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Alternatives to Imprisonment across Civil and Common Law Jurisdictions: Analytical-interpretative Challenges

Patricia San Juan[1]
University of Malaga

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Abstract: RIMES is designed to assess social exclusion across criminal justice systems through a set of indicators. This article focuses on item 35, a rule which examines the absence of alternatives to imprisonment for less serious offences. It also explores the analytical and interpretative challenges involved in applying this indicator across civil law and common law jurisdictions covered by the instrument. Using RIMES as its principal methodological framework, the study adopts a comparative approach to reconstruct the functional equivalent of the category of less serious offences. Since Spain is the only jurisdiction in which an equivalent category is expressly recognised in criminal legislation, its legal framework provides the starting point for this analysis. The findings highlight the methodological complexity of identifying comparable categories across different legal systems, requiring consideration not only of statutory criminal law but also, in several jurisdictions, of judicial practice. The study demonstrates that, although item 35 operates as a quantitative indicator of social exclusion through the absence of alternatives to imprisonment, its application across contexts requires a qualitative legal reconstruction of the category it seeks to measure.

Keywords: *less serious felonies, common law: civil law, criminal sanction system.*

1. Introduction

Criminal policies, as part of public policy, must be evaluated to assess their efficacy, effectiveness, and efficiency. In this context, the framework proposed by Dunn (1981) provides a useful basis for analysis. This author outlines this process in four main phases: problem identification, formulation of alternatives, decision-making, which leads to the adoption of strategies, and, finally, the assessment of the results derived from their implementation.

Nevertheless, the evaluation of criminal policies poses specific challenges stemming from their aim of maintaining crime rates within socially acceptable limits. This objective is closely linked to the notion of security, a dynamic concept subject to constant review in democratic societies, as the criminal phenomenon is shaped by a range of social, economic, or political factors. Consequently, the analysis of security as a central element of criminal policies extends beyond its individual or physical dimension to include structural elements related to social cohesion.

[1] Email address: patriciasanjuan@uma.es

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In this context, RIMES marks a turning point in political-criminal analysis from a substantive and comparative perspective. On the one hand, this instrument revolves around the construct of social exclusion, conceived as a continuum in which social neutralisation and social reintegration serve as explanatory counterbalances to the political-criminal strategies analysed. From an analytical perspective, an inverse relationship is assumed between the two extremes: low levels of social exclusion will lead to greater reintegration, and vice versa. This thesis allows us to distinguish between more inclusive or exclusionary criminal justice systems based on their configuration (García-España, 2021).

On the other hand, RIMES does not seek, from a comparative perspective, to test hypotheses regarding the impact of public policy orientation on crime levels. On the contrary, it is designed as a tool that enables the comparison of different jurisdictions with regard to their penal institutions, with the aim of promoting the design of criminal policies that are less socially exclusionary (Díez-Ripollés, 2021).

In short, RIMES brings together criminological and criminal policy contributions in the study of crime control strategies through 9 thematic pools. Each of these addresses a specific dimension of penal systems, incorporating socially exclusionary rules and practices. This chapter focuses on the third category, relating to the system of sanctions and sentencing, which includes, amongst other aspects, judicial discretion, harsher penalties for repeat offences, electronic monitoring, and the extensive use of imprisonment. In particular, this analysis focuses on item 35, a rule addressing the absence of mechanisms other than imprisonment (for example, community service, house arrest or fines) to punish less serious offences (hereinafter, *less serious felonies*).

The growth of RIMES over time has enabled its application to a wide range of jurisdictions, facilitating the presentation of the results obtained across the two main legal traditions: common law and civil law systems. This division is not only of systematic value but also allows for the identification of similarities and differences in the way both legal traditions address alternatives to imprisonment for crimes of intermediate severity.

2. Methodological challenges in defining *less serious felonies*: item 35

Item 35 is considered a rule; its purpose is therefore to determine whether legal provisions establish alternatives to imprisonment for *less serious felonies*. Consequently, the frequency with which these sanctions are applied is not analysed, as this falls within the scope of practices.

The wording of the item refers to the distinction between misdemeanours and felonies as categories grouping criminal conduct of lesser and greater severity, respectively. This dichotomy operates primarily in common law systems, allowing for analogies to be drawn with other regulations. However, defining *less serious felonies* poses significant difficulties. In particular, this category is not expressly defined in most of the systems analysed, regardless of legal tradition, which necessitates an interpretative exercise that will be developed throughout the chapter.

2.1. The Spanish case as a reference for operationalising Item 35

The concept most closely resembling the formulation of the item is found in the Spanish context through *less serious offences*, which have formed part of the Criminal Code since the

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original enactement. This equivalence is further reinforced if we consider that Spain was the jurisdiction used as a pilot for the instrument (García-España, 2021). This analysis, updated in 2025 to reflect those relevant legislative changes, provided the reference framework for applying item 35 to the remaining jurisdictions. This circumstance facilitates both comparison and comparative interpretation of the different legal systems.

