

2016

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Bluebook Citation

A. Michael DeBolt, Note, *The Punishing Father v. The Nurturing Mother: How Societal Views Towards Criminal Punishment Have Impacted Crime in the United States and Finland*, 12 U. St. Thomas L.J. 540 (2016).

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NOTE

THE PUNISHING FATHER V. THE NURTURING MOTHER: HOW SOCIETAL VIEWS TOWARDS CRIMINAL PUNISHMENT HAVE IMPACTED CRIME IN THE UNITED STATES AND FINLAND

A. MICHAEL DEBOLT*

I. INTRODUCTION

Beginning in the 1960s, crime rates in both the United States and Finland began to skyrocket.¹ This trend continued until approximately the end of the 1980s and beginning of the 1990s.² Both countries combated this rapid increase in crime with widespread reforms throughout their criminal justice systems, especially in the area of criminal sentencing. Finland, by taking a more lenient stance on criminal punishment, caused its prison rates to significantly decrease.³ In contrast, the United States' prison population rose to unprecedented levels, in part, because of a new regime of strict punishment with longer prison sentences.⁴ Throughout the 1990s, following the major sentencing reforms, the trend of increasing crime not only ceased, but the crime rates in both countries began to fall for the first time in three decades.⁵ The fact that both countries had decreasing crime rates, but differ-

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1. *State-by-state and National Crime Estimates by Year(s)*, UNIFORM CRIME REPORTING STATISTICS, <http://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm> (last visited Dec. 3, 2014) [hereinafter UCR Statistics]; Tapio Lappi-Seppälä, *Sentencing and Punishment in Finland: The Decline of the Repressive Ideal*, in SENTENCING AND SANCTIONS IN WESTERN COUNTRIES 92, 102–03 (Michael Tonry & Richard S. Frase eds., 2001).

2. UCR Statistics, *supra* note 1; Lappi-Seppälä, *supra* note 1, at 102–03.

3. Lappi-Seppälä, *supra* note 1, at 102–03.

4. Kevin R. Reitz, *The Disassembly and Reassembly of U.S. Sentencing Practices*, in SENTENCING AND SANCTIONS IN WESTERN COUNTRIES 222, 223–24 (Michael Tonry & Richard S. Frase eds., 2001).

5. UCR Statistics, *supra* note 1; Lappi-Seppälä, *supra* note 1, at 102–03.

ent results in terms of incarceration rates, created a statistical paradox that will be referred to in this Note as the “incarceration paradox.”

One would expect that if both countries experienced a drop in crime, the incarceration rates in each country would follow similar patterns. In this Note, I argue that the reason the incarceration rates diverged in the United States and Finland can be rationalized in a rather non-traditional way. Each country approached the revision of their sentencing practices by aligning their political priorities with the values found in different versions of what is perceived as the ideal family. The United States modeled its sentencing practices with that of the “Punishing Father,” utilizing long and harsh sentences to punish its criminals. Alternatively, Finland’s more lenient and forgiving attitude towards punishing its criminals was more akin to that of the “Nurturing Mother.”

This Note first sets out to explain the relevant history of crime in each country leading up to and through peak crime rates during the 1980s. Next is a discussion about the sentencing reforms in each country, how those reforms are consistent with the political ideological “families” of each culture, and finally, what effect those reforms had on the criminal justice systems in each country. To conclude, this Note will explore how the comparison between Finnish and American sentencing reforms sheds light on what these societies should do, if anything, as they move forward into the future.

II. HISTORICAL BACKGROUND: CRIMINAL STATISTICS IN THE UNITED STATES AND FINLAND

In order to understand the familial explanation of the incarceration paradox, it is important to have a statistical foundation as to the crime rates in both countries from the 1960s to the 1980s. The United States experienced a continuous increase in crime starting in the 1960s, which reached its peak in the late 1980s and early 1990s.⁶ This trend applied to a broad spectrum of criminal activity, from the most violent offenses of rape and homicide, to property crimes such as burglary and motor vehicle theft.⁷ During the twenty-year stretch from 1971 until 1991, the violent crime rate in the United States nearly doubled, increasing from approximately 396 to 758 crimes per 100,000 inhabitants.⁸ During this same time period,

6. UCR Statistics, *supra* note 1.

7. *Id.*

8. *Id.* The ratio of crimes to number of inhabitants is known as the “crime rate.” This ratio is typically displayed showing the number of offenses known to law enforcement per 100,000 inhabitants. For an explanation of this statistic see *Offenses Known to Law Enforcement*, FED. BUREAU OF INVESTIGATION, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/offenses-known-to-law-enforcement/offenses-known-to-law-enforcement> (last visited Dec. 3, 2014); see also *Crime Rate Law & Legal Definition*, USLEGAL, <http://definitions.uslegal.com/crime-rate/> (last visited Dec. 3, 2014).

property crimes also increased from 3,768 to 5,140 crimes per 100,000 inhabitants.⁹

Many scholars point to the increase in the popularity of crack-cocaine as the driving force behind this increase in United States crime. One such scholar has said, “It is important to contextualize 1980s crime data by referring to one of the most significant social developments of this era: the crack-cocaine epidemic.”¹⁰ Other scholars point to factors such as lead gasoline, lead paint, and increased juvenile violence as primary causes of increased violent crime rates.¹¹ It is possible that all of these factors played a role in the crime statistics, rather than just one element being completely responsible. For instance, white-collar crime, typically not related to the crack-cocaine epidemic, also increased during this period.¹² However, this increase might not necessarily indicate a growing level of criminal activity in this area, but could signify improvements in the levels of detection and enforcement of this kind of crime.¹³

Finland saw extremely similar patterns in its crime statistics throughout these same decades. Starting around 1965, Finland began dealing with a steady increase in reported crime that lasted until approximately 1990.¹⁴ The most significant increase in crime took place during the 1980s, when the number of offenses reported to the police nearly doubled, rising from 4,144 to 8,056 crimes per 100,000 inhabitants.¹⁵ Of the many categories of crimes, theft crimes had the most dramatic increase during this period.¹⁶ A distinguishing factor in Finland, however, is that it does not have a glaring epidemic, such as crack-cocaine, that can be blamed for its dramatic increase in criminal activity. The increase in reported crime during this era has mainly been attributed to Finland’s conversion from a primarily agricultural society to a more developed and urbanized country.¹⁷

As both countries entered the 1990s, there was a growing concern about how to address the problem of increased crime in society. A growing crime rate, especially as severe as was seen in Finland and the United States, can signal a lack of efficiency in law enforcement and the govern-

9. UCR Statistics, *supra* note 1.

10. Tiffany Bergin, *1981 to 2000: Introduction*, in 5 *THE SOCIAL HISTORY OF CRIME AND PUNISHMENT IN AMERICA: AN ENCYCLOPEDIA* 2407, 2409 (Wilbur R. Miller ed., 2012).

