Electronic monitoring and the problem of net-widening

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Central questions

- What is net-widening?
- Why was/is net-widening important?
- Empirical data about net-widening?
- Quid net-widening and EM?
- Is net-widening a useful concept/tool to assist our understanding of the ways in which EM has been, might be and should be used? Why does it matter?

The start

- 1970s: Diversion became an acclaimed stategy for reducing the numers of offenders, particularly young offenders, from appearing in court and avoiding the stigma and labelling of judicial processes

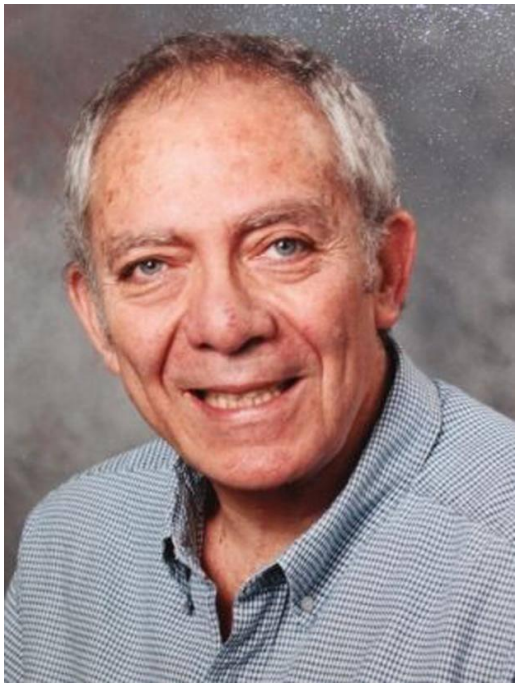
- Reductionist policies, avoiding imprisonment and its negative effects
  - Alternatives to reduce the use and cost of custody

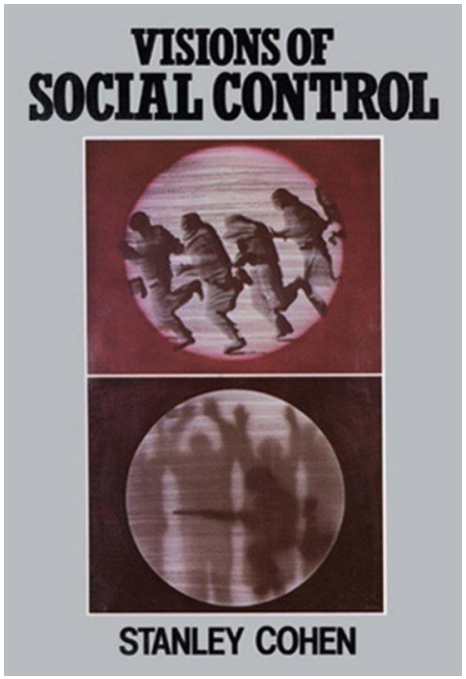
The start

- Lerman (1975): assessment
  - Prison for probation violations
  - Those not recommended for probation received longer sentences

➔ creation of new 'diversionary' measures did not lead to long-term decarceration and ultimately expanded the number of people subjected to various forms of supervision and detention

Stanley Cohen





Modern society is characterized by
an overarching tendency towards 'more social control'

Cohen (1985)

Net-widening metaphore

- *'The major results of the new movements towards 'community' and 'diversion' have been to increase rather than decrease the amount of interventions directed at many groups of deviants in the system and, probably, to increase rather than decrease the total number of people who get into the system in the first place. 'Alternatives' become not alternatives at all but new programs which supplement the existing system or else expand it by attracting new populations. I will refer to these two overlapping possibilities as 'thinning the mesh' and 'widening the net'"* (Cohen, 1979: 347).