Less serious felonies are based on articles 13 and 33 of the Criminal Code. The former defines the concept, whilst the latter provides its content. Regarding the last one, its paragraph 3 sets out a catalogue of penalties, including prison sentences of three months to five years, community service, disqualifications and other penalties involving the deprivation of rights. The breadth of this penal framework therefore reinforces the difficulty in establishing functional equivalences between systems.

Given the dichotomous nature of the RIMES instrument, the various protocols must be answered either affirmatively or negatively. Within these frameworks, the application of this item to the Spanish legal system results in a negative response, as it prescribes specifically alternative sanctions to imprisonment for this category. As we shall see, the Spanish legal system provides key analytical guidelines for interpreting the item.

2.2. Score of Item 35 in the comparative analysis across jurisdictions

In quantitative terms, it is worth noting that of the thirteen jurisdictions examined, only 23.07% answer in the affirmative, indicating that three jurisdictions lack alternatives to imprisonment for less serious felonies. Consequently, the remaining 76.93% provide for these possibilities in their legal systems, a distribution set out in the following table:

Table 1. *Score of Item 35*

Jurisdictions	Item 35
Spain	
Finland	
Portugal	
Romania	
Italy	
Poland	YES
Germany	
France	
England & Wales	
California	YES
New York	
Texas	YES
Florida	

The table reveals the item's limited discriminatory power in strictly quantitative terms. Its interpretative relevance lies not so much in the response provided to it as in the analytical process required to arrive at it. Consequently, this quantitative limitation does not compromise its potential within the RIMES instrument but rather reinforces its qualitative dimension, centred on the configuration of the sanctioning system.

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In view of the analytical division between the common law and civil law traditions that will form the backbone of this chapter, we consider it appropriate to provide some descriptive notes on each of them. On the one hand, the first unit comprises the jurisdictions of the United Kingdom, Florida, New York, Texas and California, with the latter two responding positively to the item, accounting for 40% of this sample segment. On the other hand, the second section comprises the states of Germany, Italy, France, Poland, Romania, Spain, Portugal and Finland; of these, only Poland responds positively to the item, accounting for 12.5% of the total in this section.

As can be inferred from the proportions shown, the analytical interest of item 35 lies not so much in the distribution of responses but in the challenges posed by the consideration of crimes of intermediate gravity, insofar as only the Spanish legal system expressly refers to this legal concept. For this reason, the following two sections examine the particularities of each jurisdiction in the treatment of crimes of intermediate severity, as well as the potential of this item in the evaluation of legal systems from the perspective of social inclusion.

3. Study of less serious felonies in the common law system: the contrast between the US and UK contexts

This section offers a preliminary overview of the characteristics of the common law systems that warrant a separate analysis. It then examines the jurisdictions covered by the RIMES instrument and their approach to less serious felonies. Firstly, it focuses on selected US jurisdictions, including the states of Florida, New York, and Texas, while also considering the United Kingdom, to enable a comparison between the two models.

3.1. Characteristic features of the common law system in the definition of less serious felonies

The common law system is characterised by the central role of judicial decisions (Orts-Llopis, 2001) based on the doctrine of judicial precedent (*stare decisis*), which binds courts to previous decisions in similar cases (Marquès-i-Banqué, 2017).

In this context, felonies and misdemeanours have their origins in judicial practice, although in many jurisdictions they coexist with codified legislation. With the aim of standardising criteria for determining sentences, instruments such as sentencing guidelines have been developed, the design of which has varied according to the jurisdiction.

Nevertheless, it is important to note that although both US and UK systems aim to increase transparency in criminal justice decision-making, they have pursued this objective through different implementation approaches. On the one hand, the changes introduced in the United States through the Sentencing Reform Act of 1984 were characterised by their binding nature and the establishment of guidelines with a limited margin of discretion, with the aim of ensuring consistency in sentencing decisions (Marquès-i -Banqué, 2017).

On the other hand, these sentencing guidelines in the United Kingdom were introduced gradually, particularly with the Crime and Disorder Act of 1998. Subsequent legislation has helped to refine this instrument, focusing more on the consistency of the judicial system than on the uniformity of outcomes. Consequently, these guidelines operate as a general framework that can be adapted to the circumstances of the specific case, allowing for a

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greater margin of judicial discretion. Although these guidelines are binding, courts retain a degree of discretion, provided that sentencing decisions remain within the statutory framework applicable to the offence in question (Marquès-i -Banqué, 2017).

Therefore, sentencing guidelines can be understood as a bridge between legal rule and judicial practice, which explains their inclusion in the examination of item 35.

The Common Law section is structured around two distinct contexts. On the one hand, the US context will be addressed, covering the situations in Florida, New York, California and Texas, ranging from the least to the most restrictive in terms of alternatives to imprisonment for less serious felonies. Separately, the British jurisdiction will be examined, given that the distinction between felonies and misdemeanours does not apply in the United Kingdom, which introduces a different logic to the study of alternatives to imprisonment within the *common law* system.

