CRIMINAL SANCTIONS IN FINLAND: A SYSTEM IN TRANSITION

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1. INTRODUCTION

The purpose of this paper is to describe the development of the Finnish system of criminal (penal) sanctions from the latter part of the 19th century up to 1976, a period of about one hundred years. The focus will be on those changes in the system of sanctions which, in retrospect, seem to have been the most important. The approach chosen for the task of description is restrictive, inasmuch as the background and effects of the changes are surveyed largely on the basis of the arguments to be found in the legislative history of the reforms in question. At least to some extent, however, these arguments throw light on the general living conditions (such as the prevailing economic, political and social conditions) and especially on the ideological and intellectual (cultural) circumstances which have influenced the development of the system of sanctions.[1]

The inspiration for preparing this chronological survey has been the reform of Finland's criminal-policy legislation, a reform which of late has been gathering speed. Thus, in 1976 important legislative reforms dealing with the choice of the type of punishment and with the meting out of punishment were enacted, and at the end of the same year the committee which had been preparing a total reform of penal law for almost five years finished its report. It is interesting to try to examine how far the official arguments for reform of the system of penal sanctions, and the criminal-policy ideology which has influenced these arguments, have changed from one time to another. In addition, an outline of the sanction system will help to place the recent reforms in a proper perspective.[2]

[1] Regarding factors affecting the development of the system of sanctions, see, e.g., Johs. Andenæs, "Strafferett, kriminologi og kriminalpolitikk", *N.T.f.K.* 1959, pp. 107 ff., and Raimo Lahti, *Toimenpiteistä luopumisesta rikosten seuraamusjärjestelmässä*, Helsinki 1974, (German summary), pp. 89 ff.

[2] The entire section dealing with the development of penal legislation in Finland is included in the report of the Penal Law Committee. See *Komiteanmietintö* ("Committee Report") 1976: 72, Helsinki 1977, pp. 9 ff. See also Brynolf Honkasalo, "Das finnische Strafrecht", in Edmund Mezger *et al.* (eds.), *Das ausländische Strafrecht der Gegenwart*, vol. II, Berlin 1957, pp. 13 ff.; Inkeri Anttila, "The Trend of Criminal Policy", in Jaakko Uotila (ed.), *The Finnish Legal System*, Helsinki 1966, pp. 237 ff., and Olavi Heinonen, "Suomen kriminaalipoliittisen päätöksenteon kehitys", in Anttila *et al.*, *Rikollisuus ongelmana*, Helsinki 1974, pp. 93 ff.

The survey will begin with the late 1850s and the early 1860s, when work was begun on a total reform of penal law in connection with the convening of the Estates, the Lantdag.[3] The second section of this review will end with the enactment of this reform, the penal legislation of 1889. Section 3 will deal with the half century between the enactment of the Penal Code and the end of the second world war (or, to be more specific, the end in 1945 of Finland's "Continuation War" with U.S.S.R. and Germany). It is not considered necessary to take the politically significant event which occurred halfway through this period, namely Finland's declaration of independence in 1917, as a separate turning point in describing changes in the system of sanctions. Of the two sections, 4 and 5, which deal with the period after the second world war, the former deals with the general development up to the 1970s, while the latter examines in particular the criminal-policy ideology dominant at the end of the 1960s and during the 1970s, and the reforms and proposals for reform of the system of sanctions which manifest this ideology. The examination ends with the summary and conclusions given in section 6.

2. THE DEVELOPMENT LEADING UP TO THE 1889 PENAL LEGISLATION (*c.* 1860–94)

(*a*) When work began on a total reform of the Finnish penal law around the 1860s, particular attention was given to the defects in the punishment system based on the Code of 1734. The committee which was set up to prepare arguments for what was to become an *Imperial Bill to the 1863–64 Lantdag on the general grounds for a new penal law* conceived its main purpose to be the preparation of detailed proposals on the types of punishment to be included in the new legislation or to be abandoned.

> The committee adopted as its point of departure the belief that "the penal law should not be used solely to support general legal security and the maintenance of the authority of the law and to provide for the possibility of meting out punishment in a just proportion to the seriousness of the offence; instead, in a truly Christian spirit it should also attempt to further the reform of the fallen offender and his achieving a new start through the use of measures which can be connected with the force of punishment without the punishment losing its severity and repressiveness".[4]

[3] Regarding previous phases in penal-law reform, see Yrjö Blomstedt, "Rikoslakireformin ensimmäiset vaiheet vuoden 1866 osittaisuudistuksiin saakka", *Historiallinen Arkisto* 1964, (German summary), pp. 421 ff.

[4] See Hans Kejserliga Majestäts Nådiga Proposition till Finlands Ständer ("His Imperial Majesty's Gracious Bill to the Estates of Finland") no. 12, *Hans Kejserliga Majestäts Nådiga Propositioner till Finlands Ständer å Landtdagen* 1863–1864, vol. 1, Wiborg 1864, pp. 227 f.

On this basis it was proposed by the committee, and also in the Imperial Bill, among other things, that capital punishment be abolished in all its forms, and that the use of corporal punishment, punishment involving public disgrace, and exile be done away with. The main elements of the system of punishments would consist of imprisonment with hard labour (consignment to a "penitentiary"), imprisonment, confinement to special short-term custody ("arrest"), and fines. Enforcement of prison sentences would take place in accordance with the principles of progression; release on parole ("conditional release") would be part of the progression system. In general, the penalties for various offences were to be proportionate and meted out within the limits set by given scales of punishment.[5]

In their reply to the Imperial Bill, the Lantdag stated that in general they approved of the proposed punishment system. According to the Lantdag, this punishment system

> "not only is sufficiently graduated to fulfil the demands of justice but also, through the severity of its punishments, will have a deterrent effect and by providing the opportunity of religious education will bring about repentance and an intention to reform; even more, by providing vocational instruction for [the offender] and instilling into him the habit of work, it will make it easier for him to realize this intention".[6]

The Lantdag voted on the question of release on parole, and the final decision of the Lantdag was opposed to this proposal. In dealing with the proposal, the majority of the Committee on Legislation held that adoption of parole could become dangerous to society, and would in addition be in conflict with the prevailing legislation, according to which only the sovereign was empowered to break a legally binding decision of a court.[7]

On the basis of the above quotations, it can be deduced that the envisaged new punishment system was intended not only to fulfil the demands for justice in accordance with the philosophy of retribution (atonement) but also to be deterrent (a reference to general prevention) and reformative (involving elements of individual prevention). The prevailing punishment system was seen as being based almost entirely on the belief that the purpose of punishment was to deter through fear both the offender himself (assuming his life was spared) and anyone else who was disposed towards acts against the penal law. Accordingly, the punishment system was composed primarily of methods of physical and mental torture.[8]

[5] *Ibid.*, pp. 228 ff.
[6] Finlands Ständers underdåniga svar (the Lantdag's reply), *ibid.*, p. 270.
[7] Lagutskottets betänkande, no. 14, (Committee Report), *ibid.*, p. 258.
[8] Lagutskottets betänkande, no. 14, *ibid.*, pp. 255 f.

(*b*) The grounds for the new penal law, accepted by the 1863–64 Lantdag, signified only what amounted to a draft programme, and this gave considerable freedom of action to the *Penal Law Committee set up in 1865*. The same Diet also dealt with other bills concerning the reform of penal legislation. The bill dealing with a punishment system for the period of transition did not lead to any results, as the Lantdag, contrary to the Imperial Bill, accepted complete abandonment of capital punishment already during this period.[9] On the other hand, in consequence of the decisions reached by the same Lantdag, five statutes were enacted in 1866. Four of these dealt with various offences, the fifth with the execution of prison sentences. In general, the punishments prescribed in the first four statutes were proportionate. Already the Code of 1734 recognized latitudinal punishments to some extent, but only a few of these (those with a fixed minimum and maximum) were of the type that have occupied a dominant position in our penal legislation ever since the 1860s.[1]

The Penal Law Committee, which finished its work in 1875, proposed a punishment system based primarily on the principles which, as we have seen, were accepted by the Estates in 1864. The committee deviated from these principles in the direction of greater severity by proposing that capital punishment be retained, though only as a sanction for violence directed against the sovereign.[2] The committee's proposal supporting the use of parole constituted a deviation in the contrary direction. According to the committee's argumentation, such a reform would be a logical extension of the progression system. It is characteristic of this system that it attempts to reform the prisoner by using a system of graduated progression in connection with the treatment of the prisoner: the execution of the sentence is severe at the beginning but is eased as the prisoner "progresses".[3]

> The committee's position on the principle of the punishment system is contained in the section of its report which presents arguments why, again in opposition to the opinion expressed by the Estates, forfeiture of civil rights is not included among the proposed punishments. The central idea behind the proposed punishment system is regarded as being that the punishment for each offence should not only be proportionate to the seriousness of the offence but should also, with a higher or lesser degree of purposefulness, aim at the reforming of the offender. Since the principal punishment must be meted out within the limits of the punishment scale applicable to the offence,

[9] See Blomstedt, *op. cit.*, pp. 490 f.

[1] Regarding the significance and application of the partial reforms of 1866, see Blomstedt, *op. cit.*, pp. 493 ff.

[2] See *Underdåniga förslag till Strafflag för Storfurstendömet Finland* ..., Helsinki 1875 (1875 Committee Report), p. 148.

[3] 1875 Committee Report, pp. 313 ff.

taking into consideration the need for coercion and reform in the offender that is demonstrated by his offence, the offence is in any case to be considered as having been atoned for as soon as the offender has served the principal sentence.[4]

(*c*) In the official opinions requested on the basis of the 1875 Committee Report, criticism was directed at, among other things, the fact that the proposal gave too prominent a position to scientific doctrines and that the provisions were drafted in too much detail ("kasuistisch").[5] The proposed punishment system was especially criticized on the grounds of the wide punishment scales.[6]

K. G. Ehrström (1822–86), professor of criminal law and the history of law, who seems to have been the most influential member of the committee in question, as well as having been an expert member of the committee which had prepared the general principles of the new Penal Code in 1862–63, took part in the discussion on penal scales. According to him, concrete offences to be evaluated on the basis of abstract penal provisions appeared in so many different forms that for this reason alone the scales had to be sufficiently wide in order to realize the aims of justice. Furthermore, when a penal code based on such a system of latitude was in force, there would be no need to fall back on pardons or to increase arbitrarily the length of the sentence in exceptional cases.[7]

Ehrström had already emphasized in his earlier writings that not only the external extent of the delict but also the degree of guilt of the offender should be taken into account when choosing the type of punishment and when meting out the sentence. It was necessary to uncover the degree of guilt of the offender so that the punishment could be set in a way that would further his reform. Reform and repentance were the only ways that the criminal will of the offender could be destroyed, while the sentence with its repressiveness was used to offset the delict.[8]

A new committee was appointed to examine the 1875 proposals.[9] After this Review Committee had completed its report in 1884, an Imperial Bill for a new Penal Code and Bills for statutes on the enforcement of sentences and on the promulgation of the Penal Code were constructed on

[4] 1875 Committee Report, pp. 146 f.

[5] This opinion was expressed concerning the contents of the official opinions by, e.g., Bill no. 36, *Handlingar vid Landtdagen* 1885, vol. III, Helsinki 1886, p. 3.

