





**Scandinavian Research Council for Criminology**  
Nordisk Samarbejdsråd for Kriminologi

# **When the Unforeseen is Seen**

NSfK Workshop in Reykjavík, Iceland

December 2009 & January 2011

The report is a collection of papers presented in NSfK's workshops "*When the unforeseen is seen*", in Reykjavik, Iceland, December 3-5 2009 and January 3-5 2011

The Scandinavian Research Council for Criminology 2011

University of Iceland, Faculty of Law

Lögberg, Sæmundargata 8

101 Reykjavik

Iceland

[www.nsfk.org](http://www.nsfk.org)

Chairperson: Ragnheiður Bragadóttir

Executive Secretary: Ásta Stefánsdóttir

Editor: Helgi Gunnlaugsson

Layout & design: Halldóra Þorlákssdóttir

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## ***Preface***

On its annual board meeting in March of 2009 in Reykjavik, the Scandinavian Research Council for Criminology (SRCC) decided to organize a workshop on topics related to crisis and society. What prompted this move by SRCC was the then recent banking collapse in Iceland, followed by a social turmoil and world-wide media attention. Reykjavík was felt to be an ideal location to host the workshop since many observers had pointed to Iceland as the first victim of the crisis in W-Europe, and the nation being worst hit.

The title of the workshop *When the Unforeseen is Seen* captures the theme of the workshop. Did these turbulent events come as a surprise or could they somehow be foreseen? The content should not only address current events, but also take a look at historic events and social turning points during earlier time periods. Moreover, the scope should be broad, not only including Nordic nations, but also other European nations, if possible. Crime and justice related topics were understandably supposed to be central, but if participants wanted to explore other aspects related to crisis and society, they were free to do so.

The workshop was held at the University of Iceland in December 3-5, 2009. A total of nine participants from all of the Nordic nations participated and gave a total of ten presentations, including a summary remark. On this meeting it was decided to meet again to elaborate further on the papers presented, if funds from SRCC allowed. After being granted a positive response from SRCC the second workshop was held in Reykjavík in January 3-5, 2011. A total of eight participants attended and gave nine presentations, including two new participants, but three from the first meeting were not present.

In this report, only accessible on the SRCC home page, six of the presentations from the two workshop meetings are available for the first time. In the spring of 2012, SRCC plans to publish a book complete with presentations from all of the participants given at the workshops – or just prior to the 50th anniversary of SRCC, which will be celebrated in Selfoss, Iceland in May, during its annual research seminar.

Reykjavík, December 2011.

Helgi Gunnlaugsson

Council member of SRCC

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## Programme

# **NSfK Workshop in Reykjavik, December 3-5 2009**

### **Thursday December 3**

#### **18.30:**

*Welcome, and short about the program and why "When the unforeseen is seen"*  
By Helgi Gunnlaugsson and Per Ole Johansen

*A cinematic introduction to the financial downfall of the Icelandic banks*

### **Friday December 4**

#### **9.00-12.30:**

*From public to private corruption: Structure and economic relationship*  
By Margrét Sæmundsdóttir

*Economic Crime trends in Iceland before and after the economic crisis*  
By Snorri Örn Árnason

*The banking crisis and recent crime trends in Iceland*  
By Helgi Gunnlaugsson

#### **12.30-13.00: Lunch**

#### **13.00 - to early afternoon:**

*Policing and crime trends after the banking crisis*  
By Rannveig Þórisdóttir

*Crisis and crime in Finland in the 20 the Century*  
By Martti Lethi

### **Saturday December 5**

#### **9.00-12.30:**

*When the unforeseen is seen: How Greenland transformed Denmark in to an American power*  
By Thorkild Kjærgaard

*Crime and control in Scandinavia during the Second World War*  
By Henrik Tham

*Germany after the First World War*  
By Per Ole Johansen

#### **12.20-13.30: Lunch**

#### **13.30 - early afternoon:**

*Let s put it all together*  
Commentator Per Jørgen Ystehede

*The future and our follow-ups*  
Everyone

## ***NSfK Workshop in Reykjavik, January 3-5 2011***

### **Monday January 3**

#### **18.30:**

*Welcome, and short about the program and why “When the unforeseen is seen”*  
By Per Ole Johansen and Helgi Gunnlaugsson

### **Tuesday January 4**

#### **9.00-12.00:**

*The fellowship of political parties and banks*  
By Margrét Sæmundsdóttir, Economist, Ministry of Economics, Iceland

*Impacts of depression? Change of criminal activity, use of imprisonment and changing division of labor during the depression of the 1990s in Finland*  
By Olavi Kaukonen, Social Policy, Executive Director, Finland

*Policing and crime trends in Iceland after the banking crisis*  
By Rannveig Þórisdóttir, Sociologist, Reykjavik Police

#### **12.00-13.00: Lunch**

#### **13.00-17.00:**

*Economic crimes in Iceland before and after the economic crisis*  
By Snorri Örn Árnason, Sociologist, Reykjavik Police

*Financial crisis and criminal law – fire and ice*  
By Jussi Tapani, Professor of Criminal Law, University of Turku

*No room at the Inn: Recent crime control developments in Iceland*  
By Helgi Gunnlaugsson, Professor of Sociology, University of Iceland

*Finance and politics in the Weimar republic: When everything went wrong, but some things more wrong than others*  
By Per Ole Johansen, Professor of Criminology, Oslo University

*Let´s put it all together*  
Commentator Henrik Tham, Professor of Criminology, Stockholm University

*The future and our follow-ups*  
Everyone

Margrét Sæmundsdóttir

## ***Fellowship between politicians and banks***

### ***Abstract***

It has been a widely cited argument that corruption is widespread in developing countries due to their ineffective governance and economic backwardness. However, many developed countries with high growth rates and perception of efficient institutions have also experienced corrupt acts within their own society with results of a negative impact on their economic prosperity. Thus, it is important to examine what influence corruption, or immoral behaviour, in developed society that may disrupt their economic performance. The purpose of this paper is to examine the Icelandic political system and the development of the banking sector. Two cases will be analysed in relations to literature that focuses on concentrated controlled family structure. The paper shows that strong political influences and favouritism helped to foster concentrated bank controls with the result of a range of serious governance problems.

**Keywords:** Concentrated control, ownership, corruption, structure, economic performance, favouritism, public sector, private sector, GDP per capita, political influence and trust.

*The paper carries the name of the author and should be cited accordingly. The findings, interpretations, and conclusions expressed in this paper are entirely those of the author.*

### ***Chapter 1. Introduction***

Number of economic studies on corruption focus on the impact of bribery regarding business and public services in developing countries, but few focus on other types of corruption, like favouritism and market control in public- or private sectors, and even fewer in relations to developed countries. After the financial crises hit the world in the late 2008, it has become a common argument to interpret that corruption, drawn from greediness and power conflict, helped to stoke up the crises. However, it is difficult to verify a corruption act in relation to detrimental situation and find out what may work as an incentive for corrupt behaviour due to a lack of reliable data. So far, the only possibility to understand corruption is to use surveys measuring perception of corruption, investigate a certain case that had been brought into public discussion or debate as a matter of social experience. At least we can confirm that minority of those who had been accused of corrupt acts have been penalised.

The aim of this paper is to examine the development of the Icelandic political structure and political influences during the privatisation of the two largest banks in Iceland. Furthermore, the aim is to explore the development of the banking structure and why the banks became, since the privatisation, economically vulnerable to a range of serious governance problems. The banks are chosen here as the topic since

there is a broad consensus that the banks are the crucial part of the financial system, and that a financial development is a prerequisite for economic growth.<sup>1</sup>

The paper is organised in the following manner. Chapter 2, provides a definition of corruption framework. Chapter 3, focuses on well-known indexes used to measure corruption and on relevant literature of corruption, in order to link it with the cases analysed in following two chapters. Chapter 4, covers some historical facts on the Icelandic political system from the beginning of the last century to present, as well as the politicians influence on the Icelandic industries, and the process of the banking privatisation. Chapter 5, discusses how the structure of the banks in Iceland evolved after the financial deregulation and privatisation, and why this sector became economically vulnerable in terms of corruption acts. Chapter 6, illustrates the conclusion and the results from the report of the Icelandic Special Committee will be discussed as a follow-up.

## **Chapter 2. Definition and structure of corruption**

According to many international definitions, a corruption occurs when a member of an organisation uses his position, his right to makes decisions, his access to information, or some other of the resources of the organisation to gain a benefit or avoid a disadvantage.<sup>2</sup> Other types related to corruption like favouritism, may also fall under this definition but in more narrow perspective:<sup>3</sup> *It is a mechanism of power abuse and a highly biased distribution of state resources, no matter how these resources have been accumulated in the first place. [It could also take place in a same way within a private sector when preventing others to enter into the market]. Favouritism is the natural human proclivity to favour friends, family or anybody close and trusted. Favouritism is closely related to corruption insofar as it implies a corrupted distribution of resources [public – or private].* Favouritism has mostly been used in relation to public resources<sup>4</sup> but many private own sectors do also hold crucial and scarce resources, classified as a public interest, for example, banks or telecommunications. The scope of a corruption act matter also, since the phenomenon of corruption can range from a single act of a payment contradicted by law, to a structural problem or malfunction of a political and economic system. One “petty” corruption is not likely to harm the whole economy except if it is widespread throughout the society, but one “grand” corruption, often classified as the policy formulation, is likely to have such impact. For example, when ministers use their power in personal return when transferring state assets to the private market or when firm CEO manipulates the market or risk the society in other way.<sup>5</sup> Tasks performed in public and private organisations may of course differ, but the basic structure is the same.

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<sup>1</sup> Beck, T, Demirgüç-Kunt, A., Levine, R. and Maksimovic, V. (2001); Neusser, K., and Kugler, M. (1998); Levine, R., and Zervos, S. (1998).

<sup>2</sup> See Transparency International homepage, <http://www.transparency.org/> [10.09.09]

<sup>3</sup> Andvig, J. C., Fjeldstad, O.H., et. al. (2000). This definition has been extended by adding private sectors as an actor because both public and private sector can misuse crucial economic resources.

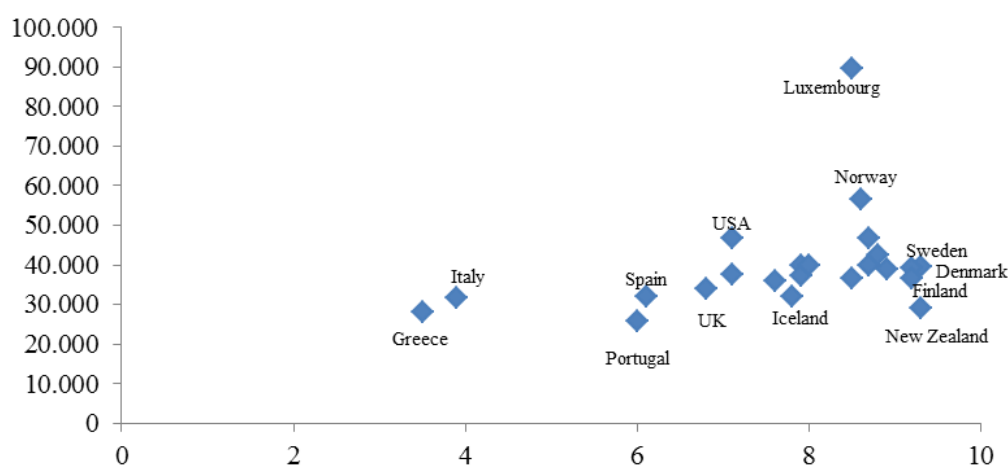
<sup>4</sup> See for example, OECD homepage, [http://www.oecd.org/about/0,3347,en\\_2649\\_34135\\_1\\_1\\_1\\_1\\_1\\_00.html](http://www.oecd.org/about/0,3347,en_2649_34135_1_1_1_1_1_00.html) [11.09.09]

<sup>5</sup> Arikan, G.G. (2008); Angandoña, A. (2003).

### Chapter 3. Corruption measurement and theoretical perspectives

Corruption has widely been examined in economic terms and many studies precisely have documented the correlation between GDP per capita and countries ranking on corruption indexes. Transparency International measure for example perceived corruption, frequency and/or size of bribes in the public and political sectors among 180 countries and territories around the world. Iceland and other Nordic countries are among countries that have been listed for decades with high GDP per capita and perception of very low level of public- and political sectors corruption. Figure 1 shows the correlation between GDP per capita and the scores on the corruption index (higher score equals lower corruption) among top 25 selected countries.

Figure 1. GDP per capita and perception of public sector corruption, 2010



Source: OECD and Transparency International

This corruption index, like many others indexes, is totally or mainly measured in terms of surveys carried out amongst international business people. Critics of this approach argue that these subjective estimates raise problems first, since business people may assess corruption to be less serious if the system works, and they make large profits. Secondly, the criticism regards to the fact that it does not try to explain what influence corrupt acts or distinguish between corruptions per transaction in relation to economic growth.<sup>6</sup> Thirdly, the survey includes questions about bribery, embezzlement and extortion practices within the public sector, but does not discern the wide variations in the way corruption is organised in public or private sectors. The public, journalists and others might therefore, misinterpret the index ranking and perceive the situation erroneously, resulting in a false confidence towards public- or private institutions. Thus, we must take into consideration other factors that could give us better information on corruptions' incentives and actual degree of corruption in relations to economic performance.

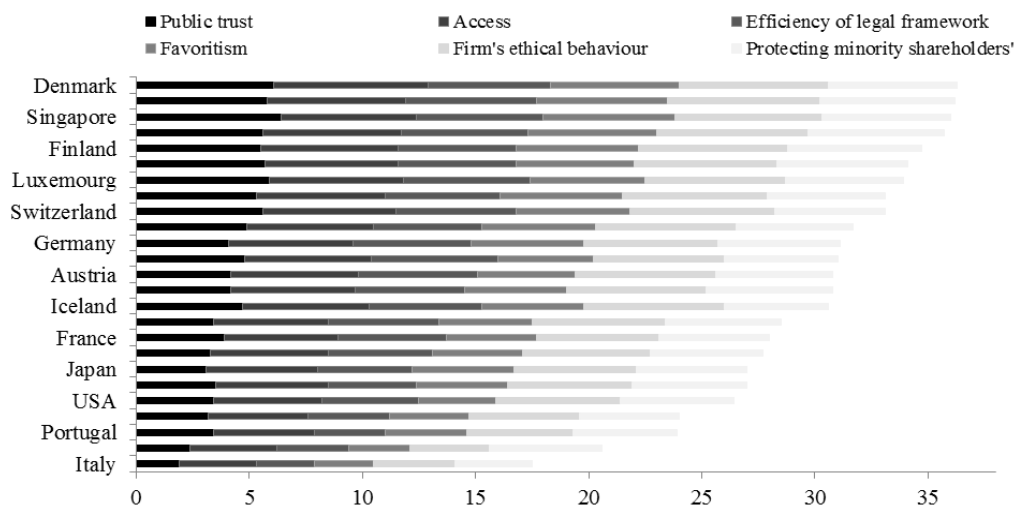
One interesting factor referred to an economic performance and corruption literature is the concept Social Capital. The most famous work is probably from Putnam's "Making Democracy Work" (1994). Trust, according to Putnam, is civic cooperation and associational activity defined as *features of social organization*. These features encourage inhabitants to improve the efficiency of their social institutions and hence, reduce the likelihood that people behave corruptly or immorally. Similarly, Zak and

<sup>6</sup> Khan, M. (1999).

Knack (2001); Beugelsdijk et al. (2004) showed that institutional reforms are more important where interpersonal trust is low than where trust is higher, in order to provide better, formal mechanisms for a reliable enforcement.

Small countries, typically a microstate like Iceland, may be classified as a trusted society in itself because it is quite common to assess that everyone knows everyone. This kind of cultural structure implies a positive effect since people are then willing to deal with each other and cooperate with those who stand outside their closest network. As a result, such countries are more likely to reflect a high trusted society with an efficient government and institutions, and thus less corruption. But although a small society can interact openly, there is also a disadvantage. Very small countries may suffer due to their high degree of interpersonal relations.<sup>7</sup> Sibert (2009) argues in her article that person in charge in a microstate is often forced to play more roles than he or she would do in a more populous society. Such multi-tasking will put a person into an undesirable position because he or she will gain an extended relationship and influences across the society, and conversely can in some cases lead to favouritism or other form of a corruption. Figure, 2 shows how Iceland and other Nordic countries score in comparison to other selected nations, regarding to the perception of trust and corruption. Trust is measured on the one hand from the public sector (efficiency of legal framework, access to public information and favouritism), and on the other hand from the private sector (protecting minority rights and ethical behaviour).

Figure 2. Governance performances within selected countries perceived with low corruption



Source: World Economic Forum, 2009

According to the figure 2, all Nordic countries are perceived to be high trusted societies. However, Iceland seems to be the least trusted among these countries, mainly because of a higher perception of favouritism and a lack of protection towards minority shareholders right. The political history of Iceland and the corporate culture may explain why many Icelanders perceive that favouritism exists in their country and why the system has not protects enough the right of the minority. In Iceland, it

<sup>7</sup> Farrugia, C. (1993), proposed for example in his article that many necessary decisions and actions in a very small nation can be modified, adjusted and sometimes totally neutralised by personal interventions and community pressures but in extreme cases, close friends and family connections lead to nepotism and corruption.

could be argued that the political and business power has evolved in so called *concentrated controlled family structure* where few related individuals (not necessarily relatives) hold strong control over the major part of the social industry as owners or/and by blocking the board seats of most vital companies. Concentrated controlled family structure has also been discussed as an aspect of a bonding society.<sup>8</sup> This is because within such a society, the norms of specific reciprocity and particularised trust towards the members of the ‘in-group’ are strictly enforced within the group, but these norms are not equally applied to the outsiders. Bonding structure in relation to economic performance is however not very new. It derives from the concept “amoral familism”, developed by Edward Banfield, 1958.<sup>9</sup> In his famous work "The moral basis of a backward society", he argues that backwardness of a community is to be explained largely, but not entirely, by the inability of the villagers to act together for their common good. Under such system, keeping faith with one’s blood kin and long-time friends is highly valued, but failing to keep faith with others, especially outsiders, hence, is regarded as inevitable.

#### **Chapter 4. The Icelandic political structure and influence**

The political intervention is well known in the Icelandic history books. Until the middle of the last century, the Icelandic political system was characterised by a network of groupings on ad hoc issues in which a multitude of allegiances appeared. Four main political parties emerged in this period and formed the political structure in the last century. These parties were the United Socialist Party (later, People’s Alliance), the Progressive Party, the Labour Party, and the Independence Party. The latest mentioned party has led most cabinet coalitions in post-war and to current days. The Progressive party has similarly dominated many coalitions. The administration and the Press were in general controlled or partly directed by few cohesive political leaders, which had also activities in economic enterprises and trading unions.<sup>10</sup> Furthermore, the managers and the board of directors of the banks were in practice politically appointed and party leaders exerted a strong influence in boards of various funds.

In the middle of the last century, an independence professionalization started to grow in Iceland as among other neighbouring countries. Professionals were recruited to the administration and new Press, social membership organisations and enterprises emerged without political intervention. Furthermore, formal securities trade centre was established and the first sign of an organised financial market appeared. As a result, the political leaders had to associate themselves with more negotiations than before with certain industries and interest groups.<sup>11</sup> However, the ruling politicians continued to appoint their members or former ministers as CEOs or as chairpersons in a board of directors within the business sector. The two largest banks, Landsbanki Íslands and Búnaðarbanki Íslands (later Kaupthing) also remained as state owned banks and were covered by special laws but neither by public sector accountability arrangements, nor by private sector corporate governance arrangements. Thus, the banks were often accused of being part of a political spoils system, rather than

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<sup>8</sup> Ades, A. and Di Tella, R. (1999); Harris, D. (2007).

