

Bachelor of Science in Criminology  
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# The Scandinavian Exceptionalism Thesis And Penal Policy Making

*Exploring Penal Exceptionalism And The Public's Legal  
Consciousness In Sweden.*



**LUND UNIVERSITY**

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Bachelor Thesis: SOCK01, 15 HP  
Spring of 2014  
Supervisor: Malin Åkerström

## **Abstract**

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When studying in Brussels, Belgium, we first encountered the term “Scandinavian Exceptionalism”. We came to understand that many western countries are experiencing an increased punitiveness; high imprisonment rates, overcrowded prisons, relatively bad prison conditions as opposed to the Scandinavian countries. Penal excess and exceptionalism are often seen within the framework of welfarism and thus the Scandinavian countries are receiving further attention since their high welfare investments. This Bachelor Thesis is based on a literature study with the purpose to explore the Scandinavian Exceptionalism Thesis, its reception by Scandinavian criminologists and its correspondence with the public opinion on crime and punishment. The Scandinavian Exceptionalism Thesis stresses that the Scandinavian (Nordic) countries are resisting an increase of punitiveness, emphasizing their low imprisonment rates and humane prison conditions. International criminologists often stresses that this exceptionalism ought to be used as a role model. Scandinavian criminologists are less positive towards this claimed exceptionalism and focus more on the pains of imprisonment and social marginalization; and emphasizing that there is a tendency of a more punitive approach in Sweden. Furthermore, there seem to exist different levels of legal consciousness; the general-, informed-, and concrete legal consciousness. Information can influence these levels and it often leads to less punitive attitudes. The public’s general legal consciousness is being relatively uninformed about the penal- and policy system. Studies show that the public *think* that the courts are sentencing much milder than what they do. The public also propose more severe sanctions compared to what they *believe* the courts do. The public’s general legal consciousness recognizes all of the conditions within the Scandinavian Exceptionalism Thesis but often find the conditions to be *too* good. The general legal consciousness is frequently used within penal policy debates and one can see an increased penal populism in Sweden. Politicians are trying to meet the demands they think that the public have, and politicians are encouraging the courts to more severe sentences and changes in penal policies.

**Keywords;** *Scandinavian exceptionalism; penal punitiveness; public opinion; legal consciousness*

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## **1. Introduction**

“Scandinavian Exceptionalism” is a term we first encountered during our criminology studies as exchange-students in Brussels, Belgium. Students and teachers were thrilled to ask us about our views and opinions regarding this Scandinavian exceptionalism when they found out that we were from Sweden, yet we were clueless about its meaning.

We came to understand that many western countries, like Belgium, are experiencing an increased punitiveness; having high imprisonment rates and difficulties with overcrowded prisons with relatively bad prison conditions as opposed to the Scandinavian countries. The Scandinavian countries have relatively low levels of imprisonment and are considered to have exceptionally good prison conditions, thus Scandinavian penal policies and prison systems are being used as positive examples to a great extent around the world. Moreover, we learned that penal excess and penal exceptionalism are often seen within the framework of welfarism and thus the Scandinavian countries are receiving even more attention due to their high welfare investments.

Due to the fact that the Belgians were so familiar with crime policies and prison systems in western societies it made us curious to find out more. Therefore, we took this opportunity to write our Bachelor Thesis to broaden our knowledge on the topic.

### **1.1. Purpose & Research Questions**

This Bachelor Thesis is based on a literature study with the purpose to explore the Scandinavian Exceptionalism Thesis, its reception by Scandinavian criminologists and its correspondence with the public opinion on crime and punishment. Curious about why we never had heard about the Scandinavian Exceptionalism Thesis before, we questioned whether it had something to do with different perspectives. Thus, our two first research questions are the following;

- *How can the Scandinavian Exceptionalism Thesis be explained?*
- *Is the Scandinavian Exceptionalism Thesis supported by Scandinavian criminologists?*

Additionally, after three years of studies within the criminology field we both find ourselves to have a much different perspective on crime and punishment compared to what we

previously had. We also find that the opinion on crime and punishment tend to vary between people whom are familiar and those whom are not familiar with the field of criminology. Therefore, our third research question is the following;

– *How does the public opinion on crime and punishment in Sweden correspond with the Scandinavian Exceptionalism Thesis?*

## **1.2. Method & Structure**

Due to the fact that we aim to present theories, previous as well as on-going debates and researches in our Bachelor Thesis we have chosen to do a literature study to explore our research questions. Thus we have chosen material consisting of articles, books and research reports that we have found relevant. We have chosen to present some statistic figures throughout the text to highlight certain points. In addition to these, figures of comparative statistics will be presented in appendix.

### *1.2.1. Delimitations*

Due to the limited amount of time and space in this thesis, we have chosen to delimitate our work and give Sweden the most attention when exploring the Scandinavian Exceptionalism Thesis and discussions that follows. When exploring the penal policies and public opinion we have also chosen to delimitate our work and to give Sweden the most attention. Thus, our Bachelor Thesis mainly focuses on the Swedish conditions but we would like to emphasize that we have also gained knowledge about the other Scandinavian countries. However, in both sections, international research and researchers will be presented in additional purposes.

Within the frameworks of this Bachelor Thesis we have chosen to let some of our gathered material constitute a superior part. For the first main section, *Penal Exceptionalism*, the New Zealand professor of criminology John Pratt's two-parted article "Scandinavian Exceptionalism in an Era of Penal Excess" has laid the foundation. This article, in which Pratt presents his Scandinavian Exceptionalism Thesis within the penal area, has received a lot of attention and response; it has set the stage for criticism and discussion. For the second main section, *Outside & Inside Perspectives*, the anthology "Nordic Prison Practice and Policy – Exceptional or Not?" will compose the main foundation. For the third main section, *Penal*

*Policies & The Public*, the work by the Swedish professor of criminology Henrik Tham and the Swedish criminologist Kristina Jerre will compose the main foundation. This is because their work is one of the largest conducted researches on public opinion and the legal consciousness in Sweden. Moreover, Jerre expanded and deepened her research based on the material from their previous study. Thus, we found that these materials composed a good foundation for our thesis. Their findings will therefore be discussed throughout our thesis, their method and methodological problems will additionally be presented adjacent to their work.

### 1.2.2. Search Terms

To find relevant literature on the subject(s) we used search terms such as; *Scandinavian exceptionalism; penal punitiveness; penal excess; public opinion; legal consciousness; common sense of justice; penal populism*; in our search to collect relevant data and material for this literature study.

We managed to gather a lot of relevant material and by reading abstracts and tables of contents of the material we were able to sort it out. We decided on what material to take a closer look at and also on which material that did not seem to be of relevance to this thesis. Thereinafter, we continued to examine the bibliographies within the chosen material to further extend the material.

### 1.2.3. Terminology

Worth pointing out is that Pratt's article is based on his research in Sweden, Norway and Finland. What Pratt seems to have missed is the fact that the *Scandinavian countries* are constituted of only Sweden, Norway and Denmark. These three countries constitute *the Nordic countries* together with Finland, Iceland and the Faeroe Islands. It is recognized that this may be of importance to Pratt's research, since there are significant differences between Finland and the Scandinavian countries such as cultural, political and historical ones (Mathiesen, 2012: 14-15). However, since Sweden is part of both the Scandinavian and Nordic countries the terms 'Scandinavian' and 'Nordic' will be used throughout the thesis, further distinction or explanation does not seem necessary within the frame of this thesis, since the main focus is on Sweden.

To clarify, in our thesis the term “exceptionalism” is referring to *positive* and *exceptionally good* aspects within the penal area. Further, the terms “the general legal consciousness” and “the common sense of justice”<sup>1</sup> will be regarded as very similar and thus no distinction will be made between the meanings of the terms. Additionally, difficulties with terminology may occur when using international material and not writing in ones native language. Therefore we would like to make reservations for misinterpretations, misunderstandings and mistranslations.

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<sup>1</sup> As we understand, there is only one term within the Swedish language that the terms “the common sense of justice” and “the general legal consciousness” can be translated into: *det allmänna rättsmedvetandet*.

## **2. Penal Exceptionalism**

There has been an increased punitiveness in western societies over the last couple of decades which has received much focus during the last couple of years. Meaning that there has been an increase of imprisonment, harsher conditions in prisons and a decrease of rehabilitative options. Sonja Snacken, professor of criminology, penology and sociology of law in Belgium, argues that welfare investments, political economy, democratic political structures and different emphasize on human rights and dignity are all correlated with the levels of punitiveness, which can differ to a great extent from one country to another (Snacken, 2010: 273-278).

The Nordic countries are described as resisting this global move towards a more punitive trend. They are seen as welfare countries with high welfare investments and who also have low levels of income differences. Furthermore, they have low levels of prison populations, claimed to have a non-punitive approach in the public debate, humane prison conditions and a knowledge-based crime policy. These countries also claimed to have the lowest levels of fear and the highest level of solidarity and trust for the government. Pratt claims that the low level of fear is partly because of modest tabloidization of the media news reports (Dullum & Ugelvik, 2012: 1; Estrada, Pettersson & Shannon, 2012: 668; Pratt, 2008a: 126; Snacken, 2010: 277).

Snacken stresses that there is a link between social inequality and punishment, she emphasizes the importance of investment within the welfare. More welfare investments ought to decrease the social inequality and vulnerability. This would in turn result in a decrease of imprisonment and increase of a more fair justice system. Thus, penal excess and high imprisonment means that there are both high social and economic costs. Due to this awareness, according to Tapio Lappi-Seppälä, the director at the National Research Institute of Legal Policy in Finland, there has been an increased international attention for the Nordic penal policies during the last years (Lappi-Seppälä, 2012: 85; Snacken, 2010: 273-278).

### **2.1. The Scandinavian Exceptionalism Thesis**

In 2008, Pratt wrote a two-parted article named “Scandinavian Exceptionalism in an Era of Penal Excess” which has become widely discussed. Pratt stressed that the study of punishment in today’s societies has its main focus on penal excess and he found it important



to give more attention to countries with low rates of imprisonment and good prison conditions, such as the Scandinavian ones. Thus, the article deals with penal exceptionalism in Scandinavia (Pratt, 2008a: 119).

