

RESISTING THE NEW PUNITIVENESS? PENAL POLICY IN
DENMARK, FINLAND AND NORWAY

Author: Michael Kevin Warner, BA, M.Sc. (Econ), M.Ed

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School of Applied Social Science

Head of School: Professor Tony Fahey

Supervisors: Dr. Valerie Richardson
Dr. Aogan Mulcahy

Abstract

The theoretical framework for this research comes from Garland's account of the 'culture of control'. Garland examines the whole spectrum of social, economic, political and cultural relations in late modern society to explain new patterns in the crime control field. Late modernity, in his view, gives rise to new ways of thinking and acting about crime issues and these are predominantly punitive or restrictive. The thesis focuses on the predicted changes in the penal system, addressing the presumption that, in Western society, the scale of imprisonment escalates, the depth of imprisonment deepens and the person in prison is perceived one-dimensionally and in demonised terms, as part of this wider 'culture of control'.

While Garland's exposition is built on examining the United States and Britain, he suggests that this punitiveness applies to all Western societies. In a case study approach, the thesis examines the penal systems of Denmark, Finland and Norway to see if this presumed increase in punitiveness can be found in these countries, and attempts to discover the reasons for the outcomes. The primary means by which these prison systems were investigated was through analysis of documentation and recorded interviews with key personnel, supplemented by visits to prisons. Thus, this thesis examines whether Garland's model applies to penal policy in Denmark, Finland and Norway. It finds that, while there have been some signs of 'new punitiveness', none of these Nordic countries have followed the path predicted by Garland.

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, but it has recently diverged, exhibiting more of the features Garland describes. The thesis examines what penal policy lessons might be learned from the Nordic countries for a country such as Ireland.

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Chapter 1

Introduction

1. THE NEW PUNITIVENESS IN PRISONS

The subject of this thesis

This thesis addresses the presumption that, in Western society, the scale of imprisonment has escalated and the depth of imprisonment deepened as part of a wider intensification of a 'culture of control' (Garland, 2001). It examines the penal systems of Denmark, Finland and Norway to see if this presumed increase in punitiveness can be found in these Nordic countries, and attempts to discover the reasons for the outcomes. The analysis focuses on the scale and depth of imprisonment, but also on the representation of the prisoner, for whether the prisoner tends to be seen in negative and even demonised terms, or is seen more inclusively as a member of the larger society, is also a significant part of penal discourse.

The primary means by which the Nordic prison systems were investigated was through analysis of documentation and detailed recorded interviews with key personnel, supplemented by visits to a representative range of prisons.

The dominant theoretical framework for this research comes from Garland's account of the 'culture of control' (2001). Looking at the whole spectrum of social, economic, political and cultural relations in late modern society, Garland examines these areas to explain new patterns in the crime control and criminal justice fields. Late modernity, in his view, gives rise to new ways of thinking and acting about crime issues and these are predominantly punitive or restrictive. This change in criminal justice, according to Garland, has taken place in the last third of the twentieth century and has been "a sudden and startling reversal" from the penal welfarism that "characterised the field from the 1890s to the 1970s" (2001, p.3).

In Garland's scenario, this "reconfigured field of crime control" (2001, p.6) is manifest in particular ways in the sub-field of penal policy. The idea of rehabilitation fades and punitive practices rise. The numbers imprisoned escalate and prison itself becomes more austere and restrictive. The way the person who commits crime is represented to society changes from an image of someone who at least in part needs help to someone who is perceived as evil and who must be punished and contained. The whole area becomes highly politicised and 'penal populism' gives rise to harder and harder policies. This analysis of Garland is set out more fully in Chapter 2, but for now it is notable that in relation to prisons this new phenomenon can be distilled into three main features:

- (i) a very large increase in the level of incarceration,
- (ii) an intensification of the controlling or restrictive aspects of prison (an increase, that is, in the depth of imprisonment),
- (iii) and a characterisation of the prisoner in negative and one-dimensional terms.

These are the three main criteria by which punitiveness will be assessed throughout this thesis. Pratt et al's (2005) term, 'the new punitiveness', encapsulates these developments in relation to prisons.

While Garland's (2001) exposition was built on examining the United States and Britain, he implied that this punitiveness would, sooner or later, apply to all Western societies. Garland (2004) later modified that suggestion to an extent, noting for example that different crime control patterns might arise in countries with different welfare structures, and he specifically highlighted Scandinavian countries and Germany in that regard. Others, such as Bondeson, see the Nordic welfare model having "a softening effect on criminal justice policy" through "the solidarity principle." (Bondeson, 2005a, pp.197-8) Thus, this thesis examines whether Garland's (2001) model applies in Denmark, Finland and Norway, especially in relation to their penal systems, or whether any of these systems are, as Bondeson put it, "an exception" (2005a, p.189).

Since the mid-1990s, much of what has developed in the penal system in Ireland resonates with what Garland describes. Consequently, the possibility of other European countries of similar size to Ireland resisting this new punitiveness in their penal systems was of particular interest. The task in large part was one of assessing elusive concepts like attitudes to prisoners, the atmospheres within prisons, “the emotional tone of crime policy” (Garland, 2001, p.10) and whether prison was seen by practitioners to have detrimental effects or, conversely, seen to ‘work’. Hence the research was to a large extent qualitative, drawing on loosely-structured interviews with key personnel, and visits to prisons in an effort to get some ‘sense’ of them. Quantitative information was critical also, however, in providing some of the indicators of the extent or otherwise of punitiveness, and often the ‘content’ of imprisonment, through data on prison populations and statistics about conditions. In particular, textual analysis of important documents, whether published or not, often told a great deal about the state of the prison system vis-à-vis the new punitiveness.

Questions arising from a work situation

This research arose in large part from experience in my work situation. I was responsible for co-ordinating education in the Irish prison system for almost three decades but, while being for many years at ease with at least the official objectives of the system (if not always its practice), the past decade or more has been troubling as the Prison Service swung in a more punitive direction. This chapter will first seek to describe the values and ‘philosophy’ with which I entered prison education work in 1979 (Section 2) and how these were formulated in the 1980s into a distinctly ‘adult education’ approach to the education of people who were in prison (Section 3). Educational thinking has relevance, in particular, to the way the person being worked with, the learner, is seen

This perception of the prisoner will, it is hoped, be seen to be important in Section 4 of this chapter, which will show how the adult education approach meshed with and complemented a coherent outlook on penal policy, one that is

perhaps best reflected in the European Prison Rules agreed by the countries in the Council of Europe (1987, 2006), but also expressed domestically in the 'Whitaker Report' (1985) and *The Management of Offenders* (Department of Justice, 1994). Then, I relay (Section 5) how a large-scale 'punitive turn' in penal matters was first experienced by me in a significant and personal way while in the United States in the mid-1990s. Thereafter, the narrative will tell (Section 6) how, soon after returning home, echoes at least of the American "imprisonment binge" (Irwin and Austin, 1994) could be found in Ireland. The prison population of Ireland rose steadily from that point, and other changes could be noted, reflecting in particular a shift away from penal welfare perspectives. This 'new punitiveness' has seriously challenged, among other aspects, what had been the accepted approach to the education of prisoners. As it took hold in Ireland, a research project that originally envisaged focusing mainly on the field of prison education gave way, in the face of increasingly pressing questions as to where in the world they run prison in an acceptable manner, to an examination of penal policy more broadly. This quest led me to the Nordic countries.

The research question grew out of issues encountered while going about my work. It seems appropriate therefore to explain in this introductory chapter the personal experience and journey that gave rise to the research effort. Moreover, as will be discussed more fully in Chapter 4 in relation to methodology, the study is primarily qualitative. In line with such methods, it is appropriate for a researcher to describe one's own values and perspective, in recognition of the fact that these can impact on the subject under investigation. Thus, for these two reasons, this chapter will seek to give some account of experience while working within the Irish prison system, and the development of ideas in response to that experience and changing circumstances. That story, of necessity, will refer to a considerable body of my own writing, as well as writing by others working with me and some writing made in conjunction with colleagues. In my view, there are clear and important links, especially in relation to the attitude to people being dealt with, between adult education, prison education and humane penal policy.

These links will be a central thread in this chapter, and they connect with a central theme of the thesis: the representation of the men and women held in prison. These ways of seeing prisoners are seriously challenged by the new punitiveness.

2. THE ADULT EDUCATION APPROACH.

A radical approach to adult literacy.

To understand what is meant by an adult education approach in prison education, it is necessary to look first at what this might mean outside the prison context. In 1975, having previously taught in second-level schools in Ireland and England, I took up a position in adult education in a Manchester college. The work was concerned in particular with adult literacy and the appointment coincided with a major British government initiative which recognised (in some ways for the first time) the extent of reading and writing problems among adults and sought to address these. Perhaps the most significant feature of this campaign in the mid and late 1970s was the blossoming across Britain of some remarkably creative, and in many ways quite radical, approaches to teaching in the field. The way the learner was seen in these developments is of critical importance, for such a perspective carried into prison education and, as will be seen below, resonates with certain penal policy outlooks while it jars with others.

An article written with a colleague from that Manchester period sought to tease out the principles inherent in the approach to adult literacy that was developed at that time, described as “student-directed learning”. (Derbyshire and Warner, 1980) The philosophy behind this teaching owes something to Paulo Freire (1972a, 1972b) in that it builds on the learner’s own words, dialect and life-experience. Even when a learner was unable to write, his or her own words could still be tape-recorded or dictated (and then usually put into typed form) and these words became a more meaningful and manageable text. The thoughts and stories from this process became, when set out in printed form, validations of these students’ lives as well as of their language, implying to them that they were

people with something to say. When a student's words are written down, "they are given authority, and so the student is able to begin to appreciate her own identity and to realise that she can interpret and analyse the world". (Derbyshire and Warner, 1980, p.245) Such ways of working challenged the stigma which equated 'illiterate' with 'ignorant' and gave students confidence to overcome previous 'failure' at school. The approach also owed something to another movement which emerged strongly within Britain about the same time, that of 'community publishing', through which 'ordinary' people wrote about their own lives and shared this with others. (Centerprise Trust, 1977; Shrapnel, 1979; Morley and Worpole, 1982)

What adult literacy students had to say was also of critical importance in shaping how the learning was organised: what was studied, how it was studied and how this learning was assessed. The knowledge and insights those who have lived with reading or writing difficulty can give also extends to the causes, effects and nature of the literacy problem, and to their experience of learning, as shown in my M.Ed. research based on lengthy interviews with 18 literacy students in Manchester (Warner, 1983). That study concluded that the adult literacy problem needed to be conceived, not just technically as reading or writing difficulty, but just as importantly in terms of "non-technical" aspects such as "social stigma" and "a sense of failure". (Warner, 1983, p.69)¹ Such a view of what is involved in literacy difficulty for an adult is central to how it is seen by policy-makers and practitioners in Ireland today, as reflected in the key policy document of the National Adult Literacy Agency. (Derbyshire, O'Riordan and Phillips, 2005)

The concept of adult education.

In his text, *Teaching Adults*, Alan Rogers says: "The difference between what may properly be termed 'adult education' and the 'education of adults' lies less in what is being learned... than in the *approach* to adult learning" (Rogers, 1986, p.17, emphasis in original). Adult education, Rogers says, "consists of all those

¹ A literacy student 'reader' on 'adult lives without literacy', which was largely based on interviews for this research, was published (Gatehouse, 1983).

forms of education that treat the student participants as adults – capable, experienced, responsible, mature and balanced people”, and the teaching must “respect and enhance the adulthood of those who have voluntarily become our students”. (1986, p.17) He says “the goal of greater adulthood” should have primacy over other goals, such as the teacher’s regard for the subject discipline or the student’s initial expectations as to what learning entails. (Rogers, 1986, p.18) That approach and respect was presumably evident in the above description of adult literacy teaching, and will hopefully be equally recognised in the account to be given below of prison education. Indeed, such attitudes that recognise ‘adulthood’, and see people as ‘subjects’ rather than ‘objects’ (Duguid, 2000) may be deciphered too in the penal policy to be described later in this chapter, and, conversely, may be seen as lacking in some of the policies that were introduced after the ‘punitive turn’.

3. PRISON EDUCATION AS ADULT EDUCATION

Support for an adult education approach

By the mid-1980s such thinking based on respect for the student had become, not just generally accepted throughout prison education in Ireland, but reflected in official policy. A policy document on prison education issued by the Department of Justice in 1984 states: “The methods appropriate to education in prisons relate far more closely to the approaches of adult and community education, than to traditional school-based education,” and it goes into considerable detail as to what is involved in these learning methods. (Department of Justice, 1984, part 5) A statement of the objectives of education in prisons is given as:

- (1) helping prisoners to cope with their sentences,
- (2) widening and strengthening the options prisoners might have open to them upon release,
- (3) affording opportunities to the prisoners for increased self-development, self-esteem or self-reliance. (Department of Justice, 1984, part 3)

There are penological assumptions inherent in these objectives also, such as recognition that prison is detrimental to people, who should be helped ‘cope’. The

following year the government's Committee of Inquiry into the Penal System, chaired by T.K.Whitaker, endorsed that very broad-ranging set of objectives, echoing some of the policy document's language very closely:

Affording opportunities to prisoners for increased self-improvement, self-esteem and self-reliance are achievable objectives, and make more sense than the unrealistic goal of a reform to be accomplished in three months or three years. For this reason education in prison should have something to offer to everyone and should not concentrate on either the backward or the bright. (Whitaker Report, 1985, p.96)

Thus adult education was seen as the appropriate approach to the education of those in prison in Ireland, with the aims, methods, courses and activities within prison considered essentially the same as in adult education outside. (Warner, 1988, 1990)

The Council of Europe report on prison education

Meanwhile, the Council of Europe was formulating what became its primary policy on the education of prisoners through the latter part of the 1980s, culminating in *Education in Prison*. (Council of Europe, 1990)² This report was adopted by the Committee of Ministers from Council of Europe countries and had "two overall complementary themes":

firstly, the education of prisoners must, in its philosophy, methods and content, be brought as close as possible to the best adult education in the society outside; secondly, education should be constantly seeking ways to link prisoners with the outside community and to enable both groups to interact with each other as fully and as constructively as possible. (Council of Europe, 1990, p.14)

The perception of the prisoner as a member of the community is notable here. The report justified education in prisons on three grounds: bringing a degree of normality to life within prisons, addressing educational disadvantage, and offering the possibility of rehabilitation. (Council of Europe, 1990, p.15) It asserted that "all prisoners shall have access to education", which was seen as involving a wide curriculum. (Council of Europe, 1990, p.7) It also stated: "Education in

² I was chairperson of the 'Expert Group' that wrote the report and from that perspective was able to offer commentary on what it set out to achieve, as in several of the articles to be referred to later in this chapter.

prison shall aim to develop the whole person bearing in mind his or her social, economic and cultural context.” (Council of Europe, 1990, p.8)³ The wider perspective of adult education, compared to providing education that attempts directly to achieve rehabilitation, was consciously adopted:

In seeking to establish good adult education in prisons, rather than focusing so much on rehabilitation or resocialisation, educators may, paradoxically, create more fertile conditions for prisoners – as they are given more psychological ‘space’ to discover positive potential within themselves – to choose to redirect their lives. An adult education model, then, may be at least as successful as a rehabilitative one even at achieving the primary end the latter sets itself: that of enabling offenders to turn away from crime. (Warner, 1991a, p.17)

The wide curriculum

In recognition of ‘the whole person’, that Council of Europe report envisaged a wide curriculum being offered in prisons and stressed areas like the arts, social education, physical and health education, as well as the importance of giving priority to those with greatest educational needs. (Warner, 1989, 1991b)

Certainly, the range of subjects and activities that became available in Irish prisons was very extensive indeed by international standards. (Coakley, 2003; Warner, 1993, 1998a, 2002a) This was so whether the prison in question was for young men (Lorenz, 2002) or adults (Kett, 2001), or even for high-security paramilitary prisoners (Wynne, 2001). The arts played an exceptionally large role in the education offered in all Irish prisons. (Coakley, 1990) Higher education became available also, mainly through the Open University, and succeeded in drawing into study at this level many ‘traditional non-participants’, people who, had they not been in prison, would have been very unlikely to take part. (Costelloe, 2003) Costelloe interviewed Open University students in Irish prisons, and detected eight ‘motivational categories’:

- (1) to alleviate boredom, (2) to promote a sense of self-development, (3) to harbour a sense of personal achievement, (4) to improve their employment prospects on release, (5) to make their families proud, (6) to make constructive use of time spent in prison, (7) to help their case

³ This key part of the recommendation drew on much the same language as in an earlier Council of Europe statement on adult education policy in the community.

when back in court, (8) to pursue old interests or develop new ones.
(Costelloe, 2003, p.141)

It is noticeable again that some of these reasons for learning are part of coping strategies in relation to imprisonment, and this corresponds to Forster's (1990) findings for a similar group in an English prison. There is no obvious or direct link in these motivations with 'rehabilitation'. Experience would suggest that those who participate in other aspects of education in prison in Ireland have a similarly large range of reasons for doing so.

Humane and holistic education

Costelloe classifies the perspective in the provision of such education as largely reflecting a "humanist philosophy of education" (2003, p.27), with only "faint traces of a more radical philosophy" such as that of Freire (2003, p.30). Her main criticism is that "the social context is ignored", with learners not having the opportunity to understand "the social, political and economic influences of their cultures in order to bring them to an awareness of reflective social action". (Costelloe, 2003, pp.31-34) However, some such location of prison education in a wider social context is offered in Warner (2002b) and Behan, who argues that "to ignore the social and structural dimension of our students' lives overlooks a key aspect of our role as adult educators". (Behan, 2008, p.134) Each of these latter writings grapple with the increasing penal punitiveness of recent times.

That sharpening of punitiveness, and a consequent narrowing of focus from the 'whole person' to the 'offender', lay behind a critique of courses which concentrate on 'offending behaviour'. (Costelloe and Warner, 2008) That article pointed to an inherently blinkered perspective in approaches that seek only or mainly to address 'criminogenic factors' in dealing with people in prison.⁴ These concerns will be revisited in Chapter 2, when discussing Canadian influence. The issue is referred to here to highlight how the humane and holistic perception of the person in prison has come under some pressure within prison education.

⁴ A similar critique of a narrowing of focus may be found in Warner (2007).

However, this perspective has been even more severely undermined in recent general penal policy, as will be seen below.

4. 'HUMANE CONTAINMENT'

Personal development

It will be clear that the approach to the education of prisoners that derived from adult education was one geared in a broad way towards the personal development of those who sought to learn while incarcerated. It saw them as 'whole persons', as normal people, and focused on their potential and their futures. Even if the social context to the learning was not always as developed as it could be, the perspective saw prisoners as members of the community and sought to enhance the interaction between them and people and events outside. It was (and is) a hopeful and humane way of engaging with prisoners: one that treats them as citizens and with dignity and respect.

While the origins of this view of work with prisoners, and of prisoners themselves, derived largely from beyond the prison, from adult education and human rights spheres, it was permitted and supported by penal policy that was a variant of penal welfarism. This outlook saw education as complementing the prison, and the fact that the providers of the education were from the community outside was seen as an additional benefit.⁵ Education was one of several activities described under the banner of 'personal development' by the Whitaker Report (1985), the others being work training, psychology and the probation and welfare service. The perception of what prison was supposed to be about allowed great scope for activities such as education to thrive. In particular, the perception of the person in prison – a member of society, perhaps fallen by the wayside, frequently one suffering multiple deprivation – coincided broadly with how the prisoner was seen by adult educators. That image is of critical importance and its shifting in official penal policy in Ireland in the late 1990s placed strain on education and similar activities and meant a far less hospitable environment within which to work.

⁵ This was so from when the first teachers in modern times went to work in Irish prisons in 1968, starting with teachers from County Dublin VEC at Shanganagh Castle.

A broad concept of rehabilitation

The document, *Education Policy in Prisons and Places of Detention*, issued by the Department of Justice in 1984, had a section on 'Prison Objectives' which quoted extensively from an earlier unpublished document circulated in the department in June 1981, entitled 'Prisons and Places of Detention: Survey of Objectives'. That earlier survey, written primarily by a Principal Officer, Frank Dunne, sees prison as having the purposes of general deterrent, individual deterrent and incapacitation. It then states:

Prisoners ought to be treated humanely... The loss of freedom... is the punishment and, subject to cost limitations and the need to maintain safe custody and well-ordered prison life, restrictions within the prisons and places of detention should be kept to the minimum. (Department of Justice, 1984, part 2)

It also says conditions of imprisonment should be made "as tolerable as reasonably possible". (Department of Justice, 1984, part 2) In the context of dealing with activities (of which education is one), the earlier document speaks of 'rehabilitation', saying that while it "is not the primary objective of imprisonment it is nevertheless an important and valid objective. It is intrinsically good and should not be abandoned simply because evidence does not prove that it is 'successful'." (Department of Justice, 1984, part 2) Frank Dunne's document speculates on what such success might mean and suggests outcomes other than ceasing to commit crime:

What about the qualitative improvement in the prisoner's approach to living, his relationships with family and friends, his involvement in community activities, his willingness to help and support others, his physical and mental well-being? (Department of Justice, 1984, part 2)

Such a broad, and perhaps realistic, concept of rehabilitation is also to be found a few years later in the 'Whitaker Report' (1985). (Frank Dunne was Secretary to that Committee of Inquiry). The Whitaker Report spoke of rehabilitation as efforts to help the criminal's "inability to cope with society" (1985, p.89). As already noted above, the report took the view that education should offer prisoners

opportunities “for increased self-improvement, self-esteem and self-reliance” rather than “the unrealistic goal of a reform to be accomplished in three months or three years”. (1985, p.96) Elsewhere, the report states:

Prisoners are people who have failed. Many will have had a long history of failure at home, at school, at work and at establishing human relationships. It is unrealistic to expect that prison can achieve what better placed institutions in society have failed to do. (1985, p.91)⁶

Whitaker recommends that such a broad concept of rehabilitation, which seems to largely address the factors *underlying* crime problems, should be combined with “humane containment” and that these two ideas should shape the prison system. It describes “humane containment” as “based on the principles of minimum use of custody, minimum use of security, and normalisation of prison life.”(1985, p.90)

The European Prison Rules

Two years later, the Council of Europe adopted revised European Prison Rules (Council of Europe, 1987), which are as much a philosophy of imprisonment as a statement of rules. Rule 65 reflects the same twin Whitaker concepts of ‘humane containment’ and rehabilitation (broadly conceived) in more detailed form:

- Every effort shall be made to ensure that the regimes of the institutions are designed and managed so as:
- a. to ensure that the conditions of life are compatible with human dignity and acceptable standards in the community;
 - b. to minimise the detrimental effects of imprisonment and the differences between prison life and life at liberty which tend to diminish the self-respect or sense of personal responsibility of prisoners;
 - c. to sustain and strengthen those links with relatives and the outside community that will promote the best interests of prisoners and their families;
 - d. to provide opportunities for prisoners to develop skills and aptitudes that will improve their prospects of successful resettlement after release’. (Council of Europe, 1987, pp.19-20)⁷

⁶ Paul O'Mahony's sociological and criminological profiles of prisoners in 1986 and 1996 in Mountjoy, by far the largest prison in Ireland, both showed widespread and severe social deprivation (O'Mahony, 1997).

⁷ The Council of Europe revised the European Prison Rules in 2006, but in broad terms the ‘philosophy’ of imprisonment remains the same. There is no longer explicit reference to “the detrimental effects of imprisonment”, but the Rules now specify that prison should be used only “as a measure of last resort” (Council of Europe, 2006, Recommendation).

It has been argued that such objectives conflict with ‘Prison works’ attitudes and approaches, which, at most, incorporate a narrow version of rehabilitation that does little other than seek to “address offending behaviour”. (Costelloe and Warner, 2008)⁸

‘Valued members of society’

This section has drawn out certain understandings of what the prison can and should do that are to be found in earlier policy documents pertinent to the Irish prison system, especially by focusing on how the person in prison is perceived. Clearly, the image of multiple failure and deprivation comes across, but there are also deliberate efforts to see the person in prison holistically and as a member of society. The Whitaker Report says:

There is simply no humane way that one human being can lock up another human being... even among the best motivated of professional staff, there is a tendency to see the inmate as prisoner first and as a patient, a student, an apprentice or a client second. (1985, p.91)

The authors of that report wanted men and women in prison seen, not in stereotypical terms as prisoners, but as these people would be on the outside. In 1994, the Department of Justice published *The Management of Offenders: A Five Year Plan*, with Frank Dunne, once again, centrally involved as the primary author. (Department of Justice, 1994) In some ways this publication was seen as the Department of Justice’s response to the Whitaker Report, which had been severely critical of the department’s stewardship of prisons. However, one of the most striking aspects of *The Management of Offenders* is the repeated references, in the chapter on aims and objectives in particular, to those in prison as “members of the community” and as “valued members of society”. (Department of Justice, 1994, pp.21-22) This Justice document also endorsed the European Prison Rules, at the heart of which is a similar inclusive attitude towards prisoners.

⁸ The same article by Costelloe and Warner (2008) also shows how these objectives in Rule 65 are very congruent with the adult education approach to prison education outlined above.

5. THE GREAT AMERICAN 'IMPRISONMENT BINGE'

Nearly all of the documents discussed so far, whether Irish or European and whether educational or relating to penal policy, shared some core general values and understandings, whatever their other differences. These tenets are that those in prison are citizens and members of our community; that prison has negative effects and so should be used to a minimum; and that if people go to prison they should be treated humanely and as 'whole persons' and helped to deal with the detrimental effects of imprisonment as much as possible. This amounted, in effect, to something of a paradigm.

Punitiveness in California

However, it was a paradigm that was to be severely challenged by experiencing at first hand developments in the USA, and in California in particular, in 1995. By that stage the 'punitive turn' that will be described more fully in Chapter 2 had taken firm hold in the United States. What Irwin and Austin describe as "America's imprisonment binge" was well under way: the prison population in the USA rose by 168 percent between 1980 and 1992, so that the incarceration rate was 329 per 100,000. (Irwin and Austin, 1994, p.1) That prison population was still under one million people; it reached 2.3 million in 2007, a rate of incarceration of 762.⁹ Although the original purpose of my sojourn at California State University in San Bernardino was to compare North American and European approaches to the education of prisoners, it was the situation in the wider prison system which became most absorbing. The scale of the incarceration, the overcrowding, the conditions of imprisonment and the way in which those in prison (who, in California, were predominantly Hispanic or black) were regarded were striking features.

The escalating prison population was evident in most of the 10 institutions of various kinds that I visited in California in the spring and summer of 1995.

⁹ The website of the International Centre for Prison Studies, based in King's College, London, gives the prison population of the USA in October 2007 as 2,299,116 as on 30.6.07, a rate of incarceration of 762 (www.prisonstudies.org, on 2/12/08).

Indeed, it was only in some juvenile institutions that one could find much decency in the way those imprisoned were generally treated. Some disturbing findings were: rooms with over 90 women in tightly-packed treble bunks at Sybil Brandt, the Los Angeles County Jail for women; men on very long sentences, but having no activity, housed together on bunks in an atmosphere of menace at the Federal Prison at Terminal Island, Los Angeles; more than 5,000 prisoners, over 400 of them on death row, crowded into San Quentin State Prison.¹⁰ Behind this reality were slogans such as 'zero-tolerance', 'get tough on crime', 'three strikes and you are out' and 'prison works', many of the same slogans that would be heard in Britain and Ireland later in the decade, which reflected a radically different approach to prison. Prisoners were demonised in public debate, and any understanding that prison itself damages people had been abandoned.

A restricted role for education

Words like 'rehabilitation' were still frequently used, but almost always in the narrow sense of individuals abandoning crime, or perhaps turning away from drug abuse. Notwithstanding all the hysteria, the 'three-strikes-and-you're-out' policies and the overcrowding, many of those working in the education of people in prison would justify what they did solely on the grounds of reducing recidivism. The idea that education had a role in helping prisoners 'cope with their sentences', as is accepted in Ireland (Prison Education Service, 2004, p.4), was almost unknown, there being no official recognition and often little consciousness among those working in institutions that prisons had 'detrimental effects'. (Council of Europe, 1987, p.20) The idea that education in prison had a larger 'personal development' role (Prison Education Service, 2004, p.4), although perhaps part of the training and culture of some of the educators, was little acknowledged by the institutions; at best, the imperative was to directly address 'criminogenic' factors. Nor was there much acceptance that the people imprisoned were citizens with human rights: almost everything gravitated around

¹⁰ This depiction of prisons in California concurs with description in Wacquant (2002).

the image of them as 'offenders', and that one-dimensional view of these men and women often came with a great deal of negative stereotyping.

Things had not always been thus, and while in the United States I learned of traditions that resonated with, although they long pre-dated, the Council of Europe policy documents cited above. For example, Kenyon Scudder's book, *Prisoners are People* (1952), describes progressive developments in a new low-security prison, the California Institution for Men, which opened in 1941 with prisoners transferred from San Quentin. The regime outlined there brings to mind Danish open prisons with their emphasis on allowing prisoners measures of freedom and responsibility and enabling many of them to work out in the community.¹¹ In the field of prison education, a book published by Austin McCormick in 1931, *The Education of Adult Prisoners*, is remarkable in its foreshadowing of *Education in Prison* and its perception of the prisoner (Council of Europe, 1990). The author¹² says:

Education of prisoners is fundamentally a problem of adult education... We need to stress the normality rather than the abnormality of our prisoner-students, to apply standard educational practice to the problem rather than to try to develop a special educational technique designed for the criminal. (McCormick, 1931, p.9)

McCormick goes on to stress the need "to consider the prisoner as primarily an adult in need of education and only secondarily as a criminal in need of reform". (1931, p.11)

By the 1990s the thinking in the US around reform and return to society scarcely ever prioritised the development of the person's positive potential. Society was no longer the sympathetic parent seeking to welcome back one of its own, as it was often characterised in penal welfarism. Attitudes had hardened: sternness

¹¹ However, when visited in 1995, the California Institution for Men bore little resemblance to the place Scudder depicts, as it was by then a closed rather than an open institution.

¹² McCormick was an Assistant Director of the Federal Bureau of Prisons in the USA. McCormick also foreshadows the offering of a wide curriculum to all prisoners aimed at 'the whole person' in his statement that they should be offered "every type of educational opportunity that experience or sound reasoning shows may be of benefit or of interest to them, in the hope that they may thereby be fitted to live more competently, satisfyingly and co-operatively as members of society" (McCormick, 1931, p.12).

and strictness, and an insistence that wrong ways of thinking be changed, were the dominant style in any 'rehabilitation' programmes. Teachers were told their role was simply to stop their students re-offending, although many instincts and some voices sensed that this was not enough. This posture was also highly unrealistic. How was one to change the prisoner's behaviour just by what happened in a classroom, when almost all the forces elsewhere in the prison and in the wider society worked in the opposite direction? Challenging the idea of evaluating prison education programmes on the basis of recidivism, I wrote for an American audience:

Education or other programmes are only small parts of prison regimes, of the totality of impact of prisons on people. While programmes may be beneficial, what else may be going on that works in the opposite direction?

- Abuse by other prisoners?
- Humiliation or degradation by staff?
- Inhumane conditions?
- Further alienation from society?
- Barriers to work, housing and other forms of integration, upon release? (Warner, 2000, p.9)

The increasing punitiveness of penal policies, and the consequent restrictions on and negative attitudes towards their students (and towards their work) made prisons inhospitable places for many teachers. It has long been recognised that prison education is something of a contradiction in terms - an oxymoron, as Behan says (2003). Behan argues that teachers can act as a counter-culture to the prison, which denies responsibility, choice and freedom of action to those it holds, but he believes that teachers need to understand the social, cultural and political context of the prison (2003). In the United States then (and to a lesser extent in Ireland later), greater restrictions in the prison and the political context of penal populism made things increasingly difficult for those trying to promote learning, or other positive activity, behind the walls.

Thus my own focus on education in prisons shifted to the institutions themselves, and to the social and political forces that shaped them, and I gave several talks and workshops on that larger context at prison education conferences in the USA

and Canada over the ensuing years. I found many teachers and educational administrators to be likewise troubled by what was happening as they formulated critical perspectives on the official lines. Certainly, at least a sizable minority of prison educators formed a critical counter-culture.¹³ This is reflected in a statement agreed by senior North American correctional educators, with some European and Australian involvement, in Park City, Utah in 1998. It echoes many of the educational and penal policy ideas highlighted earlier in this chapter:

We as prison/correctional educators can and should:
 maximise the potential of individuals in criminal justice systems;
 minimise the damaging effects of incarceration...
 enhance the process of de-stigmatization and normalization...
 create and maintain linkages with the community...
 promote humanization of institutional cultures...
 address the needs of the whole person... (Eggleston and Tracy, 1999, p.10)

Such statements of defiance are important, but the punitive trend continued in the United States, some of it soon to be copied in Britain, Ireland and elsewhere. The next section will discuss such developments in Ireland.

6. COLD WINDS FROM THE WEST, HOPE FROM THE NORTH

The 1997 General Election in Ireland

Nothing conveys the sense of the new punitiveness as something that had spread from America across the Atlantic more than finding the exact same phrases that had been used in the US occurring in debate in Ireland and Britain. This happened most dramatically in 1997, when phrases such as 'zero tolerance', 'get tough on crime', 'career criminals' and 'prison works' were used prominently in elections that were held in both countries that year. (O'Donnell,

¹³ As Guest Editor to a special international issue of the American-based *Journal of Correctional Education* in 1996, I sought in an editorial to emphasise the 'European Model' of imprisonment as a contrast to what was happening on the other side of the Atlantic, stressing that prisoners be seen as part of the community, that we recognise prisons damage people and so should be used only as a last resort, and generally elaborating on the European Prison Rules (Warner, 1996). These themes were further developed in an article published in the same journal two years later, which was still grappling with the larger prison context: 'The "Prisoners are People" Perspective – And the Problems of Promoting Learning Where this Outlook is Rejected' (Warner, 1998b). In contrast to the 'European Model', that analysis characterised the 'Anglo-American Model' as having 'three key features':

- (1) Negative stereotyping of those held in prison;
- (2) Vengeful attitudes;
- (3) Massive increases in the use of incarceration (Warner, 1998b, p.122).

By now, some of the same features were to be found in Britain and Ireland and the article sketched out some of these examples.

1998, 1999; O'Donnell and O'Sullivan, 2003; Warner, 1998b, 2002b) The British election of 1997 will be discussed in more detail in Chapter 2, but here, in recounting how it was that this research project came about, developments in Ireland at the time of its 1997 election and subsequently will be sketched.

It is often the case that, when political rhetoric on crime matters reaches a particularly high pitch of condemnation and 'tougher' responses are promised, this 'moral panic' is triggered by a single or small number of notorious incidents. Certainly the 'emotional tone' was significantly raised in this period in Ireland following two murders, that of journalist Veronica Guerin by a drug gang and Detective Garda Jerry McCabe by the IRA, both in June 1996. The General Election that followed a year later proved to be a classic tussle between the two largest parties as to who could appear toughest on crime. In the 1997 election, Fianna Fail, then in opposition, advocated 'zero tolerance' policing, announcing that 'crime is out of control in our cities, towns and countryside'.

Fianna Fail, Fine Gael and the Progressive Democrats competed with each other in their promises of huge increases in the number of prison spaces. Thus, at the time when Ireland's prison population was about 2,400, the Fine Gael Minister for Justice, Nora Owen, pledged 800 extra spaces, an increase of one-third (*Irish Times*, 6/5/1997). The Progressive Democrats, whose policy document on criminal justice was titled "Winning the War against Crime", advocated 1,500 more (Progressive Democrats, 1997, p.20); and Fianna Fail promised an additional 2,000 spaces (*Irish Times*, 4/6/97). Fianna Fail's 'Position Paper on Justice', spearheaded by John O'Donoghue, was based on "a policy of zero tolerance" (Fianna Fail, 1997, p.2). It claimed that recent crimes "have challenged our very democracy" and, driven by drugs and organised crime, "have brought greater destitution, death and menace to our communities." (Fianna Fail, 1997, pp.1-2) It spoke of "hardened prisoners" and "predator criminals". (Fianna Fail, 1997, pp.11-13) However, Labour Party and Democratic Left discussion documents were markedly more restrained, Labour stating that they were "wary

of arguments setting out the provision of more prison spaces as a panacea for our crime problem". (Labour Party, c.1997, p.11; Democratic Left, 1997) However, it was the hard-line policies of the two largest parties which dominated the agenda. A *Sunday Tribune* headline at the time of the previous general election in November 1992 (5/11/92), which stated: "Crime is not an issue in this election", gave way to a headline in the same paper in 1997 which proclaimed, "Crime-wave central to election battleground." (11/5/97)

Three criteria of punitiveness

One can look at what transpired from this period in the mid-1990s to date in relation to Irish prisons through the frame of the three criteria of punitiveness noted at the outset, i.e. the scale and depth of imprisonment, and the way in which prisoners are perceived. Looking, firstly, at the level of incarceration, the prison population in Ireland was 2,054 in 1995,¹⁴ but had risen to 3,700 by the end of 2008¹⁵. However, a recent Minister for Justice, Michael McDowell, outlined plans to bring the capacity of the prison system to 4,629 by 2011. (*Irish Times*, 20/11/06) In the early to mid-1990s, Ireland consistently maintained its prison population at or around a rate of 60 per 100,000 of the general population. This placed Ireland generally equal to, or even below, the Nordic countries for this period. However, the McDowell plan would, even with a considerably increased general population, bring the rate of incarceration (84 at the end of 2008) to well over 100 per 100,000.

Recalling the three criteria of punitiveness set out earlier, Ireland, then, has moved significantly in a more punitive direction as gauged by the first and perhaps most important indicator, the numbers held in prison, and the country is set to go much further in that direction. When it comes to the second criterion, the depth of imprisonment, one is moving to an extent into more subjective

¹⁴ This figure relates to 1/9/95 and is from the Council of Europe's Penological Information Bulletin, No. 21, December 1998.

¹⁵ The 2008 figure is from internal sources in the Irish Prison Service and relates to 3/12/08. The rate of incarceration was 59 per 100,000 of the general population in 1995 and 84 at the end of 2008. The latter figure is based on a national population estimate of 4,420,100 from Central Statistics Office, www.cso.ie on 23/11/08.

territory. O'Mahony (1996) was severely critical in the mid-1990s of the Irish prison system, in particular health and other conditions, seeing the system as plagued by mismanagement and politicisation. Some years later he continued to find Irish prisons

...overcrowded and drug-ridden and afford a very low standard of accommodation and facilities. Conditions are insanitary, lock-up times are unconscionably long and there is a chronic shortage of medical and psychiatric and general rehabilitative services, purposeful work, educational and training activity and recreational facilities. This is in spite of the fact that the Irish prison system is one of the most expensive in the world, presently costing over £50,000 per prisoner per annum. (O'Mahony, 2002, p.550)¹⁶

My own knowledge of prisons leads me to observe that regimes in Irish prisons have become more restrictive and less humane over the last decade. Little progress has been made in addressing the already very poor physical conditions in many prisons, as exemplified by multiple occupation of cells¹⁷ and the practice of 'slopping out'. Even in Cloverhill, the new remand prison built to house more than 400 men in Dublin as the twentieth century closed, the norm from the beginning has been to house prisoners three to a cell of just over 10 square meters.¹⁸ Out-of-cell time for sentenced prisoners remains very low, one of the lowest for countries Ireland usually compares itself with (International Roundtable for Correctional Excellence, 2007), and has worsened in recent years as a result of staffing disputes and far more prisoners being placed 'on protection'. Abuse of drugs is more widespread now, extending way beyond Mountjoy to virtually every prison.¹⁹

Perhaps some of the most negative developments in recent time have been the closure of relatively better regimes at The Curragh and Fort Mitchel, and the only open centre for 16 to 21-year-olds at Shanganagh Castle. At the time of their

¹⁶ The average cost of keeping a prisoner in custody in 2007 was €97,700 (Irish Prison Service, 2008).

¹⁷ The Prison Rules were changed in 1983 to allow more than one person per cell (O'Sullivan and O'Donnell, 2007).

¹⁸ Such overcrowding was inevitable given that the footprint available for this prison was originally conceived and walled for 80 women, a project which was not proceeded with as the new Dochas prison for women was built at Mountjoy instead. However, Nora Owen, Minister for Justice until 1997, specified that she required 400 male spaces on that site.

¹⁹ The extent of the drug problem within prisons was illustrated in Irish Prison Service answers to Freedom of Information requests, which showed about 40,000 positive drug tests in the three years after testing was introduced in 2004, with significant levels of positive tests in nearly all institutions (*Irish Times*, 18/2/08).

closures in the early 2000s, these three prisons had the highest participation in education across all prisons in Ireland. The closure of Shanganagh and Fort Mitchel means that the only prison now designated for males aged under 21 years is St. Patrick's Institution. St. Patrick's is a 19th Century building for which the Whitaker Report called for "priority replacement" (1985, p.18), seeing it as "an outdated, gloomy, depressing environment" (1985, p.82), and which was roundly condemned more recently by the Inspector of Prisons.

As against these points, it must be said that there have been areas of progress also, most strikingly in the regime and facilities for women prisoners in the Dochas Centre at Mountjoy – Garland acknowledges the tendency to maintain "differential penal treatment for women...despite the decline of penal-welfarism". (2004, p.174)²⁰ Education remains a very strong activity in Irish prisons, generally engaging over half of all prisoners, a rate of involvement that greatly surpasses nearly all other countries.²¹ Most importantly, and necessarily a subjective view, relations between prison staff and prisoners seem to be reasonably good, reflecting a general live-and-let-live atmosphere on the ground in most prisons. This indicates resilient penal welfarist attitudes in Irish prisons; many Governors and staff will focus to a considerable extent on prisoners' needs for help. Finally, since early 2007, prisoners can vote while in prison, a matter important in itself, but also of huge symbolic importance.

Notwithstanding such qualities and progress, any objective assessment would have to conclude that, overall, things have moved significantly in a more punitive direction in Irish prisons in the past decade. One striking change that may be taken to reflect the change of mood, and which brings us to the third criterion of punitiveness (the way prisoners are seen), is what happened to the inclusive depiction of prisoners as 'valued members of society' in official policy in 1994,

²⁰ However, the Dochas Centre is due to be demolished, along with the modern Training Unit which prepares male prisoners for release, in order to enhance the re-sale value of the Mountjoy site, as this entire prison complex is due to be closed.

²¹ See annual reports of the Co-ordinator of Education up to 2007 in the website of the Prison Education Service in Ireland, www.pesireland.org.

which was mentioned above. The phrase re-emerges in the Irish Prison Service's Mission Statement of 2001, with a very telling change: the role of the IPS now is that it "encourages and supports prisoners in their endeavouring to live law abiding and purposeful lives as valued members of society". (Irish Prison Service, 2001, frontpiece) Since we are now invited to picture prisoners *endeavouring* to become valued members of society, by implication we are not required, as before, to value them as already part of ourselves, whatever their actions, attitudes or endeavours. The official view of people in prison has moved from one of unqualified inclusiveness to one that is very qualified indeed.

There have been other shifts in how prisoners are seen. The use of the term 'offender' to depict the men and women (and children) held in Irish prisons is much more prevalent now than previously, as if there were no other dimensions to their personalities than that of committing an offence. Such views of one's clients clash with those drawn from the adult education tradition, as well as earlier manifestations of the 'European model', or indeed penal welfarism, in Irish penal policy.

Looking towards the Nordic countries

Irish prisons, then, became colder places, not just for prisoners but also for those working in them with outlooks that are in tune with the European Prison Rules, or seeking to deliver the kind of progressive adult education practised in the community and advocated for prisons by the Council of Europe. It was in penal policy and practice rather than in the field of prison education that the root of the problem seemed to lie. Unhappiness with the direction of the Irish Prison Service led me to consider where things might be done better. It became clear that the Nordic countries were among those in the Western world who might possibly withstand the Anglo-American-type punitiveness. There was *prima facie* evidence that they operated from a different, more humane and more rational outlook. They appeared generally, if not universally, to keep their prison populations lower than almost anywhere else. Conditions, activities and quality of

regimes were, on the basis of reports and a few visits to Denmark and Sweden in the 1990s, dramatically better and more civilized. Above all, the attitude to the prisoner, from what one could tell, was critically different. Thus, the research project set about trying to explore these matters in Nordic countries. More importantly, it sought to discern the underlying forces shaping the Nordic prison systems. It also sought, above all, to try to analyse the social, political and cultural factors behind such resistance as there was there to the new punitiveness. Never too far from the forefront of thoughts prompted by this investigation was the idea that the penal and social policies of these northern countries might contain good lessons for Ireland.

Outline of thesis

This thesis will examine (in Chapter 2) the literature pertaining to the 'culture of control' and 'the new punitiveness', focused in particular on Garland's (2001) work. Chapter 3 will explore literature depicting the overall Nordic context, examining especially the social backdrop to penal policy in the shape of the Nordic welfare state, and Nordic thinking generally on penal matters. Chapter 4 will address methodological issues and explain in more detail how data was gathered in Denmark, Finland and Norway. The next three chapters, Chapters 5 to 7, will present the main findings from examinations of the penal systems in those three countries. The concluding Chapter 8 summarises and synthesises the findings and has some discussion of their implications, some of which have relevance to the Garland (2001) model. That last chapter also returns the focus to Ireland, asking what lessons may be learned from penal policy and practice in the Nordic countries.

Chapter 2

The Culture of Control

1. INTRODUCTION

Garland (2001, 2004) argues that what happens in the field of penal policy can only be understood within the context of the whole crime control field and, indeed, structural issues in society. In *The Culture of Control* (2001), Garland analyses late modernity and the changes to social, economic and cultural relations that this has brought. That is the context in which ways of thinking and acting about crime control and criminal justice have, he believes, altered, giving rise to new patterns of penal response and, in particular, a shift from “penal welfarism” to a “culture of control”. So, while particular interest in this study is on penal systems, it is appropriate to begin with this wider perspective.

This chapter, first of all, sets out (in Section 2) the main points of Garland’s 2001 analysis, looking at that whole context of the culture of control. This will include a description of penal welfarism as the previous historical approach to penal matters. Having outlined such larger social forces, attention will then be devoted to the 12 ‘indices’ of change in the field of crime control that Garland identifies, all of which represent movement away from penal welfarism. Particular attention will be given to those indices that have most relevance to this thesis, i.e. those that have most bearing on the issue of imprisonment.

Having thereby set out the main theoretical framework, attention then moves to the developments in politics and penal policy that are manifestations, in Garland’s view, of the culture of control. The two locations on which Garland (2001) bases his text, the United States and Britain, are each examined in turn in this regard, in Sections 3 and 4 respectively, drawing on further writing in each case. While that discussion of the US and Britain will focus on the more overtly punitive developments in relation to prisons in recent times, related adaptations that have been classified as ‘managerial’, as distinct from ‘repressive’, (Lacey,

2008, p.23) are examined as particular strains of the new punitiveness (Section 5). Attention then moves (in Section 6 and 7) to other literature, including some later work by Garland himself, which elaborates on, qualifies or takes issue with the scenario set out in *The Culture of Control*. In that part of the literature review, particular attention will be given to commentary that relates to imprisonment or to issues seen to have particular relevance to the situation in the Nordic countries. However, the main account of the Nordic context, including Nils Christie's (2000, 2004) analysis of international developments, is set out in Chapter 3 which follows.

2. GARLAND'S THEORY

Penal Welfarism

Before outlining Garland's view of what has transpired in late modern society, it is best to set out the tenets of the penal welfarism which preceded these changes and which is seen as holding sway for most of the twentieth century. The "settled institutional structure and established intellectual framework" of penal welfarism prior to the 1970s was reflected, Garland notes, in "distinctive correctionalist motifs", which he lists as "rehabilitation, individualized treatment, indeterminate sentences, criminological research", and also in "specialist arrangements" such as probation, parole and treatment programmes. (2001, p.27)

Garland states that the "basic axiom" of penal welfarism was "that penal measures ought, where possible, to be rehabilitative interventions, rather than negative retributive punishments". (2001, p.34) He sees penal welfarist features too as "part of the wider scheme of things... integral elements of the post-war welfare state and its social democratic politics". (2001, p.28) He goes on to say that "the discourses and practices that made up the penal welfare field were premised upon a few socio-political assumptions", one of which was 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.*" (Garland, 2001, p.38, emphasis in

original) He says: "The criminal justice state became, in part, a welfare state."
(2001, p.39)

However, while penal welfarism recognised social deprivation as a source of crime, in practice the 'root causes' tended to be neglected in favour of a focus on individuals by the criminal justice institutions. Thus, Garland sees penal welfarism's concentration "within the criminal justice state" as evidence that it was "structured in a self-limiting, self-defeating way". (2001, p.40) At the same time, penal welfarism was "embedded in the forms of life created by the political and cultural relations of the post-war years". (Garland, 2001, p.44) He says: "The prevailing politics was an inclusive, corporatist, social democratic one...Its dominant ideology was a moderately solidaristic one that claimed to bring all individuals into full social citizenship with equal rights and equal opportunities." (2001, p.46) Such an outlook tended to have bipartisan political, as well as broad public, support.

Late modernity

Garland sees the foundations of the penal welfare paradigm shifting with the onset of "late modernity" and the social, cultural and political changes that came with this. "The turn against penal welfarism", he says, "related to a fundamental shift in interests and sensibilities". (Garland, 2001, p.76) "The major transformations that swept society in the second half of the twentieth century" included a profit-driven "ultra-rapid transformation of technology, transportation and communication". (Garland, 2001, p.77-8) There have been changes in mobility and in the structures of households, with more women joining the workforce, more single parents and small living units, more people living alone, as well as the elderly living longer because of higher incomes and better health. Related to these changes are new dwelling patterns so that there is now greater distance than before between the home and work, education or shopping; thus daily life is different. Labour is more mobile and (in the US at least) there is 'white flight' from inner cities. Mass media has changed, with the advent of TV and

tabloids, impacting on “social relations and cultural sensibilities”. (Garland, 2001, p.85) Further, a greater “democratisation of social life” means there is less trust of “experts”. (Garland, 2001, pp.85-87)

Individualism, insecurity, exclusion

Such changes gave rise to “a more pronounced and widespread moral individualism... less subject to the constraining influence of group demands”. (Garland, 2001, pp.88-89) This had consequences in turn in relation to crime (for example, via increased opportunities and less social control), and for the welfare state via an undermining of solidarity. The political manifestation of such changes was seen in the rise of the New Right, with its ‘neo-liberal’ and ‘neo-conservative’ elements, exemplified in particular by the coming to power of Reagan in the US and Thatcher in the UK. These altered social relations brought with them “a cluster of risks, insecurities, and control problems that have played a crucial role in shaping our changing response to crime”. (Garland, 2001, p.viii) Garland develops this point later:

The grip of tradition, community, church and family upon the individual grew more relaxed and less compelling in a culture that stressed individual rights and freedoms and which dismantled the legal, economic, and moral barriers that had previously kept men, women, and young people ‘in their place’. The result was a shift in the balance of power between the individual and group, a relaxation of traditional social controls, and a new emphasis upon the freedom and importance of the individual. (Garland, 2001, p.89)

Thus, in the neo-liberal world at least, there is less solidarity among people and more individualism.

A complementary explanation to Garland’s of the dynamics involved in the change from modernity to late modernity is offered by Young in an earlier book, *The Exclusive Society* (1999). It resonates with Garland (2001) on many points, but locates its discussion much more in a recognition of inequality and social exclusion, issues which, as will be seen, are very much part of the discourse in Nordic countries. Young’s central concept is the shift from

...an inclusive society of stability and homogeneity to an exclusive society of change and division. In this late modern world exclusion occurs on three levels: economic exclusion from labour markets, social exclusion between people in civil society and the ever-expanding exclusionary activities of the criminal justice system and private security. (Young, 1999, p.vi)

Clearly, Young regards the first of these, the unemployment and economic marginalisation generated by neo-liberalism, as the most critical, stating that: “The fundamental dynamic of exclusion is a result of market forces” (Young, 1999, p.26), thus pre-figuring Garland’s (2001) explanation of late modern insecurities as primarily based on the market. Young sees economic change, as well as generating “economic precariousness”, giving rise to “a more rampant individualism”, for example through its stress on consumerism. (1999, p.14) This individualism is intensified by pluralism (“the constant confrontation with a plurality of social worlds and beliefs”), which breeds “ontological insecurity”. (Young, 1999, p.14) Young says:

...individualism, with its emphasis on existential choice and self-creation, contributes significantly to such insecurity, while the pressing nature of a plurality of alternative social worlds, some the result of such incipient individuality, manifestly undermines any easy acceptance of unquestioned values. (1999, p.14)

In Garland’s account, the increased individualism and freedom also lead to greater personal insecurity. This brings about “a combination of repressive and managerial criminal justice strategies” (Lacey, 2008, p.23). Garland describes the criminology associated with these two strategies as “the criminologies of everyday life” (2001, p.127) and “criminology of the criminal type, the alien other”. (2001, p.135) Thus, one response was to see crime as “a normal, commonplace, aspect of modern society” (Garland, 2001, p.128) and this leads to an increase in preventive measures. The other reaction entailed what Garland calls “denial and acting out” and this leads to punitive responses. (2001, p.131) Examples of the latter were the ‘War on Drugs’ in the United States and the ‘Prison works’ policy of the British Home Secretary, Michael Howard – both of which were seen as disregarding evidence and pursuing penal populism. Such politicised policies,

says Garland, trade “in imaginary archetypes and anxiety, rather than in careful analysis”, giving rise to “the alien other” who has little resemblance to ‘us’, and generating a great deal of stereotyping and demonising. (2001, p.135)

Young argues that: “The exclusionary tendencies in civil society are easily matched, and augmented, by state-initiated attempts to maintain order”, as illustrated by zero-tolerance policing and increased imprisonment. (1999, p.121) So, the economic and social exclusionary forces give rise to, and are reinforced by, the punitive responses. Young speaks of the “outgroup”, which becomes “a scapegoat for the troubles of the wider society: they are the underclass, who live in idleness and crime”. (1999, p.20) However, the goal now, in neo-liberal late modern society, is not to integrate them but “to hold at bay and exclude” (Young, 1999, p.20). Much of this foreshadows, therefore, what Garland was to write two years later in *The Culture of Control*. However, Young goes deeper into the process of stereotyping and scapegoating, so crucial to the representation of those in prison, and devotes a chapter to it entitled, “Essentializing the Other: Demonization and the Creation of Monstrosity”. Multiculturalism, as distinct from integration, is seen to reinforce such tendencies, facilitating social exclusion. In contrast, modernity’s emphasis had been on the absorption of deviants (as reflected in part in penal welfarism): “Criminals are rehabilitated, madmen and drug-addicts cured, immigrants assimilated, teenagers ‘adjusted’, dysfunctional families counselled into normality.” (Young, 1999, p.60)

The new crime control apparatus

In constructing his analysis, Garland seeks to “identify some of the broad organising principles that structure our contemporary ways of thinking and acting about crime” and “their social and cultural underpinnings”. (2001, p.viii) He stresses that he takes a wide focus on “the whole range of our social responses to crime”, and that he analyses “at a high level of abstraction”. (2001, p.viii) One valuable aspect of his wide focus and “high level of abstraction” is the way in which these enable connections to be seen between happenings in different

parts of the criminal justice field, and these features also facilitate understanding of how crime control developments and trends are linked to larger movements in society.

Taking “a more structural perspective” on the character of the new “crime control field”, Garland notes that it is complex and often contradictory “and that new practices and mentalities co-exist with the residues and continuations of older arrangements”. (2001, p.167) He says: “The institutional architecture of penal modernity remains firmly in place, as does the state apparatus of criminal justice. It is their deployment, their strategic functioning and their social significance that have been transformed.” (2001, p.168) There are changes in size and emphasis, such as the scale of imprisonment, the role of the police and “the foregrounding of the figure of the victim”. (Garland, 2001, p.169) Garland says “the correctionalist apparatus associated with penal welfarism is, for the most part, still in place” including more treatment programmes in the penal systems in the USA in the 1990s. (2001, p.169) 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.” (Garland, 2001, p.175) Offenders 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”. (Garland, 2001, p.175)

In the new circumstances the prison has been revived with the role of controlling risk and providing retribution. It “punishes and protects, condemns and controls”. (Garland, 2001, p.199) It has both an “expressive” and an “instrumental” role, especially in relation to urban minority males. Governments have turned so readily to prisons because “they allow controls and condemnation to be focused on low-status outcast groups”. (Garland, 2001, p.200) Whereas previously the criminal justice system “formed part of a broader solidarity project” and “its programmatic response to crime was part of the welfare state’s programmatic

response to poverty and destitution”, now “that solidarity project no longer dominates”. (Garland, 2001, p.199) Thus the prison has been given a new function of “segregating the problem populations created by today’s economic and social arrangements”. (Garland, 2001, p.199)

Garland's ‘indices of change’

Having thus set out the main elements of Garland’s theory, it is important for the discussions of prisons which will follow to look at his “reconfigured field of crime control” and the “indices of change” that are of particular relevance to prisons. (2001, p.6) In Garland’s eyes, the following features indicate the presence of a culture of control in relation to penal policy:

(a) *The decline of the rehabilitative ideal*, or, in the “more cautious description” he offers, “the fading of correctionalist and welfarist rationales”, evidenced in part by targeting of services on those deemed to be most at risk of re-offending rather than offering them to all prisoners (Garland, 2001, p.8). In this scenario, rehabilitation is no longer “the leading purpose” of penal policy, and with its “fall from grace” goes “the whole fabric of assumptions, values and practices” of modern penality. (Garland, 2001, p.8)

(b) *The re-emergence of punitive sanctions and expressive justice* is a corollary to the decline in rehabilitation. Retribution is restored as a central driving force of punishment and with it a language that is condemnatory and vengeful, that speaks of shaming, and inflicting suffering on, the convicted person. This is justified as an expression of what the public wants.

(c) That in turn connects with the third feature Garland highlights, *change in the emotional tone of crime policy*. Public discourse is more hysterical, assumes crime is getting worse and that there is widespread fear of crime. It presents “stereotypical depictions of unruly youth, dangerous predators, and incorrigible career criminals”. (Garland, 2001, p.10)

(d) *Above all, the public must be protected*. Garland says “protecting the public has become a dominant theme of penal policy” so that there is renewed emphasis on the incapacitating function of prisons. (2001, p.12)

(e) These link to another index of punitiveness, *politicization and the new populism*. By this Garland means that “a highly charged political discourse now surrounds all crime control issues...every mistake becomes a

scandal. The policy making process has become profoundly *politicized* and *populist* (2001, p.13, emphasis in original). There is convergence of penal policy among the main political parties around measures that are perceived as tough.

(f) Thus we have what Garland calls *the reinvention of the prison*. Under penal welfarism the prison was seen as “problematic...necessary as a last resort, but counter-productive and poorly oriented to correctionalist goals”, so that alternatives were seen as preferable. (Garland, 2001, p.14) However, in the new dispensation this outlook is reversed, as illustrated in the slogan ‘prison works’. With the goals of prison seen as incapacitation and punishment, the numbers incarcerated grow enormously.

(g) The above developments are accompanied by *the transformation of criminological thought*. Social deprivation as an explanation of crime gives way to control theories, which “begin from a much darker vision of the human condition...Where the older criminology demanded more in the way of welfare and assistance, the new one insists upon tightening controls and enforcing discipline”. (Garland, 2001, p.15) One would expect such thinking to contribute to a significant increase in restrictions within prisons, such as an increase in security arrangements, less leave, fewer open prisons, etc.

(h) *New management styles and working practices* are seen by Garland as a further feature of the culture of control. He speaks of “all-pervasive managerialism”, illustrated by risk management, performance indicators, targeting of resources, cost-cutting and the like. (2001, p.18)

(i) Finally, gathering together almost all of the above, Garland sees a *perpetual sense of crisis* as a characteristic of the new field of crime control, with institutions such as prisons being seen as systemic failures, as well as volatile and rife with danger for politicians. This sense is added to by crises of roles and identity among many disciplines working in such institutions.

Garland does, in fact, set out 12 indices although the remaining three may be deemed to be not quite so directly relevant to the prison context. These other three indices are:

(j) *The return of the victim*. Victims of crime “are now routinely invoked in support of measures of punitive segregation” and “a zero-sum game is assumed where the offender’s gain is the victim’s loss, and being ‘for’

victims automatically means being tough on offenders". (Garland, 2001, p.11)²²

(k) An expansion of *crime prevention*, especially via community and business groups and agencies, as reflected in CCTV cameras and Neighbourhood Watch schemes. Such risk-minimisation is associated with "the new criminologies of everyday life". (Garland, 2001, p.17)

(l) The *commercialisation of crime control*. The new emphasis on crime prevention reflects "a more expansive conception of crime control" giving rise to a greater degree of private security and even private prisons. (Garland, 2001, p.17)

Clearly, these aspects relate primarily to the world beyond the prison, with the possible exception of privatisation, since private prisons have become a feature in the Anglo-American world, although less so elsewhere. There are only limited impulses to privatise elements of the public sector in any of the Nordic countries focused on in this study.

The three summary criteria for judging punitiveness

Obviously, setting out nine or 12 indices is somewhat arbitrary and it is possible to combine or group these features differently, as Kilcommins et al (2004) have done. Clearly, the first two features are mirrors of each other, as the shift from penal welfarism towards retribution already noted makes clear. This change is at the heart of the increases in prison populations. Kilcommins et al (2004) combine these two features and it might be suggested further that (d), protecting the public, be linked with these also as they all relate to the functions of prisons. Likewise, what Garland rather delicately calls "change in the emotional tone of crime policy" (c) is very much part and parcel of the politicisation listed later as (e) and Kilcommins et al (2004) put these together as well. This feature brings us, for example, the "stereotypical depictions" referred to in (c), but also to slogans such as 'prison works' and 'zero tolerance'. What Garland calls "the reinvention of the prison" is perhaps better described in Kilcommins et al as "the

²² Lappi-Seppala (2007b) notes the tendency of Nordic criminal justice to incorporate issues of compensation for victims within criminal proceedings, thus diverting attention from an emphasis on revenge which is frequent in common law countries.

primacy of the prison” (2004, p.30), denoting a radical change from the idea of the prison as “a last resort”.

The nine Garland indices highlighted above, or their ‘rationalisation’ as just described drawing on Kilcommins et al (2004), will be considered throughout this thesis in judging whether or not, or to what extent, punitive approaches apply in penal matters. However, for practical purposes and to locate more tangible outcomes that can be assessed, three criteria will be kept to the fore in thus gauging punitiveness. These are: the scale of imprisonment, the depth (or quality or content) of imprisonment, and the general representation in society of those held in prison. Table 2.1 summarises signs of punitiveness as they pertain to prisons and relates the selected Garland indices to these three key criteria.

<p>Table 2.1 Summary criteria of punitiveness and Garland indices</p>		
Scale of imprisonment	Depth of imprisonment	Representation of prisoners
(a) decline of rehabilitation		(a)/(b) less rehabilitation focus
(b) increase in retribution	(b) increase in retribution	(c) stereotyping
(d) stress on protection		(e) penal populism
(f) ‘prison works’ thinking	(g) stress on control	(h) managerialism
(i) sense of crisis	(i) sense of crisis	(i) sense of crisis

These three key criteria may be seen as broadly summarising or condensing the nine indices of Garland seen to relate to penal policy. Thus, for example, *the scale of imprisonment* is affected in a major way by the switch to retributive and protection/incapacitating functions for prisons, as well as by the assertion that ‘prison works’ (thereby reflecting a, b, d and f of the Garland indices, as classified above). *The depth of imprisonment* is shaped in profound ways by the vengeful

attitudes incorporated in the second Garland index (“punitive sanctions and expressive justice”), as well as by the switch in criminological thinking from a welfare-focused to a controlling perspective (so affected especially by indices b and g). Lastly, almost all the indices impact on *the way the person held in prison is seen*: whether as part of society, as implied by the concept of rehabilitation; whether holistically, or in the stereotypical terms 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”, as in a Council of Europe Recommendation (Council of Europe, 1990, p.8) (thus highlighting indices a, b, c, e and h in particular).

3. PRISON DEVELOPMENTS IN AMERICA

Further examination of Garland’s 2001 account at a more theoretical level will be provided later in the chapter. This will draw on commentary on *The Culture of Control* and also similar analyses by other authors, some of whom were responding to Garland’s work. However, this section and the following one will generally deal with more factual matters, elaborating the picture as to what has transpired in relation to prisons in the USA and the UK in recent times, although some theoretical issues will be referred to also, as in the link between social and penal policy. These examinations of developments in America and Britain are important in part to ‘test’ Garland’s description, but also because what happens in penal policy in the USA, and in Britain to a lesser extent, is given particular attention in other countries, which may or may not then follow in their wake.

Punitive politics in the USA

Garland’s explanation of punitiveness in the penal system appears at times almost deterministic, a feature that emerges from changes in the social and cultural relations of late modernity. While he does, in a later article, acknowledge that there may be “variations in the pattern of adaptive response” among countries to these underpinning forces, he warns that “it is possible to

overestimate the scope for political action". (Garland, 2004, pp.180-81) He speaks of "political actors" as "the final movers rather than the prime ones" (2004, p.181), since behind the politicians and policy makers are "the social and cultural conditions that structure political decisions and make certain social arrangements seem possible and desirable". (Garland, 2004, p.185)

It might be argued that political parties and individual politicians, or indeed administrators, can have a more significant role than this suggests in shaping the 'response' to the deeper forces in society and this theme will be explored in later chapters that look at particular countries. Likewise, with regard to the closely-related area of media representation of crime, Cavender argues that the media had a more prominent role "in shaping public mentalities and sensibilities" than Garland allows. (2004, p.335) "The media", he says, "reinforced and reproduced the public's attitudes", as news and drama coverage in the US gave the same narrative over 25 years: "crime was bad and getting worse, criminals were monstrous 'OTHERS' and the modern world virtually was spinning out of control." (Cavender, 2004, p.346) It is therefore illuminating to trace how the punitive turn emerged in the political sphere in the USA, for it is at least part of the story of what happened, and also because similar patterns can later be found in Britain, Ireland and some other countries.

'Sentencing reform'

The central role the political dimension came to play in the increased punitiveness has been traced in the US by Ted Gest in *Crime and Politics* (2001). Although crime issues began to be addressed more at national and federal levels during the Johnson presidency in the 1960s, significant developments did not happen until the "watershed decade of the 1980s", when President Ronald Reagan was in the White House and there was Republican control of Congress, a period when "new laws helped fill federal prisons with drug offenders". (Gest, 2001, p.41) As well as the 'War on Drugs', "sentencing reform" had an effect on

the escalating incarceration also. The drive to reduce inconsistencies in sentencing had different motivations at different ends of the political spectrum:

Conservatives... saw the scheme as a way to prevent 'soft judges' from letting defendants off too easily. Liberals, heavily influenced by the leadership of [Senator Edward] Kennedy, viewed it as a way to reduce inequities in the way justice was meted out in the federal system. The eventual result satisfied mostly the conservative side. (Gest, 2001, p.59)

The Sentencing Commission report in 1987 set guidelines which "tended to make sentences more severe". (Gest, 2001, p.60) Major changes, of course, were happening at state level too, and these often preceded federal developments, but the national events give a good overview to the way policy was transformed.

'Three strikes and you're out'

Thus, when President Bill Clinton, in his State of the Union address in 1994, told repeat violent offenders, "commit a third violent crime and you'll be put away for good", he was joining the 'three-strikes-and-you're-out' bandwagon that had begun rolling a few years earlier on the West Coast. This declaration, says Gest, "was emblematic of a national movement to tinker with sentencing laws". (2001, p.189) At state level, the slogan was frequently used to refer to extremely long sentences for any third infringement, not just violent offences. Yet, with most states having two-strikes and three-strikes already in place at the beginning of the 1990s, its adoption was of more symbolic importance than a policy that significantly increased imprisonment. "In essence", says Gest, "three strikes was a glitzy label for practices that many states had tried for years... the symbolic culmination of a late-twentieth century turnaround in the way American criminals were penalised." (2001, p.197)

Often, such slogans were adopted by politicians or political groupings on foot of some high-profile horrific crime.²³ One such in California in late 1993 was the

²³ By contrast, the White Paper on prisons produced by the Norwegian government in autumn 2008 declares: "The Government desires corrective services based on knowledge – policy must not be based on individual incidents."

murder of 12-year-old Polly Klass by a man only just released having served half his stated sentence. Along with political advocacy of harsher sentences, there were also pushes to reduce or eliminate parole (often under the banner of 'truth in sentencing') or furlough – the latter issue one that caused Democratic presidential candidate, Michael Dukakis, much harm in the 1988 election campaign. Dukakis's release, at an earlier point when he was Governor of Massachusetts, of one William Horton on furlough was used to attack him after Horton committed rape and violent assault upon a couple while on weekend leave (Newburn and Jones, 2005). So, a political culture emerged in the United States where it was considered essential to appear 'tough on crime'. At least some of this political culture crossed the Atlantic and the issue will be touched upon again later, in relation to British, Irish and Scandinavian politics.

