

An increase in the Us-Them divide in penal policy and related policy areas



NORDIC WORKING GROUP

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AAU

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The Task



What - if any - impact has the recent changed social and political context, and the refugee crisis in particular had for criminal policy and crime control? What kinds of reforms, or proposals for such, have been introduced on the level of politics, policy, law-making or enforcement? Who have been the targets of control? Have these actions or initiatives for action been analyzed by researchers?

This presentation: Emphasizing refugee situation



- **Political context: Changing political culture (from Garland).**
 - Difficult to conceptualize, not to mention measure.
 - Furthermore: Would we, in this room, agree?
 - Before and after 9/11.
 - Before and after 22/7
 - Before and after refugee crisis
- The next slide offers an overview of development in political culture regarding foreigners and especially refugees, and changes in penal law and penal administration with regard to drug offences.

	Changes in political culture	Changes in law (New penal code from 2005/2008)	Changes in courts	Changes in administration	The shadows of penal law The penal complex
Drugs	Shift in public discourse. Sobriety organizations loosing monopoly ears among leading politicians.	Status quo?	Unclear: needs research. Attention to increases in punishments for drug addicts, but actually reduction in hard sentences.	2003, 2007 and 2013: Verbal commitment to stop “pursuing” street level drug addicts. 2013 (Gundhus and Egge): foreigners in drug trade targeted for immigration-political ends.	Patient rights Opiate maintenance treatment Reform in social services (IP) More
Foreigners:	Shifting climate. National interests have become legitimate concerns above cosmopolitical concerns. Aylan, refugees welcome, capsizing boats in the meditterenean. Shifting dominance in public sentiments.	Violations of Immigration law: more use of punishment	Needs research? Supreme Court: “Mobile thieves” (foreigners) harsher punishment	Criminalization in directive sent out by general attorney; crimes committed by asylum shall be prosecuted, for immigration purposes. Immigration authorities: Increase in expulsion. And, forced return.	Denial of access to welfare etc. Reception centres. Rules for accepting asylum seekers. Criminalization of asylum process

Conclusions from the table above



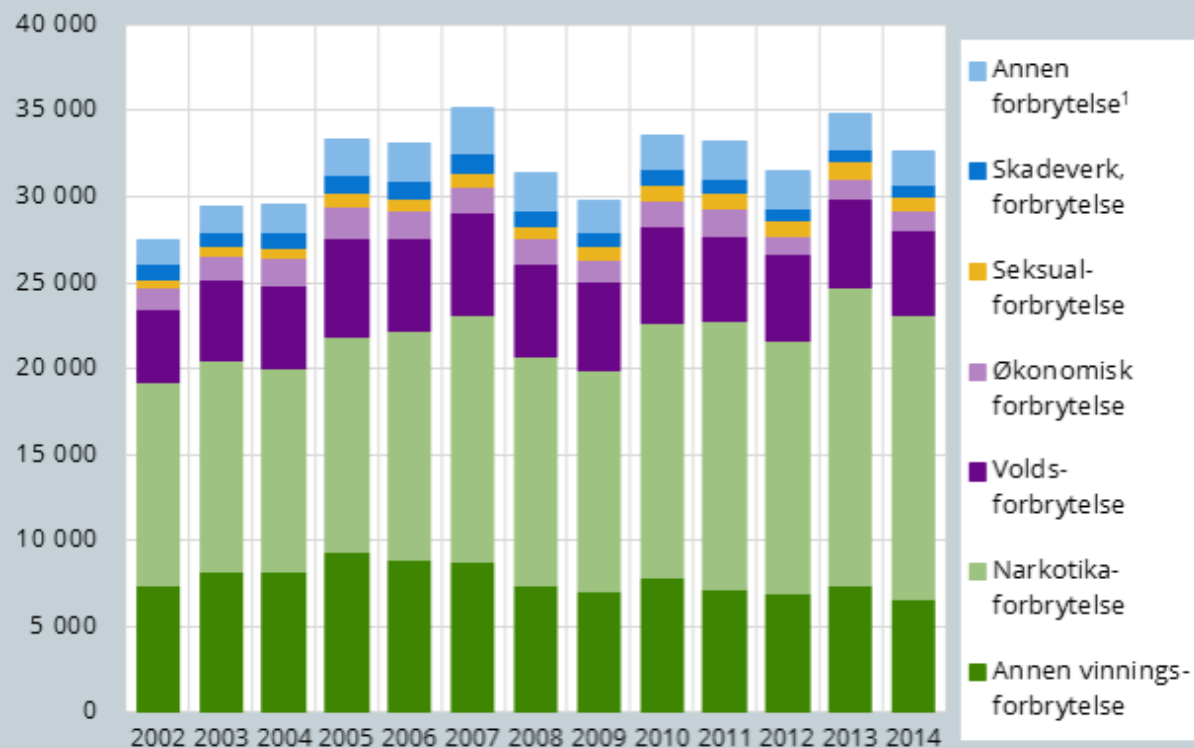
- Increase in weight of foreigners in the "system".
- Despite little movement in legislation.
- Drug violations: high on police priority list, slowly shifting political climate, signals of decriminalization, but increase in application on foreigners.
 - Drug violations are useful in targeting foreigners and rejected asylum seekers.

