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# THE RISE OF THE CRIME VICTIM AND PUNITIVE POLICIES? CHANGES TO THE LEGAL REGULATION OF INTIMATE PARTNER VIOLENCE IN FINLAND

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## KEYWORDS

intimate partner violence, legal regulation, crime victim, criminal justice policy

## ABSTRACT

This article examines intimate partnership violence as a question of criminal justice policy in Finland, and contributes to criminological discussions regarding oft-stated connections between the politicization of the victim, the treatment of offenders, and repressive criminal justice policies. In this discussion, legislation aiming to regulate and prevent violence against women has often been utilized as an example of such punitive policies. Although criminal policies in Nordic countries differ significantly from more punitive Anglophone policies, punitive tendencies have argued to exist in the former too. This article analyses the change in legal regulations and the criminal political status of intimate partner violence in Finland between 1990 and 2004, while examining the juxtaposition of victims and offenders alongside repressive demands.

## INTRODUCTION

Criminal justice policies pursued in Anglophone states differ considerably from those practiced in continental Europe and Nordic countries (e.g. Whitman, 2003; Cavadino & Dignan, 2006; Green, 2008; Pratt, 2008a; Pratt and Eriksson 2012, 2013). This difference primarily relates to penal policy, that is, the treatment and rights of offenders. These criminal justice and penal policy disparities between Anglophone states, continental Europe, and Nordic countries concern not only criminal justice policy practices and penal institutions, but also the broader society through politics and the media. The intertwine of harsh criminal justice policies and punishments, political campaigning, and news media have been referred to by using concepts such as populist justice or the popularization of crime politics (Whitman, 2003: 15; Cavadino & Dignan, 2006: 9).

The victim's movement and the rise of the victim's point of view increasingly play rather focal roles in this discussion. Some suggest that demands for victim policies and from victims have been manipulated as measures of repressive, control-oriented and, commonly, populist politics (e.g. Elias, 1993). Incorporating the victim's point of view into criminal justice policy has generated wide criticism, especially in the United States and the United Kingdom. These critical discussions have focused on hardening criminal justice policies and attitudes towards offenders, leading to a steady rise in crime and incarceration rates and an increasing fear of crime, all of which are interconnected through political actors, crime media, and the concept of the victim (Garland, 2001; Tonry, 2004; Simon, 2009). Violence against women, particularly intimate partner violence (IPV) and sexual crimes, and the feminist campaigns related to them are often used as examples of such punitive politics (e.g. Tham 2011; Simon 2009). In addition to the growing fear of crime, it has also been argued that the projection of, and media attention to, crime victims has generated a zero-sum game between the rights of victims and offenders in political debates and decision-making on criminal justice policy, whereby the apprehension of offenders' rights or wellbeing is thought, by reflex, to diminish the acknowledgment of victims (Garland, 2001).

The perceived differences between Anglophone states and Nordic countries in policies, attitudes towards offenders, and punitive consequences are thought to correlate with several social factors from the political and economic structure to the state's investment in social policy, levels of fear, social trust, and the importance of human rights. Nordic countries often serve as model examples of lenient penal and criminal justice policies (Cavadino & Dignan, 2006; Barker, 2012; Lappi-Seppälä, 2013; Pratt & Eriksson, 2013). Furthermore, the neoclassical tradition practiced in Nordic countries has been defined as fair, rational, and humane (Anttila & Törnudd, 1992). In particular, after Pratt's (2008a, 2008b) thesis regarding Scandinavian<sup>1</sup> exceptionalism, mild Nordic penal regimes received broad attention among criminologists.

Pratt (2008a, 2008b) explains the low imprisonment rate, humane treatment of inmates, and generally less harsh prison conditions characteristic of Nordic countries from a cultural historical perspective,

concluding that Nordic penal regimes are rooted in remarkably egalitarian values and social structures as constructed within the Nordic welfare state and its functions. As such, he argues that societies characterized by strong social welfare and state organizations, a comparatively objective mass media, and expert-led criminal justice policy are less likely to rely on harsh punitiveness. However, this Nordic exceptionalism has also been under constant threat from populist and punitive tendencies, and various signs indicating hardening attitudes and policies in Nordic countries have been pointed out, for example, the increasing prison population (e.g. Pratt, 2008b) and the rise of victim policies particularly due to active campaigning against violence towards women (Tham, 2011).

These discussions remain rather marginal in Finland, although some critics have taken aim at recent developments. Lappi-Seppälä (e.g. 2007, 2012) states that hardening tendencies have also gained traction in Finland. One of the phenomena he connects to this development lies in changes concerning the regulation of violence towards women, primarily domestic violence and sexual offences. For example, reforms in the right to prosecute concerning assaults in the private sphere – analyzed in the empirical section of this article – and the revision of the essential elements of rape in the Criminal Act<sup>2</sup> in 2011, which also qualified sexual intercourse with a defenseless victim (e.g. unconscious) as rape, have been identified as indications of punitive impact (Lappi-Seppälä, 2012, p. 94–95). However, these considerations have not touched upon, for example, justifications regarding why violence should be regulated differently in the public and private spheres and alternatives to the criminal justice system; or why the sexual autonomy of the defenseless should be weaker than individuals capable of defending themselves.