3.2. US jurisdictions

The jurisdictions analysed in the US incorporate the distinction between felonies and misdemeanours into their regulations. However, the category of *less serious felonies* is not expressly defined, which means it must be elaborated upon in each case to identify alternatives to imprisonment for offences of intermediate severity.

On this basis, the analysis of this legal concept in the various states will be based on four key areas: (i) the construction of this category (legal basis, functional or speculative process); (ii) the criteria for determining the sentence; (iii) the existence of alternatives to imprisonment; and (iv) the scope of judicial discretion.

3.2.1. Florida and the functional construction of 'less serious felonies'

The Florida model is more developed as it offers alternatives to imprisonment from both an institutional and operational perspective. Although its legislation does not treat *less serious felonies* as a separate category, the sentencing scoresheet is a key element in profiling, as well as in determining alternative sanctions.

Florida's criminal law is set out in the Florida Statutes (FS), specifically in Title XLVI (Chapters 775–896). Section 775.08FS establishes a three-way division of criminal offences, namely felonies, misdemeanours and non-criminal violations, with the latter two excluded from the analysis due to their lesser severity. Within the category of felonies, section 775.081FS distinguishes five subcategories of offences, namely capital offences, offences punishable by life imprisonment, and first-, second- and third-degree felonies. The range of penalties is broad, extending from prison sentences of more than one year to the death penalty. In terms of sentencing, section 775.083FS provides for a fine as a supplement to imprisonment, provided that the offence is not a capital offence. For its part, section 775.082FS introduces a greater margin of judicial discretion by allowing the imposition of fines (capped at $15,000, $10,000 and $5,000) in lieu of a prison sentence.

However, this regulation does not correspond directly to *less serious felonies*. Consequently, the definition of this category was established in a functional manner, based on judicial practices considering the grading of sentences. In this regard, Section 921.0024FS is of particular importance, as it establishes the sentencing scoresheet as a judicial assessment

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mechanism. This document contains aspects relating to the seriousness and characteristics of the offence, as well as the offender's criminal history, thereby guiding the type of sentence imposed and its duration. Furthermore, this same provision establishes the distinction between state prison sanctions and non-state prison sanctions, the latter including punishments such as probation, community service or community supervision.

The combined application of sections 775.082FS and 921.0024FS results in the establishment of three scoring bands, each one with specific consequences: for scores below 22 points, non-state prison sanctions shall be given preference; for scores between 22 and 44–48 points, imprisonment shall be considered as a possible but not mandatory measure. The upper threshold reflects two separate provisions under Florida's criminal procedural regulation (921.0024FS and 921.00241FS, respectively), both relating to the configuration of the sentencing scoresheet. Above this range, imprisonment shall be mandatory.

Consequently, judicial discretion is a central pillar in the legal definition of *less serious felonies* in Florida, as this category aligns more closely with the second of the ranges outlined. This argument is reinforced by section 921.0024FS, which provides for the imposition of alternatives to imprisonment in cases of first-offence offences or third-degree felonies, provided that the result on the sentencing scoresheet does not exceed 48 points.

The *ad hoc* development of this category requires verification of whether sanctions other than imprisonment constitute a genuine alternative within this State's penal system. Thus, reports by Marguiles, Packard et al. (2019) show that for the range spanning 22 to 44 points, prison in the strict sense accounts for only 11% of the measures imposed, whilst county jail (imprisonment for those sentenced to less than one year) accounts for 43%. However, the remaining 46%, classified as 'other', refers to punishments such as probation or community control, which do not involve imprisonment.

In short, the Florida system approaches *less serious felonies* through a functional model based on guided judicial discretion. In this process, the sentencing scoresheet plays a central role, acting as a key mechanism in the individualisation of the sentence and allowing for the application of alternatives to custodial sentence. This dynamic contrasts with other systems, such as that of New York, where the identification of alternatives to prison is more diffuse, requiring greater interpretative effort.

3.2.2. The New York context: open classification of less serious felonies

New York State Penal Law (NYSPL) divides offences into three categories: felonies, misdemeanours and violations, each of which comprises several subtypes in accordance with section 55.10 NYSPL. The latter two categories are excluded from this analysis, with the focus placed on felonies (letters A–E, from most to least serious).

Similar to Florida, New York does not have a specific category for *less serious felonies*. However, its classification is more complex, as it lacks tools for individualising the sentence and establishes imprisonment as the default penalty. In particular, in accordance with the provisions of section 70 NYSPL, the imposition of imprisonment will depend on the severity and violent nature of the offence and the existence of previous convictions for the offender. This open-ended approach necessitates inferential reasoning in the identification of offences of intermediate severity.