### 2.1.1. Imprisonment Rates

According to Pratt, when he did his study in 2006 the prison population rates in the Scandinavian countries ranged between 66 and 82 per 100,000 of the national population. Norway had 66, Denmark had 67 respectively Finland with 68 and Sweden with the highest, 82. Within the rest of Europe it was only Italy, Switzerland and Ireland that had lower imprisonment rates than Sweden (Pratt, 2008a: 119). (See Appendix B for further detailed prison population trends between 1992 and 2010.)

The most recent statistics, from 2013/2014 and illustrated in the figure below, shows that these numbers have changed since Pratt's research. The prison population rate in Sweden has decreased from 82 in 2006 down to 60 per 100,000 of the national population.

<b>2013/2014</b>	<b>Sweden</b>	<b>Norway</b>	<b>Denmark</b>	<b>Finland</b>	<b>Iceland</b>
Prison population rate (per 100,000 of national population)	60	72	73	58	47

Pratt stresses that, even though one can see an increase of the imprisonment rates in Scandinavian it is still described as resisting the global move with an increase of punitiveness (Pratt, 2008a: 119). The figure below illustrates that the Scandinavian countries have a much lower prison population rate compared to many other countries. (See Appendix B for further detailed prison population trends between 1992 and 2010 in several randomly chosen countries.)

	<b>England &amp; Wales</b> 2013/2014	<b>New Zealand</b> 2013	<b>U.S.A.</b> 2011/2012	<b>Germany</b> 2013/2014	<b>Italy</b> 2013/2014	<b>Belgium</b> 2013/2014	<b>Spain</b> 2013/2014
Prison population rate (per 100,000 of national population)	148	183	707	78	100	108	144

Further, Pratt points out that the Scandinavian countries have a great amount of small prisons with a relatively low number of inmates (Pratt, 2008a: 120). Out of the Scandinavian countries, Sweden has the highest number of prison institutions with a total of 79 and the lowest prison occupancy level; namely 86,3%. However, none of the Scandinavian countries have exceeded their maximum prison occupancy level as some other countries have, and

consequently those countries are dealing with overcrowded prisons. (See Appendix A, fig. 1-3, for further details.)

### 2.1.2. Prison Conditions

When doing his research, Pratt found the prison conditions in most of the Scandinavian prisons to be exceptionally good in comparison to other countries' prison conditions. In Scandinavia there are, for instance, often common rooms in the prisons where the prisoners can socialise, and prisoners normally have their own cells with their own television and internal sanitation. Pratt emphasizes, "(...) what strikes any visitor familiar with Anglo-American prisons is the personal space and relative material comfort of most prisoners. There is no 'prison smell' in Scandinavia (...)". Further, he emphasizes that most of the prisoners either work or study full-time, for those whom serve a short sentence in an open prison there is a possibility to stay at their previous work (Pratt 2008a: 121-122).

Pratt believes that many of these exceptional prison conditions that can be found in Sweden are the result of the prisoners resistance and several strikes in the late 1960s and 1970s towards the treatment ideology. Since the late 1920s the welfare model *The People's Home, Folkhemmet*<sup>2</sup>, had been in focus, everyone was considered equal regardless if one were rich or poor. It was the common people, *folket*, that the welfare ideology was to serve. The welfare state constituted *the home* for the people, where the political boundaries between the state and the society as well as the individual were removed. Crime was considered to be something that the state could treat with expert diagnosis, thus treatment and rehabilitation became an ideology and was formalized in 1945. Pratt believes that the prisoners then challenged these rehabilitative efforts and wanted the prison conditions to be normalized because they did not want to be seen as "psychological deficient subjects" (Barker, 2012: 17; Pratt 2008a: 127-131).

Furthermore Pratt explains that local communities in Sweden see both economic and social benefits with being the location for a new prison, and that they therefore compete with one another. He states that "(...), as with social distances inside the Scandinavian prisons, the social distance between prison and the outside world is also comparatively short." (Pratt, 2008a: 121-123).

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<sup>2</sup> "*Folkhemmet*" was introduced by the Social Democratic Party's leader Per Albin Hansson in 1928, even today the idea of *folkhemmet* still exist, but does not have the same influence in politics. Retrieved 2014-05-14 <<http://www.ne.se.ludwig.lub.lu.se/lang/folkhemmet>>

Nonetheless he emphasizes the importance not to forget, that no matter how good a prison system is and how good the material standards are, "the prisoners are still prisoners". They are deprived of their liberty, they have rules to follow, and they can be under surveillance and so on. Further, violence and bullying of different kinds is probably occurring within the prisons. He also points out that both Norway and Sweden have received criticism due to the fact that remand prisoners often are isolated completely. During his study, Pratt himself only encountered prisoners whom already had been convicted. However, even though the pains of imprisonment may still exist, his conclusion is that the outstanding prison conditions he encountered must ease the pains for the prisoners (Pratt 2008a: 123- 124).

### *2.1.3. Requirements For Penal Exceptionalism*

Even though they may look alike from the outside, it is important to bear in mind that the Scandinavian countries do have their own history and identity. However, together they can constitute a so-called Scandinavian identity because of their similarities and close relations with one another (Pratt, 2008a: 119-120; Lappi-Seppälä, 2012: 107).

Pratt stresses that strong social welfarism, strong egalitarian cultural beliefs as well as social structures and solidarity are the foundation of the Scandinavian exceptionalism, and thus the exceptionalism is linked to these countries specific characteristics *and* histories. He argues that societies are less likely to increase their punitiveness if they are characterized by a combination of political independent and strong state organisations, have a mass media that presents relatively objective information, have a history of social welfarism that has led to more lenient attitudes about punishment, have a high level of social capital and if they are influenced by expertise. He claims that these characteristics results into knowledge and social solidarity which thus may prevent penal excess. Pratt emphasizes however that one can never guarantee penal exceptionalism by doing "this or that" as a penal system is integrated in a culture formed by many different influences (Pratt, 2008a: 120, 135).

In this era of penal excess, Pratt believes that the Scandinavian exceptionalism ought to work as a guideline and inspiration to other countries. Snacken also stresses that the Scandinavian model can be a role model for other non-Scandinavian countries. She emphasizes that other countries experiences, achievements and failures both can and are taken into account within policy-makers work (Pratt, 2008a: 135; Snacken, 2010: 277).

### **3. Outside & Inside Perspectives**

Thus, Pratt stresses that the Scandinavian Exceptionalism Thesis can be validated and Lappi-Seppälä believes that the thesis is generally justified. However, Lappi-Seppälä is one of those who questions whether the Scandinavian researchers are as impressed of this so-called exceptionalism as international researchers are. “Do we believe in the rationality and sensibility of our own policies? Are these practices as liberal and clever as some foreign commentators like to tell to the world?” (Lappi-Seppälä, 2012: 85).

There seem to be a difference between an outside and an inside perspective regarding the Scandinavian societies and their penal policies and practices. Scandinavian researchers, in contrast to non-Scandinavians, are normally less positive when describing the Scandinavian penal policies and prison conditions. From the inside it is viewed differently since there has been a more strict crime policy that is more political orientated and influenced by the media and the public views. The Swedish professor of criminology Felipe Estrada with colleagues acknowledges that there is a tendency of a more punitive approach and a larger social inequality and segregation between people in Sweden. Out of the Scandinavian countries, Sweden has the highest level of immigration and one can see the development of an immigrant underclass with high unemployment. Also the amount of people who serve long time imprisonment has increased according to them. Pratt argues that Sweden is the country at most risk of moving out of the “exceptional” category. He also recognizes that here has been a decrease of the public trust for the government and that the public is questioning the expertise. This has led to a lower level of welfare security, equality and social solidarity. Furthermore new harsher penal values followed by an increase of imprisonment are also a part of the pattern, and a further threat towards the exceptionalism (Dullum & Ugelvik, 2012: 1-2; Estrada et al., 2012: 669, 684; Lappi-Seppälä, 2012: 106; Pratt, 2008b: 275-282).

The gap between Scandinavian and non-Scandinavian researchers views regarding the Scandinavian Exceptionalism Thesis is being addressed in the anthology “Nordic Prison Practice and Policy – Exceptional or Not?”. Several researchers have pointed out their disagreements when Scandinavian prisons are used as positive examples. Scandinavian researcher seem to have more focus on the pains when being imprisoned, such as being isolated, having to deal with violence or suicide. They also seem to have more focus on the social marginalization with its complex process that the penal system is a part of (Dullum & Ugelvik, 2012: 2).

### 3.1. Producing The Image

The Swedish criminologist and historian Roddy Nilsson acknowledges that there is a lot of truth in Pratt's analysis but he also finds that his conclusions made from historical material turns out to be somewhat based on speculations and evidences that cannot be confirmed. Nilsson stresses that there are two different questions within the discussion about the Scandinavian Exceptionalism Thesis. First, one can question if a Scandinavian exceptionalism really exists and second, one can question whether Pratt gives the best explanation for the exceptionalism - if there really exist such a thing. However, Nilsson chooses to focus on *how* the image of the Scandinavian exceptionalism has been created and formed, with his attention primarily on Sweden. Thus, the discussion about the existence of this exceptionalism is set aside (Nilsson, 2012: 79, 93-94).

As for Sweden, it was considered as *the* model regarding prison systems back in the 1960's and 1970's, especially according to the American researchers as well as journalists who encouraged a more liberal penal system. The Swedish penal policy was seen as modern and world leading, with a very progressive, lenient and humane approach. Spreading information about the Swedish welfare state had been an issue for several decades, but during the early 1970's the Swedish government and prison authorities spread the information to a greater extent than ever before. Nilsson argues that this image was partially created and formed due to a successful marketing campaign made by Sweden itself. Such image had from the start been a part of the Social Democratic welfare policy, they believed that their penal policy and prison system were good but could also be even better. Overall, the Swedish population also seemed to be proud of the progress of becoming a progressive welfare state. This resulted, according to Nilsson, into an attempt of spreading the information about the Swedish model to other countries. Nilsson believes that the Americans found the Swedish model so interesting and admirable due to a will to find a progressive and humane solution with a treatment approach for crimes (Nilsson, 2012: 79-93).

