

# Resisting the New Punitiveness: Penal Policy in Denmark, Finland and Norway – and some lessons for Ireland.<sup>1</sup>

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## INTRODUCTION

This paper presents the results of PhD research into the penal policies of Denmark, Finland and Norway. Essentially, the investigation asked whether the increase in punitiveness in relation to prison systems that is presumed to occur under the ‘culture of control’ of late modernity (Garland, 2001) can be found in these Nordic countries. The scale of imprisonment, the ‘depth’ of imprisonment, and the perception of the person imprisoned were all examined. The prison systems were investigated through analysis of documentation and recorded interviews with key personnel, supplemented by visits to a representative range of prisons. While there have at times been some signs of ‘new punitiveness’, especially in Denmark and Norway, in general it can be said that none of these Nordic countries have followed the path predicted by Garland.

Part 1 of this paper probes what Garland’s analysis implies for prisons, and suggests that penal developments under the ‘culture of control’ can be identified via three key criteria. Each of these criteria is then studied in the three Nordic countries: the scale of imprisonment (Part 2), the depth (or quality or content) of imprisonment (Part 3), and the representation of those held in prison (Part 4). A concluding Part 5 indicates some lessons that arise for Ireland. Ireland’s penal system had much in common with Nordic countries until the mid-1990s, especially its penal ‘philosophy’ and a similar level of incarceration, although its prison conditions have generally lagged well behind. However, Ireland has

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<sup>1</sup> This is a shortened and updated version of a paper given at the Fifth Irish Criminology Conference at University College Dublin in June 2009. The PhD thesis on which it is based is available on [www.pepre.ie](http://www.pepre.ie) The research was mostly conducted between October 2006 and July 2008. Quotations in italics are from research interviews.

recently diverged more from Nordic norms, exhibiting many of the features Garland describes.

## **PART 1: GARLAND'S 'CULTURE OF CONTROL'**

### ***Three summary criteria of punitiveness***

In *The Culture of Control* (2001), Garland sets out 12 'indices' of the change he sees in the overall crime control field. Most of these relate to imprisonment, in particular a switch in aims from rehabilitation to retribution and protection, penal populism, a steep rise in incarceration, greater emphasis on control and less on offering assistance, and negative characterisation of people involved in crime - "stereotypical depictions of unruly youth, dangerous predators and incorrigible career criminals". (Garland, 2001, p.10)

The Garland indices relevant to imprisonment can be consolidated into the three criteria of punitiveness already mentioned: the scale and depth of imprisonment, and the representation of the prisoner.<sup>2</sup> Thus, for example, *the scale* is affected by the switch to retributive and protection functions for prisons, as well as by the assertion that 'prison works'. *The depth* is shaped by the vengeful attitudes incorporated in Garland's second index ("punitive sanctions and expressive justice"), as well as by the change in criminological thinking from a welfare-focused to a controlling perspective. Almost all indices impact on *the way the person held in prison is seen*: whether as part of society, as implied by the concept of rehabilitation, or as the stereotypes often painted in politics or the media; whether narrowly as an 'offender', as suggested by much of the new managerialism, or more broadly as "the whole person bearing in mind his or her social, economic and cultural context", (Council of Europe, 1990, p.8)

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<sup>2</sup> Another useful regrouping of Garland's indices is provided in Kilcommins *et al* (2004), who combine several features, reducing the full 12 indices to six.

### ***Penal welfarism***

It is important to note what it was this 'new punitiveness' (Pratt *et al*, 2005) or 'culture of control' was presumed to have replaced. Garland refers to the earlier outlook as 'penal welfarism', a broad paradigm that held sway for most of the twentieth century. Key attitudes in this paradigm included seeing prison as a last resort, wanting to minimise security and 'normalise' life within prison, and regarding prisoners as members of society. The "basic axiom" of penal welfarism was "that penal measures ought, where possible, to be rehabilitative interventions, rather than negative retributive punishments". (Garland, 2001, p.34) Garland sees penal welfarist features as "part of the wider scheme of things... integral elements of the post-war welfare state and its social democratic politics". (p.28) Penal welfarism assumed that "*the state was to be an agent of reform as well as repression, of care as well as control, of welfare as well as punishment*" (p.38, emphasis in original) and "claimed to bring all individuals into full social citizenship with equal rights and equal opportunities." (p.46)

Garland stresses that, in the new crime control field, "new practices and mentalities co-exist with the residues and continuations of older arrangements". (p.167) However, the 'penal mode' of penal welfarism has become "more prominent... more punitive, more expressive, more security-minded... The welfare mode, as well as becoming more muted, has become more conditional, more offence-centred, more risk conscious." (p.175) Those who commit offences are "less likely to be represented in official discourse as socially deprived citizens in need of support. They are depicted instead as culpable, undeserving and somewhat dangerous". (p.175)<sup>3</sup>

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<sup>3</sup> Examples of such stereotyping from Ireland include the front-page headline of the *Irish Daily Star* (9/2/09) which ran "DNA tests to nail jail scum", with the term "scum" clearly referring to prisoners in general; two (factually incorrect) references by RTE journalists to Mountjoy Prison being "full" of violent prisoners (RTE television news, 25/4/09, and on radio, 16/6/09); and the equation by the Minister of Justice of life-sentence prisoners with dangerousness on a radio programme ('Morning Ireland', 12/6/09). A recent Director General of the Prison Service routinely spoke of prisoners as "a threat to the public", including the whole population of the main woman's prison.

### ***Measuring severity***

This paper will explore the three criteria of punitiveness in the Nordic countries thematically. The scale of imprisonment and aspects of the 'depth' are amenable to quantitative examination. The rate of incarceration (the prison population per 100,000 of the country's population) is widely accepted as a broad-brush-stroke measurement of penal severity. However, the depth of imprisonment, is more difficult to assess, having both quantitative and qualitative aspects.

Tangible features which indicate the depth of a prison system, are, for example:

- the physical arrangements in cells, and whether these are shared or not;
- the amount of time spent out of cells;
- the extent of structured activity (work, education, therapy, sport, etc);
- the extent of prison leave;
- the proportion in open prisons.