[6] See, e.g., Jaakko Forsman, "Om latitudsystemet i Finlands strafflagstiftning", *F.J.F.T.* 1878–79, pp. 228 ff.; *idem*, *Sananen tekeillä olevasta Rikoslaista, etenkin rangaistuksen punnitsemiseen nähden,* Helsinki 1884, pp. 13 ff., and the discussion on the above, *F.J.F.T.* 1880, pp. 76 ff.

[7] *F.J.F.T.* 1880, p. 88.

[8] See Ehrström's doctoral dissertation *Om principen för fängelsestraffets ordnande,* Helsinki 1859, especially pp. 66 ff.

[9] See *Underdåniga förslag till Strafflag för Storfurstendömet Finland . . .*, Helsinki 1884 (Committee Report).

its basis and then submitted to the 1885 Lantdag.[1] There was no time to deal fully with the propositions during the 1885 Lantdag, and so they were laid before the 1888 Lantdag in an almost unchanged form.[2] The Estates passed the measures with minor amendments, and the code and the statutes were duly enacted in 1889.[3] Owing to certain difficulties connected with constitutional law, the measures did not come into force until 1894.

(*d*) *The Report of the Review Committee and the provisions drawn up on the basis of the report* differed in many respects from the 1875 Committee Report. Changes in the direction of greater severity were made in the punishment system. The applicable range of capital punishment was extended. Forfeiture of civil rights was retained in the system, while confinement to special short-term custody was left out. In the draft presented by the Review Committee as well as in the subsequent Penal Code, the penal scales were generally narrower than those in the 1875 proposals. The former did not contain as broad provisions justifying digressions from the normal penal scales or types of punishment as did the 1875 proposals. Another difference was that according to the 1875 proposals, some offences, also other than those committed in public office, could in some cases be dealt with by administering an admonition instead of a punishment.[4]

The 1875 committee's proposals towards which, as we have seen, the Review Committee was opposed, and which were not included in the later drafting of legislation, had been regarded as furthering the construction of a punishment system based on the principle of the reform of the offender. A partial explanation of these changes may be the important influence exercised by Ehrström's successor in the chair, Professor *Jaakko Forsman* (1839–99), on the final formation of the Penal Code and legislation related to it.

> Forsman was a member of the review committee and the chairman of the Penal Law Committee at the time when the legislative proposals were being dealt with by the 1888 Lantdag. In his writings Forsman did not present the idea of reform so strongly as Ehrström had done, although he did not neglect it entirely. According to Forsman, justice, and consequently retribution, should be the guiding principles when meting out a punishment. But, being just, the punishment also fulfils the demands for utility, from the point of view

[1] Bill no. 36, *op. cit.*
[2] See Bill no. 1, *Handlingar vid Landtdagen 1888*, vol. I, Helsinki 1889.
[3] Statutes of Finland no. 39, Dec. 19, 1889.
[4] For a comparison of the proposals in the 1875 committee report with later proposals and the accepted legislation, see Pertti Myhrberg, "Nykyajan ratkaisuja 1875 rikoslakiehdotuksessa", *Oikeus* 1976, pp. 176 ff.

> of both society and the offender: a just punishment does not corrupt the offender morally; instead, it reforms him, wherever this is possible.[5]

(*e*) Forsman characterized the *1889 Penal Code as being* thoroughly *permeated by the spirit and principles of* the so-called *classical penal-law school*: a punishment must primarily be retribution for the offence; the principal ground for punishment is "quod peccatum est", while "ne peccetur" is only secondary; the basis for the right to punish is free human will; and so on.[6] There is general agreement in Finnish legal writing that the Finnish Penal Code, as one of the last European penal codes to be drafted, was based to a large extent on this ideology, according to the patterns provided by Sweden's 1864 and Germany's 1871 penal codes.[7]

However, Forsman also pointed out that in the 1889 penal legislation particular emphasis had been laid on the principle of reform, even though it was recognized that the primary basis for the evaluation of punishment is justice.[8] In accordance with this, it appears that more weight had been given to the idea of reform at the beginning of the work on the legislation than was given in the final statutes. This principle receives its clearest expression in the execution of prison sentences designed upon the progression system. On the other hand, a punishment system constructed primarily in accordance with the philosophy of retribution has generally been regarded as being tolerably harmonious with the demands of general prevention (deterrence).[9]

As has been noted above, the punishment system which came into force with the 1889 legislation was built upon the following general principal punishments: *capital punishment, imprisonment with hard labour, imprisonment*, and *fines*. The most important general additional punishment was to be *forfeiture of civil rights*.

3. THE DEVELOPMENT DURING THE HALF CENTURY AFTER THE 1889 PENAL LEGISLATION CAME INTO FORCE (1895–1945)

(*a*) While the work on Finland's Penal Code was still in progress, increasing demands were being made in Europe, from the 1870s and the 1880s

[5] See, e.g., Forsman, *Nyky-ajan ensuuntaiset käsitykset rangaistuksen tarkoituksesta*, Helsinki 1883, especially pp. 26 and 42, and *Anteckningar enligt Professor Jaakko Forsmans föreläsningar öfver straffrättens allmänna läror* ..., 3rd ed. Helsinki 1914 (=Forsman, *Straffrätten*), pp. 16 ff., especially pp. 35 f.

[6] "Sveitsin uusi rikoslainehdotus", *F.J.F.T.* 1898, pp. 177 f.

[7] See, e.g., Eero Backman, *Rikoslaki ja yhteiskunta* I, Helsinki 1976, (German summary), pp. 121 and 160.

[8] Forsman, *Straffrätten*, pp. 28 and 35 f.

[9] See, e.g., Brynolf Honkasalo, *Nulla poena sine lege*, Helsinki 1937, pp. 37 ff.

onwards, for a change of direction on the basic questions of penal law and criminal policy. Strong criticism was directed against the classical mode of penal-law thought, which had its roots in the philosophy of enlightenment, and especially in German idealistic philosophy.[1] A leading proponent of the demands for reform was the German expert in penal law, *Franz von Liszt* (1851–1919), who crystallized the new ideas in his inaugural address "Der Zweckgedanke im Strafrecht" (Marburg-Universitätsprogram).[2]

> According to the principal ideas in this programme, punishment was just when it was necessary (*die gerechte Strafe ist die notwendige Strafe*). In penal law, justice is manifested when the amount of punishment is limited to what is demanded by utility (*Gerechtigkeit im Strafrecht ist die Einhaltung des durch den Zweckgedanken erforderten Strafmasses*). The purpose of punishment is, through the education given in connection with the enforcement of the sentence, to reform the offender who can and must be reformed; to warn the (chance) offender who does not need reform; and to remove the danger posed by the (habitual) offender who cannot be reformed by incarcerating him for an indefinite period.[3]

The so-called *modern (sociological) penal-law school* was formed in Germany by the supporters of this programme. The international connections of this school led in 1889 to the establishment of the International Union of Criminalists (Internationale Kriminalistische Vereinigung). According to one description, the opinions expressed on the basic questions of penal law and criminal policy between the time of the publication of the Marburg programme and the period of the first world war could be divided into two, at times diametrically opposed, groups—one group following the classical school and the other the modern school.[4] If this—necessarily simplified—division is adopted, it should be remembered that many currents following the positivist ideal of science either are incorporated in the modern school or connected with it.[5]

> This new mode of thought spread rapidly. Its principles were influencing the contents of many penal-law proposals prepared in Europe at the end of the 19th century, but its effect was strongest on the penal-legislation reforms proposed and carried out at the beginning of the present century. One reason why the classical penal-law principles were being thrust aside by the new ideas was that many important changes in the social conditions were occurring and these had the effect of increasing criminality. The new ideas, which

[1] Regarding the classical penal-law doctrine, see, e.g., Leon Radzinowicz, *Ideology and Crime*, New York 1966, pp. 20 ff., and Backman, *op. cit.*, pp. 40 ff., especially pp. 117 ff.

[2] See von Liszt, *Strafrechtliche Aufsätze und Vorträge*, vol. 1, Berlin 1905, pp. 126 ff.

[3] von Liszt, *op. cit.*, pp. 161 ff.

[4] Thus Backman, *op. cit.*, pp. 142 f.

[5] For example, the positivist or Italian school is often mentioned as being separate from the modern school. See, e.g., Backman, *op. cit.*, pp. 145 ff. Cf. also Radzinowicz, *op. cit.*, pp. 29 ff.

> emphasized the importance of criminology, were seen as offering better means of preventing increased criminality than did the classical school.[6]

(*b*) Knowledge of the principles represented by the new mode of penal-law thought, and of its manifestation in legislation, soon spread to Finland. For example, already in 1889—the year in which the International Union of Criminalists was established—Forsman presented its background and programme in a legal periodical. In this article he spoke in positive terms of the new direction, and of the Union as its most significant expression—in his opinion no one could doubt the practical significance and scope of the Union's views and goals concerning the prevention of criminality, which form the nucleus of its teachings and demands.[7]

> When the Finnish Penal Code was four years old, Forsman again dealt with the new school, which he regarded as being directed by the International Union of Criminalists under the leadership of von Liszt. This Forsman did in an article on Switzerland's draft Penal Code of 1896. The cornerstone of the new doctrine, in his opinion, was formed by the ideas according to which in criminal justice attention must be focused on the offender and not the offence, and that the measures used in connection with the offender differed essentially according to his characteristics—specifically, according to whether he was a chance offender or an habitual offender. Forsman believed that the question of conditional sentences had come almost to dominate the Union's programme during the previous years. In the same article Forsman said that it was not at all strange that Finland's Penal Code could be criticized for being old-fashioned, as the legislative work had continued for a long time, and during the concluding stages there were no possibilities of utilizing the latest scientific findings.[8]

These opinions were symptomatic. Forsman, who has been called the spiritual father of Finland's Penal Code, and who retained a classical approach to the central questions of penal law despite the growing support for the new movement, saw praiseworthy features in that movement, and was prepared to admit that in some respects the new Penal Code was open to criticism. The largest share of the credit for spreading the new doctrines belongs to Forsman's successor as professor, *Allan Serlachius* (1870–1935), who later changed his surname to Särkilahti. Allan Serlachius has been hailed as the Finnish pioneer in propagating the doctrines represented by the school of von Liszt.

> Serlachius saw no great differences between the classical penal-law school and the sociological (or anthropological) school, nor did he fully adopt the opin-

[6] See Backman, *op. cit.*, pp. 122 ff.
[7] "En ny internationel kriminalistisk förening", *F.J.F.T.* 1889, pp. 1 ff., especially p. 1.
[8] *F.J.F.T.* 1898, pp. 177 ff.

ions of either school as such. He believed that the former placed too much emphasis on the general-deterrence aspect of punishment and he made many proposals advocating that greater attention be paid especially to individual prevention. These proposals are to be found in the many articles and textbooks that Serlachius wrote at the beginning of the present century. They also find expression in the draft Penal Code which he prepared in 1920 at the request of the Ministry of Justice.[9]

According to this draft Penal Code, the legal system of sanctions for offences was to be reformed by, e.g., abolishing capital punishment and forfeiture of civil rights; by using only one type of imprisonment; by adopting the day-fine system when setting fines; by making it possible to place dangerous recidivists in special detention and mentally deficient offenders in an institution for mandatory care, and to undertake educative measures for 15–17-year-old offenders. Finally, it was proposed that in certain discretionary cases the courts should have the right, where reasonable, to mete out the punishment within a reduced scale or even discharge the defendant.[1]

(*c*) The discussion on *conditional sentences* began in the last few decades of the 19th century, and at the beginning of the present century the matter was taken up in Parliament. The first petitionary proposal was made by Serlachius to the Estate of Clergy during the 1904–05 Lantdag.