Thus, Nilsson claims that the positive image regarding the Swedish penal policy and prison system was the result of both media-driven campaigns but also the exchange of ideas and knowledge between researchers and such from the two countries. Further, Nilsson stresses that the so-called idea of the Swedish model should be seen within the framework of the Swedish welfare state. The cause of Sweden being a role model within the penal area during this time was due to specific social, culture and political conditions according to these non-Swedish researchers. There were however some critics among them saying that the

treatment approach within the Swedish prison system was an evidence of the welfare state being a control apparatus. Some critics also emphasized that it was important not to have such a “rosy picture” of Sweden since there were major differences between the various Swedish prisons and far from all prisons were that exceptionally good. Even though many American researchers were positive towards the Swedish, and the Scandinavian, prison systems and penal policies, it was at the same being criticized by many Nordic researchers, professionals and journalists and so on. At home, the prison systems were criticized for being inhumane and the prisoners were seen as victims of the state's oppressive power (Nilsson, 2012: 79-93).

Nilsson believes that the critique to some extent led to even greater attempt to spread the positive and exceptional version, both from the Swedish government and prison authorities as well as from the foreign researchers whom where positive towards the policies and systems. Nonetheless, the critique towards the treatment approach led to a decreased interest in the Swedish prison model in the late 1970's. However, the conclusion made by Nilsson is that the positive *image* of the Scandinavian model and exceptionalism still exists. It is for instance indicated by Pratt's articles and by the American media, which still publishes articles about humane prisons in Scandinavia (Nilsson, 2012: 91-94).

### **3.2. Pratt's Defence & Self-Criticism**

Together with the Swedish criminologist Anna Eriksson, Pratt himself addresses some of the criticism. He acknowledges that there are some parts of his article that needs to, and should be, adjusted and further explained (Pratt & Eriksson, 2012: 235). Instead of explaining and describing in detail what criticism came from which researcher, hereinafter some of Pratt's defence and self-criticism will be highlighted.

Pratt received criticisms on the methodology he used for his data that formed the basis for his Scandinavian Exceptionalism Thesis. He was criticized for using prison population rates as a measure of punitiveness and he recognizes that there are differences between societies and their way of counting their prison populations. Some societies may for instance include mental health patients and/or remand prisoners into their prison population while some societies may not. However, Pratt stresses that the data that was used for his article was based on detailed statistics taken from the World Prison Brief. He states that the Scandinavian countries, no matter how it is measured, have the lowest rates of imprisonment (Pratt & Eriksson, 2012: 235).

Further criticism was related to the characteristics of the prisons that Pratt had stated existed. The article was partly based on Pratt's visits to several prisons where his intention was to observe and find recurring patterns within the prisons. In his article he claimed that the conditions within the prisons were normalized to the possible extent, since he believed that being incarcerated is considered to be a punishment itself in these countries. Several Scandinavian researchers were critical towards his claims and emphasized the pains of imprisonments. Pratt encountered this critique by emphasizing that it was an illustration from his side, an illustration of the possibilities of what incarceration in Scandinavian could be like. He stresses that the existence of certain patterns of prison conditions does not mean that every Scandinavian prison falls within these patterns. For instance, he is aware of that the European Committee against Torture and Inhumane Treatment has criticized Sweden for the conditions of remand prisoners whom until trial can be held in restricted confinement. Thus, he points out that he never argued that these prisons were perfect. Even though the prison conditions are considered to be good, he stresses that one cannot assume that the prisoners experiences it the same way. Thus, the different "pains of imprisonment" cannot be eliminated regardless in which society one is incarcerated within. When being incarcerated one will always be a prisoner who is deprived of one's liberty in one way or another. However, as Pratt stresses;

(...) the exceptionalism thesis does not stand or fall on what effect prison conditions have on prisoners. Instead, it is the prison conditions themselves that is the issue here, rather than their effects; that is, what is it about the Scandinavian societies that has made possible these conditions (Pratt & Eriksson, 2012: 236-237).

Furthermore, *the pressure to conform* and *the over-powerful state* are two aspects that Pratt acknowledges that he should have given more attention to concerning the Scandinavian exceptionalism and its social costs. Even though there are good possibilities for strong interdependencies and solidarity within small societies like the Scandinavian ones, it may also include a great pressure for its citizens to conform. Pratt argues that the solidarity throughout the history has contributed to the development of this exceptionalism but also to the strong informal and formal control systems within the welfare states. One should fit in within the norms of the society, both the informal as formal ones (Pratt & Eriksson, 2012: 251-252).

With all this said, Pratt still claims that the Scandinavian Exceptionalism Thesis within the penal area still can be validated and reaffirmed (Pratt & Eriksson, 2012: 235).

### 3.3. The Janus-Faced States

The discussion about the Scandinavian Exceptionalism Thesis did however not end after the publication of the anthology “Nordic Prison Practice and Policy – Exceptional or Not?”. Vanessa Barker, an American associate Professor of Sociology and Criminology at Stockholm University since 2010, acknowledges that many of the researchers whom contributed to the anthology were critical towards Pratt’s thesis. However, she stresses that no one really examined the driving force of the Scandinavian Exceptionalism Thesis, which she believes is the welfare state. Barker recognizes numerous of qualities and characteristics within the Nordic penal systems that she believes should both be maintained and copied by other countries. Although, she does not believe that the penal changes in Sweden is due to of a globalization of punitiveness. She stresses that the Nordic penal systems are Janus-faced, i.e. two-faced. Meaning that they are both rather mild and harsh at the same time. She stresses that the Scandinavian Exceptionalism Thesis has either not entirely understood, or described, this contradiction (Barker, 2012: 5-7, 21).

To be able to explain these Janus-faced penal systems one has to look deeper into the welfare states, according to Barker. One of the main founding principles of the welfare state is the so-called People’s Home, as previously explained briefly. High standard of living where everyone has access to social benefits is what the Swedish welfare state is known for. Barker emphasizes that the main focus is the people, one is “(...) a member of the Swedish welfare state because you are a part of a people, an ethnic group with shared experience, culture, language, and blood.” According to Barker, this concept contains exclusionary features even though it could be seen as very democratic. She emphasizes that because of these exclusionary features, the welfare state today has its limitations and difficulties to live up to the humane conditions and treatment that they are claimed to have. Further, she argues that the Swedish welfare state can be both punitive and difficult to access for social groups and individuals that in some way are left outside the social, economic and political systems. There are for instance difficulties for foreign nationals and ethnic minorities to fully belong to the Swedish society. As she explains;

The Swedish welfare state is fairly affluent and very generous and quite frankly a major accomplishment, if you belong to it. If you do not belong to it, Sweden can be a place made miserable by variegated social marginalization in core areas of social life: housing; employment; education; and criminal justice (Barker, 2012: 17).



She argues that the failure to include people often results in increases of social control, such as in criminalization and penalization. She stresses that Sweden relies on criminalization when trying to reproduce the image of the Swedish model and to maintain its generous welfare state (Barker, 2012: 7-8,16-18, 21).

Barker recognizes that Pratt acknowledged that one has to pay attention to the pressure to conform and the social control, however, the weak legal tradition of the individual rights was not given attention by Pratt. Barker describes Sweden as a strong social democratic state where the government has basically no power limits. Barker claims that the individual rights in Sweden are fragile and underdeveloped, to some extent the people gave up legal protection against the government when their social and material well-being and independency increased. She claims that “(...), individual freedom is constructed through the State rather than conceived as freedom from the State, (...)”. Thus, the individual independency has been gained *and* lost through the Swedish welfare state. This result in the people, especially criminals and the ones whom are considered as “the others” such as foreign nationals, is vulnerable to the state. However, Barker stresses that, in Sweden, this two-sided penal system with its both humane and inhumane features can affect all *criminal offenders* at different stages within the criminal justice system. Thus, it is not just certain types of offenders or social groups that these features affect. For instance, she emphasizes the criticism that Sweden has received from international committees regarding violations of human rights and liberties. Frequently recurring criticism is, like we previously mentioned, the inhumane treatment of the remands and incarcerated, there are many restrictions and isolation that could go on for several months. Furthermore she also emphasizes the very strict Swedish drug policy that has been aggressive since the late 1960’s with a “zero tolerance”. Today, drug offenders constitute a very large part of the Swedish prison population, even though the number of drug crimes reports is relatively small. This is justified by saying that it is the most effective way to protect the society from becoming a victim of crime (Barker, 2012: 14-15, 19-20).

Moreover, as previously mentioned Pratt claims that the Scandinavian welfare states and exceptionalism have its roots in strong social solidarity and culture values. Barker on the other hand has a different opinion. She stresses that it does exist a strong feeling of equality and a spirit of democracy in Sweden, but there is however a lack of strong social solidarity. This since there exists an ethno-cultural basis of belonging and citizenship and because individual independency is high valued. She believes that this makes it possible to have a relatively lenient penal system. Furthermore Barker believes that, in Sweden, the violation of the rights of individuals is an intentional method for the state to control, discipline and put

pressure on citizens. Thus, the violation of individual rights does not occur because there is a need to humiliate the offenders like it sometimes is in other countries. Her thesis is that this kind of repression can be hold relatively invisible to the public because these restrictions lack cruelty and vulgarity (Barker, 2012: 9, 19-20).

With this said, the Janus-faced approach where the state can provide the people individual independency and material well-being but at the same time violate individuals rights, makes the claimed humane Swedish penal system weaker and less humane according to Barker. Without violating the rights of individuals and without excluding those who are considered being “the others”, Barker claims that lenient sanctioning may be achieved with deliberative democracy that seeks to protect the people. It cannot be achieved with social democracy since its coloured by welfare nationalism where some individuals, especially foreign nationals, are much more vulnerable than others (Barker, 2012: 20-21).