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Taking into account the five categories referred to above, Class A and B felonies are excluded due to their seriousness. On the one hand, the first category carries a mandatory life imprisonment sentence, and, on the other, for the second category, the imposition of a fine alone is prohibited; the exclusion of Class B offences stems from the interpretation of section 60.01 of the NYSPL, a provision which is itself decisive for the definition of *less serious felonies*. The content of this provision stipulates that the penalties imposed by the courts may consist of imprisonment, a fine, or both. Additionally, the exclusive imposition of a fine is prohibited for Type B felonies alongside drug offences, thereby highlighting their seriousness.

Consequently, subcategories C–E are treated as *less serious felonies* insofar as they are the only criminal categories (with the exception of misdemeanours and violations) that permit the sole imposition of fines. Consequently, in New York, the imposition of alternatives to imprisonment depends on judicial practice, as there are no structured criteria, rendering *less serious felonies* a purely speculative category. Despite these difficulties, New York legally recognises alternatives to imprisonment, acting as a stepping stone towards the jurisdictions of California or Texas, which have a more restrictive approach to custodial sentences.

3.2.3. The split sentence as an apparent alternative to imprisonment: the Californian model

California's criminal law introduces approaches that differ from those previously applied in the US context. Although the distinction between felonies and misdemeanours remains, alternatives to imprisonment lack real effectiveness, projecting an appearance of choice that does not affect the punishment for less serious offences.

The sanction closest to avoiding imprisonment is regulated in section 1170(h) of the California Penal Code, known as the split sentence. This provision allows the judge to impose an initial period of imprisonment followed by mandatory supervision thereafter, whilst the convicted person may be released on certain conditions.

Introduced into Californian criminal law in 2011 by the Criminal Justice Realignment Act, the split sentence is not intended as an alternative to imprisonment but as a form of sentencing. However, it helps to define the severity of the offence, as it is only applicable to *less serious felonies*, excluding those of a violent or sexual nature. Given that misdemeanours are punishable, under Section 19 of the Penal Code, by up to six months in county jail, a fine of up to one thousand dollars, or both, the split sentence constitutes the penalty associated with *less serious felonies*. According to a report published by Bird, Grattet et al. (2017), the offences most commonly punished with this measure were the sale, possession and production of toxic substances (32.7%), 'other offences against the person' (13.7%), possession of weapons (10.3%) and burglary (10.2%).

Consequently, the existence of penalties other than imprisonment for less serious felonies in California is merely nominal. In this regard, although the split sentence is provided for in the Penal Code, its characteristics do not position it as an alternative to imprisonment but rather as a form of partial enforcement. This mechanism, which is relevant to the classification of *less serious felonies*, places this model in an intermediate position compared to

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systems such as that of Texas, where alternatives to custodial sentences are subject to greater limitations.

3.2.4. The restrictive model in Texas regarding alternatives to imprisonment

The Texas sentencing regime significantly restricts alternatives to imprisonment. Although the felonies and misdemeanours dichotomy operates in accordance with the provisions of Section 12.02 of the Texas Penal Code (TPC), the configuration of *less serious felonies* requires recourse to other legal institutions, such as limitation periods and community supervision measures. This paradigm shift marks, as we shall see, a greater degree of discretion in the construction of this category.

Texas criminal law classifies felonies into capital felonies, first-, second- and third-degree felonies, and state jail felonies, prescribing a punishment associated with each according to its severity. In this regard, capital felonies (Section 12.31 TPC) are excluded from the analysis, as they carry the death penalty or life imprisonment. On the other hand, state jail felonies (section 12.35 TPC) are excluded due to the associated penalties (imprisonment for 180 days to two years and a possible fine of less than $10,000) and the possibility of being recognised as a Class C misdemeanour, which makes it difficult to consider them as crimes of intermediate severity.

Consequently, this leaves first-, second- and third-degree felonies, regulated respectively in sections 12.32, 12.33 and 12.34 TPC. However, all of these, regardless of the duration of imprisonment, additionally or complementarily provide for the payment of a fine under the previously established terms. More specifically, for first-degree felonies, the minimum term is 5 years and the maximum is 99 years; for second-degree felonies, the range is between 2 and 20 years' imprisonment; and, finally, third-degree felonies carry a term of imprisonment of between 2 and 10 years. Thus, the fine does not operate as an alternative sanction to imprisonment. Considering the set out above, the requirement would be deemed fulfilled in the Texas case, a circumstance which does not prevent the definition of the category of *less serious felonies*.

That being the case, the concept of *less serious felonies* is derived from the combination of limitation periods and community supervision measures. The limitation periods, in accordance with the provisions of Section 12.01 TPC, are set at 10, 7 and 5 years, with no limitation period applicable to the most serious offences. Based on the relationships established between certain offences and this measure, the offence of human trafficking stands out. In this regard, Section 20A.02 TPC classifies this offence as a second-degree felony, establishing a general limitation period of 10 years. From this perspective, it is determined that the range of limitation periods previously mentioned applies to second- and third-degree felonies, with no notable differences between the two categories.