In this petition, Serlachius stated that the punishments prescribed in the 1889 Penal Code only applied to, and were apparently also designed for, "real", in other words chronic, offenders. For chance–i.e. acute–offenders, imprisonment, especially, did more harm than good, and society should show its disapproval of their acts through the use of conditional sentences.[2]

The reform efforts resulted in the Conditional Sentences Act of 1918.[3] The final drafting of this statute was speeded up by the situation brought about by the Civil War: the idea was that the law would make it possible to apply conditional penalties to the defeated side. The *travaux préparatoires* of the statute mention the following individual prevention considerations as the basic philosophy behind the new type of sanction. If the enforcement or remission of a sentence for a petty offence is made dependent on how the offender behaves during the years following the sentencing, he will be motivated to live a blameless life. Short-term imprisonment, instead of reforming the offender, often has a detrimental effect on his future ability

[9] See, e.g., Serlachius, "Sananen nuorsaksalaisesta kriminalistikoulusta", *Lakimies* 1903, pp. 74 ff., *Suomen rikosoikeuden oppikirja*, Part I, Helsinki 1909, pp. 10 ff. and pp. 20 ff., "'Uudet taivaanrannat' rikosoikeudessa", *Lakimies* 1911, pp. 139 ff., and *Ehdotus uudeksi rikoslaiksi*, Part I, Helsinki 1920.

[1] See chaps. 3–7 and the argumentation in the proposal, *Ehdotus uudeksi rikoslaiksi*, pp. 16 ff.

[2] See Anomusmietintö, no. 21, 1904–1905 Valtiopäivät ("Sessions of Parliament") (Vp.), *Asiakirjat* ("Documents"), vol. V: 2, Helsinki 1905, pp. 1 f.

[3] Regarding the development of the provisions before and after the 1918 statute, see P. J. Voipio, "Ehdollisen rangaistustuomion kehitys Suomessa", *Lakimies* 1959, pp. 478 ff.

to resist criminal impulses. The fact that society's need for retribution was regarded as demanding the immediate punishment of offenders guilty of serious offences was seen to eliminate the possibility that conditional sentences would be applied to such offences.[4]

The new statute did not include provisions on the supervision of those sentenced conditionally. Apparently, this omission was not based on considerations of principle but was made for practical reasons: at that time, arranging supervision would have involved insurmountable difficulties. Nor was supervision arranged later on for conditionally-sentenced offenders over 21 years of age, even though several official proposals to this end were made.

(*d*) The *day-fine system* was adopted in Finland in 1921. Thus, Finland was the first Nordic country to adopt this system.[5] Before this reform, fines had been fixed at a certain amount of marks; in other words they were cash fines. The main reason for adopting the new system, according to the official argumentation for the statute, was an attempt to introduce a system where fines would have an equal impact on people with varying means. For this reason the fine was to be made more dependent than before on the offender's financial status. The system was also intended to render the size of the fine more independent of fluctuations in the value of money.[6]

According to the *travaux préparatoires* of the legislation in question, the idea was, instead of setting the term of imprisonment following non-payment of a fine ("conversion into imprisonment") according to a predetermined scale, to leave the term to the discretion of the court in a new trial on the matter. However, no reform was carried out in this respect, as the day-fine reform was regarded as a temporary measure, and the legislators wished to limit change to what was absolutely necessary.[7]

> After 1921, reform of the legislation on fines was suggested several times, but not until the last few decades have any significant changes been made, as will be noted later on. For example, the committee which was formed to consider measures to prevent criminality and formulate appropriate proposals, and which submitted its report in 1930, criticized the practice whereby many fines led to conversion imprisonment. During the 1920s, there was a great increase in the number of people who were imprisoned for non-payment of fines.[8] The

[4] See Hallituksen esitys Eduskunnalle ("Government Bill to Parliament") (Hall. es.), no. 61, 1917 II Vp., *Asiakirjat*, vol. III, Helsinki 1918, pp. 1 f.

[5] Regarding the later situation in the Scandinavian countries and especially in Sweden, see Hans Thornstedt, "The Day-Fine System in Sweden", in *Some Developments in Nordic Criminal Policy and Criminology*, Scandinavian Research Council for Criminology, Stockholm 1975, pp. 28 ff.

[6] See Hall. es. no. 36, 1920 Vp., *Asiakirjat*, vol. III: 1, Helsinki 1921, p. 1.

[7] *Ibid.*

[8] See *Komiteanmietintö* ("Committee Report"), 1931: 2, Helsinki 1931, p. 2.

committee's proposal, which was not adopted at the time, was that fines should be payable in instalments and that it should be possible to grant an extension of the period during which the fine was supposed to be paid. The committee also proposed that in some cases non-payment of fines should not lead to conversion imprisonment.[9]

(*e*) *Aggravated imprisonment* entered the system with a statute passed in 1930. According to this enactment, imprisonment and conversion imprisonment would generally be enforced as the so-called "bread-and-water" imprisonment recognized by the Code of 1734, so long as the offender's health was not endangered; an exception was made if the term exceeded six months. One day of bread-and-water imprisonment corresponded to five days of ordinary imprisonment. In the same way, when the health of the offender was not endangered, imprisonment for, e.g., certain serious violent offences could be aggravated, i.e. made more severe, without, however, any shortening of the term of imprisonment.

According to the official argumentation for the law, the principal ground for the adoption of aggravated imprisonment was that it would bring about a noticeable improvement in prison conditions. Especially the shortening of the length of imprisonment which resulted from aggravating it was expected to lead to a considerable reduction of man-days in prison, thus easing the pressure on accommodation. In those cases where the aggravation of the imprisonment would not shorten its length, the repressive effect of punishment would be increased. It was also believed that a result of alleviating the space problem in prisons would be a general increase in the efficacy of prison sentences, as more use could then be made of isolation of prisoners and of individual treatment.[1]

A statute passed in 1931 considerably relaxed the requirements for *the release of imprisoned offenders on parole.* The reform was not seen as posing any danger to legal security, as the supervision of parolees was at the same time to be made more efficient, and in general the probation period was to be lengthened. The principal reason for the reform was provided by a conclusion drawn from a statistical survey: in practice parole had proved to be effective in preventing recidivism.[2]

The minimum portion of the sentence that the offender had to serve before being released on parole was lowered by the 1931 statute from three quarters to two thirds, and the absolute minimum was lowered from two years to six months. At the same time, discretionary release on parole was supplemented by "mandatory" release on parole, for which the minimum portion was

[9] *Ibid.*, pp. 3 ff.
[1] See Hall. es. no. 54, 1928 Vp., *Asiakirjat*, vol. III: 1, Helsinki 1929, pp. 3 ff.
[2] See Hall. es. no. 64, 1931 Vp., *Asiakirjat*, vol. III: 1, Helsinki 1932, pp. 5 ff.

eleven-twelfths of the sentence, and the absolute minimum was six months. The previous minimum for release on discretionary parole had been fixed by the legislative reform of 1921. At that time, the responsibility for the decision on release on parole was shifted from the Supreme Court to the Ministry of Justice. In 1944, the minimum portion of the sentence that had to be served was shortened even further: in some cases, discretionary release on parole was possible after half of the sentence had been served, and mandatory release on parole would occur after five-sixths of the sentence had been served, instead of eleven-twelfths.[3]

(*f*) In 1932, the *Dangerous Recidivists Act* was passed, in keeping with the example set by the other Nordic countries.[4] The purpose of the statute was to reinforce the prevention of chronic criminality. In the *travaux préparatoires* it was stated that imprisonment, unless it was for life or at least for a lengthy period, had no special deterrent effect on chronic offenders; its only positive effect was that by incarcerating them in a prison it rendered them harmless to society for the duration of the sentence. An offender is a chronic offender when he goes from one offence to another, and thus alternates between imprisonment and freedom. According to the argumentation for the statute, in order to protect society from repeated offences by such people and from the corrupting effect that they have on their surroundings, it is right that they should be isolated from society for a lengthy period.[5]

A special precautionary measure, *incarceration in "preventive detention"* (a special prison) *for a relatively indeterminate period*, was adopted through the statute concerning dangerous recidivists. To ensure that the procedure should be in proper proportion to the degree of dangerousness manifested by the recidivists' criminality, the legislators attempted to make the requirements for incarceration in preventive detention very strict. In addition to requirements concerning previous criminality and the nature of the new offence, it was necessary that the offender should be shown to constitute a danger to public or private safety. The procedure to be followed was in two stages. The court itself only decided on whether the offender could be incarcerated in preventive detention, the final decision being left to a special executive authority, the Prison Board.

The Government had also proposed measures to be used in connection with offenders who were permanently in a state of diminished responsibility be-

[3] Regarding the development of these and other provisions on parole, see Jorma Uitto, *Vankien ehdonalaiseen vapauteen päästäminen ja sen edellytykset*, Helsinki 1950, (German summary), pp. 65 ff.

[4] Regarding the inception of this legislation, see Inkeri Anttila, "Incarceration for Crimes Never Committed", *Research Institute of Legal Policy*, no. 9, Helsinki 1975 (mimeographed), pp. 2 ff.

[5] See Hall. es. no. 91, 1931 Vp. *Asiakirjat* vol. III: 1, Helsinki 1932, pp. 1 ff.

> cause of mental deficiency. However, in its official opinion on the legislative proposal, the Supreme Court stated that the provisions on preventive detention for recidivists and on the proposed institution of mandatory care for the mentally deficient ought to be embodied in two separate enactments, as had been done in Sweden. The legislation on the latter topic could not, in the belief of the Supreme Court, be realized as cheaply as the committee that prepared the matter had estimated; in consequence, dangerous mentally-deficient recidivists—whenever they fell outside the scope of recidivism as defined by the law—were not touched by the new safety measure.[6]

The above-mentioned statute of 1932 was intended to prevent recidivism, a goal which in the *travaux préparatoires* of the statute was stated to be currently one of the most important in criminal policy.[7] In 1939, the law on *recidivism* and *the combining of punishments* was reformed. The aim of the former reform was to prevent recidivism in all its forms as effectively as possible without encroaching upon legal security. The principal way in which this aim was to be furthered was by shifting from a recidivism system which took only certain offences into account (*récidive spéciale*) to a general recidivism system (*récidive générale*). Repeating an offence—i.e. where the offender had served a sentence for a previous offence—with certain prerequisites was either to be considered an aggravating circumstance within the normal scale of punishment or was a reason of the application of a scale increased by 50 or 100 per cent.[8]

The draft documents for the 1939 legislative reform noted that behind the provisions on recidivism lay the natural belief that an individual who violates the legal system by repeating his offence is guilty in a higher degree, or at least is more dangerous to his surroundings, than is a chance offender. The legislation in question, together with the 1932 statute, was believed to give the authorities a firm sanction system with a graduated degree of severity. This is shown by the following quotation from the draft documents:

> "An offender who is sentenced at the same time for a number of offences will receive the benefit of a lightened sentence when punishments are combined; if, having already been sentenced, he commits another offence for which he is again to be sentenced, then he will serve both of his sentences consecutively; but if he perpetrates a new offence after he has already served a sentence for a previous act, then he will receive an unusually severe sentence for the new offence, and this can be accompanied by incarceration in preventive detention for dangerous recidivists, in extreme cases for life."[9]

[6] *Ibid.*, pp. 12 f.
[7] *Ibid.*, p. 5.
[8] See Hall. es. no. 9, 1939 Vp., *Asiakirjat*, vols. I–III, Helsinki 1939, pp. 1 ff., especially p. 7.
[9] *Ibid.*, pp. 1 and 18.

