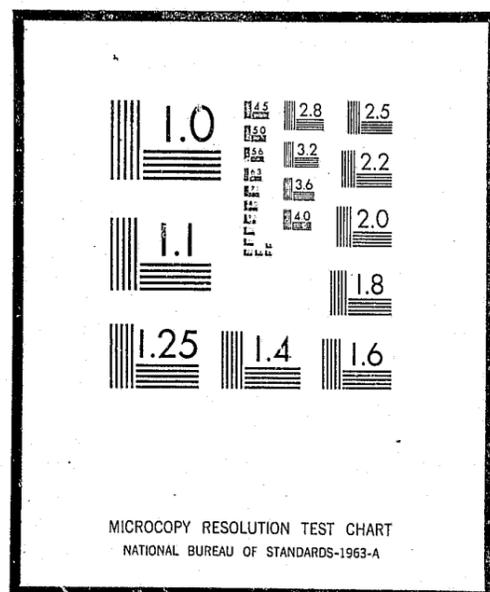


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Inkeri Anttila

CRIME PROBLEMS AND
CRIME POLICIES

I CRIME PROBLEMS IN SCANDINAVIA
II TECHNIQUES OF INDIVIDUALIZATION
PROCESSES - WHY?

Helsinki 1971

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The Institute of Criminology, founded in 1963, is subordinated to the Ministry of Justice and conducts research on criminality and the causes of criminality.

FOREWORD

The two reports included in this publication were both written in the year 1971 for international distribution.

The first report was prepared as a "background paper" for the first British-Scandinavian seminar for criminologists, which was held in Bolkesjø, Norway. As current research in Scandinavia was presented separately at this seminar, the paper does not contain any survey of such research, but aims rather at a presentation of general trends in criminological research and social defence policy.

The second report was written for the congress of the Defence Sociale-organization to be held in Paris in November 1971 and it criticizes the value implications hidden in the theme of this congress.

Reports of this type will, naturally, include more explicit statements on policy questions than what normally is included in the research reports of the Institute of Criminology. As the context of these statements is clearly set out, the inclusion of these reports in the Institute's mimeographed series, is quite in line with the general publication policy of the Institute.

Helsinki, October 20th 1971

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I CRIME PROBLEMS IN SCANDINAVIA

A report prepared for the British-Scandinavian seminar in Bolkesjø, Norway, September 13-16, 1971

Scandinavians have a tendency, when abroad, to think of themselves and to present themselves as members of one single culture; at international conferences you will frequently hear references to "Scandinavian" law or to "Scandinavian" research. When things are seen from a global perspective, e.g. at UN world congresses, the common features will rise to the foreground. On the other hand, if you wish to describe the crime trend of the last decades or characterize the most recent innovations in the field of criminal policy, it will at once be apparent that you are dealing with five different countries, each with its own history, legislation, criminality and control system - generally you might say that the "crime control climate" is different in each of the countries.

I shall attempt to briefly outline the main features of

- the crime trend
- the system for control of crime and
- the organization of criminological research and the teaching of criminology

in the Scandinavian countries. This will, however, rather be an impressionistic survey than an attempt at exact documentation.

THE CRIME TREND

The Scandinavian countries belong to the category of European industrialized societies which have as a common feature a high level of crimes against property and traffic offences while crimes of violence are comparatively unfrequent.

Until recently we have not had very much large-scale organized crime in Scandinavia; where it appears it is usually related to traffic in narcotic drugs.

Despite the overall similarity of the crime profiles the differences brought about by the variations in degree of industrialization and urbanization are clearly visible. A comparison, made by Mr. Preben Wolf, Copenhagen, based on e.g. the INTERPOL statistics reveals that Denmark, Norway and Sweden belong to the same basic category as England, i.e., the category of high larceny rate combined with a low homicide rate. Finland is the deviant country - its homicide/larceny-profile does rather resemble the profiles of Austria and France. The lower amount of larceny crimes in Finland seems to be directly attributable to the fact that there are fewer opportunities for larceny in Finland. By the same logic Sweden - the country with the highest per capita income in Europe - tops the list of larceny crime density. The high rate of homicide in Finland is more mysterious; professor Veli Verkko attributed it to the Finnish "national character" while other criminologists are more prone to refer to the violent drinking habits of the Finns.