Drugs: major part of the total



Figur 4. Straffereaksjoner for forbrytelser, etter hovedforbrytelsesgruppe

Absolutte tall



¹ Omfatter også miljøforbrytelser.

Kilde: Statistikkbanken tabell 10655, Statistisk sentralbyrå.

Drugs I

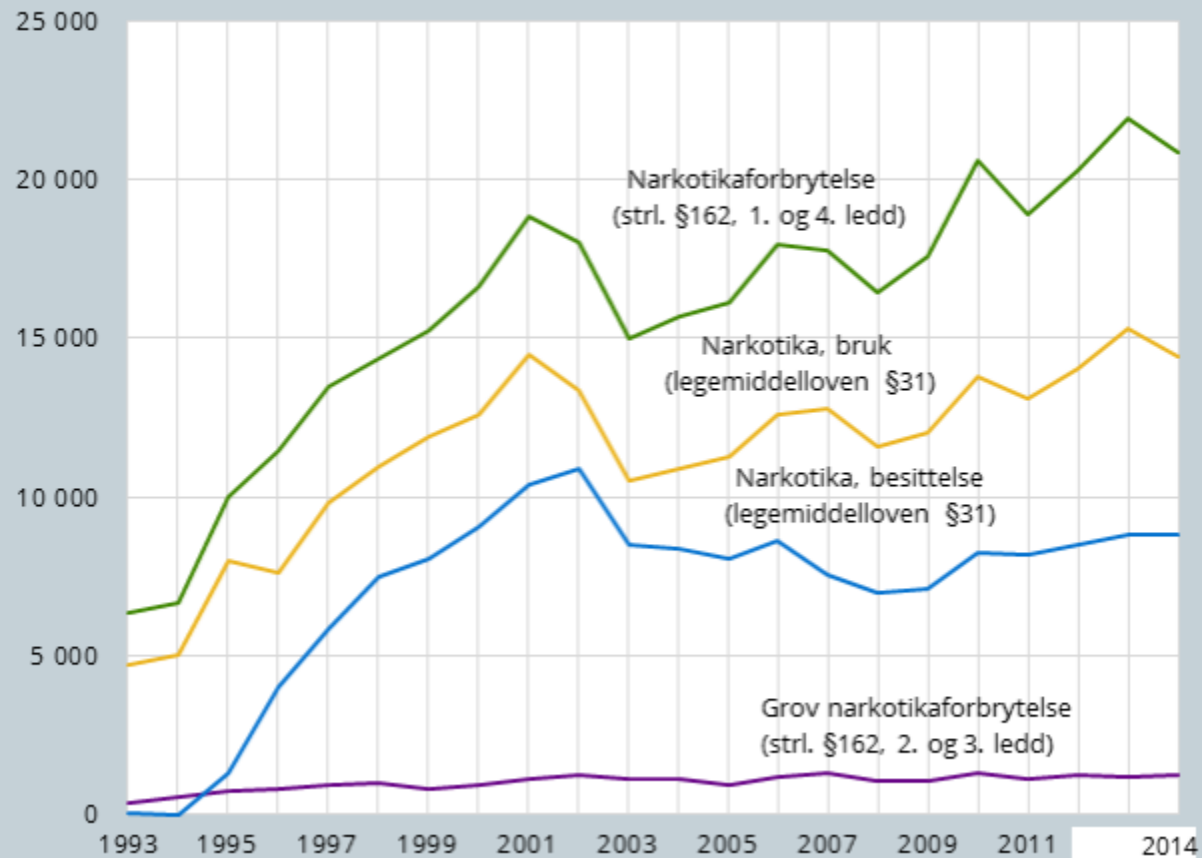


- **Culture**
 - Shift in public discourse. Sobriety organizations loosing monopoly of ears among leading politicians.
 - Sentiment from early 2000: pity rather than anger.