Dispersal of displine

- Continuation of discipline in society (cf. Foucault)
- S. Cohen (1979). *The punitive city*; (1985) *Visions of social contro*l
- 'Widening the net'
  - increase of the total number of people under judicial contol
- 'Thinning the mesh'
  - More intense community punishments, higher level of interventions
- 'Blurring'
  - Blurring boundaries between institutional and non-institutional forms of control, between the public and private
- 'Penetration'
  - Combined effect of the different tendencies through which the punishment penetrates to the informal networks of the social fabric

Net-widening

- Real effect of diversion is thus
  - Expanding ➔ net widening
  - Intensifying the level of intervention ➔ net strenghtening
  - Supplementing rather than altering or replacing punishments
- 'Punitive archipelago'
  - New resources, new technologies and professional interests are applied to an increasing number of 'clients' and 'consumers'.
  - Communities are mobilized to act as voluntary control agents in their own right, but prison stays at the core of the system

Net-widening metaphore: critiques

- Cohen (1985: 41)
  - 'an over-elaborate, somewhat arch and even, occasionally, quite misleading metaphore'
- McMahon (1990)
  - Vagaries in the use of the concept
  - Conservative
    - Excuse for not looking for alternatives (cf. 'nothing works')
  - Inherent pessimistic
    - Drawing attention away from any moderation of penal control
  - Methodological flaws
    - Overgeneralizations from limited data

Clarifications

- Tonry & Lynch (1996)
  - Front-end net-widening
  - Back-end net-widening

- Quantitative aspect : amount
- Qualitative aspect: intensity

Existing research (Aebi et al., 2015)

- Juvenile diversion programmes in US
- Phelps (2013) : US
  - on average, expanding probation rates have led to slightly greater incarceration rates; but there is wide variation across US states, in such a way that probation has been acting both as an alternative to incarceration and as a net-widener, depending on the period of time and on the state studied.
- European studies
  - NW seldom empirically tested
    - NL: CS led to a net-widening effect (Spaans, 1998)
- '*Although seldom empirically tested, the concept of NW is often mentioned in theoretical articles*' (p. 578)

Aebi et al. (2015)

- **Testing** net-widening (1990-91 – 2010)
- PP rates and rates of CSM (EM included) SPACE I and SPACE II
  - Longitudinal perspective
    - An increase of CSM is correlated with a decrease of the use of prison
  - Cross-sectional perspective
    - Countries with a high rate of persons serving CSM show low prison population rates (assuming that CSM are at least partially responsible of the low PP)

Challenges of this research

- *Empirical data on the number of CSM executed in each country during the 1990s and early 2000s are not easily available*
- *The particularities of each national criminal justice system and the way in which their criminal statistics are produced remain a major obstacle for cross-national comparisons in general as well as for those based on SPACE data for prison populations and for probation populations. As a consequence, the results of this study must be interpreted cautiously.*
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Aebi et al. (2015)
Longitudinal perspective

Is an increase of CSM correlated with a decrease of the use of prison?

PP rates in 1991, 2000 and 2010
Aebi et al. (2015: 579)