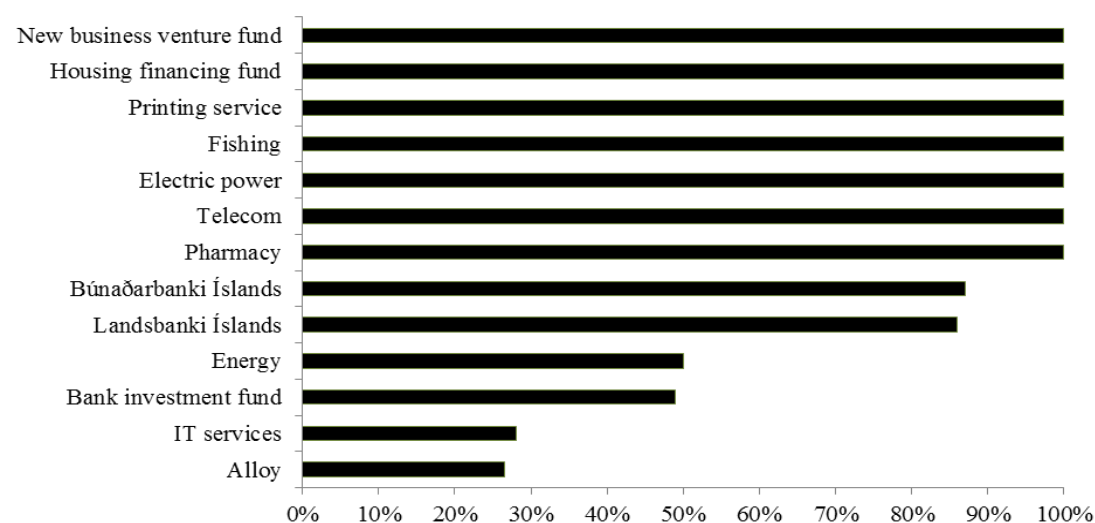
<sup>9</sup> Banfield, E.C. (1958).

<sup>10</sup> Ólafur Ragnar Grímsson (1978).

<sup>11</sup> Same (1978).

commercial enterprises acting in a fair competition.<sup>12</sup> In 1991, the State had shares in 131 companies as figure 3 shows.

Figure 3. Proportion of State-ownership in the business activities in Iceland (1991)



Source: Icelandic Competition Authority

The Icelandic economy was also to a some degree divided by “party lines” where each party fought for domination. For example, Landsbanki Íslands, shipping and many trade enterprises were assumed to belong to the Independence Party whilst Búnaðarbanki Íslands (later Kaupthing) and Cooperative firms to the Progressive Party, and the Confederation of labours to the Labour Party. It was believed that this parties’ structure was so strong that many political members or voters did only trade with a company that was labelled to their party.<sup>13</sup> Such division does not at all support a high social capital or rational structure to improve the economic performance when people trade in a small local group instead of trading with each other. However, this structure was interwoven into the Icelandic culture at that time.

#### 4.1. Privatization and deregulation

In the period of 1991-2003 Iceland followed the Western liberal model by transferring state assets to the private sectors, and deregulated the financial market. During the same period the regulator body was strengthened when the Financial Supervisory Authority and the Icelandic Stock Exchange were established. During the first four years of this period, the government was formed by the coalition of the Independent Party and the Labour Party, but from 1995 to 2003, the coalition of the Independent Party and the Progressive Party was in charge.

At the beginning of the privatisation, in the year of 1991, the government published its plan of the process regarding the aims to improve efficiency and encourage decentralisation.<sup>14</sup> The first step in the process was selling stocks in various public enterprises. The second step was to privatise the two largest banks, Landsbanki Íslands and Búnaðarbanki Íslands among other large companies. The rules procedure

<sup>12</sup> OECD, 2000.

<sup>13</sup> Gylfi Magnússon (2005).

<sup>14</sup> Prime minister’s office (2001) Iceland’s privatisation programme 1991-2000, see <http://eng.forsaetisraduneyti.is/ministry/Privatisation/nr/310> [03.04.09].

to implement privatization of the banks was in the hands of a Ministerial Committee, but an Executive Committee was also established in charge of preparations and coordination of projects within the field of privatization under the auspices of the Ministerial Committee.<sup>15</sup> One of the first works of the Executive Committee was to introduce a transparent plan and publish its object in respect of the proposed sale of the State interest in the banks. This decision was based on an evaluation of the submitted tenders for the project by following criteria:<sup>16</sup>

- International experience in the financial market;
- Experience of individual consultants;
- Proposals on the arrangement of the consultation;
- Proposals on the arrangement of the project;
- Amount of the offer;
- Knowledge of the Icelandic financial market.

The time framework of the privatisation was set to be within the four years or in the current term of the ruling government.

#### **4.2. The process of the banks privatization**

The policy of the banks privatisation, announced by the Prime Minister, was that no single or group investor could buy higher equity than around 3-4 per cents. The aim was to prevent concentrated ownership and to protect the minority right. During the year of 1998 to 2002, around fifty per cent of Landsbanki was sold directly to the public on the Icelandic Stock Exchange (ICEX) and the plan was to continue to sell the rest of the shares in lumps as before. The stake in Búnaðarbanki had also been sold in the same fashion.<sup>17</sup> However, the world market slumped in a short period after the 9/11 attack, and the sales were put temporary on hold. Later in the year of 2002 when the international market started to grow again, the leaders of the ruling parties decided to intervene into the process and put controlling stakes in both Landsbanki and Búnaðarbanki up for sale. After some discussions with interesting buyers, the government accepted bids that covered equity up to 45.8% per cent of Landsbankinn from the investment company Sampson ehf.<sup>18</sup> The Sampson consisted of three individuals, a long-time member of the Independence Party, his son and their co-worker. Soon after this process, 45.8% of the Búnaðarbanki was sold to

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<sup>15</sup> Prime Minister's office, December, 12 (1996), see <http://eng.forsaetisraduneyti.is/ministry/Privatisation/nr/801> [03.04.09].

<sup>16</sup> Prime Minister's Office, October, 30 (2001), see <http://eng.forsaetisraduneyti.is/ministry/Privatisation/nr/310> [03.04.09].

<sup>17</sup> Þóra Christiansen (2009).

<sup>18</sup> Prime Minister's Office, October, 19 (2002), see <http://eng.forsaetisraduneyti.is/ministry/Privatisation/nr/811> [03.04.09].

another group, called the S-group<sup>19</sup> which was said to have a strong link with the Progressive Party.<sup>20</sup>

From the beginning to the end of the privatisation, there was a policy debate about how the process was performed. Number of Icelandic articles and papers showed that there were substantial grounds for doubting the implementation of the banks privatization, and the competence of the parties' involvement. Many believed that the government had sold the banks at a modest price to their peer politician partners, who lacked the experience in the financial market and the knowledge to run an economical and vital company. Moreover, it was also believed that politicians had used their power to place supporters in the bank boardrooms to maintain a relationship with the bankers. In addition, and what was not the least important argument, to protect that family-based private ownership in the food market with high stakes in another bank; Íslandsbanki (later Glitnir), could achieve domination in the banking sector.<sup>21</sup> This debate did not only take place amongst the opposition parties and columnists, but also among one member of the Executive Committee after he resigned in the middle of the process. He claimed that "prospective buyers of Landsbanki were turn away in spite of their better offers".<sup>22</sup> Later, one of the former CEOs of Landsbanki and former member of Independence Party accused the ministers to use their power by dividing the two banks between their parties<sup>23</sup>.

The political leaders who were engaged in the process did not confess to these accusations and required that the National Audit Office investigated the banking privatisation. The National Audit Office later reported that nothing immoral or illegal took place during the process concerning the privatisation of the banks. However, the report stated that it was not clear how the preliminary section process was announced or how the project plan regarding the selling scheme of the government shares was organised. In addition, it was not formally assured how the sale process and the time plan were established that might have finally affected the bids.<sup>24</sup> Nevertheless, many believed that the interest of the dominated political parties was in the end to avoid political disadvantage rather than distribute the bank resources in a fair manner. After the banks collapsed in October 2008 this case has been brought again into the public debate.

## **Chapter 5. New banking sector**

The deregulation of the financial markets in the 1990s and the bank privatisation in the beginning of this decade, together with the EEA membership, created the condition that made the phenomenal growth of the financial sector possible. In five years, the consolidated assets (i.e. including the assets of Icelandic banks' foreign subsidiaries) of the three main Icelandic banks, grew from 170% of GDP in the end of

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<sup>19</sup> Prime Minister's Office, November, 16 (2002), see <http://eng.forsaetisraduneyti.is/ministry/Privatisation/nr/872> [03.04.09].

<sup>20</sup> Morgunblaðið, see <http://mbl.is/mm/gagnasafn/grein.html> [05.05.09]; <http://pappir.mbl.is/print.php?aid=11462> [05.05.09].

<sup>21</sup> Þóra Christiansen (2009); Styrmir Gunnarsson (2004).

<sup>22</sup> Jakob F. Ásgeirsson and Sigríður K. Þorgrímsdóttir (2004).

<sup>23</sup> Visir.is, see, <http://www.visir.is/article/20071119/FRETTIR01/71119099> 19.11.2007 [15.04.09].

<sup>24</sup> Icelandic National Audit Office (2003), [http://www.rikisend.is/files/skyrslur\\_2003/einkavaeding.pdf](http://www.rikisend.is/files/skyrslur_2003/einkavaeding.pdf) [05.09.09].

2003 to 880% of GDP by the end of 2007.<sup>25</sup> The wealth of the bankers also increased dramatically during this period and the households received access to cheaper loans than they had before which caused a higher living standard. Consequently, the public generally trusted those in control, and their activities, as well as the institutions to supervise and regulate the market. Nonetheless, the new banking system appeared in a same fashion as the Icelandic old political structure. In other words, the ruling politicians decided to allow few individuals to control the major stakes in the Icelandic banking sector with the following results: Despite a high concentrated ownership in a crucial resource, the owners gained effortless influences in other business sectors and soon became cross-holding ownership with large indirect risks.

After a short period, the owners and other high potential valued bankers experienced a high profit and many of them perceived themselves with an enormous power, traced to the idea of "too big to fail" or whatever they will do, the government will always intervene and help them out of the trouble otherwise it will harm the society. With this persuasion, it is easy to take an unlimited risk, even though knowing that such behaviour would also risk the economic performance; mid or long run. This description of bankers is however not typical for Icelandic society since many other countries are tackling the same problem. The things that might be different, is that the Icelandic banks, controlled by concentrated owners, gained undesirable economic influences throughout the business activities.<sup>26</sup>

Following the banks' failure, the media, the public offices and foreign experts begun to investigate the structure of the banks management. Insofar the report shows that the biggest shareholders of the banks had engaged in a wide range of financial activities and the banks were financing purchases of their own, and other banks' shares, by their owners and their closest clients. In more serious cases there seems to have been a habit of accepting banks' own shares as collateral for loans that often had been taken in order to buy those same shares and perhaps abusing power to boost personal own capital adequacy.<sup>27</sup> Such purchases may have been "hidden" in their foreign subsidiaries in order to make them less detectible.<sup>28</sup> Additionally, the major shareholders ensured in some cases that they could buy shares at lower prices than the market prices.

## **Chapter 6. Conclusion**

Empirical studies show that by far the most important determinant of a corruption is economic development, measured by real GDP per capita. However, the majority of corruption indexes focus almost explicitly on business people opinions' about bribery, fraud and embezzlements, but not on other types of corruption, like favouritism and market manipulation within the public – and private sector. Despite of this distortion, the actual corruption is often unclear and therefore all regression results ought to be interpreted with care. A number of studies have also tried to explore the possible influence of corruption on the growth of GDP. One interesting

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<sup>25</sup> Central Bank of Iceland, see <http://sedlabanki.is/?pageid=552&itemid=5a037662-26ea-477d-bda8-d71a6017cc05>

<sup>26</sup> It should be noticed however, that the main causes of the crises is due to the macroeconomics imbalances factors in Iceland and other international factors. However, it is important to go through other factors that may have depressed on the crises.

<sup>27</sup> Jännäri K. (2009).

<sup>28</sup> Same (2009).

study on this issue is the correlation between trust and corruption. However, favouritism and market manipulation which is a form of corruption can take place in a country classified with a high GDP per capita and high trust, and cause serious impact on the economy performance in the mid or long run. In this paper, Iceland was examined regarding this subject with an indication of being highly concentrated, controlled family structure society.

### ***Follow-up***

In December 2008, the Icelandic Government decided to establish a Special Committee to investigate and analyse the processes leading to the collapse of the three largest banks in Iceland. The Committee was also requested to analyse the period of the process of the banks privatisation. In April 2010, the committee delivered its report to Althingi, the Icelandic Parliament. Almost immediately, the report was published on the internet, around 7000 pages in total.

The main results from the Committee lead towards the same direction as this article demonstrates. The Committee stated that during the period of the privatisation process, the ruling parties decided the buyers and what should be required from them. However, the Committee did not investigate in detail the responsibility of the process and the decision, due to the short time it had to complete its report. Currently, the Parliament is still addressing whether it should initiate a committee to investigate the corruption during the period of the privatisation.

The Committee opinion shows that the big growth in lending by the banks caused their asset portfolio to develop into a very high-risk one. Big and high-risk growth is not compatible with long-term interests of a robust bank but, on the other hand, there were strong incentives for growth within the banks. The operations of the Icelandic banks were, in many ways, characterised by their maximising the benefits of the bigger shareholders, who held the reins in the banks, rather than by running reliable banks with the interests of all shareholders in mind and showing due responsibility towards creditors.

The Group of States against Corruption (GRECO) visited Iceland in the year of 2007 and published its report in the year of 2008. The report recommended at that time, and before the crisis, that Iceland increased the penalties for bribery offences in the private sector to effectively deter private sector entities from engaging in corrupt practices due to rapid economic growth - with large investments of private Icelandic companies being made both at home and abroad. However, the penalty was not extended.

Why did the Government not react at the time when the banks were growing totally out of control? It was clear that the Government could have enforced laws and strengthened rules to control the financial market and lower the size of the banks. It was also clear that the GRECO had warned the Icelandic authorities about the possible corruption activities within the private market. The Special Committee illustrates in its report some evidence as to why the government did not react, when looking at the ethical part of the banks' collapse, and perhaps the corruption perspective. The main conclusion is that Iceland suffered due to its high cultural degree of interpersonal relations. The relationship between politicians and the business sector were often informal, and the conversations and decisions not always documented. The Committee points out the following examples in its report: 1) Prime

Minister had some personal contacts with a chairperson of the banks. 2) The director of the Financial Supervisory Authority had a friendship with people that he was supposed to supervise. 3) The politicians held shares in prevailing companies and were even board members. 4) Bankers phoned politicians directly and vice versa. 5) Politicians accepted invitations from the bankers and grants behind the scenes providing an undesirable closeness between politicians and contributors. Therefore, it was not always apparent who was in power and who was really making the decisions. Consequently, the politicians operated in favour of the banks since the banks decided if and when, politicians could intervene into the process of business sector activities.

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*Jussi Tapani*

## ***Financial Crisis and Criminal Law – Is Trust Everything that Matters?\****

### ***Abstract***

It is a commonly accepted view that the general purpose of the criminal law is to make people do what society regards as desirable and to prevent them from doing what society considers being undesirable. However, criminal law is not framed in terms of offering incentives or of granting rewards for good conduct; it is normally framed in terms of imposing punishment for wrongdoing. Therefore, we could regard the criminal justice system as the conservative, blame allocating and resources consuming system. Another fundamentally important institution, the economy seems to be an antipode of criminal law: like fire and ice. The economy, understood as the market place offers both incentives and opportunities for the value adding process and is often viewed as the dynamic and progressive system keeping the society going on.

Still, one could argue that there is at least one fundamentally important element, namely *trust*, which connects these institutions. Different fields of science, such as sociology, philosophy, psychology, economics and law give this term different meanings causing conceptual confusion. However, we have good reasons to believe that trust or actually the lack of trust has something to do with the Icelandic financial crisis in 2008 and the Finnish bank crisis as it stood at the end of 1980s' and beginning of 1990s'. Furthermore, some of the crime control actions taken after these crises could be seen as a response to restoring trust on those above mentioned fundamental institutions in society.

This article aims at exploring one aspect of trust, which concerns "theories of punishment" or "justifications for punishment". The criminal justice system needs a practice i.e. punishments imposed by courts, which concretise the breach of prohibition: by imposing punishment, the state tries to tell citizens that no one can act against norms without consequences. Furthermore, if the crime is understood as a public wrong, a wrong against one's fellow citizens and the values on which our shared life depends, it merits public censure and punishment. Therefore, there seems to be some connection between moral theory, criminal law, trust and justification.

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## 1. Introduction

It is a commonly accepted view that the general purpose of the criminal law is to make people do what society regards as desirable and to prevent them from doing what society considers being undesirable.<sup>1</sup> However, criminal law is not framed in terms of offering incentives or of granting rewards for good conduct; it is normally framed in terms of imposing punishment for wrongdoing. As *Wayne R. Lafave* puts it “the emphasis is more on the prevention of the undesirable than on the encouragement of the desirable”.<sup>2</sup> This doesn't by any way suggest that the criminal justice system could erase wrongdoing. Instead, we should regard the criminal justice system as the conservative, blame allocating<sup>3</sup> and resources consuming institution.

Another fundamentally important institution, the economy seems to be an antipode of criminal law: like fire and ice. The economy, understood as the market place<sup>4</sup> offers both incentives and opportunities for the value adding process and is often viewed as the dynamic and progressive system keeping the society going on.<sup>5</sup> Still, one could argue that there is at least one fundamentally important element, namely *trust*, which connects these institutions.

*There seems to be striking similarities if we look at little bit deeper and concentrate on the key elements of both systems: the concept of property and that of punishment. Both are complex institutions presenting different inter-related features calling for separate explanation.<sup>6</sup> H.L.A. Hart concretises this by stating “in the case of property we should distinguish between the questing of the definition of property, the question why and in what circumstance it is a good institution to maintain, and the question in what ways individuals may become entitled to acquire property and how much they should be allowed to acquire”.<sup>7</sup> The answers given to these questions may of course vary depending on theoretical and ideological background.*

This article aims at exploring one aspect of trust, which concerns “theories of punishment” or “justifications for punishment”. The criminal justice system needs a practice i.e. punishments imposed by courts, which concretise the breach of prohibition: by imposing punishment, the state tries to tell citizens that no one can act against norms without consequences. If the crime is understood as a public wrong, a wrong against one's fellow citizens and the values on which our shared life depends, it merits public censure and punishment. Therefore, there seems to be connection between moral theory, criminal law, trust and justification.

In this article, I will first discuss briefly on the concept of trust. After that I will concentrate on the moral content of crime. This discussion is needed in order to

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<sup>1</sup> See e.g. *Ashworth* 2009 p. 15–16.

<sup>2</sup> *LaFave* 2010 p. 24.

<sup>3</sup> As *Feinberg* (1994 p. 74) says “punishment is a conventional device for the expression of attitudes of resentments and indignation, and of judgements of disapproval and reprobation”.

<sup>4</sup> The market is here understood in wider sense. If we want to be more precisely, we can talk about the financial markets, which can be divided into different subtypes, such as capital markets, commodity markets, money markets, derivatives markets, future markets, insurance markets and foreign exchange markets.

<sup>5</sup> Nevertheless, this view can be contested in many ways if we keep in mind the present turbulence at the global market.

<sup>6</sup> *Hart* 2008 p. 4.

<sup>7</sup> *Hart* 2008 p. 4

analyze the dichotomy *mala in se* – *mala in prohibita* -offences. At the end I will approach the justification of punishment from one interesting point of view by discussing punishment as a fair play.

## **2. Trust**

### **2.1. Background**

The concept of trust is highly ambiguous and vague, because it has several connotations in social sciences. Sociology, philosophy, psychology, economics and law give the term different meanings causing conceptual confusion. Nevertheless, it seems plausible that all these fields of science have something relevant to say about the connection between trust and the causes and consequences of financial crisis. It is for example interesting to see how the financial bubbles like subprime-crisis were able to build up as long as citizens, business actors and authorities trusted on the very premises of economy and its ever-growing nature.<sup>8</sup> But, when first signs on economic problems were on the horizon, the seeds of doubt were planted in people's mind and that caused fractures on trust.