- **Legislation**
 - Status quo?
- **Courts**
 - Unclear: needs research. Attention to increases in punishments for drug addicts, but actually reduction in hard sentences. See next slides.

Drugs: Increase in punishments

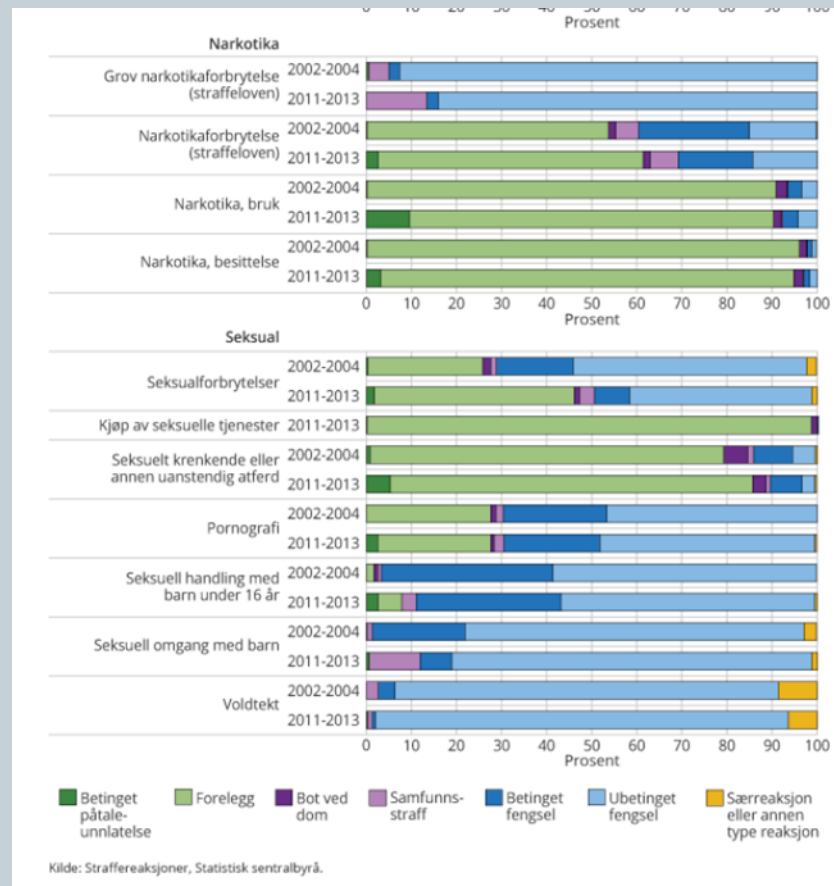


Figur 5. Lovbrudd anmeldt, etter type narkotikalovbrudd. Absolutte tall



Kilde: Statistisk sentralbyrå, statistikkbanktabell 08484

Drugs: Reduced use of prisons (thanks to Sverre Flaatten)