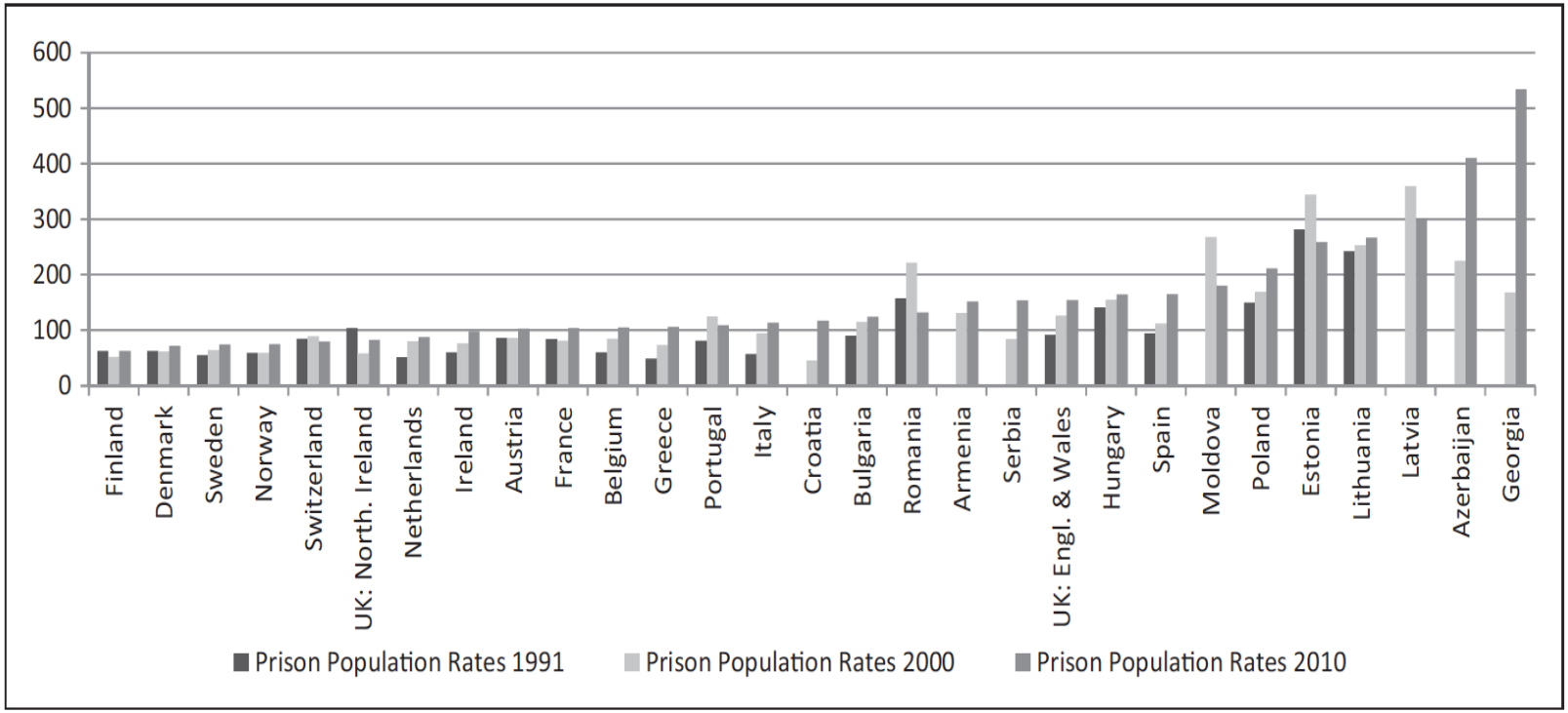


Figure 1. Prison population rates in 1991, 2000 and 2010.

Aebi et al. (2015)

- Intermediate conclusion of the longitudinal perspective
  - Increase of both CSM and the use of imprisonment

  ➔net–widening effect?

  ➔'some' relationship
- Quid crime rates ➔ constant?
  - *Prison population rates and probation population rates increased despite the fact that the overall crime rate was falling* (Aebi et al, 2015: 587).

Cross-sectional perspective

Do countries with a high rate of persons serving CSM show low prison population rates (assuming that CSM are at least partially responsible of the low PP)?

Probation and PP in 2010

Aebi et al. (2015: 580)

