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# Shoplifting in Japan and Sweden

A comparative analysis of social structures and  
sanctions in the 21st century

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## Summary

Crime is a problem all over the world. We must sometimes look to other countries and legal systems to find solutions to our own problems. This thesis will encompass the view into another system. Both the Swedish and Japanese perspective.

In this thesis I present the reader with a comprehensive overview of the two justice systems, theories on crime, and restorative justice. An exploration of informal social control, and formal control is conducted, ending with an analysis and conclusion on the subject. The dispositions construction allows the reader to identify the system from how legislation is created, to how society functions with formal and informal control in both the Japanese and Swedish system. An examination is also provided on how the different sanctions are carried out, the effects they have on the individuals, and on society. The thesis will refrain from extensive elaboration in the individual chapters. However, instances may arise where a clarification is warranted, and a surface-level examination is not granting sufficient satisfaction.

Shoplifting, which is defined in the first chapter, has been used throughout the thesis as an example crime, as it is simple in comparison. The thesis explores restorative justice in both countries, examining potential measures for alleviating stress on the formal criminal justice system.

Finally, an analysis will be undertaken, and recommendations for legislative improvements will be provided for each of the countries. The conclusion is multifold. There are many different ways each country can deal with their crime problems. Sweden for example can do better in making restorative justice be a more viable option when it comes to all offenders.

Further research needs to be conducted on legislation not yet implemented.

## まとめ

### 概要

本稿は、読者に2つの司法制度の包括的な概観を提供し、その後、いくつかの追加的な側面を検討する。分析の構成により、読者は、社会が公式・非公式の統制という観点からどのように機能しているかを含め、法制度がどのように構築されているかを確認することができる。本稿はまた、さまざまな制裁がどのように実施され、それが個人と社会に与える影響についても探求している。個々の章では詳細な分析を行わず、必要に応じて十分な説明を行うようにしている。万引きを犯罪の例として挙げているのは、明確な比較が可能だからである。本論文では、両国の修復的司法を幅広く検証し、正式な刑事司法制度への影響を軽減するための潜在的な方策を検討している。最後に、包括的な分析を行い、それぞれの国について法的改善のための提言を行う。

# Acknowledgement

I was, or I became 32 years of age the second month on my first semester in law school. My classmates all seemed to be fresh out of high school, or at least most of them. I already felt old by then. But I liked law school. Law was my thing. Today I am sitting here, almost five years later with a lot of experiences and knowledge. A lot of new friends, not only in Sweden but also around the world. Work awaits in the next chapter, but so far, I will take it easy<sup>1</sup> for a little while more.

Special thanks to: 妹尾拓也 (SENOO, Takuya) for his invaluable knowledge and insight into the criminal system of Japan, my supervisor Sverker Jönsson for his ability to always calm me down, Filippa my wife for letting me have my process, my cats for not leaving me alone, and Erik Forsberg, my constant sparring partner when it comes to law.

Thank you!

I leave Sisyphus at the foot of the mountain! One always finds one's burden again. But Sisyphus teaches the higher fidelity that negates the gods and raises rocks. He too concludes that all is well. This universe henceforth without a master seems to him neither sterile nor futile. Each atom of that stone, each mineral flake of that night filled mountain, in itself forms a world. The struggle itself toward the heights is enough to fill a man's heart. One must imagine Sisyphus happy.<sup>2</sup>

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<sup>1</sup> To conduct a comprehensive comparative thesis proved more complicated than my initial assumptions had led me to believe.

<sup>2</sup> Albert Camus, *The Myth of Sisyphus* (first published 1942, Penguin Classics 2000) 24.

# Abbreviations

BrB  
BGB  
Brå  
CCTV  
CPT

Brottsbalken  
Bürgerliches Gesetzbuch  
Brottsförebyggande rådet  
Closed-Circuit TeleVision  
Council of Europe´s Committee  
for the Prevention of Torture and  
Inhuman or Degrading Treatment  
or Punishment

NJA  
NGO  
NPA  
MOJ  
PRC  
SCB

Nytt Juridiskt Arkiv  
Non-Governmental Organisation  
National Police Agency (Japan)  
Ministry of Justice (Japan)  
Prosecution Review Commision  
Statistikmyndigheten

# 1 Introduction

## 1.1 Background

I travelled to Nagoya, Japan, in September of 2022. The idea of spending a year in Japan had been contemplated upon for 20 years. When the opportunity arose to go and study for a year, I had to say Yes!

While in Japan, I tried to acquire as much knowledge as possible about the judicial system. Likewise with regards to the norms in Japanese society with the goal of making a comparative thesis. A year was not enough to acquire all the essential expertise I required to make a justifiable thesis on comparative law between the two countries. It meant more research was needed for the realisation of this paper.

To have a crime fitting for a comparative thesis, I choose to focus on shoplifting<sup>3</sup>. Shoplifting is a common crime around the world and thus it is recognisable to compare with only small nuances in the different countries on what the crime encompasses. In Swedish crime statistics, there is sufficient data on shoplifting. This is the result of shoplifting having its own classification of crime. Conversely, in Japan all theft is enclosed in the Penal Code under one crime, requiring more effort to obtain the appropriate data. This is where Senoo-san<sup>4</sup> guided me towards the appropriate statistics among the quantity of bureaucratic data.

Why shoplifting you might ask? This issue became interesting during a conversation I had with a defence attorney in Japan. He was defending an individual who was going to go to jail for shoplifting. This person was accused of stealing products to the sum of approximately 10 000 ¥. Equating to roughly 730 SEK. Based on my understanding of the Swedish justice system, this would not typically be considered an offence one would go to jail for. In order to familiarise myself on the subject matter, research was conducted, and I found that sanctions on shoplifting in Japan can be steep. My understanding of this it that it is due to shoplifting being encompassed in the classification theft. This caught my interest and subsequently became the topic of my thesis. During the writing process on shoplifting, I encountered restorative justice. I felt it essential for this thesis to encompass the subject, as restorative justice is used, to some extent, in both Sweden and Japan when concerning matters of shoplifting. Thus, restorative justice has been given its own chapter. Further, shoplifting typically do not arrive at severe sanctions as a first offence. This is where the potential part of restorative justice is explored, but I am getting ahead of myself.

The most elusive part of this study though, is not how the legal system works, but the entirety of society, and examining the similarities and

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<sup>3</sup> The crime shoplifting is in general terms when someone steals merchandise that is for sale in a store.

<sup>4</sup> Takuya Senoo, Attorney, Watanabe & Kasuya Law Office. Who I met during my studies in Japan.



differences between Sweden and Japan. One thing that emerges is the contrast of Swedish and Japanese sanctions. As a Swede who just spent a year in Japan, the choice of what countries to work with, and which subject I would examine, was thus obvious for me.

Informal and formal social control are the norms that rule our lives. Durkheim<sup>5</sup> is probably the most famous academic to contextualise the subject of informal control. Peer pressure, community pressure, bystander intervention, these are just some of the informal social controls of society. Crimes are moreover a natural part of these norms. Sweden and Japan possess plentiful of differences, as well as notable similarities when it comes to justice.

Furthermore, I had to grasp comparative methodology, and how to properly conduct one on two countries. Engaging in an examination of crime and justice systems reveals intriguing nuances, particularly as they exist on opposite ends of the spectrum in various respects. Why comparative? Deep diving into comparative law we learn something new about another system and our own, *de lege lata*, we see similarities and differences, and maybe we find *de lege ferenda* for our own system.<sup>6</sup>

Doing a systematic comparative analysis on crime rates is not without its challenges. Primarily due to countries employing different ways on reporting crime. With this, statistical outcomes end up being mismatched as a result of using divergent parameters.<sup>7</sup>

One is further compelled to address the populist view; that crimes should generally have higher sanctions. A matter that is ever so contemporary.<sup>8</sup> In Japan, this has been going on for a while. Sweden saw a lowering in punishment during the 21st century, however since the new government came into power in 2022, punitive measures have been gaining popularity.<sup>9</sup>

## 1.2 Purpose and Research Question

I will in this thesis undertake a comparative analysis, touching upon many different subjects, such as restorative justice and in-group structures, among others. The purpose is to evaluate factors that can contribute to the reduction of crime and recidivism of crime.

This thesis is created with the intent for Swedish and Japanese legislators, lawyers, and others who wishes to get a brief condensed paper on the two judicial system in comparison. Shoplifting is used as an example crime to

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<sup>5</sup> French professor in sociology, 1858-1917. Famous for introducing a scientific method in sociology, and most remembers for *Suicide* (1897) in which he creates a normative theory on suicide, focusing on the condition of group life.

<sup>6</sup> Michael Bogdan, *Comparative Law*, (Norstedts Juridik 1994), 28–29, 32–33.

<sup>7</sup> Philip L. Reichel, *Comparative Criminal Justice Systems: A Topical Approach* (2nd edn, Prentice-Hall 1999) 33 – 35.

<sup>8</sup> Wallberg P, "Regeringen tar första steg mot högre straff" *Tidningen Nä-ringslivet* (2 January 2023) <<https://www.tn.se/article/24678/regeringen-tar-forsta-steg-mot-hogre-straff/>> accessed 11 October 2023; Henrik Tham, *Kriminalpolitik*, (Norstedts Juridik AB 2022) 154–167.

<sup>9</sup> Ulrika Öster and Tom Knutson, "Ett långtidsprojekt att bryta utvecklingen" *Advokaten* (Stockholm 2023 #8) 23–33.

provide insight into different approaches and outcomes in the respective countries.

Over the past three decades, criminology has proved that longer and stricter sanctions on crime does not have a deterrent effect.<sup>10</sup> A fact that society seems to have a hard time recognising. Harder sanctions seems like it is the only viable option when discussing crime today.<sup>11</sup> In this thesis, a study will be undertaken to analyse the different structures inherent in the crime and justice system of these two nations. Through this investigation, the intention is to clarify which factors contributes to crime, distinguish effective deterrent mechanisms, and propose strategies to encourage positive societal transformation in both countries.

Shoplifting is used as a result of a conversation I had with an attorney when I was in Japan. Along with the reason that it is a very common crime all over the world and thus a good example to work with. The question springs from the want and need to solve Sweden's problems when it comes to crime. I am looking to Japan for answers, and vice versa. Despite prevalent studies showing that stricter sanctions on crime does not have a deterrent effect, Sweden remains steadfast on implementing punitive measure to treat criminal behaviour.<sup>12</sup> According to the government, the reason for the higher sanctions is to curb the crimewaves that seems to be tormenting Sweden.<sup>13</sup>

This led me to contextualise the matter into questions.

1. Is the comparatively low incidence of crime and incarcerations in Japan attributed to the strong connections within in-groups, when contrasted with Sweden?
2. If not, are there other factors beyond in-groups<sup>14</sup>, such as harsher sanctions that contributes to the lower crime rate in Japan?
3. Are these potential factors not applicable due to divergent conditions in Sweden?

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<sup>10</sup> Ben Johnson, "Do Criminal Laws Deter Crime? Deterrence Theory in Criminal Justice Policy: A Primer" (Minnesota House Research Department 2019) 18; Paul H Robinson, John M Darley, "Does Criminal Law Deter? A Behavioural Science Investigation" (*Oxford Journal of Legal Studies*, Volume 24, Issue 2, SUMMER, Pages 173–205, 2004); Björn Tyrefors Hinnerich, Per Pettersson-Lidbom and Mikael Priks "Do Mild Sentences Deter Crime? Evidence using a Regression-Discontinuity Design" (Stockholm University 2016).

<sup>11</sup> Ellen Albertsdóttir, "Kriminalisering första åtgärden – eller sista?" (Lunds Universitet 1 September 2022) <<https://www.lu.se/artikel/kriminalisering-forsta-atgarden-eller-sista>> accessed 29 November 2023.

<sup>12</sup> Regeringskansliet, "Om regeringens prioritering: Kriminalitet" <<https://www.regeringen.se/regeringens-politik/regeringens-prioriteringar/kriminalitet/om-regeringens-prioritering-kriminalitet/>> accessed 14 December 2023.

<sup>13</sup> Henrik Tham, *Kriminalpolitik*, (Norstedts Juridik AB 2022) 136-145.

<sup>14</sup> An in-group is a group of people who identify with each other based on a variety of factors including gender, race, religion, or geography.

### 1.3 Scope of the Study and Delimitations

In Sweden shoplifting or “ringa stöld” is a crime by and in itself. This means that finding statistics and numbers on it, was not that intricate. It was complicated with Japan though, as it is all bundled up in one single classification, the much more general crime of theft. Language did not help either. I undertook a meticulous review process to identify and extract the relevant parts of my inquiry. My research has been limited to English literature on Japan.

This thesis takes on a legal perspective and will thus not discuss psychological aspects of theft such as kleptomania, which is otherwise often referred to on the topic of shoplifting. I will briefly remark on other crimes to show how these are being managed by the different countries. There will be no in-depth of these particular crimes, only bare mentioning.

Focusing on crime and how crime is handled, Sweden should perhaps learn from the Japanese with their low crime rates and incarceration. The history of how social order and penal structures has evolved in the respective countries is however a far too large subject to be fully addressed in this thesis. It is due to practical concerns this thesis has a much narrower scope. This means I will only briefly introduce both countries history. I will mainly focus on contemporary Japan and Sweden.<sup>15</sup>

A major factor looking at the statistic of crime is the way parameters are set up. Different criteria yield contrasting outcomes which makes it challenging getting comparative and reliable results. Examining a single country over time, introduces a level of complications where the statistics may become skewed, particularly due to the definitions of crime changing. Consequently, in order to maintain coherence and precision, I have chosen to only apply contemporary statistics.

### 1.4 Methodology

#### Comparative

In this thesis I apply a comparative methodology. When using a comparative methodology, it is imperative to remember that language, the justice system, and all other sociological phenomena are important contributors to the different legal systems. One must investigate different disciplines to be able to understand the organisation of the judicial system. It evolves into a multidisciplinary approach wherein the legal (justice) holds equal amount of importance as other discipline one employs in the analysis. The two different judicial systems need to be described, similarities and differences needs to be pointed out, norms of culture, attitudes, institutions, etc. Getting documents translated

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<sup>15</sup> See Rosemary Louise Taylor Fox, “Reframing the Japanese legal system in comparative legal scholarship: recognising the role and function of socio-cultural regulatory norms through legal culture and critical legal pluralism” (DPhil thesis, University of Leeds 2019) for a deeper dive into Japan.

correctly is also a matter that needs to be handled with care. Finally, recording it, so it becomes comprehensible to the readers of both countries.<sup>16</sup>

All of this makes comparative legal methodology a flexible method. It needs to be, to be able to grasp the whole spectrum of what is determined to be law in the countries of research.

One of the challenges with comparative legal research is that there is no general agreement among researchers on the methodology. Mark Van Hoecke suggests a toolbox on the methodology though; Why compare?; Choice of legal systems to be compared?; What has to be compared?; Level of comparison; Historical aspects; and a functional method which looks at a societal problem and how law and society as a whole tries to work out a problem.<sup>17</sup>

This permits a broad and insightful view on the comparative matter and makes it easy for the reader to grasp all the elements that come into play when constructing a study like this. I like to make it easy for the reader, this is why I opt to use Hoecke's toolbox.

Bogdan makes similar remarks in his book about comparative law, that there is no general agreement on methodology. Though he does not use the same idea of a toolbox that Van Hoecke does.<sup>18</sup> Bogdan's book is comprehensive and provided me with more insight on the subject. Bogdan, as Van Hoecke, additionally remarks on the problems of comparability, availability of source and translating of such, learning one's own system, politics, history, culture, all matters that plays an important role understanding another legal system.<sup>19</sup>

It is with Van Hoecke's toolbox of comparing, at my hand, that I have create a taxonomical framework of comparative law. Explaining the choice of legal systems, what has to be compared, the result of that analysis emerged as this thesis.

## 1.5 Material, Status of Research, and Contribution

The material used in this thesis have been varying in content and availability. Articles on shoplifting in Sweden and Japan. Social research in retribution, recidivism, and social control. Further, Japanese, and Swedish statistics on crime and shoplifting was studied in great depth. Theses on comparative law, especially between Japan and western countries. Legal sources like the Penal Code, Constitution of Japan and similar were used as well. I spent countless hours in criminology books, learning about deterrence, restorative justice and more for this thesis.

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<sup>16</sup> Maurice Damas, Jaako Husa and Marie Oderkerk (eds), *Comparative Law Methodology*, (vol 1, Edward Elgar Publishing 2017) 5-26, 99.

<sup>17</sup> *ibid* 127-155.

<sup>18</sup> Michael Bogdan, *Concise Introduction to Comparative Law*, (Europa Law Publishing 2013).

<sup>19</sup> *ibid*.

Criminology is still not a well-researched field in Japan.<sup>20</sup> So, finding information is more challenging than obtaining it from the West. I have instilled help from my network in Japan collecting material. This has included statistics and official white paper. Some of it has been in English, but a few papers I have had help from Senoo-san to find the correct statistic with some translating. Focus has been on ensuring language correctness, particularly names and subjects. I enlisted help from a few friends for my summary. I wanted to write it in Japanese, so Japanese people can locate this thesis as well.

There have been numerous independent studies done on Japan and Sweden over the years. Though I have struggled to find any comparative journals, or articles, where one can get a broader understanding of the two systems. There have been comparative studies between Japan and other legal systems though, but not comparing with Sweden.

In Fox's thesis, for example, she goes in-dept of the social system and then focuses on a case study of the Saiban-in Seido system, which I will only briefly touch upon in my thesis.<sup>21</sup>

## 1.6 Disposition

In this thesis I start with an introduction to the subject. The research question, delimitation and methodology are explained.

In the second chapter the reader is introduced to the different theories of crime. This is to get an understanding of the different perspective one can have when deliberating on the subject. Subsequently, restorative justice is explained and criticism that has been voiced over it.

In the third chapter the theoretics of informal social control are introduced, as it is an important matter in Japan, where social norms are in a sense part of the legal system. One must comprehend how this subject interacts with the whole, before looking at the legal system of comparison. If not, one can miss out on how the system in Japan work, looking only from once own's perspective of the western world, and specifically Sweden.

The fourth chapter introduces formal social control with a taxonomic approach with comparison on both the Japanese and Swedish system. Comparing Swedish legal system, which has slowly evolved in the European sphere for hundreds of years, taking its influences from all over the continent and our neighbours' countries. Whilst Japan did an adoption of the German BGB civil and criminal code in the early 1900s. All with the exception of family law and succession law, which they updated through their traditional scripts.<sup>22</sup>

In the fifth and sixth chapter, I will present my analysis and give my conclusion of the thesis, answering the comparative research question. I will also

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<sup>20</sup> David T Johnson, *The Culture of Capital Punishment in Japan* (Palgrave Macmillan 2020) 76.

