

Open prisons – will they last?

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Abstract / English:

Will the Danish open prison have a job to fulfill in the future? A cornerstone for decades, this institution could be squeezed out by alternatives to imprisonment on one side, increased use of closed prison and more punitive rules on the other side. Still, a Foucauldian perspective points to the open prison making the prisoner survey and control himself in a way the closed prison does not entail. This matches a general development in society and may support the open prisons existence and position.

Even if prison rules have become stricter, the open prison still lives up to its name. However, what should be its role in the future? Unfortunately, actual documentation to lean on for a research-based recommendation is lacking. A strong hypothesis is that the open prison is less detrimental to inmates than the closed setting. Accordingly, further research is suggested on certain issues. However, if the above hypothesis is correct and open prisons are to be furthered the communication of knowledge from existing research may be more important than recommendations of future research. At the individual level, punitiveness is related to attribution of crime; research and researchers have an important role in explaining the often counter-intuitive messages of criminology.

Introduction

Scandinavian countries are known for using more lenient punishment and having more humane prison conditions than other countries. Denmark even sends by far the largest amount of prisoners to open prisons; most of them as open as to be without ring walls and fences.

This cornerstone in the Danish prison system may be at threat in coming years. On the one hand, alternatives to imprisonment is used to a much larger extent than earlier – with the result that some of the usual ‘customers’ are now subject to community sanctions or electronic monitoring. On the other hand, increased punitiveness may lead to the open prison becoming a parenthesis rather than a cornerstone.

Therefore it is relevant to ask the following questions: Will the open prison have a job to fulfill in the future? Should it have a job to fulfill? And finally, what role is relevant for research and researchers in relation to the position of the Danish open prison?

I hypothesize that while increased use of alternatives to imprisonment as well as increased punitiveness pose threats to the open prison, the institution will still have an important role to play in the Danish prison system.

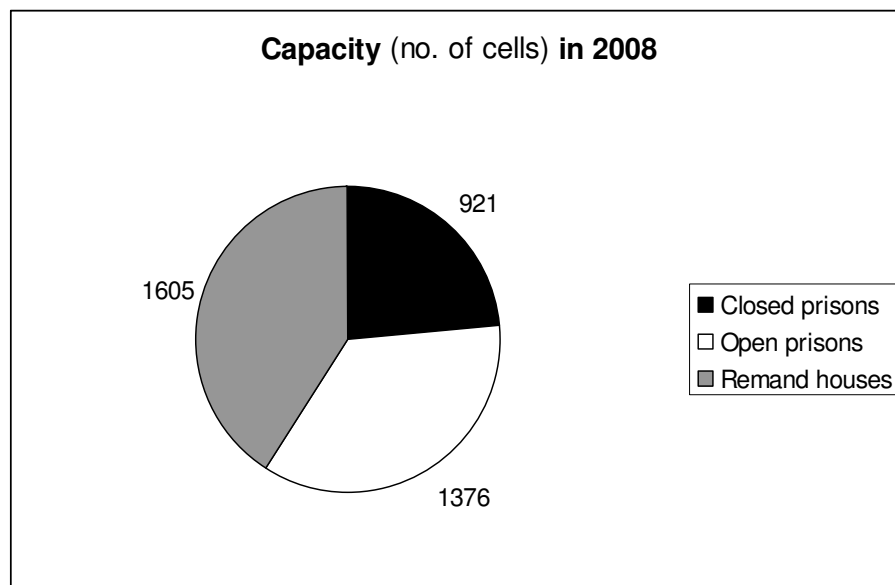
This paper first gives an overview of the use of open prisons in Denmark. Then follows a discussion of future threats and opportunities and finally of the role of research in relation to the use of open and closed prisons.

The use of open prisons in Denmark

Open prisons have been in use in Denmark since 1943, at first as a solution to a need for more capacity during and after WWII. From 1947 open prisons were established as permanent institutions, inspired by Sweden. Precursor to the open prisons were already found in 1933 in the 'work house' and 'youth prisons' established with the penal code of 1933 (Clausen 2010, Bendtson 2009).

Today, the open prison constitutes a cornerstone in the Danish prison system and most prisoners serve their sentence there. The main rule when placing a prisoner is that he should go to open prison. Closed prison should only be used for those with very long sentences (thus at risk for escape) and those who are not able to deal with life in open prison. 'Very long sentences' has up to now meant five years, but may be increased soon (Justitsministeriet 2011). 'Not able to deal with' means for instance that the prisoner has escaped from open prison, has taken part in altercations or is at risk of violence.