(*g*) In 1940 an important reform on *young offenders* was introduced.[1]

> The argumentation for the reform proposal stated that the legislation in many countries had received impetus from the observation that 15–20-year-old offenders formed a large proportion of all offenders, that the reaction of society had a greater chance of success when directed at young people than when directed at older offenders and, finally, that a further impetus had been provided by studies of the psychology of young offenders. Thus, educative measures had been used in addition to or instead of punishment even where the young offender had reached a level of maturity at which the use of a punishment in accordance with the retribution principle could be just and well-founded. Special care had been taken to try to avoid short terms of imprisonment which neither reform nor deter but instead usually turn young offenders into hardened criminals.[2]

In the light of these research results, the existing legislation on young offenders was regarded as being so out-moded and so out of tune with its purposes that the method it provided could not be regarded as being sufficiently effective in preventing juvenile delinquency. The new goal was the reform of legislation in such a way that the special characteristics of young offenders would be taken into consideration when prosecuting, sentencing, and enforcing sentences.[3] The most important provisions on the treatment of young offenders (i.e. those aged from 15 to 20) were gathered together in a special statute on young offenders.[4]

A novel feature of this statute was that in some cases it allowed the dropping of charges against 15–17-year-old offenders and, in a fairly large range of cases, their absolute discharge. However, it was not the intention to leave such offenders without attention; instead, they were to become the object of welfare measures.[5] To this end, all cases of the dropping of charges and of absolute discharge were to be reported to the appropriate municipal social board. The prerequisites for the use of conditional sentences were relaxed in favour of young offenders. It was also provided that they should be placed under supervision for the duration of the probationary period, except where the court believed that the young offender would mend his ways without supervision.

Another new feature of the statute was the juvenile prison. Before a

[1] Regarding this reform, and in general on the Finnish system of sanctions for young offenders, see Anttila, *Nuori lainrikkoja*, Helsinki 1952, (English summary), *passim*, and Matti Joutsen, "Young Offenders in the Criminal Justice System of Finland", *Research Institute of Legal Policy*, no. 14, Helsinki 1976 (mimeographed), pp. 1 ff.

[2] See Hall. es. no. 10, 1939 Vp., *Asiakirjat*, vols. I–III, Helsinki 1939, pp. 1 ff.

[3] *Ibid.*, pp. 9 ff.

[4] Young Offenders Act, Statutes of Finland no. 262, May 31, 1940.

[5] See Hall. es. no. 10, 1939 Vp., *ibid.*, pp. 13 f.—Regarding the achievement of this goal, see Lahti, *op. cit.*, pp. 138 ff., 151 ff. and 265 ff.

sentence of imprisonment of at least six months and at most four years could be enforced on a young offender, he first had to be examined. The Prison Board was to order that the sentence should be served in a juvenile prison if there were firm grounds for supposing that the offender was in need of the education and teaching provided by the juvenile prison and if, in addition, he was capable of development. The statute prescribed that the period of punishment in the juvenile prison was to be longer than that of an offender consigned to a normal prison. However, offenders in juvenile prisons who had been sentenced for more than just a brief period could be released on parole earlier than those in ordinary prisons.[6]

(*h*) A study of the *travaux préparatoires* of the legislative reforms dealt with above shows that, in the development of the sanction system, weight has been given to the opinions of the modern penal-law school. The *system of punishment* which was originally based on the idea of retribution, and thus on the principle of guilt being manifested in the act (*Einzeltatschuld*) *was changed* in such a way that in the choice of the penal sanction *more consideration* could be *given to the demands of individual prevention and to the offender's personality beyond what had been manifested in the individual act.*[7] Reforms in this direction were carried out above all through the adoption of legislation on dangerous recidivists and on young offenders. The former type of legislation was intended to render chronic (incurable) offenders harmless by isolating them in a special prison, the latter to create educative sanctions adapted to the special needs of young offenders.

During the 1930s, the prevention of recidivism was seen as one of the primary tasks of criminal policy. In order to reach this goal, legislation on recidivism was developed; among other things, it authorized the isolation of dangerous recidivists in a special prison. At the same time, concern was expressed over the shortage of prison accommodation resulting from the increase in the prison population. The adoption of aggravated imprisonment was specifically intended to bring about an improvement in prison conditions. Furthermore, one of the reasons for relaxing the prerequisites for release on parole was an attempt to reduce the prison population.[8] The shortage of prison accommodation was caused above all by the rapid increase in the number of cases of criminalized drunkenness and of offences against the alcohol prohibition that was in force from 1919 to 1932,

[6] *Ibid.*, p. 19.

[7] See also, e.g., Honkasalo, *Suomen rikosoikeus, Yleiset opit,* Part II, 2nd ed. Helsinki 1967, p. 18.

[8] See Inkeri Anttila and Patrik Törnudd, *Kriminologi i kriminalpolitiskt perspektiv*, Stockholm 1973, p. 108.

and by the increase in the number of cases of conversion imprisonment brought about by the depression beginning at the end of the 1920s.[9]

4. THE DEVELOPMENT DURING THE PAST FEW DECADES (FROM 1946 TO THE 1970s)

(*a*) In the turmoil of social and individual conditions that characterized the immediate post-war period, registered criminality as well as the number of prisoners rose rapidly. This development was specifically mentioned as a ground for introducing the statute of 1946 which *created* new institutions, called *labour colonies,* for the execution of prison sentences.[1] At the same time, the statute on aggravated imprisonment, the efficacy of which had been the subject of debate, was repealed.[2]

The labour colonies were intended for offenders sentenced to short terms of imprisonment for the first time. In the *travaux préparatoires* of the legislation, it was stipulated that no limit should be placed on the freedom of those sentenced to labour colonies except where called for by the maintenance of order and work discipline, and that the inmates should be paid according to the normal wage scale. The purpose of establishing labour colonies was to lessen the number of those serving short imprisonment sentences in closed institutions, thus realizing a principle that has been very widely accepted in modern criminal policy.[3]

In 1954 the *system of open institutions was expanded.*[4] In the argumentation for the reform, it was noted that the labour colonies had been regarded as beneficial, especially from the point of view of individual prevention.[5] Therefore, the prerequisites for placement in a labour colony were relaxed, although the idea of sentencing first-time prisoners to a labour colony irrespective of the length of their sentences was rejected. In the *travaux préparatoires* of the legislation it was noted that in labour colonies, as opposed to closed institutions, progressive enforcement of sentences, important in the educative sense, could not be arranged.[6] In accordance with

[9] See *Komiteanmietintö* 1976: 72, p. 17.

[1] See Hall. es. no. 102, 1945 Vp., *Asiakirjat*, vol. III: 1, Helsinki 1946, p. 1, and Lakivaliokunnan mietintö ("Report of the Parliamentary Law Committee"), no. 21, *ibid.*, p. 1.

[2] For an evaluation of this legislation, see Honkasalo, "Suomen rikosoikeuspolitiikka kahtena viimeisenä vuosikymmenenä", *Lakimies* 1939, pp. 389 f.

[3] See Hall. es. no. 102, 1945 Vp., *loc. cit.*

[4] Regarding the system of open institutions as it was enlarged in 1954, see, e.g., Valentin Soine, *Finland's Open Institutions,* Helsinki 1965.

[5] See Hall. es. no. 8, 1954 Vp., *Asiakirjat*, vol. I, Helsinki 1955, p. 3.—According to a later study, the labour colony and prison do not differ in regard to individual or general prevention. See Paavo Uusitalo, "Recidivism After Release from Closed and Open Penal Institutions", *The British Journal of Criminology*, vol. 12, 1972, pp. 211 ff.

[6] *Ibid.*

the idea of progression the same statute established "prison colonies" as the last stage in the incarceration of those sentenced to longer periods of imprisonment. Already in 1949, in accordance with a decision of the Ministry of Justice, labour camps had been established to provide temporary jobs for those released on parole.

Utilizing studies and legislative reforms carried out in Sweden, the committee on prison-administration reform, which finished its work in 1946, proposed that the *individually preventive effect of the execution of prison sentences be increased.* The committee believed that the need for reform had been rendered more acute above all as a result of the strong criticism of the defects expressed by political prisoners. However, as there was reason to reinforce the significance of the threat of punishment because of the noticeable increase in criminality, the committee stipulated that the execution be eased (humanized) using due caution.[7] In 1950 the statute on prison administration was revised on the basis of the committee's work. In the statute, the objective of execution of prison sentences was defined as being the furthering of the reformation of the prisoner.

(*b*) The idea of reformation and education was very much to the fore in the report submitted in 1950 by the committee appointed to deal with the *development of legislation on young offenders*. The committee proposed that the possibility of dropping charges against or absolutely discharging 15–17-year-olds should be increased, that the conditional sentencing of 15–20-year-olds should be replaced by probation and, similarly, that general punishments for this group be replaced by reformative measures in a juvenile institution.[8]

The committee's proposals provoked strong opposition, the critics especially emphasizing the importance of general deterrence and the observance of legal safeguards, and these proposals did not immediately lead to legislative reform. However, the legislation in question was slightly amended in 1953. For example, the lengthening of the punishment term of those sentenced to juvenile prisons was left to the discretion of the Prison Board, and the maximum extension was lowered.

> In its opinion on this report, the Supreme Court stated that the committee had laid too much emphasis on the reformation of the offender, and had thus prevented him from becoming the object of the actual punishment procedure. In this way it had been forgotten that the purpose of penal law and criminal justice, even in the case of young offenders, was to have a preventive effect on the individual and his surroundings. Acceptance of the committee's proposals

[7] See *Komiteanmietintö* 1946: 8, Helsinki 1946, pp. 30 and 40 f.
[8] See *Komiteanmietintö* 1950: 29, Helsinki 1950 (mimeographed).

> would, in the opinion of the Supreme Court, result in the loss of a proper balance between the offence perpetrated by a young offender and the consequent sanction, something which is demanded by the sense of justice. The Supreme Court believed that, e.g., the committee's recommendation about expanding prosecutorial discretion was questionable from the point of view of legal security.[9]

The idea of rehabilitating the offender also met with opposition during the second half of the 1940s. Consequently, when the Government introduced a bill, inspired by this aim, *for the abolition of forfeiture of civil rights* and similar penal sanctions, the legislature voted that it should be left pending until after the next election.[9a] It was then defeated albeit by a narrow majority. Recourse to the sanctions in question was significantly curtailed in 1953 and 1958, but their use was not completely abandoned until 1969—almost a hundred years after the committee which had prepared the present Penal Code had proposed legislative measures along these lines.[1]

The fact that the ideology according to which general deterrence was to be achieved specifically through the use of severe punishments was strongly represented in the criminal policy of the 1940s and the 1950s is evident in the many *measures aggravating the punishment system* that were *enacted or* at least *proposed* at that time.[2] In 1946, for example, the legislation on property offences, primarily theft, was made more severe, and in 1952 and 1956 the same thing was done with regard to the legislation on sexual offences against minors. A committee report of 1954 on prison conditions proposed that the execution of prison sentences be tightened up.[3] The legislative reform of 1946 was supported on, *inter alia*, the ground that, in the fight against criminality, attention must be paid not only to adopting preventive measures but also to seeing that the offence always meets with a sufficiently effective punishment. The punishment must both protect society through the incarceration of offenders and deter individuals lacking in judgment from following a path of crime.[4]

[9] This opinion is quoted in Anttila, *Nuori lainrikkoja*, pp. 392 ff.—Criticism similar to that of the Supreme Court was given by, e.g., the then professors of criminal law, Brynolf Honkasalo (1889–1973) and Bruno A. Salmiala. See Honkasalo, "Nuoria lainrikkojia koskeva lakiehdotus", *Defensor Legis* 1951, pp. 414 ff., especially pp. 439 ff., and Salmiala, "Nuorisorikollisuus ja nuoria lainrikkojia koskevan lainsäädännön uudistussuunnitelmat", *op. cit.*, pp. 442 ff.