Let us take a concrete example. Concerning the Icelandic financial crisis in 2008 the Special Investigation Commission (SIC)<sup>9</sup> discusses in their report mainly *economic* factors, which were plausible causes leading to the crisis. Explanations for the collapse of three biggest banks i.e. Glitnir Bank hf., Kaupthing Bank hf. and Landsbanki Íslands hf. are first and foremost to be found in their rapid expansion and their subsequent size, when they tumbled in October 2008.<sup>10</sup> However, the report as a whole gives an impression that there was something fundamentally distorted concerning trust. Bankers trusted large-scale and high-risk growth, governmental authorities trusted bankers' ability to control risks inherent to the growth, and politicians trusted bankers. Furthermore, citizens believed that those making important decisions knew what they were doing. It was like a self-boosting circle of trust.

Therefore, it is hardly surprising that the Working group on Ethics under the above mentioned SIC saw “the primary problem reside in the fact that in the wake of a flawed process of privatization, where inexperienced owners gained large shares, the banks were allowed to grow far beyond the ability to supervise them properly. The policy to trust the bankers to largely regulate themselves proved fatal and the culture within financial institutions severely neglected professionalism and good working practices”.<sup>11</sup>

### **2.2. Conceptual challenge**

Trust plays an important role in our ordinary life. How should we then define this key concept? I have chosen as a starting-point the moral philosophical conceptualization

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<sup>8</sup> See more on blowing bubbles from historical perspective *Ferguson* 2009 p. 120–176.

<sup>9</sup> The Special Investigation Commission (SIC) was established by Althingi, the Icelandic Parliament, in December 2008, to investigate and analyse the processes leading to the collapse of the three main banks in Iceland.

<sup>10</sup> Chapter 2/2010 p. 1.

<sup>11</sup> Working group on Ethics 2010.

of trust.<sup>12</sup> *Annette Baier's* article on the theme will serve as a firm base.<sup>13</sup> She starts her article claiming that the question “Whom should I trust in what way and why?” has not been the central question in moral philosophy.<sup>14</sup> One reason may lie on the very “triviality” of trust. “We inhabit a climate of trust as we inhabit an atmosphere and notice it as we notice air, only when it becomes scarce or polluted” says Baier.<sup>15</sup>

Baier argues that trust is more than a relationship of reliance; she makes a difference between trust and reliance by saying that trust can be betrayed, whilst reliance can only be disappointed. Therefore, the dominant paradigm of trust in philosophy seems to be *interpersonal*.<sup>16</sup> According to Baier, the concept of trusting another means that I depend on her good *will* toward me. Hence, the first preliminary definition of trust could be as follows: accepted vulnerability to another's possible but not expected ill will (or lack of good will) toward one. Trusting doesn't need to be purposive in that sense that one need not intend to achieve any particular benefit from it. Nevertheless, it requires awareness of one's confidence that the trusted will not harm one, although they could harm one.<sup>17</sup>

Baier continues to develop the concept of trust with the help of a three-place predicate (A trusts B with valued thing).<sup>18</sup> But what does it mean to let other persons (natural or artificial, such as firms) take care of something the truster cares about? The concept of caring for seems to involve some exercise of discretionary powers which should be used according to Baier competently and non-maliciously.<sup>19</sup>

*The relational conception of trust is triadic. It has interestingly certain similarities with the conception of responsibility presented by R.A Duff. He argues that we should understand responsibility as a matter of being responsible (i.e. answerable) for something, to some person or body, within a responsibility-ascribing practise.<sup>20</sup> Liability – to criminal punishment or to moral blame – is grounded in responsibility: I can be liable to punishment or blame for X only if I am held responsible for X.<sup>21</sup>*

Is it then plausible that we could define the core cases of trust? One could begin with Baier's concept of promise.<sup>22</sup> “Promises are puzzling because they seem to have the power, by verbal magic, to initiate real voluntary short-term trusting. They not merely create obligations apparently at will of obligated, but they create trust at the

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<sup>12</sup> *McLeod* (2008) explores various philosophical dimensions of trust, including the conceptual nature of trust and trustworthiness, the epistemology of trust, the value of trust, and what kind of mental attitude trust is.

<sup>13</sup> See also *Bok* 1999.

<sup>14</sup> *Baier* 1986 p. 232. Nevertheless, she points out later (p. 233 n 3) a couple of writers who have dealt with the subject in moral philosophy. After 1986 the situation has of course changed.

<sup>15</sup> *Baier* 1986 p. 234. See also *Jones* 1998.

<sup>16</sup> *McLeod* 2008. See also *Dimock* 1997 p. 45–47.

<sup>17</sup> *Baier* 1986 p. 235. Baier (1986 p. 257–259) suggests that a moral test for trust should be judged on basis of *the expressibility test*. This test leaves open, what motives the trusting and trusted have for maintaining the relation, requiring only that these motives, insofar they rely on responses from the other, survive the other's knowledge of that reliance.

<sup>18</sup> *Baier* 1986 p. 236.

<sup>19</sup> *Baier* 1986 p. 240. See also *Dimock* 1997 p. 47–49.

<sup>20</sup> *Duff* 2007 p. 15 and 23. However, *Ristroph* (2011 p. 116) points out that this might be the starting point but it will not end here.

<sup>21</sup> *Duff* 2007 p. 16.

<sup>22</sup> See also *Green* 2006 p. 107–113.

will of the truster”, notes Baier.<sup>23</sup> However, there are certain difficulties with this idea. As Baier underlines, the mould of promises is based on relations between roughly equal parties. This can be seen problematic because other cases, such as relations between those of unequal power – husband to wife, adult to aged parent, official to citizen, employer to employee – can hardly be forced into that kind of mould.<sup>24</sup> Therefore, Baier claims that we count on all sorts of people for all sorts of vital things, without any contracts, explicit or implicit, with them or any third coordinating party.<sup>25</sup>

It seems plausible to claim that Baier’s view reveals only one – though important – aspect of trust. According to *Carolyn McLeod*, we can find four subcategories of trust views: “the social contract view”, “encapsulated interest view”, “the goodwill view” and “the virtue view”.<sup>26</sup> The first model can be said to have a contractual nature: the force of social constraints, such as a contract can compel trustworthiness; the constraint imposed could be the primary motivation for being trustworthy.<sup>27</sup> According to the second view trustworthy people are motivated by their own interest to maintain the relationship they have with the truster. This in turn encourages them to encapsulate the interests of that person in their own interests. The third model states that a trustee who is actually trustworthy will act out of goodwill toward the truster, to what or to whom the trustee is entrusted with or both. In other words the trustworthy person care about the truster, or care about what he or she cares about. As we see, this is the view represented by Baier. The fourth view is that trustworthiness is a virtue understood as a moral disposition to be trustworthy toward everyone.

Whether one accepts one of these views, *McLeod* argues that the uncontroversial *conditions* for trust are as follows: an acceptance of risk, especially the risk of being betrayed; an inclination to expect the best of the other person (at least in domains in which one trusts him or her); and the belief or optimism that this person is competent in certain respects.<sup>28</sup> She also discusses the question of what sort of – if any – motive a trustworthy person has. Clear conditions for trustworthiness – understood as an attribute, not an attitude – are that the trustworthy person is competent and committed to do what s/he is trusted to do.<sup>29</sup>

As I mentioned earlier, the dominant paradigm of trust in philosophy seems to be *interpersonal*. This is obvious when we think about trust having some intrinsic value and enormous instrumental value. What comes to intrinsic value, the value of trust is not exhausted by its instrumental role in making possible cooperative relations. *Jones* pinpoints that “trust, when well placed, is valuable in itself and is a constitutive

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<sup>23</sup> *Baier* 1986 p. 245.

<sup>24</sup> We can of course disagree if these relations are really relations between those of unequal power. At least the relationship between husband and wife is in principle thought to be equal.

<sup>25</sup> *Baier* 1986 p. 251.

<sup>26</sup> *McLeod* 2008. Cf. *Jones* 1998, who divide accounts of trust into three families: risk-assessment accounts, which are indifferent to the reasons why one trusts; will-based accounts, which stress the importance of the motives of those who are trusted; and affective attitude accounts, which claim that trust is a feeling as well as a judgment and a disposition to act.

<sup>27</sup> *Hardin* (1996 p. 34) says that “there is great trustworthiness in contracts because performance is easy to assess and enforcement is relatively easy”.

<sup>28</sup> See more *McLeod* 2008. See also *Jones* 1998.

<sup>29</sup> See more on trustworthiness e.g. *Hardin* 1996 p. 26–42.

part of other things valuable in themselves, such as love and friendship”.<sup>30</sup> *McLeod* for her part uses the concept “goods of trust” in discussing its instrumental value. According to her these goods include opportunities for cooperative activity, knowledge, autonomy, self-respect, and overall moral maturity.<sup>31</sup> She highlights the importance of trust saying “trust that is warranted forms the foundation of a good society. It allows people to thrive through healthy cooperation with others and to be morally mature human beings”.

The reason why trust plays so important role in society can be illustrated by the research of *Tapio Lappi-Seppälä*. He has explored explanation for differences in penal severity in industrialized countries.<sup>32</sup> It is claimed that welfare and social equity promotes trust and legitimacy, which facilitate compliance with norms based on legitimacy and acceptance. Lappi-Seppälä’s study confirms that the most powerful predictors of moderation in policy and practise are high levels of confidence in fellow citizens and in government, strong welfare states, and consensus compared with conflict political systems.<sup>33</sup> According to Lappi-Seppälä “increased personal trust, community cohesion, and social capital strengthen informal social control. This, associated with institutional trust and norm compliance based on legitimacy, decreases the need to resort to formal social control and to the penal system”.<sup>34</sup>

### **3. Economic crimes – distinction mala in se, mala in prohibita**

#### **3.1. Crimes as Wrongs**

*Duff* suggests that we should understand crimes as public wrongs. On this understanding crimes are wrongs that concern the public i.e. wrongs that concern us all as citizens.<sup>35</sup> According to his liberal republican<sup>36</sup> claim we are criminally responsible not to a separate sovereign, but to ourselves and our fellow citizens: “The criminal law is concerned not with moral wrongs as such, but with such public wrongs as are internal to particular polity whose law it is”.<sup>37</sup>

*The fundamental elements of republicanism, understood in the sphere of political philosophy, are publicity and self-government. Although, republicanism seems to be quite close to liberalism there are, however, a difference of emphasis. According to Dagger the republican claim is that “liberty is not so much a matter of freedom from the law as of freedom by or through the law”.*<sup>38</sup>

This view is based on the idea presented earlier by *Marshall* and *Duff*, that the criminal law should protect common or collective goods, and then ask whether any (and if so which) individual goods should also count as “common” goods which the

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<sup>30</sup> *Jones* 1998.

<sup>31</sup> *McLeod* 2008.

<sup>32</sup> *Lappi-Seppälä* 2008 p. 313–387.

<sup>33</sup> See especially on trust *Lappi-Seppälä* 2008 p. 361–373.

<sup>34</sup> *Lappi-Seppälä* 2008 p. 377.

<sup>35</sup> This view in turn is based on the communitarian conception of the self as 'constitutive'. See *Marshall – Duff* 1998 p. 10. See more the debate over the self *Bell* 2009.

<sup>36</sup> This term doesn't refer to the political view. So, it must be understood in the context of political philosophy. See more on this *Duff* 2007 p. 49–53 and *Dagger* 2011 p. 44–66.

<sup>37</sup> *Duff* 2007 p. 52–53. See also *Dagger* 2011 p. 50.

<sup>38</sup> *Dagger* 2011 p. 46 (emphasis in original).

criminal law should protect.<sup>39</sup> In order to get clearer picture of what is meant by the concept of crime, they present the central features of the concept of crime:<sup>40</sup> a) crime involves wrongdoing i.e. what we may call socially proscribed wrongdoing, b) it involves a wrongdoer – someone who does the wrong and can be held responsible for it, c) it merits the censure of the community; d) it is appropriately responded to or dealt with by a criminal rather than a civil process; e) it should render the agent liable to punishment rather than to merely formal censure or a duty to compensate.

How could we then understand the crimes as a public wrong? Marshall and Duff use rape as an example.<sup>41</sup> They try to describe how rape is a wrong against the community, which does not involve ignoring or denigrating the wrong done to the individual victim. Let us suppose a case where a man rapes a woman. How a group of women might respond to a sexual attack on one of them? Marshall and Duff claim that these women may see it as a collective, not merely an individual, wrong (as an attack on them), insofar as they associate and identify themselves with the individual victim. Therefore, “a group can in this way ‘share’ the wrongs done to its individual members, insofar as it defines and identifies itself as a community united by mutual concern, by genuinely shared (as distinct from contingently coincident) values and interests, and by the shared recognition that its members’ goods (and their identity) are bound up with their membership of the community”.<sup>42</sup>

*It is worth noting that the wrongfulness of a public wrong does not depend on its being public. A domestic assault committed in the home is as much a public wrong that concerns all members of the polity.*<sup>43</sup>

Finally, this leads to the account where we share in the very wrong that the victim has suffered: it is not our wrong instead of hers; it is our wrong because it is a wrong done to her, as one of us – as a fellow member of our community whose identity and whose good is found within that community. At the deeper ontological level, Marshall and Duff resist an atomistic moral or political ontology which takes ‘individuals’ and their individual goods as basic – as prior to their place in a community in favour of a more holistic view of individuals as finding their identities and their goods within their relationships to others.<sup>44</sup>

### 3.2. Mala in se, mala in prohibita

Accepting the idea of crimes as public wrong doesn’t tell us, if we are able to categorize crimes in accordance with their moral content. So, would the traditional common law distinction between in mala in se and mala in prohibita be here useful?<sup>45</sup> I take as a starting point Duff’s definition “*mala in prohibita* as offences consisting in conduct that is not wrongful prior to the legal *regulation* that prohibits it, whilst

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<sup>39</sup> Marshall – Duff 1998 p. 11.

<sup>40</sup> Marshall – Duff 1998 p. 13–17.

<sup>41</sup> Marshall – Duff 1998 p. 19–20.

<sup>42</sup> Marshall – Duff 1998 p. 20.

<sup>43</sup> Duff 2011 p. 127–128.

<sup>44</sup> Marshall – Duff 1998 p. 21. Duff has also developed his view on the community in the context of punishment. See Duff 2001 p. 42–56.

<sup>45</sup> See shortly on the history of distinction Green 2006 p. 118 and references note 21. Feinberg’s (1984 p. 19–21) distinction between primary and derivative crimes has similarities with mala in se, mala prohibitum distinction.

*mala in se* are (supposedly) wrongs prior to any such legal regulation”.<sup>46</sup> Paradigmatic examples of *mala in se* are usually thought to be murder, rape and theft. However, *Husak* defines *mala in se* in other words: “conduct that is morally wrongful prior to or independent of law”.<sup>47</sup>

If we try to find the difference between *mala in se* and *mala in prohibita*, it is worth thinking *what* we are criminally responsible for. In *mala in se*, we are criminally responsible for the substantive wrong that we commit. This means that the object of responsibility is the wrong. In *mala prohibita* the breach of regulation is an aspect of the object of responsibility.<sup>48</sup> Therefore, in *mala prohibita*, the sentence “because it is the law” is part of citizen’s reason for action. Let us think about regulation concerning driving in the right – or in left – side of the road. This regulation, if it is obeyed, serves the convenience of drivers generally. If we think that breaking the rule of driving in the proscribed side of the road, although not a serious wrong, it is one that should be publicly marked and censured, we will see good reason to give this regulation the backing of the criminal law.<sup>49</sup>

As usually this distinction is not clear. *Stuart P. Green* seems to suggest that there are good arguments for abandoning the distinction entirely. But, he states that these concepts retain analytic power as a means of distinguishing between two kinds of moral content.<sup>50</sup> Therefore, it seems possible to argue that there are also offences consisting elements flowing from *mala in se* and *mala in prohibita*. Duff calls these crimes hybrid offences. But what is actually wrong with these kinds of offences?<sup>51</sup> Suppose the driver who claims that he can drive safely though over the legal limit as to their speed or alcohol intake. Here, Duff’s argumentation is twofold. First, we owe each other not merely to ensure that we act safely, but to assure each other that we are doing so. Secondly, a driver who claims to know that he can safely ignore such rules claims certain superiority over his fellows: it is a denial of *civic fellowship*. People are not to be allowed to trust their own judgements, but the law must lay down a rule and people have to follow it.<sup>52</sup>

*There seem also exist purer mala prohibita offences, like offences concerning licensing of various activities or keeping or making available appropriate records. Those offences could also relate to financial security, but Duff uses rather offences connected to driving (to drive without a driving licence) as examples. These kinds of regulations serve the common good; breaches of them are therefore breaches of our civic responsibilities, which merit condemnation as wrongs.*<sup>53</sup>

*Duff* also explores the different logical structures of the two kinds of offences. In *mala prohibita*, we do need rules or conventions to determine what conduct should be prohibited or required for the sake of the cooperative endeavour. The system of taxation may serve as a good example. If we want that the system of taxation

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<sup>46</sup> *Duff* 2007 p. 90. See similarly *Green* 2006 p. 118.

<sup>47</sup> *Husak* 2005 p. 66.

<sup>48</sup> *Duff* 2007 p. 92–93.

<sup>49</sup> *Duff* 2007 p. 92.

<sup>50</sup> *Green* 2006 p. 120–121, note 33.

<sup>51</sup> See more *Duff* 2002 p. 102–106.

<sup>52</sup> *Duff* 2007 p. 170–171.

<sup>53</sup> *Duff* 2007 p. 173–174.

functions, we need rules about how much of one's income one must contribute to pay for a range of public goods and services. Once such regulations are in place, we must decide how to deal with breaches of them: we might see good reason to criminalize at least some breaches, as constituting wrongs that should be publicly marked as such. But, if we want to know what makes them wrongs, we cannot now say that the conduct in question was wrongful prior to the regulation that prohibits it.<sup>54</sup>

## **4. Punishment as a fair play**

### **4.1. Background**

It seems justifiable to claim that one important purpose of criminal law and the criminal process is to identify the kinds of wrongs and the wrongdoers which merit punishment. This is the mechanism, which is needed in a modern liberal democracy which tries to communicate to its members that they have even in future *reason* to trust on legal system and especially criminal justice system. Hence, trust is rational in an end-directed way, because it contributes to ends shared by people in relationships or even in whole communities.<sup>55</sup>

As pointed out earlier, punishment demonstrates that anyone acting against the common rules has to pay for his or her actions. Furthermore, *Hardin* points out that the development of norms with sanctions and of other devices for social control tends to enhance cooperation and reduce the risks inherent in trusting others.<sup>56</sup> *Dimock* for her part argues that if we understand the principal function of a legal system as creating and maintaining conditions of trust in a community, then those who violate the law must be punished.<sup>57</sup> This view is very close to *David Hoekema*'s claim that the betrayal of trust makes an act an appropriate ground for punishment.<sup>58</sup>

Could we make some use of these remarks? Has trust really something to do with punishment? Should we understand the institution of punishment as a tool for restoring trust more generally? Can punishment rebuild trust? These questions will be elaborated as follows. First, I will briefly discuss trust-based accounts on justification of punishment. Secondly, I will concentrate on the idea of punishment as fair play. Both accounts are in wider sense grounded in a general principle of fairness, which has given *Davin Boonin* reason to count these views to fairness-based retributivism. The fairness-based retributivism is trying to justify punishment in terms of distributive justice.<sup>59</sup>

### **4.2. Trust-based retributivism**

It can be argued that trust has both objective and subjective condition. Therefore, *Dimock* argues that the purpose of the law is to maintain the objective grounds of trust. She notes that "in any complex society, coercive rules will have to secure trust among those who have only temporally limited interactions with each other, and

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<sup>54</sup> *Duff* 2008 p. 279.

<sup>55</sup> *McLeod* 2008. See also *Lappi-Seppälä* 2008.