Drugs II



- **Changes in administration**
 - 2003, 2007 and 2013: Verbal commitment to stop “pursuing” street level drug addicts (minister of justice, general attorney).
 - 2013 (Gundhus and Egge 2013): foreigners in drug trade targeted for immigration-political ends.
- **In the shadows of penal law, harm reduction and more emphasis on care**
 - Patient rights
 - Opiate maintenance treatment
 - Reform in social services (IP)

Drugs in short



- Political culture allows for decriminalization.
- Increase in punishments, but in the soft part of the scale.
- Mysterious field, producing statistics, "the wire" style?
- Redirected attention: foreigners.

Foreigners



- How to count? A mess of concepts (Book Mohn 2013 tying up).
- Bureau of census uses "citizenship".
- Book Mohn 2014: asylum seekers responsible for 1-2 % of reported crimes.

Foreigners



- **Political culture**

- Shifting climate.
- National interests have become legitimate concerns above cosmopolitical concerns.
- Aylan, refugees welcome, capsizing boats in the mediterranean. Shifting dominance in public sentiments.

Foreigners



- **Legislation**

- Violations of Immigration law: more use of punishment.

- Politimidler i utlendingsloven (2008)

- §14 Grensekontroll

- § 17 Bortvisning (§121 EØS)

- §21 Alminnelig utlendingskontroll

- Kapittel 8: Utvisning (§122 EØS)

- § 103 Undersøkelse (ransakelse)