In assessing such features in Denmark, Finland and Norway, information came variously from documentation, as a result of specific enquiries, or during prison visits or interviews. The more qualitative aspects of the content of imprisonment, crucial to how prisoners might experience imprisonment, were explored particularly in interviews and assessed on visits to prisons.

The third criterion, whether people in prison are seen inclusively or exclusively in relation to society, is the most difficult to assess. Inferences of inclusion or otherwise were drawn from what interviewees said, from criminological or other literature, from policy or political statements and from particular practices. For example, one can take as indicative of an inclusive attitude the presence of strong policy in relation to resettlement, while indications in another direction can be gleaned from the use of demonising or other negative language.

## **PART 2: THE SCALE OF IMPRISONMENT**

Garland built his analysis of the emergence of a culture of control, and, within that broader context, greater severity in penal matters, on developments in the USA and Britain in the late twentieth century. His presumption was that new patterns in crime control in America and Britain would sooner or later apply “elsewhere in the developed world”. (Garland, 2001, p.viii) A core question for this research, then, was whether such trends could be found in Nordic countries.

While the USA’s rate of incarceration of 730 is notorious, much lower rates of 154 for England and Wales and 155 for Scotland still stand out as among the highest in Western Europe.<sup>4</sup> Levels of imprisonment have risen enormously in the US since 1973, and in Britain since 1993. By comparison with Britain, or even with Ireland, the Nordic countries incarcerate far fewer people. Recent rates of incarceration and prison populations are:

Denmark	<b>74</b>	4,091	(on 1/4/11)
Finland	<b>59</b>	3,189	(on 1/1/11)
Norway	<b>73</b>	3,602	(on 1/5/11)
Sweden	<b>70</b>	6,669	(on 1/10/11)
Ireland	<b>98</b>	4,401	(on 3/5/12)

### ***Denmark***

While prison numbers in Denmark have risen recently, this population was about 3,400 in 2008 (a rate of 63) and averaged that level for 20 years previously. Punitive impulses have come from the political field, leading to increased sentences, a clampdown on drugs and restrictions on prison leave, but these have been offset by alternatives to custody, supportive drug treatment and a policy which enables many to be released ahead of the conventional two-thirds point of sentence. Such balancing features derived mainly from a coherent penal-welfarist ‘philosophy’ among the ‘experts’ running the prison system.

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<sup>4</sup> The figures in this section come from [www.prisonstudies.org](http://www.prisonstudies.org), on 20/8/12. This is the website of the London-based International Centre for Prison Studies, which has an academic partnership with the University of Essex.

Lappi-Seppala describes some Nordic countries highlighting punitive policies, but more quietly softening these and introducing alternatives to custody, and this description is particularly relevant to Denmark:

A functional differentiation seems to prevail between sanctions policies and criminalization policies. Reforms in specific offences tended to lead in a more severe direction, whereas the changes made in the system of sanctions mostly had the opposite effect. In many cases, changes and innovations in the system of sanctions functioned as a safety valve, easing the pressure created by politically motivated reforms in the realm of criminalization. (Lappi-Seppala, 2007, p.219)

### ***Finland***

In Finland too, there have been some longer sentences for certain sex, drugs and violent offences, but these greater punishments were limited in scope and more than offset by the drive to find alternatives to custody, such as community service and the virtual abolition of prison for non-payment of fines. Finland's prison population has fallen almost continually from a high level just after World War Two –except for an upward swing from 1999 to 2005, which has now turned decisively downwards again. Esa Vesterbacka, the Director General, spoke in 2007 of additional alternatives being introduced, such as conditional early release and electronic monitoring. These have clearly been effective, with the rate falling from 67 in 2007 to 59 in 2011. Reducing prison numbers is a government objective.

Nils Christie says: "Finland's penal history illustrates that prison figures are not created by crime, but by cultural/political decisions... laws were changed, fines used more often, prisons less."(2000, pp.53-54) He credits much of the responsibility for this to "the intellectual-administrative elite" with responsibility for crime policy. In relation to the recent decarceration, the Director General noted that a refusal by the Ministry of Finance to a request some years earlier for more prison spaces was a positive thing. The Finance Ministry's view was that it was better to reduce the prison population. Acknowledging that there is a tendency for

any given prison capacity to be soon filled up, Esa Vesterbacka compared this to a lack of cupboard space in one's kitchen at home – when new cupboards are acquired they are quickly filled up also.

### **Norway**

Prison populations rose in Norway in the early years of this century, from a rate of 59 in 2002, but the rate has remained relatively static in the low 70s since 2006. One may find traces of Garland's indices of punitiveness in Norway in some longer sentences and a stress on protecting the public. However, the latter idea leads not to more imprisonment as Garland describes, but to a commitment to offer help towards change and resettlement. This is evident in the government's White Paper on punishment (Norwegian Ministry of Justice and the Police, 2008), which is notable for its strong focus on rehabilitation and its recognition that this is best achieved outside prison or in open prisons. The political and administrative leadership have declared a commitment to reduce prison numbers via alternatives and early releases, although they have yet to see large progress in this direction.

### **PART 3: THE DEPTH OF IMPRISONMENT**

The physical conditions of imprisonment and the way prisoners are treated are also indicators of penal severity. (2007, p.4) Evans and Morgan say:

Countries with the lowest incarceration rates tend also to have the shallowest systems, that is a high proportion of prisoners in small, relatively open institutions with liberal regimes. Rising incarceration rates tend to be accompanied by the growth of more restrictive prison regimes. This... reflects a political will to get 'tough on crime' (1998, p.325)

Former British Home Secretary, Michael Howard's, promulgation of both 'prison works' and 'austere prisons' is an illustration of how the scale and depth of imprisonment tend to move together.

### ***Open prisons***

An important indicator of the depth of imprisonment is the extent to which sentences are served in open prisons. The view in Nordic countries is that open prisons have fewer detrimental effects and better facilitate reintegration. They rely primarily on relationships and on the prisoner's sense of responsibility, rather than on physical restraints. Denmark holds 34 per cent of its total prison population in open centres, Finland 32 per cent and Norway 36 per cent. This contrasts sharply with Ireland, where the rate is barely 5 per cent.<sup>5</sup> Thus, each of these Nordic countries has *at least six times* the proportion in open institutions as Ireland. These figures include remand prisoners, but when one looks only at *sentenced* prisoners in Denmark, it transpires that a large majority of 59 per cent were in open rather than closed institutions (Kristoffersen, 2010). As well as being seen to have fewer detrimental effects, the cost of holding someone in an open prison is about half that of a closed prison in Nordic countries.