11. See Jeffrey Butts & Jeremy Travis, *The Rise and Fall of American Youth Violence: 1980 to 2000*, URBAN INSTITUTE (Mar. 2002), <http://www.urban.org/uploadedpdf/410437.pdf>; see also *Research Summary: Childhood Lead Exposure Trends Explain International Property and Violent Crime Trends, and Differences in USA City Murder Rates*, NATIONAL CENTER FOR HEALTHY HOUSING, <http://www.nchh.org/portals/0/contents/nevin2007leadandcrimestudy.pdf>.

12. Bergin, *supra* note 10, at 2409.

13. *Id.*

14. Lappi-Seppälä, *supra* note 1, at 102–03.

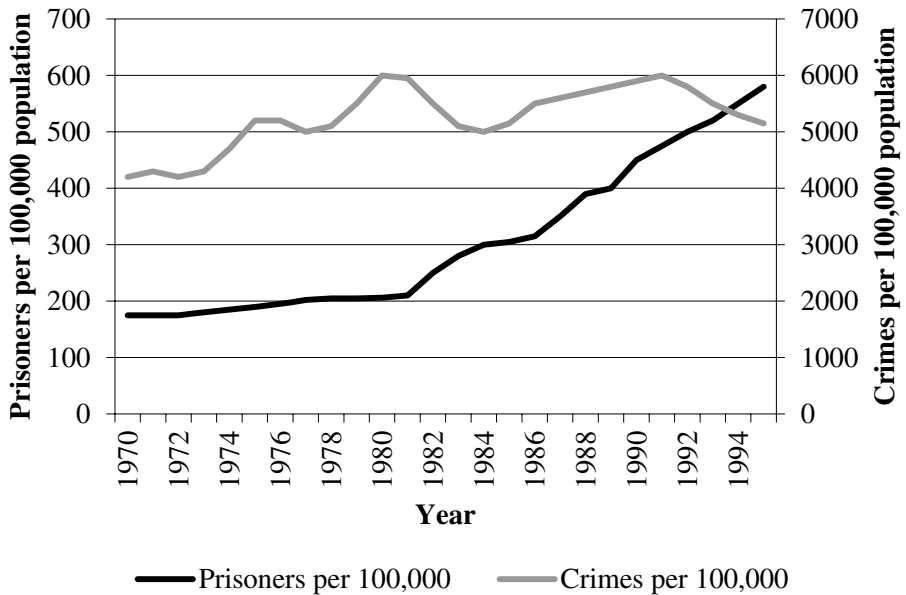
15. *Id.*

16. *Id.*

17. *Id.* (explaining that urbanization of a culture brings with it increases in criminal activity).

ment as a whole.¹⁸ To maintain legitimacy in the eyes of its citizens and other countries, each government had to do something to slow down the serious crime epidemic. With the same goal of decreasing crime in mind, both countries implemented numerous and substantial reforms. However, as will be discussed later, these reforms had different purposes, were grounded on different principles, and ultimately reflected the different ideologies of each culture. These reforms are directly responsible for the differing incarceration rates, which is the focal point of this Note. Between 1970 and the end of the 1990s, the incarceration rate in the United States more than tripled.¹⁹ During a similar timeframe, Finland's incarceration rate decreased by approximately half.²⁰ The following graphs summarize the criminal statistics of both countries that have been described thus far, and provide a visual depiction of the incarceration paradox:

CHART 1: UNITED STATES CRIME STATISTICS, 1970 – 1995²¹

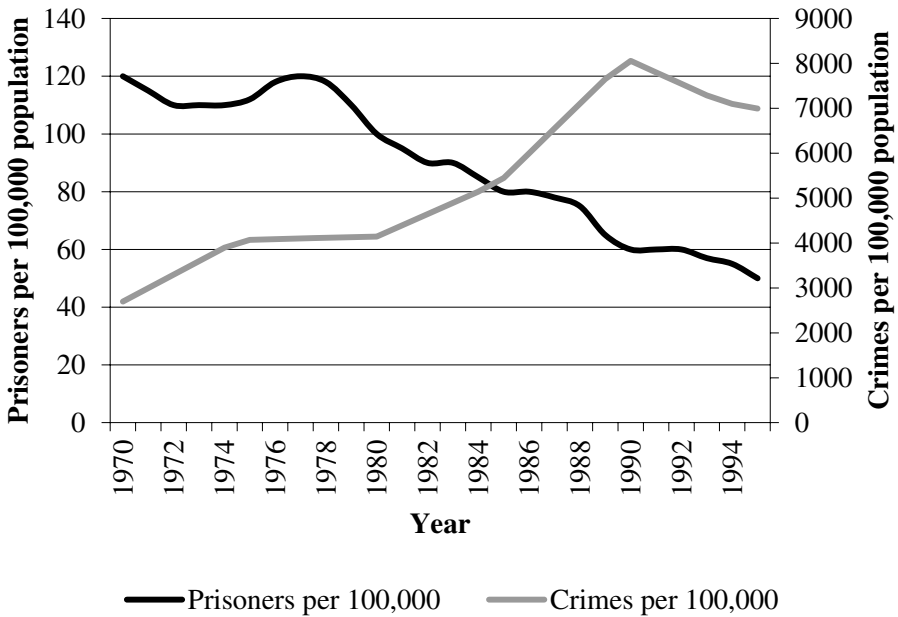


18. See John J. DiIulio, Jr., *Rethinking the Criminal Justice System: Toward a New Paradigm*, NAT. CRIM. JUST. REFERENCE SERV. (Oct. 1993), <http://www.bjs.gov/content/pub/pdf/pmcjs.pdf>.

19. Reitz, *supra* note 4.

20. Lappi-Seppälä, *supra* note 1, at 107; see also Finland, INTERNATIONAL CENTRE FOR PRISON STUDIES, <http://www.prisonstudies.org/country/finland> (last visited Dec. 3, 2014) (prior to 1980, Finland maintained a prison population of around 120 prisoners per 100,000 citizens, and through the 1990s maintained a prison population of approximately 60 prisoners per 100,000 citizens).

21. Reitz, *supra* note 4, at 234; Jenni Gainsborough & Marc Mauer, *Diminishing Returns: Crime and Incarceration in the 1990s*, THE SENTENCING PROJECT (Sept. 2000), <http://www.prisonpolicy.org/scans/sp/DimRet.pdf>.

