

Chapter 7

Resisting the New Punitiveness: Penal Policy in Denmark, Finland, and Norway and Contrary Trends in Ireland

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ABSTRACT

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

INTRODUCTION

The first part of this chapter probes what Garland’s analysis implies for prisons, and suggests that penal developments under the ‘culture of control’ can be identified via three key criteria. Each of these criteria is then studied in the three Nordic countries

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that are focused on, with occasional reference also to Iceland or Sweden: the scale of imprisonment, the depth (or quality or content) of imprisonment, and the representation or perception of people held in prison. A concluding section contrasts these Nordic patterns with what has happened in penal policy and practice in Ireland over the past quarter of a century. Ireland's penal system had much in common with Nordic countries until the mid-1990s, especially its penal 'philosophy' and a similar level of incarceration, although its prison conditions have generally lagged well behind. However, Ireland has recently diverged considerably from Nordic norms, exhibiting many of the features Garland describes.

Garland's 'Culture of Control'**Three Summary Criteria of Punitiveness**

In *The Culture of Control* (2001), Garland sets out 12 'indices' of the change he sees in the overall crime control field. Most of these relate to imprisonment, in particular a switch in aims from rehabilitation to retribution and protection, penal populism, a steep rise in incarceration, greater emphasis on control and less on offering assistance, and negative characterisation of people involved in crime - "stereotypical depictions of unruly youth, dangerous predators and incorrigible career criminals" (Garland, 2001, p.10). Pratt *et al's* (2005) term 'the new punitiveness' encapsulates well these purported new trends.

The Garland indices relevant to imprisonment can be consolidated into the three criteria of punitiveness already mentioned: the scale and depth of imprisonment, and the representation of the prisoner. Thus, for example, *the scale* is affected by the change to retributive and protection functions, as well as by the assertion that 'prison works'. *The depth* is shaped by the vengeful attitudes incorporated in Garland's second index, "punitive sanctions and expressive justice" (2001, p.8), as well as by the change in criminological thinking from a welfare-focused to a controlling perspective. Almost all indices impact on *the way the person held in prison is seen*: whether as part of society, as implied by an inclusive concept of rehabilitation, or as in the negative stereotypes often painted in politics or the media; whether one-dimensionally as an 'offender', as suggested by much of the new managerialism, or more broadly as "the whole person bearing in mind his or her social, economic and cultural context" (Council of Europe, 1990, p.8).

Penal Welfarism

It is important to note what it was this 'new punitiveness' (Pratt *et al*, 2005) or 'culture of control' was presumed to have replaced. Garland refers to the earlier

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outlook as ‘penal welfarism’, a broad paradigm that held sway for most of the twentieth century. Key attitudes in this paradigm included seeing prison as a last resort, wanting to minimise security and ‘normalise’ life within prison, and regarding people in prison as members of society. The “basic axiom” of penal welfarism was “that penal measures ought, where possible, to be rehabilitative interventions, rather than negative retributive punishments” (Garland, 2001, p.34). Garland sees penal welfarist features as “part of the wider scheme of things... integral elements of the post-war welfare state and its social democratic politics” (p.28). Penal welfarism assumed that “*the state was to be an agent of reform as well as repression, of care as well as control, of welfare as well as punishment*” (p.38, emphasis in original) and “claimed to bring all individuals into full social citizenship with equal rights and equal opportunities” (p.46).

Garland stresses that, in the new crime control field, “new practices and mentalities co-exist with the residues and continuations of older arrangements” (p.167). However, the ‘penal mode’ of penal welfarism has become “more prominent... more punitive, more expressive, more security-minded... The welfare mode, as well as becoming more muted, has become more conditional, more offence-centred, more risk conscious” (p.175). Those who commit offences are “less likely to be represented in official discourse as socially deprived citizens in need of support. They are depicted instead as culpable, undeserving and somewhat dangerous.” (p.175)¹ Clearly, then, the punitive developments Garland speaks of are relative rather than absolute and refer to significant *changes in emphasis* in penal policy.