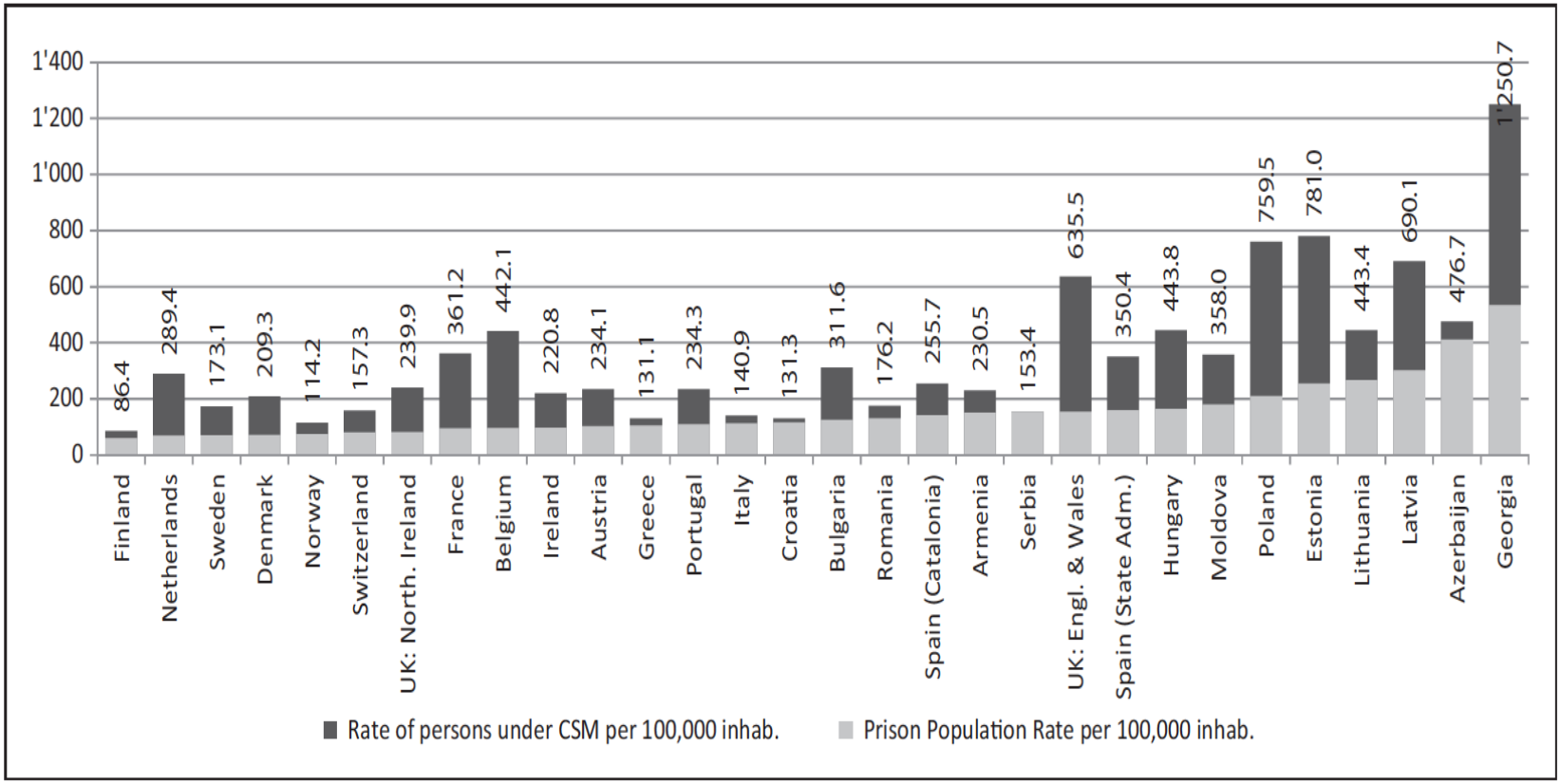


Figure 2. Total prison and probation population rates per 100,000 inhabitants in 2010.

Probation and PP in 2010

- 7 out of the 10 countries with the highest probation population rates are also among the 10 countries with the highest prison population rates (England and Wales, Estonia, Georgia, Hungary, Latvia, Poland and the State Administration of Spain)
- On the other extreme of the scale, among the 10 countries with the lowest probation population rates, there are three (Finland, Norway, Switzerland) that are also among the 10 countries with the lowest prison population rates.
- Once more, the hypothesis that CSM are used as alternatives to imprisonment must be **rejected**