CHART 2: FINLAND CRIME STATISTICS, 1970 – 1995²²

III. HOW PARENTING STYLES HELP EXPLAIN THE INCARCERATION PARADOX

Analyzing the differences between the two countries' values and ideals can help us to better understand the goals of the sentencing reforms in each country.²³ In 1996, George Lakoff²⁴ published a book titled *Moral Politics* and compared the societal views within American politics to the moral standards that are fundamental in what people think of as "model families."²⁵ Lakoff's purpose in comparing political ideals to family values was to try and uncover why certain individuals and societies prioritize certain political issues above others.²⁶ His hypothesis was that the underlying cause in the divergence between different worldviews is actually a factor that unifies

22. Lappia-Seppälä, *supra* note 1, at 103, 107 (source provides data points in five year intervals; years between data points were averaged).

23. For a description of the United States' political ideologies throughout the past three decades see Lydia Saad, *Conservatives Remain the Largest Ideological Group in U.S.*, GALLUP (Jan. 12, 2012), <http://www.gallup.com/poll/152021/conservatives-remain-largest-ideological-group.aspx>. For a general overview of the Nordic Welfare Model, see NORDIC CENTRE FOR WELFARE AND SOCIAL ISSUES, *THE NORDIC WELFARE MODEL 10–17* (Gerd Vidje ed., 2013) http://www.nordicwelfare.org/PageFiles/7117/Nordic_Welfare_Model_Web.pdf.

24. George Lakoff is a Goldman Distinguished Professor of Cognitive Science and Linguistics at the University of California-Berkeley. See <http://linguistics.berkeley.edu/person/21> (last visited Dec. 3, 2014); see also <http://www.georgelakoff.com> (last visited Dec. 3, 2014).

25. See GEORGE LAKOFF, *MORAL POLITICS: WHAT CONSERVATIVES KNOW THAT LIBERALS DON'T* (1996).

26. *Id.* at 12.

them. Groups generally identify with the philosophies and values that a person would apply to their own idea of the model family.²⁷

Lakoff found that “[t]he moral principles that have priority in each [group’s] model appear in the other [group’s] model, but with lesser priorities.”²⁸ This means that the members of one group do not completely disregard the obviously positive ideals of the other group; they just prioritize their values differently. Lakoff discusses many aspects of the ideal family, but the one that is most relevant to this paper is how parents punish their children.

In my analogy to sentencing practices within a society, society acts as the parent, while the child is the convicted member of that society. Some people with certain political ideals prefer a method of punishment that is similar to what will be defined as the traditional Punishing Father.²⁹ In contrast, other people may prefer a method of punishment that is akin to a Nurturing Mother.³⁰ It must also be noted that Lakoff’s comparison is limited to examining American political culture. However, this Note takes these principles and applies them on a global level, under the assumption that American political and social ideologies apply to societies outside of the United States borders.

Given the general political alignment of each country relative to each other, this comparison to the family structure can provide insight as to why the United States and Finland have different techniques for dealing with their criminals, as well as give an explanation for different results in the various criminal statistics of each country. First, the identities of the Punishing Father and Nurturing Mother will be explained, which will give a basis for applying the sentencing practices that have taken place in each country over the last several decades.

A. *Who is the Punishing Father?*

At the center of one of Lakoff’s worldviews is the Strict Father model,³¹ which this Note refers to as the Punishing Father. The father stands for the belief in a traditional nuclear family, where the father has primary responsibility for supporting the family, setting the overall policy of the family, creating strict rules for the behavior of children, and enforcing those rules.³² The children are expected to respect and obey their parents, and in doing so they build character, self-discipline, and self-

27. *Id.*

28. *Id.* at 35.

29. *See id.* at 67–68. Lakoff calls this parent the “Strict Father,” which is referred to in this Note as the “Punishing Father” to provide a more similar relation to criminal punishment.

30. *Id.* at 108–13. Lakoff calls this parent the “Nurturing Parent,” which is referred to in this Note as the “Nurturing Mother,” to provide a more distinct contrast from the fatherly worldview.

31. LAKOFF, *supra* note 25, at 33.

32. *Id.*

reliance.³³ Love and nurturing take second priority to portraying authority, which is in itself a display of tough love.³⁴ Once children mature, they are left to their own devices and must depend upon themselves.³⁵ Self-reliance allows them to set their own destinies, and in turn, they expect parents not to “meddle in their lives.”³⁶ The Punishing Father believes that the “pursuit of self-interest is seen as a way of using self-discipline to achieve self-reliance.”³⁷

This worldview presupposes a theory of human nature where people typically aim to satisfy their own desires and will refrain from doing things they otherwise would prefer to do in order to avoid punishment.³⁸ Furthermore, “Without competition, there is no source of reward for self-discipline, [and] no motivation to become the right kind of person.”³⁹ The Punishing Father prioritizes moral strength, which advocates for the idea that “punishment can be good for you, since going through hardships builds moral strength.”⁴⁰

“Within the [Punishing Father] model, the parent . . . sets standards of behavior and punishes the child if the standards are not met.”⁴¹ “[J]ust as importantly, the exertion of authority is moral behavior on the part of the parent, and it is immoral for the parent to fail to exert authority.”⁴² This idea is very thought provoking when applied to criminal justice. A society that buys into the idea of a Punishing Father position would not only use the strict form of punishment as a strategy for the overall good of the prisoner and society, but also because the society would feel obligated to punish the person. Contemplate a scenario where a judge, a probation officer, the prosecutor, and even the victim of a crime all know that the best sentencing outcome for a certain criminal would be to not go to prison at all, but to simply be placed in programming. Yet those same people, if part of a Punishing Father society, might feel a moral duty to advocate for a sentence of imprisonment.

The “[Punishing] Father morality requires retribution rather than restitution for harming someone or for violations of moral authority.”⁴³ One would expect advocates of this idea to want harsher prison sentences and

33. *Id.*

34. *Id.*

35. *Id.* at 33.

36. *Id.*

37. LAKOFF, *supra* note 25, at 35.

38. *Id.* at 67.

39. *Id.* at 69.

40. *Id.* at 72.

41. *Id.* at 76.

42. *Id.*

43. LAKOFF, *supra* note 25, at 80.

prison life.⁴⁴ Additionally, a society that adheres to the Punishing Father mentality would be expected to favor the death penalty.⁴⁵

It is clear to see that the Punishing Father worldview places a strong priority on independence, and the expectation that individuals will adhere to authority for the betterment of themselves and society. The United States' policy changes in sentencing reforms, discussed later in this Note, illustrate these principles.⁴⁶ But first, the identity of the Nurturing Mother, the Punishing Father's counterpart, must be revealed.