<sup>56</sup> *Hardin* 1996 p. 32.

<sup>57</sup> *Dimock* 1997 p. 37.

<sup>58</sup> *Hoekema* 1991 p. 345.

<sup>59</sup> *Boonin* 2008 p. 119–120.

between whom no special relationships or tuistic interests bind, as well as among those more intimately connected”.<sup>60</sup>

*Dimock* connects this trust-based view to the idea of crime as a violation of trust.<sup>61</sup> According to the functionalist theory of law, the law serves making trust in others objectively reasonable i.e. law ensures that it is objectively reasonable for members of the community to trust one another. She claims that the law has to produce *meta-trust*, trust in trust. Therefore, what distinguishes cases of trust violations that are punishable from those which are not, is that only the former involve violations of meta-trust, as well as the particular subjective trust that the violator disappointed. She argues that “the worst cases involve violations of trust that make anticipation and pre-emptive violence more likely”.<sup>62</sup>

*Hoekema* seems to represent quite similar opinion when he claims that it is a matter of criminal justice to deal with preservation of those kinds of trust that are necessary background for either contractual or personal relationships – “with the trust that strangers extend to each other in order to make life in society possible”.<sup>63</sup> He argues that the criterion of distinguishing between punishable and non-punishable breaches of trust is the voluntariness with which the victim of a trust violation had entered the trust relationship: “The reason that punishment is inappropriate has to do not with the gravity of the harm caused but with the voluntary character of the trust relation.”<sup>64</sup>

If we would accept *Dimock*’s – and arguable *Hoekema*’s – view, we could think that punishment restores the objective conditions of trust. Nevertheless, there is no reason to believe that punishing offenders necessarily affects the extent to which members of a community actually trust anyone. However, *Dimock* argues that “the objective conditions of trust are restored through punishing offenders, independently of the effects which punishing has on the willingness of individuals to actually trust”.<sup>65</sup> But, as *Korman* heavily opposites, it is not at all why it would follow from the (alleged) fact that the function of the legal system is to sustain the conditions of trust, that it is morally permissible for the legal system to perform that function.<sup>66</sup>

But, how do meter the right punishment for an individual offender? *Dimock* argues that punishment must be proportioned to the need to restore the conditions of trust and uses cases of corporate embezzlement and tax evasion as examples.<sup>67</sup> Although I sympathize with her claim that monetary, supervisory, regulatory or non-custodial penalties are sufficient for the purpose of restoring the trust, it seems hard to find any specific criteria for evaluation of loss of trust. How do we know what level of punishment will suffice to restore the basic trust? Furthermore, *Dimock*’s view has certain limitation. Suppose that for the definition of punishment is crucial that it

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<sup>60</sup> *Dimock* 1997 p. 45–46.

<sup>61</sup> See also *Hoekema* 1991 p. 343–350.

<sup>62</sup> *Dimock* 1997 p. 51. Cf. *Boomin* 2008 p. 145–146, who argues that *Dimock* fails to draw the line between offences with undermine trust and those which don’t.

<sup>63</sup> *Hoekema* 1991 p. 347.

<sup>64</sup> *Hoekema* 1991 p. 347. Cf. *Korman* 2003 p. 564–565 who convincingly argues that the involuntariness of one’s extension of trust is neither necessary nor sufficient for a trust violation’s being punishable.

<sup>65</sup> *Dimock* 1997 p. 53–54. Ch. *Boonin* 2008 p. 146–147.

<sup>66</sup> *Korman* 2003 p. 573.

<sup>67</sup> *Dimock* 1997 p. 55–56.

involves not merely performing an act that harms an offender but doing so with the intention of harming an offender.<sup>68</sup> This, in turn, means that the forms of reactions presented by Dimock can't be counted as punishment; the harm to the offender will be merely foreseen rather than intended.<sup>69</sup>

It is worth noting that examples<sup>70</sup> presented by Dimock can't correctly draw the line between those violations of trust that intuitively ought to be illegal and punishable, and those that do not warrant legal action. *Korman* point out that the only difference seems to be the severity of the breach of trust and the degree of harm involved.<sup>71</sup>

### 4.3. Fair play – a crime as a crime of unfairness?

I take as a starting point *Richard Dagger's* ideas, which were presented in 1993 and which he continued defending in 2008. Dagger restates in 2008 published article his starting point by describing the idea of fair play as H.L.A. Hart and John Rawls presented it. These writers discussed the principle of fair play as a basis for political obligation, understood as the general obligation to obey the law. Thereafter, for example Herbert Morris and Jeffrie G. Murphy<sup>72</sup> have connected this idea to the punishment. Morris claims that punishing the offender restores the equilibrium of benefits and burdens by taking from the individual what he owes, that is, exacting the debt.<sup>73</sup>

According to Dagger underpinning all three of these statements – Hart's, Rawls's, and Morris's – is the idea that society or the political or legal order, is a *cooperative endeavour*.<sup>74</sup> When each member benefits from the compliance of other members, it generates an obligation to reciprocate by similarly complying. Thus, fair play can be seen growing out of cooperative ventures, enterprises, or practices, in which the participants rely on one another and must make some sacrifice or bear some burden if the cooperation is to prove beneficial. Therefore, it could be claimed that cooperative enterprises produce *public goods*. But, as always concerning public goods there will be free riders.<sup>75</sup> The temptation to be a free rider is often strong, and steps must therefore be taken to secure the cooperative order against this temptation. Dagger notes that enforcing the laws is one of these steps, and punishment of those who break the laws is another.<sup>76</sup>

What seems to be here of the utmost importance is the content of political account of legal or political order. According to Dagger, the fair-play theory rests on a conception of the political order that falls between the contractarian and the

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<sup>68</sup> *Korman* 2003 p. 562, 570 and *Boonin* 2008 p. 24–25.

<sup>69</sup> So *Boonin* 2008 p. 149. See already *Korman* 2003 p. 570–571.

<sup>70</sup> *Dimock* (1997 p. 49–50) uses following scenarios: a) the child who does not receive some promised gift, b) the wife who commits adultery, c) the stranger who purposely gives someone wrong directions, d) the child who is physically abused or neglected, e) the wife who knowingly infects her husband with HIV and f) the stranger who robs someone.

<sup>71</sup> *Korman* 2003 p. 568.

<sup>72</sup> *Murphy* 1994 p. 47–70. It is though worth noting that Murphy has changed his view thereafter.

<sup>73</sup> *Morris* 1976 p. 34. See more about discussion *Boonin* 2008 p. 119–154. See also *Dagger* 2008 p. 260–261 and *Dimock* 1997 p. 40–41.

<sup>74</sup> *Dagger* 2008 p. 261 and *Dagger* 2011 p. 61. See more *Hart* 1994 p. 197–198.

<sup>75</sup> Cf. *Boonin* 2008 p. 122–123, who seems it difficult to accept that free riding concerns offences like rape, murder, assault and child molestation.

<sup>76</sup> *Dagger* 2008 p. 262.

communitarian conceptions.<sup>77</sup> He explains this view saying that “it does not rest on strictly voluntary agreement, on the one hand, and because it requires more than mere membership, on the other”.<sup>78</sup> Therefore, we could argue that the political order is a kind of super- or meta-cooperative practice.<sup>79</sup>

It seems obvious that fair play account doesn't tell us how we should punish. But, it certainly tells us that a crime is understood as a *crime of unfairness*: “Criminals act unfairly when they take advantage of the opportunities the legal order affords them without contributing to the preservation of that order”.<sup>80</sup> However, Dagger doesn't think that the concept of crime could be reduced to the concept of unfairness. In 1993 he claimed that an injury to one person is not only an injury to her or her kin, but an offence against the law itself.<sup>81</sup> Therefore, we could say that the criminals want the security and freedom guaranteed by law but they are not willing to grant this same security and freedom to their victims.

Thereafter he has developed his arguments. According to Dagger unfairness is an aspect or feature of all crimes, including crimes that involve much more, and much worse, than taking unfair advantage of the law-abiding members of society. His claim is that “the principle of fair play requires us to attend to the benefits and burdens involved in a *system* of laws, not in the benefits and burdens of obedience to particular laws, such as those against robbery, murder, or rape”.<sup>82</sup> Let's take an example concerning murder and tax evasion: Dagger claims that the murderer has committed two crimes: a crime of unfairness (a *malum prohibitum*) and a crime against her victim (a *malum in se*). This same applies also to tax evasion: the offender commits two crimes, although the victim is more abstract compared to murder.

We don't have to bother ourselves thinking about if Dagger understand all offences as hybrid offences. Instead, we can claim that understanding crime as a crime of unfairness doesn't capture the normal, ordinary life usage of this concept. As *Duff* pinpoints, many citizens do not in fact find it a burden to refrain from raping or murdering: it is rather that they should not find it a burden, because such conduct cannot be properly seen as a good that the law requires them to give up.<sup>83</sup> Furthermore, there is certainly some criminal behaviour that many people are not capable of engaging in. *David Boonin* uses hacking into the Pentagon's computer system as an example. These people are not burdened by a law that forbids them to do so.<sup>84</sup>

Let us leave aside the discussion of the content of the crime. In what way does Dagger try to explain the justification of punishment? His answer is straightforward: “those who take unfair advantage of the cooperating members of a cooperative practise should be punished”.<sup>85</sup> But, he admits that reciprocity must be complemented with other elements – deterrence, retribution, moral education etc. – but none of this

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<sup>77</sup> *Dagger* 2008 p. 266.

<sup>78</sup> *Dagger* 2008 p. 267. *Duff* (2008 p. 277) for his part calls this view a communitarian liberalism.

<sup>79</sup> *Dagger* 2008 p. 268–269 and *Dagger* 2011 p. 61–62.

<sup>80</sup> *Dagger* 2008 p. 262. Cf. *Dimock* 1997 p. 41, who finds the harm of legal offences in their violation of the conditions of basic trust in society, and we restore trust by punishing the offender.

<sup>81</sup> *Dagger* 1993 p. 479–480.

<sup>82</sup> *Dagger* 2008 p. 263.

<sup>83</sup> *Duff* 2008 p. 278–279. See also *Boonin* 2008 p. 123 and note 35.

<sup>84</sup> *Boonin* 2008 p. 123.

<sup>85</sup> *Dagger* 1993 p. 483.

other consideration offers a satisfactory account of a society's right to punish.<sup>86</sup> This strong view is based on the idea that by taking advantage of the cooperation of the others to advance his own interest, the criminal says in effect that others are less important than he. Punishing is a way of balancing: the balance between people qua equal subjects to the law is to be restored.<sup>87</sup>

Nevertheless, Dagger takes seriously the complaint presented by Duff that fair-play theory simply fails to capture "the punishment-deserving character of crime". Though, he argues that this kind of worry concerns only the relevance of fair play to mala in se offences, not to those that are mala in prohibita. Those who are willing to accept that tax evasion is a crime of unfairness may well deny that unfairness plays any part in the wrongfulness of these acts of violence: fair play is simply irrelevant in mala in se.<sup>88</sup> Dagger has two arguments in response to this charge. First, the tax evader takes unfair advantage of many people – in some cases millions of them – but her offense typically does not make it difficult for them to continue doing their part in the cooperative practice. With the rapist, the murderer, and the batterer, however, the offender has done something that makes it difficult or even impossible for his victim to contribute further to the on-going cooperation.

Therefore, Dagger puts forward as a significant part of the explanation the claim that "those offenses that would render someone less capable or incapable of being a fully cooperating member of a cooperative political order are in that respect a more serious affront to the sense of fair play than are lighter, less serious offenses". He offers also an indirect argument for his view: the desire to maintain a cooperative practice grounded in fair play requires that some crimes be taken much more seriously than others, even if their offensiveness is not entirely or even mainly a matter of their unfairness.<sup>89</sup>

*Duff doesn't accept Dagger's account on sentencing. According to Duff the first question is to determine what the offenders deserve, i.e. what kind or level of punishment will suffice to remove or balance their unfair advantage. Duff's objection is that, the fair play theory cannot provide an acceptable account of what the offender deserves – not just an account of why he deserves punishment at all, but of what he deserves by way of punishment. The argument is as follows. Unless the fair play theorist can show that the rapist gains a greater unfair advantage over the law-abiding than does the tax-evader, he must either bite the bullet and claim that they deserve the same level of punishment, or abandon the claim that punishment is justified as a burden that removes or counter-balances the unfair advantage that the offender gained in committing the crime.<sup>90</sup>*

#### 4.4. A modest theory of fair play?

It is reasonable to argue that Dagger tries to give a necessary – though not sufficient – explanation to the justification of punishment. Among others *Zachary Hoskins*

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<sup>86</sup> *Dagger* 1993 p. 484. Cf. *Boonin* 2008 p. 125–126, who points out that the principle of fairness precludes the existence of such a justification.

<sup>87</sup> *Dagger* 1993 p. 486–487.

<sup>88</sup> *Dagger* 2008 p. 269.

<sup>89</sup> *Dagger* 2008 p. 271–272.

<sup>90</sup> *Duff* 2008 p. 280. See also *Boonin* 2008 p. 124–129.

claims that Dagger doesn't succeed.<sup>91</sup> He argues that a closer examination of the fair play view's evolution from a theory of political obligation to a defence of punishment indicates that there are good reasons to expect that it is suitable as an answer only to the permissibility question. Punishment's positive aim and the constraints on how it is administered in particular cases must be grounded in distinct considerations.<sup>92</sup>

Hoskins's account on the justification of punishment is modest one. He tries to defend the claim that the rule instituting punishment as a response to crimes is itself one of the rules with which we have an obligation of fairness to comply.<sup>93</sup> In the path of Hart he suggests that the rule regarding the punishment of violations is secondary rule i.e. the rule which establish punishment per se as the appropriate response to a crime.<sup>94</sup> According to Hoskins "such a rule is conceptually prior to the rules governing what punishments are appropriate in particular cases; that is, determining the appropriate punishment in a given case implies that punishment itself is the appropriate response to the criminal wrongdoing". Furthermore, he seems to think that there is nothing in the conception of criminal law that entails that the law must be backed by punishment.<sup>95</sup>

In order to understand Hoskins' account, we have to ask if it is possible to comply with this kind of rule. This seems to require a communicative aspect of punishment: a significant element of the institution of punishment is that it communicates to, and indeed imposes obligations on, citizens themselves. Hoskins points out that the institution of punishment communicates to citizens generally that the community not only condemns certain actions as morally wrong, but in fact condemns them so strongly that it is willing to impose hard treatment on those who commit such actions. However, he doesn't accept the view that the communicative aspect itself grounds the permissibility of punishment.<sup>96</sup>

*Hoskins explains how is possible to comply the rule of punishment. We can comply either by not committing crimes, thus rendering the antecedent false, or by accepting being subject to punishment, so that the consequent (and thus the conditional) is rendered true.<sup>97</sup> He defends this version saying that the institution of punishment, as a threatened response to violations of the criminal law, often permissibly offers prudential reasons for compliance.<sup>98</sup>*

One interesting objection to ideas presented by Hoskins is that the fair play view is insufficient, because it can only ground the permissibility of punishing those who accept the benefits of this institution. So, are these benefits only "open benefits"? Examples of open benefits include police protection, national security from external threats, assurance of air- and water-quality standards, etc.<sup>99</sup> In accordance with other writers (e.g. Klosko) Hoskins argues that the benefits provided by the institution of punishment are open and indispensable. He believes that "the central benefit of the

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<sup>91</sup> See especially *Boonin* 2008 p. 122–135, who offers an interesting analyze on the topic.

<sup>92</sup> *Hoskins* 2011 p. 54, 58.

<sup>93</sup> *Hoskins* 2011 p. 58–59.

<sup>94</sup> See on the distinction between primary and secondary rules *Hart* 1994 p. 79–99.

<sup>95</sup> *Hoskins* 2011 p. 59.

<sup>96</sup> Ch. *Duff* 2001.

<sup>97</sup> *Hoskins* 2011 p. 60.

<sup>98</sup> *Hoskins* 2011 p. 61.

<sup>99</sup> *Hoskins* 2011 p. 67.

institution of punishment is that it gives genuine bindingness to the rule of law by providing significant incentives not to violate legal rules (i.e., through general deterrence). In this way, the institution of punishment plays a crucial role in ensuring the security of community members. If I am right, then this seems fairly clearly to be an open benefit. Receiving this benefit does not require actively seeking it, and in fact it's not clear how we might refuse this benefit".<sup>100</sup>

## 5. Conclusion

The vast literature of justification of punishment seems to offer interesting ideas on the relationship between trust and the criminal justice system. But, I haven't said much about the tension of economy and criminal law. Have the elements of trust described above intrinsic to the criminal justice system something to do with the financial markets? Is it more or less a delusion to hope that the criminal justice system could play some kind of role in restoring trust on the financial markets after the crisis? Aren't it politicians, central banks and their bankers, IMF, the whole financial sector (especially commercial banks) – probably even investors – who are responsible to do whatever is needed to restore trust on the system? It seems unrealistic to expect too much of the criminal justice system in that process.

However, could the Icelandic financial crisis be seen as an exception? If one is capable to identify the kinds of wrongs that, and the wrongdoers who, merit punishment in forthcoming criminal processes isn't it a question of restoring trust not only on the criminal justice system but on the whole financial markets in Iceland? We have even before witnessed cases where the criminal process has offered to the whole society opportunity to "catharsis": the society has been forced to rethink and reevaluate the foundation of society and those values which are viewed of great importance in the society.<sup>101</sup> While, paradigmatically, trust is a relation that holds between two individuals, forces larger than those individuals inevitably shape their trust in one another. *McLeod* reminds that "social or political climate contributes to how trustworthy people tend to be and therefore to whether trust is justified".<sup>102</sup>

Therefore, I argue that the trust must be the key concept on understanding the criminal justice system. But, it is only one – though important aspect – when we are exploring the problem of justification of punishment. What concerns criminal punishment the answer seems to lay closer to the idea of *Duff* who claims that criminal punishment "should communicate to offenders the censure they deserve for their crimes and should aim through that communicative process to persuade them to repent those crimes, to try to reform themselves, and thus to reconcile themselves with those whom they wronged".<sup>103</sup>

But, as *Malcolm Thornburn* notes, for *Duff* the core of the criminal justice system is the trial. On this understanding, the trial is the mechanism through which a political community calls its members to account for their failures to live up to its standards.<sup>104</sup> Furthermore, it provides them with the opportunity to respond to

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<sup>100</sup> *Hoskins* 2011 p. 68.

<sup>101</sup> In addition to that we could argue that crisis like this offers the opportunity to make effective changes to the regulatory system. See *Árnason* 2010 p. 117–119 and from Finnish perspective *Alvesalo* 2003.

<sup>102</sup> *McLeod* 2008. See especially concerning differences in penal policies *Lappi-Seppälä* 2008.

<sup>103</sup> *Duff* 2001 p. xvii.

<sup>104</sup> See e.g. *Duff* 2011 p. 127–128.

allegations against them by denying allegation, by providing an answer – through justification or excuse –, or by confessing wrongdoing.<sup>105</sup> Duff puts it clearly saying that “criminal law is focused on the polity’s formal response to the conduct with which it deals”.<sup>106</sup>

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<sup>105</sup> *Thornburn* 2001 p. 28. See closer *Duff* 2011; *Duff* 2007 and 2001.

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Henrik Tham

## ***Crime in Scandinavia during the Second World War<sup>1</sup>***

### ***The interest in crime during war***

According to Herman Mannheim there is in the whole field of criminology hardly a subject of greater interest than war and crime (Takala 1989). Mannheim's statement can be disputed but the subject is obviously interesting for both criminology and criminal policy.

Mannheim was interested in both what happened during the wars to crime and the effects on crime after the war. A particular interest of enduring effects among criminologists was that of criminal cohorts, e.g. if the Second World War produced more crime prone generations that would continue their higher frequency of crime long after the war had ended (Takala 1987). The question can also be raised for today's war, like those in Afghanistan and Iraq. Ex-servicemen are now clearly overrepresented in British prisons.