As to the trend of crime, the Scandinavian countries^{are} once more fairly similar. The number of property crimes is steadily increasing, the crimes of violence remain at^a constant level or are slowly increasing. Drunken driving offences are increasing very fast in almost direct proportion to the number of cars and drivers.

These observations concerning the crime situation could of course be illustrated by the use of various figures. There is an abundance of statistical material available from the official printed publications. The apparent similarity of many crime labels has frequently tempted Scandinavian criminologists to construct statistical tables where the relevant figures are treated as if they were comparable. The truth is, of course, that they are not quite comparable and the very fact that we now have become so sophisticated about the pitfalls and drawbacks of intra-Scandinavian comparison, creates a certain reluctance to present any exact-sounding figures for the purpose of comparison.

The difficulties I am referring to are quite familiar to any criminologist who has attempted comparisons on the basis of crime statistics; for lesser offences the variance explained by variations in the activities of the police and the authorities and by variations in the tolerance level of the general public remains an unknown factor. While this variance is less of a problem when you are dealing with grave felonies there remains the problem of contentual dissimilarity; the legal definitions do not cover each other. An offence which will be labelled as theft in one country would be fraud in another; an assault on a police official would be regarded as a drunkenness offence in the neighbouring country etc. Right now Mr. Sven Rengby, Sweden, is, on the basis of an initiative taken by the Scandinavian Research Council for Criminology, conducting a systematic investigation into this aspect of the matter.

In the sanction system the dissimilarities are more obvious. As an example: suppose a 17-year old boy commits a series of thefts. In Sweden he would not normally be sentenced by a court; the prosecuting authorities would probably waive prosecution and turn over the boy to the child welfare authorities. In case of repeated serious offences these authorities may consider sending him to a youth welfare school, which technically is a treatment institution. The case would thus not be entered in the prisoner statistics, despite the fact that he would be incarcerated in a prison-type institution for as much as a year. At the other end of the scale we have Finland, where this boy, depending on the seriousness of the offence, would receive either a conditional prison sentence or would be sent for e.g. 6-8 months to an ordinary prison or to a prison for juvenile offenders. In the latter case he will be released after six months imprisonment. He would thus remain incarcerated for a much shorter time than his counterpart in Sweden - nevertheless only the Finnish boy would be included in the prisoner statistics. In a similar way an individual guilty of homicide or some other serious crime of violence runs a greater risk of ending up in an ordinary prison

in Finland in comparison with Sweden where a greater part of such offenders are considered psychiatric cases and are sent to mental hospitals. This phenomenon^{*on} should most certainly rather be attributed to differences in the system than to differences in the characteristics of the offenders.

During the last decade every Scandinavian criminologist has become aware of the significance of the prisoner population comparison carried out by Nils Christie, University of Oslo. This comparison reveals the extent to which the control system is selfregulating: despite population growth and enormous changes in the structure and functioning of our societies, the number of prisoners in Sweden, Norway and Denmark has remained almost the same. Finland was also included in the comparison and did - once again - deviate from the general pattern. In the beginning of the nineteesixties the prisoner rate per 100 000 inhabitants varied between 40 and 50 in Norway and between 60 and 70 in Sweden and Denmark. In Finland the corresponding figure was 150. Considering the rough similarity of the crime profile- the above-average level of crimes of violence in Finland cannot influence the prisoner number decisively - two explanations remain to account for the Finnish prisoner figures: the use of longer sentences of imprisonment in Finland and the large number of Finns serving conversion sentences for unpaid fines. Nils Christie's figures received quite a lot of attention in Finland and they certainly contributed to those legal reforms (especially the abolition of the drunkenness fines) which now have brought Finland somewhat closer to its neighbours as far as the number of prisoners is concerned. These prisoner figures from 1971 are - of course - not quite comparable, they do e.g. refer to different dates, but will nevertheless give a rough picture of the present situation:

| | Date | Number of prisoners | Total pop. Millions | Prisoners per 100 000 of pop. |
|---------|------|---------------------|---------------------|-------------------------------|
| Denmark | 1/8 | 3400 | 4,9 | 72 |
| Finland | 1/8 | 4700 | 4,7 | 100 |
| Iceland | 1/8 | 49 | 0,23 | 24 ¹⁾ |
| Norway | 1/1 | 1700 | 3,85 | 44 |
| Sweden | 1/1 | 4900 | 8,0 | 61 |

This tableau indicates that there has not been any radical change in the prisoner population as compared with the early nineteesixties except for the substantial reductions in the number of prisoners in Finland. The Finnish figures of August 2nd would have revealed a further reduction; on August 1st a law amendment came into force which released more than two hundred persistent recidivists placed in preventive detention; only very dangerous persons guilty of repeated crimes of violence can now be placed in preventive detention. This reform causes the relative prisoner figure to drop from 100 to 94. It seems that Finland is at least trying to conform.

THE CRIME CONTROL "CLIMATE"

It is important to know the hard facts of how the system of control really operates - but it is also important to have an idea of the "image" of the system in the eye of the public and outside observers. If someone were to ask Finnish criminologists and prison administration officers about the crime control system in the Scandinavian countries, you might obtain the following type of characterization:

- Finland is the country of harsh sentences where the idea that punishments are supposed to deter other people from breaking the law is taken seriously;
- Sweden is the country of permissive penal philosophy where the official ideology strongly stresses the importance of humane sanctions designed to fit the individual offender and where this philosophy at the same time is believed to reduce the recidivism risk;

1) The figures for Iceland include only sentenced prisoners.

- Denmark is the country of psychiatrists and psychologists where offenders are seen as needing either "institutional treatment" or "other treatment". The treatment measures are carried out with great zeal and for a considerable time, the discipline being more strict and the institutional treatment more conservative than in Sweden;
- Norway is the country where prison sentences are used with extreme reluctance - this attitude has resulted in the lowest prisoner figures in the world. The prisons are, logically enough, rather seen as places of confinement than as treatment institutions.

As all stereotyped characterizations this does of course grossly oversimplify and exaggerate the differences: yet it may contain some truth. In order to complete the picture I wish to draw attention to the fact that the balance of power within the control system is quite different in the Scandinavian countries. I am thinking in particular of the balance between legislative and judicial power. All the Scandinavian countries are, of course, oriented towards a fairly legalistic control philosophy when compared with the Anglo-Saxon legal culture. But within Scandinavia, Sweden and Finland probably represent extremes; Sweden has gone far in turning over discretionary power to choose an appropriate sanction to the courts and to various official agencies. This of course follows as a consequence from the general rehabilitative philosophy and the belief in the necessity of finding a sanction which "fits the offender rather than the offence".

The other extreme case is Finland, where the Swedish type of rehabilitative philosophy earlier was resisted because it appeared overpermissive to lawyers of the traditional "law-and-order"-type. Today the Swedish treatment philosophy is resisted for other reasons by a growing number of persons who are concerned about predictability and the equality principle within the system of penal law. They feel that lack of evidence for any demonstrable beneficial impact of the "individualized" treatment must lead to a renewed emphasis on predictability and on proportionality between offence and punishment.

The demands for proportionality have nothing to do with metaphysical concepts of "retribution" as an end in itself, but are seen as rational from the point of view of crime control and, which is perhaps even more important, as desirable from the point of view of the subjective expectations of the offenders.

