

WHEN THE UNFORESEEN IS SEEN

NSFK WORKSHOP IN REYKJAVÍK 2009 & 2011





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

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Forord

Nordisk Samarbeidsråd for kriminologi (NSfK) har i de norske og islandske rådsperiodene gitt støtte til en rekke nordiske arbeidsgrupper. When the unforeseen is seen er en av dem.

1. Hva skjer når et samfunn utsettes for det uforutsette og dramatiske kriser som krig, revolusjon og økonomisk kollaps?
2. Kom krisene uventet, eller var det noen som forsto hva som var i vente, eller burde ha forstått det?
3. Hva var foranledningen til krisene?
4. Fikk de noen følger for kriminalitetsutviklingen, og i så fall som forventet?
5. I hvor stor grad og på hvilken måte preget krisene sin samtid, psykologisk, kulturelt og politisk?
6. Hva slags forståelsesformer er blitt lagt til grunn, i samtid og ettertid?
7. Hvem har lært hva, med hvilke følger for kontroll og styring i ettertid?

Ideen til denne arbeidsgruppen sprang ut av den islandske bank- og finanskrisen. Tre av bidragene et islandske, med søkelys på finans og bank, korrupsjon, økonomisk kriminalitet, kriminalitetsutvikling, kriminalitetskontroll og straffeforfølgning. Men det ble åpnet for studier av andre samfunn og tidsperioder også, både for sammenligningen og forskjellenes skyld.

Den finske finanskrisen på 1990-tallet byr på noen likhetstrekk. Den finske voldskriminaliteten og drapsstatistikken etter revolusjonen i 1905 og videre inn i en dramatisk mellomkrigstid, er en annen type reise. Kriminalitetsutviklingen i de nordiske landene under den andre verdenskrig likeledes. Tyskland etter den første verdenskrig er til en viss grad en slags blanding; til dels finanskrise som i Island, om enn av andre årsaker. Men først og fremst revolusjon, borgerkrig, politisk terror og drap, som sier det meste om hva islendingene har styrt klar av, sine egne motsetninger til tross.

Kriser kan utvikle seg som forventet, og på måter som de færreste forestilte seg i forkant. Store forandringer kan inntreffe som man i og for seg var innstilt på, men av andre årsaker enn man regnet med. I andre tilfeller skjer det ikke så store forandringer på sikt likevel, til tross for krise og dramatiske forventninger. Samtlige scenarier er blitt oss til del, i løpet av denne reisen i tid og sted.

Vi takker Nordisk Samarbeidsråd for Kriminologi som har gitt oss anledning til å samarbeide på en så givende måte.

Per Ole Johansen

Oslo mars 2012

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

Crime in Iceland (Before) and After the Banking Crisis

Introduction

In early October 2008 Iceland was hit by a serious economic downfall when the banking system started to collapse. The three banking empires Glitnir, Kaupthing and Landsbanki were taken over in a short succession by the Icelandic government one by one.

Only six years earlier, in 2002, the banking sector was privatized in Iceland. Furthermore relaxed conditions in the mortgage market helped to create an aggressive competitive environment which helped households to use inflated real estate prices to borrow money both in Icelandic krona and foreign currency. Icelanders started to use their homes as collateral to fund their consumption spree (Jännäri, 2009).

Not only did the banks expand very quickly domestically, they grew even more rapidly and aggressively abroad. At the time, the global financial market was characterized by a booming era, facilitating the international expansion of the Icelandic banks. While the Icelandic banks' assets were less than 100% of GDP at year-end 2000, they were over eight times GDP by the end of 2006, peaking in October 2008 at 11 times GDP (Althingi Special Investigation Commission, 2010).

Following the collapse of the banks Iceland suffered dramatic economic recession. One outcome was an escalation in unemployment from a fairly long-term status of 1-2 percent to 9 percent during its peak. The value of real estate dropped significantly at the same time that loans inflated extensively. Thus a nation that was previously an affluent one sunk into huge debts in a matter of weeks. Many households and businesses went bankrupt and many more were struggling to escape that fate.

Due to these changes there were concerns about how the banking crisis in Iceland would affect crime. The National Commissioner of the Icelandic police for example warned that these changes might give foreign crime groups an opportunity to strengthen their status on the Icelandic drug market and to invest and launder money in Iceland (The National Commissioner of the Icelandic Police, 2009). It was also emphasized that the number of thefts and burglaries would continue to grow and violence, especially against police officers, could increase in number and become more severe. The link between economic crisis and violence was also discussed in the media, focusing greatly on partner violence, especially in relation to unemployment.

In this paper we will attempt to evaluate if the economic crisis in Iceland had any impact on the number of crimes. We use numbers of reported offences to the Metropolitan police before and after the banking crisis in Iceland. This is only a descriptive analysis based on crimes known to the police. Nevertheless police data should be somewhat of an indicator of the situation in the society as a whole.

Economy and crime

The link between economic situation and crime, both on the macro and on the micro level is well established within criminal theory. For example theories on social disorganization (Shaw & McKay, 1942) are based on the idea that macro factors such as poverty and economic deprivation within neighborhoods can influence social order making offences more likely. Durkheim's anomie theory also suggests that rapid social change such as economic downturns, disrupt social controls, producing anomie which is conducive to deviance (Durkheim, 1951). Moreover Merton argues that during recessions when there is a disjunction between culturally defined goals and the means to attain them, the culture becomes more prone to anomie and hence to crime.

Research has supported the link between economy and crime although this link is neither simple nor straightforward since changes in the economy appear to have different influences on different offences. How changes in the economy are measured is important as well. Yearwood and Koinis (2011) for example pointed out that research on the relationship between unemployment rates and crime can best be described as mixed, inconclusive and varied depending upon the types of data and the statistical methods used.

The UNODC research (2012) following the economic crisis in 2008 and 2009 indicates for example that there is a link between economic conditions and crime. The crisis appears to mostly affect violent property crimes such as robbery but the research did not find reduction in property crimes through the generation of fewer potential crime targets. It is also concluded that although there is a link between economic situation and crime this link does not only exist during economic crisis.

Yearwood and Koinis (2011) found that as supplemental security payments increased and the average wage and salary disbursements decreased, property crime rose. They pointed out that when economic conditions worsen criminal motivation amongst those already financially strapped might increase as the value of a product becomes unattainable by normal means. Based on Durkheim's (1984) ideas on anomie drastic social, economic and political transformations might as well influence criminal motivation or criminal attraction making criminal behavior more likely to occur (Antonaccio, Botchkovar, & Title, 2011).

It is also important to acknowledge other factors that influence the economic crime link such as perceived economic situation (Rosenfeld & Fornango, 2007). As well as how measures taken by the government to strengthen the support system for individuals can diminish the effects of economic downturns (Yearwood & Koinis, 2011). Growing unemployment does therefore not necessarily cause an increase in property crimes if the support system for this group is modified at the same time.

To sum up, theoretically there are many ways in which economic factors might be expected to have an impact on crime. However the empirical literature has been far from conclusive in its attempts to test these theories. There are also well known limitations to measuring crime rates based on officially recorded crimes.

Data and analysis

The crime statistics are taken from the Icelandic police database and are based on all recorded incidents in the years 2006-2011 known to the police in the Metropolitan

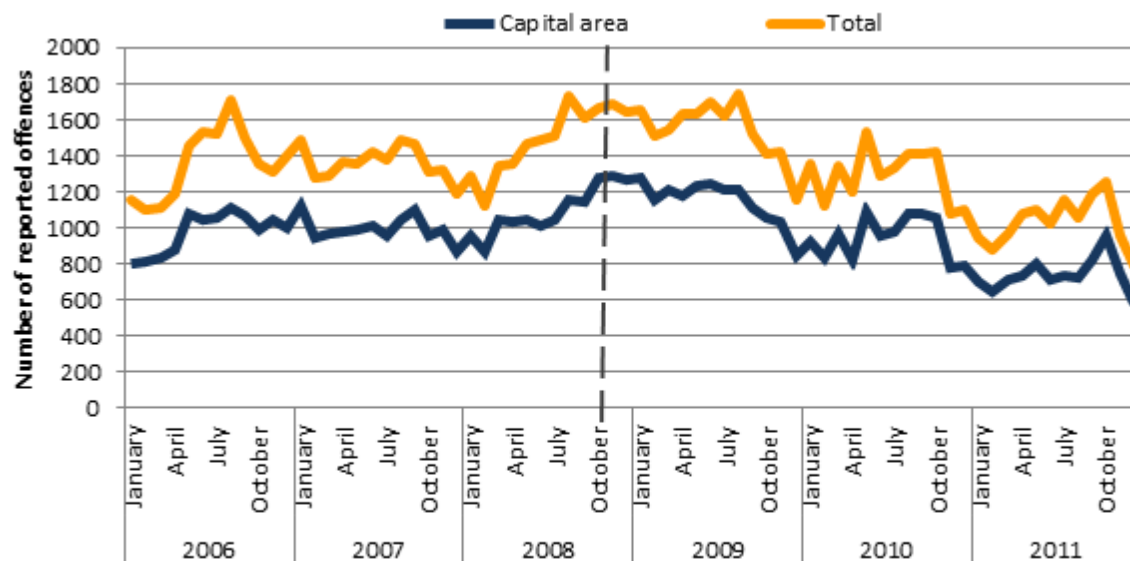
area. Using official data is of course insufficient since only part of criminal incidents are known to the police, data is registered by a number of people and definitions might change over time. Factors such as resources for proactive policing may play a role. To somewhat diminish limitation of official crime data we also report on survey data that has been gathered for the police each year since 2006. In the survey people were asked if they had experienced crime in the last year and if they reported it. Self report studies like this can give support to official data if the trend is parallel. Finally we use data from Statistics Iceland about unemployment and consumer price index to make a robust analysis on the link between crime trends and these measurements on economic situation in Iceland. These indicators may give some suggestion about the relationship between crime rates and economic situations. But even if we were to establish some sort of relationship between crime rates and the economic downfall it would be correlation at best, but not a causal relationship.

Results

Graph 1 shows number of offences against the penal code in Iceland and in the capital area from 2006 to 2011. Overall there were no dramatic changes in the number of reported offences against the penal code though the average number of reported offences in Iceland pr. month grew almost 12 percent between the two year periods before the crisis (2006-2007) and during the crisis years (2008-2009) and 14 percent in the metropolitan area. This increase did not last very long since the number of reported offences started to fall rapidly after 2009, or more than 23 percent on average pr. month in the whole country and close to 25 percent in the capital area.

As shown the increase in number of reported offences started in the beginning of 2008 or almost at the same time as the consumer price index rate¹ started to go up. Still there is not a significant correlation between the number of offences against the penal code and the consumer price index in the period neither before the crisis nor during the years when the banking crisis and the public protests that followed were at a maximum. Nonetheless there is a statistically significant correlation between offences against the penal code and consumer price index in 2010 and 2011, both for Iceland and the Metropolitan area (see table 1 in appendix). On the other hand there is no correlation between monthly unemployment rates and the number of offences against the penal code (see table 2 in appendix). This lack of correlation can probably be explained by different impacts of the economic downturn on different types of crime (Rosenfeld & Fornango, 2007; UNODC, 2012; Yearwood & Koinis, 2011).

¹The index measures change in the prices of private consumption based on the consumer price index act nr. 12/1995. The index was named the cost of living index before 1995.

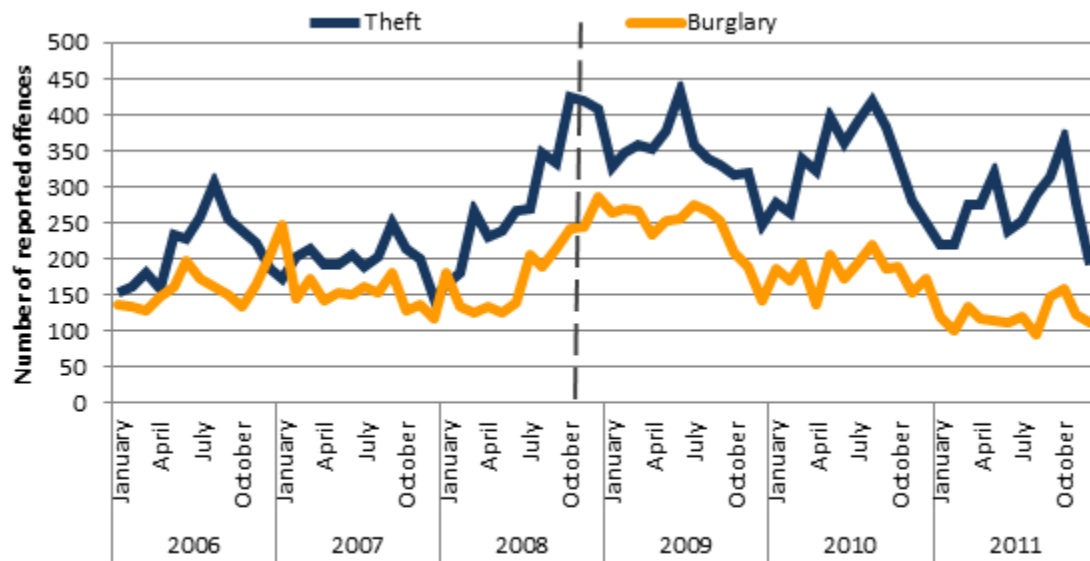


Graph 1. Number of offences against the penal code reported to the police in Iceland from 2006 to 2011 by month

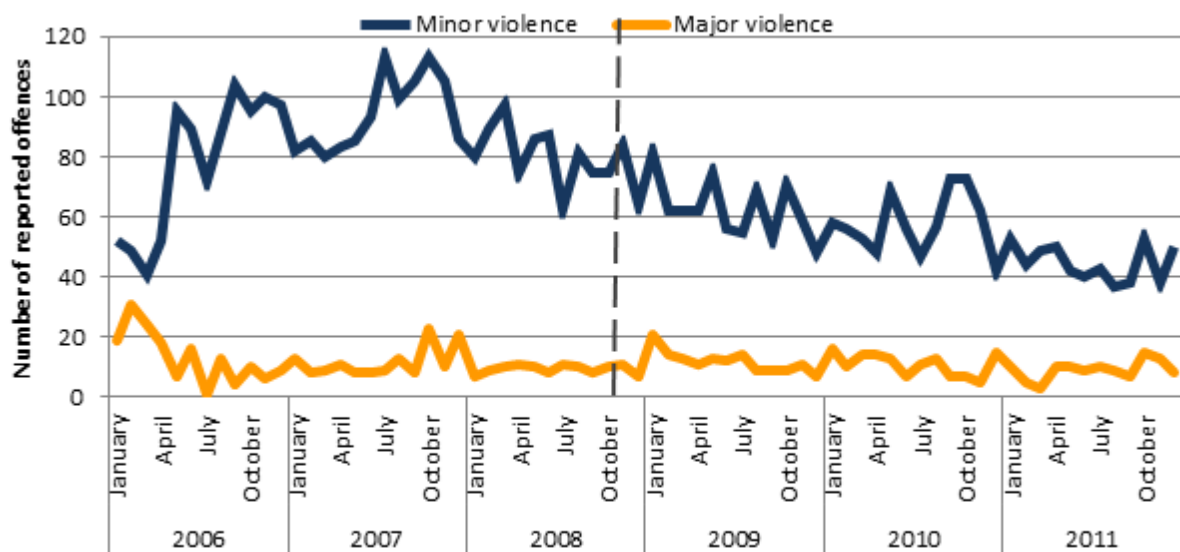
As shown in graph 2 most of the increase in number of offences against the penal code can be explained with growth in the number of property crimes, burglaries in particular. Thus average number of thefts pr. month grew almost 54 percent between the two year period before the crisis (2006-2007) and during the crisis (2008-2009) and burglaries grew 35 percent between the two periods. Between 2008-2009 and 2010-2011 average number of reported thefts went down five percent and burglaries almost 29 percent.