[9a] This vote had been preceded by a vote in favour of the measure.

[1] See Hall. es. no. 73, 1968 Vp., *Asiakirjat*, vol. I, Helsinki 1969, pp. 1 ff.

[2] According to Anttila in *The Finnish Legal System*, pp. 237 f., there was in the 1950s a keen debate between adherents of "conservative" and of "modern" criminal policy: the then professors of criminal law expressly emphasized the importance of the "deterrent" theory and urged that rigid measures be taken against crime, whilst those responsible for prison administration were prepared to give greater prominence to educational and therapeutic measures.

[3] See *Komiteanmietintö* 1954: 31, Helsinki 1954 (mimeographed).

[4] See Hall. es. no. 74, 1945 Vp., *Asiakirjat*, vols. I–II, Helsinki 1946, p. 1.

Another increase in the severity of the system was brought about in 1953 through the *reform of the statute on the incarceration of dangerous recidivists.*[5] The prerequisites for incarceration in the old legislation of 1932 were considered too strict and formal, and the statute itself was thought incompatible with the requirements of legal safety and of the protection of society. Especially the 1939 reform of the penal-law provisions on recidivism had lessened the number of offenders sentenced to preventive detention. As a result of this reform, the severity of sentences for theft, and thus the number of persons sentenced to preventive detention for that offence, decreased considerably; on the other hand, the majority of all those sentenced to preventive detention had been convicted of theft offences.[6]

It was regarded as necessary for the protection of society to enlarge the scope of the legislation on preventive detention so as to include dangerous mentally-subnormal offenders. It was therefore provided that such offenders could be sentenced to preventive detention on lesser grounds than other recidivists. In contrast to other Nordic countries, however, in Finland separate sanctions and separate institutions were not developed for subnormal offenders. The procedure by which an offender could be sentenced to preventive detention, the very name of which indicated incarceration rather than care, took place in two stages, as before: decisions were first made by the court, and then ultimately by the Prison Board when the sentence was to be enforced. The above-mentioned differences between Finland and the other Nordic countries have been explained partly on ideological grounds and partly by reference to Finland's more limited resources.[7]

(*c*) The *increasing Nordic cooperation during the 1960s* had an effect on the contents of many penal reforms.[8] The 1962 Nordic Cooperation Agreement contains a special article on criminal policy, which states that the contracting parties should try to unify their respective legislation on offences and penal sanctions.[9] Two years previously the Nordic Committee on Penal Law had been set up. Its purpose was to prepare legislation as

[5] Dangerous Recidivists Act, Statutes of Finland no. 317, July 9, 1953.

[6] See Hall. es. no. 101, 1952 Vp., *Asiakirjat*, vol. III: 1, Helsinki 1953, pp. 1 ff. (cf. 3 f. *supra*).—There was general agreement on the necessity of the statute. Regarding the discussion, see Anttila, "Vaaralliset vaarattomiksi", *Lakimies* 1971, pp. 441 f., which critically notes, e.g.: "The same experts who in another connection had fiercely opposed indeterminate sanctions as being dangerous to legal safety and in violation of the sense of justice were in favour of an extension of the preventive detention system". See also *idem*, *Research Institute of Legal Policy* 1975, pp. 5 f.

[7] Thus Anttila, *Research Institute of Legal Policy*, pp. 7 f.

[8] Regarding an evaluation of this cooperation, see Anttila in *The Finnish Legal System*, p. 238, and Heinonen in *Rikollisuus ongelmana*, pp. 107 and 111 f.

[9] See art. 5 of this agreement on cooperation (March 23, 1962).

assigned by the various ministries of justice. Sweden's Penal Code of 1962 constituted a significant model.

Examples of the results of this cooperation are the 1960 Extradition of Offenders among Nordic Countries Act and the 1963 Nordic Cooperation in the Execution of Criminal Sentences Act.[1] The goal of unification of Nordic legislation was a principal motive for the 1966 reform of the provisions on release on parole. During the 1970s, the same goal has been mentioned in connection with the reform in 1973 of the provisions on pre-trial custody and on limitations.[2]

Another form of Nordic cooperation in criminal policy that deserves to be mentioned is the Scandinavian Research Council for Criminology, established at the beginning of the 1960s. In 1963 the Finnish Ministry of Justice established the Institute of Criminology (in 1974 renamed the Research Institute of Legal Policy) in order to maintain contacts with the Council. This arrangement significantly improved the possibilities of carrying out research, and the resulting increase in the store of scientific knowledge has had an effect on criminal-policy thinking and on the legislation in the field.[3] This is especially true as a result of some noteworthy features in Nordic criminology since the end of the 1960s: emphasis on the utility and value-consciousness of research, and the growing interest of researchers in participation in decision-making.[4]

(*d*) Progress in research has made it possible to re-evaluate the system of sanctions. Such a reappraisal has in fact taken place during the 1960s and 1970s. A typical feature of the resulting discussion has been strong criticism of the ideology of individualized punishment. At the same time, planning in the field of social-development policy has been the object of increasing attention from the public authorities, as is manifested by the establishment of planning bodies in various areas of administration. This development has resulted in demands that the general methods of social-development policy planning (such as cost-benefit analysis) shall be adapted to the problems faced by criminal policy. This new emphasis has

[1] Statutes of Finland no. 270, June 3, 1960, and no. 326, June 20, 1963.

[2] Regarding the statements in the argumentation for these provisions, see Hall. es. no. 130, 1972 Vp., *Asiakirjat*, vol. I: 2, Helsinki 1973, p. 1, and Hall. es. no. 237, 1972 Vp., *Asiakirjat*, vol. III: 2, Helsinki 1973, p. 4.

[3] See Anttila *et al.*, "The Impact of Criminological Research in Finland", in *Criminological Research and Decision Making, United Nations Social Defence Research Institute*, Publication no. 10, Rome 1974 (mimeographed), pp. 123 ff.

[4] This is how the situation is described by Professor Inkeri Anttila, who has been Director of the Institute of Criminology (now the Research Institute of Legal Policy) since 1963. See Anttila, "Developments in Criminology and Criminal Policy in Scandinavia", in *Crime and Industrialization*, Scandinavian Research Council for Criminology, Stockholm 1976, p. 8.

radically changed the basis for decision-making in the field of criminal policy, as will be explained in detail in the next section.

Of course, one cannot always draw conclusions about a general movement in criminal policy, such as those pictured above, on the basis of individual legislative reforms. For example, it is possible that the experts in a field may long have regarded a certain legislative reform as being acceptable in principle but it has not been adopted, either because practical considerations have led to a delay or because the need for reform may not be felt to be urgent. Even under such circumstances a legislative reform can be hastened when it is in harmony with the dominant trend in criminal policy. The following reforms could perhaps be included in this category.

In 1963 and 1969, following proposals which had been made on several occasions, the *legislation on fines was reformed*. First, in 1963 it was made possible to pay a fine in instalments, and an extension of the period during which the fine had to be paid was allowed. In the 1969 statute, conversion imprisonment was left to the discretion of the court in a new trial on the matter, and the maximum fine was lowered from 300 to 120 day-fines, the maximum conversion being reduced from 180 to 90 days. The main aim of these reforms was to lessen the number of people imprisoned for not paying fines.[5] This goal was reached in so far as the number serving conversion decreased to a tenth of what it had been before the reforms (the number of those serving conversion in 1962 was 9,075 and in 1974 539).[6] The results of the reform were not regarded as completely satisfactory, however, and during the following decade the remaining defects led to a reappraisal of the legislation and to proposals for further reform.

Also during the 1960s and the 1970s, a series of measures to mitigate the severity of the penal-law system was adopted, in accordance with a number of prior proposals. In 1966, *there were issued general provisions on the possibility of not reporting an offence, dropping charges, and absolute discharge*, which enabled the police, the public prosecutor and the court to waive measures in connection with certain types of petty offences.[7] In 1972, the permissible discretion of the courts was further enlarged in so far as *courts were authorized to deviate generally from the normal punishment scales or punishment*

[5] Regarding the goals of the reforms, see Hall. es. no. 15, 1963 Vp., *Asiakirjat*, vol. I, Helsinki 1964, pp. 1 ff., and Hall. es.no. 174, 1967 Vp., *Asiakirjat*, vol. III: 1, Helsinki 1968, pp. 1 ff. (cf. 3 d *supra*).

[6] This improvement was greatly influenced by the decriminalization of drunkenness in 1968, since many of those in conversion imprisonment had originally been fined for this offence.

[7] Regarding the argumentation for the provisions, see Hall. es. no. 198, 1965 Vp., *Asiakirjat*, vol. III: 1, Helsinki 1966, pp. 1 ff.—For a detailed examination of these provisions, see Lahti, *op. cit.*, *passim*.

types in the direction of greater leniency.[8] The actual use of these flexible measures has been limited, and recourse to the dropping of measures has been much less than in the other Nordic countries.[9]

Also in 1972, *capital punishment was abolished from the system of sanctions*. Even though this reform was important in principle, its practical significance was slight, as a statute passed over 20 years before forbade the use of capital punishment in time of peace, and capital punishment had been out of use under normal conditions for more than a century and a half.[1]

5. THE CRIMINAL POLICY DOMINANT DURING THE 1960s AND 70s, AND CORRESPONDING REFORMS AND PROPOSALS FOR REFORM OF THE SYSTEM OF SANCTIONS

(*a*) In sections 3 and 4 it has been shown that, in the development of the system of sanctions up to the end of the 1950s, increasing attention was paid, when imposing the punishment, to the offender's personality, his individual characteristics, and the requirements of individual prevention. In Finland, however, this ideology has never had the widespread support it has had in many other countries, such as Sweden and Denmark. The same can be said especially of the treatment ideology, which emphasizes the social rehabilitation of the sentenced offender. It has been mentioned above that the proposal for reforming the legislation on young offenders in order to place more emphasis on reformation and education met with stiff opposition at the beginning of the 1950s. However, it was at this same time that the scope of incarceration in preventive detention, based primarily on the offender's dangerousness, was enlarged.

Beginning during the 1960s, especially towards the end of the decade, there has been *increasing criticism of the ideology behind individualized sanctions*.[2] This has been due to many reasons. Despite the advances made in criminological research, there has not yet been discovered a method of

[8] See Hall. es. no. 23, 1972 Vp., *Asiakirjat*, vol. I: 1, Helsinki 1973, pp. 4 ff., and Lahti, *op. cit.*, pp. 306 ff.

[9] See Lahti, *op. cit.*, pp. 124 ff. and 211 ff.