As such, this article aims to examine the links between the changing position of the crime victim, the role of the offender, and possible indicators of hardening criminal justice policies in Finland between 1990 and 2004. Here, IPV is used as an empirical case study.<sup>3</sup> This study utilizes Pratt's thesis and discussion concerning populist politics, media attention, and the exclusionary rights of the victim and the offender. Further, this article will analyze changes in the legal regulation and status of IPV within Finnish criminal justice policy during the observed period in an attempt to answer the following questions: (1) were the rights of the victim and the offender viewed as exclusionary; and (2) were punitive demands included in the process whereby the victim of IPV was acknowledged within Finnish criminal justice policy? This research relies on two sets of data: (1) all legislative documents of legal revisions which considered violence within private spheres and intimate relationships between 1990 and 2004; and (2) news articles and materials emanating from campaigns and initiatives against violence within intimate relationships during the same period.

## HUMANE CRIMINAL JUSTICE POLICY AND CRIME VICTIMS: THE FINNISH CONTEXT

In Finland, the Civil War in 1918, the wars with the Soviet Union, and World War II delayed economic development and urbanization. Progress towards a Nordic welfare state began in the early 1950s. Thus, Finland joined the neoclassical Nordic criminal justice policy later than other Nordic

countries. Finnish criminal justice policy experienced a substantial transformation in the early 1970s, whereby the system of retribution was made more equitable, and, due to alterations in legislation and sentencing practices, the Finnish incarceration rate decreased fourfold to mirror the moderate level found in other Nordic countries. The thrust of this shift towards a 'humane and rational' criminal justice policy occurred as a result of wide criticism towards the overly harsh retribution system from a younger generation of social scientists and legal scholars. The ideological roots of such criticism lay in critical sociological and criminological thinking concerning inequality within the criminal justice system (e.g. unfair treatment of the poorest in society and a wider concern for offenders' rights) and criminality as a normal societal function rather than as an aberration inherent to offenders (e.g. Anttila, 1976; Kivivuori, 2011).

Since the 1970s, Finnish criminal justice policy has followed the Nordic neoclassical tradition. In Finland, this has meant focusing on the connection between criminal justice policy and social policy, the deterrent function of the criminal justice system, and measuring the severity of punishment in proportion to the seriousness of the offence. Furthermore, effective social policy is regarded as the most efficient way to impact criminality, with criminal sanctioning representing the last resort in cases where all other measures have proven ineffective (Lappi-Seppälä, 2007; Nuotio, 2007; Pratt & Eriksson, 2013, p. 185–186). The requirement to refrain from unnecessary use of criminal justice measures arises from the internal tension within criminal law between the protection of individual rights and legal protections. That is, the purpose of criminal law lies not only in protecting individuals from violations from the state and other individuals, but using the criminal law also includes the risk of infringing those selfsame rights. Since criminal sanctions refer to restricting the individual rights of offenders, thus, generating intentional suffering, offenders' rights and their legal protection represent the essential aims of neoclassical criminal justice policy as practiced in Finland, to the extent that the offender is often considered a victim (e.g. Anttila, 1990/1991).

Cavadino and Dignan (2006, p. 26, 155) suggest that one of the explanations for the humane treatment of, and attitudes towards, offenders could be society's collective responsibility for criminality (also Pratt & Eriksson, 2013, p. 192; Tham, 2011). The recognition of offenders as victims and collective responsibility are intertwined in the words of Inkeri Anttila (1972, p. 290), the general architect of Finland's rational and humane criminal justice policy:

Offering prisoners the benefits of both traditional treatment measures and social services does not infringe on their liberties. As prisoners in a sense are 'scapegoats' of the system, it is reasonable to offer them better facilities than are offered to the average citizen. It is only fair to give them as much help or assistance as society can possibly afford without weakening the social control system.

In some respects, Finland's humane criminal justice policy is also an outcome of economic rationality. An analysis of the writings of Inkeri Anttila and her colleague, Patrik Törnudd, (e.g. 1970) on the justifications of the basic principles of Finnish criminal justice policy, shows a causal

interrelationship of the humane and the rational. Policy measures which are cost-effective for society produce humane outcomes for offenders, such as policies minimizing imprisonment by utilizing the widest possible range of non-institutionalized sanctions (Honkatukia & Kotanen, in progress).

While news coverage and political debates concerning criminal justice policy are more restrained in Nordic than Anglophone countries, Finland stands out, at least in comparison with Sweden, where criminal justice policy represents an integral part of political discussions (e.g. Lappi-Seppälä, 2012, p. 107). In general, criminal justice policy garners a low level of interest in Finland, politically as well as in the media, rarely leading to fervent public or political conversation; even the media's crime reports are conducted in a composed manner, with sensationalism avoided and hyperbole largely absent (Smolej, 2011). As such, Finland neatly fits Pratt's (e.g. 2008, 2014, p. 194–195) description of a society with an expert-led persistent criminal justice policy and moderate media. Indeed, it has been argued that Finnish criminal justice policy represents the most expert-orientated when compared with other Nordic countries (Törnudd, 1993).

In contrast, one could state that the victim occupies a bipartite and controversial position in Finnish criminal justice policy, a position simultaneously weak and strong (Niemi-Kiesiläinen, 2004; Ronkainen, 2008). From a legislative perspective, crime victims possess several rights. Departing from other Western countries, the crime victim has, for example, the right to institute criminal proceedings as a complainant in Finland. The victim also possesses the right to have a support person present and to use an assistant, often provided by the state. Legislation enacting criminal liability passed as early as 1973; compared internationally, compensation paid on the basis of the law stands at a solid level, and compensation claims can be filed during court proceedings (Honkatukia, 2011).