A glance at the distribution of prison cells on open prisons, closed prisons and remand houses (pre-trial prisons where conditions are rather similar to those in closed prison) may lead to the thought that not that many serve their sentence in an open prison:



Graph 1. Capacity in 2008. Source: Kriminalforsorgen 2009a.

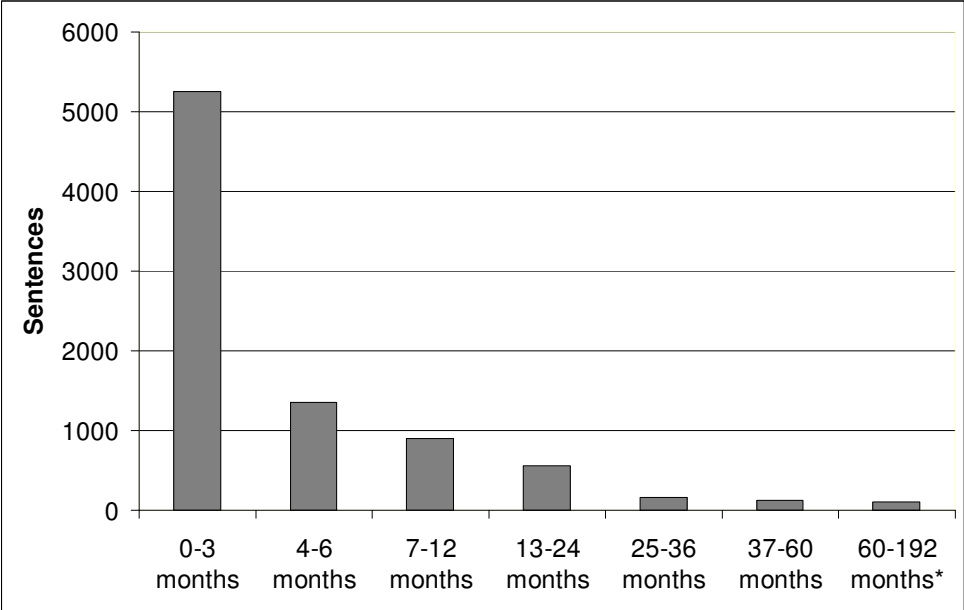
Only 35% of cells were in open prisons on a day in 2008¹; so, does the main rule of people going to open prison have any effect of prison management?

The distribution of cells on one given day does not give an accurate picture of their use; this is due to the very different length of sentences given. The prisoner who has a long sentence may occupy the same cell for a year; the neighboring cell could be used by as many as 52 different prisoners, if these all had the shortest sentence possible, that of 7 days. As longer sentences

¹ Some sections in the open prisons are flexible and sometimes used under custodial rules rather than the open prison regime.

are mostly served in closed prisons, it follows that cells in open prisons are used by a much larger number of prisoners than do closed prisons.

Unfortunately, it is not possible to extract statistics from the Prison Service Database that accurately picture the amount of individuals in closed and open prisons over a year. Data can be extracted on the number of sentences, of admissions and of cells, whereas it is more difficult, datawise, to follow the individual. Still, the below graph gives an impression of the amount of short sentences used in Denmark; it is evident that only very few sentences are above 5 years. Even though prisoners may serve more sentences at one time (thus going to closed prison if the total length of sentences is above five years), by far the most prisoners go to open prison.



Graph 2 Sentences said by courts in 2008. Source: Kriminalforsorgen 2009b.
* The bar '60-192 months' (5-16 years) includes sentences to imprisonment for life. In 2008, one life sentence was said.

Apart from those who go directly to open prison from the first day of serving their sentence, many prisoners spend the last part of their sentence in open prison. They do not make up the bulk of the open prison population, contrary to popular belief. Another popular belief has it that only people with lesser crimes stay in the open environment. This is also wrong - one can go to open prison with almost any kind of sentence; as long as one lives up to the general requirements of not having a very long sentence ahead and being able to deal with the rules and circumstances of open prison.