- § 104 Beslag

- § 106 Pågripelse og fengsling

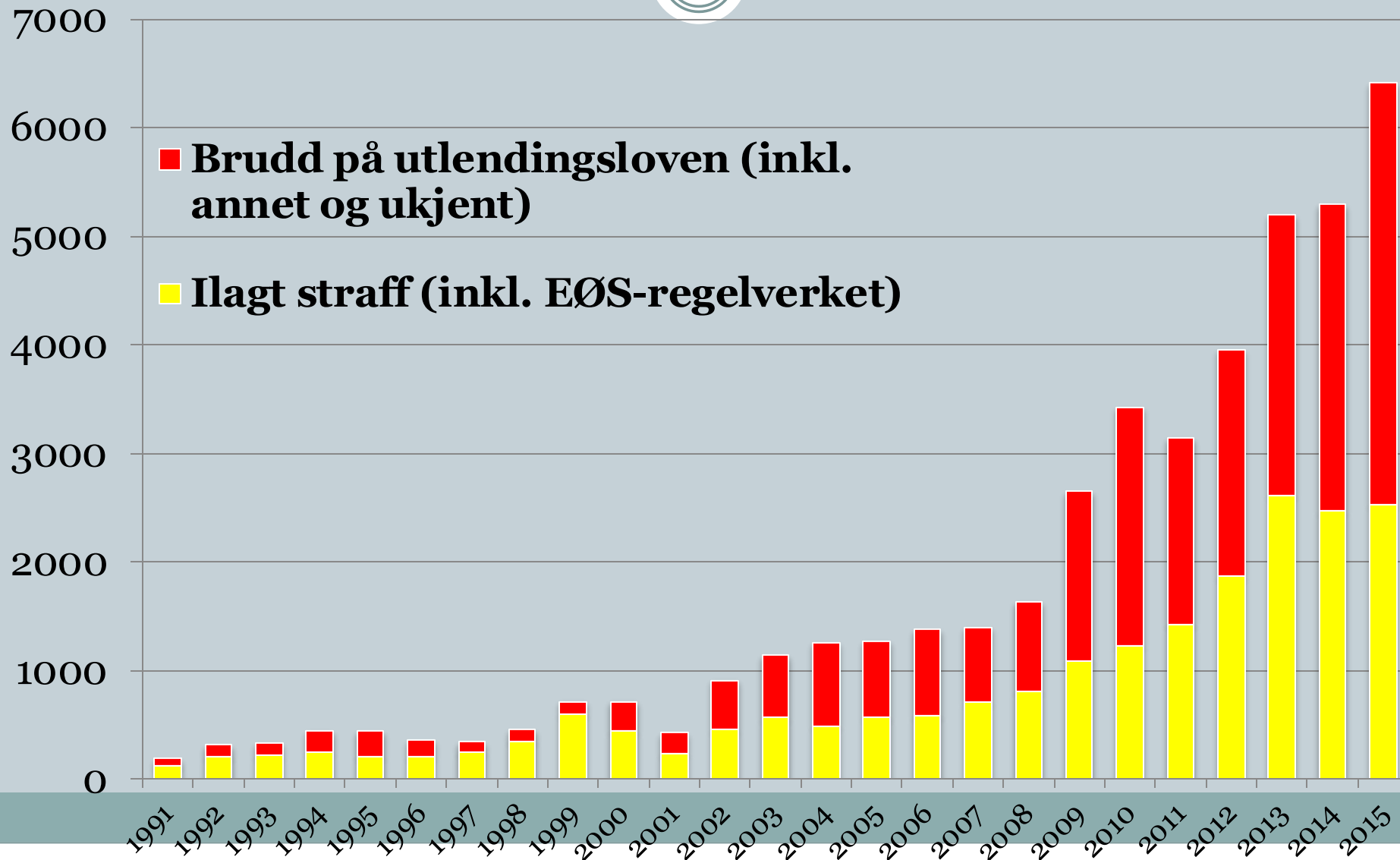
- § 108 Straff

Foreigners



- **Changes in court decisions**
 - Up to half of the prison population "foreigners".
 - Supreme Court: "Mobile thieves" (foreigners) harsher punishment.
- **Changes in administration/shadows of penal law**
 - Criminalization in directive sent out by general attorney; crimes committed by asylum shall be prosecuted, for immigration purposes.
 - Immigration authorities: Increase in expulsion (non-penal sanction). See next slide.
 - And, forced return. Slide after next.