B. *Who is the Nurturing Mother?*

Lakoff described an opposing worldview, one that centers on the idea of a "Nurturant Parent," which this Note will refer to as the Nurturing Mother.⁴⁷ The primary focus of a Nurturing Mother is on love, empathy, and nurturance.⁴⁸ Children are expected to become responsible, self-disciplined, and self-reliant through the process of being cared for, being respected, and learning to care for others.⁴⁹ Thus, the support and protection of the child are crucial to his or her success.⁵⁰ Obedience of a child arises out of the child's respect for his or her parents and the community, not out of fear of being punished.⁵¹

The ultimate goal for children in this model is to be fulfilled and live happy lives that are committed to the family and the community around them.⁵² Raising the child requires helping the child develop his or her potential for achievement and enjoyment, and allowing the child to explore ideas and options that the world offers.⁵³ A Nurturing Mother society places its emphasis on collaborative support within the family system and does not have a negative attitude towards relying on others to succeed.⁵⁴

It is important to highlight at this point that the Nurturing Mother prioritizes what will be best for the child—at least in the context of punishment. There is no indication that the parent, or society, has a self-imposed moral duty to punish an individual. As this Note explores the reforms that Finland made to its sentencing practices, this theme will resurface often.

44. *Id.* at 81.

45. *Id.* The death penalty is legal in the United States' Federal system, as well as in some of its states. *See* *Gregg v. Georgia*, 428 U.S. 153 (1976).

46. *Infra* Part IV.

47. LAKOFF, *supra* note 25, at 108.

48. *Id.* at 108–18.

49. *Id.* at 108.

50. *Id.* at 108–09.

51. *Id.* at 109.

52. *Id.* at 34.

53. LAKOFF, *supra* note 25, at 34.

54. *Id.*

C. *Summarizing the Parental Framework*

Lakoff summarized the comparison of society to a family structure early on in his book, *Moral Politics*:

What we have here are two different forms of family-based morality. What links them to politics is a common understanding of the nation as a family, with the government as parent. Thus, it is natural for [one group] to see it as the function of the government to help people in need and hence to support social programs, while it is equally natural for [the other group] to see the function of the government as requiring citizens to be self-disciplined and self-reliant and, therefore, to help themselves.⁵⁵

This parental metaphor is directly applicable to sentencing within the criminal justice system. In the same way that parents punish their children, the government, through judges and attorneys, hands out punishments for criminal acts in many different forms. This Note analyzes the theory behind the varying methods of punishment in order to provide an explanation for the incarceration paradox of differing crime statistics between the United States and Finland.

IV. PRINCIPLES OF SENTENCING IN THE UNITED STATES AND FINLAND

A. *Principles of Sentencing in the United States*

To understand the sentencing reforms of each country and how they align with the political ideologies of society, the principles that guide each country in sentencing must be explained. For the United States, the goals and purpose of sentencing criminals are most easily understood by looking at the text of 18 U.S.C. § 3553. This statute provides factors that federal courts *shall* consider when imposing a sentence on someone convicted of a crime.⁵⁶ Specifically, the statute reads:

[I]n determining the particular sentence to be imposed, [courts] shall consider (. . .) the nature and circumstances of the offense and the history and characteristics of the defendant . . . the need for the sentence imposed – (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed education or vocational training, medical care, or other correctional treatment in the most effective manner.⁵⁷

In theory, this statute provides a broad range of factors that judges shall consider when making their sentencing decisions, but the reforms the

55. *Id.* at 35–36.

56. 18 U.S.C. § 3553 (2012).

57. *Id.*

United States has implemented suggest that some of the factors have been given more attention than others.

Previously, the political theory behind the United States' sentencing policy was the general idea that "most criminal offenders could be rehabilitated and that this goal could best be accomplished through a system of individualized decisions about punishment."⁵⁸ This individualized method of sentencing, known as indeterminate sentencing, typically yielded unpredictable results.⁵⁹ The case-by-case approach left judges with immense discretion, and the sentences imposed "tended to reflect the idiosyncrasies of the judge assigned to the case."⁶⁰ The rehabilitative approach to punishment was largely played out through the presence of the parole board. The parole board was in place to monitor the prisoner once he or she was in custody, and the board made the determination about when that person had been rehabilitated to a level that made it safe for that individual to return to society.⁶¹

The theory of rehabilitative sentencing was practically abandoned towards the end of the 1970s as the public continued to see increases in crime rates.⁶² As this general rehabilitative theory declined, "a broad-gauged intolerance toward criminal deviance of high and low seriousness [was] observed across U.S. criminal justice systems."⁶³ "Recidivism rates were not being reduced, and there was growing support for more conservative, or punitive, forms of punishment."⁶⁴ This attitude expressed by the general public towards criminal justice is the first indication that the United States was taking on the persona of a Punishing Father and moving towards a system focused on retribution and punishment—or as Lakoff described it, tough love.

As the United States moved into the 1980s, the country gradually made a shift from an indeterminate sentencing scheme to one of statutory determinacy.⁶⁵ Determinate sentencing, a system based upon statutory penalties, created a structure where the legislature assigned specific sentences to certain crimes. This method has been criticized as an inefficient method of determining proper criminal punishments.⁶⁶ Not only are members of the legislature likely to be under-qualified to determine such penalties, but their lack of ability to monitor the effects of sentences has also been linked to the

58. Reitz, *supra* note 4, at 239.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.* at 241.

64. Ikponwosa Ekunwe & Richard Jones, *Doing Re-entry: Accounts of Post-prison Release in Finland and the United States*, in GLOBAL PERSPECTIVES ON RE-ENTRY 443, 445 (Ikponwosa Ekunwe & Richard Jones eds., 2001).

65. Reitz, *supra* note 4, at 224.

66. *Id.*

severe growth in prison populations.⁶⁷ Nevertheless, this shift to a determinate sentencing regime came about during a time when the general attitude towards treatment programs, as they related to sentencing criminals, was that “nothing works.”⁶⁸ Even if the new method was not ideal, at the very least it was different from the old method that, based upon rising crime rates, had utterly failed.

In addition to statutory determinacy, “[t]he United States adopted the sentencing guideline system at the Federal level in 1987.”⁶⁹ By the end of the 1990s, twenty-five states and the federal government had either adopted the use of a uniform sentencing commission, or had proposed such a change.⁷⁰ This change in sentencing strategy took away many of the subjective considerations seen in the indeterminate sentencing system in place prior to the 1980s.

Determinate sentences were also accompanied by expansive use of prison punishments, increased non-prison punishments, and death sentences.⁷¹ The emphasis in the United States’ sentencing was placed on “mass incarceration, long prison sentences, severe deprivations associated with incarceration, and a lack of meaningful treatment programs available to . . . prisoners who needed and desired such programming.”⁷² “The National Research Council calculated in 1993 that the average prison time served per violent crime in the United States roughly tripled between 1975 and 1989 (and it has increased even further since)—mainly because offenders were more likely to be imprisoned at all once convicted, partly because many of them stayed behind bars longer once sentenced.”⁷³ As of 2012, the average length of a United States prison sentence had increased 36 percent from its 1990 average.⁷⁴ With a current prison population of over 2.1 million people, the United States has more people incarcerated than any other

67. *Id.* at 225.