Nevertheless, from the perspective of protection and aid, the position of Finnish crime victims remains inadequate (Ronkainen, 2008). While individuals dealing with the consequences of crime and crime victims themselves noted that authorities often provided insufficient help and support to victims, the development of victim support and counselling services did not emerge in Finland until the 1990s, late by Western standards. Undoubtedly, the most essential reform improving the service system, for service providers and victims in need, was the establishment of Victim Support of Finland in 1994, which temporally coincided with the rise of IPV as an agenda of criminal justice policy.

Regardless of amendments to victim services or increasing media attention (Smolej, 2011), crime victims and victimhood are difficult topics in Finland. In particular, this concerns victims of violence and the consequences of violence to victims, as well as their families. According to social psychologist, Suvi Ronkainen (2008), this is due to Finland's recent history – especially the destructive wars in the earlier half of last century – and the culture of silence as relates to suffering.

Ronkainen explains this as a denial reaction of the traumatized society; a way to avoid processing overly painful issues and memories. The difficulties attached to confronting victimhood are visible in the way the service and justice systems respond to victims of violence. Despite its traumatizing and paralyzing effects of violence, within both the service and justice systems, victims of violence are expected to possess an active and strong agency, expectations which are primarily implied. Both systems, however, are built in such a way that they impose certain conditions on receiving aid such as the active and self-reliant action of victims themselves (Ronkainen, 2008; Niemi-Kiesiläinen, 2004).

## INTIMATE PARTNER VIOLENCE IN FINLAND

Two victimization surveys focusing on violence against women have been conducted in Finland (Heiskanen & Piispa 1998; Piispa et al. 2006). On the basis of the latest survey, published in 2006, 17.5% of Finnish females experienced physical violence in a current relationship, with the number increasing to 44.7% as regards former husbands or partners (Piispa et al., 2006). According to the survey which mapped violent experiences of both men and women in Finland, men and women encounter approximately the same amount of violence within intimate relationships, although those experiences remain unsymmetrical. Women were twice as likely to encounter violence in former relationships as men, and the forms of violence against women, and the consequences of it, were more severe. Women also experienced more violent episodes (Heiskanen & Ruuskanen, 2010).

These results are consistent with the fact that, in Finland, an average of 20 women die annually resulting from IPV, while the number of male victims varies from 0 to 5. Furthermore, the number of female victims is high in proportion to the population as a whole. For example in Sweden, where the population is approximately double that of Finland, fewer women die each year as a result of IPV (Lehti, 2012). Niemi-Kiesiläinen (2004) pointed out that the main problem in Finland lies not in unusually high levels of IPV, but rather a lack of intervention from the state. The sad consequence of this policy has been high death rates and an ever-growing chain of violence in the absence of any active intervention.

In contrast to other Nordic and Western countries, the physical integrity of women has garnered relatively little attention in Finland (e.g. Nousiainen & Pentikäinen, 2013). This has often served as an explanation for why, from a legal and social viewpoint, violence within the family and intimate relationships was condoned in Finland until relatively recently. While modernization and calls for equality altered attitudes leading to increasing disapproval, Finnish legislation lacked provisions justifying state intervention in cases of domestic violence (e.g. Pylkkänen, 2009). Rape within marriage, for example, was only criminalized in Finland in 1994; before 2004, assault in private spaces led to prosecutions only when this was demanded by the victim. This lack of legal regulation reflected both an understanding of violence within the domestic sphere as a private matter, and the above-mentioned difficulties in recognizing vulnerability and victimhood (e.g. Kotanen, 2013). Thus,

inadequate regulation positioned domestic violence primarily outside legal control and left the physical autonomy of victims without protection. This lack of legal regulation met a growing amount of criticism during the 1990s which led to the alteration process which this study analyses.

Although primarily focusing on altering the process of legislation to regulate and control IPV, this article does not suggest that criminalizing IPV would be an exhaustive solution to this complex problem. While criminalization has become a common way to react to problems caused by IPV, various studies have pointed out that its use entails multiple problems, many of them unexpected (e.g. Gillis et al., 2006; Römken, 2006; Burman, 2010). However, actions against IPV often aim to promote the visibility of the problem as well as its recognition as a crime (e.g. McMahon & Pence, 2003). This is connected to the position of criminal law as a powerful social and moral entity which regulates and governs social life and individual actions. Hence, criminalization of IPV has been seen not just as a symbolic act of recognizing violence in the private sphere as unacceptable, but also as a way to effect widely on individuals' behavior.

## DATA AND METHODS

The following two sections provide an empirical analysis of change as regards the above-mentioned lack of state interference in IPV. This analysis will focus on how and why the change occurred, and how the positions and rights of victims and offenders were handled within the Finnish justice system<sup>4</sup> and broader society. In addition, the analysis will illustrate how understandings of IPV changed within Finnish criminal justice policy and legislation, as well as within society as a whole. In order to do so, data compilation, which was collected as a part of a broader study (Kotaniemi, 2013), was two-fold. The first dataset includes all documents from five legislative revisions that considered violence in the private sphere and intimate relationships between 1990 and 2004<sup>5</sup>. These legislative processes, and their time frames, include the following:

1. Criminalizing rape within marriage (1991–1994);
2. Subjecting assault in the private sphere to public prosecution and simultaneously adding article 21:17 to the Criminal Act, enabling deflection of the right to public prosecution<sup>6</sup> (1993–1995);
3. Legislating restraining orders (1996–1998);
4. Legislating restraining orders within families (2001–2004);
5. Removing article 21:17 from the Criminal Act<sup>7</sup> (2002–2004).