This "neo-legalism" is, I think, at the moment most common among young social scientists and lawyers in Finland and in Norway; it has some adherents in Sweden and probably meets with the greatest resistance in Denmark.

SOME FEATURES OF THE SCANDINAVIAN CONTROL SYSTEMS

What outward features are common to the Scandinavian systems for crime control? A comparison of the criminal laws reveals a number of similarities - and dissimilarities.

Common features:

- a legalistic system of control based on detailed legal statutes and a sophisticated body of interpretation rules;
- no death penalty in times of peace
- the length of the average prison sentence is less than six months
- juvenile offenders are not referred to "juvenile courts", but there are other special sanction systems for juveniles (operated by child welfare boards etc.); there are no institutions of the "detention centre" or "attendance centre" type in operation for juveniles;
- various types of conditional sentences are used, sometimes in combination with supervision and sometimes without (when the conditional sentence is combined with supervision, this sanction is usually called "probation" - perhaps as a complimentary gesture to the Englishmen - although the length of the prison sentence in many cases already is fixed).

Differences:

- a qualified type of imprisonment - imprisonment with hard labor - now remains only in Finland (and will probably be abolished next winter). The Danish system has, on the other hand, retained a "milder" type of imprisonment; called "arrest" as an alternative to ordinary imprisonment;

- in Sweden and Finland persons who have been fined and are unable to pay their fines, are no longer automatically sent to prison, but are instead brought to court for a special hearing in which a proper sanction is decided upon;
- the after-care of released prisoners is in Sweden the task of special state authorities, while the other countries still entrust many of these tasks to private organizations, or, as in Finland, even to local police authorities;
- of those sentenced to conditional imprisonment in Finland only persons under the age of 21 are placed under supervision; in the other countries adults too are placed under supervision.

REFORMS UNDER WAY

This enumeration of similarities and differences will give an incomplete picture of our control systems unless something is said about the current reform trends.

The "crime catalogues" of the criminal laws are continuously changing; in recent years the so called "moral offences" have been objects of special attention: Denmark and Sweden have lifted the ban on pornography and Finland will probably follow their example. The abortion law reform carried out in Denmark and Finland and which soon will be brought before the Swedish parliament aims at a system which is fairly close - but still some distance from - so called "free abortion". Public drunkenness is in most cases no longer an offence in Finland and Norway, and Sweden will soon pass a similar law.

There is, generally, much interest in decriminalization - also in such areas as property crimes. The feasibility of decriminalising petty larceny was seriously considered in a report by a Swedish state committee which was made public in the beginning of this year.

The decriminalization is, naturally, balanced by adding new offences to the crime catalogues. Race discrimination is now a crime. Soon all the Scandinavian countries will have legislation against invasion of privacy e.g. by the means of electro-

nic devices is now on the way of becoming a crime. There is a trend towards providing stiffer punishments for tax offences.

Among the various reforms under way within the sanction system it may be interesting to note the definite trend away from indeterminate sentences. Preventive detention of dangerous recidivists is no longer favored: the present provisions for such detention are abolished or revised. A similar reorientation away from the earlier favored indeterminate sentences also seems to be taking place, within the sanction system for young offenders. Much energy is devoted to efforts to find new sanction alternatives such as "fee"-type sanctions which have replaced parking fines; Finland and Norway have been considering the possibilities of introducing a kind of "detention centre" (or perhaps, rather a kind of "Jugend-arrest") which may be seen as an alternative both to short terms of imprisonment and to fine sentences. Sweden is right now considering a radical reform of the sanction system for drunken drivers. In an international perspective all the Scandinavian countries have adapted a tough policy against drunken driving, based on unconditional prison sentences. The proposed Swedish reform would keep the majority of drunken drivers out of prison by the use of open clinics for alcoholics etc. as alternative to imprisonment.

SCANDINAVIAN COOPERATION IN THE FIELD OF CRIME CONTROL

This patchy characterization of various national reform efforts may make the exasperated non-Scandinavian ask: why don't these ridiculous miniature countries with a combined population of only 21 millions once and for all settle for a unified system?