### ***Small prisons***

Nordic prisons tend to be small relative to most other Western countries, with no prison in any Nordic country holding more than 400 prisoners.<sup>6</sup> The average population in a prison is about 150 for sentenced prisoners in Denmark (and about 25 in local remand prisons), about 130 in Finland, while in Norway the average prison size is approximately 65. The general assumption is that such smaller institutions will have less institutionalisation, restriction and bullying.

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<sup>5</sup> Danish and Norwegian figures are from Kristoffersen (2010) and relate to 2008 (yearly average). Finnish figures are from personal communication with an official in the Criminal Sanctions Agency on 15/10/09 and relate to October 2009; she noted Finland's aim to raise this proportion to 35 per cent by 2011. The Irish Prison Service's *Annual Report 2011* gave the daily population averages for Ireland's two open prisons, Loughan House and Shelton Abbey, as 122 and 102 respectively, a total of 224; the daily average for the prison system as a whole was 4,390.

<sup>6</sup> Pratt says: "These countries have a large number of small prisons, often with 100 inmates or fewer... The largest prison in the region, in Sweden, holds around 350 inmates". (2008, p.120) However, Oslo Prison had 392 in November 2006, and the new Turku Prison had places for 350 in July 2008.

Having more small prisons rather than fewer large ones also means more prisoners can be held near their homes and families.<sup>7</sup>

### ***Regime features***

Other notable aspects of regimes for sentenced prisoners in Denmark, Finland and Norway are:

- single-cell accommodation for almost all prisoners;
- proper sanitation arrangements (although some 'slopping-out' still continues in Finland);
- out-of-cell time that is generally 12 to 14 hours, with strong activity such as work, training, education and therapy;
- an increasing tendency to facilitate 'self-management' whereby prisoners carry out their own daily tasks such as cooking and cleaning;
- substantial prison leave;
- sentence planning and a concomitant willingness to release prisoners early;
- substantial drug treatment;
- very few young people imprisoned.<sup>8</sup>

This picture will be elaborated on below.

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<sup>7</sup> Such thinking is taken furthest in Iceland, as described by the Assistant Director of Iceland's Prison Administration, Erlendur Baldursson, who says that "small institutions function better" because "the problems that emerge, and there are problems in all prisons, are more visible and can therefore more easily be discussed and solved." (Baldursson, 2000, p.7). His idea of smallness is an institution with 10 to 20 places, which describes four of Iceland's five prisons. The one 'large' prison is Litla Hraun, with 87 places, where he sees "increasing levels of traditional problems", such as drug abuse and personal conflicts (Baldursson, 2000, p.8).

<sup>8</sup> Figures for under 18-year-olds in prison systems given on [www.prisonstudies.org](http://www.prisonstudies.org) on 20/8/12 are as follows: Denmark 0.3 per cent, Norway 0.2 per cent, Finland 0.1 per cent. By contrast, Ireland had 1.9 per cent, England and Wales 1.5 per cent, and Scotland 1.4 per cent.

### ***Denmark – the new East Jutland prison***

Despite an increased emphasis on security and a recent reduction in prison leave in Denmark, the 'depth' of prison remains very contained, best exemplified by the high proportion in open prisons. However, examining the new high-security closed prison of East Jutland is just as revealing. It opened in October 2006, holds 228 and is situated amid farmland and rolling hills which can be seen from most parts of the prison. A principle in the construction of East Jutland was that there should be 'scattered, low buildings toning down the institutional impression'. Although it has the highest security in Denmark, there is a sense of space inside, not just in the way the perimeter wall is modulated to afford views to the countryside beyond, but within the walls also, where there is a high ratio of open space to buildings.

There are five accommodation sections spaced apart, A to D each comprising 48 places, and E, which holds 36 and has the highest security. D is dedicated to full-time drug treatment. Prisoners may traverse the central area between sections several times a week, walking past the football field and lake to a central building or 'culture centre', which holds a sports hall, church, library and a self-service shop where prisoners buy groceries and personal accessories. Security is strong, with a high perimeter wall and a fence beyond that, and 200 CCTV cameras.

Living spaces, which look like good-quality student accommodation, are made up of units of six single rooms grouped around a well-equipped kitchen, sitting area, laundry facilities and a balcony. Prisoners have keys to their own rooms and staff have keys to second outside locks used to close doors at 9.30pm. Rooms measure 12.5 square meters, including a separate bathroom, and each has a sofa-bed, desk, chair, television, clear unbreakable glass windows and an air-vent. Each six-room unit opens on to a lobby area shared with other units, where there are recreational facilities. As in other Danish prisons, men and women mix, although a woman may opt to be in a single-sex unit. There are usually fewer

than eight women in East Jutland, the vast majority of female prisoners in Denmark being in open prisons. The staff to prisoner ratio of 1.14 to 1.<sup>9</sup>

While security is high, in many ways the prisoner's day within East Jutland is similar to that in other Danish prisons, including open prisons. Out-of-cell time is 14.5 hours per day, from 7am to 9.30pm. Prisoners must be in occupation for over seven hours each day, making up the 37-hour week. From 3.30pm to 9.30pm, they are free to go about their daily tasks – shopping, washing, cooking, eating, recreating. They may spend this time outdoors if they wish. Work is similar to that offered elsewhere in Danish prisons, such as the processing of textiles, metal, wood or paper. Education consists, as elsewhere, of normal adult education courses. There are programmes such as anger management, as well as drug treatment.

The same effort to create as much normality as possible is evident in visiting facilities. There are 14 standard visiting rooms, each fairly similar to the prisoner's own room, with arm-chairs and a coffee-kettle in addition. There are also two 'visiting flats' where a family can come to stay with a prisoner for a day or two. Each of these has a double-room for adults, another room with bunk-beds for children, a kitchen/dining/sitting area, and an opening on to a small courtyard. All these visiting facilities adjoin a garden area which includes some children's play facilities.