<sup>21</sup> Fox (n 15).

<sup>22</sup> Max Rheinstein, Mary Ann Glendon and Paolo Carozza, "Japanese Law", *Britannica* <<https://www.britannica.com/topic/civil-law-Romano-Germanic/Japanese-law>> accessed 13 November 2023.

look to the future, give my thoughts on *de lege ferenda*, and what these two countries can learn from each other.

## 2 Theories on Crime

### 2.1 Traditional Theories

Crime is a wide problem in many ways. It is usually rooted in the injustice of society and structural dysfunctions. The objective of the criminal justice system is to secure social order within the sovereign state. The system functions by applying sanctions to prevent further crime and the abuse of public penal power.

“The rules of procedure determines how the state enforces the substantive rules of the criminal law by assessing the occurrence of crime and convicting and punishing those responsible for the crime.”<sup>23</sup>

This is regarded as traditional criminal justice. In this, the victim is not part of the process.<sup>24</sup> In chapter 2.2 I will introduce a path where the victim is part of the process.

When discussing crime, one should be aware of the different theories on crime. I will briefly describe them and some general effects of them. The reason for this is to understand how theories on crime work, which is relevant for this thesis.

*Structural theories* deal with criminal behaviour in the sense that societies either promote it or fail to discourage it. The focus is mostly on urbanisation and social complexities with increase crime. Smaller towns usually have more points of contact, thus leading to better social control. The larger the community, the more social disorganization. With anonymity comes freedom to act outside the norms.<sup>25</sup> This happens to some extent in Japan as well, but as I talked about earlier, Japan still has small in-groups which one still has to adhere to.

*Learning theories* tell us that normative or deviant behaviour is learned. Thus, criminal behaviour should be addressed in the same fashion. The studies primarily focus on social interaction within family, close friends, etc. Humans usually learn behaviour through copying others, or through reward and punishment (modelling and operant conditioning). The theory also address conformity in the sense that norms and deviant behaviour are different set of social norms.<sup>26</sup> For example, following the strict structure of a gang and its hierarchy, and on the other end of the spectrum going to church every Sunday, as part of a Christian religious ceremony. Though the church might be a bit more forgiving in missteps.

*Control theories* tend to ask the question; why do 90 % of the population not engage in criminal activity? Some of these reasons seem to be attachments

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<sup>23</sup> Linda Gröning and Jørn Jacobsen(eds) *Restorative Justice and Criminal Justice Exploring the relationship* (Santérus Academic Press Sweden 2012) 9-10.

<sup>24</sup> *ibid* 10-11.

<sup>25</sup> Alan S Miller and Satoishi Kanazawa, *Order by Accident: The Origins and Consequences of Conformity in Contemporary Japan*, (Westview Press 2009) 63-63.

<sup>26</sup> *ibid* 65-66.

to other people (relationships), investments in society to reap the benefits, involvement in conventional activities, and lastly, beliefs in the social norms, meaning that it is wrong to break them. Control theories believe that we are all inclined to act deviant for short gain but use self-control because this will benefit us in the long term.<sup>27</sup>

Finally, *deterrence theories*, which focus on the fact that if there is a high price to pay being a criminal, then this is enough to deter people from committing the act.<sup>28</sup> According to Gibbs<sup>29</sup>, the effectiveness of deterrence is the matter of certainty to be apprehended, and how severe the punishment is.<sup>30</sup>

Now that the theories have been introduced, the subsequent exploration will delve into restorative justice. Restorative justice plays a pivotal role within this thesis, contributing significantly to the comprehension of its prospective path.

## 2.2 Restorative Justice

Restorative justice in summary is the idea that out of state control, the victim and offender should come to a consensus on restorative measures so that the victim feels as they have been compensated for the offence that they have been exposed to. This idea is more focused on not involving the offender in the normal justice system, which may result in lessening the stigma of the offender in the public's perspective. One can argue that the offender has the most to gain from this "second track" as it is frequently labelled.

Japan has to a small extent **treated** with restorative justice, and I will draw comparisons within the context of my analysis to Sweden and how Sweden will be able to apply this in the future.

In theory, restorative justice comprises of five main themes.

1. Crime is a wider term than "violation of a law" or "deviant/abnormal behaviour".
2. Crime is an interference between the three relationships that are victim, offender, and society.
3. As the crime hurts both the victim and society, the primary purpose should be to repair the damage that the crime has caused and "heal" the victim and society.

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<sup>27</sup> Miller and Kanazawa (n 25) 66-67.

<sup>28</sup> *ibid* 67.

<sup>29</sup> A sociologist known for his work in social control theory and deterrence.

<sup>30</sup> Jack P Gibbs, *Crime, Punishment, and Deterrence* (New York Elsevier 1975).



4. The victim, the offender and society need all to participate in the reaction of the finalised crime. The State needs to declare its monopoly on the matter.
5. The processing of the case needs to be founded upon society and the victims needs and not the offenders need, responsibility, dangerousness, and criminal past.<sup>31</sup>

All of this encompasses restorative justice. It is necessary to further recognise that even though mediation has taken part, and the judge has made a ruling over the formal agreement that has been settled between the two parties, this is still not the complete process. Mediation is a second process that runs parallel to the normal process of the state.<sup>32</sup>

In Sweden, the law (2002:445) “Lag om medling med anledning av brott” (Act on mediation in connection with crime) formalises the structure of how restorative justice should be regulated. Mediation can only be pursued if both parts are willing, and the offender has admitted guilt in the case. Mediation is applicable in all criminal offence, irrespective of their nature or severity. There is also a test to see if it is appropriate under the circumstances.<sup>33</sup> Since 2008 the municipalities in Sweden have an obligation to offer mediation between the parties if the offender is below 21 years of age.<sup>34</sup> The purposes of mediation are many. However, one thing that differs from the normal system is the reparations’ part, wherein the victim has an opportunity to engage with the offender about the crime, how they feel, get answers to questions, and proper compensation for real costs.<sup>35</sup>

A crime must have been charged with the police to utilize the “second process”. This is similar in both Japan and Sweden. The offender must have acknowledged culpability for the offense as well. These are the outset parameters. Then undoubtedly both parties need to be willing to participate in mediation.<sup>36</sup>

The judge and prosecutor can take mediation into account when deciding on abstention from prosecution. Abstention from prosecution means that there will be no formal hearing and no conviction in the traditional sense, although the offender will still get a mark in their criminal record. Occasionally, this acts as an incentive for young offenders who want to avoid passing through the conventional legal process. The problem is that offenders might not be sincere in their apology throughout the mediation and are only doing it to “get

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<sup>31</sup> Linda Marklund, *Ett brott – två processer Medling vid brott och unga lagöverträdare i straffprocessen*, (Uppsala universitetstryckeri 2011) 50.

<sup>32</sup> *ibid* 128–136.

<sup>33</sup> Lag (2002:445) om medling med anledning av brott.

<sup>34</sup> Socialstyrelsen, “Medling vid brott”, <<https://www.socialstyrelsen.se/kunskapsstod-och-regler/omraden/evidensbaserad-praktik/metodguiden/medling-vid-brott/>> accessed 26 October 2023.

<sup>35</sup> Marklund (n 31) 2–3.

<sup>36</sup> *ibid* 28–29.

off lighter”.<sup>37</sup> If the convicted individual does not follow the agreement, the prosecutor is required to act, and decide if the abstention from prosecution should be withdrawn<sup>38</sup>. Prosecutor then determines whether formal charges should be pursued.<sup>39</sup>

As mediation in Sweden for young delinquents falls under the municipality’s responsibility, a lot of actors are joined together in the process for the preferred outcome of the victim and offender. These actors are the police, the social service, and the prosecutor. However, school, local crime preventing agencies, and traders have also been known to join the process.<sup>40</sup>

In a retributive justice system, the state is the victim. This implies that the victim, the person that had the crime perpetrated against them, is somewhat left out.<sup>41</sup> This is where restorative justice could be applied. It is a path to a more harmonious society. The above mentioned are abstract and soft values, nevertheless important in society.

The impact that mediation agreement possesses on “ne bis in idem”<sup>42</sup> should be discussed as well. In Sweden for example, the agreement does not have the same significance as internationally. Internationally the agreement has the same potency as of a judgement. The mediation can be part of a judgement as well, nonetheless, it does not share the same level of magnitude in Sweden as abroad, especially Japan.<sup>43</sup> It is probably due to the prosecutor in Sweden lacking the level of freedom that prosecutors in Japan and USA possesses.

So why is restorative justice discussed in this thesis? Greatly by reasons that restorative justice is used primarily regarding juvenile delinquency in both Sweden and Japan. Among these individuals, the most common crime is shoplifting. It is a crime where restorative justice functions well.<sup>44</sup> The shopkeeper and the young offender can come together and find a way to forgiveness and restoration. The young offender learns that it is culpable what he/she is doing, and the keeper obtains understanding about young offenders and individuals of the community. Restorative justice aims to bring justice to the victims. It is usually not by means of punishment of the offender, but recognition of the victim.<sup>45</sup>

There are a multitude of problems in the Swedish mediation process. Notably, the distinction when comparing Japan and Sweden, is the reluctance of

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<sup>37</sup> Marklund (n 31) 112.

<sup>38</sup> Lag (1964:167) med särskilda bestämmelser om unga lagöverträdare §22, Rättegångsbalken 20 kap. 7§ b.

<sup>39</sup> Marklund (n 31) 113.

<sup>40</sup> *ibid* 117.

<sup>41</sup> *ibid* 232.

<sup>42</sup> A principle in criminal law that pursues to avoid double prosecutions and double punishments.

<sup>43</sup> Marklund (n 31) 244–245.

<sup>44</sup> *cf* Christie (n 197) 81-82.

<sup>45</sup> Daniela Bolivar “Deconstructing Empowerment in Restorative Justice” in Ivo Aertsen and Brunilda Pali (eds), *Critical Restorative Justice*, (Hart Publishing 2017) 39-40.

offenders to confess.<sup>46</sup> Consequently, mediation cannot take place. In Japan, most individuals do confess, in this way offering restorative justice mediation is less problematic.<sup>47</sup>

A further dilemma is that we cannot phase out penal and formal law. What if the victim does not want to participate in the restorative justice process? A victim who does not want to see his/her offender. Or an offender who really do not care for the victim, and thus the action of restorative justice becomes futile.<sup>48</sup> A minimal approach might be the answer. A bit of both. Where mediation is not possible, enabling sanctions to crimes when the system demands it.<sup>49</sup>

A standard of punishment needs to exist in these events. If we could find a middle way though, that would be desirable in our society. As we have seen, the proceedings in restorative justice are part of society; hence, society's representatives should be participating simultaneously. Restorative justice is not a panacea, as critics will show.

I will now elaborate on the criticism of restorative justice.

### 2.2.1 Criticism

Restorative justice is not without criticism. It is said to trivialise crime, especially men's violence against women. Fail to effect real change, fail to prevent recidivism (which is not really what restorative justice is set out to do), and the exclusion of professionals, are some among other various concerns. Many of these are misdirected at restorative justice and predominantly these criticisms are based on misconceptions regarding restorative justices' scope and purpose, divergent from its objectives, as explained earlier.<sup>50</sup>

There are different forms of punishment, negative and positive (A positive punishment involves the presentation of something unpleasant whereas negative punishment is punishment by removal). Negative is something we have to move away from as it is counterproductive. Looking at capital punishment for example. It is supposed to keep us from committing heinous crimes, while at the same time supporting a state that can punish its citizens with death.<sup>51</sup> Sweden has not had capital punishment in peace time since 1921. Conversely in Japan, it is still in effect.

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<sup>46</sup> Maritha Jacobsson, Lottie Wahlin, and Eva Fromholz, "Victim Offender Mediation in Sweden: An Activity Falling Apart?" in Anna Nylund, Laijus Ervasti and Lin Adrian (eds), *Nordic Mediation Research*, (Springer 2018) 75-76.

<sup>47</sup> Ismawansa, Madiasa Ablisa and Alvi Syahrin, "Settlement of Criminal Cases through Restorative Justice in Japan and the United States of America: A Law Comparison" (Universitas Sumatera Utara – Indonesia 2022) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4181688](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4181688)> accessed 11 November 2023.

<sup>48</sup> Nils Christie, *A Suitable Amount of Crime* (Routledge 2004) 80-81.

<sup>49</sup> *ibid* 85.

<sup>50</sup> Josep Tamarit Sumalla, "Restorative Justice, Procedural Justice and Care" in Ivo Aertsen and Brunhilda Pali, *Critical Restorative Justice*, (Hart Publishing 2017) 111-115.

<sup>51</sup> Claudia Mazzucato, "Restorative Justice and the Potential of 'Exemplarity' In Search of a 'Persuasive' Coherence Within Criminal Justice" in Ivo Aertsen and Brunhilda Pali, *Critical Restorative Justice*, (Hart Publishing 2017) 248-249.

Positive punishment though, working with the victim, working with the offender, where we get community involvement, citizens that work together for a better after. This is beneficial to both the victim and offender, whilst still enforcing and keeping the culprit accountable. Compliance becomes a fact and self-interest and conservation of “good” becomes a social norm.<sup>52</sup>

Crime is not an isolated phenomenon; rather, it is intricately intertwined with societal dynamics. An individual is deemed a criminal when deviating from established norms. However, the concepts of norms and social control deserves careful examination. Subsequent chapters will exemplify the origins and nature of social control, shedding light on its essence and manifestations.

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<sup>52</sup> Mazzucato (n 51) 249-250.

## 3 Social control

### 3.1 Informal Social Control

Informal social control was historically much more prevalent in Sweden than it is today. This all changed after the Second World War. This has further exasperated the measures that need to be taken to battle the local problems, putting it all on the official formal controls table, the state. Active engagement of the general public in Sweden is vital. An overreliance on formal control measures alone may not be enough to achieve the outcomes we are looking for.<sup>53</sup>

The informal social control that is still around in Sweden today are the various NGOs that has popped up on local level. They do a great job, unfortunately it is not enough, as the problems develop too fast in Sweden. NGOs do not have enough people or finances to handle all the problems.<sup>54</sup> In Japan, it is the social groups, the in-groups, that still have the social control.

#### 3.1.1 Social Groups

Social groups are usually very effective when it comes to controlling the behaviour of its members (e.g., family, study groups, sports clubs, etc). This unintentionally gives rise to social control in society. This is known as informal social control.<sup>55</sup> The benefits of small groups having social control within them will positively affect the societal level of control and order. Obviously, if it is uniform to the norms of society. The group norms require members to behave in solidarity. This implies a way which brings success to the group, and in the bigger picture the rest of society. There might be counterproductive groups among the masses as well. These might be hoodlum gangs, religious cults, or for example the paramilitary group “Proud Boys”<sup>56</sup> in America. Productive groups on the other hand might be The Scouts, different sports groups, choirs, music bands, etc. The more productive groups a society has, the better social order we get, as solidarity is bred in these groups.<sup>57</sup>

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<sup>53</sup> BRÅ-report, “Our Collective Responsibility”, (National Council for Crime Prevention Sweden 1997) 4.

<sup>54</sup> Isabel Schoultz, “Controlling the Swedish state Studies on formal and informal bodies of control” (DPCRIM thesis Stockholm University 2014) 33-34.

<sup>55</sup> Miller and Kanazawa (n 25) 8–9.

<sup>56</sup> A far-right, neo-fascist militant organisation that promotes and engages in political violence.

<sup>57</sup> Miller and Kanazawa (n 25) 14–15.

### 3.1.2 Social Order

Social order has evolved, and we look differently upon it through the centuries. From Hobbes<sup>58</sup>, Locke<sup>59</sup> and Rousseau<sup>60</sup> starting in the seventeenth century to Spencer<sup>61</sup>, Sumner<sup>62</sup>, and Durkheim continuing the discussions, and further with Marx<sup>63</sup> and the list continues.<sup>64</sup> What I want to demonstrate is that informal control is ever transforming. The distinctions in our contrasting societies constantly evolve new forms of control and rules. We have positive sanctions and negative ones, and they evolve as well. If you do not interact with society around you, then adherence to these norms will not come as natural.

Where there is a society, there will be morality. In society, there will be individuals who will diverge from the norm, shaping them into criminals. The more authority and norms a society has, the more harshly it will react to infractions. Crime will differ from society to society, but it will always be there. Durkheim suggests that the criminal is “below the level of his time”. In opposite, as the idealist is a head of his time, they both must be able to exist during the same era. Sometimes the criminal and idealist are one and the same.<sup>65</sup> I only need to mention Socrates and you get the idea.<sup>66</sup>

### 3.1.3 Punishment

Punishment can be seen as the remedy to crime, but this is only true if crime is a disease. If crime is something else, we must look for the answer to its remedy somewhere else.<sup>67</sup>

Scull and Lukes<sup>68</sup> suggests that the punishment should only vary when the subject of the criminal act is more of a repeat offender than to what the actual crime might be. This is, provided that the scale of punishment only consists of a few classifications. An incurable thief is as bad as an incurable murderer. Nevertheless, in society we do not excessively punish the incurable more than the few times offender. Scull and Lukes claim that this makes the system an

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<sup>58</sup> English philosopher, 1588-1679. Influential of the social contract theory.

<sup>59</sup> English philosopher, 1632-1704. Influential during the Enlightenment. Father of liberalism.

<sup>60</sup> Genevan philosopher, 1712-1778. Influential during the Enlightenment. Politics, education, and economics.

<sup>61</sup> English philosopher, psychologist, biologist, sociologist, and anthropologist, 1820-1903.

<sup>62</sup> American social scientist and neoclassical liberal, 1840-1910. Held the first professorship in sociology in America.

<sup>63</sup> German philosopher, 1818-1883. Known for *The Communist Manifesto* and *Das Kapital*.

<sup>64</sup> James J Chriss, *Social Control An Introduction*, (3rd edn Polity Press 2022) 36–37.

<sup>65</sup> Émile Durkheim, *The Rules of Sociological Method*, (first published 1895, 8th edn, The Free Press 1964) 70–71.

<sup>66</sup> Socrates was executed for impiety and corruption of the youth. Later it has been argued that the reasons were political. Socrates wanted the young to use critical thinking. This was not respected by his peers.

<sup>67</sup> Durkheim (n 65) 72–73.