Measuring Severity

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

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

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

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

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

The Scale of Imprisonment

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

While the USA’s rate of incarceration of 655 is notorious, much lower rates of 140 for England and Wales and 149 for Scotland still stand out as among the highest in Western Europe.² Levels of imprisonment have risen enormously in the US since 1973, and in Britain since 1993. By comparison with Britain, or even with Ireland, the Nordic countries incarcerate far fewer people. Recent rates of incarceration (per 100,000 of the country’s population) and prison populations are:

Denmark	63	3,635
Finland	53	2,910
Norway	60	3,190
Sweden	61	6,210
Ireland	85	4,209

It may be noted that, while Ireland has a lower general population than all the above countries, its prison population exceeds the numbers held in prisons in each of Denmark, Finland and Norway by considerable amounts.

Denmark

While prison numbers in Denmark have risen occasionally, its rate of incarceration has generally remained in the low 60s per 100,000 for the past 25 years. Punitive

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impulses have come from the political field at times, leading to some increased sentences, a clampdown on drugs and restrictions on prison leave, but these have tended to be offset by alternatives to custody, supportive drug treatment and a policy which enables many to be released ahead of the conventional two-thirds point of sentence. Such balancing features derived mainly from a coherent ‘philosophy’ among those running the prison system, an outlook that is very much penal-welfarist in the manner described earlier in the chapter.

Lappi-Seppala explains how sometimes Nordic countries pronounce punitive policies, but then more quietly soften these by introducing alternatives to custody, and his description is particularly relevant to Denmark:

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

Finland

In Finland too, there have been some longer sentences for certain sex, drugs and violent offences, but these greater punishments were limited in scope and more than offset by the drive to find alternatives to custody, such as the development of community service and the virtual abolition of prison for non-payment of fines. Finland’s prison population has fallen almost continually from a high level just after World War Two – except for an upward swing from 1999 to 2005, which then turned decisively downwards again. Esa Vesterbacka, the Director General, spoke in interview in 2007 of additional alternatives being introduced, such as conditional early release and electronic monitoring. These have clearly been effective, with the rate falling from 67 in 2007 to 59 in 2011, and to 53 in early 2020. Reducing prison numbers is a government objective.

Nils Christie says: “Finland’s penal history illustrates that prison figures are not created by crime, but by cultural/political decisions... laws were changed, fines used more often, prisons less” (2000, pp.53-54). He credits much of the responsibility for this to “the intellectual-administrative elite” with responsibility for crime policy. In relation to the uncharacteristic rise in prison numbers for a period in the early years of the century, Esa Vesterbacka noted that a refusal by the Ministry of Finance to a request for more prison spaces at that time 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

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compared this to a lack of cupboard space in one's kitchen at home – when new cupboards are acquired they are quickly filled up also!

Norway

Prison populations rose in Norway at certain times this century to a rate of incarceration in the low 70s, but dropped again to a rate of 60 in 2019. One may find traces of Garland's indices of punitiveness in Norway in some longer sentences and a stress on protecting the public. However, the latter idea leads not to more imprisonment as Garland describes, but to a commitment to offer help towards change and resettlement. This is evident in the government's White Paper on punishment (Norwegian Ministry of Justice and the Police, 2008), which is notable for its strong focus on a socially-inclusive concept of rehabilitation and its recognition that this is best achieved outside prison or in open prisons. The political and administrative leadership declared a commitment to reduce prison numbers via alternatives to custody and early releases, a strategy that has clearly been put into effect over the past decade.