## **4. Penal Policies & The Public**

After presenting the Scandinavian Exceptionalism Thesis and the opinions and discussions that have arose within the researchers community we will now turn to the public. After this, we investigate how the Scandinavian exceptionalism and public opinion on crime and punishment correspond. Instead of just looking at opinions, it is important acknowledge the interaction between media and the society. The interaction regarding opinion-forming can further be explained by the relation between crime policy, media and the public. Åkerström exemplifies that the public opinions on legal matters are being investigated with opinion polls and surveys; these are then compiled and published in media. This then affects and interacts with the individual citizens' position on the matter, which in turn influences the politicians and then new opinion polls and surveys are conducted (Åkerström, 2008: 23; Demker, Towns, Duus-Otterström & Sebring, 2008: 329).

### **4.1. From The Offender Towards The Public**

In the public debates it is common with complaints from the public about the prisons having too high material standards and luxury, claiming that the prisons are more like hotels than prisons. It is viewed as though there does not exist any punishment in the so-called prison experience (Dullum & Ugelvik, 2012: 1-2).

“The common sense of justice” is often referred to within crime debates; the expression refers to a collective entity. According to the Swedish counsel and former Councillor of Justice at the Supreme Court of Sweden Dag Victor, the expression symbolizes that a sufficient number of individuals within a selected public (e.g. citizens of a country) actually have similar attitudes in legal matters. Nevertheless, until the 1980s, the sanctioning system had left the publics common sense of justice aside. As described above, the treatment ideology was prevailing until the 1980s in Sweden. Since crime was considered to be something treatable, the treatment-oriented system did not consider guilt and responsibility as the main reason for usage of sanctions. Instead it rather considered the individual delinquency of the offender, which was believed to be possible to treat with different kind of individualized treatment programmes. Since it was believed that future involvement in criminality could be avoided and recidivism would decrease if it were treated, penalty and common sense of justice could never be the main focus within the treatment-oriented justice

system. Thus, a treatment-oriented system leaves the common sense of justice aside since it is the needs of the offender that are in a central position and not the needs of the public (Victor, 1981: 151-152).

However, the treatment-oriented system received massive criticism for not making enough progress with recidivism. For a long time it was assumed that the reason for this was that the treatment programmes needed to be reformed. Therefore a set of different kind of treatment programmes were brought into trial phases but very few had the positive outcome one had hoped for. Hereafter, the treatment ideology became more of a political question in Sweden. Due to the lack of results, the care and treatment system shifted to a more punitive approach instead. With this shift the view of the offender as a delinquent whom could be treated from committing future crimes also changed (Victor, 1981: 152).

When the treatment ideology had become unsustainable the focus instead shifted to law-and-order and the public opinion. A new set of theories arose in the Swedish justice system. This is also considered to be a neoclassical turn in the crime debate, although as Victor points out, the term should be used with caution since neoclassicism contains a great variety of theories. However, many of the theories have an essential interest for fundamental questions within criminal justice, and have words like legitimacy, proportionality, general prevention, responsibility and guilt in common. From this point, penalty and the common sense of justice gained new ground and could achieve a more central position in crime policy making (Jerre, 2012: 31-32; Jerre, 2013: 98; Victor, 1981: 152).

The main focus was no longer the offender but instead harsher sanctions, mainly imprisonment. It is also clear that the care and consideration for the offender got replaced by care and consideration of the public. Meeting and satisfying the public's common sense of justice and opinion has become an important connection to crime policy making and is widely used within politics. In penal welfare systems the public opinion has thus become a guiding principle, and Jerre points out that in relation to sentencing, the public has been assigned the role of "arbiter of what is fair" (Jerre, 2012: 31-32; Jerre, 2013: 98).

There have been political criticisms towards the court judges for imposing punishments that are on the lower half of scale of punishments. In relation to the on-going political debate, the level of punishments is by some political parties considered to be too low in Sweden. Political efforts have been made to encourage a more severe sentencing and during the last decade there has been an increase in the total number of sentences. Changes to the criminal law are to a great extent justified by referring to the public opinion; that the changes are what the public stand for (Estrada et al., 2012: 679; Jerre & Tham, 2010: 1, 3).

## 4.2. The Public Opinion On Crime & Sanctions

As previously mentioned, in Swedish and Western crime policy making the public opinion have a central and important part in the process of legitimizing crime policy proposals and changes.

### 4.2.1. Problematic Encounters

It is important to question and examine descriptions of the nature of the attitudes that are being referred to as the “*public opinion*”. If we do not acknowledge the intrinsic meanings in these attitudes, there is a risk that references to the public opinion will be relatively arbitrary while using it to form crime policy. Therefore, it is important to acknowledge some problematic encounters regarding studies about public opinions. There are different ways of studying the public opinion and surveys and polls are some examples of methods that are often being used in this purpose. Jerre gives the following example of a poll question; “Are sentences too lenient?” to which most respondents answer “yes”. In questions like these, important dimensions and differences are not met because of the lack of nuance in both questions and answers. It is problematic since the results are often presented or referred to as evidence of what the public thinks, in this case it would show that the public support more severe or harsher punishment. In the above stated example it is not mentioned anything about the crime or the offender nor by the questioner or the respondent, which often leads the respondent into thinking in a very stereotype image of crime which are often presented in media (Jerre, 2012: 33; Jerre, 2013: 98, 100).

Further complications with studies of this design is that they do not estimate how much more severe the public want the punishments to be, neither does it reveal what sanctions are being viewed as more severe than others. Jerre also finds that in general, the public has a very poor knowledge of the sanctioning system. Because of this, the public have a tendency of under- or overestimating how severe the punishments are imposed within the scale of punishments. This complicates the interpretation of the public demand regarding severe sanctioning even further. Therefore, polls and surveys that are designed like this should not be accredited much reliance in guidance for public policy making (Jerre, 2012: 33).

One way to avoid complications like these is to instead let the respondent state which sanction is appropriate to a given crime in, for example, a questionnaire or survey. Constituting a survey like that offers the researcher to both control the types of crime being

referred to, and also what the respondent choose as an appropriate sanction. In addition to these kinds of surveys Jerre also recognize that by comparing answers with court practice it becomes even more promising to make indirect assumptions about the respondent's preference for more lenient or severe sanctions despite their knowledge of current praxis. Even though these kinds of surveys capture a more varying and nuanced set of answers, it could become problematic in presenting results due to a broad range and higher degree of variation within the answers. Therefore it could be problematic to summarize it to a representative level of public opinion on the matter (Jerre, 2012: 33).

#### *4.2.2. The General-, Informed-, & Concrete Legal Consciousness*

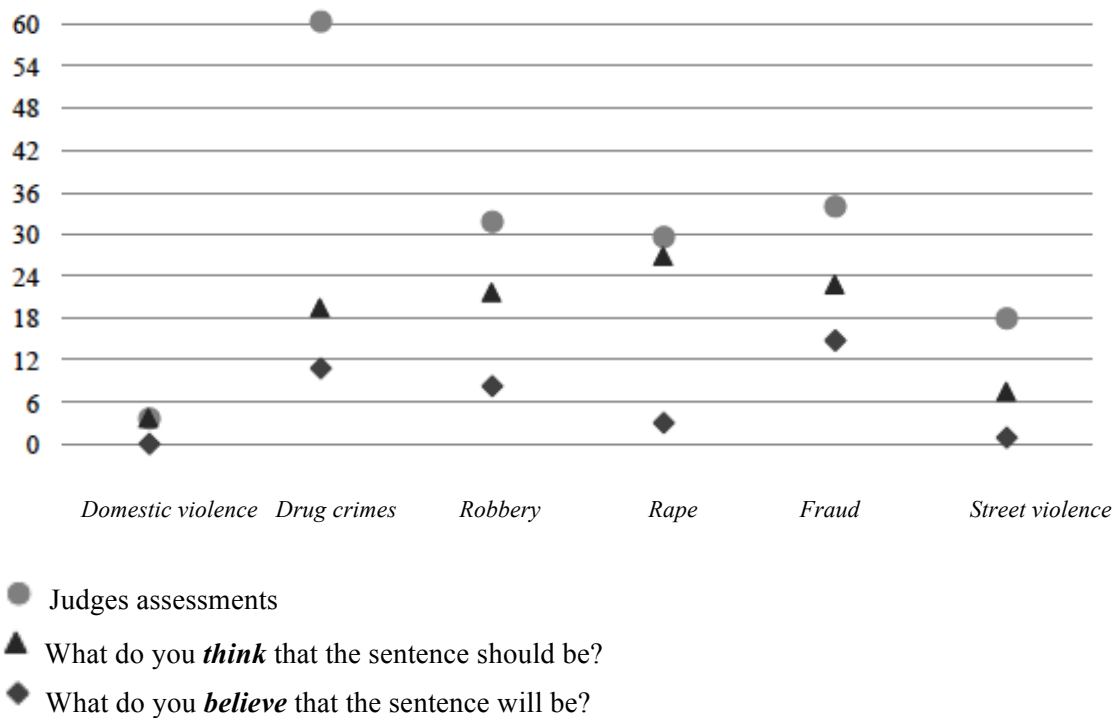
In 2010, a research report regarding the Swedish public legal consciousness was presented. The research was a part of a larger Scandinavian project, conducted by the Danish criminologist Flemming Balvig, where three levels of legal consciousness was investigated; the general consciousness, the informed consciousness and the concrete consciousness. To investigate the general legal consciousness a representative selection of the Swedish population had to consider simple questions regarding crime and punishment. Furthermore, over thousands Swedes took part in a survey with longer descriptions of fictitious vignette crime cases to investigate the informed legal consciousness. Finally 119 people were shown mock case trials of the vignette cases and then took part in group-discussions to investigate the concrete legal consciousness (Jerre & Tham, 2010: v-1).

The findings regarding the general legal consciousness indicate that the Swedish public wants tougher punishments. Two thirds believe that the punishments are too mild, more than half are generally for longer prison sentences and three quarters believes that violent crimes shall be punished much more severe than what they currently do. Thus, the Swedish population seems to want a stricter criminal law with tougher punishment. (See Appendix C for the distribution of answers from the survey regarding the general legal consciousness.)