The open prison regime

Open prisons differ from closed prisons in a number of respects, but the physical layout may make the biggest impression on the outsider. Located in picturesque countryside areas, most open prisons are beautiful places to arrive at - and most are without a general fence. Facilities

are generally welcoming, one-story buildings that make a newcomer think of a Scandinavian folk high school. In contrast to the closed prisons, there often are large green areas for e.g. sports.

For the prisoner, however, it may matter more that the internal rules as well as the rules regarding prisoners' interaction with the outside society are much more lenient than in a closed prison. One has to stay within the invisible borders of the prison, but it is easier to get permission to leaves. Visits from family members are more comfortable than in the closed setting and rules regarding daily life in the ward are more lenient as well.

Like other prisons, the open prisons adhere to the principle of normalization – but the principle is more easily implemented in the open setting. The philosophy is as follows: Imprisonment harms people and makes them susceptible to do more crime. Therefore, conditions inside prison should be normalized, i.e. life inside should be as much like life outside as possible. Normalization entails the following conditions for prisoners serving a sentence:

- Wards are furnished with fully-equipped kitchens, where inmates cook their own food, morning and night. For lunch, inmates make a lunch pack to bring to their work place, as do most Danes on the outside.
- Among the kitchen equipment is a full set of cooking knives. In flexible use wards there is a precaution, though: the top of the knife has been manipulated to avoid it being used as a weapon. Also, the knife may be fastened to the wall with a cable.
- Groceries for cooking are bought in a store on the prison grounds. In some cases, shopping takes place in a nearby town. In this case, inmates make up a joint grocery list, and a few inmates with leave permission go to town to do the shopping.
- Inmates receive a weekly allowance to use for food and other necessities. On top of this comes wages. All in all, the allowance and the wages sum up to the equivalent of the lowest social welfare subsidy.
- Inmates wear their own, private clothes and wash these themselves in the wards' washing machine. To a certain extent they may bring private belongings to prison.
- All prisoners serving a sentence are obliged to work in prison, though they may study or receive treatment instead. The work week has the same length as in the surrounding society, 37 hours.

Not everything is normalized, though. Transportable cell phones are not allowed. People who are retirees in the outside society have to work in prison. Prisoners work the whole year (excluding national holidays) and have no vacation, whereas most adult Danes enjoy five or six weeks of paid holiday. Prices in the prison store are higher than in the surrounding society.

Future threats and opportunities

Having described the use of the open prison, this section will discuss threats and opportunities in relation to its use in Denmark; first in relation to developments in the use of alternatives to imprisonment and the increased use of closed prison; then in relation to more general developments in penal policy in Denmark and abroad; finally in relation to the object of punishment.

Developments in the use of alternatives to prison and the use of closed prison

While open prisons still receive by far the largest amount of prisoners, the most resourceful and the least resourceful of their population are increasingly going to other institutions. This is in comparison to the situation ten or twenty years ago.

Among the resourceful prisoners, community sanctions and electronic monitoring take a lump of former open prison clients. This can be expected to have a most positive impact on said clients as they avoid some of the negative effects of imprisonment.

The least resourceful prisoners instead go increasingly to closed prison which may have to do with the following factors:

- Longer sentences, meaning that more people have to start their stay in closed prison rather than open prison.
- Gang-related crime, as all gang-related prisoners go to special wards in closed prisons. On top of this, the last few years have seen an upsurge in gang-related violence and a change in the general policy in the criminal justice system towards those related to gangs. According to a Danish tabloid, the Danish Police has now set a target of having 250 gang-related prisoners at a given time (Politiet får...). This naturally impacts the use of prison cells.
- Prisoners who are to be extradited after their sentence automatically go to closed prison, no matter the length of their sentence.
- More prisoners are seen as unfit for open prison. This tendency can also be seen in the increased number of denials of parole – the percentage of denials going from 21% in 2001 to 28% in 2009 (Kriminalforsorgen 2010:64). Even if the largest amount of denials were found in open prisons (646 or 27% of all paroles), the impact can be expected to be greatest in closed prisons, where a denied parole would typically be related to a much longer sentence (272 or 52% of all paroles in closed prison). Løppenthin (2011) has demonstrated that the increase in denials of parole is not related to a general deterioration of inmates' resources. Rather, a change in administrative practice combined with an upsurge in gangs (whose members go to specific wards in closed prison) have lead to the higher number of denials.