A particular interest of crime during war is the question of crime as a moral indicator. Statistics on crime originally was called moral statistics in several countries with the main aim to say not something about the criminality as such but about the general moral standards of the population (Jakkola 1984). As such crime received a status far beyond itself and became a parameter of the nation. A number of statements of crime in Scandinavia during the Second World War can be found among Scandinavian scholars: Veli Verko interprets the non-increase in crimes of violence during the period of peace 1940-41 to be due to the healing of the nation after the winter war of the conflict since the civil war, Hannu Soikkanen sees the general improvement of morals during war time and the patriotic sentiments that even reach the criminal strata, and Per Madsen stress the fairly limited increase in theft in order to show that Norway honorably passed the occupation (Takala 1989).

It is then reasonable to ask the question how crime actually developed in Scandinavia during the Second World War.

### ***The four large Scandinavian countries during the Second World War***

Denmark, Finland, Norway and Sweden experienced the Second World War quite differently. Finland fought three wars, the Winter War, the Continuation War, and the Lappland War with 85 000 victims of war. The country was all through the war led by a legitimate Finnish government. Norway was occupied by 400 000 German

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<sup>1</sup> This article is based on the publications from a project on crime and control in Scandinavia during the Second World War (Takala and Tham 1987, 1989).

troops and lost 10 000 in the initial fighting with further deaths in concentration camps. After the occupation in April 1940 the country was led the Quisling puppet government. Denmark was occupied with 400 military and 1 000 civilian casualties and additional citizens dead in the concentration camps. Denmark was led by a Danish government that resigned in 1943 and then was replaced by a German government. Sweden, finally, stayed neutral or rather non-participatory with a few hundred deaths caused by the war, mainly sailors (Dahl 1989).

The different experiences of the war in the four countries would be expected to produce different crime pictures. Variations in legitimacy, sufferings, brutalization, soldiers away from home and general living conditions ought to be criminologically fruitful to study. Here a short analysis of crimes of theft, crimes of violence and black market crimes will be undertaken in light of wartime experience (see further Jaakkola and Tham 1989).

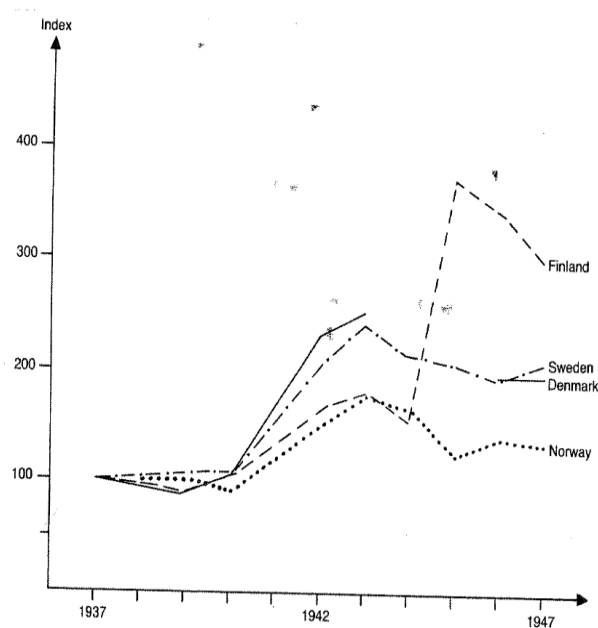
### ***Crimes of theft***

National statistics exist for all the countries only for convictions. For Denmark there are no data for 1944 and 1945. For the capitals there are also data for thefts reported to the police. Figure 1 shows the convictions for theft. In all countries there is a marked increase. The curves peak in 1943 except for Finland that can be given a special explanation (see below). The increase is even more marked for police reported crimes in the capital cities. This should exclude the interpretation that the conviction data only show the reactions from the criminal justice system but that there was a real increase in theft.

The development is somewhat surprising and especially in the light of ideas about moral rearmament in the population during wars. A decrease in theft could be expected from the drastically reduced number of cars that are both objects for criminal attack and instruments for transport of stolen goods. Unemployment was reduced, total alcohol consumption initially went down in all the countries, and penalties were stiffened in Denmark and Norway.

However, there were also a number of conditions that were associated with the war and that would be expected to cause an increase in theft. The black-outs made the nights darker and could have increased theft. Geographic mobility took place to a considerable extent owing to altered labour markets, military service, forced labour, evacuation, flights of political reasons, and participation in the resistance movement. This could be expected to loosen up informal control that in turn could be conducive to theft – and also to new sex partners as can be seen from the marked increase in venereal diseases that increased in all countries.

Figure 1. Persons convicted of theft in Denmark, Finland, Norway, and Sweden, 1937-1947. Index.



Inflation, falling real wages, and shortages of goods could also be seen as explanations of the rise in theft in all the countries. These assumptions are also somewhat supported by the fact that they are in accordance with variations in the crime development in the different countries. Theft in Sweden stagnates or even drops after 1943, at the same time as the real wages again reached the pre-war levels. In contrast crime levels in Finland reach their peak in 1945 – the year the inflation reaches its highest level.

For Finland, the main explanation for the late peak in theft convictions should, however, be the demobilization. When a large number of men returned from the front the conditions conducive to theft that already existed became even more accentuated. The curves presented in figure 1 do also not include convictions for crimes against the military penal code, among them crimes of theft. If these convictions are included, the Finnish figures increased three times during the war, reaching its maximum in 1944. The decline then in crimes against the military penal code coincides with the sharp increase in theft 1945 among civilians.

The shortage of goods is also manifest in all the countries, although to varying degrees. The governments tried to master the situation by introducing rationing systems. Rationed goods, such as food and clothes, became popular items of theft, as, of course, did ration cards. A particular common crime reported during the war was the theft of bicycles and bicycle parts. With the deterioration of other means of transportation, cycling became more popular at the same time as a shortage of bicycle tubes and tires arose.

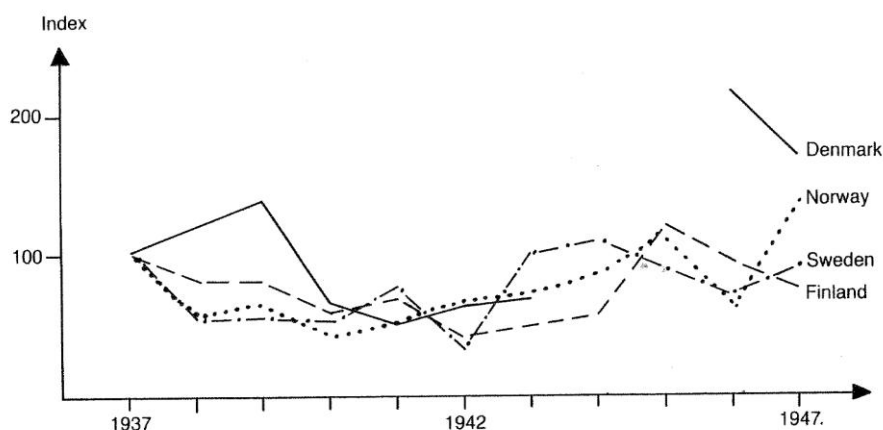
Items were stolen not only for direct consumption but also for sale in the black market. There might also have been some shift during the war towards black-market theft. With increasing real wages towards the end of the war, poverty as a cause of theft probably decreased. Still, many items were difficult to find in the shops but could be bought on the black market.

So, the deterioration of material living conditions in all the Scandinavian countries during the war explains why crimes of theft increased. At the same time this explanation has its limitations. The differences in economic hardship between the countries do not seem to be reflected in the crime curves. The shortage of foodstuffs was most marked in Finland and least so in Sweden, where it was mainly a problem of distribution.

### **Crimes of violence**

Figure 2 shows the development of convictions for homicide in the four countries during the Second World War. The figure only shows the relative change and not absolute numbers. During the years 1937-1947 the average rate of homicide convictions (per 100 000 inhabitants 15 years of age or more) was for Denmark 1.6, Finland 4.6, Norway 0.5, and for Sweden 0.3. The numbers are generally small and therefore cause fluctuations in the time series. Some outliers can be observed at the end of the war and the two years after caused by soldiers being demobilized and possibly retaliation on collaborators.

*Figure 2. Persons convicted of homicide in Denmark, Finland, Norway, and Sweden, 1937-1947. Index.*

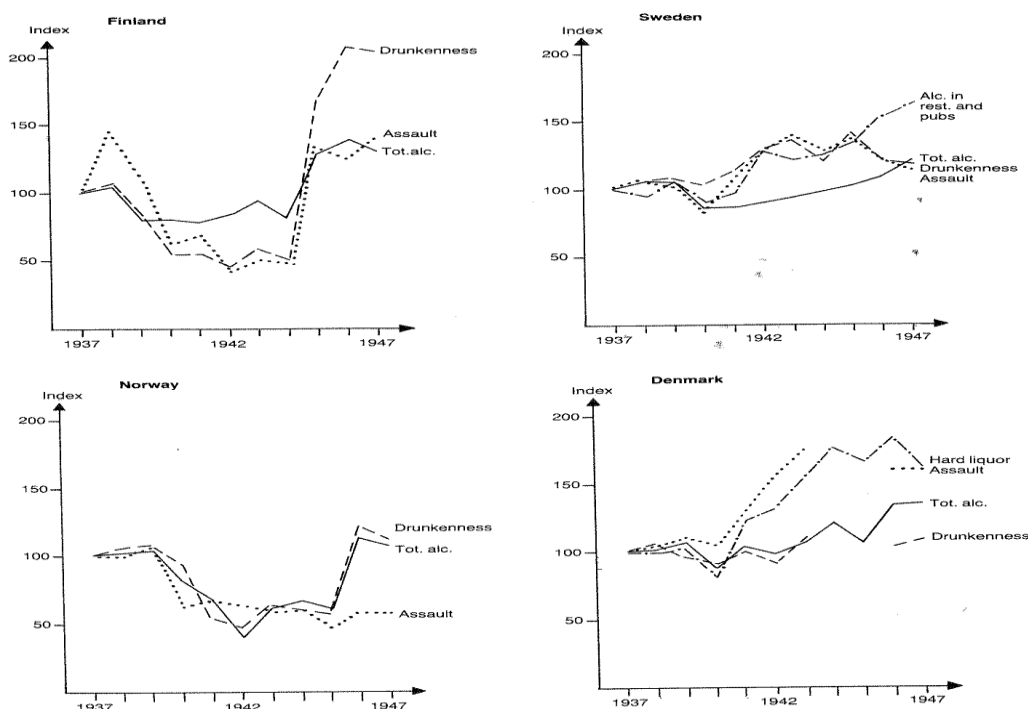


What is striking, however, is how the four countries continue their “ordinary” homicide rates throughout the war. Neither the brutalization thesis nor the thesis of moral improvement in wartime seems to receive support. However, the question of how to describe the number of homicides during war arises. How should acts of war, executions and deaths in prison camps be counted. The case of Norway well illustrates this. The years 1941-1945 a total of 54 persons were sentenced for homicide. After the war, the statistics of causes of death gives the figure 1 556 cases of murder for the same period – executions carried out by the Quisling regime, killed during political imprisonment and Jews and others killed in concentration camps in foreign countries (Tham 1989).

The development of crimes of assault is shown in Figure 3. For Finland, Norway and Sweden the relation to total alcohol consumption and alcohol policy seems quite clear. In all the three countries alcohol sales became more restrictive after the war broke out and prices were raised through taxes. The sharp increase in Finland at the end of the war in both assaults and public drunkenness can, again, be attributed to the demobilization of soldiers earlier at the front. In Sweden, the increased purchasing power after 1942 led to an increase in drinking in bars and restaurants,

and public drinking is known to produce higher risks of violence or at least violence that becomes known to the police (Lenke 1990). In Denmark, finally, assault and drunkenness does not as clearly correlate with total alcohol consumption as in the other countries. The two curves are, however, more in agreement when it comes to hard liquor sales – and hard liquor is known to be more conducive to assault (Lenke 1990). Again, the increase in real wages in 1940 that was faster than the rise in the price of vodka seems to have played a role.

Figure 3. Assault, drunkenness, and total alcohol consumption in Denmark, Finland, Norway, and Sweden, 1937-1947. Index.



### The black market

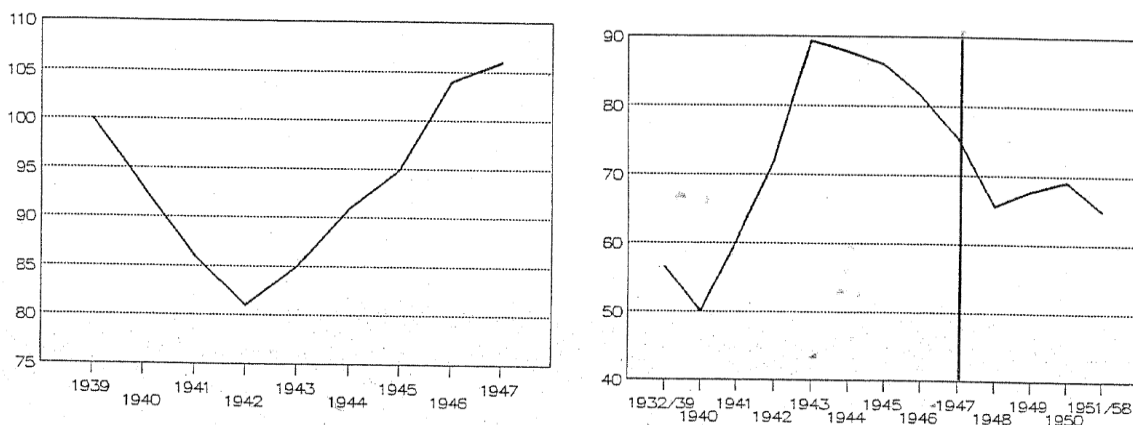
There is not much scientific literature on crimes against rationing regulations in the Scandinavian countries during the Second World War. The crimes were considered as “normal” and many if not even most families did commit crimes against these laws. This is shown in a comparison of the black market in Finland and Sweden. “In both countries this type of crime were more a ‘better-class’ crime than the traditional property crime. The types of crimes were in both countries very similar, with the exception of the intensive forgery of ration cards in Sweden, the to some extent more organized black-market trade in Finland, and above all the extensive crimes among agricultural producers resulting from the obligation of supply. In both countries the sanctions inflicted were rather mild. The essential difference lies in the number of crimes” – in Finland about six times higher when comparing convictions (Sperlings et al. 1989).

The explanation given for this type of crime is in terms of supply and demand. In Sweden the official supply of goods decreased in the beginning of the war and the purchasing power decreased because of increases in prices. The incentives to turn to the black market increased subsequently. With more goods officially available and increases in real wages at the end of the war the black market crimes decreased. In

Finland the scarcity of goods was much more marked than in Sweden and was a more important explanation to the development of the black market (Sperlings et al. 1989).

Figure 4a. Development of consumption of all foodstuffs in Sweden, 1939-1947. Index.

Figure 4b. Sentenced persons, excl. crimes against the military code, in Sweden, 1939-1950:s. 1 000 sentences.



The importance of the official consumption of foodstuffs for the development of crime in Sweden is well illustrated by Figures 4a and b (Wijk 1992). If one of the curves in the two figures is turned upside down the two curves become almost identical.

## Conclusions

The explanations of the development of crime in Scandinavia during the Second World War according to official statistics are not as dramatic as has been suggested in the literature. The explanations are similar to the ones applicable during peacetime – changes in real wages, in informal control, in supply and demand for goods and in alcohol restrictions. A special war time explanation is mobilization and demobilization where varying parts of the young and middle aged male population were more or less under risk for committing crimes against the civil penal law. The development of crime and its causes also seem to be fairly alike in the four countries in spite of quite different experiences of the Second World War.

Studying crime during the Second World War is, however, still quite fruitful for understanding the development of crime in general. The changing historic conditions reveal explanations other than those that are made in terms of properties of the individual. Macro level explanations become intuitively more relevant: opportunity structure, geographic mobility, strain and alcohol policy. Equally, war brings out the legal side of crime. The making of laws and the power to criminalize and to carry out punishments comes to the forefront in a way that it doesn't in "normal" times. Equally intuitively, a doubling in theft convictions in two years cannot be caused by changes in the mental capacities or the upbringing of individuals. Similar conclusions can be drawn from other cases of sharp historical changes, like the fall of the Berlin wall (Tham 2007). In abnormal times, the unforeseen is seen.

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## ***Economic and political crises and homicide rates in Finland in 1905-32***

### ***Abstract***

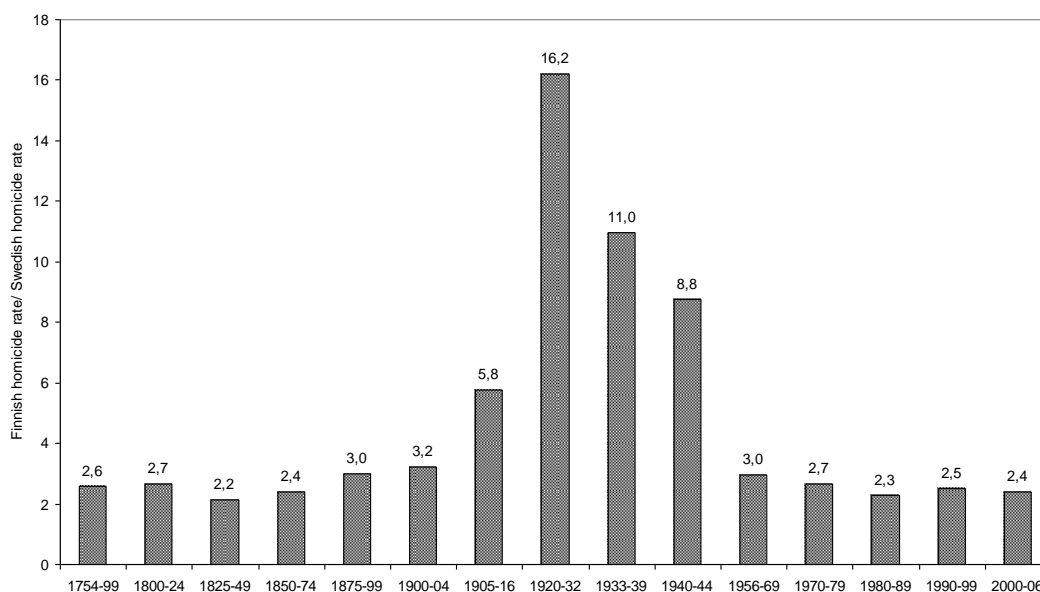
The presentation discusses the impact of the 1905 revolution on violent crime in Finland and describes some of the main explanations for the crime wave the revolution triggered presented in modern Finnish violent crime research.

The topic of my presentation is the impact of the 1905 revolution on violent crime in Finland. Violent crime trends are described mainly by using homicides as an example. This should not be problematic, because homicide trends are a fairly good indicator for violent crime trends in general during this period in Finland.

### ***The Phenomenon***

The figure 1 shows the difference between the Finnish and Swedish homicide mortality rates from 1754 till today based on population statistics. The data are problematic by their temporal comparability, because the coverage differs between the centuries; but they should show fairly reliably the difference between the Finnish and the Swedish mortality rates at any given point of time. There is a remarkable stability in the rate difference during the whole period, which is in itself an interesting fact, but we can also see that the period from 1905 until 1948 is a period apart; an unique period in the history of modern Finnish violent crime; and a very violent period, too.

*Figure 1. The Difference between Finnish and Swedish homicide mortality rates, 1754-2009 (Verkko 1951; Kivivuori & Lehti 2011)*



The violent crime wave which started by the revolution in 1905 was not a specifically Finnish phenomenon but comprised the whole Russian Empire. The year 1905 quadrupled homicide rates all over Russia and the crime wave continued not only in Finland, but also in the other parts of the former Russian Empire also after the First World War, throughout the 1920s, and perhaps even longer (in Finland and Estonia the most violent phase ended in the 1930s).

However, although 1905 was not a specifically Finnish crisis and the crime wave that followed not an exclusively Finnish crime wave, I am going to discuss mainly the Finnish experience during those years.