However, the study shows that these opinions and attitudes become different when the public is more informed and consider a more detailed description of court cases, crimes and sanctions. In the survey the respondents had to state what sanction they believed would be imposed in court and what sanction they thought was reasonable. Their answers were compared to the answers from nine court judges. The results showed that the public *think* that the courts are sentencing much milder sentences than what they really do in practice.

Furthermore, the public propose more severe sanctions compared to the sanctions they *believe* are given by the courts. However, these proposals of punishments are normally milder than what the interviewed judges proposed. The public also propose non-custodial sentences in approximated 20 % of the criminal cases. The judges however, are sentencing with very few exception all of the cases to prison. The figure below illustrates the informed legal consciousness (Jerre & Tham, 2010: 51).

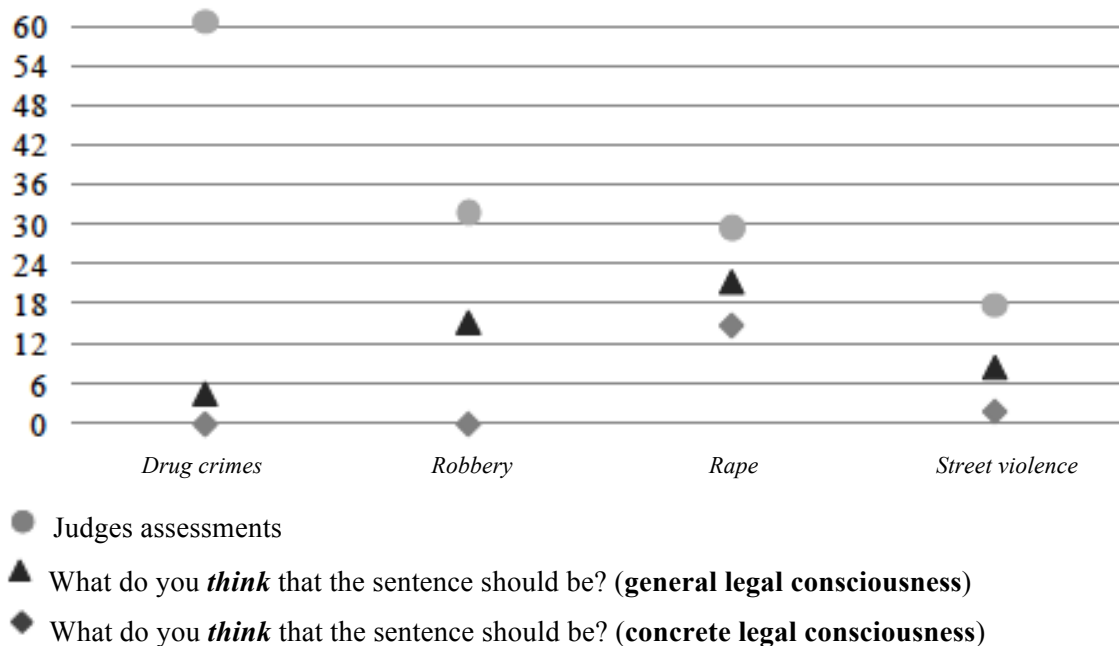
*Months in prison (mean)*



Furthermore, the investigation of the concrete legal consciousness showed that in crime cases regarding robbery of stores, street violence and drugs the public imposed an even lower punishment after receiving further information. There seems to be a great difference between the public and judges when it comes to the assessment regarding drug related crimes, which is considered as serious crimes. When the public wanted a non-custodial sentence for the drug crime the judges wanted five years of imprisonment. All though, there seems to be the same approach for the public as for the judges in the assessment regarding domestic violence. However, Jerre mentions that there has been findings that indicate that respondents agree on what type of sanction that is adequate to a given crime often correspond, but that there is a tendency of variance regarding how severe the implied sanction should be according

to the respondents (Jerre & Tham, 2010: 1-3; Jerre, 2012: 34). The figure below illustrates the changes from the general to concrete legal consciousness (Jerre & Tham, 2010: 66).

*Months in prison (mean)*



The study reveals that when the public is informed there is a decrease in their demands for more harsh punishment, which also have been the result of studies in other countries. With this said, it does not mean that the public take the crimes less seriously. It just shows that the public is not well informed and do not have great knowledge about the actual punishments that are imposed in court. Furthermore, the researcher thinks that when the public is poorly informed they propose harsher punishment since they want to point out that they do not approve of the criminal actions. The result indicates that the public normally wants justice and proportion, but also that they want to extend the punishment so that imprisonment is complemented with other sanctions and legal responses. It could for instance be economic compensations for the victims or special treatments for the offenders and try to prevent future recidivism (Jerre & Tham, 2010: 2).

In conclusion, the research show that the political demands for stricter punishments appears to not have support by the Swedish public's informed and concrete legal consciousness, but it does have support by the general legal consciousness. While forming crime policy it is a emphasized goal to satisfy the public's opinion, therefore policies on sanctioning levels should not deviate from the public opinion (Jerre & Tham, 2010: 3; Jerre, 2012: 40), which is represented by the general legal consciousness in crime debates.



### 4.3. The Objectives Of Sanctions

With regard to the above it is also important to investigate what the sanctions are supposed to symbolize as they constitute society's reaction to crime. The objectives, meaning the aims, of sanctions could represent a variety of different reactions.

In Jerre and Thams research project, the analysed information on the concrete legal consciousness was based on the participants own discussions and arguments from the conducted group interviews. It was of interest to gain a more detailed insight into *which* sanctions the public perceived as appropriate, but foremost it was of interest to study *why* these sanctions seemed to constitute appropriate reactions to crime and what was expected out of these sanctions. The material was thus further explored by Jerre in a follow-up article in 2013. In a context where policy, practice and public opinion should correlate in appropriate reactions to crime it is thus important to examine the intrinsic meanings in sanctions. Julian Roberts, professor in criminology, formulated together with Loretta Stalans, professor of criminal justice, criminology and psychology, a question as follows;

Are certain sanctions considered attractive because they punish or 'rehabilitate' the offender, repair the financial harm done to the community or the victim? Or, do they appeal because they promise public safety throughout deterring the offender? (Jerre, 2013: 99-100).

By examining the group discussions from the study on the public's concrete legal consciousness, it became possible to take a closer look at the different arguments that were used while discussing the objectives of society's reaction to crime amongst the participants. The goals of these discussions were to "stimulate a discussion that functions to simulate a microcosm of the larger community" (Jerre, 2013: 102).

There are four elements that have been identified in several research projects about the aims of society's reactions to crime, namely that the reaction should contain *punitive*, *restorative*, *rehabilitative* and *compensatory* elements. The public is also concerned with that these elements should include the victim, the offender and also the society and its population. Hence, it is possible to argue that sanctions, and the objective of sanctions, are desirable to contain a wide set of reactions that have to correspond with the public opinion and consensus at large. Different sanctions fulfill or grant these elements at diverse levels, but a common point is that they have to signal a condemnation of (the) crime (Jerre 2013: 100).

In the following studies, participants were asked to state their opinions on objectives, justice goals and sanctions decided by researchers. Prison is in most cases considered to be a

sanction where the purpose is to punish the offender. According to a study made by Gromet & Darley, punishing the offender could also be achieved throughout restitution or community service and therefore serve to fulfill the same justice goal as prison does. They also found that prison is not only viewed as a sanction to just punish the offender, it also contains values as being able to restore the victim and reinforce community values. Jerre also refers to Oswald et al. whom conducted a research project and found that the overall objective of society's reaction to crime is "the prosocial intention of changing the offenders' deviant behaviour". However, the participants in this particular study had very different views on the type of sanctions that best would fulfill this objective. Marinis instead argues that the appropriateness of a sanction varies depending on "the nature of the offence and the offender" and that the interaction between these two is what should be taken into account within the broader purposes of punishment. Furthermore, Robert McFatter concluded in his research that what makes a particular sanction attractive varies between different kinds of offences. While studying society's reaction to crime, Jerre also recognize that it is a plausible assumption that what makes a sanction attractive also lies in its ability to fulfill further needs than to just serve as a condemnation. These needs could for example be rehabilitative measures. Considering the above, Jerre defines that the same sanction can accomplish a number of different justice goals and objectives, and in turn, the same justice goal may be fulfilled by different types of sanctions (Jerre, 2013: 99- 100).

#### 4.3.1. *Two Overarching Objectives*

The main findings in Jerre's study were that there were two overarching objectives according to the participants. The first one is that society's reaction to crime is to create a safe society, and thus creating a safe environment where citizens do not need to experience fear of, or exposure to, crime. This can partially be obtained by society *signalling* that (the) crime is intolerable and prevent the offender from committing further violations. Jerre points out that what the "signal" constitutes it not entire clear amongst the participants, but that it is described as being directed at the public and the victim(s), and both at potential offenders and the actual offender. For the sanction to function as a signal it has to be *visible* and perceived as *tangible* for the offender to serve, and it could also achieve a *deterrent* function. Custodial sentences were perceived by the participants as the most tangible of punishments, and in the discussions they repeatedly acknowledged that the offender should feel remorse and reflect upon their behaviour, by doing so, the offender could be able to stay away from crime over

the longer term. This means, according to the participants, that law and order are being maintained and that offenders are being punished, further it also shows that society is on the side of the law abiding citizen by the condemnation that the signal declares. Interestingly, the participants also acknowledged that even though custodial sentences were important to both society and the offender, it also worked in a counter-productive way by further marginalization of the offender and thus it was viewed as a short-term crime-preventive solution (Jerre, 2013: 103-105).