<sup>68</sup> Andrew Schull, sociologist. Steven Lukes, political and social theorist.

extension of talion<sup>69</sup>, even though a kinder version of it. Punishment has thus remained an act of vengeance of morality through expiation.<sup>70</sup>

For society at large the punishment needs also to be proportionate to the crime. This is to accommodate the majority of society that follows the norms, denoting that justice has been served.<sup>71</sup> The proportion changes through time by the evolving of perspective among people in society, and with that, the intentions of politicians.

Social order is when people in society follow the norms, both formal and informal. In constructing this comparative analysis on crime, one must understand that crimes are differently shaped in individual countries and thus a complete and accurate comparison is often not possible.<sup>72</sup>

The majority of people in a country tend to follow the laws and informal structures of society. At the same time engaging in calculation of the risks and rewards, that stepping outside the societal norms might have. This is inherent among humans. Order is desirable, but too much behavioural conformity becomes oppressive at some point. Humans generally prefer to have a society where we know the norms of society, but do not have to follow them (the informal ones). Effects of this can be observed in many instances.

In America, for example, where you have some of the highest homicide rates of developed countries, you also have the highest degree of Nobel prize laureates. Conversely, Japan on the other hand has a low homicide rate and even though it is a highly technologically and educationally advanced country has produced very few Nobel laureates. This is just another way to show how the different social structures and order might give rise to surprising results.<sup>73</sup>

It can be just as stressful living in a high social order society as living in a low one. There are always trade-offs to be had.<sup>74</sup> For example, Durkheim, who gave rise to his interpretation of anomie in 1893, in which he describes a social condition that happens to a person falling outside of normlessness and in doing so ending up committing suicide in extreme cases.<sup>75</sup>

To an effect Japan does not have the behaviour problems like anomie that Durkheim discusses. Conversely, the strict nature of regulations in Japan where second chance are seldom granted, projects Japan to the other side of the spectrum, leading people to commit suicide when they step too far outside the norms. It is interesting that the extreme of the spectrum leads to suicide, but this is beyond the scope of this thesis.

Why is it important? It is through this control that we will discern Japan and its people. That is why looking at informal social control is important for

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<sup>69</sup> "An eye for an eye" in the bible, earliest known in the Code of Hammurabi.

<sup>70</sup> Steven Lukes and Andrew Scull, *Durkheim and the Law*, (Martin Robertson 1983) 61-62.

<sup>71</sup> *ibid* 69-70.

<sup>72</sup> Miller and Kanazawa (n 25) 6.

<sup>73</sup> *ibid* 4.

<sup>74</sup> *ibid* 6-7.

<sup>75</sup> Émile Durkheim, *The Division of Labor in Society* (first published 1893, The Free Press 1964) 364-373; Émile Durkheim, *Suicide: A Study in Sociology* (first published 1897, The Free Press 1951), 231-266.

this thesis. Some academics, among others, Ruth Benedict has proposed that shame, fear of being embarrassed or disgraced, are the main characteristics of the Japanese.<sup>76</sup> Meanwhile, Kanazawa and Miller appropriate it to the monitoring and sanctioning in and by the groups that keeps the social control at bay.<sup>77</sup> This will further be analysed in the thesis.

### 3.1.4 Kindergarten and School

In Japan children are born independent and are fostered into social in-groups. This is done to prepare them for coming adulthood in society. The reason children are fostered into dependency on the in-group is because this is how adulthood works in Japan. Closely knitted in-groups are thus created because Japanese social structure rewards this behaviour in adults.<sup>78</sup>

In Sweden, play is in focus. The curriculum places a distinct emphasis on addressing individual needs and interests, while education is deliberately directing attention towards gender awareness. This intentional focus aims to ensure equal life opportunities are accessible irrespective of individual identity.<sup>79</sup>

Playing and making friends is part of the curriculum in kindergarten and elementary school in Japan. It is an important part. Antisocial behaviour is seen as a detestable thing in the school setting as it possesses challenges for the child to integrate into society at large. Consequently, great efforts are undertaken to secure children's socialising skills. School is also meant to be enjoyed with one's classmates. Past elementary, school is the place where Japanese children will spend lots of time working on their academics' path.<sup>80</sup> Like the soldiers in the trenches that are made to fight together, so are the children of Japan made to study until school is over and work life begins.

School children have on average four hours of homework every day. Outside the normal week they also attend school on every other Saturday. Besides this, there is after school clubs and "cram school". In these a lot of time is spent with even more extra-curricular activities.<sup>81</sup> With all of this there is literally no time for the school kid to get into trouble.

Conversely in Sweden, homework is a rarity. It exists but the idea in Sweden is:

“a stressed worker: homework blurs the boundaries between home life and school life, stealing time from children's leisure time, and puts unhealthy pressure on the ambitious students”<sup>82</sup>

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<sup>76</sup> Ruth Benedict, *The Chrysanthemum and the Sword* (Houghton Mifflin 1946).

<sup>77</sup> Miller and Kanazawa (n 25) 10–11.

<sup>78</sup> *ibid* 24–25.

<sup>79</sup> Swedish Institute, “Education is key in Sweden. It is tax-financed, and compulsory from the age of 6.” <<https://sweden.se/life/society/the-swedish-school-system>> accessed 15 December 2023.

<sup>80</sup> Miller and Kanazawa (n 25) 25–26.

<sup>81</sup> *ibid* 31.

<sup>82</sup> Forsberg, L (2007) “Homework as serious family business: power and subjectivity in negotiations about school assignments in Swedish families”, *British Journal of Sociology of Education*, 28 (2), 209–222.



The child is supposed to not be stressed and enjoy their free time instead.<sup>83</sup>

Things that do stand out compared to other countries are the school ceremonies in Japan. These are celebrated when the new kids start their first school year. The uniforms they wear, the special schoolbag that one observes Japanese kids walking around with are elements of this. Students have their own home classroom throughout the academic year which they are responsible for. Teachers alternate throughout the different subjects, while the student are constantly in the same room. The children handle the cleaning of the classroom, and they eat in the classroom. In the midst of these various activities and responsibilities, young students cultivate a bond within the classroom, fostering a shared sense of ownership and responsibility towards their collective environment.<sup>84</sup>

The Japanese education system mainly focuses on males. The reason for this is that women are not perceived to have the same potential level of threat to social order as men do. Though it is possible, it becomes harder for women to pursue a career. A separate motivating factor for women to try and gain admission to prestigious schools, is the prospect of finding a future spouse there. The more prestigious the school, the higher probability of the spouse landing a good career, securing a good life for the woman.<sup>85</sup> This causes women to be dependent on the educational system, although for an altered reason in comparison with the men.

In Sweden, children engage in home-based learning environments; however, their responsibilities notably differ from those assigned to Japanese school children. Unlike their Japanese counterparts, Swedish students are not tasked with classroom maintenance duties, and they transition to distinct classrooms for subjects taught by educators other than their homeroom teacher. Furthermore, Swedish school children go to a school cantina and eat. The food at the cantina is provided as a component of their educational life.<sup>86</sup> As mentioned above, Swedish school focus on everyone, no matter which gender.

All this freedom that is surrendered in Japan, has some rewards though. Otherwise, it would never work. Better test scores, better high schools, lead to better colleges/universities which in the end amounts to better jobs. In Japan, group structure also breeds hierarchical patterns as juniors must follow seniors and perform dull tasks that the seniors once did when they were juniors. This structure continues into the work environment.<sup>87</sup>

When the Japanese children are done with high school, they move on to college or university. Of Japanese eighteen-year-olds, 80,6 % continue on to

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<sup>83</sup> Petersson, J, Marschall, G, Sayers, J et al. (1 more author) (2019) Swedish year one teachers' perspectives on homework in children's learning of number: An ongoing controversy. *Writings from SMDF*, 13. 7. pp. 91-101, 103.

<sup>84</sup> Miller and Kanazawa (n 25) 26-28.

<sup>85</sup> *ibid* 30-31.

<sup>86</sup> Livsmedelsverket, "School lunches", <<https://www.livsmedelsverket.se/en/food-habits-health-and-environment/maltider-i-varld-skola-och-omsorg/skola>> accessed 15 December 2023.

<sup>87</sup> Miller and Kanazawa (n 25) 33-34.

higher education in Japan.<sup>88</sup> Conversely, in Sweden only 45 % continue with higher studies, a number that has gone up from 2000, when the number was 16 %.<sup>89</sup>

When Japanese students finish at 22-24, the young adults have passed the age when people tend to get into criminal or deviant behaviour. In criminology it is widely accepted that seventeen is the peak age of deviant behaviour among men. From there on out, criminal activity decreases<sup>90</sup>. This results in a low crime society. It is not completely true; Japan is not low on all forms of crime. There is on the other hand no space in this thesis to explore white-collar crime in Japan, a crime that is more prominent, but well-hidden in the social structures of Japan.

### 3.1.5 How the Structure ‘Works’

A big difference to most of the western world is how the work structure among white collar jobs functions in Japan. When you start at a company in Japan it is in many cases for life. This makes changing jobs complicated as well. As a new hire, one always starts at the bottom of a company, as loyalty is rewarded. Hence, companies possess the capacity to demand more from their employees, as workers are reliant on their employment. Consequently, workers often perform duties long after designated working hours, and on top of that participating in after- hours activities such as *Nomikai*<sup>91</sup>. Furthermore, this keeps the group strong and deviation from the group is heavily frowned upon. Swedes, conversely, tends to advance in their career through switching workplace. This can sometimes be the only way to bump up one’s salary.<sup>92</sup>

It should also be mentioned that company workers in Japan sit in an open landscape so that everyone, including the manager, can see what everyone else is doing. The mentality of this is to instil transparency and order. Through this process, solidarity on the meso scale becomes solidarity on the macro scale.<sup>93</sup>

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<sup>88</sup> See Supplement A Figure 3.

<sup>89</sup> SCB, ”Utbildningsnivån i Sverige”, <<https://www.scb.se/hitta-statistik/sverige-i-siff-ror/utbildning-jobb-och-pengar/utbildningsnivån-i-sverige/#:~:text=I%20dag%20har%2030%20procent,fr%C3%A5n%2016%20procent%20C3%A5r%202000.&text=F%C3%B6r%20att%20unders%C3%B6ka%20utbildningsniv%C3%A5n%20tittar.procent%20I%C3%A4st%20vidare%20efter%20gymnasiet>> accessed 22 November 2023.

<sup>90</sup> Caitlin V. M. Cornelius, Christopher J. Lynch, and Ross Gore, *AGING OUT OF CRIME: EXPLORING THE RELATIONSHIP BETWEEN AGE AND CRIME WITH AGENT BASED MODELING*, (2017) Spring Simulation Multi-Conference - Agent Directed Simulation (SpringSim-ADS), Virginia Beach, VA, 25.

<sup>91</sup> A *Nomikai* is an activity held among members of the same team or department. Attendance is voluntarily, but depending on the occasion, showing up might be strongly recommended. Typically, the event will last 2-3 hours, at a bar or restaurant, and often come with a *nomihodai* (飲み放題, all-you-can-drink plan) and a set menu of dishes that everyone can share.

<sup>92</sup> Maja Andersson, “Stark trend – svenskar byter jobb som aldrig förr”, (13 November 2018) <<https://www.svt.se/nyheter/lokalt/vasterbotten/vi-byter-jobb-allt-oftare>> accessed 7 December 2023.

<sup>93</sup> Miller and Kanazawa (n 25) 18–19.

The difference between Swedish society and Japanese society is not necessarily the norms, monitoring, or sanctions per se, but the degree or even strictness on how rules are enforced. Swedes have their after-work activities as well, but they are not obligated to be there in the same way as a Japanese has to be at a *Nomikai*. Obviously, there are differences in the specific norms as well. It is not the most important part though, rather how they are followed makes a difference; voluntary versus obligatory.

Another thing that diverges between the two separate countries, is the manner in which gender is being addressed.

### 3.1.6 Gender

When talking about gender, Sweden has gone a different path when it comes to equality between the genders. A point of distinction lies in that Japan has a traditional gender-based society. A feature that is absent in the Swedish context. For example, Sweden ranks 5<sup>th</sup> place in the world when it comes to gender gap on salary between men and women. Conversely, Japan ranks 125<sup>th</sup> on that same ranking falling behind dictatorships such as China(107<sup>th</sup>), Azerbaijan(97<sup>th</sup>) and Viet Nam(72<sup>nd</sup>).<sup>94</sup>

A traditional gender-based society gives rise to the high levels of social order in Japan. For example, there is a low level of divorces in Japan. This does not mean that people are happier in their relationships, still it is the traditional way to have a family and stay together. Having a family stay intact, mitigates the adverse effects a divorce has on a child, benefiting society at large. Children have a stable upbringing and there is little room for delinquency. The better the supervision from parents, the less problems are there to get into. This does not suggest an intact family is a panacea to all crime. Even households with dual earners have less supervision, and thus opportunities arise to get into trouble.<sup>95</sup> There is strong correlation between delinquency and the absence of a fathers influence in the upbringing of boys, which is not a novel observation.<sup>96</sup>

In Japan the divorce rate was 1.57 per 1000 people<sup>97</sup> in 2021, compared to Sweden which had a rate of 2.5 during the same period.<sup>98</sup>

An adverse effect of having a traditional gender-based society is the rise of gender discrimination in the workplaces. In Japan, men are hired as permanent employees. Females to a much higher degree gets temporary

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<sup>94</sup> World Economic Forum, “Global Gender Gap Report 2023”, (World Economic Forum 2022) 11.

<sup>95</sup> Miller and Kanazawa (n 25) 58.

<sup>96</sup> Rebekah Levine Coley and Bethany L Medeiros, “Reciprocal Longitudinal Relations Between Nonresident Father Involvement and Adolescent Delinquency” (2007) *Child Development Volume 78*(1) 132-147, DOI: doi.org/10.1111/j.1467-8624.2007.00989.x.

<sup>97</sup> Ministry of Health Labor and Welfare Japan, *Trends in the number of divorces and divorce rates 1950-2020*, <[https://www.mhlw.go.jp/english/database/db-hw/FY2022/dl/divorce\\_4.pdf](https://www.mhlw.go.jp/english/database/db-hw/FY2022/dl/divorce_4.pdf)> accessed 3 October 2023.

<sup>98</sup> Statistiskdatabasen, *Antal nyblivna skilda efter civilstånd, kön och år*, <[https://www.statistikdatabasen.scb.se/pxweb/sv/ssd/START\\_BE\\_BE0101\\_BE0101L/CivilstandTypPar/table/table-ViewLayout1/](https://www.statistikdatabasen.scb.se/pxweb/sv/ssd/START_BE_BE0101_BE0101L/CivilstandTypPar/table/table-ViewLayout1/)> accessed 3 October 2023.

employment. This is due to most criminals being young males. If young men have a job, they are less inclined to become criminals. This can be seen as an unfair treatment towards females who then can easily be fired when the business or economy is not doing well.<sup>99</sup> In the broader context nevertheless, young males receiving jobs contributes to enhancing safety in society.

Women work inherently more in “nursing jobs” in Sweden, as Japan. Viewing academia though, in Sweden women have become the majority in most educational programs.<sup>100</sup>

Sweden and Japan are also very different when it comes to how society is run. Japan places a strong emphasis on collective values, whereas Sweden primarily prioritises individualism<sup>101</sup>.

In the next part we shall delve further into this.

### 3.1.7 Individualism

Japan has for a long time been all about the collective. This is something that is slowly changing though, but it might not be for the best of Japan.

The rise of individualism is happening among the Japanese youths, but it is not like the western one. Instead, this is primarily giving rise to physical and mental isolation, predominantly because the world of social networking services disconnects people from physical interactions. Young Japanese have their communication online but forget to build relationships in the real world.<sup>102</sup>

Limited data exist on the societal impact of this emerging phenomenon. Consequently, we must await further developments on how it turns out.

### 3.1.8 Collectivism

When talking about collectivism I am referring to the definition “the defining feature of collectivism is the group heuristic or expectation of generalized reciprocity among, but not extending beyond, members of the same group”<sup>103</sup>.

With high visibility and high dependence in-groups that lives in close ties there are few chances of being cheated. Either by the own members or other groups. Assurance is high by the social structure in Japan, thus in a sense, there does not need to be trust. There is a distinction between trust and assurance. Trust has to do with belief in benign intentions of others, and assurance is a guarantee of the investment that everyone has in the group. It is important to remember this when looking at the whole structure of the social control of

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<sup>99</sup> Miller and Kanazawa (n 25) 59.

<sup>100</sup> Universitetskanslersämbetet, “Jämställdhet i statistiken (6 October 2023) <<https://www.uka.se/sa-fungerar-hogskolan/om-jamstalldhet-i-hogskolan/flikar/jamstalldhet-i-statistiken>> accessed 7 December 2023.

<sup>101</sup> A philosophy that emphasises individual rights, autonomy, and self-reliance. Individual achievements are valued more than the collective or group interests.

<sup>102</sup> Laura Bui and David P Farrington, *Crime in Japan A Psychological Perspective* (Palgrave Advances in Criminology and Criminal Justice in Asia, Palgrave Macmillan 2019) 35.

<sup>103</sup> Toshio Yamagishi, Nobuhito Jin and Allan S Miller, “In-group Bias and Culture of Collectivism” (1998) *Asian Journal of Social Psychology* 1:315-328.

Japan. Japanese people generally do not have a high level of trust to other people, compared to other countries.<sup>104</sup> This is Japanese collectivism.

In Sweden, collectivism happens through the welfare system. Sweden has, in a sense, institutionalised collectivism.<sup>105</sup>

With this introduction to informal social control, I hope you have gained a foundation of understanding of Sweden and Japan. The evident distinctions in the educational systems of these two nations, encompassing factors such as individualism, collectivism, and gender roles, have been regarded. The subsequent discussion will delve into formal control, scrutinizing the justice systems of Sweden and Japan, to cultivate a comprehensive understanding of their respective components.

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<sup>104</sup> Miller and Kanazawa (n 25) 108-109.

<sup>105</sup> Kathy Tian and Tian Guang, "Exploration of Collectivism in Contemporary Sweden" (2017) in *Journal of Applied Business and Economics Vol.19(11)*, 10-13.

## 4 Formal Social Control

### 4.1 What is Formal Social Control?

Formal social control is something that exist in all countries which we might not think of as a social control. The judicial system serves as a form of control of what we do in society. I shall introduce the system in general terms.