68. Ekunwe & Jones, *supra* note 64, at 445.

69. Tapio Lappi-Seppälä, *Penal Policy and Sentencing Theory in Finland*, 5 CAN. J. L. & JURIS. 95, 95 (1992).

70. *See* Reitz, *supra* note 4, at 225–26.

71. *Id.* at 234.

72. Ekunwe & Jones, *supra* note 64, at 445.

73. Elliott Currie, *Assessing the Prison Experiment*, in CRIME AND PUNISHMENT IN AMERICA (1998), <http://www.nytimes.com/books/first/c/currie-crime.html>.

74. Rachel Myers, *Extreme Sentencing*, AMERICAN CIVIL LIBERTIES UNION (Aug. 31, 2012), <https://www.aclu.org/blog/criminal-law-reform/extreme-sentencing>. For further data and research indicating that the prison populations in the United States continued to increase after the turn of the century see *Fact Sheet: Trends in U.S. Corrections*, THE SENTENCING PROJECT, http://sentencingproject.org/doc/publications/inc_Trends_in_Corrections_Fact_sheet.pdf (last visited Nov. 8, 2014) [hereinafter *Corrections Fact Sheet*]; see also Todd D. Minton, *Jail Inmates at Midyear 2012 – Statistical Tables*, BUREAU OF JUSTICE STATISTICS (May 2013), <http://www.bjs.gov/content/pub/pdf/jim12st.pdf>.

country in the world.⁷⁵ The growth in the prison rates was especially rapid during the end of the 1980s and into the 1990s.⁷⁶ As one author summed it up, the rapid increases in prison populations during this time frame can be attributed to “the courts and legislatures [getting] ‘tougher’ on offenders.”⁷⁷ The general increase in the length of prison sentences was a major factor in the significant increases in prison rates.

B. Principles in Sentencing in Finland

Like with the United States, Finland’s general attitude towards sentencing can be summarized by referencing one statute. Chapter Six of the Finnish Penal Code provides insight into Finland’s priorities in sentencing their criminals, similar to 18 U.S.C. § 3553 for the United States.⁷⁸ The most relevant portions of that Chapter, at least for purposes of this Note, are Sections 4, 5, and 6. Section 4 reads, “The sentence shall be determined so that it is in just proportion to the harmfulness and dangerousness of the offence, the motives for the act and the other culpability of the perpetrator manifest in the offence.”⁷⁹ Sections 5 and 6 enumerate grounds for increasing or reducing the punishment based upon factors such as special needs or characteristics of the defendant, the defendant’s criminal past, and specific offense characteristics.⁸⁰ These factors are most relevant to this Note because they show that although the wording is technically different, the statutes at the core of sentencing in each country are not all that different. It is not surprising to see similar factors in both statutes because “similar sentencing criteria are probably found in most legal systems” around the world.⁸¹

Once a person in Finland is convicted, the principles in Chapter 6 of the Finnish Penal Code are to be applied when determining a sentence within the proscribed “sentencing latitude” of each offense.⁸² This acts as a form of statutory determinate sentencing. “Chapter 6 also contains a kind of model for sentencing decisions, known in Finland as ‘the notion of normal punishments’ . . . [that] aims to reduce unwarranted disparity in sentencing by structuring the decision in a way such that the courts have a firm starting point for their decisions.”⁸³ At this point, it would appear that the United

75. See *World Prison Brief: Highest to Lowest*, INT’L CENTRE FOR PRISON STUDIES, http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All (last visited Dec. 3, 2014); see also Ekunwe & Jones, *supra* note 64.

76. Reitz, *supra* note 4, at 233.

77. Currie, *supra* note 73.

78. THE CRIMINAL CODE OF FINLAND, ch. 6 (1996), <http://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf> (last visited Dec. 3, 2014).

79. *Id.* § 4.

80. *Id.* § 5–6.

81. Lappi-Seppälä, *supra* note 69, at 99.

82. *Id.* at 96.

83. *Id.*

States and Finland handle their sentencing in very similar ways. Finland has sentencing latitudes for each specific offense to set up a basic range for the sentence, and the principles of Chapter 6 are applied when a judge imposes the sentence on the criminal. The United States uses sentencing guidelines and statutory minimum and maximum sentences to provide the basic range, and the principles of 18 U.S.C. § 3553 are applied at the sentencing hearing. However, as will be discussed, the execution of these principles provides completely different results in each country.

V. REFORMS AND RESULTS IN CRIMINAL JUSTICE AND THEIR APPLICATION TO MORAL POLITICS

The goal of this Note is to provide an explanation for the incarceration paradox in the United States and Finland. As the crime rates in both countries peaked towards the end of the 1980s, different sentencing reforms were implemented. As crime rates decreased in both countries following these reforms, the United States' prison population drastically increased while Finland's prison population decreased. This statistical conflict is what has been referred to thus far as the incarceration paradox. The idea asserted in this Note is that each country's parental punishing style explains the incarceration paradox, most clearly illustrated by analyzing the types of sentencing reforms Finland and the United States have implemented in the last several decades.

A. *United States Reforms*

As was stated previously, the United States' main sentencing reforms took place in the 1980s, when society abandoned a rehabilitative theory of criminal punishment.⁸⁴ Because the general attitude of Americans was that correctional treatment of criminals did not work, the goal of American sentencing became more focused on retribution, which was evidenced by the mass numbers of people being incarcerated and the harsher penalties handed down by courts.⁸⁵ This abandonment of the rehabilitative theory of sentencing was achieved through reforms that made the United States a determinate sentencing country.⁸⁶ Determinate sentences were established both by statutory mandatory minimum and maximum sentences, as well as guidelines created by sentencing commissions at the federal and state levels.⁸⁷

Once the rehabilitative theory of sentencing was effectively done away with, American society was left with "the other mainstream goals of pun-

84. *See supra* Part IV.

85. *Id.*

86. *Id.*

87. Reitz, *supra* note 4, at 224–30.

ishment.”⁸⁸ Without “the softening tendency of [the] rehabilitation theory . . . there [was] no compelling argument against incapacitating as many offenders as the system [could] accommodate, for as long as possible.”⁸⁹ During this time, the political focus of harsher sentencing was on the most serious offenses, but in reality, the most dramatic changes were manifested in the non-violent crimes such as property theft and drug offenses.⁹⁰ For instance, “In the latter 1980s and early 1990s, the growth in imprisonment rates for drug offenders was the single most important contributor to the U.S. incarceration explosion.”⁹¹ In addition to high incarceration rates for drug-related offenses, the number of individuals having parole privileges revoked was also increasing during this time.⁹²

In light of 18 U.S.C. § 3553, these reforms and the overall movement to harsh punishment in the United States represent some level of disregard for subdivision (D), which states that when imposing a sentence, courts “shall consider . . . the need for the sentence imposed . . . to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.”⁹³ The focus of the United States’ reforms, which mainly deal with harsher punishment, also directly relates to the Punishing Father’s worldview of societal punishment. The direct shift towards longer sentences and stricter parole, as well as a lack of effort to consider what can be done to help the offender, are also in line with a Punishing Father mentality. The old method of rehabilitation places more of a priority on helping the criminal, but the United States’ new approach made it a priority to punish and incapacitate, which came at the expense of the prisoner and ultimately, the prisons.