The legislative documents were analyzed in their original form as produced during each legislative process. The number of documents varied depending on the particular legislative process. In general, however, most included preparatory documents (e.g. a legislative proposal put forth by a Member of Parliament or a working group report<sup>8</sup>) and documents relating to the legislative work of Parliament (e.g. governmental proposals, committee reports, and expert statements from committee hearings). The governmental proposal (GP) represents the key document of every legislative process, providing

an account of the present state of the legislation in question and typically also including an international overview. Most importantly, the proposed legislative renewal — the importance, aims, and desired effects of implementation — are justified at length in the governmental proposal. The legislative data consists of approximately 3500 pages. In order to map the interaction between the Finnish justice system and broader society, the second dataset was collected simultaneously to supplement the legislative data. The secondary dataset consists of news articles from the *Helsingin Sanomat*<sup>9</sup> (HS; approximately 150 articles) and materials related to campaigns and initiatives against violence in intimate relationships (approximately 1500 pages of materials produced by different social actors and government organizations).

Analyses presented in this article utilize more detailed analyses conducted for a wider study (Kotanen, 2013). Qualitative text analysis of the data is based on argumentation analysis by Kenneth Burke (1969, 1974; also Gusfield, 1989), and particularly on his idea of language as a form of human action rather than a lens through which social action and events are observed and analysed. Hence, the key idea behind this analysis is to understand both the legislation and the legislative process as an action. Although the legislative data is in literal form, the aim of producing legal documents and the final outcome of legislative processes are statutes of law. These statutes have, after implementation, very tangible consequences for both victims and perpetrators. Moreover, they have consequences for wider society as norms constraining and altering citizens' actions. Therefore, by observing data collection from the perspective of a process, the idea of legislation as action that has concrete consequences becomes more explicit. The whole analyzed legislative change is motivated by action (*enacting a law*) and consequences of this particular action (*the impact of a law on society*), and moreover the further social action generated by legislation and its consequences (*demands raised in response to the legislation*) reflected in the secondary data (Kotanen, 2013, p. 50–51).

Analysis of the data also aimed to trace the justifications provided for prospective new enactments, focusing, in particular, on those concerning the object of protection, and the potential evaluation of the costs and benefits of the new law on society, as well as on victims and offenders. Analysis of secondary data will highlight the important indicators of broader societal change and the interactive relationship between society and the justice system. Secondary data will also pinpoint the actions of several social actors, including the media and political and organizational actors. Furthermore, it will enable tracing possible moments and measures of pressure directed at the legislature by following the rise of different perspectives and demands on the media both prior to and during legislative processes (Kotanen 2013, 48), simultaneously providing an overview of the changing recognition of IPV as a social problem in Finland over a 14-year period.

#### THE EMERGE OF THE VICTIM (1990–1995)

In the early 1990s, victims of IPV garnered attention in criminal justice policy considerations in Finland mainly due to external pressure directed at the legislature. That attention was linked to public discussions on issues of equality, which accelerated during the late 1980s and the early 1990s. In particular, ratification of the Convention on the Elimination of All Forms of Discrimination against

Women (CEDAW) in 1986 and the European Convention on Human Rights in 1989 which led to increased pressure for amendments to Finnish legislation. At that time, a husband could not be convicted of raping his wife. In addition, a strict segregation of violence in public and private spheres existed within criminal law. While minor assaults, assaults, and grievous bodily harm conducted in the public sphere all fell under public prosecution, in the private sphere only causing grievous bodily harm was subject to public prosecution. Critical attention from the CEDAW committee focused on this lack of legal regulation and prevention of violence against women. This attention was in a focal role when violations of physical integrity in the private sphere started to rise on the agenda of criminal justice policy in Finland (Nousiainen & Pentikäinen, 2013).

In addition to the CEDAW committee, several domestic actors also pressured the legislature. In particular, the violence section of the Finnish Advisory Board for Equality (TANE) — an expert-led advisory board appointed by the government — stood at the forefront by drawing attention to IPV. In the early 1990s, TANE defined violence within families and intimate relationships as a part of the wider continuum of violence against women. Furthermore, TANE agitated effectively for acknowledging victims' rights. In addition, TANE's initiative for a national victim support service was implemented in 1994 when Victim Support Finland finally began operations (Ministry of Social Affairs and Health Equality Bulletin, 5/1991).

Simultaneously, the media also became interested in the topic. For instance, the *Helsingin Sanomat* published several critical news articles pointing out deficiencies in the legislation. However, while critical, the media maintained an objective matter-of-fact tone with most articles addressing the topic relying on expert knowledge. Professionals and authorities (such as researchers, lawyers, health care and social work professionals, politicians, and members of TANE) commonly served as informants. Utilizing victim-sensitive human rights rhetoric was a shared feature in the approaches of both the media and social actors, yet human rights were not integrated into the Finnish legal culture in the early 1990s. News articles focused on rights and the vulnerable position of victims of IPV, while offenders were rarely mentioned. This is not surprising: avoiding pronounced conflicts is common in both Finnish culture and the political system (e.g. Kantola, 2006). Rather than punishing offenders or increasing sentences, any mention of offenders was mostly related to preventing violence in the private sphere. In addition, public discussions focused on instituting equal treatment surrounding violence regardless of the crime scene or the relationship between victim and offender which served as the primary justification for altering prospective legislation:

The cycle of domestic violence is difficult to break for several reasons. According to legislation, assaults at home [...] are complainant offences [...] doctors keep quiet. This silence will also harm offenders due to the repetitive and aggravating nature of domestic violence. The offender becomes responsible for his actions only after the death of the victim. (HS 24 August 1992)<sup>10</sup>

Criminal justice policy discussions about the victim's position had not yet begun. Criminalizing rape within marriage offers an excellent example of this when an initiative to criminalize rape within marriage was forced onto the political agenda due to international pressure in 1991. Victims of marital rape, perpetrators, or any references suggesting that criminal acts of this kind even occurred in Finland remained unmentioned in the governmental proposal (365/1992). Victims of IPV appeared for the first time in legislative documents in the governmental proposal (94/1993), which covered the renewal of criminal acts, including an initiative subjecting assaults in the private sphere to public prosecution without exception. As previously mentioned, minor assaults and assaults in private were complainant offences; thus, a victim request to prosecute was a prerequisite to pressing charges against the offender. Both the governmental proposal and expert written statements to the legislative committee revealed that media coverage of critical views from professionals had placed pressure on the legislature to dissolve the unequal legal regulation of public and private violence; thereby alleviating the position of the victim.

In the actual background of the proposition initiated in the governmental proposal lies the concern, currently commonly highlighted in public discussion, that the waiving of charges in so-called family violence crimes could often result from pressuring the complainant. (National Institute of Legal Policy to the GP 94/1993)

Similarly, offenders also played a marginal role in the legislative data. Instead, documents focused on broader changes in attitudes whilst contemplating the victim's inhibited agency. According to the governmental proposal (94/1993), the attitudinal change against domestic violence was so significant that disapproving attitudes were considered the '*generally accepted view*' in Finland. Thus, the existing law reflected an outdated understanding of IPV as a private matter into which the state should not intervene. Due to the shared home and the victim's position as complainant, the victim was viewed as vulnerable to intimidation by, and pressure from, the offender. This is the only context in which the offender is mentioned in legal documents. The explicit aim of the governmental proposal (GP 94/1993) was to revise the law so that pressing charges would no longer depend upon the victim.

As noted in the quote above, these perceptions reflected the views of professionals presented in the media concerning the nature of IPV in Finland. However, these views were also challenged and discounted by alternative expert knowledge presented during the legislative process. Immediately following the victim-sensitive justification, the governmental proposal noted a possible need to apply an extended code of non-prosecution '*in special cases*'. The significance of this concern from the perspective of IPV relates to its context. In the proposal, this consideration is specifically connected to violence within the family generating an assumption that violent acts in the private sphere likely belong to the category of '*special cases*' in which the public right to institute criminal proceedings would cause considerable harm:

[...] in order to emphasize that violence is not accepted even within a family, it is suggested here that assaults are decreed a matter of public prosecution. Unreasonable and purposeless

proceedings can be, in special cases, avoided by applying the extended provisions on non-prosecution. (GP 94/1993)

Due to this bipartite stance concerning the right to public prosecution, the victim's volition became the focus of attention when the governmental proposal was handed over to the legislative committee. Many of the legal experts consulted opposed the right to public prosecution, invoking the victim's right to decide to press charges. Preserving the victim's autonomous right to decide was defended using a classic liberal argument: the individual's overriding right to their own autonomy and to control their private life free from state intervention. As a result, the legislative committee decided to add a new section (21:17) to the penal code to waive charges, formulated as follows:

In assault cases, if by their own firm volition, the complainant requests that the charge not be pressed, the prosecutor will have the right to waive prosecution, if any important public or private interest does not necessitate pressing charges. (Penal Code 578/1995)

This new section conflicted with the explicit objectives of the governmental proposal (GP 94/1993), as well as the demands of social actors and the media. However, adding the new section did represent the legitimate conception of autonomy and the most valued object of protection in the private sphere as argued by experts of criminal justice policy at the time. The explicit justification for enacting section 21:17 was the protection of a victim's autonomy and freedom to act according to their own will. However, conditions related to that will were imposed: it must be '*authentic*' and '*considered*'. Thus, the ultimate object of protection is a rational victim with strong agency and the capability of making rational decisions to defend their rights. The original object of protection in the governmental proposal, the autonomy of the vulnerable victim with a limited agency, remained at risk of intimidation. From the perspective of victim protection, this change was merely cosmetic when compared to the previous law. This was also proven in other research mapping the impact of this particular enactment (Siren and Tuominen, 2003; Castrén, 2004).

#### INCLUDING THE VICTIM'S POINT OF VIEW IN CRIMINAL JUSTICE POLICY-MAKING (1995–2004)

Key motivators initiating the legislative alteration process included an acknowledgement of the IPV victim's vulnerable position, growing media attention to the deficiencies of the legislation, and an increasing interest from a number of social actors and professionals. Consequently, pressure directed at the justice system and legislators intensified in Finland after 1995. According to the research data, this also sped up the process. However, broader changes to Finnish legal culture were also essential for revisions to the understanding of state intervention in the private sphere and relationships. This change appeared alongside membership to the European Union, which demanded harmonization of national legislation with the European Convention on Human Rights. Progress culminated in the renewal of fundamental rights, which took effect in 1995.