The numbers held in federal and state prisons, and county jails, in the USA all increased substantially from the early 1970s, with a quite massive escalation coming in the 1980s and 1990s. The numbers locked up continue to grow, although the rate of increase has tapered off in the new century. By 2007, 2.3 million men and women were incarcerated in the USA. Gest summarises the reasons for such increases. Clearly, sentencing changes, following a multiplicity of new or amended state and federal laws, added to the population increases. Changes in the laws of evidence, as well as more efficient investigation and prosecution practice, are also seen to have swollen the numbers. However, the issue of drugs is central, both directly, as many more were given sentences for drug offences, and indirectly, as large numbers of probationers and parolees were sent or returned to prison on failing urine tests. Gest says, "nationally, parole violations comprised 34.5 per cent of state prison admissions in 1997", and many of these were drug offenders. (2001, p.209) In 1998, he says, 21 per cent of state prison inmates "were there for drug crimes compared with only 6.5 per cent in 1979, and that didn't include many other violent offenders – who accounted for half of inmates overall – whose crimes were drug-related." (Gest, 2001, p.209)

Punitive bi-partisanship

Even when it was clear that the punitive policies were not having the promised effects on crime rates, or were having disproportionate effects on minor law-breakers, there was great resistance to any political U-turn. Gest (2001) tells of Republican Governor George Pataki in New York, and Clinton's Attorney General, Janet Reno, each recognising the need to modify some laws on sentencing, but each failing to do so to any significant degree. The bi-partisan political consensus remained, then, firmly rooted to punitive policies which produced unprecedented levels of imprisonment. Off stage – or at least off the political stage – there were voices pointing out the folly and self-defeating nature of the approach, but politically there was no significant breaking of ranks. Numerous (but not all) criminologists criticised these policies, such as John Irwin and James Austin in their book, *It's About Time: America's Imprisonment Binge* (1994) and Elliott Currie's *Crime and Punishment in America* (1998). "The prison," says Currie, "has become a looming presence in our society to an extent unparalleled in our history – or that of any other industrial democracy." (1998, p.21) He criticises many of what he calls the "myths" about prison's effectiveness. He says, the political debate "has become increasingly primitive and detached from what we know about the roots of crime and the uses and limits of punishment." (Currie, 1998, p.6). Currie speaks of "the failure of nerve, honesty and seriousness among too many of our political leaders". (1998, p.6)

Another attempt to halt the tide was made by the National Criminal Justice Commission, "a group of thirty-four citizens", who examined criminal justice policy in the United States and made recommendations in a report entitled *The Real War on Crime* (Donziger, 1996, p.xi). Among their recommendations were "a three-year moratorium on new prison construction" (Donziger, 1996, p.199), a public health approach to substance abuse, rebalancing punishments "that fit the crime and the accused" (Donziger, 1996, p.205), gun control legislation and

“reducing poverty by investing in children, youth, families and communities”. (Donziger, 1996, p.215) Politically, such ideas fell on deaf ears.

Whereas previously Republicans were often to the fore in advocating tougher criminal justice policies, by the 1990s they were generally matched by Democrats. Judging that they were outflanked in the 1988 presidential election, illustrated by the Willie Horton ‘attack ads’ with serious racial undertones, Democrats had regrouped by the early 1990s, advocating three-strikes laws and other punitive measures and defending capital punishment. Learning from the Dukakis defeat, Clinton took a consciously ‘tough’ line on criminal policy in 1992, denying clemency to men facing the death penalty, including Ricky Roy Rector, who was deemed to be intellectually disabled.

Changes to imprisonment in the USA

The rise in the scale of incarceration in the USA between 1973 and the present day has been extraordinary. Commentators clearly struggle to find the language to capture its extent. “No comparable democratic society has embraced [such]... penal regression,” says Downes. (2001, p.52) Wacquant says: “Starting in 1973, American penal evolution abruptly reversed course and the population behind bars underwent exponential growth on a scale without precedent in the history of democratic societies.” (2005, p.5) Currie says the US “has built the largest prison system in the world” but this makes it “a society in trouble, one that, in a profound sense, has lost its bearings.” (1998, pp.3-8) Irwin and Austin speak of “the national tragedy and disgrace of America’s imprisonment binge”. (1994, p.xiii)

Blumstein and Beck (1999) speak of the prison population in the USA having quadrupled between 1973 and 1996. Wacquant (2005) shows the numbers in federal, state and county prisons increased by more than fivefold between 1975 and 2000, when it neared two million people. Beckett and Western show further that at this point there were close to another four million on probation and parole so that “nearly 6 million people – almost 3 per cent of the adult population – were

under some form of correctional supervision". (2001, p.35) By 2007, the prison population had risen to 2.3 million people²⁴, but clearly the period of most rapid increase was between 1980 and 1995. (Wacquant, 2005, p.5)

Blumstein and Beck, in their study of the population increase in that peak period, conclude: "The preponderance of the responsibility for prison population growth lies in the sanctioning phase, the conversions of arrests into prisoners, and the time they serve in prison." (1999, p.54) A huge part of that rise was for drug-related offences, which accounted for 5 per cent of inmates in 1960, but nearly a third by 1995. (Wacquant, 2005, p.19) Wacquant also noted an increased share of African-Americans in prison populations which made "a majority of entering cohorts (55 per cent in 1995)". (2005, p.19) He observed that the growth of the carceral population "has partly supplanted and partly supplemented the ghetto as a mechanism of racial control". (Wacquant, 2005, p.19)

Tonry and Petersilia summarise the research on the 'collateral effects' of imprisonment, which they present as six kinds of negative effects: on the prisoners' later lives, whereby employment and income are reduced; on their later physical and mental health; on family relationships and "the social functioning of prisoners' children"; on the likelihood of future involvement in crime ('prison is criminogenic'); on community resources and cohesion; and on prisoners' immediate physical and mental wellbeing, including prison suicide. (Tonry and Petersilia, 1999, pp.5-7) At a macro level, the drain on state and national resources is enormous and likely to be counter-productive. Mauer says:

From a crime control perspective, continued expansion is likely to lead to diminishing returns, as successively less serious offenders are incarcerated on average. From a societal standpoint, mass imprisonment results in fundamental concerns of human rights and racial polarization becoming more prominent each day. (Mauer, 2001, p.8)

²⁴ Source: www.prisonstudies.org on 2/12/08.

The links with social policy

Downes asks whether such mass imprisonment makes the USA “an exceptionalist outlier in the penal sphere or both a prefiguration and a driver of things to come”. (2001, p.52) Garland clearly holds to the latter view. Downes relates punitive developments in the USA to the privatisation and reduction of public expenditure and to the “retreat from welfarism”, a tendency for which, in Europe, “Britain leads the way”. (2001, p.62) He does, however, see some prospect that other European countries can “resist the US example on the penal front”. (Downes, 2001, p.64)

Cullen, Van Voorhis and Sundt (1996) are among those who have delineated the crises facing American prisons, in particular the crowding crisis and what they call the “crisis in conscience” – or the confusion as to what the purposes of prison are. These crises intersect; there is a massive onslaught on the idea of rehabilitation as the prison system becomes “a kind of waste management function”. (Cullen, Van Voorhis and Sundt, 1996, p.35) They note that the American prison system raises issues as to “what kind of society America will be”. (Cullen, Van Voorhis and Sundt, 1996, p.44) The trend, they acknowledge, is “that the United States is being transformed into a post-welfare state in which at risk individuals will be left to fend for themselves and in which wide racial and class inequalities will be attributed to individual failings”. (1996, p.44) If this trend continues, Cullen, Van Voorhis and Sundt maintain: “We can expect prisons to degenerate more fully into warehouses” (1996, p.44). However, they question whether “Americans are prepared to roll back the welfare state and the safety-nets it offers.” (1996, p.44)

Beckett and Western (2001) also explore the interconnection between penal and social policy,²⁵ noting that both have become more punitive in the USA, reflecting “a larger shift in the governance of social marginality” since Reagan’s

²⁵ In the chapters that follow, the link between social policy and penal policy will become a repeated theme. Note, for example, in Chapter 6, the frequent repetition of the phrase “good social policy is best criminal policy” in Finland.

Presidency. (2001, p.36) Their study of different states “suggest that beginning in the 1980s, states with larger black populations are states that spend less on social welfare and also incarcerate the highest levels... in the wake of the Reagan revolution, penal and welfare institutions have come to form a single policy regime.” (Beckett and Western, 2001, p.46) This “alternative mode of governance” is “replacing, to various degrees, the modernist strategy based on rehabilitation and welfarism”. (Beckett and Western, 2001, p.46) Tonry, in his 2007 Presidential address to the American Society of Criminology, suggests “insensitivity to basic decencies and human rights” has even wider application than in US penal policy, being relevant also to areas such as “welfare policy, health policy and immigration”. (2008, p.1) His list of “inhumane policies of United States Governments” include Abu Ghraib and Guantanamo, as well as capital punishment, “life sentences without possibility of parole” and “three-strikes laws and mandatory minimums”. (Tonry, 2008, p.2)

4. PRISON DEVELOPMENTS IN BRITAIN²⁶

Garland analyses the US and the UK as if they are very similar societies and he emphasises the same patterns in the two countries. Some commentators have questioned the validity of doing this and such reservations will be brought forward in Section 6 below. For now, the assumption will be maintained and Britain, and England in particular, will be examined in the same manner as the USA above. The political context in Britain will be explored first, followed by developments within the prison system.

Punitive politics in Britain

The account given above of politics and crime in the USA was taken to the point where, by the early 1990s, the policies of Democrats and Republicans became

²⁶ Garland frequently speaks of the ‘UK’, but often, in fact, he is referring to England or, in the case of the prison system, England and Wales. The patterns to be described in this section largely relate to England and Wales, although Scotland’s scale of incarceration has followed similar lines to the prison system south of the border in recent decades. There will be some brief discussion of Scotland in the concluding chapter.

congruent in that each party adopted an exceptionally 'tough on crime' stance and essentially competed on the basis of their respective punitiveness. This pattern has remained to the present day in the US. From 1993 onwards there was a sameness about the penal policies of Labour and Conservatives in Britain too, with a new Home Secretary, Michael Howard, and a shadow Home Secretary, Tony Blair, competing vigorously on 'toughness' from this time.²⁷

Assuming the office of Home Secretary in 1993, Howard speedily broke with the approach of those who went before him in his speech to the Tory Party conference in October, when he announced a 27-point plan in relation to law and order and declared 'Prison works'. (Lewis, 1997, p.109) Dunbar and Langdon observe that

Howard's 'Prison works' speech marks the generally recognised start of an open race between the two main parties on law and order, with the Conservative government producing ever more extreme proposals and the Labour party being sometimes equivocal, sometimes even harsher than the government, but never allowing itself to be trapped in a position of outright opposition such as might expose it, however unreasonably, to the gibe of being soft on crime. (1998, pp.115-116)

A predecessor of Howard's, David Waddington, had remarked some years previously that "prison is an expensive way of making bad people worse" – essentially acknowledging, as many others in leadership positions in relation to English prisons had done for many years, the "detrimental effects of imprisonment". (Lewis, 1997, p.109) Howard was also "determined to ensure that conditions [in prison] are decent, but austere". (Lewis, 1997, p.109) Under Howard, the prison population of England and Wales, which had been about 40,600 in December 1992 (Dunbar and Langdon, 1998, p.26), rose steadily, being "about 60,000 and growing fast" (Dunbar and Langdon, 1998, p.3) when the Blair Labour government took office in May 1997. Ten years later it was over 80,000. In February 2008, it surpassed 82,000 for the first time (*The Guardian*,

²⁷ It will be recalled from Chapter 1 above that the two largest parties in Ireland competed on toughness, and on who would incarcerate most, in the run-up to the 1997 General Election.

22/2/08) and was over 83,000 later in the year.²⁸ As happened in the US, the penal policies of Labour and the Conservatives in Britain have become indistinguishable in general.

Blair returned from briefings he and Gordon Brown had with Clinton advisers in early 1993 and within days made one of his most famous soundbites – “tough on crime and tough on the causes of crime”. Newburn and Jones draw attention to what they call the “conjoining of the parties in the new bipartisan consensus...On both sides of the Atlantic the two major national political parties occupy largely the same populist, punitive and expressive stretch of the mediatized penal policy landscape.” (Newburn and Jones, 2005, p.85) Downes and Morgan (1997) note that, in the run up to the 1997 general election in Britain, it was the “tough on crime” side of Blair’s formula that was emphasised, including greater incarceration for juveniles and adults and the adoption of the slogan ‘zero tolerance’ in relation to policing.

Imprisonment in Britain

The level to which incarceration grew in Britain has come nowhere near that of the USA, nor has the rapidity of its growth matched that on the other side of the Atlantic either. Yet, as the figures given above reveal, the number of people in prison has more than doubled between 1992 and 2008, and England and Wales has had one of the highest rates of incarceration in Western Europe for some time. There is evidence too of prison conditions deteriorating, an aspect that will be examined below. Moreover, some of the hyperbole and hysteria that surrounds crime and punishment in Britain persists, if not at anything like the same pitch as in the USA. However, if 1973 marks the point from which prison populations began their inexorable rise in the USA, the graph has not been so consistent in England and Wales over that period and its prison population has

²⁸ The prison population of England and Wales on 31/10/08 was 83,324, according to www.prisonstudies.org on 21/2/08.

risen steadily only since 1993, the year Blair returned from the US with ideas drawn from the Clinton camp and Howard launched his 'Prison works' policies.

In fact, the early 1990s were a period which promised a very different future for prisons, following some difficult years which culminated in the Strangeways Prison riot of 1990. Lord Woolf's 1991 report on that riot set out a clearer direction for the prison service, balancing custody with care aspects, such as treating prisoners with humanity, minimising the negative aspects of imprisonment, fostering links with family and making prison as close as possible to life outside, and preparing prisoners for a return to society via education and training. (Morgan, 1997; Dunbar and Langdon, 1998) Woolf specified that loss of freedom was the punishment and this should not be added to unnecessarily. (Morgan, 1997, p.1150) A new departure was his insistence that "Justice" have a key role alongside "Security" and "Control" in the running of prisons. Morgan speaks of Woolf offering "a rights model of rehabilitation" which emphasises "the legal rights that prisoners retain as citizens". (1997, p.1151) The concern for justice lay behind proposals for better grievance and disciplinary procedures, "recommendations for prisoners to be given reasons for decisions" and "compacts with prisoners that would spell out their expectations and responsibilities". (Dunbar and Langdon, pp.25-26) Essentially, Woolf envisaged a prison system that was strongly in the penal welfarist mode,²⁹ moving away from the "punitive paradigm" (Matthews and Francis, 1996, p.1). More specifically, the role and type of prison he sets out is strongly in tune with the European Prison Rules, especially given the human rights and socially inclusive content.

Other signs of progress were also evident in the early 1990s. Having reached a peak of 51,000 prisoners in 1988, the population fell to 40,600 in December 1992. (Dunbar and Langdon, 1998, p.26) It transpired that "in 1991-3, the

²⁹ The Inspector of Prisons, Stephen Tumim, who worked with Woolf on his report, writes in similar vein that prisons should be "pre-release centres", should provide "security, humanity and help", should "reduce the distance between the prisoner and the wider community" and should recognise the socially deprived backgrounds of most prisoners. (Tumim, 1996, pp.11-19)

number of prison places exceeded, for the first time in half a century, the number of prisoners”, offering “a real prospect of system overcrowding becoming a thing of the past”, so that the Prison Service “grew in confidence” and began implementing Woolf’s “reformist agenda”. (Morgan, 1999, p.110) Research in the Home Office by Roger Tarling, published in 1993, concluded that increasing custody by 25 per cent, targeted on groups thought likely to re-offend, would reduce crime by only 1 per cent, thus making prison ineffective as a means of reducing crime (Tarling, 1993). The 1991 Criminal Justice Act was seen as a major move towards constructive sentencing reform. The Act obliged the courts “to consider all alternative disposals before sending an offender to prison”, sought to make “punishment in the community” more credible, introduced means-related fines and “re-established on a secure basis” systems of parole and early release (Dunbar and Langon, 1998, p.1). However, several key aspects of this Act were abandoned or revised soon after its implementation in 1992. (Morgan and Clarkson, 1995)

“Populist punitiveness” (Bottoms, 1995, p.39) or the “punitive bi-partisanship around questions of crime and punishment” (Loader, 2006, p.578), described earlier as led by Howard and Blair, soon saw the agenda turning another way. Dunbar and Langdon report that: “The first repudiation of parts of the [1991 Criminal Justice] Act took place in an atmosphere of media hyperbole on crime, largely conditioned by the tragic case of toddler, James Bolger, who was murdered by two 10-year-olds”. (1998, p.3)³⁰ In the Prison Service, two high-profile escapes on Howard’s watch led to investigations, and the report for one of these by Learmont proposed “custody as the dominant aim, in replacement of Woolf’s view”. (Dunbar and Langdon, 1998, p.30) Morgan notes the change in prison’s role also, saying: “Learmont makes no reference to justice and sees ‘care’ and ‘custody’ as conflicting elements... in Learmont’s opinion, custody must be the Prison Service’s ‘primary purpose’.” (1997, p.1185) These reports,

³⁰ Green contrasts the way the media and politicians in Britain dealt with this case in 1993 with the response in Norway to a very similar case a year later, drawing attention to “political-cultural explanations to account for differences in punitive appetites”. (2007, p.634)

Morgan says, “exercised sufficient influence seriously to increase the ‘depth’ of imprisonment – levels of security, surveillance, and restriction, lack of autonomy, and so on”. (1997, p.1185) Liebling says: “The prison world changed rather drastically between 1995 and 1996...a dehumanising moment whereby new managerialism met popular punitiveness.” (Liebling, 1999, p.165)

Elsewhere, Morgan elaborates on this increased depth to imprisonment:

Home leaves were cut back, visiting procedures tightened, prisoners’ personal property restricted and prison perimeters strengthened. The new emphasis on security absorbed both capital expenditure and prison staff. Prisoner programmes were cut back. The Chief Inspector warned that the combination of overcrowding and reduced resources was threatening much of the progress made in the aftermath of the Woolf Report. (Morgan, 1999, p.110)

The prison population continued to rise over the next 15 years, with both Labour and Conservatives having “locked themselves in to the position of defining undue leniency as the prime cause of high crime rates”. (Downes and Morgan, 2002, p.87) In the election of 2001 there was again “near consensus” between these two parties for “more punitive policies”. (Downes and Morgan, 2002, p.81) With the rising population, overcrowding became an escalating problem, although ‘slopping out’ was ended in all prisons on foot of a Woolf recommendation by April 1996. In 1997 about 9,500 people had to share cells designed for one, but this number rose to near 18,000 by 2007. (Riddle, 2007) In recent years also, penal reformers blamed an increase in prison suicide on overcrowding (*Guardian*, 22/9/07 and 2/1/08). In 2007, the chairman of the Youth Justice Board, Rod Morgan, resigned in protest at the government’s “criminalising of young people through antisocial behaviour policies and presiding over record numbers of children in jail”. (*Guardian*, 23/1/08) In 2008, prison food budgets were reduced, and the ‘core day’ and weekend ‘association time’ were cut in many prisons. (*Observer*, 6/7/08) It is reasonable to conclude that conditions deteriorated in general as the scale of imprisonment rose, and it also seems fair to judge that the representation of people in prison has not improved either in such a climate. So, by the three critical criteria for gauging punitiveness, things

would seem to have gone from bad to worse overall in relation to prisons in England and Wales over the last 15 years.

5. MANAGERIAL RESPONSES TO LATE MODERN CRIME

Garland describes two broad responses to the increased crime, disorder and insecurity of late modernity which correspond to the criminology “of the alien other” (2001, p.135) and “the criminologies of everyday life”. (2001, p.127) In penal policy these are manifest, on the one hand, in the enormous intensification of imprisonment and demonisation of those in prison that was evident in the accounts of the US and Britain that were given above, expressions of what Garland calls “denial and acting out”. (2001, p.131) In the US and UK contexts such policies are the major, and most noticeable, strand of punitiveness. On the other hand, there are what Garland calls “adaptive responses” (2001, p.113), strategies that recognise the reality of crime and disorder and seek to prevent or minimise them. In penal policy such adaptations can be seen in “an emphasis upon individual responsibility, the simplicity of an account that blames the offender, silences excuses, ignores root causes, and sees the punishment of wrongdoers as the proper response.” (Garland, 2001, pp.130-131)

These two sets of response are perhaps better, and certainly more simply, described by Lacey as “repressive” and “managerial” criminal justice strategies. (2008, p.23) Having focused largely on the more significant “repressive” response so far, some attention is now given to the “managerial” or “adaptive”, which may be seen to have similar roots in the social conditions of late modernity and, as will be seen below, share some of the same assumptions about punishment and those who commit crime as the retributive, repressive or ‘expressive’ versions of the new punitiveness. Two strands of this adaptive response will be examined: the new penology associated with Feeley and Simon (1992), and a focus on “addressing offender behaviour” that is strongly promoted in and from Canada. It will be seen in the later Nordic chapters that such sources

have at times had considerable influence in these countries, evident in such practices as risk assessment and a narrowing of focus to individual responsibility.

The new penology

Feeley and Simon describe “the new penology” as involving “shifts in three distinct areas... new discourses... new objectives... and new techniques”.(1992, p.450) The new language relates to “probability and risk”; in objectives there is “increasing primacy given to the efficient control of internal system processes” over purposes like rehabilitation; and the new techniques “target offenders as an aggregate in place of traditional techniques for individualizing or creating equity”. (Feeley and Simon, 1992, p.450) Feeley and Simon maintain the new penology is a distinct trend, different from both the older penology conceived around ideas of reintegration and recidivism, and from the “massive increase in the level of incarcerations”. (1992, p.450) However, Coleman and Sim “take issue with a number of theoretical premises” on which the new penology is based, one of their points being “that the actuarial approach *overemphasizes* the discontinuity between different historical moments and time periods and *underestimates* the continuities and material and ideological connections between these periods.” (2005, p.103, emphasis in original) They state that: “Oversimplifying processes of change has had the effect of marginalizing an analysis of politics and history,” pointing out, for example, that “risk discourse masks a resurgent positivism based on individual offender profiling”. (Coleman and Sim, 2005, p.103-104)

One would have to judge that the new penology strand is closer to the punitive model, given its focus on both control and the management of an increased scale of crime and sanctions. In particular, it complements the punitive approach in its view of the prisoner, even if the same visceral depiction often associated with the latter is not usually present: it does depersonalise the man or woman in prison, shifting the focus from the individual to the aggregate or category. As Feeley and Simon say: “It is concerned with techniques to identify, classify and manage groupings sorted by dangerousness. The task is managerial, not transformative.”

(1992, p.452) They would accept that the new penology “has contributed to the recent rise in prison populations”, but also contend that it “is both cause and effect of the increases”. (1992, p.470)

Young’s criticism of the new penology, or “administrative criminology” as he calls it, is based on his view that it is “an exclusionist discourse which seeks to anticipate trouble whether in the shopping mall or in the prison and to exclude and isolate the deviant...it seeks merely to separate out the criminal from the decent citizen, the troublemaker from the decent shopper...” (Young, 1999, pp.45-46) For Young, concepts of inclusion and exclusion are critical in assessing where penal policy stands. The new penology, in its treating the man or woman in prison as part of a category rather than an individual and in seeking to exclude that person, adds to the deterioration in the way that person is seen in society and in the criminal justice system. It seems valid to locate such resurgent thinking within the broad ambit of the new punitiveness.

The Canadian variant of the new punitiveness

It is clear from even a cursory look at the numbers in prison that Canada differs from its neighbour in relation to penal policy in substantial ways, and the literature frequently makes contrast between the two North American countries (Tonry and Farrington, 2005; Meyer and O’Malley, 2005). Certainly, in comparison with the USA, Canada is at first sight decidedly non-punitive, with a rate of incarceration of 108 per 100,000, compared to 762 in the USA.³¹ Moreover, while crime rates for the two countries have run in close parallel since 1970, “Canada’s total imprisonment rate has remained essentially flat for four decades, generally fluctuating around a narrow band of 100-110 prisoners per 100,000.” (Tonry and Farrington, p.2) Further, Meyer and O’Malley characterise the Canadian authorities as having “a policy based on punishment and correction”, which they refer to as “a self-styled ‘balanced’ philosophy”. (Meyer and O’Malley, 2005, p.204) Such balance is seen in Canada’s official policy to

³¹ These figures are from www.prisonstudies.org on 2/12/08. The Canadian figure is an average for the year to 31/3/06, while the US figure relates to 30/6/07.

also apply to other areas, such as a balance between victim and offender, and a balanced approach to being tough with violent crime while dealing with the social causes of crime. However, a large part of Meyer and O'Malley's essay relies on taking official versions at face value. Others in Canada are more critical of the penal system, including of its emphasis on therapeutic programmes and the criminogenic focus generally. Attention is given here to the latter aspects, as such interventions have been widely exported from Canada, and have had particularly strong influence in Nordic countries.

So, while Canada can be seen as holding firm against certain punitive trends in the USA, at least when the rate of incarceration and possibly physical conditions are concerned, Moore and Hannah-Moffat (2005) detect "increasing oppressive undertones" and "a punitive turn by stealth" in Canada's prisons. They are critical of the strongly-promoted courses and interventions that confront criminogenic behaviour, observing: "Therapeutic discourses and practices are also punitive. The Canadian criminal justice system operates under a liberal veil of the free subject who makes her or his own choices. Prisoners are not, however, by definition, free subjects." (Moore and Hannah-Moffat, 2005, p.86)

Their outlook is matched by earlier work from Stephen Duguid (1997), who criticised the Canadian federal system for its switching of resources from general Humanities teaching towards courses such as Cognitive Skills, which seek to correct what is seen as the false thinking of the offender. Other such programmes geared to directly addressing offender behaviour relate to areas like anger management and addiction awareness.³² However, research funded by the Canadian Correctional Service itself showed the Humanities courses to be much more effective in reducing recidivism, the core objective of the latter. (Duguid, 2000) Of such cognitive skills courses Duguid says: "The deception is both transparent and despised [by prisoners]. Only the weakest willed take on

³² The term 'programmes' is widely used in Nordic countries to refer to such interventions, and they will be thus spoken of frequently in the data chapters to follow.

the self suggested by the state, the clever wear it only as a veil, and the stubborn resist as best they can.” (Duguid, 2000, p.200) What would appear to have happened in Canada is the type of narrowing of perspective referred to earlier in Chapter 1, whereby the stress on the person in prison is as an ‘offender’ – in other words, a significant negative change in the way that person is seen. This kind of over-focus on “addressing offender behaviour” represents a radical change from the traditions of both adult education and Council of Europe penal policy (Costelloe and Warner, 2008). Such a development may be identified then as a particular strain of the ‘new punitiveness’, even if not its most virulent form.

6. THE RELEVANCE OF THE GARLAND MODEL

Elsewhere in the developed world

While Garland emphasises that he takes a wide focus in his analysis of social responses to crime, in other respects it may be argued that Garland’s (2001) perspective is too narrow. His study concentrates on “the UK and the USA” (2001, p.viii), although more often it is clear that it is Britain, or at times only England and Wales, that he has in mind, along with the USA.

More significantly, he can be criticised for a tendency to assume at times, perhaps too easily, that what applies in Britain and ‘America’ can be taken to apply “elsewhere in the developed world”. (2001, p.viii) Or that what has happened in the USA and Britain represents the essence of “late modernity”. He speaks of “two sets of transformative forces” of the late twentieth century, saying that the first of these, the social and cultural changes of late modernity, “were experienced to a greater or lesser extent by all Western industrialized democracies... from the 1960s onwards”. (Garland, 2001, p.75) However, the second transformation, the political and policy responses to these changes, were seen “in their most thoroughgoing form” in the US and Britain, particularly in the 1980s. (Garland, 2001, p.75) It is only in a footnote to such discussion that Garland recognises that “other nation-states in Europe and Scandinavia reacted differently to the forces of late modernity”. (2001, p.233, footnote 1)

Garland does, at certain moments, acknowledge a larger, and perhaps other, late modern world beyond Britain and the USA – as when he says, at the end of his book, that “other societies, such as Canada, the Netherlands, Norway or Japan” may have responded differently to “the social and economic disruptions of late modernity”. (2001, p. 202) However, on the whole, he seems to imply in *The Culture of Control* that what goes for the USA and Britain is generally applicable to other developed countries also.³³ Garland’s later article, ‘Beyond the Culture of Control’, more fully recognises “variations in the patterns of adaptive responses” among countries to the forces of late modernity. (Garland, 2004, p.180)

Another problem with Garland’s focus on Britain and the USA is that there are significant differences even between these two countries, not least in the scale of crime and imprisonment, as noted by Young (2002) and also by Kilcommins et al who point out that Garland’s comparative method “accentuates similarities at the expense of differences”. (Kilcommins et al 2004, p.33) The latter also state: “Garland connects an increasingly vindictive penal policy with greater economic insecurity, but this is never fleshed out fully”, (Kilcommins et al, 2004, p.33), a point likewise made by Young (2002), who criticises the lack of attention in Garland’s text to the issues of social deprivation and inequality as explanations of crime. Young (2002) and Kilcommins et al (2004) all point out that the narrative in Garland gives undue attention to neo-liberal and neo-conservative outlooks, to the neglect of other discourses.

Strengths and limitations of Garland

These observations on Garland (2001) should not take from the qualities of his analysis and points made earlier merit reiterating, in particular that a great

³³ Garland names Thomas Mathiesen and Nils Christie among those who note “the growing tendency of European nations to emulate patterns of crime control first developed in the USA”. (2001, p.ix) However, one has to suspect that this may be no more than half the story as far as these two Norwegian scholars are concerned. Each gave recorded interviews for this thesis and, while both are critical of certain Nordic policies, each also expressed optimism that Norway and its neighbours were taking distinctive courses to the USA and UK, as will be evident in Chapters 3 and 7.

strength of Garland is his wide and deep perspective that encompasses the full range of social, economic and cultural relations in society that underpin the crime control field, and especially those features in late modern society associated with neo-liberalism such as insecurity. A related strength is his capacity to see links across the whole crime control field and his ability to explain apparently distinct developments as stemming from the same forces. For example, gated housing and mass incarceration may derive from the same underlying fear and insecurity, one presumed to be a practical approach to crime prevention, the other arising from the less-than-powerful 'sovereign state' seeking to assert its authority and play on those same fears. (Garland, 1996)

Further, although Garland (2004) is inclined to view political actors as final rather than prime movers, conditioned by deeper social forces, he does document in *The Culture of Control* (2001) much of the political context to crime and penal policy decisions that is helpful even when one looks at a different style of politics elsewhere. In general it can be said that Garland offers a theory, a hypothesis, that can be tested, as he suggests (2004), in settings other than the US and the UK and even if the theory is found wanting much can be learned from putting it to the test. Garland is of the view that theory such as his allows one "to frame issues in a certain way, to make particular connections, to ask particular kinds of questions". (2004, p.162) He also says theory is not there "for its own sake... it must be put to work". (2004, p.165) It is hoped that this has been done in the thesis.

The geographical limitations of Garland's (2001) work have been noted just above. Tonry (2008) observed that if Garland's theory generally held one should see the same patterns in every developed country:

The insuperable difficulty of Garland's analysis is that, if he is right, it should explain why all Western countries have experienced steeply rising imprisonment rates and steadily harshening penal policies... Imprisonment rates and policy trends, however, diverge dramatically. (Tonry, 2008, p.10)

Tonry cites Lappi-Seppala (2007b) and other literature he himself has edited to

...explain imprisonment trends and penal policy differences in terms of such things as income inequality, citizens' perceptions of the legitimacy of governmental institutions, citizens' trust in each other and in government, the strength of the welfare state, and the structure of government. All these things seem to matter. (Tonry, 2008, p.10)

A related issue is Garland's presumption that late modern society is one driven by neo-liberalism, but it can be argued that it is the US which is the "exception" (Downes, 2001) and considerable variations and different scenarios may prevail. The dominance of neo-liberalism may be even more in doubt after the international economic turmoil of 2008. The most striking limitation of Garland's description is its failure to deal more fully with the issue of equality as a determinant of penal policy, and its hesitance to consider different arrangements, as for example when the welfare state remains strong.

Nevertheless, Garland's theory of the culture of control is the primary framework through which the research for this thesis is pursued. It is his work that mainly helps to frame the issues and ask the questions. While his work has been criticised in various ways, it has sparked an extensive debate about the nature of crime control in contemporary society and the degree and trajectory of punitiveness in particular. Garland has also raised in an important way the question of "policy transfers" in relation to crime control and added to the possibilities of comparative work across societies in the fields of penal and social policy. It is appropriate, therefore, to refer to other literature that in different ways widens the horizons, either geographically in looking at fields beyond America and Britain, or in broadening the theoretical frame of reference by noting what other authors say, about issues of deprivation and equality in particular, as was done in drawing Young (1999) into the discussion above.

Another work that builds on the Garland thesis is Pratt et al's *The New Punitiveness: Trends, theories, perspectives* (2005). This addresses essentially the same issues as Garland (2001), such as the rise in mass incarceration and

the abandonment of previous restraints on excessive punishment, but these matters are examined in a far greater range of countries and from diverse points-of-view, including different views as to whether recent developments largely represent “rupture or continuity”. (Pratt et al, 2005, p.xix) As Lea says, in his review of this book: “Nothing is really resolved within the covers... we are reminded how diverse the perspectives are.” (2007, p.99) Diversity needs to be emphasised also in relation to the possibilities for the shape of society, even in late modernity. There are more options than Garland, with his focus on neo-liberalism, really acknowledges, as will be seen in discussion below. This draws once more on work by Young (1999), and also by Lacey (2008), and thus sets the scene for examination of Nordic societies.

Wider possibilities than Garland acknowledges

A strength of Young (1999), in contrast to others such as Christie (2000, 2004), is his ‘left-realism’, his willingness to recognise crime and ‘incivility’ and their impact on people, and indeed their significant increase in the latter part of the twentieth century.³⁴ Economic exclusion contributes towards crime; a general sense of insecurity also inflames the reaction to crime. “Crime itself is an exclusion as are attempts to control it by barriers, incarceration and stigmatization.” This exacerbation he calls “a dialectic of exclusion”. (1999, p.26) However, Young stresses, as others have done, that there is “no inevitability in this process”. (1999, p.27) He speaks of “progressive politics” which does not entail an impossible return to “the inclusionist world of the 1950s”, but rather is a matter of “devising new forms of community, employment which is not totally dependent on the whims of the market place and new and emerging family structures”. (Young, 1999, p.27) Contrasting the ‘American dream’ with the ‘European dream’, he emphasises “the exclusionary nature of American ideology when compared to

³⁴ Christie would be more inclined to stress an *impression* of increased crime. The relationship between crime and imprisonment will be more fully explored in Chapter 8 (Section 3) in the context of probing the factors deemed to affect punitiveness or a lack of punitiveness. Fuller discussion of Christie is given in Chapters 3 and 7.

European ideals”, which focus on “social citizenship”. (Young, 1999, p.22)³⁵ Such issues will be central to later discussion in relation to penal policy in Nordic countries. A value of Young’s analysis is that it opens up possibilities for such different scenarios much more than Garland does.

Lacey (2008) develops an analysis drawing on the work of Young, Garland and others, including several already referred to in this thesis, and she like Young (1999) opens up possibilities that are quite different from those suggested in Garland (2001). Essentially, she turns Garland’s approach on its head, seeking to understand the institutional preconditions for a tolerant, rather than a punitive, criminal justice system. She notes that Garland’s argument “seems a counsel of despair”, as “the dynamics of penal populism” are presented as “a structural feature of ‘late modern’ society” so that “all avenues for institutional reform designed to counter the culture of control seem blocked.” (Lacey, 2008, p.25) However, Lacey argues that “not all ‘late modern’ democracies have reacted by plumping for a neo-liberal politics, ‘rolling back the state’ and cutting public spending on welfare provision”, and “many countries have managed to sustain a relatively moderate, inclusionary criminal justice system.” (2008, p.29) She points in particular to Scandinavia and northern Europe, where there are “key institutional differences” to the US and UK, notwithstanding globalisation. (2008, p.xvii)

Lacey examines the political economy systems of countries and finds that “co-ordinated market economies” which contrast with liberal market economies “have been able to resist the powerfully excluding and stigmatising aspects of punishment”. (2008, p.109) These co-ordinated systems “favour long-term relationships – through investment in education and training, generous welfare benefits, long-term employment relationships”. (Lacey, 2008, p.109) They also tend to have consensus-orientated political systems, representative political

³⁵ Downes (2001), too, it will be recalled in the discussion on the USA above, saw hope of a Europe going a different way.

parties with coalition governments and “strong professional bureaucracy”. (Lacey, 2008, p.62) By contrast, the liberal market economy tends to promote deregulation, including in the labour market, and have majoritarian government and “politicised bureaucracy” (Lacey, 2008, p.62) so that such countries turn “inexorably to punishment as a means of managing a population consistently excluded”. (Lacey, 2008, p.109) Such underpinning factors affecting penal policy will be examined more fully in the next chapter around discussion of the Nordic welfare state, and in subsequent chapters. Lacey sets out the institutions that “affect our capacity to combine sound criminal justice policy with humanity and liberal democratic values” as follows:

Not only the economic mechanism of the labour market, but structures of education and skills formation, aspects of our political systems and bureaucracy, as well as the welfare state, all bear centrally on the explanation of the socially constructed phenomena of crime and punishment and also, crucially, on a country’s capacity to combine moderation and humanity in punishment with an adequate response to popular concerns about crime. (Lacey, 2008, p.200)

Lacey says further that “criminal justice policy must be articulated with social policy” (2008, p.200), a way of thinking that is widely held in Nordic countries.

Chapter 3

Nordic social and penal policy

1. INTRODUCTION

This chapter sets the broad context of the Nordic social world for the more detailed analysis of prison systems in Denmark, Finland and Norway that will be made in subsequent chapters. It also takes Garland's thesis (2001), that the basis of the new culture of control lies in the altered social and political structure of late modern society, to the Nordic countries and examines whether the same underlying changes in society that he describes in the USA and Britain have happened, or are in the process of happening, in Nordic countries. Garland (2001, 2004) associates the rise in punitiveness in the US and UK with a decline in the welfare state. Many prominent Nordic (and other) criminologists, including a number who were interviewed for this thesis, correspondingly attribute a resistance to punitiveness in their countries to the ongoing strength of the welfare state, although they vary a little in their expectations as to how things will develop in the future (Lappi-Seppala, 2000, 2004a, 2007a, 2007b; Balvig, 2004; Bondeson, 2005a; Christie, 2000; Pratt, 2002, 2008; Lacey, 2008). The welfare state, therefore, will be a central theme of this chapter.

Just as penal policies cannot be separated from larger social developments such as the welfare state, so too the fate of the welfare state connects with a range of other matters, such as values, attitudes and institutions within Nordic societies. Even geography is a relevant aspect, with some attributing significance to the relative 'smallness' of countries or societies. This chapter will, then, return firstly to Garland's perspective on the larger social context to the rise in punitiveness, focusing in particular on his views in relation to the welfare state (Section 2). Secondly, insights of criminologists on this link between penal and social policy in Nordic countries will be explored in Section 3.

The question arises as to whether one should now speak of “the crisis of the welfare state” (Balvig, 2004, p. 182) in Nordic countries or whether the welfare state can be seen to be adapting and surviving in a strong form. So, Section 4 will look beyond criminology to accounts in the wider field of social policy to assess how the Nordic welfare state fares today. Returning to crime matters, Section 5 will describe what may be regarded as a general Nordic tradition in relation to penal policy, which is also clearly part of the overall context for this study. Centred on ideas that recognise ‘the detrimental effects of imprisonment’, this tradition argues among other things for decarceration and the development of alternatives to imprisonment. However, there are critical voices which assert that in new prison laws in some Nordic countries, “The current trend is characterized by a retreat of both the ‘Rechtsstaat’ ideology [which controlled the power of the state and guaranteed procedural fairness] and the welfare state ideology.” (Greve and Snare, 2007, p.2)

Finally, as well as giving, as part of the context for this research, that overview of Nordic countries in general and what are regarded as the common features of Nordic penal policy, there will be brief reference to Iceland and Sweden (Section 6). These two countries, together with Denmark, Finland and Norway, are usually regarded as making up the five Nordic countries.

2. GARLAND’S WEAKENED WELFARE STATE

Garland (2001) stresses that the basis of punitiveness in the field of crime control lies in the social, economic, political and cultural structures of late modern society. Part of the political response in the US and Britain to the new social situation was “the anti-welfare politics of the 1980s and 1990s” promoted by Reagan and Thatcher. (Garland, 2001, p.93; see also Beckett and Western, 2001; Downes, 2001) In Garland’s analysis, the welfare state generated “a self-negating dynamic” consisting of four elements: “the tendency to discover more and more unmet needs”; continuously rising expectations; poorly functioning ‘big government’; and “collective memories of depression, mass unemployment and

destitution”, which had generated the welfare state in the first place, fading in the face of continuing prosperity. (2001, pp.93-4) Since the 1980s, Garland says, “Solidarity with the victims of social and economic dislocation has given way to a more condemnatory view of claimants, many of whom are now viewed as members of a culturally distinct and socially threatening ‘underclass’.” (2001, p.196)

Garland sees such a shift as deeply connected with a change in political culture whereby

...crime - together with associated ‘underclass’ behaviours such as drug abuse, teenage pregnancy, single parenthood, and welfare dependency – came to function as a rhetorical legitimization for social and economic policies that effectively punish the poor...social accounts of the crime problem [came] to be completely discredited...Crime came to be seen instead as a problem of indiscipline, a lack of self-control or social control, a matter of wicked individuals who needed to be deterred and who deserved to be punished....The recurring image of the offender ceased to be that of the needy delinquent or the feckless misfit and became much more threatening – a matter of career criminals, crackheads, thugs, and predators – and at the same time much more racialized....Instead of idealism and humanity, penal policy discussions increasingly evoked cynicism about rehabilitative treatment, a distrust of penological experts, and a new righteousness about the importance and efficacy of punishment. (Garland, 2001, pp.101-2)

Thus, in Garland’s thesis, a virtual precondition for a punitive approach in crime control is a severe weakening of a welfare state built on the principle of solidarity.

In later reflections, while recognising that “the Anglo-American patterns of adaptation” to the conditions of late modernity may not be replicated in the same way elsewhere, Garland speculated that “there will be a rather limited variety of adaptive patterns”. (2004, p.180) He says:

I would expect that a nation’s welfare regime will be a good predictor of the crime control and criminal justice pattern that is likely to emerge there, insofar as both welfare policy and crime policy tend to be shaped by group relations, political structures and previously-existing institutional and cultural arrangements. (Garland, 2004, p.180)

Garland notes that

the Scandinavian nations and Germany...are less inclined to populist, majoritarian politics and more given to coalition politics that broker compromise positions...and less likely to produce 'underclass' populations excluded from the social and economic mainstream. (2004, p.180)

How the welfare state fares, then, in Nordic countries would seem to be critical in judging how likely it is that these countries travel down a punitive road. Several criminologists (listed above) have expounded a link between a lack of punitiveness and the welfare state. When these authors are discussed in the next section it will be seen that a larger range of other social and political features, albeit ones linked in various ways to the welfare state, also impinge on the existence or otherwise of punitiveness in penal policy.

3. PENAL POLICY AND THE NORDIC WELFARE STATE

General features of Nordic countries

The five Nordic countries have just over 24 million people between them: just over 9 million in Sweden, 5.4 million in Denmark, 5.2 million in Finland, 4.5 million in Norway and over 300,000 people in Iceland (Lappi-Seppala, 2007b, p.220). Each is fairly homogeneous, although immigration has become a feature in some recently. They share similar culture and (aside from Finland) related languages. The term 'Scandinavia' is frequently used interchangeably with 'Nordic', even by Finns, although, strictly speaking, Scandinavia comprises just Denmark, Norway and Sweden. Social democracy has been a shaping influence in all of these societies and each has a strong welfare state. In all Nordic countries: "The public sector is comprehensive and the tax rate high. The countries are politically stable. According to comparisons made by Transparency International (2004) the countries are among the least corrupted." (Takala, 2004, p.131) Nordic countries also tend to score highly in international indices for the wellbeing of their people. For example, the annual Human Development Index (HDI) produced by the United Nations, which ranks 179 countries using composite measures of life expectancy and health, access to knowledge and per capita GDP, ranked the Nordic countries for 2005 in a manner that had been

fairly similar for decades: Iceland first, Norway second, Sweden seventh, Finland 12th and Denmark 13th.³⁶

The Nordic Welfare State

The welfare state refers to “a form of capitalist society in which the state takes responsibility for a range of measures intended to ensure the wellbeing of its members” such as education, health services and unemployment compensation. (Scott and Marshall, 2005, p.699) Welfare state patterns vary greatly across countries but have been classified by Esping-Andersen (1990) into three main models: social democratic (typically the Nordic countries), liberal (the US and UK being examples) and corporatist/conservative (common in Central European countries, including Germany and France). (Kilcommins et al, 2004, p.274) Greve identifies the main characteristics of the Nordic welfare state, including “full employment, high degree of equality, a high level of taxes and a high level of public spending on welfare”. (2007, p.43) Kautto et al cite Esping-Andersen and Korpi’s (1987) identification of three features of the ‘Scandinavian model’: “...the comprehensiveness of social security systems, institutionalized social rights and solidarity accompanied by universalism”. (Kautto et al, 1999, p.11) Greve stresses universalism as a crucial aspect of the Nordic welfare state, so that provision is available to all. This means that programmes “are better and less stigmatizing than means-tested benefits”, thus ensuring “consensus and support from the middle class” (Greve, 2007, p.44). Support for welfare state arrangements developed in Nordic countries in conjunction with the growth of the labour movement in the early part of the twentieth century (although a little later in Finland).³⁷

In Nordic countries today, the levels of services offered by the welfare states are generally high in comparison with other countries, in both absolute terms and

³⁶ Source: <http://hdr.undp.org/en/statistics>, on 15/3/09. Ireland was ranked fifth in this list. However, as Fintan O’Toole reported: “Of the 17 OECD countries ranked for levels of poverty, Norway is the second best and we’re the second worst.” (*Irish Times*, 7/7/05).

³⁷ It may be argued that the nationalist movement in late nineteenth century Norway also helped lay the foundations for the collective sense and equality inherent in the Norwegian welfare state. This point was made by Thomas Mathiesen in Norway in interview for this thesis.

relatively as a proportion of GDP. Such ‘social protection’ covers such matters as old-age pensions, disability payments, health care, payments for family and children, and for unemployment. In a ranking of 30 European countries (the EU 27 plus Iceland, Norway and Switzerland) for expenditure on social protection in purchasing power standards (which removes the distortion due to price level differences) for 2005, Norway is ranked second, Sweden fourth, Denmark fifth and Finland twelfth, but all were higher than the EU average.³⁸ Moreover, such social commitment has generally remained strong over recent years. The following figures are given by Greve for the EU Nordic countries for social protection as a percentage of GDP between 1990 and 2003:

Table 3.1
Current expenditure on social protection as a percentage of GDP³⁹

	1990	2003	Change (1990-2003)
Denmark	30.3	30.9	+ 0.6
Finland	25.5	26.9	+ 1.4
Sweden	32.9	33.5	+ 0.6

Nordic Moral Climates

Bondeson argues that, in the face of “a sharpening of criminal justice policy” in many countries, “Scandinavia appears more or less to be an exception”, even though crime rates are similar to the European norm. (2005a, p.197) Von Hofer (2005) also regards crime levels in Nordic countries as similar to those in other Western European countries. The “milder criminal policy”, Bondeson says, “could partly be explained by less fear of crime and less punitive attitudes” among the

³⁸ Source: Eurostat, <http://epp.eurostat.ec.europa.eu/portal/page>, on 15/3/09.

³⁹ Source: Greve (2007, p.49) citing Eurostat (www.ep.eurostat.ec.europa.eu). Ireland's percentage figures were: 19.1 in 1990, 16.5 in 2003, a negative change of 2.6.

public, and this is aided by the media exercising “a more restraining role” (2005a, pp.193-4). She says: “A certain rational component can be seen in the criminal justice policy process”, drawing on criminological research and recognising the effects of imprisonment, so that “several Nordic commissions... have advocated that as few persons as possible should be sentenced to imprisonment and that the sentences should be as short as possible”. (Bondeson, 2005a, p.198)

Bondeson’s view is that, while the welfare state in Nordic countries “has not reduced crime levels”, it “seems to have had somewhat of a softening effect on criminal justice policy” via what she calls the “solidarity principle”. (2005a, pp.197-8) She explains this concept:

A welfare model implies that every citizen should have a decent standard of living and that there should be no great inequality between different social groups, and also that there should be solidarity among people. The solidarity principle should also include the less privileged, i.e. the socially and economically poorest groups, which generally are considerably over-represented in our prisons. (Bondeson, 2005a, p.194)

Thus, in public opinion, there may be (in contrast to the USA) “stronger interdependencies and levels of trust – and thereby greater tolerance of others and possibly an in-built cultural resistance to the new punitiveness”. (Bondeson, 2005a, p.198) Such tolerance and “sense of unity” is central to the universal welfare state and its associated “functional democratization”. (Bondeson, 2005a, p.199) However, Bondeson suggests, support for the welfare state may not be quite as strong as heretofore, especially in Sweden and among the young, so that there is some evidence of “a tendency to sharpen criminal justice policy” in recent times. (2005a, pp.197-99)

Bondeson has conducted considerable research into public attitudes in Nordic countries, especially as these relate to crime control matters, most notably in her project entitled ‘Nordic Moral Climates’ (Bondeson, 2003, 2005b). While there are differences in attitude among the countries, and within groups within countries,

they do in Bondeson's view generally "share language, values and a belief system" (2003, vi). In all four countries (she did not research Iceland):

The macro values are seen as dominated by leftism and egalitarianism. People are secularized to a high degree, but still influenced by protestant values, being often strict and moralistic but without much of a religious underpinning. (Bondeson, 2003, p.261)

The 'Nordic ethos' can be seen less positively, of course, as "fundamental equality, conformity and oppression". (Bondeson, 2003, p.262) As one would expect, there are subtleties and nuances in many of her findings, as in the conclusion that Danes are "unusually permissive regarding private matters and restrictive on public morality". (2003, p.262) In Sweden, the tradition of teetotalism was found to be "particularly strong" and fed into the labour and social democratic movements. A similar point was made by Tham (2001, 2005a) and may explain the strong anti-drugs views on the left as well as the right in Sweden.

The welfare state in crisis?

Flemming Balvig (2004) also sees very close links between criminal justice policy and the welfare state and attitudes linked to the welfare state such as trust and legitimacy, although he is (in this article) pessimistic as to the prospects of such thinking and policies continuing into the future. He speaks of "a complex, yet coherent, paradigm for the way in which crime and punishment is seen", founded on "the modern rationality-oriented welfare state". (Balvig, 2004, p.179) In this world-view, crime is explained as social deprivation, "as a cry for help"; the aim of punishment is rehabilitation, negative influences are to be avoided and "thus the use of incarceration should be as limited as possible"; and "rationality and thus science and experts have a prominent role". (Balvig, 2004, p.179) However, Balvig speaks of a "paradigm shift" in late modernity (2004, p.180) in which "lack of control" is seen as the cause of crime rather than social deprivation, and rehabilitation gives way to "incapacitation and revenge". (2004, p.181) He suggests three factors in this change: "...the crisis of the welfare state,

estrangement and individualization". (2004, p.182) "Estrangement" is described as "a daily life lived among strangers [which] intensifies the question of whom to trust", and this phenomenon would appear to merge with his third factor, "individualization" – "an increased, and substantial, sense of freedom, but also an increased experience of existential insecurity". (Balvig, 2004, p.183)

Describing "a shift of wind in Danish criminal justice" in the early years of the twenty-first century (2004, p.167), Balvig says "...the most remarkable feature of the renaissance of punishment is not that it is here, but rather that it has come so late, and that it is evolving as slowly as it is". (2004, p.185) This he attributes to adherence to "ideas about the welfare state" by parties across the political spectrum, as well as key administrators and academics maintaining attitudes "based on the modern paradigm". (2004, p.185)⁴⁰ Balvig envisages substantial increases in the Danish prison population in the future and this he links to the crisis, as he described it, in the welfare state.⁴¹ However, whether the welfare state as found in the Nordic countries is under significant threat may be doubted, as Bondeson (2005a) above and other analysts to be discussed below (Kautto et al, 1991 and 2001; Kuhnle, 2000; and Timonen, 2003) have noted. Moreover, while Balvig exhibits pessimism in relation to the future of the welfare state in that article published in 2004, by contrast, in interview for this thesis at the end of 2007, he remarked that he was surprised at the support for the welfare state by both left and right-wing parties at that time. Balvig said after the 2007 election:

*We just had an election in Denmark and the main topic was the welfare system. What they were saying there was, all the parties want to contribute to a better welfare system. Nobody was saying they were going to reduce it....In fact I would say that if you had asked me a year ago, I would say it seems like it's really a critical situation about the welfare system and things like that. But I'm not sure what I should answer you now.*⁴²

⁴⁰ The influence of such key personnel in helping resist the new punitiveness in Denmark will be explored in Chapter 5.

⁴¹ As will be elaborated in Chapter 5, the Danish prison population peaked in 2005 with well over 4,000 in prison and a rate of incarceration of 77 per 100,000, but it has declined since to less than 3,500, or a rate of 63, in late 2008.

⁴² Throughout, quotations in italics are taken from recorded interviews made for this thesis. A number of interviewees (including four criminologists and two Director Generals of prison services) have written articles that are also used in this thesis, but only material from the recorded interviews is put in italics to distinguish it.

In the interview, Balvig, like Bondeson, linked the welfare state to “*lesser punitiveness*”, citing surveys which suggest Nordic people, although they are subject to similar levels of crime as elsewhere, “*think it was less serious to them than people in other places*”, because

...if you get something happening in your economy, or your body, there will be a system to take care of you. And because of that it is less serious...in general people feel more secure...and that's related to the high level of social capital also, they feel that [other] people are not threatening...And because you are feeling this way, you feel more relaxed about crime, because of the welfare system. You are less punitive in your attitudes.

Flemming Balvig also noted “*the confidence in the police is very high, I think Denmark is number one in the world in relation to that.*”

In his analysis of “civilizing” processes in society, Pratt notes that “Scandinavian countries” are among those at the better end of a continuum “in relation to the way in which they punish criminals”. (2002, p.145) He highlights two factors in particular as underpinning this situation: “highly developed welfare state commitments” and “high levels of functional democratization in these societies”, which involves bureaucracy that is open and not remote. (Pratt, 2002, p.146) Pratt’s more recent investigation into what he calls “Scandinavian exceptionalism” (in relation to ‘penal excess’), which he describes as involving “humanitarian prison conditions and low rates of imprisonment”, again pinpoints the universal welfare state and its associated “cultures of equality” as the main reason for this phenomenon. (2008, p.124) Pratt’s paper is a result of research in Finland, Norway and Sweden conducted around the same time as some of the research for this thesis. He emphasises the relatively short social distance that applies to prisoners, the policy of normalisation in the way prisoners are treated and the fact that services provided for prisoners are usually delivered by bodies from the community who reflect community “rather than prison values”. (Pratt, 2008, p.120) However, he sees threats to the traditional Nordic penal values in a decline in security and solidarity, a lessening of homogeneity due to immigration, and the attitudes to drug crime. This decline is exemplified, in Pratt’s view, by

recent increases in prison populations (although, it should be noted, such a pattern of increase appears not to have been established by 2008).⁴³

The 'welfare state ideal'

Lappi-Seppala has perhaps written most extensively in English on the factors that underpin a resistance to punitiveness shown in penal policy in Nordic countries. He stresses the “social policy orientation” of the “evidenced-based, pragmatic and non-moralistic approach” to crime (2004a, p.1). In particular, he says this approach

...reflects the values of the Nordic welfare-state ideal and emphasises that measures against social marginalisation and equality work also as measures against crime. It stresses the view that crime control and criminal policy are still part of social justice, not just an issue of controlling dangerous individuals. (Lappi-Seppala, 2004a, pp.1-2)⁴⁴

In a further paper, Lappi-Seppala explained a lack of severity in Nordic penal policy on the basis of three main factors: welfare and social equality policies; “confidence and trust in political institutions” and “social trust (trust in people)”; and the “corporatist and consensual model of political decision-making”. (2007a, pp.13-16) In earlier papers, looking specifically at Finland, he also noted the “exceptionally expert-oriented” approach to forming penal policy; “attitudinal readiness” in the judiciary; and a “sober and reasonable media”. (Lappi-Seppala, 2000, pp.28-38)

Virtually all of that thinking by Lappi-Seppala, and also the explanatory factors for ‘Nordic exceptionalism’ attributed above to Bondeson (2005a), Balvig (2004) and Pratt (2002, 2008), are incorporated in a much more substantial and more recent article by Lappi-Seppala (2007b). This sets out six ‘hypotheses’ for less penal repression in Nordic countries compared to Anglo-Saxon ones and these are summarised as follows (Lappi-Seppala, 2007b, pp.270-285):

⁴³ Prison populations have generally tended to decline again in recent times in Denmark, Finland, Norway and Sweden, as will be clarified in relation to Sweden later in this chapter, and in relation to the other countries in Chapters 5, 6 and 7 respectively.

⁴⁴ All interviewees for this thesis were asked their views on how strong or otherwise the ‘Nordic welfare state ideal’ remained and how it impacted currently on crime problems. See Appendix B, question 12.

A. *Public Sentiments and the Media.* Lappi-Seppala asserts that fear of crime is lower in Nordic countries and the media less sensational in relation to crime than in Britain.

B. *Welfare, Equality and Punitiveness.* Lappi-Seppala gives what he calls “the continuing strength and credibility of the welfare state” as one of the primary reasons for leniency in penal policy (2007b, p.217). He says: “...the connection between commitments to social welfare and imprisonment rates is explicit in the old Scandinavian slogan ‘Good social policy is the best criminal policy’...society does better investing in schools, social work and families than in prison... producing less stressing crime problems by providing safeguards against social marginalization” (Lappi-Seppala, 2007b, p.273-4). Lappi-Seppala sees the universalism of the Nordic welfare state as critical to its continuing popularity and support, even amid a deep recession in Finland in the early 1990s, believing that “today the protections of the welfare state enjoy unanimous acceptance across party lines” (2007b, p.275), although it did have to make adjustments to survive.⁴⁵

C. *Trust, Legitimacy and Social Control.* Whereas in Garland, the state, lacking authority, resorts to “denial and acting out” (2001, p.131), there is generally confidence in the political system and “trust in institutions” and “trust in people” in Nordic countries (Lappi-Seppala, 2007b, p.276).

D. *Consensual Political Culture.* Political systems in Nordic countries are generally more representative and geared towards compromise, whereas “majoritarian democracies are based on competition and confrontation” and “more susceptible to penal populism” (Lappi-Seppala, 2007b, pp.279-280).

E. *Stability and Deliberation.* Although somewhat less true of Sweden, the other Nordic democracies are averse to quick reactive legal responses, and time is taken in framing legislation.⁴⁶

F. *Judicial Cultures and Legal Professions.* In Nordic countries, judges are independent and not politically appointed, and also trained in criminology. Lappi-Seppala says “individuals and elites also matter” (2007b, p.284), referring to the strong influence in Finland of particular experts in prison administration, law-drafting offices, the judiciary and universities.

⁴⁵ Some of these adjustments to the welfare state are described in the next section, drawing on Timonen's (2003) account in particular.

⁴⁶ Examples of careful deliberation in law drafting are the reform of the Finnish Criminal Code between 1972 and 1990 (see Anttila and Tornudd, 1996) and Jareborg's (1995) account of Swedish sentencing reform. The extensive consultation process around the 2008 White Paper in Norway could be seen as an example of a similar approach.

Clearly, the factors offered by Bondeson (2005a), Balvig (2004) and Pratt (2002, 2008)⁴⁷ as explanations for less punitiveness in Nordic countries are all broadly incorporated in Lappi-Seppala's fuller explanation of such 'hypotheses'. It should also be clear that the various reasons generally given for this different Nordic pattern connect and overlap with each other in large measure, and several might validly be grouped or sub-divided differently. However, the persisting strength of the Nordic welfare state is afforded primacy in these explanations, and this factor can almost be seen as an overarching factor for all of the others. For example, the welfare state is clearly linked to the legitimacy of institutions and the consensual political process. Also, a lower fear of crime clearly supports, and is supported by, trust in institutions. Deliberation in law drafting and other policy developments presumably enables practitioners and researchers to retain more of a say – more so, one presumes, than where matters tend to be driven by 'knee-jerk' political reactions. Moreover, it is perhaps easier for practitioners and academics to have some influence in societies with smaller populations than in much larger ones such as Britain or the USA. The relative smallness of the societies in question is not listed as one of the restraining factors above, but it may be a factor, linking with trust in institutions and others and perhaps more easily enabling interaction between politicians, academics and other 'experts'.⁴⁸

As the objective of this thesis was to identify, not just the extent or otherwise of punitiveness in certain countries, but the reasons behind the outcomes, such factors as those listed above were probed considerably in the course of the data collection, especially in the recorded interviews. Like the Garland indices and three summary criteria for punitiveness identified earlier, the above factors will frame, in subsequent chapters, examinations of what gives rise to or hinders the emergence of punitiveness. However, it might also be helpful here to 'rationalise' some of these factors, in particular the last two 'hypotheses' given by Lappi-

⁴⁷ Similar explanations were given by Tonry (2008) and Lacey (2008) and were quoted in Chapter 2 above.

⁴⁸ Lappi-Seppala notes how, in Finland, "close personal and professional contacts" between politicians, academics and administrators has been important, with Inkeri Anttila, for example, being at different times Director of the National Research Institute of Legal Policy and Minister for Justice (2000, p.37).

Seppala (E and F). Both of these relate to the influence of practitioners or 'experts' and so may be combined. Thus, the core factors seen to possibly hamper punitiveness in Nordic countries may be summarised as follows:

- the role of the media and the public's fear of crime,
- trust in institutions and other people,
- consensual political culture and systems,
- the role of experts and practitioners,
- and the universal welfare state.

Like prison systems themselves, some of these influential factors are also challenged and changing and these dynamics will therefore also form part of the narrative. Factors such as those might help make penal policy in Nordic countries stand apart from, say, the USA, Britain or Ireland, and they were explored in the investigation and will be reported on in later chapters.⁴⁹

4. SOCIAL POLICY REFORM IN NORDIC COUNTRIES

Given the critical importance of the welfare state and related matters in the discussion underpinning penal policy, it is pertinent to ask further about its present strength and likely future prospects in Nordic countries. A review of some general studies in this field points towards many new challenges but also shows the welfare states in the four larger Nordic countries adapting in various ways to changed circumstances while maintaining their essence. This section will also refer to further indications of broad public and political support, in Nordic countries, for the welfare state.

The 'Scandinavian model': adjustment and survival

In a collection of largely research-based chapters by authors from Denmark, Finland, Norway and Sweden, Kautto et al (1999) recognise differences in the

⁴⁹ Another interesting distinction comes from his account of how victims are regarded in the criminal justice system. One of Garland's "indices of change" was what he called "the return of the victim" (2001, p.11). Garland says: "The interests and feelings of victims – actual victims, victims' families, potential victims, the projected figure of 'the victim' – are now routinely invoked in support of measures of punitive segregation," the "symbolic figure of the victim" coming to be seen to represent the public (Garland, 2001, p.11). However, Tapio Lappi-Seppala says: "The Scandinavian criminal justice process incorporates a different view of the rights of the victim. Compensatory claims of the victim are always dealt with in the same process as the criminal case. These claims are assessed by the prosecutor on behalf of the victim. Victims' rights are associated not with a right to pursue a personal vendetta in the court, but with victims' possibilities of having damages and losses compensated. (Lappi-Seppala, 2007, p.284)

political, economic and social dimensions of these nations, but hold the view that they have enough in common to be treated as a distinct group in relation to social policy, as has been done traditionally.⁵⁰ Kautto and colleagues speak of the 1980s as the 'Golden Age' of the Nordic welfare state when each of these countries had economic prosperity, high degrees of social justice and equality and low levels of poverty. Challenges came in the 1990s with economic recessions in Finland and Sweden, but also from "ageing of populations" and changes in family and work arrangements. (Kautto et al, 1999, p.3) Yet, they say, "Despite often-heard claims about the withering of welfare states, their decline is not at all evident." (Kautto et al, 1999, p.5) The state remains the predominant provider of welfare state services in Nordic countries; these authors prefer to speak of "restructuring, reorientation or adjustment". (Kautto et al, 1999, p.9) The 'Scandinavian model' retains its distinctive comprehensiveness, its basis in social rights, and its universal quality.

One adjustment was in the labour market in the face of higher unemployment. Whereas some governments elsewhere made cuts in social spending in the face of economic pressure, Nordic countries put more stress on 'activation policies' in the labour market, such as 'active labour market policies' (involving public programmes), 'workfare' (involving work requirements for income support), and 'work incentive', making it financially more attractive for people to work (Dropping et al, 1999, pp.135-6). However, in a shift of focus from the structural to the individual that can find echoes in penal policy, Dropping et al note: "A consequence of the activation discussion is that the causes of unemployment are individualized: the focus on the duties and motivations of the employed person may become so strong that structural causes are pushed into the background." (Dropping et al, 1999, p.140) They also question policy shifts which involve "vulnerable groups" being forced financially to take part in work programmes

⁵⁰ While recognising that there was no 'yes or no answer to the question of Nordic distinctiveness' in terms of welfare state regimes, a slightly different group of authors still conclude two years later that "the Nordic countries as a group tend to be different from other groups of Western European countries in key dimensions of policy and welfare" (Kautto et al, 2001, p.263-4)

when “only a minority of these individuals will actually enter employment afterwards.” (Dropping et al, 1999, p.158)

Hallerod and Heikkila’s chapter analyses poverty and social exclusion in the Nordic countries and finds that, in the face of economic recession in the early 1990s, “in contrast with Sweden, the economic crisis in Finland was not accompanied by an increase in income inequality”, even though the recession was greater in Finland. They note that: “The crisis in the Finnish economy hit almost every section of the population.” (Hallerod and Heikkila, 1999, p.194) Andersen et al considered the legitimacy of the welfare state in Nordic countries and found a popular mood continuing to approve of welfare state support, although “disagreement between groups on welfare spending seems to be highest in Sweden, followed by Finland and Denmark, with Norway displaying the most consensus on welfare spending”. (Andersen et al, 1999, p. 256) This is attributed to “larger differences between various class, education and income categories in Sweden than elsewhere” and the fact that: “Divisions between the political left and right are particularly pronounced in Sweden, and particularly small in Norway.” (Andersen et al, 1999, pp. 256-7)

Two years later, a somewhat different group of authors note that “Nordic welfare states have overcome a sea change in family structures and labour markets and even demonstrated a remarkable ability to survive through periods of dramatic economic turmoil.” (Kautto et al, 2001, p.271) The welfare states in these countries have demonstrated a capacity to adjust quite dynamically “while still retaining their central characteristics”, being “relatively generous and comprehensive” and certainly not facing “imminent death or dismantling as sometimes prophesied by the most extreme adherents of the convergence thesis.” (Kautto et al, 2001, p.272)

Universalism and public support

In similar vein, Kuhnle's (2000) study of the changes to the Nordic welfare state in the 1990s interprets these as reforms carried out while the basic structure was preserved. He says: "Despite some significant economic problems, especially at the beginning of the 1990s in Sweden and Finland, Scandinavian countries have fundamentally maintained, and even to some extent also strengthened, their welfare states during the last decade," (Kuhnle, 2000, p. 211) Kuhnle cites an OECD publication from 1981, *The Welfare State in Crisis*, which proposed a shift to non-state welfare provision and individuals taking more responsibility themselves (Kuhnle, 2000, p.210). However, Scandinavian states have, in fact, "consolidated state welfare solutions and employment"; government employment increased to an average Nordic figure of 29 per cent in the early part of the 1990s, while the average for Europe remained below 19 per cent (Kuhnle, 2000, p.218). The main driving force for change in Nordic welfare states came from economic necessity, not from an ideological challenge. However, the moves from passive to active labour market policies were in part influenced by neo-liberal views.