[1] See Hall. es. no. 1, 1972 Vp., *Asiakirjat*, vol. I: 1, Helsinki 1973, pp. 1 ff.—Regarding the stages in the use of capital punishment in Finland, see Honkasalo, "Die Todesstrafe", in *Sitzungsberichte der Finnischen Akademie der Wissenschaften* 1955, Helsinki 1956, pp. 89 ff., and Anttila, *The Death Penalty in Finland*, Coimbra 1967.

[2] Regarding this criticism, see especially Anttila, "Conservative and Radical Criminal Policy", *Scandinavian Studies in Criminology*, vol. 3, Oslo 1971, pp. 11 ff., *idem*, "Punishment versus Treatment—Is There a Third Alternative?", *Abstracts on Criminology and Penology*, vol. 12, 1972, pp. 287 ff., and Norman Bishop, "Beware of Treatment!" in *Some Developments in Nordic Criminal Policy and Criminology*, pp. 19 ff.

treatment that would substantially decrease the risk of recidivism and, in general, be better than other sanctions. Furthermore, studies of the dark figure of criminality have shattered the belief that the average offence is a symptom of mental illness or deviance. This same conclusion has been reached by paying more attention to modern offences in addition to the traditional ones. The above-mentioned criticism of individualized sanctions has also been due to the consequent defects in legal safeguards. Indeterminate sanctions which are based on the offender's need of treatment or on his dangerousness are in conflict with many important legal principles, such as equality and predictability.

In the general debate on criminal policy which took place in Finland at the end of the 1960s and the beginning of the 1970s and which had received impetus from several widely-publicized trials, the establishment of two pressure groups in the field of criminal policy and the increasing attention paid by political parties to criminal policy, the *focus* as regards the system of sanctions was on *legislation on incarceration in preventive detention.*[3] It is understandable that, among the Nordic countries, criticism of the system was strongest in Finland. After all, in Finland preventive detention resulted in long periods of confinement in addition to the regular sentence. Furthermore, the treatment ideology offered no support for incarceration; and, finally, at one time 6 per cent of the entire prison population of Finland, in other words nearly 400 persons, could be in preventive detention.[4]

When reforming the legislation on preventive detention in 1971, the immediate goal was to confine preventive detention to those recidivists who actually represented a danger to society—i.e. who were in certain ways a danger to the life or health of other people. In a broader perspective, the necessity of a separate incarceration system was questioned.[5] As a consequence of a considerable tightening of the requirements for incarceration, only eight persons were left in preventive detention after the statute came into effect (in 1976, there were only five). Before the reform, the majority of the inmates had been those found guilty of repeated property offences, primarily theft.

(*b*) It can be said that since the end of the previous decade *increasing attention* has been paid, in the setting of goals and the evaluating of means

[3] Regarding this discussion in general, see Heinonen in *Rikollisuus ongelmana*, pp. 110 f. Regarding criticism specifically of the preventive detention system, see Anttila, *Lakimies* 1971, pp. 443 ff., and *idem, Research Institute of Legal Policy* 1975, pp. 8 ff.

[4] See Anttila, *Research Institute of Legal Policy* 1975, p. 10.—Regarding the goals of the 1953 legislation, cf. 4 b *supra*.

[5] See Hall. es. no. 176, 1970 Vp., *Asiakirjat*, vol. III: 2, Helsinki 1971, pp. 2 ff., Anttila, *Lakimies* 1971, pp. 447 ff., and *idem, Research Institute of Legal Policy* 1975, pp. 11 f.

in criminal policy, *to the connections between* these goals and means and *those of general social-development policy*. In general, more emphasis has been placed on the interrelationship between the different sectors of social-development policy. This trend is connected with the increasing role played by social-development policy planning in government. *Cost-benefit thinking* (research) *and planning has been adopted in criminal policy*, just as it has been adopted in general in social-development policy and decision-making.[6] This new approach has also led to a *new set of criminal-policy goals*. Nowadays, it is generally accepted that the chief goals of criminal policy are (1) the minimization of suffering and other social costs caused by crime and the control of crime and (2) the just distribution of these costs.

> Traditionally, the main goal of criminal policy has been defined as the prevention or elimination of criminality, or the protection of society. Until recently, such goals, which seem to imply that the only test of the success of criminal-policy measures is their effect on criminality, have stood almost alone. For example, in an international survey carried out in connection with the Sixth International Congress on Criminology in 1970, only a Finnish researcher (Patrik Törnudd), who advocated the above-mentioned cost-benefit goals, deviated from the general consensus.[7]
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> This Finnish definition of goals was adopted by the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, where it was embodied in the report of the section dealing with the economic and social consequences of crime. The same report also recommends encouragement of cost-benefit thinking. It deals with attitudes that constitute barriers to this way of thinking, and emphasizes that the economic costs are only part of the measurable social costs.[8]

A systematic comparison of costs and benefits is very evident in the 1972 report of the *Committee on Probation and Parole*.[9] The committee presents several alternative models for reaching the goals of probation and parole, and these models are compared on the basis of their discernible costs and benefits. Strictly speaking, the committee methodically examined

[6] In this connection see, e.g., Anttila and Törnudd, *Kriminologi i kriminalpolitiskt perspektiv*, pp. 145 ff., and "Evaluation Research in Criminal Justice", *United Nations Social Defence Research Institute*, Publication no. 11, Rome 1976, *passim*.

[7] See Katja Vodopivec, "Relationship between Scientific Research and Criminal Policy", *Annales Internationales de Criminologie*, vol. 13, 1974, pp. 17 ff. Regarding Törnudd's opinion, see *ibid.*, p. 22, and Törnudd's original paper, "The Futility of Searching for Causes of Crime", *Scandinavian Studies in Criminology*, vol. 3, Oslo 1971, pp. 29 ff. Cf. also Lahti, "On the Reduction and Distribution of the Costs of Crime", *Jurisprudentia*, vol. 2, Helsinki 1972, pp. 298 ff.

[8] See *Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, Geneva, September 1–12, 1975, United Nations, A/Conf. 56/10, New York 1976, pp. 41 ff., especially at p. 50. Cf. also working paper for this congress, *Economic and Social Consequences of Crime: New Challenges for Research and Planning*, A/Conf. 56/7, New York 1975, *passim*.

[9] See *Komiteanmietintö* 1972: A 1, Helsinki 1972.

criminal-policy measures only, but other measures were mentioned in its report. It is worth noting how the committee compared the benefits of institutional punishments with the alternative non-institutional sanctions in the light of different grounds for decision-making.

> Traditionally, the justifiability and utility of a punishment are matters to be evaluated by reference to three considerations, i.e. from the aspect of general prevention (deterrence), in other words the preventive effect of criminal law upon society in general, from the aspect of individual or special prevention, in other words its preventive effect on the individual punished, and from the aspect of retribution or atonement.[1] According to the last-mentioned idea, deriving from a modern approach, the guilt of the offender must be the basis for punishability, and the sentence must be proportionate to the punishable act.[2] This idea of retribution, together with the legality principle in penal law ("nullum crimen sine lege"), has been regarded as being instrumental in the realization of the central legal principles, such as equality and predictability, in criminal justice.
>
> The report of the Committee on Probation and Parole compares institutional sanctions with non-institutional ones not only on the basis of the three aspects referred to above but also in the light of the following considerations: administrative and other costs caused to the society by the enforcement of the sentence; the suffering caused to the offender by the sanction (the suffering caused by the cumulation of sanctions being listed separately); the discriminating effect of sanctions on groups with little power in society; the effect of the sanction on the general feeling of safety; and the secondary criminality caused by the sanction itself. It is the conclusion of the committee that, in the light of most of the criteria used, non-institutional measures, regardless of their exact nature, are more beneficial than are institutional sanctions. Institutional sanctions can be supported only by reference to general prevention, the need for the greatest possible measure of individual prevention in the case of certain very limited groups of offenders, and the demands of the general feeling of safety.[3]

(*c*) The report of the Committee on Probation and Parole has not led directly to any legislative measures, although it is probable that later work on legislation has been partially based on it. Also, the research data presented by the committee, such as the results of the comparison of different penal sanctions, have been utilized in subsequent legislative work. This can be inferred from the emphasis given in later legislative reform to the various criminal-policy criteria examined by the committee.

A partial *reform of the imprisonment system* had been carried out in 1971,

[1] Regarding these arguments for punishment, see, e.g., Andenaes, *The General Part of the Criminal Law of Norway*, London 1965, pp. 55 ff. Regarding especially general prevention, see *idem*, *Punishment and Deterrence*, Ann Arbor 1974.

[2] Cf., e.g., H. L. A. Hart, *Punishment and Responsibility*, Oxford 1968, pp. 11 ff., 128 ff., 160 ff. and 230 ff., and Alf Ross, *On Guilt, Responsibility and Punishment*, London 1975, pp. 55 ff.

[3] See *Komiteanmietintö* 1972: A 1, pp. 151 ff.

the year before the publication of the committee's report. A second partial reform took place three years later. It was considered that the proper ground for the carrying out of imprisonment sentences was their general-preventive effect. This demand was regarded as being sufficiently fulfilled by the proposal that imprisonment should mean merely a loss of liberty (within the limits, however, resulting from prison security and the maintenance of prison order). Other important principles mentioned were that the execution of the sentence should not unduly strain the position of the offender and that the costs of the system of sanctions should be in reasonable proportion to the results achieved through the punishment.[4]

The reforms of 1971 and 1974 were intended primarily to meet the following demands placed on the execution of prison sentences: increasing the prisoner's possibilities of succeeding, and counteracting the detrimental effects of imprisonment. Thus provisions on the right of prisoners to leave the institution for short periods ("prisoners' leave") were introduced, the progression system of executing prison sentences was abandoned, as was also the use of the imprisonment with hard labour as a sanction, and finally the system of open institutions was expanded. The progression system was abandoned, since its goal, the reform or rehabilitation of the prisoner through the use of measures in connection with the carrying out of sentences, was no longer regarded as realistic in the light of recent research results. In addition, the division of prisoners into different categories, required by the progression system, had lost much of its significance in practice.[5]

In 1975 the *provisions on parole were made less stringent*, primarily by reducing from four to three months the minimum time a prisoner had to serve to be eligible. The reform was of practical significance as, a number of years previously, the average length of enforced imprisonment sentences had been 4.5 months. The argumentation for this legislative reform notes that, historically, release on parole has been connected with the recently abandoned progression system. However, the use of parole was held to be supported by other considerations. The parole can be seen as a means whereby the costs and inconveniences of the execution of punishment could be lessened without endangering the general-preventive effect of the system of criminal sanctions.[6]

[4] See Lakivaliokunnan mietintö, no. 6, 1974 Vp., as to Hall. es. no. 239, 1972 Vp., *Asiakirjat*, vol. III: 2, Helsinki 1975, p. 2.

[5] Regarding the argumentation for the statutes, see Hall. es. no. 95, 1970 Vp., *Asiakirjat*, vol. III: 1, Helsinki 1971, pp. 1 ff., and Hall. es. no. 239, 1972 Vp., *Asiakirjat*, vol. III: 2, Helsinki 1973, pp. 1 ff.

[6] See Hall. es. no. 126, 1975 Vp., *Asiakirjat*, vol. A 2, Helsinki 1976, pp. 1 ff.