East Jutland has managed to reconcile the imperatives of 'care' and 'custody', or what the Director General, William Rentzmann, called "*the soft and the hard*", opposites that are notoriously difficult to hold in balance. A high level of security has been achieved while also doing justice to the progressive principles that govern life in Danish prisons<sup>10</sup> – relating activities in the prison to normal life in

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<sup>9</sup> There are 261 full-time equivalent staff of all disciplines to the 228 prisoners at East Jutland.

<sup>10</sup> These principles are explained further in Part 4 below.

the community, achieving a measure of openness and enabling prisoners to take responsibility for at least some aspects of their own lives.<sup>11</sup>

### ***Finland***

In interview, the Finnish Director General, was frank in detailing the shortcomings of his prison system. His points related mainly to structural issues: the continuing practice of 'slopping out', which affects close to 500 prisoners and is being slowly phased out; the sharing of cells which affects '*a couple of hundred*'; insufficient drug treatment; the confinement of a small number of sentenced prisoners (in '*tens*' rather than '*hundreds*') to cells for up to 23 hours a day, mainly because of fear of other prisoners; and the lack of a full day's activity for many prisoners.<sup>12</sup> Thus, while physical conditions in Finland may not match those in Denmark, the prisons are less subject to the new restrictions experienced in the latter. So, while there are shortcomings in Finnish prisons, there is steady, if slow, improvement, enhanced by a new sentence-planning process.

Resettlement is a key concept, with a stress on social supports. Housing, unemployment, drugs, alcohol and mental health are seen as the main challenges in ensuring successful reintegration. The recognition of the social dimension here corresponds to a phrase that is often cited in Finland: "Good social policy is best criminal policy." Clearly, the management of the prison system have an inclusive view of prisoners, regarding them as full members of society, an issue to be explored further in Part 4.

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<sup>11</sup> In February 2008, two months after the visit to East Jutland for this research, the Council of Europe's CPT visited the prison. Their description and assessment of the institution corresponds very closely with that given above. (Council of Europe CPT, 2008, pp.30-31) Additionally, the CPT examined the special units in Section E for "negatively strong inmates" and note that material conditions and activities there were excellent and similar to the other units, except for "the limited amount of outdoor space available to them". (Council of Europe CPT, 2008, p.23)

<sup>12</sup> Ireland's conditions are considerably worse than Finland's. See points 4 and 5 in Part 5 of this paper.

## **Norway**

Conditions for most prisoners in Norway are relatively good, illustrated by an average of 13 hours out-of-cell time for sentenced prisoners, a strong range of activities such as work and education, and virtually none of the substandard sanitation that characterises many systems. The Director General, Kristen Bolgen Bronebakk, spoke of a need to differentiate more between types of prisoners, suggesting “*a stricter regime*” for “*the organised crime group*”, who are clearly seen as a small minority, while recognising that drug-users “*are not really a threat to society, more a threat to themselves*”. The 2008 White Paper repeats this dual approach: “Some convicted persons will require stricter regimes, others more open. The Government will deploy measures along both these tracks.” (Part 5) Overall, however, it is clear that the government envisages improved regimes for most prisoners, and a significant increase in the proportion in open prisons, already at 36 per cent, to at least 40 per cent.

Despite recent curtailment, prison leave is more substantial than elsewhere. Major cities have halfway houses from which prisoners go out of prison to work or education during the day. In addition, prisoners normally get home leave after serving one-third of their stated sentence. The norm then is 18 days per year in a closed prison and 30 days in an open, although prisoners will often transfer from a closed to an open institution at the one-third point. Prisoners pay for travel home themselves.<sup>13</sup> Approximately 25,000 leaves were given in 2005; less than 0.5 per cent defaulted, including late returns.

Asked to identify the strengths and weaknesses of the prison system, the Director General said the main weaknesses related to the isolation of, and lack of activity for, many pre-trial prisoners, and the confinement of a small number of high-security prisoners. She identified as the key qualities of Norwegian prisons:

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<sup>13</sup> Most prisoners in Norway are paid 51 NOK per day, the same standard rate applying whether they attend school, work, programmes or other organised activity. This amounts to about €32 per week. (2008 figures). In Ireland, the 2012 rate is €16.45 per week, but the Prison Service plans an average reduction of 28 per cent to this rate.

*The personnel. And the emphasis put on treating everybody with respect, not using more harsh methods than absolutely necessary. I think when you visit a prison in Norway, what people say to me afterwards is that they note the atmosphere and the relationship between inmates and security officers...Security officers are not locked into their own cubicle, they are out there together with inmates.<sup>14</sup>*

The role envisaged for prison staff is centred on relating to prisoners, captured in the official slogan that reflects a decision to change the emphasis of their work: “from guard to social worker – a paradigm shift”.<sup>15</sup> This changed role is particularly evident for the ‘personal officer’ (also called ‘contact officer’), who has the responsibility for supporting usually no more than three prisoners in dealing with their sentences and planning their futures.

### **Bastoy open prison**

The open prison on the island of Bastoy has achieved some fame within the Norwegian prison system and beyond, and is referred to in the recent White Paper as a model to be copied elsewhere. It is run on “*ecological principles*” and the idea that (as the Governor, Oyvind Alnaes, expressed it) “*people can change behaviour. We believe that if you treat each other with respect, they will treat you with respect back.*” This thinking is put into practice in many ways, including in joint seminars between staff and prisoners. The Governor explained the ecological principles:

*We think that it's not one small factor that changes people. There are lots of factors. And the ecological thinking is a circle of thinking, everything is tied together... Education, working, training, and so on...We raise horses here, an old Norwegian race. And we also produce calves and when you are a prisoner and work in the agriculture department, you would get the responsibility for a cow. And that's how we train responsibility in action. This is your cow...you have to give the cow food. And when the calves come, you have to take care of the calf. You have literally to take it out... And this is teaching and training responsibility in action. This is also a way of building, or training and teaching, empathy.*

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<sup>14</sup> Certainly, nothing in the three Norwegian prisons visited for this research, nor in three others visited subsequently, would give rise to a questioning of that statement; the atmospheres and the relationships seemed good.

<sup>15</sup> Similarly, in Denmark, prison officers are expected to carry out four main tasks which relate to security, welfare, occupational supervision and leisure-time guidance.