There were some cuts in provision, or "decreased generosity" as Kuhnle puts it, especially in the face of Sweden's and Finland's economic crises: benefits were reduced, benefit periods shortened, eligibility tightened and there was "a much stronger emphasis on rehabilitation, activation, education and training", but these changes were put in place through a process of wide political consensus, which gave them legitimation (Kuhnle, 2000, p.225). Some of the thinking evident in these changes can also be detected in penal policy and practice, such as an emphasis on individual responsibility and rehabilitation. However, the major relevance of this narrative for prisons and prisoners is that the inclusive concept of society, the universalism, persists. As will be seen in later chapters, a critical feature of Nordic countries is that prisoners tend to be seen as part of society, as citizens, and seldom as demonised outsiders.

Unemployment peaked in all four countries in 1993 and there was negative economic growth for a few years in the 1990s in both Sweden and Finland. Yet social expenditure, as a percentage of GDP, increased in all four between 1990 and 1995. Kuhnle argues that “The type and format of the welfare state may have helped these countries, and Finland especially, more rapidly through the crisis than a welfare state of another, less comprehensive, type might have and with considerably less social damage.” He is of the view that such a welfare state “can be a vital shock absorber which stabilises the economy and social conditions so that the economy can recuperate fast and well”. (Kuhnle, 2000, p.226) He too stresses the extent to which the welfare state has strong support across the political spectrum and among the public. Kuhnle notes that no political party in a Nordic country “favours a deconstructed welfare state” (2000, p.225) and Nordic politics in the 1990s was characterised by “strong welfare populism” among “the smaller parties on both the left and the right”. (2000, pp. 220-1) Kuhnle concludes: “The Scandinavian type of welfare state may be adjusted, reconstructed and made less generous, but...it seems rather unlikely that the institutional characteristics of the welfare state will be challenged in the foreseeable future. It will remain universal, comprehensive, redistributive and employment-oriented.” (2000, p.226-7) Such societies will be more inclined to help those who commit crime and less likely to think in terms of banishment.

Surviving globalisation and recession

Timonen (2003) focuses on “the impact of globalization and economic crisis” on the welfare states of Finland and Sweden. (2003, p.3) She, like Kuhnle and others, characterises such welfare states as “institutional” in that everyone is entitled to an adequate range of benefits and services. “Institutional welfare states”, she says, “are solidaristic and universalistic”. (Timonen, 2003, p.4)

However, she maintains, these welfare states survived the extremely severe recessions of the 1990s in part through absorbing some conservative and liberal welfare regime features (2003, p.8), with Finland in particular moving a little more

towards Central-European type earnings-related benefits (2003, p.185).

However, the main basis of the survival of this model was its “universalism”; the fact that benefits were generally available to all “created a broad base of support which in turn became an integral part of politicians’ strategic calculations”.

(Timonen, 2003, p.12) As with other writers referred to above, Timonen stresses that their “encompassing structure...protected the Finnish and Swedish social policy regimes”, saying: “The recession increased the popularity of the Finnish and Swedish welfare states. In the game of politics against markets, politics scored another victory.” (2000, p.17)

Timonen is of the view, again like Kuhnle, that the pressure to change these welfare states came from the economic recession and that “the impact of political, or ideological attacks...was very limited” – clearly a quite different situation from Britain. (2003, p.39) Neither was globalisation a major influence, in her opinion; she says that: “The impact of globalization is heavily mediated by domestic actors and institutions and has imposed only narrow constraints on national social policy-making.” (Timonen, 2003, p.60) Thus the reforms were “moderate...adjustment strategies rather than ideologically motivated retrenchment”. (Timonen, 2003, p.183) The main changes in both countries came from social democratic-led governments, who were able to negotiate restructuring because they had a “basic trust” among the electorate and the labour movement. (Timonen, 2003, p.190) The institutional welfare states are resilient, according to Timonen, because of the kind of politics they produce: “Instead of creating divisions, they bring about unity, that is to say large constituencies in favour of social policies...there is only a very small ‘market’ among the electorate for anti-welfare parties and ideas.” (2003, p.192)

Public support for the welfare state

All of the authors referred to above, who dealt with the welfare state and social policy, made clear in different ways, even more firmly than the criminologists referred to earlier, that the Nordic welfare state retains its pre-eminent position

and remains strongly supported. So, far from being weakened as in the Garland (2001) scenario, the Nordic welfare state is reported as adjusting and adapting, and in some ways growing stronger, particularly in the three countries investigated for this thesis. Triggered by Tapio Lappi-Seppala's comment that the "lenient and less repressive responses to crime" in Nordic countries reflect "the values of the Nordic welfare state ideal" (2004a, p.1), one of the questions in the interview structure prepared for the research for this thesis related to this view (See Appendix 1). Most interviewees were asked whether the "welfare state ideal" was a major influence on penal policy in their countries. Responses will be detailed for the most part in later chapters, but it should be noted here that such a link was overwhelmingly perceived. Moreover, those interviewed spoke very positively of the welfare state and generally believed that the public were supportive of it.

Flemming Balvig was quoted above as saying in an interview for this thesis that he revised his opinion about political support for the welfare state in Denmark after the general election of November 2007; he saw it as strongly supported across the board. In Sweden, a government led by Fredrik Reinfeldt of the centre-right 'New Moderates' (Nye Moderaterna) took over from the Social Democrats in September 2006. Nicholas Watt (2006), a *Guardian* reporter, wrote (18/9/06):

The centre-right, which suffered a crushing defeat in 2002, after pledging drastic tax cuts of £9.4bn, has tailored its message to an electorate which accepts that the 'social model' needs to change but does not want to see it dismantled. Mr Reinfeldt has pledged more modest tax cuts of £3.2bn over two years.

Mats Engstrom (2006), writing in the *The Village*, stated:

The Moderaterna was seen by many voters as a right-wing party which threatened public welfare. In order to win, the party had to rebrand itself, embrace the welfare state – the essence of the 'model' – and try to look more like the model's principal defenders, the Social Democrats..." Every promise the Social Democrats make on social welfare, we will agree to and improve," Reinfeldt said in one of his campaign speeches. (*The Village*, pp.34-35, 21-27/9/06)

Clearly, then, the political and social policy context in the Nordic countries, where the welfare state remains strong, well-funded and almost universally supported, especially in Denmark, Finland and Norway, is very different from that experienced in the US and UK from the 1980s and as documented by Garland (2001, pp.89-94). It could be argued that such a different setting may reasonably be expected to have a considerable bearing on the direction of penal policy.

5. NORDIC CRIMINAL POLICY

Nordic criminal policy

This section will explore the main traditions in Nordic countries in relation to penal policy and practice, as indicated by some of the dominant ideas and as reflected in some of the more prominent Nordic criminological writers. The Nordic nations have much in common, especially in the criminal justice area, and so it is appropriate to describe that overall context ahead of examinations of penal policies in specific countries.

Politically, and in other respects, there is close co-operation between these countries, although they are not uniform in their membership of bodies such as the European Union and NATO. The Nordic Council, “an inter-parliamentary co-operative body that can give recommendations to the governments of the member states”, has been in existence since 1952 and the inter-governmental Nordic Council of Ministers, formed in 1971, funds a range of joint activities. (Takala 2004, p.132) There has been co-operation between Nordic criminologists going back to the early part of the twentieth century and in 1962 the Scandinavian Research Council for Criminology was established by the five Ministers of Justice (Takala 2004, p.133). Von Hoffer, in an overview of crime and sanctions in the four larger countries, says the pattern of crime levels is similar to other European countries and the crime control field is “characterised by relatively low police density, a declining clear-up rate, the imposition of fines in

a high proportion of criminal cases and relatively low prison populations”; fear of crime tends to be lower than elsewhere. (von Hoffer, 2005, p.67)

Bondeson identifies other general features to be noted: “criminalization and penal sanctions are almost identical” among these countries, but there are “real differences” in criminal procedure and sentencing practice (2003, p.21); pre-trial detention tends to be relatively high, more so in Denmark and Norway; and over 50 years “prison populations have been fairly stable in Denmark, Norway and Sweden”, though Finland in that time has brought its rate of incarceration down from a very high level to one similar to the others (2003, p.24). Iceland is often omitted from such discussions, which Lappi-Seppala attributes to a difficulty in obtaining data (2007, p.218).

While there are clearly differences between countries, Lahti (2000) does judge it valid to speak of a “Scandinavian criminal policy”, in part based on shared legal history and co-operation in legal matters, and also on the basis of a common tendency to set criminal matters in a social context. Clearly, using the term in this manner, in much the same way as one speaks about Nordic welfare states, is not to deny significant variations across countries. Lahti traces a broadly shared criminal policy history among Denmark, Finland, Norway and Sweden, from positivist thinking which gave rise to a strong treatment ideology and a practice of indefinite sanctions in the early twentieth century, to criticism of such approaches in the 1960s and 1970s, for example from Christie (1960) in Norway and Anttila (1971) in Finland. Lahti says:

...criticism against the idea of treatment and the reappraisal of the role of the criminal justice system and the function of penal sanctions were the central themes of the official reports on questions of principle, carried out in 1977 and 1978 in the various Nordic countries (Lahti, 2000, p.144).

He refers to reports published in all of the four larger countries, which he says “were reflective of a new criminal policy, often described as neo-classicism”. (Lahti, 2000, p.144)

These policy initiatives emphasised “justice, legal security and humaneness as leading legal principles in the criminal justice system, at the same time putting value on the general preventive effects of the penal law”. (Lahti, 2000, p.145) While Denmark and Norway prioritised reducing punishment and developing alternatives to imprisonment, the Swedes and Finns focused on “general deterrence and reinforcement of morals” (Lahti, 2000, p.145), although the latter countries clearly also recognised the personal and social costs of imprisonment as well as of crime. Lahti says “a common feature” of these official reports in the four countries in the late 1970s

...was the sharp criticism against the existing penal system, especially indefinite penal sanctions and imprisonment in general. The requirement of humaneness and the goal of reducing control-caused damage were arguments for more lenient penalties and for alternatives to imprisonment. (Lahti, 2000, p.147)

However, the radical reduction in punitiveness envisaged in these reports, says Lahti, did not happen in the remaining part of the century, with the exception of Finland. Otherwise the prison populations remained fairly stable, and the “criminal policy climate” in Norway and Sweden became “chillier” towards the end of the 1980s (Lahti, 2000, p.147). “Drug control measures,” he says, “are the most noticeable example of hard criminal policy”. (2000, p.149)

Criminological writing in the 1990s continued to focus on “the need for humane law policy...less use of imprisonment” and argued against incapacitation as a purpose. (Lahti, 2000, p.148) Alternatives such as community service have grown, and approaches like mediation and restorative justice have been explored. Lahti speaks of a “moderate renaissance of the treatment ideology”, as exemplified by “rehabilitation programmes that are now available in the prison service”. (2000, p.148)⁵¹

⁵¹ In the following chapters, many of those interviewed or otherwise met in the course of the research will be found to refer to such ‘programmes’, several speaking of them in critical or sceptical terms. It would appear that they are not quite as fashionably regarded as they once were.

Mathiesen and 'abolitionism'

Pre-eminent among writers critical of imprisonment, in the latter decades of the twentieth century and into the present time, are Nils Christie and Thomas Mathiesen, both of whom are based at the Institute of Criminology at the University of Oslo.⁵² Both have played prominent roles in KROM, the Norwegian Association for Penal Reform, and Mathiesen was its first Chairperson from its foundation in 1968 to 1973. Mathiesen has taken an 'abolitionist' stance in relation to prisons, arguing against incarceration as a means of dealing with behaviour deemed unacceptable. His *Prisons on Trial* (2000) systematically challenges, on the basis of logic and research, the various grounds upon which imprisonment is justified (such as rehabilitation, general prevention or retribution) "in an attempt to contribute to the shrinking – perhaps the abolition – of the prison solution". (Mathiesen, 2000, p.22) His view is that "prison is a fiasco" (2000, p.26). Likewise, in an essay entitled 'The argument against building more prisons', Mathiesen says his conviction is that: "Prisons should be abolished. Our society should be structured in such a way that prisons are unnecessary, perhaps excepting extreme cases." (Mathiesen, 1991, p.179) In this paper he sets out eight arguments against expanding prison systems. In his view, prisons do not work as prevention and alternatives are available. Prisons are costly and irrevocable; they are inhumane and signify destructive cultural values.

Christie's arguments against incarceration

Like Mathiesen, Christie has had significant international influence, including within Nordic countries, and his thinking is an important part of the backdrop for any study of Nordic penal policy. In analysing his writing here, the three key criteria of punitiveness in this thesis of scale and depth of imprisonment, and representation of people in prison, will be kept to the fore. Christie is, like Mathiesen, strongly opposed to imprisonment, pointedly speaking of it as the imposition of pain in *Limits to Pain* (1981). In that book he too is critical of the arguments for incarceration and tackles in turn concepts such as treatment,

⁵² Both Nils Christie and Thomas Mathiesen gave interviews for this research project and their perspectives will be explored again in Chapter 7, on Norway.

deterrence and the neo-classical position of general prevention. However, he also addresses the *kind* of imprisonment imposed. Christie says: “Prisons are filled with people in need of care and cure. Bad nerves, bad bodies, bad education – prisons are storing houses for deprived persons who stand in need of treatment and educational resources.” (Christie, 1981, p.48) While opposed to “treatment for crime”, he says, however, that “*if human beings are in prison to receive punishments*, they ought to get a maximum of treatment to improve their general conditions and soften their pain. Treatment for crime has lost its credibility. Treatment has not.”(Christie, 1981, p.48, emphasis in original)

Christie’s *Crime Control as Industry: Towards Gulags, Western Style* (2000) looks at imprisonment worldwide and its massive escalation in most countries, stressing the extent to which it has become big business, especially in the USA in recent years. He is of the view that, apart from capital punishment “Nothing is so total in constraints, in degradation and in display of power, as is the prison.” (Christie, 2000, p.25) Christie is emphatic that “the volume of crime does not explain the volume of imprisonment” (2000, p.38), which he sees as explained by other forces.⁵³ What holds imprisonment down in countries such as Norway and Finland are cultural and political factors, he argues.⁵⁴ Christie quotes K.J Lang, the former Director General of the prison system in Finland, as saying: “The number of prisoners has very little to do with crime. The number of prisoners is rather caused by the general situation of confidence in society and of the political equilibrium.” (2000, p.51, Christie’s translation) Generally in Scandinavia, Christie says, civil servants working in the prison system have helped resist moral panics around crime and demands for more severe punishments and “have to a large extent stood up as sober and calming elements”, stressing the negative effects of imprisonment. (2000, p.147)⁵⁵

⁵³ Fuller discussion of ‘the crime-incarceration disconnection’ (Wacquant, 2005, p.11) is given in Chapter 8, Section 3.

⁵⁴ Hans von Hofer also concludes that we must see prison populations as ‘political constructs’ after he analysed how Finland, Holland and Sweden, with very similar economic, social and crime contexts, have had radically different imprisonment patterns over decades (von Hofer, 2003, p.21).

⁵⁵ The Netherlands could once be bracketed with Nordic countries in its restraint in relation to incarceration, bolstered by traditions of tolerance, compromise, a humanistic and critical criminology, and government by elites – but these factors have weakened and imprisonment has increased. Christie gives a rate of incarceration of 85 per 100,000 for the Netherlands, for what appears to be around 1998. Ten years earlier, on 1/9/88, the rate had been 40 (Council of Europe:

The core of Christie's critique is to trace forces which have contributed to the massive increase in the levels of incarceration. In general, what he has to say can be seen to complement the writing of Young and Garland, but he develops certain points in relation to prisons more fully. Central to his book is the depiction of the 'prison-industrial complex', a phenomenon seen to mirror the earlier military-industrial complex.⁵⁶ Large companies such as Wackenhaut Corrections and Corrections Corporation of America have an enormous vested interest in ratcheting up the scale and intensity of punishment, a stake enlarged by the extensive privatisation of many aspects of imprisonment in the USA in particular.

A central point in Christie's thinking is that the level of imprisonment in any country is not something given, not determined by the level of crime or such forces, but is in fact a deliberate decision by society. As the title of his later book, *A Suitable Amount of Crime* (2004), suggests, what is classified as crime is also arbitrary and can be different in different times and places. Informal social controls and the extent of interaction between neighbours, for example, in part govern whether unwanted acts are treated as crimes. So, Christie says: "Social distance is one of the conditions for the heavy use of the penal system." (2004, p.55) Christie's '*minimalism*', which he says is "close to the abolitionist position, but accepts that in certain cases punishment is unavoidable", is to a large extent based on the idea that both crime and incarceration are deliberate decisions of society, not given (2004, p.85, emphasis in original). It is also based on a passionate view of the harmful effects of imprisonment: "With imprisonment, we do not take the whole life away. But we take parts of life away... To me, a small prison population within a state has some of the same sacred qualities as the absence of torture and capital punishment." (2004, p.103)

Prison Information Bulletin). On 31/8/08 the rate was 100, having been 123 in 2004 and 110 in 2007 (www.prisonstudies.org, on 2/12/08).

⁵⁶ The phrase 'military-industrial complex' was coined by President Eisenhower in 1961, when he sensed "the potential for the disastrous rise of misplaced power", as the journalist Henry Potter put it (*Observer*, 13/11/05).

Social distance and cultural capital

Following the theme of depersonalisation, Christie draws on Bauman's *Modernity and the Holocaust* (1989), which traces the preconditions for the Holocaust to factors in social organisation.⁵⁷ Christie asserts: "...the central point of Bauman's explanation of the Holocaust is *the social production of moral indifference in modern societies*." (2000, p.179, emphasis in original) That indifference is "created by authorisation, by routinization and by dehumanization of the victims by ideological definitions and indoctrinations". (p.179) Christie argues that the prison system in the USA "is rapidly moving in the same direction" (2000, p.182) seeking "control of the dangerous classes" (2000, p.184). In changing a system of justice into a system of crime control, values are "pushed aside" (Christie, 2000, p.191). Common human experience is, to Christie, "the basis of a common core in humanity, a basis of shared values and rules on how to act". Knowledge, he says, is called *folkevett* in Norwegian, "a sort of intuitive common sense shared by everyone" (2000, p.195). However, this "common core... can be made irrelevant by distance", or by extreme circumstances, or "by professional training or practice". (Christie, 2000, p.197) In the Nazi camps, ordinary *Norwegians* treated other Norwegians inhumanely when such distance was established, a subject of early Christie research (See Christie, 2004). This has implications for a central issue in this thesis, the way in which the person in prison is seen. Distance today is achieved and maintained by stereotype, by demonisation, by the depiction of the prisoner as "other". The restraint that core common values can facilitate on excessive punishment is thereby weakened.

Christie (2004) relates such distancing of other people to the concept of "social capital", as set out by Putnam in *Bowling Alone* (2000). Christie notes that the "trend towards increased social isolation" leads to "increased reliance on the media for describing what happens" and greater dependence on the state rather than on social networks to deal with "perceived dangers" and "local conflicts"

⁵⁷ Christie quotes Bauman as saying such conditions were "the division of labour, the modern bureaucracy, the rational spirit, the efficiency, the scientific mentality and particularly the relegation of values from important sectors of society" (Christie, 2000, p.178).

(Christie, 2004, p.69). In an interview for this thesis in 2006, he spoke of having just written a paper (in Norwegian) relating the concepts of “social capital” and “cultural capital” to crime prevention. He was concerned at some social trends that disempower poorer people within society, such as the ‘gentrification’ of inner city areas, “*where poor people are losing out because rich people invade their housing...you cannot bring social capital with you, so if you split up your housing or your neighbourhoods, then you are completely alone socially.*” Thus, social networks are lessened, social capital, in Putnam’s (2000) sense, is diminished. Christie sees cultural capital in a similar way, where the knowledge of poor people – what he calls “*kitchen knowledge*” or “*kitchen table knowledge*” – is discounted, to be replaced by professional knowledge, such as that of social workers. He expressed concern that professionals undermine “*people’s belief in their own knowledge*” which is built on life-experience. In Nils Christie’s perspective, the social capital and cultural capital of poor people contribute to the prevention of crime and great care is needed not to undermine such resources.

The negative impact of imprisonment

The negative impact of imprisonment is a persistent theme in Nordic commentary on prison matters, and indeed explicit reference to “the detrimental effects of imprisonment” can be found in Danish, Finnish, Norwegian and Swedish official policy documents. For example, in discussing the ‘normalisation’ principle, Danes refer to “a variety of side-effects associated with a traditional sojourn in prison” (Ministry of Justice, 1994, p.10). Swedes have continually used phrases that speak of “the detrimental consequences of deprivation of liberty” (Kriminalvarden, 1999, p.3). The Finnish Prisons Act of 2006 has many such references: prisons should seek “to prevent any detriment resulting from the loss of liberty” (1.3); staff shall attempt to work “without causing greater detriment than is necessary” (1.6); leave is necessary “to decrease the detriment resulting from loss of liberty” (14.1). The recent Norwegian White Paper on prisons declares: “The documented risks of the harmful effects of loss of liberty shall be reduced as far as possible.” (Norwegian Ministry of Justice and the Police, 2008, Part 2)

Ulla Bondeson (2005c) has studied both the damage caused by imprisonment to individuals and the efficacy of alternatives to imprisonment. A research study of inmates in a variety of Swedish institutions demonstrated a 'prisonization' process in all places, whereby prisoners were socialised into anti-social roles, what she calls "a negative individual preventive effect". (Bondeson, 2005c, p.369) Correspondingly, Bondeson's research into recidivism rates for different kinds of community sanctions in Sweden show them to be more effective than prison. However, when it comes to alternatives, the least intrusive sanction – conditional sentence – had the lowest rate of relapse, probation having a higher rate (Bondeson, 2002). Clearly, findings of this nature have impacted on penal policy, reflected, for example, in the Danish principle of 'Least Possible Intervention' (Ministry of Justice, 1994, p.14) and their preference for open over closed prisons.

The larger social context

While a focus in Nordic prisons on matters such as drug problems and offending behaviour programmes may confirm some resurgence of aspects of a "treatment ideology" (Lahti, 2000, p.148), it is important to stress that a sense of the prisoner's larger social context is generally kept to the fore also. In other words, not *all* responsibility for change is heaped on the shoulders of the individual; there is usually an awareness of contributory social factors to crime or to reform. It is generally not the case in Nordic countries that scholars or experts see it *solely* as a matter of personal choice whether a person in prison will offend or not offend again. Generally, in the literature, and among those spoken to for this thesis, the social context and conditions to be faced on the outside are regarded as very important factors in the future outcome.

This awareness of social background, and what are called "resource problems" (Nillson, 2003, p.57) or "welfare deficiencies" (Skardhamar, 2003, p.39), is shown

by many working in prison systems. It 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.* (Ministry of Justice, 1999, p.6, emphasis added)

The same policy document gives as a goal for the prison and probation 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) So, in this thinking, society as well as the prisoner needs to be worked on and changed – presumably so as to be more helpful and supportive of people from prison.

The Governor of Oslo Prison put this perspective most pithily in interview for this thesis when he said of those held in his prison: “*80 per cent of them need help*”. Nilsson’s (2003) research on social exclusion and recidivism among prison inmates 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) Once again there is recognition here of ‘the detrimental effects of imprisonment’, that prison itself is criminogenic. Skardhamar (2003) found similar results in a survey of Norwegian prisoners, for whom 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)

Drugs policies

The issue of drugs is a central one in Nordic prisons, and indeed in Nordic crime control. In Traskman’s view (2005, first published in 1995), anti-drug measures

have severely undermined many of the qualities of the criminal justice system such as due process, a rational and proportionate approach, and a reluctance to use excessive sanctions. He says: “Drugs are dealt and used in all Scandinavian prisons”, which “has led to the introduction of several control measures that counteract any effort to make correctional care less restraining and more humane”, particularly in relation to prison visits. (Traskman, 2005, p.302) Yet, the aim of a drug-free society has not been advanced and the costs of attempting to control drugs are enormous, not least in the escalation of prison populations. It would appear from visits and discussion as part of this research project that restrictions have greatly intensified since Traskman wrote in the mid-1990s, and also that drugs are widely available in prisons today.

The ‘fight’ against drugs is perhaps most intense in Swedish society, where Tham (2005b) says authorities have stubbornly persisted with an ever-intensifying, but failing, policy of controlling drug-use. He says these strategies are “grounded in central themes within the Swedish drug debate, ‘a drug-free society’ and ‘total rehabilitation’”. These two themes may in turn be seen as two aspects of an underlying vision of society.” (Tham, 2005b, p.69) He says the alternative approach, “the use of maintenance programmes or other harm reduction measures would be seen as a failure for social policy in Sweden.” He describes the policy as “an absolutist model” which “cannot settle for second best”. (Tham, 2005b, p.69) This approach is supported by the police, proponents of the Swedish version of the welfare state and the political right, and it harks back to temperance movements and prohibition policies of earlier times.

A human rights perspective.

Greve and Snare (2007) also link the themes of treatment and resocialisation in prisons with the welfare state ideology. They trace how, across many generations, in Nordic countries and elsewhere, the treatment/welfare state outlook has contested with what they call the ‘Rechtsstaat’ ideology for dominance in penal matters. The latter is essentially a human rights perspective,

where the state is constrained by law, the individual in prison is recognised for his or her human worth and “laws aim for equal status for prisoners and non-prisoners” (Greve and Snare, 2007, p.8). The ‘Rechtsstaat’ line of thought’ can be found, they say, in the European Prison Rules, in the Corrections Acts in Sweden of 1974 and Denmark of 2000, and in Finland’s Prison Law of 2006. (Greve and Snare, 2007, pp.4-6) However, Greve and Snare detect recent departures in thinking and practice from both of these ideologies, especially in Denmark and Sweden. They say that “a century-long development directed towards a still better and more humane fulfilment of the ‘Rechtsstaat’ ideals in the countries’ prison systems” now “breaks off” in the face of political impulses. (Greve and Snare, 2007, p.25) Crime is depicted as “acts committed by foreigners”, and “the correctional system has become a political tool for showing strength.”(Greve and Snare, 2007, p.26) They offer as evidence some of the departures that will be given in more detail later in this chapter in relation to Sweden and in Chapter 5 which deals with Denmark. The new forces they describe are certainly there, but the strength of the countervailing forces also needs to be considered, especially in Denmark.

6. ICELAND AND SWEDEN

Iceland

This thesis concentrates on penal developments in Denmark, Finland and Norway and a chapter will later be devoted to each. The present chapter attempts to present the general Nordic context or setting on the basis that there is considerable shared culture among the five Nordic countries and that cross-currents are very significant in particular in the social and crime control fields. It is appropriate, therefore, to refer briefly to criminal policy in the other two countries, Iceland and Sweden. Although far smaller in terms of population than other Nordic countries, and somewhat removed geographically from them and from the rest of Europe, Iceland does, however, merit some attention. It has by far the lowest rate of incarceration of any country in Europe, at about 40 per 100,000,

and so must stand out on that basis alone as a bulwark against punitiveness.⁵⁸ Of perhaps even more relevance, however, is that Iceland's penal policy can be seen as embodying, most clearly among the Nordic countries, the essence of those attitudes and practices in relation to imprisonment which are most opposite to "the culture of control" (Baldursson, 2000).

The rate of incarceration since the late 1980s has generally ranged between 36 and 44 per 100,000; in 2008 it was exactly what it was in 1995.⁵⁹ The prison population has tended to rise with efforts to reduce the 'queue' of those waiting to serve sentences. However, the introduction of alternatives like community service counteracted the rise this would have brought about (Baldursson, 2000, p.12). For the most part, the prison capacity and populations have only grown in tandem with the country's general population rise over the last couple of decades. Gunnlaugsson and Galliher offer a "functionalist theory involving boundary maintenance" which argues that Icelandic society's concern with narcotic drugs now serves a role that was previously played by beer prohibition, which was repealed in 1989 (2000, p.16-17).

However, any increase in the prison population for drug-related offences has been offset by a decline in those incarcerated for crimes to do with property and traffic violations (Gunnlaugsson and Gallaher, 2000, p.131; Baldursson, 2000, p.6). So, as stated above, the rate of detention has remained remarkable steady, in or around the 40 mark, over nearly two decades, and this rate is well below that of any other Nordic (or indeed European) country. Baldursson sees the fact that Iceland is a small society as being very relevant in this regard. He says that even Members of Parliament will, therefore, know prisons, prisoners and their families and that such "closeness as a rule creates more understanding and more tolerance" (Baldursson, 2000, p.12). He argues for the benefits of

⁵⁸ The Council of Europe's Penological Information Bulletin (No. 26, May 2006) lists Iceland as having, by far, the lowest rate of incarceration in Europe, at 39.6, or 115 prisoners, on 1/9/04. By 1/9/08 the prison population had risen to 140, a rate of 44 (www.prisonstudies.org, on 2/12/08).

⁵⁹ Source: Council of Europe, *Penological Information Bulletin*, nos. 2-26, Dec 1983 to May 2006; International Centre for Penal Studies, www.prisonstudies.org, on 2/12/08.

smallness in another way when he 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).⁶⁰

Baldursson stresses, however, that what he means by a prison functioning better “does not refer to recidivism in the first place, but rather to reducing human suffering when serving a prison sentence”. (Baldursson, 2000, p.8)⁶¹ This recognition of the damage imprisonment causes seems to be a core issue for him, and apparently for the prison system. Baldursson (2000) is adamant that “a prison is a prison” (p.6); that there is no such thing as “a good prison” (p.7); he refers repeatedly to “the damage caused to people by imprisonment itself” (p.9); and he says “putting people in prison contributes only by a marginal degree to solving crime problems” (p.12). Minimising imprisonment and humane containment would appear to be the dominant impulses in shaping the prison system. Material conditions are reported as satisfactory by Baldursson (2000), and Gunnlaugsson and Galliher (2000) refer to a 14-hour unlock each day, which would match the best in other Nordic countries (and is about twice what is usually granted in Ireland).

A notable feature that makes Iceland different from other Nordic countries is that “treatment ideology has not made any major breakthrough into Iceland’s criminal sanction system” (Baldursson, 2000, p.9). When people are sick in prison they go out to hospital. Training services come from outside. Those in need of drug or

⁶⁰ The CPT report compiled following a visit to Iceland in 2004 would seem to complement Bauldersen’s analysis. It stated that in three smaller prisons “the overall atmosphere... seemed to be relaxed and staff-prisoner relations were generally good”, but that in the larger Litla-Hraun Prison “relations between staff and prisoners were of a formal and distnt nature” (Council of Europe CPT, 2006a, p.36).

⁶¹ Erlendur Baldursson is now Assistant Director of Iceland’s Prison Administration. Previously he undertook postgraduate study in criminology under Nils Christie in Oslo, and some influence from the latter may be seen in the perspective of the Icelandier.

alcohol treatment are facilitated on the outside. Psychological services are available in prisons on the basis of helping individuals in trouble, not primarily aimed at rehabilitation. None of the 'programmes', like the Canadian-style cognitive skills courses, so fashionable at times elsewhere in Nordic countries, are available in Iceland. The view is that "a prisoner who has problems, social, psychological or physical, should receive help to solve these problems, regardless of whether... he or she is at risk of committing new offences". (Baldursson, 2000, p.13) Thus the language used speaks not of "care" and "welfare" but, more grounded in reality, bluntly of "prisoner", "prison guard", "cell" and "isolation".

Sweden: prison as a last resort?

Sweden has already been referred to on many occasions, given its pre-eminence in the area of penal policy as in many other fields. Some brief further points will be made about Sweden in this section, elaborating on the Nordic context. In his interview in Finland for this thesis, Tapio Lappi-Seppala spoke of Sweden especially having "*a modelling effect*" on its neighbours in penal policy matters. In preliminary data collection for the thesis a number of interviews were conducted and some prisons visited in Sweden in 2007.

For many years, Sweden stood out as a leader of progressive penal policy. Clearly, the 'last resort' principle was taken to heart, as in the explicit assertion by the Swedish Prison and Probation Administration: "The modern Swedish view is that, preferably, people ought not to be locked up. To deal with offenders by keeping them in the community is considered the best way of getting them to lead crime-free lives." (Kriminalvarden, 1996, p.3) The Prison Treatment Act states: "Prison treatment shall be so devised so as to promote the prisoner's adjustment in society and counteract the detrimental consequences of deprivation of liberty." (Kriminalvarden, 1999, section 4, p.3) The preference for avoiding prison and the recognition in law of the "detrimental consequences" of imprisonment are important markers. A consequence of such thinking is the well

developed practice in Sweden of providing alternatives to custody, with far more serving sentences in the community than in prison (Bondeson, 2002). A booklet produced by the authorities in 2002, *Facts about the Prison and Probation Service*, states:

The basic approach of Swedish criminal policy is that sanctions involving deprivation of liberty should be avoided wherever possible, since such sanctions do not as a rule improve the individual's chances of readapting to a life of freedom. Furthermore, non-institutional care is both a more humane and cheaper form of care than care in prison. (Kriminalvarden, 2002, p.15)

It is something of an open question whether one can say that such policies still continue. The prison population was very much within the normal range for Nordic countries at 60 per 100,000 in 1998, with about 5,300 in prison.⁶² However, the number rose rapidly by more than 2,000 prisoners in six years to over 7,300 (and a rate of 82) in 2004.⁶³ In addition, there were plans to increase the capacity of the prison system further by a net 1,841 places between 2007 and 2010.⁶⁴ These expansion plans, if they go ahead, would bring the capacity of the system, which was a little over 7,000 in 2007, to approximately 9,000 places, an increase of over 25 per cent, so that the rate of incarceration would then be nearing 100. However, the prison population has declined again more recently to a rate of incarceration of 74.⁶⁵

A 'right-wing' government has been in power in Sweden since 2003 and more punitive policies have ensued.⁶⁶ Certainly, Danish and Norwegian prison administrators spoke of a tilting of the balance towards security in Swedish prisons in recent times to an extent far greater than in their own countries. Headquarters staff, regional officials and Governors, interviewed in Sweden for this thesis, all spoke about what they saw as an excessive emphasis on security

⁶² The prison population was 5,290 on 1/9/98 (Council of Europe's *Penological Information Bulletin*, No.22, December 2000).

⁶³ The prison population was 7,332 on 1/9/04, or a rate of 81.7 (Council of Europe's *Penological Information Bulletin*, No.26, May 2006).

⁶⁴ Personal communication with Swedish Prison and Probation Service officials, December 2007.

⁶⁵ The prison population was 6,770 on 1/10/07 (www.prisonstudies.org, on 2/12/08).

⁶⁶ However, as will be noted below, the presence of 'right-wing' government in Denmark since 2001 has not altered the direction of penal policy there to the same extent.

since a new Director General, Lars Nylen, took over in 2004 following a series of highly-publicised escapes and escape-attempts. This was to the detriment, as they saw it, of many positive qualities in their system.

Penal populism

There is evidence of much of the initiative for the increased prison population and tightened security in the Swedish penal system coming very directly from the political spheres. The Social Democratic Party made the kind of switch Labour had made in Britain and that was described in Chapter 2. Tham (2005a) notes how the criminal policy of the Swedish Social Democrats changed to a tougher stance, matching that of the Moderate Party.⁶⁷ However, another force aided the convergence around relative punitiveness in Sweden. As well as a strand within social democracy in Sweden that was based on solidarity and sought “to reduce the regressive aspects of criminal policy”, there has also for long been a moralist strand within the labour movement and with it “a tradition of condemning criminals and demanding stiffer penalties” (Tham, 2005a, p.101). In the 1980s and early 1990s, the Social Democrats were seen as vulnerable to attack by the Moderate (Conservative) Party, who criticised the former’s “degenerate criminal policy” (Tham, 2005a, p.110). By 1994, the Social Democrats had the same Blair strategy of being “tough on crime - and tough on the causes of crime”, but reserved particular harshness in relation to drugs policies. Political bipartisanship of this kind around ‘get-tough-on-crime’ policies may be a critical factor in more punitive outcomes such as the substantially greater prison populations.

Indications of punitiveness

Three main criteria for gauging punitiveness, reflecting the essence of Garland’s (2001) indices as applied to prisons, were set out in Chapter 2: the scale of imprisonment, the depth of imprisonment and the way in which people in prison are seen. It is instructive now to look briefly at the present situation in Swedish

⁶⁷ In another article, Tham said of politics in Sweden: “Since the 1970s, crime policy has become politicized. Conservative parties have launched the law and order theme and exploited crime in political campaigns. Social Democratic and other leftist parties have more or less reluctantly followed. Since the 1990s, however, the political left itself seems now to take the lead in the reshaping of crime policy in a less liberal direction.” (Tham, 2001, p.409)

prisons in the light of these three factors. On the scale of imprisonment, it is clear that Sweden has begun to separate from the Nordic norm. Certainly, rates of detention of about 75 to 80 per 100,000, while not indicative of 'mass imprisonment' as in the USA, or even Britain, undermines the claim to use prison as a last resort. Moreover, if the plans to increase capacity go ahead, and if even 90 per cent of that capacity (which seems to be about the norm) is used, Sweden will get near to a rate of detention of about 100 very soon. This would represent a radical departure from established practice over many decades. This quantitative feature certainly indicates a punitive turn.

Some developments in the qualitative aspect of imprisonment in Sweden today point in a punitive direction also, although the issue is far from clear-cut and many impressive features in Swedish prisons remain very strong, some indeed clearly improving. Regimes have been considerably changed and life in prison has become much more restricted.

Per-Ake Palmquist, the Governor of one of Sweden's highest-security prisons, Hall Prison near Stockholm, stressed that the important time he previously spent moving around his prison, speaking to staff and prisoners, is now severely curtailed. Detailed instructions from headquarters and continuous inspections of security restrict his decision-making as a governor. Things have become highly bureaucratised and "*there is always something coming up on the computer, new instructions from headquarters that should be fulfilled*". He and his Assistant Governor, Agneta Johnson, were concerned at the psychological impact of the changes on the prisoners and speculated about the reaction all the restrictions may eventually bring. Preliminary observations made by a CPT delegation following a visit to Swedish prisons in June 2009 noted that, when they visited the two high-security prisons of Hall and Kumla "many prisoners expressed anxiety and frustration about increased security requirements", although they also stated that conditions in these prisons were generally good and the activities

satisfactory.⁶⁸ Leave from all prisons has also been curtailed, although it is probably still more liberal than in many countries.

There are many ways in which conditions remain very good within Swedish prisons relative to most countries. All prisoners have single cells. 'Slopping out' is unknown. Average out-of-cell time, even in a high-security prison like Hall, is at least 12 hours per day (although the recent CPT delegation recommended "urgent measures should be taken to review the situation of prisoners held in isolation"). There are strong activities like workshops and education, and these appear to be improving. Following Danish practice, more prisoners have, in recent times, been enabled to cook for themselves, as happens in Hall. Alternatives to prison, such as electronic tagging, continue to expand also, modifying the more high-profile political urges to lengthen sentences and put more people in prison. There appear to be solid efforts to develop sentence-planning more⁶⁹ and also to give more support to people post-release. There is considerable drug-treatment on offer, even if the major focus is on attempts to restrict the supply of narcotics getting into prisons. However, overall, there is a sense, at least among some senior staff, that core ideas from previous times, like recognising the detrimental effects of imprisonment and using prison as a last resort, are not recognised now at the very top of the organisation and at political level. There is clearly a contest still being worked out between control urges among the leadership and penal-welfare attitudes lower down the hierarchy and at local level, with the former seemingly gaining more ground.

Media and politicians were criticised by those interviewed in Sweden for promoting negative attitudes about prisoners, for supporting higher numbers in prison, and making things more and more restrictive within prisons. However, some felt that prisoners were still generally seen as part of society, that the

⁶⁸ Source: Council of Europe CPT press statement, 23/7/09, 'Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) which visited Sweden'. (www.cpt.coe.int on 23/9/09)

⁶⁹ However, Greve and Snare (2007) are critical of the risk-assessment processes involved in sentence planning, as was the Governor of Hall Prison.

demonised images promoted by some in leadership roles had not really taken hold. Birgitta Persson, who has responsibility for, among other things, women prisoners and the policy in relation to the children of prisoners, pointed out that in staff training they strongly recognise that most women in prison are victims in a variety of ways and therefore need help. Moreover, in their policies of trying to foster and develop relationships between prisoners and their children, there is recognition of prisoners *as parents*, they are not seen just as offenders. Those spoken to in a range of roles in the Swedish system clearly had holistic views of their 'clients' (a word commonly used) in prison. They also felt there was a good deal of public support for such perspectives. So, although Greve and Snare (2007) may have documented serious weakening of due process and welfare attitudes in prison systems, especially in Sweden and Denmark, and while there is much evidence in Swedish prisons of the phenomena they write about, there are considerable counter-forces there also. Pratt's (2008) assessment that Sweden remains generally 'exceptional' in relation to penal excess elsewhere, but is nevertheless the one among the Nordic countries most at risk of losing that status, would appear to be a valid judgment.

7. CONCLUSION

This chapter has sought to describe the broad Nordic context ahead of more close-up focus on Denmark, Finland and Norway in later chapters. It follows Garland (2001, 2004), Pratt (2002, 2008) and Nordic writers referred to earlier in identifying a very close relationship between penal systems and general social policy, in particular the character and status of the welfare state. The welfare state has had to cope with severe challenges in the Nordic countries in recent times, but the preponderance of evidence from the literature suggests that it has adapted successfully and that it remains strong and widely supported. This assessment will be further tested in the course of forthcoming chapters 5, 6 and 7, which present the data collected from Denmark, Finland and Norway respectively.

The sense of 'everyone being in it together' that is embedded in such welfare states, and that Bondeson speaks of on the basis of her research (2003), could be the basis for prisoners being seen, to a far greater extent than in say Britain or Ireland, as members of the society, and this matter was probed considerably in the interviews for this thesis. Such perception could help to curtail any tendencies to demonise or negatively stereotype those involved in crime or in prison, and to modify any urges to increase imprisonment or worsen prison conditions, even though crime seems in line with Western Europe generally. Complementary to the traditional inclusive perspective of the welfare state in these countries is a robust tradition in penological literature which, while it may swing between an orientation towards treatment and towards minimising intervention, generally comes across as humane, respectful of human rights and focused on resettlement.

These issues will also be further tested in the chapters to come. Yet signs of punitive tendencies are present, although perhaps least of all in Iceland but most strongly in Sweden, where they are accentuated by an overriding preoccupation with ridding society of drugs.

Chapter 4

Methodology

1. INTRODUCTION

Chapter outline

This chapter will describe how the research was conceived and carried out and will explain why particular methodologies were used. The study combines both quantitative and qualitative approaches. It makes use of literature and statistics to sketch out some of the main macro features of prison systems. However, the core of the investigation was built around three elements:

- (i) analysis of documentation acquired (some published, but many never formally published);
- (ii) 20 lengthy interviews with key actors and observers in Denmark, Finland and Norway;
- (iii) and 11 visits to prisons in these countries.

Discussion in Section 2 below relates in large part to the gathering of quantitative data which gives information on penal severity, such as rates of incarceration as well as other tangible features of prison systems which convey something of the 'content' of imprisonment. The chapter will continue the exploration of methodology in Section 3, explaining that the major part of the research was qualitative and teasing out the main features of that aspect, including the use made of documentation and the nature of the in-depth interviews with key personnel. Thereafter (in Section 4) the importance of visits to prisons as complementary sources of information is shown. The main strategy of the research can be described as a 'case study' one and Section 5 examines the nature of such investigation. Section 6 is a summary Conclusion.

Key research questions

The key research questions of this thesis were:

- (a) Does Garland's theory (2001) that the 'culture of control' has taken hold in relation to prison systems apply in the three Nordic countries examined here?

(b) What factors explain the extent to which these countries adhere to or diverge from the Garland scenario?

The Garland indices of punitiveness deemed relevant to prisons were assessed in Denmark, Finland and Norway, and each of the next three chapters has discussion of findings in relation to these indices in each country. However, as explained earlier in Chapter 2, three summary criteria for gauging punitiveness are perhaps the best indicators of how each country's penal system stands overall in relation to the new punitiveness. These criteria are:

- (1) the scale of imprisonment,
- (2) the content or depth of imprisonment,
- (3) the representation of people in prison.

Likewise, five summary factors that may explain Nordic 'exceptionalism', distilled from examination in Chapter 3 (Section 3) of Lappi-Seppala (2007b) and other authors, will frame discussion in relation to research question (b) in the remainder of this thesis. These five factors relate to the media and public fear of crime, trust in institutions and others, consensual politics, the role of experts, and the welfare state.

Policy research

This thesis is based on research into penal policy, and to a degree into the process of policy-formation, in Nordic countries. Some observations on what policy research entails is appropriate. Majchrzak defines policy research as "the process of conducting research on, or analysis of, a fundamental social problem in order to provide policymakers with pragmatic, action-oriented recommendations for alleviating the problem". (1984, p.12) It should be clear, from the perspective outlined in Chapter 1, that the kind of prison systems generated by the punitive turn are seen as deeply problematic. Mass incarceration and the associated greater depth of imprisonment are presumed to be deeply wasteful in human, social and economic terms. So the issue in question is to understand this phenomenon, seek out "alternative policy actions for alleviating the problem" (Majchrzak, 1984, p.12) and understand what might

make these alternatives possible. Thus, Chapters 1 and 2 set out the 'social problem'. Chapter 3 describes the broad Nordic context where it is possible solutions may be on offer. The next three chapters will examine in turn Denmark, Finland and Norway to probe the degree to which each resists, or does not resist, punitiveness, and the factors behind the outcomes. The final Chapter 8 will draw the research together, stressing the alternative policy actions that may be possible, particularly in Ireland.

Majchrzak describes "aspects of the policy arena relevant to policy research" (1984, p.14). She notes, firstly, that "research findings are only one of many inputs to a policy decision", other influences being the views of constituencies, the views of staff involved and existing policies. (Majchrzak, 1984, p.14) That much is very clear from the manner in which 'Prison works' attitudes prevail in Britain and Ireland against extensive evidence of the ineffectiveness of prison. Secondly, Majchrzak says, "policy is not made, it accumulates", since social problems are "complex, elusive and not easily resolved" and so can only be addressed "through a series of successive approximations in which policies are continually suggested, implemented, evaluated, and revised." (1984, pp.14-15) Thirdly, she says, "making policies is as complex as the social problem itself" because so many different actions and agendas tend to be involved. (1984, p.15)

Majchrzak thus sums up the situation facing policy research as involving "competing inputs, complex problems, and seemingly irrational decision-making styles", but she argues it can be done if the context is appreciated. (1984, p.15) Given such complexity, the research response is correspondingly far from simple. Majchrzak sees some of the characteristics of policy research studies as addressing "the entire multidimensional nature of the problem" and also building and testing theory in an "empirico-inductive approach" along the lines of "grounded theory" (1984, pp.18-19). She also stresses that "policy research explicitly incorporates values", including those of the researcher which should be

made clear. (1984, p.20) It is hoped some clarification of values has been made earlier, and there will be further discussion of that aspect later in this chapter.

2. MEASURING SEVERITY

Assessing the criteria of punitiveness

The first of the key criteria for judging punitiveness, and aspects of the second, are amenable to quantitative examination. The rate of incarceration, also called the rate of detention or the prisoner rate, meaning the prison population per 100,000 of the country's population at a point in time, is generally accepted as a reasonable broad-brush-stroke measurement of penal severity and there will be some discussion of its appropriateness below. However, the second criterion, the content of imprisonment, has both quantitative and qualitative aspects.

The more tangible features of any prison system which can give indications of where the content or depth of that system stands on punitive scales are, for example:

- (a) the physical arrangements in cells – whether shared or not, and what toilet arrangements pertain;
- (b) the amount of time prisoners spend out of cells;
- (c) the proportion of prisoners who eat meals together in a normal manner;
- (d) the extent of structured activity (work, training, education, sports, therapy, etc);
- (e) the extent of sentence-planning or progressive serving of sentences;
- (f) the extent of prison leave;
- (g) the number and proportion of young people (aged under 18 and under 21) in the prison system;
- (h) the proportion of the prison population in open prisons;
- (i) whether prisoners may vote or not.

Each of these features was assessed in the course of the research, with the necessary information coming variously from published reports or other documents, as a result of specific verbal or written enquiries, or in the course of the prison visits or the interviews. The more qualitative aspects of the content of imprisonment, crucial to how prisoners might experience imprisonment (for example, such as relations with staff or other prisoners, or links with families),

were explored particularly in the interviews and assessed on visits to prisons. However, it must be borne in mind that such qualitative evidence was in large part second-hand and impressionistic, based on the views of people who were not prisoners, and on observations and some casual conversations with staff of various kinds while in prisons (although occasionally there were opportunities to speak with prisoners also).

The third criterion, how people in prison are seen, whether in the main inclusively or exclusively in relation to society, is the most difficult on which to make a judgement. However, efforts were made in various ways in each country to assess that aspect. Inference of inclusion or otherwise were drawn at different times 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, or more simply in the acceptance of a prisoner's right to vote. Indications in another direction could be gleaned from the use of demonising or other negatively stereotyping images of criminals or prisoners, or from the excessive restriction in prison of rights enjoyed by all others in society. Therefore, as well as examining practice, this part of the research is substantially based on prison discourse, as in the interviews with key officials within the prison system and important policy documents. Analysis of such sources locates the official characterisation of prisoners, in terms of the language used to describe them and the imagery used to depict them.

The rate of incarceration

The rate of prison population per 100,000 of the national population is a widely used measurement in international and other comparisons of prison systems. It is used as one of their primary statistics by the Council of Europe, and also in the authoritative World Prison Population List of the International Centre for Prison Studies at King's College, London (www.prisonstudies.org). Lappi-Seppala reflects on other possible indicators of penal severity, such as the numbers

entering prison or the length of sentences, but concludes that the above rate of incarceration, what he calls the 'prisoner rate' (2007a, p.1), is preferable. Looking at European patterns of imprisonment, he says:

Should we use entries as an indicator of punitivity, Switzerland, Scotland and Denmark would place themselves much higher and Portugal and Spain much lower. Should we use sentence length as an indicator, Portugal and Spain would receive top rankings. The essential question is, why should we pick up one of these two alternatives, when we have an indicator that takes *both of them* into account? Prisoner rate is a function of both the number of entries and the duration of the prison term. It tells the same thing [as] these two alternatives together and more than any of these alone. (Lappi-Seppala, 2007a, p.4, emphasis in original)

Lappi-Seppala notes that "the quality and conditions of prison regime" is another important indicator of penal severity (2007a, p.4) and this is what is envisaged by the second of the summary criteria of punitiveness in this thesis. Attempts will be made to assess this aspect in relation to each country, but it should be noted that it is much more difficult, and at times more subjective, to judge, although the features listed (a) to (i) above are of considerable help. However, Evans and Morgan (1998), in their book on the Council of Europe's work on the prevention of torture and inhuman and degrading treatment, say in relation to such 'depth' of imprisonment:

It is notable that those 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 is scarcely surprising since to the extent that growth in the use of imprisonment reflects a political will to get 'tough on crime', it is to be expected that toughness will be extended to the provision of more restrictive regimes. (Evans and Morgan, 1998, p.325)

They note that the work of the CPT, the Council of Europe's committee which inspects prisons in relation to such matters, provides supporting evidence for this. They also refer to the British Home Secretary, Michael Howard's, twin promulgation of the idea that 'Prison works' and of 'austere prisons' in the early 1990s as another sign of how the scale and depth of imprisonment tend to move together.

3. QUALITATIVE RESEARCH

Comparative criminology

The major part of this research project addressed penal policy and practice in three countries, Denmark, Finland and Norway. As such it was essentially a set of case-studies, even though each 'case' represented an entire country or prison system. It was also comparative in design (Vagg, 1993; Ragin, 1996), in that much attention is given to relaying how each country stands in relation to the others and, for indicative purposes, how each of these countries stands in relation to countries beyond the Nordic world, especially Ireland and other English-speaking countries characterised as having taken a 'punitive turn'. The nature of the case-study approach therefore merits exploration and will be discussed in Section 5. Fundamentally, however, the core of the research was qualitative and the general features of this larger aspect will be explained first, in this section, followed by discussion of prison visits in Section 4.

In discussing comparative criminology, Vagg (1993) stresses the need for awareness of "diverse social, economic and political contexts" and so makes "a plea for qualitative comparative research" to overcome the limitations of using statistics that may refer to different things. (1993, pp.551-2) This research involved examination of the data and literature relating to the countries in question, to gather a sense of their recent history and the characteristics of their prison systems. However, the major part of the study went well beyond such largely quantitative material. As Garland says, in examining such issues:

Discursive statements and rhetorics – and the knowledge-based and value-based rationales that they involve – will thus be as important as actions and decisions in providing evidence about the character of the field. A new configuration does not finally and fully emerge until it is formed in the minds and habits of those who work the system. (2001, p.24)

He lays great importance on "the ways in which government officials and private actors experience and make sense of changing social circumstances and new predicaments." (Garland, 2001, p.25) This thesis has attempted to get some

sense of the present 'minds and habits', and the current experience, of key people who relate to prison systems in different ways. Therefore, the core part of the investigation consisted of detailed recorded interviews with such actors: leading administrators in the prison systems (such as Director Generals and Governors), but also people who might see things from a different angle (such as educators, who work in prisons but may stand a little apart from it) and voices from outside the system that are often critical (such as criminologists). The names of those interviewed, and the dates and locations of interviews, are given in **Appendix A**.

The qualitative dimension to the research is to be found mainly in the conduct of such interviews, which were central to the project. However, the visits to prisons (See **Appendix C**), and the observations made there and conversations held there, added to this dimension of the research. The kind of crucial insights reached via these interviews and visits were, for example, gaining awareness of the beliefs and values of the key actors and observers, and how these might shape the prison system; getting a sense of the 'depth' of imprisonment in that country; and obtaining some realisation of the standing of the person in prison within that system and within the wider society. Some key documentation also revealed a great deal about how prisoners were seen, as well as indicating much about other aspects of penal policy. The visits will be described in the next section; the use made of documentation and the way the interviews were conducted will be described here.

Summary of interviews and prison visits

While the full details of interviews and prison visits are given in Appendices A and C respectively, it may be helpful at this point to summarise these aspects of the research in the three countries. These may be set out as follows:

Table 4.1
Interviews conducted in Denmark, Finland and Norway

	Denmark		Finland		Norway
Director General of Prison Service	1		1		1
Governors	1		1*		2
Education specialists (headquarters)	1		1*		1
Other senior HQ staff	-		2		1
Employment/ education managers (prison)	2		-		-
Criminologists	1		1		2
Researcher	1		-		-
Deputy Minister for Justice	-		-		1
TOTALS	7	+	5*	+	8 = 20

**Note: Kirsti Kuivajarvi is counted in two categories. She had previously been in charge of prison education in Finland. At the time of the interview she was Governor of Helsinki Open Prison.*

Table 4.2
Prisons visited in Denmark, Finland and Norway

	Denmark		Finland		Norway
High security prison	1		1		-
Other closed prison	1*		2		1
Combined open/closed prison	-		-		1
Open prison	2		1		1
TOTALS	4	+	4	+	3 = 11

**Note: Ringe Prison in Denmark was visited prior to the commencement of the research but data gathered then is incorporated in this thesis.*

It can be seen from Table 4.2 that quite a broad range of prison types were visited in each country and these may be taken to be reasonably representative of the different systems. No claim is made to have interviewed a representative group of people (see Table 4.1) but they were all key personnel who offered crucial insights from different standpoints into the respective prison systems. In terms to be discussed later in this chapter, they were all in some sense ‘outliers’ or ‘special instances’. In particular, many shared invaluable knowledge of policy and policy-formation, even if they were not ‘frontline’ personnel in the prisons. However, the special insights of some of these, leading people in headquarters or in the academy, were enriched by a number of others (governors, managers, a researcher) who could speak reflectively on much the same issues from a position where they experienced prison on a daily basis. It is my view that, overall, the composite pictures generated by these 20 interviews are very reliable and deeply revealing.

Analysis of documentation

Chapters 5, 6 and 7 present the main part of the data gathered in relation to Denmark, Finland and Norway respectively, drawing on the interviews and visits, as well as documentation that was acquired in these countries. Both the interviews and the documents were crucial in getting a sense of the prison discourse in a country. For example, the documents often indicate the official characterisation of prisoners. Although I do not read or speak any Nordic languages, a large amount of material on each country’s prison system was available in English. Some of this was officially published (such as Ministry of Justice material and annual reports), but more was issued or circulated by organisations or personnel without being formally published.

Examples of the latter, more ‘informal’, documents were a draft translation of the 2006 Prison Act from Finland (which proved invaluable in assessing Finland’s representation of prisoners), the Governor’s notes and architectural drawings for

the new East Jutland Prison in Denmark (which revealed much about prison conditions) and the photocopied notes compiled to explain the prison to new prisoner arrivals at Horserod Prison in Denmark – the latter a translation in English, by a teacher and a prisoner, of a brochure in Danish. Several unpublished presentations and conference papers were also acquired, including a couple by Director Generals, which usefully complemented the interviews with these men. A handbook for dealing with pre-trial prisoners in Oslo Prison, and another on assessment and allocation procedures for Finnish prisons, both mainly for internal use in these systems, each revealed much about how prisoners are regarded and treated, as well as about prison conditions. Leaflets on courses running at Kerava Prison in Finland also gave useful information. In all such documents, it was often the occasional phrase or sentence, frequently in unconventional English, that told a great deal.

The interview format

All of the interviews undertaken for this research were conducted between November 2006 and July 2008. Of these, eight were with Norwegians, seven with Danes and five with Finns, making a total of 20 interviews in the three countries which became the focus of major study. (In addition, four interviews conducted in Sweden and the one with an Icelander were important in informing the background to the Nordic model of penal policy). Apart from one interview which was conducted with Ulla Mohell of Finland by e-mail, all were made face-to-face, recorded and subsequently transcribed. All of these interviews were substantial, none took less than 30 minutes, most lasted well over an hour, and a few went on for over two hours. Five of those interviewed (three in Norway and two in Sweden) asked to have a colleague join them, some citing uncertainty with English as a reason, and on a few of these occasions the colleagues participated substantially in the interviews.

All those interviewed were asked if they were willing to go 'on the record' and the great majority agreed to this. Some asked not to be quoted, or not quoted at

length, without checking back, a few of these again pleading unease with their standard of English; their requests have been respected. Occasionally, interviewees who consented to go 'on the record' asked that certain things they said not be attributed to them; this too has been respected. In all, eight interviews were in some manner linked to prison visits, and four of these interviewees were guides to prisons in which they worked. Where a direct quotation is given from the recorded interviews for this thesis it is given in italics, and may thus be distinguished from written comment made elsewhere by some of the same people.

Prior to beginning the interview process, an interview schedule was formulated. This consisted of fourteen questions or sets of questions and is reproduced in **Appendix B**. Some of those who agreed to give interviews asked for the questions beforehand, usually expressing concern about their English (though, almost invariably, their English proved excellent). One substantial change was made to the questions after a small number of interviews were conducted, as it was realised that awareness of the European Prison Rules (EPR) was not necessarily extensive. So, thereafter, the questions that related to the EPR were framed to elicit a response to the *idea* behind a 'Rule' rather than to the Rule itself – such as the idea of prison being used as a 'last resort', or that there are 'detrimental effects' to imprisonment. It transpired that the Nordic interviewees were invariably familiar with such ideas, even if not with their expression in the EPR.

Apart from that change, which greatly reduced the emphasis on the EPR, much the same questions were generally asked throughout the research. However, the order in which questions were asked, or the time spent on each of them, varied with interviews. As issues arose, additional questions were asked. In all cases, however, priority was given to whatever aspects those being interviewed wished to focus on. In most cases, when Question 10 was asked ("Who or what are the main influences on penal policy in this country?") five possible groups were

offered as examples: politicians, the media, senior management in the justice or prison system, academics or staff unions. The interview with Terje Moland Pedersen, Deputy Minister for Justice, in May 2008 was the one to depart in significant measure from the interview format, as the main purpose of that interview was to learn about the content of the forthcoming White Paper. However, in effect, most of the same core issues were covered in a somewhat different way even in that interview.

'Gatekeepers' and access

In all three of the main countries researched there was very good access to key people and places. In each of Denmark, Finland and Norway, the Director Generals of the prison systems recorded lengthy interviews, as did key criminologists, governors, headquarters staff and others from each of those countries. There was also good access to any prisons to which visits were sought, including the highest security prisons in Denmark and Finland.⁷⁰ Moreover, documentation was freely given in all countries, including some unpublished material.

Crucial to such access were the key 'gatekeepers' in these countries, all counterparts to this researcher who are (or had been) responsible for prison education in their countries: Torfinn Langelid in Norway, Kaj Raundrup in Denmark and Kirsti Kuivajarvi in Finland.⁷¹ The role of these 'agents' was vitally important in a range of ways – in providing information as the research project was being formulated, in suggesting and providing access to people to be interviewed, and in arranging visits to prisons. All three were interviewees in their own right, and each was willing to be critical of their own prison service where they felt this was necessary. They also provided, when asked to source a range

⁷⁰ In Norway, a tentative plan to visit one of their highest-security prisons, Ringerike, near Oslo, was changed when the opportunity emerged to interview the Deputy Minister for Justice at a conference in Tromsø in the Arctic Circle; Tromsø Prison was visited instead.

⁷¹ All these were known to this researcher for many years and we had worked together on a range of projects, mainly to do with prison education. Like Torfinn Langelid and Kaj Raundrup, Kirsti Kuivajarvi had for a period been responsible for prison education at the Criminal Sanctions Agency in Finland, but was Governor of Helsinki Open Prison at the time of the fieldwork for the research, and has since moved to a senior policy post within the Ministry of Justice.

of perspectives, links to others they expected would be critical of the prison systems, as well as to those expected to speak positively of their systems. Each of these three was invaluable in the role of 'gatekeeper' as described by Denscombe:

...people who can grant permission...for access to people, places and events, ...who vouch for the *bona fide* status of researcher...They use their informal status and relationship with subjects as a currency facilitating both contact and trust between researcher and subject or group. (2003, p.91)⁷²

Not only was the access and information they provided essential at the start, but such help continued throughout the research in all three countries and each of these gatekeepers facilitated "emergent needs of access... to new people, places and events as new lines of inquiry [became] incorporated in the research". (2003, p.91)

The various ways that initial contacts, visits and interviews led on to others will be detailed below in the discussion of the case study. The sequential selection of interviewees happened in several different ways. For example, Torfinn Langelid recommended a meeting with Nils Christie, who in turn suggested his colleague Thomas Mathiesen. In his own interview, Kaj Raundrup described the research of Sigrid Knap on the impact of imprisonment on people and, when she was a fellow speaker at the prison education conference in Tromsø in May 2008, the opportunity was taken to interview her. It was the task of Virva Ojanpera-Kataja as International Secretary at the Criminal Sanctions Agency in Finland to accompany me on the visits to Turku and Kerava prisons in July 2008, and conversations on trains led to an arrangement to record what proved to be the last interview for this research with her.

Ethnography and self-ethnography

Clearly, in line with qualitative research in general and case studies in particular, those interviewed cannot be seen as necessarily 'representative' (although the

⁷² Birgitta Persson and Svenolov Svensson provided similar access in Sweden.

three Director Generals may, in another sense, be seen to very definitely represent their prison services). However, those interviewed certainly offered the opportunity to “understand social action at a greater richness and depth” (Keagan et al, 1991, p.17) as required in qualitative research, and they are important as ‘special instances’ or ‘outliers’. This study is also, even if to a limited extent, ethnographic. Taking Denscombe’s characterisation of ‘ethnography’, one can see from his description that there are elements of this approach in the manner in which interviews and visits in the Nordic countries were conducted:

It requires the researcher to spend considerable time in the field among the people whose lives and culture are being studied... allows for a journey of discovery in which the explanations for what is being witnessed emerge over a period of time... routine and normal aspects of everyday life [e.g. in prison] are regarded as worthy of consideration... special attention given to the way the people being studied [e.g. in prison systems] see their world... There is an emphasis on the need to look at the interlinkages between the various features of the culture... Ethnography generally prefers a holistic approach which stresses processes, relationships, connections and interdependency among the component parts. (2003, pp.84-85)

Denscombe notes that: “The ethnographer’s final account of the culture or group being studied is more than just a description – it is a construction... which invariably owes something to the ethnographer’s own experiences.” (2003, p.85) One is required, therefore, to supply “some insights into the possible influence of the researcher’s self on the interpretation of events or cultures”. (Denscombe, 2003, p.89) Thus, the biographical details and previous writing, outlined in Chapter 1 in explaining how the research project came about, is important also in providing that necessary “public account of the self” (Denscombe, 2003, p.89) which might have impacted on the research in various ways, especially via the values and perspectives I bring myself to the penal area. Certainly, the key ‘gatekeepers’ who facilitated this research were very familiar with that narrative and biography (and in ways had been participants in some of the same story). Others among those interviewed or met more informally on prison visits were familiar with this background also, especially my involvement with the Council of Europe and the European Prison Education Association (EPEA).

Finally, although Ireland and its prison system was not one of the primary subjects of this research, in another way it was present as much as the researcher's self. As explained earlier, what was seen as increasing punitiveness in the penal system in Ireland played a large part in stimulating the research in the first place, and explorations in the Nordic countries continually evoked comparisons and contrasts with Ireland, many of which were discussed with interviewees and others encountered when in these countries. Given that I had worked for nearly three decades in the headquarters of the Irish Prison Service, such a 'presence' of Ireland in the research means that this thesis is to an extent what Alvesson (1999) calls 'self-ethnography', or what Brannick and Coghlan (2003) call 'insider research'. Alvesson describes 'self-ethnography' as

...a study and a text in which the researcher-author describes a cultural setting in which s/he is an active participant, more or less on equal terms with other participants. Typically, the researcher works in the setting and then uses the experiences, knowledge and access to empirical material for research purposes. (1999, p.8)

Alvesson calls this role one of 'observing participant' rather than 'participant observer' (1999, p.8). To the degree that Ireland thus forms part of this research project, the work is that of an 'observing participant' doing 'insider research'.

There is a limited degree to which one might see the research as 'insider research' in relation to the Nordic countries also, and not just because one was seen as involved in the overall field, via the Council of Europe and the EPEA, for example. The visit to Tromsø, Norway, in May 2008 (which garnered interviews with a Norwegian Minister, a Dane and an Icelandic, as well as enabling a visit to the local prison) was primarily in response to an invitation to give the closing keynote address to a conference of 150 Nordic prison educators and associated disciplines at their biannual conference (Warner, 2008). Further, the weeks spent on field-work in Sweden and Denmark in December 2007 were separated by a weekend working in Malmö, Sweden, as part of an organising committee under the auspices of the Swedish Prison and Probation Service planning the 7th

Conference of European Directors and Co-ordinators of Prison Education. That event meant a return to Malmo in September 2008. These engagements, as well as work helping to organise the EPEA biannual conference in Dublin in June 2007, in which a high number of Nordic colleagues participated, added to the sense that the researcher was, to a degree, an 'observing participant' when in the Nordic countries. Brannick and Coghlan speak of someone in this situation as a 'native', but they consider that relationship to be a resource, although it requires that some effort be made to get some distance, which they say can be gained through 'reflexivity': epistemic reflexivity which challenges assumptions, and methodological reflexivity which is concerned "with the monitoring of our behavioural impact upon the research setting". (2003, p.4)⁷³

4. READING PRISONS

The point has already been made that prisons tend to be complex places, typically containing layer-upon-layer so that one can never be sure that what is visible and apparent provides anything close to a full picture of what is happening. To even begin to get a true sense of what might be going on in a prison requires, more than most places, an experienced and critical eye. The researcher's work background and years of being in prisons was of some help in 'reading' situations in the prisons visited as part of this research in Denmark, Finland and Norway. Generally, visits took place around the same time interviews were being conducted in that country, and visits and interviews certainly complemented each other, illuminating or modifying aspects learned in the other sphere. In particular, while spending a day traversing most of a prison cannot give one anything like a full awareness of the institution, one nevertheless learned much,⁷⁴ including a tangible sense of what interviewees had spoken of. Also, such visits often raised issues that could be explored later in interviews.