The legislative body passes laws. The police enforce the laws. The prosecutor processes the offender. The judges in court charge the offender or sets him free if no crime was committed. The correctional system punishes and works to reform the person to deter offenders from further crime. In summary, this is what formal social control is all about, the criminal justice system.<sup>106</sup>

Criminal justice started when societies grew, and order was needed when people did immoral acts.<sup>107</sup> The first written law that existed in this world, and still exist to this day, are the words on a basalt stele rock, and the Code written is Hammurabi's. This means that we have since 1755 BC, in one form or another had written code. Not everywhere at once, but slowly it grew and spread around the world. Religion with its moral code further created law, and the very basics of our criminal code originate from these morals. Examples of these are "Thou shall not steal", "Thou shall not kill", and so on.

It is presumed with this introduction that you have a basic understanding of the concept formal law. In the following section I will introduce the Japanese and Swedish justice system, the crime shoplifting, prosecution, penal codes, restorative justice, and punishments. I will discern similarities and differences and offer a perspective on the subject.

This introduction is very broad and does not go into depts of the different parts that the system consists of. Below I shall introduce in-dept analysis by introducing the specific judicial system and its parts. I will begin introducing the contemporary history of these two countries.

### 4.2 The History of the Japanese Justice System

After the Meiji Restoration in Japan, the new government looked at different western law systems to use, when adopting a new Civil Code. The reason was that Japan wanted to have the "best" and newest civil code that existed. Japan viewed the civil code of France for a long time, but after the turmoil in France, views changed. Instead, they opted for the German BGB (Bürgerliches Gesetzbuch) which the German justice system had created. This became Japan's new structure of law, except for the family law and succession part, as Japan in these two parts preferred to create their own provisions.

The Japanese people did not get, and still do not have, the same strong consciousness to legal right as the German people. This was in part as a result of the BGB and its structure being adopted and not having legal provisions

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<sup>106</sup> James J Chriss, *Social Control An Introduction*, (3rd edn Polity Press 2022) 95.

<sup>107</sup> Samuel Noah Kramer, *The Sumerians: Their History, Culture and Character* (University of Chicago 1971) 4.

naturally evolve. Instead, societies norms played a more vital role in Japan, and still do.<sup>108</sup>

It is intriguing to observe how the justice system in Japan has evolved since then, despite being a modern nation, Japan still keeps its Asian identity with a legal system and moral principles that springs from Chinese law and Confucian philosophy.<sup>109</sup>

During the first decade of the 20<sup>th</sup> century, power shifted to the parliament and towards democracy. In the First World War, Japan was part of the Allied powers. Leading up to the Second World War, Japan developed into a military controlled country more than anything else. The emperor turned into a nationalistic symbol. The power of the military and Emperor grew even more during the Sino-Japanese wars, in which Japan perpetrated a lot of atrocities. Japan joined the Axis powers. After a long war Japan surrendered on the 14 of August 1945, following the bombs that were dropped on Hiroshima and Nagasaki.

In the wake of the war, Americas roll as occupier was to restore and rebuild Japan. The occupation of Japan ended in 1952, but America still has a considerable force on the island of Okinawa.

As the new Constitution was put in place, the Americans wanted the Japanese to have a jury and grand jury system. This was something the Japanese did not approve off. Instead, the Prosecution Review Commission was created. It is the only one in the world of its form. In short, it is used as a checks and balance system for the people to scrutinise prosecutors. It later grew into a form for victims to obtain rights when prosecutors would not charge. The PRC can institute mandatory prosecution in some circumstances. What the PRC does is to review non-charge decisions made by professional prosecutors and decide if the case should be reinvestigated or charged. The mandatory prosecution did not come into effect in Japan until 2009. Primarily, as a result of pressure from society as some scandalous cases in Japan occurred where victims were not given proper compensation, or even recognition. Before that, PRCs powers were merely recommendations to charge or further investigate.<sup>110</sup>

Japan became Americanised during the post-war time. The emperor effectively lost all power and became a ceremonial figure. Shinto religion, and the state were separated. The Zaibatsu (powerful families, industrial tycoons of the Empire of Japan) were abolished. In addition, a new constitution came into effect. A constitution that has not been amended since.

Between 1947 and 1973 the Japanese economy flourished. In 1973 the oil crisis occurred. It ended up hurting Japan's economy which was at the time heavily reliant on oil. Japan shifted its priorities and became the high

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<sup>108</sup> Britannica, *Japanese law*, <<https://www.britannica.com/topic/civil-law-Romano-Germanic/Japanese-law>> accessed 16 October 2023.

<sup>109</sup> Percy R Luney, "Traditions and Foreign Influences: Systems of Law in China and Japan" in Volume 52, Number 2 & 3 (Spring-Summer 1989) *Emerging Framework of Chinese Civil Law*. Spring Issue, 129.

<sup>110</sup> David T. Johnson, *Japan's Prosecution Review Commission On the Democratic Oversight of Decisions Not To Charge* (Palgrave Macmillan 2022) 46-59.

technology country we know of it today. In the 90's, after the collapse of the real estate market in Japan, the economy became stagnant.<sup>111</sup> Stagflation is a term used for this. Legislative bodies have worked since to try and get the economy going. Most know politician for this, was Shinzo Abe during his reign. It is today known as Abenomics.<sup>112</sup> Heavy borrowing was done to try and boost the economy. This led to Japan becoming the second highest debt to GDP ratio nation in the world, at 266%.<sup>113</sup>

You have now acquired some understanding of Japan's historical origins and its current societal landscape. Continuing on to the legal system and we jump straight into outside perspectives of Japan, which often tends to scrutinise Japan's judicial system.

#### 4.2.1 Introduction to Justice in Japan

Japan has received scrutinization from human rights organisations for several reasons when it comes to its justice system. Arrested suspects are held for long detention times without bail, awaiting trial. During this time, they are coerced into confessing to whatever crime they are accused of. This is interesting considering that article 38 in the Japanese Constitution reads:

“No person shall be compelled to testify against himself. Confessions made...after prolonged arrest or detention shall not be admitted in evidence”.<sup>114</sup>

It seems that Japan is not implementing precedence in accordance with its legislation. Consequences of long detention times lead to tarnished reputation and huge financial loss to the accused, even if they are acquitted. According to article 40 in the same Constitution it is formulated that, once acquitted one may sue the State for redress.<sup>115</sup> This system of coerced confession is known as hitojichi-shiho (hostage justice system) in Japan. When it comes to rule of law and presumption of innocence, the justice system in Japan is like most other democracies on paper. The reality differentiates from the theory. Suspects are often treated as criminals, even before a conviction. False conviction or *enzai*, as the Japanese call it.<sup>116</sup>

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<sup>111</sup> Okina Kunio, Shirakawa Masaaki & Shiratsuka Shigenori (2001) "The Asset Price Bubble and Monetary Policy: Japan's Experience in the Late 1980s and the Lessons: Background Paper" *Monetary and Economic Studies, Institute for Monetary and Economic Studies, Bank of Japan, vol. 19(S1)*, 395-450.

<sup>112</sup> Inman Yeo (2017) "Debating Abenomics", *Seoul Journal of Japanese Studies Vol.3*, (1) Institute for Japanese Studies, Seoul National University, 59-79.

<sup>113</sup> Debt to GDP Ratio by Country 2023, <<https://worldpopulationreview.com/country-rankings/debt-to-gdp-ratio-by-country>> accessed 13 November 2023.

<sup>114</sup> 日本国憲法 Nihon-koku kenpō (The Constitution of Japan) (Tokyo: Ministry of Justice 1947), article 38.

<sup>115</sup> 日本国憲法 Nihon-koku kenpō (The Constitution of Japan) (Tokyo: Ministry of Justice 1947), article 40.

<sup>116</sup> Human rights watch, *Japan's "Hostage Justice" System Denial of Bail, Coerced Confessions, and Lack of Access to Lawyers* [https://www.hrw.org/report/2023/05/25/japans-hostage-justice-system/denial-bail-coerced-confessions-and-lack-access#\\_ftn218](https://www.hrw.org/report/2023/05/25/japans-hostage-justice-system/denial-bail-coerced-confessions-and-lack-access#_ftn218) accessed 6 October 2023.



Denial of bail, abusive interrogations to obtain confessions, prohibitions on communicating with family or others, unaccountable prosecutors, insufficient reforms, and lack of adequate health care for detained. These are just some of the issues that human rights organisations report when it is criticising the Japanese system.<sup>117</sup>

The Japanese justice system does not operate with juries, as history demonstrate. What they implement instead, to some extent, is the lay judge system (Sabian-in system) that were introduced in 2009. The system functions with six judges alongside the three professional judges. The people in the lay system are chosen at randomly from the public. A majority vote is needed with at least inclusion of one of the professional judges. The lay system is only used in criminal trials of very serious character.<sup>118</sup>

Without juries, predicting a case becomes effortless for a Japanese prosecutor. A further reason to Japan's high conviction rates.<sup>119</sup> Prosecutors in Japan diligently pursues confessions and more often than not, they succeed. The methods on how they acquire confessions may not always align with legislation.<sup>120</sup>

The Supreme Court in Japan is primarily handling constitutional interpretation and questions of national law. Ultimately, they are the last resorts of courts.<sup>121</sup>

It is crucial to acknowledge that the social norms inherent in everyday life in Japan plays a huge role on the country's legal system.<sup>122</sup> It is equally crucial to recognize the processes through which legislation, encompassing formal rules, comes into existence.

#### 4.2.2 Legislation

In Japan it is the Diet, the lower and upper house of the parliament, that has the legislative power.<sup>123</sup> A member of the Diet or the Cabinet can suggest a bill that they want to become legislation.<sup>124</sup> To change code and law in Japan is difficult. It is not complex in the sense of how voting and proposal go about, rather it is due to getting consensus in the Diet, and especially dealing with crime legislation. It can and has taken decades before modernisation and internationalisation were enacted in some parts of the Penal Code. This approach, though conservative, resonates with many in Japan. It emphasises the

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<sup>117</sup> Human rights watch (n 116).

<sup>118</sup> MOJ, "Please cooperate with the saiban-in system", <[https://www.moj.go.jp/EN/keiji1/saibanin\\_seido\\_index.html](https://www.moj.go.jp/EN/keiji1/saibanin_seido_index.html)> accessed 16 October 2023.

<sup>119</sup> David T Johnson, *The Japanese Way of Justice: Prosecuting Crime in Japan* (Oxford University Press 2002) 45.

<sup>120</sup> Human rights watch (n 116).

<sup>121</sup> Tadano, Masahito, "The Role of the Judicial Branch in the Protection of Fundamental Rights in Japan" in Yumiko Nakanishi (ed.), *Contemporary Issues in Human Rights Law: Europe and Asia*. (Springer 2018) 73–90

<sup>122</sup> H P Glenn, *Legal Traditions of the World* (5th edn, Oxford University Press 2014) 345-346.

<sup>123</sup> Johnson, *The Japanese Way of Justice: Prosecuting Crime in Japan* (n 119) 34.

<sup>124</sup> House of Councillors, The national Diet of Japan, "Legislative Procedure", <<https://www.sangiin.go.jp/eng/guide/legi/index.htm>> accessed 24 November 2023.

necessity of long-term consensus, recognising that alteration of law requires a substantial amount of time.<sup>125</sup>

Having presented an overview of the Japanese system, a parallel composition of the Swedish system will follow suit in the subsequent sections.

### 4.3 The History of the Swedish Justice System

The Swedish system was reformed in 1809. Power was divided by the monarch and the parliament. It was determined that neither party should wield too much power, which meant that specific checks and balances were put into place. These ideas arrived from continental Europe, which had experienced revolution. Revolution was something that the ruling parties of Sweden did not want to take place. From 1866, two chamber parliament was enacted, and in 1870 Sweden obtained a prime minister.

Industrialising and urbanising changed notably how society looked and worked. The noblemen progressively lost their power for every decennium that past. In 1951, Sweden gained freedom of religion and became steadily a secular country. Something Sweden today share with the Japanese people.

Sweden does not have a Civil Code comparable to Japan. Sweden instead has four laws that comprises the Swedish constitution. These are the Instruments of Government, the Act of Succession (dealing with the succession of the monarch), the Freedom of the Press Act and the Fundamental Law on Freedom of Expression.

#### 4.3.1 Introduction to Justice in Sweden

Sweden has predominantly received scrutinization over its pre-trial detentions. In Sweden, there is no limit to how long a suspect can be detained awaiting trial. As a result of this, Sweden has after pressures from the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)<sup>126</sup>, conducted SOU 2016:52 Färre i häkte och minskad isolering (Less people in detention and less isolation). A report to the government in which it describes how to lessen restriction, isolation, and detentions in Sweden. Since the report, little has happened. Sweden has continued to get reprimanded by the CPT.<sup>127</sup> Sweden with its long pre-trial detentions does not have a bail system either. Japan on the other hand has a bail system, but it is seldom used.<sup>128</sup>

Sweden does not have juries either, except in press libel cases of chapter 7 in Tryckfrihetsförordning (1949:105) (Freedom of the Press Act). Instead, Sweden employs lay judges that sit in District Courts and Court of Appeal. In a usual case there are three lay judges and one law-learned judge. In the Court of Appeal there are instead two lay judges and three law-learned judges. In each proceeding, the votes of the judges have the same priority and are

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<sup>125</sup> Johnson, *The Japanese Way of Justice: Prosecuting Crime in Japan* (n 119) 34-35.

<sup>126</sup> CPT report, visit 1991, 1994, 1998, 2003, 2009, <<https://www.coe.int/en/web/cpt/sweden>> accessed 16 November 2023.

<sup>127</sup> CPT report, visit to Sweden 2021.

<sup>128</sup> See n 120.

counted equally. Lay judges are nominated by political parties but are supposed to be neutral when performing their duty.<sup>129</sup>

On occasions when individuals fail to fulfil their duties appropriately, they may be relieved of their responsibilities as lay judges.<sup>130</sup> Historically, it was not that easy to relieve lay judges of their duties. This changed in 2014 after proposition 2013/14:169 from the Government to Parliament and the proposition passing in Parliament.<sup>131</sup>

#### 4.3.2 Legislation

In Sweden the Parliament has the legislative power. The government suggests legislation, though individual representatives of the parliament can likewise take initiative to legislation.<sup>132</sup> Changing law is pretty straightforward in Sweden. Usually there is a coalition of the government, which makes passing law not too burdensome. Contrarily, there is an exception when in occurrence with the constitution. There must be two votes on the new legislation, and there has to be an election of parliament in-between the votes.<sup>133</sup>

A mention of the distinction between civil code and penal code must be made here as well. Outside of penal code, civil code exists. Civil code says, “This is the duty” and penal code says, “This is the punishment”. The penal code considering that the rule for the crime need not be mentioned as it is already understood, known, and accepted by the people. Whereas the civil code is implemented when there is doubt to the question.<sup>134</sup>

You have now been introduced to the concept of formal social control, its history evolution in each respective country, and how the control is formulated and ratified into norms. The subsequent sections will elucidate how the system works, and the roles that are played in the distinct parts of the system.

### 4.4 Penal Code Japan

Japan’s Penal Code (刑法 Keihō) from 1907, consists of the General provisions which includes the scope of application, punishments, calculation of the period of time, suspension of execution of the sentence, parole, prescription and extinction of punishment, unpunishable acts and reduction or remission of punishment, attempts, consolidated punishments etc, and obviously the crimes.<sup>135</sup> The Code has been amended multiple times throughout history,

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<sup>129</sup> Sveriges Domstolar, ”Roll, uppgift och skyldigheter” <<https://www.domstol.se/om-sveriges-domstolar/namndeman---ett-fortroendeuppdrag/roll-uppgift-och-skyldigheter/>> accessed 16 November 2023.

<sup>130</sup> Robert Klackenborn, ”Mänsklig omdömeslöshet är nämndemanssystemets minsta problem” <<https://www.dagensjuridik.se/debatt/mansklig-omdomesloshet-ar-namndemanssystemets-minsta-problem/>> accessed 16 November 2023.

<sup>131</sup> Prop. 2013/14:169.

<sup>132</sup> Regeringskansliet, ”Lagstiftningsprocessen”, <<https://www.regeringen.se/sa-styrs-sverige/lagstiftningsprocessen/>> accessed 9 November 2023

<sup>133</sup> Sveriges riksdag, ”Grundlagarna”, <<https://www.riksdagen.se/sv/sa-fungerar-riksdagen/demokrati/grundlagarna/>> accessed 9 November 2023

<sup>134</sup> Lukes and Scull (n 70) 43-44.

<sup>135</sup> 刑法 Keihō (Penal Code of Japan).

though no major shifts have been made. The latest deliberation has been on emphasising rehabilitation over retribution.<sup>136</sup>

Differing from a lot of countries, Japan uses informal sanctions to punish criminals. It is true that incarceration rates are low, but it is also true that 98 % of sentenced people receive a prison sentence. Two third of these will have their sentence suspended. This is where the informal sanctions play a part. The social group operates with a dual purpose, encompassing retribution in the form of the guilt experienced by the wrongdoer and simultaneously serving as a mechanism for rehabilitation through the provision of social support. Thus, probation officers are used to a smaller extent in Japan, the social group has to perform their duty instead.<sup>137</sup> This puts a lot of stress on the family and the close group of the offender.

## 4.5 Penal Code Sweden

Named the Swedish Criminal Code (Brottsbalken, SFS 1962:700), it entered into force on the 1 of January 1965. It contains the general provisions on all offences, criminal sanctions, the applicability of Swedish law and naturally provisions on the acts that are criminal offences in Sweden. There are other laws of offences that are not concluded in the code. They are found in supplementary penal provisions outside the Penal Code.<sup>138</sup>

Except from fines, conditional sentence, prison, sentences with probation, committed to care, Sweden uses community service to a high degree as a measure of sanctions when it comes to first-time offenders. First-time offenders are often juveniles.<sup>139</sup> In some way this can be equated with the Japanese informal system. It is not the same, but it serves the same purpose. A form of retribution and instilling guilt while at the same time being in a societal structure that offers to rehabilitate the offender.<sup>140</sup>

So, who is searching retribution for the state? The prosecutor obviously!

## 4.6 Prosecution

In Japan the prosecutor plays an almost quasi-judging role and has a substantial toolbox when it comes to prosecution. To begin with, 80 % of Penal Code violators are not arrested. They are instead sent to the prosecutor for further processing. Police and prosecutor work closely with one another and determine when a suspect should be arrested. An act that should not be taken

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<sup>136</sup> Magdalena Osumi, Possible revision to Japan's Penal Code to emphasize rehabilitation over retribution, <https://www.japantimes.co.jp/news/2022/03/11/national/penal-code-rehabilitation-prisoners/> accessed 11 October 2023.