B. Finland Reforms

Finland began applying reforms as early as the 1970s that started a trend of lenient Nurturing Mother policies, although the most notable reforms occurred towards the end of the 1980s when the crime rates began to decline. “[The] experts who were in charge of planning the reforms and research shared an almost unanimous conviction that Finland’s comparatively high prisoner rate was a disgrace and that it would be possible to significantly reduce the amount and length of prison sentences without serious repercussions on the crime situation.”⁹⁴ This attitude “was shared by

88. *Id.* at 240.

89. *Id.*

90. *Id.* at 241.

91. *Id.* at 242.

92. Steven D. Levitt, *Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six that Do Not*, 18 J. OF ECON. PERSP. 163, 177 (2004).

93. 18 U.S.C. § 3553(a)(2)(D) (2012).

94. Tapio Lappi-Seppälä, *Imprisonment and Penal Policy in Finland*, 54 SCANDINAVIAN STUD. L. 333, 362 (2009) (quoting PATRIK TÖRNUDD, FIFTEEN YEARS OF DECREASING PRISONER RATES IN FINLAND, 8 (1993)).

the civil servants, the judiciary and the prison authorities and, as was equally important, by the politicians.”⁹⁵ In implementing the reforms that will be discussed next, Finland displayed that its criminal justice system embraced “relatively short prison sentences, and strong efforts to help prisoners maintain contact with family through family visits (conjugal) at the prison, or furloughs.”⁹⁶

Starting in the early 1970s, Finland’s first major reform was the decriminalization of public drunkenness and reduced penalties for general theft crimes.⁹⁷ When analyzing levels of leniency, decriminalizing certain acts would be one of its ultimate forms. Instead of relaxing punishment, Finland simply decided not to punish these actions at all. Following this reform, in 1973, Finland significantly restricted the ability of courts to hold an offender in “preventive detention.”⁹⁸ Preventive detention in Finland is a provision in the criminal justice system that allows a sentencing court and a special court to collectively decide that because an offender is a chronic recidivist, that person must be held in custody to deter him or her from committing more criminal acts.⁹⁹ The 1973 reform limited this option to only allow preventive detention of dangerous and violent criminals.¹⁰⁰ This restriction caused the number of people being held in preventive detention to drop from over 200 to 24 in just one year.¹⁰¹ The United States has similar programming in its criminal justice system. “In *Kansas v. Hendricks*, the United States Supreme Court upheld a statute that explicitly permitted preventive detention of an individual who has just completed his sentence, if that person is shown to be dangerous as a result of ‘mental abnormality.’”¹⁰² However, the United States has taken a much more expansive approach to the use of holding people in preventive detention. For example, three thousand citizens in the United States have been held in preventive detention since 1990 for sex offenses alone.¹⁰³

The year 1977 brought along several more changes in Finland, including an amendment to the drunk driving law, which again considerably reduced the number of prisoners.¹⁰⁴ Instead of receiving unconditional imprisonment, which is a sentence of actual imprisonment without the op-

95. *Id.* at 363.

96. Ekunwe & Jones, *supra* note 64, at 446.

97. See Lappi-Seppälä, *supra* note 94, at 352.

98. *Id.*

99. Lappi-Seppälä, *supra* note 1, at 111.

100. *Id.* at 111–13. This reform was originally passed by amendment in 1971.

101. *Id.* at 113.

102. See *Kansas v. Hendricks*, 521 U.S. 346, 352 (1997). For a discussion of the effect of this case and the line of cases it follows, see Christopher Slobogin, *Preventive Detention in Europe and the United States*, UNC SCHOOL OF LAW, <http://www.law.unc.edu/documents/faculty/adversaryconference/sloboginravennapaper.pdf> (last visited Jan. 25, 2016).

103. Adam Klein & Benjamin Wittes, *Preventive Detention in American Theory and Practice*, 2 HARV. NAT’L SEC. J. 85, 168–69 (2011).

104. Lappi-Seppälä, *supra* note 94, at 352.

tion of probation, offenders convicted of driving while intoxicated only face conditional sentences or stand-alone fines.¹⁰⁵ Under a conditional sentence, the term of imprisonment will be suspended for a period of time while the defendant is on probation.¹⁰⁶ Other crimes were also amended to allow conditional sentences and fines to be combined, in order to replace what would have otherwise been a sentence of only unconditional imprisonment.¹⁰⁷ Finally, day-fines, which are fines that are adjusted to reflect the financial well being of the defendant, were also heavily reformed.¹⁰⁸ The new policy allowed courts to impose heavier fines to replace a sentence of imprisonment altogether.¹⁰⁹

These reforms, when taken together, show the beginning of Finland's trend towards more relaxed sentencing. Criminals who used to be facing substantial prison time prior to the 1970s reforms were now given the option to avoid incarceration all together. This method of utilizing a conditional sentence shifts the focus away from punishing the misbehavior of the criminal and incentivizes future good behavior. Self-reliance and independence of the criminal, in the aftermath of conviction, are achieved through the merits of not breaking laws in the future rather than deterring future misbehavior because of the severity of punishment that would follow.

In 1989, approximately the time when the crime rates reached their peak and soon after began their decline, one of the most significant changes to Finland's sentencing policy came about. That year, legislators decreased the minimum amount of time that a prisoner must serve in custody before he or she becomes eligible for parole.¹¹⁰ Prior to 1989, the minimum period that had to be served before being considered for parole was three months, and only around one-half to two-thirds of prisoners were released on parole.¹¹¹ However, following this reform prisoners became eligible after fourteen days, and since this law was implemented, nearly all of Finnish prisoners have been released on parole.¹¹² In a similar way to shortening and eliminating sentences, using a system of parole like this illustrates how Finland was placing more confidence and trust in its offenders. Through rewarding good behavior, releasing a prisoner on parole places the focus and incentive on future positive conduct, rather than focusing on retribution for the past offense. Having a hands-on approach to criminal corrections is Finland's way of nurturing those individuals back into society, and by shortening the parole eligibility qualification date, Finland wastes no time in beginning that nurturing process.

105. *Id.*; Lappi-Seppälä, *supra* note 1, at 115.

106. Lappi-Seppälä, *supra* note 94, at 338.

107. Lappi-Seppälä, *supra* note 1, at 115.

108. Lappi-Seppälä, *supra* note 94, at 352.

109. *Id.*

110. *Id.* at 356.

111. *Id.* at 356–57.