⁷³ Likewise Alvesson suggests five ways of creating the necessary distance between self and what is researched: the use of irony and self-irony, questioning commonsense views, questioning one's own perspective, using reflexivity and working "with different self-concepts". (1999, pp.17-18)

⁷⁴ Wacquant bemoans the decline of prison ethnography, especially in the USA, "just as the United States was settling into mass incarceration". (2002, p.385)

Visits and interviews likewise complemented the literature and documentation on Nordic prisons and penal policy in a way that affirms Liebling's comment on prison research: "Without the particular, there is little understanding." (1999, p.163)⁷⁵ Details of prison visits made are given in **Appendix C**, and a summary of those visits was given above in Table 4.2.

Selection of prisons to be visited

An effort was made to see a broad range of prisons which could be taken as reasonably representative of the penal system in each country. On that basis, open and closed prisons were visited in each country, as well as prisons of various sizes, ages and security levels. There was an element of convenience in some selections: it seemed practical to spend time in the large closed city-centre prisons in Oslo and Helsinki, and the large open prison of Horserød, an hour's train ride outside Copenhagen, as several key interviewees were met in each of these capitals. The visit to Tromsø Prison likewise arose because of being in that Arctic city for other work reasons.⁷⁶

However, as with those interviewed, some selections can be seen as 'outliers', of interest in large part because they "are distinctly not mainstream" (Denscombe, 2003, p.26). Denscombe quotes a description of the 'outlier' given in Miles and Huberman's *Qualitative Data Analysis* (1994):

Outliers are not only people; they can be discrepant cases, atypical settings, unique treatments, or unusual events... But *the outlier is your friend*. A good look at the exceptions, or the ends of a distribution, can test and strengthen the basic findings. (Denscombe, 2003, p.26, emphasis in original)

The 'ecological prison' on the island of Bastøy in Norway, and the open prison on the World Heritage Site island of Suomenlinna in Finland are thus 'outliers' in every sense of the word. Moglekaer Prison, set in the farmland of Jutland, was

⁷⁵ She also says: "The significance of the particular and the careful consideration of the general are equally relevant to 'faithful representations'." (Liebling, 1999, p.164)

⁷⁶ Similarly, two prisons near Malmö, Sweden, Ystad closed prison and Tyngsbo open prison, were visited with others while in the area twice in relation to a conference.

special in some ways too, but probably less atypical of Danish prisons given the predominance of open prisons in that country and the policy of extending the approach to training and education pioneered there throughout the system. East Jutland Prison, near Moglakaer and visited the following day, was a 'special instance' in another sense: it is very new, the prison with the highest security in Denmark, and considerable thinking had gone into its design.⁷⁷ However, some of these prisons were also investigated because it was arranged that key people be interviewed in them. Turku, Finland's newest and highest-security prison, was selected on foot of somewhat critical comments heard within and without the country. The exploration of Kerava Prison in Finland similarly arose from following up on comments made about that institution by Tapio Lappi-Seppala.

Conduct of visits

Prior to and during a visit to a prison this researcher stressed the wish to see as much of the prison as possible and to get a full picture of how it operated, including conditions, restrictions and activities. Frequently, a briefing was provided at the outset and documentation relating to the prison was offered. The guides around prisons varied from governors to basic grade prison officers; or the guide was the person in charge of education. At times the guide was also a research interviewee. Given my background, there was a tendency among some guides to gravitate towards education facilities, although that was never meant to be the main focus of the visit. However, classrooms and other education facilities were revealing too, and these facilities often provided good opportunities for casual conversations with prisoners.⁷⁸

As an institution was traversed, one tended to have extensive conversations with the guide and others, about the prison and the prison system. (In Finland there were also opportunities for considerable discussion on trains and boats to and

⁷⁷ The design conception of East Jutland Prison is reflected in the production of a DVD about its construction (Movision Film and TV, 2007).

⁷⁸ Thus, it was in or around classrooms that one heard the complaints of an Irishman on remand in Oslo Prison about what he saw as the unfairness of the remand system, and the unhappiness of a woman in Tromsø Prison at what she saw as unequal treatment in an overwhelmingly male prison.

from prisons visited). In all cases the visits lasted many hours, often a full day. Some notes were taken during all of the visits and more extensive notes were written up immediately afterwards. Notes made on earlier visits to Nordic prisons in the 1990s, prior to the commencement of the research project as such, were also revisited and often proved helpful in filling out the background to the prison system.⁷⁹ Considerable communication, by telephone, e-mail, correspondence or in person, continued throughout the research period, especially with the 'gatekeepers', but also with interviewees, guides and other contacts; this helped clarify many specific points and generally fill in the overall picture.

Visits garnered facts and characteristics about the particular institution (and very often about the wider prison system), such as the numbers in the prison or in particular parts or aspects of it, the physical and environmental conditions and the types of prisoners held there. Information about official policy, such as the objectives, prison leave arrangements, security and activities was also obtained. However, it was the more casual aspects of the visits that were often most revealing - as when a guide told that, regardless of what was said at headquarters, drugs were still getting into prisons; or in observation of how staff and prisoners related to each other; or the kind of atmosphere one sensed on a particular wing. Sometimes small significant incidents were noticed, or an incidental feature was revealed, such as a woman prisoner leaving the prison with her child to go to the community crèche, the woman officer who acted in a pop video made by prisoners, the chaining of cooking knives to the kitchen wall, the way prisoners decorated their living-space walls, or the orchards, plants and animals that were the milieu of recovering addicts. Each of the three 'data' chapters that follow provides 'pen pictures' that attempt to convey something of the sense of the prisons visited in that country.

⁷⁹ Such notes were particularly helpful in the 'revisiting' of Ringe Prison, on Funen in Denmark, which was seen in 1996 and is described in Chapter 5.

5. A CASE STUDY APPROACH

Advantages and limitations of the case study

While the greater part of the research for this thesis can be characterised as qualitative, the primary strategy within that form was a 'case study' approach. Denscombe says that "the idea of a case study is that a spotlight is focused on individual instances rather than a wide spectrum", as it would be in a survey approach. (2003, p.30) "The aim," he says, "is to illuminate the general by looking at the particular." (2003, p.30) It enables a researcher to examine things in much more detail, and in a "real life context". (Roche, 1997, citing Yin, 1994) The case study focus is especially on "relationships and processes" (Denscombe, 2003, p.31), so that something of the complexity of a situation can be understood – and there are few social phenomena as complex as prison systems or prisons. Thus, it is not just the outcome that is of interest, but the factors which bring that situation about.

In each of these country studies, one crucial outcome is the finding as to whether, and to what extent, that particular country's prison system can be said to exhibit the 'new punitiveness'. Denscombe says case study research "can deal with the case as a whole, in its entirety", and thus have some chance of being able to discover how the many parts affect one another. (2003, p.31) In this respect, "*case studies tend to be 'holistic' rather than deal with 'isolated factors'.*" (Denscombe, 2003, p.31, emphasis in original) Moreover, as Brannick says of "case-based research", "the researcher learns about the culture under investigation and attempts to interpret it the way its members do", so there is a certain ethnographic aspect. (1997, p.14)

There are, of course, limitations as well as advantages to the case study approach, which offers depth rather than breadth. In selecting Nordic countries for study, one is aware that they are not typical or representative even of European prison systems. While the method does allow for some testing of Garland's theory (2001) and the possible building of alternative theory, whether

the findings can be generalised does not necessarily follow, but some *possible* implications for other countries can at least be raised in the last chapter, especially with regard to the factors which underpin punitiveness or its absence. There can sometimes be issues around the definition of the boundaries in a 'case', but given that this thesis looks at penal systems, and their settings within countries, such boundaries are well marked out in this instance. A requirement of case study research is that good access to "documents, people and settings" be negotiated (Denscombe, 2003, p.39), and the choice of 'gatekeepers' and respondents for this thesis ensured such access. Finally, one needs to be aware of the potential impact of "the observer effect" on findings in case studies, an issue addressed earlier in this chapter.

Multiple methods and sources

Since the research effort is geared to studying a situation in all its complexity, then multiple sources and methods come into play in the case study. Denscombe says: "It allows the researcher to use a variety of sources, a variety of types of data and a variety of research methods as part of the investigation." (2003, p.31) Likewise, Roche says: "Case studies typically use multiple sources of evidence." (1997, p.99) Thus, this project draws on literature and documentation, interviews with key people and visits to observe prisons. It is therefore a research exercise very close to the case based research described by Brannick, which "involves collecting historical, archival (numerical and written) information and primary data by employing observational techniques and individual in-depth interviews". (1997, p.16) A key issue that arises therefore is that of "negotiating access to documents, people and settings" (Denscombe, 2003, p.39), and how this was achieved in this research was explained earlier. The case study method is particularly suited to theory-testing, to assessing in this instance the validity of the Garland (2001) thesis in particular locations, and therefore posing questions about its general applicability.

An advantage of probing in detail what goes on in the prison systems of the Nordic countries, and the social and political factors which may underpin these narratives, by means of written texts, interviews and observation is that these different methods can complement each other through a process of “triangulation of sources”. (Keagan et al, 1991, p.19) Denscombe explains that “The findings from one method [can] be checked against the findings from another. The multi-method approach allows findings to be corroborated or questioned.” (2003, p.133) Consequently, it was employed as the approach of choice in this thesis. There are close parallels between the manner in which this thesis was developed and that of Loader (2006) in studying key Home Office personnel and criminologists, where he supplemented “a reading and analysis of key texts” with “an interpretation of original materials generated in extended biographical/oral history interviews with several of the key protagonists.” (Loader, 2006, p.562) Thus, for example, this thesis combines analysis of an important Danish policy document (Ministry of Justice, 1994) with the observations on it by the Director General who was one of its authors; combines analysis of the 2006 Prison Act in Finland with interpretation by key officials; and links a Deputy Minister for Justice’s account of the new White Paper in Norway with the summary text in English (Norwegian Ministry of Justice and the Police, 2008). Similar useful intertwining is made of the writings of four criminologists with what they said in interviews for this thesis. The criminologists who gave interviews for this thesis were Nils Christie, Thomas Mathiesen, Tapio Lappi-Seppala and Fleming Balvig.

Moreover, a discovery in one setting often led to further exploration in another. Thus, for example, comment on Finland’s new assessment and allocation process in earlier interviews in that country led to investigation on subsequent prison visits as to how that actually worked in practice, and gave rise latterly to obtaining detailed documentation on this arrangement. During the first visit to Norway, it was found that interviewees focused substantially on the White Paper then in preparation. This led to an interview with a key civil servant centrally involved in that process and to the acquiring of explanatory documentation on the

second visit, and that in turn culminated in an interview with the Deputy Minister for Justice on the outcome of the White Paper on the third visit. A further example related to the question of access to the internet for prisoners in Denmark which was elaborated on through a range of interviews, other conversations and visits to prisons over the course of the data collection.

The emerging sample

The examples given above draw out another dimension of research of this nature, one that arises from its qualitative character. The sample “emerges as a sequence of decisions based on the outcomes of earlier stages”. (Denscombe, 2003, p.25) When the investigation began in these countries most of those to be interviewed and the prisons to be visited had yet to be selected. In part, interviewees were chosen on the grounds that access could be obtained, and prison visits were often sought in locations that proved convenient. However, choices also came about on foot of suggestions, discoveries and hints made in earlier stages. Denscombe describes qualitative research as tending to adopt “an approach to sampling which is based on sequential discovery of instances to be studied and which emphasizes the inclusion of special instances”; these two features, he says, are appropriate for “non-probability sampling” such as “theoretical sampling”. (2003, p.26) Certainly, in this thesis, many of those interviewed may be regarded as “special instances”, people it was thought might offer particularly valuable insights. Likewise, as was explained in Section 4, prisons were visited on foot of various suggestions from interviewees and others, but especially from the ‘gatekeepers’ for the research.

The countries that were finally chosen for major attention also ‘emerged’ as the research progressed. At one point, Sweden was considered for more detailed attention and some preliminary research was conducted there in 2007, including four interviews and two prison visits. At different stages, various combinations of two countries were considered, three (Denmark, Finland and Norway) finally being chosen on the basis that each of these seemed to offer a significantly

different dynamic in relation to their penal policies, and it also proved practical to spend time in each of these countries. For example, as the thesis was being formulated, there were reports of penal populism in Denmark putting pressure on the prison system (Balvig, 2004) but this appeared not to be the case in Finland (Lappi-Seppala, 2000), as was discussed in Chapter 3. Norway, given its strong historical role in criminological thinking that included ‘abolitionism’ and ‘minimalism’ (See Chapter 3), also seemed at the outset a logical place to investigate. Likewise, the prison populations of the three countries exhibited somewhat different patterns in the mid-2000s.

However, a very important factor in the selection of Denmark, Finland and Norway was that it transpired there was good access to people and places in these countries, as was explained above – including, for example, all three of the Director Generals of the prison systems giving interviews, while access proved less successful in Sweden. However, much was learned that was useful in Sweden, as well as about Iceland,⁸⁰ and this provided additional contextual material for examination of the Nordic model (See Chapter 3). Where appropriate therefore, reference is made to data on Sweden and Iceland throughout the text.

Theory testing

Keagan et al state that the case study method “provides a way of studying human events and actions in their natural surroundings”. (1991, p.7) As part of a holistic focus on a complex situation, the case study enables one to study values and beliefs, to “see human beings up close, get a sense of what drives them”. (Keagan et al, 1991, p.11) Certainly, the openness of many of those interviewed towards this research gave such insights into their world-views. Keagan et al stress that the “virtue of case study research, like other qualitative research, is that it lends itself to theoretical generation and generalization”. (1991, p.13) Therefore, it was considered an appropriate methodology to scrutinise the validity

⁸⁰ An opportunity was also taken to interview the Assistant Director of the Icelandic Prison Administration, Erlendur Baldursson, when attending a conference in Tromsø, Norway, in May 2008.

of Garland's theory of the 'culture of control' (2001) in the Nordic setting, and build on the theory to provide new insights.

Ragin makes the point that "the qualitative tradition" is particularly valuable in "comparative social science" applied to nations and is the dominant approach in such work. (1996, p.75) "The focus," he says, "is on comparing cases, and cases are examined as wholes – as combinations of characteristics." (Ragin, 1996, p.84) While a qualitative 'case-oriented' approach is more common in such situations, combinations of strategies can exist, one being "case studies reinforced with quantitative analyses". (Ragin, 1996, p.84) This latter description perhaps best characterises this thesis.

6. CONCLUSION

The need to assess penal policy in the Nordic countries, and the factors behind what transpires there, required a combination of quantitative and qualitative research, making use of multiple methods and drawing on diverse sources. Quantitative features, such as the rate of incarceration, can give a broad-brush indication of a country's punitiveness or otherwise. However, more is needed to assess such a complex phenomenon and therefore other features and methods, especially qualitative methods, were required. Brannick says "qualitative research focuses on the links among many contextualised attributes involving relatively few cases" (1997, p.2) and this in large measure describes the research undertaken here. Essentially, the approach has been a case study one, with samples emerging in the course of discovery. Moreover, both the theory and the methods developed and interacted as the research progressed, but this is valid in the hermeneutic tradition which "allows the research question, the conceptual framework and data collection to proceed and develop simultaneously through a reflexive process". (Brannick, 1997, p.7) The choice of Denmark, Finland and Norway as the major subjects of the investigation was not clear at the beginning, but came about via a process of 'progressive focusing', as it became clear where the new punitiveness was resisted with greater success .

The study has required macro and micro focus at different times, at some points looking at the political, social or demographic situation in a whole country, at others dwelling on what may be going on in a small corner of one prison. The research studied organisations and management, looking at some historical aspects via documents but especially via 'informants' memories' (Roche, 1997, p.100), as well as at the contemporary situation. Searching for answers has been both an empirical and a hermeneutic exercise, although the latter has predominated. The research has examined official policy, but also what may actually be happening on the ground, which may not necessarily be the same thing. It is hoped that such rich context, which Majchrzak (1984) speaks of, has been reflected in this thesis, and that the aspects of the policy arena, the characteristics of policy research and the importance of multiple methods and sources that she speaks of will be clearly brought out in the following chapters.

The next three chapters present the main data from Denmark, Finland and Norway. Each of these three chapters will broadly follow similar outlines in:

- (1) giving an overview of that country's prison system, including a little of its history, and noting the recent trends in its incarceration rate and other quantitative data, thus setting the broad context for the research;
- (2) outlining and analysing key documentation;
- (3) outlining and analysing the data gathered in extended visits to prisons;
- (4) outlining and analysing the data gathered in recorded interviews with key personnel;
- (5) assessing the overall situation vis-à-vis punitiveness or lack of punitiveness in that country's prison system;
- (6) seeking to identify factors behind these features in the prison system and relating these to the five summary factors identified above;
- (7) summarizing what has been learned and relating this to the Garland indices and the three summary criteria set out in Chapter 2.

Chapter 5

Denmark: ‘the art of balancing the soft and the hard’

1. INTRODUCTION

This chapter assesses, in the manner set out at the end of the last chapter, the extent to which the Danish prison system has, or has not, turned in a punitive direction. As well as documentation, the analysis is based in large part on interviews with seven people, all of whom have, or have had, significant roles in relation to prisons in Denmark. Five of these, including the Director General, have management roles within the Danish Prison and Probation Service, the others being the manager of education across the prison system, a Governor and two men in charge of employment in prisons. A sixth is a criminologist, while a seventh had conducted research into how a Danish prison affected its inhabitants. The assessment also draws considerably on visits to four Danish prisons and on the inevitable conversations with guides, other staff and prisoners met there. Full details of those interviews and the prisons visited are given in Appendices A and C.

Chapter outline

This is the first of three ‘data’ chapters on Denmark, Finland and Norway respectively. Each chapter reports on the data gathered in the three countries, and analyses and interprets this material, focusing in particular on assessing the degree of punitiveness in that country’s penal system and seeking to explain the factors behind that situation. In each case the framework for discussion will be the three summary criteria for punitiveness identified earlier. Each of these chapters also sets out the general features of the prison system and something of its social, political and historical context. Thus, in this chapter on Denmark, these features of the prison system will be set out in Section 2. Then the evidence gathered will be considered in relation to the criteria of punitiveness. Section 3 considers the scale of imprisonment. An account of the prisons visited is given in Section 4 and these descriptions give some context for an analysis of

the next two criteria: the depth of imprisonment (Section 5) and the representation of people held in prison (Section 6). Section 7 seeks to analyse the factors underpinning these outcomes.

2. FEATURES OF THE DANISH PRISON SYSTEM

Open Prisons

To an outsider, one of the most striking and unique features of the prison system in Denmark in modern times is the fact that it holds more sentenced prisoners in open than in closed prisons. This characteristic can be traced back to the conclusion of World War Two when the post-liberation government required facilities to imprison some 20,000 collaborators - no small task when the prison capacity had been about 3,000 for many years. Hans Jurgen Engbo, a senior prison governor and one of those interviewed, explained:

So we examined the whole country to find buildings which could be used to put people in – used as prisons or prison camps. And we didn't build walls and fences around these facilities. So that was the beginning of the widespread use of open prisons in Denmark. And we found out that these prisons could be managed without walls, without fences, etc. And now that we saw that we could do that for those collaborators, we could also use it for normal thieves and other kinds of criminals.

The Director General, William Rentzmann, gave figures for those held in prison the day he was interviewed for this thesis. These are set out in Table 5.1.

Table 5.1
Breakdown of prison populations in Denmark (on 5th July 2007)

Sentenced prisoners:	
In open prisons:	1,352 (52%)
In closed prisons	1,251 (48%)
Remand prisoners:	993
Total:	3,596.

Such a pattern of distribution between open and closed institutions seems to have held firm for several years, with the number of sentenced prisoners in open

centres greater than those in closed at any one time.⁸¹ For example, roughly similar proportions for 1999 are given in a Ministry of Justice publication (Ministry of Justice, 2001). Moreover, if one looks at sentenced prisoner *admissions*, that is at the ‘flow’ rather than the ‘stock’ of prisoners, the numbers *sent* to open prisons are vastly greater, possibly in the region of 80 to 90 per cent of all sentenced prisoners, since their periods in prison tend, on average, to be much shorter. Of the 19 state prisons in Denmark (leaving aside local remand prisons), seven are closed and 12 are open. In general, the cost of holding someone in an open prison is about half that in a closed prison. The focus of this study of Denmark, as in the other countries examined, is on such state prisons for sentenced prisoners and does not generally deal with the remand or local prisons. Remand prisoners are, however, always included in national prison population aggregates and rates of incarceration, as is conventional.

Stable crime policy

The last quarter of the twentieth century would appear to have been quite a stable period in Danish prisons in several respects. The report just referred to notes in 2001 that the figure of 3,400 in all prisons “has been almost constant over the past 25 years...despite the doubling of the reported crime during that same period” and attributes this to the “principle of using custodial sentences only when strictly necessary” and an increased use of alternatives to custody. (Ministry of Justice, 2001, pp.14-15) Likewise, in interview, William Rentzmann, the Director General, noted:

Up to 2001, the crime policy has been very stable and, if you looked only on what was going on in prison, it was impossible to see whether the government was a right-wing government or a social democratic government. There were no big changes. But, after 2001, we have seen some attempts to follow the common world trend to be tough on crime.

That more contested period in the new century will be examined later in this section.

⁸¹ The number of sentenced prisoners given in closed prisons includes a few on very short sentences kept in local prisons mainly used for people on remand.

'The Six Principles' for Prison and Probation work

The stability and consistency of the latter part of the twentieth century would appear to owe much to a very clear and widely-accepted philosophy within the Danish Prison and Probation Service and perhaps beyond in the wider society. Indeed, as will also be seen below, this outlook remains very resilient throughout the prison system, even if somewhat buffeted by different attitudes and approaches coming now from politicians in particular. This 'philosophy' is perhaps best expressed in *A Programme of Principles*, the statement of six principles adopted in 1993 (Ministry of Justice, 1994). Drafted by William Rentzmann (then Deputy Director) and other colleagues in the Prison and Probation department of the Ministry of Justice, the document was adopted by parliament and the Minister for Justice and thus became official policy. The six principles as a whole, or particular principles like 'normalisation' or 'least possible intervention', were repeatedly referred to in the interviews and visits for data collection for this thesis in Denmark and it was striking the extent to which senior prison staff at least had internalised these ideas.⁸² These principles will, therefore, feature frequently in this chapter. For now, it will suffice to state them as follows:

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...

4. Security.

Prison and probation work shall ensure that the sentence of the court is carried out with due attention paid to the protection of the community from crime as well as protecting the inmate from aggression or damaging influences emanating from other persons...

⁸² As will be noted in Chapter 8, in discussion of the current European penal context, a recent Recommendation of the Council of Europe on the treatment of life-sentenced and other long-term prisoners has adopted several of these Danish principles (Snacken, 2006).

5. *Least Possible Intervention.*

The Prison and Probation Service shall choose the least intervenient means for dealing with any particular task...

6. *Optimum Use of Resources.*

The Prison and Probation Service will use resources effectively, flexibly and in relation to perceived needs...

(Ministry of Justice, 1994, pp.10-15)

The first three of these principles have been referred to as the 'three cornerstones' of Danish penal policy (Rentzmann, 1992, 1996).⁸³

That Denmark's prison service uniquely regards open prisons as the norm, and the place where the majority of those sentenced should serve their time, may have come about somewhat as a result of historical accident, but such prisons are now seen to best reflect the six principles just outlined. For example, 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, and represent far less intervention into a prisoner's life than a closed prison. However, open prisons remain prisons and are thereby seen to have detrimental effects on those they hold, even if these effects are less than they would be in closed prisons.

Sigrid Knap's research

In 2003, Sigrid Knap lived for four months in Jyderup, an open prison in Zealand, conducting research as an anthropologist on prisoners' experiences of being in prison. That project had the support of Danish prison authorities and the agreement of prisoner representatives for the prison. What was striking was that she found, even in an open prison, considerable negative effects on those held there. These included a lack of '*connectedness*' between prisoners, such that they tended not to trust each other and not have friendships in prison. They were "*obsessed with time because they wanted time to pass*", but were "*always on*

⁸³ It was from Danish sources that I first encountered the concept of 'normalisation' as applied to prison, when Henning Jorgensen developed thinking around this idea at the Council of Europe committee working on a document on prison education in the 1980s and such thinking formed a core part of that group's final report (Council of Europe, 1990). Henning Jorgensen was also one of those involved in the initial drafting of the Danish *Principles*.

guard”, wary of unpredictable behaviour in others. In the institutional setting they are inclined to get things very much out of proportion, “*and small things become big things because that is all they have to worry about... that happens much more in the closed prisons than in the open ones, because people in open prisons have more contact with the outside world*”. Sigrud Knap spoke of being damaged herself by living for four months in prison; the experience, she said, “*has marked me forever*”. She thus concluded:

Sometimes I think that putting people in prison is a sort of experiment, because we don't really know what we're doing. It's a very very – I'd almost say – violent experience. Not violent in a physical way, but in a mental, psychological way. It's violent and we don't really know what we're doing.

Evidence such as this drives home the awareness that prisons, even the most benign of prisons, damage people and thus should be used as a last resort. These have remained core ideas in Danish penal policy.

Political impact on penal policy

The ‘philosophy’ and much of the practice of the Danish prison system is a strongly socially-inclusive and prison-minimising variant of penal welfarism. This outlook is clearly a force to be reckoned with and its character will unfold more in the course of this chapter. However, this approach is pitted against a degree of penal populism that has come to the fore in recent years and this chapter is in large part the story of these two competing forces. Such political impact on penal policy will now be described. All those interviewed, and many met otherwise in the prison system, expressed unease at least (and exasperation in some cases) at the way ‘politicians’ had impacted on the prison system in recent years. A Liberal-Conservative coalition, led by Anders Fogh Rasmussen, has now been in power since November 2001, having been elected for a third term in November 2007. These parties are variously described as centre, centre-right or right-wing parties, but there is no doubting the strongly, some would say extreme, right-wing characteristics of the Danish Peoples Party, which now has 25 of the 179 seats in parliament and supports the government from without. The presumed

influence of the Danish Peoples Party on policy, often seen as disproportionate, aggrieved many of those spoken to, and there was concern that one of its members held the chair of a parliamentary committee on justice matters.

However, while all those interviewed perceived governments since 2001 taking a tougher approach to crime than they deemed appropriate, some identified similar punitive or restrictive tendencies in the previous Social Democratic governments which were in power from 1993 to 2001. Flemming Balvig (2004) writes that the former Liberal-Conservative governments from 1982 to 1993 did *not* increase sentences and developed community service as an alternative to prison. He also notes that the Social Democrats supported from opposition most of the increases in sentences in recent times. For Balvig, then, trends in greater punitiveness “cannot be explained by the development of crime, nor can they be explained by simple changes in political power between left and right”. (2004, p.174)

Balvig notes, however, that whereas Social Democratic governments “justified the new measures primarily by their utility, the current government appeals to ‘people’s sense of justice’ and justifies initiatives by their ‘penal value’.” (2004, p.172) He also states that the government “deliberately tries to silence criminal justice experts”, referring to them disparagingly as “arbiters of taste” or as “so-called experts”. (2004, p.172) Balvig traces, as others do, the shift of authority on penal matters over decades from “experts” (presumably like himself at the University of Copenhagen) towards “professionals” within the prison service, but then latterly towards politicians as the primary shapers of penal policy.⁸⁴ It would appear that, in Denmark at least, the shifting of authority from ‘experts’,⁸⁵ whether within the universities or the prison service, towards politicians is linked to a contesting of the functions of imprisonment. The former see a role for prison that is more in tune with the European Prison Rules or the ‘Six Principles’. Some politicians at least tend to speak in terms that are more visceral, more focused on

⁸⁴ Christie and others make a similar point in relation to Norway, as will be noted in Chapter 7.

⁸⁵ In this thesis the term ‘expert’ is generally used to include managers or ‘practitioners’ within a Prison Service or Justice Ministry, as well as academics such as criminologists.

retribution. These shifts, or attempted shifts, in purpose can correspond to what Garland calls “the change in the emotional tone” of crime policy. (2001, p.10)

In interview, Flemming Balvig spoke again about the “people’s sense of justice” theme which he had written about in the 2004 article. *“If you look”,* he said, *“at the big debates in the parliament about penal policy in the last 50 years”,* the discussion in the early years is nearly always framed by the idea of preventing crime. Then, as one moves into the 1980s and beyond, there is increasing reference to *“the people’s sense of justice”*. From 2002,

“...the dominant frame of reference is not any more about prevention, but how it will be in accordance with what people think. They have to be tough because people want something to be done about this...perhaps it will not affect the crime, but we don’t care, perhaps it will get worse, but still.

He argued that the essential motivation here is revenge, a phrase Benny Christensen, in charge of employment and education at Moglekaer Prison, also used in speaking of the expansion of prison capacity under the Liberal-Conservative government. He sensed a contradiction with the role he is given to help prisoners:

Sentences are harder, longer. More stuff is criminal. Things you weren’t punished with prison for before, you are now imprisoned for....it is an unnecessary way to go because you are not doing that to help the prisoners, offenders. You are doing that out of revenge... And from my point of view the best thing is to get them out as, as a better person you could say, with better employabilities and better educated. Because then there’s a better chance they’ll not be criminal again. So that’s what I think we should spend our time and our money doing, instead of sending more people to prison.

Hans Jurgen Engbo, Governor of Herstedvester Prison, saw significant tightening of the rules for leave from the prison as in conflict with normalisation and the other principles by which he is supposed to be guided. He was particularly critical of the requirement on him as a Governor to deny early release to a person who might otherwise qualify *‘if we find that the public sense of justice would be jeopardised by this early release’*. He pointed out that such a concept is very difficult to assess: *“Where do you find this information about the public sense of*

justice, related to this specific case?... I find it very hard to administer such... criteria. It's jeopardising my sense of justice and what human rights say." A lawyer himself, Hans Jurgen Engbo said: *"I am very worried about the conditions for human rights in prisons nowadays."* He believed those in parliament were not sufficiently respectful of human rights, as in their allowing multiple punishments for the one offence – the Governor gave as an example of this someone who commits a drug offence in prison. Parliament, he said, *"...have not so much respect for human rights. Maybe because the party which is supporting the government, the Danish People's Party, I would say they become sick when they hear the words 'human rights'."*

3. THE SCALE OF IMPRISONMENT

Whether the degree of penal populism just described has actually led to a significantly more punitive system in the manner Garland (2001) describes will now be considered, turning first to look at prison incarceration numbers. Drawing mostly on Council of Europe and latterly other sources, the figures on the table following refer to the period from 1983 to 2008.

Table 5.2: Incarceration rates in Denmark⁸⁶

Date	Prison population	Rate of incarceration per 100,000
1/9/1983	3,120	60 (a)
1/2/1985	3,478	68
1/2/1986	3,512	69
1/9/1986	3,322	65
1/2/1988	3,515	69
1/9/1988	3,469	68
1/2/1989	3,668	73
1/2/1990	3,551	70 approx (wrongly given as 61)
1/9/1991	3,243	63
1/9/1993	3,702	71
1/9/1994	3,828	72
1/9/1995	3,438	66
1/9/1996	3,203	61
1/9/1997	3,299	62
1/9/1998	3,413	64
1/9/1999	3,560	67
1/9/2000	3,279	62
1/9/2001	3,150	59
1/9/2002	3,439	64
1/9/2003	3,557	66
1/9/2004	3,762	70
17/10/2005	4,198	77 (b)
Average 2006	3,932	72 estimate (c)
5/7/2007	3,596	66 estimate (d)
4/9/2008	3,448	63 (e)

Sources: (a) 1983 to 2004, Council of Europe, *Penological Information Bulletin*, nos. 2-26, December 1983 to May 2006; (b) International Centre for Penal Studies, www.prisonstudies.org, on 12/2/08; (c) Kriminalforsorgen (Danish Prison and Probation Service, 2007), annual report; (d) William Rentzmann, Director General, during interview; (e) International Centre for Penal Studies, www.prisonstudies.org, on 2/12/08.

It can be seen from these figures that the claim made by the Director General of a constant prison population of 3,400 is not exactly true; but it is a reasonably

⁸⁶ As in similar tables in Chapters 6 and 7 on Finland and Norway, the figures of prison population given up to 2004 are those available via the Council of Europe. The dates of such censuses varied, especially in earlier years, but have all been on 1st September since 1991. Figures are missing for some countries for some years, presumably because they were not returned to the Council of Europe by these countries.

accurate statement of the numbers generally incarcerated across more than two decades, even if there was some upward drift in the numbers for a while in the latter part of that period, before then dropping very close to the 3,400 'norm' once again. It is worth noting that the relatively low figure of 3,150 in September 2001, the year in which there was a change of government, rose to 4,198 in October 2005 and these figures in isolation might suggest quite a radical escalation over a short few years. However, while more punitive sentencing policies did lead to a rise in prison population in this period, the fuller story is more complicated. The Director General noted, in an interview for this thesis, that October 2005 was a high point from which the population had again declined; it was exceptionally high at that time because there was a specific policy of eliminating 'the prison queue', which will be examined below. Indeed, the latest figure in the above table (3,448 in September 2008) is less than the mean in the annual populations between 1983 and 2008.⁸⁷ So, for example, the current prison population is lower than it usually was in the late 1980s or early 1990s. Moreover, the trend since the peak of 2005 is clearly downwards.

The prison 'queue'

The 'prison queue' is a phenomenon largely particular to Denmark, Iceland and Norway. It refers to people being sentenced to a term of imprisonment, usually a short term, and then having to wait (or being allowed to wait) for a vacancy to occur so that they can serve that sentence. Thus the annual report of the Prison and Probation Service for 2005 (English summary) refers to the "rising occupancy rates" at that time, noting that "the total average occupancy rate in the institutions...came to over 97 per cent in 2005". (Kriminalforsorgen, 2006, p.55)⁸⁸

This report notes that "reducing the prison queue" was the main reason for this:

At the beginning of 2005, about 2,000 convicted offenders were waiting to serve a sentence, and the queue had been cleared one month into 2006. The queue started growing in 2002 because of longer sentences and more remand prisoners. The Prison and Probation Service has inaugurated new places several times since then to alleviate the long

⁸⁷ Twelve of those figures are higher than 3,448, while just ten are lower (and a couple of those are very marginally lower).

⁸⁸ The multiannual agreement between the Prison Service and the Danish parliament holds that normally occupancy should be at 92 per cent of capacity.

waits and the high occupancy rates. The clearing of the queue was given top priority in 2005. (Kriminalforsorgen, 2006, p.55)

This entailed bringing into play both temporary and permanent additional accommodation. The following year's report consequently notes that the "average daily occupancy was 3,932 inmates, corresponding to a capacity utilisation of 94.3 per cent" in 2006. (Kriminalforsorgen, 2007, p.52) The 2005 peak would appear, therefore, to be due to a large extent to the decision to clear the backlog represented by the 'queue'.

Alternatives to custody

Another factor likely to be responsible for modifying the numbers imprisoned from about this time may be the bringing into force on 1st July 2005 of the first 150 places on a new electronic monitoring scheme. The report for that year says:

The individual offender serves his sentence in his home, which makes it possible for him to keep his job or continue his education during enforcement of the sentence. The target group of this scheme comprises persons sentenced to imprisonment for up to three months for violation of the Road Traffic Act. (Kriminalforsorgen, 2006, p.56)

The following year's report noted: "The spring of 2006 saw an enlargement of the home detention programme with electronic tagging." (Kriminalforsorgen, 2007, p.52) Later in this chapter there will be further discussion about the way in which the political imperative to increase sentences and thereby the prison population is to a considerable extent countered by measures, often introduced more quietly, that bring into being alternatives to custody. Thus the punitive drive, as represented by the scale of incarceration, is significantly modified. Clearly, there was upward movement in Denmark's prison population between 2001 and 2005. However, from the high point in October 2005, the population dropped steadily by about 750, or 18 per cent, in less than three years to a rate of incarceration of 63.⁸⁹

⁸⁹ It seems clear that dealing with the 'queue' made the prison population exceptionally high in October 2005, but there were factors which appeared to make it unusually low in July 2007. As the Director General explained, a reorganisation of the police and courts services was under way over that summer and this meant that there was a slow-down in processing cases, adding "*this is very unusual, and in that respect it is a very calm situation right now*". Thus, of a capacity of about

Some increased sentences

Early in 2002, the new Liberal-Conservative government, which had been elected at the end of the previous year, brought in legislation which increased sentences for a range of crimes, in particular crimes of violence and sexual offences. A 'second package' of legislative changes followed in autumn 2003 and this increased penalties for other crimes such as drug offences and aggravated theft. New laws were also introduced making it a crime to escape from prison or for having a mobile phone in prison. All the initiatives for these changes came from the political sphere and Balvig (2004) notes a tendency in this period to respond to virtually every problem in the law and order field with proposals to increase sentences. The Director General remarked how politicians are now more central to the formation of such laws than before, reducing the input of "*the professors in criminology and criminal law*". He said that in recent years

...there has been much more political focus on our area of responsibility and a lot of new initiatives come from incidents or one staff member claiming that it's too lenient...and then all of a sudden there is a petition from one member of parliament to the Minister.

Balvig writes: "From 2002 to 2003, the total length of sentences increased by 20 per cent, and from the beginning of 2003, the prison population increased well past prior limits." (2004, p.168) Parliament decided to expand capacity from 3,700 cells; such capacity was just under 4,200 in 2007. It will be recalled from Table 5.2 above that, from a low point of 3,150 in 2001, the prison population rose to about 4,200 in October 2005, aggravated by the elimination of the 'prison queue', before dropping down significantly again (to about 3,450 in September 2008). It is possible that the punitive push in the early period of this government may not now be sustained at the same level, given the drop off in prison population. Similarly, in light of the political push to increase sentences, it is interesting to note the pattern in 'average number of sentenced months to

4,200 places, only approximately 3,600 were then in use, or about 86 per cent of capacity rather than the norm of 92 per cent.

prison' given for Denmark for the years 2001 to 2005: 5.6, 6.0, 5.9, 6.1 and 5.7. This shows that the rise immediately after 2001 seems to have dropped back to earlier lower levels by 2005 (Kristoffersen, 2007, p.17).

Net-widening

Most interviewees questioned what they saw as net-widening, bringing into prison people who would not have been drawn in previously. William Rentzmann, the Director General, gives as an example those now incarcerated *"for minor violent crimes...just a normal fight between students, or whatever. I mean, in the old days they would not have been reported to the police."* He claimed reporting of such incidents has increased considerably and, where people might previously have been fined or given a suspended sentence, *"now they are sent to prison for 30, 40, 60 days, something like that."* The Director General noted the difficulty of assessing how many of those in prison should be there, but estimated *"maybe 25 per cent or so could easily be dealt with in another way...quite a few of those who are placed in open prisons now, they could be as well."* He saw scope for many such prisoners to be dealt with by way of electronic tagging. A colleague, Kaj Raundrup, who managed education in the prisons, offered the view that about 33 per cent should not be in prison.

Yet, the Director General's view is that Denmark still holds to the 'last resort' principle, saying: *"I think we could still claim that [prison is] used as a last resort. It is used at a little higher level than earlier, but still...we are a little less than 70, I think, per 100,000."* However, Hans Jurgen Engbo, Governor of Herstedvester, was more downbeat, thinking Denmark no longer uses prison as a last resort. The criminologist, Flemming Balvig's, view was that the 'last resort' principle has been *"weakened"* in Denmark, stressing that he saw this especially in relation to young people 16 and 17 years old, about 400 of whom, he said, are sent to prison each year. This does seem a relatively high figure by Nordic standards, if not compared with much of the rest of Europe. The imprisoning of so many of these youngsters happens in Denmark, said

Flemming Balvig, despite the availability of “*all kinds of alternatives*”. He said, “*Youth delinquency is not higher in Denmark than in other Nordic countries, but we use prison more because of not following this principle of prison as a last resort.*” Kaj Raundrup, the education manager, was also uneasy about having so many of this age-group in prison, pointing out the difficulty of drawing them into education in prison.⁹⁰ He said that a number of prisoners with mental health problems should not be in prison either.

Clearly there has been what different interviewees called “*a tightening of the screw*” or a “*harshening*” of penal policy, at least in the early part of the decade. Some sentences were increased, matching an escalation of political rhetoric. The ‘last resort’ principle has been put under strain, with groups who might previously have avoided prison now being drawn in. However, as with the surge brought about by the elimination of the queue, this episode in penal populism may well have abated also, its sting drawn by the development of alternatives to custody. With the level of imprisonment having dropped back to its low ‘norm’ of many decades, at 63 per 100,000, it must be concluded that the scale of imprisonment has not to date shown a lasting punitive turn.

4. THE CHARACTER OF DANISH PRISONS: RINGE, HORSEROD, MOGLEKAER, EAST JUTLAND

It can be judged, then, on the basis of the analysis in the previous section, that Denmark cannot be regarded as punitive on the basis of the first critical criterion, the scale of imprisonment. This section seeks to convey a sense of the ‘quality’ of Danish prisons as learned from the visits undertaken and this will lead into a general assessment of the second criterion, the depth of imprisonment, in the following section. Three Danish prisons were closely examined for this thesis: the

⁹⁰ Ireland, which is also criticised for over-use of prison for this age group, committed 247 such children to prison in 2007 (Irish Prison Service, 2008). However, it is possible that the problem in Denmark, as Flemming Balvig and Kaj Raundrup saw it, has receded. Figures for under 18-year-olds in prison systems given by Kings College, on www.prisonstudies.org on 2/12/08, are as follows: Denmark 0.3 per cent, which would mean about 10 such young people in prison at one time; Norway 0.3 per cent; Sweden 0.2 per cent; Finland 0.1 per cent. By contrast, Northern Ireland is given as 1.3 per cent, Republic of Ireland as 1.7 per cent, England and Wales as 2.9 per cent, Scotland as 3.1 per cent and Netherlands as 7.6 per cent.

open prison of Horserød, near Helsingør (Elsinore), in July 2007; and Moglekaer and East Jutland, both on the Jutland mainland near Horsens, in December 2007. At Horserød, five hours were spent walking throughout the prison and discussing matters with the Head of Education, Kjeld Erickson. In the other two locations the guides on extensive traverses of their prisons were the Heads of Employment and Education, both of whom also gave recorded interviews.⁹¹ In 1996, another Danish prison, Ringe on the island of Funen, was visited and briefings given by the Head of Education and the Governor (Philip, 1996).⁹²

Ringe

Ringe was one of the highest-security prisons in Denmark at the time of the visit in 1996. It had been constructed in 1976 to be as non-institutional as possible, built on a mound within the walls to ensure that those inside *could* see the surrounding countryside.⁹³ It holds 86 prisoners; normally about a quarter of whom are women of all ages and three-quarters are boys or young men aged 15 to 23. (A woman prisoner spoken to there felt this was about the right balance!). At the time of the visit to Ringe, there were five couples based there, each partner having received a sentence. There were also three children, two just a few months old and a girl of two, who, at that point, usually spent two days a week in the prison with her mother, but was mostly with her father outside. Men and women were mixed in activities and accommodation wings. Prisoners were housed in six wings, with 10 to 16 single rooms in each wing. They were required to cook evening meals for themselves on their wings with food they bought from a shop in the prison; mid-day meals were eaten with staff in work locations, with all taking turns to cook. As in other prisons visited later, there was a clear work-day from 8am to 3.30pm and sufficient activity for all, mainly in tasks such as

⁹¹ Hans Jurgen Engbo, the Governor of Herstedvester Prison, near Copenhagen, also recorded an interview at his place of work, but time was not available to tour that prison.

⁹² Given Ringe's leading role within the Danish Prison and Probation Service, and the fact that its character appears not to have altered much in intervening years (Ministry of Justice, 2001), it is included in this thesis along with others visited more recently.

⁹³ I was reminded of the spacious art classroom in the Education Unit in Cork Prison, specifically located with large windows at the top floor corner within that building so that it would have good light on two sides. However, the Governor there had ordered the boarding up of the entire windows to prevent prisoners seeing the tops of some of the surrounding city buildings.

furniture-making and 'production schools' – the latter are designed to help in particular young people who have had no experience of the labour market and provide a mixture of education and training. However, activity also included general education, cognitive skills courses and drug treatment. Men and women at Ringe were unlocked throughout the day and evening from 7am to 10pm, 15 hours in all.⁹⁴

The depiction of Ringe, given in an official publication five years later, matches exactly what was found in 1996. It is clear that, although the men and women held at Ringe are "rather heavy criminals", reliance is made on "dynamic" as well as "static" security: a five-meter high perimeter wall and CCTV surveillance, but also "close personal contact between staff and inmates". (Ministry of Justice, 2001, p.75) This report of the Prison and Probation Service states:

When the prison came into operation, many aspects of the structure and daily life were arranged in a radically different manner from those of conventional prisons. Unit officers were to perform four main tasks with regard to security/order, welfare work, management of the workplaces and management of the inmates' leisure time activities. The structure has now been introduced in the remaining state and local prisons. (Ministry of Justice, 2001, p.75)

The sense of engagement with prisoners by prison staff that this approach calls for did appear, as far as one can judge these things, to be quite widespread within the Danish prisons. Such a qualitatively-different regime, first encountered in the pioneering prison of Ringe, would indeed now appear to have been generalised to a considerable extent across the prison system, at least on the basis of the more recent visits to be described below, notwithstanding reports of 'negative staff' to be discussed later.

⁹⁴ Two recollections of that visit to Ringe stand out. One was that the wings looked strangely familiar to an Irish eye, as the planning of Wheatfield Prison in Dublin, built in the mid-1980s with 20 wings each of which had 16 cells, had been influenced by the Ringe concept, including the installation of plumbing and other services in the shared rooms on each wing to enable prisoners to do their own daily chores such as cooking and laundry. However, this self-management capacity has never been utilised in even one of the wings in Wheatfield. Prisoners at Wheatfield today are served food from a central kitchen and then locked up for all meals, including a two-hour lock-up at lunchtime, as in nearly all other Irish prisons. Another impression recalled was of asking to see a typical cell or room at Ringe; a staff member went to an office to check where one might be vacant. It was just accepted that to look in unnecessarily on someone's room would be an inappropriate intrusion on privacy. Such a small incident told something of the different way prisoners were seen, and respected, in Denmark.

Horserod

Horserod is the largest open prison in Denmark with a capacity for 221 men and women. It is set in a spacious clearing in woodlands (bisected by a public road) some 5km from Helsingor (Elsinore), which is about an hour by train north of Copenhagen. Built originally during the First World War as a Red Cross camp, the location was then used in turn as a holiday camp for children, for the detention of communists during the early part of World War Two, for the imprisonment of Danes by the Germans during their occupation, as an infirmary by the German army and, after the war, as a prison for collaborators. From 1947 it became an open prison for men and women in the normal sense.

Accommodation is in 10 single-storey wooden houses, or 'departments', one of which is designated a family unit with 14 places, one a drug-free unit with 22 places and one a drug-treatment unit with 13 places. One unit offers "an opportunity for women to serve with inmates of their own sex" (Ericksen and Hennig, no date, p.12), an option that seems to be offered to women in other prisons also. The family unit is for single parents or couples, and children can remain there up to the age of three; some parents have their children to stay at this unit at weekends. While visiting the prison I noticed a woman with her child getting into a car driven by a prison officer; she was being brought out to a playgroup in the community – an example of the 'normalisation' principle being applied to the child as well as to the prisoner. On the same basis, visiting facilities in Horserod are 'normal' rooms with chairs, a table, a sofa-bed and coffee-making facilities, adjoining a pleasant outside garden with benches and a play-area for children.

As is virtually universal now in both open and closed prisons in Denmark, prisoners at Horserod cook their own food and are given an allowance, in addition to their payment for work and other activity, to purchase food from a shop in the prison. This is seen as part of the application of the third 'Principle' listed above, 'The Exercise of Responsibility'. Information in English for those held at Horserod explains the arrangement as follows:

Shopping and cooking are left to the inmates to do themselves. Food-allowance (Kostpenge) is paid to the inmates a week in advance together with the weekly payment. If an inmate proves unable to control the use of allowance, the prison staff will minister food instead.

Food is purchased in the prison shop, which provides a range of most used groceries. The opening hours are announced on a notice board next to the shop.

Leaves of absence are not granted for the purpose of shopping food, but in connection with leaves of absence and visits, it is, within limits, permitted to buy and bring in food – except beverages.

Normally, it is not permitted to order food or goods to be delivered to the prison. Ordered food or goods can be turned away. (Ericksen and Hennig, no date, p.10)

As well as normal home leave at weekends, leave can also be given for work or education, or, indeed, for Catholics or Muslims to attend their worships in Helsingør; there is a Lutheran church in the prison. However, as will be seen below, leave of all kinds has become more restricted in Danish prisons in recent times.

As elsewhere in Danish prisons, there is a 37-hour 'working week', with prisoners being obliged to work or attend education or treatment programmes. The possibilities for occupation at Hørserød seem very typical of both open and closed prisons: there are large well-equipped metalwork and carpentry workshops, but also other work possibilities in maintenance, textiles and assembly work; education courses are along conventional adult education lines, following Ministry of Education syllabi; treatment programmes are in cognitive skills, anger-management and 'Booster' (a follow-on course for those who have completed cognitive skills or anger management). Some in the prison may split their time between work, education and treatment, although many are in full-time work or full-time education. Some also leave the prison to attend work or education on a daily basis. The 'daily programme' for a typical week-day is given as follows:

07.00	Enumeration of inmates in the departments
07.30–11.30	Occupation
11.30–12.00	Lunch
12.00–15.00	Occupation
15.00 – 21.15	Leisure time
17.00	Enumeration of inmates in the departments
21.15	Front doors will be locked. Inmates are inside the departments.

(Eriksen and Hennig, no date, p.6).

Moglekaer

December 2007 was the occasion of visits to two prisons near Horsens in Jutland, the Danish mainland: an open prison, Moglekaer, and the new closed prison of East Jutland. Nearly a full day was spent in each place with extensive tours being provided by the men in charge of employment and education, each of whom also recorded interviews. Moglekaer was very similar to Horserod. It is an open prison for 175 men and women, located on farmland and centred on a fine old manor house. It has been a prison since 1945 and offers a very similar range of activities to Horserod: a furniture workshop, forestry, horticulture, a metal workshop and maintenance work; what appeared to be a similar level and type of education; and much the same 'programmes' – cognitive skills, anger management and 'Booster'. 14 prisoners have places in alcohol treatment and 14 in drug treatment. There are between 20 and 25 sex-offenders in a separate area of the prison. There are about 30 women in the facility. 30 to 40 per cent of prisoners at Moglekaer are from an immigrant background. The working day and living arrangements appeared to be very like Horserod and these seem to be the norm for open prisons generally in Denmark.

As Head of Employment and Education, Benny Christensen developed a model for integrating prisoners into the labour market through education and training. This involves linking the work being done by prisoners in the institution with vocational training certification offered by a training centre in the community. Prisoners combine periods of work and training within the prison with travelling out to follow study modules in the outside centre, and they receive accreditation

for all this combined learning. He spoke of this arrangement being applicable, for example, to short seven-day courses in fork-lift truck driving, as well as to full craft apprenticeships. At the time of interview he was about to go on a year's secondment to help develop this model in other prisons across Denmark.

Two staff at Moglekaer are trained in guidance counselling and meet all new arrivals at the prison. Benny Christensen spoke enthusiastically about drawing from the field of guidance counselling '*the principle of acknowledgement*', based on the thinking of the German writer, Axel Honneth. He said that all staff at Moglekaer have had a three-day course in these principles and on the associated skills of motivating people. He gave striking examples of what he means by this approach: he said a paedophile can be moral in other respects; a thief can be a good parent. The philosophy here would seem to imply that it is important to find the positive qualities in prisoners, to acknowledge these and to try to motivate the prisoners to a better life accordingly.

East Jutland Prison

A new prison says much about what a prison system is attempting to accomplish, its priorities and where it may be heading. East Jutland Prison, which opened in October 2006, is the first new prison to be built in Denmark since 1976 and the Prison Service's largest construction project since Nyborg was built in 1913.⁹⁵ It has replaced the old prison in Horsens, some 10km away, which was opened originally in 1853. The old prison was by all accounts in poor condition and had a capacity of 167 when it closed. The new, East Jutland, prison holds 228 and is situated amid farmland and rolling hills which can be seen from most parts of the prison – a more pleasant and ambient location for the prisoners, but more difficult and costly to get to for visiting families and friends.⁹⁶

⁹⁵ The new prison is discussed here on the basis of a visit to it in December 2007 and briefing by Tue Nyrup Rasmussen, who is in charge of employment and education there, but the description also draws on a 57-minute DVD made about its construction, *The Village Behind the Wall* (Movision Film and TV, 2007), on architect's drawings and on briefing notes from the Governor, Jorgen Bang. Later, in the concluding chapter, some contrasts with East Jutland will be made with the new prison complex being planned by the Irish Prison Service at Thornton Hall in north County Dublin which is due to replace Mountjoy, a prison of similar vintage to Horsens, which East Jutland replaced.

⁹⁶ A taxi fare from Horsens to East Jutland prison costs about 200kr, i.e. between about €25 and €30.

A principle in the construction of East Jutland was that there should be 'scattered, low buildings toning down the institutional impression' (Governor's notes). That would seem to have been achieved to a large extent. Although it is now seen as the highest-security prison in Denmark, there is a definite sense of space inside the prison, 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 having places for 36 of the highest-security prisoners.⁹⁷ D is dedicated to full-time drug treatment. Occupational activity (work, education, programmes) takes place for the most part in workshops and classrooms within the sections. However, prisoners may traverse the central area between sections several times a week, walking around past the football field and the lake to a central building or 'culture centre', which holds a sports hall, church, library and a small self-service shop from which prisoners may buy groceries and personal accessories three times a week.

Security does appear strong, with a high perimeter wall and a fence beyond that, some 200 CCTV cameras controlled from a central office, and airport-type screening for all who enter. E is more secure again: prisoners there cannot have visual contact with any other part of the prison. The different sections, and the possibility of dividing within sections which are made up of units of six single-rooms grouped around a kitchen, recreation area and laundry facilities, allow the authorities scope to segregate. However, to date prisoners associate in groups no smaller than 24 in sections A, B, C and D. As in other Danish prisons, men and women are mixed, although women may opt to be in a single-sex unit. Generally there are only six to eight women in East Jutland at any one time, the vast majority of women prisoners in Denmark being in open prisons. There are 261 full-time equivalent staff of all disciplines to the 228 prisoners at East Jutland, a staff to prisoner ratio of 1.14 to 1.

⁹⁷ Section E, it was explained, is for prisoners due to be sent to The Hague, prisoners who seriously threaten others, some on protection and some 'bikers'.

While acknowledging the high external security, in many ways the prisoner's day within this prison would not appear to differ greatly from that in other prisons in Denmark, even open prisons such as those described above. The regime allows out-of-cell time of 14.5 hours per day, from 7am to 9.30pm. Prisoners must be in occupation for over seven hours each day, again making up the 37-hour week. Then, 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, not necessarily inviting in the Danish winter but often attractive in summer when the option is there to barbecue and/or eat outside. They are confined to rooms from 9.30pm. Work seems typical of that offered elsewhere in the Danish prison system, such as the processing of textiles, metal, wood or paper. Education again consists of normal adult education courses, but also 'Danish for foreigners' and 'English for foreigners'. Treatment programmes are cognitive skills, 'Booster', anger management and 'Brottsbrytet' (a Swedish programme based on cognitive theory which aims to change behaviour and in which prisoners are confronted with their crimes). The drug treatment in D section is provided by Hjulsogaard, a drug treatment organisation from the community. Participation in all such treatments, and in education, is voluntary.

The accommodation units for six prisoners look, for the most part, like good-quality student accommodation of the kind one finds now in many universities, but at the high end of the quality range for such accommodation. Every prisoner has a single room, to which they have their own keys. Prison staff have keys to second outside locks which are used to lock the cell doors at 9.30pm. Each of these cells is about 12.5 square meters, including a separate bathroom with shower, toilet and sink (according to architectural drawings). Each room has a sofa-bed, desk, chair, television, clear glass windows and an air-vent. There would be no way of escaping, but the appearance remained of good student accommodation. Those prisoners in any set of six rooms share a kitchen/dining/recreation area, which can open on to a balcony – the horizontal

bars across the balcony are virtually the only bars in the prison. The shared area of each six-person unit includes a well-equipped kitchen with a cooker, microwave, dishwasher, fridge-freezer, cupboards and work-units. The one indication that this was a prison was that large carving knives were chained to the wall by the work-surface, so they could not be moved from this area. (The Head of Employment and Education saw this as unnecessary security, as will be discussed further below). Each unit opens out on to a lobby area shared with other units, in which there are snooker tables and other recreational facilities. As mentioned above, those residing in at least four such units, or 24 prisoners, can mingle with each other in their respective and shared areas.

The same effort to create as much a sense of normality as possible has gone into visiting facilities. There are 14 standard visiting rooms, each fairly similar to the prisoner's own room, although also with arm-chairs and the inevitable coffee-kettle one finds everywhere in Denmark. 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 out on to a small courtyard (seemingly mainly used for smoking). All these visiting facilities adjoin a garden area which includes some children's play facilities.

It is still a prison, of course. Men and women confined here are still deprived of their liberty, a confinement that is intensified by recent reductions in the home and other leave allowed to prisoners. What is striking, however, is that it would appear East Jutland has managed to reconcile to some degree the imperatives to 'care' and 'custody', or what the Director General called "*the soft and the hard*", opposites that are notoriously difficult to hold in balance. From what one can judge, it would appear that the requirement to have a high level of security is achieved while also doing justice to a considerable degree to others of the six 'Principles' – for example, relating the activities in the prison to normal life in the community, achieving a measure of openness and applying the concept of 'least

possible intervention' so that prisoners can take responsibility for at least some aspects of their own lives.⁹⁸

5. THE DEPTH OF IMPRISONMENT

At first glance, given institutions of the kind just described, the 'quality of life' in Danish prisons would appear to be vastly better than in most other systems. The majority of sentenced prisoners are in open prisons such as Horserød or Moglekaer. Even those held in closed prisons like Ringe or East Jutland clearly have a far shallower 'depth' of imprisonment than closed prisons elsewhere, with reasonable conditions and activity, substantial unlock time and scope to manage significant aspects of their own lives. It would also appear that, with the exception of leave entitlements and new security arrangements that seek to control drugs (both to be discussed below), the recent punitive episode in the political sphere has not greatly worsened conditions. However, as with the scale of imprisonment, there are strong contesting forces at work in relation to the depth or content of imprisonment in Denmark, and this merits exploration. This section, therefore, will probe changes in leave, drugs policy, security, remission and resettlement to construct a picture of current dynamics around the depth of imprisonment.

Reduction in leave

Virtually everyone spoken to in relation to Danish prisons referred to three recent new restrictions, all of which interlink: zero tolerance on drugs, changes in arrangements for leave from prison, and tightening of security in general. The reduction in leave possibilities is perhaps the most clear-cut and the most obviously punitive of the changes in that it increases incarceration and deepens the 'depth' of imprisonment. Leave in Danish prisons is vastly more generous

⁹⁸ 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)

than most other countries, even now after its restriction. Conceptually, leave is linked to one of the core six principles: "Leave is an important part of the principle of openness, which is to strengthen the inmates' possibility of maintaining their contact with relatives and friends and with the community outside the prison" (Ministry of Justice, 2001, p.26). When prisoners become eligible for home leave, they will then normally be permitted to go home every third weekend. Leave is also given to engage in work or education outside the institution; 37 per cent of leaves were to these activities at the turn of the millenium. (Ministry of Justice, 2001, p.26)

Until 2001, prisoners had "*monitored home leave with a prison guard*" at one quarter of stated sentence (the officer and prisoner go to the prisoner's home for a few hours), and then home leave on their own at one-third (staying for the full weekend with their family); this was changed to monitored at one-third and without guard at the half point of stated sentence. An example of how leave entitlement has thereby worsened can be given by considering a person with a 12-year sentence, who would therefore be due out after eight years because of remission. Such a person in the past could expect guarded home leave at three years, but that is now four years; and unguarded home leave, which in the past happened after four years, now takes place after six years – so, full home leave, the most valuable type of leave to the prisoner, is available now only for the last two years in prison for such a case, whereas before it was possible for four years.

When asked what rationale the Minister had for restricting leave, Governor Hans Jurgen Engbo said: "*Frankly, the reason was that punishment must be punishment. So, it's a punitive reason and nothing else.*" He had earlier explained what was involved in the changes:

After the election in 2001, the first step the new Minister of Justice took was to change the rules for home leave for long-term prisoners. So, from one day to another, the long-term prisoners had only half the amount of leave that they had before. That's very very, very restrictive.

The Governor stressed the importance of home leave in terms of a prisoner keeping in touch with normality. He pointed to other restrictions: *"You can only have home leave to your family now. Before that you could have home leave to friends and others."* He also noted that leave for work and education, so important in terms of reintegration, has also been severely curtailed. Further curtailment of leave occurs, of course, when prisoners give positive drug tests. When asked how prisoners reacted to the change in rules regarding leave, he said: *"They just had to accept it...they know that it's a political decision and that the purpose of that decision was to make the prison more punitive, so to say."*

Drug policy changes

One of the most significant changes in prisons introduced by the Danish government in recent times is its 'zero tolerance' policy on drugs. Extensive regular drug-testing via urine samples is now comprehensive across the prison system. William Rentzmann, the Director General, spoke of about 40,000 tests being carried out within the system each year, noting *"and, of course, this leads to a lot of disciplinary punishment."* Governor Hans Jurgen Engbo explained what the requirement meant for him in Herstedvester Prison:

Until three or four years ago, we were not allowed to take a urine test unless we had concrete suspicion. Now we can take them randomly, and we have a duty. In my contract for this year, I am obliged to take about 2,000 urine tests...And if a test is positive, we use disciplinary punishments and we can withdraw permission to home leave. So in that way we are much more restrictive than we were before.

With a population of 153 in his prison, 2,000 tests a year means a test for each prisoner more often than once a month on average. The testing of prisoners is reinforced by other measures such as the searching of prisoners before and after visits and airport type security for all on entering closed prisons. There was some disagreement among those interviewed as to whether this attempt at supply control was successful, with those closest to the 'ground' being most sceptical.⁹⁹

⁹⁹ Likewise, there were different understandings as to whether testing, which can detect the presence of cannabis in the body for far longer than hard drugs like heroin, had caused a shift in use from cannabis to heroin.

However, the other side of this drugs policy is a quite massive expansion in treatment offered to those who want it and there was more general agreement that this element does work well, in part because it is voluntary.

What is noticeable is that the Danish policy on drugs in prison works strongly on *both* demand and supply – in contrast to that in Irish and many other prison systems which focus predominantly on hindering supply (O'Mahony, 2008). Attempting to keep illegal drugs out of prisons by means of security control alone, or even primarily by such means, may well be a futile approach. It also adds a deeply intrusive aspect to the regime for the prisoner, as well as adding an unpleasant aspect to the work of prison staff and costing a great deal of money.¹⁰⁰ What is distinctive about the 'zero tolerance' drugs policy in Danish prisons is that such attempts at supply control, which are indeed comprehensive, are balanced by a huge effort in demand control by means of treatment and other supportive practices. The criminologist Flemming Balvig said the drugs policy is

...a development with two hats... this treatment system in the Danish prisons is the largest treatment institution in the whole of Denmark. They want to treat as many people for drug and alcohol [as they can].

Treatment programmes, and often drug-free units for those who actively wanted to stay clear of drugs, were present in all of the prisons visited for this thesis.¹⁰¹

The 2005 annual report on prisons says:

In recent years, the Prison and Probation Service has received even more resources for treatment programmes aimed at hashish and drug addicts. This means that the range of treatment offers is being gradually expanded. The Government has decided that all drug addicts must be guaranteed treatment by the end of 2006. (Kriminalforsorgen, 2006, p.55)

In 2005, the service "extended its treatment guarantee to all alcoholics by inaugurating two new treatment units". (Kriminalforsorgen, 2006, p.55) Further

¹⁰⁰ Scotland abandoned mandatory drug testing in prisons in 2005 on the grounds that it was counterproductive, shifted usage towards heroin and created confrontational atmosphere between prisoners and staff (Irish Penal Reform Trust press-release, 31/5/05).

¹⁰¹ Hans Jurgen Engbo, Governor of Herstedvester, said:
almost every prison now has a unit, a treatment unit. This prison is very special. This is a treatment prison as a whole, not for drug abuse but for people with mental problems. We have a lot of psychiatrists and psychologists appointed in this prison. So it's the only prison of this kind in Denmark.

He noted that, while there is treatment for drugs within that framework, his prison has much more of a focus on alcohol.

openings of treatment units are reported in the following year's report, which also explains this guarantee: "Motivated inmates having at least three months left to serve in prison must be offered treatment within two weeks after they have expressed a desire to receive treatment." (Kriminalforsorgen, 2007, p.52)

Increased emphasis on security

Although it did not appear to be anything like as pervasive as in Sweden (a situation that was referred to in Chapter 3), a general raising of security in recent times would appear to have impacted considerably on Danish prisons.¹⁰² Some tightening may have been justified in some respects, and the Director General recounted with some satisfaction that the annual number of escapes had been greatly reduced. However, he did paint a picture of the drugs policy driving much of the escalation in security: *"We got money for extra fences, extra scanners and all sorts of technical devices to prevent people from carrying mobile phones and drugs into prisons."* Several of those interviewed were quite critical, some even exasperated, by some of the security changes. Kaj Raundrup, the education manager, said: *"I am not convinced that security, security, security is the only way."* He questioned: *"If an inmate is going to have a visit from his mother, for instance, is it necessary [for the prisoner, in search prior to visit] to strip...when it's his mother?"* Generally, he felt the prison system treated people with dignity, but thought such situations as the one just described were where it fell short.¹⁰³

In the face of constant complaints about excessive security, interviewees were probed for examples of what they meant. At times the examples seemed less than might be required to demonstrate heavy-handed punitive regimes, certainly not compared to most other countries, although one could clearly see how some of these changes registered as annoyances. Benny Christensen referred to the

¹⁰² The recent CPT report on Danish prisons noted: "the use of handcuffs and transportation belts during prisoners' transportation outside and within prisons has increased over the years (from a total of 1,484 cases in 2005, to 2,566 cases in 2007)". (Council of Europe CPT, 2008, p.21)

¹⁰³ Kaj Raundrup had concerns too about the isolation of some prisoners, such as those in E section in East Jutland.

ten recently installed rotating cameras that looked down on his open prison, Moglekaer. He also said:

We didn't used to lock up the cells, just the building, now they are locked up at, I think, 9.30 every day. Locked into their own room. It didn't used to be that [way]...they were just locked in the building. They could sit together and talk as long as they wanted.

For his colleague, Tue Rasmussen, in the high-security East Jutland Prison on the other side of Horsens, it was the recent chaining up of the sharp knives in the kitchen, apparently on instructions from headquarters, that annoyed him. Asked what increases in security there were, apart from the restrictions in relation to drugs and the internet, he said:

...in smaller things maybe. In Horsens, you had visitors who could bring in food, cakes and things like that. They are not allowed to do that here. That's a small one, but otherwise no, I don't think so. The knife problem, I think, is a bit ridiculous, as I told you, because we never had incidents with kitchen knives at all, so why string them up?