The advantages of aiming at unification - or of maintaining once achieved unification - have always been obvious in principle and at least makes for a favorite topic of official banquet speeches. Most of the formal unification is carried out by the cooperative bodies of the Scandinavian Ministries of Justice. The most important of these is the permanent

Nordic Criminal Law Committee, which has been working for the unification of our criminal legislation for more than 10 years. Practical problems such as providing facilities for sending persons sentenced in one Scandinavian country to serve his sentence in his own country have been among the objects of attention, along with such technical matters as the time limits of the statutes of limitations. The committee is at the present time considering the fine sanction and legislation concerning abnormal offenders.

Scandinavian cooperation in the field of crime problems carries with it a very strong positive image - few people would publicly oppose it as such. Its advantages definitely outweigh the disadvantages; in particular those countries have benefited which have waited in order to be the last one to carry through a certain reform - the last country can learn from the mistakes of its neighbours. In a few cases the Scandinavian cooperation may be said to have had negative consequences; Finnish first time offenders had been released when one-half of their prison sentence was served for over 20 years, but when the other Scandinavian countries decided to release prisoners after two thirds of the sentence is served, Finland obediently followed the example, even though this reform in Finland amounted to a quite unnecessary lengthening of the average prison sentence.

This example points to one of the weaknesses of the practical organization of this cooperation. Too much attention is paid to formal conformity and too little effort is spent on a socio-legal analysis of how the various institutions actually function in the country in question. Such an analysis would of course require a research organization, perhaps a Scandinavian socio-legal research institute with 10-20 qualified research workers.

Dissatisfaction with the slow rate of progress in the reform work has led to the creation of national reform movements which in turn have established a close relationship with each other. These reform or "protest" movements, the members of which main-

ly are young people, have quite a lot in common, but their ideological profile is nevertheless in a very distinct way dependent of the national legal culture. In permissive and officially treatment oriented Sweden the reform movement KRUM calls for more permissiveness and improved prison conditions. I think the Danish KRIM has a similar program, while the corresponding movements in Norway and Finland have much more radical ultimate aims including a complete reorganization of not only the system for social control, but the whole societal structure. A recent action target for the Finnish movements has been the system of preventive detention for dangerous offenders while the Swedish KRUM has been engaged in arranging prison strikes for the improvement of prison conditions.

As is usually the case in this type of situation, there is a constant lag between current plans, current demands for reform put forwards "within the establishment" and the demands put forwards by the radical reform movements. Concern about tax offences and white collar crime in general has already reached the stage of current planning while the radical reformers nowadays talk more about "crimes against work" and "crimes against the ecology". It was the radicals who half a decade ago launched the in some respects successful campaign against involuntary treatment of deviancy and who demanded that criminals and deviants should not be considered "sick", the slogan being "let us give the criminal a certificate of health". These and other topics related to legal safeguards and the rights of the individual were more accentuated in the 1960's while the focus of attention today has shifted to matters related to equality and the problem of class conflicts within the control system.

CRIMINOLOGICAL RESEARCH IN SCANDINAVIA

The research organization is fairly uncomplicated: Sweden, Norway and Denmark possess an Institute of Criminology each, connected to a University of the capital; in addition there is an Institute of Criminology at the University of Aarhus,

Denmark. The Institute of Criminology in Helsinki is subordinated to the Finnish Ministry of Justice but it is governed by an Institute Board and can thus be considered fairly independent.

A considerable proportion of the research is of course carried out independently of these institutes, e.g. at university institutes of sociology and criminal law and in some countries also at institutes of psychology.

A typical feature of Scandinavian criminology has throughout the nineteesixties been the heavy orientation towards sociological research. There is some variation between countries; Denmark being the country most oriented towards psychology, Finland perhaps the least. But even the Scandinavian psychologists and psychiatrists have accepted a fairly "sociological" outlook on crime and deviancy e.g. in comparison with continental criminologists.