The previous system of Finnish fundamental rights offered protection from state intervention. During the reform process, a perception was expressed that the normative bearing of fundamental rights should be extended to cover relationships between individuals, particularly if the fundamental rights of an individual were violated. This principle was written into a new law as the obligation of precautionary protection. Addressed to the legislature, this must actively advance the realization of such fundamental rights within private relationships (Lämsineva, 2006). Thus, for the first time, the state was obligated to actively protect a citizen from a threat caused by another citizen.

Juxtaposition of the victim and offender was not at the core of the discussion around legislative changes, but rather a deep conflict between differing professional conceptions of IPV. Instead of campaigning for harder punishments, critical demands fell upon the Ministry of Justice. The preparatory process for a restraining order and the surrounding public debate in 1995 and 1996 provide excellent examples of this divide. *Helsingin Sanomat* took on a more active role by publishing articles and editorials speculating on the possible reasons for the government's reluctance to advance legislation and highlighted deficiencies in victim protection. However, the single most important impetus for the first legal initiative regarding restraining orders resulted from a 1995 homicide, which garnered unusually widespread media coverage in Finland. In this case, a man shot his sleeping ex-wife in her home after repeatedly harassing, intimidating, and seriously assaulting her. Before the homicide, the victim and her relatives had appealed to the police for protection without any success. In the media coverage of this case, the critical focus was not on the offender, but the inadequate legislation preventing police from intervening and possibly saving the victim's life:

According to Törnqvist [*the interviewee, representative of the Ministry of Justice*], the major improvement, which the restraining order might entail for a woman at risk, could be the possibility of getting the police to the location more quickly and easily than today. [...] For example, if in this case the possibility of imposing a restraining order against the ex-husband had existed, the police would certainly have reacted in a completely different way to the woman's request for help. (HS 8 October 1995)

Although the debate around and concern for the victim's unprotected position intensified in the media and in Finnish society during the decade, acknowledgement from the justice system and its experts arrived more slowly. Data from the media offer several indications of different conceptions of the seriousness of the problem and the importance of protecting victims. For example, after the police operation related to this homicide was investigated by the Finnish Solicitor General, the lack of police intervention was explained as follows:

[The] police did not take any action because the case was assessed as a routine domestic violence case [...] and police assumed that the woman was hiding in some safe place. (HS 8 March 1996)

Media attention on this case culminated in growing political pressure when MP Margareta Pietikäinen prepared a legal initiative on restraining orders which was given to Parliament in December 1995. When officials from the Ministry of Justice declared the initiative too incomplete to form adequate

legislation (HS 15 June 1996), *Helsingin Sanomat* continued to critically report on the issue and demand explanations for delaying a law widely considered necessary. The debate concerning the necessity of restraining orders continued on paper for a year until a ministry representative announced in the Letters to the Editor section that the ministry would soon begin preparing the restraining order legislation (HS 2 July 1996).

The governmental proposal on restraining orders (41/1998) was finally handed over to Parliament in the spring of 1998, putting the obligation of precautionary protection into practice. In effect, it is based on restrictive orders given to a person upon whom a prohibition is imposed. The restraining order is not a criminal sanction, but an administrative order reinforced by the risk of criminal sanctions. Although intended to protect the potential victim, at the same time, it should also prevent potential offenders from receiving criminal sanctions. Despite the fact that the governmental proposal (GP 41/1998) considered restraining orders a specific measure against IPV, the private sphere remained free of legislation. That is, this specific legislation only enabled interventions in situations where the victim and the person against whom a prohibition is imposed do not share a flat or household.

Contrary to legislative processes in the early 1990s, potential offenders now began to receive more attention in the legislative records due to concerns relating to the rights of the person against whom an order was imposed. These rights, the rights of the protected person, and the importance of crime prevention were weighed up during the process, particularly within the legislative committee. The restriction of rights was validated based on the obligation of protection, and the objectionable conduct of the individual upon whom a prohibition is imposed. A similar, yet more critical, discussion surrounded issuing restraining orders within the family<sup>11</sup> in 2003 and 2004 when more substantial restrictions were placed on the rights of individuals upon whom the order is imposed (Kotanen, 2013, p. 116–139; Rantala et al., 2008):

The public discussion has one-sidedly concentrated on the needs of the person protected by the restraining order. However, imposing the restraining order has another side too: it interferes in the freedom of action and movement. Hence, the principles of the preconditions and proceedings must be paid adequate attention. [...] The legislator must weigh the prejudices caused to the person upon whom the order is imposed very carefully against the rights and freedoms of the protected person. (Report of the Legislative Committee 11/1998)

While the governmental proposal (41/1998) proceeded, MPs and most experts providing statements to the legislative committee considered the new law a necessary and useful tool which would enable police to control IPV. This contradicted the government proposal as prepared by Ministry of Justice officials which seemed to regard the new law and its preventive effect rather more skeptically. This doubt stems from the characteristics associated with potential offenders perpetrating violence in the private sphere who were seen as troubled individuals with criminal backgrounds and serious substance misuse problems whose antisocial behavior was deemed hard to influence. In addition, skepticism surrounded the understanding of the marginality of IPV. This was reflected in the

proposal, for example, in the assumption that *'the number of issued prohibitions would not necessarily increase considerably'*.