The issue of access to the internet

Another matter that similarly brings into sharp relief the tension between the urge towards normalisation and the urge to control is the question of access by prisoners to the internet. This issue is up for debate in a major way at prison headquarters, with a high-level committee examining the question, and it is apparent that there are security voices advocating restriction and control, not least from police sources. On the other hand, frustration is expressed by those working in education, who see the internet as a routine tool in learning and in everyday life.¹⁰⁴

The present situation at Horserød is that the internet is available in an unrestricted way to between 15 and 20 prisoners, via their own laptops used in their own rooms. An example of someone given permission to use the internet in

¹⁰⁴ The educational use of the internet in prisons is being examined in pilot schemes in nine European countries under the banner of the Pipeline Project, led from Norway by the County Governor of Hordland, with assistance from Oslo University. Denmark is an active partner in this exploration. While the feasibility of different levels of controlled access has been demonstrated in a number of ways through Pipeline, there has been no major general breakthrough in any country to date.

this manner is a man who had a small business on the outside and who kept things going from within prison largely via the internet; others follow distance education or training, perhaps doing courses via the internet that they had begun outside. Both staff and prisoners at Horserod seem to expect that this kind of facility will be halted or largely curtailed in the near future. Another way in which the internet is accessed in Horserod, as in other open prisons such as Moglekaer, is under the supervision of a teacher in the classroom. Internet access is then only available when the teacher is present, can see all the computers and can examine access records to ensure appropriate use, a level of control not unlike many educational settings outside prison. However, at the closed prison of East Jutland, the Head of Employment and Education expressed frustration that even this level of controlled access was not allowed in his classrooms; nor is it currently allowed in any closed institution. Speculation within the prison system is that systems of 'whitelisted' and 'blacklisted' sites will be permitted in education in the near future. The expectation is that very restricted controlled access will be allowed in closed prisons, with learners being authorised to access specific 'whitelisted' sites only. The guessing is that in open prisons there will be more access allowed in classrooms, although certain sites will be barred or 'blacklisted'. Such a scenario would represent a gain, even if a limited one, for those in closed institutions, but a setback for those in open prisons such as those who currently have unrestricted access in their own rooms.

There was therefore considerable bristling among some of those interviewed at restrictions on the use of the internet, although it remains to be seen whether those currently deliberating on this issue will move to liberalise or restrict current arrangements. Tue Rasmussen at East Jutland was one of those critical of this restriction in closed prisons and said: *"I don't see why an inmate shouldn't be allowed to go on certain parts of the internet. You could make a restricted internet connection, so you could go to look at the papers and things which are*

not security risks.” Hans Jurgen Engbo, Governor of Hestervester Prison, saw dimensions to this issue beyond the educational. To him it was related to normalisation, resettlement and having sufficient awareness of technology to obtain employment, even if a degree of supervision might also be required:

One of the big problems for many prisoners, in my opinion, is that in almost every job outside in the society, it is necessary for you to have IT skills. And because of security restrictions, it is very difficult for prisoners to train and to get IT skills in the prison. And things go fast out there in the society outside the wall...they have not very good IT skills when they go outside the prison gates.

He predicted, however:

In some few years we have to give them access to the internet. Access to mobile phones as well. Access to communication, to e-mail with their families...It's so common in our society nowadays to communicate in these ways, so you can't just run the prisons without that fact.

The ‘something-for-something’ policy

From examination up to now of the content of imprisonment, it is clear that some moves have been made in a more punitive direction, such as the reduction in leave and tightened security, especially around drug-supply control. However, these changes are far from overwhelming, and need to be set against a starting-point of an exceptionally tolerant and penal-welfarist prison system. Leave is still very good compared to most other countries. The severe attempted clamp-down on drug supply is balanced, unusually by international standards, by an almost equal effort at genuine drug treatment. The issue of access to the internet is still under consideration and probably no more restrictive at present than in prisons elsewhere. Overall, it hardly amounts to an argument that penal-welfarism has been significantly pushed aside in Denmark. Moreover, some other changes in the depth of imprisonment can be seen as very progressive moves, such as the ‘something-for-something’ policy, an increase in remission and an improvement in resettlement help. These positive aspects will now be discussed.

The balancing of ‘care’ and ‘custody’ seems to be a genuinely inherent feature of the Danish prison system, a quality that is also encapsulated in the ‘something-

for-something' policy (as it was translated by most, although the Director General conveyed the same idea in his describing it as a 'give-and-take' policy). William Rentzmann explained:

The government introduced the possibility for early release, a new paragraph in the penal code. And it said that if you are behaving well, not offending staff or co-inmates, undergoing treatment, education programmes and so on – if you do that you can be released after half of the sentence. So that was part of this new philosophy, a give and take philosophy.

There were complaints from others working as managers of various kinds in the prison system that this early-release scheme offered incentives to too narrow a range of activities. It appears it is applied, in practice, only to some of those prisoners completing drug treatment or 'programmes', and they argued that it should be applicable also to other constructive behaviour.

However, a progressive feature of the new Danish arrangement is brought out in comparison with Norway. In Norway, the 2001 Execution of Sentences Act means that remission at the two-thirds stage of sentence is no longer automatic, but must be applied for. This could be seen, as it was by Nils Christie, as a reintroduction, in a fashion, of indeterminate sentencing, where release or otherwise depends on what is deemed to be good behaviour in prison. This leads, Nils Christie believes, to a lot of '*falsification of behaviour*', of pretending to reform. Denmark's normal remission point is also at the two-thirds stage, yet discretion is being introduced at the half-way point and, while it might be argued that this shifts some decision-making about imprisonment from judges to the prison service, and also that there is still the danger of the 'falsification of behaviour' which Christie speaks of, it does ultimately mean a move in the direction of *decarceration*. When asked if he saw an element of the much-criticised indeterminate sentencing of the past in the something-for-something policy, the Director General replied:

Well, this is a very old debate of course. We had that debate with Christie and his counterparts many years ago, in the 70s... But I think this [debate] has been silent ever since, because I think the consequence of not doing

this would be longer sentences. And longer time in prison for most prisoners. And I think that those professors and criminologists realised that maybe this pragmatic situation is better.

Rentzmann credits the Minister for Justice since 2001, Lene Espersen, with this policy:

It is a progressive thing, yes. I think this has the Minister's fingerprint...she came up with the idea actually. And if they have a more, let's say, traditional punitive approach, then they would have introduced that at the two-thirds [point in sentence], and they didn't do that. They said, "okay, try this and we'll give you the possibility of one-half..." It's, I think, probably due to her that it's not only restrictions...now and then she has to fight other members of government to follow what we would call a reasonable development.

'A stronger emphasis on resettlement'

Efforts to facilitate the prisoner's return to the community are also seen to have improved, with Kaj Raundrup saying: *"We have a stronger emphasis on resettlement today than we have had earlier, in my opinion, at least."* He mentioned a programme of mentors to help released prisoners. Initially piloted for ethnic minority prisoners under 25, *"...today it is any inmate under 25...willing to have a mentor helping him, not only...on work and education, but also in his leisure period."* The mentor, who is paid, can at times be a person the prisoner suggests, or it can be someone in a company he or she is to work with. Benny Christensen, who is considerably involved in the area of transition from prison to life and work on the outside, sees the main problems of released prisoners as getting a job, accommodation, adapting to family life – *"...and, maybe the prisoners don't think that way, but one of the problems I think is that you're going back to the same old guys you used to hang out with who are still criminal."* So, staff like him do at times arrange for released prisoners to move to a new location.

The Prison and Probation Service claims relatively good, and improving, recidivism rates. It defines recidivism as "new offences within a period of two years after release or the date of the suspended sentence which has led to a

new suspended or unsuspended sentence” (Ministry of Justice, 2001, p.13). In 2001, this rate was stated to be 42 per cent of all convicted persons; or 44 per cent for those who received a prison sentence and 38 per cent for those with a suspended sentence. However, the annual report for 2005 states “recidivism has decreased in recent years” (Kriminalforsorgen, 2006, p.55) and the following year’s report gives an overall figure of “just under 26 per cent, as against slightly above 27 per cent in 2005”. (Kriminalforsorgen, 2007, p.52) One can assume that better employment opportunities contribute to this improvement, but it may also be valid to note that the prison system may not be the severely alienating and damaging institution it is, in practice, in many other countries. When asked to assess the strengths and weaknesses of the Danish prison system, Kaj Raundrup listed the weaknesses as not doing enough for some groups (mentioning foreigners, young people and long-termers), the reduced opportunities for leave and early release, and the recent emphasis on security. Yet, he saw strengths in the expansion of alternatives, the ‘something-for-something’ policy and the positive approach of most prison staff.

‘The balance between the soft and the hard’

The care-custody duality that characterises the current Danish prison system is perhaps nowhere better expressed than in what William Rentzmann calls “*our main value*”, what he describes as “*the balance between the soft and the hard*”. In a paper he gave in Barcelona in 2006, he spoke in similar vein of the “two facets” of imprisonment, exercising control and “providing support and motivation”. He says there: “These two facets of the primary purpose [of imprisonment] are complementary. Thus there can be no question of asserting that one is more important than the other.” (Rentzmann, 2006, pp.404-5) Probed as to whether this two-fold nature of the work of prison staff was under strain, whether there was pressure from the ground or from above to lean more towards security, the Director General replied:

I think we are balancing these two parts of our job... the soft and the hard...this has been introduced last autumn as our main value, so to speak. The main value is to keep the right balance between what we call

the soft and the hard...You're dealing with prisoners, with colleagues, your boss, whatever, this is what you should have in mind all the time, to keep the right balance...The art of keeping the right balance...it's possible to motivate on one hand and to punish, it's not impossible. That's what parents do all the time, that's what teachers do all the time, and that's what we should do all the time.

Essentially, this is the balance inherent in penal welfarism, between what Garland calls the 'penal mode' and the 'welfare mode' (2001, p.175). If these are being thus kept in balance (and the evidence of this research indicates that they generally are despite punitive pressure), then the 'culture of control' has not asserted itself as Garland describes in relation to the depth of imprisonment.

6. THE REPRESENTATION OF THE PRISONER

In general, penal welfarism sees people in prison as members of society and its urge is to restore that bond fully. In contrast, the imperative under the 'culture of control' is to separate and contain, and it depicts the prisoner negatively, or at least one-dimensionally as an 'offender' – rather than as a citizen and a 'whole person'. Such characterisation of prisoners is the third main criterion of punitiveness, and it will now be assessed in relation to Denmark. There were few indications of prisoners being demonised or seen in very negative terms outside parts of the political sphere, but what was earlier called the 'Canadian variant' of the new punitiveness (See Chapter 2, Section 5) has had some currency in the Danish system. This section begins, therefore, with consideration of the view of prisoners reflected in such behavioural programmes, and some other possible negative views of prisoners. That is followed by discussion of more holistic or inclusive representations of prisoners.

Behavioural programmes

The argument that the promotion of programmes to change behaviour (such as cognitive skills, anger management or 'Booster') is an indicator of punitiveness is based on a critique of the ideology that often lies behind these programmes, described as a 'punitive turn by stealth' by Canadian critics of this very

Canadian phenomenon (Moore and Hannah-Moffat, 2005, p.86). Certainly, Costelloe and Warner (2008) have written that, if their promotion *displaces* other approaches, such as those that seek to offer rounded education to all prisoners, then one can argue that this narrowing of focus arises from punitiveness – the focus on the offence pushes aside other aspects of ‘the whole person’ (Council of Europe, 1990, p.8). Such a shift could be regarded as a negative change in the way the person in prison is seen.

In Denmark, direct displacement of traditional activities like work and education seems not to have happened as a result of introducing such programmes that claim to ‘address offending behaviour’, as it did in Canada (Duguid, 2000). Likewise, the cognitive skills courses seem to have been adapted to Danish culture (Philip, 1996). Some interviewees were of the view that unwarranted priority was given to such programmes, even if such favouritism seems to be less now than in the 1990s. Currently, the situation seems to be moving towards fuller equality between ‘regime activities’ as required by the European Prison Rules and other Council of Europe recommendations (Council of Europe, 1987, 1990).

Staff-prisoner relationships

Generally, an indication that prisoners are perceived negatively is detectable in the way they are treated by prison staff and management, which is closely related to the relationship between staff and prisoners. An example at the extreme would be ‘barrier handling’ where prisoners only come into contact with staff in heavy-duty protective gear; obviously, there can be little positive relationship in this situation, and an exceptionally negative image of the prisoner, as dangerous and devious, is conveyed. Conversely, at the other extreme as in open prisons, prison staff rely on relationships with prisoners and therefore must see them in more holistic terms, must trust them to a considerable extent and

convey that trust. Staff-prisoner relationships, therefore, are a location where one can learn how prisoners are perceived within the prison system.¹⁰⁵

A recurring theme in this examination of the Danish prison system was what are described as 'negative officers'. An interesting aspect of this term is its resonance with 'negative prisoners', or 'negatively strong inmates' as the Director General referred to them, that had been in use some years earlier (Ministry of Justice, 2001, p.5).¹⁰⁶ More recently the label of negativity has been applied to staff, generally asserted to be a small minority of staff in certain closed prisons (East Jutland and Herstedvester were mentioned) who are unduly harsh in their dealing with prisoners or who bully fellow staff or both. The Governor of Herstedvester, Hans Jurgen Engbo, was adamant that, in his prison, the issue was one of some staff bullying others for the latter's efforts to work closely with prisoners, rather than direct negativity by these staff towards prisoners. At any rate, the issue of negative staff was aired in the media in 2007 at the time of the data collection; the matter was even raised by the taxi driver who drove me from Horsens out to East Jutland prison.

The fact that the presence of some 'negative staff' in the prison system was being investigated and publicly discussed *could* be seen as reflecting credit on the prison authorities. Certainly there was widespread confidence that such officers were a small minority in a few closed prisons and that generally staff-prisoner relations were good. A much greater degree of positive engagement with prisoners is demanded of staff in Danish prisons than in many others, as may be noted from the statement on Ringe given above which refers to four main tasks. The notes on Horserod, which are given to prisoners and visitors alike,

¹⁰⁵ Liebling reports on an evaluation in the prison system in England and Wales: "A key finding of the research was that prison officers deploy their authority through relationships with prisoners. They use the rules when relationships do not work." (2008, p.25)

¹⁰⁶ As used in relation to prisoners, the term includes 'bikers', those in motor-cycle gangs such as Hells Angels or Bandidos who have been prone to inflict violence on each other within prisons and even to generate armed attacks from outside prisons on rivals within. This conflict is international but appears to have manifested itself in a particularly violent way for a period within Danish prisons. However, there are reports of late of a truce between these gangs. The term 'negative prisoners' also seems to be used more generally to refer to prisoners who engage in severe bullying of other prisoners.

elaborate on these four tasks, stating that since the early 1990s prison officers must “participate on different aspects of prison life for the inmates:

1. As a security officer, handling disciplinary problems.
 2. As a case officer or liaison officer, dealing with the various questions concerning the individual inmate e.g. granting leaves.
 3. As an occupational supervisor in the workshops.
 4. As a leisure-time instructor in sport and hobby-activities
- (Eriksen and Hennig, no date, p.7).

Such an approach is demanding of staff, requiring of them that they are simultaneously “exercising control...and ...providing support and motivation for the inmates”. (Rentzmann, 2006, pp.404-5)

Several of those interviewed, although prone to be critical of other aspects of the prison system, expressed the belief that the way prison staff in general relate to prisoners is probably one of the main strengths of the Danish system, allowing for a minority of ‘negative staff’. The CPT report conducted in Denmark in 2008 said: “most prisoners spoke favourably of the way in which they were being treated by prison staff, and the delegation observed for itself that relations between prisoners and staff were quite relaxed”. (Council of Europe CPT, 2008, p.20) Clearly, engaging with prisoners and being supportive of them is backed from the very top. The Director General said he has regular discussion with the presidents of the staff unions and that they “*and the vast majority of staff*” support his approach. He also spoke of going to meetings throughout the country recently explaining and discussing “*the art of keeping the right balance*” and has at times been applauded for what he had to say. From going about prisons it was evident that staff were *working with* prisoners in workshops, not just supervising as one finds in many prisons elsewhere. The Employment Manager at Moglekaer open prison noted how staff in closed prisons can be more distant than in open prisons, but Hans Jurgen Engbo, Governor of a closed prison, was adamant that prisoners were treated with dignity: “*I would say that generally we respect human dignity...And the staff members, the prison officers, also respect human dignity.*”

Positive representation of prisoners

There were several other strong indicators of positive perception of people in prison, at least from within the prison system. Three of these will now be noted: the inclusive and holistic assumptions inherent in the 'Six Principles' and such policy statements; a strong human rights approach to penal work; and the active seeking out of prisoners by employers. The representation of the prisoner in the *Principles* document (Ministry of Justice, 1994) suggests a normal citizen, a member of the community, one who can be trusted to a large extent – as, for example, conveyed by principles such as 'normalisation', 'openness' and 'exercise of responsibility'. Inclusive and supportive ideas are also part of what is built into more recent value statements such as 'the balance between the soft and the hard'. Prisoners' citizenship is also acknowledged in Denmark via their rights to vote, appeal to the ombudsman and form representative groups (Greve and Snare, 2007).

All those interviewed regarded the punitive initiatives from the political field as in tension with, maybe even in conflict with, core principles of the prison system. Hans Jurgen Engbo, a Governor and also a teacher of human rights at university, was the most vehement in pointing this out. His anxiety about the lack of regard from politicians for human rights was noted above. Of the idea in the European Prison Rules that "the deprivation of liberty" is "a punishment in itself" (Council of Europe, 1987, p.19), he said:

The principle of normality is expressed indirectly in this way... if you take... freedom of movement from a person, then all other personal rights and life conditions should be normal. That should be our ambition. But there is a punitive thinking that doesn't allow this to happen. So people would say, if the prisoners have a normal life, where's the punishment? People do not accept – politicians do not accept – that the deprivation of liberty is the punishment in itself. It's not enough in people's minds.

He was pessimistic about what he saw as long-term decline in adherence to principles he and others held dearly when he began work in the 1970s:

Less use of prisons, many reforms, human rights...prisoners are citizens and not slaves of the state as they said in the courts in Virginia in

1871...In the 1970s, all over Western Europe, the prisoners got the status of normal citizens who had rights – to join the elections. They had normal rights – the normalisation principle...And I think during those 36 or 37 years I've been in this business, the trend has, almost all that period, gone away from this right thinking.

His view was that such a decline has been most marked in the last 10 years.

No doubt there has been some such decline in the perception of the prisoner, but the evidence does not suggest the kind of radical swing from penal welfarism to a culture of control that Garland describes (2001). Inclusive concepts, in particular, still persist, such as the acceptance and positive view of the prisoner inherent in the '*principle of acknowledgement*' at Moglekaer (See Section 4 above). Even outside the prison system, the fact that employers will seek out prisoners for training and employment is revealing. There was a view that at times politicians may over-reach themselves in their approach to prisons and prisoners. Benny Christensen, Head of Employment at Moglekaer, asserted: *"The politicians are worse than the public in general. Because when you see employers now, they are more willing to take [prisoners] in and help than they were before. But the politicians talk about prisoners tougher and tougher."* Several other interviewees made the same point, one noting that *"the factories are screaming for more people"*. Tue Rasmussen, Head of Employment at East Jutland, did see a problem in the stereotype of prisoners presented by some in politics and reinforced by tabloid newspapers. However, he said, if the public *"knew more about the people we send to prison, I think their attitude would change, I think so"*. He compared this with some general hostility in Denmark to foreign workers, *"except when it's one they know. But all the others must go, but not Ali, because he's a good guy! They know him and they don't know the rest of them. So, out with them, but don't touch him."*

7. RESISTANCE TO PUNITIVENESS WITHIN THE SYSTEM

Bringing to the fore once again the three key criteria for judging punitiveness, an overall assessment must now be made of the Danish prison system.

Undoubtedly, Danish prisons have, in several respects, moved in some measure in a punitive direction, since the turn of the century in particular. The prison population increased substantially, but then dropped back to its norm of more than a quarter of a century. More significantly, prison conditions have become more restrictive in a number of important respects and there has been a degree of political rhetoric that to some extent demonises prisoners. So, in these ways there has been some regression. However, what has transpired to date is nowhere near a full-blown 'punitive turn' as experienced in most English-speaking countries, nor even anything like the more limited change that has happened in Sweden.

Today, Denmark still comes well below the 70-mark in its rate of incarceration (most recently 63 per 100,000), still one of the lowest in Europe. There has been a significant expansion of alternatives to custody, including wider use of community service orders. Electronic monitoring was introduced in 2005, and expanded in 2006. Conditions continue to be excellent, in open and closed institutions, compared to almost anywhere else outside Nordic countries, and the replacement of Horsens by East Jutland Prison illustrates some substantial improvement. The majority of sentenced prisoners at any one time are in open centres – a remarkable and unique characteristic. Prisoners are still generally regarded as citizens, and treated with professionalism and dignity, and with a continuing eye towards their eventual reintegration as full members of society, at least *within* the Danish Prison and Probation Service. The developments in a punitive direction described earlier have to be recognised, but there has also been a large measure of restraint applied to many of the punitive impulses, there have been counter-tendencies, and there has been resistance.

Factors inhibiting punitiveness

The debate in the literature as to what factors inhibit punitiveness in Nordic countries was set out in Chapter 3. Five factors were highlighted there as

generally contributing to a different scenario in Nordic countries compared to that set out by Garland (2001):

- the role of the media and the public's fear of crime,
- trust in institutions and other people,
- consensual political culture and systems,
- the role of experts and practitioners,
- and the universal welfare state.

In such accounts, the universal welfare state is usually held to have a primary role, and can be seen almost as an overarching factor. It is clearly associated with trust in others and in institutions, and the level of fear about crime in society. It appears such a welfare state continues to play a very strong role in Danish society, funded on as strong a basis as before (30.9 per cent of GDP, as set out in Table 3.1), and strongly supported by the public and political parties, as Flemming Balvig described in his interview (See Chapter 3, Section 3).¹⁰⁷

Aside from the welfare state and associated features, two underpinning factors stand out as significantly influential in Denmark – the role and philosophy of ‘experts’ and, pulling in the opposite direction, the presence of ‘penal populism’ in the political sphere. The emergence of some punitive bi-partisanship among the main political parties in Denmark from the mid-1990s was described in Section 2, and indicates that coalition and consensus politics is not a sufficient condition for restraining punitiveness in the manner Lappi-Seppala (2007b) asserts. This trend has given rise to some increased sentences and a tightening of restrictions on prisoners. However, as the Director General said, ‘*it's not only restriction*’ that comes from politicians and he noted the progressive initiatives of the current Minister for Justice in particular. Some further discussion of such contrary forces is appropriate.

Penal populism

The picture conveyed by some of those spoken to is of politicians approaching prisons in a punitive way and the administrators trying to hold firm to a human

¹⁰⁷ Andersen et al find Danes only second to Norwegians among Nordic countries in terms of consensus support for welfare spending (1999, p.256).

rights outlook or to penal-welfarism – exclusionary and inclusive outlooks, in Young's (1999) analysis. As with all generalisations, this simplifies, even if it does hold a broad truth. Clearly, security is one of the 'Six Principles', and one half of William Rentzmann's '*main value*', and the prison managers interviewed fully recognised the central dimension of control in their jobs, but that is part of penal-welfarism in any case. Likewise, there must be considerable support among at least some politicians, and indeed the public, for the rational re-integrative policies put forward by the penal 'professionals', even if this is often tacit. The Minister for Justice is the person ultimately responsible for non-punitive aspects such as 'something-for-something', the balancing treatment element to the drugs policy, the expansion of alternatives and the improvement in conditions.

Tapio Lappi-Seppala (2007b), as was discussed in Chapter 3, paints a picture of the Nordic countries' justice systems in recent times having punitive policies out front, driven by some politicians, but also quietly softening these and introducing alternatives to custody by the back-door:

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, 2007b, p.219)

There is something of this in Denmark, but there may also be some politicians in power who deliberately modify punitive impulses, at least in relation to prisons and prisoners.

In some respects, given Denmark's recent political history, the surprising thing is that the punitive impulses of the right-wing parties have left the prisons so relatively unaffected. This is so when one looks at the immigration policies of the Liberal-Conservative coalition, which has given Denmark "some of the most stringent immigration rules in Europe", cutting since 2001 "the number of residence permits issued to refugees or their relatives" by a factor of four, and

the number of foreigners granted asylum by 80 per cent. (Ruadhan MacCormaic, *Irish Times*, 19/11/07) Writing earlier in 2007, the same correspondent documents how different approaches to immigration in Sweden and Denmark have meant that some 2,000 Danes married to spouses outside the European Union live in more liberal Sweden, many of them commuting daily back to work in Denmark across the Oresund Bridge between Malmo and Copenhagen. (MacCormaic, *Irish Times*, 13/6/07) Tue Rasmussen, who saw the Danish policy on these matters as “*ridiculous*”, tried to explain the different approaches to prisons and immigration by the same government in Denmark, saying: “*There are no political votes in prisoners. But there are many votes in the immigration policy.*”

The resistance of ‘experts’

However, this begs the question as to why this should be so, why one group is scapegoated much more than the other. Bondeson (2003) offers some explanation based on surveys of people’s attitudes in Nordic countries. She notes that the relatively homogenous Danish society “is clannish, with great internal cohesion and solidarity”, so that there is “a comparatively low tolerance for foreigners”, but more tolerance of other deviant groups (Bondeson, 2003, pp.268-9). Flemming Balvig, the criminologist, agreeing the same restrictiveness and punitiveness is not applied to the two fields, is more inclined to point to those administering the respective systems. He said:

I’d say it’s because, when it comes to foreign policy [i.e., policy in relation to foreigners], this is much more decided alone by the political system. If you look at the people administering that system, it’s brand new, it’s people from many different areas, they have no background from specific areas in the universities, and they are not involved in a network with a specific attitude or knowledge about these concerns – and in this way they are much more acting like the politician is saying.

By contrast, there is a tradition of expertise within the universities as well as within the prison system in Denmark that probes penal policy initiatives much more critically.

More important than the influence of these public servants is the fact that they tend to share a coherent 'philosophy'. This outlook is perhaps most forcefully seen in the 'Six Principles' adopted in the early 1990s (Ministry of Justice, 1994). These principles stand, like centurions, promoting penal-welfarism and a defence against punitiveness. It is perhaps fair to assume that they would not be adopted today, at least not in the uncompromising way some of them are set out. However, they remain official policy, even if, as Flemming Balvig said, the politicians ignore them or may not even be aware of them. They are ground gained, and are clearly part of the deeply internalised framework with which the interviewees at least, but probably many or most of those working in the prisons, approach their work. They are a major bulwark in resisting the new punitiveness. Flemming Balvig said:

I think there is an unspoken conflict between those in charge of the prison system, their intentions and their policies, and then the politics that they get from others. And they try to do it in the softest way all the time, in the prison system...but it is unspoken.

Later, in relation to the conflict between the Six Principles and punitive political attitudes, he said: *"I think you can say you have a resistance inside the system."* For Hans Jurgen Engbo, the Governor, the conflict he finds himself in is not so 'unspoken': *"We try to protect the qualities, but when the parliament changes the law, we have to follow the law. So we can't protect what is being attacked by the politicians."* Yet the sense one got was that quite a lot of the core values has been protected.

Therefore, one of the key factors in retaining a relatively non-punitive prison system must be the quality of the people who work in it at all levels, and who appear to share a coherent, humane and resettlement-focused outlook. As the Director General said of his prison system, *"humane treatment is still a key word...and prison as a last resort...normalisation and all that. That's a common way of thinking, I think, in the Nordic countries. It still is."* Of the political thirst for retribution, he said: *"It is not part of our policy, so to speak, in this house."* Clearly, Rentzmann's own leadership of the Danish Prison and Probation Service

is of enormous importance, as is, one suspects, his influence on the Minister and other politicians. Moreover, there is a whole corporate culture managing the prison system that is, despite the pressure it is under, strongly non-punitive, geared to minimising prison and its destructive effects, and to promoting resocialisation. If there is some punitiveness, it is well contained. It is still, as Kaj Raundrup said, “*a moderate system*”. The essentials of what one finds in the European Prison Rules, penal welfarism at its best or the Six Principles of Denmark’s 1994 policy document remain largely intact.

8. CONCLUSION

Those spoken to, whether on visits to prisons or in the more formal interviews, were almost uniform in their assertion that the Danish penal system had become considerably more punitive and security-orientated in recent years, and nearly all were critical, some severely critical, of this development as they saw it. However, everywhere in the prison system one also found considerable pride in at least some aspects of what the Danish Prison and Probation was doing, and very reflective adherence to the kind of outlook expressed in their key policy document, *A Programme of Principles for Prison and Probation Work in Denmark* (Ministry of Justice, 1994). Politicians, and particularly the right-wing or centre-right (both terms were used) governments who have been in charge since 2001 were pointedly criticised by several interviewees for driving the prison system in an unwelcome direction, although the Minister for Justice over that period, Lene Espersen, was also credited, by some, with considerable subtlety and with several positive initiatives. However, while the focus of several interviewees was on what they saw as recent regressions, what is striking from this researcher’s perspective is the extent to which ‘the punitive turn’ appears in many respects to have been fairly successfully resisted.

In assessing then whether Denmark has largely succumbed to or resisted the new culture of control, one can find some signs of that development as indicated by Garland (2001), such as a degree of political populism set on retribution,

some increased sentences and quite marked increases in control as in the efforts to limit the supply of drugs into prisons. However, most of the nine relevant Garland indices are not present to any significant degree in Denmark's prison system. Moreover, when one looks for the features of the opposite paradigm, penal welfarism, these are present in abundance in Denmark, as in the emphasis on minimising the detrimental effects of prison, in the focus on resettlement, in the inclusive view of prisoners, in the pursuit of alternatives and in the strong urge, at least within the prison and Justice systems, to adhere to the idea of prison as a last resort.

Looking at the situation, then, through the frame of the three summary criteria for gauging punitiveness (the scale and depth of imprisonment and the representation of people held in prison), the case for diagnosing a punitive turn in Denmark is even more clearly lost. Firstly, although prison populations have risen for periods, the growth has been modest and turned downwards again. Secondly, good conditions and positive features, such as a high level of self-management by prisoners, continue, despite some definite intensification of restrictions. Looking at the 'quality of life' in Danish prisons overall, one can only find a pale shadow of Garland's culture of control; the depth of prison remains very contained, best exemplified by most sentences being served mainly in open prisons. Thirdly, prisoners are by no means demonised or stereotyped as they are in much of the English-speaking world; people in prison appear to be treated holistically, with dignity, as citizens and with a firm eye on their reintegration into society – notwithstanding some contrary images and rhetoric in the political field.

Chapter 6

Finland: 'promoting the prisoner's potential to cope and his adjustment to society'

1. INTRODUCTION

This chapter will explore the same key questions in relation to Finland as have been discussed above with regard to Denmark. It will ask whether Finland has moved in a punitive direction and examine what has happened there with regard to the scale and depth of imprisonment, and how those in prison are seen in the justice system and society.

Similar data will be presented here for Finland as was set out earlier for Denmark, i.e. significant documentation will be examined, four prisons visited will be described and what was revealed in five interviews with key personnel will be set out. Recorded interviews for the research were conducted with four people in Finland around the times of the prison visits, three in late autumn 2007 and one in July 2008. A further interview was conducted by e-mail in June 2008 with an official in the Ministry of Justice after it proved impractical to arrange a face-to-face interview. Those who gave recorded interviews were: the Director General of the Criminal Sanctions Agency (CSA), i.e. the prison and probation services, another official at this headquarters, a criminologist and a Governor. Details of these interviews and visits are given in the Appendices.

Chapter outline

The next section (Section 2) will describe the main features of the Finnish prison system, including the recent expansion of community service, and the new 'Imprisonment Act' of 2006 with its associated developments in assessment, allocation and sentence planning. Section 3 will outline Finland's unusual pattern of prison population movement and analyse what shapes the present scale of incarceration. Section 4 will convey something of the character of Finland's institutions, setting the scene for an assessment of the depth of imprisonment in

the country (Section 5) and consideration of the representation of people held in prison in Finland (Section 6). The concept of social inclusion will be seen to be of critical importance in the latter. Section 7 will try to identify the explanatory factors, in the wider society as well as within the penal world, for the level of punitiveness in Finland's prison system, including the 'philosophy' apparent in Finnish penal policy called 'humane neo-classicism'. The concluding Section 8 will summarise the situation in Finland's prison system in light of the three summary criteria of punitiveness, as well as touching again on Garland's (2001) indices.

2. FEATURES OF THE FINNISH PRISON SYSTEM

General Features

Finland had (in 2008) less than 3,500 people in 26 prisons, ten of which are entirely open.¹⁰⁸ In all, 25 per cent of that prison population are in open institutions (861 out of 3,481 as of 16/6/08).¹⁰⁹ From the accounts of senior prison staff, and on the basis of visits to four prisons as part of this research, the character of each of these 26 prisons varies greatly in terms of physical structure and regimes, with much also apparently left to the discretion of the governors. Historically, work has had a very central role in Finnish prisons, as an official involved in prison personnel training explained:

Before the Second World War we concentrated on farming and reclaiming of swamp areas in the countryside...After the war we invented a new type of institution, the open labour colony. In the seventies a rather heavy programme of building industrial workshops and halls started. (Laine, 1993, p.2)

In the 'open labour colonies' the more skilful prisoners "performed ordinary work for the same wages available in the open labour market" (Laine, 1993, p.3). According to Laine, research showed "no significant difference in recidivism between similar groups in open colonies and closed prisons...the labour colonies were just cheaper, more open and maybe more humane and more productive."

¹⁰⁸ There are also two separate open units which are operated under the management of two closed prisons.

¹⁰⁹ Source: Ulla Mohell, Ministry of Justice.

(1993, p.3)¹¹⁰ While labour colonies no longer exist as such, the tradition of promoting work is still evident in places, as is a strong emphasis on *vocational* training, which by the 1990s was “organised in almost all prisons”. (Hartoneva et al, 1999, p.45)

Kristoffersen’s *Correctional Statistics* (2007) indicate an average sentence length of more than eight months in Finland, which rose moderately between 2001 and 2005. This is comparable to Sweden’s but a good deal higher than the average in Denmark or Norway, in each of which the length was between five and six months (Kristoffersen, 2007, p.17). Finland had the lowest proportion of remands among these Nordic countries, between 12 and 13 per cent of the prison population in 2005 (Kristoffersen, 2007, p.18). Some five per cent of prisoners in Finland in 2005 were non-Finnish nationals, a figure that was also rising slowly (Kristoffersen, 2007, p.20). The proportion of ‘clients’ in the correctional service in probation and prison were 55 per cent and 45 per cent respectively in 2005 (Kristoffersen, 2007, p.19), and the intention is to widen that ratio further. Thus Finland’s use of alternatives was well below that of Sweden or Denmark, but well above the usage in Norway. The Finnish Prison Service had 74 employees per 100 prisoners in 2005, a lower staffing level than other Nordic countries (excepting Iceland) which had closer to 1:1 ratios (Kristoffersen, 2007, p.23). The number of life-sentence prisoners in Finland increased recently from 66 (or 2.7 per cent of the prison population) in 2001 to 124 in 2005 (or 3.9 per cent of the population) (Kristoffersen, 2007, p.40).

The 2006 Prison Act

The comprehensive reform of legislation relating to imprisonment in Finland that came into force on 1st October 2006 was in fact several acts, a revision of the penal code and a number of new government decrees. However, the most important was the ‘Act on Imprisonment’, and it is this act which was referred to

¹¹⁰ This assessment is supported by Anttila, citing Paavo Uusitalo’s 1968 study of labour colonies: “When one compares recidivism in similar groups from the colony and the prisons, no essential difference was revealed...the deprivation of freedom is, in itself, of decisive significance.” (Anttila, 1971, p.12)

frequently in interviews and other discussion, often described simply as the 'Prison Act' or the '2006 Act'. The 'Act on Imprisonment' of 2006 is now the major framework for penal policy and practice in Finland and some of its provisions are revealing, especially in indicating how prison is officially conceived (although it must be kept in mind that the copy provided in English was still regarded as a draft translation). The goal of imprisonment was defined as "to increase the preparedness of a prisoner to a life without crime by promoting the prisoner's potential to cope and his adjustment to society." (para.1.2)

Ministry of Justice and Prison Service officials confirmed that the European Prison Rules (EPR), revised earlier in 2006, were a substantial influence on this Act. This can be seen, for example, in its declaration that "the content of imprisonment shall be loss or restriction of liberty" and that

...the conditions in a prison shall be arranged, to the extent possible, so that they correspond to the living conditions prevailing in society. The possibilities of a prisoner to maintain his health and functional ability shall be supported. The goal is to prevent any detriment resulting from the loss of liberty. (para.1.3)

The statement that prisoners "shall be treated with justice and with respect for their human dignity" (para.1.5) is a very direct echo of the EPR. The recognition of "the detrimental effects of imprisonment", which is explicit in the 1987 version of the EPR (Council of Europe, 1987, p.20), can be found throughout this Finnish Act also, as in the stipulation that staff must behave "without causing greater detriment than is necessary" (para.1.6) and in the statement that the purpose of granting leave is "to support the maintenance of contacts of the prisoner and his placement in society as well as to decrease the detriment resulting from the loss of liberty". (para.14.1)

Bearing in mind the critical issue as to how the person in prison is seen by society, i.e. whether negatively and narrowly as an 'offender', or more holistically and as a member of society (an issue to be discussed more fully below), there are a number of revealing phrases in the Prison Act. The Act says authority must

be used “appropriately and impartially as well as in a spirit of compromise” and authority should be maintained “primarily through advice, requests and orders” (para.1.6). The next paragraph begins: “A prisoner shall be heard when a decision is being made on his accommodation, placement in a prison and in an activity, discipline as well as on another issue regarding him...” (para.1.7) A section on social rehabilitation says:

A prisoner shall receive support in social rehabilitation and in the maintenance of contacts with his close relatives and other close persons as well as guidance in attending to matters relating to accommodation, work, subsistence, social benefits and social services. (para.10.6)

The sentence planning process

The 2006 Act established in a more formal and comprehensive way the systematic approach to sentence planning that is now a major feature of the Finnish prison system. The legislation also set up a new organisational structure based around five regions or ‘district prisons’. An Assessment and Allocation Unit in a prison in each region develops a detailed plan in the early weeks of a sentence for almost all who receive more than six months imprisonment, based on a ‘risk and needs assessment’ and including a ‘statement about prison leaves and supervised probationary freedom’ – the latter a form of early conditional release. (Communication by Director of the Assessment and Allocation Unit for the Western District, Turku Prison)

The sentence planning attempts to implement what a prison service headquarters official called “*process thinking*”, whereby a focus on resettlement and living a crime-free life begins from the point of sentence by the court (or at times even before this with the permission of a prisoner on remand), persists throughout the sentence and continues, in the hands of the Probation Service, for a period after release. Speaking in October of 2007, the Director General noted that the goal for that year of having “*a proper sentence plan*” for “*all those who serve in prison at least six months*” had not yet been reached. About 30% of the entire prison population had sentence plans at that point, but the prison service

were developing “*their working methods*”, he said, and it would take five years before there were plans for all, including short term prisoners.

The *Assessment and Allocation Unit Handbook* (Criminal Sanctions Agency, 2004a) highlights how this process may work and the issues that are emphasised. There is a positive rather than a fault-finding orientation in the principles set out for sentence planning, the “guiding notion” being “the individual’s potential to change and grow”. (Criminal Sanctions Agency, 2004a, p.4) These principles also include:

- the convict’s right to be heard on matters concerning him/her
 - strengthening an individual’s responsibility, supporting him/her, and motivating them to a life without crime...
 - regular and open assessment which contributes to directing and developing the activities and means,
 - taking the convict’s situation and individual needs into consideration...
- (Criminal Sanctions Agency, 2004a, p.4)

A section entitled ‘Ethics of the Assessment’ states: “The assessment is not the object in itself but it must express an aim to support and help the prisoner forward. It is not only pointing out defects but it must also show strengths.”

(Criminal Sanctions Agency, 2004a, p.8) As well as clarifying to which prison a person is initially to be sent, “work, education, informing and motivating activities, substance rehabilitation, and orienting and leisure time activities” are planned “according to the prisoner’s individual needs and possibilities”. (Criminal Sanctions Agency, 2004a, p.9)

When a plan is drafted, involving the prisoner and a range of disciplines, it is brought to an ‘allocation meeting’. The Handbook states:

If possible, the prisoner is present in the allocation meeting dealing with his/her case and participates in the discussion. The prisoner should be encouraged and motivated to participate...The result is completing the assessment and setting the targets together. (Criminal Sanctions Agency, 2004a, p.12)

This collaborative aspect is stressed again and again, as in the statement that “The aim is to reach a common view with the prisoner even if it would require

long or repeated discussions.” (Criminal Sanctions Agency, 2004a, p.20) The aim of this process “is a positive, cumulative development, which helps to integrate the prisoner back into life and society”, with goals suggested including offence-focused ones, but also ones that range far wider than that (Criminal Sanctions Agency, 2004a, p.19). This may be seen in the statement:

The goals (such as vocational training, settling debts, creating contacts to working life, rehabilitation, and improving attitudes, family relationships, and parental skills) may be set on different levels, i.e. some prisoners’ goals may be smaller than others. The suggested activities always require justifications, which define and deepen the setting of goals.
(Criminal Sanctions Agency, 2004a, p.19)

3. THE SCALE OF IMPRISONMENT

An atypical penal history

The most striking development in Finland’s penal policy in recent times is the reduction in its rate of incarceration per 100,000 of the general population from about 200 in the 1960s (Bondeson, 2005) to half that in the mid-1980s, to about a quarter by the turn of the century, suggesting a very unusual penal history indeed. Recently the rate has been in the mid-60s, very much in line with Denmark and Norway. Its rate has been generally close to other Nordic countries since the early 1990s. The pattern of incarceration in Finland from 1985 to 2008 may be seen from the following figures:

Table 6.1: Incarceration rates in Finland¹¹¹

Date	Prison population	Rate of incarceration per 100,000
1/2/1985	4,683	97 (a)
1/2/1989	3,813	77
1/2/1990	3,537	72
1/9/1991	3,130	63
1/9/1992	3,294	65
1/9/1993	3,132	62
1/9/1994	2,974	59
1/9/1995	3,018	59
1/9/1996	2,952	58
1/9/1997	2,798	56
1/9/1998	2,569	54
1/9/1999	2,598	50
1/9/2000	2,703	52
1/9/2001	3,040	59
1/9/2002	3,466	67
1/9/2003	3,437	66
1/9/2004	3,446	66
1/4/2006	3,954	75 (b)
30/10/2007	3,600 approx.	68 estimate (c)
1/1/2008	3,370 ¹¹²	64 (d)
16/6/2008	3,481	66 estimate (e)

Sources: (a) 1985 to 2004, Council of Europe, *Penological Information Bulletin*, nos. 5-26, June 1985 to May 2006; (b) International Centre for Penal Studies, www.prisonstudies.org, on 12/2/08; (c) Esa Vesterbacka, Director General, during interview; (d) International Centre for Penal Studies, www.prisonstudies.org, on 2/12/08; (e) Ulla Mohell, Ministry of Justice, e-mail interview, 17/6/08.

There was an ongoing and dramatic fall from a very high level in the numbers imprisoned in Finland from after the Second World War to the end of the twentieth century (Lappi-Seppala, 2007a). From the above table, an almost uninterrupted decline is evident from 1985 to 1999,¹¹³ at which point there were

¹¹¹ As in similar tables in Chapters 5 and 7 on Denmark and Norway, the figures of prison population given up to 2004 are those available via the Council of Europe. The dates of such censuses varied, especially in earlier years, but have all been on 1st September since 1991. Figures are missing for some countries for some years, such as 1983 and 1986 to 1988 in Finland, presumably because they were not returned to the Council of Europe.

¹¹² It is probable that the figure given for 1/1/08 above is somewhat lower than most other times due to some prisoners being on Christmas or New Year leave, as happens in many countries.

¹¹³ The lowest prison population in Table 6.1 is for 1998 (2,569), giving a rate of 54. A higher number in prison in 1999 (2,598) gives a lower rate of 50. This could be explained by a new census giving an increased general population for the country.

just less than 2,600 people in prison and a rate of incarceration of just 50. Thereafter, the numbers imprisoned rose fairly sharply again for a few years, reaching in excess of 4,000 for a few days in the autumn of 2005 (interview with Director General). However, in more recent years it has declined once more, being under 3,500 in June 2008, or a rate of about 66. Christie attributes the radical reduction in the incarceration rate in the latter decades of the twentieth century to the fact that Finland, which “once had been a Russian province, and still was similar to Russia in certain respects... wanted, culturally, to be part of Scandinavia, not of Russia.” (2004, p.109) Other commentators explain the dramatic drop by factors more inherent in Finnish society, especially “the values of the Nordic welfare state ideal” (Lappi-Seppala, 2004b, p.139) and the “exceptionally expert-oriented” character of Finnish criminal policy (Lappi-Seppala, 2000, p.37).

Writing earlier, 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) Lappi-Seppala confirms that “...the use of imprisonment is relatively unrelated to the number of crimes committed or reported”, showing that Finland’s very different pattern of incarceration to its neighbours since the 1950s did not disturb “the symmetry of Nordic crime rates” over the same period (2004b, pp.148-9). Christie, like Lappi-Seppala, also credits much of the responsibility for the decarceration to “the intellectual-administrative elite” with responsibility for crime policy. (Christie, 2000, p.54) However, he expresses concern as to how things would go in the future, when Finland may identify with Europe at large rather than mainly with Scandinavia. Lappi-Seppala (2004b) also wrote of his concern that international forces might give rise to more punitive policies in Finland in the future, but the prison population which rose considerably between 1999 and 2005 dropped significantly again between then and 2008, so his fears may well be groundless.

Recent increases and falls in incarceration.

Those interviewed found it difficult to give full explanations for the rise in the prison population between 1999 and 2005, which temporarily disrupted the trend of long-term decline, although one interviewee suggested the punitive attitude of a Minister for Justice for the period, Johannes Koskinen. While Tapio Lappi-Seppala, Director of the National Research Institute of Legal Policy, spoke of “*conscious law-drafting*” being a factor in reducing prison populations, he was of the view that this “*backlash*” in the late 1990s was generally “*not an intended shift*”, but arose from a variety of factors. Only one of these, increased sentences for aggravated assault, was an action intended to increase imprisonment. Other factors, such as increased drug trafficking, a greater number of foreign criminals in the country (both a result of more open borders) and a rise in fine-defaulters caused by an increase in the minimum day-fine, were not the result of deliberate actions that sought to increase incarceration. By contrast, many of the current moves reducing the prison population are deliberate and part of the Minister for Justice’s strategic plan.

Yet, as Virva Ojanpera-Kataja, the International Secretary at prison headquarters, suggested, identifying what increases or decreases the prison population can be something of an inexact science. Some factors, she said, are hard to identify or predict, as when, in the mid-2000s “*...there was so much talk about the rising prison population, the courts adjusted the sentencing policy in reaction to that*”. The number of life sentences has increased (as noted above) but why there should be more murders or manslaughter is less clear; one possibility Virva Ojanpera-Kataja mentioned is the lowering of tax on strong alcohol. Ulla Mohell of the Ministry of Justice drew on Tapio Lappi-Seppala’s research in her account of why the prison population is now falling: “*We have reduced penalty scales, we have built more alternatives to unconditional sentence, we have restricted sentencing rules, we have restricted use of custody for juveniles and we have extended [the] system of parole (conditional release).*”

She added that demographic changes, with a smaller proportion of the population in the younger age groups, have also had an impact.

The use of community service as an alternative to imprisonment, to be described more fully below, certainly seems to be significant. Esa Vesterbacka, the Director General, spoke of the additional alternative available now under the new legislation, conditional early release, and he calculated that in a few years this could take 300 to 400 at a time out of the prison system. Electronic monitoring is also being planned as an alternative to short sentences. Moreover, the virtual abolition of prison for non-payment of day-fines is having a decarcerating impact currently and will take up to 300 at a time out of the prison system compared to just a few years ago. First, the number of these prisoners was reduced by changing 'the rate of exchange' and reducing the maximum day-fine, and in the summer of 2008 imprisonment for non-payment of fines was effectively abolished.

Alternatives to Imprisonment

There are "three basic alternatives" available to a judge sentencing someone in Finland: "unconditional imprisonment, conditional [i.e. suspended] imprisonment or a fine". (Lappi-Seppala, 2004b, p.141) The system of fines are known as 'day-fines', whereby a unit or 'day' is related to the income of the person to be sentenced. In the event of non-payment, the number of 'days' was traditionally converted to that much time in prison, although in recent years the 'rate of exchange' has been altered a number of times so that three days of fine came to mean just one day in prison. The conditional sentence grew to become the most common form of punishment through the latter part of the twentieth century, growing from about 3,000 per year to about 18,000 annually between 1950 and 1990 (Lappi-Seppala, 2004b, p.141). In the 1990s a new alternative to imprisonment, community service, was introduced, first on an experimental basis in some regions, then nationally from 1997:

Community service may be imposed for not less than 20 and at most 200 hours, and it can replace unconditional prison sentences of a maximum of eight months. The choice of sanction is thus influenced by the length of the prison term, but also by the suitability of the offender and his consent. However, the use of community service is not restricted to certain types of offences or the age or degree of recidivism of the offender, as is the case in, for example, Norway or Sweden. (Muiluvuori, 2001, p.72)

Of course, one of the common problems with alternatives to prison is that they become 'add-ons' rather than genuine alternatives to custody, so that 'net-widening' rather than diversion takes place. Tournier (2004) says:

The same question may in fact be asked about virtually all alternatives to detention which enable entry to prison to be avoided. Would such a person sentenced to community service have been sentenced to imprisonment... if community service had not been provided in law? Would he or she not rather have been given a suspended sentence or even fined? (2004, p.22)

To ensure community service in their country really was an alternative to custody, Finnish authorities adopted a 'two-step procedure' so that it "should be used only in cases where the offender would otherwise have received an unconditional sentence of imprisonment". (Lappi-Seppala, 2000, p.33) The possibility of community service is only looked at, and a person's suitability weighed up, *after* a prison sentence has been imposed. Lappi-Seppala argues that the aim of the community service provision appears to have been well-achieved given that "with the increase in the number of community service orders, the number of unconditional prison sentences has decreased". (2004b, p.145) This was particularly evident in the late 1990s, in the early years of the new sanction.

Another problem in assessing the effectiveness of alternatives to prison is judging whether a better success rate in relation to recidivism among those chosen for alternatives, compared to those who remain in prison, is really attributable to the different kind of sanction, as those chosen and those not chosen represent by their nature very different prospects. However, the rolling out of community service in some regions in Finland but not in others in the

period 1991-94 offered the possibility of a valid control group in the areas which did not at first have community service. Muiluvuori (2001) assessed the new sanction's effect on recidivism, matching the different groups by sex, age, offence and time in prison. She concluded:

This examination shows that recidivism after community service, compared to recidivism after prison sentences, is slightly less widespread... In the light of this analysis, community service seems to be a suitable sanction, especially for sentenced people lacking previous prison experiences. (Muiluvuori, 2001, p.81)

While the focus of her study was on the impact on recidivism, Muiluvuori does also recognise that such alternatives can be supported “for economic reasons, and, above all, due to the detrimental effect of prison on the individual”. (2001, p.72)

Prison as a last resort

Alternatives, then, are regarded in Finland as preferable to imprisonment for some, on several grounds. They have provided the authorities with a means to reduce the prison population and the pattern for the scale of imprisonment, as set out in Table 6.1, gives a dramatic and unusual picture of a mostly falling trend in incarceration. Reducing prison numbers is now an official objective of the Minister for Justice, Tuija Brax of the Green Party. It was clear that the Director General concurred with this political focus on decarceration and he noted that a refusal by the Ministry of Finance some years earlier to agree to a request 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 when one finds a lack of cupboard space in one's kitchen at home – when the cupboards are acquired they are quickly filled up also. As with all those interviewed who were working within the prison system, he saw the 2006 Act as critical in shaping the system's direction and he said a key part of the act was to bring the prison population down, especially through developing

alternatives to prison.¹¹⁴ As was indicated above, having briefly gone just over 4,000 prisoners for a while in 2005, the population was about 3,600 at the time of the interview (October 2007) and 3,481 on 16/6/08 (a rate of 66). The Director General envisaged getting it down to about 3,200 “*in four or five years*”. Clearly, Finland cannot be judged punitive in relation to the first criterion, the scale of imprisonment.

4. THE CHARACTER OF FINNISH PRISONS:

HELSINKI CLOSED AND OPEN, TURKU, KERAVALA

Four prisons were visited as part of this research: Helsinki closed prison and Helsinki open prison (in late October and early November 2007); and Turku and Kerava prisons in July 2008. The precise dates of each of these visits and the guides who facilitated are given in Appendix C. Each visit lasted most of a day and involved seeing an extensive part of the prison, asking many questions and taking detailed notes. The following descriptions are intended to give tangible pictures of these four prisons, which would appear to be reasonably representative of prisons generally in Finland, at least in relation to the range of security levels.

Helsinki Closed Prison

Helsinki closed prison is in many ways typical of prisons in the heart of major cities: large (by Finnish standards, with a population of about 300) and old (built between 1881 and the early 1900s). For the majority of about 200 prisoners there seemed to be a considerable range of activities, predominantly in workshops, but also in education and ‘programmes’. For such prisoners there was substantial out-of-cell time of about 14 hours a day and the possibility of eating in a central dining area, or cooking and eating in smaller groups in kitchenettes within wings. With overcrowding pressure now eased, almost all in the prison had single cells. There were special sections for drug treatment, for ‘lifers’ (where a dozen such

¹¹⁴ Likewise, Kirsti Kuivajarvi, Governor of Helsinki Open Prison, cited the act in her view that prison should be used as “a last resort”, although she gave the incarceration of fine defaulters – many of whom are alcoholics or drug-addicts, and often homeless – as an example of how the principle was not applied so fully until very recently.

prisoners had keys to their own cells) and for fine-defaulters (in a unit yet to be renovated so that ‘slopping out’ still occurred – a practice slowly being eliminated from the system, but estimated to still apply to some 500 prisoners across all prisons). All prisoners have access to a sauna once per week, as they have throughout the prison system, reflecting the application of what is normal in Finnish society.

However, for a substantial minority of prisoners in Helsinki there was insufficient activity, in the sense of a full day’s work, education and/or ‘programmes’.¹¹⁵ This minority was also confined to wings far more (or to cells in the case of some prisoners ‘on protection’). Most of the men in this prison were described as ‘recidivist’ and were long-term (i.e. serving sentences of more than two years), although there were between 40 and 50 short-term prisoners. An estimated 30 to 40 prisoners were described as ‘gang members’ and these were seen to pose particular problems for prison staff and other prisoners.

Helsinki Open Prison

Helsinki open prison holds 155 prisoners in two units about 20 kilometers apart, Vantaa unit (for 80) near the airport and Suomenlinna unit (for 75) on a set of linked islands in Helsinki harbour. It was the latter unit which was visited, and an interview was also conducted there with the Governor, who had charge of both units, Kirsti Kuivajarvi. Many thousands of people visit Suomenlinna each year, most unaware that one out-of-the-way corner consists of an open prison (although tourists do quite often inadvertently wander past the low picket fence into the prison). A tourist brochure describes the location:

Built on six islands off Helsinki, this maritime fortress, over 250 years old, is Finland’s most important construction monument and a unique historical landmark. Since 1991, Suomenlinna has been on UNESCO’s world heritage list. The fortress’ museums, parks, architecture, galleries, restaurants and cafes offer the visitor unforgettable experiences.

¹¹⁵ The most recent CPT report on Finland noted that 70 per cent of prisoners in Helsinki closed prison were engaged in activities in 2007. (Council of Europe CPT, 2009)

Suomenlinna is also a recreational area and a living city neighbourhood with 900 inhabitants. (Suomenlinna Tourist Information, 2001, p.4)

Suomenlinna had in the past been an open labour colony and that tradition was still evident in work prisoners did in the restoration of fortress walls and the conversion of an old boathouse as a base for coastguards. However, the Governor was striving to widen and deepen the activity beyond the labour colony practice, so that formal training is now attached to such work, and courses run by external education authorities are also provided. She explained too that prisoners are permitted to go out of the prison and use facilities on the islands like the shop, library and sports hall on a rota basis – but neither of the two bars. Unlike Denmark, drug testing does not apply to all prisoners in Finland, but it is conducted in all open prisons (being part of the contract when prisoners go there) and among those who opt for drug treatment programmes or for drug-free sections in the closed prisons. Drug treatment, and support in dealing with addiction after release, is also offered at Suomenlinna, as it is in nearly all Finnish prisons.

Turku Prison

The prison in Turku, just on the outskirts of that city in south-west Finland, is a new institution for 350 prisoners which opened in October 2007. It is the largest in Finland and has the highest level of security. It replaced an old prison that had an even larger capacity. In many respects, therefore, it is comparable to East Jutland Prison in Denmark, which opened a year earlier and which was described in Chapter 5. In many of its positive qualities Turku also brings East Jutland to mind: good spacious physical conditions and living spaces, and particularly good workshops, classrooms and sports hall. Prisoners may cook in kitchenettes in their units, although it was envisaged most would take main meals in a central dining area. There are two attractive family visiting rooms of the kind common in prisons in Denmark and elsewhere in Scandinavia. Importantly for families (and unlike East Jutland), Turku Prison is accessible by public transport.

However, in many respects the comparison with East Jutland suggests poor architectural conception and design in Turku, and a far less satisfactory regime. Whereas East Jutland was deliberately designed to offer prisoners a sense of space and normality, despite its high security, Turku by contrast seems unnecessarily restrictive. Most striking in this regard are the deeply-sunken outdoor recreation areas – a visitor or member of staff may look down into 10 such recreation areas of different sizes; some, for small segregated groups, are very cramped indeed. Prisoners access these areas only via underground tunnels, through which those allowed may also access the main activity buildings. From the sunken recreation areas prisoners can see only the high walls surrounding these areas, the tops of some buildings maybe, and a rectangular patch of sky. In a similar vein, all windows in prisoners' cells have been deliberately designed so that prisoners cannot see other windows. Perhaps it was such features which prompted one senior official in Finland to speak critically of the new Turku prison as “a bunker”.

Other aspects of life in that prison also fell short by comparison with East Jutland, although some of these may be due to ‘teething problems’, as the prison was less than a year in operation when visited. Out-of-cell time for most was only about nine hours (compared to 14 in East Jutland, and also in Helsinki closed prison). All staff (including education staff and social workers) were obliged to wear prison uniforms. There was little or no mixing between accommodation units, although some prisoners had an opportunity to meet others from different units in the structured activities; overall, segregation generally seemed much more severe at Turku than in East Jutland (or indeed in other Finnish prisons). While there was drug treatment in Turku, it seemed considerably less than the more than 20 per cent of capacity - all of D section - devoted to this function at the Danish prison.

Some of these features may derive from a much poorer staff-prisoner ratio (about 0.71:1 in Turku, compared to 1.14: 1 in East Jutland), but might also arise because of an attitude among staff whereby they distance themselves from prisoners. Certainly, in July 2008, fewer prisoners had access to the main activity area than had been originally envisaged, the activity day had been reduced from eight to six hours, there were extra lock-up periods and the central dining area was not in use for prisoners as planned. All these aspects were attributed to staff not facilitating services in the manner intended, as part of a demand for higher staffing. In a typical supervising office from which staff observed four six-person units, the prison officer was locked away behind tinted glass, unseen by prisoners, but presumed to be watching. In East Jutland such staff would have been far more likely to be out in the units mixing with, and relating to, prisoners.

Kerava Prison

The point made earlier about each prison in Finland having a very distinct character is again borne out by Kerava Prison, which is a little outside Helsinki, and which I visited a day after visiting Turku, making the comparison between the two institutions quite stark. Each of these prisons is classified as a closed prison, but they seemed remarkably different. Kerava, indeed, had many of the qualities of an open prison with some prisoners at least having considerable scope to move about the rural setting. The quality of Kerava is to a large extent determined by its origins as an institution for juveniles and traditions from that period of engagement with, and providing activity for, those detained there seemed to continue – although there appeared to be full-time activity for just some 60 to 70 per cent of those held in the institution. There are two parts to the prison, a main building with a capacity for 100, and another section that could hold 72; both places are quite old and in need of renovation. Most of those now imprisoned there are adult men, but there are some young men there also, particularly in the smaller section.

The two-thirds or so of the prison population in full-time activity are involved in work such as organic farming, carpentry, metalwork, cleaning and maintenance. There are some intensive education courses on offer, as well as drug treatment. A full-time 'motivational course' called *Valmentava* is run over five months twice a year and combines, among other elements, life and work skills, learning skills, health education and artistic opportunities. Kerava has pioneered a course called *WOP* ('Work Out Project'), which was originally funded by the European Union but is now continued with prison service finance. *WOP* is geared to men under 26 coming to the end of their sentences and offers "intensive guidance with educational and therapeutic elements" within the prison prior to release and in the community under the Probation Service for a period after release, according to a brochure in English available at Kerava. In contrast to the programmes which focus narrowly on addressing offender behaviour, this course does appear to support, as it claims, "the holistic rehabilitation of the client". It recognises the social dimension in a way the Canadian-style programmes seldom do. The brochure states:

- During the time in prison the projectworkers and the networkers in communities aim to assure [the] following things for every prisoner:
- Housing; supported housing is primary
 - Income
 - Something meaningful to do; education, practical training, work, etc.
 - At least outpatient care for substance and/or mental disorders in clients home communities
 - Securing the long continuum of rehabilitation.

The goal "is to support the client to find new contents for life and reinforce the experience of meaningful life".

There is also considerable help offered in relation to drug problems at Kerava. As elsewhere in closed prisons, testing is generally conducted only when it is part of a rehabilitative 'package' for which a prisoner must volunteer, such as *WOP* or *KISKO* (a very intensive drug rehabilitation programme for those with deep and long-term drug problems), or who opt to reside in designated drug-free areas (which seem to have more attractive conditions and regimes as well, no doubt as

an incentive). Those on the *KISKO* course at Kerava work in horticulture, growing organic tomatoes and apples, and take care for sheep and rabbits. The male pony-tailed prison officer who had managed this area for many years (casually dressed, unlike staff at Turku) was very emphatic about how such work nurtured emotional bonds and helped the development of responsibility.

In all Finnish prisons there are branches of *Toverikunta*, a “prison inmates’ association” that dates from the 1960s, a period of considerable political activity in many spheres in Finland. One of the interviewees spoke of Finland being “a *country of associations – we love to have meetings!*” The existence of such an association in Finnish prisons may indicate a fundamental acceptance of prisoners as citizens and be a significant indicator of how prisoners are seen. *Toverikunta* seemed quite active in Kerava. In one lobby there was a “suggestion box” for the organisation. On a nearby noticeboard were minutes of their last meeting in the prison: five prisoners, who are elected by fellow-prisoners, attended, along with a study-counsellor (a leading education official) who represented the prison. Issues discussed included: prisoners’ wish that family visits last longer at weekends; a wish to have longer time on phones in the North Wing (of the main building); and that there be DVDs available for loan in the library (it was noticeable that it held only books). It would be inconceivable in present circumstances in Ireland, Britain or the USA that such an organisation could exist throughout any of these prison systems.

5. THE DEPTH OF IMPRISONMENT

Prison Conditions

In interview, Esa Vesterbacka, the Director General, was frank in detailing the shortcomings of the prison system as he saw them. These mainly related to physical or structural issues: the continuing practice of ‘slopping out’, which affects close to 500 prisoners and is slowly being phased out; the necessity to share cells which affects perhaps ‘*a couple of hundred*’; insufficient drug treatment to meet the high need for such services; the confinement of a small

number of sentenced prisoners (in '*tens*' rather than '*hundreds*') to cells for all but as little as one hour per day, mainly because of fear of other prisoners; and lack of a full day's activity for many prisoners. Along with the drive to find alternatives to prison, he stressed the new assessment and sentence planning process as positive developments within the prison system. In the report on their visit to Finland in April 2008, the CPT highlighted similar issues, reporting that there were then 508 cells without a toilet compared to 750 in 2003. They also stated that "most inmates interviewed by the delegation considered that they were being treated correctly by prison officers", but remarked that "staff attitudes towards prisoners, although polite and correct, were of a merely custodial character". (Council of Europe CPT, 2009, pp.35-6)

Others interviewed frequently pointed to where improvements in conditions or regimes were needed. Kirsti Kuivajarvi, a prison Governor, felt that where sufficient activities for prisoners were not available they could be shared out more equally, even if this meant that not every prisoner had a full day in work or education. She also thought that prisoners' housing was better in Sweden than in Finland. Another interviewee in prison headquarters, Virva Ojanpera-Kataja, thought that while local and regional authorities helped ex-prisoners as required, there was not enough '*mental support*' for them. She also saw the new regional structure for prisons as generating too much bureaucracy. Lack of resources slowed down progress on all such matters, but generally there was still progress. It is clear from such accounts that the government is reluctant to commit resources to the prison system, and Tapio Lappi-Seppala, Director of the National Research Institute for Legal Policy, made it clear that because of this parsimonious attitude many of the older prisons remain in bad shape. However, the reluctance to spend is also one factor behind the drive to reduce prison numbers.

These frank assessments concur with the negative side of the picture of prison conditions gleaned from the visits detailed above. However, a mixed picture

emerged from the visits to those institutions, with very positive qualities being in evidence also, especially in Helsinki Open Prison and Kerava Prison. In international comparison, it is likely that Finland's prisons are generally of a higher standard than prisons in most Western European countries, if only because overcrowding has not undermined regimes as it has elsewhere. Compared to other Nordic countries, Finland may well lag somewhat behind the others in aspects such as activities and conditions. However, Finland seems not to have been afflicted by the escalation of restrictions evident in Sweden and Denmark, for example, which derive ultimately from penal populism in the political sphere. The principles governing what the Finnish prison system attempts to do in its regimes remain 'purer' penal welfarist ones, and more in tune with the European Prison Rules, as discussion below should make clear. Thus, while the content of imprisonment in Finland may generally not quite match that in Denmark, for example, it is generally less subject to the new controlling urges and restrictions experienced in the latter. In other words, it is hard to see any regression in Finnish prison regimes in recent times and, while there are shortcomings, the outlook promises steady, if slow, improvement. Certainly in Finland, one cannot identify any worsening in the depth of imprisonment, driven by punitive, or any other, urges. The thinking among prison management that prevents such regression merits some exploration.

'Principles of sentence enforcement'

Given that interviewees repeatedly referred back to the 2006 Prison Act, it is clear that the thinking behind it has been well internalised by many in senior prison management – or, more likely, the act articulated perspectives that were already well ingrained. Thus, Governor Kirsti Kuivajarvi referred to the concept that “imprisonment is a punishment in itself” as being incorporated in that legislation, believing the idea to be accepted by most prison staff, although not by a minority of them. She was very conscious too that prison had ‘detrimental effects’. As she put it, prison “*very easily institutionalises people*” and creates “*psychological problem*” for long-term prisoners. This too is acknowledged

several times in the 2006 Act. In an article written in 2005, Ulla Mohell wrote about the “basic principles of sentence enforcement” then informing the shaping of the act, including the ‘normality principle’ whereby prison conditions should “correspond to the general condition of life in society”, and the idea that prisoners retain their basic rights. (Mohell, 2005, p.4) What comes across, then, from these leaders in the prison system is not only a commitment to reducing the scale of imprisonment, but also a wish to reduce the depth of imprisonment.

There was consensus too in the interviews as to the importance of resettlement, also a key focus of the 2006 Act and *the* central concept in the new assessment and allocation process. It was a wide concept of resettlement that was invariably invoked in the interviews, with a stress on social supports and not just what might be seen as individual pathologies such as addiction or a tendency towards violence, although drugs in particular were seen as an issue for the majority of prisoners. Thus, various interviewees saw housing, unemployment, drugs and alcohol, and mental health as the main challenges in ensuring successful reintegration. However, Virva Ojanpera-Kataja spoke of the importance of municipal officers who had responsibility for such services being more proactive in helping prisoners and being more sympathetic in their attitude towards them.