112. *Id.* at 357.

The last major change to take place in Finnish law during this time period was the introduction and stabilization of a community service system during the early 1990s.¹¹³ Community service, officially implemented in 1992, was offered as an alternative sanction for certain offenders who would have otherwise served an unconditional sentence.¹¹⁴ What is most important, at least for analyzing crime and prison rates, is that Finnish courts actually used this alternative punishment. Throughout the 1990s, Finland saw the number of convicted persons who received unconditional sentences go from over eleven thousand people annually to just less than six thousand people.¹¹⁵ The other side of that figure, the number of people receiving community service sentences, also increased during this time. For example, in 1992, not a single criminal had the option to do community service in lieu of imprisonment.¹¹⁶ By 1997, approximately three thousand five hundred people who normally would have gone to prison were instead sentenced to community service.¹¹⁷ The initial effect of this community service system is interesting in one minor sense in that the average length of a prison sentence in Finland actually increased slightly.¹¹⁸ This is only because the short-term sentences that would have lowered the overall average length of a sentence were replaced with community service orders.¹¹⁹ The most important reforms in Finnish sentencing during this time period are outlined below:

TABLE 1: FINNISH CRIMINAL LAW REFORMS, 1960 – 2000¹²⁰

| Year | Reform |
|------|---|
| 1969 | Decriminalization of public drunkenness |
| 1972 | Penalties for theft reduced |
| 1973 | Restriction on the use of preventive detention |
| 1976 | Minimum time for parole reduced from 4 months to 3 months |
| 1977 | Fines and conditional sentences replace prison for drunk driving offenses |
| 1989 | Minimum time for parole reduced from 3 months to 14 days |
| 1991 | Penalties for property crimes reduced |
| 1992 | Introduction of community service |
| 1995 | Community Service stabilized and expanded |

113. *Id.* at 352.

114. Lappi-Seppälä, *supra* note 1, at 116.

115. *Id.* at 117.

116. *Id.*

117. *Id.*

118. Lappi-Seppälä, *supra* note 94, at 366 (although in comparison to the United States, the average length of a sentence in Finland was still shorter).

119. *Id.*

120. *Id.* at 352.

These alternatives to imprisonment undoubtedly played a meaningful role in explaining why Finland's prison rate decreased during this time. This method, by its very nature of being *community* service, also achieved the goal of punishing criminals in a way that provided a valuable service to society, rather than simply focusing on punishing the individual. As Lakoff described, prioritizing the community and the overall well-being of a society is a trademark of a Nurturing Mother country. The general leniency, and move towards being less harsh on the offenders in society, is also directly in line with this worldview. Instead of simply responding to criminal misconduct with the most severe punishment, it is apparent that Finland has made it a goal to focus on what can be done to help the criminal correct his or her path, and in a way, nurture him or her back into society.

C. *Indicators of Success or Failure*

Parents, regardless of whether they are Punishing Fathers or Nurturing Mothers, punish their children with the purpose of teaching lessons and hoping that the children will learn from their mistakes and correct their behavior the next time they are in the situation where they initially misbehaved. For instance, children might get into trouble at school and receive a "time-out" when they return home. Some parents might even choose to spank their child or deprive them of leisure activities. Regardless of the method of punishment, part of a parent's goal in punishing the child might be for retribution of the misbehavior, but another reason might be to give the child a purpose to correct his or her future behavior. The next time that child is at school and is presented with the same situation, the child will remember the punishment or lesson learned from that parent, and will hopefully adopt a more acceptable form of behavior.

In a way, this is a small-scale version of a criminal's re-entry into society. After punishment, how well that criminal does when he or she transitions back into the community can help prove how effective the punishment has been in creating a safer overall society and allowing that criminal a chance to be a productive member of that society. By analyzing the re-entry process and recidivism statistics, countries can gain perspective on how effective their criminal justice systems are in achieving these parental goals. One article, written by Ikponwosa Ekunwe and Richard Jones, directly compares the process of re-entry into society between the United States and Finland.¹²¹

Ekunwe and Jones recognized that recidivism rates, which represent the number of individuals who commit new criminal offenses after conviction of a separate prior offense, vary significantly between different countries, and they decided to look at certain "dimensions of re-entry" to answer

121. See Ekunwe & Jones, *supra* note 64.

why this is so.¹²² These dimensions included the preparation that prisoners are given while incarcerated for life after prison, the society's ability to provide the basic needs to ex-prisoners once they are released, and the ex-prisoner's personal ability to maintain a crime-free lifestyle after serving prison sentences.¹²³ One of the biggest problems in sentencing is that serving time in custody has direct and indirect consequences that are not accounted for when sentencing, which are referred to as the "deprivations of incarceration."¹²⁴ The United States' deprivations of incarceration fall into two general categories: structural and psychological.

In the United States, when prisoners are ultimately released, they face structural problems that continue to punish them far beyond the court-imposed sentence. For instance, public attitude towards people that have committed crimes can make many basic necessities difficult to obtain. "[T]he stigma associated with a criminal record will make it extremely more difficult to find employment sufficient to support a family."¹²⁵ Affordable housing is difficult to find for several reasons. Not only are landlords less likely to rent to people who have criminal pasts, but if an ex-prisoner has a drug conviction, that individual could be denied housing that would have otherwise been supported by federal funds.¹²⁶ Additionally, the long and harsh prison sentences in the United States have a direct effect on the stability of families.¹²⁷ When prisoners are released from custody, a strong family bond can act as a great resource and as the foundation the individual needs to move forward in a law-abiding capacity.¹²⁸ However, a long prison sentence often times has a negative impact on the relationships within a family that will last well after the criminal sentence has been served.¹²⁹

Aside from the structural issues that ex-prisoners have in the United States, they also must overcome the psychological and emotional issues that come with being incarcerated for a long period of time.¹³⁰ Some ex-prisoners find relief from this in drugs or alcohol, and most of them have to deal with the internal emotions of anger and frustration.¹³¹ These effects should not be surprising, but there is another psychological component that might be. This psychological issue is known as "prison community socialization," or "opposition to the free world."¹³²

122. *Id.* at 443.

123. *Id.*

124. *Id.* at 444.

125. *Id.* at 446.

126. *Id.*

127. Ekunwe & Jones, *supra* note 64, at 446.

128. *Id.*

129. *Id.*

130. *Id.* at 444.

131. *Id.*

132. *Id.* at 444.

The idea behind this psychological issue is that the longer an inmate is incarcerated, the greater the likelihood is that he or she will become fully immersed in the “prison way” of doing things.¹³³ This would suggest longer periods of incarceration for all prisoners, as is common in the United States, would create a society where re-entry would be extremely difficult—and at times, even impossible. Once a prisoner is finally released from prison, he or she is so accustomed to the way of life while in custody that transitioning into society’s way of life is inconceivable. Thus, it is not difficult to understand how people in this situation would revert back to a criminal livelihood, simply because that is what is comfortable or because that is the only thing they know how to do.