Aebi et al. (2015) Conclusion

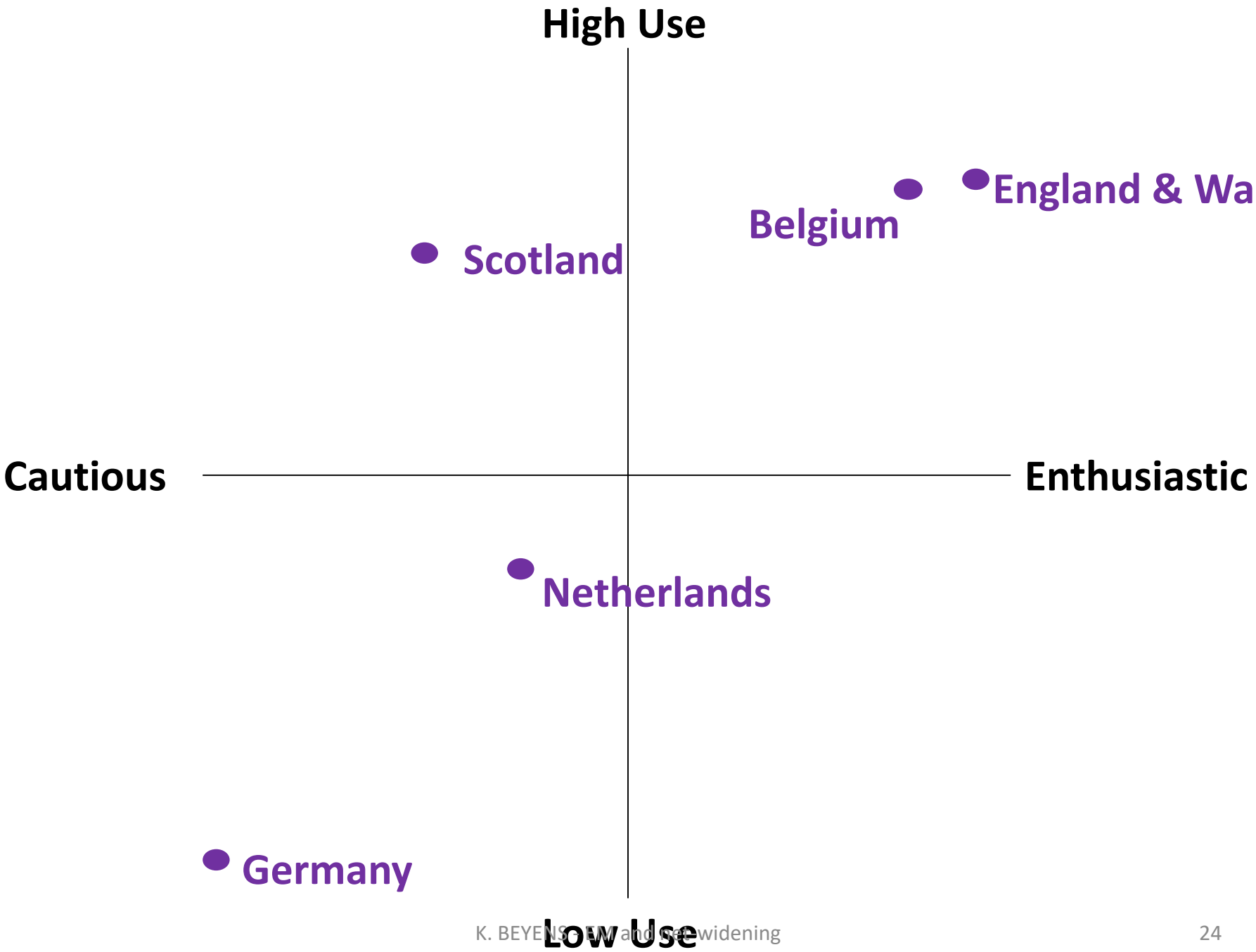
- The increased use of community sanctions and measures did not lead to a decrease of prison populations across Europe.
- The result of 20 years of community sanctions and measures in Europe is a huge number of persons serving such sentences, but no visible effect on prison population rates. Community sanctions and measures are **not a panacea** for reducing imprisonment. Indeed, they do not at all guarantee a decrease of the prison population.

Comments

- Analysis based on aggregated data
  - Quid decision-making at the micro-level?
- Quantitative aspect ➔ quid intensity?
- No separate analysis for EM

Hucklesby et al. (2016)

- '*Creativity and effectiveness in the use of electronic monitoring as an alternative to imprisonment in EU member states*' (emeu.leeds.ac.uk)
- 5 jurisdictions
  - Belgium - Kristel Beyens
  - Germany - Frieder Dünkel
  - England and Wales - Anthea Hucklesby
  - The Netherlands - Miranda Boone
  - Scotland - Gill McIvor and Hannah Graham


High Use
England & Wales
Belgium
Scotland
Cautious
Enthusiastic
Netherlands
Germany
Low Use

Comparison PP and EM

- Less extensive use of EM is associated with long-term reductions in prison populations and reducing imprisonment rates (NL and Germany)
- High prison populations are associated with high use of EM.
  - Germany and the Netherlands (rates of 76 and 69 respectively in 2015) have significantly lower imprisonment rates than England, Scotland and Belgium (rates of 148, 139 and 105 respectively in 2015).
- **But**….
  - Only 5 countries
  - Link between PP and the use of EM is not clear/direct
  - Availability of data
  - No analysis of decision-making at the micro-level