Looking into the correlation between thefts and burglaries and the consumer price index it is interesting to see that there was not a significant correlation between the two in 2006-2007 but during the crisis years in 2008-2009 there was a strong positive correlation (see table 1 in appendix). In the period after the crisis (2010-2011) there was no longer a significant correlation between the consumer price index and thefts but the correlation with burglaries was negative. This could either mean that there is no link between the two or other factors later influence or even neutralize this relationship. For example victimization surveys have shown that the number of thefts and burglaries in police data can partly be explained with growth in the number of people reporting thefts and burglaries to the police beyond the increase in number of offences (Árnason, Guðmundsdóttir and Þórisdóttir, 2012). This might be explained with sudden changes in prices which led to growth in markets with used (and sometimes stolen) goods and it also being more expensive to replace stolen things and therefore more likely for people to report thefts to the police and insurance companies than before. The decrease in thefts reported in 2010-2011 from the period 2008-2009 might be explained by police counter measures which included more focused intelligence led policing. These measures entailed among other things keeping closer tabs on repeat offenders and placing the most productive ones under custody.

Correlation between unemployment and thefts and burglaries is not significant in the years before the crisis nor in the years after the crisis but during the crisis years in 2008 and 2009 there is a significant correlation between the two (see table 2 in appendix).



Graph 2. Number of reported thefts and burglaries to the Metropolitan police from 2006 to 2011 by month.

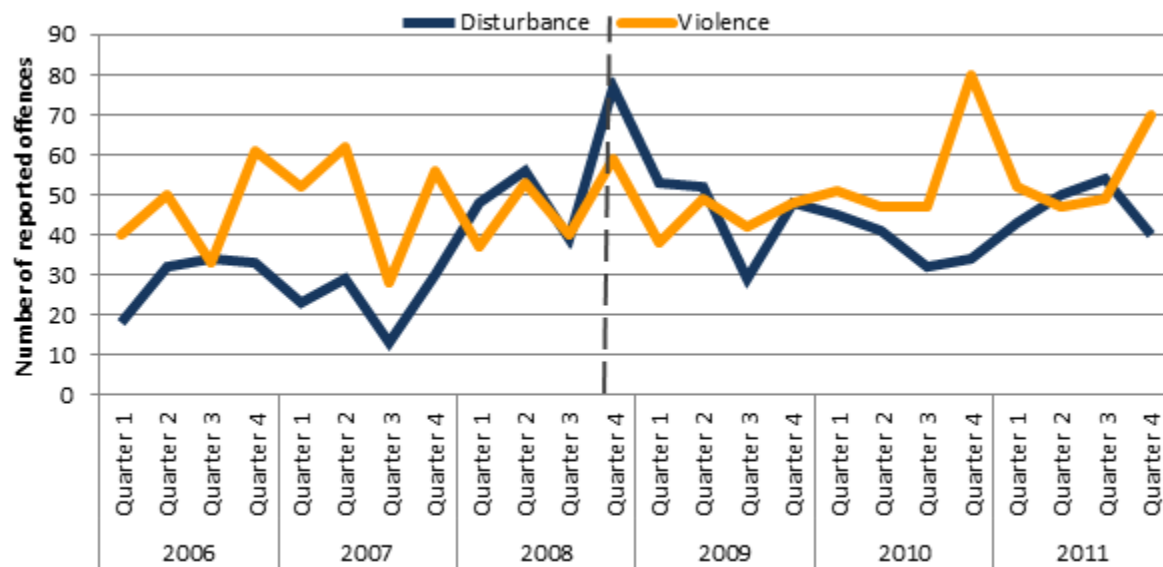


Graph 3. Reported minor and major violence to the Metropolitan police 2006 to 2011 by month.

Graph 3 shows the trend in number of reported violent crimes in the years 2006-2011. In general the number of reported offences has been decreasing during the whole period and is particularly clear in the case of minor physical assault. However that drop only starts at the end of the year 2008, but in the period from 2006 leading up to the banking collapse the numbers had been increasing slightly. In the case of major assault the trend is a much more flatter line, but still it indicates a small decrease in numbers in the period 2006-2011. The numbers decreased slowly between 2006 and the collapse at the end of 2008, but the year 2009 started with a slight increase which gradually decreased again after that. Comparing the average number of reports pr. month between the three periods it is though evident that the

overall number of minor and major violence has been decreasing. It is interesting to see that there is a positive correlation between minor violence and consumer price index in 2006-2007 but this correlation changes to a negative relationship after that.

As shown in graph 4 trends in domestic disturbance and violence were somewhat different from trends in other violence. Using quarterly trends due to few cases we can see that during 2008 and 2009 there was an increase in reports of domestic disturbance, peaking right after the banking collapse. Overall number of average reports of domestic disturbance grew almost 90 percent from 2006-2007 to 2008-2009, decreasing again in 2010-2011 by almost 26 percent. Frequency of domestic violence on the other hand stayed more or less the same except for short term peaks at the end of 2010 and 2011 causing a 21 percent growth in the average number of reports pr. month in the period. It is noteworthy that there is not a significant correlation between domestic disturbance and domestic violence and unemployment rates nor consumer price index.

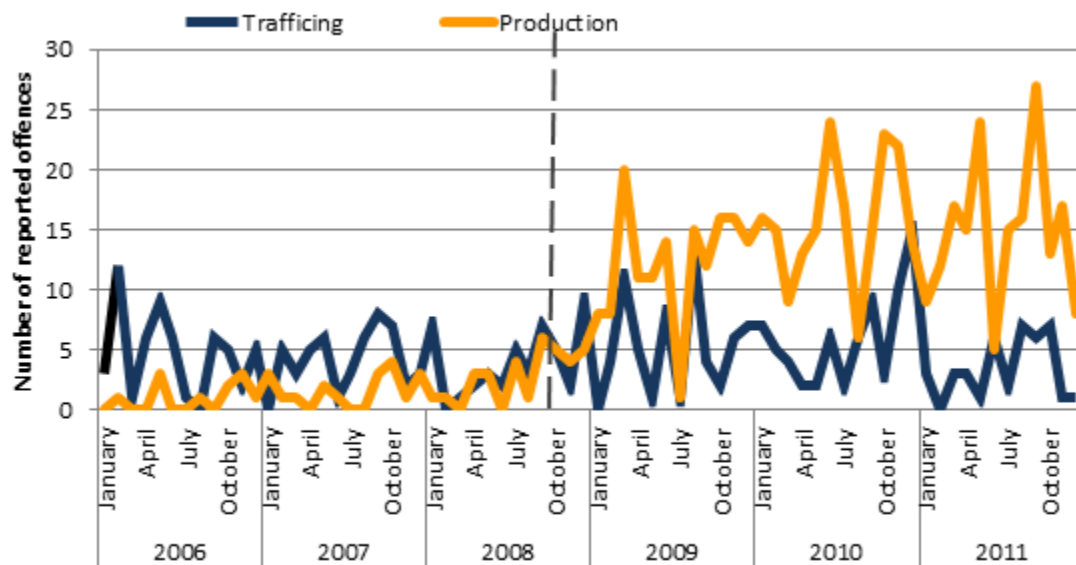


Graph 4. Reported domestic disturbance and violence to the Metropolitan police 2006 to 2011 by quarter.

Despite worries about the impact of the crisis on the frequency of violence against police officers, there is no evidence of any such effects. The numbers fluctuate from one year to the other and even though there was a slight increase in the numbers in 2009 from the year before, the numbers were still higher in 2007.

This indicates that there were little long term effects of the crisis on reported violence in Iceland. Self report surveys support this trend (Árnason, Guðmundsdóttir and Þórisdóttir, 2012). These results are surprising because after the banking crisis a large number of households in Iceland have gone bankrupt, an even greater number experienced severe financial difficulties and unemployment rose from less than two percent to nine percent. General strain theory would give reason to assume that the numbers should have increased. According to Agnew (1992) negative experiences, for example financial difficulties or unemployment can cause strain that induces feelings of frustration or anger. These feelings can lead individuals to react violently in retaliation or revenge. Violence or other criminal behavior can be a way for

individuals to reduce strain. Peaks in number of domestic violence cases in 2010 and 2011 might though be results of the aftermath of the crisis even though it's a short term effect.

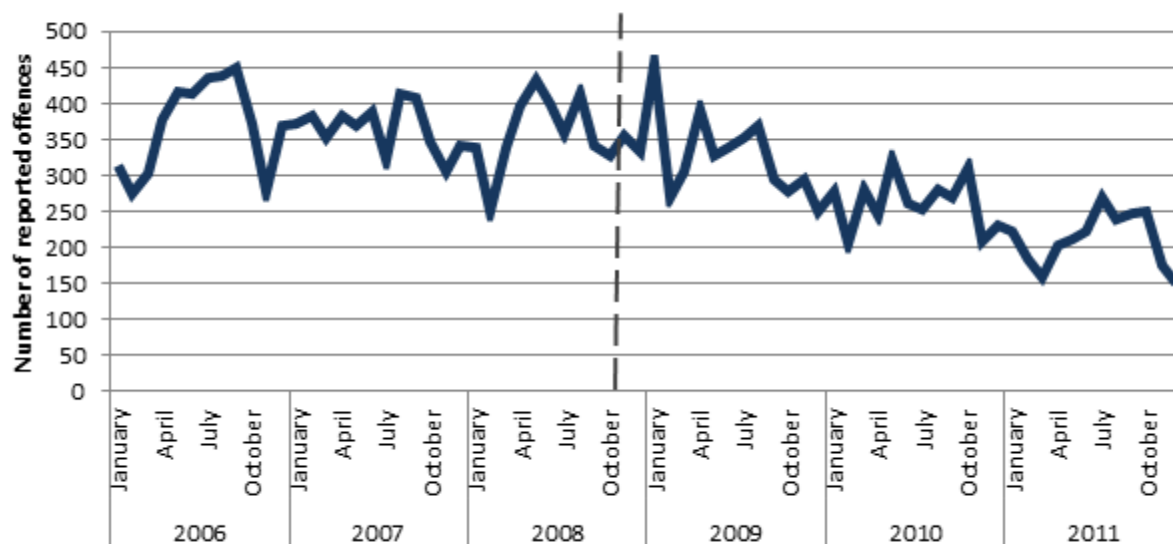


Graph 5. Number of cases of trafficking and production of narcotics by the Metropolitan police 2006 to 2011, by month.

As cited in the introduction the National Commissioner of the Icelandic police reported concerns about how the drug market in Iceland would be influenced by the economic crisis. Graph 5 shows how trafficking and production have developed through the period. Changes after 2008 are interesting for from 2008 to 2009 number of cases regarding production of narcotics more than tripled between those years. Number of trafficking cases also went up but not by any means to the same level as cases of production. These cases mostly are related to the production of marihuana but there have also been some cases related to the production of amphetamine in Iceland.

This increase in numbers of production cases happened at the same time as the banking crisis occurred. It is difficult to blame the crisis for this development but as well it is almost impossible to look past the possible effects of the crisis. Firstly the Icelandic krona had started to fall in worth in 2008 making it more expensive to shop for narcotics in other countries. Secondly, soon after the collapse of the banks the Central bank of Iceland issued new rules on foreign exchange making access to foreign currency difficult for Icelanders. This development does not only apply to the capital area for the same pattern appears for the whole of Iceland.

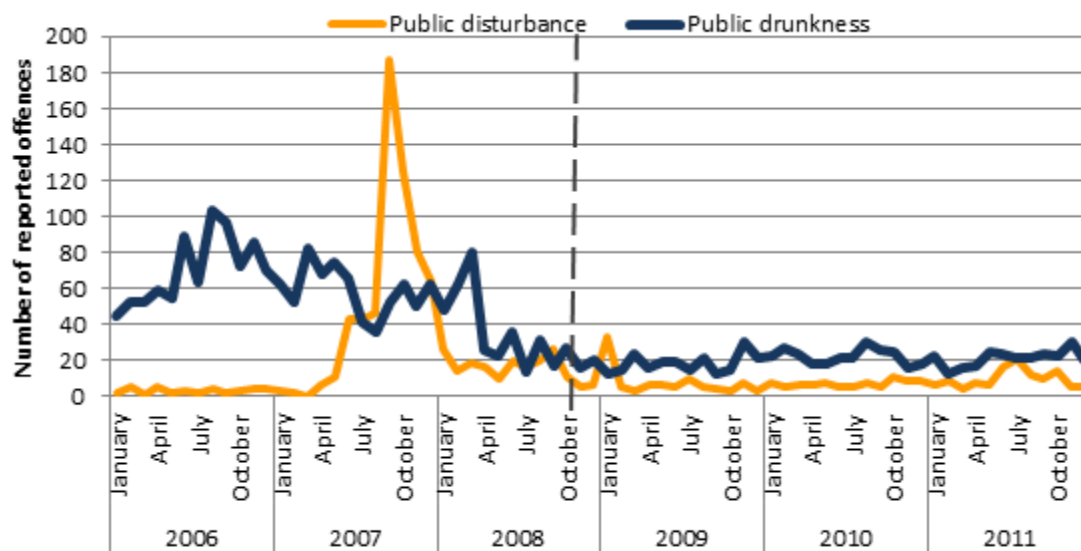
Still one should bear in mind that the growth in production of Marihuana does not only apply to Iceland for the same development has occurred in other European countries (UNODC, 2011). This might indicate that the development of Marihuana production in Iceland is both influenced by trends in narcotics consumption as well as financial crisis.