(*d*) In 1976, several important reforms of the penal-sanction system were carried out, and both these reforms and the arguments for them throw an interesting light on recent points of emphasis in criminal policy. The reforms in question include a new Conditional Sentences Act, the replacement of the provisions on recidivism by legislation on the meting out of punishment, and the reform of some of the provisions on the imposing of fines.[7] The first- and last-mentioned changes were connected with a reform of the legislation on drunken driving.[8]

The reason for this combining of legislative proposals was that the aim of the *reform of the drunken-driving legislation* was a desire to increase the efficacy of the general prevention of the system of criminal sanctions in several ways. One of the methods used was to make conditional sentences and fines a more practical alternative to short-term imprisonment.[9] It became possible to impose a fine in addition to conditional imprisonment. The monetary value of day-fines was raised substantially. According to the new law, an amount equal to one-third of the offender's average gross daily income was to be regarded as a reasonable day-fine value.

> Other methods were, first of all, improving the possibility of supervising traffic by making it possible to oblige not only those suspected of drunken driving but also other drivers to take tests for drunkenness. The scope of the criminalization of drunken driving was enlarged and clarified in that even minor cases of drunken driving became punishable, depending on definite *per mille* levels of alcohol in the blood stream. Furthermore, the legislation on drunken driving was unified and incorporated in the Penal Code in order to emphasize the reprehensible nature of this offence. Increasing the severity of unconditional imprisonment sentences for drunken driving was explicitly rejected as an alternative, as it was noted that this offence had already resulted in an aggravation of the problems faced by prison administration.
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> In the *travaux préparatoires* of this legislative reform, the opinion was expressed that efficient traffic supervision is the most effective direct method of preventing drunken driving. To augment this efficiency, and thus to increase the likelihood of detection, it was recommended that the reform should be paralleled by the adoption of other measures. It was recommended that the information campaign on careful driving and courtesy on the road should be stepped up and that a search for alcohol-policy measures preventing drunken driving should be instituted.[1]

The 1976 *statute* did not change the basic structure of the system *of conditional sentences*. It relaxed the prerequisites for the use of conditional

[7] Statutes of Finland no. 135, Feb. 13, 1976, no. 466, June 3, 1976, and no. 650, July 29, 1976.
[8] Statutes of Finland nos. 960–65, Dec. 10, 1976.
[9] See Hall. es. no. 110, 1975 II Vp., *Asiakirjat*, vol. A 2, Helsinki 1976, pp. 1 and 6 ff.
[1] *Ibid.*

sentences in a number of respects: a longer term of imprisonment than before can now be ordered by the courts (the new maximum being two years instead of one); a previous sentence is more seldom a barrier to conditional sentencing (as a rule, a sentence of more than one years's imprisonment passed within the previous three years bars the use of conditional sentences); and the probation period set by the court is shorter than before (1–3 years).

The argumentation for this statute noted that in the light of current thinking the role played by conditional sentences was greater than it had been when the previous statute was passed. About a third of all imprisonment sentences were given conditionally, and this proportion had not varied greatly during the entire post-war period. Conditional sentencing of young offenders (those under 21), especially those from 15 to 17 years old, was much more common than was conditional sentencing of older offenders. The principal benefit of the conditional sentence was regarded as being that it was not accompanied by the drawbacks usually attached to unconditional (imprisonment) sentences; from the point of view of individual prevention, a conditional sentence was on the whole likely to be more efficacious than an unconditional one would be. In addition, it was pointed out that conditional sentences are cheaper for society.[2]

It was, however, realized that the demands of general prevention set limits to the use of conditional sentences. The attempt to take general prevention into consideration when the statute was being drafted can clearly be seen in the provision that recourse to a conditional sentence cannot be had when the maintenance of general obedience to the law calls for an unconditional sentence. The corresponding stipulation in the previous statute was that a conditional sentence could be passed only if it could be presumed that the offender would mend his ways even if the sentence was not carried out. Also, the idea of general prevention was the principal one behind the provisions allowing the use of fines in addition to conditional imprisonment.[3] In contrast to the situation prevailing when the previous statute was being drafted, considerations of principle were evidently seen to militate against the placing of conditionally-sentenced adults under supervision; this possibility was not even mentioned in the *travaux préparatoires* of the statute.[4]

The principal motive in *increasing the monetary value of the day-fine* was the desire to improve the applicability of fines. Some idea of how widespread

[2] See Hall. es. no. 108, 1975 II Vp., *Asiakirjat,* vol. A 2, Helsinki 1976, pp. 1 ff.
[3] *Ibid.*
[4] As to views of principle in this regard, see *Komiteanmietintö* 1972: A 1, pp. 133 ff.—Cf. 3 c *supra*.

the use of fines as punishment is can be gathered from the fact that during recent years about 90 per cent of all convicted offenders have been sentenced to pay a fine (the number of those sentenced to a fine was in 1974 about 290,000). The goal is that the general-preventive effect of the higher fines should be equivalent to that of the shorter terms of imprisonment, and thus constitute an alternative. The lesser offences would continue to be met with mild fines. This would be made possible by lessening the number of day-fines. With the noticeable increase in the monetary value of the day-fine, it was regarded as especially important to make a more just evaluation of the offender's ability to pay and to avoid disparity in judicial practice. To this end, the statute provides that the size of the day-fine be set according to *gross* income, and more detailed rules for fixing the size of the day-fine are given.[5]

The *provisions on the meting out of punishment, which replaced the provisions on recidivism*, seek to guide the courts in the meting out of punishments in order to distribute severe and lenient punishments more equitably, more consistently, and so that they will be more instrumental in preventing criminality. The intention is that harsher sentences than before will be directed at planned and organized criminality.[6] The aggravating effect of repeating an offence was confined to those cases where the relation between the offender's previous offence and his new offence shows that he is obviously heedless of the bans and commands of law. In itself, repeating an offence for which the offender has already served a sentence will not be an aggravating circumstance, and on no account will it justify in general the application of a more severe penal scale.[7] The statute only enumerates the grounds which have an aggravating or a mitigating effect within the scale applicable to the offence in question.

One of the basic provisions of the new statute is a demand that the punishment be meted out so that it is in just proportion to the harmfulness and dangerousness of the offence and to the guilt of the offender as manifested in the offence. A matter to be taken into consideration in meting out the sentence is, in addition to all the aggravating or mitigating circumstances (those grounds which are intended to be general are listed in the statute), the consistency in judicial practice. A noteworthy innovation in the statute is the provision which is intended to decrease the unregu-

[5] See Hall. es. no. 109, 1975 II Vp., *Asiakirjat*, vol. A 2, Helsinki 1976, pp. 1 ff.

[6] See Hall. es. no. 125, 1975 II Vp., *Asiakirjat*, vol. A 2, Helsinki 1976, pp. 1 ff.

[7] Even though according to the 1939 Act the maximum punishment allowed by the scale could be one-and-a-half times or twice the normal scale (see 3 (f) *supra*), in judicial practice punishments lower than the maximum of normal scale were almost always applied to cases of recidivism. However, it has been noted that as a rule too much significance had been accorded to recidivism in the meting out of punishments. See *ibid.*

lated cumulation of sanctions. If, as a result of the offence or the sentence, the offender is faced with another harmful consequence which, together with his sentence, would lead to a result incompatible with the seriousness of the offence, then this consequence will reasonably be taken into consideration when meeting out the punishment.[8]

(*e*) The contents of and reasoning behind the above-mentioned legislative reforms—especially those carried out in 1976—reflect very strongly *the emphasis laid on the general-preventive effect of the punishment,* at the expense of individual prevention, specifically the idea of individualized sentences. And although individual prevention is seen as supporting the use of conditional sentences, the statute provides in this respect that the choice of the type of sanction shall be based on the demands for general obedience to the law and not, for example, on the personality and prognosis of the offender. Of the different facets of general prevention, many have been emphasized: especially the risk of detection, the knowledge of norms, and the function of punishment as an indication of moral disapproval, and thus as a way of shaping attitudes. Punishments have been made more severe in a differentiating manner, keeping an eye on certain types of sanctions (fines and conditional sentences) and certain groups of offenders (those who act in a deliberate or organized manner).

In addition to general prevention, a related matter—*the idea of the justness of sentences*—has come to the fore. In this connection it has been emphasized, on the one hand, that in accordance with the proportionality principle the punishment must correspond to the harmfulness and dangerousness of the offence and to the offender's guilt as manifested in the offence and, on the other, that the consistency in judicial practice is a consideration of major importance.

(*f*) *The report on considerations of principle of the Penal Law Committee*, published at the beginning of 1977, contains a projection of future trends.[9] When the committee was appointed in 1972, it was charged with the preparation of an integrated basic reform of criminal law. The committee considered the most important task in this total reform to be the evaluation of uniformly protected values and of punishable forms of behaviour: in other words, it was necessary to establish what ought to be punished and how harshly it should be punished. In its report the committee notes that, up to the last few decades, the focus in criminal policy has been on the

[8] According to the corresponding basic philosophy, under the 1976 Act consideration must be taken, when suspending a driver's licence for, e.g., drunken driving, of the effects of this suspension on the offender's income, or to other circumstances. Should this prove to lead to especially unreasonable results, the licence need not be suspended.

[9] See *Komiteanmietintö* 1976: 72, Helsinki 1977.

development of the system of penal sanctions. Therefore, in the committee's opinion, the reform of that system will not necessarily call for extensive further preparations.[1]

By and large, the same trends of thought which affected the above-mentioned reforms and proposals for reform during the 1960s and 70s appear in a more developed form in the report. *A close linking of criminal policy with other forms of social-development policy* is apparent in those sections of the report which deal with the social functions of the penal system and with the grounds for punishability. According to the committee, when deciding on the social functions of the penal system and on how it should be directed, many more alternatives than before have to be considered, and these alternatives must be viewed in the light of an increasing number of considerations. In this way, the alternative nature of penal measures in relation to other social-development policy measures can be better understood. One can attempt to remove negative behaviour in a number of ways: by changing social structures and conditions that are conducive to it; by developing educative measures; by making such behaviour difficult or impossible through the use of technical devices; and so on.[2]

However, the committee sees the penal system—and the system of sanctions as a part of it—as a necessary indicator of some of the ultimate limits that are essential to social order. Especially significant is the indirect effect of authoritative disapproval on the attitudes, values and beliefs of citizens. In connection with this view of the committee, the report—as also do the *travaux préparatoires* of certain recent legislative reforms (see above)—*emphasizes the significance of general prevention* in relation to individual prevention, and of the channels through which general prevention has an effect, *especially the function of punishment as an indicator of disapproval.* The symbolic value of punishment is considered noticeable, partly because it is believed that the harshness of a sentence depends largely on factors other than its official content.[3]

> The committee believes that general prevention has often been one-sidedly tied in with the question of the harshness of the sentence. It considers, however, that the harshness of punishments has relatively little effect on the total level of criminality. It is true that by regulating the severity of the threat of punishment one can influence those offenders who act deliberately, and changes in the level of harshness of punishments have significance in the attempt to indicate the relative sequence of grossness among various offences. The committee especially emphasizes the indirect effect of a high risk of detection, a speedy reaction by society, and the proper function of the penal

[1] *Ibid.*, pp. 4 and 43 f.
[2] *Ibid.*, pp. 38 ff.
[3] *Ibid.*, pp. 38, 41 and 62 ff.