The following trends may perhaps be discernible in present-day criminological research in Scandinavia:

- instead of analyzing the clientele, more research effort is directed towards studying the behavior of the authorities; instead of asking "what are the criminals like" the question is put "in what way does the system define certain types of behavior as deviancy and certain individuals as deviants?".
- the utility value of research is given more attention; either by directly relating to current decision-making problems or by planning research with an eye to latent utility seen in a long-term perspective.
- Scandinavian criminologists have gradually become more value-conscious as they have become aware that crime problems have more facets than the number of criminals or the gravity of criminality.

These trends are perhaps also discernible in our joint Scandinavian publication "Scandinavian Yearbook of Criminology" - I refer in particular to the article by Nils Christie "Criminology facing the 1970's" which was published in the third volume this summer.

TEACHING OF CRIMINOLOGY

While there is some kind of criminology teaching in all Scandinavian countries the differences are much more obvious than in the organization of research. The "undeveloped" country is here Finland where there is no university chair in Criminology, nor in the Sociology of Law. At the other extreme of the development scale is Norway with professorships as well as several other teaching and research positions in both subjects.

The scope of the university teaching is also broadest in Norway. Examinations can be passed on three levels including the choice of criminology as the main subject of the examination for the Master's degree. The curriculum for this examination includes the following subjects:

- deviancy and social control
- crimes and criminals
- the sanction system
- the total institution
- the effects of sanctions
- special topics: juvenile criminality, alcohol, and drug criminality etc.
- statistical analysis and research methods

The Norwegians have also planned to establish a "Scandinavian Lecturer" position in Criminology, with the view of creating of the Oslo University a Scandinavian center for post-graduate studies in Criminology.

The teaching of criminology in Swedish universities includes three interrelated courses (the basic courses A and B and the advanced course C). As the university studies in Sweden are based on a performance credit system (in some ways reminiscent of the system used in US colleges), it is not easy to summarize the contents of criminology studies. In Denmark two university courses are held for lawyers; one basic course (35-40 hours) and one advanced course (20-40 hours); in addition there is a special series of lectures for psychologists. - Students of

law in Finland have to take part in a lecture series in criminology (30 hours) or read a Finnish text-book in criminology. This text-book is also included as an alternative in the curriculum for sociology students.

A considerable part of the post-graduate studies in criminology can be said to take place at the annual seminars arranged by the Scandinavian Research Council for Criminology.

SCANDINAVIAN RESEARCH COUNCIL FOR CRIMINOLOGY

The recommendation by the Nordic Council to the five Scandinavian governments led to the founding of the Scandinavian Research Council for Criminology in 1963. The Council consists of one member from Iceland and three members from Denmark, Finland, Norway and Sweden. The Council has a permanent secretariat, now situated in Helsinki, Finland. (The Council was domiciled in Oslo 1962-1965 and in Copenhagen 1965-1969.) The budget of the Council (appr. US \$ 35 000) is paid by equal contributions from Denmark, Finland, Norway and Sweden.

Beginning in the year 1958 the Scandinavian criminologists have held annual meetings, which after the establishment of the Council became a part of its activities. These annual seminars with 40 to 50 participants have served as an important medium of communication and exchange of ideas.

In 1965 a new type of seminars began, with researchers and "practioners" working together. These "contact seminars" have been held with prison officials, probation and parole workers, prosecutors, police officers, defence counsels, and law-makers. Mimeographed seminar reports are sent to criminologists in all Scandinavian countries.

The Council also conducts surveys of Scandinavian criminological research and sent the reports to the Division of Crime Problems of the Council of Europe, Strasbourg, and to the National Council of Crime and Delinquency, New York. The

Council has also taken an initiative to produce better and comparable crime statistics in Scandinavian countries.