As a consequence, open prisons experience that their clientele is changing to contain less very resourceful inmates. At the same time, a number of formerly potential clients are instead going to closed prison – the use of capacity is shifting to the 'advantage' of closed prisons. Indeed, the open prison could be threatened.

General developments in penal policy

Rhetorics as well as actual policy has changed in the direction of increased punitiveness in the last 15 years, as Balvig already demonstrated in 2004. The following years have seen further increases in the length of sentences, introduction of random drug testing in prisons, increased security measures etc. etc.

The regime changes make it relevant to ask: do open prisons actually live up to their name anymore? In the early 1980s, the local bus went through the State Prison of Sdr. Omme on its 80 km route through Jutland. The bus would drive the length of the prison wards, making it possible for inmates to get on the bus and for outsider (e.g. prisoners' visitors) to get off. When this arrangement stopped, it was on the initiative of the transportation company, not of the prison for whom the bus route had been most practical (Birk 2011) – even if an escape-seeking prisoner could just go take the bus out of prison. In the same way, an outsider in a car

could easily go through the prison, whether as a 'tourist' (to see what a prison looks like – and not welcomed by the prison!), in order to drop off contraband or to help a prisoner escape. Today open prisons are very different, not just because through-traffic is hindered in the Sdr. Omme prison today. Certain wards will have fences and other kinds of perimeter security and there are high and all-encompassing fences round two open prisons. Random urine testing takes place, like in the closed prisons – and prisoners are allowed to bring fewer kinds of personal belongings with them to prison.

On the other hand, many other kinds of rules have become more lenient than in earlier decades. Most importantly, the principle of normalization and the practice of self-administration were introduced in the early 1990s. Also, it would still be possible to leave some open prisons by simply walking away – though one would probably be apprehended quite soon. So, open prisons definitely do live up to their name, and the last twenty years' changes have gone in both in both the more punitive and the less punitive direction.

On a more general level, the increase in punitiveness remains a threat to the use of open prisons. In the 1990s, the penal code was changed 22 times ("Straffen skærpes...") and from 2002 to 2010, sentences were raised 47 times ("Regeringen har hævet..."). Politicians from the government and their supporting party have stated a number of times that the level is now ok, *but* for a few areas, where a higher punishment should be put in place. This has been the situation for some time, which leads to the thought that Denmark has not seen the last increase in punitiveness – whether in the form of longer sentences or of harsher conditions inside prison. Of course, one could expect lessons from the USA to have an impact on the public and decision makers – however, Danish decision makers did not learn from their American counterparts when using the Philadelphia and Auburn systems as models for the state prisons in Vridsløselille and Horsens more than a century ago.

While a change of color of government is possible, this should not lead to the expectation that punitiveness will be rolled back. As demonstrated by Balvig (2004), government color is not necessarily related to punitiveness. Instead, bottom-up factors regarding "the crisis of the welfare state, estrangement and individualization" (2004: 182) are important drivers for punitiveness. These factors have not diminished in importance since 2004 and the bottom-up perspective has become even more salient.

As such, one can expect an increase in punitiveness in Denmark in coming years – a very relevant threat to the role of the open prison. Though of course, the prediction in the late 1960s was that imprisonment would decline...

The object of punishment

Foucault (1977) analyzed the birth of the modern prison and coined the term 'normalization' – a different kind of normalization than the principle in use in the Danish Prison and Probation Service. Foucault's concept of normalization relates to the role of the prison along with other institutions in shaping the individual into a productive and efficient societal unit. The prison is but one of these institutions, which also count hospitals, schools and the army.

The open prison described earlier in this paper is a far cry from the discipline described by Foucault. The prison service principle is not (on the surface) about normalizing the individual; instead it aims at normalizing the conditions inside prison.

Foucault described a change from physical punishment aiming at the body to imprisonment aiming at the offender's soul. Has the object of punishment changed in recent years?

First, the open prison functions on the backdrop of closed prisons – the threat of closed prison is one of the reasons why prisoners stay behind the invisible border of the open prison. Maximum security wards are still at the end of the normalization spectrum.

Second, Foucault focused on institutions exercising discipline over the body in order to discipline the mind. This is very much what goes on in the open prison: the inmate conducts his own surveillance and discipline. The motivation to leave the prison is constant, 24/7. Also, he is normally physically able to leave the prison, in contrast to many patients in hospital beds who will also have an interest in staying in the hospital. The open prison inmate is in a very different position than in closed prison, where he may dream and fantasize of escape without trying – or even without using the possibilities offered, as when most inmates chose to stay inside the walls of the Danish closed prison of Vridsløselille in 1993, when a bulldozer went through the prison wall.