<sup>137</sup> Philip L. Reichel, *Comparative Criminal Justice Systems: A Topical Approach* (2nd edn, Prentice-Hall 1999) 287-290, 363,

<sup>138</sup> Brottsbalken (The Swedish Penal Code), Preface, <<https://www.government.se/contentassets/7a2dcae0787e465e9a2431554b5eab03/the-swedish-criminal-code.pdf> > accessed 16 October 2023.

<sup>139</sup> Johan Stewart, "Samhällstjänst Från kroppsbestraffning till ideell verkställighet" (Sociologi Halmstad 2007) 30

<sup>140</sup> Per Ole Träskman, "Påföljd, proportionalitet och prioritering av samhällsstraff" (SvJT 2003) 173–193.

lightly, as there is substantial stigma regarding the fact when one becomes arrested in Japan. It is better to work with the suspect, than to forcibly bring them in.<sup>141</sup>

In Japan, like Sweden, the prosecutor must ask a judge to extend the detention. In Japan 24 hours is the limit after receiving the case. At first the extension is ten days. Then a second extension of another 10 day can be asked. This implies that the suspect can be detained for 72 hours before getting in front of a judge, and another 20 days after seeing the judge.<sup>142</sup>

In Sweden the prosecutor must at the latest, 12 o'clock on the third day of the detained, make formal application to a judge.<sup>143</sup> In Sweden there is no upper limit to how long the suspect can be detained. There needs to be a new application every 14 days if the charge is not complete. Moreover, the duration of detention needs to stand in proportion to the alleged crime the offender is suspected of. The prosecutor should act hurriedly and initiate charges within a time no longer than is necessary to the case.<sup>144</sup> Sweden has received reprimands concerning this practise from human rights organisations around the world, as mentioned earlier. In part because it is inhumane, detaining suspects longer than necessary.<sup>145</sup>

Additionally, Japanese prosecutors have the option of employing *summary prosecution*. A practice recently adopted in Sweden, although with a different operational methodology. The goal is to have speedier process for all involved in the process while still having fair rulings.<sup>146</sup> In Japan, 90 % of criminal case that are prosecuted, are handled through summary prosecution, while the rest goes to formal prosecution in the District Courts.<sup>147</sup>

In Japan, the authority to determine the disposition of a case, including the decision to drop a case, is vested exclusively in the hands of prosecutors, granting them the discretionary power to terminate legal proceedings regardless of the gravity of seriousness of the charges, or the strength of the evidential basis.<sup>148</sup> In Sweden, the prosecutor and the Police share this authority, but are not able to drop the charges when there are strong evidence. Prosecutors are not elected, in either Japan or Sweden. It is a bureaucratic profession.<sup>149</sup> The burden of proof lies solely on the prosecutor, both in Sweden and in Japan.<sup>150</sup> The characteristics of the prosecutor in Japan is that he does not

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<sup>141</sup> Johnson, *The Japanese Way of Justice: Prosecuting Crime in Japan* (n 119) 50-61.

<sup>142</sup> *ibid* 13-14.

<sup>143</sup> Rättegångsbalken (Code of judicial procedure) (1942:740) 24 kap. 12§.

<sup>144</sup> Rättegångsbalken (Code of judicial procedure) (1942:740) 24 kap. 18§

<sup>145</sup> Fair Trials <<https://www.fairtrials.org/articles/news/isolated-before-trial/>> accessed 12 October 2023.

<sup>146</sup> Polisen, *Snabbare lagföring utvidgning 2021–2023* <<https://polisen.se/om-polisen/polisens-arbete/snabbare-lagforing/>> accessed 12 October 2023.

<sup>147</sup> Johnson, *The Japanese Way of Justice: Prosecuting Crime in Japan* (n 119) 14.

<sup>148</sup> *ibid* 15, 37.

<sup>149</sup> *ibid* 31–32; Åklagarmyndigheten, “Så blir du åklagare”, <<https://www.aklagare.se/karriar/aklagaryrket/utbildning-till-aklagare/>> accessed 16 October 2023.

<sup>150</sup> Åklagarmyndigheten, *Nedlagda förundersökningar visar att systemet fungerar*, <<https://www.aklagare.se/nyheter-press/aktuellt-pa-aklagarmyndigheten/nedlagda-forundersokningar-visar-att-systemet-fungerar/>> accessed 12 October 2023.

proceed with the case unless he is 100 % sure to get a conviction. It is a matter of reputation and face, something Sweden does not have to the same extent.<sup>151</sup>

Together with high predictability does the incentive emerge to settle before trial in Japan. This can be arranged in a variation of ways where the offender might plead with the victim. A thief might pay and return what he has stolen, “letter of forgiveness” might help and compensate. With this and the notion that the thief will not offend again, the prosecutor can suspend prosecution if all parts are willing. With settlement the prosecutor further protects his reputation. Acquittals are a disgrace, while settlements are just part of the game.<sup>152</sup>

Suspension of prosecution is a distinct tool the prosecutor might use. The aim of this tool is to allow first-time offenders a chance to rehabilitate and reintegrate without reoffending. Japan has because of this, emerged as a lenient country when it comes to sanctions of first-time offenders. The system is arranged like this on purpose to avoid stigma of the offender and give them an opportunity to better their ways. The system is sometimes used wrongfully. For example, when a prosecutor is under heavy case load and relieves the burden with suspension. This contravenes official policies.<sup>153</sup> Prosecutors in Sweden do not have the comparable toolbox that Japanese prosecutors enjoys. For example, a Swedish prosecutor cannot drop a case when there is sufficient evidence, neither make deals on sanctions with the suspect before trial if he/she admits guilt.<sup>154</sup>

In Sweden, first-time offenders are usually handled more lenient, as Japan. There is also a presumption against jail sentence, which means that prison time should only be assigned when there is no other option. The ruling government in Sweden wants to modify so that prison emerge as priority in convictions.<sup>155</sup>

Formal sanctions should be the last resort, as informal sanctions work well in Japan. Japan’s high clearance rate and lenient sentencing when it comes to punishment of first-time offenders are a contributing factor to why crime rates are low in Japan.<sup>156</sup> Undoubtedly, leniency is dependent on the seriousness of the crime and of the character of the offender. The implications of a serious criminal act or a relapse in offence, escalates the punishment of the offender. Complementary factors are the victim’s attitude, and repeated offences.<sup>157</sup> A case under these circumstances was of an elderly man in Japan that tried to rob a drunken passenger. He received a suspended jail sentence. Two months later he was again caught, this time for trying to steal a bowl of rice and pork from a supermarket. This resulted in escalation of the punishment and a two-

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<sup>151</sup> Johnson, *The Japanese Way of Justice: Prosecuting Crime in Japan* (n 119) 56, 58.

<sup>152</sup> *ibid* 44–47, 58.

<sup>153</sup> *ibid* 107–110.

<sup>154</sup> Åklagarmyndigheten, ”Åklagaren kan väcka åtal”, <<https://www.aklagare.se/latt-last/det-har-gor-en-aklagare/aklagaren-kan-vaeka-atal/>> accessed 15 December 2023.

<sup>155</sup> Dir. 2023:115 *En översyn av straffskalorna samt ett reformerat och mer rättvist påföljdssystem*, 9-13.

<sup>156</sup> Johnson, *The Japanese Way of Justice: Prosecuting Crime in Japan* (n 119) 190-191.

<sup>157</sup> *ibid* 192-193.

year sentence in jail.<sup>158</sup> Such punitive measures may be perceived as severe from the perspective of a Swede.

If the suspect has confessed in Japan and the crime is not severe, a fine is usually the remedy when the perpetrator is a first offender.<sup>159</sup> A fine is, as well, the most common sanction in Sweden.<sup>160</sup> Both Sweden and Japan do not want to send criminals to prison as a first means, as I have addressed. But when Japan do send individuals to prison, the sentences are severe.<sup>161</sup>

Another reason to not prosecute in Japan is the fear of losing one's career if failing to convict.<sup>162</sup> Even judges face this scrutiny if they do not convict. As per my research findings, such a thing is unprecedented in Sweden.

321 Japanese judges participated in a study that showed that a judge that did not convict, ended up having worse careers than their peers.<sup>163</sup> In Japan one must adhere to the norms, or it could mean severe consequences for the individual.

In summary, the Japanese prosecutor can use various tools to reach the purpose and principles of the Japanese criminal system. Through invoking remorse, rehabilitating, reintegrating criminals, and repairing relationships between victims, and offenders. As I have demonstrated, leniency can be a tool, but it is solely used on first-time offenders of non-serious crime, under other conditions sanctions are harsh.<sup>164</sup> In Sweden the prosecutor does not wield the same power but still has great autonomy in performing his/her duty.

Finally, the PRC seems to slowly be helping the process in Japan to be more democratic, more transparent, and even more effective. It seems that Japan has culture obstacles to work through to get to the same level of transparency as Sweden.<sup>165</sup>

This process might seem counter-intuitive at times, but for the Japanese, it works. Who defends the accused, and can they really perform their duty in Japan where convictions are almost guaranteed? Will it not be disheartening to be an attorney at law when your country has a conviction rate of 98 %?

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<sup>158</sup> Yoshiaki Nohara and Andy Sharp, "Japan's Elderly Go on a Petty Crime Spree", <<https://www.bloomberg.com/news/articles/2013-07-18/japans-elderly-go-on-a-petty-crime-spree?embedded-checkout=true>> accessed 28 October 2023.

<sup>159</sup> Miller and Kanazawa (n 25) 74.

<sup>160</sup> Brå, "Nio av tio lagförda brott resulterar i böter", (10 Oktober 2016) <<https://bra.se/om-bra/nytt-fran-bra/arkiv/nyheter/2016-10-10-nio-av-tio-lagforda-brott-re-sulterar-i-boter.html>> accessed 27 November 2023.

<sup>161</sup> Nippon.com, "Crime and Punishment in Japan: A Holistic Perspective" (3 June 2020) <<https://www.nippon.com/en/in-depth/a06801/>> accessed 27 November 2023.

<sup>162</sup> Johnson, *The Japanese Way of Justice: Prosecuting Crime in Japan* (n 119) 44-47.

<sup>163</sup> J. Mark Ramseyer and Eric B. Rasmusen, "Why is the Japanese Conviction Rate so High?" (2001) *The Journal of Legal Studies* Vol. 30, No. 1 January 2001, The University of Chicago Press, 36 pages, 53.

<sup>164</sup> Johnson, *The Japanese Way of Justice: Prosecuting Crime in Japan* (n 119) 277-278.

<sup>165</sup> Johnson, *Japan's Prosecution Review Commission On the Democratic Oversight of Decisions Not To Charge* (n 110) 163-164.

## 4.7 The Role of the Lawyer

The adversary system was introduced with the Constitution of Japan in 1947. The provision stipulated that legal counsel would be provided to a defendant unable to afford one for himself.<sup>166</sup> Article 34 in the Constitution further specifies that, if the suspect is held in detention and is not formally charged, the suspect is entitled to legal counsel, both after arrest and prior to indictment. However, the state is not compelled to pay for the above-mentioned fees.

As a result of individuals not possessing monetary assets to pay for this service, different Bar Associations set up legal aid systems in the 90's for suspects that needed them. The money came from the lawyers' members fees of the different associations and were pooled into a fund. Subsequently, all Bar Associations around Japan initiated the same practice. In 2004, the Diet established a new government funded service for suspects. The system, however, does not immediately appoint attorneys. The police can detain a suspect in custody for up to 72 hours before an attorney is appointed to the case. Attorneys have worked, and are still working tirelessly, for the right to suspect having an attorney at their side throughout the process.

An accomplishment of attorneys in Japan has been the ability to file suits in civil courts against the denials of Article 39 in the Code of Criminal Procedure. A civil court judge did and do not preside over criminal cases. Instead basing their judgement on the law, whereas the criminal law judges base their decision on practice. By upholding the law, the attorneys were successful in their claim, and won multiple cases gaining financial compensation when the police had denied attorneys to visit their clients.

There is unsatisfactory legal protection for suspects in Japan, not in the Constitution, but caused thereby of decisions made with the Supreme Court over the years.<sup>167</sup>

So, what does an attorney in Japan think? Well of course that,

“...it is important for the attorney to protect not only innocent persons, but guilty[*sic*] persons. To protect guilty[*sic*] persons means to prevent their perpetrating crimes again by suffering right punishment and remaking their lives. They are likely too[*sic*] suffer heavy punishment or fail the opportunity to remake their lives if the attorney doesn't help them.”

Moreover, when talking with Senoo-san on the subject, he explains what makes the job rewarding for him,

“Crime will be able to decrease in our society if even one guilty person do not perpetrate a crime again. As the result, I could make our society a little better. I find my job rewarding about that”.<sup>168</sup>

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<sup>166</sup> 日本国憲法 Nihon-koku kenpō (The Constitution of Japan) Article 37.

<sup>167</sup> Makoto Ibusuki and Lawrence Repeta, “The Reality of the “Right to Counsel” in Japan and the Lawyers’ Campaign to Change It”, (The Asia-Pacific Journal Volume 18, Issue 13, Number 4, June 25, 2020)

<sup>168</sup> Email from Takuya Senoo, Attorney, Watanabe & Kasuya Law Office to author (12 November 2023).



Attorneys in Sweden seems to be enacting a different role in the justice system. Not purely upholding the constitutional democratic values, clasping the accused in the hand through the legal process, but defending the accused and fighting for “innocent until proven guilty”. Something the Japanese attorneys seems to be struggling with. Of the 539 262 suspicions of crime in Sweden 2022, only 110 552 ended up in convictions, where of 76 636 were finalised in court.<sup>169</sup>

There is also a difference how attorneys conduct business in the different countries, and additionally how they are accepted into the bar. Sweden does not have a bar system like Japan. Instead, it is an attorney’s association in which after three years of working as a lawyer, one gets the opportunity to apply to the association and then one has to perform an ethics exam. Conversely in Japan, the young students try to pass the bar exam, which is one of the hardest exams in Japan. Japanese student finishes University at the age of 22. The average age of passing the exam on the other hand is between 28 and 29 years of age. The consequences of this are, until passing the exam, they study and do part-time jobs to survive, not gaining real life experience in their trade, as in Sweden.<sup>170</sup>

In Sweden on the other hand, there is no obligation to attain the status of an attorney to practice law. Attorney is a protected title in Sweden, lawyer is not. Inhabiting the role of attorney in Sweden is a proof of quality. It is hard to become an attorney, but that does not mean that lawyers are not as competent as an attorney. It all comes down to the individual. In Sweden in 2022, there were 35 000 lawyers and 5690 attorneys.<sup>171</sup> Similarly to Japan, one has to finish law school in one’s country to be able to apply for the exam to become an attorney. In Japan, if you do not go to law school, you will have to take a preliminary test called Yobi-Shiken, before being able to do the bar exam.<sup>172</sup>

The process of becoming a lawyer and the associated responsibilities within each respective country has been explained. The subsequent chapter will concentrate on the manifestation of crime in Sweden and Japan, with a specific focus on a more detailed examination of shoplifting.

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<sup>169</sup> Brå, ”Personer lagförda för brott”, <<https://bra.se/statistik/kriminalstatistik/personer-lagforda-for-brott.html>> accessed 9 November 2023,

”Handlagda brottsmisstankar” <<https://bra.se/statistik/kriminalstatistik/handlagda-brotts-misstankar.html>> accessed 9 November 2023.

<sup>170</sup> “Fewer Law School Grads Pass Japan’s National Bar Exam in 2020” *nippon.com* (Tokyo, Mars 8 2021) <<https://www.nippon.com/en/japan-data/h00942/>> accessed 13 November 2023.

<sup>171</sup> ”Skillnad mellan jurist och advokat – Vem kan hjälpa dig?” <<https://aatos.app/se/ovriga/artiklar/jurist-och-advokat/>> accessed 13 November 2023.

<sup>172</sup> Japan Federation of Bar Associations, “The Japanese Judicial System” <[https://www.nichibenren.or.jp/en/about/judicial\\_system/attorney\\_system.html](https://www.nichibenren.or.jp/en/about/judicial_system/attorney_system.html)> accessed 9 November 2023.

## 4.8 Crime

### 4.8.1 Japan

Japan is known for being one of the safest countries in the world. One of the reasons is the low crime rate.<sup>173</sup> The reason for low crime rate is multifold and will, to some extent, be explained in this thesis. In the last 20 years, and since Japan peaked in 2002, crime rates have steadily decreased.<sup>174</sup> Incarceration rate has also declined. Japan has taken a more punitive approach to sanctions. This is a result of public demand for harder sanctions.<sup>175</sup> Penal populism as it is called, is something that is also observed in Sweden today. The start of 2023 in Japan has seen an unprecedented rise in crime and is up 20 % since previous year.<sup>176</sup> Reasons for this phenomenon is still unknown as limited data exists.

In Japan, the probability of the offender being a juvenile arrest, is 2.5 times greater than experiencing such an event as an adult. The reason for that is simple, juveniles commit more crime, and get caught more often. Juveniles are individuals between 14-19 years. When convicted, there is some relief in the sanctions against juveniles, similar to the Swedish system. Juveniles are not administered through the district courts, but rather in the family courts. Emphasis is put on correction and protection through help of the family court probation officers. Family background, life history, environment, and the child's character are investigated thoroughly. There are lots of measures at the judges' disposal to make sure of the best outcome for the specific juvenile. The family court has the capacity to send juveniles to Criminal Court if it is deemed that the crime is of a serious matter, and the juvenile should be tried as an adult instead.<sup>177</sup>

Class factors in, according to research on youth delinquency. One reason for the potential distortion of statistics, is the majority of people being born into the middle class in Japan. Even if the number of offenders remains consistent across different social classes, the relatively low number of people in low-income households in Japan magnifies the actual number of offending by a magnitude.<sup>178</sup>

Another important study regarding young offenders took place in halfway homes in Japan. What was noticeable was the examination of juveniles' background, the motivating factors to offend, and the when and why they stopped.

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<sup>173</sup> "Safest Countries in the World 2023" <<https://worldpopulationreview.com/country-rankings/safest-countries-in-the-world>> accessed 3 October 2023.

<sup>174</sup> See Figure 1.

<sup>175</sup> Kita Mari, "Kin, Crime and criminal Justice in Contemporary Japan" in Jianghong Liu and Sestuo Miyazawa (eds), *Crime and Justice in Contemporary Japan*, (Springer Series on Asian Criminology and Criminal Justice Research 2018) 29.