I shall first describe some basic characteristics of Finnish violent crime during that era, especially what changed and what did not change in those characteristics in 1905 and during the following decades.

After that I am going to describe and discuss shortly some explanations for the crime wave of 1905 presented in the modern Finnish violent crime research.

### ***The Crimes and the Offenders***

The violent crime wave of 1905 was a very clear cut crime wave: it had a clear starting point (1905) and a clear ending point (1932 or 1933; 1932 was the last year of very high homicide rates and 1933 the first year with significantly lower rates).

In spite of the already relatively high homicide rates before 1905 and a fairly large population, almost 3 million, both the relative and the absolute changes in crime rates were quite large: the difference between the 1906 and 1904 levels (+88%) meant in the Finnish context 100 extra homicide deaths each year, and the difference between the 1920 and 1906 levels (+55%) added to these 100 deaths and additional 150 extra deaths annually. Thus, the crime wave did not materialize only in statistics but was concretely seen also in mortuaries.

The second half of the 19th century and beginning of the 20th century was a period of rapid social and economic change in Finland, the first phase of the Finnish industrialization that had begun in the 1880s. And we can see industrialization very clearly in both the regional distribution as well as the social structure of violent crime of the era.

In Finland, from the 1880s until the 1940s, the most violent places were the new forest industrial settlements and towns throughout the country as well as the rural communities supplying raw materials to the industry; thus, both progress and violent crime as well as forest industry and violent crime went hand in hand in Finland during this era. 1905 did not change anything in this respect.

Also the basic social structure of violent crime was the same from the 1880s until the 1940s: industrial workers had the highest offending rates. However, it is important to note that the homicide wave beginning in 1905 was not a homicide wave of industrial workers or any other special social group; both in 1905 as well as in the 1920s the offending rates of all main socio-economic groups increased in a fairly similar way and in similar proportion. Thus, it was a phenomenon that comprised the whole population in a fairly similar way. It was also a phenomenon that seems to have been indifferent of the local differences in the social background in violent crime throughout Russia. For example, it took place in Estonia in a different social setting

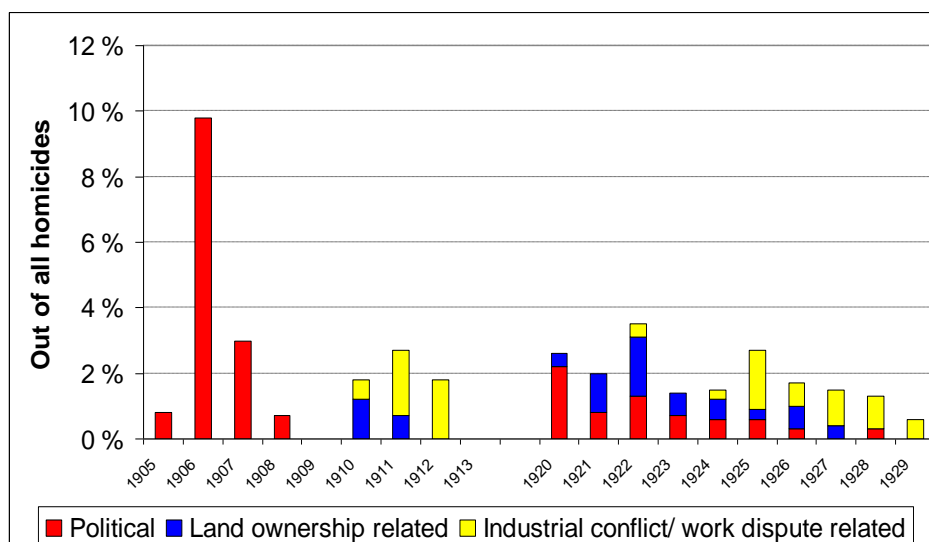
than in Finland. In Estonia, violent crime was dominated by landless rural population, not by industrial workers.

What was the same in Finland and Estonia, and I think throughout Russia, was that the homicide wave of 1905 was a crime wave of young men. Already before 1905, throughout the 19th century, violent crime was in Finland and Estonia a form of juvenile crime, the men in their 20s had much higher offending rates than other age-groups. But also the homicide wave beginning in 1905 was concentrated to this age-group. The offending rates of men under 30 years of age increased more rapidly than those of older age-groups. In the 1920s, there was also a significant increase in the offending rates of the men in their 30s i.e. those who had been in their 20s in the 1910s and the vanguard of violent crime then. Thus there is some evidence at least in Finland that the generations in the 1910s and 1920s who had very high offending rates in their teens and 20s had also higher than usual offending rates when they grew older. Indications of this kind of phenomenon can be seen also in the 1930s when the crime rates began to drop. However, because of the Second World War we cannot follow the violent careers of the offenders of that decade longer than until the end of the 1930s.

What kind of violence increased? The period was politically unstable in the whole region, for example, in Finland, there were three revolutions (1905, 1917, and 1918), one civil war (1918), several smaller or larger military conflicts (1918-22) against different Russian fractions; and a large scale organized crime problem in the 1920s because of the prohibition. Thus, one could think that a substantial part of the extra-violence emerging in 1905 and during the following decades would have been caused by some new forms of violent behaviour directly linked to these potentially violence creating events.

Such new forms of violence truly existed in the era. The figure 2 shows the percentage of direct political violence out of all annual homicides in those years; the years 1917, 1918, and 1919 have been excluded because of the cause of death data of those years are fairly hard to interpret; the percentage for those years would have been much higher. But as we can see otherwise this kind of violence (in spite the fact that I have used the concept quite broadly including all kinds of potentially politically motivated acts and quarrels) had a fairly marginal role in the homicide wave of 1905-32.

Figure 2. Homicides linked with politics in Finland, 1905-13 and 1920-29 (Lehti 2001)



Even when one adds the homicides linked to organized crime activities the total is less than 7% in the 1920s and less than 5% in the 1910s. Thus, although there was a considerable number of this kind of new crimes, especially if we compare the situation with Scandinavia at that time, the role of the new forms violence was marginal in the whole phenomenon, and cannot explain it, at least in Finland.

The crime wave did not change the basic type-structure of violent crime. In Finland, this meant the domination of forms of violence linked closely with alcohol consumption and alcohol consumption situations: private drinking brawls and crimes committed in the weekend dances and other social free-time gatherings of youth.

Thus, to sum all this up: in 1905, there seems to have been a sudden and dramatic increase in general violent behaviour of young men in the whole population, and this violence took place in the same contexts, because of the same motives, and consisted of the same forms as before. The phenomenon seems also to have been independent and indifferent of the local structural and social peculiarities of violent crime in the empire.

### ***The Explanations***

Why all this happened? There exist lots of research and studies on the topic in Finland, but the Grand Explanation is still missing. One reason for this is perhaps, that there existed in that era simultaneously so many different factors potentially influencing violent crime. It is hard to choose between them the most important one.

In the following I have listed some of the factors/explanations mentioned in the Finnish research.

A) Social factors: The social change and tensions of the era i.e. the sore points are clearly to be seen in the geographic distribution and social structure of violent crime; but the actual crime wave after 1905 cannot be pinned to any specific social group.

B) Wars: There seems also to be very little of any direct influence of the wars of the period on violent crime (there sure was much indirect influence). For example, the motives of the crimes or the persons involved in them can only rarely be linked to war time events. There is no evidence in the 1920s (similarly as there is no evidence after the Second World War in Finland) that war veterans would have been an especially violent group, on the contrary, the offending rates of veterans seem to have been both after the civil war as well as after the Second World War lower than the average; however, in the 1920s the most violence prone group seems to have been the men who had just missed the action, those between the ages of 10 and 15 during the wars.

C) Demographics: There are two main variations of this factor/explanation: The first concerns the local demographic structures of the new industrial settlements from the 1880s onwards. Especially the forest industrial towns had often a potentially very violent prone population mixture: a huge overrepresentation of young men combined with high turnover; that can have to some extent contributed to their high violent crime rates. The second variation concerns the demographic crisis in the 1920s when the exceptionally large cohorts of the turn of the century reached their adulthood and there were problems to integrate them in society, to create for them means for independent existence. The large size of the cohorts may have influenced violent crime also by other ways, for example, they made the social life of the decade much

livelier than before; there were lots of young men available for all kind of activities. The opposite is true for the 1930s when the cohorts reaching adulthood were some of the smallest in the Finnish demographic history making their integration relatively easy and their social life much less livelier.

D) Economics: Finland went through two severe depressions in the period, in 1917-19 and 1930-34. But as far as can be seen, they did not have any effects on violent crime; and if they had any, it was rather positive than negative, in the form of decreasing alcohol consumption.

E) Alcohol: Alcohol is always an important factor or at least the favourite explanation in the context of Finnish violent crime. The period from 1905 until the 1930s was actually an era which saw the two extremes in this respect: the years 1914-16 were the driest in modern Finnish history (and had also the lowest homicide rates during this period); and the 1920s, the prohibition years, had actually the most liberal alcohol policies ever practiced in Finland; following a total collapse of any kind of distribution controls and leading to a rapid increase in consumption; and this can also be seen in homicide rates: at the same time as the crime rates increased by 65% when compared to the average of the 1910s the percentage of alcohol related homicides (where the persons involved were intoxicated) increased by almost 10 percentage points. Thus, the increase in homicide rates in the 1920s took place mainly in alcohol related crimes.

F) Guns: Another liberal social experiment of the 1920s with potentially significant impact on homicide rates was the gun policies. The wars had left lots of all types of firearms in the country and their usage was controlled very laxly. Hand guns became the fashion weapon of young men of that decade and were carried especially in the weekend dances and the mixture of these guns and illegal alcohol had fairly fatal results. There is plenty of evidence that there were not only more violence in the 1920s but it was also more lethal than in the 1910s.

G) Politics: Politics appear in several different variations and combinations as an explanation. It is actually more or less logical to think that politics or some sort of change in the general social atmosphere, or thinking of the population, in their attitudes towards authorities and laws and norms, triggered the crime wave in 1905, because in 1905-06 politics was basically the only sphere of social life where there happened any important and dramatic changes; but a much trickier question is what was the link between politics and violent crime.

In this respect, several different suggestions have appeared in the research. There is actually much evidence in the writings and press of the contemporaries that there was a very dramatic change in the adherence to law and authorities among the population and especially among the younger generations in 1905; that this was not restricted to any special social groups; and that it led to a general non-obedience to laws and norms. And actually this fits fairly well to that what happened in crime during the period. But why this legal nihilism appeared so suddenly, why it comprised such a large segments of the youth, why it lasted such a long time and why ended in the mid-1930s; I don't think that it has been really explained satisfactorily so far.

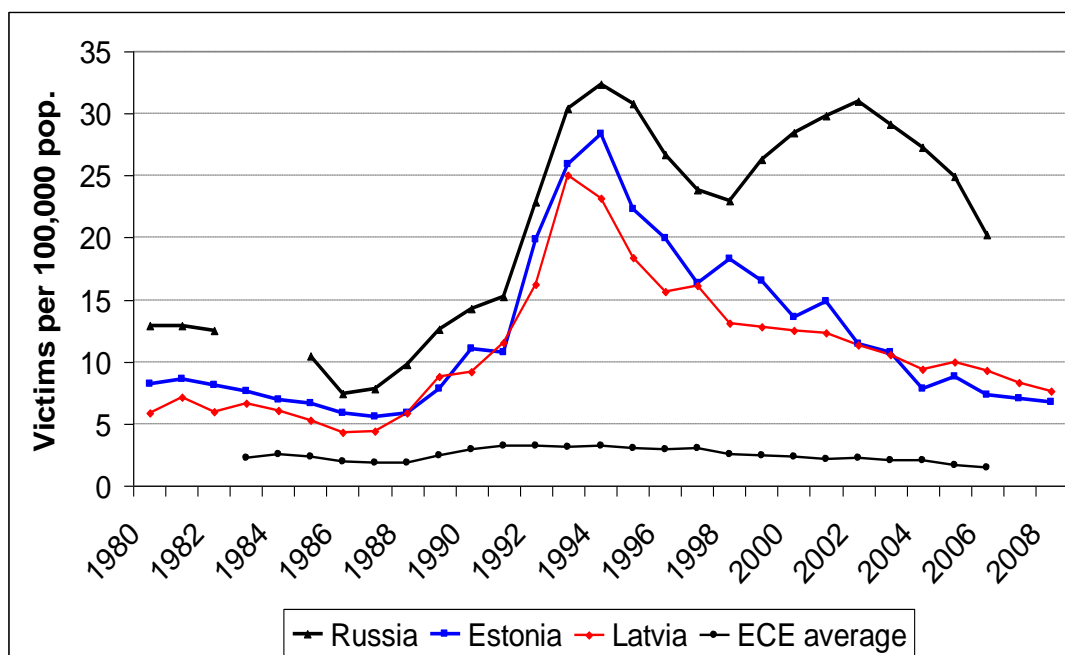
Of course there are also important developments in the political sphere in the 1930s; there is the great reconciliation between the Social Democrats and centre-right parties in the second half of the decade; but what coincides with the drop in violent crime rates in the beginning of the decade is perhaps rather the not very democratic crushing of both left wing and right wing extremist movements in the beginning of the thirties; if there are any links between those two events and what they are, it is another question.

H) Institutions: If we divide the public behaviour control to pre-control (meaning the general keeping of order) and after-control meaning clearing crimes and convicting offenders; the after-control part functioned well during the whole period. The clearance rate of homicides was about 90%, the sentencing rate of offenders about 75 to 80%, and the sentences were pretty severe by any standards. The medium sentence for manslaughter was 10 years in penitentiary and for murder a life sentence. Thus, the period from 1905 until 1932 is a pretty depressing experience for a person who believes that one can influence crime rates or at least homicide rates by sentencing policies – if the crimes consist mainly of impulsive drunken acts. What did not function was the pre-control. Police forces were poorly organized, poorly trained and undermanned especially in countryside and the new industrial cities. The open hostility of the socialist movement and large parts of population to the police force, partly based on theoretical dogmas, partly on negative experiences did not help (and was also shown in the high numbers of police officers killed in duty both before the First World War and in the interwar years).

Control measures seem to have had also some role in ending the crime wave in 1932-33; at least the years coincide with a combination of several control strengthening measures: 1) alcohol distribution was brought under strict state control; 2) hand guns were made de facto illegal for civilians; 3) the organizing of public dances was restricted considerably; and 4) a new national mobile police force was created to improve the keeping of law and order in rural districts.

I) Cultural factors: Figure 3 shows what happened in the Soviet Union in 1990s; and leads us to still one question/problem which has troubled Finnish researchers through all these years: why this happened in Finland (and in Russia), why similar revolutions and civil wars did not cause a similar dramatic increase in civilian violence or collapse of obedience to law, for example, in Ireland, Spain, France or Germany during the late 19th and early 20th century? I think it is a good question that emerged again in the 1990s when one compares what took place in the ex-Soviet Union with that taking place in the eastern Central Europe after the revolutions of that decade.

Figure 3. The revolutions of the 1990s in Europe and homicide rates (WHOSIS; ECE = eastern Central Europe)



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Per Ole Johansen

## **Tyskland etter den første verdenskrig**

### **Hvorfor Weimarrepublikken?**

Den islandske banks- og finanskrisen gjelder en demokratisk nasjon som har vært i fred med seg selv og sine naboer i århundrer, relativt sett. Frigjøringskampem fra Danmark førte ikke til noen militær konfrontasjon. Foranledningen til finanskrisen var spekulasjon, korrupsjon og økonomisk kriminalitet. Det vil si *økonomiske* insitammenter - i en utvidet, kriminogen forstand. Krisen kom meget uventet og *unforseen* for de fleste isledninger. De få som advarte ble utdefinert av det gode selskap. En islandsk journalist skrev foraktfullt om forskjellen mellom "Vest Norden" og "Øst Norden." Færøyene og Island var "vest" i god betydning; frie markeder, private initiativ, innovasjon, entreprenuerial spirit og individualisme. Norge og Sverige var "øst" (les: Det kommunistiske Øst Europa) med sterk stat, knugende byråkrati, et overregulert næringsliv og servile undersåtter.

Tyskland hadde en tapt verdenskrig bak seg. Det demokratiske fundamentet for Weimarrepublikken var like svakt som industrien, vitenskapen og hæren var sterk, før krigen. Etterkrigsinflasjonen og superinflasjonen i 1923 var først og fremst en følge av *politiske* avveielser og prioriteringer, for å finansiere krigen, demobiliseringen og motstanden mot den franske okkupsjonen av Ruhr i 1923. Tyske myndigheter vek tilbake for upopulære skatteøkninger, til fordel for krigsobligasjoner, lån og opptrykk av flere pengesedler, uten dekning i gullstandarden.

Finanskrisen og dets ettervirkninger har vært traumatisk for islendingene, enten de har vært med på ferden eller håpet på å kunne få bli med. For de få som advarte, kom det som et sjokk at *omfanget* av krisen ble så stort og at de internasjonale relasjonene så vanskelige.

Historikerne diskuterer i hvor stor grad utbruddet av den første verdenskrig var *unforseen*, sett på bakgrunn av våpenkappløp og spente internasjonale forhold. Nye kilder tyder på at tyske generaler søkte krigen, som en forkjøpskrig mot Russland som var i ferd med å bli en sterkere militærmakt, trodde de. Men for tyskere flest kom krigsutbruddet som en meget stor overraskelse, og en positiv opplevelse for mange i de første feberhete ukene med krigsbeistring og partiotisme. Men at "guttene ikke kom hjem til jul", at krigen varte i fire år og at Tyskland til og med tapte, var meget *unforseen* etter fire krigsår med militær sensur og løgnaktige propagandemeldinger fra fronten om at seieren var straks rundt hjørnet av neste skyttergrav. Et så uforutsett nederlag var mer enn tyskerne kunne ta, og den viktigste grunnen til at generalene fraskrev seg ansvaret for en våpentilstand de selv hadde foreslått, etter å ha innsett at hæren var ugjenkallelig fortapt, både militært og industrielt. Demobiliseringen var en midlertidig suksess, takket være seddelpressen, men kritikerne advarte. Tyskland levde på lånt tid, regnskapets dag ville komme.

Men selv ikke kritikerne regnet med at det skulle bli så dyrt, og at inflasjonen skulle ta så mye av at den tyske marken mistet enhver verdi.

De økonomiske problemene i Island må ha vært meget tunge å bære for de som levde med den økonomiske boomen og lånte og handlet deretter, selv om de ikke ble utsatt for massehungre og kamp om det daglige brød i bokstavelig forstand da krisen rammet dem, som i Tyskland etter den første verdenskrig. Men når det gjelder tap av nasjonalt selvbilde, håpløshet og fremtidspessimisme i de islandske etterkriseårene kan man muligens se en parallell.

### ***Weimarrepublikkens indre fiender***

Den tyske keiseren måtte abdisere, og forlot Tyskland i unåde. Prestisjen til hæren og den preussiske offiserstanden - som hadde vært Tysklands stolthet og forbilde - ble svekket, men uten at det fikk konsekvenser for selvtiliten og ambisjonene til generalene. "For civilians and their mode of life they had nothing but withering contempt." Den tunge arven fra keiserdømmet hang ved. "They were taught to idealize force." (Halperin 1946, side 10.) Sosialdemokratene kom i regjeringsposisjon, i mangel av andre dugelige - og fikk ansvar for fredsforhandlingene og styringen av landet i en ekstremt vanskelig i overgangstid. "The Social Democrats were psychologically unprepared for the responsibilities of power." (Halperin 1946, side 108) De mestret oppgaven dårlig, men det var flere som hadde skyld i.