The Depth of Imprisonment

The physical conditions of imprisonment and the way people in prisons are treated are also indicators of penal severity. Evans and Morgan say:

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

Former British Home Secretary, Michael Howard's, promulgation in 1993 of twin punitive concepts ('prison works' and 'austere prisons') is an illustration of how the scale and depth of imprisonment tend to move together. This section will examine a number of factors which appear to contribute to the 'shallow' character of Nordic prisons, including the high usage of open prisons, the tendency to have small prisons and other important regime features. The discussion will be illustrated by reference to particular prisons.

Open Prisons

An important indicator of the depth of imprisonment is the extent to which sentences are served in open prisons. There is a widely held view in Nordic countries that

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open prisons have fewer detrimental effects and better facilitate reintegration. The operation of an open prison relies substantially on relationships and on the prisoner's sense of responsibility, rather than on physical restraints. Denmark holds 30 per cent of its total prison population in open centres, Finland also 30 per cent, and Norway 34 per cent (Kristoffersen, 2019). This contrasts sharply with Ireland, where the rate is less than 6 per cent.³ Thus, each of these Nordic countries has *at least five times* the proportion in open institutions as Ireland. These figures include remand prisoners, but when one looks only at *sentenced* prisoners in Denmark, it transpires that a large majority are in open rather than closed institutions – 55 per cent in the latest available figures (Kristoffersen, 2019). As well as being seen to have fewer detrimental effects, Nordic officials report that the cost of holding someone in an open prison is about half that of a closed prison.

Small Prisons

Nordic prisons tend to be small relative to most other Western countries, with no prison in any Nordic country holding more than 400.⁴ The average population in a prison is approximately 77 in Denmark, 120 in Finland, 89 in Norway and 79 in Sweden – in contrast to Ireland, where the average prison size is 350.⁵ The general assumption is that such smaller institutions will have less institutionalisation, restriction and bullying. Having more small prisons rather than fewer large ones also means more of those in prison can be held near their homes and families. Such thinking is taken furthest in Iceland, where the average prison holds 26 (a population of 131 in five prisons). Iceland's former Assistant Director of the Prison Administration, Erlendur Baldursson, 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 in his eyes was Litla Hraun, (which had 87 places at the time of this author's visit in 2013), and where Baldursson had seen “increasing levels of traditional problems”, such as drug abuse and personal conflicts (Baldursson, 2000, p.8).⁶

Regime features

Other notable aspects of regimes for those serving sentences in Denmark, Finland and Norway are:

- single-cell accommodation for almost all men and women in prison;
- proper and private sanitation arrangements

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- out-of-cell time that is generally 12 to 14 hours, with strong activity such as work, training, education and therapy;
- an increasing tendency to facilitate ‘self-management’ whereby those in prison carry out their own daily tasks such as cooking and cleaning;
- substantial temporary prison leave;
- sentence planning and a concomitant willingness to release people from prison early;
- substantial drug treatment;
- very few young people imprisoned.

This picture will be elaborated on below, in particular via portraits of particular prisons and details from interviews with officials.

Denmark – East Jutland prison

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

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

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

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As in other Danish prisons, men and women mix, although a woman may opt to be in a single-sex unit. There are usually fewer than eight women in East Jutland, the vast majority of imprisoned women in Denmark being in open prisons. At the time of this author's visit in 2008, the staff-to-prisoner ratio was 1.14 to 1.⁷

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

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

East Jutland has managed to reconcile the imperatives of 'care' and 'custody', or what long-time Director General, William Rentzmann, called "*the soft and the hard*", opposites that are notoriously difficult to hold in balance. A high level of security has been achieved while also doing justice to the progressive principles that govern life in Danish prisons⁸ – relating activities in the prison to normal life in the community, achieving a measure of openness and enabling those in prison to take responsibility for at least some aspects of their own lives.⁹

Finland

In interview, the Finnish Director General, Esa Vesterbacka, was frank in detailing the shortcomings of his prison system. His points related mainly to structural issues: the then continuing practice of 'slopping out', which still affected close to 500 people in prison in 2007 and was slowly being phased out; the sharing of cells which affected '*a couple of hundred*'; insufficient drug treatment; the confinement of a small number of sentenced prisoners (in '*tens*' rather than '*hundreds*') to cells for up to 23 hours a day, mainly because of fear of other prisoners; and the lack of a full day's activity for many in prison. Thus, while physical conditions in Finland may not match those in Denmark, the prisons are less subject to the new restrictions

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experienced in the latter. So, while there are shortcomings in Finnish prisons, there appears to be steady, if slow, improvement, enhanced by a new sentence-planning process.