<sup>176</sup> "Crime in Japan rises in first half of 2023 as COVID-19 restrictions ease" *Japan Times* (Tokyo, July 20 2023) <<https://www.japantimes.co.jp/news/2023/07/20/national/crime-le-gal/japan-crime-rise/>> accessed 29 of September.

<sup>177</sup> Jae Joon Chung, "Japan", in Scott H Decker and Nerea Marteache (eds), *International Handbook of Juvenile Justice* (2nd edn Springer 2017) 195-215.

<sup>178</sup> Bui and Farrington (n 102) 119.

The women in the interviews usually stopped offending at the age of 18 and the men at 20. Reasons for ceasing to offend was usually because they got caught and then got professional help. Other reasons of stopping were that the young offenders did not want to bring shame or hurt to their families. Reasons for committing crime was to alleviate the pressure of school, status, attention from peers, or the juveniles came from disadvantageous backgrounds. The research found that the best way to get young people out of recidivism, was to relate to them on a personal level. Respect, encouragement, and integration were key words. It was additionally important for these young individuals to have someone to care for and/or protect. It made a huge difference to desistance. The primary reason young people ceased offending, was by reason of wanting to integrate and have a normal life. Japanese youths tended to blame themselves for their failure, not anyone or anything else when it came to offending.<sup>179</sup> One of the challenges with help work in Japan is that if one has been convicted of a crime, one cannot work as a helper to support these young individuals.<sup>180</sup> This is for reasons unbeknownst to me.

As Japan's population gets older, economic hardship becomes more prevalent. Most of the elderly crimes are perpetrated by ladies 65+, and the most reported crime of these, 80 %, was shoplifting. Much of this is due to the ladies living alone, having very low pensions, as they have not worked much in their lives, being housewives and are at the end of their lives alone, when family is no longer around.<sup>181</sup> This group is exposed, and instead of being helped with social welfare support, they are dealt with harshly in the Japanese justice system.<sup>182</sup> Conversely in Sweden, it is the men that perpetrates the majority of elderly crime.

#### 4.8.2 Sweden

Crime in Sweden is more frequent than in Japan. Sweden has a crime index of 48, just above America's 47.81 and below Iraq's at 48.42. Meanwhile, Japan enjoys a crime index of only 22.19.<sup>183</sup> Crime tends to be at the same level historically in Sweden, somewhere between 10 500 – 14 000 crimes reported, year on year, per 100 000 people since 1980.

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<sup>179</sup> Monica Barry, "Young offenders' Views of Desistance in Japan: A Comparison with Scotland" in Jianhong Liu, Max Travers and Lennon Y.C Chang (eds), *Comparative Criminology in Asia*, (Springer series on Asian Criminology and Criminal Justice Research 2017) 127-128.

<sup>180</sup> *ibid* 122-128.

<sup>181</sup> Bui and Farrington (n 102) 62-63.

<sup>182</sup> Johnson, *Japan's Prosecution Review Commission On the Democratic Oversight of Decisions Not To Charge* (n 110) 14.

<sup>183</sup> Crime Rate by Country 2023, <<https://worldpopulationreview.com/country-rankings/crime-rate-by-country>> accessed 23 October 2023.

According to the Global Peace Index<sup>184</sup> Sweden maintains position 28 on the list after falling from 15 in 2021.<sup>185</sup> It is still a good number but does not bode well for the future.

Sweden has for the last couple of years turned infamous due to gang shootings and bombings that has occurred around the country. Lack of integration, among other things, is one the major reasons to these problems where young people, second generation immigrants, do not get an opportunity in Sweden, and instead end up being part of gangs, fuelling violence and crime.<sup>186</sup> But the most relevant and common among these young men is the lack of a reliable father figure in their upbringing. The government in Sweden, as I have shown, have started to implement harsher sanctions against young criminals. However, few proactive measures are being aimed at the root cause. This is something attorneys and other professionals in justice have been actively advocating for.<sup>187</sup>

Sweden has to some extent, in the (SOU 1995:91) “Ett reformerat straffsystem” (A reformed penal system), heavily reduced the idea of prevention and instead focused on determining punishment on the penal value of a given offence in relation to other crime. It was implemented in 1999 when the reformed Penal Code came into force. Juveniles in Sweden are handled under the provisions in (1964:167) “Lag med särskilda bestämmelser om unga lagöverträdare” (Law of special provisions concerning youth offenders), which has been amended considerably through history. The latest revision was in 2023.

In Sweden, youngsters within the age of 15 to 20 years are recognised as juveniles within the legal context. As Japan, the Swedish judge have similar options of youth services, as care, probation, youth custody, the social service. All to cooperate for a better life to the youths.<sup>188</sup>

Quantitative studies have indicated that socioeconomic factors do not play that significant role as commonly assumed.<sup>189</sup> Instead, rather the determining factor is who one’s friends are. It plays a significant role if the composition of one’s social network consists of delinquents or not.<sup>190</sup>

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<sup>184</sup> Global Peace Index (GPI) is the world’s leading measure of global peacefulness. This report presents the most comprehensive data-driven analysis to-date on trends in peace, its economic value, and how to develop peaceful societies. The Global Peace Index covers 99.7% of the world’s population and is calculated using 23 qualitative and quantitative indicators.

<sup>185</sup> 2023 Global Peace Index, <<https://www.visionofhumanity.org/wp-content/uploads/2023/06/GPI-2023-Web.pdf>> accessed 23 October 2023.

<sup>186</sup> The Guardian, “Sweden’s failed integration creates ‘parallel societies’, says PM after riots” <<https://www.theguardian.com/world/2022/apr/28/swedens-failed-integration-creates-parallel-societies-says-pm-after-riots>> accessed 23 October 2023.

<sup>187</sup> Ulrika Öster and Tom Knutson, ”Ett långtidsprojekt att bryta utvecklingen” *Advokaten* (Stockholm 2023 #8) 23–33.

<sup>188</sup> Decker and Marteache (eds) (n 177) 445-464.

<sup>189</sup> cf Bui and Farrington (n 181) 119.

<sup>190</sup> Moa Halvars and Fanny Karlsson, ”Sociala band och socioekonomisk bakgrund som orsak till ungdomsbrottsligheten En kvantitativ studie om brottslighet bland ungdomar”, (BSocSc Stockholm Universitet 2016).

Offences enacted by elderly people in Sweden primarily consists of acts by men 60 years and older. This figure has maintained at a relatively stable rate of 500 convictions per 100 000 people since 2014. A decline since the beginning of the 21<sup>st</sup> century.<sup>191</sup> Notably, crimes committed by women aged 60 and older has exhibited a consistent level, staying around 100 convictions per 100 000 people since the beginning of the 21<sup>st</sup> century.<sup>192</sup>

As been observed, crime differs considerably from each other in the respective countries. In this next part I will examine shoplifting in each specific country.

## 4.9 Shoplifting, 万引き (Mambiki), Snatteri

### 4.9.1 Japan

Shoplifting has no special provision under the Japanese Penal Code. It resides in Article 235 (Theft), chapter 36, Crimes of Theft and Robbery,

“A person who steals the property of another commits the crime of theft and shall be punished by imprisonment with work for not more than 10 years or a fine of not more than 500,000 yen.”<sup>193</sup>

Punishment for shoplifting can thus be steep in Japan. Reports show that shoplifting cases has declined from 158 020 in 2004 to 86 280 in 2021, according to the NPA.<sup>194</sup> This amounts to almost 69 shoplifting cases per 100 000 people in Japan. Shoplifting is still one of the most common offences in Japan.<sup>195</sup>

Shoplifting is usually seen as a juvenile crime in Japan. A gateway crime into worse criminality. This is why Japan wants to deal with it swiftly and at an early age, so delinquency does not develop into a preponderant problem.<sup>196</sup> Mediation is sometimes used for this purpose.

The problem with mediation is the notable power asymmetry between parties, where significant disparities in influence and authority exist. Christie explains that when a shoplifter steals from a big firm, and usually the shoplifter is a first-time offender, the power dynamics are substantial. He further

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<sup>191</sup> Brå, “Antal lagföringsbeslut mot män efter ålder och antal beslut per 100 00 invånare, 1995–2022” <<https://bra.se/statistik/kriminalstatistik/personer-lagforda-for-brott.html>> accessed 26 October 2023.

<sup>192</sup> Brå, ”Antal lagföringsbeslut, mot kvinnor efter ålder och antal beslut per 100 000 invånare, 1995–2022” <<https://bra.se/statistik/kriminalstatistik/personer-lagforda-for-brott.html>> accessed 26 October 2023.

<sup>193</sup> Japan’s Penal Code (Act No. 45 of 1907).

<sup>194</sup> NPA, <https://www.npa.go.jp/english/Statistics.html>, Distribution of larceny offenses reported to the police in Japan in 2021, by type, <https://www.statista.com/statistics/1266043/japan-share-recognized-theft-offenses-by-type/> accessed 11 October 2023.

<sup>195</sup> MOJ, “White paper on crime 2022”, <[https://hakusyol.moj.go.jp/en/71/WHITE\\_PAPER\\_ON\\_CRIME2022.pdf](https://hakusyol.moj.go.jp/en/71/WHITE_PAPER_ON_CRIME2022.pdf)> accessed 16 October 2023.

<sup>196</sup> Metropolitan Police Department Life Safety and General Affairs Division, Research report on shoplifting 2019 “Awareness survey focusing on shoplifting among elementary school students and fact-finding survey on shoplifting suspects”, <<http://www.keishicho.metro.tokyo.jp/>> accessed 16 October 2023.

contends that for mediation to really be effective in these cases, the head of the company would need to be the one in mediation. It is essential to be able to listen to the youths, understand their perspective, particularly regarding the temptations of stealing and why it is occurring in those specific shops. This would benefit society; implementation though, would be impractical.<sup>197</sup>

An elaboration on the subject was dealt with in 2.2.

#### 4.9.2 Sweden

In the Swedish Criminal Code (BrB), chapter 8 – “On theft, robbery and other appropriative offences”, Section 2, resides “minor theft”. Otherwise called “ringa stöld” (“Snatteri” in Swedish layman’s term) which is translated into shoplifting in English:

“If an offence referred to in Section 1 is considered minor in view of the value of the property appropriated and other circumstances associated with the offence, the person is guilty of *minor theft* and is sentenced to a fine or imprisonment for at most six months. Act 2017:442.”<sup>198</sup>

The crime shoplifting is in general terms when someone steals merchandise that is for sale in a store.<sup>199</sup> In Sweden the product shoplifted must be inexpensive, with a max value of 1250 SEK.<sup>200</sup> In 2021 the number of shoplifting cases in Sweden amounted to 412 per 100 000 people. A significant number compared to Japan’s 69.

In Japan shoplifting is covered in the provision of theft, in the Penal Act. In Sweden though, shoplifting belongs under the chapter of theft, but has its own section of the provision, “ringa stöld”, which means it is a bit more specified crime.

How can we handle shoplifting? What does theory say? The ensuing chapter will explore strategies for addressing shoplifting, drawing insights from theoretical frameworks. This will include an introduction to studies on the subject and an overview of additional tools that can be employed in the process of managing this specific criminal offense.

#### 4.9.3 Formal and Informal Ways to Handle Shoplifting.

Studies on how to handle shoplifting has undoubtedly been conducted and I will deliberate on these results below.

There exists different formal and informal surveillance when in the context of retail. Security guards, electronic tags on clothes, and CCTV is part of the formal ones. Whereas informal is the casually clothed person walking around in the shop, seemingly being a shopper as well. Informal surveillance can be

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<sup>197</sup> Christie (n 48) 81-82.

<sup>198</sup> Brottsbalken (The Swedish Criminal Code), Ch. 8, Section 2.

<sup>199</sup> Arto Lindblom and Sami Kajalo, “The use and effectiveness of formal and informal surveillance in reducing shoplifting: a survey in Sweden, Norway and Finland” (2011) *The International Review of Retail, Distribution and Consumer Research*, 21:2, 111.

<sup>200</sup> NJA 2019 p 951.

argued, has no deterrent effect, because one does not know it is there. There is however research that show that targets that are readily visible to passers-by has a reducing effect on crime. This is part of the CPTED (Crime Prevention through Environmental Design), which was formulated by criminologist C. Ray Jeffrey<sup>201</sup> in 1971. The system uses seven factors, which in my own words “builds away crime”. These are, territoriality, surveillance (informal and formal), access control, image/maintenance, activity programme support and target hardening. Social control also plays a part in informal surveillance. When a vigilance exists by the general populus, it further helps surveillance. Not in an active sense, but passive. It should also be noted that informal surveillance, in the context of deterring shoplifting, has not been empirically tested on a larger scale.<sup>202</sup>

Experiments have shown that when the staff are well trained and vigilant, shoplifting reduces. Visibility in stores is additionally paramount due to the fact that shoplifters then are naturally spotted. Furthermore, a factor that needs be taking into consideration, is the perspective of why shoplifters engage in criminal activity.<sup>203</sup> However noteworthy “why” is; the factor will not be explored within the scope of this thesis.

Considering the notably low rate of blue-collar crime in Japan, I wanted to briefly acknowledge the aspect of white-collar crime<sup>204</sup>, but it as well, lies outside the scope of this thesis.

As has been shown, company culture should foster well trained staff if they want to prevent shoplifting. Shoplifting is possible to build away as well, to some extent. But if not, there needs to be punishment for the individual engaging in these activities.

## 4.10 Punishment

It is worth noting that punishment is an old concept. The Romans and the Greeks all through the Middle Ages used punishments like stoning, burning, whipping, drowning and other horrible acts. All this was administered

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<sup>201</sup> Criminologist that developed and coined the term CPTED.

<sup>202</sup> Lindblom and Kajalo (n 199) 113-119.

<sup>203</sup> Lindblom and Kajalo (n 199) 125.

<sup>204</sup> Overall crime is low in Japan. However, white collar crimes are seldom brought to light, as they remain concealed, or even unreported. This is primarily of the tightly knitted in-groups that Japan’s society consists of. It makes white collar crimes hard to detect when individuals in in-groups are keeping each other’s back.

Even though on the outside it looks like Japan does not have a substantial amount of crime, it hides in plain sight when it comes to corporations.

The definition of white-collar crime in Sweden tends to be broader than internationally. Consisting of a collection of crime such as tax fraud, competition offences, and a wide variety of corporate offences. White-collar crime in Sweden is dependent on what happens in the near vicinity. Money moving all over Europe through different corporate system facilitates the criminal market. Most common of these crimes are MTIC (Missing Trader Intra Community) frauds. Laws are consistently evolving to address the new situations in a rapidly advancing digital landscape. Despite prosecutors and law enforcement efforts, the ongoing struggle remains an uphill battle where they find themselves arriving too late, only to discover that the companies have already declared bankruptcy and moved on.

through justice systems based on criminal law and penal codes. It is all part of our history, and we continue with it into the age of the modern world. With diverse forms of punishment, nonetheless.

Japan is usually known as the 99.99% country when it comes to conviction rates.<sup>205</sup> There are many reasons for this. First, there are a lot of police locally in Japanese cities in what is known as *Koban*. Koban is a police box where police is stationed throughout the city and enjoys a very close relationship with the community. With the consequence of low crime rate the police are able to investigate crime more thorough than their counterparts in other countries.<sup>206</sup> Second, when it comes to conviction rate the prosecutors in Japan has a substantial toolbox at their disposal. He or she can usually choose when to prosecute, meaning that if they are not totally sure that there will be a conviction, they will not prosecute. As discussed before, the prosecutor in the majority of cases obtains an admission from the suspect. This produces an efficient and expedient prosecution, resulting in convictions.<sup>207</sup>

Japan does not only enjoy low crime rates, but it also maintains a high clearance rate (45 % in 2021)<sup>208</sup>.<sup>209</sup> Sweden on the other hand only had 13 % clearance rate in 2021.<sup>210</sup> The reason Sweden has a low clearance rate depends on many things and is extensively documented in a report from 2014 by Brå (Swedish National Council for Crime Prevention). Documentation points out that the most prevailing reason is the increased numbers of reported crimes. Something Sweden has become better at over the last decade. Low funding conversely has been a general obstacle for the Swedish Police Force.<sup>211</sup>

When it comes to reported crimes on the other hand, there are under reported types of crime in Japan. Especially when discussing domestic violence and sexual assault.<sup>212</sup> In Sweden however, politicians have worked intensely to shed a light on these criminal activities. Primarily through legislation and lessening of stigma around the reporting. Legislation was changed in 1982 when domestic violence or assault against women came under public prosecution.<sup>213</sup> Sweden exhibits elevated statistics in reported crimes of this nature, while simultaneously maintaining comparatively low figures in the area of unreported criminal activities.<sup>214</sup> This skews the statistics.

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<sup>205</sup> Ramseyer and Rasmusen (n 163) 53.

<sup>206</sup> Miller and Kanazawa (n 25) 74-76.

<sup>207</sup> Johnson, *The Japanese Way of Justice: Prosecuting Crime in Japan* (n 119) 30-56.

<sup>208</sup> Statista, "Clearance rate of Penal Code offences in Japan from 1946 to 2021" <<https://www.statista.com/statistics/1265266/japan-clearance-rate/>> accessed 27 November 2023.

<sup>209</sup> Miller and Kanazawa (n 25) 74.

<sup>210</sup> Brå, "Slutlig brottsstatistik 2021", <<https://bra.se/om-bra/nytt-fran-bra/arkiv/nyheter/2022-03-31-slutlig-brottsstatistik-2021.html>> accessed 27 November 2023.

<sup>211</sup> Brå, "Varför gav fler polisen inte ökad personupplärning?", (Lenanders Grafiska 2014), 9–15.

<sup>212</sup> Bui and Farrington (n 102) 8.

<sup>213</sup> Prop. 1981/82:43.

<sup>214</sup> Henrik Tham, *Kriminalpolitik Brott och straff i Sverige sedan 1965* (2nd edn Norstedts Juridik 2022) 114–121.



An example: Japan has only 1.1 reported rape case per 100 000 inhabitants. Statistics show that only 5.6 % actually went to the police in Japan. Half of them were raped by someone they did not know, but it is estimated that only 12 % of rape victims are raped by someone they do not know.<sup>215</sup> In Sweden that number is 63 per 100 000 inhabitants. Rape in Sweden also has a wider definition of the term rape.<sup>216</sup> Thus, it is complicated to make a fair comparison like this justice. In Sweden it is estimated that 10-20 % of all acts of rape are reported to the police.<sup>217</sup>

Let us leave statistics for a while and see what occurs in society after, for example, a punishment has been served.