Risks of net-widening with EM

- **Front-end: sentencing and pre-trial detention**
  - EM in stead of no intervention (widening)
  - EM in stead of a less punitive intervention (fine, CS, probation supervision) (thinning)
    - EM provides a stricter and more continuous form of control (GPS)
  - EM as an addition to an existing (supervisory) measure; 'cocktails' (thinning)

Risks of net-widening with EM

- **Back-end: execution of sentences, parole**
  - Transition to release ➔ keeping subjects longer under more strict forms of control (widening and thinning)
  - Supplementing (penitentiary furlough)
  - Increasing risk of recall ➔ increase the PP (widening)
- 'Blurring'
  - Blurring boundaries between the public and private (home, involvement of family members)
- 'Penetration'
  - Combined effect of the different tendencies through which the punishment penetrates to the informal networks of the social fabric

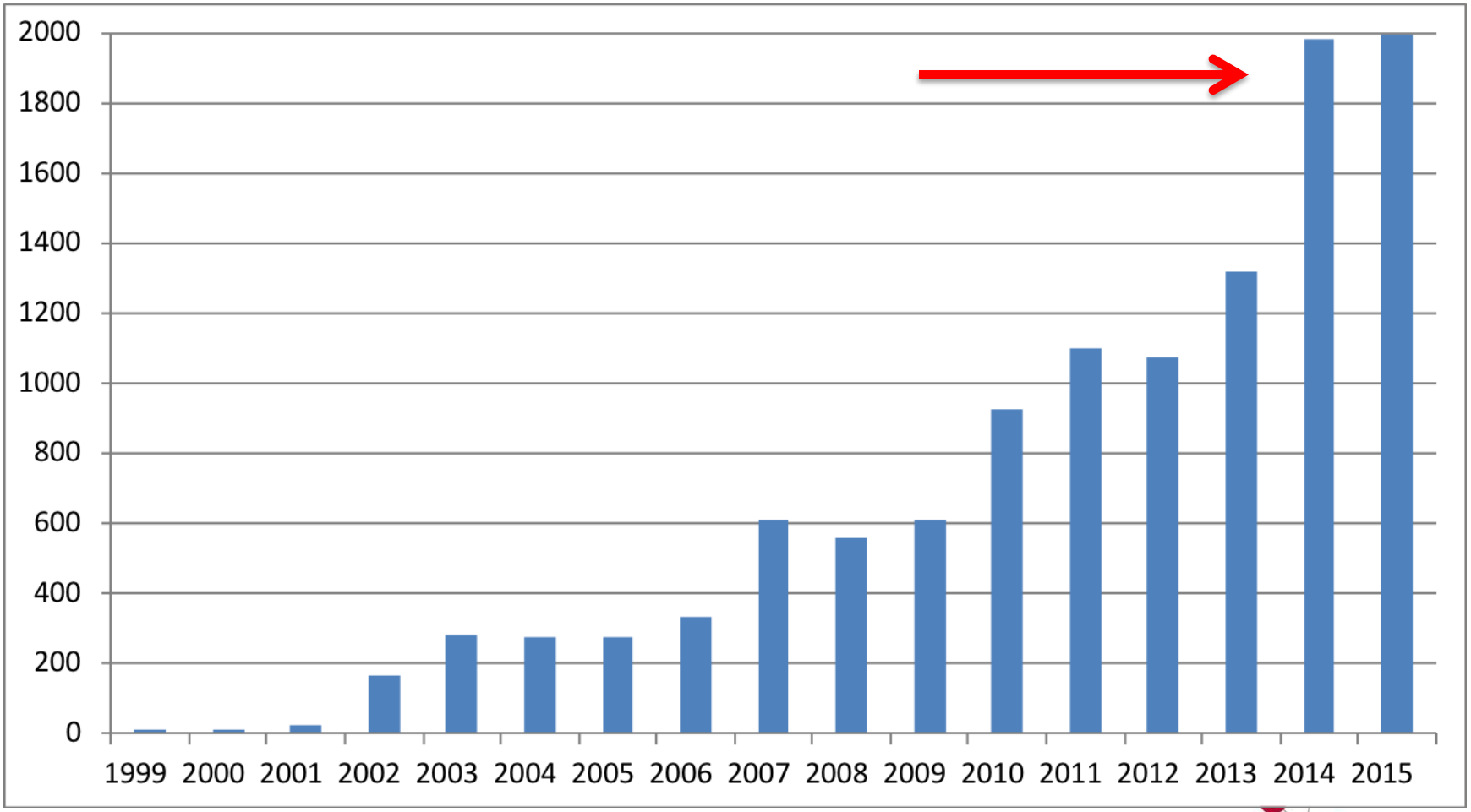
Illustration : the Belgian case

- Extending the scope and diversification of EM
  1. Way of executing prison sentences (2000)
     - Back-door (+ 3 y PS) and front-door (- 3 y PS
  2. Disposal of the sentence implementation court (2012) (after prison sentence, preventive measure)
  3. Alternative for pre-trial detention (2014)
  4. Autonomous penalty at sentencing level (2016)
  5. Alternative for detention of mentally ill prisoners (2016)