The *Helsingin Sanomat* anxiously reported on the implementation, covering, among other issues, the number of imposed prohibitions. Later that spring, it became quite clear that the ministry's low estimate for the number of issued prohibitions had entirely missed the mark. In April, the courts had already issued more than 200 restraining orders. In total, 999 restraining orders were imposed in 1999<sup>12</sup>, which subsequently stabilized at slightly more than 1,000 prohibitions annually. The Ministry of Justice reacted promptly to the situation, announcing in August 1999 that ministry officials would begin drafting an initiative extending restraining orders to parties living within the same household (HS 23 August 1999).

This quick reaction related to an increase in academic research carried out domestically on IPV. Thus, notions regarding the scale of the problem as well as the difficult position of the victim promoted by the media during the 1990s, finally received confirmation. The first Finnish victim survey of violence against women was published in August 1998, providing a sense of the scale of the problem. According to the survey, 40% of Finnish women had experienced physical or sexual violence or the threat of it by men, while 22% of all women reported experiences in their current relationship (Heiskanen & Piispa, 1998). Acknowledging this enabled a rapprochement of differing professional perceptions of the preventive measures needed both inside and outside the justice system.

A governmental proposal (GP 144/2003) allowing for restraining orders within the family<sup>13</sup> and repealing Criminal Act, section 21:17 was delivered to Parliament in November 2003. Criticism of section 21:17 had accelerated during the latter half of the 1990s, with the Finnish Prosecutor General finally taking note of the excessive use of the section in courts in 2001. His criticism was aimed at the importance given to the volition of the victim when compared to the fact that approximately 70% of assaults occurring in the private sphere, although solved by the police, often resulted in the waiving of charges under section 21:17 (Kotanen, 2013, p. 140–141). The written instruction of the Prosecutor General in the matter was an essential justification for the repeal of section 21:17 (GP 144/2003).

Research and statistics prove that domestic violence is a serious problem in Finland [and is] an issue in which society must intervene. [...] It will cause a crisis and trauma to the victim, which can be a serious threat to the victim's self-esteem and dignity. For a person who has been suffering domestic violence for a long time may have difficulty finding a solution to the problem without outside interference. (GP 144/2003)

The quote above indicates the impact of victim surveys on the governmental proposals: as a result, IPV was illustrated ambiguously as a significant social problem affecting individuals from varied backgrounds and society as a whole. In addition, the problem and its effects were approached more profoundly from the victim's point of view in much the same way as recent domestic feminist studies analyzed the victim's limited agency and position within a violent relationship and the traumatic effects of violence (e.g. Husso, 1997; Lahti, 2000). While the victim's perspective was acknowledged,

victims of IPV were not understood as ideal victims (see Christie, 1989). The victim was expected to have a rational and active agency. For instance, managing the demanding process of obtaining a restraining order within the family was left almost exclusively to the victim (Kotanen, 2013; Rantala et al., 2008). Thus, despite improvements, ambivalence in dealing with victims persists within the service and justice systems.

## CONCLUSIONS

This study has focused on rapid change in the legal regulation of IPV which took place in Finland between 1990 and 2004, and which altered considerably the position of the victim and the responsibilities of the state in relation to interventions and victim protection. The aim of this article was to explore whether the rights of the offender and the rights of the victim were viewed as exclusionary, and whether punitive demands were set forth during the analyzed process. As a result, it is difficult to perceive a juxtaposition of the victim and offender in the observed 14-year process. While the media was active and critical, it avoided sensationalism and showed no signs of attempting to arouse anti-offender attitudes. Due to the absence of discussions about increasing punishments, the data showed few signs of penal populism and a hardening in attitudes towards offenders. This is despite the fact that the motivation for the entire analyzed process rested on apprehension of the victim's rights.

Instead of viewing victims and offenders in opposition, a struggle between two divergent versions of professional knowledge — which exist inside and outside the justice system — characterized the observed process. In early datasets, knowledge amongst legislative officials formed resistance which hindered change. Undoubtedly, the hindrance was partly due to the neoclassical requirement restraining the use of criminal sanctions, but this knowledge was also based specifically on the low status legislative officials granted IPV as a criminal justice policy problem. Moreover, this knowledge was also related to the legal and criminal justice policy practiced in Finland which tended towards protecting privacy and the private sphere, while placing less emphasis on protecting the weak and vulnerable (Lämsineva, 2006; Pylkkänen, 2009). Hence, in relation to IPV, protecting privacy and the deficiencies protecting vulnerable individuals formed a built-in resistance to change within the legislative system, which only began to fade after the renewal of fundamental rights and statistical confirmation of the extent of the problem (Kotanen, 2013). Thus, changes in the Finnish legal culture and an increase in academic research drew these two forms of professional knowledge closer; consensus between them ultimately led to concrete legislative changes and victim protection in the private sphere from 2004.

Pratt and Erikson (2013, p. 194) noted that, regarding the concept of victim, the difference between penal policies in Anglophone and Nordic countries lies in the emotionally provocative victimization and populist politicization of the victim, which Nordic countries have largely managed to obviate. While extreme victimization or politicization cannot be found in Finland, if we understand

politicization as ‘detecting the political potential of some existing changes, shifts or processes’ (Palonen, 2003, p. 182), it would be misleading to state that the concept of the victim has not been politicized in Finland given the findings of this study. The entire observed legislative alteration process centered around this concept, a process tightly bound to wider social changes already emerging at the time. First, the alteration process was connected to broader changes in society related to shifts in the understanding of the problematic nature and proportion of IPV and the recognition of women rights as human rights in Finland. Second, those legislative changes were rooted in a change of paradigm in the legal culture and criminal justice policy of Finland; mandatory changes due to its European Union membership and the integration of human rights into Finnish legislation (Kotanen, 2013).