With a criminal record in Japan, it is almost impossible to find a job and/or a spouse. One has become *tainted*. However, it does not have to be as extreme as a criminal record. Not following your small in-group might likewise bring devastating consequences.<sup>218</sup> If one gets expelled from an in-group it becomes complicated to find a new one. Most in-groups are full, individuals are suspicious of other people that do not have an in-group. One is *tainted* when lacking an in-group. This is as a result of people belong to an in-group since school, as mentioned before.

Crime affects all workplaces in some sense. To have criminals in ones' company is something Swedes try to avoid as well. It has become more common in Sweden for the employer to ask the job seeker for their criminal records as they apply for jobs. They are only supposed to do this when there is legal support for their claim, something an employer does not always have.<sup>219</sup> Requesting records is supported, for example when the employee has to work with children, with insurance, or specified healthcare work.<sup>220</sup>

Concluding this analysis, it is important to examine how many suspects were sent to trial. Statistics reveals that merely 8.9 %, in 2019 went to public trial, whereas many as 56.6 % obtained suspended prosecution in Japan.<sup>221</sup> Japan uses prison to a lesser extent than a lot of other democratic countries. This places a burden on the citizens, as they inevitably are required to assume more responsibilities in their community.<sup>222</sup> In Sweden, 2019, 40 % of suspects received a sentence and 10 % of cases were suspended.<sup>223</sup>

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<sup>215</sup> Johnsson, *Japan's Prosecution Review Commission On the Democratic Oversight of Decisions Not To Charge* (n 110) 164-166.

<sup>216</sup> Brå, "Svårt jämföra våldtäktsstatistik mellan europeiska länder", (30 September 2020) <<https://bra.se/om-bra/nytt-fran-bra/arkiv/nyheter/2020-09-30-svart-jamfora-valdtaktsstatistik-mellan-europeiska-lander.html>> accessed 28 November 2023.

<sup>217</sup> Terese Evertson, "Högt mörkertal vid våldtäkter - varför anmäls så få våldtäkter?", (MSc Law thesis Lund University 2011).

<sup>218</sup> Miller and Kanazawa (n 25) 69.

<sup>219</sup> SR, "Ökad efterfrågan på utdrag från belastningsregister" (2 January 2018) <<https://sverigesradio.se/artikel/6853132>> accessed 27 November 2023.

<sup>220</sup> Polisen, "Information till arbetsgivare om registerutdrag", <<https://polisen.se/tjanster-tillstand/belastningsregistret/information-till-arbetsgivare-om-registerutdrag/>> accessed 27 November 2023.

<sup>221</sup> See Supplement A Figure 4.

<sup>222</sup> Mari (n 175) 46-47.

<sup>223</sup> Brå, "Handlagda brottsmisstankar 2019 Slutlig statistik" (2020).

As we can see, there are many reasons for why Japan has such a high conviction rate, as there are many reasons for Sweden having a low rate. Penal law can sometime be said to be a blunt tool when dealing with crime. Usually, the solution can be found through civil measurements instead. Seeking compromises can be a more viable solution, allowing individuals to coexist harmoniously within the same environment. In clear terms, to keep the social system preserved and more harmonious. Certainly, while our current living conditions differ significantly from those of 8<sup>th</sup> century village times, there is a sense in which we persist in coexistence side by side.<sup>224</sup> A matter that has changed since that age, is capital punishment. At least in Sweden, as explained earlier.

In this chapter we have been introduced to how the formal system works in each respective country. The roles representing the state and the once defending the offenders. This overview offers valuable insights into crime and the corresponding punitive mechanisms. In the following section the analysis will provide responses to the research question, exemplify both similarities and distinctions between Sweden and Japan.

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<sup>224</sup> Christie (n 48) 79.

## 5 Analysis

### 5.1 Summarising

Informal social control, easily put, is everything that is not part of the legal or medical control. It is the everyday norms, the group scoldings, another visitor telling you it is not allowed to film at the opera, religion, mass media, and the list goes on. These have all come about so that we can function in an ever-growing society without people stepping out of line. Different countries have different norms, and they might be confusing to discern. Norms are not written anywhere. As a result, norms are inherently learned growing up and living in a society. This usually makes it a challenge when changing from one community to another before one gets the hang of it. Even friend groups, school, and workplaces have different norms that we need to navigate.<sup>225</sup>

It is important to know the history of informal social control when bringing about a new form of informal justice in society. Stricter forms of punishment are a creation of the modern state. Employing civil society in criminal control is fundamental in regard to restorative justice. Ideals, moral, collectivism and good in-groups, are things that we need to work on to help people not become criminals. In this, accountability is imperative, and has to work. The system needs to be built around accountability, so that it can form a change for the individual. Restorative justice is not a one-fix-all-problems thing, but we should not fear it.<sup>226</sup>

Crime sprouts out of social injustice, and structural dysfunctions in the system. That is why restorative justice cannot be the fixer of all problems. Restorative justice needs to be implemented with various other elements in society for it to genuinely function to the benefit of our lives. It also needs to happen in a transparent system, otherwise it might develop into a tool for the government to push agendas that are not to the benefits of the people.<sup>227</sup>

All of this led me to my research question. Japan, with its in-groups are enjoying a measurable amount less crime than Sweden. Both countries, when it comes to formal social control seems to not want to punish first time offenders severely. Japan on the other hand seems to have harsher sanctions when it comes to recidivisms. What criminology has taught us; harsher sanctions does not have a deterrent effect. The determining factor is if there is a risk to get caught or not.

As we have seen, in Japan, the police enjoy a broader connection with the community, than in Sweden. This is also a factor that needs to be accounted. The way the prosecutor works in Japan, having more options when it comes to apprehension, dealing with and the conviction of offenders. This is where I think disparities in incarceration exist between Japan and Sweden. Judges

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<sup>225</sup> James J Chriss, *Social Control An Introduction*, (3rd edn Polity Press 2022) 24–28.

<sup>226</sup> Declan Roche, *Accountability in Restorative Justice* (Oxford University Press 2008) 226-239.

<sup>227</sup> Lode Walgrave, “Restorative Justice is Not a Panacea Against All Social Evils” in Ivo Aertsen and Brunhilda Pali, *Critical Restorative Justice*, (Hart Publishing 2017) 95-108.

of course play a role in this, as observed. It is not meaningful to point out a single factor causing the different levels of crime in Sweden and Japan. It is a plethora of things. It is commonly considered that school plays a vital role. Further, the presence of housewives/mothers in Japan is an important factor. I strongly believe that informal control is fundamental to Japan's low number of crimes. I think formal control plays a vital role as well, with the police being able to investigate criminal activities more thoroughly, compared to Sweden. A deterrent effect that lowers the incidents of crime.

I cannot point to one thing and say, "This is it; this is what Sweden needs to adopt to have lower levels of crime", that is impossible. Instead, Sweden needs to work not only at harsher sanctions, something Sweden should not be doing at all, but instead bringing the whole of society into the matter. Make the people united against crime.

## 5.2 Similarities and Differences

Japan and Sweden are seemingly very different countries. Being an island country in Asia, and the other a Scandinavian country with influences from continental Europe. But there are again frequent similarities between the two countries. Japan adopted the BGB (Bürgerliches Gesetzbuch) in the beginning of the 20<sup>th</sup> century which gifted it with a part of the European justice system. Both countries used to briefly be empires.

Religion has changed over the centuries, with Shinto becoming the more prominent one in Japan over Buddhism. Japan counts as a secular state and the rituals that follows from Shinto are honoured more out of tradition than of actual religious belief. This is similar when observing Sweden in the 90's when there still were graduations in church and people spent Christmas visiting festivities in church. Christmas and Easter are still celebrated, but I think few lends Jesus a thought. Most people just enjoy being off work. The king in Sweden is required to be Christian, as the Japanese Emperor continues his duties to perform Shinto rituals.

They are roughly the same size in land mass<sup>228</sup>, population wise though, Japan with its 125 million inhabitants, roughly 12 times the population of Sweden. On the other hand, Japan only has half the number of crimes occurring that of Sweden.

If we focus on similarities, we will find many, this holds true when it comes to differences as well. These are two countries that may benefit considerably from each other as we look to the future of crime prevention. Creating a mutual exchange of knowledge, we both can learn and achieve higher standards of justice in our respective countries.

Let us look at what we can learn from each other.

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<sup>228</sup> Sweden 528 447 Km<sup>2</sup>, Japan 377 973 Km<sup>2</sup>.

### 5.3 What Insight Proves to be Beneficial for Each Respective Country?

The fast and easy answer is, far from everything. The rationale behind this is that, in Japan it is challenging conducting research on specific demographics such as young offenders. The crime issues are usually hidden from the public, to protect the young offenders, but there are probably further reasons. It makes it near impossible to know what the long-term effectiveness implementation has on the juvenile justice system.

Here I discovered that stigma poses a problem for Japan's development. Transparency, like in Sweden, would make it easier to highlight the issues in society and how to face them.

In Sweden we see a lot of past criminals ending up in services catering to help new offenders. This is for the sake of helping the struggling offenders not to end up in recidivism. It is more accessible listening to someone that has been in the same position as you are in. A beneficiary system in Sweden. Contrarily in Japan, convicted criminals are not permitted to work with new offenders, as previously shown.

We have seen that Japan has a lot of informal social control, something that Sweden lost after the Second World War. This has been detrimental to the whole criminal system. By losing the small groups and local level collaboration, Sweden has lost efficiency in mitigating criminal activities before it escalates. Reliance on the institutions in Sweden has left the system weak. Sure, we gained freedom in the sense of anonymity and individualism, but to what costs?

Like the old saying goes, "It takes a village to raise a child", something that Sweden seemed to have forgotten. We individuals, all have a responsibility to make sure children around us grow up with a moral compass, and the environment they grow up in is good for them. The costs are less with preventive measures, as shown earlier, the longer life been spent in criminal activity, the harder it gets to return to a normal life. It is regrettable to see that the government instead of actually preventing people from becoming criminals, diverges money into creating new and harsher laws, producing more criminals. Sweden can learn a lot from Japan and its communities in this aspect.

Having the opportunity to have after school activities, like in Japan, has demonstrated that the kids are kept out of trouble. It is simple, if there is no time to end up in trouble, this effectively prevents young individuals from becoming criminals. Or at least lessens the number substantially. Thus, Sweden should invest in extracurricular activities and make them free for everyone. The short-term economic investment might prove small, relative to the long-term positive effects.

On the other hand, Japan has other social problems growing. Young individuals living their lives on their phones and online, not socially interacting with each other outside of the in-group, or even the in-group. This leads to disassociation problems inevitably, and individuals will become lonely as a result. We are a social creature and loneliness is not good for anyone of us.

Sweden has similar problems, but not to the same extent as Japan. This phenomenon is primarily owing to the absence of in-group in Sweden and thus does not have an influential role to the same extent. Swedes make friends either way.

I think it would be beneficiary to make mediation a part of the justice system, and not a side part where the social service has the major role. Justice would be administered in a more just way. As I have displayed, restorative justice has been both criticised and hailed, but I think the system needs to be implemented and trialled more rigorously. In my concluding remarks, I will articulate my final statements and present ideas pertaining to the future trajectories of both countries.

## 6 Conclusion

A vast area has been scoped by this thesis and only the surface has been scratched. As been concluded, there are so many matters that plays a part in trying to understand crime and the measures that are put in place trying to mitigate them.

Harsher punishment does not help the offender and neither society. The exception might be mentally unstable individuals, but that is not encompassed in this thesis. With harder sanctions, prisoners are removed from the streets and cannot offend anymore. So, for a while, retribution is served. Offenders will inevitably join society again. With the help of mediation, they can hopefully understand what the impact of their offences has had on both victim and society.

Legislators in both Sweden and Japan need to work better on helping young individuals not falling into crime. Working at one end of the spectrum will not help. A way to help this situation is to involve all parts of society. There are a lot of old people in both countries that would do great in having young people as friends. It would alleviate pressure from the social system and young people would get a moral compass. They would at the same time be helpful to older people who are lonely in society. I see it only as a win-win. Informal social control is not something that a country can really implement either.

How do you make this possible though? You engage young individuals in extracurricular activities at nurseries or set up a system where young people “adopt” older people that they come and visit every week. Creating social bonds and someone that they have to care about. As research has shown, this is one of the most important things for young people. A sense of responsibility and caring for another individual. Being needed is important.

It is a start. But to change informal control in Sweden will take long time, generations. Same goes for Japan. It grows with the mind of the people, and that mind grows slow.

Conversely, formal control is characterized by simplicity and *speed*<sup>229</sup>. The following are illustrative examples of measures that can be implemented.

### 6.1 De lege ferenda

Law wise, Sweden needs to make mediation more applicable. As was shown earlier, the problem with mediation in Sweden is that offenders do not confess to their crime. In my opinion, prosecutors need to be more educated on mediation and make it a more viable option seeing as it has a better impact on society.

Creating harsher sanctions, both in Japan in Sweden will only amount to more costs and more criminals. Education of the populus to explain why mediation is good, and why harsher sanctions does not work, is also important.

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<sup>229</sup> Its relatives towards informal control.

If society does not understand why focus is on restorative justice and creating extracurricular activities, then it will be hard to get re-elected.

I think that *Ultima Ratio* should still be applied. That means that interference from the state should be the last resort. There are so many other ways to deal with the problem and not create criminals. There will of course always be crimes that cannot be forgiven by the state, these should be punished. Politicians and members of society must demonstrate the ability to simultaneously hold two thoughts in their head at the same time.

My suggestion is thus to implement rules in school so young individual have to be responsible for older people and get social interaction. Implement after-school activities that are free for children. Let them create groups, make friends, and indulge in activities they are interested in.

Make mediation more accessible for the prosecutor, make it have more weight in the process. For the benefit of the victim, the offender and society at large.

In Japan, make shoplifting have its own classification of crime. It is such a common offence, dealing with it in its own classification would benefit all parts of the process. A different scale of punishment. Mitigating the problems of shoplifting are many. Arguing from a cost beneficiary perspective; socially helping older people that are shoplifting through interactions with young people would create a more harmonious collective. This could be handled through legislation when changing the curriculum or purpose of school.

If we aspire to foster a secure and harmonious community, collective participation is necessary. Relying solely on formal social control is insufficient; the role of informal social control is equally important in achieving this shared objective.<sup>230</sup>

Further research is needed when these norms are applied.

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<sup>230</sup> Eric P Baumer, Richard Wright, Krístrun Kristinsdóttir and Helgi Gunnlaugsson, "Crime, Shame, and Recidivism The Case of Iceland", *British Journal of Criminology* 41(1) (2002).



# Supplement A

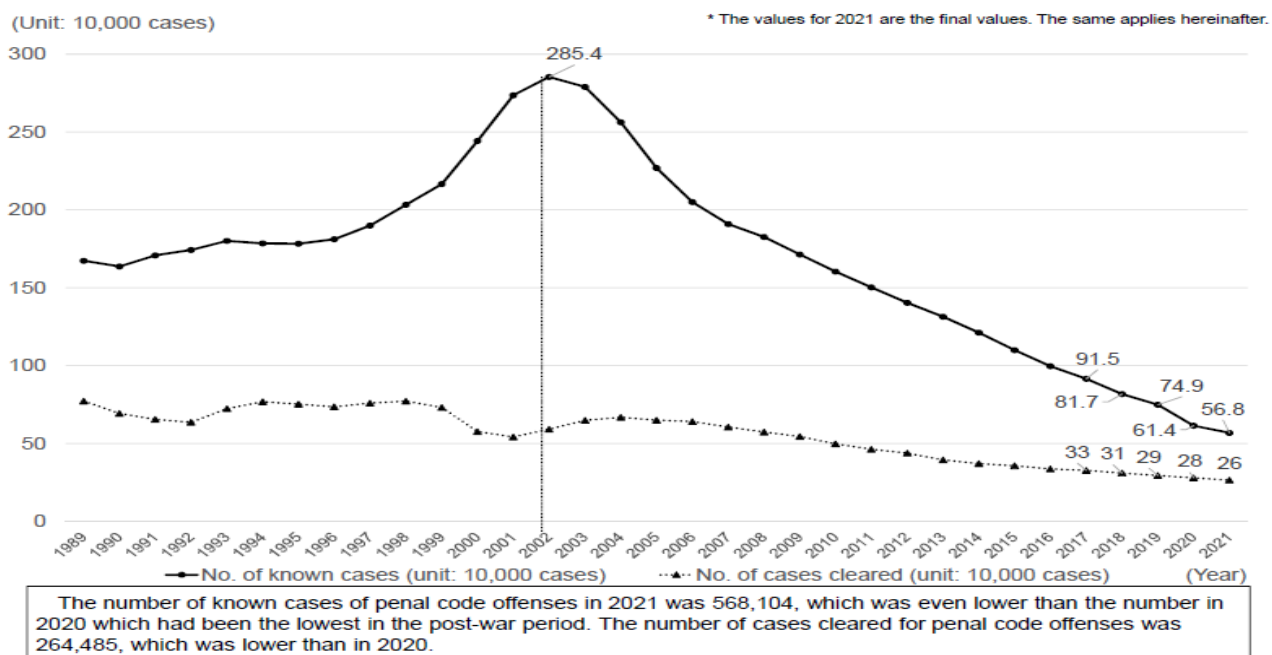
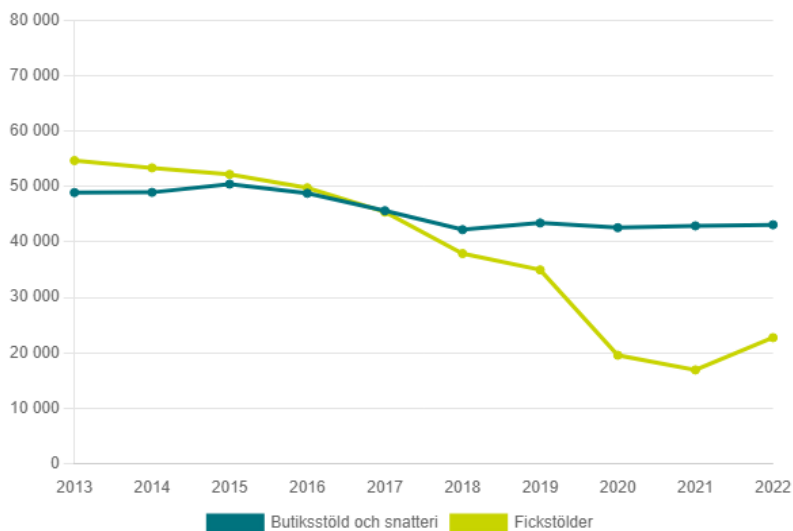