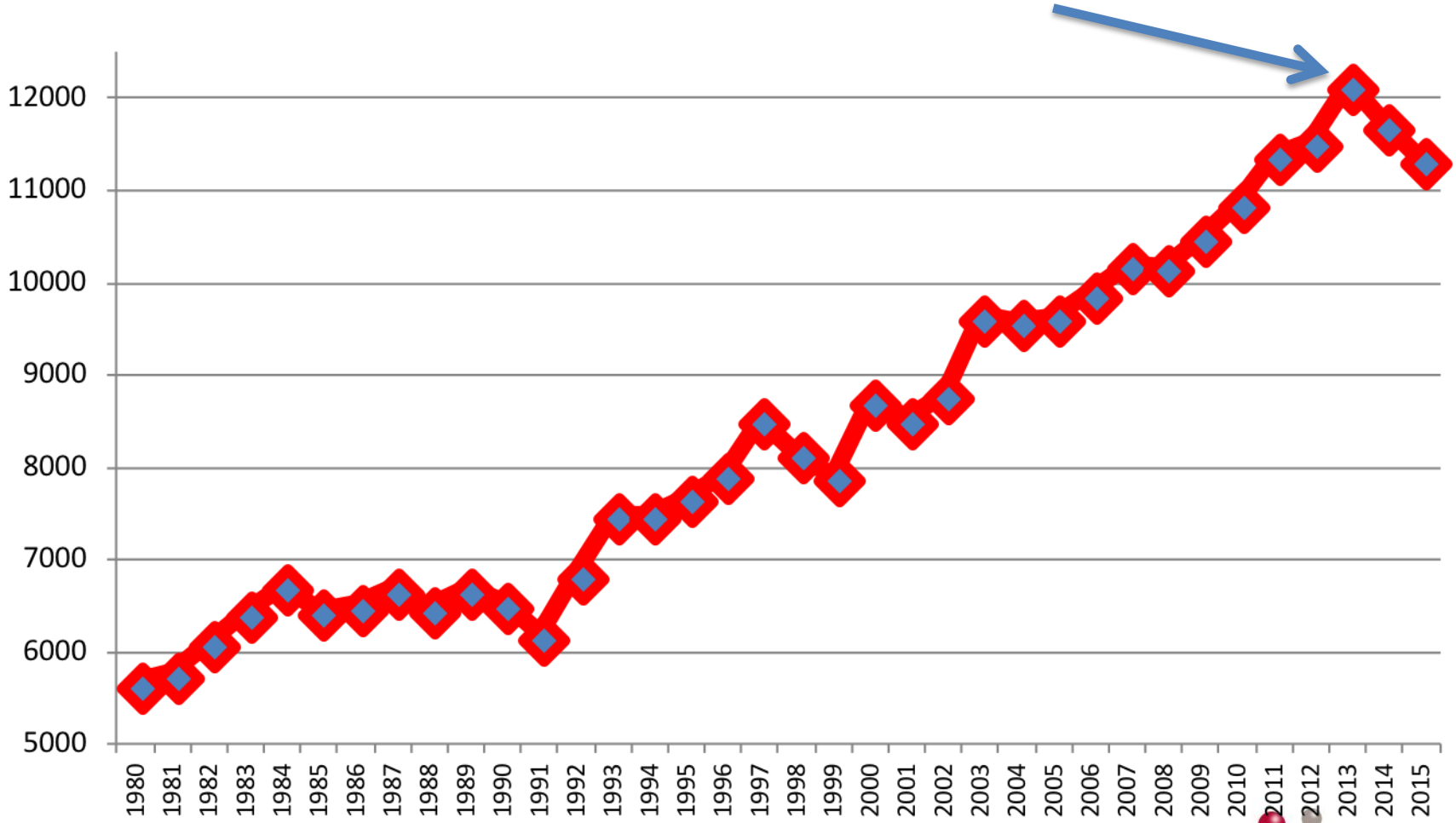
Technology

- RF (2000)
- Voice verification (2012 -2013
- GPS tracking (remand)(2014)

EM : A story of growth



Reducing the prison population?



Net – widening?

NO

- **Front door: up to 3 years PS** ➔ replacement of PS, not decided by the sentencing judge, but by the prison governor
- **Alternative for pre-trial detention??**
  - Very strict regime to avoid net-widening ➔ perverse effect of concern for NW!!

YES

- **Back-door: + 3 y PS**
  - EM has become a vast ingredient of the 'trajectory of gradual release' ➔ longer under stricter form of control

Net-widening?

- YES and NO
- Not sure…
  - EM as an autonomous sentence? (sentencing judge)
  - Quid recall to prison? ➔ reason?
  - More research is needed
    - Difficult to study : ! microlevel decision-making
- BUT: the effect of the EM increase in 2014 on the decrease of the PP is undeniable

Conclusion

- Net-widening as a reminder of the **unintended consequences** of reform and the introduction of new punishments, sensitizing concept
- Attention for quantitative AND qualitative aspects: **expanding and thinning/intensifying**
  - Appeal of introducing ever more restrictive community sanctions
    - Populist punitiveness
    - Belief in the positive effects of EM and of technology as a panacea for other problems, fetisjising technology
    - Political enthousiasm

Conclusion

- Search for more 'credible' (= punitive…) alternatives to avoid imprisonment
  - Technology as an easy available and cheap ally …
  - Insisting private sector
- ! Goals punishment and of EM
  - Re-integration, crime prevention
    - Do we (always) need EM to attain these goals?
    - What is the most effective?
- Avoiding net-widening as an general concern
    - Subsidiarity, proportionality, parsimony,