This leads us to the second overarching objective, namely the *prevention*. Prevention by custodial sentences was in some cases expected to have protecting objectives, since it would protect the victim and other citizens from the offender. Non-custodial sentences like community service, mediation, suspended/probationary sentences, fines and financial compensation were all being perceived as *potentially tangible for the offender*. Further, these sanctions did not marginalize the offender in the same way as a custodial sentence did, because of the offender not being excluded from society. On the other hand, because of the fact that they are not custodial, they are *not perceived as visible or tangible by the public*. And thus, they do *not signal society's condemnation of the crime*. These sanctions could fulfil objectives by giving insight and lead to reflection, for example in mediation, although the participants also found that this could be hard on the victim(s) and thus not work in a redressing way. Regarding probationary and suspending sanctions they were viewed as warnings for future criminal activity and therefore should lead to insight, although, this probably did not apply to "hardened criminals" according to participants. Moreover, fines and financial compensations could lead an offender that was already in a financially deprived situation even further away from (re-)socialization. Meanwhile an offender whom was well off could be perceived as not getting a punishment that was particular tangible (Jerre, 2013: 105-108).

While discussing custodial sanctions it was not only the marginalization of the offender that were of interest, but also the importance of care and treatment of the offender. Jerre found that the participants generally were in favour for combining custodial sanctions with care and treatment programmes, such as dealing with substance abuse or anger management therapy. Even though this was perceived as being essential to the offender to not commit future violations and thus work as a long-term prevention, it was also being perceived as showing consideration for the needs of the offender *over* the needs of the public and/or the victim. Such measures, even though they were acknowledged to be of great importance to the

offender, were not perceived as tangible and thus they did not signalling society's condemnation of the crime (Jerre, 2013: 107).

In conclusion, Jerre's research shows that the objectives of society's reaction to crime are fulfilled by signalling the condemnation of (the) crime, but also by successfully (re-)socialize the offender. These two objectives, aims, cannot be achieved without the cost of one another (Jerre, 2013: 109). Hence, it is a contradiction within the objectives, one cannot punish *and* treat at the same time.

#### **4.4. Penal Populism**

As previously mentioned, changes to the penal policies seem to be justified by saying that the changes are what the public stand for. In Sweden, the penal policy is a major part of the national political elections. The media plays an important role when it comes to the public opinions and political actions. The media culture differs between countries and the Scandinavian media are considered to be less sensational and commercialized compared to the media in other countries. Even though the Scandinavian media are considered to be less sensational, Pratt believes that the Swedish media has gone from an objective and informing approach towards a more sensational and alarming reporting (Jerre & Tham, 2010: 1; Lappi-Seppälä, 2012: 106-107; Pratt, 2008: 287).

The phenomenon of crime is intriguing and leads to increased audience figures within television and more single copies being sold within the newspaper industry. This sensational-seeking journalism has been criticised for leaving important political and social questions aside, and furthermore it has been accused of being tabloid-seeking. Additional critique against this kind of journalism is that real stories about crime and criminality can be lost due to some exceptional cases being published instead, giving a skew image of reality. When media find themes such as criminality to be an interesting topic, "populating the media" becomes important. Meaning, publishing stories on crimes, victims and offenders thus becomes of interest, and according to Åkerström the media is depending on the cooperation of those whom are willing to tell their story. The professor of political science Marie Demker with colleagues also recognizes that constructing the victim- stories as tragic and demonizing the offender in media reports has also increased. By focusing on the individual crime victim and the offender in media, it could lead to an overblown picture about the prevalence of crime, which in turn can affect the public opinion on tougher sentences because of raised

awareness on crime and crime policy (Demker et al., 2008: 324, 328; Thelander, 2008: 25; Åkerström, 2008: 18-19).

#### 4.4.1. Heightened Sensitivity

In an essay written by Tham in the journal *Tvärsnitt*<sup>3</sup> he acknowledges that the Swedish media have a massive report on both national and international crimes, foremost acts of violence. He also states that Swedes have become more sensitive to acts of violence, by expanding the definition of violence and by reacting stronger against acts of violence. Further he states that this is shown both in the media, the public and by politicians. Media produces the image that acts of violence are increasing in society, and that younger individuals are increasingly participating in these acts. Politicians also use the media to express their concern about the increasing crime rates and violence. Interestingly, there is no actual increase of acts of violence, and acts of deadly violence have been decreasing over the last twenty years. On the other hand, what actually have been increasing are reports to the police about acts of violence, but since it is not supported by other measurements of violence it should also be interpreted as heightened sensitivity to, and against, crime. According to Tham, attention should be paid to the increasing sensitivity since this could result in political action.

The Swedish Minister of Justice, Beatrice Ask, claimed that the Swedish public were impatient about the sanctions for serious acts of violence, since they were not perceived to be in line with the common sense of justice. In 2010 Ask stated that “this harsher view on sanctions that exist in the public is not reflected in court practice... Thus, there are strong reasons to increase the sanctioning range for the most severe acts of violence”<sup>4</sup> (Own translation<sup>5</sup>) The politicians interpretation is thus that the Swedish population wants harsher sanctions for acts of violence, that they are dissatisfied with the government not taking actions of crimes seriously enough. According to Estrada, Pettersson & Shannon, there are basically only criminologists whom are criticizing the shift from the so-called Scandinavian exceptionalism publicly. They state that “in light of this last fact, it may be of comfort to certain politicians that criminology remains one of the smaller social science disciplines in Sweden” (Estrada et al., 2012: 684).

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<sup>3</sup> Retrieved 2014-03-21

<<http://www.vr.se/huvudmeny/tvarsnittnr342011/essanejsvenskenvillintehastrangarestraff.4.3a36c20d133af0c12958000261.html>>

<sup>4</sup> See footnote above

<sup>5</sup> “Den här skärpta synen som finns ute bland människor märks inte i domstolspraxis ... därför finns det starka skäl att höja straffnivån för de allvarligaste våldsbrotten” (Ask 2010).

After Tham and Jerre had published their research in 2010 they additionally published a debate article in the Swedish newspaper *Dagens Nyheter*<sup>6</sup> where they again stated that there is a gap between politicians and the public. Politicians keep claiming that the public wants harsher sanctions, even though the report suggests that the Swedish populations informed legal consciousness and the concrete legal consciousness do not support harsher sanctions. However, as we previously acknowledged the general legal consciousness does want harsher sanctions and according to Tham and Jerre, politicians consequently become interpreters of this first level of legal consciousness. Therefore, it is not unusual for politicians to make an interpretation like this, as we can see, Asks only focused on the general (and uninformed) legal consciousness in her statement.

The terms “penal populism” and “populists punitiveness” refers to politicians work trying to meet the demands they *think* that the public have, so that they in turn can be re-elected regardless what the real effects of the policies may be. According to Snacken, some authors stresses that this way of developing policies is more democratic. However, Snacken argues that it is the opposite and stresses that there must be guaranteed “(...) that an unpopular minority such as offenders or prisoners is not ruled by the ‘tyranny of the majority’.” (Snacken, 2010: 280).

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<sup>6</sup> Retrieved 2014-03-21  
<<http://www.dn.se/debatt/krav-pa-skarpta-straфф-saknar-stod-hos-folket/>>

## **5. Discussion, Reflections & Conclusions**

The purpose of this Bachelor Thesis was to explore the Scandinavian Exceptionalism Thesis and the discussions regarding it. The Scandinavian Exceptionalism Thesis recognizes penal exceptionalism in Scandinavia, emphasizing exceptionally low imprisonment rates and exceptionally good prison conditions in Scandinavia in comparison to other countries. In other western societies there is an increase in punitiveness, high imprisonment rates and harsher prison conditions. The Scandinavian countries are described as resisting the global move towards a more punitive trend and are thus given a lot of international attention. The statistics of the prison population rate per 100 000 of the national population shows that all of the Scandinavian countries have a lower prison population rate than the other western societies. For instance, if one compares the statistics concerning Sweden and Belgium, with a total national population of 9,61 million respectively 11,19 million, there are significant differences between the countries even though they are relatively close in national population figures. According to the most recent statistics from 2013/2014 the prison population rate per 100 000 of the national population in Sweden is estimated to 60 respectively 108 in Belgium. Further, if one looks at the recent prison population trends between 1992 and 2010 it shows a dramatic increase of the prison population rate in Belgium even though it has also increased in Sweden, though it lately has decreased. (See Appendix B, Fig.1, 6, for further details.) Pratt, who coined the term “Scandinavian Exceptionalism”, acknowledged that the Scandinavian countries have a great amount of small prisons with a relatively low number of inmates. Out of the Scandinavian countries, Sweden has the highest number of prison institutions with a total of 79 and the lowest prison occupancy level; namely 86,3%. In Belgium there is a total of 33 prison institutions and a prison occupancy level of 124,4%. Pratt also found the prison conditions in most of the Scandinavian prisons to be exceptionally good with high material standard, good possibilities for personal space and many opportunities for studies and/or employment. He also stressed that the foundation of the Scandinavian exceptionalism is linked to specific characteristics *and* histories of these countries, such as strong social welfarism, strong egalitarian cultural beliefs as well as social structures and solidarity. Pratt further stated that a penal system is integrated in a culture formed by many different influences, but one can never guarantee penal exceptionalism by doing “this or that”. Thus, we find that a lot of different mechanisms seem to contribute and affect the claimed Scandinavian exceptionalism. According to Pratt, the Scandinavian countries have the lowest imprisonment rates regardless how it is measured. Lappi-Seppälä agrees with Pratt and he is

stating that the Nordic countries have fewer offenders that are under supervision, however, he emphasizes that they impose more fines (Lappi-Seppälä, 2012: 106). Even though crime rates are increasing according to the Swedish National Council for Crime, there are several prisons in Sweden that has been closing.<sup>7</sup> It is claimed that by using alternative sentences, such as electronic tagging and others, it is possible for Sweden to keep the prison population down. However, not everyone is able to receive an alternative sentence and the Swedish judge Westerlund says that “if we talk about other crimes...like burglaries, narcotics or sexual violence, I’d say the sentences haven’t changed in the last ten years.”<sup>8</sup> According to Snacken, studies show that penal policies are not directly related to crime rates (Snacken, 2010: 274). This is something that Barker also recognizes by emphasizing the very strict Swedish drug policy with a “zero tolerance”. She stresses that drug offenders constitute a very large part of the Swedish prison population.