Figure 1<sup>231</sup>

## Anmälda stölder



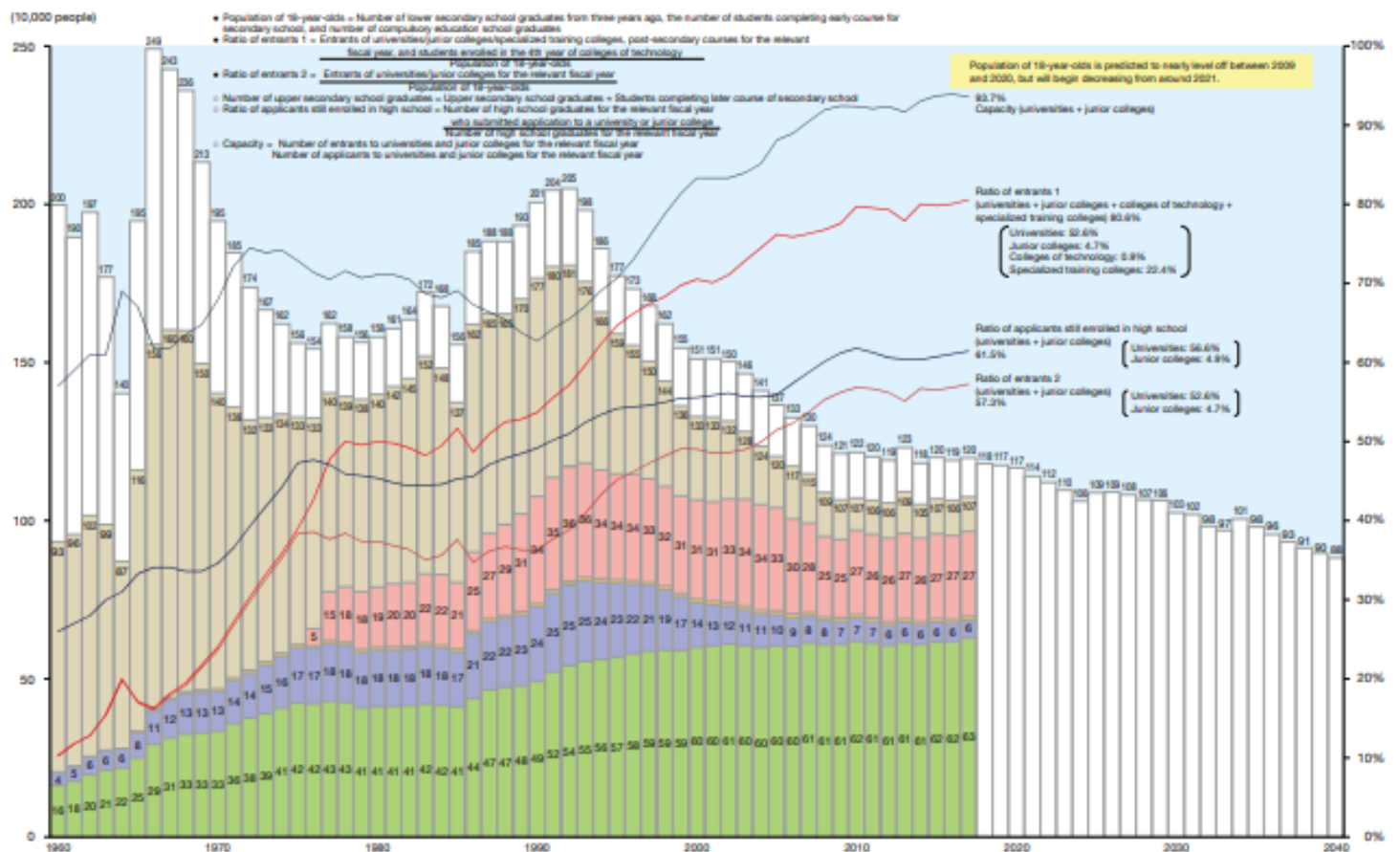
Anmälda brott av stöld och snatteri i butik, varuhus o.dyl. samt fickstölder. Källa: Anmälda brott

Figure 2<sup>232</sup>

<sup>231</sup> National Police Agency, *Crime Situation in 2021* <[www.npa.go.jp/english/crime\\_situation\\_in\\_2021\\_en.pdf](http://www.npa.go.jp/english/crime_situation_in_2021_en.pdf)> accessed 25 September 2023.

<sup>232</sup> Brottsförebyggande rådet, *Stöld och snatteri* <<https://bra.se/statistik/statistik-om-brottstyper/stold-och-snatleri.html>> accessed 25 September 2023.

## Data 6 Ratio of Population of 18-Year-Olds to Students Entering Higher Educational Institutions



Source: MEXT School Basic Survey

FY2030-FY2040 is based on the National Institute of Population and Social Security Research, "Japan's future population estimate (FY2017)" (medium fertility / medium mortality).

\* "Breakdown total" and "Total" enrollment rate in higher education, and ratio of applicants still enrolled in high school may differ in some cases due to rounding the second decimal place.

Figure 3<sup>233</sup>

**Table 1.1** Penal Code cases disposed of by prosecutors in Japan, 2019 (% of suspects processed)

Disposition	Percentage of suspects (%)
Public trial	8.9
Summary order	22.2
Suspended prosecution	56.6
Other non-prosecution	6.9
Sent to family court	5.3
Total	100

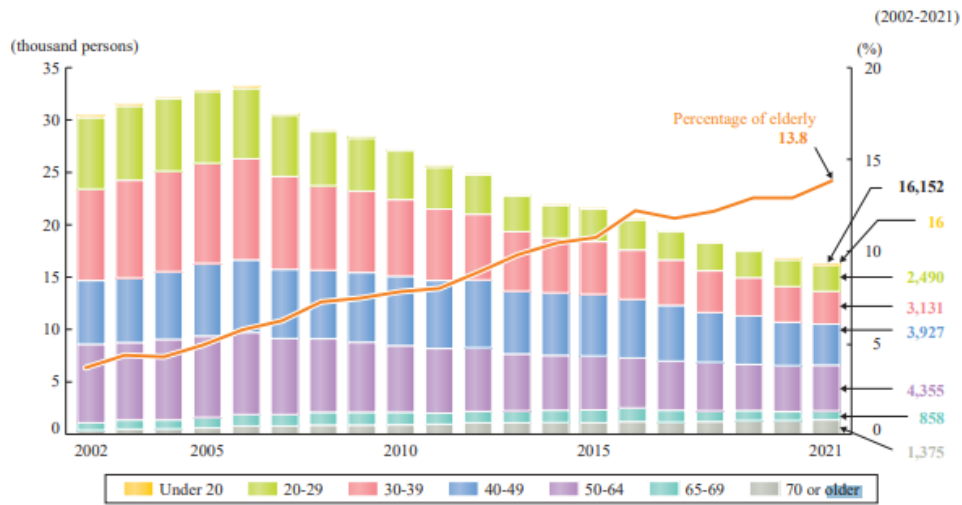
Source Japanese Ministry of Justice, *Hanzai Hakusho* (2020), at <http://hakusyo1.moj.go.jp/jp/67/nfm/images/full/h2-2-4-1.jpg>

Figure 4<sup>234</sup>

<sup>233</sup> MEXT, *Overview of the Ministry of Education, Culture, Sports, Science and Technology* <[https://www.mext.go.jp/en/about/publication/icsFiles/afield-file/2019/03/13/1374478\\_001.pdf](https://www.mext.go.jp/en/about/publication/icsFiles/afield-file/2019/03/13/1374478_001.pdf)> accessed 29 September 23.

<sup>234</sup> Johnson, *Japan's Prosecution Review Commission On the Democratic Oversight of Decisions Not To Charge* (n 109) 3.

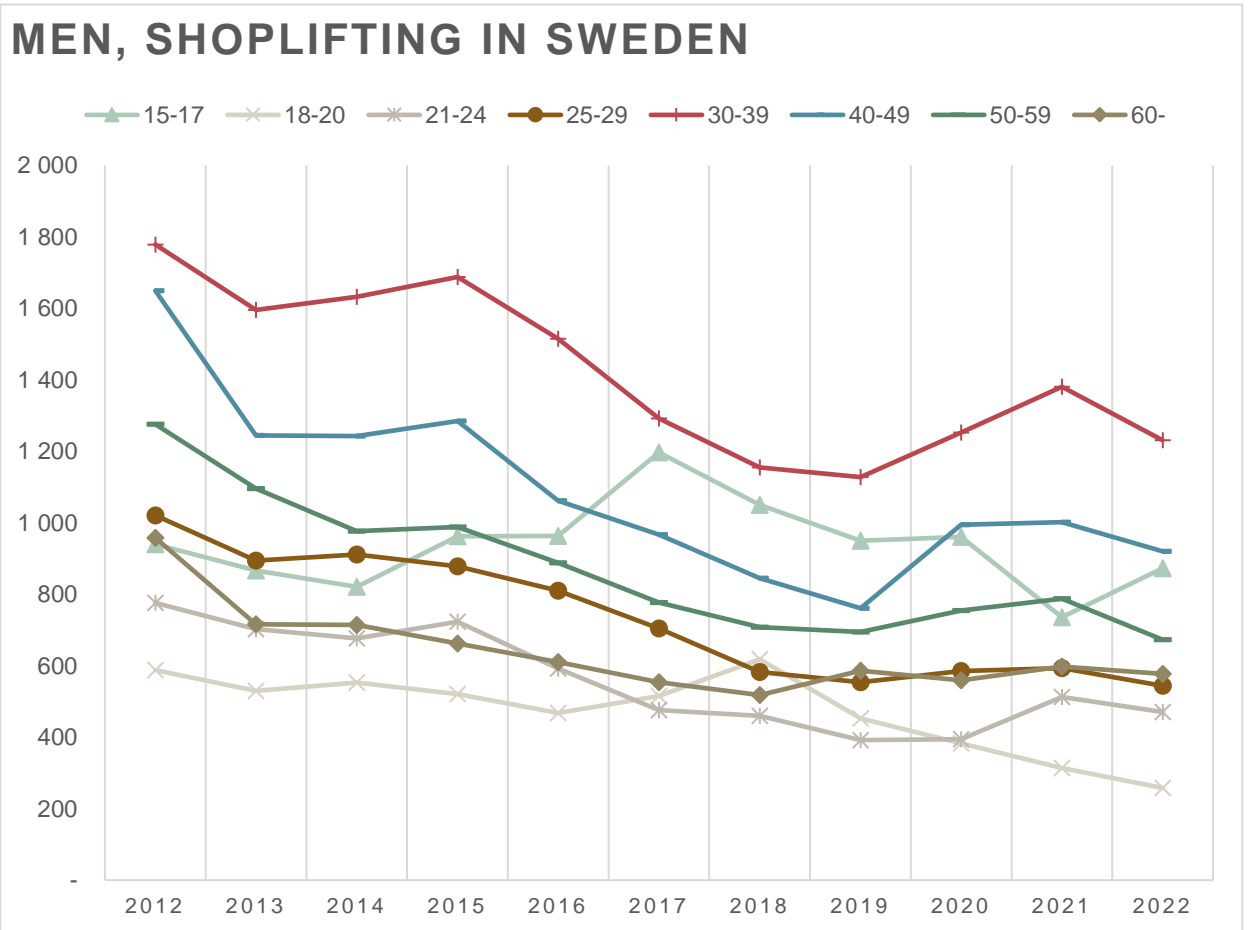
**Fig. 4-8-2-1 Newly sentenced inmates (by age group) and percentage of elderly**



Notes: 1. Numbers are based on the age at the time of imprisonment. Inmates sentenced to indeterminate sentences and aged 20 or older at the time of imprisonment, however, have been counted by the age at the time of the judgment since 2003.

2. "Percentage of elderly" refers to the percentage of newly sentenced elderly inmates among the total number of newly sentenced inmates.

Figure 5<sup>235</sup>



<sup>235</sup> MOJ, "White Paper on Crime 2022", [https://www.moj.go.jp/EN/housouken/houso\\_hakusho2.html](https://www.moj.go.jp/EN/housouken/houso_hakusho2.html) accessed 12 October 2023.

Figure 6<sup>236</sup>

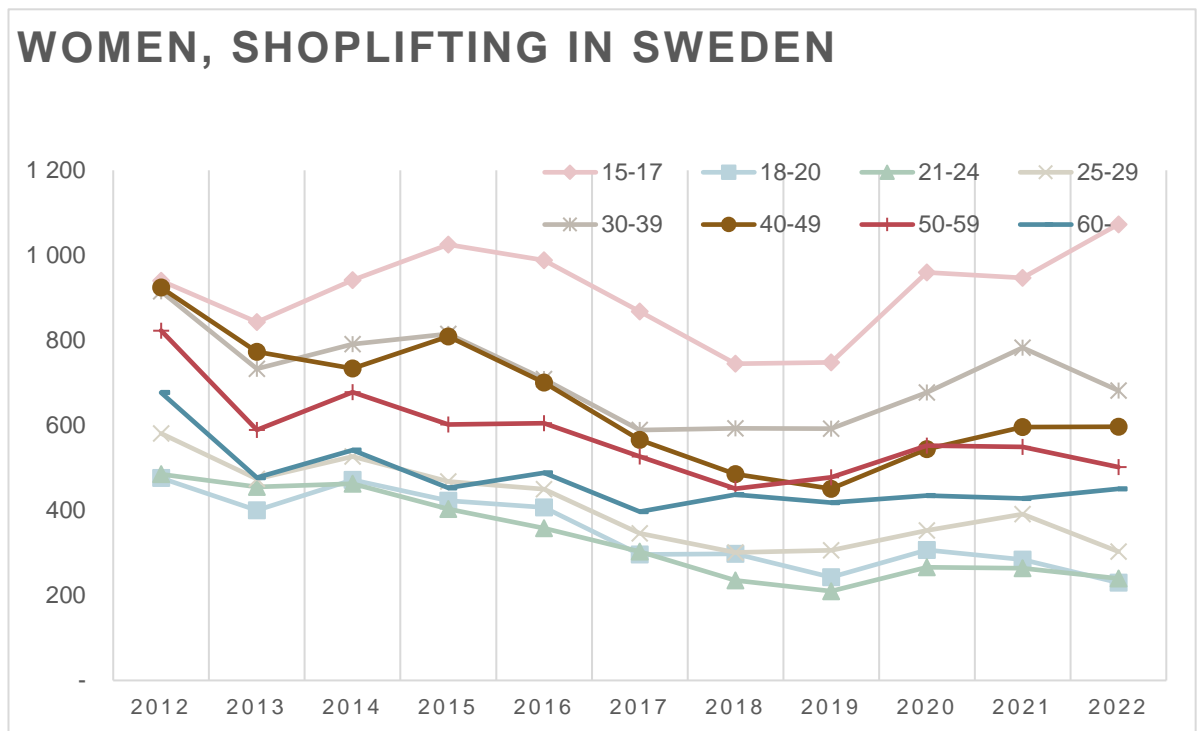


Figure 7<sup>1</sup>

## NUMBER OF CRIMES PER 100 000 PEOPLE IN SWEDEN

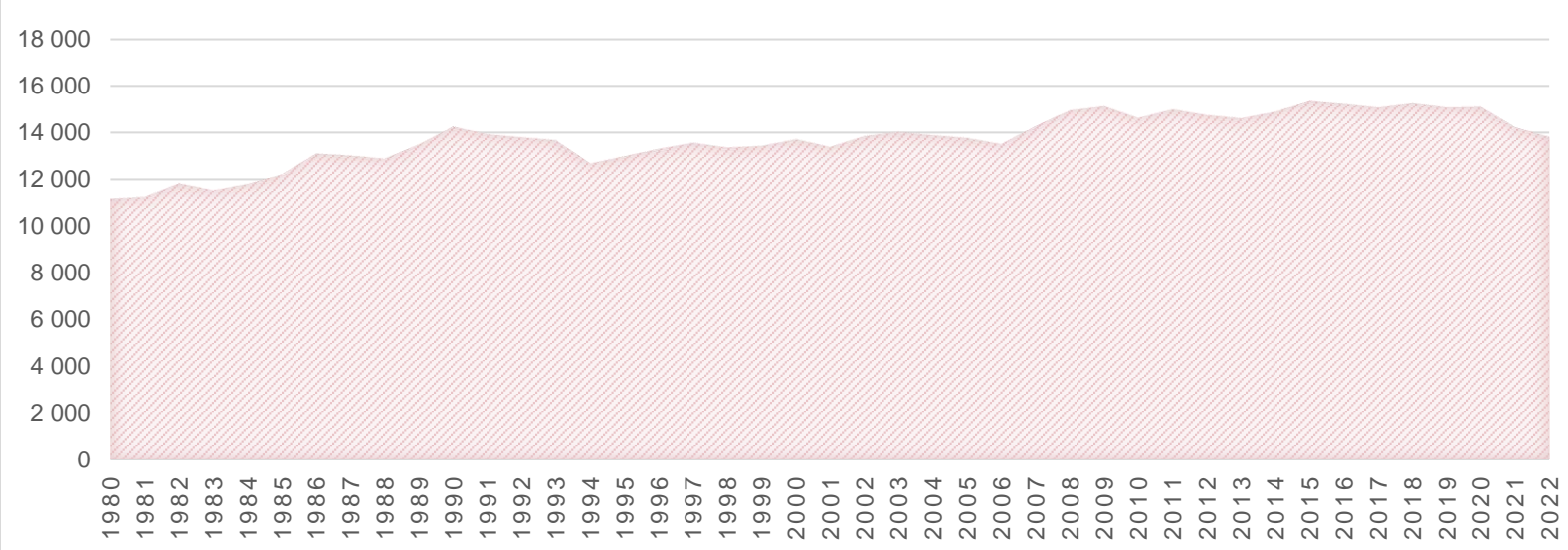


Figure 8  
237

<sup>236</sup> Brå, "Personer lagförda för brott", <<https://bra.se/statistik/kriminalstatistik/personer-lagforda-for-brott.html>> accessed 23 October 2023.

<sup>237</sup> Brå, "Anmälda brott", <<https://bra.se/statistik/kriminalstatistik/anmalda-brott.html>> accessed 23 October 2023.

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