Self-discipline is a muscle that will be flexed and developed a lot during a prison sentence in open prison, where freedom is in constant view and no alarm is attached to the leg as in electronic monitoring. In a way, the open prison exerts not only normalization unto the prisoner, but self-management. The inmate self-manages, not just when he decides not to cross the invisible line. He cooks his own food and he goes to work or receives treatment or education.

This is interesting seen in relation to the needs on the job market in the information society. This society cannot make do with the streamlined machine-like individuals of the industrial age. Other skills are needed and therefore shaped by institutions. The streamlined machines demanded much guidance and instruction and the time for this is not in supply in today's information society. Moreover, yesterday's streamlined humans developed a lot of resource-demanding defects. They smoked and drank alcohol, developing illness and cluttering up hospitals. They are not efficient today.

The open prison inmate can be interpreted as one that prepares himself to become or continue as an efficient production unit. His society does not allow him to stay out of circulation for a long time, or to hang around as superfluous fat. If it does, it is to serve as a warning for other citizens.

If the above interpretation of the open prison is valid, and the institution expresses a refinement of punishment, open prisons should in fact be strengthened in the coming years. Following Foucault, however, needs on the labor market can be expected to be decisive in whether open prisons will have this role. If potential prison clients are not needed on the labor market, another great confinement can be expected.

The role of research

Summing up, open prisons face a number of threats to their cornerstone position in the Danish criminal justice system. Changes in penal policy, in prison policy and in administrative practice may lead to actual open prisons occupying a minor role in the future. Since 2004, Balvig's prediction of increased punitiveness in Denmark has been confirmed, even if it remains to be seen whether his expectation of a continuation under a differently

colored government is valid. On the other hand, the increasing need and demand for citizens to self-manage may point to a strengthening of the open prison. Here, inmates are to govern and control themselves, not just from escaping but also in their general self-maintenance.

Considering these possible routes for the open prison – what may be the role of research and researchers? Should the open prison be recommended?

Sadly, the extraordinary Danish use of open prisons has not been an object of research. This should be seen in relation to the rather small amount of Danish research in prisons and probation – even if there has been quite an upsurge in recent years.

In the absence of actual research on open prisons, one might expect researchers to recommend the use of open prisons (in contrast to the closed prison). This would be based on the hypothesis that the more lenient rules and conditions in open prison would lessen the negative effects of imprisonment.

The open prison lessening the negative effects is however a *hypothesis*, which has not been tested in research. The testimony of inmates and staff makes the hypothesis salient; still, a recent account by an open prison inmate (Pedersen 2009) points the attention to the effect of the loss of autonomy encountered even in open prison. His book was written on the backdrop of experience from open prison only, so it does not give the opportunity to compare between open and closed conditions.

Also, a survey carried out by Minke (2010) showed that the level of prisonization was not lower in open prisons, as one might have expected. As Minkes research focused on closed prisons and as her fieldwork was done in one of these, we do not know why this was the case or in what respects prisonization in the closed setting differed from the open setting.

Minkes earlier research (2006) on a specific halfway house has shown the advantages of the Skejby institution to other halfway houses; the Skejby method involves mixing inmates with ordinary young citizens with a non-criminal background. Considering this research, one of the earlier mentioned threats to the open prison becomes very real. As more sentenced people get the opportunity of an alternative to imprisonment, the open prison population can be expected to be characterized less by resourceful citizens and more by people with lower socio-economic status and higher degree of previous criminal involvement. If the salient factor in the Skejby model is mixing people with the less criminally involved, it is most unfortunate if the open prison population becomes less advantaged in general. This does not mean that the use of alternatives to imprisonment should be lessened; however, there may be an effect on the remaining prison population.

More research needed, of course

Should open prisons remain a cornerstone in the Danish prison system? An answer to this question would depend on the use of alternatives and closed prisons. Open prison should not be used instead of alternatives. Open prisons are probably better (less detrimental) than closed prisons, but actual research documentation is lacking.

As usual, “more research!” is one thing to recommend, then. A number of areas would be important to look into, both to gain more knowledge in the field and to create a basis for decision making in both the political and the administrative sphere.