Such a holistic approach is clearly a very different way of developing responsibility than Canadian-style behaviourist 'programmes' with their narrow focus on the criminogenic.

### ***Resilient penal welfarism***

In Norway, penal welfarism is clearly identifiable in the thinking of both the administrative and political leadership of the prison system, and this lies behind much of the restraint on punitiveness. Shortly before the Norwegian government published its White Paper in 2008, the Deputy Minister for Justice, Terje Moland Pedersen, gave an interview for this research. He was explicit at several points in distinguishing his government's approach on penal matters from what was happening elsewhere in Europe. He said:

*The main issue is rehabilitation, to try to reintegrate criminals into civil society... We have also some discussion that they have in every country about security and safety, and what's security for prisoners, security for the people that work in the prison, and security for society. But I think the most important thing is what we are trying to achieve about rehabilitation.*

This priority given to rehabilitation over security seems set to have major impact on the depth of imprisonment. When asked about the escalating emphasis on security in many prison systems elsewhere, Pedersen said:

*I think we are going in a different way. It is very important that we have prison with high security, but not so high... I think most of the people in the prison should stay in the prison with lower security.*

He made clear that what he meant by 'low security prisons' were open prisons such as Bastoy:

*We call it, for the debate, a prison with low security. We are going to have more of that kind of prison. And also we're looking at the possibility of having a prison where prisoners should take care of themselves... that they have to make their own food, maybe they could be able to have some work outside the prison area and earn some money, and control the day more than they do today. Because I think if they were able to do that it would also be easier for them to go back to the normal life afterwards. And I think that Bastoy is a really good example.... We think how to use the prisons with high security even less than we are doing today.*

Garland says: "Where the older criminology demanded more in the way of welfare and assistance, the new one insists upon tightening controls and enforcing discipline." (2001, p.15) On that basis Norway is certainly following 'older criminology', given, for example, that the Director General was of the view that "*prison should be bearable*" and also said: "*We have enough of the locks and gates and cameras... we need to have more activities.*"

#### **PART 4: THE REPRESENTATION OF THE PRISONER**

##### ***Nordic countries: The larger social context***

Turning now to the third criterion of punitiveness, the research sought to decipher how the men and women held in prison were perceived, within the prison system and within wider society. This was an attempt to assess whether they were, in Garland's terms, "represented in official discourse as socially deprived citizens in need of support", or "depicted instead as culpable, undeserving and somewhat dangerous". (2001, p.175) In all three countries studied, human rights thinking and socially-inclusive attitudes (both related to the universal welfare state) counteract the stereotyping of prisoners typical of the 'culture of control'. Prisoners are widely seen as citizens, as members of the larger society. It is also recognised that prison has 'detrimental effects', damaging bonds with the wider community, and so should be used as 'a last resort'.

Such thinking is central to a Danish document setting out the principles for prison and probation work (Ministry of Justice, 1994), the 2006 Prisons Act in Finland and the 2008 White Paper on prisons in Norway. All broadly resonates with Council of Europe (2006) policy. A sense of the prisoner's larger social context is kept to the fore in Nordic countries. In other words, not *all* responsibility for change is put on the shoulders of the individual, as it tends to be in the US and UK; there is usually a consciousness of contributory social factors to crime, and to reform.

This awareness is well captured in Finnish prison authority statements, such as the following:

Among the prisoners there are more and more offenders who have consciously chosen a criminal career and who are reluctant to quit it in the short term. However, the bulk of the prison population still consists of persons who have drifted into crime and who are socially maladjusted. Alcohol and other drug problems would seem to be major factors in current crime in Finland. (Ministry of Justice, 1999, p.6)

The same policy document gives as a goal for the prison system “supporting and encouraging the convicts in leading a life without crime”, but also sets a goal of “influencing society as a whole in order to make work with this orientation possible”. (Ministry of Justice, 1999, p.7) In this thinking, society needs to be worked with and changed, as well as people in and from prison.

Are Hoidal, Governor of Oslo Prison, said of those held in his prison: “80 per cent of them need help”. In a survey of Norwegian prisoners, Skardhamar found that housing, money and work were major problems. He says: “Inadequate living conditions should not necessarily be considered a cause of crime, but as a narrowed opportunity structure where other choices are limited.”(Skardhamar, 2003, p.39)<sup>16</sup>

### ***Denmark: the ‘Six Principles’ for Prison and Probation work***

A widely-accepted philosophy in the Danish penal system remains resilient, even though buffeted by different approaches coming from politicians in particular. This ‘philosophy’ is well expressed in *A Programme of Principles*, the statement of six principles adopted in 1993 (Ministry of Justice, 1994). These principles begin:

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<sup>16</sup> Nilsson’s (2003) research on social exclusion and recidivism among prisoners in Sweden found that problems of employment, education, housing and finance (in that order) are significantly associated with recidivism. In addition, “Time spent in prison serves to reduce the chances of living a conventional life – with a legitimate income – and thereby contributes to marginalisation and social exclusion.” (Nilsson, 2003, p.80)

1. *Normalisation.*

The daily activities of the Prison and Probation Service shall in general...be related to normal life in the general community...

2. *Openness.*

Prison and probation work shall be organised so that the offender is offered good opportunities to make and maintain contact with the ongoing life of the community...

3. *Exercise of Responsibility.*

Prison and probation work shall be so organised that the offender has the opportunity to develop a sense of responsibility, self-respect and self-confidence and become motivated to actively strive for a crime-free life...

These three principles have been referred to as the 'three cornerstones' of Danish penal policy (Rentzmann, 1992).

Such principles also underpin the Danish view that open prisons should be the norm. Open prisons incorporate a greater degree of normalisation, enable prisoners to have more interaction with the outside community and take responsibility for more of their own lives. The representation of the prisoner in the *Principles* document, then, suggests a normal citizen, a member of the community, one who can be trusted to a large extent. Prisoners' citizenship is also acknowledged in Denmark, as elsewhere, via their rights to vote, appeal to the ombudsman and form representative groups.