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

Norway

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

Despite some curtailment over a decade ago, prison leave is more substantial than elsewhere. Major cities have halfway houses from which those in prison go to education or work on the outside during the day. In addition, a person in prison normally gets home leave after serving one-third of the stated sentence. The norm then is 18 days leave per year in a closed prison and 30 days in an open, although many will transfer from a closed to an open institution at the one-third point. They pay for travel home themselves.¹⁰ Approximately 25,000 leaves were given in 2005; less than 0.5 per cent defaulted, including late returns.

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

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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.¹¹

The role envisaged for prison staff is centred on relating to prisoners, captured in the official slogan that reflects a decision to change the emphasis of their work: “from guard to social worker – a paradigm shift”.¹² This changed role is particularly evident for the ‘personal officer’ (also called ‘contact officer’), who has the responsibility for supporting usually no more than three people in prison in dealing with their sentences and planning their futures.

Bastoy Open Prison

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

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

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

Much of the philosophy behind open prisons such as Bastoy may also be found in closed prisons in Norway, such as the new prison in Halden, which resembles East Jutland prison in Denmark in many ways and which opened in 2010 (Kriminalomsorgen, no date).

Resisting the New Punitiveness**Resilient Penal Welfarism**

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

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

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

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

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

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

Garland says: "Where the older criminology demanded more in the way of welfare and assistance, the new one insists upon tightening controls and enforcing discipline" (2001, p.15). On that basis Norway is certainly following 'older criminology', given, for example, that the former Director General was of the view that "*prison should*

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be bearable” and also said: “We have enough of the locks and gates and cameras... we need to have more activities.”

The Representation of the Person Held in Prison

Nordic Countries: The Larger Social Context

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

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

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

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

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

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Are Hoidal, the former Governor of Oslo Prison (and now Governor of the new Halden Prison referred to earlier), said of those held in his Oslo prison: “80 per cent of them need help”. In a survey of Norwegian prisoners, Skardhamar found that their major problems related to housing, money and work. 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). In similar vein, Nilsson’s (2003) research on social exclusion and recidivism among prisoners in Sweden found that problems of employment, education, housing and finance (in that order) are significantly associated with recidivism. In addition, he said, “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).

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

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

1. *Normalisation.*
The daily activities of the Prison and Probation Service shall in general...be related to normal life in the general community...
2. *Openness.*
Prison and probation work shall be organised so that the offender is offered good opportunities to make and maintain contact with the ongoing life of the community...
3. *Exercise of Responsibility.*
Prison and probation work shall be so organised that the offender has the opportunity to develop a sense of responsibility, self-respect and self-confidence and become motivated to actively strive for a crime-free life...

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

Such principles also underpin the Danish view that open prisons should be the norm for those serving sentences. Open prisons incorporate a greater degree of normalisation, enable those in prison to have more interaction with the outside community and take responsibility for more of their own lives. The representation of the person in prison in the *Principles* document, then, suggests a normal citizen, a member of the community, one who can be trusted to a large extent. The citizenship

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of people in prison is also acknowledged in Denmark, as elsewhere in Europe, via their rights to vote, appeal to the ombudsman and form representative groups.