First, more knowledge would be welcome on the negative effects of different elements of prison regimes. As stated above, we may hypothesize that open prisons have less negative (and maybe even more positive) effects on prisoners than closed regimes. However, we do not know whether research would support this hypothesis. Though it would be tempting to do direct comparisons between open and closed regimes, the question is whether this kind of research would be the most useful one. As a myriad of different regimes and treatment opportunities have surfaced (at least in the Danish setting), it could be more useful to try and describe what *elements* of prison regimes are the most important as to effects on prisoners. Here, the interaction between staff and inmates would probably have a lot to say. The hypothesized lessened negative effects of imprisonment in open prison may be related to the possibility to leave the prison; they could also be related to a different climate between staff and inmates. Finally, it is possible that an easier escape from prison has an effect on the interaction between staff and inmates. The closed prison very much resembles a monopoly, where management and staff have less interest in listening to their customers (Hirschman 1970); the open prison more resembles an organization with competitors in that it is easier for their clients to choose the ‘exit’-option. Following Hirschman’s argument, the open prison could create a more beneficial working environment between prisoners and staff due to the easier access to escape or to stay away from prison after a leave. So, research on the effects of different elements and degrees of imprisonment would be welcome, possibly with weight on prisoner-staff interaction, prisoner autonomy and prisonization.

Second, Denmark fares well in international comparisons of imprisonment rates, but the question is whether the normally used measures give an accurate picture of punitiveness. As Denmark uses short prison sentences extensively, the picture created of Denmark could be overly cheerful. How would Denmark fare compared to other Western democracies if one uses alternative measures, for instance the percentage of the population who have been imprisoned in the last five years? Also, what is the effect of the extensive use of short sentences? On the one hand, one would expect it to have less negative effects for the individual and for society than if the same individual received long sentences. On the other hand, it may be that in other countries the same individual would not go to prison at all. What is the effect of the use of short sentences on the individuals and on the Danish society?

Third, in a time where much political focus has a more or less nationalistic angle, recent research (Pratt 2008a and b, Ugelvik & Dullum (forthcoming)) in ‘Scandinavianness’ in criminal justice will have an important role to play. How are prison regimes and sentencing policies related to Scandinavian culture? How is the development in recent years related to Scandinavian traditions and to the traditions of and developments in other countries? What may be future expressions of ‘Scandinavianness’ in Criminal Justice?

Other roles for researchers

Even if research on the above themes were initiated, it would take years before the evidence was available and could be used in decision making. When that finally happened... it is very possible that the research would be overlooked in decision making processes. Publishing a

report does not make it half the way to results being put to use – by others than researchers and students.

Researchers and those using research had well try other routes if they want to influence the political agenda as well as administrative routines.

One question is whether research is today delivered to the public, to media and to politicians in ways that are actually tailored to make them take in crucial messages. Research mostly takes on a rational and logic angle – whereas in politics and the media, emotions may be the key to getting a message through; especially in a field like criminology.

Also, researchers relate individuals' level of punitiveness to their attribution style (Sargent 2004, Unnever & Cullen 2009), i.e. how they perceive why people commit crime. Hypothesizing that open prisons ought to be promoted in relation to closed prison, it is possible that one could work to enhance the level of empathetic identification with prisoners.

Finally, if Denmark increases punitiveness in coming years, large costs are on the way to the national budget. Increased sentences would mean increased need for capacity and staff; staff accounts for around 70% of the Prison and Probation Service budget and most of these costs are for uniformed staff. Also, staff costs are the lowest in open prisons, meaning that extended use of closed prisons would greatly increase costs. A projection of costs in realistic scenarios, compared to alternative use of the same funds and possible effects hereof in crime prevention may convince some of the members of the public and of political parties that do not today see a danger in increased punitiveness.

In an analysis of developments in prison populations, von Hofer wrote that “The increase in Holland, the decrease in Finland and the long stability in Sweden were made possible because no strong political opposition challenged the course of events” (2003: 33). The similar point was made by Gould regarding the ban on buying sex in Sweden from 1999; the ban was possible because of the lack of liberal opposition (2001: 453). Researchers are not to act like politicians at all; that would be an unfortunate mix of roles. Knowledge from researchers, however, may be an important component when citizens and politicians make up their mind on a subject. Getting knowledge through may be necessary to the existence of diversity of opinion, and with that, opposition.

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