Graph 6. Number of reported vandalism by the Metropolitan police in 2006 to 2011, by month.

In line with Durkheim's theory one might assume that rapid economic downturns would affect offences related to public order. This does not appear to be the case in Iceland. Looking for example at the trend in vandalism or property damage in the years 2006-2011 (graph 6), there is clearly a reduction in the number of reported incidences in that period. The decline is even sharper in the years after the crisis than in the years 2006-2008. So there doesn't seem to be any long-term effect of the banking collapse on the numbers of reported vandalism. However there was an increase in property damage in relation to public protests and individual acts of vandalism which can be attributed to the crisis, most noticeably in January 2009. That was mostly cases of broken windows, not least in government buildings and the parliament, damages like fires in public places and not least reports of paint being thrown on houses, businesses and cars of those believed to be responsible for the banking collapse. In many cases expensive cars (most often Range Rovers) were vandalized, either by scratches and other damages to the paint, even if the owners had no accountability in the crisis. So there is evidence of short term effects in which people expressed their anger and frustration by damaging properties of others. But the long term trend indicates a decline in the number of vandalism.

The same development applies to the number of cases of public drunkenness and public disturbance (graph 7). This indicates either that the economic crisis did not cause frustration and anomic situation among the general public in Iceland. This might also be explained by the fact that the police, like other governmental agencies, has had to go through severe cutbacks after the collapse of the banks making proactive measures against such behavior more difficult.



Graph 7. Number of reported cases of public drunkenness and public disturbance.

Economic crimes

The trend in reported economic crimes gives us a whole different story from the other crime types covered in this paper. It is the only crime type that can be directly linked to the economic crisis. This is due to the fact that a large number of the crimes were potentially the cause of the whole banking collapse and only came to light in its aftermath.

It is rather difficult to keep track of the trend for economic crimes with any accuracy. First of all it is due to the fact that the Economic crime division handled investigations of economic crimes before the banking collapse, but in 2010 it was united with the Special prosecutor office which handles all the cases connected to the crash. Secondly, after the Special prosecutor office was established in the beginning of 2009 it has not kept an annual record of reported crimes, but an accumulated one². Before 2008 less than a hundred economic crimes were reported each year to the Economic crime division. Tax violations were by far the most common economic crimes reported in the years before the crisis or around half of all the cases each year.

However, by the end of 2011 the number of cases reported to the Special prosecutor had reached almost 200. At that time 57 cases had been dropped by the prosecutor and over 80 cases were in ongoing investigation at that time, but less than 50 pending investigation. What is interesting is that one of the most dominant types of crimes being investigated is mandate fraud (or misuse in status in access). Before the crisis these types of cases were very rare. Many cases include violations such as market manipulation, fraudulent loans or connected lending, insider trading, embezzlement, fraud, book keeping violations, financial law violations and violations

² In the beginning the office consisted of four men. But it soon became obvious that it would take more than four men to deal with the caseload, so the office was strengthened and at the end of 2011 it had around 90 employees.

of corporate laws among others. A large number of these cases were referred or reported by the Financial Supervisory authority to the Special prosecutor.

Many of the transactions being investigated as criminal are of an unprecedented scale for Iceland in terms of the amounts of money. Billions of Icelandic kroners were lent from the banks in deals that are under investigation.

At the time when business seemed to be booming, not many were critical of how the interests of shareholders were being handled, but that soon changed after the crash, when it became clear that they had been handled poorly if not criminally. In fact the banks seem to have manipulated their books and market share value. Before the crash the sort of conduct in question, connected lending and market manipulation seems to have been widespread and viewed as unethical at worst. Now a large group of people may be facing prison sentences because of that sort of behavior. So it is appropriate to ask if the economic crisis has changed definitions on what sort of behavior is defined criminal and if so why wasn't this conduct seen as criminal before the economic crisis? Or did it simply go unnoticed?

Conclusions

This paper has given a robust overview of the crime trend before, during and after the collapse of the Icelandic banks in 2008. The statistics viewed here show that contrary to what criminological literature might suggest, there is limited evidence that the economic crisis has had any measurable impact on long term crime trends in Iceland. Overall reported offences against the penal code increased somewhat during the crisis year as well as the number of reported burglaries and thefts. After 2009 these number decreased again and in some instances even more than the previous growth.

In the case of violence it appears that the number of reported cases decreased through the period but at the same time number of reported cases of domestic disturbance and violence increased somewhat. It is interesting to see that there have been rapid changes in number of cases regarding production of narcotics in Iceland. After the banking crisis the number of cases of production tripled.

Looking into the correlation between the consumer price index and crime and unemployment and crime it is interesting to see that in the years before the crisis there appears to be little correlation between these two indexes and crime (except for minor violence). Following a severe increase in the consumer price index and unemployment in 2008 and 2009 there was a significant correlation between thefts, burglaries and minor violence and the consumer price index. But in the period after the crisis (2010 and 2011) there is no significant correlation between the indexes and crime.

Even though three years have passed, it might still be untimely to rule out any possible effects since it might materialize later. The danger of that will grow if social problems such as unemployment and poverty will gain a long term foothold in Iceland.

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Appendix

Table 1. Correlation between consumer price index and crime 2006 to 2011 by period.

	Before the crisis 2006-2007	During the crisis 2008-2009	After the crisis 2010-2011
Penal code – Iceland	,291	,349	-,509*
Penal code – Metropolitan area	,373	,361	-,527**
Theft	,137	,601*	-,318
Burglary	-,010	,603*	-,652**
Minor violence	,787**	-,762**	-,594**
Major violence	-,333	,228	-,121
Domestic disturbance	,097	-,065	,254
Domestic violence	,146	,092	,114

Table 2. Correlation between unemployment rate and crime 2006 to 2011 by period.

	Before the crisis 2006-2007	During the crisis 2008-2009	After the crisis 2010-2011
Penal code – Iceland	,109	,210	,146
Penal code – Metropolitan area	,094	,292	,123
Theft	,064	,414*	,111
Burglary	-,007	,530**	,070
Minor violence	-,123	-,603**	,278
Major violence	-,063	,306	,133
Domestic disturbance	,317	-,088	,205
Domestic violence	-,045	-,038	-,218

No Room at the Inn: Punitive Developments and Economic Turbulence in Iceland in the 2000's

Abstract

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

Iceland is currently in the middle of a severe economic crisis. Even though the public demonstrations and protests were intense immediately following the collapse, resulting among other things, in a new government in 2009; in large part this public outburst tended temporarily to unify the nation against the economic and political elites believed to be responsible for the demise of the banks. The local social sciences community responded to the crisis with 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 observed in the new millenium. This punitive 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 seem 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 fiercely 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 Brothers*, but critics focused on local responsibility such as faulty privatization of the banks in 2003, and lax supervisory rules in the spirit of neo-conservatism. The answer is still 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 2011. 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 millennium, 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

Ever since the downfall of the banks, it has been an urgent question posed to us in the social sciences, by both ourselves and others, what impact this incident has on 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 largest and last bank collapsed, Kaupthing, on October 6 in 2008 to be precise, I met Annika Snare, Professor of Criminology at Copenhagen University, and Professor of Law Vagn Greve at the same institution, who were both visiting UI to give a lecture. Annika was openly excited claiming this was a unique 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 shock like everyone else. Yet, deep down inside I knew she was right. This was indeed a new 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 witnessed 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 had an atypical crime incident or even a typical one immediately following the downfall – we frequently received questions from the local media and others (see for example

Ríkisútvarpið, 2009a and Fréttablaðið, 2012) – was 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 easily turn into a convenient scapegoat; blaming everything on the crisis pacifying 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 more comfortably 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 an 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. We can expect diminished acceptance of norms and values of society – or what Durkheim (1893/1964) termed in short 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 can be argued, contrary to what might be expected, that Icelanders experienced increased social solidarity immediately following the bank meltdown. Most citizens felt the crisis on their own skin in one way or another. This was a common experience, something which even helped us relating more to each other. Sensing a mutual link between us, possibly strengthening our conscience collective as Durkheim (1893/1964) would have phrased it: enhancing social cohesion and even helping us to maintain social order, at a time of uncertainty. In particular, because the public outcry following the crisis, demonstrated among other things in the so called noisy „pots and pan revolution“ outside the Parliament building, traced the cause of the crisis to only a relatively few individuals, who allegedly had gone berserk in their foreign investments and money transactions up to the crisis (see for example Iceland Review, 2008). These particular individuals were instantly blamed for the fate of our small nation; a clear cut case of us against them. A public commonality

was felt in the condemnation of these relatively small groups of business people and certain public institutions, perceived to be guilty of the bank meltdown, by their negligent actions or non-actions.

Also, not less important, many felt they were part of history, living historic times, something which will be written down in history books. Not only were Icelanders reading about something happening in the past, as usually is the case with history books, but personally living through it in the present history unfolding in front of us, and being part of it. I witnessed 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 in the present 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 Icelanders 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 (Þjóðarpúlsinn, 2012). 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. The victory of the Best Party in the Reykjavik city elections in 2010 is a good example of the public distrust towards the political system, in which a popular comedian became the mayor of the city.

Still, 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 – less than four years after the collapse. New trends up and down in certain crime types can be demonstrated (see Þórisdóttir and Árnason in this book), 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 nation like Iceland. Yet we know long term crime trends and crime control developments are always associated in one way or another with deeper social and economic factors – but the relationship is seldom direct or immediate.

Problem conceptualization

With this broad background outlined above in mind, I have decided to give a general review of crime control developments in Iceland during the past ten years or so – or in the time span leading up to the collapse and in the relatively 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 with local crime control?

Iceland prison situation

If we look at the prison system, the total prison capacity of Icelandic prisons in March of 2012 stood at about 160 cells, including a total of 10 solitary confinement 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 of 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 early 2012. 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 possible 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 475 receiving an unconditional prison sentence in 2011 (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 meted out 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 March of 2012 this list stood at about 320 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, 2000-2011

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Less than 30 days	25	26	28	23	26	23	28	23	27	26	25	27
30 days-3 m.	40	35	38	35	32	36	35	32	31	33	31	34
3-6 months	15	15	11	17	16	12	15	16	16	16	13	17
6-12 months	8	10	11	11	12	13	10	10	10	8	13	9
12 mths-36 mths	8	9	9	12	12	14	9	14	11	11	13	11
36 months+	4	5	3	2	2	2	3	5	5	5	5	2
Total number	313	302	312	368	361	370	364	402	416	447	410	475

Source: Prison and Probation Administration annual reports, 2000-2011.

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 2000-2011 (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 a total of 18 percent of all inmates in 2000 (including homicide, sexual offenses and other violence) up to 33 percent in 2011 of the total prison population. If only sexual offenders are analysed, they consisted of 5% of all inmates in 2000 but were 12% in 2011. 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 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, 2000-2011

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Homicide	6	6	5	5	4	5	6	8	8	7	7	6
Property offenses	35	33	26	26	34	27	23	22	18	24	25	25
Traffic offenses	20	15	22	16	12	11	16	11	10	9	3	5
Drug offenses	25	29	32	28	24	32	34	32	28	31	36	31
Sexual offenses	5	6	6	9	11	9	9	15	13	10	13	12
Other violence	7	9	6	10	10	9	9	8	16	10	10	15
Other	2	2	3	3	5	7	3	4	7	9	6	7
Total number:	219	254	251	325	317	305	327	288	314	331	327	366

Source: Prison and Probation Administration annual reports, 2000-2011.

What lies behind this profound change shown in tables 1 and 2? Most likely a series 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); in short a 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 2000-2011 (table 1). More than two-thirds of all sentences involved three months or less in 2000, but in 2011 this figure was lower, or about 61 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 – but lowering again to 13 percent in 2011. A likely explanation for the reduction of longer sentences in 2011 stems most likely from the release of several inmates serving for homicide in that year. With a growing number of incarcerations during 2000-2011, 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. A recent Nordic study also showed that recidivism was low in Iceland compared to other Nordic nations (Prison and Probation Administration, 2012) 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 and obvious. 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 for tougher sentencing – 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 through other means. Yet on the whole, Iceland still resembles what Pratt (2008a and b) and Dullum and Ugelvik (2012) have called Scandinavian exceptionalism, characterized by relatively short sentences and a small prison population.

With the economic crisis still deeply affecting Iceland and possible criminal indictments 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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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.¹

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.² Other types related to corruption like favouritism, may also fall under this definition but in more narrow perspective:³ *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 resources⁴ 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.⁵ Tasks performed in public and private organisations may of course differ, but the basic structure is the same.

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

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

³ 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.

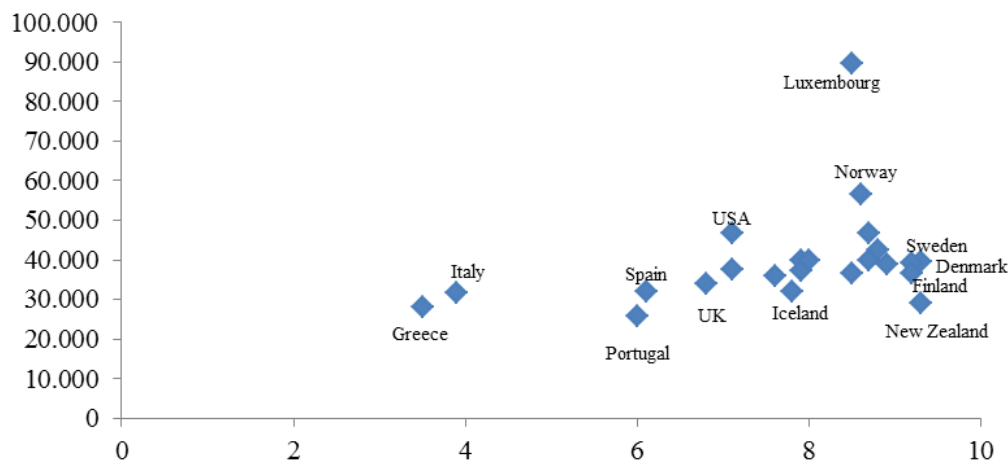
⁴ See for example, OECD homepage, http://www.oecd.org/about/0,3347,en_2649_34135_1_1_1_1_1_00.html [11.09.09]

⁵ 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.⁶ 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.