While there has been some decline in the perception of the person in prison in Denmark, especially in the political sphere, the evidence does not suggest the kind of radical swing from penal welfarism to a culture of control that Garland describes. Employers still actively seek those released from prison for work. Inclusive concepts persist in other areas too, such as the accepting and positive view of the incarcerated person inherent in the ‘*principle of acknowledgement*’¹³ used at Moglekaer open prison. The Head of Employment there gave striking examples of what he means by this: a paedophile can be moral in other respects; a thief can be a good parent. This approach seeks to find the positive qualities in people in prison, to acknowledge these and try to motivate them accordingly.

Finland: Prisoners as Members of Society

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

There is far more to the Finnish idea of rehabilitation than narrowly ‘addressing offender behaviour’, which indicates a one-dimensional perception of the person in prison.¹⁴ A course at Kerava Prison, for example, seeks “the holistic rehabilitation of the client”, recognising the social dimension in a way offence-focused programmes seldom do. This course addresses issues such as housing, finding meaningful activity like work or education, and help within and beyond prison with addiction and mental health. The goal “is to support the client to find new contents for life and reinforce the experience of meaningful life”.¹⁵ That wider perspective is evident too in the manual for the assessment and allocation of those held in prison and their involvement in the formation of a sentence plan (Criminal Sanctions Agency, 2004). The approach is to look for strengths as well as weaknesses, and it is expected staff must listen to and collaborated with those in prison.

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

The prison sentence shall be enforced so that the punishment will involve only deprivation of liberty. The harmful effects caused by the loss of liberty shall, as far as possible, be mitigated. The punishment shall be enforced so as not to unduly

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render difficulties, but rather facilitate, the readjustment to society. The conditions in penal institutions shall, as far as possible, be arranged to correspond to those prevailing in the society. (Ministry of Justice, 1994, 1.4)

'To Support the Self-esteem of the Prisoner'

The idea that those in their charge were mainly “*members of the community*” in need of help was pervasive among those interviewed in Finland. Such thinking is part of a deep and long tradition in Finnish penology, exemplified by K.J.Lang, an earlier and long-time Director General of the prison system. Lang translated the Finnish term for the prison service, ‘Vankeinhoito’, as “care of prisoners”, also noting that the corresponding Swedish term ‘Kriminalvard’ literally means “care of criminals” (Lang, 1993, p.65). He argued that most in prison are “socially and psychologically disabled...deprived of all chances to develop and use what we can call their stronger parts” (p.66). They have, Lang said,

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

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

First of all prisoners/clients need to improve their self-confidence. Therefore all our efforts when organising correctional services should be analysed as to their ability to support, uphold and redress the self-esteem of the prisoner. (Lang, 1993, p.67)

He stressed the importance of work, training, education, “medico-social treatment” and “the need for shelters” - since “our customers...have been mistreated and abused both inside and outside the institutions we put them in”, they should be offered in prison “shelter and protection in time, space and social environment” (Lang, 1993, p.67). It would be hard to find a more welfarist statement from the leader of any prison system. This philosophy continues to be a core part of the outlook of those running the prison system in Finland; the culture of control has made few inroads there in relation to the representation of people in prison.

Resisting the New Punitiveness**Norway: Reasserting the Social Dimension**

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

This White Paper is titled, in its ‘English summary’ form, *Punishment that works – less crime – a safer society* (Norwegian Ministry of Justice and the Police, 2008). It suggests that fewer should be in prison, that more of those imprisoned should have lower security, that regimes should be improved and focused on rehabilitation, underpinned by the government’s ‘return guarantee’ which assures social support in this process. The White Paper is unquestionably penal welfarist and socially inclusive in outlook, even if it speaks of strict regimes for a minority and in places cloaks discussion in the language of the culture of control.¹⁶

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

The smaller the difference between life inside and outside prison, the easier the transition from prison to freedom. The normality principle is therefore a loadstar for penal implementation policy. It is also in accordance with the principle that deprivation of liberty is the actual penalty and that the stay in prison shall not be more onerous than security considerations demand... Strengthening the normality principle means organising a daily routine in prison that as far as possible reflects the society outside the walls. (Part 3)

The concept of the person in prison here is of a ‘normal’ member of society.