While there has been some decline in the perception of the prisoner in Denmark, especially in the political sphere, the evidence does not suggest the kind of radical swing from penal welfarism to a culture of control that Garland describes. Employers still actively seek released prisoners for work. Inclusive concepts persist in other areas too, such as the accepting and positive view of the prisoner inherent in the '*principle of acknowledgement*'<sup>17</sup> used at Moglekaer open prison. The Head of Employment there gave striking examples of what he means by this: a paedophile can be moral in other respects; a thief can be a good parent. This approach seeks to find the positive qualities in prisoners, to acknowledge these and try to motivate the prisoners accordingly.

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<sup>17</sup> This is reported to be based on the thinking of the German writer, Axel Honneth.

### ***Finland: prisoners as members of society***

The representation of the prisoner in Finland can likewise be examined by probing principles, practices and attitudes to gauge whether those in prison are seen inclusively, or in stereotypical terms and as 'other'. Analysis suggests the former is the dominant approach. The 2006 Prison Act, the primary framework for penal policy in Finland, stresses that prisoners retain basic rights. The substantial focus on resettlement, and helping prisoners in relation to issues such as work, housing and addiction, reflects the view that criminal policy is part of social policy.

There is far more to the Finnish idea of rehabilitation than narrowly 'addressing offender behaviour', which indicates a one-dimensional perception of the prisoner.<sup>18</sup> A course at Kerava Prison, for example, seeks "the holistic rehabilitation of the client", recognising the social dimension in a way offence-focused programmes seldom do. This course addresses issues such as housing, finding meaningful activity like work or education, and help within and beyond prison with addiction and mental health. The goal "is to support the client to find new contents for life and reinforce the experience of meaningful life".<sup>19</sup> That wider perspective is evident too in the manual for the assessment and allocation of prisoners and their involvement in the formation of a sentence plan (Criminal Sanctions Agency, 2004). The approach is to look for strengths as well as weaknesses, and it is expected staff must listen to and collaborated with prisoners.

The recognition that imprisonment weakens the bond with wider society is at the heart of Finnish penal thinking, and hence its decarceration policy:

The prison sentence shall be enforced so that the punishment will involve only deprivation of liberty. The harmful effects caused by the loss of liberty

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<sup>18</sup> Such narrow and one-dimensional views of the prisoner are challenged in Warner (2007), and Costelloe and Warner (2008).

<sup>19</sup> Information on this course comes mainly from a brochure in English describing it.

shall, as far as possible, be mitigated. The punishment shall be enforced so as not to unduly render difficulties, but rather facilitate, the readjustment to society. The conditions in penal institutions shall, as far as possible, be arranged to correspond to those prevailing in the society. (Ministry of Justice, 1994, 1.4)

***'To support the self-esteem of the prisoner'***

The idea that those in their charge were mainly "*members of the community*" in need of help was pervasive among those interviewed in Finland. Such thinking is part of a deep and long tradition in Finnish penology, exemplified by K.J.Lang, an earlier Director General of the prison system. Lang translated the Finnish term for the prison service, 'Vankeinhoito', as "care of prisoners" (p.65). He noted that most prisoners are "socially and psychologically disabled...deprived of all chances to develop and use what we can call their stronger parts." (p.66) They have, Lang said,

... very low expectations of success. They (or a majority of them) experience domestic and street violence in their childhood, often as victims. They have also been exposed to violence in their later life... they are poorly educated and unskilled and have been unemployed for long periods or all of their lives. (p.66)

Asking "what are the needs of our customers?", Lang made what might be regarded as a remarkable statement for a Prison Service Director General:

First of all prisoners/clients need to improve their self-confidence. Therefore all our efforts when organising correctional services should be analysed as to their ability to support, uphold and redress the self-esteem of the prisoner. (p.67)

He stressed the importance of work, training, education, "medico-social treatment" and "the need for shelters" - since "our customers...have been mistreated and abused both inside and outside the institutions we put them in", they should be offered in prison "shelter and protection in time, space and social environment." (p.67) It would be hard to find a more welfarist statement from the leader of any prison system. This philosophy continues to be a core part of the

outlook of those running the prison system in Finland; the culture of control has made few inroads there in relation to the representation of the prisoner.

***Norway: reasserting the social dimension***

Although there is evidence of some narrowing of focus to *individual* responsibility in Norwegian penal policy around the turn of the century, the social dimension has been strongly reasserted recently. The idea of the prisoner as part of society, but someone in need of help, is brought out strongly in the 2008 White Paper. Just before it was issued, the Deputy Minister for Justice, Terje Moland Pedersen, spoke of the welfare state as a factor shaping the debate. He explained the Nordic welfare state model as “*about how everyone is going to carry for everyone*”, and this meant “*that it is possible for us to have another kind of discussion about how we use prison and how we sentence people than I think it can be in some other countries*”. For Pedersen the key issue was “*the people who really need help*”. He added: “*I think it’s about humanity and it’s about [whether] you succeed in handling poverty.*”

This White Paper is titled, in its ‘English summary’ form, *Punishment that works – less crime – a safer society* (Norwegian Ministry of Justice and the Police, 2008). It suggests that fewer should be in prison, that more of those imprisoned should have lower security, that regimes should be improved and focused on rehabilitation. The White Paper is unquestionably penal welfarist and socially inclusive in outlook, even if it speaks of strict regimes for a minority and in places cloaks discussion in the language of the culture of control.<sup>20</sup>

Penal welfarism is also suggested by core ideas in the White Paper:

The smaller the difference between life inside and outside prison, the easier the transition from prison to freedom. The normality principle is therefore a loadstar for penal implementation policy. It is also in

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<sup>20</sup> That the emphasis on protection in the 2008 White Paper leads to more ‘liberal’ policies rather than greater incapacitation is reflected in the statement: “Penal implementation out in the community is more effective for rehabilitation than prison and is therefore the best long-term protection.” (Norwegian Ministry of Justice and the Police, 2008, Part 2)

accordance with the principle that deprivation of liberty is the actual penalty and that the stay in prison shall not be more onerous than security considerations demand... Strengthening the normality principle means organising a daily routine in prison that as far as possible reflects the society outside the walls. (Part 3)

The concept of the prisoner here is of a 'normal' member of society.