The recognition of the social dimension here corresponds to a phrase that is often cited in Finland: “Good social policy is best criminal policy.” (Vesterbacka, 2005, p.6; Lappi-Seppala, 2000, p.29) Significantly, Esa Vesterbacka, in the paper he delivered in 2005 to fellow prison directors in Edinburgh, added a further concept. Quoting a report that the World Bank regarded helping discriminated groups as the best economic policy, he said: “Equal realisation of economic opportunities seems to be also connected with the prison population rate. Maybe in the future we can say that *good economic policy is best criminal policy*.” (2005, p.7, emphasis in original) Clearly, then, 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 the next section.

Congruence with the European Prison Rules

Both the Director General, Esa Vesterbacka, and the Ministry of Justice official largely responsible for shaping the 2006 Act, Ulla Mohell, noted how the European Prison Rules (EPR) (Council of Europe, 2006), especially the revised version which was adopted in January 2006, influenced the Finnish 2006 Act, enacted in October of that year. Ulla Mohell noted in her interview for this thesis that she worked on drafting the 2006 Act at the same time as participating in meetings of the Council of Europe's CDPC, the European Committee on Crime Problems, "*where the draft EPR was prepared and discussed*", so that she was "*very aware*" of "*developments within the Council of Europe*".¹¹⁶ Of all the Nordic countries explored, Finland seemed the one which most consciously attuned its penal policy to that of the Council of Europe. The objectives for prison regimes set out in Rule 65 in the 1987 version of the EPR (quoted as an example of 'humane containment' in Chapter 1 above), which stand opposite in so many ways to the punitive policies of the culture of control, especially in their recognition of 'detrimental effects' and their resettlement focus, are strongly reflected in the 2006 Act as well as in the attitudes of those interviewed.

Conversely, it was difficult to find much evidence of punitive influences on penal policy in Finland. All those interviewed were aware of the kind of penal populism exhibited by some politicians and some parts of the media elsewhere, and in Britain in particular, but generally they reported that such tendencies were absent in Finland. One slogan associated with the punitive turn, 'zero tolerance', was said by the Director General and the Governor of Helsinki Open Prison to be used largely by some in the police service relating only to issues such as street violence.¹¹⁷ In general, Ulla Mohell of the Ministry of Justice said: "*Punitive policies have not had very strong effect on criminal policy in Finland,*" while Virva Ojanpera-Kataja of the Criminal Sanctions Agency said punitive attitudes

¹¹⁶ The Director General spoke of similar influence from Europe but stressed this went back to the 1980s when K. J. Lang was Director General and also participating in the CDPC.

¹¹⁷ A similar restricted use of the term was reported in Norway.

are not very strong voices [in Finland]. I think it has something to do with the Finnish way of thinking in general. We are quite a pragmatic people and people realise, okay, we cannot lock up anybody for life and throw away the key. Eventually everybody comes out. And what if he or she can move into my neighbourhood – so perhaps it is better that something is done with him in the prison time, and not to make him bitter or angry or anything. They can see this a bit further.

While such a statement of calm pragmatism is entirely believable in relation to Finnish society, and is supported by the virtual absence of penal populism in politics, it is yet to be explained why this should be so. An attempt will be made to understand such underlying factors later in the chapter.

6. THE REPRESENTATION OF THE PRISONER

Prisoners as members of society

Finland, then, cannot be seen as significantly punitive in relation to the first two criteria, the scale and depth of imprisonment. The third criterion will now be examined. This section will probe principles, practices and attitudes in relation to prisoners in Finland in an effort to gauge whether those in prison are seen in an inclusive or exclusive way; seen primarily as citizens and members of society, or seen in stereotypical terms and as 'other' as is so often the case in the culture of control. Initial analysis suggests the inclusive is the dominant approach. The 2006 Act stresses that prisoners retain basic rights: "The content of imprisonment shall be loss or restriction of liberty. The enforcement of imprisonment *may not restrict the rights or circumstances of a prisoner* in any other manner than that provided in law or necessary due to the punishment itself." (para.1.3, emphasis added)

The substantial focus on resettlement, and seeing criminal policy as part of social policy, spoken of above, is likewise a drive towards full reintegration of prisoners as members of society, recognising the need to help them in relation to practical social issues such as work, housing and addiction, and not just an idea of rehabilitation that "addresses offender behaviour". The wide-ranging objectives of the 'holistic rehabilitation' sought through the WOP course at Kerava Prison, for

example, illustrate such an approach. 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, also described earlier. The approach there is one which respects prisoners as ‘subjects’ rather than as ‘objects’, which looks for strengths as well as weaknesses, and in which it is expected staff must listen to and collaborate with prisoners. Likewise, the reintegration impulse permeates activities in prison also, as Ulla Mohell explained: “*The target of all activities is to improve a prisoner’s possibilities to cope in society after release.*”

Such an approach, of course, requires reasonable relationships on the prison ‘floor’ between staff and prisoners. As was argued in the previous chapter, staff-prisoner relationships are a good indicator of how prisoners are seen in the prison system. Some indications of good relationships were apparent on visits to prisons, although evidence of distance was available too at the new prison at Turku, as was reported above, which may suggest some reluctance on the part of staff to engage positively with prisoners. Most of those interviewed were of the view that in their prison system in Finland there was, as one said, “*good training*” and “*a good professional attitude towards inmates*”. On balance, the system seemed to be characterised by positive atmosphere and good relationships, and most reports and evidence suggested constructive activities for at least the majority of those in prison.

The prison system is also actively engaged in asserting the prisoner’s membership of society, as in insisting with municipalities and regional authorities that those in prison be afforded help on the same basis as people on the outside. Obligations on the authorities to facilitate prisoners have been strengthened in recent legislation.¹¹⁸ So, in theory at least, the deprivation of liberty is the punishment, and people in prison remain ‘*members of the community*’ in other respects. Such is the view in official policy and among the leadership of the

¹¹⁸ However, Virva Ojanpere-Kataja noted that such help relates to formal community support via social services and so forth, but she was of the view that informal community support of ex-prisoners was less strong in Finland, in contrast to Russia for example, with which she was somewhat familiar from her international role.

prison system, and perhaps among a sizable part of staff. However, as the Director General expressed it, while the ideal is that prison should not add to the punishment, for some in society prison has a '*hidden function*' of revenge. He said this can be reflected, for example, in the way some prison buildings have been designed, so that they are not optimum settings for rehabilitation. He said that the tradition of military service which has been part of the prison system in the past often persists in prison and inhibits the way the person in prison is seen and treated. Generally, however, there is substantial evidence of inclusive attitude, seeing the person in prison as a member of one's society and as a citizen. When asked if prisoners can vote, the Governor of Helsinki Open Prison, Kirsti Kuivajarvi, seemed very surprised by the question, replying "*of course*". As outlined earlier in Chapter 3, on Nordic exceptionalism, the Nordic welfare state would appear to be a critical factor in underpinning such inclusive approaches.

Such thinking pervades penal policy in Finland, the dominant urge is towards resettlement within the larger society, and the view of the person in prison is of one who is 'socially maladjusted', a phrase that recurs in official policy documentation. The recognition that imprisonment weakens the bond with wider society is at the heart of Finnish penal policy, and hence the decarceration of recent and earlier years, and the strong resonance with the thinking in the EPR:

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 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, emphasis added)

A later document stipulates as one of the two goals of prisons and probation "to assist in reducing recidivism and *terminating the development of social maladjustment reproducing crime*", (Ministry of Justice, 1999, p.3, emphasis added), thus identifying the social context of crime.

This social awareness contrasts with many Anglo-American presentations, which seek to “address offending behaviour” by loading virtually all responsibility on to the individual ‘offender’, a feature, as noted earlier, that can be associated with the new punitiveness. In contrast also to Anglo-American depictions of prisoners in general as ‘career criminals’, the Finns are emphatic in keeping the social dimension of crime to the fore:

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, emphasis added)

Such a social context continues to be kept to the fore more recently in a Criminal Sanctions Agency statement of purpose set out in the annual report for 2003. One of the two common goals of the Prison and Probation Services is stated as: “to contribute to the reducing of recidivism and to the preventing of the development of *social exclusion which maintains criminality.*” (Criminal Sanctions Agency, 2004, p.4, emphasis added)

‘To redress the self-esteem of the prisoner’

The idea that those in their charge were mainly people in need of help was pervasive among those interviewed who worked in any way in the prison system. Their general view of those in prison was of “*members of the community*” who happened to have problems which mean they would not, or could not, participate fully in that society. Thus the recurring theme of ‘social maladjustment’ in the policy documents just quoted. Such thinking is part of a deep and long tradition in the Finnish prison system, well exemplified by K.J.Lang, now deceased, who was Director General for some 28 years until about 1995. He was frequently spoken of as one of those ‘experts’ who had huge influence on the penal system, and several of those met or interviewed made admiring, even affectionate, references to him. Those who spoke of him included the present Director General, Esa Vesterbacka, who noted his part in shaping and promoting the European Prison

Rules in 1987, and the criminologist, Tapio Lappi-Seppala, who stressed how Lang's and another Director General's longevity in office had ensured consistency in policy. Kirsti Kuivajarvi, Governor of an open prison, said of K.J.Lang: *"He had a very big influence in Finland and he was very well known. And his thoughts were very well known. And I think he had a lot of influence on things and issues here."*

Lang's thinking unquestionably saw people in prison inclusively, as members of his society, but often in need of help. This perspective comes across in a talk he gave in 1993 where he described the prisoner as "our principal customer" and translated the Finnish term for the prison service, 'Vankeinhoito', as "care of prisoners". (Lang, 1993, p.65) In that address he asked "What are the characteristics of our customers?" and noted that most prisoners are "socially and psychologically disabled...deprived of all chances to develop and use what we can call their stronger parts." (Lang, 1993, p.66) They have, he 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 and experienced circumstances and...environments where a high risk of social, physical and mental damage was present...they are poorly educated and unskilled and have been unemployed for long periods or all of their lives. They live in sub-standard housing and have a wretchedly poor or deprived socioeconomic and family background. (Lang, 1993, p.66)

From that description of deprivation, Lang went on to ask: "What are the needs of our customers?" and made what many might regard 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." (1993, p.67) He stressed the need to provide work, training, education and "medico-social treatment" in such efforts. (1993, p.67) He added a further need of prisoners, which he called "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.” (1993, p.67) It would be hard to find a more welfarist statement from the leadership of any prison system. It was also clear that such a philosophy continued to be a core part of the outlook of those running the prison system in Finland when this research was conducted. Thus, in relation to the third criterion of punitiveness also, the representation of the prisoner, the culture of control has made few inroads.

7. RESISTANCE TO PUNITIVENESS WITHIN THE SYSTEM

This section looks at the main factors behind Finland’s firm resistance to the new punitiveness. The analysis will draw on the explanations offered in interviews, complemented by recent writing on this topic. It is clear that, set against the three ‘summary criteria’ for diagnosing punitiveness which this study has set out, the scale and depth of imprisonment, and the way prisoners are seen, the culture of control can be judged *not* to have taken hold in Finland. A fairly clear consensus comes across from interviews in response to questioning about the factors that have limited or inhibited punitiveness in Finland. The reasons given corresponded in general to those listed in Chapter 3 as to the factors behind Nordic ‘exceptionalism’, and these are related to: the role of the media and the public’s fear of crime, trust in institutions and other people, consensual political culture and systems, the role of experts and practitioners, and the universal welfare state. While trust in institutions and in others was not a feature very amenable to examination in this thesis, it does overlap with other factors, and the welfare state in particular.

The other four prominent factors, however, are seen as very relevant. As detailed in Chapter 3, Lappi-Seppala’s (2007a, 2007b) accounts of the welfare state as the major inhibitor of penal severity in Finland would appear valid, and Timonen’s (2003) narrative of the welfare state’s resilience in the face of economic change in Finland supports that position. The view that “good social policy is the best

criminal policy”, frequently cited in Finland, is reflected in particularly strong socially-inclusive perspectives and practices in the Finnish prison system. Finland, then, conforms to the classic account (set out in Chapter 3) of the universal welfare state as the dominant factor behind a resistance to punitiveness in Nordic countries. Some of the other factors seen to help resistance to punitiveness in the Nordic countries as a whole emerge as more emphatic ones in Finland, so that something of a distinctive Finnish style comes across in this regard. Most striking is the strong role permitted to ‘experts’, and the corresponding lack of penal populism among politicians and the media.¹¹⁹ Such arrangements in Finland require further explanation.

An ‘exceptionally expert-oriented’ system

When asked what groups in society she thought were the main influences on penal policy, Governor Kirsti Kuivajarvi said: *“In Finland, it’s not politicians. They are not interested now. I think the main key persons have been professors in the university, academics, criminologists, and experts. And also some top civil servants”* – at which point she spoke of what she saw as the huge influence of the former Director General, K.J.Lang. In the same vein, Ulla Mohell of the Ministry of Justice said:

I think that criminal policy has been very expert-orientated in Finland. Professors, criminologists and other scientists have played an important role. Of course the Minister of Justice and the Minister of the Interior are important as ‘persons’, as well as the Head of Police and the General Director of the Prison Administration...Also the law committee of the Parliament is quite powerful.

Virva Ojanpera-Kataja mentioned Ministry of Justice officials, *“certain academics”* and *“the union of prison officers”* as all being influential, but all also contributing towards a consensus in relation to prisons. In an outsider’s view confirming the critical role these Finns give to ‘experts’, Nils Christie wrote:

Year after year Inkeri Anttila, Patrik Tornudd, and K.J.Lang pressed forward with a penal policy which, in the end, resulted in [a rate of incarceration of 54]. They accomplished a reduction in the intake to

¹¹⁹ This absence of populism seems to extend to other areas also. For example, the anti-immigrant populism evident in Denmark has not taken hold in Finland.

prisons; laws were changed, fines were used more often, prisons less. Prison figures are no artefacts; they are transmitted through important actors, who reflect major values and goals of their times. (2000, p.54)

Lappi-Seppala has written that Finnish criminal policy is “exceptionally expert-oriented”, but also with “close personal and professional contacts” between politicians, academics and the leadership in the prison system. (2000, p.37) In relation to the Nordic countries generally, he notes elsewhere that “the power of professional elites...small groups, and even individuals may be of great importance”. (2007b, p.220) Such is the impression one gets about individuals such as K.J.Lang, spoken of above, and Inkerri Anttila and Patrik Tornudd, to be discussed below. “Experts” in this context can be taken to mean senior officials in the prison system or the Ministry of Justice, academics in the criminal justice field, and possibly judges. In interview, Tapio Lappi-Seppala stressed how, in small countries such as the Nordic nations, changes in a few personnel can make for great changes, for good or ill, in penal policy. In Finland, however, the dominant outlook of this leadership has for many decades been characterised in particular by socially inclusive attitudes and ‘humane neo-classicism’. The former has already been explained, the latter thinking will now be examined.

‘Humane Neo-classicism’

While the strong role allowed to such ‘experts’ in influencing criminal policy in Finland is striking, so also is the extent to which a clear, cohesive and quite uniform perspective emanates from a range of such people. Lappi-Seppala designated this outlook ‘humane neo-classicism’ (2000, p.28) but the extent to which it is a ‘societal perspective’ on criminal policy (Snare, 2005, p.495), such as that exhibited by Lang above, also needs to be stressed. In part, the clarity of this dominant ideology is helped by the personal knowledge which key people have of each other, something which becomes more possible in a relatively small country such as Finland, a point emphasised in interviews. Thus, politicians, senior prison system figures and criminologists have for long been in close contact. Thus too, different Directors at different times of the National Research

Institute for Legal Policy, such as Inkeri Anttila (who was also for a time Minister for Justice), Patrik Tornudd and Lappi-Seppala himself, have worked together and cited each other in a way that gives a sense of a consistent philosophy over time. Their close involvement over many years with other ‘experts’ in the criminal justice field is also very evident, as in Anttila’s and Tornudd’s central roles in the total reform of the Finnish Criminal Code – they wrote jointly about the “strong sociological orientation” of the Committee that undertook that work. (Anttila and Tornudd, 1996, p.141) The criminological underpinning to the Finnish penal system which these two offered appears to be a significant factor and will now be discussed.

Snare speaks of Inkeri Anttila as “the grand old lady in criminal law and criminology in the Nordic countries”. (2005, p.495) In “her famous lecture” (Lahti, 2000, p.144) in 1971 on conservative and radical criminal policy in the Nordic countries, Anttila argues that the “coercive care” driven by a treatment ideology based on a medical model undermined legal safeguards and increased incarceration under the guise of “humane-sounding words”. (Anttila, 1971, pp.10-11) She made the point that, while interventions such as group work may be appropriate for some prisoners, services such as those of psychiatrists, psychologists and social workers should be provided generally to prisoners “not to cure these people of their criminal tendencies, but to help them to bear the...oppressive prison existence, and to ease their mental and social situation.” (1971, p.12)¹²⁰ Anttila says that the treatment ideology in Nordic countries did play a humanising role in its early application, but became a more negative influence as it gained strength. She says: “The parallel of the criminal-sick appears to be false...This has led to an acute legal safeguards problem,” due to an absence of predictability and proportion. (1971, p.15) Thus, while once regarded by its proponents as radical, the treatment approach is really a conservative viewpoint. Radicalism, Anttila says, is represented by “a sociological view of society” whereby crime is seen as a manifestation of conflict

¹²⁰ This statement is very closely echoed in a comment on treatment made a decade or so later by Nils Christie (1981), quoted in Chapter 3, Section 5, above.

and social pressure. (1971, pp.16-17) From this point-of-view, adjusting society's controls and considering decriminalisation (as in removing prohibition) are options to be considered, as are preventive means.

Anttila and others (including Lappi-Seppala and Takala) edited a collection of Tornudd's writing for book form to mark his retirement in 1996. They state there: "Patrik Tornudd has played an exceptionally significant role in the evolution of Finnish criminal policy", noting that he wrote, not for "a scholarly audience", but for "enlightened decision-makers". (Tornudd, 1996, p.5) They argue that, while calls for punitive measures escalate elsewhere, "Finnish criminal policy values expertise, and its tone has remained calm." (Tornudd, 1996, p.5) What Tornudd has to say complements Anttila to a great extent. For example, he is critical of preoccupation with the "causes" of crime, seeing this arising from following a medical (rather than, say, an economic) model. Like Anttila, he sees crime and its definition as "irrevocably bound up with changing cultural values, interests and norms", so that "crime is necessary and normal" in every society. (Tornudd, 1971, pp.24-26) Tornudd says, therefore, that the aim of crime policy should be: "1) to keep the sum total of costs and suffering caused by crime and by society's efforts to control crime as low as possible, and 2) to distribute those costs as justly as possible." (1971, p.29) Built into this thinking is a recognition that the capacity of controls (such as prisons) is limited, and often counterproductive because of the damage they do, and one must look back always at the way society defines crime.

Almost a quarter of a century later, one finds Patrik Tornudd still focused on "the social costs of crime control measures", as well as on the costs and damage of crime itself. (1995, p.37) He noted then that it is impossible to get consensus in modern pluralistic society on the balance between these two sets of costs. Thus, he says, there can never be success in crime control policies, but there can all too easily be failures. A "core element" in "Nordic legal tradition" is that "the rationale of the criminal justice system should be general prevention rather than

deterrence.” (Tornudd, 1995, pp.45-46) What is important in relation to general prevention as a goal is seeing “the system... as legitimate and reasonably efficient...[which] will promote internalisation and acceptance of the social norms lying behind the criminalizations”. (Tornudd 1995, p.46) There should be “a just proportion between crime and punishment”, otherwise legitimacy will be eroded. (Tornudd 1995, p.46)

Tornudd sees ‘Nordic neo-classicism’ as the ideology behind the new penal code in Finland, which was brought to a conclusion in the mid-1990s after more than two decades work. He said in an essay on this subject:

Once the ideology of coercive treatment has been eliminated and the incapacitation ideology has been rejected it seems that we are left with the ideology of general prevention. But we wish to give this ideology a humane interpretation by stating that the act of punishment primarily expresses society’s reproach of the criminal act, it is a condemnatory measure aimed at influencing both attitudes and behaviour. Causing pain or suffering is not the aim. (Tornudd, 1996, p.84)

Lappi-Seppala thus refers to the dominant philosophy of Finnish criminal policy as ‘humane neo-classicism’, seeing it as a reaction to both coercive treatment, and the indeterminate sanctions that implied, and demands for harsher punishment. (2000, p.28) The characteristics aimed for in the law reform were legality, predictability, proportionality and justice. Anttila and Tornudd saw two tendencies, “the populist law-and-order mentality” and “the old ideas of coercive treatment”, as the “two ancient foes” of the reform movement that has developed in Finland. (1996, p.162) Writing in the 1990s, they were aware from what was happening internationally how such ‘foes’ might soon challenge the penal system in their country. However, to date that challenge has been met.

Other restraining factors

The nature of Finnish media is also a distinct and important factor restraining punitiveness, as Virva Ojanpera-Kataja suggested in describing what she saw as the influential forces on penal policy:

I'm quite happy to say the media doesn't have much effect. And I'm happy because very often that is not a good effect...Finnish newspapers write rather good stories. I don't mean they don't take any interest in prisons, they do. But they take the facts into consideration and they are often very positive in their stories. It's more in these columns, readers' columns, where you see more harder views towards inmates. But it isn't very important.

Both Esa Vesterbacka and Tapio Lappi-Seppala emphasised that it was by *not* highlighting crime in the way that is often done in English-speaking countries that the media enable other forces, such as politicians and 'experts', to promote progressive penal policies. Esa Vesterbacka acknowledged that "*evening papers*" do take a sensational approach to crime, apparently in the manner of tabloids in Britain and Ireland, but he explained that their impact on policy formation was minimal as people almost invariably see such accounts as "*entertainment*". Further, the more serious morning papers do not have to compete with each other on a daily basis via dramatic headlines, since "almost 90 per cent" of newspaper readership is acquired via subscription. (Lappi-Seppala, 2007b, p.243) Moreover, readership of such newspapers in Finland is remarkably high by international standards, with 90 per cent of the population reading a newspaper each day. (Lappi-Seppala, 2007b, p.243)

A further element in media restraint may be the dominance of public television over privately-owned channels, a situation that pertains to various degrees in all the Nordic countries. (Lappi-Seppala, 2007b, p.272) However, the recent availability of multiple channels (up to 90 now being possible) may bring about a change in this situation in the future. A recent review of research on crime news reporting in Finland found that in recent decades it had increased in newspapers and television, but especially in "tabloid front-page headlines and ads". (Smolej and Kivivuori, 2008, p.214) The authors stress, however, that "crime control has never been a central political issue in election campaigns in Finland, and in general also the media have retained a sober and reasonable attitude towards criminal policy issues instead of resorting to low-level populism." (Smolej and Kivivuori, 2008, p.216)

Different media representations of crime clearly have a role in shaping the level of fear of crime among the public, and this in turn influences, and is influenced by, political decisions. Lappi-Seppala contrasts the media in Britain and Finland, noting that their respective newspapers are “two different worlds”, and explains that “the Finnish version of Police TV is more like an educational programme with criminal justice officials explaining the contents and functions of the criminal justice system.” (2007b, p.271) However, while this reduces the pressure towards punitiveness on Finnish politicians, it does not fully explain the virtual absence of that element. The consensual and corporatist political culture, exceptionally strong in Finland as in much of Scandinavia, contributes further towards the political restraint. This means that “bargaining and compromise” tend to be the dominant styles rather than the “competition and confrontation” that pertain more in majoritarian political systems; and there is also “less crisis talk” (Lappi-Seppala, 2007b, pp. 279-80). Such a political context will obviously also give more scope to slower deliberative approaches to policy formation and enable capable ‘experts’ to have greater influence. One of these experts, Ulla Mohell of the Ministry of Justice, reflects the consensus explanation for Finland’s and the Nordic countries’ distinctive criminal policy. She said :

*I believe what Lappi-Seppala has written and published concerning this issue. He thinks that structural factors behind Scandinavian criminal policy are: social equality and welfare, social trust and political legitimacy and consensual democracy and corporatism.*¹²¹

8. CONCLUSION

An absence of punitiveness

This final section of the chapter will discuss in more detail the conclusion made earlier that the new punitiveness can be judged not to have taken hold in Finland when measured by the three summary criteria, recalling also in doing this some of the Garland (2001) indices described in Chapter 2. Garland’s “reconfigured field of crime control” should offer evidence of “the decline of the rehabilitative

¹²¹ This description of explanatory factors seems closest to that presented by Lappi-Seppala (2007a).

ideal” or “the fading of correctionalist and welfarist rationales.” (2001, p.8) Yet, it is clear from the narrative given above that rehabilitative and welfarist approaches are alive and strong in Finland; this comes across in the interviews and visits, in policy documents and in the 2006 Act and its ensuing assessment and allocation processes. The supposed corollary to the fading of rehabilitation, “punitive sanctions and expressive justice” (Garland, 2001, p.8) can be found to an extent in the longer sentences for certain sex, drugs and violent offences, but these greater punishments seem fairly limited in scope and are probably more than offset by the significant drive to make greater use of alternatives to custody and early release.

Whereas the punitive turn, should it have come to Finland, would have brought with it a changed tone and greater politicisation of crime issues, penal policy in Finland proceeds in a remarkably calm and deliberative fashion, with little of the ‘symbolic messages’ and political competition to appear toughest that has been a feature of the Anglo-American world. Were such penal populism present in Finland, one would expect to find a high level of fear of crime (real or imagined) and a response that had “protecting the public” as “the dominant theme of penal policy” (Garland, 2001, p.12). However, the Director General of the prison and probation services said at an international gathering: “People insist on more severe sentences because they assume it increases safety,” but “the views of the experts of criminal policy are the opposite...the influence of sanctions on criminality is very limited.” (Vesterbacka, 2005, pp.4-5)

In Garland’s punitive scenario there is “the reinvention of the prison”(2001, p.14) but Finland’s prison population is currently falling and has been for most of recent decades, and it strongly promotes alternatives. Ulla Mohell, who worked on drafting the 2006 Act, said: “*The official goal of the criminal policy in my country is to ‘control’ the numbers of prison populations so that overcrowding can be avoided. To find alternatives to unconditional imprisonment is one important goal too.*” The Director General, Esa Vesterbacka, expressed the view that:

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

The avoidance of imprisonment seems particularly well achieved in relation to young people, with only a handful aged under 18 in prison,¹²² and less than 100 who are under 21. Ulla Mohell stressed the very conscious application in legislation of the last resort principle to such youngsters.

The other side to imprisonment, what one might call the quality as opposed to the quantity, should find intensification too, if the situation in Finland were as described in the culture of control, with restriction and control replacing welfare and assistance. This would correspond to what Garland calls “the transformation of criminological thought” (2001, p.15). However, in Finland, ‘humane neo-classicism’ remains the dominant and official outlook, with a clear continuity in criminological thought from Anttila through to Lappi-Seppala. While Turku Prison provided some evidence of quite restrictive control, generally this did not appear to be a feature of the Finnish prison system. For most prisoners, cell conditions, time out of cell, activity and support seemed good by general Western European standards. For some others there was not enough activity and there were poor facilities, but this does not add up to the systematic tightening of regimes that Garland implies. Another sign of movement away from the state Garland depicts was the expansion of early release, ahead of normal remission dates, as part of the new sentence planning. One other of Garland’s indices of change is what he calls “all-pervasive managerialism”, which gives rise, among other things, to cost-cutting and the consequent selective ‘targeting’ of prisoners in the provision of services. (2001, p.18) This more negative style of management seems not to

¹²² On 1/10/09 there were only two aged between 15 and 17 serving a sentence in Finnish prisons. Source: Kirsti Kuivajarvi, Criminal Sanctions Agency.

pertain in the Finnish prison system, with universalism rather than targeting remaining the aim of those in charge of prisons.

What emerges most clearly, then, if one looks at the three summary criteria for gauging punitiveness, is a picture of a prison system that in the overall has resisted the punitive turn. Firstly, there is an underlying pattern of falling prison population, in contrast to most Western countries. Secondly, while the content or 'depth' of imprisonment is a more mixed picture, with physical conditions and purposeful activity falling short of the Nordic norm for a minority of prisoners, even here the general trend seems to be one of slow improvement. Certainly, one cannot find much evidence of significant overall worsening of the 'quality' of imprisonment in Finland as in a substantial increase in restrictions to life within the prison. Thirdly, and most clearly, the general perception of the person held in prison is an inclusive one, which regards him or her as part of society and in holistic terms, and there have been hardly any signs of the kind of demonisation of criminals or prisoners that has been widely experienced in most English-speaking countries.

Possible risks to Finland's 'exceptionalism'

John Pratt, in his recent analysis of Finland's, Norway's and Sweden's 'exceptionalism', in the face of 'penal excess' in so many other countries, concluded that "on a country by country assessment" this exceptionalism "remains most solid in Finland", which has "become the new standard bearer of penal tolerance and leniency". (Pratt, 2008, p.288) That would be a reasonable conclusion of this research also. However, it is fair to recognise 'risk factors' in relation to such non-punitive policy, and Tapio Lappi-Seppala set out some of these in interview. International influences may give rise to such risk, in his view, especially if other Nordic countries take the punitive route; and, given its closeness, what happens in Sweden, in particular, is liable to have a modelling effect on Finland. A second risk factor is the European Union, although the EU currently has a limited role in justice issues. A third factor relates to the possibility

of the future politicisation of crime issues in a way that is not the case at present. This could happen around the problems which could arise from increased drug use, possibly accentuated by closeness to the Baltic States.

However, it is important to note that crime rates and incarceration would appear to have little bearing on each other in Finland. Lappi-Seppala (2000) showed how in Denmark, Finland, Norway and Sweden offences against the criminal codes followed strikingly similar patterns in these countries over the second half of the twentieth century. The graphs for all four countries are remarkably symmetrical over that period, all showing much the same significant upward trends in crime. However, while the other three countries “kept their penal systems more or less stable” over this time, Finland, as was seen above, radically reduced its rate of incarceration. (Lappi-Seppala, 2000, p.36) Yet this very different penal history “has not disturbed the symmetry of Nordic crime rates”. (Lappi-Seppala, 2000, p.36) Lappi-Seppala believes this is revealing given the “strong social and structural similarities” between these four countries. (Lappi-Seppala, 2000, p.36) He concludes that “crime rates rise and fall according to laws and dynamics of their own, and sentencing policies in turn develop and change according to dynamics of their own; these two systems are fairly independent of one another.” (Lappi-Seppala, 2000, pp.36-7)¹²³

Good social policy as best criminal policy

Lappi-Seppala notes “some signs of a more punitive approach may also be seen [in] the more recent Finnish debate. The number of prison sentences, as well as the number of prisoners, have started to increase.” (2004a, p.3) However, Lappi-Seppala says:

there still may be room for some optimism in Finland. The path taken by many other European penal systems is not an inevitable one. Very few of those social, political, economic and cultural background conditions which explain the rise of mass imprisonment in the US and UK apply to Finland,

¹²³ Lappi-Seppala notes how this evidence is in line with Tarling's (1993) study for the Home Office in England which showed negligible linkage between incapacitation via imprisonment and levels of crime. This issue will be discussed further in the concluding chapter.

as such... The social and economic security granted by the Nordic Welfare State model may still function as a social backdrop system for tolerant crime policy. (2004a, p.3)

There is a clear awareness of contrast with others beyond the Nordic countries in his statement that:

The Nordic position is an example of evidence-based, pragmatic and non-moralistic approach, with a clear social policy orientation. It reflects the values of the Nordic welfare state ideal and emphasises that measures against social marginalisation and [for] equality work also as measures against crime. It stresses the view that crime control and criminal policy are still a part of social justice, not just an issue of controlling dangerous individuals. (Lappi-Seppala, 2004a, pp.1-2)

The evidence gathered for this thesis leads one to concur with this assessment, certainly as far as it applies to Finland. Indeed, the reversal of the prison population rise in Finland since 2005 (See Taable 6.1 above) adds to the validity of what Lappi-Seppala said in 2004.

The Director General of the prison system stressed how penal policy was part of crime policy as a whole, and stated the view frequently expressed in Finland that “good social policy is best criminal policy”. (Vesterbacka, 2005, pp.6-7) He too was asserting that prison and crime problems are best dealt with via the policies of the welfare state and the promotion of equal opportunity. The philosophy inherent in this view, and the strategies in relation to crime that arise from it, are clearly penal welfarist and far removed from the new punitiveness. The factors underpinning such penal systems in Nordic countries are the welfare state in particular, but also related matters such as a high level of trust in the institutions and in other people, responsible media, political systems built on consensus, human rights culture and a strong role for ‘experts’. (Lappi-Seppala, 2007b) The ‘experts’ in particular appear critical in carving out distinctive penal policy and direction in Finland.¹²⁴

¹²⁴ In interview, Lappi-Seppala emphasised the quality of senior civil servants in the Criminal Sanctions Agency and the Ministry of Justice, but also politicians in the constitutional and law-drafting committees in Parliament – and the current Minister for Justice. Such quality people in key posts, he felt, were further helped by the fact that the crime issue is not at present politicised in Finland, unlike Sweden and Denmark.

Chapter 7

Norway: ‘another kind of discussion about how we use prison’

1. INTRODUCTION

This chapter will explore whether or not the Norwegian prison system has become punitive as judged by the three summary criteria set out earlier and the reasons for the answers. As in the two previous data chapters, the chapter will be structured around assessing the scale and depth of imprisonment and the representation of people in prison. The primary data to be presented in this examination will, as before, be from important documents, interviews with key personnel and visits to prisons. Eight lengthy interviews were conducted in all in Norway, including one each with the Director General, a Department of Justice official, the Senior Adviser for prison education and a Deputy Minister for Justice, two with Governors and two with criminologists. Details of the interviews and visits are given in the Appendices.

The chapter will initially give (in Section 2) a brief overall picture of the main features and trends in relation to Norway’s prisons today, including some reference to the political context, and some historical milestones as marked out by government White Papers. The first of the three criteria of punitiveness, the scale of imprisonment, will be assessed in Section 3. A sense of Norwegian prisons is then given by the description of three prisons visited (Section 4), offering a context for a discussion of the next two criteria. An attempt to gauge the depth of imprisonment in Norway by examining conditions and other regime features is given in Section 5. Then, also, in a similar manner to the previous two chapters, the third criterion, the representation of the person in prison, will be explored, especially how the prisoner stands vis-à-vis the rest of society (Section 6). Section 7 analyses the underlying factors that tend to give rise to punitiveness or otherwise in Norway.

2. FEATURES OF THE NORWEGIAN PRISON SYSTEM

General features

In order to give a general context for the examination of penal policy in Norway, this section will provide some information about the prison system and then outline something of the manner in which policy is formulated, and the public and political milieu for this. Many of Norway's 49 prisons are old, dating from the 19th century, but the prison system has a reputation as a humane one with good conditions in general. About one-third of the population are in open prisons or halfway houses. (Kristoffersen, 2005) When Norway's prison population was recently around 3,300, about 800 were not in single-cell accommodation, but most of these were in open centres where, for example, they could leave their rooms at night should they wish to use a toilet (interview with Director General, Kristen Bolgen Bronebakk). A recent benchmarking report by the Roundtable Group of 10 countries showed Norway had the longest average out-of-cell time per day for sentenced prisoners at over 13 hours per day, while Ireland, with Scotland, had the lowest with less than eight hours. (International Roundtable for Correctional Excellence, 2007) However, authorities acknowledge that conditions for pre-trial detainees, who in the absence of a bail system make up just under 20 per cent of the prison population (Kristoffersen, 2005), are not as good, and Norway has been criticised by the Council of Europe's CPT for this (interview with Director General). The Director General also argued that they are making some progress in ending much of the isolation of, and lack of activity available to, these pre-trial prisoners, but that they are constrained by the courts as judges can stipulate that some pre-trial prisoners must be kept isolated from others.

White Papers

An important backdrop to this investigation in Norway was that the process of preparing a White Paper on the future of prisons was ongoing during the period in which data was collected. Following the general election of 2005, a new government was formed in Norway, commonly known as the 'Red-Green Alliance' and led by Prime Minister Jens Stoltenberg. The Labour Party is the

largest element in this coalition, which also involves the Socialist Left Party and the rural-based Centre Party. Although there is broad consensus on many policy matters across these parties and their centre-right predecessors, this government appears willing to strike out more in a non-punitive direction in the area of penal policy. At least that would appear to be the *intention* of Knut Storberget, the Minister for Justice, to judge by the brief he gave for the White Paper: to reduce prison numbers, to develop alternatives to prison and to improve the ‘content’ of imprisonment. All of the data for this thesis was collected in Norway between November 2006 and May 2008, within the period in which that White Paper was being formulated, and there were continual references from those interviewed, and from others encountered on prison visits, to the new White Paper. The consultation process in preparation for this White Paper was particularly wide, with prisoners and the public at large involved. It was finally issued in autumn 2008, with a summary published in English. (Norwegian Ministry of Justice and the Police, 2008)

White Papers clearly have a strong tradition in Norway. One interviewee explained: “*Technically speaking it’s just a report from government to parliament...but it’s very important, and it’s THE policy document for the next 10 years or so.*” The White Paper of 1978 put forward a lot of new proposals that were seen to have eventually improved the prison system and, in the words of an interviewee, “*tried to tell the story of the prisoners, what kind of problems do they have*”. By comparison, the same person, an education specialist, was very critical of the a White Paper on prisons issued 20 years later which he saw as reflecting “*a much more bureaucratic approach*”.

Certainly, the English summary of that 1998 White Paper gives as its first “key point... more focus on the personal responsibility of the offender himself” and speaks of “quick and firm reaction” to breaches of conditions, as well as “behavioural training” for those sentenced in the community. (Kriminalomsorgen, 2002, p.2) It proposed an increase in prison capacity of between 400 and 600

places, in part apparently to reduce the prison 'queue'. That later White Paper would seem to represent, if not quite a decisive 'punitive turn', then at least a swerve in a punitive direction, indicated perhaps as much by what was left out as by what was included: there is nothing in the English summary of that document about "the detrimental effects of imprisonment" (although that was an aspect the Director General was concerned to speak of), nor of the needs (beyond addressing offending behaviour) of those held in prison.

The narrative about the earlier 1978 White Paper has achieved something of a legendary status in Norway. A common account is of the Minister for Justice, Inger Louise Valle, setting out radical proposals for a far more progressive penal system, but she was before her time and had not built the necessary administrative, political or public support for the changes. She was obliged to resign, but, the story goes, in time her reforms were in large part implemented. One interviewee spoke of her as "*a brave woman, very brave*", but "*a lone wolf, without organisations to support her...she did not do enough to create a consensus*". Another, an official in the Ministry of Justice who worked on the 2008 White Paper, said of the Minister behind the 1978 White Paper:

The White Paper leaked beforehand, so really she didn't have the bureaucracy supporting her. There were just a few people backing it actually. And she was made fun of publicly, as being incredibly naïve, and it was impossible to implement, etc. So by the time the White Paper was actually ready, everybody already knew what was actually in it and soon afterwards she had to resign. But it's fantastic, because if you look at it today, it was really a quality document, not really for 10 years, but for 20 years or so...those things have happened, and those things have been implemented since.

Those developments, as a further interviewee described them, included "*much more use of open prisons, reduction of isolation, much more use of day release, trying to support them back to labour, much more focus on the workshops in the prisons, and a chapter on education in the prison...*" The memory of Inger Louise Valle's fate may well be part of the exceptional efforts by the current government to generate participation and consensus around the new White Paper of 2008.

The public and political context

The formulation of the most recent White Paper involved a multitude of committees drawing on people from within and outside the prison service. There was also involvement of staff representatives in prisons and probation, consultation with prisoners and wide public consultation, including conferences and the involvement of a school group of 16-17-year-olds. The group of young people were asked by the Minister for Justice, said one official, “*to think about the future of the correction service... to submit a report to the Minister*”. There was also a ‘think-tank’ who were secluded for three days in the lighthouse at one end of the island of Bastøy, which is an open prison, to discuss the future shape of prisons, followed by a further few days deliberations in the more austere setting of Ringerike closed prison. This latter group involved such ‘external’ people as an actor and a film maker, as well as Professor Flemming Balvig from Copenhagen. Tellingly, Flemming Balvig, who was generally less optimistic about the future of prisons in Denmark when interviewed in Copenhagen for this thesis, spoke of being hopeful about Norway, saying: “*I’m a little excited about it because they have this Minister that seems to be open...who has this general philosophy that you should reduce the use of prisons.*” An official identified the thinking of the Minister about the process:

He says that we need to get the public support for the things that we do. We will not be able to experiment or push limits unless we have the support of the public. I think it’s a good goal, to try to educate or invite the public to discuss with us what kind of correctional service we want in future. I think when we make it very private, that’s when we’re due to fail.

In an interview for this thesis just before the publication of the new White Paper, the Deputy Minister for Justice, Terje Moland Pedersen, who held a special responsibility for the White Paper process, said he saw this discussion continuing once the White Paper was published, culminating in debate in the parliament. The key questions he wanted the public to consider were “*What shall we do to help these people? What shall we do in order to help them back to the society?*” He believed that by consulting the public they ensured support for the direction in which they wished to go. There was already support for a non-punitive direction

from “some environments”, such as “lawyers, people in the university...among professionals”, but he said he was surprised that a recent Gallup poll indicated that the general public thought likewise, believing rehabilitation was the most important aspect of imprisonment. He had expected it would have been “revenge or something like that”.¹²⁵ Politically, he expects the populist right-wing Progress Party will continue to take a tough-on-crime line, but there may be some support from the main opposition centre-right. The Deputy Minister seemed very conscious that the way the White Paper was presented was critical, saying he believed they would succeed if they told the public

...that our main concern is the safety of the community...that's really our main concern, and to reach that goal it's really necessary to have this talk about rehabilitation. I think if we succeed in presenting our message in a good way, I think we will... have a good discussion about it. But if we do not succeed in doing that, I think we'll have a discussion about being soft on crime.

Terje Moland Pedersen saw his previous role as a policeman, in which he worked for some 20 years until the mid 1990s, as giving him an advantage in this debate. He felt he could justly argue that he knew who the criminals were.

While these comments might suggest a general bi-partisan approach around non-punitive policies, in relation to the main parties at any rate, the political context is not a total opposite to the penal populism Garland (2001) describes. Two events recounted in interviews are illustrative of a more mixed political atmosphere. The Governor of Bastøy Prison, Øyvind Alnaes, noted that some politicians recognise that over-heavy punishment can be counter-productive and described a recent incident:

We have a Minister¹²⁶ now...there was one guy who got leave from an open prison, and they found a dead body in his car. So, some media started the discussion should prisoners have leave from the prison at all? And he stood up and said “yes”, they are going back to the community and

¹²⁵ This finding resonates with Young's observation, when reviewing Garland (2001): “I have lived all my adult life in the inner city and have never encountered such a punitive middle class” (2002, p.237).

¹²⁶ It is not clear whether Øyvind Alnaes was speaking here about the Minister for Justice, Knut Stoiberget, or his Deputy, Terje Moland Pedersen.

they need to train how to behave. And sometimes it goes wrong, and this was one of the times that it goes wrong...We had some visitors here from England and from Scotland, and they said that could never happen there. That they would have to remove the Minister, it couldn't happen.

However, there have been examples of politicians responding restrictively when some 'scandal', which the world of prisons invariable throws up, arises. Accounts are still given of the response to the escape of a prisoner in 1988 while on a few hours escorted leave on his birthday; he absconded through a toilet window having just finished a meal. Torfinn Langelid, who heads prison education, described what happened:

It was a very well known prisoner who had day release from prison with guards, and he came to a nice place in the southern part of Norway. He had a big dinner with red wine and duck, and then after the dinner he asked to go to the toilet. Yes, of course, and then he went away.

He commented wryly on how a great deal of media attention given to this incident had a restrictive impact for some time, including the tightening of leave conditions: *"The duck and the red wine had a big influence on the criminal policy in Norway in the late 80s."*

Thomas Mathiesen (2003) has written about this same event and others, describing how some in the media created "moral panic" around them. Television did this by treating "a few individual cases as *serials*" and "the cases were given *rich contextual details* in the most titillating ways...Breast of duck and Cardinal red wine were shown on the screen, the Cardinal being poured into crystal glasses on white damask." (Mathiesen, 2003, p.447; emphasis in original) Are Hoidal, Governor of Oslo Prison, noted how the 'queue' had been the subject of criticism in the media. He described as well how an incident highlighted in the media can make the Minister "*go bananas*", but he noted that such occurrences are fairly rare. The Director General also reported that treatment of prison issues by the media was generally reasonable and that much of it was positive. She said: *"It is not only negative, sometimes it is really a help,"* citing a television programme that defended low security in open prisons on the grounds that

prisoners needed to prepare for release. This depicts a more benign political and media setting than Garland (2001) describes and is discussed again below.

3. THE SCALE OF IMPRISONMENT

Table 7.1: Incarceration rates in Norway¹²⁷

Date	Prison population	Rate of incarceration per 100,000
1/9/1983	1,941	47 (a)
1/2/1985	2,102	51
1/2/1986	2,121	51
1/9/1986	2,021	48
1/2/1988	1,951	47
1/9/1988	2,041	48
1/2/1989	2,135	51
1/9/1991	2,510	59
1/9/1993	2,607	60
1/9/1994	2,689	62
1/9/1995	2,395	56
1/9/1996	2,290	52
1/9/1997	2,318	53
1/9/1998	2,519	57
1/9/1999	2,602	59
1/9/2000	2,643	59
1/9/2001	2,666	59
1/9/2002	2,662	59
1/9/2003	2,914	64
1/9/2004	2,975	65
1/8/2006	3,048	66 (b)
9/11/2006	3,300 approx.	71 estimate (c)
2007, unspecified date	3,280	70 (d)
1/8/2008	3,276	69 (d)

Sources: (a) 1983 to 2004, Council of Europe, *Penological Information Bulletin*, nos. 2-26, December 1983 to May 2006; (b) International Centre for Penal Studies, www.prisonstudies.org, on 12/2/08; (c) Kristen Bolgen Bronebakk, during interview; (d) International Centre for Penal Studies, www.prisonstudies.org, on 2/12/08.

This section will examine the first of the three criteria of punitiveness, the scale of imprisonment, in Norway. The pattern of incarceration in Norway for the 25 years

¹²⁷ As in similar tables in Chapters 5 and 6 on Denmark and Finland, the figures of prison population given up to 2004 are those available via the Council of Europe. The dates of such censuses varied, especially in earlier years, but have all been on 1st September since 1991. Figures are missing for some countries for some years, such as 1990 and 1992 in Norway, presumably because they were not returned to the Council of Europe.

from 1983 to 2008 may be seen from the table above. As one would expect, there are some variations in these figures over the years. There is also some upward drift over the 1980s and 1990s, but this is fairly modest overall and generally the rate of incarceration into the early part of this century remained no higher than 60 (with one exception in these figures in 1994). That would indicate a relatively restrained approach to the use of prison. However, in the new century, imprisonment increased significantly (by 23 per cent) between 2002 and 2008, bringing just over 600 additional people into prison.

Explaining incarceration rates

Elements in the explanation of this recent rise would appear to be increased sentences (for certain offences at least), a greater number of sentences and the reduction in the 'queue'. There is evidence of each of these three elements having some impact on the prison population, at least in certain years. Early in the decade, penalties were increased "for serious sexual, violent and economic offences", although it is noted that "these are low volume offence categories in relation to imprisonment rates". (Lappi-Seppala, 2007b, p.258) Kristoffersen notes that the average number of sentenced months in prison between 2001 and 2005 rose from 4.5 to 5.5 (peaking at 5.6 in 2003), a rise of 22 per cent. (2007, p.17) Prison capacity also increased by 13 per cent between 2001 and 2005 and so facilitated at least some of the extra numbers. (Kristoffersen, 2007, p.21)

These developments would appear at first sight to look like the classic results of increased politicisation and populism associated with the culture of control. Yet, as will be seen later in the chapter, while interviewees recognised traces of these features in Norway, they appear, by comparison with some English-speaking countries, to be fairly weak phenomena. There have been strident calls for harsher sentences from the populist Fremskrittspartiet (The Progress Party), but this party, unlike its counterpart in Denmark, has thus far remained marginalised from power and, it appears, is not considered a plausible partner for government by any of the likely coalition combinations. This does not mean, of course, that

such calls for greater toughness do not have some impact on the mainstream parties, although the approach of some key politicians would appear to be one of taking on board some of the language of the culture of control but not necessarily the policies of that phenomenon, as will be seen in examining the new White Paper. Tapio Lappi-Seppala suggests increased resources for, and greater efficiency among, the police and courts services were factors in the increased imprisonment. (2007b, p.258)¹²⁸

In more recent years, the determination to reduce the 'queue', those given short-term sentences waiting to commence imprisonment, has undoubtedly had an effect on the prison population. Although an average of 1,588 for the year ending 2000 (Kriminalomsorgen, 2002, p.7), the queue had reached about 2,500 in November 2006 (interview with Director General). However, the queue had fallen to under 1,500 in September 2007 (conversation with Director General, Hurdalsjoen, September 2007) and was little over 800 in May 2008 (interview with Deputy Minister for Justice). Since most of these delayed sentences are short ones, it is difficult to quantify the extent to which the deliberate policy of reducing the queue was responsible for the increased population, but the views of the Director General and the Deputy Minister for Justice were that this strategy was significant. It will be recalled from the chapter on Denmark that a somewhat earlier policy decision there to eliminate the queue had given rise to a fairly dramatic swelling of the prison population, which reached a peak in October 2005, but this high point was then followed by a significant falling off as the surge of such short-term imprisonments abated.

In the Garland (2001) scenario, imprisonment rates escalate sharply as prison is seen as a measure of earlier resort rather than of last resort. This reflects a belief that 'prison works', thus negating the idea that prison has 'detrimental effects'. Kilcommins et al speak of this as 'the primacy of imprisonment'. (2004, p.30) In asking whether this is what unfolded in Norway, it is notable that the scale of

¹²⁸ Lappi-Seppala wrote that he was drawing on personal communication with Ragnar Kristoffersen for this information.

imprisonment rose fairly sharply in the early part of this decade, but it has begun to decline a little since then. Some of the rise seems attributable to more and longer sentences, both features of the 'new punitiveness', but a major part of the increase would appear to arise from efforts to eliminate the queue, and whether this is a sign of punitiveness or not is a matter of debate.

The pressure to reduce the queue was certainly political, according to several interviewees. Oyvind Alnaes, Governor of Bastoy Prison, took the view that the abolition of the queue indicated a new intolerance – he clearly saw the fact that people had to wait until a prison place was available, or indeed until a time that suited the sentenced person, as a very civilized way of managing things and implied a respectful way of seeing the person due to go to prison. He said:

Politicians will say that it is terrible to have criminals in a queue. You have to put them behind bars at once. But you can see it in another way... if you can have criminals waiting to get in prison, they cannot be so cruel or dangerous if they can go and wait to get into prison.

In this analysis, the queue is a positive sign for society, implying an acceptance that these 'criminals' can be treated reasonably, and trusted in some ways at least. The rejection by politicians of the queue may be based on a changed perspective of such people due to commence short sentences, demonising them a little perhaps or at least painting a darker picture of them. So, the elimination of the queue can, in this analysis (which was also shared by Nils Christie), be seen as a punitive move, but it is hardly enough to convict Norway of taking a punitive turn. At most, it represents a trace of punitiveness.

The idea that the population rise was temporary due to the queue being eliminated was certainly the view of the Director General, Kristen Bolgen Bronebakk, who said in interview that, once the queue had been eliminated, the prison population could be brought down again, she hoped to something like a rate of 60. In the meantime, she thought the rate of detention could go as high as

80 for a while.¹²⁹ Further, while the Deputy Minister for Justice, Terje Moland Pedersen, did not wish to quantify the future prison population he thought likely, he expressed a commitment, which he said would be incorporated in the White Paper, to reduce the prison population substantially. (Interview, 22/5/08) That White Paper, which was issued in the autumn of 2008, envisaged greater use of alternative to custody, more early release and a reduction in the usage of unconditional sentences by 50 per cent. (Norwegian Ministry of Justice and the Police, 2008)

Prison as a last resort?

As was expounded in earlier chapters, two critical and related concepts underpin prison minimising approaches in penal policy, and each of them is at the heart of the European Prison Rules (Council of Europe, 1987, 2006), as well as widely reflected in official Nordic documents on prisons: the idea that prison be used “as a last resort”, and recognition of the “detrimental effects” of prison. Clearly, both of these ideas are challenged by the ‘prison works’ approach so characteristic of ‘the culture of control’. In gathering data for this thesis, all interviewees were asked about the application of such concepts in their countries. (See survey questions, Appendix B). Thomas Mathiesen pointed to pre-trial prisoners and many who had drug problems¹³⁰ as groups for whom he thought prison was an early, rather than a last, resort.

When asked whether Norway used prison as a last resort, the Director General said: *“We still have a way to go and that’s what we’re trying to do right now, and our new Ministry is also putting pressure on us to try to do that...we are trying to get the numbers down.”* Kristen Bolgen Bronebakk told how there are efforts to expand alternatives to prison such as electronic monitoring, greater use of fines for minor offences, more community sanctions and the possibility for those with drug problems to serve their sentences in treatment institutions. So the ‘last

¹²⁹ Such a substantial rise has not happened to date.

¹³⁰ There was a presumption among those interviewed generally that between 60 and 70 per cent of the prison population had drug or alcohol problems.

resort' ideal would appear to be accepted in principle, even if it is also recognised that the practice falls somewhat short. Although Norway's prison population has risen in recent years, as described earlier, there appears to be a strong official determination, expressed by the Director General and Ministers for Justice, to bring the numbers incarcerated down, notwithstanding the fact that a relatively small minority are receiving longer sentences for serious offences. Already there appear to be fewer in prison nowadays for offences such as drunk driving than there were in the 1990s and early 2000s. In particular, the desire now seems to be to have fewer of the more minor drug offenders Thomas Mathiesen spoke of in prison.

Terje Moland Pedersen, the Deputy Minister for Justice, acknowledged "*some increase in the number of people*" in prison "*in the last four or five years*". He attributed part of the reason for this to longer sentences for "*rape, child abuse, different kinds of violence*". He also believed there had been an increase in the number of people from other countries committing crimes such as burglary who serve sentences and are then deported. However, he said: "*We would really like it [the prison population] to go down. That's definitely a goal.*" His thinking, and that in the White Paper, appears to be prepared to consider the great bulk of those sent to prison for alternative sanctions, at least for part of their sentences. He also envisaged the majority of sentenced prisoners serving their time in open prisons (as happens in Denmark currently).

The Deputy Minister said the focus of the White Paper was on "*how we can reduce the use of prison, and use other types of sentences, [such] as community sentences, drug programmes, alcohol-related programmes, a lot of ...programmes to try to rehabilitate*". Terje Moland Pedersen saw these alternatives expanding greatly in the coming years, saying there had been good evidence in Norway that such penalties lead to lower re-offence rates than if prison is used. He highlighted the high number of short-term sentences in Norway. Although the prison population was then close to 3,500, some 12,500

sentences were served in a year, and he felt these short sentences would be particularly appropriate for replacement by sentences in the community. He mentioned drug offences and thefts as examples of those considered for alternative sentences. The number of children under 18 who spend time in prison in Norway is low by international standards (he mentioned 41 in the course of a year¹³¹) but there is a clear wish to reduce that number further. He said of these youngsters in Norwegian prisons:

Some of them for very serious crime, also murder. So it's a challenge, but still we think that people under 18 should not be in prison. But we don't mean that they should be on the street. You have to find some alternative, that might be another house or something like that, but not with older criminals.

By Nordic standards, there would appear to be a good deal of scope for Norway to expand its alternatives to prison. Kristoffersen (2007, p.19) notes that in Norway only 40 per cent of sentences are dealt with via probation, which contrasts with 70 per cent in Sweden, Denmark and Iceland, and 55 per cent in Finland.

The published White Paper points the way towards fulfilling the promise of reducing numbers and depth. The overall thrust of the document is that there should be fewer sentences served in prison, especially the short-term sentences of only a few months. There is recognition throughout of the “harmful effects of loss of liberty” (Part 2)¹³², and that restrictions in prison should be kept to a minimum (Part 3). Consequently, “extended use of leave” is proposed (Part 3), having earlier noted that the prison service is “in many cases more restrictive than necessary” in granting leave. It is stated that: “The Minister will to the greatest extent possible make use of alternative reaction and penal implementation forms.” (Part 3) Thus, there is likely to be more use of community service, split sentences and “detox programmes under court control” to replace prison sentences. (Part 3) The “think-tank of professors and artists” are quoted,

¹³¹ This compares with 247 in prison in Ireland during 2007 (Irish Prison Service, 2008).

¹³² No page numbers are given in the English summary. This report is set out in five parts, so these parts are referred to instead.

apparently with approval, as saying that: “It should be a paramount goal to reduce the use of unsuspended prison sentences by 50 per cent.” (Part 5)

The figures given above in Table 7.1 show substantial increases in prison numbers in recent years, but also some more recent signs that the prison population has peaked and may have started to drop again. There may be good grounds for expecting the recent swelling of prison numbers to be a relatively short-lived phenomenon, much as Denmark and Finland has surges in prison population for a few years that then abated. The policy of seeking the elimination of the queue would seem to be a large factor in the rise and, if this is so, then it is likely that this particular pressure will taper off, as it did in Denmark. Most importantly, the clear policy position at both political and administrative level now is to find alternatives to prison and to reduce prison numbers. Intention and what happens in relation to such objectives are, of course, notoriously different matters, as both Nils Christie and Thomas Mathiesen pointed out in interview, but at least one can say that the Norwegian situation hardly amounts to one of “mass imprisonment” and the country cannot be charged with punitiveness according to the first criterion.

4. THE CHARACTER OF NORWEGIAN PRISONS

Three prisons were visited in Norway between November 2006 and May 2008: Oslo, Bastoy and Tromsø, and these will now be described ahead of an examination of the depth of imprisonment. Oslo, the largest prison in Norway with 392 prisoners, is also one of the oldest. Bastoy is an open prison for 115 prisoners on an island south of Oslo, in which activities and attitudes are built around ecological principles. The Governors of both of these institutions were interviewed for this thesis. Tromsø, in the far north of Norway, combines closed, open and half-way house elements for a total of 73 prisoners. At the time of the visits, the prisoners in all three of these prisons were men, apart from two women in Tromsø. Some prisons or parts of prisons in Norway, such as Ringerike and Ullersmo, have reputations of being more restrictive than any of the three visited,

but otherwise the descriptions to be given below may be taken to represent at least the varied security levels of Norwegian prisons.

Oslo Prison

The original part of Oslo Prison was built in 1851 along the lines of the 'Philadelphia' model, but it has been added to since then, including the incorporation of the brewery next door, so that it is now a great jumble of buildings with 392 prisoners. 'Outreach' buildings include the women's section at Bredtvedt, and Sentrum, a post-release facility. About one-third of the prisoners are 'pre-trial' and are housed in 'Oslo B' (including about 30 young men who are under 21 years), while the 'Pathways' building within the prison is dedicated to pre-release preparation. Oslo has both long and short-term prisoners; it has more recidivists than most prisons and a high proportion of prisoners have drug and/or alcohol problems. A breakdown of the sentenced prisoners by main offence was given as: 145 for drug offences, 95 for robbery or theft, and 14 for murder or manslaughter. When visited in November 2006 it held 47 different nationalities. It is, then, in its headline characteristics at least, not unlike many prisons located in or near the centres of large cities across Europe.¹³³

For such a genre of prison, however, Oslo had several impressive qualities, including strong educational, drug treatment and pre-release support. In this it was probably aided by a high staff to prisoner ratio, with the total of all staff being greater than the number of prisoners. Although most parts were old, sanitation was modern and the prison appeared clean. Out of cell time was 13 hours for most prisoners (7am to 8pm), but only about four hours for pre-trial detainees. Nils Christie spoke positively of the prison compared to previous times, noting that in the past it had been a place with a great deal of "*banging of doors*" by day and night. He said:

¹³³ In many respects Oslo brought to mind the Mountjoy complex in Dublin, which dates from almost the same time and is a similar mix of facilities for adult men, women, juveniles and segregated groups, and also has a pre-release section at the Training Unit. Most of all, the client profiles seemed remarkably similar in both locations and, despite some very old buildings, in both places the atmospheres are relatively relaxed.

It is now much more decent silence, and people can sleep through the night. I met people who were desperate because they couldn't sleep in such a hell of a night. So that material element has probably meant something... My feeling is that this is a very good prison, actually. A very human prison Director [Governor] doing his utmost, his utmost, to establish good standards. We have a layer, second in command, who are more from the old time, but then with prison officers at the ground level who are also very civilised.

He said that, several decades ago,

*...there was a lot of relatively brutal, physical confrontations... but my feeling is that there is considerably less brutal day-to-day interaction, partly related to the fact that there are so many females now. I think that the majority in the school for prison guards, prison officers, are now females.*¹³⁴

Oslo Prison, and its Governor, Are Hoidal, have also been to the forefront of 'change management' within the Norwegian prison system, but by using a strategic management approach that stresses qualitative aspects and takes a holistic view of prisoners.¹³⁵ Known as a 'Balanced Scorecard' method of management, it seeks "to prioritise goals and find a balance between all the guidelines and indicators that have to be followed". (Bleiklie, et al, 2003, p.38) Thus, considerable effort went into improving the lot of the isolated pre-trial prisoners at Oslo, including detailed surveys of the prisoners' views and ideas.

Bastoy

Bastoy is a sizable island in a fjord about an hour by train, bus and boat south of Oslo. The island is entirely given over to use as an open prison for 115 prisoners, who work in farming, forestry and building restoration, as well as following a range of courses. It is important as an example of an open prison, given that about a third of Norway's prison population are in open institutions at any one

¹³⁴ Bleiklie et al (2003) would seem to confirm much of Nils Christie's analysis:

"Three decades ago, there were almost no female employees inside the prison walls, except for some female nurses. Today, most prisons employ female guards, and this has together with the personal contract [sic] officer policy resulted in a reduction of the 'old boys network', in which male guards can 'overprotect' each other. 'Female guards bring different norms and values into our system', one of our respondents remarked." (Bleiklie et al, 2003, p.39)

¹³⁵ Presentation by Are Hoidal, 2006.

time. It is also important in that its philosophy has been praised by the Minister for Justice (Fouche, 2006) and it is highlighted in the new White Paper as the kind of regime that should be replicated elsewhere. So, Bastoy too would seem to be at the cutting edge of where the prison system is going. It has high quality accommodation and an exceptionally scenic setting, but this pen-picture will focus on that 'philosophy' which is receiving so much official backing.

Stressing that Bastoy is shaped by ecological principles, "*the first human ecological prison in the world*", the Governor, Oyvind Alnaes said:

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. It's like... when you have a wheel with cogs going into each other. If one of those is missing, it doesn't work. And all those cogs are present in the programme. 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 to raise it and to show it in an exhibition... That's what we're doing. And this is teaching and training responsibility in action... and teaching empathy. Yeah, and work with their feeling.

Such a holistic approach is clearly a very different way of attempting to teach responsibility than in the Canadian-style behaviourist 'programmes' discussed previously with their narrow focus on the criminogenic.

The Governor further explained the philosophy of this prison:

It doesn't matter what you have done. It matters what you are thinking to do tomorrow, or for the rest of your life. So that is one of the reasons that we have all kinds of sentences here. We have from six months to 21 years. And 21 years is the longest sentence you can get. And we try to run the prison according to human ecological principles or values. It means we have a deep respect for humans and indeed for nature. And human ecological thinking is about what you do to the people around you or the nature around you, you actually do to yourself. If you want people to be kind to you, you have to show kindness to them back. If you want nature to give you clean food, you have to run the agriculture department without poisons and so on... It's not enough to give him just education or give a

drug programme, we have to work with basic values, basic attitudes...Our goal is to make them ordinary citizens. So we also use the human ecological approach to teach them responsibility, but also to create an interest in working, an interest in being together with other people, to get educated, to take part in the working society.

The Governor contrasted the atmosphere and environment within which he and his staff work in the open prison of Bastoy with the other extreme within the prison system, such as the high-security units within prisons like Ullersmo and Ringerike. In such units, the seven or 14 prisoners held in each of them have restricted space, activity and contact with others. He said prisoners in those high-security places only speak to staff when they need something and talk to each other about what they have in common, “*drugs and criminal acts*”. Such an environment is not conducive to changing behaviour, he believes:

If you live under conditions which are very harsh, and you are not able to talk to your family for more than 20 minutes a week, not able to meet your son for more than one hour a week, you are locked up in a small room and you are together with other criminals all the time, I think the staff members will, in a way, become the enemy, those are the people who are doing all these negative things. They will check you, they will visit your room, they will strip you naked to check you out...It's easier I think in an open prison to have a good dialogue. Because we don't have all those control activities. And it's easier for prisoners to open their ears and to hear what we are actually saying.

Both the Director General and the Deputy Minister for Justice were explicit in interview that there should be no increase in these restrictive regimes and they would seem to concur with the Governor's criticism of the punitive approach:

If you treat people bad, you teach them how to be bad...So, I cannot understand why this approach is so strong in the United States and in England, that we have to punish harder. And that they really believe that the people they deal with should be nice guys after we have been treating them like dirt...this thinking is so hard and do people really believe it?...It's unbelievable that people think that you can change behaviour that way, treating them like that.

Tromsø Prison

While Oslo and Bastoy prisons can each be seen as unique in different ways (although both are significant ‘outliers’ that tell much about the prison system),

Tromsø can be seen as much more typical of Norway's 49 prisons. With 73 places it is much closer to the average prison size; its regional character is also more representative; and in its combination of closed, open and half-way house settings, and its inclusion of some women in a preponderance of men, it incorporates in one institution many of the key features of the overall system. There are 39 prisoners in four sections of the closed prison, including 10 places for remand or pre-trial prisoners; this building was thoroughly renovated and reopened in 2004. The other part is new, built in 2003, and houses 34 prisoners, 20 of them in a conventional open regime and 14 in a half-way house (from where they go out to work, education or training by day). It has people doing the full range of sentences from short-term to life, nearly all of whom have links with the Arctic locality.

In the closed section, prisoners are out of their cells for 12 hours per day; they make their own breakfasts and lunches in their sections (each of which houses between seven and 12 people) and have dinners delivered to them in their dining areas from the main kitchen; they look after their own washing using conventional domestic machines in these areas. The closed part has a sizable outdoor recreation space with a soccer pitch that is almost full size and a volleyball court; there is a high-quality indoor sports hall which doubles as a performance area with its drop-down stage. There are more staff overall than prisoners in the closed section, including teachers and medical staff, but staffing is less than half that level in the open section, as is common in other prison systems. Prisoners are engaged full-time in work (such as in metal workshops) or education, or in a combination of such activity. For the whole prison there are 4.3 wholetime equivalent teachers and a similar number of medical staff, including four nurses whose main work is with drug problems. The Deputy Governor, Siri Gaarder Brock-Utne, spoke of between 60 and 70 per cent of her clients having drug or alcohol problems, but she noted that in a recent testing of all prisoners they found no positive results. Normally the prison will do one or two random drug tests each day.

5. THE DEPTH OF IMPRISONMENT

Having provided some tangible sense of prisons above, this section will attempt to judge the depth of imprisonment in Norway. It will do this by drawing on these concrete examples, as well as on other features of the prison system sketched earlier. It will also examine some of the thinking that affects the 'quality' of imprisonment, and the intentions for the future content of imprisonment.

Prison conditions

As noted in Section 2, conditions for most prisoners in Norway (some pre-trial detainees aside perhaps) are good relative to most other countries. This is illustrated by an average of 13 hours out-of-cell time for sentenced prisoners, a strong range of activities such as work or education, and little of the substandard sanitation that characterises many systems. A shallower level of incarceration is also evident in 32 per cent of all prisoners (or about 40 per cent of those sentenced) at any one time being in open centres. There are quite restrictive regimes in at least parts of some prisons such as Ringerike, Ullersmo and Skien. A CPT report based on a 2005 visit states that "material conditions were generally of a high standard", but it noted some exceptions such as six women at Trondheim not having access to a lavatory at night and "particularly bleak" or "extremely limited" parts of Ringerike Prison. (Council of Europe CPT, 2006b, pp.30-32)

Several management interviewees spoke of the great majority in prison requiring limited or less security, but of a minority, variously put at 10 or 20 per cent and seen as part of organised crime, requiring strict or stricter regimes. The Director General spoke of a need to differentiate more between types of inmates, suggesting "*a stricter regime*" for "*the organised crime group*", who are clearly seen as quite 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 enhanced arrangements for most prisoners.