Økonomiske historikere har revidert synet på hvor ødeleggende krigserstatningene og de andre fredsbestingene egentlig var for Tyskland på sikt. Avtaler ble reforhandlet. Inflasjonen bidro til å redusere krigsgjelden. Men tyskerne opplevde det ikke slik, og kunne ikke oppleve det slik heller, der og da. Når nederlaget kom så uventet ville taperens påtvungne fredsbestingelser nesten uansett ha blitt opplevd som meget urettferdige. Påfølgende økonomiske kriser var heller ikke bare økonomiske. "The real scale of the economic crisis was perhaps less important than the symbolic meaning of the crisis as the Germans perceived it." (Bessel)

Hungerblokaden fortsatte etter fredsslutningen, og ble til og med skjerpet på noen områder. Over 700 000 tyskerne antas å ha mistet livet på grunn av underernæring og sultrelaterte sykdommer, hvorav sjokkerende mange barn. Det tyske "Drang nach Osten" og den kyniske drømmen om Ukraina som Tysklands fremtidige kornkammer, som Hitler forsøkte å oversette fra ord til handling, kan følges tilbake til de sultne årene under og etter den første verdenskrig.

De allierte tok ikke høyde for at de hadde å gjøre med en helt annen type og mer demokratisk innstilte tyske politikere enn før og under krigen, og gjorde det ikke lettere for dem med sine urimelige krav og harde ord. Tyskerne var meget sultne, bitre og uten håp. "The orgies of national hatred in which all combatant nations had indulged during the war left a terrible legacy of bitterness for the future." (Evans 2004, side 59) Det var lett å tro på syndebukker; lik sosialdemokratene - "novemberkriminelle" som de ble kalt etter fredsslutningen den 8. november 1918 - sivilister som bare var opptatt av maten, jødene som var ute etter å berike seg osv. *Die Juden seien Kriegsgewinner*. Keiserdømmets tid var likevel over. Monarkistene stormet ikke til barrikadene for å dø for Keiseren. "Fornuftsrepublikanere" innen byråkrati, hær, industri og politikk innså nødvendigheten av av midlertidige allianser med sosialdemokratene og fagbevegelsen.

Men det buttet veldig imot likevel. Byråkrater og generaler identifiserte seg med *Staten* i en meget abstrakt forstand. Demokratiet kunne de ikke med. Den tyske dommerstanden, som hadde forfulgt arbeiderbevegelsen siden 1880-tallet, lot seg ikke rehabilitere over natten, og viste stor forståelse for høyreekstreme voldsgrupper. 22 politiske mord begått av venstreradikale i årene 1919- 1925 førte til 38 rettskraftige dommer, de fleste livstidsdommer og ti fullendte dødsdommer. De 354 mordene som høyreekstreme ble tiltalt for, førte til 24 fellende dommer på fire måneder i gjennomsnitt og ingen dødsdommer. 23 av de tiltalte ble satt fri selv om de hadde tilstått. (Evans side 135). Adolf Hitlers nasjonalistiske propagandanummer i retten, under beskyttelse av en meget forståelsesfull dommer ble et eksempel til etterfølgelse. Professorer og studenter sluttet seg til høyeradikale og nazistiske organisasjoner.

Hæren og "frikorpse" nølte ikke med å ta ladegrep da sosialdemokratiske regjeringsspammer amodet dem om å nedkjempe uavhengige sosialister som okkuperte fabrikker, aviser og offentlige bygninger, og kommunistenes i klossete forsøk på "revolusjon" i tyske storbyer. Oppdragene ble utført på en meget entusiastisk og morderisk måte, med over 1200 drepte i Berlin våren 1919 og ca 1000 drepte under "borgerkrigen" i Ruhr i 1920, hvorav mange som følge av henrettelser uten rettegang, etter at de "røde" hadde strukket våpen. De politiske mordene på tyske politikere og regjeringsmedlemmer tok de "frivillige" seg av. Hæren og "frikorpse" slåss ikke for å beskytte Weimarrepublikken. De hadde sin høyreradikale agenda med visjon om nasjonalt diktatur, og like lite til overs for republikanere og sosialdemokrater som overfor venstresosialister og kommunister. De tyske sosialdemokratenes store tragedie var de ikke innså dette før de selv havnet bak lås og slå, eller ble stilt opp etter muren for å henrettes.

"Når tyskerne først forsøkte demokrati" – var utgangspunktet elendig. Nødvendigvis ikke så elendig at republikkens undergang var forhåndsbestemt, innvender flere historikere. Men det var slik det endte, med den totalitære regressen fra slutten av 1920-tallet og nazistenes maktovertagelse i 1933.

### ***Krigskriminalitet er vinningskriminalitet***

"Krigskriminalitet er vinningskriminalitet" - på flere måter og av flere grunner, under og etter krigen. Hensynet til krigsindustrien gikk foran alt. Millioner av unge menn, som arbeidet i jordbruket i fredstid, dro ut i krigen. Hærskarer av rekvirerte bondehester likeledes. Jordbruksproduksjonen sank. De alliertes hungerblokade gjorde vondt mye verre. Svartebørsen for mat og andre nødvendighetsartikler kom tidlig under krigen, fortsatte inn i etterkrigstiden og tok helt av under superinflasjonen i 1923, da pengene mistet verdi som ekvivalent og betalingsmiddel. Desertører og demobiliserte soldater solgte varer de hadde stjålet i forlegningene, etter å ha spist den delen av hestematen som var spiselig. Ekssoldater opererte som "kjempende enheter" etter krigen også, for å stjele og rane. Men sett under ett skal demobiliseringen i Tyskland ha vært en suksess. Kvinnene vekk plassen i industrien, jobber sto på vent.

Økningen i vinningskriminaliteten hadde mer å gjøre med andre forhold enn eks-soldater på videvanke. Tyverier, rasjoneringslovbrudd og svartebørs var først og fremst "crimes of need". *Gibt und billiges Brot*. En liten gruppe smuglere, organiserte kriminelle og svartebørshandlere var unntaket, som i andre krise- og krigstider. De superkriminelle skremte og fascinerte. Havnearbeiderne i Hamburg nektet å losse

viss ikke skipslastene inneholdt noe som var verd å stjele. Den nødsrelaterte vinningskriminaliteten varierte fra private "initiativ", til husmødre som plyndret matbutikker i flokk og store grupper arbeidere som hjemsoekte landsbygda med flagg og revolusjonere paroler, på jakt etter "det daglige brød." Bøndene svarte med bevebnet landsmilits, eller var føre var og solgte avlinger på rot. Prisene på det svartebørsen var mye høyere enn lovlige maksimumspriser. Selv om bøndene hatet storbyen hadde de en pragmatisk fellesinteresse med kundene, som heller ikke likte politi og militær som enevendte bondegårdene på jakt etter svartebørsvarer.

Inflasjonen i etterkrigsårene og superinflasjonen i 1923 var kjent for *Flucht in die Sachwerte*. Et galloperende prisnivå gjorde det mere lønnsomt å "investere" i faste verdier – i tingene – ved oppkjøp eller tyveri. I 1913 ble det avsagt 115 000 dommer for vinningskriminalitet i Tyskland, i 1923 lå tallet på 365 000. Heleridommene økte til det syvdobbelte i løpet av samme periode. Barter - bytte av vare mot vare – var et lignende tegn i tiden. Alternativt aksjer; som var et yndet spekulasjonsobjekt så lenge kursene gikk oppover . De som hadde penger fra tidligere høstet store gevinster, men mange nye og unge så sin sjanse også, i Tyskland og ellers. Gambling og lykkespill ble en metafor *Das Leben*.

"Plutselig oppdaget folk en sikker havn: aksjer. Det var den eneste form for pengeplassering som til en viss grad holdt stand mot inflasjonen. Ikke jevnt og alle i samme takt, men aksjene klarte så noenlunde å holde tritt. Altså gikk man og kjøpte aksjer. På lønningsdagene var det storm på bankene, og aksjekursene skjøt i været som raketter. Bankene svulmet opp av rikdom. Ukjente bankeer skjøt opp som paddehatter og gjorde store forretninger." (Haffner 2009, side 49)

Industrialister gjorde formuer med lånte penger, som var av vesentlig mindre (forventet) verdi da de skulle betales tilbake. Sult, underernæring, arbeidsledighet, håpløshet, virkelighetsflukt og religiøst svermeri - for veldig mange. Nyvunden rikdom, aksjespekulasjoner, oppkjøp av kunst - av andre grunner enn de kulturelle – og et frivolt fornøyelsesliv i manisk søken etter det sorgløse øyeblikk, for noen få. *Morgen is ungewis. Nur das Heute gilt.*

"Midt i så mye lidelse, fortvilelse og bunnløs fattigdom vokste det frem en feberaktig, varmblodig ungdommelighet, opphisselse og alminnelig karnevalstemning. Nå var det plutselig de unge og ikke de gamle som hadde penger, og dessuten hadde pengenes natur endret seg slik at verdien bare holdt seg noen få timer, og de ble brukte raskere enn noen gang før eller senere, og til andre ting enn det eldre mennesker hadde brukt pengene sine til. Utallige barer og nattklubber dukket plutselig opp. Unge par virvel gjennom gatene i fornøyelsesstrøkene, som en film om samfunnets ti tusen rikeste." (Haffner, 2009, side 50)

Utagering er også en gjenganger når spekulasjonsfeber og drømmer om de store gevinstene tar epedemiske former. Men det var ingen i Tyskland som trigget inflasjonen eller tok andre grep i forkant, for å tjene penger på nye måter. Tidene var uoversiktelig for alle. Forskjellen lå i at noen var raskere til å lese den nye skriften på veggen, og til å trekke de "riktige" konklusjonene av det de leste.

Kjennere av tysk mellomkrigshistorie hevder at etterkrigsårene ikke førte til noen økning i voldskriminaliteten av betydning, som man kunne ha forventet når ti millioner sinte, unge menn vendte "hjem" fra fronten med en smertelig erkjennelse av nederlag. Noen tallrekker kan til og med tyde på at voldskriminaliteten var lavere etter enn før krigen, om man tør ta en så usikker statistikk på alvor. Forsøkene på

forklaringer har varierende troverdighet, fra det sivile samfunns evne til å inkludere eksksoldatene, til mindre tilgang på alkohol og en generell underernæring som gjorde det mindre fristende å slåss, på egen hånd. Kriminalstatistikken for mord og drap kan følges et stykke på vei, grensetilfeller til tross. For mildere voldstyper og seksualisert vold i og utenfor hjemmene er statistikken særdeles upålitelig. I tillegg til de "tradisjonelle" årsakene til mørketall - *Dunkelziffer* som tyskerne kalte det - ble ikke situasjonen noe bedre for anmeldelser, straffeforfølgning og kriminalstatistikk i en etterkrigstid med et politi som var så underbemannet, forgubbet, desillusjonert og overbelastet med nye oppgaver som følge av rasjonering og svartebørs. De politiske drapene i årene 1919 -1923 ble ikke fanget opp av kriminalstatistikken. Den politiske volden er riktignok en annen historie enn tradisjonelle drap og mord, men ikke den minst viktige for forståelsen av det tragiske utfallet av tyskernes første store, demokratiske eksperiment.

### ***Der Deutsche Sonderweg***

De tunge innslagene av vold og borgerkrigsliknende tilstander i politikk og arbeidsliv fra 1918 til den nazistiske maktovertagelsen i 1933, da den politiske volden ble statssanksjonert, er et særkjenne for mellomkrigstidens Tyskland, sammelignet med andre demokratiske, vestlige land i samme periode. Voldsretorikk, og politisk hat og undertrykkelse hadde riktignok røtter i keisertidens Tyskland, men det statlige voldsmonopolet ble ikke utfordret. Førkrigs-tyskerne var et meget lovlydig folk. Det var etter det første verdenskrigen at det statlige voldsmonopolet møtte konkurranse og den politiske volden ble privatisert, men myndighetssanksjonert også - da regjeringen trengte leikeknekter for å bekjempe den politiske venstresiden.

Historikere diskuterer om Weimarrepublikken var dømt til undergang - og om den politiske volden var av en slik karakter at *det* var årsaken til Weimarrepublikkens fall. Den diskusjonen er like viktig som vanskelig. For oss er det tilstrekkelig å påpeke at republikken uansett tapte - forhåndsbestemt eller ikke - og at den voldelige selvkriminaliseringen av tysk politikk og samfunnsliv var en av flere årsaker til at det endte slik.

Kollektive voldelige aksjoner - med politiske undertoner – for å mette tomme maver, var startet under den første verdenskrig, og fortsatte inn i etterkrigsårene. Det er en definisjonssak hvordan man kategoriserer denne typen *Selbshilfe*, som er kjent fra bondeopprør og urbane hungeroppstander i europeisk historie.

Den politiske volden i regi av "frikorpsene" var en annen agenda. Det var riktignok bare et "mindretall" av ti millioner tyske soldater som sluttet seg til "frikorpsene" i etter krigen. Det store flertallet var krigstrette, og svært motiverte for det sivile liv. De voldelige ungdommene som strømmet til de nazistiske kampgruppene fra midten av 1920-tallet hadde ingen fronterfaring. De var krigsbarn mens de industrielle massemyrderiene pågikk, med en romantisk oppfatning av krigshandlinene. Men pluss- munis en halv million revansjelystne krigsveteraner i kampformasjoner i tyske byer gjorde likevel mye ut av seg. (Enkelte historikere mener til og med at antallet var nærmere 1 1/2 millioner i de første etterkrigsårene.) Den nazistiske ungdommens mangel på krigserfaring gjorde dem enda mer mottakelig for voldsdyrking, frontmyter og løgnhistorier om hvem som hadde skylden."Dere skal ikke hate Frankrike, men de novemberkriminelle" – var Hitlers mantra. Naziungdommen trodde og fulgte ham i det.

Tyske kommunister dannet også kampgrupper, *Proletarische Hunderschafthen* og Rote *Frontkämpferverbund*. De gikk heller ikke av veien for voldelige konfrontasjoner og gatekamper, det være mot "frikorps", nazistiske kampgrupper, opprørspoliti eller sosialdemokratisk ungdom. Sosialdemokratene dannet *Reichsbanner Schwarz Rot Gold* til forsvar av republikken. Dette ordenverner uniformerte seg også, og marsjerte i sluttet militær orden, men formålsparagrafen var defensiv. Andre republikanere var velkommen også, flere takket ja, men ikke kommunistene som hatet sosialdemokratene. En rød arme i spissen for en tysk oktoberrevolusjon var deres visjon

Enkelte historikere har villet moderere bildet av den politiske volden i mellomkrigstidens Tyskland: De fleste sammenstøtene handel om en "symbolsk" form for vold, som knuffing om hvem som skulle marsjere hvor, hærverk på valgplakater og erobring av motstanderens faner, som seierens søte triumf. Tyske "frivillige" med personlige erfaringer fra nærkamper i de baltiske statene like etter krigen, var mer voldelige enn eksoldater med traumatiske minner fra den industrielle drepingen på Vestfronten. For flere var volden en livsstil i sin egen rett og ikke til hinder for å skifte side, alt etter hvor man fant de hyggeligste kammeratene og det beste ølet. Borgerlige politikere så nytten av "frikorps" og veteranforeninger av typen "Stahlhelm," men behandlet dem aldri som politiske likeverdige. Adolf Hitler fulgte også med, for at ikke SA og senere SS skulle utvikle seg maktgrupper i sin egen rett, utenfor partiets kontroll. Nyanser ja, men de rokker ikke ved hovedinntrykket av Tyskland i årene 1918-1933: Politikere uten vilje til å kompromiss. Reichstag som arena for utskjelling og voldsretorikk. Revansjelyst og nasjonalisme. Jødehat og politiske drap. Et autoritær president med vide fullmakter til å utstede ekstraordinære dekretter, med åpning for det totalitære - og en mann som var lett å kjøpe. President Hindenburgs lovforslag om å stykke opp noen av storgodsene i Øst Pressuen for å frigi jord til veteraner fra den første verdenskrig, som ble fremmet i Riksdagen i 1927, skremte opp de tyske godseierne. Men det hele roet seg etter at de kom på den smarte idee å forære Hinderburg et gods, slik at han ble en av dem.

Den politiske voldskulturen med krigerske oppmarsjer og gatekamper, ble til og med *forsterket* i Weimarrepublikkens angivelige stabile periode fra midten av 1920 tallet. De ulike fløygruppene legitimerte hverandre, men sine hatbilder og vilje til vold. Det statlige voldsmonopolet fikk aldri sin sjanse. Den politiske voldskulturen overvintret i Weimarsrepublikkens gyldne år, som en premiss og ressurs for den nazistiske voldsstaten fra våren 1933.

### ***Hvem som har skjønne hva***

Mellomkrigstidens tyskere levde for en meget stor del i en fantasiverden hvor alle andre hadde skyld, unntagen dem selv. "Germany failed to make the transition from wartime to peacetime after 1918. Instead, it remained on a continued war footing; at war with itself, and a war with the rest of the world ..." (Evans, side 72) Ansvaret for krigsnederlaget og de økonomiske krisene på 1920 - tallet skyldtes alltid "de andre." Deriblant jødene, selv om de tyske jødene var mere tyske enn mange ikke - jødiske tyskere, og overrepresentert som stridende under den første verdenskrig. Weimarrepublikkens nederlag var et ikke-tema for tyskere flest - frem til 1960-tallet, til og med blant faghistorikere. Hitler ble valgt, på sitt udemokratiske program. Han kuppet seg ikke til regjeringsposisjon, som hans store forbilde, il duce Benito

Mussolini. Kommunistene – som bekjempet det ”borgerlige” demokratiet på sin måte - hadde også en betydelig oppslutning.

Island i dag; et helt annet samfunn og en helt annen tid. Men en traumatisk nedgangstid. Mange triste skjebner. En nasjon uten fremtidshåp, inntil nylig. Tusenvis av begavede ungdommer som har utvandret. En krass opinion mot utenlandske kreditorer og islandske ”finansvikinger.” Men en voksende kollektiv selvransakelse og selvinnsikt også. En viss politikerforakt overfor den gamle lederkassen, som neppe var til å unngå. Mange, høylytte og sinte demonstrasjoner, men ikke voldelige - og heller ikke til støtte for totalitære bevegelser og ”sterke” menn. Islendingene har måttet ”vaske seg,” men de har ikke slått ut det demokratiske barnet med det skitne badevannet. Det vil ta lang tid, men islendingene kommer til å klare seg, politisk, mentalt og økonomisk. Deri ligger den store forskjellen.



*Helgi Gunnlaugsson*

## ***From Economic Boom to Collapse: Crime Control Developments in Iceland in the 2000's***

### ***Abstract***

In the first few years of the 2000's Iceland experienced an economic boom culminating in a banking collapse in 2008. In this paper criminal control developments in Iceland in the past decade will be described and analysed. What impact does this economic background have on local crime control in Iceland, if any? Immediate public reactions in Iceland are traced to the historic events when the local financial institutions collapsed in a matter of a few days in October of 2008. Does a national shock like a banking collapse only have a negative impact on society – or can we detect any signs of positive social consequences? How did the local social sciences community react?

Iceland is currently in the middle of a deep economic crisis. Even though the public demonstrations and protests have been intense and frequent since the collapse, resulting among other things, in a new government in 2009; immediate public reactions in large part tended to unify the nation against the power and financial elites believed to be responsible for the demise of the banks. The local social sciences community has responded to the crisis by a number of research projects addressing the causes and consequences of the collapse. A deeper crime concern, in particular concerning drug and violent offenses, and an increase in both the number of such crime types in our court system, and a subtle trend towards longer sentencing practices, can be detected in the new millenium. This penal change in Iceland coincides with profound changes taking place in Icelandic society, as reflected in both internal and external social indicators. An economic boom and subsequent banking collapse occurred at a time when Iceland also opened up to the outside world, demonstrated among other things in the criminal justice system, with more foreign born inmates. This penal trend moving towards somewhat harsher sentencing practices is however not only confined to Iceland but has also been taking place in many other western nations, which makes the local economic impact on crime control developments less obvious.