Furthermore, in this Bachelor Thesis it was also questioned whether *Scandinavian criminologists support the Scandinavian Exceptionalism Thesis*. The historian Nilsson who is specialized in criminology, emphasizes that there are two different questions within the discussion about the thesis, one being if a Scandinavian exceptionalism really exists. Lappi-Seppälä is one of those who question whether Scandinavian criminologists are as impressed of their own penal policies and systems as many international criminologists seem to be. One of our main findings is that there seems to be an outside and inside perspective that differs from one another regarding this thesis. The Scandinavian countries are often viewed as rather exceptional within various areas from an outside perspective. Compared to other countries, they are claimed to have high welfare investments, low levels of fear, high levels of trust for the governments, extremely high solidarity and such. Further they have low imprisonment rates and are claimed to have humane prison conditions, non-punitive approaches in the public debates as well as having knowledge based penal policies. International researchers within the outside perspective, seem to emphasize that this claimed exceptionalism can be used as a role model when changing and improving other countries penal policies and systems. Pratt believes that the Scandinavian Exceptionalism Thesis can be validated, even after reviewing and readjusting the thesis. Even though there seems to be a more punitive tendency within the Swedish penal policy Pratt stresses that there is a great difference in levels of

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<sup>7</sup> “Fewer criminals jailed in Sweden despite rising crime” published on the news site *Global Post – America’s world news site*. Retrieved from 2014-05-14

<<http://www.globalpost.com/dispatch/news/afp/140109/fewer-criminals-jailed-sweden-despite-rising-crime>>

<sup>8</sup> See footnote above



imprisonment and prison conditions in Sweden compared to most other Western countries (Pratt, 2008b: 289). From an inside perspective there is however a different view regarding this claimed exceptionalism, there are less positive attitudes towards the usage of these countries penal policies and systems as role models. Scandinavian criminologists seem to focus more on the pains of imprisonment and social marginalization rather than focusing on, the in comparison, low imprisonment rates and good prison conditions. Several criminologists seems to emphasize that there is a tendency of a more punitive approach in Sweden where one can see a lower welfare security as well as a larger social inequality and segregation between people in Sweden. They are also recognizing that there has been a more strict penal policy that is more political orientated and influenced by the media and the public opinions. It is argued by several researchers that Sweden is the Scandinavian country most at risk of leaving this exceptionalism. As Pratt points out, the Swedes seem to have gotten a lower level of trust for their government and they are beginning to question the expertise. However, the Norwegian criminologists Ugelvik and Dullum emphasizes that the contributors of the anthology "Nordic Prison Practice and Policy – Exceptional or Not?" could not decide on one answer, whether the Nordic penal policies and systems are exceptional or not. They stresses that it is a question open for discussion, there is no simple yes or no, since they recognizes that different parts of Pratt's article can be strengthen as well as challenged (Dullum & Ugelvik, 2012: 8). It is also emphasized by Nilsson that one can also question whether Pratt gives the best explanation for the exceptionalism - if there really exist such a thing. Barker is one of those who argue that there are parts of the Scandinavian penal policies and systems that should both be maintained and adapted by others. However, she argues that no one really examined the driving force of the Scandinavian exceptionalism, namely the welfare fare states which she claims are Janus-faced. According to Barker, the Swedish welfare state today has its limitations and difficulties to live up to the humane conditions and treatment that they are claimed to have, arguing that the penal system is mild and harsh at the same time. The Swedish welfare state can be both punitive and difficult to access for social groups and individuals that in some way are left outside the social, economic and political systems. Further it is argued that it exists a strong feeling of equality and a spirit of democracy in Sweden but, unlike Pratt, she claims that there is a lack of strong social solidarity and that this makes it possible to have a relatively lenient penal system. Barker stresses that the individual rights in Sweden are fragile and underdeveloped since people to some extent gave up legal protection against the government when their social and material well-being and independency increased. Thus, she does not agree with Snacken who believes that more

welfare investments ought to decrease the social inequality and vulnerability, which in turn would decrease the imprisonment rates and lead to more fair justice system. Thus, we find that humane prison conditions with high material standards and prison population rates are not what the Scandinavian criminologists find important. Instead they focus on the pains of imprisonments and social marginalization. However, we believe that whether Scandinavian criminologists support the Scandinavian Exceptionalism Thesis is an open question. Just as Ugelvik and Dullum points out, there seem to be parts of the Scandinavian Exceptionalism Thesis that are supported and some that are not.

The purpose of this Bachelor Thesis was also to explore and see *how the Scandinavian Exceptionalism Thesis corresponds with the public opinion on crime and punishment*. As previously explained, the Scandinavian Exceptionalism Thesis emphasizes the low imprisonment rates and the humane prison conditions in the Scandinavian countries. In the public debate the term “Scandinavian Exceptionalism” does never or seldom occur. However, emphasizes on rehabilitation, imprisonment rates and prison conditions are acknowledged in public debates and indicated in surveys and opinion polls. We found that, according to the public, there are different important purposes and aims with sanctions. The public wants sanctions to contain as well as provide; proportionality and justice; restore and give support to the victim; measures to prevent further or future criminal acts. Thus, the overarching objectives are the prevention of crime but also to signal society’s condemnation of crime, which results in a dilemma for the public. The care and consideration of the offender is seen as important as a long-term prevention. However, it must be perceived as though society is considering the needs of the public *over* the needs of the offender to signal condemnation of the crime and be on the law-abiding citizens side. Because of the contradiction within these objectives it appeared, in the study conducted by Jerre and Tham, to be problematic for the public to choose an appropriate sanction. In the study it was clear that when gaining more insight and further information, a change in penal attitude occurred. These attitudes were mostly in conflict with their old attitudes regarding of how offenders and crime should be dealt with. This repeatedly led to respondents to combine different sanctions trying to fulfill the different objectives. Further it was emphasized that it is important that the sanctions should be visible, tangible and rehabilitative. The non-custodial sentences did not seem to fulfil the objective of serving as society’s condemnation of the crime due to the fact that they were not visible to the public; therefore they could not fulfil the same objective as a custodial sentence. Further, an emphasized goal was to successfully (re-)socialize the offender, and custodial sentences were perceived as giving the opposite effect by further

marginalization. Thus, as we previously acknowledged, these two objectives cannot be achieved without the cost of one another, one cannot punish *and* treat at the same time. There are different levels of legal consciousness namely the *general-, informed-, and concrete legal consciousness*. When receiving information, these levels of legal consciousness can be influenced, this in turn often changes the attitudes towards sanctions and penal policies. The public is seen as having a general legal consciousness that is strict, “more punishment”, when being relatively uninformed about the penal- and policy system. It is therefore a plausible assumption that the public’s lack of knowledge is reflected in their attitudes towards the justice system. For instance, throughout the entire research project conducted by Jerre and Tham, the public kept under- and overestimating the sanctioning range. This assumption is further strengthened by the fact that after receiving further information, the penal attitudes normally changed. When more detailed information was given on offenders and situations, the less punitive and the more considerate the attitudes become. This is also supported by recent findings on the legal consciousness in Norway and Denmark, also a part of the larger Scandinavian project conducted by Balvig et al. (Mathiesen, 2012: 32).

Furthermore, we now see a so-called penal populism in Sweden where politicians are trying to meet the demands they think that the public have, and politicians are encouraging the courts to more severe sentences and changes in penal policies. The contradictory objectives of sanctions, to punish *and* treat at the same time, become complicated even for educated judges to comprehend and try to fulfil to a greater extent. Therefore, when the politicians are giving the public the role of “the arbiter of what is fair” it becomes problematic. Yet, the public opinion is important in the process of forming penal policies, despite whether or not they are qualified to actually make (correct) assessments on the matter. The general legal consciousness is, like we previously acknowledged, frequently used within penal policy debates. Just like Jerre and Tham (2010: 67), we would like to stress that the general legal consciousness is perfect to use as a legitimizing foundation to (re)form penal policies since the investigation clearly indicates that the public want more tangible, longer and harsher sanctions. When interpreting the results, the public seem to be dissatisfied with the current sanctioning system since it was considered to be too lenient, especially regarding acts of violence. Thus, the public seem to support the harsher penal approach that is advocated in penal policy debates. In our opinion though, the politicians have a responsibility to inform the public on what a worthy penal policy system should contain and be founded on. The objectives of sanctions should be explained to the public where the purposes can be understood in a context of *which* sanction(s), and *why* the sanction(s), is appropriate to a given

crime. Publically held crime debates and information being presented in media are often simplifying issues and thus misleading the public. The Swedish media is argued to becoming more sensational and the media is of high importance when it comes to the opinions of the public. Due to the interaction between politicians, the media and the public, the crime debate seems to be presented in a rather overblown picture. The interaction goes back and forth, where the different parts trigger each other in using a hardened penal approach because of the, to use Thams expression, heightened sensitivity to crime. Like we previously acknowledged, it is complicated to investigate public opinion. Simple yes or no questions should not lay the foundation, nor be considered as justifying changes in penal policies. When not being informed, it is possible that only apparent purposes of sanctions, for example the tangible and visible part, will be acknowledged by the public when investigating the general legal consciousness- because they lack insight into sanctions within the justice system. Thus, using the general legal consciousness as an argument to change penal policies does not investigate attitudes on a deeper and more nuanced level. However, using a questionnaire to state which precise sanction that is appropriate to a given crime captures a more nuanced and varying set of answers. Despite its methodological complications with both informing the public and summarizing data, the more accurate thing to do would be to acknowledge such answers if accounting for penal policy changes based on legal consciousness. Our speculation as to why this is not the case, is that it is an immense and challenging task to inform an entire population on the intrinsic meanings and purposes on sanctions and the justice system. The political game is dependent, as of now, of a public that is uninformed, because of the benefits in elections. Tougher penal policy and the turn to a more punitive approach are supported by the general superficial legal consciousness, not on how people reason when they know a bit more. Since these simplified views can be used in political catch phrases this “legal consciousness” is what the politicians use in elections. Claiming that the public opinion support harsher, longer and more tangible sanctions and sentences for legitimizing penal changes is for example illustrated in Asks statement 2010. Scrutinizing that statement, it just further indicates the importance of the informed- and concrete legal consciousness. Thus one can question whether it is the politicians, and the political parties, interest to just be (re)elected or to actually found their politics on an informed public opinion which in turn, would be more democratic than what it currently are. Since it is an emphasized goal to satisfy public opinion in forming penal policy, it should be in the interest of democracy that the public actually are informed enough to make a righteous assessment in political questions, so “(...) that an unpopular minority such as offenders or prisoners is not ruled by the ‘tyranny of the

majority”” (Snacken, 2010: 280). Hence, it is possible to argue that the consequences and effects of this political persistence only affect a small minority, namely the offenders.