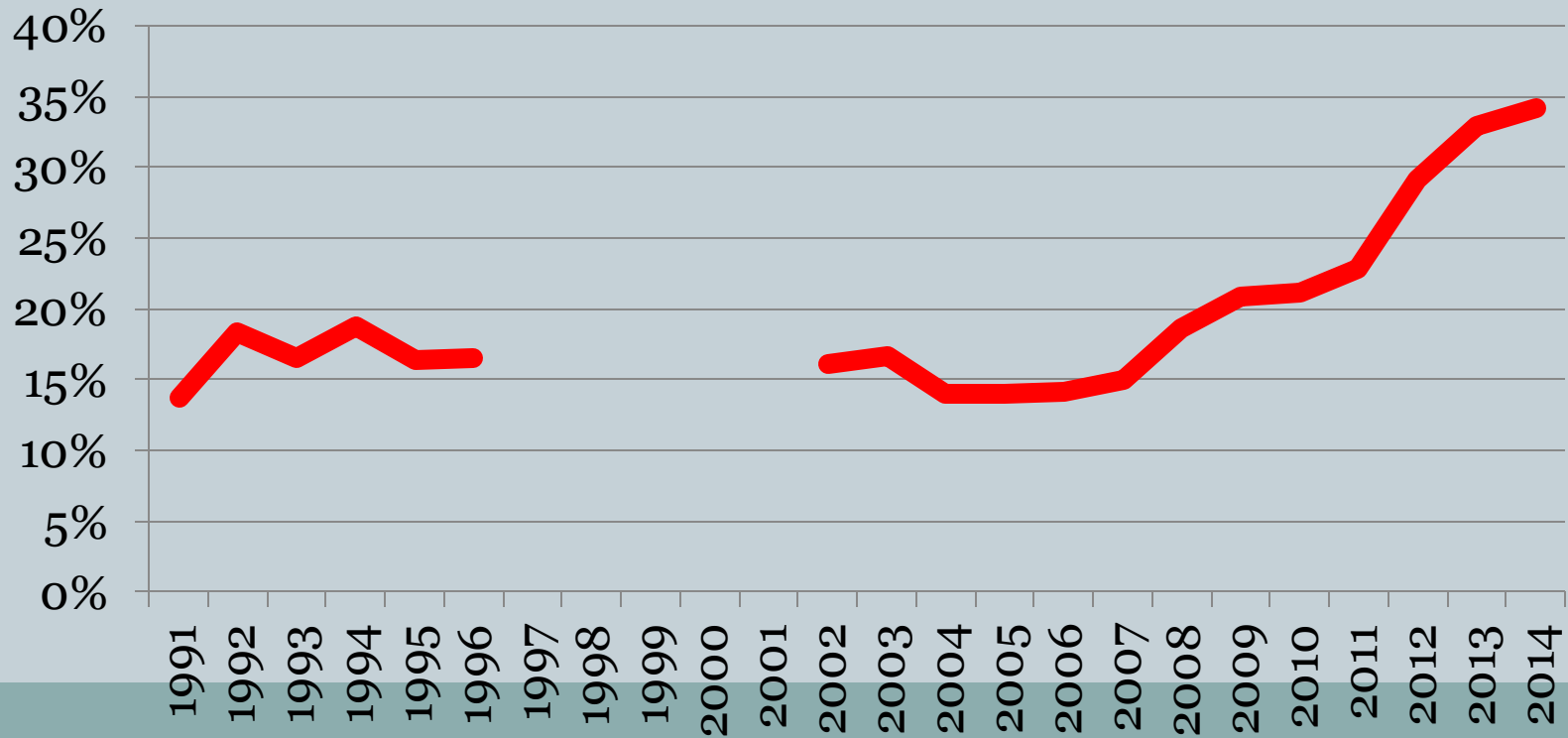
Utvisning 1991-2015 (thanks to SB Mohn)