### ***'A competition between pictures'***

Showing a tabloid headline that translated as "Blitz at Oslo emergency ward: PRISONER SHOT FREE by masked gang",<sup>21</sup> one governor stressed that only about 10 per cent of prisoners were dangerous in this manner. Most prisoners, he said, "*are the poor guys.*" An issue in Britain and the USA is that 'the dangerous guys' come to be seen as typical of prisoners, rather than as a small minority, and this is a basis for vengeful and punitive attitudes. Nils Christie, strongly critical of presentations of prisoners as 'monsters', said: "*The danger is now that these very physical famous criminals shall in a way cover the picture. So we think they are the prisoners. It's even competition between pictures now.*" One senses, however, that in Norway the negative stereotypes have not won this 'competition between pictures' and the entire prison system has not been moulded in response to the minority.

In its representation of prisoners the White Paper goes strongly against the grain of the 'new punitiveness'. Prisoners are seen as members of society who "enjoy the same rights as everyone else", if not always the same access (Part 4). Social services are obliged to provide for them "in the same way as to other citizens" (Part 4). It is noted that many prisoners "belong to the poorest and most alienated sectors of our society" (Part 4). The report lays great stress on the government's "return to society guarantee", which is declared to be "a public responsibility" (Part 4).

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<sup>21</sup> The newspaper was VG on 7/9/03.

In this inclusive view of prisoners, it is the explicit ruling out of stereotyping that is most striking. The White Paper says that “it is only a minority that constitute a threat to public or individual safety” and specifically warns against their ‘demonising’ (Part 2). In similar calming vein, it states that “policy must not be based on individual incidents” (Part 1). In Norway, the perception of the person held in prison among the public, politicians and especially the prison administration, is for the most part holistic and inclusive.<sup>22</sup>

## **PART 5: CONCLUSION: EIGHT LESSONS FOR IRELAND**

There are many lessons that a country such as Ireland could take from examination of the prison systems of Denmark, Finland and Norway – countries of similar size to Ireland. The possibilities for constructive modelling are vast. Here I will highlight eight possible lessons in relation to penal policy:<sup>23</sup>

### 1. Reduce the prison population by 1,500

Currently (May 2012), Ireland has some 4,400 men and women in prison, a rate of incarceration of 98 that has risen sharply in recent years. Although Denmark, Finland and Norway all have higher overall populations than Ireland, all have lower prison populations. Ireland had a rate of incarceration close to, or even lower than, these Nordic countries until the mid-1990s, yet now has a rate that ranges from 30 to 66 per cent higher, as was evident in figures given earlier. Nils Christie quotes K.J. Lang as saying: “The number of prisoners has very little to do with crime. [It] is rather caused by the general situation of confidence in society and of the political equilibrium.” (2000, p.51, Christie’s translation)<sup>24</sup>

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<sup>22</sup> Prisoners’ input was also sought for the White Paper: “In six prisons dialogue conferences were held in which both inmates and staff participated and discussed what a good day in prison would look like for them.” (Part 5)

<sup>23</sup> Similar prescriptions for the Irish prison system are given in more detail in the policy paper of the Jesuit Centre for Faith and Justice, *The Irish Prison System: Vision, Values, Reality* (Dublin, 2012).

<sup>24</sup> The current Director General of the Finnish prison system is clearly of the same view. He wrote: The prison population rate seems to be more connected with other factors describing the state of society than with the quantity and quality of crimes. Identifying these connections creates a basis to carry out long-term criminal policy instead of leaning to more and more

Were Ireland to return to the rate of incarceration it adhered to until the mid-1990s (usually below 60), or were it to match the much lower rates in Nordic countries today, it would have in the region of 1,500 fewer in prison, a prison population of, say, 2,700 to 3,000.<sup>25</sup> Indeed, a government committee of inquiry into the penal system in the 1980s proposed an even lower rate of about 50 (Whitaker Report, 1985). A range of modest adjustments, all of which have been demonstrated in the countries examined (and most of which were advocated by Whitaker), would achieve such a reduction; for example, ceasing to use prison for non-payment of fines or debt,<sup>26</sup> finding more alternatives in the community for shorter sentences in particular, allowing drug-dependent prisoners to undergo treatment in the community, applying remission at the two-thirds point, and granting more prisoners early release on parole, including some life-sentence and other long-term prisoners. Most of these possibilities are present in the Irish criminal justice system already, but are often only used in a limited way.

The nub of the problem is Ireland's over-reliance on imprisonment, rather than alternatives in the community, as a sanction for crime. Of those who "served a correctional order" in the five Nordic countries in 2008, "62% served a probation order, while 38% served in prison" (Kristoffersen, 2010, p.19). While data in Ireland may not be precisely comparable, the general picture is unmistakable: the proportions in Ireland are broadly reversed, with less than 30 per cent receiving sanctions in the community under the Probation Service, compared to over 70 per cent being imprisoned. This is evident in the IPS and Probation Service reports for 2011: the total number of orders for supervision and community

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severe sentences whenever a single brutal crime agitates the public. (Vesterbacka, 2005, p.5)

<sup>25</sup> The 2008 report by the 'McLeish' commission set up by the Scottish government, *Scotland's Choice*, suggested a target prison population of 5,000, radically reduced from its current level which is over 8,000.

<sup>26</sup> The IPS *Annual Report 2011* states: "The number of committals to prison as a consequence of the non-payment of a court ordered fine during 2011 increased by 12.4% on the 2010 figure, i.e., from 6,683 in 2010 to 7,514 in 2011" (p.28). Elsewhere, it is stated that in a 'snapshot' of the prison population on 30/11/11 there were 20 in custody for non-payment of a fine (p.21).

service made in 2011 was 7,223<sup>27</sup>; the total number of committals to prison for that year was 17,173<sup>28</sup>. Clearly, Ireland has considerable scope for resorting to imprisonment far less often.