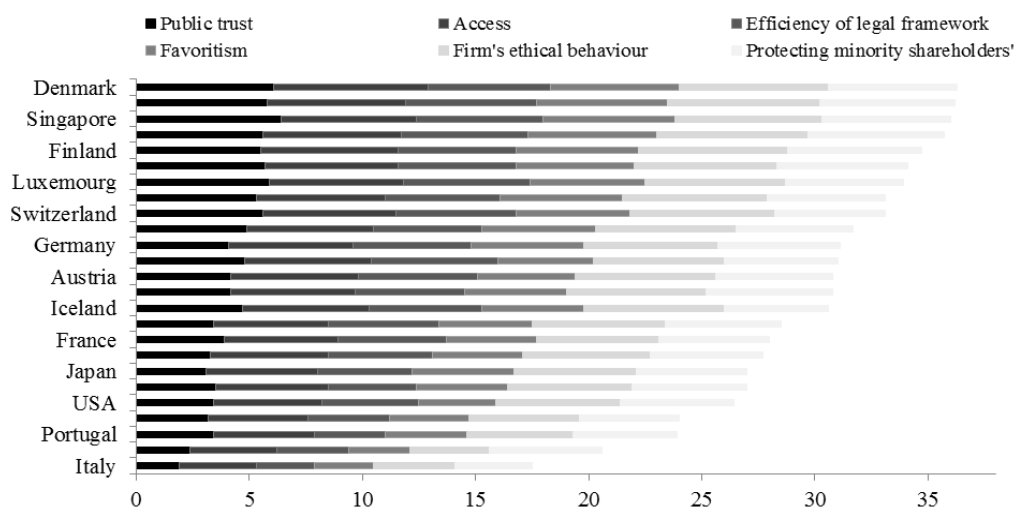
One interesting factor referred to an economic performance and corruption literature is the concept Social Capital. The most famous work is probably from Putnam's "Making Democracy Work" (1994). Trust, according to Putnam, is civic cooperation and associational activity defined as *features of social 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

⁶ 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.⁷ 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

⁷ 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.⁸ 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, 1958.⁹ 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.¹⁰ 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.¹¹ 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

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

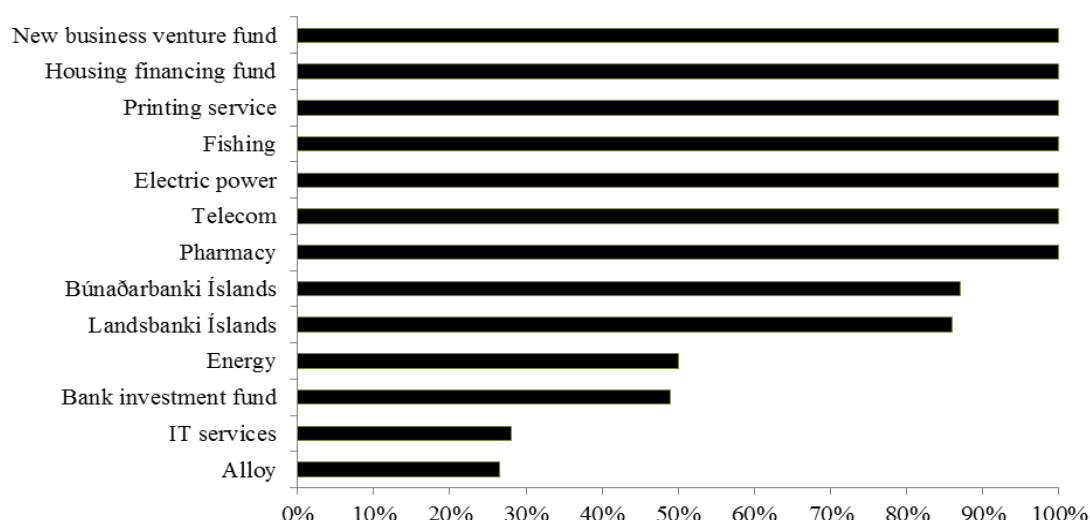
⁹ Banfield, E.C. (1958).

¹⁰ Ólafur Ragnar Grímsson (1978).

¹¹ Same (1978).

commercial enterprises acting in a fair competition.¹² 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.¹³ 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.¹⁴ 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

¹² OECD, 2000.

¹³ Gylfi Magnússon (2005).

¹⁴ 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.¹⁵ 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:¹⁶

- 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.¹⁷ 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.¹⁸ 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

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

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

¹⁷ Þóra Christiansen (2009).

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

another group, called the S-group¹⁹ which was said to have a strong link with the Progressive Party.²⁰

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.²¹ 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".²² 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 parties²³.

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.²⁴ 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

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

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

²¹ Þóra Christiansen (2009); Styrmir Gunnarsson (2004).

²² Jakob F. Ásgeirsson and Sigríður K. Þorgrímsdóttir (2004).

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

²⁴ Icelandic National Audit Office (2003), http://www.rikisend.is/files/skyrslur_2003/einkavaeding.pdf [05.09.09].

2003 to 880% of GDP by the end of 2007.²⁵ 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.²⁶

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.²⁷ Such purchases may have been "hidden" in their foreign subsidiaries in order to make them less detectible.²⁸ 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

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

²⁶ 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.

²⁷ Jännäri K. (2009).

²⁸ 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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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.¹ 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”.² 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 allocating³ 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 place⁴ 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.⁵ 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.⁶ 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”.⁷ 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

¹ See e.g. *Ashworth* 2009 p. 15–16.

² *LaFave* 2010 p. 24.

³ 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”.

⁴ 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.

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

⁶ *Hart* 2008 p. 4.

⁷ *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.⁸ 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)⁹ 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 2008.¹⁰ 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".¹¹

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

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

⁹ 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.

¹⁰ Chapter 2/2010 p. 1.

¹¹ Working group on Ethics 2010.

of trust.¹² *Annette Baier's* article on the theme will serve as a firm base.¹³ 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.¹⁴ 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.¹⁵

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*.¹⁶ 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.¹⁷

Baier continues to develop the concept of trust with the help of a three-place predicate (A trusts B with valued thing).¹⁸ 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.¹⁹

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.²⁰ 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.²¹

Is it then plausible that we could define the core cases of trust? One could begin with Baier's concept of promise.²² "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

¹² *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.

¹³ See also *Bok* 1999.

¹⁴ *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.

¹⁵ *Baier* 1986 p. 234. See also *Jones* 1998.

¹⁶ *McLeod* 2008. See also *Dimock* 1997 p. 45–47.

¹⁷ *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.

¹⁸ *Baier* 1986 p. 236.

¹⁹ *Baier* 1986 p. 240. See also *Dimock* 1997 p. 47–49.

²⁰ *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.

²¹ *Duff* 2007 p. 16.

²² See also *Green* 2006 p. 107–113.

will of the truster”, notes Baier.²³ 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.²⁴ 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.²⁵

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”.²⁶ 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.²⁷ 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.²⁸ 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.²⁹

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

²³ Baier 1986 p. 245.

²⁴ 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.

²⁵ Baier 1986 p. 251.

²⁶ *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.

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

²⁸ See more *McLeod* 2008. See also *Jones* 1998.

²⁹ See more on trustworthiness e.g. *Hardin* 1996 p. 26–42.

part of other things valuable in themselves, such as love and friendship”.³⁰ *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.³¹ 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.³² 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.³³ 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”.³⁴

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.³⁵ According to his liberal republican³⁶ 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”.³⁷

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”.³⁸

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

³⁰ *Jones* 1998.

³¹ *McLeod* 2008.

³² *Lappi-Seppälä* 2008 p. 313–387.

³³ See especially on trust *Lappi-Seppälä* 2008 p. 361–373.

³⁴ *Lappi-Seppälä* 2008 p. 377.

³⁵ 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.

³⁶ 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.

³⁷ *Duff* 2007 p. 52–53. See also *Dagger* 2011 p. 50.

³⁸ *Dagger* 2011 p. 46 (emphasis in original).

criminal law should protect.³⁹ 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:⁴⁰ 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.⁴¹ 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”.⁴²

*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.*⁴³

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.⁴⁴

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 mala in se and mala in prohibita be here useful?⁴⁵ 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

³⁹ Marshall – Duff 1998 p. 11.

⁴⁰ Marshall – Duff 1998 p. 13–17.

⁴¹ Marshall – Duff 1998 p. 19–20.

⁴² Marshall – Duff 1998 p. 20.

⁴³ Duff 2011 p. 127–128.

⁴⁴ 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.

⁴⁵ 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”.⁴⁶ 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”.⁴⁷

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.⁴⁸ 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.⁴⁹

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.⁵⁰ 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?⁵¹ 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.⁵²

*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.*⁵³

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

⁴⁶ Duff 2007 p. 90. See similarly Green 2006 p. 118.

⁴⁷ Husak 2005 p. 66.

⁴⁸ Duff 2007 p. 92–93.

⁴⁹ Duff 2007 p. 92.

⁵⁰ Green 2006 p. 120–121, note 33.

⁵¹ See more Duff 2002 p. 102–106.

⁵² Duff 2007 p. 170–171.

⁵³ 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.⁵⁴

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.⁵⁵

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.⁵⁶ *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.⁵⁷ This view is very close to *David Hoekema*'s claim that the betrayal of trust makes an act an appropriate ground for punishment.⁵⁸

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.⁵⁹

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

⁵⁴ *Duff* 2008 p. 279.

⁵⁵ *McLeod* 2008. See also *Lappi-Seppälä* 2008.

⁵⁶ *Hardin* 1996 p. 32.

⁵⁷ *Dimock* 1997 p. 37.

⁵⁸ *Hoekema* 1991 p. 345.

⁵⁹ *Boonin* 2008 p. 119–120.

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

Dimock connects this trust-based view to the idea of crime as a violation of trust.⁶¹ 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”.⁶²

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”.⁶³ 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.”⁶⁴

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”.⁶⁵ But, as *Korman* heavily opposes, 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.⁶⁶

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.⁶⁷ 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

⁶⁰ *Dimock* 1997 p. 45–46.

⁶¹ See also *Hoekema* 1991 p. 343–350.

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

⁶³ *Hoekema* 1991 p. 347.

⁶⁴ *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.

⁶⁵ *Dimock* 1997 p. 53–54. Cf. *Boonin* 2008 p. 146–147.

⁶⁶ *Korman* 2003 p. 573.

⁶⁷ *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.⁶⁸ 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.⁶⁹

It is worth noting that examples⁷⁰ 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.⁷¹

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. Murphy⁷² 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.⁷³

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*.⁷⁴ 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.⁷⁵ 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.⁷⁶

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

⁶⁸ *Korman* 2003 p. 562, 570 and *Boonin* 2008 p. 24–25.

⁶⁹ So *Boonin* 2008 p. 149. See already *Korman* 2003 p. 570–571.

⁷⁰ *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.

⁷¹ *Korman* 2003 p. 568.

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

⁷³ *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.

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

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

⁷⁶ *Dagger* 2008 p. 262.

communitarian conceptions.⁷⁷ 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”.⁷⁸ Therefore, we could argue that the political order is a kind of super- or meta-cooperative practice.⁷⁹

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”.⁸⁰ 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.⁸¹ 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”.⁸² 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.⁸³ 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.⁸⁴

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”.⁸⁵ But, he admits that reciprocity must be complemented with other elements – deterrence, retribution, moral education etc. – but none of this

⁷⁷ Dagger 2008 p. 266.

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

⁷⁹ Dagger 2008 p. 268–269 and Dagger 2011 p. 61–62.

⁸⁰ 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.

⁸¹ Dagger 1993 p. 479–480.

⁸² Dagger 2008 p. 263.

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

⁸⁴ *Boonin* 2008 p. 123.

⁸⁵ Dagger 1993 p. 483.

other consideration offers a satisfactory account of a society's right to punish.⁸⁶ 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.⁸⁷

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.⁸⁸ 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.⁸⁹

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.⁹⁰

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*

⁸⁶ 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.

⁸⁷ Dagger 1993 p. 486–487.

⁸⁸ Dagger 2008 p. 269.

⁸⁹ Dagger 2008 p. 271–272.

⁹⁰ Duff 2008 p. 280. See also *Boonin* 2008 p. 124–129.

claims that Dagger doesn't succeed.⁹¹ 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.⁹²

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.⁹³ 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.⁹⁴ 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.⁹⁵

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.⁹⁶

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.⁹⁷ 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.⁹⁸

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.⁹⁹ 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

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

⁹² *Hoskins* 2011 p. 54, 58.

⁹³ *Hoskins* 2011 p. 58–59.

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

⁹⁵ *Hoskins* 2011 p. 59.

⁹⁶ Ch. *Duff* 2001.

⁹⁷ *Hoskins* 2011 p. 60.

⁹⁸ *Hoskins* 2011 p. 61.

⁹⁹ *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".¹⁰⁰

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.¹⁰¹ 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".¹⁰²

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".¹⁰³

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.¹⁰⁴ Furthermore, it provides them with the opportunity to respond to

¹⁰⁰ *Hoskins* 2011 p. 68.

¹⁰¹ 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.

¹⁰² *McLeod* 2008. See especially concerning differences in penal policies *Lappi-Seppälä* 2008.

¹⁰³ *Duff* 2001 p. xvii.

¹⁰⁴ 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.¹⁰⁵ Duff puts it clearly saying that “criminal law is focused on the polity’s formal response to the conduct with which it deals”.¹⁰⁶

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¹⁰⁵ *Thornburn* 2001 p. 28. See closer *Duff* 2011; *Duff* 2007 and 2001.

¹⁰⁶ *Duff* 2011 p. 129.