Consequently, recourse is made to the institution of community supervision (Section 42.A.001 of the Texas Code of Criminal Procedure). This measure, considered a form of suspension of sentence, is prohibited for first- and second-degree felonies. Consequently, it will apply to third-degree felonies, which facilitates the assimilation of this category with *less serious felonies*.

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In short, the Texas jurisdiction lacks alternatives to imprisonment, particularly in less serious felonies, presenting itself as the system with the greatest limitations within the US unit. Consequently, the development of this *ad hoc* category has required a higher level of abstraction using indirect legal institutions. The particularities observed across different US jurisdictions highlight the heterogeneity of the sentencing model within the Anglo-Saxon legal tradition. This study is rounded off with an examination of the British system, which incorporates different approaches to alternative measures to imprisonment for offences of intermediate severity.

3.3. The specificity of the British model: recourse to the courts

The abolition of the categories of felonies and misdemeanours in the UK since 1967 necessitates a reformulation of the analytical parameters used to define *less serious felonies*. Unlike the US models, which are based on substantive criteria, the British system is structured around procedural principles, with the judicial forum playing a key role.

The British legal system provides a three-tier classification of crimes (*indictable*), as known as indictable-only offences, either-way offences and summary offences, derived from the combined interpretation of the Criminal Law Act 1977 and the Crime and Disorder Act 1998. The first category, which includes offences such as robbery with intimidation or rape, constitutes the most serious category and is tried by the Crown Court.

Either-way offences include, for example, drug-related offences, and these are dealt with by the Magistrates' Court, which may refer the case to the Crown Court or deal with it by summary trial, depending on the seriousness of the offence. Finally, *summary offences*, which are less serious, are tried exclusively by the Magistrates' Court without a jury, including offences such as petty theft, traffic offences or public order offences. The Magistrates' Court therefore serves as the primary forum, meaning that competent court acts as the determining factor for the seriousness of the offence. Its significance is based not only on a legal criterion set out in Part V of the Criminal Justice Act 1988, but also on judicial practice, insofar as it hears 90% of the cases brought before it (Ashworth, 2010). According to this author, the majority of these cases involve summary offences, which, although typically punished by a fine or community service, may also result in a prison sentence of up to six months, thereby revealing the jurisdictional limits of this court.

This punitive framework guides the determination of *less serious felonies*, which are defined by three elements: (i) either-way offences, (ii) the Magistrates' Court as the judicial forum, and (iii) sentencing guidelines. This combination serves as a functional equivalent to the substantive categories used in the systems analysed previously.

This latter mechanism is regulated by sections 143 and 167 of the Criminal Justice Act 2003. Specifically, the first provision sets out the basis for assessing the seriousness of an offence, whilst the second elaborates on the content of these guidelines. Unlike in Florida, these guidelines are not formulated from a quantitative perspective, but rather offer a series of interpretative criteria aimed at standardising the courts' approach to specific cases. An examination of these guidelines reveals that the Magistrates' Court establishes categories or classes of *either-way* offences, involving the imposition of a fine or community service as an alternative to imprisonment.

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Overall, the analysis of the common law unit has highlighted the diversity of approaches to determining *less serious felonies* and the methodological challenges associated with this task. Whilst US jurisdictions employ functional, discretionary or restrictive models based on substantive criteria, the British system relies on procedural considerations when defining these categories. These differences stem in part, and, from the absence of a distinction between felonies and misdemeanours in the United Kingdom, which positions this system as a transitional point towards the civil law jurisdictions.

4. The continental law context: normative and inferential models in the definition of less serious felonies

As in the previous section, the analysis of jurisdictions belonging to the civil law tradition is structured into two levels: a brief overview of the general characteristics of these systems and an examination of specific jurisdictions. For the purposes of systematisation, the analysis is confined to the European context. Depending on each legal system's ability to identify *less serious felonies* as a distinct category, the jurisdictions analysed are organised into two main groups.

On the one hand, the first section encompasses those systems that allow for a direct legal definition, as they possess legal concepts similar to *less serious felonies*, as is the case in Germany, Italy and France. On the other hand, the second group includes those systems that require a greater degree of inference to determine this category, as they rely on a combination of different criteria for its characterisation, as is the case in Poland, Finland, Portugal and Romania.

4.1. Civil law tradition as an analytical framework

Civil law system has its origins in the Romano-Germanic legal tradition and exhibits specific characteristics that distinguish it from common law, justifying its autonomous analysis. In this regard, the jurisdictions falling within this category are characterised by the centrality of the statute as the primary source of law, as they are geared towards resolving potential conflicts between citizens (David & Jauffret-Spinosi, 2017). Legal rules are therefore the cornerstone of the system and may be supplemented by other principles, whilst judicial decisions lack binding effect (Stürner, 2007). Furthermore, codification, influenced by Roman law and consolidated throughout the 19th century, demonstrates a marked systematic and academic effort in the organisation and compilation of positive law (Stürner, 2007). Within these frameworks, interpretation and analogy emerge as the primary resources in legislative application.