## 2. Have one-third of prisoners in open prisons

As was seen above, Nordic countries make far greater use than Ireland of open prisons, which cost far less, give rise to less institutionalisation and offer better prospects of resettlement.<sup>29</sup> A critical improvement in the quality of regimes in Ireland would be brought about by having one-third of all prison places in open prisons (say, 1,000 in open prisons in a total prison population of 3,000). This would involve decommissioning some closed prisons and acquiring new replacement facilities that would be suitable as open centres. It would also involve adapting work practices and prison officer training, as staff in open prisons must rely more on relating to prisoners. At present, no open facility exists in the Irish prison system for women, nor is there an open facility now for young men aged under 21 (since the closure of Shanganagh Castle in 2003).<sup>30</sup>

## 3. Operate a greater number of smaller prisons than fewer larger ones

Ireland has 4,400 people in just 14 prisons and its four largest prisons are each bigger than any institution in any Nordic country.<sup>31</sup> The *average* prison size in Ireland is now over 300, at least twice the average in Norway, Finland or Denmark, whose averages range from 65 to 150. It is generally recognised that

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<sup>27</sup> The Probation Service, *Annual Report 2011* (Navan, 2012), p.40. Note that Part Suspended Sentences and Post Release Supervision Orders, which are only activated upon release from custody, are not included here.

<sup>28</sup> Irish Prison Service, *Annual Report 2011* (Longford, 2012), p.20.

<sup>29</sup> These outcomes also derive from home leave. Home leave in Nordic countries, despite some recent restrictions, is significant. Ireland could well implement Norway's policy of 18 days leave a year from a closed prison and 30 days from an open prison from when one-third of stated sentence is served.

<sup>30</sup> Moreover, in the open prisons visited in the three Nordic countries, one found that sex offenders were not precluded, as they effectively are from open prisons in Ireland. Several other categories of prisoners are also precluded in the Irish system.

<sup>31</sup> These four are Wheatfield (which had a daily average of 671 in 2011), Mountjoy (616), Midlands (586) and Cloverhill (433).

problems such as institutionalisation, bullying and the need for segregation are less in smaller locations – and there is no evidence of economies of scale being obtained in Ireland from having larger institutions. Yet, Ireland’s prisons grow ever bigger, with the Midlands Prison set to hold over 1,000 shortly.

#### 4. Have out-of-cell time of at least 12 hours

In Nordic countries, more than 12 hours out-of-cell time of is the norm for sentenced prisoners, while it tends to be no more than seven hours (and often far less) in most Irish prisons, even though Ireland’s staffing ratio is close to the levels in Norway and Finland.

The Whitaker Report dealt with these issues, saying prisoners should have:

...normally (and always when a prisoner so desires) private sleeping accommodation in a single cell... access to toilet facilities at all time... much more out-of-cell time (at least 12 hours), the present lock-up time of 16 hours a day being excessive...flexible access to participation in ordered activity, such as education and work, to recreation facilities and to welfare services. (1985, pp.13-14)

Over a quarter of a century later, little has improved overall with regard to such matters in Ireland.

#### 5. Have single cell accommodation for all prisoners, with access to separate toilet facilities at all time

Single-cell accommodation is almost universal in Nordic countries, while in Ireland about 60 per cent of all prisoners must share cells – a problem compounded by high lock-up time and undignified sanitary arrangements.<sup>32</sup> The European Prison Rules specify that prisoners should normally be able to sleep in individual cells.<sup>33</sup> The problems associated with high lock-up times, multiple

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<sup>32</sup> Answers to parliamentary questions asked by Ciaran Lynch, T.D., on 24/11/11 revealed that 60 per cent of prisoners shared cells, nearly all of whom had to defecate and urinate in each other’s presence; that ‘slopping out’ still applies to 845 prisoners (20 per cent); and that 178 were on ‘23-hour lock-up’.

<sup>33</sup> The European Prison Rules (Council of Europe, 2006) state:

occupancy, inappropriate sanitation and drug-taking in prisons (see point 6 below) all tend to reinforce each other.

#### 6. Put at least as much effort into drug treatment as into drug control

Given extensive drug problems among prisoners, a combination of Finland's approach to supply control and Denmark's approach to demand control offer a good strategy within prisons, combined with the proposal in the 2008 Norwegian White Paper that more prisoners with drug problems be released to undertake treatment in the community. The Finns have not applied airport-type screening nor mandatory drug-testing universally, but they do conduct urine tests where prisoners *volunteer* to go to open prisons or on drug treatment programmes or to drug-free units. Denmark guarantees drug treatment within two weeks to any prisoner who requests it and who still has at least three months to serve. Extensive and generally full-time voluntary drug treatment is available in virtually every prison in Denmark.

#### 7. Give greater recognition of prisoners' citizenship and membership of society

There is much more that Ireland could learn from Nordic countries about respecting the dignity and citizenship of people in prisons. Positively facilitating the right to vote would be one step, as happens without question in Nordic countries.<sup>34</sup> Another would be to allow the kind of prisoner representative groups (*Toverikunta*) that exist in prisons throughout Finland, where prisoners also have access to the ombudsman in the same way as citizens in the outside community.<sup>35</sup>

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“18.5 Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation.

18.6 Accommodation shall only be shared if it is suitable for this purpose and shall be occupied by prisoners suitable to associate with each other.

18.7 As far as possible, prisoners shall be given a choice before being required to share sleeping accommodation.”

<sup>34</sup> Prisoners in Ireland were granted the vote in 2006 (Behan and O'Donnell, 2008), but research by Cormac Behan indicates barriers to them exercising their franchise in practice.

<sup>35</sup> The Whitaker Report stated: “Prisoners should be given the right to have grievances investigated by the Ombudsman”. (1985, 2.33)

## 8. Ensure public participation in formulating the future direction of the prison system

Ireland could truly learn from the deliberative process that was involved in the shaping of the Norwegian White Paper, bearing in mind that an Irish White Paper on crime is in preparation. The Norwegian government and prison administration consulted seriously and widely with the public and within the prison system (among staff and prisoners). Such a process would help address a problem set out by Loader:

We need to design institutional ways of living with, and seeking to make as inclusive and as informed as possible, the mediated public contests about crime and punishment that have become a recurrent feature of our times... (2006, p.582)

Loader argues for “the lost political art of taking the heat out of crime – an art that pressingly needs to be reinvented in ways that can help temper the impatient, illiberal climate that has come to pervade the politics of security in England and Wales today”. (2006, p.583) Such a lost political art might be found, in part, in the manner in which the Norwegian government generated wide-ranging public involvement in the shaping of its 2008 White Paper.

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