Thus, we can see that the general legal consciousness recognizes all of the conditions that are emphasized within the Scandinavian exceptionalism. However, the public are less positive towards the conditions in comparison with non-Scandinavian criminologists. The uninformed public often claims that the prisons are like hotels, that the prison conditions and penal policies are *too* good and *too* lenient. However, when being informed, the public seem to become more positive and find the conditions and policies to be good. Although, they are still less positive in comparison with the international criminologists, since there is an ambivalence between the *needs of the public* and *the needs of the offender*. As concluded, it is indicated that *a less punitive trend* is prevailing the closer the respondents come to the concrete event. The results of the Swedish study, as well of the Scandinavian project, are therefore the exact opposite of the image that is presented by politicians and the media. As Pratt recognized, the Swedes seem to have gotten a lower level of trust for their government and they are questioning the expertise. We find this frustrating since the expertise and knowledge do exist, but politicians do not use this information, nor do they allow the information into the publically held debates. Thus, the expertise on the matter keeps on being in the background or almost invisible in public debates. We would therefore like to stress that there is a punitive approach in the public debates and the penal policies are not always based on knowledge, in contrast to what international criminologists seems to emphasize. We believe that politicians and the media are trying to produce an image where Sweden is in need of harsher penal policies by emphasizing that it is for the good of the people, but their intention is to control criminality thus also its citizens within the welfare state.

### **5.1. Future Studies**

The Scandinavian Exceptionalism Thesis, crime policy making and public opinion on crime and punishment are all very complex and broad areas. It could be of interest to further investigate every part separately as well as together. We feel that there are a lot of different perspectives and approaches that could be used for future studies on the matter. Although, we feel that using a welfare perspective might be of interest at the time being, since Sweden's welfare system is being questioned.

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## 7. Appendices

### **7.1. Appendix A – World Prison Brief Statistics Retrieved From The International Centre For Prison Studies**

**Fig. 1**

<b>2013/2014</b>	<b>Sweden</b>	<b>Norway</b>	<b>Denmark</b>	<b>Finland</b>	<b>Iceland</b>
National Population	9,61 million	5,1 million	5,61 million	5,43 million	321,400
Prison population total (including pre-trial detainees / remand prisoners)	5797	3649	4091	3134	152
Prison population rate (per 100,000 of national population)	60	72	73	58	47
Pre-trial detainees / remand prisoners (percentage of prison population)	24,5%	28,7%	33,8%	19,3%	8,4%
Foreign prisoners (percentage of prison population)	31,6%	34%	26,8%	14,5%	15,8%
Number of establishments / institutions	79	42	52	30	5
Official capacity of prison system	6715	3803	4151	3089	165
Occupancy level (based on official capacity)	86,3%	96%	98,6%	96,9%	93,3%

**Fig. 2**

<b>2013/2014</b>	<b>Belgium</b>	<b>Spain</b>	<b>France</b>	<b>Germany</b>	<b>Italy</b>
National Population	11,19 million	46,41 million	66,8 million	80,7 million	60,05 million
Prison population total (including pre-trial detainees / remand prisoners)	12 126	66 937	68 859	62 632	60 197
Prison population rate (per 100,000 of national population)	108	144	103	78	100
Pre-trial detainees / remand prisoners (percentage of prison population)	31,8%	13,4%	25,9%	18%	36%
Foreign prisoners (percentage of prison population)	44,2%	31,2%	21,7%	27,1%	34,4%
Number of establishments / institutions	33	82	190	186	222
Official capacity of prison system	9351	77 955	57 680	76 556	48 309
Occupancy level (based on official capacity)	124,4%	88%	119,4%	81,8%	124,6%



**Fig. 3**

	<b>England &amp; Wales (2013/2014)</b>	<b>New Zealand (2013)</b>	<b>United States of America (2011/2012)</b>
National Population	57,29 million	4,49 million	315,1 million
Prison population total (including pre-trial detainees / remand prisoners)	84 697	8 223	2 228 424
Prison population rate (per 100,000 of national population)	148	183	707
Pre-trial detainees / remand prisoners (percentage of prison population)	12,9%	18,9%	21,6%
Foreign prisoners (percentage of prison population)	12,8%	3,5%	6,8% (of state and federal prisons only – not local jails)
Number of establishments / institutions	133	17	4575
Official capacity of prison system	75 562	9 545	ca. 2 265 000
Occupancy level (based on official capacity)	112,8%	90,2%	99%

**7.2. Appendix B – Statistics Of Recent Prison Population Trends Retrieved From The International Centre For Prison Studies (ICPS)**

**Fig. 1**

<b>SWEDEN</b>		
<b>Year</b>	<b>Prison population total</b>	<b>Prison population rate (per 100,000 of national population)</b>
1992	5,233	60
1995	5,861	66
1998	5,156	58
2001	5,708	64
2004	7,020	78
2007	6,925	76
2010	6,902	74

**Fig. 2**

<b>NORWAY</b>		
<b>Year</b>	<b>Prison population total</b>	<b>Prison population rate (per 100,000 of national population)</b>
1992	2,477	58
1995	2,610	60
1998	2,466	56
2001	2,762	61
2004	3,028	66
2007	3,420	73
2010	3,624	74

**Fig. 3**

<b>DENMARK</b>		
<b>Year</b>	<b>Prison population total</b>	<b>Prison population rate (per 100,000 of national population)</b>
1992	3,597	70
1995	3,575	68
1998	3,422	65
2001	3,236	60
2004	3,767	70
2007	3,646	67
2010	3,965	71

**Fig. 4**

<b>FINLAND</b>		
<b>Year</b>	<b>Prison population total</b>	<b>Prison population rate (per 100,000 of national population)</b>
1992	3,511	70
1995	3,248	64
1998	2,809	55
2001	3,135	60
2004	3,577	68
2007	3,551	67
2010	3,291	61

**Fig. 5**

<b>ICELAND</b>		
<b>Year</b>	<b>Prison population total</b>	<b>Prison population rate (per 100,000 of national population)</b>
1992	101	39
1995	119	44
1998	103	38
2001	110	39
2004	115	39
2007	115	37
2010	165	52

**Fig. 6**

<b>BELGIUM</b>		
<b>Year</b>	<b>Prison population total</b>	<b>Prison population rate (per 100,000 of national population)</b>
1992	6,418	64
1995	7,478	74
1998	8,176	80
2001	8,544	83
2004	9,245	89
2007	10,008	94
2010	10,561	97

**Fig. 7**

<b>SPAIN</b>		
<b>Year</b>	<b>Prison population total</b>	<b>Prison population rate (per 100,000 of national population)</b>
1992	40,950	105
1995	45,198	115
1998	44,747	113
2001	46,594	114
2004	58,655	137
2007	65,812	147
2010	76,701	166

**Fig. 8**

<b>FRANCE</b>		
<b>Year</b>	<b>Prison population total</b>	<b>Prison population rate (per 100,000 of national population)</b>
1992	48,113	84
1995	51,623	89
1998	50,744	87
2001	44,618	75
2004	55,355	91
2007	56,294	91
2010	61,430	98

**Fig. 9**

<b>GERMANY</b>		
<b>Year</b>	<b>Prison population total</b>	<b>Prison population rate (per 100,000 of national population)</b>
1992	57,448	71
1995	66,146	81
1998	78,592	96
2001	80,333	98
2004	81,166	98
2007	75,719	92
2010	72,052	88

**Fig. 10**

<b>ITALY</b>		
<b>Year</b>	<b>Prison population total</b>	<b>Prison population rate (per 100,000 of national population)</b>
1992	47,316	83
1995	46,908	83
1998	47,811	84
2001	55,275	97
2004	56,068	96
2007	48,693	82
2010	67,961	112

**Fig. 11**

<b>ENGLAND &amp; WALES</b>		
<b>Year</b>	<b>Prison population total</b>	<b>Prison population rate (per 100,000 of national population)</b>
1992	45 817	90
1995	51 047	100
1998	65 298	126
2001	66 301	127
2004	74 657	141
2007	80 395	149
2010	84 725	153

**Fig. 12**

<b>NEW ZEALAND</b>		
<b>Year</b>	<b>Prison population total</b>	<b>Prison population rate (per 100,000 of national population)</b>
1992	4 217	119
1995	4 685	128
1998	5 450	143
2001	5 887	152
2004	6 556	160
2007	7 959	188
2010	8 604	197

**Fig. 13**

<b>UNITED STATES OF AMERICA</b>		
<b>Year</b>	<b>Prison population total</b>	<b>Prison population rate (per 100,000 of national population)</b>
1992	1 295 150	501
1995	1 585 586	592
1998	1 816 931	655
2001	1 961 247	685
2004	2 135 335	725
2007	2 298 041	758
2010	2 270 142	758

### 7.3. Appendix C – Illustration Of The General Legal Consciousness

The distribution of answers from the survey regarding the public opinion on sentences (Jerre & Tham, 2010: 25-26).

The sentences in Sweden are in general...	%
...too lenient	66
...moderate	28
...too severe	1
Do not know	5

Acts of violence should be sentenced much more severe than they currently are.	%
Agree completely or partially	77
Neither or	7
Disagree or do not substantially agree	12
Do not know	4

The distribution of answers from the survey regarding the public opinion on *prison* sentences (Jerre & Tham, 2010: 25-26).

I am generally positive towards longer prison sentences.	%
Agree completely or partially	57
Neither or	13
Disagree or do not substantially agree	26
Do not know	4

Being in prison can almost be compared to a hotel stay, the conditions are too good.	%
Agree completely or partially	49
Neither or	16
Disagree or do not substantially agree	34
Do not know	1