In this analysis, the civil law tradition is represented by the legal systems of Germany, France, Italy, Romania, Portugal, Finland and Poland, an examination of which reveals significant methodological challenges in determining *less serious felonies* and possible alternatives to imprisonment in such cases. Unlike the Anglo-Saxon context, particularly the US one, there is generally no equivalent structural distinction between misdemeanours and felonies. Nevertheless, the civil law systems analysed, due to the characteristics previously noted, have their own categories of offences, the configuration of which allows for their functional adaptation to the construct of crimes of intermediate severity.

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Therefore, given the heterogeneity of criminal regulations, the definition of less serious felonies will not be based on a single criterion, requiring the combination of various criminal mechanisms. In particular, institutions such as sentencing frameworks, limitation periods and the suspension of sentences will be analysed.

4.2. Direct regulatory delimitation: the German, Italian and French models

This first category comprises those systems in which an ad hoc construction of *less serious felonies* is not necessary, as the legal system itself offers a pre-existing distinction corresponding to intermediate severity. This typology includes the legal systems of Germany, Italy and France, which represent different degrees of direct regulatory delimitation.

In the German case, the criminal system distinguishes between serious offences (*Verbrechen*) and less serious offences (*Vergehen*). In accordance with Section 12 of Title 2 of the Criminal Code, the latter are punishable by a prison sentence of less than one year or a fine. Consequently, criminal law provides for a fine as an alternative to imprisonment for offences of intermediate severity, requiring no further interpretation.

For its part, the Italian legal system distinguishes in Article 39 of its Criminal Code (ICC) between *Delitti* and *Contravvenzioni*, the latter being excluded from the analysis due to their lesser severity. The penalties provided for *Delitti*, in accordance with Article 17 of the ICC, include life imprisonment, imprisonment for a fixed term or a fine, reflecting the coexistence of custodial and financial penalties. This framework is supplemented by sector-specific criminal legislation, primarily Law 354/1975 of 26 July on the prison system and custodial sentences, and Legislative Decree 274/2000 of 28 August concerning magistrates' courts. Both pieces of legislation establish alternatives to imprisonment for less serious offences, notably fines, house arrest or community service, thereby expanding the range of measures available.

In France, Article 111-1 of the Criminal Code (FrCC) distinguishes between *crimes*, *délits* and *contraventions*, corresponding respectively to serious offences, offences of intermediate severity and minor offences. This legislation therefore provides a clear distinction between types of offences, allowing *délits* to be equated with less serious felonies. In particular, offences falling under this category are punishable by up to 10 years' imprisonment (*emprisonnement*) or a fine of up to €3,750, confirming the existence of penalties other than imprisonment. Furthermore, Article 131-6 of the French Criminal Code establishes other alternative measures for the punishment of *délits*, such as the suspension of a driving licence, a ban on the use or possession of weapons, and a restraining order against the victim, amongst others. Additionally, Article 131-8 of the French Criminal Code specifically regulates community service as an alternative to imprisonment for *délits*.

In short, alternative sanctions to imprisonment in the systems analysed are not framed as token measures, but constitute a structural element of the legal systems. Unlike in the Anglo-Saxon section, the existence of specific categories of offences significantly reduces the need for interpretation. However, in the following section we shall examine in greater depth those jurisdictions where the establishment of alternative measures requires greater inference due to the integration of different penal institutions.

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4.3. Inferential regulatory delimitation: heterogeneity as an explanatory dynamic in the Polish, Portuguese, Finnish and Romanian jurisdictions

The jurisdictions included in this category share the absence of provisions relating to *less serious felonies*, which requires a specific interpretation of each system for their delimitation. However, each context, due to its particularities, entails a differentiated analysis, and this approach to the civil law system will be structured in two main parts. On the one hand, Poland will be analysed as a system that frames less serious felonies within penological criteria. On the other hand, we will examine those legal systems where the definition of *less serious felonies* stems from a combination of various criminal law institutions (Portugal, Finland and Romania).

4.3.1. The case of Poland as a European restriction on alternatives to imprisonment

Article 7 of the Polish Penal Code (PolPC) establishes a classification of offences that shows certain similarities with the US model. Thus, the most serious offences (*zbrodnią*) are punishable by prison sentences of more than 3 years, whilst less serious offences (*występek*) may be punished by a fine 30 times the daily fine amount, restriction of liberty (a form of probation) or imprisonment for more than one month.

This dichotomy proves insufficient for defining *less serious felonies*, which requires a higher level of abstraction based on penological criteria. In this regard, three distinct categories are identified: (i) offences punishable by less than two years of imprisonment, (ii) offences punishable by between two and five years, and (iii) imprisonment exceeding five years.

In the first stage, in accordance with the provisions of Article 58.1 of the Code of Police Procedure, the system gives priority to fines and restrictions on liberty, treating imprisonment as *ultima ratio*. At the other end of the spectrum, the PolPC does not provide for any alternative to imprisonment for the most serious felonies. The intermediate range is the one that best fits *less serious felonies*, both in terms of duration and the envisaged punitive framework.