As in Denmark, prison leave has been reduced in recent years but remains considerably better than in most other countries, as details provided below will indicate. Moreover, as the example relayed earlier by the Governor of Bastoy makes clear, present Justice Ministers are prepared to defend leave even when things go wrong. Further, the recent White Paper indicates that leave is to be expanded, saying that the Norwegian Correctional Services, in seeking to reduce risk, are “in many cases more restrictive than necessary. Figures for absconding during prison leave are very low”. (Part 2)

Despite recent curtailment, prison leave in Norway is more substantial than elsewhere. The major cities have halfway houses from which prisoners go out of prison to work or education during the day, as was seen at Tromsø. In addition, prisoners normally get home leave after serving one-third of their stated sentence, which would usually be half way through the actual time to be served.¹³⁶ The norm then is 18 days leave per year from a closed prison and 30 days from an open one, although prisoners will often transfer from a closed to an open institution at the one-third point. The granting of such leave is dependent on behaviour. Prisoners pay for travel home themselves¹³⁷, which often involves the taking of flights, given Norway’s extensive terrain. Travel time is not counted as leave.¹³⁸ The Director General said that about 25,000 leaves were given in 2005; less than 0.5 per cent defaulted, including late returns.

¹³⁶ However, a positive urine test means four months without leave.

¹³⁷ 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.

¹³⁸ This information about leave and payment was provided by the Deputy Governor of Tromsø Prison.

Punitive tendencies

The restrictive changes in remission rules arising from The Execution of Sentences Act of 2002 are more contentious than the leave changes and stronger evidence of a punitive tendency. Previously, as in most prison systems, remission was almost always granted when due; in Norway this is at the two-thirds point of sentence.¹³⁹ The Director General explained: *“In the old days I think it was almost always automatic. It is no longer automatic.”* She said that, of those eligible to apply for remission, 25 per cent will not now get released at the two-thirds stage. She had looked at what happened in 2005 to those due for consideration for release with sentences longer than six years, and none of these stayed in prison for the “full-time”, although a number of them were released between the two-thirds point and “full-time”. Asked to explain the basis on which prisoners may now get or be refused release at the two-thirds point, she said:

You try to look at the whole situation. I have tried to point out that good behaviour in prison, during your time, is not always the best indication of the risk for criminal activity... you look at what the person has done before and what friends he is still keeping in contact with. It is the total picture that we are trying to consider.

Torfinn Langelid, the Senior Education Adviser, was very critical of this change:

That’s very very contentious, because before this new Act, the prisoner could normally be released when they have the sentence two-thirds served, and maybe between half and two-thirds. And it’s much more difficult today than before, and that’s a kind of – why should it be like this? – it’s a kind of revenge. It’s a kind of punitive reaction. It’s very difficult to understand the reason.

He also felt that, in the eyes of prisoners at least, programmes like cognitive skills counted for much more as ‘good behaviour’ that might ensure release than participation in education or work.¹⁴⁰ Nils Christie also criticised the fact that release at the two-thirds stage, almost always automatic previously, now depends so much on behaviour. He said: *“That is a terrible weapon in the hand. And it might very easily lead to a lot of falsification of behaviour,”* of pretending to reform. He remarked: *“You have in a way to prove that you’ve improved.”* He

¹³⁹ Remission is not applicable to those with sentences under 80 days.

¹⁴⁰ Governor Hans Jurgen Engbo made a very similar criticism in relation to remission changes in Denmark.

saw the discretionary aspect of release that has now been introduced as a reintroduction, in a fashion, of indeterminate sentencing, against which penal reformers had so successfully campaigned in the 1960s and 1970s in the Nordic countries.

Nils Christie's perspective on the remission issue is linked to a wider criticism of efforts in prison to moderate behaviour. He said: "*We have all the influence from Canada overwhelming us. I'm thinking of all the treatment programmes...I'm extremely suspicious. And I'm resisting.*" Others too, notably Oyvind Alnaes and Torfinn Langelid, were sceptical, at the least, of cognitive behaviour based programmes discussed in Chapter 2 and criticised by Canadian writers, Moore and Hannah-Moffat (2005) and Duguid (2000).¹⁴¹ Nils Christie, who said "*The Canadians have invaded the whole area, both in Denmark and here,*" was likewise critical of the risk-assessment tool, OASYIS: "*This new system where all prisoners shall be interviewed for hours, so that you know everything about them. And thereafter you shall be able to decide what sort of prison they should be in and what sort of treatment they should be under, etc, etc.*"

However, from a situation where they were once apparently prioritised among the activities available to prisoners (as reflected in the 1998 White Paper), offence-focused programmes now appear to be generally regarded more as one possible 'offer' among others such as work and education. There appears, from comments made by the Director General and others, to be a situation now that is closer to equal treatment among regime activities, as stipulated by the European Prison Rules. Moreover, unlike the Canadian Federal system as described by Duguid (2000), the 'programmes' have never come to *displace* other activities like work or education in Norwegian prisons.

The remission question and the narrowing of perspective associated with offence-focused initiatives are perhaps the only strong indications of punitive

¹⁴¹ The former authors say of their country: "The liberalism of Canadian punishment is a veil underneath which remains an extremely punitive system," even if it "offers a different kind of punitiveness." (Moore and Hannah-Moffat, 2005, p.97)

tendency in the overall system. The latter outlook is undoubtedly fading, replaced by more holistic and socially-inclusive perspectives, as the next section will make clear. Such punitive elements need also to be set against the more benign features noted earlier. A further reputed quality of Norwegian regimes merits discussion, that of the role of prison staff.

The role of prison staff: 'from guard to social worker'

Asked to identify the strengths and weaknesses of the prison system as she saw them, 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:

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.

Certainly, nothing in the three Norwegian prisons visited for this thesis would give rise to a questioning of that statement; the atmospheres and the relationships seemed good. Likewise, following visits to three different prisons (Ila, Trondheim and Ringerike), the CPT stated: "In general, relations between staff and prisoners were relaxed; at Ila Prison in particular, they seemed to be constructive, and many prisoners met by the delegation spoke favourably of the staff." (Council of Europe CPT, 2006b, p.27)

Prison staff are well trained, their training of third-level quality and duration. More critically, the role envisaged for them is strongly 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". At Oslo Prison, the Governor and his deputy spoke for a considerable time about the prison officer's role, especially that of 'personal officer' (sometimes 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. The Deputy Governor, Tom Eberhardt, spoke of 'human contact' being the 'main value' in their prison.

Echoing a similar theme on Bastøy, the Governor, Oyvind Alnaes, said: *"People can change behaviour. We believe that if you treat each other with respect, they will treat you with respect back."* He described how every Tuesday a quarter of the staff have an "education day", so that everyone takes part in such a day once a month – *"Every staff member from the cleaning lady to the governor have one day of education every month, together. To build a common basis on values and attitudes."* They also have joint seminars of prisoners and staff, usually involving a university or other speaker – *"all staff members and prisoners together. We are 200 people in the community"*. The topics for these joint seminars can vary greatly: *"Like training and drugs, sexual abuse, how to treat violent offenders. How should we have a better dialogue in this prison. I have had a topic on human ecological thinking. We try to change them, to teach them our philosophy."* At times, prisoners have led these seminars, as well as staff. At the Minister's request, such seminars have now been developed in other prisons. Kristen Bolgen Bronebakk, the Director General, gave an example of respectful relationship from Stavanger Prison, where the security is much higher:

You know, this week I read a report regarding the situation of a group of prisoners who are considered to be rather dangerous. And I noted their choice of words in that report. They do not speak about the risk. They use words like "oh, he seems to be having a very hard time at the moment."

That is certainly language closer to that of a social worker than a guard, and it reinforces a sense that penal welfarism remains the dominant outlook in the Norwegian prison system.

Underlying paradigm

All three criteria of punitiveness are affected by the underlying thinking or 'philosophy' of those who shape prison systems. Thus 'humane neo-classicism' restrains the scale of imprisonment in Finland, and principles such as

‘normalisation’ and ‘openness’ ensure shallow regimes in Denmark. In all three countries studied, human rights-based and socially-inclusive attitudes, related to the universal welfare state, counteract the stereotyping of prisoners typical of the ‘culture of control’, and this aspect will be explored in relation to Norway in the next section. In Norway, penal welfarism in its various forms was clearly identifiable in the thinking of both the administrative and political leadership of the prison system, and this lay behind much of the restraint on punitiveness in relation to the depth of imprisonment in particular. This quality will now be illustrated.

The Director General, on being questioned about the purposes of imprisonment as she saw them, seemed keen to widen the focus and emphasise prisoners’ needs for help in a multitude of ways, in prison and upon release:

I think if you look at what society’s expectation is of corrections, it is the protection of society for the duration of the sentence, to prevent further criminal activity in that period. And it is to offer activities and treatment programmes so that if the person responds to that they have a better chance for law-abiding lives in the future. And prison should be bearable. You have all three [purposes] in the second paragraph of our Act.

Recognising the detrimental effects of imprisonment, she stressed the third aspect:

The third one is really quite important, that prison shouldn’t be unbearable, because you will have a number of people who don’t have the potential to change...who are actually unable to change and it should not be made worse than necessary...That third aspect is often overlooked actually.

Clearly, in seeking to combine roles for prisons in offering protection, treatment and tolerable conditions, she reflects a penal welfarist outlook, rather than a ‘prison works’ point-of-view. Her subsequent comment that “*we have enough of the locks and gates and cameras...we need to have more activities*” suggests a general desire for less punitiveness and more constructive regimes.

The aim of the Director General and the Deputy Minister of Justice to reduce the prison population was noted in Section 3 above. Underlying the determination to

reduce numbers was a general acceptance that prison had ‘detrimental effects’ – even though this idea, in contrast to other Nordic countries, seems not to be very explicit in Norwegian policy documents until recently. Detrimental effects are well recognised in the 2008 White Paper, however, which speaks of “the documented risk of the harmful effects of loss of liberty”. (Part 2) A Ministry of Justice official saw the damage of imprisonment mainly as “*losing contact with your network, your family*” and the fact that, in prison, “*you are totally institutionalised, that you lose control over your life*”. The Governor of Bastøy Prison believed the negative effects to be far stronger in closed than in open prisons – “*big closed prisons, they are more like criminal schools than rehabilitating institutions*”. Such thinking would appear to be generally accepted, given the Director General’s expressed wish that the proportion of places in open prisons be increased further, an aspiration also reflected in the new White Paper. Thinking such as this, seeking to minimise both the use and impact of imprisonment, is clearly the very opposite to what Garland calls “the reinvention of the prison” (2001, p.14), or “the primacy of imprisonment”, as Kilcommins et al put it (2004, p.30).

Stressing a theme to be highlighted in the White Paper, the Deputy Minister for Justice said:

If you are going to court, I think it’s necessary to have some kind of social report. What we are trying to create is some kind of a line between what’s happening before going to court, what’s happening when you are in prison, and...what is a very difficult time just before and after you are released from prison.

This emphasis on ‘throughcare’ is significant and strongly suggestive of a penal welfare approach. The idea that a ‘social report’ is to be considered by the court prior to sentence contrasts with the versions of ‘just deserts’ and ‘sentencing reform’ in much of the USA, which virtually drains background social factors from judgements that are restricted by detailed guidelines. According to Christie, these developments in the US have “eliminated the whole question of social justice” (2000, p.158) and led to the “depersonalisation of the offender.” (2000, p.160)

Clearly, Norway appears determined to keep to a different road, holding the social dimension to crime and punishment firmly in place.

The Deputy Minister was quite explicit at several points in distinguishing the way his government wished to go on penal matters from what was happening generally elsewhere in Europe. When asked to assess the strengths and weaknesses of Norway's prison system, he stated that he saw the main weakness as a failure to do enough in relation to rehabilitation; he saw the main strength as the competence of services such as education. He picked up on the rehabilitation theme again when asked what would be the most important things in the forthcoming White Paper. He said:

I think the most important thing about the White Paper is the goal of it, that everything we are doing helps...[in] preventing new crime...In other words, we have said that the main issue is rehabilitation, to try to reintegrate criminals into civil society. And that's the main challenge that we're trying to reach, to solve, in this White Paper...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 general priority given to rehabilitation over security would appear set to have major impact also on the depth of imprisonment. When asked about the escalating emphasis on security in many prison systems elsewhere, Terje Moland 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. Because I think, at least in Norway, we cannot imagine that someone will come to use force to release them from prison...I can't imagine [who] in the prison today should have such high security. 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 Bastøy:

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.

These points would seem to imply a very clear and conscious decision to refrain from increasing security in the way the Swedish system, among others, has done. Stating, moreover, that most prisoners should be held in 'lower security', or open, prisons further suggests that Norway is turning more in a non-punitive direction in relation to the depth, as well as the scale, of imprisonment.

6. THE REPRESENTATION OF THE PRISONER

In turning now to an examination of the third criterion of punitiveness, the representation of the prisoner, it will be seen that there is considerable overlap with the subject matter of the previous section. Clearly, how people in prison are seen is closely linked with how they are treated. This link is evident in the 1998 White Paper, which speaks of a capacity in the prison system to switch "from normal to high-security level regimes", this being necessary to deal with "increasingly tough and professional criminals". (Kriminalomsorgen, 2002, p.7) That White Paper will be critically examined in this section, in particular because it is one of the strongest examples in Norway of a narrowing of focus from 'the whole person' to the 'offender', noted earlier as a strand of punitiveness. Other indicators of the perception of the person in prison, within the prison system and society, will also be explored. Some of these run counter to the 1998 White Paper and envisage the prisoner more inclusively and holistically, and as a citizen.

The 1998 White Paper

Some interviewees contrasted the 1978 White Paper, described in Section 2, with the one that came 20 years later, among them Torfinn Langelid, who saw

the 1998 one as “*written by the bureaucrats in the Department... [In the 1998] White Paper, they focus much more on the prisoner himself... you as a prisoner have to take much more responsibility.*” Later he said:

When we look back on this White Paper from 77/78, there is a big chapter about the social conditions of the prisoners. The problems of work, education, all the poor backgrounds that they have, and they are explaining this because that's important to take into account when you are discussing criminal policy... Because when you focus much more on the prisoner's responsibility, then it's easier for the government and the authorities to say “it's up to you”, it's not so important what the government and the officials are doing.

The Norwegian Prison and Probation Service produced a short summary in English of the 1998 White Paper (Kriminalomsorgen, 2002). It does tend to bear out some of these points. The 1998 document led to regional reorganisation in 2001 and to a new law for the service, The Execution of Sentences Act, which came into force in March 2002. The ‘short presentation’ on that White Paper in English set out the “key points of emphasis and development”, the first five of which are:

- More focus on the personal responsibility of the offender himself
- Individual approach regarding security, control and rehabilitation programmes
- Development of a variety of rehabilitation and supervising programmes
- Community service work to be combined with supervision programmes and behavioural training
- Quick and firm reaction when breach of conditions (Kriminalomsorgen, 2002, p.2).

There follows a detailing of the ‘values’ and ‘principles’ on which the Prison and Probation Service is seen to be founded. Some of these reflect what might be seen as traditional Nordic thinking, or the kind of perspectives incorporated in the European Prison Rules: humane enforcement, human rights and equality, satisfactory living conditions and activities, and regard for “the needs and the total life situation of the convicted person”. (Kriminalomsorgen, 2002, p.3) Imprisonment, the document says, will continue to be enforced via “the present framework...i.e. release on parole, serving in open establishments, temporary release for studies and work, leaves, visits, etc” – but there is to be “more focus

on the personal responsibility of the offender himself". (Kriminalomsorgen, 2002, p.4) Elsewhere it is stated: "The Prison and Probation Service is to stimulate the convicted person's determination to take responsibility for his or her own life." (Kriminalomsorgen, 2002, p.3) The concern of Torfinn Langelid in particular was that such an emphasis on personal responsibility tends to remove necessary attention from the wider social dimension of crime and of the person's whole life.

That new emphasis, and arguably narrower focus, would appear to be carried through into The Execution of Sentences Act. Paragraph 2 of the Act relates to the purpose of sentences:

A sentence shall be executed in a manner that takes into account the purpose of the sentence; that serves to prevent the commission of new criminal acts, that reassures society, and that within this framework ensures satisfactory conditions for prisoners. (Kriminalomsorgen, 2003a, p.1)

This seems to suggest two primary purposes, preventing new crime and reassuring society, and a secondary or conditional purpose ("within this framework") of reasonable conditions for prisoners. The 'Regulations' to this Act says of this purpose:

As far as is compatible with due regard for the security of society and the general sense of justice, suitable arrangements shall be made for enabling the convicted person to amend his way of life and to prevent recidivism. (Kriminalomsorgen, 2003b, p.1)

Prioritising "the security of society" or preventing new criminal acts does narrow the focus from the social dimension, but does not preclude it – one can argue that these objectives are best achieved by progressive penal policies and good prison conditions, activities and environments. Indeed, the new White Paper on the future of prisons sets out markedly non-punitive policies within the framework of preventing new crime. What smacks of 'new punitiveness' or a 'culture of control' in the statements above are phrases like "reassuring society" and "the general sense of justice". These are inexact concepts, open to multiple interpretations and they open the door to the kind of irrational impulses and emotional reactions, such as revenge, associated with penal populism. It was

seen in the chapter on Denmark that the phrase “the general sense of justice” was invoked by some politicians in this way and was a concept severely criticised by Hans Jurgen Engbo, the senior Governor, in whose view it was a justification for retribution.

As was seen above in discussion of Finland, and indeed in earlier analysis of penal welfarism, keeping an awareness of the social causes of crime and the social dimension to a prisoner’s life is perfectly compatible with efforts to help the person in prison mend his or her ways. However, this perspective recognises that one cannot realistically achieve the latter without addressing the social barriers and difficulties in the way of a person’s progress. It cannot all, or even mainly, be left to “personal responsibility”. The Finns have acknowledged this in their dual statement of purpose, which provides an image of their attempting to change *both* the person in prison or on probation *and* society itself. Such sentiments about society’s responsibility are missing from the key Norwegian statements of purpose given above.

In the same manner, another Prison and Probation Service publication from 2003 gives the “main goals of the Norwegian Correctional Service” as:

- To enforce reactions set by the prosecution authority and by the courts of law, as soon as they are legally binding.
- To enable the offender, *through his/her own initiative*, to change their own criminal behaviour. (Kriminalomsorgen, 2003c, p.2, emphasis added)

The stress on “through his/her own initiative” might seem to again imply that all responsibility for change is thrust on to the individual. While, as noted earlier, there is some recognition of “the needs and total life situation of the convicted person” (and this is repeated in the document just mentioned, p.12), it is the narrowing of focus to the offence and to the individual’s personal responsibility that seems to be given priority.

Such Norwegian statements of purpose could, therefore, sit easily within recent American or British penal policy documents. The main question that arises is to

what extent this reflects change in practice in a punitive direction. Initiatives associated with The Execution of Sentences Act, in particular the lessening of early release and the linking of remission to behaviour, may be seen as shifts of this kind. Likewise, the prioritising (for a number of years at least) of programmes, such as those from Canada, that claim to directly address offending behaviour, may be seen to reinforce this reorientation.

Reasserting the Social Dimension

On the other hand, there are grounds for arguing that the social dimension has never really been lost sight of in Norwegian penal policy or practice, and there are signs of it being reasserted very strongly in recent times, for example in the extension of prison education and the strengthening in general of what is called the 'import model' – whereby services, such as medical, housing, social work or education, are provided in prison by the same agencies as in the community, on 'normalising' grounds and in recognition of the prisoner's citizenship. Such rebalancing may be seen as part of a bigger readjustment going on in the penal system, after some narrowing of focus on personal responsibility and relative neglect of the social dimension, as exhibited in the 1998 White Paper and the Execution of Sentences Act. However, the social dimension, which was never even close to squashed as virtually all the interviews indicate, is clearly now reasserted in penal discourse. The 2008 White Paper is much more in the 1978 mould than that of 1998 in this regard.

Heidi Bottolfs of the Department of Justice detected the pendulum swinging back from the responsibility of the individual to seeing the individual in his or her larger social context. She interpreted the 1998 White Paper as largely looking to the individual to change criminal behaviour, whereas the 1978 one saw this as a community responsibility as well. More recently, she felt, attention is "*tending back to a focus on the structures, not at the individual level*". This is supported by renewed recognition of the extent of drug dependency, homelessness, general deprivation and so forth among those in prison. Underpinning this approach was

a strong public commitment to the welfare state. The Governor of Oslo Prison, Are Hoidal, referred to Skardhamar's (2003) research on prisoners' social background and also characterised his 'clients' by saying "*80 per cent of them need help*", stressing addiction as their primary problem.

An illustration of the way in which the person in prison is seen in a social context is another White Paper, on the education of those in prison, produced in 2005 and entitled *Another Spring* (No. 27, 2004-05). It is clear that a wider, more holistic, view of the prisoner's needs is reflected in this document. A 39-page 'short version' has been published in English (Norwegian Ministry of Education and Research, 2005). It is interesting to contrast that with a Green Paper on the same subject that came out in England, also in 2005, *Reducing Re-Offending Through Skills and Employment* (HM Government, 2005). What comes across most strongly in the Norwegian document is that the 'inmate' is primarily a *citizen*, entitled as such to *rights* to education. However, in the English document, he or she is primarily an *offender* and the concern is with educational 'outcomes' - the main task is to stop or reduce re-offending, a far narrower perspective. The two publications probably fairly characterise the very different degrees to which the two prison systems have taken the 'punitive turn', certainly in relation to the criterion relating to how people in prison are seen. Seeing the person in prison as a citizen or member of society reflects a penal welfare or characteristic Council of Europe way-of-thinking; seeing him or her mainly as an offender, or as someone on whom 'outcomes' should be achieved, is a narrower perspective more in keeping with the 'culture of control'. Despite some wavering in the recent past, the Norwegian penal system remains essentially far more reflective of the former philosophy.

'You can't lock up your people'

The idea of the prisoner as part of society, but someone in need of help, is brought out strongly in the 2008 White Paper. The Deputy Minister was clear that the welfare state was a factor in shaping the debate he wanted. He defined 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*”. It was not a good sign for Europe, he said, that prison populations were rising – “*There should be a little bit of concern. Because you can’t lock up your people, that’s not possible.*” For Terje Moland Pedersen the key issue, something he said he was “*deeply engaged in*”, was “*the people who really need help*”. He added: “*I think it’s about humanity and it’s about if you succeed in handling poverty.*” He stressed that it was a very small segment of children who got into trouble who generated most crime. If such children could be helped at an earlier stage, the positive outcome for society would be huge. As a policeman he “*followed*” such children from when they were eight years old until, as adults, they were killed or died from heroin. These children had children in turn, who also got into trouble about the age of eight and “*so it passes on*”. This is a strongly penal welfarist statement.

The promise of a decidedly non-punitive impetus to penal policy that is flagged in the above outline of the Minister’s perspective was moved significantly forward with the publication of the White Paper in October 2008. Entitled, in its ‘English summary’ form, *Punishment that works – less crime – a safer society: Report to the Storting on the Norwegian Correctional Services* (Norwegian Ministry of Justice and the Police, 2008), it suggests that fewer should be in prison, that more of those who become prisoners should have lower security prison, that regimes should be improved in many ways, and it clearly speaks of prisoners as members of society who must be facilitated in reintegration. The White Paper is unquestionably penal welfarist and socially inclusive in outlook, with its focus on rehabilitation and its recognition of the social dimension to crime, even if it speaks of strict regimes for some and in places cloaks discussion in the language of the culture of control. It proposes that Norway should go in a direction that is very contrary to many of the indices set out in Garland (2001). In

particular, in relation to the three summary criteria for punitiveness, it marks out a considerably different path to that of the 'new punitiveness'.

It is noticeable, at the same time, that several key phrases and ideas regularly invoked in penal populism can be found this White Paper, but then in some ways turned against their normal use. Thus the whole report, as its title indicates, is couched under the banner of protecting the public, which was one of Garland's indices (2001, p.12). However, even this idea is used to justify, not greater imprisonment, but less, by means of a shift towards alternatives to custody: "Penal implementation out in the community is more effective for rehabilitation than prison and is therefore the best long-term public protection." (Part 2) Thus too there are to be increased penalties for 'serious violence' and sex offending, and a crack down on organised crime, but these appear more than offset by the elimination or reduction of other sentences. There is stress on security to control the dangerous, but then a statement that this "shall not, however, mean an unnecessary high level of security for all inmates", noting that "it is only a minority that constitutes a threat to public or individual safety." (Part 2)

A leaning in the liberal or penal welfarist direction is also suggested by some of the core thinking put forward in the report, which is very much in tune with the European Prison Rules, or indeed other Nordic policy documents such as the Danish 'Six Principles'. This is evident in the report's assertion that:

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 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)

In this context, the self-management regimes in prisons in Denmark and Sweden are to be closely examined and more 'village prison' regimes such as already exists in Bostoy are to be established.

'A competition between pictures'

Tom Eberhardt, Deputy Governor at Oslo Prison, referred to the Minister of Justice in the previous government: *"The last Minister, he said that the tough guys shall be treated tough. But the poor guys, we have to help. I think we have 80 per cent of the inmates in Norwegian prisons are the poor guys."* Tom Eberhardt pointed to a copy of the front page of the tabloid VG (7/9/2003), the headline of which was translated as "Blitz at Oslo emergency ward: PRISONER SHOT FREE by masked gang", and said: *"But maybe 10 per cent are like this, you see, like this person who is dangerous...he was shot out from this prison by a masked gang...This happened once a year maybe, it was in 2003, and we had one now this year [2006]."*

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; public discourse presents "stereotypical depictions of unruly youth, dangerous predators and incorrigible career criminals" (Garland, 2001, p.10). 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. Terje Moland Pedersen, the Deputy Minister for Justice, was quite emphatic in saying that Norway would refrain from introducing the very high-security prisons of the kind that Sweden has resorted to.

The 2008 White Paper stressed that prisoners are part of society and is critical of their "demonising". It is in the representation of prisoners that the White Paper goes most strongly against the grain of the 'new punitiveness'. Throughout, the image conveyed of prisoners is of 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” and for which services geared towards reintegration are to be more fully engaged from the beginning of the sentence. (Part 4)

In this inclusive view of prisoners, it is the explicit ruling out of stereotyping that is most striking. The White Paper says of prisoners that “it is only a minority that constitute a threat to public or individual safety” and it specifically warns against the ‘demonising’ of individuals or groups. (Part 2) In similar calming vein, the report states that “policy must not be based on individual incidents.” (Part 1) Prisoners’ input was 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) The White Paper quotes directly from the input of the social science class in a secondary school who were consulted. They said that the school curriculum should promote the understanding “that inmates can perfectly well be quite ordinary people so that we can to some extent remove unintended elements of the penalty such as prejudice and stigmatisation.” (Part 5) The pendulum has swung back in a penal welfarist direction, abandoning imagery associated with the culture of control. 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. Thus, Norway cannot be judged punitive by the third criterion.

7. RESISTANCE TO PUNITIVENESS WITHIN THE SYSTEM

What has emerged, then, from the above discussion is substantial resistance to punitiveness in Norwegian prisons, as measured by the criteria and indices set out earlier. Norway, of course, is not without some of the features Garland (2001) describes, with stiffer sentences for certain crimes swelling the prison population

to a degree and some suggestions of stricter regimes for a minority. There may be an element in this of the Minister of Justice “*playing on two horses*” (as Torfinn Langelid put it), mixing toughness towards some with an easing of imprisonment for others, and this dual character persists to an extent in the most recent White Paper. However, in an overall assessment, the punitive scenario set out by Garland and others cannot currently be found in Norway. Moreover, there is a strong resurgence of penal welfarism, under the present Stoltenberg government in particular, evidenced by the predominant perspective in the White Paper. Social and political factors underpinning Nordic exceptionalism in general were discussed in Chapter 3. The question as to whether there are any particular Norwegian circumstances contributing to such resistance will be explored here.

By and large, the factors listed from the literature in Chapter 3 to explain why Nordic countries have not significantly taken a punitive turn appear in Norwegian explanations in the data gathered for this thesis also, often with some local colour or in somewhat distinctive terms. Specifically, the welfare state, the nature of politics and the role of experts show up as important restraining factors. These will be discussed in some detail in this section, with brief mention also of the role of the media.

The welfare state

The welfare state, in particular, again looms very large in these accounts. For example, Nils Christie’s exposition on social and cultural capital as a constraint on punitiveness, given in Chapter 3, resonates with the role often given to the welfare state in this regard, but it also brings out further qualities. Another term frequently used in Norway is the “import model”, meaning the services and agencies from the society outside operating within the prisons, and this concept gives practical effect to welfare state thinking. The concept is well set out by Asbjorn Langas, a former Deputy Director of the Norwegian prison service, who wrote:

The treatment of inmates in prisons should underline the fact that the prisoner is still a member of society, and is not to be excluded from it. Therefore, it needs to be emphasised that any person detained or sentenced to imprisonment shall not lose his or her right to receive help, services and support from society. All citizens have an equal right to education, work, health-services and culture. (Langas, 1990, p.154)

The current Director General was supportive of the prison service's practice of not employing professionals like education and medical staff directly, but relying on the normal providers of these services in the community. She saw this as reflecting their inclusion in the welfare state, as well as guaranteeing adequate standards.

It is appropriate, then, to firstly try to tease out the influence of the welfare state in hampering potentially punitive approaches in the Norwegian context, as perceived by the interviewees. It will be recalled from Chapter 3 that social policy commentators who had studied Nordic welfare states in recent times had concluded that, while there have been adaptations to new challenges, these welfare states remain strong and intact, and well supported by politicians and the public. The Nordic or Scandinavian welfare state model is seen to have three distinctive characteristics, captured in Esping-Andersen and Korpi's (1987) description quoted by Kautto and colleagues: "The comprehensiveness of social security systems, institutional social rights and solidarity accompanied by universalism." (Kautto et al, 1999, p.11) Each of these three aspects is important in its influence on penal policy. For example, social security support is critical in efforts to help prisoners in resettlement (such as the two full-time municipal housing officials working inside Oslo Prison). The idea that prisoners are citizens and thus possess rights like people outside prison pervades the whole prison system (as in the approach to the education of prisoners based on education rights rather than 'outcomes', noted above). The sense of solidarity engendered by welfare state attitudes means prisoners are less likely to be demonised and there is a strong impulse to see them as included in society (issues addressed in the White Paper just discussed).

The last mentioned feature, relating to the critical issue of how people in prison are seen, is perhaps the most important. Nils Christie said: *“I am not in doubt that the one basic condition for having a low prison population is to have a functioning welfare state.”* He elaborated on this by explaining how, through its history, Norway became a progressively more inclusive society. The Norwegian impulse has always been, he said,

...not to exclude but to include...and this is in a way basic behind the welfare idea, to be able to include people and thereby get them into the system in a more total way. There are dangers in this. The Swedes have the concept of...the home for the people. That is the whole nation. And homes can be very oppressive. And I connect this with a very oppressive drugs policy [in Sweden]. And I say this in a way to excuse them. They don't want people to fall outside, so they have to stop them from using drugs. But you cannot be that idealistic and push people outside, you have to try to get them in. So, this idea, I think it's also strong here [in Norway], that we should, after all, try to integrate those at least that belong here.

Christie focuses a great deal on how people in prison are perceived, drawing on his early post-war research on concentration camp guards in places such as Trondheim; he realised that the (Norwegian) killers and torturers did not see their prisoners as human beings. In modern times, he believes, it is critical that those in prison are not seen as ‘monsters’, but as part of society, as people who can be brought back. He wrote:

The pictures of monsters are difficult to preserve if you come to know them...When we understand somewhat more of people's behaviour, particularly when, or if, we are able to see ourselves in the other person's behaviour, then the monster dissolves. (Christie, 2004, p.50)

In this regard, he thinks small societies are at an advantage; it is hard to see prisoners as completely different when we know them to be otherwise.

Heidi Bottolfs of the Ministry of Justice spoke of the welfare state being deeply-embedded in Norway. Echoing points made in earlier chapters in relation to the general elections in Denmark in 2007 and Sweden in 2006, she spoke of being fascinated by the discussion about the welfare state in Norway's general election

of 2005. The issue was not whether or not services paid for by the state should be provided, but simply the form of delivery of those services:

We're not discussing whether Grandma should be given a bed or room at the centre for elderly people. The dividing line is, of course she should be given a room, but the question is should she be given a choice whether it should be [a private] company X offering this...where the family expenses are paid by the state, or should it be a municipal or state company?

But she does speak of tensions in some respects, as in relation to drug addicts, a group which “*doesn't accept the terms on which they can, so to say, regain integrity by using what is made available through the welfare state*” and which is also “*a group that we have, as a community, very little tolerance for*”.

However, in penal policy and practice, the overriding attitude towards such drug addicts and most others is inclusive. Are Hoidal, Governor of Oslo Prison, said:

80 per cent of the inmates need help. They need a lot of help. I think that's the main focus in the Norwegian [prison] system, and we cannot help those gang guys, it's not easy. But I think the main group of inmates, there is much focus on helping them out into society again.

The Director General said: “*an inmate is entitled to, within the limits of being in prison, the services that other citizens receive.*” Thomas Mathiesen saw the welfare state, and especially the idea of equality, as an important restraining influence on punitiveness. He linked the idea of equality to Norway's historic struggles against Denmark and Sweden, and to the labour movement. These forces were influential, he thought, but he was also of the view that the abolitionist movement, of which he was a part in the 1960s and 1970s, was an important factor also in constraining imprisonment.

Consensus approach to politics

One of the key factors reported as reflecting a shift from penal welfarism to more punitive models in other countries, such as England and The Netherlands in particular, is a corresponding shift in influence from ‘experts’, that is practitioners and academics in the field, to politicians and the media (Downes, 1988; Loader, 2006). Several of those interviewed in Norway noted something of a shift of this

kind there too, but the point was also generally made that politicians, although definitely more 'hands on' and influential now than in the past, had not for the most part turned to penal populism in the way they had elsewhere. Additionally, as was noted above, the media were generally seen as responsible, even helpful at times, by those taking non-punitive approaches. The consensus approach to politics would seem to have contributed to such moderation. There has not been, in Norway, the level of competition among the main political parties to appear 'tough-on-crime' that has happened in the USA, Britain, Ireland, or even Sweden. Penal populism does have a political voice, but in the Fremskrittspartiet (The Progress Party), a right-wing group outside the mainstream. Further, the account given in the last section of the Deputy Minister for Justice's views conveys a picture of a politician unafraid to take liberal positions, and hopeful of consensus about the way forward across the main political parties.

The argument of Balvig (2004), Lappi-Seppala (2007b) and others is that electoral systems which usually give rise to coalition governments (as is the case in Nordic countries), rather than the majoritarian form which pertains in the USA and UK, will tend to give rise to more restrained policies, in penal as in other matters. Of course, for this factor to be a significantly restraining one on penal policy, it is necessary that there be a broad consensus around moderate approaches among the public and politicians. However, such moderation is supported by welfare state thinking, with its inclination to include rather than exclude. Heidi Bottolfs noted that all political parties in Norway supported the welfare state, even the right-wing Fremskrittspartiet, which has been known to champion 'welfare populism', i.e. pushing for extra state benefits. She explained: *"All eight political parties in Norway that are represented in the parliament today would fit into the left wing of the Democrats in the US. All of them, including the far-right."* This consensus is further helped, she said, by Norway's relatively homogenous society. Such broad agreement in the political arena is matched by a generally moderate and non-sensational media, as described by interviewees in Section 2 above.

The influence of 'experts'

A question asked of interviewees was what groups they thought were the main influences on penal policy in the country; possible groups suggested were politicians, media, civil servants, academics and staff unions. The replies gave a sense of diverse influences in Norway, the influence attributed to groups varying and no group being seen to have a predominant impact on policy. The picture that emerged in Denmark on the same question was of serious, if somewhat sublimated, tension between strong political and practitioner forces – politicians to a considerable extent taking a 'tough-on-crime' line, the management in the prison system adhering to penal welfare values, and the tug-o-war appearing fairly stalemated for now. There does not seem to be the same politician-administrator divide in Norway, with some leading politicians at least speaking and acting in decidedly non-punitive ways. Moreover, unlike the Garland (2001) scenario in which the penal 'experts' have a very diminished impact, they still seem to have a considerable say in Norway over the direction of penal affairs, no doubt facilitated by the more benign political milieu.

When asked whether most initiatives in relation to prisons came from the prison service management or the political leadership, the Director General, replied, perhaps diplomatically, that they came from both. While most of those interviewed saw politicians and the media having major influence on policy, it is clear that 'practitioners' have maintained significant influence in Norway, and Are Hoidal could point to initiatives taken locally in his prison in Oslo that were later adopted elsewhere, such as a strategic management approach that highlighted qualitative aspects, and an initiative to improve the lot of pre-trial detainees (Danielsen and Karlsen, 2005).¹⁴² As in other countries, however, the senior people who run the prison system have lost some power over the decades. Classically, in the penal welfare scenario, this group were the main drivers of development. Nils Christie spoke of them as seeing themselves (and, it

¹⁴² For the work on pre-trial detainees, the prison was given the 2006 'Offender Management, Treatment and Reintegration' award by the Canadian-based ICPA, the International Corrections and Prisons Association.

appeared, he also saw them) as “*carriers of decency*”, as “*upholders of standards*”; they were, he said, “*in a way calming*”. He referred to similar leadership at one time in the Home Office in England, in “*their little unit on crime policy*”; but in England “*under modern circumstances, they have, in a way, lost control and much more power has now moved to the political side.*”

It is clear that the modern day “carriers of decency” still have a significant, if reduced, say in policy formation in Norway, however, even if it is because to a large extent they are facilitated in this by penal welfarist attitudes among politicians. That would seem to be an implication of comments about influence cited above by the Director General and the Governor of Oslo Prison. The influence of such practitioners may in turn be strengthened by the strong criminological tradition in Norway. For example, Oyvind Alnaes, Governor of Bastoy, did his MA in Criminology at the Institute of Criminology in Oslo, at which Christie and Mathiesen are emeritus professors (Alnaes, 2006). He investigated what would contribute to “a non-criminal lifestyle” and found that low-security or open prisons were much more effective, in motivating prisoners to change, than high-security or closed prisons.¹⁴³ His work, obviously influenced by the strong Norwegian tradition in criminology, is most firmly driven by penal welfare ideas, including a broad concept of reintegration and a recognition that the damaging effects of imprisonment should be countered, views which are also strongly reflected in the White Paper of 2008.¹⁴⁴

Such research raises the question as to how significant an influence that Institute and academics in general have on Norwegian criminal policy. It is indisputable that criminologists like Christie and Mathiesen have strong international standing,

¹⁴³ Alnaes found that, while all activities (work, programmes and education) were “good with regard to getting through everyday life in prison...school is the activity that the inmates experience as the most (re)habilitating.” (Alnaes, 2006, p.11) The survey also investigated what would contribute to ‘a non-criminal lifestyle’ and found: “...informants reckon their own place to live, education and work as important if they are to live a life without crime...the most important factor is the relationship with their family...The inmates need to reconcile with themselves, their families and their community, which implies that conflicts need to be solved and worked through emotionally. Prison as of today, however, does not invite to this type of personal work.” (Alnaes, 2006, p.12)

¹⁴⁴ Oyvind Alnaes chaired one of the sub-committees, on research, that helped prepare the 2008 White Paper.

and it seems reasonable to surmise, as was indicated in Chapter 3, that they contributed to considerable reform in the past, in the 1960s and 1970s in particular. Thomas Mathiesen, perhaps the person most associated with 'abolitionism', was of the view that KROM, the movement he, Nils Christie and others founded in 1968, had been influential in helping to terminate forced labour for alcoholics, borstal and indeterminate sentencing. Such influence needs to be matched, of course, by thinking within the system and this combination of forces was present, for example, in relation to the closure of the borstal system.¹⁴⁵ There were mixed views among interviewees as to the level of influence of such criminologists today.

It is difficult to measure and disentangle influence, of course, but an indication that criminologists and KROM have at least some effect on policy these days may be the seminar held every winter in the mountains, which has taken place 38 times over 40 years. Nils Christie said:

Now it has declined a bit, but each year... they have what they call a winter seminar in the mountains, where academics like us, we go. And the prison authorities like to go. In the beginning they were very much opposed, just one courageous Prison Director who dared to go there, otherwise nothing. Now they compete to go there. And prisoners... straight from the prison.

The direct influence of people like Christie and Mathiesen on penal policy formation may possibly have diminished, but a good deal of their thinking appears to be incorporated in the prison administration, and even among politicians and the public. The yearly gathering in the mountains is described by Christie in one of his books; he speaks of the 200 or so present as "a joint moral community", where those with responsibility for the prison system "cannot escape their critics, and the critics cannot escape those with responsibility." (Christie, 2000, pp.41-43) For a seminar of this kind to happen in current times would be incredible in the scenario painted by Garland. It suggests, perhaps fairly graphically, that Norway is indeed different. Overall, there appears to be a

¹⁴⁵ Kare Bodal, Governor of an institution for young offenders, did a master's thesis which found that 80 per cent of this group re-offended, and so he recommended his own borstal be closed down.

balanced and reflective approach to policy formation in relation to prisons, involving administration, politicians and perhaps academics, with the result that many if not all initiatives are non-punitive and effective, and strongly recognise the social dimension.

8. CONCLUSION

Setting the situation in Norway against the indices of Garland (2001) detailed in Chapter 2, only a few can be ticked as in any way applicable. There is stress on protecting the public, but the idea feeds not into an incapacitating function for prisons as Garland describes but into a commitment to offer prisoners help towards change and resettlement. Rehabilitation seems a far stronger discourse than retribution or control theories. The “emotional tone of crime policy”, and its politicisation in the way Garland describes, has had only limited, if any, impact. The restrictive nature of the managerialism Garland refers to, focused on targeting and quantitative indicators, contrasts with “opening up the prisons based on a new prison policy characterised by treatment optimism and rehabilitation”, such as the balanced scorecard approach referred to earlier in relation to Oslo Prison. (Bleiklie et al, 2003, p.39)¹⁴⁶ Overall, the Norwegian prison system today corresponds far more closely to the penal welfarism Garland describes, putting stress on reintegration, on tackling social deprivation and on applying policies in a universal rather than a targeted way, than it does to his punitive model.

Prison populations have risen, as noted, but possibly temporarily and certainly not driven by a ‘prison works’ mentality to any significant extent. It is a fairly weak basis for arguing that Norway has taken a punitive turn. The increase in the prison population in recent years might at first sight suggest that Norway was following a pattern Garland and others describe. However, while an element of this increase may be attributable to longer sentences for some offences, a

¹⁴⁶ Bleiklie et al (2003) also identify factors which have changed the culture in Norwegian prisons in recent years. These include the high number of female prison officers now compared to previously (noted by Nils Christie earlier), the change in the role of the prison officer (the ‘guard to social worker’ shift also referred to earlier) and the opening up of the prisons to other professional groups such as ‘teachers, nurses, psychologists, library assistants and leisure activities consultant’. (p.39)

substantial part of the growth is explained by what might be seen as a 'tidying up' exercise in eliminating the 'queue'. If the reduction of the queue is a major source of this population growth, as appears to be the case, then the surge is likely to taper off significantly, as it did in Denmark.

The case for saying that Norway's recent rise in incarceration is a clear sign of punitiveness is even less convincing, when one looks for a 'culture of control' surrounding such expansion, in the sense of the rhetoric and political populism Garland describes (2001). Those in charge politically and administratively see this prison population increase as a reluctant or unwanted rise, and it is accompanied by none of the full-blooded 'prison works' discourse one got, for example, from Michael Howard in England. While these penal populist features have by no means been absent from Norway, it seems fair to say that they have had nothing like the impact they have had in the US, Britain or Ireland. Moreover, the political and administrative leadership appear very determined to reduce the use of prison in the years ahead, largely through greater use of alternatives to prison. In the new White Paper, Norway is setting a course for itself that is radically different from most countries in Europe. Aspiration and outcome are different matters, of course, and imprisonment can rise even when Ministers and Director Generals wish it otherwise. Heidi Bottolfs at the Ministry of Justice, for example, was not at all certain that a programme of prison closures could be easily carried through given the political strength of regional forces in Norway, especially in locations far from large urban centres where the prison's role in giving employment is seen as important.

However, it is when one examines the language and concepts of those in charge of the prison system that one finds the most convincing case for seeing penal welfarism as the most fitting description of Norway's penal system today. It is a vigorously resurgent penal welfarism at that, illustrated by Terje Moland Pedersen's and the White Paper's primary focus on rehabilitation. In Garland's scenario one should see a decline in rehabilitation, to be replaced by retribution

and “expressive justice” (2001, p.8), and this has manifestly not happened in Norway. There appear to be tougher regimes in some respects for a minority of prisoners, variously put at no more than 10 or 20 per cent and possibly a good deal less than either of these figures, but clearly the prison system is centrally focused on *helping* the great majority of prisoners and reintegrating them fully into society. In Garland’s prison world such constructive approaches are mainly for the select few, those ‘targeted’ on the basis of risk. Yet, in Norway, the universalism central to their welfare state thinking pervades almost the whole penal system.

This brings us again to the criterion of how people in prison are seen, within the penal system, among the political leadership and by the public at large. This is a key weathervane indicator. As Garland (2001) describes things, those involved in crime or in prison are stereotyped and demonised, their darker side kept to the fore as control theories hold sway. However, seeing those in prison as members of the community or society, as people mainly in need of help, seems to be the dominant perspective in Norway, evident in what the leadership in the prison system and the Deputy Minister for Justice said, and no doubt the basis of the Gallup poll Terje Moland Pedersen spoke of, showing the public gave priority to rehabilitation over retribution in the role they envisaged for prisons.

When one looks at the ‘depth’ or ‘content’ of imprisonment, the picture is one where punitiveness is even more clearly resisted. Physical conditions, at least for sentenced prisoners, are considerably better than in most other places, illustrated by high unlock hours. Services for prisoners are substantial and, by and large, from the community outside via ‘the import model’, thus reflecting an inclusive approach. A relatively high rate of open prison use (currently about 32 per cent of total prison population) seems set to be expanded considerably, on the basis of what the Minister and others have said, possibly to more than 50 per cent of sentenced prisoners (which would mean at least 40 per cent of the total). 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 firmly 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.*” Likewise, Terje Moland Pedersen spoke of being averse to prisons with ultra-security and wished to promote “lower security (meaning open) prisons” more.

The other serious basis on which one might make a case that the Norwegian prison system was punitive is the narrowing of focus to individual responsibility for a period from the 1990s, well reflected in the 1998 White Paper. That policy document was followed by The Execution of Sentences Act and its accompanying practices of limiting leave and relating remission to perceptions of risk and behaviour. However, if such changes signified a punitive turn of the kind identified in Canada, the diversion seems now to be in the process of being substantially corrected, even if something of that punitive overlay remains in the system. The downplaying of the social dimension to the causes of crime and to the prisoner’s chances of resettlement, reflected in these departures, has now been rectified. In this regard, the new White Paper is much more in tune with that of 1978 than 1998. If the course described there, and which the Minister and those responsible for running prisons declare they favour, is followed, it will be valid to say that Norway has gathered itself for a decidedly non-punitive turn, guided by prison-minimising and penal welfarist values. Already Norway has had, as Terje Moland Pedersen put it, “*another kind of discussion about how we use prison and how we sentence people.*”

Chapter 8

Conclusion

1. INTRODUCTION

This thesis has examined whether the scenario in relation to imprisonment that Garland (2001) describes in his depiction of a 'culture of control' applies to the prison systems in Denmark, Finland and Norway. In this analysis three critical criteria have been assessed: the scale of imprisonment; the depth of imprisonment; and the representation of people held in prison. The thesis has also sought to understand the reasons behind the particular outcomes in each of these countries, probing four underpinning factors especially: media and public sentiment with respect to crime, whether politics tends to be consensual or confrontational, the role of 'experts' and, most importantly, the Nordic welfare state.

The research found that prison populations are relatively low in these three countries, all of whom have rates of incarceration of less than 70 per 100,000. Prison populations have also been falling for a few years in both Denmark and Finland, while Norway has committed itself to reducing its prison population in the years ahead. Prison conditions are generally good relative to other countries, especially in Denmark and Norway, with high proportions of prisoners doing time in open prisons. Generally, also, the levels of stereotyping and demonising of people in prison that Garland (2001) describes can not be widely found in these countries, where more inclusive views characteristic of penal welfarism tend to hold sway, and this is most clearly to be found in Finland.

In explaining these different patterns to those which Garland (2001) sets out in relation to the US and the UK, the persisting strength and popularity of the universal welfare state is critically important in all three countries. Coherent non-punitive perspectives among leading penal 'experts' and practitioners is very important also, especially in Denmark and Finland. Further, while there are some

examples of penal populism in all three countries, and especially in Denmark, there are also political leaders unafraid to strike out in non-punitive directions, confounding the image of politicians in Garland (2001), and this is most dramatically seen in Norway. The Nordic countries also provide evidence of a more “sober and reasonable” media,¹⁴⁷ and a public less fearful of crime and more supportive of rehabilitation and inclusive initiatives than one might expect from Garland’s analysis (2001).

Chapter outline

This final chapter recaps briefly on whether the ‘new punitiveness’ has made any progress in the prison systems of Denmark, Finland and Norway. As was detailed in the previous three chapters, each of these countries has succeeded, in somewhat different ways and to different extents, in ‘resisting’ the punitive turn so many others have taken. Summaries of the situations found in each of these prison systems are provided in Section 2. The findings of this research challenge much of the scenario set out in Garland (2001) and Section 3 discusses key assumptions inherent in the penal populism he describes that are thus called into question, i.e. the presumed punitiveness of the public and the assumption that prison levels are linked to crime levels. The social and political factors that influenced the outcomes in the different prison systems have much in common across the different Nordic countries and a reprise of these factors is given in Section 4, with those matters which have shown up as most influential in the course of this study being emphasised.

The three case-studies that were the subject of this thesis test Garland’s (2001) theory and find that his scenario is not inevitable in Western European countries. The culture of control, or the new punitiveness Pratt et al (2005) speak of, can be resisted or avoided. Questions arising then are: how might other countries take non-punitive routes in relation to their prison systems, and what are the

¹⁴⁷ This same phrase is used by Lappi-Seppala (2007b, p.243) and Smolej and Kivivuori (2008, p.216).

prospects of this happening? Such issues are discussed briefly in Section 5, in relation to some continental European and some English-speaking countries.

Developments in Ireland have been a constant backdrop in this thesis, and its prison system once had many things in common with Nordic countries, although conditions in Irish prisons have for long generally fallen well behind Nordic norms. Ireland's rate of incarceration, however, matched that of the lowest Nordic countries up to the mid-1990s and, as was made clear in Chapter 1, its 'philosophy' in relation to penal policy had a similar adherence to penal welfarism and to the European Prison Rules. However, Ireland has diverged for more than a decade now from the kind of approach Denmark, Finland and Norway take to prisons. This is spelled out in Section 6, with the contrast starkly illustrated by comparing East Jutland Prison with the new prison complex envisaged for Thornton Hall in Ireland. The more interesting questions are: what would it take for Ireland to adopt more fully the penal policy approaches of those Nordic countries today? Then, what likelihood is there of that happening? What such an Irish prison system would look like, in terms of size, regimes and attitude to people in prison, is sketched out in Section 7.

2. DOES NORDIC EXCEPTIONALISM PERSIST?

As explained in Chapter 1, the concern that gave rise to this research was awareness of changed paradigms for the role of prisons in the USA, Britain and Ireland. What was happening in prisons was part of much larger developments in the whole crime control field and in the wider society. Garland (2001) explored the post-modern social and cultural forces that gave rise, as he saw it, to a 'culture of control' in the USA and Britain, and he strongly suggested that this scenario applied to other Western countries. Of particular interest for this thesis was his exploration and analysis of the rise of punitiveness in relation to prison systems, which manifests itself in escalating incarceration, greatly tightened control within prisons, and the demonisation of those in prison. Pratt and colleagues (2005) saw these developments as part of the 'new punitiveness'.

However, several commentators note, and seek to explain, how Nordic countries are in some respects not part of such trends. (Balvig, 2004; Bondeson, 2005; Christie, 2000, 2004; Lappi-Seppala, 2004a, 2007a, 2007b; Pratt, 2002, 2008) This thesis set out to ask whether what is happening in the prison systems of Denmark, Finland and Norway today can be explained by Garland's theory, or whether these countries are, indeed, 'exceptions' (Bondesen, 2005, p.189) and, if they are, what might explain this standing apart.

In explaining how Nordic countries might follow different patterns in penal policy to that described by Garland (2001) in the US and UK, caution needs to be entered in relation to the use of terms such as 'exceptions' (Bondeson, 2005) or 'Nordic exceptionalism' (Pratt, 2008). For it is possible that many Western countries could be closer to the Nordic ones than to Britain or the USA in essential characteristics. This is especially the case when the comparison is with the US. Indeed, Downes speaks of "American exceptionalism in deviance and control." (2001, p.51) Garland rejects any usage of the term:

Talk of American exceptionalism tends to essentialise difference, to measure the United States against some spurious uniform 'international' standard, and to forget that every nation has its own distinctive culture and social characteristics. In that sense, every nation is exceptional – and none are. (Garland, 2004, p.183)

However, sufficient awareness and acknowledgment of such distinctive culture and social conditions among countries other than the US or UK is generally absent in Garland's *The Culture of Control* (2001), which instead suggests that universalising tendencies are evident. Moreover, exploring the nature and implications of such national distinctiveness requires close attention to specific case-studies, and it was this orientation which formed the basis of this thesis.

Testing Garland's theory

Distilling Garland's scenario as it applies to prison systems, three criteria seemed critical in judging whether the punitive path had been taken or not: the scale of imprisonment, the depth of imprisonment and the perception held of prisoners in

society. In Denmark, Finland and Norway, each of these three aspects were examined, data being gathered mainly via interviews, documentation and visits to prisons. In essence, Garland's theory with regard to changes to prison systems is put to the test by these case studies. This research questions whether or not what Garland has to say in relation to prisons in the USA and UK can be generalised to other countries. For, if the Nordic case-studies indicate that the Garland (2001) scenario in relation to prisons does not apply there, this raises questions as to whether a similar non-punitiveness might be possible in other Western countries.

The conclusions to such investigation do not come in the shape of clear-cut 'yes' or 'no' answers, of course. "The value of the case study approach," says Denscombe, is that it can "deal with the subtleties and intricacies of complex social situations." (2003, p.35) Prisons and prison systems are highly complex settings. Further, the exploration in this thesis is of policy, and policy research, as Majchrzak (1984) says, is, like policy formulation, a highly complex activity. She says "policy is not made, it accumulates", as it deals with social problems that are "elusive, and not easily resolved". (Majchrzak, 1984, p.15) Thus, "doing policy research consists of competing inputs, complex problems, and seemingly irrational decision-making styles". (Majchrzak, 1984, p.16) In examining the way penal policy emerges within the prison systems of Denmark, Finland and Norway (or indeed in Ireland), none of these observations can be disputed. However, in all that complexity, some clear findings emerge in each country, so that valid generalisations can be made. In the three previous data chapters, the concluding sections in particular have already set out such findings. A synopsis of the situation in each of these case studies will now be given.

Denmark

The rate of incarceration in Denmark has risen and fallen somewhat in recent decades, but it is lower now (at 63 per 100,000) than 20 years ago, and, indeed, one of the lowest in Europe. Given that the great majority of sentences are

served in open prisons, the depth of imprisonment has to be seen as likewise restrained, since self-management and reasonable relationships with staff are prerequisites for such regimes. These qualities are very much in evidence also in closed prisons in Denmark, and even the prison with the highest level of security, East Jutland, has strong activity and over 14 hours out-of-cell time per day and in some respects displays a non-institutional character, despite recent tightening of security. The perception of the prisoner, certainly in the prison system and most likely in society at large, is an inclusive one, notwithstanding a degree of demonising by some politicians. Punitive impulses have come from the political field, such as some increased sentences, a clampdown on drugs and restrictions on leave, but they have been offset by alternatives to custody, supportive drug treatment and an imaginative 'something-for-something' policy. A cohesive, humane and human rights-based penal philosophy among the 'experts' who lead the prison service has contained the tendency towards penal populism and kept the service firmly in a strong penal welfarist mode focused on resettlement.

Finland

As Pratt (2008) also found in looking at Finland, Norway and Sweden, Finland's exceptionalism to punitive trends remains the most solid. The penal populism that threatened to change the penal system in Denmark has not really been present to date in Finland. Thus, despite a temporary upswing in the early years of this decade, the trend in prison population is downward once more. More importantly, reducing it further is official government policy, through greater use of alternatives in particular, and this is cemented in the 2006 Act and keenly pursued by prison administrators. The 'content' of imprisonment is less impressive in Finland than in Denmark, even allowing for recent restrictions in the latter, with conditions less uniformly good. Yet the thinking in the system recognises that one must counteract the detrimental effects of imprisonment and the trend is one of slow improvement in prison conditions and resettlement activity. However, it is in the representation of people in prison that the 'culture of control' is most firmly rejected. There is an unchallenged 'societal perspective'

(Snare, 2005, p.495) to criminal policy, widely expressed in official policy documents and the writing of prison leaders,¹⁴⁸ and in criminological articles from Anttila (1971) to Lappi-Seppala (2007b). The prisoner is seen as part of society, his or her problems must be addressed to ensure resettlement, and that makes adaptive demands on society as well as on the individual. This non-punitive direction in all three criteria is underpinned by a coherent outlook, especially among the influential 'experts', in which the universal welfare state is accepted without question and 'humane neo-classicism' remains the approach to penal policy, essentially unperturbed by what happens in the wider world.

Norway

In the past decade there have been signs of a punitive turn in the Norwegian prison system, but they have transpired to be relatively weak ones: there have been some increased sentences and a rise in prison population, a tightening of leave and remission, and a narrowing of focus from societal to personal responsibility. However, the political and administrative leadership now declares a commitment to reduce prison numbers via alternatives and early releases, to improve the content of imprisonment and make greater use of open prisons, the usage of which is already high at 32 per cent. (Kristoffersen, 2007, p.56) This direction is conveyed in the 2008 White Paper, which is notable for its strong focus on rehabilitation and its recognition that this is best achieved outside prison or in institutions of lower security. The core of European Prison Rules thinking is now explicitly reflected in an official Norwegian policy document, with recognition of the harmful effects of imprisonment and a determination to keep these to a minimum.¹⁴⁹ Penal welfare perspectives are now central to the running of Norwegian prisons, with prisoners regarded as citizens, as members of society. A primary urge is to address issues of social deprivation and to reintegrate prisoners, most of whom are seen as in need of help. Moreover, politicians and practitioners appear confident that they have public support in thus promoting

¹⁴⁸ See, for example, Lang (1993), Mohell (2005) and Vesterbacka (2005).

¹⁴⁹ Norwegian interviewees argued that these ideas have been part of their thinking heretofore, but I have not been able to find them clearly set out in the policy documents available in English.

rehabilitation. Clearly, this is radically different from the scenario depicted by Garland (2001).

Nordic penal distinctiveness

This study examined Denmark, Finland and Norway and found that, in general, they stand apart from the penal trends described by Garland (2001), even if there is some unevenness in the patterns each displays. Although some punitive tendencies have been present at times in these countries, they have all avoided substantial penal severity. All of these prison systems now seek to reduce their numbers in prison (Finland most explicitly), all attempt to adhere to the concept of normalisation within prisons, and all seek to maintain or develop high proportions of prisoners in open centres, a practice in which Denmark leads the world. Experts, in the sense of those administrators leading the prison systems and developing policies, influenced in turn partly by academics, do still play a strong role in shaping the direction of the systems, perhaps most clearly in Denmark and Finland. Politicians vary in their outlooks, but many pursue non-punitive policies, especially, currently, in Norway. In all these countries, policy documents make strong statements that reflect non-punitive directions which are in tune with the European Prison Rules and penal welfarism generally, notably the *Programme of Principles* (Ministry of Justice, 1994) by which the service is guided in Denmark, the 2006 Act in Finland and the 2008 White Paper in Norway. Underlying such policy and practice is the strong and resilient universal welfare state, and the political and social forces associated with that, such as inclusive and human rights-based cultures.

It should be noted that Pratt (2008), in his study of Nordic exceptionalism in Finland, Norway and Sweden, is less positive about the future prospects of Nordic 'exceptionalism'. He finds a decline in homogeneity and solidarity in the countries he examined and so sees the exceptionalism as being in jeopardy,

especially in Sweden,¹⁵⁰ exemplified in his view by recent increases in rates of imprisonment. One might contest this prognosis, at least in relation to the Nordic countries other than Sweden, given that the prison population increases have significantly reversed in Denmark and Finland since 2005, and show signs of turning downwards from 2008 in Norway.¹⁵¹

The resilient welfare state

Moreover, to suggest a weakening of the welfare state in Denmark, Finland or Norway is very questionable, as data presented in earlier chapters of this thesis indicate. It will be recalled from Chapter 3 (Section 4) that several social commentators were referred to in concluding that the Nordic welfare state, while adapting or adjusting to new circumstances, remains the dominant social arrangement in these countries. Thus Kautto et al state: "Despite often heard claims about the withering of welfare states, their decline is not at all evident." (1999, p.5) Kuhnle asserts: "Scandinavian countries have fundamentally maintained, and even to some extent also strengthened, their welfare states during the last decade." (2000, p.211)¹⁵² Kuhnle argues that the Nordic welfare state "may be adjusted, reconstructed and made less generous, but...will remain universal, comprehensive, redistributive and employment-oriented". (2000, pp.226-7) Timonen speaks of the resilience of such welfare states: "Instead of creating divisions, they bring about unity, that is to say large constituencies in favour of social policies...there is only a very small 'market' among the electorate for anti-welfare parties and ideas." (2003, p.192)

¹⁵⁰ Despite plans to increase the capacity of its prison system, referred to in Chapter 3, Sweden also shows some signs of reversing its prison population surge of recent years. The most recent Council of Europe figures give Sweden a prison population of 7,332, or a rate of 82, for 1/9/04 (*Penological Information Bulletin*, No. 26, May 2006). However, the King's College, London, website gives a population of 6,770, or a rate of 74, for 1/10/07 (www.prisonstudies.com, on 2/12/08).

¹⁵¹ Pratt also describes good conditions in prisons in the countries he visited in a way that seems generally accurate and recognisable to this research. However, he does understate the extent and importance of open prisons, which he says hold "between 20 and 30 per cent of the respective prison populations". (Pratt, 2008, p.121) It will be recalled from earlier discussion that in Norway it is 32 per cent, and likely to grow significantly. In Denmark it is 38 per cent of all prisoners, but 52 per cent of sentenced prisoners at any one time, and more than 80 per cent of all sentences served.

¹⁵² This confounds the predictions of an OECD publication from 1981, *The Welfare State in Crisis* (Kuhnle, 2000, p.210).

Bondeson (2003) also suggested that: “Generally, Scandinavians support the welfare state... although it is somewhat diminished in the young generation.” (2003, p.267) It will also be recalled from earlier chapters that firm public and political support for the welfare state was evident in the general elections in Norway in 2005 (Chapter 7, Section 7), Sweden in 2006 (Chapter 3, Section 4), and Denmark in 2007 (Chapter 3, Section 3). The latter is notable in particular because Flemming Balvig acknowledged in interview that such across-the-board support in that election was a surprise to him, making him adjust more pessimistic views he had expressed in writing some years earlier. (Balvig, 2004)

3. CHALLENGING GARLAND’S ASSUMPTIONS

Penal populism

The strength or otherwise of the universal welfare state is critical because it is associated with a high level of solidarity and a tendency to include rather than exclude, thus acting counter to the presumed reality of penal populism set out in Garland (2001). Roberts et al find examples of penal populism in all five English-speaking countries they examine, although these are most common in the USA, which tends to be the source in this field of ‘penal modelling’. (Roberts et al, 2003, p.59) The political urge towards punitiveness which Garland describes makes certain assumptions: one is that the public is inherently punitive; another is that sanctions such as imprisonment are closely linked to levels of crime. Both of these premises are questionable, even in a US or UK context. Whether there is much relationship between levels of crime and imprisonment is a matter that will be examined below, ahead of wider analysis of the factors that impact on levels of punitiveness in penal policy. First, the matter of the public view will be discussed. Costelloe et al (2009) support Garland’s explanation of punitive attitudes as linked to both fear of crime and economic insecurity, on the basis of a large-scale survey in Florida. Johnson (2009) further shows an association between anger about crime and punitiveness, also in the USA on the basis of survey evidence.

While public opinion may thus be taken to give some support to punitive policies in the American context, it is not necessarily the case elsewhere. Neither are people necessarily so punitive when one moves beyond opinion polling to elicit views of 'informed subjects', even in an American context. (Roberts et al, 2003, p.29) Bottoms warns that it is not valid to speak of "public opinion" about crime "in a way that automatically equates it with a heavily punitive approach", even if politicians often make such an assumption. (1995, p.40) Roberts and colleagues summarise research which indicates

...a clear disjunction between the results of general opinion polls and the findings from more refined public opinion research... public support for harsh sentencing is less solid than many politicians appear to believe. Evidence from many studies suggest that the public favour alternative measures and that support for rehabilitation remains strong. (Roberts et al, 2003, p.34)

Pratt (2001) also questions whether there really is a public mood for severe punishment. While citing some studies which indicate such sentiments, he also refers to contrary evidence, as in a survey in England where 56 per cent of respondents disagreed with the statement "Prison works: the more prisons the better", while just 33 per cent agreed. Hutton, in Scottish research, also found "punitive attitudes become more moderate as well as more complex and contradictory" when one moves beyond surveys to such methods as focus groups and deliberative polls. (2005, p.243) Mauer notes that "support for imprisonment generally declines substantially when a broader range of sentencing options are considered", although he cautions that it is difficult to bring such complexity into political debate which relies heavily on "sound bites". (2001, p.11)

Consequently, the assertion that the punitive politics Garland (2001) describes in the US and UK is applicable to the Nordic countries is very much open to question. The chapters on Denmark and Norway in this thesis gave examples of what may be regarded as penal populism among politicians, such as increased sentences for some offences and less prison leave. However, those chapters

also gave evidence of Ministers for Justice in those countries unafraid to take positions at variance with penal populism as described in the US or Britain, such as the promotion of alternatives and early release from prison, expressed in the Norwegian White Paper of 2008 and the Danish ‘something-for-something’ policy. Moreover, Finland has an explicit political and administrative objective of further reducing its prison population through the developments of alternatives to custody. Those running the prison systems in the three countries examined also generally held the view that the public favour more restrained and nuanced penal policies than those predicted by Garland (2001), as in their confident belief that the inclusive thinking associated with the welfare state was strongly supported. Likewise, the Norwegian Deputy Minister for Justice, Terje Moland Pedersen, cited a recent Gallup poll showing that the public in Norway favoured rehabilitative rather than retributive approaches.