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Economic and Political Crises and Homicide Rates in Finland in 1905-32

Abstract

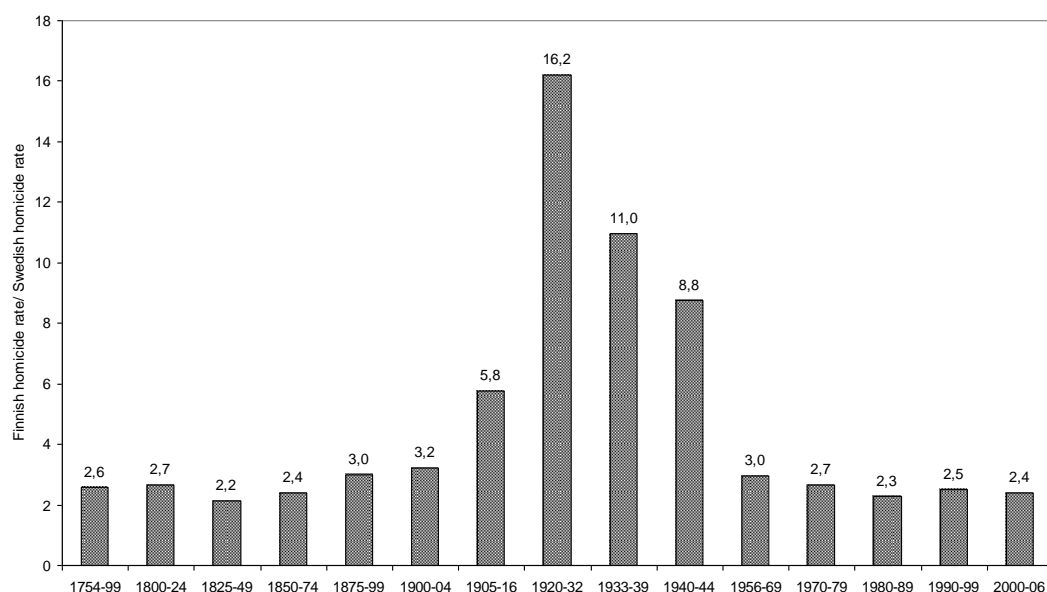
The presentation discusses the impact of the 1905 revolution on violent crime in Finland and describes some of the main explanations for the crime wave the revolution triggered presented in modern Finnish violent crime research.

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

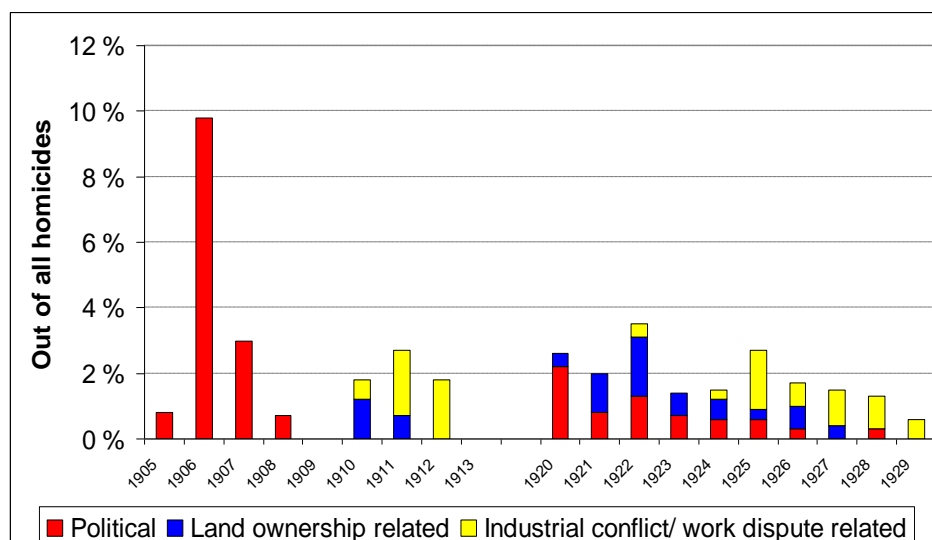
than in Finland. In Estonia, violent crime was dominated by landless rural population, not by industrial workers.

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 of 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.

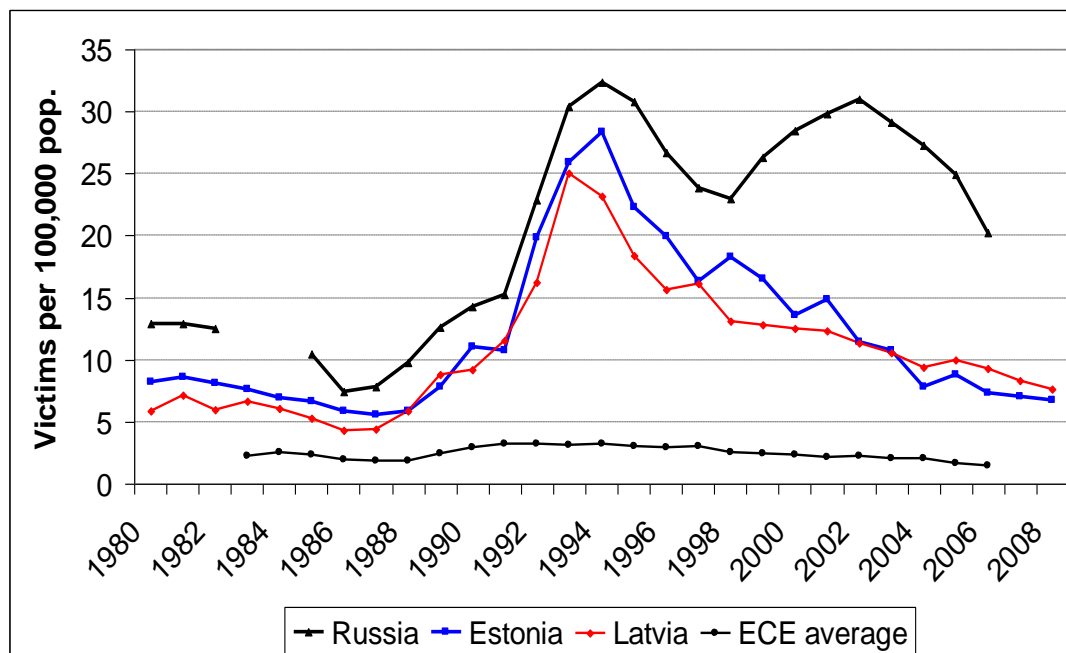
Of course there are also important developments in the political sphere in the 1930s; there is the great reconciliation between the Social Democrats and centre-right parties in the second half of the decade; but what coincides with the drop in violent crime rates in the beginning of the decade is perhaps 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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Crime in Scandinavia During the Second World War¹

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 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

¹ 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).

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).

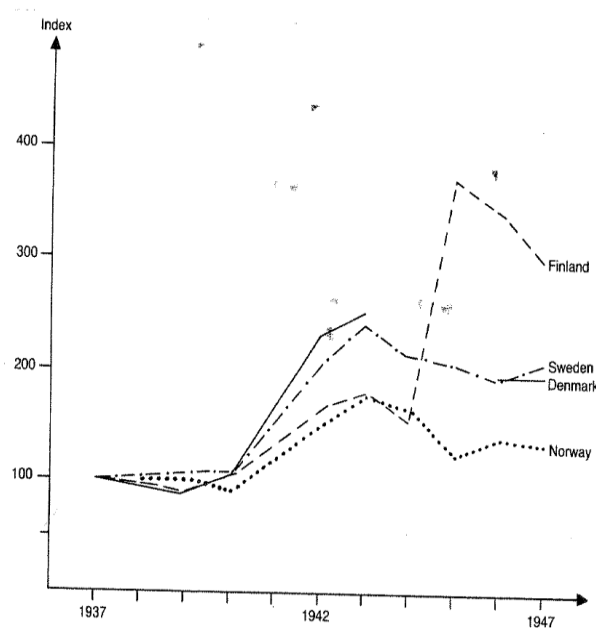
Crimes of theft

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.

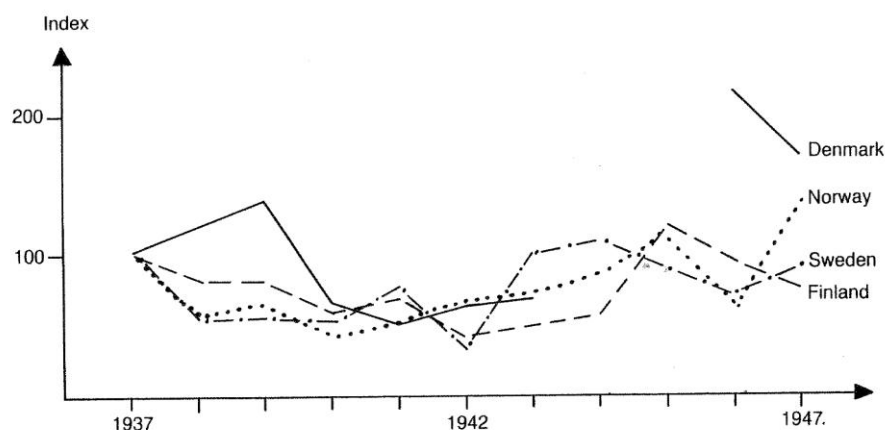
Items were stolen not only for direct consumption but also for sale in the black market. There might also have been some shift during the war towards black-market theft. With increasing real wages towards the end of the war, poverty as a cause of theft probably decreased. Still, many items were difficult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

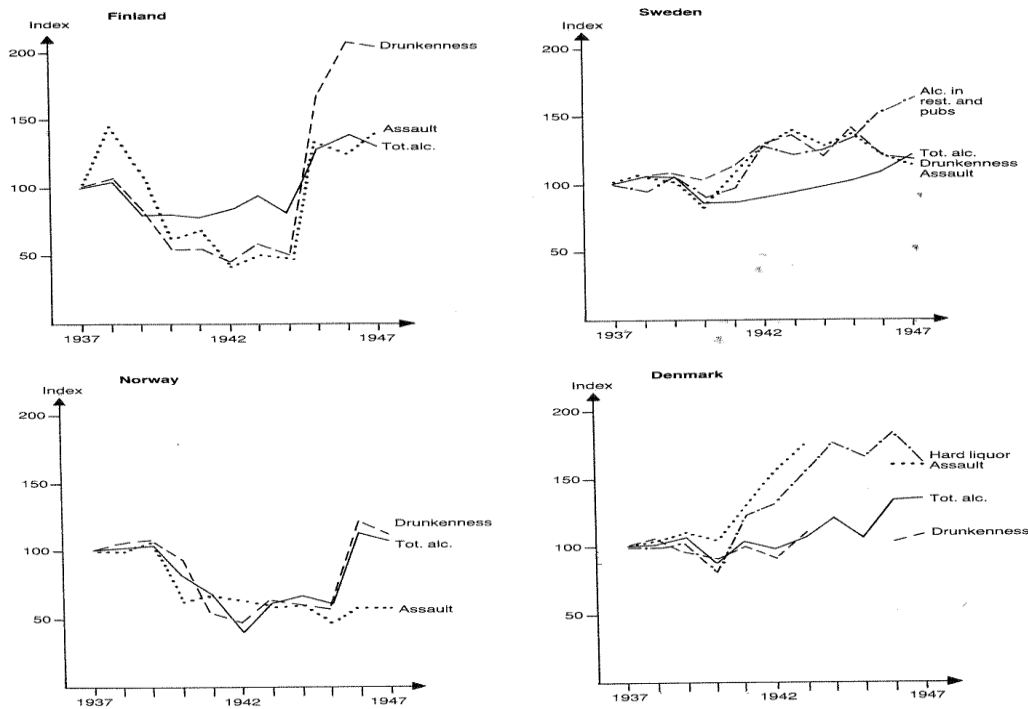


What is striking, however, is how the four countries continue their “ordinary” homicide rates throughout the war. Neither the brutalization thesis nor the thesis of moral improvement in wartime seems to receive support. However, the question of how to describe the number of homicides during war arises. 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

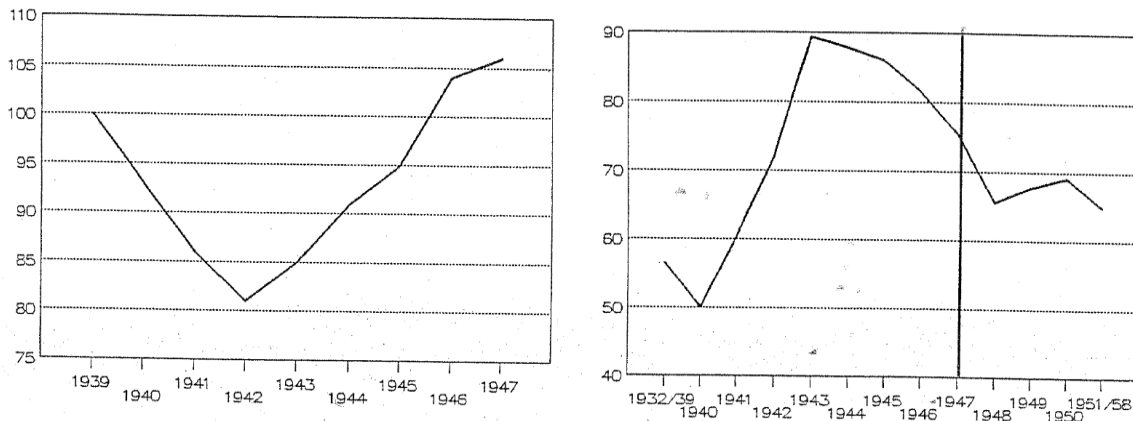
There is not much scientific literature on crimes against rationing regulations in the Scandinavian countries during the Second World War. The crimes were considered as “normal” and many if not even most families did commit crimes against these laws. This is shown in a comparison of the black market 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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Tyskland etter den første verdenskrig

Abstrakt

Krisene i Tyskland etter den første verdenskrig og på 1920-tallet var svært forskjellige fra den islandske bank- og finanskrisen i våre dager, både med hensyn til årsaker og konsekvenser – og måten tyskere versus islendinger forholdt seg til krisene på. Forskjellene er hovedgrunnen til interessen for «Tyskland etter den første verdenskrig». Men det er noen likhetstrekk, i den forstand at de tyske krisene var økonomiske og finansielle også.

Økningen i den økonomiske kriminaliteten og vinningskriminaliteten i Tyskland i årene 1918-1923 var ikke uventet. Den var «logisk» sett på bakgrunn av knapphet, rasjonering og inflasjon. Den politiske terroren og volden som fortsatte og satte seg i den demokratiske Weimarrepublikkens stabile fase, etter at vinningskriminaliteten hadde gått tilbake til førkrigsnivå, er mer av et paradoks og derfor en større utfordring for studiet av 1920-tallets Tyskland.