Moreover, while in prison, inadequate education programs, training programs, and work opportunities only contribute to the re-entry barrier. This makes in-custody treatment and programming essential to reduce recidivism and improve the overall well being of a society.¹³⁴ However, “the expense associated with prison construction and mass incarceration has left little revenue to operate residential treatment programs to assist with ex-offender re-entry.”¹³⁵ Given this information, it is not surprising to see that recidivism rates in the United States presently remain at roughly 67% failure, meaning that approximately two-thirds of people released from prison will go on to commit additional crime in their lifetimes.¹³⁶

In Finland, re-entry is a far less daunting task for ex-prisoners. Finland has turned “away from correctional policies heavily influenced by the former Soviet Union,” and some scholars have even described Finland’s shift in sentencing attitude as “Gentle Justice.”¹³⁷ This idea of Gentle Justice is directly on point with the Nurturing Mother style of parenting and criminal punishment. Finland’s philosophy is centered on a concern for the citizen, and many rights of citizenship are maintained for Finnish prisoners, “while also insuring a range of rehabilitative programming and re-entry services.”¹³⁸

Finnish individuals leaving prison will have many resources available to them that simply do not exist for ex-prisoners in the United States.¹³⁹ For example, all citizens, including the ex-prisoners, “are entitled to social benefits, which include housing allowance as well as unemployment insurance.”¹⁴⁰ The “stigma associated with a criminal conviction will not be used to prevent employment in Finland, unless the crime was of a nature that was

133. Ekunwe & Jones, *supra* note 64, at 444.

134. *Id.*

135. *Id.* at 446.

136. *Id.*

137. *Id.*

138. *Id.*

139. Ekunwe & Jones, *supra* note 64, at 447.

140. *Id.*

incompatible with the demands of the workplace.”¹⁴¹ This is in stark contrast to the United States, where approximately one in every four adults has a criminal record that could adversely impact their prospects of gaining employment.¹⁴² Because of this obstacle, it is estimated that “somewhere between 1.5 and 1.6 million [Americans] are locked out of the job market each year.”¹⁴³ Additionally, the structural problems of United States prisons do not exist in Finland. The overall quality of Finnish prisoner life is superior to many other countries’ prisons, including the United States.¹⁴⁴ The United States sets its standards of prison life very low, basically ensuring that while in prison the individuals maintain the minimal rights afforded to them in the Constitution, such as due process of law, the right against unequal treatment based on certain demographics, and the right to not be subjected to cruel and unusual punishment.¹⁴⁵

In Finland, “every effort is made to reduce the negative impacts of incarceration as much as possible.”¹⁴⁶ Going to prison in Finland is the punishment for the crime that was committed, and the society aims to limit that punishment to the time that is spent in custody.¹⁴⁷ This highlights the flaw of the lingering punishment United States prisoners must deal with upon release. A prisoner in the United States could be sentenced to three years of confinement, but the effects of that sentence could follow that individual around for the rest of his or her life. That person regains freedom, but without the resources and support that are available in Finland, the individual is not able to enjoy that freedom to any significant level.

The support that Finland provides is mainly exhibited through its relatively short sentences, or lack of sentences altogether.¹⁴⁸ However, the society as a whole also plays a large role in supporting ex-offenders. For example, private groups such as KRIS (Criminals Returning Into Society) exist to assist criminals’ transition back into the general population.¹⁴⁹ Additionally, Finland correctional institutions encourage family visits and furloughs to allow prisoners to maintain some level of stable livelihood to

141. *Id.*

142. Rich Ehisen, *States Slowly Adopting Laws to Ease Ex-Felons’ Path to Employment*, LEXISNEXIS (Aug. 5, 2014, 9:31 AM), <http://www.lexisnexis.com/legalnewsroom/labor-employment/b/labor-employment-top-blogs/archive/2014/08/05/states-slowly-adopting-laws-to-ease-ex-felons-39-path-to-employment.aspx>.

143. *Id.*

144. See Doran Larson, *Why Scandinavian Prisons Are Superior*, THE ATLANTIC (Sept. 24, 2013), <http://www.theatlantic.com/international/archive/2013/09/why-scandinavian-prisons-are-superior/279949/>.

145. See *Prisons and Prisoner’s Rights: An Overview*, CORNELL UNIV. LAW SCH., http://www.law.cornell.edu/wex/prisoners_rights (last visited Dec. 3, 2014).

146. Ekunwe & Jones, *supra* note 64, at 446.

147. *Id.*

148. See *id.*

149. *Id.* at 447.

return to after completing the term of confinement.¹⁵⁰ This helps eliminate the psychological barrier of re-entry and rehabilitation that is present in the “prison community socialization.” For example, Finland has several open prisons, which are correctional institutions that allow prisoners to study or work in the community during the day and then return to prison in the evening.¹⁵¹ At least at the federal level, the United States does not have a similar program for its offenders. By simply allowing prisoners to maintain a consistent connection with the world outside of prison, Finland directly combats the psychological and emotional struggles that other prisoners, such as United States prisoners, must deal with. Many of these factors contribute to the fact that recidivism rates in Finland have hovered around 30%, less than half of the rate in the United States.¹⁵²

VI. CONCLUSION: MOVING FORWARD IN SENTENCING

This Note has set out to provide an unconventional explanation for why crime rates in the United States and Finland dropped during the 1990s, but Finland caused its incarceration rates to decrease and the United States caused its incarceration rates to increase (the incarceration paradox). The answer is that Finland took on an attitude towards criminal punishment akin to a Nurturing Mother, founded upon lenient sentencing and allocation of resources to help offenders integrate back into society. In contrast, the United States acted more like a Punishing Father, placing the burden of re-entry on the offender after imposing harsh and long sentences.

The recidivism rates and re-entry statistics show that Finland has achieved a desirable result, while the United States now struggles with the growing problem of extremely high prison populations. However, simply switching to a more lenient approach to sentencing might not be the best option for the United States. In Finland, it took commitment from all of society to make such a tolerant method work. The United States could struggle in that regard, because while it may decrease the prison populations, there is no guarantee that crime rates would not increase back to their pre-1990s levels. No politician would want to be associated with legislation responsible for that change. The other important issue to combat would be how to finance the amount of resources needed in the United States to have the same kind of programming that exists in Finland. Money is already a problem in the criminal justice system with the housing and feeding of over two million incarcerated people. As the United States moves forward, the government will have to decide if being the harsh, strict Punishing Father is the best approach to sentencing, or if the criminal justice system should add more compassion in its pursuit of justice.

150. *Id.* at 446.

151. *Id.*

152. Ekunwe & Jones, *supra* note 64, at 446.