Loader (2006) discusses the issue of involving the public in the formation of penal policy. He rejects both the possibility and desirability of re-establishing the liberal elite from the Home Office and some universities (whom he refers to as ‘Platonic Guardians’), who in the past had great influence in shaping penal policy in England and Wales. Loader says, however:

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... Open political debate about crime and punishment is not something that democratic societies are or should be able to shy away from. (Loader, 2006, p.582)

Loader argues for the need to reconstruct “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 in prisons. (Norwegian Ministry of Justice and the Police, 2008)

Crime rates and imprisonment rates

The common presumption, particularly inherent in penal populism, that levels of imprisonment are closely related to crime will now be addressed. Young, while disputing “the conventional wisdom which sees the prisons etc. as simply a function of the level of crime” is also critical of those who discuss imprisonment as if it had *no* relationship with crime. (Young, 1999, p.58) Clearly, increased crime or greater fear of crime can be part of the general social conditions that underpin the emergence of punitiveness, in the manner which Garland (2001) describes. However, Young asserts that: “There is no direct correlation between levels of crime and imprisonment, let alone a one-to-one line of causality.” (1999, p.58) Others also assert very weak or no linkage between levels of crime and imprisonment, such as Coyle (2006), drawing on the views of European prison directors, and Tarling, who famously asserted that in England and Wales “change in the use of custody of the order of 25 per cent would be needed to produce a 1 per cent change in the level of crime” (1993, p.154). Wacquant also speaks of “the crime-incarceration disconnection”, noting that “the vast majority of the new convicts” incarcerated in the US prison surge are “small-time non-violent offenders”. (2005, p.11)

As already explained in Chapter 6 (Section 8), Lappi-Seppala, having noted the symmetry in crime patterns across four Nordic countries but Finland’s very different penal history, concluded that crime rates and sentencing policies “are fairly independent of one another”. (2000, p.37) In a similar manner, Tonry and Farrington compare patterns in the US and Canada, saying:

Crime rate trends in Canada have closely paralleled those in the United States since 1970. When America’s crime rates rose, so did Canada’s. When America’s crime rates fell, so did Canada’s. However, there is no resemblance between American and Canadian imprisonment trends. (2005, p.1)

Summarising research in five countries, Roberts et al likewise conclude: “It is clear that the increase in the use of imprisonment is no direct response to increases in the crime rate, since several countries have seen the sharpest rise

in imprisonment at a time when crime rates have been declining.” (2003, pp.19-20)

Analysing crime and punishment in Scandinavia, von Hofer notes that generally crime victimisation is lower in Finland and Norway than in Sweden and Denmark, but that: “Crime trends in the Scandinavian countries are on the whole much the same as those found in other western European countries.” (2005, p.61) It is reasonable to conclude therefore that the significantly low rates of incarceration by Western European standards in Denmark, Finland and Norway (currently all with a rate of incarceration in the 60s per 100,000) cannot be explained by any significant difference in crime rates. The assertion of K.J.Lang that “the number of prisoners has very little to do with crime”, but “is rather caused by the general situation of confidence in society and the political equilibrium” (quoted in Christie, 2000, p.51) would seem to be borne out. It is such underpinning social factors that have been the focus of the research in this thesis, just as they are in Garland (2001) in relation to the US and UK. Evidence emerged in the course of the data collection to support four factors in particular as underpinning resistance to punitiveness in the countries studied – public sentiment and the media, consensual rather than confrontational politics, the influence of ‘experts’, and the universal welfare state. This evidence will be summarised in the next section.

4. FACTORS UNDERPINNING NORDIC RESTRAINT IN PENAL POLICY

Chapter 3 was largely devoted to the social context to penal policy in the Nordic countries and examined the central role of the welfare state in particular. Each of the data chapters that followed (Chapters 5, 6 and 7) revisited such background factors in relation to Denmark, Finland and Norway respectively, drawing out what was found to be especially important in that country or other unique features. It is appropriate now, in this concluding chapter, to return to the explanatory factors that underpin the distinctive penal policies of the Nordic countries in general. It will be recalled from Chapter 3 (section 3) that five main

summary factors were identified in the literature as underpinning resistance to punitiveness:

- the role of the media and the public's fear of crime,
- trust in institutions and other people,
- consensual political culture and systems,
- the role of experts and practitioners,
- and the universal welfare state.

This section will review such factors in the light of evidence that emerged from the data collection.¹⁵³

Public sentiment and the media

The public's perception of, and feelings about, crime and those who commit crime, and the media's reflection or manipulation of these aspects, is of central importance. Of the three countries studied, Denmark was the one that came closest to exhibiting significant penal populism among politicians. (Balvig, 2004) Yet, that trait was also considerably contained in Denmark, as exemplified by increased sentences for only a limited number of crimes and substantial switching to alternatives to custody. Some interviewees expressed the view that the public generally had less punitive attitudes than those politicians who took a 'tough on crime' line. Four interviewees in Denmark remarked on how employers actively seek ex-prisoners for work (Chapter 5, Section 6), thus denoting a degree of acceptance that belies prisoners' depiction as 'other'.

In Norway, Terje Moland Pedersen, the Deputy Minister for Justice, made clear in interview his preference for lower numbers in prison and for more of those sent to prison being held in prisons with lower security (Chapter 7). He recounted how a Gallup Poll, conducted as part of the process of formulating the White Paper on prisons, indicated the general public saw rehabilitation, rather than 'revenge', as the purpose of prison, somewhat to his surprise. Moreover, the consultation process around the White Paper elicited the views of 'informed subjects' (Roberts

¹⁵³ The nature of the research did not allow much opportunity to judge one factor, the extent of trust in institutions and other people, although it was touched upon occasionally. However, this is a factor which is closely bound up with another, the universal welfare state. The remaining four underpinning factors deemed to inhibit punitiveness will be discussed more fully below.

et al, 2003, p.29) that were markedly non-punitive, to judge by the final report (Norwegian Ministry of Justice and the Police, 2008). Further, while the language of protection framed the White Paper, the policy proposed has set out a direction very different from that predicted by Garland (2001). In Finland also, interviewees were at one in reporting that there were no significant punitive attitudes among the public, politicians or the media, the latter being regarded as “sober and reasonable” (Lappi-Seppala, 2007b, p.243; Smolej and Kivivuori, 2008, p.216). This concurs with the judgment of Nils Christie, who wrote that when he visited Finland: “Crime was not the dominant theme on the agenda.” (2004, p.35) He added:

They kill each other more in Finland than in the other Nordic countries, but discuss it less. The drug panic did not hit Finland until quite recently. Their discussions on how to control what is seen as crime were more sober than in the other Nordic countries. (Christie, 2004, p.35)

Consensual rather than confrontational politics

The kind of competition between political parties to appear ‘tough on crime’ described earlier in this thesis in relation to the US and UK (Chapter 2), Ireland (Chapter 1) and Sweden (Chapter 3), has been present to a limited extent in Denmark (Balvig, 2004) but hardly at all in Finland or Norway. Moreover, Terje Moland Pedersen, a minister in the present ‘Red-Green’ government in Norway, spoke in interview of being confident of getting the support of the main opposition Conservatives for the White Paper initiatives. Lappi-Seppala (2007b) attributes such consensus to the fact that the electoral systems in Nordic countries are not majoritarian as in the US or UK and so tend to generate coalitions and thus more compromise and moderation in policies. The current Finnish government, which has a Green Minister for Justice, has five political parties in it. However, the right-wing Danish People’s Party, although not formally part of the government, was seen by interviewees to have significant and possibly disproportionate influence on penal policy in Denmark (Chapter 5), although the like-minded Progress Party is far more marginalised in Norway. It is clear from accounts in interviews that the dominant outlook in relation to penal policy in Finland and Norway is penal

welfarist and that this is facilitated by a political system and culture which tends towards consensus. The situation is more mixed in Denmark, with the Liberal and Conservative parties on the right (who are currently in government) and the Social Democrats and their allies on the left matching each other on toughness (Balvig, 2004), notwithstanding some progressive policies from the current Minister for Justice as reported by the Director General. However, such political forces leaning towards punitiveness are counterbalanced in Denmark by very strong influence from ‘experts’.

The influence of ‘experts’

Garland says that, in the penal welfare structure, “a central place was allocated to professional specialists and expert judgment.” (2001, p.35) This included criminologists and other professionals and “senior civil servants and expert advisers who were quite removed from public debate”. (Garland, 2001, p.37) In the world of the new punitiveness the power of such elites is radically reduced, with politicians asserting more control and directing it in a more punitive way. However, this thesis has produced evidence in the main data chapters above of ‘experts’ retaining considerable influence. Moreover, the prison minimising and penal welfarist outlook of the current political leadership, at least in Finland and Norway, meshes with that of the leadership of the prison systems.

In Denmark, as was explained in Chapter 5, it is clear that there is at least some political support, notably from Lene Espersen, the Minister for Justice, for the non-punitive policies of William Rentzmann, the Director General, and his colleagues – or at least some political deference to their expertise. Flemming Balvig referred to the “*unspoken conflict*” between politicians and practitioners in the penal system in Denmark that gives rise to “*developments with two hats*” and where penal experts “*try to do in the softest way all the time*”. Thus, in Denmark, there are the balanced ‘something-for-something’ policies, and the ‘soft and hard’ roles for prison that the Director General speaks of. However, even if there are tensions between practitioners and politicians inherent in these balanced

developments, an implication has to be that the penal experts retain some significant strength and influence. Given the clarity in the thinking of the Director General, William Rentzmann, and the senior Governor, Hans Jurgen Engbo, both of whom gave interviews for this thesis, it is unsurprising that they are seen to have substantial influence.¹⁵⁴

No evidence could be found to question Lappi Seppala's depiction of Finnish penal policy as "exceptionally expert-oriented". (2000, p.37; see also Christie, 2000, pp. 49-50) The interviewees in Finland all emphasised what they saw as strong expert influence. The conclusion of this research was that the influence of experts was a crucial (perhaps *the* crucial) active ingredient in shaping Finland's penal policy (Chapter 6, Section 7). Indeed, the determining influence of the civil service on penal policy extended beyond the penal system to the Ministry of Finance, which was credited in interviews by both the criminologist, Tapio Lappi-Seppala, and the Director General, Esa Vesterbacka, with being responsible for resisting the building of additional prison capacity and insisting on reducing prison numbers instead. However, political support, even if it is tacit, is also required to enable experts to be influential and this is clearly present in the explicit policy of the Finnish government to reduce the prison population. Likewise, in Norway, there would appear to be cohesion, firmly geared to rehabilitation and penal welfarism generally and towards reducing the scale and depth of imprisonment, between experts and politicians. This was evident, for example, in the interviews with the Director General, Kristen Bolgen Bronebakk, and the Deputy Minister for Justice, Terje Moland Pedersen, detailed in Chapter 7.

One further aspect of this influence should be noted. Most of those experts involved in shaping these three prison systems clearly act from cohesive 'philosophies'. The dominant outlook is best expressed in Denmark by the 'Six Principles' developed and adopted by the Prison Service (Ministry of Justice,

¹⁵⁴ Such clarity is evident in the 'Six Principles' (Ministry of Justice, 1994) of which Rentzmann was the main author (See also Rentzmann, 1992, 2006). Engbo's writing is in Danish, but he is extensively quoted in Chapter 5.

1994), which includes key concepts like ‘normalisation’, ‘openness’ and ‘responsibility’, and which build on a prison-minimising and human rights-based outlook (Chapter 5, Section 2). While these Danish ‘Principles’ are reported not to find much favour among politicians, they clearly permeate the thinking of the prison service leadership, as was evident in the interviews, and are reinforced by criminological thinking and research, as indicated by Sigrid Knap’s unique project (Chapter 5, Section 2). In Finland, the widely-accepted penal policy outlook is expressed most fully in the concepts of ‘humane neo-classicism’ and ‘social inclusion’ (Chapter 6). In the Norwegian prison system, less given in the past to ‘philosophical’ documents on penal policy than the other Nordic countries, the new White Paper (Norwegian Ministry of Justice and the Police, 2008) is striking in its advocacy of characteristic ‘Nordic’ penal concepts such as ‘normalisation’ and minimising the use of imprisonment, and it resonates on many points with the thinking of the European Prison Rules (Council of Europe, 2006).

The overarching welfare state

There is considerable agreement across the Nordic countries as to the main political and social factors that contribute to a resistance there to the new punitiveness, even if there is some divergence of views as to the extent to which these brakes are being successfully applied.¹⁵⁵ That degree of consensus as to what forces keep punitiveness at bay should have been evident from the discussion in Chapter 3 (Section 3), especially as the various reasons given for Nordic exceptionalism connect and overlap with each other in large measure, and several might validly be grouped or sub-divided differently. Four of these core factors were found to be strongly supported by the data collected for this thesis, three of them having just been discussed above: restrained public sentiment and media, consensual politics, and the influence of experts. The final factor now to be examined, the universal welfare state, is afforded primacy in

¹⁵⁵ This divergence is evident in varying degrees of optimism conveyed by Balvig (2004), Bondeson (2005a) and Lappi-Seppälä (2007b) as to how successful the welfare state is in holding punitive urges at bay (See Chapter 3, Section 3).

most of these explanations, and this factor can be almost seen as an overarching factor for all of the others.¹⁵⁶

Kautto et al (1999) cite Esping-Andersen and Korpi (1987) as specifying the three main characteristics of the Nordic welfare state as comprehensive social security, social rights and solidarity. The first of these is clearly important in supporting prisoners, for example in help with housing, health and finance, especially upon release. However, in discussion now about the welfare state in Nordic countries generally, it is the other two which will be emphasised. Essentially, the importance to penal policy of the thinking inherent in the universal welfare state characteristic of Nordic countries is its *inclusive* nature, the way in which prisoners tend to be seen, not as ‘others’, but as citizens with rights and as part of the larger community. Often such a perception of people in prison is striking in its taken-for-granted nature, as illustrated by the surprised “*of course*” response by the Finnish Governor (Kirsti Kuivajarvi) when asked if prisoners could vote. In Denmark, that inclusive thinking is at the core of key principles such as ‘normalisation’ and ‘openness’ which govern the way prisons are run (Chapter 5). In Norway, it is inherent in the ‘import model’, based on the assumption that services should be delivered to people in prison by the same public bodies that provide them on the outside – a view strongly asserted by the Director General and several recent government White Papers, and clearly evident in practice (Chapter 7). The same attitude is reflected in the Finnish view that criminal policy is but a part of social policy (and, indeed, as the Finnish Director General asserted, of economic policy also) (Chapter 6).

The human rights basis to penal and social policy is linked to the universal welfare state outlook in which citizens are seen to have *rights* to welfare benefits and services. Prisoners’ citizenship is asserted in voting and in the delivery of

¹⁵⁶ While primacy is given to the welfare state as an explanatory factor for a lack of punitiveness in most of the texts cited in this thesis, Pratt notes in a review of Green (2008), who compares Norwegian and English penal policies, that the latter “puts all his eggs in one basket: political culture is the main determinant of penal value.” (Pratt, 2009, p.136) Pratt, however, in line with most others, highlights the universal welfare state as the most important distinguishing factor in analysing Nordic countries.

public services, but also in other ways. For example, the Ombudsman's remit in Finland includes prisoners and there also prisoners can form associations in any prison, evident by the presence of *Toverikun* throughout the system. (See Chapter 6, Section 4)¹⁵⁷ Chapters 5, 6 and 7 analysed documentation relating to policy in the particular counties, all of which reflected strongly inclusive views of prisoners and which sought to minimise and counteract their separation from the rest of society. This was evident in the Danish *Principles for Prison and Probation Work* (Ministry of Justice, 1994), the Finnish 2006 Prison Act and the Norwegian White Paper (Norwegian Ministry of Justice and the Police, 2008).

Overwhelmingly, interviewees themselves saw prisoners as part of society, as part of the welfare state, and asserted the principles inherent in the Nordic welfare state in their perceptions of, and dealings with, prisoners. It is unlikely that any of those interviewed would disagree with Nils Christie's assertion: "*I am not in doubt that the one basic condition for having a low prison population is to have a functioning welfare state.*"

Generally, also, interviewees conveyed a sense of such a universal welfare state continuing to be a very strong force with widespread political and public support, confirming the sense from most of the literature cited earlier, and in contrast somewhat with Pratt's pessimistic prognosis for the future of the Nordic welfare state.¹⁵⁸ This thesis can conclude, therefore, that the strong universal welfare state continues to be the primary underpinning reason for a lack of punitiveness in Denmark, Finland and Norway, backed by related factors such as restrained public sentiment, politics which tends towards consensus, and a strong role given to 'experts' in the field.

¹⁵⁷ This is the situation also in Denmark (Greve and Snare, 2007).

¹⁵⁸ It should be noted that Pratt's (2008) finding of a decline in homogeneity and solidarity related particularly to Sweden, which was not one of the case-studies for this thesis. Moreover, Pratt did not include Denmark in his study.

Implications for penal policy

As Garland (1990) notes, the penal system, as well as reflecting the values of society, also generates and communicates meaning about the nature of society. So, when convicted men are shown on television being led from court in handcuffs (even when the necessity for handcuffs is questionable) this conveys and reinforces the sense of such people as dangerous 'others', and adds to the consciousness of society of being under threat and needing a punitive solution to maintain public safety. This is likewise the case in relation to men and women held in restrictive closed prisons when they could be held in open institutions, or when they are routinely referred to in negative or demonised terms. By contrast, discourse about 'normalisation', 'resettlement' or the rights prisoners have as citizens communicates very different meaning about the society being lived in.

In this study, whether a penal system is punitive or otherwise has been associated with factors such as media representation, the political system and political practice, the influence of 'experts', and especially the nature of the welfare state. One then needs to ask what, in turn, lies behind such factors. While Garland (2001) conveys a measure of determinism in his analysis of such matters (Lacey, 2008), the scope for deliberate choices, whether by individual media leaders, administrators, politicians or the public at large via political action, may be greater than he recognises. The three case studies examined for this thesis all provide strong examples of individual administrators, politicians or academics significantly shaping penal policy and practice in non-punitive directions. An implication, then, is that key individuals, and individual choices, do matter. Coyle (2000) points to 'leadership' as a critical quality necessary for improving prison systems.

What is of critical importance in relation to such leaders is that they have a coherent 'philosophy' in relation to prisons and prisoners, be these, for example, the Danish 'Principles', the Finnish social inclusiveness and 'neo-classicism', or the penal welfarist perspective that now finds expression in the 2008 Norwegian

White Paper. Thus, whether a new prison is designed to be as non-institutional as possible and aspires to 'normalisation' (as for 228 prisoners in East Jutland, Denmark), or is envisaged as confined and restrictive and on a massive scale (as for 2,200 prisoners at Thornton Hall in Ireland),¹⁵⁹ is in very large measure dependent on decisions taken by key administrators and politicians. Also, the kind of choices taken in such matters in a country at different times by different individuals may vary considerably. For example, it is difficult to envisage the administrative and political leadership that oversaw the publication of *The Management of Offenders* (Department of Justice, 1994) opting for the current punitive direction in Ireland.¹⁶⁰ Conversely, it is substantially open to leading individuals to turn a prison system in a non-punitive direction once again, given inclusive values that are sufficiently strong and clear.

However, it is probably values in society at large rather than among key individuals that are most important in shaping penal systems (although these two sets of values are not, of course, entirely distinguishable). In the Nordic countries examined in this thesis, it was seen that such societal values were mainly those associated with the universal welfare state and these had a decidedly restraining influence on penal policy. This conclusion raises further questions: what gives rise to such an inclusive welfare state, and is the welfare state a cause or effect of such communal values? The detailed origins and dynamics of the Nordic welfare state are beyond the scope of this study, but it seems fair to assume that the roots lie in the labour movements, and probably related features such as national movements, in these countries, as Thomas Mathiesen noted above in relation to Norway. The answer to the second question is most likely that the Nordic welfare state *both* shapes, and is shaped by, the communal values, the idea that '*everyone is going to carry for everyone*' (as the Norwegian minister put it; see Chapter 7).

¹⁵⁹ These institutions will be further contrasted in considerable detail in Section 6 below.

¹⁶⁰ The 'punitive turn' taken in Ireland in the second half of the 1990s was sketched in Chapter 1 and will be further illustrated later in this chapter.

Even where welfare state structures and thinking are not as developed as in Nordic countries, some such collective sense of values is present or latent in probably all societies, and is certainly conceivable, and recognisable to some extent, in most Western societies. The potential to build penal policy on such inclusive thinking in a country such as Ireland, for example, will be explored below (Section 7). The possibilities of non-punitive penal policies emerging elsewhere will now be examined. It should be noted that, while the welfare state is a strongly influential factor in Nordic countries, it is not such a distinctive phenomenon that similar conditions cannot be found or developed in other countries. Thus, choices are eminently possible, both for individuals in key positions and for societies acting collectively through political processes, to take non-punitive routes in penal policy. These case studies demonstrate that resistance to punitiveness can and does occur, and with social benefits that are widely recognised in those locations, but it is also the case that such resistance is not confined to these particular societies. No ideology holds complete sway in any society; there are always opportunities to challenge and reshape policy on these matters. Even in societies where punitiveness seems deeply entrenched, resistance is possible. Raising for debate the question of whether penal policy could and should be different is a crucial part of this.

5. THE PROSPECTS OF RESISTANCE¹⁶¹ ELSEWHERE

Essentially, it can be said that Denmark, Finland and Norway represent a different model of penal policy to that set out by Garland (2001). He suggests that the scenario of a 'culture of control' can be generalised across Western countries. This has been tested in these three Nordic countries and the theory he offers has been found not to be applicable there, even if some traces of punitive tendencies can be identified in various degrees. That has been the core of this thesis. A question that then arises is whether it is possible for the new punitiveness to be resisted in other countries also. That is an implication which this section briefly asks, looking mainly at Europe, and raises the possibility, on

¹⁶¹ The term 'resistance' is also used in relation to countries withstanding punitiveness by Downes (2001, p.52) and Lacey. (2008, p.109; see Chapter 2, Section 7)

the basis of this research, that prison systems in other countries also may depart from the Garland (2001) model. Fuller investigations of these other penal systems are, of course, matters for other studies. Initially, the general picture across the 47 countries of the Council of Europe is touched upon and questions are raised as to possibilities in a number of jurisdictions, mainly ones close to Ireland. Ireland is then examined in more detail in the following sections, as an example of how the lessons from the Nordic countries may be applicable.

The current European context

Many of the patterns in relation to prisons that Garland (2001) described in Britain and the USA are very discernable in continental Europe also. Coyle (2006) speaks of about two million people being incarcerated in the Council of Europe countries.¹⁶² Distilling the key insights from a decade of meetings by European Directors of Prison Administration, he recognises “the increasing use of imprisonment and the increasing length of prison sentences”, but these features are not, in the main, “a reflection of crime levels”. (Coyle, 2006, p.21) This trend has led to “significant levels of prison overcrowding in many countries”, affecting conditions for prisoners and especially their health. (Coyle, 2006, p.21) Coyle cites the Directors as seeing themselves as carrying out an “important task... in protecting society”, but they also come to the conclusion that “the safety of society would be improved by a decreased use of imprisonment and an increased use of alternatives to prison”. (Coyle, 2006, p.21) In that latter statement, the collective leadership of prison systems in Europe are clearly questioning the ‘prison works’ approach (which asserts that greater imprisonment will reduce crime), which is usually driven by penal populism in politics. However, addressing the same gathering in 2004, Dirk van Zyl Smit noted that, while there is “increased European political interest in matters penological”, (2006, p.3) both in the European Union and the Council of Europe, “we find politicians who are prepared publicly to support the calls for improvements to conditions of

¹⁶² Stern (2006) write about imprisonment worldwide increasing, with consequent greater corruption and worsened health conditions. She says “prison populations have risen more than 50 per cent in the last twelve years in 50 major countries”, more than doubling, for example, in Brazil and Thailand in that time. (Stern, 2006, p.7)

imprisonment [and] for the humane treatment of offenders in the community.”
(van Zyl Smit, 2006, p.5)

Such an overall European context, then, where there is at least some recognition of the disconnection between crime and imprisonment, and evidence of non-punitive politicians, diverges in some important respects from what Garland describes, and it suggests the possibility of some countries at least following more restrained routes. The Council of Europe, of course, as was elaborated in the first chapter, has been an institution that firmly sets out a contrary view on imprisonment to that developing under the culture of control. This is most evident in the European Prison Rules. Further, a recent Recommendation agreed by Council of Europe countries, on the management of life sentence and other long-term prisoners, is remarkable in the extent to which it also echoes much of the Nordic ‘philosophy’ set out in the chapters above. As reported by Sonja Snacken, this Recommendation stresses “the detrimental effects of long-term imprisonment”, which need to be modified by means of basic comforts, “some form of control over their [own] fate and environment”, and offering meaningful existence through activities like education and training “to help prisoners retain a sense of worth and self-esteem”. (Snacken, 2006, p.10)

Danish influence seems very much in evidence in this Recommendation (and it is noteworthy that Denmark was represented on the ‘Committee of Experts’ which wrote it. See Snacken, 2006, p.8). Six ‘General Principles’ are set out for dealing with long-term prisoners and while they do not exactly match those six principles described earlier as guiding policy in Denmark (Ministry of Justice, 1994), key principles do recur such as ‘normalisation’, ‘responsibility’ and ‘security and safety’. The others tend to reflect good sentence planning, being the principles of ‘individualisation’, ‘non-segregation’ and ‘progression’. (Snacken, 2006) As in Denmark, normalisation is clearly meant to counteract detrimental effects and “means reproducing to the greatest extent possible within the prison the typical situations, routines and problems that are encountered in the wider community”.

(Snacken, 2006, p.11) Clearly, Council of Europe countries aspire here to far less damaging and more constructive regimes, going against the more controlling impulses described by Garland.

Continental Western European countries

Given such contested ground in Europe between punitive and non-punitive forces, it is at least conceivable that other countries might follow roads significantly different from that set out by Garland. Sweden is still regarded as an exception to 'penal excess' by Pratt (2008), although he notes that its status is at risk. Iceland has the lowest rate of incarceration in Europe and, as was explained in Chapter 3 (Section 6), clearly stands apart generally from the punitive turn, even more so than its Nordic neighbours. Some countries in Western Europe imprison on a far lower scale than England and Wales (which had a rate of 140 in 2004), such as France (91), Switzerland (82), Italy (97), Germany (97) and Slovenia (56).¹⁶³ It is noticeable that imprisonment, as shown by those rates for 2004, has declined since in Germany (89 in August 2008) and Italy (83 in December 2007), while England and Wales continues its upward trajectory (153 in October 2008).¹⁶⁴ Germany would appear to be pursuing some policies more associated with penal welfarism, at least in some states, such as alternatives to prison, more prison leave and early release. (Dunkel, 2004a, 2004b)¹⁶⁵ The main point to be noted here is that examination of some of these continental countries might reveal models quite different to that which Garland describes, or at least interesting combinations of models.

¹⁶³ Figures given here are the most recent produced by the Council of Europe, in its *Penological Information Bulletin*, No. 26, May 2006. The figures are for prison population per 100,000 of general population, rounded off the whole numbers, as of 1/9/2004.

¹⁶⁴ These figures are from www.prisonstudies.org, on 2/12/08, which offers the most recent prison populations available, but these are for different dates in different countries.

¹⁶⁵ Garland (2004) brackets Germany with Nordic countries as examples of those which may take a different route to that predicted in *The Culture of Control* (2001). He says: "Northern European countries, such as the Scandinavian nations and Germany, also exhibit multi-party political systems that are less inclined to populist, majoritarian politics and more given to coalition politics that broker compromise positions," (Garland, 2004, p.180)

English-speaking countries

Among English-speaking countries, which are obviously more influenced by Anglo-American culture, the prospects for deviations from what Garland describes may be less promising, but they are not inconceivable. One might examine, for example, why the Australian state of Victoria should have a rate of incarceration that is about half that of its neighbour, New South Wales, which has similar social and cultural features.¹⁶⁶ Scotland's rate of imprisonment (155 in October 2008)¹⁶⁷ matches that of England and Wales, but one may wonder at the possibility of that self-governing area breaking away from the UK norm, bearing in mind its strong social democratic tradition and the willingness of its devolved (and usually coalition) governments to take different, more universalist, lines in other areas of social policy such as education and health, in comparison with policies south of the border. In the case of Scotland, one would be looking towards some of the underlying factors that are seen to support non-punitive policies in the Nordic countries of similar size – pro-equality and pro-welfare state attitudes, social inclusiveness, consensus rather than majoritarian government – but if these factors pertain sufficiently in Scotland, they have not appeared to impact on penal policy in recent times, at least prior to the report of the Scottish Prisons Commission (McLeish, 2008).

Indeed, McAra (2006) details a move away from penal welfare values in Scotland, what she calls “detartanisation” of distinctive Scottish policies and convergence towards those of England and Wales. However, Hutton, drawing on research in Scotland, questions the presumed “public appetite for more severe punishment”, while noting an inclination to be “tougher” on the most serious crime. (2005, p.255) He finds “widespread support for community-based sanctions which offer the opportunity for less serious offenders to reduce their offending behaviour”. (Hutton, 2005, p.255) He also detects “broad cross-party agreement on criminal justice” in the Scottish Parliament in favour of a “more rational policy”. (Hutton, 2005, p.255) This suggests that it might be possible for

¹⁶⁶ Brown (2005, p.43) gives a rate of incarceration of 94 for Victoria and 180 for New South Wales, on 30/6/2004.

¹⁶⁷ From www.prisonstudies.org, on 2/12/08.

Scotland to go the Norwegian route of taking a tougher stance towards what is seen as a hard-core minority, but a more lenient penal welfarist approach towards most.

Northern Ireland has obviously followed a distinct road, in penal policy as in other matters, due to the political and paramilitary conflict of recent decades. That conflict gave rise to excessive efforts at control of many kinds, starkly exemplified by internment in the 1970s. This was also manifest in very high rates of incarceration, away beyond what was happening elsewhere on these islands, from when Council of Europe figures became available in the mid-1980s. Northern Ireland had an incarceration rate of 135 in 1985, at a time when Scotland had 97, England and Wales had 90 and Ireland had 47. However, imprisonment was dramatically reduced in Northern Ireland, as it rose among its neighbouring systems, over the following years, so that it reached a low Nordic-type level of 52 in 2001. However, it then began to rise once more, being 84 in October 2006. The drop in incarceration is obviously largely explained by ceasefires and the prisoner releases that followed in the 1990s. The current rate is now very close to that of the Republic of Ireland. The model (or mixed models) being applied in penal policy at present in Northern Ireland merits examination.¹⁶⁸

6. WHERE IRELAND DIVERGES FROM NORDIC NORMS

The Garland (2001) scenario has been shown not to apply in three Nordic countries, and this raises questions as to where else it may not apply, whether other countries might choose to take a more 'Nordic' rather than an 'Anglo-American' direction in penal policy. Some general discussion about such prospects was sketched above, but now Ireland will be examined in greater detail as an example of one country which could take a less punitive route. What the Irish system might look like if it were to take some of the best practice from Denmark, Finland and Norway will be set out in the next section. First of all,

¹⁶⁸ It is possible punitive approaches are again rising in Northern Ireland. On the other hand, it is also not unrealistic to think that 'other lessons' may be taken out of the conflict, as Mulcahy suggests in relation to policing: "Despite the threats to human rights in criminal justice developments in Northern Ireland, we should also attend to the potentially positive lessons of conflict and conflict resolution." (2005, p.204).

however, in this section, it is necessary to track the way in which Ireland has diverged from what generally transpires in these Nordic countries of similar size. The conditions for only a small proportion of Irish prisoners are in any way comparable with what is considered normal in Denmark and Norway,¹⁶⁹ but one can point to times when the scale of imprisonment compared to Nordic norms and when official policy (if not always practice) reflected socially inclusive attitudes which are common in Nordic countries. That latter feature was brought out in Chapter 1 in the discussion around Department of Justice documents from the early 1980s, the ‘Whitaker Report’ (1985) and *The Management of Offenders* (Department of Justice, 1994). However, as was also shown in Chapter 1, the unqualified inclusive official view of prisoners as “valued members of society” was significantly changed in the new Mission Statement for the Irish Prison Service. (Irish Prison Service, 2001)

Rates of incarceration

Table 8.1
Rates of Incarceration per 100,000 of the general population

	Denmark	Finland	Norway	Ireland
1985	68	97	51	47
1988	69	77	48	56
1991	63	63	59	60
1994	72	59	62	59
1997	62	56	53	68
2000	62	52	59	76
2004	70	66	65	79
2008	63	64	69	84 ¹⁷⁰

Ireland’s rate of incarceration was close to the Nordic norm for many years, and, indeed, until the mid-1990s was lower than some or all of the three countries

¹⁶⁹ Conditions on a par with Nordic norms can be found only in the Dochas Centre, the Training Unit, the Grove at Castlerea and the two open prisons, which between them hold about an eighth of the prison population.

¹⁷⁰ www.prisonstudies.org, on 2/12/08, gives a figure of 76 for Ireland, but this relates to October 2007. From internal sources it is known that Ireland’s prison population was exactly 3,700 on 3/12/08. Relating this prison population to the most recent estimate of general population (4,420,100 for April 2008, www.cso.ie on 23/11/08) gives a rate of incarceration of 83.71. By March 2009, the prison population had risen further to 3,790 (*Irish Times*, 16/3/09), giving a rate of about 86.

studied here. This can be seen from Table 8.1 (above), which brings together information that has, for the most part, been provided already in earlier chapters.¹⁷¹ As can be seen from Table 8.1, all four countries had close to the same level of incarceration in 1991, around a rate of 60, and this remained the case in 1994 also, aside from Denmark. From the mid-1990s, however, Ireland began to detach from the others. It will be recalled from Chapter 1 that the latter part of the 1990s was the time a new degree of punitiveness entered the debate, and the practice, in Ireland. By 2008 the divergence is much more significant, with Ireland having 3,700 in prison, or a rate of 84, while the others are 63, 64 and 69 respectively. Should Ireland revert to such a Nordic norm, it would have about *one thousand fewer* people in prison. Yet, as was noted in Chapter 1 also, Ireland plans to hold *a thousand more* people in prison, compared to its present population, in the next few years, while all of these three Nordic countries seem set to maintain or even reduce their prison populations.

The ‘coercive confinement’ context

Recent work by O’Sullivan and O’Donnell (2007) is valuable in offering wider context to the discussion of incarceration in Ireland. They enlarge the view of society to consider, not just the prison, but all institutions involved in ‘coercive confinement’, thus including psychiatric hospitals, county homes, reformatories and industrial schools, and Magdalen homes for unmarried mothers. They also look at a longer time span, comparing total incarceration in all such places between 1951 and 2002. The different perspective offered by this analysis is dramatic. While there were only 443 (daily average) in prison in 1951, there were over 31,000 in the other institutions. In total, this meant that over 1% of the entire population of the country in 1951 was forcibly held in institutions. By contrast, the figure for all institutions in 2002 was just under 5,000 of whom over 3,000 were in a prison or place of detention.

¹⁷¹ This table draws on Council of Europe figures from the *Penological Information Bulletin*, apart from 2008, which come from www.prisonstudies.org on 2/12/08 in the case of the Nordic countries, and internal sources in the case of Ireland. The selection of years in this table, first at three year intervals and then at four year intervals, is largely determined by years for which data is available for all countries.

Thus, while O'Sullivan and O'Donnell do acknowledge the "growing centrality of the prison", they point to a "downsizing in overall levels of coercive confinement" (2007, p.28) and in that sense see "a waning in the culture of control" (2007, p.45). While there is value in getting the longer historical and wider social perspective offered by O'Sullivan and O'Donnell, it does not invalidate the argument that the Irish *penal system* (as distinct from the totality of institutions) have moved in a more punitive direction in recent years.¹⁷²

In contrasting Ireland today with the 1950s, the authors are, almost literally, comparing two different worlds, certainly two radically different societies (as they do, indeed, acknowledge). All non-prison institutions of which they speak have been either abolished or (in the case of psychiatric hospitals) radically transformed and reduced for several decades now. One would surely get a very different picture if the comparison went back to the 1970s, the 1980s or even the early 1990s. The changes in a punitive direction in the Irish prison system, and the substantial increase in incarceration from, say, 1995 are hardly deniable. Moreover, Garland's thesis is that this 'culture of control' or greater punitiveness is triggered with the move from modernity to late modernity; if such a shift can be said to have occurred in Irish society, it has surely happened in more recent decades, in the time beyond those coercive institutions of the past.¹⁷³ That is the time period which most merits analysis. Finally, punitiveness is detectable, not just in the quantity, but also in the quality or conditions of imprisonment. It can be argued that this depth of imprisonment has also worsened in recent times in Ireland and this aspect will now be discussed.

Open prisons

In looking at qualitative indicators, the disparity between the Irish and the Nordic prison systems is further accentuated. The numbers in open prisons have

¹⁷² One connection between the earlier scale of coercive institutions the authors describe and present-day imprisonment, is that some of those who would in earlier times have been held in psychiatric hospitals might today be in prison.

¹⁷³ Garland says late modernity "emerged in America, Britain and elsewhere in the developed world in the third quarter of the twentieth century". (2001, p.viii) Later he speaks of late modern change being "most pronounced from the 1960s onwards", with its political manifestation in the US and UK "from the late 1970s onwards". (2001, p.75)

already been presented in the data chapters on the Nordic countries and show stark differences in approach to Ireland, as may be seen from Table 8.2.

Table 8.2
Occupancy in Open Prisons¹⁷⁴

	Prison total (all prisons)	No. in open prisons	percentage in open prisons
Denmark	4,041	1,516	38%
Finland	3,888	856	22%
Norway	3,051	987	32%
Ireland	3,700	207	6%

It is generally accepted in Nordic countries that open prisons have far less detrimental effects than closed and are better at facilitating reintegration. Finland had the lowest proportion of prisoners in open institutions among these Nordic countries in 2005, but that has increased significantly since then to 32 per cent.¹⁷⁵ Thus, each of the three Nordic countries has *more than five times* Ireland's rate in open institutions.

High lock-up times

Another tangible indicator of 'quality of life' in prisons is out-of-cell time. For the great majority of Irish prisoners, this is severely constrained, despite a staff to prisoner ratio that is close to one-to-one, i.e. comparable to the staffing levels in Denmark's and Norway's prisons, and substantially better than Finland's. (Kristoffersen, 2007)¹⁷⁶ It will be recalled from prison descriptions in earlier chapters that most sentenced prisoners in the Nordic countries spend the full day unlocked, being out of cells for anything from 12 to 14 hours, consuming (and

¹⁷⁴ Nordic figures are from Kristoffersen (2007) and relate to 2005 (yearly average). Irish figures are from internal sources and relate to 3/12/08, when 121 and 86 were in custody in Loughan House and Shelton Abbey respectively, Ireland's only open prisons.

¹⁷⁵ The deliberate policy of switching from closed to open prisons was facilitated by recent decommissioning of a large closed prison in eastern Finland and the the decreased numbers in a closed prison in northern Finland, so that by October 2009 the proportion in open prisons was 32 per cent. The Criminal Sanctions Agency aim to bring this figure up to 35 per cent by 2011. (Source: Kirsti Kuivajarvi, Criminal Sanctions Agency, e-mail communication, 15/10/09)

¹⁷⁶ Kristoffersen (2007, pp.58-9) gives figures for staff "per 100 inmates" employed by the prison service in "closed prisons and remand centres" in 2005 as follows: Denmark 98, Norway 95, Finland 73.

often cooking) their meals with fellow prisoners. The great majority of Irish prisoners are unlocked briefly after 8am to collect breakfast on a tray which they bring back to their cells to eat while locked in. They will again be unlocked once more about 9.30am and can go to exercise in prison yards, to activities like education or work, or meet with other staff. (Their mornings will often be combinations of these elements). They are moved back to cells once more between 12 noon and 12.30pm, collecting dinner to eat in the cell en route. They will be locked in cells for about another two hours, being unlocked again after 2pm, possibly as late as 2.30pm (or 3pm on Thursdays), and have a shorter out-of-cell period for similar activities as in the morning until between 4pm and 4.30pm, at which point they are given tea and locked in once more for about an hour. They will be out of cells for a further two-hour 'recreation' period, but will be locked in for the night by 7.30pm.

Thus, for most Irish prisoners out-of-cell time will be between six and eight hours in practice, but will be far less for the increasing numbers "on protection".¹⁷⁷ A high proportion of prisoners must share cells, and use toilets or buckets in the presence of their cell-mates should they need to urinate or defecate. 'Slopping out' is the norm in the case of Mountjoy, Cork and Portlaoise prisons (which between them hold over 1,000 prisoners). Most prisoners in Mountjoy and Cork, and many in other prisons, are obliged to share cells; this probably applies to well in excess of 1,000 prisoners.

More restrictive regimes

The sketch of conditions for high proportions of Irish prisoners given above and the earlier information given about Nordic prisons will give some sense of the very significant gap there generally is in the quality of regimes between Ireland and these Nordic countries. The lower out-of-cell time, poorer sanitation and lack of single cells in Ireland are all particularly indicative. Education in Irish prisons is as good as, and often better, than what is offered in most Nordic prisons,

¹⁷⁷ In the open prisons, the Grove at Castlerea, the Dochas women's prison and the Training Unit in Dublin, which between them cater for about 470 of the 3,700 prisoners, the regimes will be far better.

reflected in participation rates and the range of programmes offered in all prisons,¹⁷⁸ and some prisons have high quality work training facilities. However, a growing problem is the reduced access many prisoners have to such activities, especially those on '23 hour lock-up', as security has become tightened and segregation increased in recent years.¹⁷⁹ Recently leave and structured early release opportunities for prisoners, always below Nordic norms, have also tightened much further.¹⁸⁰

Major changes have been introduced in Irish prisons since 2007 which are described as 'enhanced security measures', and these are primarily aimed at stopping drugs and mobile phones getting into prisons. (Irish Prison Service, 2008, p.4) These new measures involve the presence of a 'Dog Detection Drug Unit', airport-type security screening and an 'Operational Support Unit'¹⁸¹ in each closed prison, and also some additional segregation in prisons. (Irish Prison Service, 2008, p.4) It is very evident that the 'content' or 'depth' of imprisonment in Ireland is deteriorating substantially from an already low base, as its scale escalates.¹⁸²

The Thornton Hall Prison complex

A major focus of the Irish Prison Service for several years past, and probably for coming years, is the planning and construction of a huge prison complex north of Dublin at Thornton Hall. It is illustrative, in considering the possibility of similar policies in Ireland as in the Nordic countries, to compare the Irish prison building project with the new Danish prison at East Jutland, the prison with the highest level of security in that country, and which was described earlier in Chapter 5

¹⁷⁸ Such information on education in Irish prisons is available on www.pesireland.org.

¹⁷⁹ In November 2008 the Inspector of Prisons expressed concern at the high number of prisoners 'on protection', which he estimated at over 1,000, and their restricted access to services and facilities.

¹⁸⁰ Indicative of this has been increasingly limited Christmas leave, which was given as 238 in 2006, 137 in 2007 and 107 in 2008 (*Irish Times*, 24/12/07 and 24/12/08).

¹⁸¹ The establishment of the Operational Support Units required over 170 additional prison staff posts, in addition to the more than 3,200 prison officer posts already in the system. This major effort geared primarily at drug supply control has not been matched as yet by substantial effort at demand control via drug treatment, as is the case in Denmark.

¹⁸² Average life sentences were until recently less than 12 years imprisonment, but are now given as over 17 years, with the Irish Prison Service pointing out that, if those unlikely to be released are included in the calculation, average life sentences could now be closer to 20 years (*Sunday Tribune*, 28/12/08; *Irish Times*, 13/2/06).

(Section 4).¹⁸³ Comparing the projects in the two countries may illustrate the different approaches in each place, offering, not least, different indicators of punitiveness.

The difference in the scale of incarceration envisaged in the planning of both projects suggests quite different visions of the future. It is highly probable that Denmark will keep its incarceration rate at slightly over 60 per 100,000, but Ireland is set (in the light of the McDowell plan referred to in Chapter 1) to move to a rate of more than 100.¹⁸⁴ In addition to a prison building project for some 450 in Kilworth, Co. Cork, the Irish Prison Service plans a set of new prisons at Thornton Hall, north Dublin, that will hold 1,408 – and possibly up to 2,200.¹⁸⁵ Some of this new capacity is due to replace accommodation to be vacated in Cork and Mountjoy, but there are other expansions under way in prisons elsewhere, such as Wheatfield, Portlaoise, Castlerea and Shelton Abbey.

However, in comparing the completed East Jutland with what is envisaged for Thornton, stark contrasts other than the considerable difference in scale are evident and these may be taken to indicate different standards, conceptions and philosophies. Among these contrasts are the following (some based on estimates and projections in relation to Thornton Hall, as certain aspects of these plans have yet to be clarified):

Density. Within the walls of East Jutland the space is such that there are 7.3 prisoners per acre. In Thornton Hall it is likely to be at least three times more crowded per acre, on the basis of a population of 1,408; and obviously more crowded again if the expansion towards 2,200 takes place.

Out-of-cell time. While prisoners are out of cell 14.5 hours per day in East Jutland, it will probably be no more than half that at Thornton Hall. About seven hours is currently the norm in Irish closed prisons, and there may

¹⁸³ It was also referred to in Chapter 6, Section 4, in comparison with the new prison at Turku, in Finland.

¹⁸⁴ A map of Europe in a Danish Ministry of Justice publication of 2001 showed countries coloured according to rate of incarceration, and both Ireland and Denmark are in red among the few in the lowest grouping, with fewer than 75 in prison per 100,000. Much more recent incarceration rates for the two countries are given in Table 8.1 above and show Denmark at 63 and Ireland at 84 per 100,000.

¹⁸⁵ As indicated in the Public Notice of Development issued on 29th February 2008 (p.4, *Thornton Hall Prison Development News*, issue 2, February 2008; www.ips.ie on 19/3/08).

be pressure to reduce that further because of a much lower staffing level envisaged for Thornton (see below).

Cell size. Single cells or rooms (including bathroom) are about 12.5 sq m at East Jutland, 11 sq m at Thornton Hall, but that 11sq m may have to be shared between two.

Staffing. The staff to prisoner ratio is 1.14:1 at East Jutland. It is due to be approximately 0.5:1 at Thornton Hall.¹⁸⁶ Currently there is roughly a 1:1 ratio of officers to prisoners in Irish prisons. Clearly, the lower staffing level will reduce the possibilities of 'dynamic security' at Thornton and add to the pressure for increased lock-up.

Sense of space. The sense of space at East Jutland contrasts with a high degree of building to open space at Thornton. This is illustrated by the fact that no football space greater than 5-a-side pitches has been planned for Thornton, while East Jutland has a full-sized soccer pitch for a much smaller population.

Self-management. Prisoners at East Jutland take responsibility for their own daily tasks like cooking their main meals and washing their own clothes. This will not happen at Thornton Hall, where it is envisaged that 40% of prisoners there will be served meals in canteens, the other 60% eating meals locked in their cells.

Moreover, Thornton Hall is comprised entirely of closed prisons, including prisons for juveniles and women, although some will have a lower degree of security than others. It is therefore anticipated that there will be no open facility for women, or for males under 21, in the Irish prison system. Only Shelton Abbey and Loughan House are to remain as open facilities within the system for adult men. At present, these two open centres take between them less than 6 per cent of the Irish prison population, a proportion that has decreased over the years. With the planned expansion of closed facilities, this low percentage is set to reduce even further.

¹⁸⁶ See *Development News*, issue 1, December 2007, p.2; www.ips.ie on 19/3/08.

7. THE LESSONS FOR IRELAND

The necessary conditions for non-punitive policies

This thesis will conclude, not so much by addressing present arrangements, but by asking what might be possible for an Irish prison system should it take even some of the present better practices from Denmark, Finland and Norway and also adopt the kind of vigorous welfarist approaches these countries espouse. Obviously, this would entail a considerable change in approach and one has to ask if the necessary underlying factors, such as welfare state solidarity, are sufficiently present in Ireland. O'Connor notes that, in the period up to 2003, Ireland compared poorly with other EU countries in terms of social protection expenditure as a percentage of GDP, and had "high levels of relative income inequality despite improvement in 'consistent poverty'". (2007, p.237)¹⁸⁷ While Ireland has not to date encompassed the form of welfare state that pertains in the Nordic countries, there are some signs of public, if not so much political, aspiration towards universal approaches, as exemplified by recent discourse on education and health issues.

However, Kilcommins et al outline the difficulty of classifying Ireland's 'welfare regime' according to the conventional grouping of nations, explaining that different areas of policy "had very different influences and pathways". (2004, p.281) While, in terms of spending and recent growth in inequality, Ireland might be included with the liberal regimes, they refer to

...two key policies that confound this description. First is the commitment to maintaining the real value of welfare payments and second is the use of active labour market policies. Such policies are more characteristic of social democratic welfare regimes than liberal ones. (Kilcommins et al, 2004, p.286)

They see O'Riain and O'Connell's (2000) phrase "solidarity without equality" as best capturing some of the complexity of the Irish welfare situation. (Kilcommins et al, 2004, p.285) They conclude that: "Public policy in Ireland remains

¹⁸⁷ In referring to the international economic recession in the early 1990s, O'Connor also notes: "Some countries were non-sensitive (Ireland and Luxembourg) and others (Sweden and Finland) responded with dramatic increases in social expenditure." (2007, p.227)

extraordinarily flexible and not necessarily guided by rigid ideological dogma... Trends in public opinion in relation to crime and punishment are equally fluid.” (Kilcommins et al, 2004, p.287) Thus, in Ireland, the door seems at least open to the kind of solidarity associated with the welfare state, one of the key factors underpinning non-punitive penal policy.

Moreover, Ireland’s social partnership process, which sets many of the social and economic parameters in the country, corresponds to the kind of consensus-building regarded as typical of Nordic countries. Ireland also has an electoral system based on proportional representation, rather than majoritarian, rules which invariably nowadays gives rise to coalition governments. Such factors, in the Nordic accounts, tend to mitigate conflict between political parties so that, for example, escalating competition between parties in relation to penal populism is less likely to take place.¹⁸⁸

However, at least some media representation of crime appears to be more high-pitched and demonising in Ireland than in the Nordic countries, even if this is not quite at the level it is in Britain.¹⁸⁹ Overall, however, a different approach may at least be *possible*, and indeed has been flagged almost a quarter of a century ago in the ‘Whitaker Report’ (1985). The following is one possible outline for an alternative prison system for Ireland and sets out what could be done in relation to the scale and the content of imprisonment by drawing on Nordic example. Inherent in such an approach is a restoration of the idea of prisoners as “valued members of society” (Department of Justice, 1994, p.22) and the practical application of that inclusive thinking. What is suggested is just one version of a restrained, humane and welfare-oriented system that Ireland could adopt. It is not an impossible prospect, but, of course, would require changes in perspective, assumptions and priorities. Yet many of the elements needed to bring such a

¹⁸⁸ Severe competition as to which party might appear most punitive did, however, take place around the 1997 General Election - as was discussed earlier in Chapter 1 (Section 6).

¹⁸⁹ To take one of many examples that could be offered, the front-page headline of the *Irish Daily Star* on 9/2/09 ran: “DNA tests to nail jail scum” with the term “scum” clearly referring to the prison population as a whole.

situation about, it is argued, are already present in Ireland, while others are within reach or eminently conceivable.

How many prisoners?

As many Nordic commentators and practitioners make clear, the numbers held in prison are “not created by crime, but by cultural/political decisions. They are based on discussions on what sort of society we want to be part of.” (Christie, 2000, p.53) Whereas presently (in January 2009), Ireland has more than 3,700 in prison, or a rate of incarceration of 84 per 100,000, it is proposed here that even with limited adjustments in thinking and practice an incarceration rate of 61, or about 2,700 people in prison, is eminently feasible. That is close to current levels in Denmark and Finland and the kind of level to which Norway is likely to go. It is also the level which Ireland was generally *below* up to as late as 1995. O'Donnell notes that, in Ireland, “the pressure to expand is not coming from within the criminal justice system”. (2008, p.129) He points out that, while committals have dropped between the mid-1990s and the mid-2000s, the prison population has expanded due to politically-driven factors such as a tightening of bail, fewer prisoners on temporary release and longer sentences.

A range of reasonably modest adjustments, all of which have been demonstrated in the countries examined, would achieve such a reduction. Reducing the prison population by a thousand from its present level could be done, for example, by measures such as the following: ceasing to use prison for non-payment of fines,¹⁹⁰ finding alternatives in the community for shorter sentences in particular, allowing drug-dependent prisoners to undergo treatment in the community instead of imprisoning them, 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 on a limited basis. For

¹⁹⁰ In answer to a Dail question on 5/12/06, the Minister for Justice gave figures for recent years which showed about 1,800 people annually, or close to one-fifth of all prison committals, are imprisoned for non-payment of fines or for debt (*Irish Times*, 6/12/06).

example, remission in prisons in Ireland is at the three-quarters point (compared to two-thirds in Nordic countries) and a scheme was announced in 2008 that allowed the Minister for Justice discretion to reduce this to the two-thirds point where rehabilitation seemed in prospect (*Irish Times*, 4/3/08). However, governors were circulated by Prison Service headquarters, pointing out that this scheme will be used only in exceptional circumstances.¹⁹¹

One could validly argue for a prison population lower than 2,700, but that figure would bring Ireland back to around the lowest levels of incarceration in Europe,¹⁹² and a rate of 61 is near to where the Nordic countries of similar size to Ireland are likely to be in the coming years. The government's Committee of Inquiry into the Penal System proposed significant reductions in the number of committals to prison "and effective duration of stay in prison" and envisaged a prison population which would have given a rate of incarceration of about 50. (Whitaker Report, 1985, p.17)¹⁹³ One needs to allow for some increase in serious crime such as gangland criminality and sex offending since then (although paramilitary violence has decreased markedly). It might be argued that Irish society has changed more profoundly since the 1980s than these developments in crime suggest, but the change is hardly significantly different from that which took place in Nordic countries in the same period. Nordic countries and Ireland can be presumed to be similarly impacted by the forces of late modernity, so that, if restrained prison populations are possible in those countries, it should be possible to achieve this in Ireland also. A population of 2,700, or a rate of 61, is still less radical than the government's Committee of Inquiry's proposal.

¹⁹¹ After the first year only one prisoner had been granted the extra remission, despite hundreds of applications. (*Sunday Tribune*, 25/1/09)

¹⁹² Iceland has a rate of incarceration of 40 per 100,000, the lowest in Europe. The next lowest are Bosnia (48) and Slovenia (56). These figures are for 1/9/2004. (Council of Europe, *Penological Information Bulletin*, no. 26, May 2006).

¹⁹³ Council of Europe figures around that time give a prison population of 1,671 (or a rate of 47) on 1/2/85 and of 1,852 (or a rate of 52) on 1/2/86. Whitaker notes that 'actual numbers in custody' in June 1985 were 1,960 (p.17), but there were 300 more on 'special leave'. The Whitaker Report proposed a population of no more than 1,760.

The depth of imprisonment

The nature of the imprisonment is almost as important as the scale, but the two aspects are interlinked. The lower population would enable the system to have prisons with smaller numbers in them, moving towards the prison sizes typical of the Nordic countries, which are considered to have fewer negative effects. It would allow for a drastic reduction in cell sharing and for the abandonment or conversion of cells without access to proper sanitation. There should be even less excuse then for the high lock-up time, and the 12 to 14 hours out-of-cell time seen in Nordic prisons could be applied in Ireland. 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)

Little has changed with regard to most of these matters since the Whitaker committee reported nearly a quarter of a century ago.

Lower prison numbers and an increase in out-of-cell time should also allow for better access to educational and work training activities, and the opportunity to use technology that is as close as possible to that which pertains outside prison. It should also facilitate better family contact and better drug treatment and/or drug-free areas for those who want these. The kind of self-management described earlier in all Danish prisons, and being copied in other Nordic countries, whereby prisoners do their own shopping, cooking and cleaning, could and should be introduced in Irish prisons as the most obvious way to adhere to 'normality' and mitigate the detrimental effects of imprisonment.¹⁹⁴

¹⁹⁴ It may be recalled from Chapter 5 (Section 4), in the description of Ringe Prison, that when Wheatfield Prison was built in Dublin, the prison was planned to enable just such self-management to happen, following the example of Ringe, but the facilities installed for this purpose have never been used.

With regard to the extensive drug problems among prisoners and in prisons, a combination of the Finnish approach to supply control and the Danish approach to demand control might appear the best strategy within prisons, together with following the proposal in the Norwegian White Paper that more prisoners with drug problems be released to undertake treatment in the community. The Finns have not universally applied the airport-type screening as Denmark has (although the high-security Turku Prison does have this), nor the universal mandatory drug testing of which the Governor of Herstedvester Prison was so critical, but they do conduct urine testing where prisoners *volunteer* to go to open prisons or on drug treatment programmes or to drug-free units. Most important, however, is the Danish guarantee of drug treatment offered within two weeks to any prisoner who requests it and who still has at least three months to do. Thus, extensive voluntary drug treatment is available in virtually every prison in Denmark.

Greater use of open prisons

A critical change in the quality of regimes, however, would be to have one-third of all prison places in open prisons, which would probably allow for something in the region of one half of all sentences to be served mainly in such locations. This would involve adapting some closed prisons or acquiring some 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. It will be recalled from earlier that at present no open facility exists in the Irish prison system for women (while in Denmark the proportion of women in closed prisons is very low), nor is there an open institution now for young men (since the closure of Shanganagh Castle in 2003). 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.

It will also be recalled that in Denmark the cost of keeping a prisoner in an open prison is about half that of a place in a closed prison, a pattern that was also reflected in the different staffing levels, for example, at the Tromsø open and closed sections in Norway. The real benefits of open centres, of course, come from lessened institutionalisation and better prospects of resettlement. These outcomes also derive from home leave and it was seen that 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.

The need for a White Paper

There is much more that Ireland could learn, of course, from these Nordic countries about respecting the dignity and citizenship of people in prisons. Positively facilitating, rather than reluctantly allowing, the recently granted right to vote to prisoners would be one step (Behan and O'Donnell, 2008), as happens without question in Nordic countries. Likewise, there can be no valid reason to prohibit the kind of prisoner representative groups (*Toverikunta*) that exist in prisons throughout Finland. Ireland could also benefit from something like the annual 'seminar in the mountains' in Norway to discuss prison issues, which involves politicians, policy makers, prison management, academics and prisoners.

Ireland could truly learn from the deliberative process that was involved in the shaping of the Norwegian White Paper on the future of the prison system, (Norwegian Ministry of Justice and the Police, 2008) bearing in mind that in Ireland a White Paper on crime was promised by the government for 1998 and remained an objective for the Department of Justice up to 2003, but has never come about. (O'Donnell, 2008) Given poor planning and policy analysis in relation to prisons in Ireland, the country would surely benefit from the kind of process and product Norway has developed in its 2008 White Paper. Even a White Paper assessing whether there is a need for, and the possible character

of, the Thornton Hall complex would be a highly desirable exercise, one that would be likely to produce much saving in economic, social and human terms.

As well as helping clarify penal objectives and future direction, the *process* involved in bringing about the Norwegian White Paper is something for Ireland to learn from, for the Norwegian government and prison administration consulted seriously and widely with the public in its formation. Such a process would help address a key problem set out by Loader (2006) and detailed earlier in this chapter in the discussion of penal populism (Section 3). He identifies a need for inclusive and informed public debate about crime and punishment as part of “the lost political art of taking the heat out of crime”. (Loader, 2006, p.583) Norway offers such an experience and example.

8. CONCLUSION

This thesis set out key questions at the outset:

- (a) Does Garland’s theory (2001) that the ‘culture of control’ has taken hold in relation to prison systems apply in the three Nordic countries?
- (b) What factors lie behind the answers?

Overall one can assert, on the basis of the data gathered for this thesis, that the prison systems in Denmark, Finland and Norway have not followed the path set out for prisons by Garland (2001). There have been some indications that the punitive scenario Garland describes might apply to some extent to the prison systems in each of these countries, particularly in the early part of this decade. However, more recent evidence indicates each of these prison systems pursuing courses that are significantly at odds with that set out by Garland (2001). Prison populations in Denmark, Finland and Norway have stayed at relatively low levels and are again tending to decline; the depth of imprisonment in these Nordic countries is lessening in many respects; and policy and practice work from a concept which sees people in prison as members of society.

As is widely described in the literature, the Nordic universal welfare state is of critical importance in underpinning that inclusive attitude and in generally restraining punitiveness. The indications gathered in this research suggest that this underlying social and political factor remains robust and widely accepted and supported. Further (but related) factors which help these three countries resist the new punitiveness are lower fear of crime and relatively restrained media; more consensual politics than in the US or UK and a much stronger role for the leadership of the prison systems who, critically, work from very coherent and non-punitive 'philosophies' with regard to penal policy.

An implication for this research, then, is that the scenario for prison systems elaborated by Garland (2001) is by no means inevitable in Western countries. Moreover, there are no insurmountable reasons why Ireland, whose prison system shared much of the character of those in Nordic countries until at least the mid-1990s, cannot today opt to have far fewer people in prison and have prisons which are much more in line with those in Nordic countries. Ultimately, however, the level and depth of incarceration in a country, and how it chooses to regard its citizens held in prison, is a political choice, reflecting larger questions as to what form of society people aspire to, and deeper issues as to what are its core values.

Appendix A: Interviews conducted, dates and locations

DENMARK

William Rentzmann, Director General of the Danish Prison and Probation Service. 5th July 2007, at Prison and Probation Service Headquarters, Copenhagen.

Kaj Raundrup, Education Manager. 6th July 2007, at Prison and Probation Service Headquarters, Copenhagen.

Benny Christensen, Head of Employment and Education, Mogelkaer Prison, Jutland. 11th December 2007, at prison.

Tue Nyrup Rasmussen, Head of Employment and Education, Oystjylland (East Jutland) Prison. 12th December 2007, at prison.

Flemming Balvig, Professor of Sociology of Law and Criminology, University of Copenhagen. 13th December 2007, at Institute of Criminology, Copenhagen.

Hans Jorgen Engbo, Governor, Herstedvester Prison, near Copenhagen. 14th December 2007, at prison.

Sigrid Knap, Researcher. 24th May 2008, at Rica Ishavshotel, Tromso, Norway.

FINLAND

Esa Vesterbacka, Director General, Criminal Sanctions Agency. 30th October 2007, at Criminal Sanctions Agency Headquarters, Helsinki.

Tapio Lappi-Seppala, Director, National Research Institute of Legal Policy, Helsinki. 31st October 2007, at Institute.

Kirsti Kuivajarvi, Governor, Helsinki Open Prison. 1st November 2007, at prison on Suomenlinna Island.

Ulla Mohell, Legislation Counsellor, Ministry of Justice. E-mail interview, 17th June 2008.

Virva Ojanpera-Kataja, Secretary for International Affairs, Criminal Sanctions Agency. 4th July 2008, at Criminal Sanctions Agency Headquarters, Helsinki.

ICELAND

Erlendur Baldursson, Assistant Director, Prison Administration, Iceland. 25th May 2008, at Rica Ishavshotel, Tromso, Norway.

NORWAY

Are Hoidal, Governor, Oslo Prison; with Tom Eberhardt, Principal Officer, Oslo Prison. 7th November 2006, at prison.

Torfinn Langelid, Senior Adviser, County Governor of Hordaland (responsible for prison education across Norway). 8th November 2006, at Bondeheimen Hotel, Oslo.

Nils Christie, Emeritus Professor of Criminology, Institute of Criminology and Sociology of Law, Oslo. 9th November 2006, at Institute.

Kristen Bolgen Bronebakk, Director General of the Correctional Services of Norway; with Suzanne Five, Senior Adviser, Correctional Services Department, Ministry of Justice. 9th November 2006, at Correctional Services Headquarters, Oslo.

Oyvind Alnaes, Governor, Bostoy Prison. 10th September 2007, at prison.

Heidi Bottolfs, Adviser, Correctional Services Department, Ministry of Justice. 11th September 2007, at Correctional Services Headquarters, Oslo.

Thomas Mathiesen, Emeritus Professor of Sociology of Law, Institute of Criminology and Sociology of Law, Oslo. 12th September 2007, at Institute.

Terje Moland Pedersen, State Secretary (Deputy Minister for Justice); with Jan-Erik Sandlie, Correctional Services Department, Ministry of Justice. 22nd May 2008, at Rica Ishavshotel, Tromsø.

SWEDEN

Per-Ake (Pelle) Palmquist, Governor, Hall Prison; with Agneta Johnson, Assistant Governor, Hall Prison. 5th December 2007, at prison.

Svenolov Svensson, Co-ordinator of Programmes, Goteborg Region, Prison and Probation Service. 6th December 2007, at Prison and Probation Service Headquarters, Norrköping.

Eva Cedergren, Legal Department, Prison and Probation Service; with Birgitta Persson, Senior Adviser, Prison and Probation Service. 6th December 2007, at Prison and Probation Service Headquarters, Norrköping.

Birgitta Persson, Senior Adviser, Prison and Probation Service. 8th December 2007, at Prison and Probation Service Regional Headquarters, Malmö.

Appendix B: Questionnaire used in interviews

Interview format about penal policy.

1. What is your work within the prison (criminal justice) system?
2. How would you assess the general situation within prisons in this country at present?
3. What do you think are the most significant features of official policy in relation to prisons in this country?
4. Do the European Prison Rules (EPR) influence penal policy or practice very much? (Explain/Expand/Give examples)
5. The revised EPR say prison should only be used “as a last resort”.
 - (a) Do you think this principle is applied in this country?
 - (b) There is a view in the EPR that the deprivation of liberty is “a punishment in itself” and that prisons should “not aggravate the suffering inherent” in imprisonment. To what extent do you think this principle is applied in this country?
6. According to the EPR, prison conditions should not “infringe human dignity”, should offer “meaningful occupational activities and treatment programmes to inmates”, as a way of “preparing them for their reintegration into society”. To what extent do prisons here put those ideas into effect?
7. What do you see as the main obstacles to the resettlement of prisoners into society upon release?
8. The former (1987) EPR referred to the “detrimental effects of imprisonment”.
 - (a) Do you think there are detrimental effects to imprisonment and (if so) what are they?
 - (b) (If there are) how well are detrimental effects minimised in prisons here?
9. Has there been much change in prisons here in recent times? Has there been pressure for change? What is behind these changes/pressures?
10. Who or what are the main influences on penal policy formation in this country?
11. Internationally (or at least in some western countries) there appears to be greater punitiveness in penal policy in recent years (e.g. mass imprisonment, zero tolerance, austere prisons, get-tough-on-crime, etc.). Have these ideas had any impact here? (Examples?/Why?/Why not?).
12. Some of the literature claims that in Nordic countries the “welfare state ideal” is a major influence on penal policy in these countries. Do you think this is (still) so? (Explain/Examples?)
13. Is it still reasonable to speak of a Nordic approach to penal policy? What, if anything, is distinctive about it? How does your country compare with other Nordic countries? What would concern you about/what would you admire about other Nordic countries?
14. Have I given you an opportunity to describe how things are here properly? What else should I know?

Appendix C: Visits to Prisons

DENMARK

Horserød Prison, 4th July 2007. Guide: Kjeld Eriksen, Head Teacher.

Mogelkaer Prison, 11th December 2007. Guide: Benny Christensen, Head of Employment and Education.

Ostjylland (East Jutland) Prison, 12th December 2007. Guide: Tue Nyrup Rasmussen, Head of Employment and Education.

Prior to commencement of the research programme: **Ringe Prison**, 1st March 1996. Guides: Kim Damgaard, Head Teacher, and Bodil Philip, Governor.

FINLAND

Helsinki (Closed) Prison, 31st October 2007. Guide: Irene Litmanen, Deputy Governor.

Helsinki Open Prison, Suomenlinna, 1st November 2007. Guide: Kirsti Kuivajarvi.

Turku Prison, 2nd July 2008. Guides: Virva Ojanpera-Kataja and Tiina Lehto, Director of Assessment and Allocation Unit for Turku Region.

Kerava Prison, 3rd July 2008. Guides: Virva Ojanpera-Kataja and Minna Peltonen, Deputy Governor.

NORWAY

Oslo Prison, 7th November 2006. Guide: Marit Gran, Head Teacher.

Bastoy Prison, 10th September 2007. Guide: Halvor Killingstad, Prison Officer. (*Prior to commencement of the research programme:* Bastoy was also visited on 16th June 2003 as part of the EPEA Conference being held at Langesund).

Tromsø Prison, 23rd May 2008. Guides: Siri Gaarder Brock-Utne, Deputy Governor, and Dag Rafaelsen, Head Teacher.

SWEDEN

Hall Prison, 5th December 2007. Guides: Per-Ake Palmquist, Governor, and Agneta Johnson, Assistant Governor.

Tygelsjö Prison, 8th December 2007. Guide: Andrea Larara, Teacher.

Ystad Prison, 11th September 2008, as part of the Conference of European Directors and Co-ordinators of Prison Education being held in Malmö.

Prior to commencement of the research programme: **Huddinge (Beateberg) Prison**, 12th September 1996. Guide: Gunner Odeltorp, Head Teacher. **Uppsala Prison**, June 1993. **Osteraker Prison**, early 1990s.

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