Den islandske krisen, unforeseen for de aller fleste.

Den islandske bank- og finanskrisen gjelder et demokratisk land som har levd i fred med seg selv og andre i svært lang tid. Frigjøringskampen fra Danmark var ingen frigjøringskrig. Forløpet til den islandske bank- og finanskrisen var politisk i den forstand at privatiseringen av bankene var basert på en politisk beslutning. Det trengte i og for seg ikke å føre til en krise. Måten bankene ble privatisert på, med generøse andeler til inkompetente venner, og «kreativ» bokføring og nye lån for å finansiere gamle lån og nye utlån, var årsakene til at det gikk så galt og måtte gå galt, snarere før enn senere. Krisen kom likevel meget uventet. Den var *unforeseen* for de fleste islendinger. 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, privat initiativ og individualisme. Norge og Sverige var "øst" i negativ betydning; «kommunistisk», totalitær stat, knugende byråkrati, overstyrt næringsliv og servile undersåtter. Bank- og finanskrisen har vært traumatisk for islendingene, enten de var med på ferden eller sto på vent for å bli med. For de meget få som forsto hvor det bar, kom det som et sjokk at *omfanget* av krisen ble så stort og at forholdet til utlandet så vanskelig. Overgangen fra et selvbylde basert på mirakuløs økonomisk vekst til kollaps og tap av internasjonalt omdømme, var meget brutal.

Unerwartet - unforeseen i Tyskland

Historikerne diskuterer om utbruddet av den første verdenskrig egentlig var så *unforeseen*, sett på bakgrunn av våpenkappløp og spente internasjonale relasjoner. Flere 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 (Fromkin 2008). For mange tyskere var krigsutbruddet en stor opplevelse i de første feberhete månedene med nasjonal begeistring og arroganse. Den unge Adolf Hitler var en av dem, *überwältig von stürmischer Begeisterung*. Andre var skeptiske fra første stund, og stadig flere etter som seieren lot vente på seg. De mange, unge døde gjorde et voldsomt inntrykk. Det la seg stemning av død over byen, meldte Martin H. Geyer fra München. «Eine Todesstimmung machte sich breit». (Geyer 1994 (A), side 36). At krigen varte så lenge, og Tyskland tapte var meget *unforeseen* etter fire krigsår med militær sensur og propaganda om at seieren var nær. «States do not plan during wartime for their defeat. Germany during The First World War was no exception.» (Bessel 1995, side 49). Et så uforutsett og ydmykende nederlag var mer enn de fleste tyskere kunne ta. Men demobiliseringen var en suksess, takket være seddelpressen som dekket utgiftene. Kritikerne advarte. Tyskland levde på lånt tid, regnskapets dag måtte komme. Men selv ikke kritikerne regnet med at regnskapet ville gå så meget i minus, og at inflasjonen skulle føre til at den tyske mark mistet enhver verdi. Det tyske keiserdømmet gikk med i dragsuget i november 1918, etter at generalene hadde innsett at krigen var tapt og massene gikk på barrikadene mot det gamle regimet, i det som senere ble kjent som «den tyske revolusjonen.» Tyske sosialdemokrater kom i regjeringsposisjon, meget uventet for dem selv også og neppe så ønsket heller. 1)

En kriminalitetsutvikling man burde ha regnet med.

Standardverkene om Tyskland etter den første verdenskrig omtaler økningen i den økonomiske kriminaliteten og vinningskriminaliteten som typisk for kriminalitetsutviklingen. Krigens (og etterkrigstidens) kriminalitet er «økonomisk kriminalitet», konkluderte Moritz Liepmann i sitt pionerarbeid. «Kriegskriminalität ist wirtschaftliche Kriminalität». (Liepmann 1930, side 69). «Økonomisk kriminalitet» i en vid betydning; lovbrudd begått både av og mot industri og næringsliv, i en periode da tyskere manglet det meste, for både næring og tæring. 2) Tradisjon og autoritet sto for fall. «The basic norms of civil order had broken down.» (Peukert, side 150). Martin Geyer fornemmet en eksistensiell krise; «eine fundamentale Krise des Rechtsbewusstseins.» (Geyer 1994 (B), side 337).

Det forundrer ikke at den økonomiske kriminaliteten og vinningskriminaliteten økte. Tyskerne tusket til seg og stjal fra hverandre på grunn av mangel og nød; råvarer, industrielt utstyr, mat, klær, penger m.m. - og mange andre tenkelige og utenkelige varer og gjenstander som egnet seg som byttmiddel. Husmødre stjal mat til sine sultende barn, mat som var rasjonert eller for dyr for den menige, tyske familie. For den arbeidsløse kom maven før moralen. For de heldige som fortsatt var i arbeid ble det hamstret på lønnsdagen, før pengene tapte seg i verdi. Sebastian Haffner mintes den månedlige lønnsutbetalingen til sin far, den preussiske embetsmannen:

«Hvor mye lønnen var verdt, var vanskelig å avgjøre. Verdien svingte fra måned til måned; en gang kunne hundre millioner være en betydelig sum, noen dager senere var en halv million bare lommepenger. Iallfall prøvde far så raskt som mulig å kjøpe et månedskort til T-banen ... Så ble det utstedt sjekker til husleie og skolepenger, og om ettermiddagen gikk hele familien til frisøren. Det som så var igjen, ble overlatt til mor – og neste dag stod hele familien, også hushjelpen, bare ikke far, opp ved fire-femtiden om morgenen og reiste med drosje til engroshandelen. Det ble arrangert et storinnkjøp, og i løpet av en time ble embetsmannens månedslønn omsatt til holdbare matvarer. Kjempestore oster, hele skinker, poteter i femtikilos sekker ble

lastet inn i drosjen. Hvis plassen ikke strakk til, skaffet hushjelpen sammen med en av oss en håndkjerre i tillegg. Ved åttetiden, før skolen begynte vendte vi hjem, mer eller mindre utrustet for en måneds beleiring. Og det var det.» (Haffner 2009, side 53).

Så lenge *det* varte. Da den økonomiske krisen var på sitt verste fikk opprørspolitiet i Berlin utbetalt lønn fem ganger daglig. Byfolk hjemsøkte landsbygden i helgene, med ryggsekker og matspann. Tyskere kom fra andre kanter av landet - som *Lebensmitteltouristen* - for å hamstre før vinteren satte inn. Bevæpnede gjenger tok seg til rette, selvhjelp – *Selbsthilfe* – het det seg. Høsten 1923 sto Berlin i plyndringens tegn. Demonstrasjoner, oppløp, sammenstøt og kollektiv «selvhjelp» gled over i hverandre. Den 15. november 1923 ble det satt rekord, med over tusen tilfeller av «kollektiver Übergriffe auf Geschäfte». (Lefèvre 1994, side 353). Svartebørsen varierte fra enkel bondehandel, til organiserte nettverk som distribuerte og solgte en gros. De «profesjonelle» smuglet både til og fra utlandet, alt etter prisforskjeller og etterspørsel. «Hullet i Vest» - «Loch im Westen» - ble et begrep, og synonymt med storskalasmuglingen etter den første verdenskrig. 1920- tallet var storhetstid for profesjonell smugling i Europa og Amerika, for mer enn 96 % smuglersprit - som hadde sitt marked i de nordiske landene (Johansen 1994). Tyskerne hadde et hat-kjærlighetsforhold til profitører og spekulanter, som amerikanere til gangstere og nordmenn til spritsmuglere. De fleste handlet med dem, de færreste kunne tenke seg å begynne i pris- og rasjoneringspolitiet eller tolletaten. Storindustri og offentlige arbeidsgivere kjøpte «svart» for å unngå at arbeidere og funksjonærer kom utsultet og arbeidsudyktige på jobb. Bildet av profitørene og spekulantene svingte mellom myte, fascinasjon og virkelighet. De ble hyppig portrettert i 1920-tallets massekultur. Gambling og lykkespill ble et symbol for livet. Morgendagen var uvisst, man levde i nuet. *Morgen ist ungewiss. Nur das heute gilt.* Men profitørene og spekulantene ble foraktet også, og beskyldt for alt som gikk skakt og dårlig. Myndighetene i Bayern frarådet kjøpmenn å stille ut luksusartikler i vinduene sine, for å unngå å provosere de sultne. «Wer kaum Brot kaufen konnte, für den war jeder Luxus provozierend.» (Geyer 1994 (B), side 324).

Økonomiske lovbrytere og andre vinningskriminelle gjorde ikke noe mer enn å utnytte tidens «iboende» muligheter. De skapte dem ikke. «Inflation profiteers such as big businessmen came only gradually to turn the situation to their ends.» (Kolb 2005, side 183). Enda flere kunne ha grepet muligheten. «Nuhr sehr langsam wurden sie sich der Folgen der Inflation bewusst». (Geyer 1994, side 212). De illegale markedene skyldtes ingen kriminell konspirasjon. Den «svarte» etterspørselen meldte seg tidlig under krigen, etter at hundretusenvis av bondegutter var blitt beordret til fronten. Industriarbeidere ble oftere fritatt, dersom de arbeidet i krigsrelevant industri. Gardshester ble rekvirert i titusentall. Jordbruket ble sterkt nedprioritert med hensyn til vedlikehold og utstyr. Avlingene sank, samtidig som importen stanset opp på grunn av den allierte blokaden, som varte til forsommeren i 1919 (Moeller 1986). Tyskerne sultet. «The visitor could easily pick out the average German by his sallow complexion, listless gait, and obvious lack of vigor – all manifestations of malnutrition.» (Vincent 1985, side 147). Verst gikk det utover barna og de som ble syke av «vanlige» årsaker og kunne ha berget livet viss det ikke hadde vært for underernæringen. Over 700 000 tyskere kan ha mistet livet på grunn av denne blokaden, under og etter krigen. At det oppsto en landsomfattende svartebørs til tross for, eller snarere på grunn av rasjonering og tvangsrekvirering av avlinger, er meget «logisk» kriminologisk sett.

Det var stor knapphet og rasjonering i de landene som vant krigen og i nøytrale land også. Men det er meget sannsynlig at vinningskriminaliteten økte mer i Tyskland frem til slutten av 1923, enn i de andre landene. Inflasjonen ble ytterligere trigget av den franske okkupasjonen av Ruhr samme år. «Den uhemmede inflasjonen i 1923 innebar i realiteten at den tyske stat gikk konkurs.» (Magnusson m.fl. 1986, side 56).

Da den tyske marken mistet sin verdi søkte tyskerne tilflukt i tingenes egenverdi, *Die Flucht in Die Sachwerte*. De betalte med eller byttet vare mot vare. Bryggearbeiderne i Hamburg nektet å losse last som var verdiløs som byttmiddel. De som fortsatt hadde penger investerte; i aksjer, utenlandsk valuta, gull, malerier og kostbare bokutgivelser m.m. Alle ville kjøpe noe for pengene sine, men de færreste så seg tjent med å ta seg betalt på den måten. Den registrerte vinningskriminaliteten nådde et angivelig historisk toppnivå med inflasjonsrekordene i 1923. Da ble det avsagt 365 000 dommer for vinningskriminalitet i motsetning til 115 000 i 1913. Heleridommene ble syv doblett. Etter at Tyskland gikk tilbake til den tradisjonelle gullstandarden tok det knapt ett år før vinningskriminaliteten var tilbake til førkrignivå. «Kriminalitetsbølgen» skremte landsbygden og den eldre generasjon. Ryktene om lettsindige kvinner, alkoholmisbruk og kjønnssykdommer likeledes, selv om kvinnefrigjøringen gjaldt et mindretall, og alkoholkonsumet og kjønnssykdommene gikk *tilbake* etter krigen. Tyskland var ikke et samfunn i kollektivt moralsk forfall selv om tyskerne stjal og handlet «svart». De gjorde bare unntak for seg selv fordi de mente å ha grunn til det, uten å miste synet av forskjellene mellom ditt og mitt. Økningen i den registrerte vinningskriminaliteten frem til 1924 var en tidsbegrenset, normativ unntakstilstand, fordi tyskerne hadde det så vanskelig i de årene. Dersom økningen hadde vært en følge av en generell normløshet og kynisme, ville nok ikke vinningskriminaliteten ha gått så raskt tilbake da pengeøkonomien begynte å fungere igjen.

Fiender av republikken

Studiene av Weimarrepublikken trekker i ulike retninger når det gjelder republikkens muligheter for å overleve. «Tradisjonalistene» mener at republikken fikk sin fødsel på et dårligst mulig tidspunkt. «The Weimar constitution, in fact, was simply not given a chance of proving itself». (Peukert 1991, side 42). Republikkens «stabile» periode 1924 - 1928 er en myte, mener Richard Evans. «There was in reality no sign that it was becoming more secure, on the contrary...» (Evans 2004, side 6). Den politiske volden avtok *ikke*, presiserer James Diehl. «The streets of Germany during the “golden years” were in a very real sense filled with troops carrying out a clandestine civil war.» (Diehl, side 194) Weimar«revisjonistene» innvender at det ikke var *gitt* at republikken ville gå til grunne. «The Weimar Republic was a society characterized by violence. But this violence did not mean that the Republic was doomed to failure from the start. There were many opportunities to rein the violence and to control it.» (Ziemann 2003, side 91) Peter Fritzsche «provoserer» allerede i tittelen, i sin artikkel fra 1996; *Did Weimar Fail?* «Alt» kunne ha skjedd, er hans svar. «The Weimar Republic remains compelling not because of the glimpses of social democracy and social welfare it offers, but because its public life was formed so forcefully that nothing was certain and everything possible». (Fritzsche 1996, side 633). Gideon Reuveni omtaler 1920-tallets Tyskland som de nye muligheters tid (Reuveni 2005.)