In these cases, Article 58.3 of the PolPC allows for the substitution of penalties with a fine or a restriction of liberty for up to two years, and, simultaneously, penalties involving the deprivation of rights set out in Article 39 of the PolPC (disqualification, prohibition on residence, prohibition on working with minors, amongst others). However, these provisions are included solely in the General Part of the Code and not for specific offences, which limits their implementation. Consequently, the Polish system provides for penalties other than imprisonment, not as alternatives but as substitutes. Therefore, as these are not penalties that can be imposed directly, the guarantees of their application in the context of *less serious felonies* are reduced. This explains why Poland is the only European jurisdiction analysed that answers 'yes' to item 35.

In other words, the definition of *less serious felonies* in the Polish context is based on penological criteria, although alternatives to custodial sentence lack effective application due to their substitute nature. Having exhausted this substantive approach, the construction of this category is addressed from the perspective of other legal institutions, as observed in the Portuguese, Finnish and Romanian systems, which are analysed below.

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4.3.2. The combination of substantive and procedural criminal law dimensions in the definition of 'less serious felonies' in the contexts of Portugal, Finland and Romania

The legal systems of Portugal, Finland and Romania are analysed together due to the absence of specific categories regarding the seriousness of offences as a common feature. These systems, by their structure, require the combination of substantive and procedural institutions, in particular, penal frameworks and limitation periods, with the aim of establishing categories functionally equivalent to *less serious felonies*.

On the one hand, the Finnish criminal law system bases the seriousness of an offence on the range of penalties (Joutsen, 1993), that is, the type and duration of the penalties provided for in the Criminal Code (FinCC) which, in accordance with Section 1 of Chapter 6, take the form of a fixed fine, a fine, a fixed-term prison sentence, community service, electronic monitoring and life imprisonment. As there are no formal categories of offences, their seriousness is determined on the basis of the limitation periods provided for in the FinCC. Specifically, there is no statute of limitations for offences punishable by indeterminate imprisonment; 30 years for those punishable by a prison sentence exceeding 8 years; 20 years for offences punishable by between 2 and 8 years of imprisonment; and, finally, 10 years for offences punishable by a maximum of 2 years of imprisonment, a fine or a fixed fine. Thus, as there are four limitation periods that are not directly linked to pre-existing criminal categories, the punitive frameworks of the penalties were analysed in the abstract. In this regard, the setting of prison sentences ranging from 8 years to life imprisonment was identified as the normative pattern, thereby establishing the former as the lower limit for serious offences.

Furthermore, given their nature, minor offences corresponded to the shortest of the limitation periods; an interpretation based on a systematic inference placed *less serious felonies* within the range of 2 to 8 years. To ascertain whether alternatives to imprisonment existed for this category, offences falling within this range were examined. This analysis revealed that offences such as false reporting (Chapter 15, Section 6), coercion to perform sexual acts (Chapter 20, Section 4) or the preparation of terrorist acts (Chapter 34a, Section 2) carried penalties of a fine or imprisonment for up to 3 years, thus confirming the existence of alternatives to imprisonment for *less serious felonies*.

Secondly, the Portuguese system has a similar structure based on the statute of limitations for criminal offences, as regulated in Article 118 of the Penal Code (PorPC). Specifically, the limitation period is set at 15 years for prison sentences exceeding 10 years; 10 years for offences punishable by between 5 and 10 years; 5 years for sentences ranging from 1 year to less than 5 years of imprisonment; and, finally, 2 years for lesser offences and shorter sentences. In the absence of substantive criminal categories that allow for the definition of their nature, procedural legislation is used as a complementary mechanism. In particular, the focus is on the judicial organisation, with Articles 14, 15 and 16 of the Portuguese Code of Criminal Procedure distinguishing between the collegiate (*tribunal colectivo*) and single-judge (*tribunal singular*) courts. The jurisdictional boundary between the two courts is the abstract penalty framework adjudicated by each, set at 5 years of imprisonment.

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Thus, from the combination of limitation periods and jurisdictional competence, the category of *less serious felonies* is constructed, referring to those offences whose penalty range is between 1 and 5 years of imprisonment, as the maximum limit is reinforced by both criteria. As in the Finnish case, criminal offences falling within these parameters are examined in order to verify the actual existence of alternatives to imprisonment. Certain offences are highlighted, such as aggravated theft, breach of trust, as well as aggravated damage and fraud (Articles 204, 205, 213 and 218, respectively). The associated penalties for which entail imprisonment for up to 5 years or a fine of up to 600 days.

Finally, the classification of *less serious felonies* in Romania also relates to the concept of the statute of limitations, given that the system lacks a distinction between felonies and misdemeanours, as well as criteria for grading the seriousness of offences. In particular, pursuant to Article 53 of the Romanian Criminal Code (RCC), penalties are based on life imprisonment, fixed-term imprisonment and fines, with any potential for discrimination being ruled out due to the broad scope of the prison sentence framework, ranging from 15 days to 30 years (Article 60 RCC).