Conclusion

- Qualitative aspect: intensity, punitiveness of EM
  - Insights into EM regimes is needed
    - strictness of the follow up ➔ recall? chances, three strikes and you're out? ….
    - Free/uncontrolled hours per day

➔ the most 'generous' users are not necessarily the most' punitive'…

Conclusion

- YES: net-widening IS a useful concept/tool to assist our understanding of the ways in which EM has been, might be and should be used!
- Why does it matter?
  - Strive for a right balance between
    - parsimony versus follow up/more control
      - Cf. violations, breach, recall
    - Intervention or non-intervention
      - Cf. iatrogenetic effects of interventions
    - Re-integration? ➔ ! Human supervision

Conclusion

- However….
- Net-widening is difficult to prove with quantitative data
- Need for in-depth qualitative research into decision-making and execution of EM

Questions for work shop

- Is there a sensitivity for net-widening in your country with regard to EM policies or the use of EM? Can you give an example of this?

- Which kinds of (potential) net-widening do you perceive in your country? Can you give some examples?
  - Back-end or/and front-end net-widening

Questions for work shop

- Are there any evaluation studies showing net-widening with regard to EM in your country?

- Do you think net-widening is an important criterion to evaluate EM policies and practices in your country? Why (not)?

thank
you
baie dankie
dziękuję
tänan
suksema
tack så mycket
gràcies
dank u
شكرا
obrigada
ありがとう
molte grazie
gracias
teşekkür
ederim
obrigado
dakujem
vám
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merci
धन्यवाद
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谢谢
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