Ingen gikk på barrikadene for å dø for keiser Wilhelm. Politiet i Berlin holdt en meget lav profil i de kritiske dagene under den tyske revolusjonen. Politifolk på vakt ble aldri avvæpnet. Den jobben gjorde de selv. «The prompt capitulation of the uniformed Schutzmannschaft remained a source of evident unease of the police years afterword.» (Liang 1970, side 32). Konservative partiledere, byråkrater og industrialister var egentlig i mot republikk og classesamarbeid, men valgte side med republikken til fordel for et midlertidig samarbeid med den moderate delen av arbeiderbevegelsen, av frykt for det som verre kunne bli. De var «fornuftsrepublikanerne» så lenge det syntes «fornuftig», i påvente av omkampen mot republikk og fagbevegelse. Høyresiden av tysk akademia svevet mellom åndfull elitisme og høyreekstrem, antisemittisk aktivisme (Hammerstein, 1995). Ideologiske premissleverandører og «frikorps»-aktivister, uten andre forutsetninger enn ekstrem nasjonalisme og akademisk hovmod? Byråkrater, dommere og generaler identifiserte seg med «staten» i en abstrakt, autoritær betydning, fjernt fra demokrati og republikk. Generalene så seg som noe mer enn statens beskytter. I en dypere forstand var *hæren* staten (Seeckt 1929). Byråkratiet forble på plass, med sine førdemokratiske rutiner og kultur. Dommerne brukte knyttneven mot arbeiderbevegelsen og tok mildt på de høyreekstremerne. Opprørspolitiets ledere levde i 1800-tallets tyske politistat, politisk sett. Antisemittiske «vitser» og nidviser om sosialdemokratiske ministre var populære innslag i opprørspolitiets offisersmesser.

Generalene forholdt seg aktive og passive til konfliktene og kuppforsøkene, etter sitt eget forgodtbefinnende. «For civilians and their mode of life they had nothing but withering contempt. They were taught to idealize force». (Halperin 1946, side 10). Den politiske venstresiden ble likvidert med nådeløs, «militær» beslutsomhet. I desember 1918 og første halvdel av 1919 ble regjeringen utfordret av spontane arbeideroppstander, og svermeriske utbrytergrupper på venstresiden som okkuperte offentlige bygninger og beleiret regjeringskontorene i Berlin m.m. Samarbeidet mellom sosialdemokratiet og generalene ble innledet i Berlin i desember 1918, da den politiske situasjonen var usedvanlig anspent. Generalene var rede, men satte sin pris; hærens autonomi. «Frikorpsene» fikk sin sjanse, fordi hæren var tallmessig underlegen. «Frikorpsene» omfattet et mylder av autonome, udisiplinerte kampgrupper som fulgte sine karismatiske ledere i ett og alt. Den sosialdemokratiske forsvarsministeren Gustav Noske opparbeidet seg en viss respekt blant «frikorpsene» ved å gi dem frie tøyler. Det var ikke han imot å være «blodhund» erklærte han før oppgjøret med «spartakistenes» venstrefløy, som hadde gått til kamp for en tysk rådsrepublikk. *Einer muss der Bluthund werden, ich sheue die Verantwortung nicht*. Men da trengte han hjelp fra «frikorpsene», uten at det borget for noen lojalitet fra den kanten. Minst 1200 menneskeliv gikk tapt i kampene i Berlin vinteren og våren 1919.

Weimar-«revisjonistene» stiller seg kritiske til bildet av Weimarrepublikken som en sammenhengende krisetid. Historikere er blitt forført av den hyppige bruken av begrepet «krise» som 1920-tallets skribenter la noe annet i enn man gjør i dag. «Krise» kunne være noe positivt, i betydningen nye muligheter etter at den «historiske» krisen var overstått. (Föllmer, Graf 2005). Menneskers evne til «normalisering» av det ekstraordinære, og til å leve relativt bra i øyeblikket eller i håpet, kan også ha bidratt til at Weimarrepublikkens Tyskland ble opplevd som mindre dramatisk, enn antatt i ettertid. 1920- tallet var *Die Zeit der Jugend*, med grensesprengende kunst, musikk, teater og livsstil. Unge mennesker som studerte eller var i arbeid hadde mange spennende tilbud i 1920-tallets liberale Berlin.

«Midt i så mye lidelse, fortvilelse og bunnløs fattigdom vokste det frem en feberaktig 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 brukt raskere enn noen gang. Utallige barer og nattklubber dukket opp. Unge par virvlet gjennom gatene i fornøylesstrøkene, som en film om samfunnets ti tusen rikeste.» (Haffner 2009, side 50).

Weimar«revisjonistene» nyanserer, men motbeviser ikke at 1920-tallet var en meget vanskelig tid for flertallet av tyskerne; materielt, mentalt, familiært, sosialt og politisk, enten man kaller disse vanskelighetene for «krise» eller ikke. «Revisjonistene» undervurderer hatet, revansjelysten og sorgen etter den første verdenskrig, den militante blokkdannelsen mellom partiene, den politiske volden og drapene, antisemittismen, fattigdommen, arbeidsløsheten, sulten, desperasjonen og håpløsheten blant dem som bare hadde fra hånd til munn selv om de var i arbeid. Eksempelene på 1920-talls-optimisme er eksklusive (Föllmer, Graf 2005). Kampfellesskapet til de unge slåsskjempene på de politiske ytterfløyene var en livsstil, men det var krise nok da de slo hverandre helseløse eller til døde i kampen om «det offentlige rom». Riksdagen var ikke uten lovgivende evne, og politisk verdighet (Mergel 2002. Reithel 2005). Men Riksdagen ble satt side fra begynnelsen av 1930 likevel. Presidenten styrte ved hjelp av «nødlover». Nazister og kommunister vulgariserte forhandlingene med politisk propaganda og sjikane.

Et voldelig Tyskland?

Om det «måtte» gå slik med Weimarrepublikken er et spørsmål som blikket over i det spekulative. Da kan man like gjerne spørre om republikken kunne ha gått til grunne mye tidligere. Weimarrepublikken ble etterfulgt av et politisk terrorregime, det er viktigst i vår sammenheng, predestinert eller ikke. Den politiske volden på 1920-tallet er en av *flere* mulige årsaker, og muligens ikke den viktigste heller. Men den gav nasjonalistiske tyskere en referanse for hvordan det etter hvert «kunne ordnes opp», med jøder, sigøynere, homser, kommunister, sosialdemokrater, liberalere, republikanere og demokrater. Engstelige tyskere som ble skremt av den politiske volden og lengtet etter «ro og orden» - om nødvendig på bekostning av borgerlige rettigheter – stemte på nazistene av *den* grunn.

Weimarforskningen spriker i analysene av den politiske volden. En retning hevder at volden preget hele 1920-tallet. Tyskland fortid var politisk autoritær, men volden begrenset seg til det retoriske for partienes og borgernes vedkommende. Statens voldsmonopol var udiskutabelt frem til 1918/1919. Det «radikalt» nye med 1920-tallet var privatiseringen av den politiske volden. Weimar «revisjonistene» innvender at volden begrenset seg til det «symbolske» i annen halvdel av 1920-tallet. Politiske motstandere slåss om det offentlige rom, «brøt opp» hverandres møter og demonstrasjoner, erobret motstanderens faner og slåss i henhold til stilltiende regler om ikke å lemleste og drepe.

Mørketallene - *die Dunkelziffer* - er store for den tradisjonelle volden også. Standardverkene er likevel samstemte på at voldskriminaliteten stagnerte i Tyskland under og etter den første verdenskrig. De mannlige «risikogruppene» var ved fronten, eller ventet på å bli demobilisert. Nedgang i alkoholkonsumet og svekkelse av folkehelsen som følge av underernæring, er to andre hypoteser. Tysk politi og påtalemyndighet sto overfor mange prøvelser og nye oppgaver etter krigen.

Anmeldelser som aldri ble fulgt opp gav en dårlig signaleffekt. Nervøse krigsveteraner som skamslo kone og barn var ingen prioritert politioppgave:

«They were «destroyed men and «wounded patriarchs». Incapable of reintegration into civilian life, haunted by wartime memories, many committed suicide- rates rose at the end of the war – drank themselves into oblivion or tried to reassert their authority by beating their wives and children.» (Mazower 1999, side 90).

Grupper av kvinner og unge menn tømte butikker for mat og slåss med butikkeiere og politi i de sultne årene etter krigen, og i 1922/23 da inflasjonen gjorde marken verdiløs. Flere forskere avskriver den volden som «apolitisk», på linje med hungeroppløpene i europeiske storbyer på 1700- og 1800-tallet, og glemmer at konsekvensene av slike oppløp var meget «politiske.» «Rekvireringen» av mat fra bondegårdene som ble foretatt av organiserte arbeidere med våpen i hånd, var politisk i sin narrative. De mente å være i sin rett, på en helt annen måte enn tradisjonelle innbruddstyver. Bøndenes borgervern som møtte «rekvirentene» med våpenmakt var også politiske. Myndighetenes brutale rekvirering av pålagte kvoter av årets avling likeledes, i den repressive betydningen av politikk. Det skapte stor bitterhet blant bøndene, og gjorde dem mottagelige for nazistiske svadaen om bonden og landsbygden som det egentlige Tyskland.

1920-tallets politivold kom i skyggen av den brutale tilstedeværelsen av *Reichswehr* og «frikorps». I flere tilfeller ble volden utløst av nervøse politifolk som skjøt i panikk mot demonstranter og tilskuere. Langt oftere var det en bevisst strategi, som under «krigen» i Sachsen i mars 1921. Da gikk et tungt bevæpnet 4500 mann sterkt opprørspoliti til angrep mot 3000 fabrikkkokkupanter og streikende arbeider som hadde tatt kontroll med de kjemiske fabrikkene i Halle/Merseberg. Tapene var store på begge sider, 145 arbeidere og 35 politi. Offiserene i opprørspolitiet var politisk reaksjonære, i motsetning til lokalpolitiet som var pragmatikere og oppfattet polititjenesten som det muliges kunst. De menige i opprørspolitiet var idrettsinteresserte bondegutter som ikke forsto seg på politikk. Men de opparbeidet et veldig hat overfor de «røde», som følge av de brutale gatekampene i tyske storbyer. Kommunistiske utbrytergrupper og autonome syndikalister utførte en rekke aksjoner som var meningsløse politisk og strategisk, som okkupasjon av folketomme avisredaksjoner, forlag og offentlige bygninger. En uthalingstaktikk hadde gjort jobben for myndighetene etter hvert som sult og kjedsomhet hadde trettet ut fantastene. Men «haukene» i politiet ville ikke være dårligere enn hæren, selv om det kostet menneskeliv å angripe kampklare forsvarsstillinger.

Wolfgang Kapp og general Walther von Lüttwitz sitt kuppforsøk i Berlin våren 1920 var foranledningen til «Ruhrkrigen» samme år, som kostet over 1200 menneskeliv. *Freikorps Eberhardt* sto for den militære delen av kuppet. General Seeckt nektet å forsvare regjeringen. Han ville ikke beordre soldatene til kamp mot sine «våpenbrødre», mytterister eller ikke. Regjeringen flyktet fra Berlin. Fagbevegelsen erklærte generalstreik. Departementene nektet å følge ordre fra en kuppmaker. Kuppforsøket var over nesten like raskt som det hadde begynt. Generalstreiken også, bortsett fra i Ruhr hvor protestene fortsatte av andre grunner, med brodd mot *Reichswehr* som arbeiderne hadde et meget bittert forhold til fra gammelt av. Streikene, og okkupasjonene av fabrikker og offentlige bygninger i Ruhr var ingen kommunistisk konspirasjon, som generalene hevdet. Kommunistpartiets ledelse var skeptisk til frittstående militære «eventyr.» Men det ene utspillet tok det andre. Hæren og de «frivillige» ble fordrevet av væpnete arbeidere, som hadde

kamperfaring fra den første verdenskrig. Et slikt prestisjenederlag var mer enn generalene kunne ta. Hevnen kom i form av en regulær invasjon, og «standrett» med vilkårlige henrettelser. Arbeidere «ble skutt under flukt». Kvinner og barn mistet livet fordi de var på feil sted til feil tid. Personer som så «mistenkelige» ut ble slått i hjel. En ung mann ble tatt av dage fordi han hadde på seg en dress som minnet om de revolusjonære matrosene under den tyske revolusjonen. En amerikansk journalist ble skutt «under flukt», fordi notatene hans fra et intervju med arbeiderledere ble «tolket» som kommunistisk propaganda (Eliasberg 1974).

Totalitære grupperinger som «frikorps», «sivilgarder», «Stahlhelm», borgervern, streikebryterorganisasjoner og andre «frivillige» omfattet et stort antall tyskere, tatt i betraktning at Tyskland var blitt et demokratisk land. Beregningene varierer fra 1 1/2 millioner til i overkant av 150 000, avhengig av definisjon og avgrensning. «Frikorpsene» - også kjent som *Ein Heer in Kleinem* - var de mest brutale. Ved flere anledninger frem til 1920 ble de mobilisert i mangel av kampklare hæravdelinger, i andre tilfeller i samordnede operasjoner, som under «Ruhrkrigen». De «frivillige» viste et hat og en brutalitet som hadde borgerkrigens klassiske kjennetegn. En av dem sendte et skrytebrev til sin mor om at han hadde vært med å drepe ti Røde Kors sykepleiersker, og hånet deres minne med nedsettende omtale om hvordan de gikk døden i møte.

Historikerne er uenige om årsakene til at «frikorpsene» var så brutale. De var veteraner fra stormavdelingene ved Vestfronten, er en hypotese (Waite 1952). Disse eliteavdelingene hadde levd sine egne liv, og klarte ikke overgangen til det sivile liv. «Frivillige» fra krigen i Baltikum i 1918- 1920 er en annen hypotese. Nærkampene i Baltikum var «personlige», meget brutaliserende og moralsk nedbrytende. De «frivillige» i Baltikum gjorde ingen forskjell mellom soldater og sivile (Lielevicius 2000). Begge hypoteser har noe for seg. «Frikorpsene» fra Vestfronten var ikke vanlige soldater som kun hadde deltatt i den «industrielle» krigføringen, men utvalgte stormtropper som var forherdet etter morderiske nærkamper med fienden. Et økende antall «frikorps»-medlemmer var uten krigsbakgrunn, men ikke mindre hatefulle av den grunn. Hele kull med juss- og medisinstudenter stormet fra lesesalene til barrikadene for å slåss og drepe. Det krigerske mannsfelleskapet og volden var en selvforsterkende prosess. Flertallet av de «frivillige» hadde meget vage forestillinger om politikk, og visste bare var de var *imot*. Flere var med for kampen og plyndringens skyld, og skilte seg lite fra senere tiders voldsgjenger i europeiske storbyer. Grupper av demobiliserte «frivillige» fra krigen i Baltikum konverterte til ran og innbrudd.