### ***Introduction***

The Icelandic banks collapsed in October of 2008 in only a matter of few days. This event was a major shock to most Icelanders because the banks were thought to be well financed with high returns only in the summer prior to their downfall. Suddenly, Iceland, a small nation of only 320 thousand citizens in the North-Atlantic, found itself in the world-wide media, but for all the wrong reasons – as the nation worst hit by the global crisis (Chartier, 2010). Since then Icelanders have hotly debated the causes of this collapse; whether and how Icelandic officials and business community

failed, and how much impact outside factors played in the crisis. Not surprisingly, key government figures blamed outside events, such as the global crisis and the downfall of *Lehman Brotherse*, but critics focused on local responsibility such as faulty privatization of banks in 2003 and lax supervisory rules in the spirit of neo-conservatism. The answer is not entirely clear, yet it is safe to state here that the cause of the collapse is associated with both internal and external factors.

Iceland has in recent years experienced both internal and external change. Iceland's population more than tripled in the 20th century and has increased from about 280,000 inhabitants in 1999 to about 320,000 in 2010. At the same time Iceland has opened up to the outside world, detected among other things in an influx of new immigrants. In 1999 about 2,4% of the population was foreign born, but in 2009 this figure stood at 8,0% (Statistics Iceland, 2009). The social fabric has therefore undergone major change in most recent years, with the economy experiencing a boom in the new millenium and then suddenly collapsing in 2008.

What impact do these societal events have on local crime control developments in Icelandic society? A general view of crime control developments here in Iceland during the past ten years or so will be presented and discussed – to give readers an insight to trends and tendencies in the number and types of court sentences. Have we experienced any penal changes in recent years? Can harsher sentencing practices be detected? If changes have indeed taken place – how can they be explained?

### ***A Personal Account***

We belong to the social science community. It has been an urgent question posed to us by both ourselves and others what impact the crisis will have to the Icelandic people and society. What are the consequences to our social institutions and to everyday life here in Iceland? I remember it vividly on the very day when our biggest and last bank collapsed, *Kaupthing*, on October 6 in 2008 to be precise, when I met Annika Snare, Professor of Criminology at Copenhagen University, and Vagn Greve Professor of Law at the same institution, who were both visiting UI to give a lecture. Annika was all excited because she said this was a wonderful opportunity for me and the social sciences in general here in Iceland: to experience first-hand a society in a meltdown right in front of us. To study the impact of this collapse on the well-being of Icelanders in the years to come. Honestly, I was not ready for this piece of information at that particular moment, because I was in a shock like everyone else. Yet, deep down inside I knew she was right. This was indeed a unique opportunity for us all in the social sciences community.

### ***Crisis and the Role of the Social Sciences***

Ever since the downfall of the banks in 2008 we have seen the local social science community meeting the challenge for new research with a number of different research projects. Various aspects of social life here in Iceland have been studied; the impact of crisis on migration (Garðarsdóttir and Bjarnason, 2010; Woytynska and Zielinska, 2010), economic instability (Þórlindsson and Jónsson, 2009), and economic prospects of Iceland after the collapse (Ólafsson, 2009) to name only a few studies. Not surprisingly the question of crime has also been brought up in public discourse. It is interesting to note that whenever we have an atypical crime incident or even a typical one – we always seem to get questions from the local media and others (see for example Ríkisútvarpið, 2009a) – is this incident, or this reported

increase we see for different crime types a result of the crisis? A violent incident, domestic outbursts, burglaries, thefts, drug crimes like home grown marihuana – are these incidences all a result of the crisis? The crisis seems to give a deeper meaning to these events and to crimes in general, making them somehow more understandable to the public. Yet, in a way the crisis can also turn into a convenient scapegoat for us; blaming everything on the crisis pacifying us, making us neglecting other plausible explanations. Moreover, also quite common statistical fluctuations always showing up in crime data, suddenly seem to take on a deeper meaning, which we can more easily understand and live with than before. Therefore, a crime control change or policy shift does not necessarily have to directly reflect economic turbulence. This relationship might be deeper, more subtle and more difficult to discern.

We know from history past, and classic sociological literature in particular, that sudden social change, both in the form of a sudden crisis or a boom, has some impact on society. Events of this sort tend to infiltrate into different social institutions and into our lives in one way or another. The most important element of this influence is not only economic but social and moral, a sudden change can undermine moral foundations of society. What we commonly believe to be good or bad, right and wrong, what you expect of others and what others expect of you, might be in jeopardy – in short we can expect diminished acceptance of norms and values of society – or what Durkheim (1893/1964) termed as an *anomic* condition at both individual and societal levels.

Still, it is important for us to keep in mind that a structural change in the form of a sudden economic crisis or a boom does not necessarily have an immediate effect on society. A society does not change its morality over night nor do individuals change their behavior instantly due to a change in their economic situation. For example, an economic fall does not necessarily mean rising crime rates (Bushway, 2010) just as the Great Depression in the USA back in 1929 did not have an immediate effect on the US crime rate. Yet we know that different social groups are more vulnerable than others to outside changes. Social and institutional forces do not equally protect different social groups in times of transition, some change in behavior eventually takes place and risk of social exclusion is always there.

### ***National Mood Immediately Following the Collapse***

It is for example quite possible that Icelanders experienced increased social solidarity immediately following the bank meltdown. All citizens felt the crisis on his or her own skin in one way or another. This was a common experience, something which helped us relating more to each other, sensing a mutual link between us, perhaps strengthening our *conscience collective* as Durkheim (1893/1964) would have phrased it: enhancing social cohesion and even helping us to maintain social order. In particular, because the public outcry following the crisis, demonstrated in the so called noisy „pots and pan revolution“ outside the Parliament building, found the cause of the crisis in only a relatively few individuals, who allegedly had gone berserk in their foreign investments and money transactions up to the crisis (Iceland Review, 2008). These particular individuals were instantly blamed for the fate of our small nation. We found a shared thread in our condemnation of these relatively few individuals and certain public institutions, perceived to be guilty of the bank meltdown by their negligent actions or non-actions.

Also, not less important, we felt we were part of history, we were living historic times, something which will be written down in the history books. Not only were we reading about something happening in the past as we usually do with history books, but we were personally living through it in the present history unfolding in front of us, and we were a part of it. *I was there close to the downtown protests in January of 2009 outside the Parliament building when the government was ousted* - was a public mood felt by many. This experience gives you an immediate sense of history and belonging, and Iceland became front page news in the international media (Chartier, 2010), oddly it seemed to give us some pride. Yet it needs to be pointed out that trust in political institutions, such as the parliament *Alþingi*, has been at a historical low since the collapse. The gap between the public and the government has probably never been as wide as in most recent years or since the downfall of the banks.

It is in many ways premature to draw firm conclusions about the impact of the crisis in Iceland on crime or other social issues for that matter – only a mere three years after the collapse. Still we can point to signs and new trends in certain crime types (see elsewhere in this workshop report), but it is probably too early to state with certainty that this is due to the crisis or to other deeper social forces. Perhaps we are only experiencing statistical coincidences – because we always have statistical fluctuations, in particular in a small country like Iceland. Yet long term crime trends and crime control developments are always associated in one way or another with social and economic factors – but the relationship is seldom direct or immediate.

### ***Problem Conceptualization***

With this general background in mind, I have decided to give a general review of crime control developments here in Iceland during the past ten years or so – or in the time span leading up to the collapse and in the short time period since. To shed a light on trends and developments in the number and types of sentences meted out by the courts which prison authorities are in charge of implementing. Have we experienced any new penal developments in recent years? Can harsher sentencing practices be detected? If changes have indeed taken place – how do we account for them? Does the economic boom and subsequent collapse in Iceland have anything to do with local crime control?

### ***Iceland Prison Situation***

If we look at the prison system, the total prison capacity of Icelandic prisons in October of 2011 stood at about 160 cells, including a total of 10 custody cells. This space has been filled to its maximum capacity in most recent years (see Gunnlaugsson, 2011). It is noteworthy, despite a marked population increase in Iceland during past years, that the total prison capacity did not increase markedly since the mid 1990's (Gunnlaugsson and Galliher, 2000) until May 2010, when the new prison facility at Bitra was opened with spaces for 18 inmates. The number of prisoners per day was around 150 inmates in 2011. This number, currently at its historical peak, still shows the Icelandic per capita imprisonment rate to be low, or around 45 per 100 thousand inhabitants, below almost all other European nations (see for example Seppala, 2011).

The annual number of those under the supervision of the *Prison and Probation Administration* from 2000 to 2008, by type of sentence, shows a marked increase, especially in the number of those receiving a fine. The number of those receiving a

fine doubled, or from a total of 639 in 2000 to 1519 in 2008. Most of the fines were meted out for traffic violations, such as driving while intoxicated, and for drug offenses, or about 70% in 2008 and 15% respectively. A significant increase can also be detected in probation, or from a total of 447 in 2000 to 588 in 2008, who do not have to serve time in prison if they meet the requirements of their probation. The increase in both fines and probation put no extra burden on prison capacity. Still, failure to pay fine might result in imprisonment. With prison facilities currently being filled to capacity it is likely that some of them will expire and eventually not be paid nor served: This is important to keep in mind because it is likely that many of the economic offenses related to the banking crisis will result in fines – which might end up not being paid nor served in prison if not paid.

If the figures for prison sentencing are examined we also see a steady increase, or from a total of 313 in 2000 to 410 receiving an unconditional prison sentence in 2010 (table 1). In the 1990's figures for prison sentencing were close to the figure in 2000 (Gunnlaugsson and Galliher, 2000) which shows how recent this increase is. Yet it is important to note that not all of these sentences result in prison incarcerations with some of the convicts serving their sentence through other measures, in particular community service (see later). Still, this recent jump in unconditional prison sentences handed down by the courts, has put an enormous pressure on the prison system, which has not been fully met by opening new prison space. The result is that prison space is filled to capacity creating a long list of convicts awaiting a place of confinement. In September of 2011 this list stood at about 360 persons waiting to be placed in prison or serving their sentence through other means (see also Ríkisútvarpið, 2009b). Thus, government officials face a major pressure to meet this increase by creating more prison space or seeking prison alternatives.

*Table 1. Percentage distribution of imprisonments, by length of sentence, 2000-2010*

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Less than 30 days	25	26	28	23	26	23	28	23	27	26	25
30 days-3 m.	40	35	38	35	32	36	35	32	31	33	31
3-6 months	15	15	11	17	16	12	15	16	16	16	13
6-12 months	8	10	11	11	12	13	10	10	10	8	13
12 mths-36 mths	8	9	9	12	12	14	9	14	11	11	13
36 months+	4	5	3	2	2	2	3	5	5	5	5
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Total number	313	302	312	368	361	370	364	402	416	447	410

Source: Prison and Probation Administration annual reports, 2000-2010.

Where does the increase in the number of court sentencing come from? Are specific crime types increasing or does it reflect an overall increase of all crime types?

Institutional records of prisoners for 2000-2010 (table 2) reflect an emphasis on confining those convicted of drug, property and violent offenses in this order. The ratio of drug offenders has increased and varied from 25 to 36 percent of the prison population in this time period. Proportionately property offenders have decreased or from accounting for about 35 percent in 2000 down to a low of 18 percent in 2008. Violent offenders have taken more space or from 18 percent of all inmates in 2000 up to 30 percent in 2010 of the total prison population, including sex offenders from 5% in 2000 to 13% in 2010. Both proportionately and in number, the most notable increase during this time period therefore consist of drug, violent and sex offenders, while property and traffic violators increasingly lag behind. Yet it is noteworthy that

the ratio of property offenders have increased again in 2009 and 2010 – in the wake of the banking crisis in 2008.

*Table 2. Percentage distribution of incarcerations in Icelandic prisons, by type of crime committed, 2000-2010*

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Homicide	6	6	5	5	4	5	6	8	8	7	7
Property crimes	35	33	26	26	34	27	23	22	18	24	25
Traffic violations	20	15	22	16	12	11	16	11	10	9	3
Drug violations	25	29	32	28	24	32	34	32	28	31	36
Sex crimes	5	6	6	9	11	9	9	15	13	10	13
Other violence	7	9	6	10	10	9	9	8	16	10	10
Other	2	2	3	3	5	7	3	4	7	9	6
Total number:	219	254	251	325	317	305	327	288	314	331	327

Source: Prison and Probation Administration annual reports, 2000-2010

What lies behind this profound change shown in tables 1 and 2? Most likely a mixture of events. Increased drug enforcement (Gunnlaugsson, 2008), and harsher sentences meted out by the courts, for both drug and violent crimes (Bragadóttir, 2009; Magnússon and Ólafsdóttir, 2003) undoubtedly play a role. Moreover, concern in society for both sex and violent crimes has deepened with more media reporting (Björnsson, 2007) and public pressure to increase penalties (Visir.is, 2006) and push for more indictments and convictions. We can see this sentiment in population crime surveys (Gunnlaugsson, 2008), media reporting and public demands from various grass-roots movements (Visir.is, 2010). Moreover, we have seen alternatives to prison which have been adopted in recent years, in particular used for traffic violators, whose number in prison has subsequently decreased. Traffic violations is a mixed category involving not only traffic violations, but also car thefts, driving while intoxicated, and driving without a license.

### **Court Sentencing Practices**

What is the range of sentencing meted out by the courts? On the whole prison sentences tend to be relatively short. Yet, we see a subtle trend towards longer sentencing practices during 2000-2010 (table 1). More than two-thirds of all sentences involved three months or less in 2000, but in 2010 this figure was lower, or about 56 percent stipulating three months or less. In the 1980's about 66 percent of all sentences were three months or less (Gunnlaugsson and Galliher, 2000) or very similar to the situation in 2000, which shows that increased punitivity is a recent development.

Same trend towards longer sentencing practices holds for sentences more than one year in prison. About 12 percent of the total sentences in 2000 stipulated more than 12 months in prison, but this figure had risen to around 18 percent in 2010. On top of a growing number of incarcerations during 2000-2010, or about a 25% increase, we also see longer sentences meted out by the courts. The total length of prison sentences in 2000 was 202 years in prison, but in 2008 this total had risen to more than 300 years, or an increase of about one-third.

Thus, sentences have gradually become longer in the new millenium in addition to a growing number of imprisonment sentences. This trend in both number and longer

sentencing practices has contributed to the current pressure in the prison system, and has added to the long list of convicts awaiting a place of confinement.

However, court sentencing policy is one thing, and time actually served in prison another. According to Iceland's penal code (law no 19, 1940), an option of giving parole is made possible when two-thirds of the term has been served and after at least two months in prison. Yet there are frequent exceptions, and many prisoners are released when half of their term is completed. The relative share of half and two-thirds of terms completed before released on parole has not changed much over time. With a growing number of longer sentences over time more inmates have a possibility to be granted parole since shorter sentences than two months do not permit it. How many inmates are first servers and how many are recidivists?

In the 1980's and 1990's usually about half of the prison population had served in prison before (Gunnlaugsson and Galliher, 2000). In most recent years the rate of first servers seems to be increasing. During 2000-2008 repeat prisoners are proportionately fewer than before with about 40 percent of inmates being recidivists in 2008. What accounts for this change is difficult to state with certainty, and some fluctuations can be detected in recent years. Growing number of prison sentences seems to have reached more offenders than before. More services provided to prisoners while serving their term have also been offered in recent years, such as substance abuse treatment, which might have helped reducing recidivism. Earlier, Baumer et. al., (2002) had found Iceland to have a similar rate of recidivism, as in other nations for both reconviction and reimprisonment. Therefore, a small and relatively homogenous nation such as Iceland does not necessarily reintegrate offenders at a higher rate than others. While there are perhaps several plausible explanations for this pattern, the authors (Baumer et. al., 2002) raise the possibility that functional aspects of exclusion may override prevailing reintegrative forces, even in communitarian societies such as Iceland, characterized by low crime rates.

### ***Prisons and foreign born inmates***

In the economic boom in the new millenium the number of foreign citizens in Iceland increased considerably. As was mentioned earlier about 2,6% of the population was from outside Iceland in 1999 increasing to 8% of the population in 2009. Most of this migration came from the eastern part of Europe to meet demands on the labor market for manpower in the growing economy. A large share of the population growth in Iceland in recent years has therefore come from immigrants. This new social environment of foreign born inhabitants and the increasing number of foreign visitors to Iceland can also be detected in the local criminal justice system. On average about two foreign born citizens served time each day in Iceland prisons in 2000 but they numbered 24 in 2008 or about 17 percent of the total inmate population (Prison and Probation Administration, 2011). In October of 2011 the number of foreign inmates was 20. Thus, it is evident that a large part of the current pressure on the prison system to open more prison space comes from both population increase and the ever more heterogenous nature of the Icelandic society. The crime types committed by foreign born inmates tend to follow the same crime types committed by local inmates. Property crimes, drug and violent offenses, constituted the bulk of the offenses committed by foreign citizens who served time in Icelandic prisons in 2009.

## Conclusion

It is evident that some changes in crime control have taken place in Iceland in the past few years. We have experienced a deeper crime concern especially with drug and violent offenses, and an increase in both the number of such crime types in our court system, and a subtle trend towards longer sentencing practices. This penal change in Iceland coincides with profound changes taking place in Icelandic society, as reflected in both internal and external factors. An economic boom and subsequent banking collapse occurred at a time when Iceland also opened up to the outside world, demonstrated among other things in the criminal justice system, with more foreign born inmates. This penal trend moving towards harsher sentencing practices has also been taking place in many other western nations (Kury and Ferdinand, 2008). Iceland is not operating in a vacuum, global forces do penetrate Iceland just as they do other nations (Garland, 2001 and Nelken, 2009).

High levels of economic ups and downs in Iceland in the past few years does not seem to have had a direct influence on different crime control practices – this impact seems more subtle and nuanced than being clearly apparent. Possibly the relatively more punitive mood detected in Iceland in the new millenium might have reached the shores of Iceland independent of economic boom or collapse.

Icelandic authorities have however not met this penal development by providing sufficient prison facilities to meet this new pressure. It may be easy for politicians to ask for harsher sentences and raise punishment levels in response to public and media demand – but it is costly to institutionally meet this challenge. Prison space has not adequately followed the increase in unconditional prison sentences meted out by the courts since early 2000's and then prison space was even close to being full. At present Iceland faces an emergency with hundreds on the waiting list to be imprisoned or serving their sentence by other means. Yet on the whole, Iceland still resembles what Pratt (2008a and b) has called *Scandinavian exceptionalism*, characterized by relatively short sentences and a small prison population.

With the economic crisis still deeply affecting Iceland and possible criminal responsibility of great many bankers and business entrepreneurs for what went wrong imminent, an urgent question is posed at the local government: How will the system respond? If we see a huge pile of prison sentences and criminal fines, it is clear that as of now our system is not sufficiently prepared to meet this challenge.

Given the crisis and the limited budget the Icelandic state has, soaked up in foreign debt and a huge deficit, it will be difficult to meet this challenge with new prison buildings in the near future. Yet, the government has recently, or in late August of 2011 (Fréttablaðið, 2011), decided to build a new prison building in the Reykjavik capital area, to be opened in the next three years. Plans on how to finance the building are however not yet entirely clear.

What we will see in the future remains an open question. The government will have to pay heed to what often appears to be a public demand for tighter crime control and longer prison sentences. Yet, it is likely that we will see more prison alternatives; more use of community services, half-way houses, alcohol and drug treatment services, and electronic surveillance – all measures less costly than prison and therefore attractive to the government currently facing a state budget crisis and deficit. A proposal involving introduction of electronic surveillance (Visir.is, 2009; Hákonarson, 2009), also including a provision making community service available

to more offenders, was just passed in September of 2011 in the Iceland parliament, *Alþingi* might illustrate this response.

Perhaps a paradigm shift towards milder sentencing is a likely outcome of the crisis. This shift might be directed towards drug offences in particular, which now carry relatively stiff penalties for importation and sale. With their number in prison on a steep increase as shown in table 2, we might expect to see a trend of less punishment towards those offenders who are not believed to be dangerous. This shift does not necessarily only have to come from the criminal courts – but possibly also from the executive branch, which is responsible for processing and completing different sentences in Iceland. Permission to release inmates after half-time on parole is possible for offenses not considered to be dangerous. However, a trend towards more use of probation, parole and alternatives to prison must be discussed and debated in the public discourse. In particular, during these critical times, characterized by lack of public trust towards government institutions, amidst voices calling for stiffer penalties, this public debate is even more urgent than before.

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