The major research project of the Council has been a study of self-reported crime in Scandinavia. The data were collected by anonymous group interviews with young men appearing for pre-military draftboard sessions in Denmark, Finland, Norway and Sweden. The results indicate the frequency and also the similarity of "hidden delinquency" among Scandinavian youth.

In 1970 the Council decided to launch a large-scale study designed to investigate the feasibility of complementing present crime statistics with new statistical series dealing with the damages and economic consequences related to crime. The task of carrying out this study was entrusted to Mr. Preben Wolf from the University of Copenhagen.

II
TECHNIQUES OF INDIVIDUALIZATION PROCESSES - WHY?

A report prepared for the Eighth International Congress of Social Defence "Techniques of Individualization Processes", Paris, November 18-22, 1971

The choice of subject for the congress may be thought of as being based on the more or less axiomatic acceptance of the idea that individualized punishments or individualized sanctions represent an appropriate and desirable aim. This in turn involves acceptance of the hypothesis that there exists an optimal treatment for each criminal. By use of this treatment, it would be possible to "cure" the criminal, which is seen as the best alternative both for the individual and for the society.

If this fundamental ideology is accepted, it does of course, imply the necessity of and need for a number of changes in the system of sanctions and the criminal procedure. Dividing the process in two parts, so that the court merely determines the guilt of the offender while the task of choosing an appropriate sanction is left to a board of experts, seems to be one of the major reforms in this connection. I shall, however, not go into any detailed discussion of this or other institutional devices designed to facilitate the individualization. I think the time has come for a critical re-appraisal of our basic ideology.

It is reasonable to assume that most of us who take part in a Defence Sociale - Congress are inclined to take it for granted that the task of individualizing the sanctioning system represents something worthwhile and desirable. Maybe we should think twice about this. At least I want to activate the discussion by expressing some heretical opinions concerning the fundamental treatment and individualization ideology.

This is not an attempt to reintroduce forgotten controversies. What I have to say is immediately related to present-day problems. My paper can be said to reflect some of the most intense policy controversies which have been aired at certain recent annual seminars arranged by the Scandinavian Research Council for Criminology. The new and heretical ideas have not been brought forth by "old-fashioned" lawyers but by young Scandinavian sociologists and they have won support by a large number of progressive criminologists, irrespective of their training.

Which points are these young opponents of the treatment ideology stressing? Here is a sketchy summary:

1. First, one must distinguish two things from each other: the volume and structure of criminality in a certain society on the one hand and the selection process by which certain acts and certain individuals are labeled as crimes and criminals on the other hand. This has some important implications for criminal policy; we must make up our minds whether we wish to control the amount of criminality (or perhaps rather the amount of societal costs brought about by crime and crime control efforts) or whether we wish to prevent certain individuals from becoming criminals.

The philosophy of individualized sanctions obviously gives priority to the latter aim. But it certainly is a fallacy to believe that a program designed to maximize this aim automatically also would bring about a decrease in the amount of crime. Crime is, after all, not something born within the single individual, but is created by society and by counter-acting forces within the society. A society which would be ready to reduce, at any cost, the amount of crime to some absolute minimum can do so at any time by controlling crime opportunities and by rewording the criminal legislation. These are far more effective means of controlling the amount of criminality than measures directed towards single offenders. Even executing all offenders or putting them in prison for

life would be a less effective means of controlling total criminality than the ones I just mentioned. Even if individual offenders were eliminated or successfully "conditioned", certainly we could expect changes in the criminal laws or changes in their interpretation which would create new offences and new offenders within new and more narrow limits of societal tolerance.

Conclusion: By individualizing sanctions it may be possible to influence the selection process by which individuals are labeled as offenders but hardly the volume and structure of criminality in a society.

2. The treatment-oriented ideology derives the need for individual treatment from the presupposed existence of some individual disturbance, some kind of unique individual "cause" of the criminal behavior. The analogy is taken from medicine and there may be a certain number of criminals for whom the medical analogy is true. This makes it easy to forget that the analogy may be quite false for the vast majority of all criminals. A criminal act is after all not something which springs out of the individual but the outcome of an interaction process between the individual and the surrounding society.