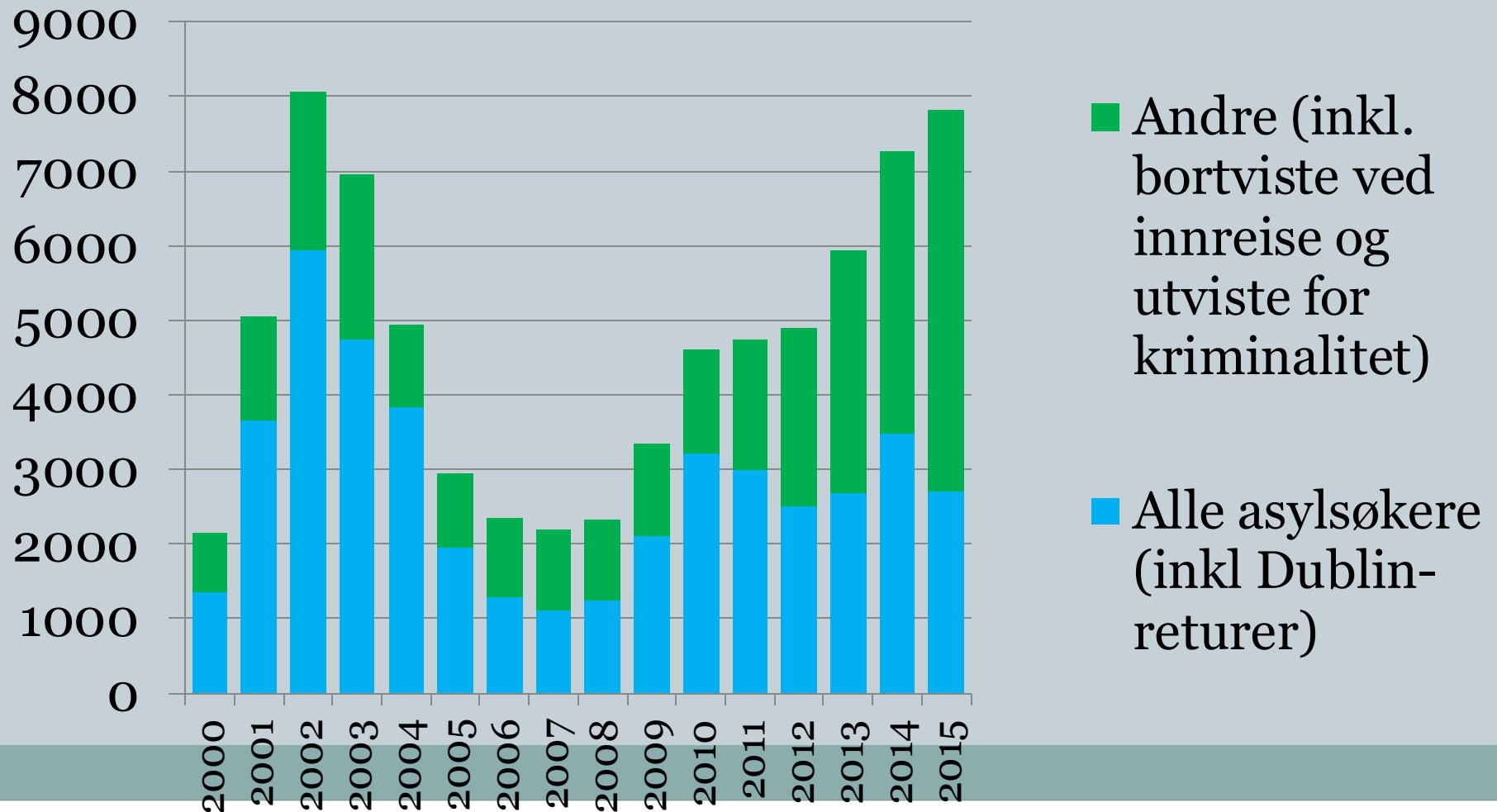
1991-2014 Relativ økning (thanks to SB Mohn)



Utv. for straff per 100 straffereaksjon (forbr) mot utenlandsk stb.



Forced return 2000-2015 (thanks to SB Mohn)



Foreigners



- In the shadow: stricter regime for immigration and foreigners
 - Denial of access to welfare etc. (Johansen 2014)
 - Reception centres.
 - Rules for accepting asylum seekers.
 - Criminalization of typical violations for asylum seekers (i.e. re-entry)
 - Criminalization of asylum process (fake passports etc)
 - Detention (“prisons”)

These pieces of penal developments



- Are the highlighted developments sufficient to qualify a contention that we find an expanding divide between us and them in penal policy?

Some resources



Bosworth M and KF Aas (2014) "Borders of Punishment", Oxford University Press.

Franko, K og SB Mohn (2015): Utvisning som straff? Tidsskrift for Strafferett.

Gundhus, H and M. Egge M (2013): Grenser for forebygging? I "Krimmigrasjon?".

Johansen, NB, T. Ugelvik and KF Aas (2013): Krimmigrasjon? Oslo, Universitetsforlaget.

Johansen, NB (2013): Elendighetstrakten. I "Krimmigrasjon".

Johansen, NB (2014): Governing the funnel of expulsion. In "Borders of Punishment", Bosworth M and KF Aas, Oxford University Press.

Mohn, SB (2013): Passet påskrevet. I "Krimmigrasjon".

Mohn, SB (2014): Et marginalt problem? Report, Oxford research.

Skilbrei, MLØ (2013): Transnasjonal prostitusjon... I "Krimmigrasjon?".

Ugelvik, T: On detention in Norway.