How can the manner of the legislative process and the social activity around it be explained? The key explanation offered by this study is the role of experts and professionals. The displacement of expert knowledge to advance sentimental populist politics in the shape of the suffering victim or fearful citizen is viewed as one of the central problems within criminal justice policies in Anglophone societies (e.g. Garland, 2001, p. 13; Pratt and Eriksson, 2013, p. 193–194). Instead of bypassing experts and their knowledge, here the legislative process — and interestingly even the politicization of the victim — was expert-led in many ways. As discussed, the key social actor, TANE, promoted not only the agenda of IPV victims, but crime victims in general as an expert-led parliamentary advisory board.

Furthermore, a continuous link exists between the media and experts, who represented the most common informants and interviewees for news articles. In addition, legislative changes from 1998 onwards were increasingly justified by scholarly research. Consensus regarding the seriousness of the problem and the victim’s need for protection was reached at the beginning of the millennium following the publication of several domestic studies concerning IPV, and the first victim survey on violence against women. In addition, the examined development concerning crime victims, and victims of IPV in particular, is equivalent to similar observations made in Sweden: the ideology of the welfare state, which should equally protect the interests and wellbeing of all of its citizens, is clearly present also in Finland (Tham, 2011, p. 594). Equality and further promotion of it, not least in the form of equal regulation and control of violence in public and private spaces, gained much more attention in the data than the offender or sentences imposed on offenders.

From a perspective strictly focused on restraining the use of criminal law without taking the wider social context into account, it could be argued that acknowledging violence against women has had a punitive impact on lenient Finnish criminal justice policy (e.g. Lappi-Seppälä 2012) as it expanded legislation regulating IPV, especially compared with the lack of legal regulation in the early 1990s. However, instead of more punitive tendencies, the findings here suggest that these legislative shifts should actually be connected to much wider social changes occurring globally. For example, the rise of anti-violence attitudes and a recognition of human rights has rendered us more sensitive to

violations of personal integrity, and has gradually led to the decline of all forms of violence (e.g. Pinker, 2011).

The interaction between law and society indicates that legal regulations must evolve with the requirements of a changing society (Nuotio, 2007). Compared to the 1970s when Finnish criminal justice policy was formed, we are currently living in a very different social environment. As such, ideas regarding human rights and women's rights to sexual and physical autonomy have changed drastically. While the position of the crime victim has improved significantly in Finland since the turn of the millennium<sup>14</sup>, the zero-sum game between the rights of victims and rights of offenders mentioned by Garland (2001) appears to exist in a Nordic version based on the fear of instituting an excessive criminal justice policy. In this version, the rights and protection of crime victim represent a threat to an offender-sensitive, moderate criminal justice policy; violence against women may be seen as an intimidating example of this threat since the struggle to diminish and control such violence has broadened the sphere of legal regulation.

1. Although Pratt (2008a, 2008b) originally refers to Denmark, Norway, Sweden, and Finland as Scandinavian countries, this article will use the traditional definition of Nordic countries, since Finland was not regarded, historically or geographically, as a part of Scandinavia (e.g. Mathiesen, 2012).
2. Before 2011, sexual intercourse with a defenseless person/victim was defined in the Criminal Act as sexual abuse, and was therefore accompanied by a more lenient penal scale as compared to rape.
3. This empirical example is based on a monograph (Kotanen, 2013).
4. Justice system here refers to a legislator, e.g. ministry officials and governmental actors taking part in legislative processes.
5. The period, 1990 to 2004, was the time frame when the majority of legal regulation concerning IPV was established in Finland. The legislative reform of 2011 where minor assaults in intimate partnerships were subjected to public prosecution is not included to this study (see Kotanen, 2013).
6. Deflection is possible if the victim requests waiving the charges on her/his own firm volition.
7. Thus, subjecting assault committed in the private sphere to public prosecution without exception.
8. Typically, the ministry managing the preparation of legislation sets up a working group. The report of the working group will generally constitute the governmental proposal.
9. *Helsingin Sanomat* is the leading broadsheet newspaper in Finland with the largest circulation of all newspapers in Nordic countries. In this region, daily subscription of a newspaper is more typical than purchasing a single copy from a newsstand.
10. All quotes from the research data were translated from Finnish by the author.
11. The restraining order within the family enabled the imposition of an eviction and a barring order on a violent member of a shared household. The maximum duration of such prohibition was three months, during which the person upon whom the order was imposed was prohibited from contacting or approaching the person who obtained the prohibition, and from returning to the residence.
12. According to governmental proposal 41/1998, during the first years (1 July 1988–30 September 1991), 654 restraining orders were imposed in Sweden. The population of Sweden is approximately double that of Finland.
13. Restraining orders within a family can be imposed in cases where the (potential) offender and (potential) victim share a household. In practice, the person on whom the restraining order is imposed must leave the shared household and is not allowed to return. In addition, the person is not allowed to meet nor contact the protected party for the duration of the order. The maximum duration of the prohibition is three months. The justification for imposing the prohibition is prevention of a homicide or bodily injury, or prevention of a serious threat of such acts (GP 144/2003). For more information, see van der Aa et. al., 2015.
14. For example, minor assaults within a family and among close relations were complainant offences until 2010, when they were subjected to public prosecution. In addition, the crime victim settlement act took effect in 2015.

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