It is quite understandable that those exceptional cases where e.g. psychiatric care was the adequate treatment alternative were the first to attract the attention of critics of the older repressive and revenge-oriented penal system. In a more far-sighted perspective it would perhaps have been better had the first behavioral scientists to take a practical interest in penal reform been sociologists of law rather than medical doctors and psychologists. Much harm has been done by spreading the popular but false analogy by which every criminal is a sick person and each criminal act the outcome of some personal disturbance or maladaptation. Recent studies concerning real criminality or hidden criminality have done much to correct our false picture in this regard: Now we know

that it may as such be perfectly normal to commit crimes and that almost everybody does commit crimes at least during a certain age period.

Conclusion: The average offender is not a sick person in need of psychiatric care and we should not expect psychiatry or psychology to provide the solutions to the fundamental dilemmas of criminology and penal policy.

3. The treatment-oriented ideology does not, contrary to what many people believe, necessarily imply any more humane attitudes towards single offenders. Actually this ideology may provide excuses for much more inhuman, demeaning and repressive behavior towards offenders than ever could be possible within a manifestly punishment-oriented system of the classical type - with all the legal safeguards attached to manifest punishments. Extreme examples of the consequences of a pure treatment ideology are the special institutions for psychopaths where the offenders may be kept for treatment over time periods of indefinite length. The offender does not of course have any right to choose whether he wants treatment or not. The treatment is enforced treatment. The offender is given help quite irrespectively of whether he wants any help or not.

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From point of view of the rights of the individual the danger here lies in the confusing terminology. Such words as "treatment", "care" or "therapy" associate to medical terminology and to the doctor-patient relationship, where the patient approves of the treatment or can be presumed to later approve of the treatment. Empirical studies of systems for institutional treatment of deviants suggest that there frequently is no appreciable difference at all between the treatment institutions and normal penal institutions. It is punishment under another name and thus lacking both the efficacy of medical treatment and the legal safeguards attached to manifestly punitive sanctions.

Conclusion: Punishment should never be camouflaged by calling it treatment, rehabilitation or therapy. If the sanctions involve deprivation of freedom or other coercion then the legal safeguards must meet at least the same standards as those used in a manifestly punitive penal system. The principle of proportionality between the gravity of the offence and the amount of infringement of the rights of the individual inherent in the sanction must be upheld. No one must be subjected to suffering which is disproportionate in comparison with his crime.

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The popularity of the idea of the individualized sanction can perhaps not be explained solely by the presumed efficacy of such sanctions. Controlled empirical studies have not, after all, given much grounds for such optimism. It is more probable that the individualized sanction has been seen as a counter-measure against several defects in the present system.

1. The present system is frequently felt to be over-rigid, when too much stress has been laid on the consequences of the crime rather than on the intensity of the criminal's purpose.
2. The sanctioning policy is frequently considered too arbitrary as the subjective opinion of the judge or such extra-legal elements are thought to have influenced the choice of sanctions.
3. The overall level of punishments may have been considered too harsh. Thus it seems obvious that loss of freedom, in terms of what one loses, is a more severe punishment today than a century ago. At the same time the capacity for empathy for deviant persons and the realization of how narrow the margin for choice is, which society offers some marginal groups, has definitely increased.

All these points are important and they must be taken into account in the reform of the present sanction systems. These

problems are, however, not solved by any far-reaching individualization of sanctions.

A final point of clarification. The representatives of the ideology I have described here do not of course oppose the efforts to humanize prison treatment and to provide facilities for psychiatric treatment in prisons as long as this does not lead to prolonged incarceration. On the contrary, it is natural that even when criminals are placed in prisons mainly for reasons of general prevention they should be given the best possible treatment irrespectively of whether this treatment is supposed to have some adjusting effect in marginal cases or whether it mainly is supposed to ease their mental situation.

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