Consequently, the analysis relies on the limitation periods as a legal institution, according to Article 154 of the Romanian Code of Criminal Procedure, which establishes a term of 15 years for offences punishable by life imprisonment or a maximum of 20 years' imprisonment; 10 years for offences punishable by between 10 and 20 years of imprisonment; 8 years, where the prescribed prison sentence ranges from 5 to 10 years; 5 years, where the sentence is between 1 and 5 years' imprisonment; and, finally, 3 years for offences punishable by less than one year's imprisonment or a fine. Given the existence of these four time intervals, the complementary application of other legal instruments is required to refine the category of *less serious felonies*, notably the suspension of the sentence (Article 80 RCC). The imposition of this measure requires, amongst other things, that the duration of the prison sentence does not exceed 5 years. The consideration of this criterion highlights a greater degree of abstraction in the Romanian system regarding the definition of *less serious felonies*, insofar as the suspension of sentence is not a structural instrument of the system. On the contrary, it is a criterion for the individualisation of punishment that operates on penalties already imposed and not on codified penal frameworks. However, the aforementioned 5-year period coincides with the limitation period covering offences punishable by between 1 and 5 years' imprisonment, with offences of intermediate severity falling within this interval.

A specific search for offences in the Romanian Criminal Code falling within this timeframe reveals a fine as the main alternative, with assault and receiving stolen goods being the most prominent (Articles 193 and 270 of Romanian Criminal Code, respectively).

Overall, the systems of Portugal, Finland and Romania provide for alternatives to custodial sentence, thus answering item 35 in the negative. Regardless of the response obtained, one of the most significant aspects of the analysis presented is the methodology employed due to its parallels with the British context. However, whilst this system identified the judicial forum as the sole criterion in defining this category, the systems comprising this part of the civil law section combine substantive and procedural criteria, with particular emphasis on the statute of limitations. Nevertheless, the construction of this category has shown marked contrasts depending on the context. Thus, the dogmatic nature of the

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German, Italian and French legal systems stands out, in contrast to the lack of alternatives in the Polish system or the flexibility in the Finnish, Portuguese and Romanian legal systems, based largely on the concept of limitation period.

5. Discussion

The analysis of *less serious felonies* across the Anglo-Saxon and civil law traditions has revealed the analytical and functional nature of this construct in measuring social exclusion across the thirteen jurisdictions analysed. With the exception of the Spanish context, where this category is explicitly provided for, in the other systems it has had to be constructed *ad hoc*. For this reason, this chapter has systematically analysed the various legal and criminal law institutions that allow this category to be defined, as well as the alternatives to imprisonment in these cases, forming the central focus of the study.

The comparative examination of the two main legal traditions in the Western world has gone beyond mere descriptive systematisation, presenting them as extremes of a continuum characterised by a high degree of internal heterogeneity. As we have seen, the distinction between felonies and misdemeanours remains a structural dichotomy in the US context, although alternatives to imprisonment exhibit varying degrees of development, which may be described as functional, apparent or non-existent. This model differs from the British context, where the absence of this distinction has necessitated the use of other procedural criteria in defining this category of offence.

Regarding civil law jurisdictions, they have been characterised by greater diversity in the definition of this category, largely due to the absence of a classification equivalent to the felonies and misdemeanours dichotomy. This group, which has encompassed a greater number of jurisdictions, allows us to distinguish between those systems that have categories closer to *less serious felonies* and those that require a greater degree of inference. This group includes the Finnish case, whose configuration does not present any particular features of relevance in determining this category with respect to the inferential models described. In this context, the statute of limitations emerges as the main defining criterion, which, complemented by other criminal law institutions, both substantive and procedural, has facilitated the construction of functional equivalents and analytical comparison between systems.

It is particularly important to consider those jurisdictions that answer 'yes' to this criterion and therefore have no alternatives to imprisonment for *less serious felonies*. In this sense, Texas, California and Poland converge on the centrality of imprisonment as a punitive instrument, albeit from different perspectives. In Texas, a fine operates as an additional sanction to imprisonment regardless of the seriousness of the offence; in California, there are institutions similar to *probation* but whose structure does not constitute an autonomous alternative to imprisonment; and, finally, in Poland, sanctions other than imprisonment are presented as substitute rather than direct measures, which limits their effective implementation.

As can be inferred from the above, although item 35 is a rule and its application in practice is therefore not assessed, defining the category of 'less serious felonies' has required recourse to judicial practice in order to verify the response across different jurisdictions. In short, the measurement of social exclusion through this item goes beyond a simple yes or no answer.

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Thus, its relevance lies in the combination of existing criminal law institutions that allow for the construction of functional equivalents of this concept, forming a comparative analytical framework that enables the assessment of the absence of alternatives to imprisonment as a socially exclusionary dynamic.

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