Hæren slåss mot de «røde» for å forsvare republikken, trodde regjeringen. Visjonen om et nasjonalt diktatur, ved å provosere venstresiden til væpnet kamp for å skaffe seg et påskudd for et høyrekupp, var nok nærmere sannheten. Tyske sosialdemokrater klarte aldri å demokratisere hæren.

«Frikorpsene» og de høyreekstreme kampgrupper på den politiske høyresiden gikk igjennom flere faser: «Borgerkrigene» 1918-1920. Terror og «utvalgte» politiske likvideringer i første halvdel av 1920 tallet, med drapene på finansminister Mathias Erzberger den 26. august 1921 og utenriksminister Walter Rathenau den 24. juni 1922 som de mest sjokkerende. «Bygerilja», gatekamper, sammenstøt med politiet og politiske mishandling og drap på «menige» motstandere fra midten av 1920 tallet.

En rekke «korps» ble forbudt og gikk under jorden, for senere å høste ny næring da kommunistene dannet *Rote Frontkämpferverband RFB*, og sosialdemokratene *Reichsbanner*. «Each benefited from the existence of the other, which provided for its own continued existence.» (Diehl, side 136) RFB, som det var flere meninger om innen det tyske kommunistpartiet, var en aggressiv og til tider voldelig organisasjon, som så seg som spydspissen for en tysk oktoberrevolusjon. Våren 1932 gikk RFB-gjengene til bakholdsangrep mot politiet i Berlin etter at myndighetene omsider hadde bestemt seg for å ta et oppgjør med de *nazistiske* voldsgjengene. *Reichsbanner* var en defensiv organisasjon, men militær i sin fremtoning. Det opprørte sosialdemokrater som hadde vært antimilitarister fra ungdommen av og krigsveteraner som hadde gått evig lei av krig og disiplin.

Den politiske volden i 1920-tallets Tyskland kom i skyggen av Stalins Sovjet og Mussolinis Italia. Men det spørres hva man sammenligner med. Den moderate delen av det borgerlige Tyskland valgte republikken. Tysk arbeiderbevegelse hadde ingen ønsker om væpnet revolusjon og «proletariatets diktatur». Spartakistene var fåtallige og innbyrdes uenige. Generalene visste det. De innledet til og med et hemmelig militært samarbeid med Sovjet på 1920-tallet, i felles front mot gamle fiender i Vest. Frittalende frikorpsaktivister innrømte blankt at de var mye mindre opptatt av slåss *mot* kommunistene, enn *for* nasjonale tyske interesser i Tyskland og Baltikum. Likevel varte den politiske volden ved og satte seg i annen halvdel av 1920-tallet. Første halvdel av 1920-tallet var en rolig tid i Berlin, sammenlignet med gatekampene og de politiske drapene fra midten av 1920 – tallet (Liang 1970).

Tiden etter den første verdenskrig var tilspisset med arbeidskonflikter, sosiale motsetninger og inflasjon i USA, Frankrike, England og de nordiske landene også. Den økonomiske depresjonen i 1929 rammet vidt og uten skånsel. Men politisk vold kom aldri på den politiske dagsordenen. Demokratiet sto prøven. Det statlige voldsmonopolet forble intakt. Skjønt; en slags «konsolidering» fant sted i Tyskland også, etter at nazistene kom i regjeringssposisjon og fikk 44 % av stemmene ved riksdagsvalget den 5. mars 1933. «Nå blir det lettere å føre kampen, for vi kan ta alle statens midler i bruk,» skrev en fortrøstningsfull Goebbels i sin dagbok (Magnusson m.m. fl 1986, side 7).

Den «økonomiske» kriminaliteten og vinningskriminaliteten i Tyskland i første halvdel av 1920-tallet overrasker ikke, like lite som at tyskerne skjerpet seg da superinflasjonen tok slutt og det kom mat på bordet. Det som utfordrer det historisk-kriminologiske blikket og oppfordrer til nye studier, er den politiske volds-kriminaliteten som fortsatte etter at vinningskriminaliteten hadde gått tilbake.

Påstanden om at den politiske volden bare var «symbolsk» stemmer ikke med de 310 politiske drapene som ble begått i årene 1919-1931. 3) Bildet av nasjonalistiske tyskere som «lov og orden» er en forfalskning, selv om de var autoritære så det rakk. Men autoritære i et land uten autoritet, for å si det med Anne Lise Thimme. «Autoritäre Menschen im Autoritätslosen Staat.» (Thimme 1969, side 141). Lenins harselas over tyske kommunister; at de ikke fikk seg til å besette en jernbanestasjon uten å ha løst billett, står like lite til troendes. Det var kanskje ingen mangel på «legitimitet», men mange motstridende oppfatninger av hva som var legitimt.

Hva skjønte tyskerne?

1920-tallets Tyskland var en meget politisk tid, med usedvanlig høy valgdeltagelse og et gatebilde som gav inntrykk av at det alltid var noe på gang. Tyskere skrev mye i og om sin samtid; generaler, frikorps- ideologer, nasjonalister, politiske ledere og journalister, uten å skjøne så mye av den grunn. «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) Det var alltid noen andre som hadde skylden. «Germans retreated into an illusory world in which the problems were invariably the fault of others» (Bessel, side 183). Tyskerne opplevde fredsbetingelsene som meget urettferdige, selv om de økonomiske følgene ikke ble så dramatiske som fryktet (Feldman 1993). Innrømmelser ble gitt fra de alliertes side etter krigen og i løpet av 1920-tallet, men for et ydmyket og sorgtungt folk som hadde levd med illusjonen om tysk seier var det til liten trøst. Hatet mot utlandet satte seg, og fikk ny næring med ryktene om grådige utlendinger som kom til Tyskland for å kjøpe billig.

Generalene hadde knapt anbefalt våpenhvilen i 1918, av tvingende militære grunner, før de la skylden på «politikerne». Den tyske hæren ble aldri beseiret, men dolket i ryggen av sine egne i nasjonens skjebnetime, het det seg. «Dolkestøtlegenden» satte seg meget raskt, og ble delt av mange. «...die Schuldfrage wurde zum Kernstück des politischen Kampfes» (Thimme, side 76). Veteraner fra krigen i Baltikum nærte sin myte: Tyskland hadde seiret i øst. «Germaniseringen» av de baltiske landene var en suksess, og kunne ha blitt det nye Tyskland, hadde det ikke vært for svikerne i Berlin. Selv under den franske okkupasjonen av Ruhr i 1923 formanet Hitler sine tilhengere til å hate de «novemberkriminelle» fremfor franskmennene. «Nicht nieder mit Frankreich! Sondern nieder mit den Novemberverbrechern!» (Riecker 2009, side 84).

Jødene fikk skylden for det meste; krigsnederlaget, revolusjonen, inflasjonen, sulten, den økonomiske kriminaliteten og misbruk av velferdsordningene. Jødene var overrepresentert ved fronten under den første verdenskrig, etter å ha meldt seg som frivillige for å bevise at de var tyskere som gode som noen. Stolte, patriotiske tyske jøder i uniform, som snakket et bedre tysk enn tyskere flest var et kjent innslag. Likevel fikk de «skylden». Plyndringen i tyske byer hadde en understrøm av jødehat, som munnet ut i regulære forfølgelser i jødiske boligområder i 1922/23. Tyske jusstudenter mobbet jødiske professorer uten at universitetsledelsen reagerte. (Wildt 2002). Professorer som var nazister og hetset jøder fikk være i fred for sine «nøytrale» kolleger. Så pass fikk jødene tåle av hensyn til den akademiske frihet, var unnskyldningen. I Hitler-Tyskland ble jødene pålagt å bære den gule stjernen, for at man skulle kunne se at de var jøder. Klarere kunne det ikke sies at antisemittismen rettet seg mot en gruppe tyskere som *ikke* skilte seg.

Jødene ble forbundet med metropolen. Jødehatet var sterkere på landsbygden enn i byene. Det moralske forfallet skyldes det dekadente livet i storbyen, advarte psykiateren, professor Emil Kraepelin i München. Han hadde mange tyske akademikere med seg i det. Landsbygden og bøndene var det egentlige Tyskland, som måtte forsvares dersom tyskerne skulle gå seierrike ut av den nasjonale frigjøringskampen (Baranowski 1995).

Mytene om «dolkestøt», jødisk konspirasjon og storbyens fordervelse satte seg i det tyske narrative lenge før Hitler gjorde sin debut, og skvulpet videre i de ideologiske

understrømningene i Weimarrepublikkens stabile år, sammen med voldshandlingene og drømmen om det nasjonale diktatur.

«Hang over» og ettertanke i Island

Den islandske bank- og finanskrisen har vært meget bitter. Raseriet til demonstrantene er ukjent i nyere islandsk historie. Man må tilbake til anti NATO – demonstrasjonene etter krigen for å finne en slags parallell. Den gamle politikerklassen står uten legitimitet, og en tidligere statsminister inn for Riksretten. Men protestene har ikke bikket over i politisk vold og antidemokratiske strømninger. Den tidligere statsminister gir riktignok «utlandet» skylden. Fallerte finansvikinger skylder på «de andre», som sytende øko-kriminelle har for vane. Islendinger flest vet bedre og vedgår at «de har vært sin egen fiende», selv om de er uenige i at Island skal betale for lovbruddene til gårsdagens finanshelter. Den islandske «bakrusen» gir et depressiv og pessimistisk inntrykk. Men vi som kjenner litt til islandsk historie og kultur, vet at islendingene har en lang historie for å overvinne katastrofer og nedgangstider ved hjelp av egne krefter, og at det er en lysning ute i horisonten for Sagaøya, denne gangen også.

Noter

- 1) Faglitteraturen om Weimarrepublikken er meget omfattende, skjønnlitteraturen og memoarene også. Av plasshensyn er eksempler, sitater og henvisninger begrenset.
- 2) Moritz Liepman omtaler kurvene for “vermögenskriminalitet “ som “eine groteske Steigerung”. I 1913 ble det avsagt 79 554 dommer for «einfacher Diebstahl» og 15 845 dommer for «schwerer Diebstahl.» I 1923 hadde tallene økt til 286 178 for «einfacher» og 50 684 for «schwerer.» I 1925 var tallene tilbake på førkrigsnivå med 79 465 dommer for «einfacher Diebstahl og 16 627 dommer for «schwerer Diebstahl.» (Liepman, 1930) Richard Bessel viser til “Criminal convictions in Germany 1910-1926” med absolutte tall. “Total of people convicted “ var 555 976 i 1913, 636 817 i 1922, 823 902 i 1923, 696 668 i 1924 - og 575 745 i 1925. (Bessel, 1993.) «... mass crime on this scale had never been seen in Germany since the compilation of statistics had begun” skriver Detlev J.K. Peukert om kriminalitetsøkningen i 1922/23. (Peukert 1987) Han støtter seg til C Kennerts doktoravhandling *Entwicklung der Jugendkriminalität in Deutschland 1882-1952*, Berlin 1957. Kennert “målte” kriminalitetsutviklingen med “numbers of criminal offences per 100 000 people of responsible age.” (Figure 7, i Peukert) Tabellene viser en påfallende økning i årene 1922/23, men Bessel og Peukert skiller ikke på typen lovbrudd. Det svekker analysene. Mørketall, grovkalibret statistikk og svingninger i kontrollhyppighet maner til forbehold. En *økning* i kriminaliteten - ja, men overraskende eksplosiv og anomisk? Det synes ikke dokumentert.
- 3) Se Dirk Schuman som har skrevet en grundig bok om den politiske volden i Weimarrepublikken. (Schuman 2001). I følge hans kilder ble det begått 310 politiske mord i Tyskland i årene 1929-1931, hvorav halvparten i 1931. Schuman har rett i at tallene ikke er sammenlignbare med antall døde i Weimarrepublikkens første år (1918-1920). Relevansen av borgerkrigsmetaforen kan diskuteres når det gjelder Weimarrepublikkens siste år, men å avskrive volden som «symbolsk» stemmer ikke med hans egne eksempler og statistikk.

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Per Jørgen Ystehede

Attempting To Put It All Together

Begrepet 'krise' kommer fra det greske ordet krisis, som betyr vanskelig situasjon, avgjørende vendepunkt og/eller plutselig forandring. 'Krise' deler ikke kun et etymologisk slektskap med begrepet kriminalitet (crimen), men er også blant de ordene – i likhet med for eksempel revolusjon og organisme – som tidligere ble brukt innen naturvitenskapen om naturfenomen og prosesser, men som nå også favner beskrivelser av en virkning på det menneskelige kollektiv – samfunnet, eller kan hende mer presist, den sosiale kroppen.

To av de mest sentrale trådene som går gjennom artiklene samlet i denne antologien og knytter de sammen er nettopp 'krisis' og 'crimen'. Til tross for at leseren blir gitt et innblikk i mange ulike steder og hendelser i ulike historiske epoker, omhandler artiklene 'kriser' og 'kriminalitet'. Der de greske legene Galen og Hippokrates brukte begrepet 'krisis' for å beskrive endringer i en sykdomsutvikling i menneskekroppen – bruker bidragsyterne her 'krise' for å søke forstå endringer i samfunnsutvikling og den sosiale kroppen. Det som også deles med Galen og Hippokrates metode og som er karakteristisk ved *When the Unforeseen is seen* er at det er diagnostisk prosjekt. Her undersøkes hva forløpet var (symptomene), blir gitt deskriptive bilder av utviklingen og konsekvensene (for eksempel de mentale og det materielle skadeomfanget). Videre, blir kriminalitet benyttet som en måle-enhet på krisens størrelse og alvor. 'Kriminalitet' blir ikke gitt som eneste avlesningsform, men andre eksempler på et samfunns reaksjon på en krise blir også benyttet som et barometer på nasjonalstatens soliditet, klima og helse.

When the Unforeseen is Seen følger en lang tradisjon innen samfunnsforskningen som bruker dramatiske vendepunkt for å forstå den sosiale kroppen. Dette er en tradisjon som kan hende spesielt har blitt, og blir, kultivert innen kriminologien med sitt fokus på avvik og kriminalitet.

Antologien drøfter de ulike retningene 'krise' som vendepunkt kan få. Den kan føre til krig, forfall, rasehat, politisk uro, anomi, men og til solidaritet og samhold, forvandling og fornyelse. Blant antologiens fremste styrker er at den, uten å romantisere 'krise', får leseren til å reflektere både over krisens natur, og 'krise' som normativt paradoks for samfunnsanalyse.