> system on the attitudes of citizens. Also, attention should be paid to the actual process of pronouncing the sentence, as well as the social significance of related measures, by, e.g., upholding the official disapproval even in mild measures.[4]

The committee has laid down some *requirements for punishment:* penalties must not be inhuman, nor may they violate the principles of equality or proportionality; they should be directed only at the offender; the offender must not be subjected to needless suffering; the punishments should not cause unregulated cumulation; the system of sanctions must be economical. These requirements are regarded as being *in general applicable to* the *sanctions* that follow an offence.[5] First of all, the committee opposes individualized sanctions. It does not recommend the use of special sanctions for certain groups of individuals or for certain offences. All indeterminate sanctions (today, this would principally refer to preventive detention, and an extension of the imprisonment term of young offenders)[6] should be abandoned. Next, the committee believes that especially all emphatically punitive or severe sanctions that follow an offence and which have a pronounced effect on the life and rights of the offender should be brought within the criminal-justice system.[7] Wherever this is not possible, the principles to be applied in the infliction of criminal sentences should be given greater weight when using any punitive sanction.

In the committee's opinion, a large variety of sanctions is not to be recommended. *A simple and clear system of sanctions* is more effective as far as general prevention is concerned and, from the point of view of protecting consistency in judicial decisions, is more certain than a system based on a number of different types of sanctions. Above all, new alternatives to imprisonment are needed. These alternatives must be able to compete with short terms of imprisonment so that the infliction of imprisonment sentences can be lessened without prejudicing the general-preventive effect of the system of criminal sanctions. On this basis the committee has proposed that the structure of the new system of sanctions should be based on the following general types of sanctions: imprisonment and fines, and—as novelties—mandatory reporting and punitive warning. According

[4] *Ibid.*, pp. 65 ff.
[5] *Ibid.*, pp. 67 ff.
[6] Cf. 3 g and 4 b *supra*.—Abandonment of extension of the term of imprisonment in juvenile prison has been proposed in a bill prepared within the Ministry of Justice in 1973 for a partial reform of the law on young offenders. It is pointed out in this bill that this extension had not been used for several years. See the appendix to *Laintarkastuskunnan lausunto* ("Statement of the Commission for Examining Legislation") 1973: 3, Helsinki 1973 (mimeographed).
[7] For example, sentences which are now set by administrative authorities for tax fraud are mentioned in this connection.

to the committee, corporate bodies ought to be subjected to criminal liability. Sanctions intended for corporate bodies would be a corporate fine and a punitive warning.[8]

The committee has stated that *terms of imprisonment* in Finland are often unnecessarily long, and has made proposals for shortening these sentences. Unconditional sentences of up to 60 days could be enforced as special custody ("arrest"), three days of imprisonment corresponding to one day of special custody.

It is proposed that parole be retained, but the present form of supervision attached to it would be abandoned. The committee believes that parole could be characterized as a conditional remission of punishment on fairly firm grounds. The committee also favours the retention of conditional imprisonment, while noting, however, that the carrying out of several conditional imprisonment sentences can lead to an unreasonable cumulation. Therefore, other non-institutional sanctions should be possible, especially for young people.

In regard to the development of *fines* as sanctions, the committee presents ideas similar to the argumentation for the 1976 legislative reform dealt with above. The system of fines should be differentiated along the following lines: day-fines, based on the ascertained financial position of the offender, would be a sanction having a noticeable effect on his standard of living, while, on the other hand, fee-type sanctions, fixed at a specific amount of money, would be applied especially to mass criminality. According to the committee, the method of enforcing fines must be made more effective. One should not attempt to abolish the infliction of conversion imprisonment until a sufficiently effective enforcement system has been developed.[9]

A new non-institutional sanction that is intended as an alternative to short imprisonment sentences and should, in the opinion of the committee, be adopted, is *mandatory reporting*. Mandatory reporting would be ordered for a period ranging from six to 60 days, and the sanction would involve 2–3 reports weekly to the police or to some other appropriate authority.[1] The committee discussed whether community service could be used, e.g., as a replacement for mandatory reporting or as a conversion penalty. Ultimately, the committee opposed this sanction, holding that it would be difficult to achieve equality in the use of community service, and it pointed out that enforcement would be difficult. Mandatory reporting is intended to be emphatically punitive. In

[8] *Ibid.*, pp. 72 ff. and 148 f.

[9] In 1976, there was also presented a proposal for a partial reform intended to increase the efficiency of the fine-enforcement procedure. See Hall. es. no. 65, 1976 Vp.—Regarding the future trends of the penalty fines, cf. the proposals of the Nordic Committee on Penal Law, *Nordisk utredningsserie* 1975: 5, Stockholm 1975.

[1] The corresponding sanction proposed by the Committee on Probation and Parole was called punitive supervision. See *Komiteanmietintö* 1972: A 1, pp. 163 ff. Regarding this sanction, see also Anttila, "Probation and Parole: Social Control or Social Service?", *International Journal of Criminology and Penology*, vol. 3, 1975, pp. 821.

general, the committee believes that it is not proper to connect social services with the enforcement of non-institutional sanctions; duress (control) and service must be separated from each other.[2]

In order to enhance general prevention and in order specifically to indicate the disapproval of an act, absolute discharge should generally be replaced by a sanction called *punitive warning*.[3] However, in view of the fact that there exist exceptional situations where a rebuke in the form of an official warning would be unreasonable, the possibility of absolute discharge should be retained. In the same way, prosecutors and the police could continue to administer a reprimand to those found guilty of a criminalized act, or they could waive prosecution or abstain from reporting the offender.

6. SUMMARY AND CONCLUSIONS

The foregoing survey covers a period of slightly over a hundred years in the history of Finnish criminal law: a period extending from the beginning of the preparation of the present Penal Code to the first stages of a new total reform of criminal law. The focus has been on changes in the system of penal sanctions, and such changes have been the most conspicuous of all the penal-law reforms since 1889. Discussion and reform in criminal policy have been largely directed at the system of sanctions. It has been presumed that a partial explanation of this is the fact that it is relatively simple to reach accord on many questions related to the system of sanctions, thanks to relatively unambiguous grounds for evaluation.[4] However, in the future development within criminal law, the main interest will be focused on other questions.

It has been observed above that many legislative reforms reflect a more general way of thought or approach in criminal policy. It has, for example, become customary to speak of two schools or doctrines: the classical and the sociological (or positivistic). Of these, the former arose during the 1800s and the latter at the turn of the century. Finland's 1889 penal legislation is a product of the classical school, while the reforms of the sanctions system carried out during the first decades of this century reflect the ideas of the sociological school. It is difficult to pinpoint the dominant themes in criminal policy during the last few decades. According to one

[2] The importance of this classification was emphasized earlier in the report of the Committee on Probation and Parole. See *Komiteanmietintö* 1972: A 1, pp. 86 ff. See also Anttila, *International Journal of Criminology and Penology* 1975, pp. 83 f.

[3] Previously, this sanction was proposed for young offenders. See the appendix to *Laintarkastuskunnan lausunto* 1973: 3.

[4] Thus *Komiteanmietintö* 1976: 72, p. 44.

characterization, the golden age of indeterminate sanctions in the Nordic countries lasted for three decades, beginning with the end of the 1920s. During the 1930s, attempts were made to divide recidivists into sick ones needing care and healthy ones needing incarceration. Treatment ideology was at its height during the 1950s, when the circle of offenders needing treatment and cure was believed to be very wide. During the next decade, the role of the official control system was subjected to a fundamental reappraisal.[5]

Fewer rules reflecting the ideology of individualized sanctions have been adopted in Finland than in the other Nordic countries. Also, at the end of the 1960s and during this decade, the renaissance of general prevention and the return to (neo-)classical ideology is perhaps more evident in Finnish criminal policy than elsewhere in the Nordic region. It is emphasized, for example, that punishment must primarily be understood as a rebuke delivered by society, and should thus depend on the offence.[6] These latter features in the development are interesting, as they show how in criminal policy an approach or emphasis can come back into favour after a period of rejection.

The fact that, for example, the importance of the principles of general prevention and proportionality has been emphasized at different times does not necessarily signify that these principles have been interpreted in the same way at those times. It has been reported above that, according to the present belief, the emphasis of general prevention does not mean a favouring of harsh punishments, but that punishment must be in just proportion specifically with the grossness that the offence displays in the offender. Previously, general deterrence was more closely tied to the harshness of sentences, and more weight was given to rendering the punishment proportional to the harmfulness of the offence rather than to the guilt of the offender.

The increase in knowledge concerning the direct and indirect effects of

[5] This is how the development is characterized by Professor Anttila. See *Research Institute of Legal Policy* 1975, pp. 3 ff.

[6] Regarding the renaissance of general prevention, see especially Törnudd, "Deterrence Research and the Needs of Legislative Planning", in *General Deterrence – a Conference on Current Research and Standpoints*, National Swedish Council for Crime Prevention, Stockholm 1975, pp. 326 ff. Regarding the return to the (neo-)classical ideology, see especially Anttila, "A New Trend in Criminal Law in Finland", in *Criminology between the Rule of Law and the Outlaws,* Volume in honour of Willem H. Nagel, Kluwer-Deventer 1976, pp. 145 ff.

Regarding the trends in criminal policy, particularly in the system of penal sanctions, in other Nordic countries, cf., e.g., Andenæs, *Punishment and Deterrence,* pp. 152 ff.; Erland Aspelin, "Some Developments in Swedish Criminal Policy", in *Some Developments in Nordic Criminal Policy and Criminology,* pp. 4 ff.; H. H. Brydensholt, "Udviklingen i sanktionssystemet", *Juristen & Økonomen* 1975, pp. 172 ff.; Nils Christie, *Hvor tett et samfunn?*, Copenhagen 1975, pp. 119 ff. and 208 ff.; and Göran Elwin *et al.*, *Den första stenen,* 4th ed. Stockholm 1975, pp. 294 ff.

social measures has played a part in this change in beliefs. It should also be remembered that a certain emphasis in criminal policy may have a very different effect in different penal-sanction systems and in different social conditions. For example, during the 19th century emphasis on the idea of reformation of offenders could lead to proposals which may be found acceptable even today, but yet in the light of different grounds for decision-making. The 1875 Penal Law Committee, which put much weight on the idea of reformation, proposed legislative reforms which were not carried out until some 100 years later (removing forfeiture of civil rights from the system of sanctions, and including in legislation provisions on the meting out of punishment) or which are once more being planned (adoption of the sanction of short-term custody). Today, the provisions on parole are based on different grounds from those current during the 19th century, when they were drafted.

Some themes in the planning and decision-making in criminal policy recur decade after decade without ever finding complete solutions. An example of this would be the once more topical question of replacing short-term (unconditional) imprisonment by more appropriate sanctions. It is especially important in Finland to find alternatives to imprisonment, inasmuch as the prison population since the 1920s has been noticeably higher in Finland than elsewhere in the Nordic countries.[7]

[7] Regarding the development of the prison population in Finland compared with other Scandinavian countries, see Christie, "Changes in Penal Values", *Scandinavian Studies in Criminology*, vol. 2, Oslo 1968, pp. 169 ff., and *idem*, *Hvor tett et samfunn?*, pp. 129 ff. and 309 f. Cf. also Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *The Treatment of Offenders, in Custody or in the Community, with Special Reference to the Implementation of the Standard Minimum Rules for the Treatment of Prisoners Adopted by the United Nations*, Working Paper Prepared by the Secretariat, A/Conf. 56/6, New York 1975, pp. 20 ff. and 67 ff.