‘A Competition Between Pictures’

Showing a tabloid headline that translated as “Blitz at Oslo emergency ward: PRISONER SHOT FREE by masked gang”,¹⁷ one governor stressed that only about 10 per cent of those in prison were dangerous in this manner. Most prisoners, he said, “*are the poor guys.*” An issue in Britain and the USA is that ‘the dangerous guys’ come to be seen as typical of those in prison, rather than as a small minority,

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and this is a basis for vengeful and punitive attitudes. Nils Christie, strongly critical of presentations of people in prison as ‘monsters’, said: *“The danger is now that these very physical famous criminals shall in a way cover the picture. So we think they are the prisoners. It’s even competition between pictures now.”* One senses, however, that in Norway the negative stereotypes have not won this ‘competition between pictures’ and the entire prison system has not been moulded in response to the minority.

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

In this inclusive view of the men and women who are in prison, it is the explicit ruling out of stereotyping that is most striking. The White Paper says that “it is only a minority that constitute a threat to public or individual safety” and specifically warns against their ‘demonising’ (Part 2). In similar calming vein, it states that “policy must not be based on individual incidents” (Part 1). In Norway, the perception of the person held in prison among the public, politicians and especially the prison administration, is for the most part holistic and inclusive.¹⁸

Conclusion: Ireland’s Punitive Drift**Nordic Penal Restraint**

Broadly speaking, Nordic countries have not followed the penal policy path predicted by Garland. While, in particular countries and at particular times, one can find traces of some of Garland’s indices and some punitive urges, in general it can be said that Nordic countries have remained very restrained in their use of imprisonment, have adhered to high standards of humanity and human rights in the way people are treated in prison, and have largely maintained socially-inclusive approaches in responding to those who commit crime. That was the main conclusion of this author’s PhD research in Denmark, Finland and Norway more than a decade ago (Warner, 2009). Around the same time, John Pratt explored penal policy and conditions in Denmark, Norway and Sweden, and his landmark study in 2008 likewise asserted that these countries are distinctive; he spoke of ‘Scandinavian exceptionalism in a time of penal excess’ (Pratt, 2008). Pratt’s work set in motion considerable debate, both within and beyond Nordic countries, as to whether and in what ways their penal policy and practice were ‘exceptional’ (Ugelvik and Dullum, 2012). More widely in

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Europe, other studies found considerable differences in levels of punitiveness, as well as an absence of punitiveness, in different places (Snacken and Dumortier, 2012).

At the very least, all such writing makes it clear that the Anglo-American direction of travel in penal policy is not inevitable. There can be ‘resistance’ to the forces that led to a ‘punitive turn’ in both the USA and Britain. For a country like Ireland, it is clear that alternative approaches are possible; lessons can be learned from other Western European countries, especially those of similar size with similar history, social structures and political systems – such as most of the Nordic countries.

Ireland’s ‘Punitive Turn’

Yet, while Ireland may not have gone as far down the punitive road described by Garland as Britain and the USA have, comparisons with Nordic (and some other) countries today indicate that it has travelled in that direction to a considerable extent. A quarter of a century ago, Ireland matched Nordic countries in its restrained inclination to imprison, having a rate of incarceration of 59 in 1994. Today, it has moved from being among those countries with the lowest rate of incarceration in Western Europe to a mid-table position in that region. Its rate of incarceration today is 85 per 100,000, much higher than that in each of the Nordic countries, and even higher than in Germany which currently has a rate of 77 per 100,000.¹⁹

The main driver for the surge in the numbers in prison in Ireland (which went close to 100 per 100,000 in 2011, before tapering off somewhat) came from the political field. The sense of the new punitiveness as something that crossed the Atlantic to Britain and Ireland is conveyed by finding the exact same phrases that had been used in the USA occurring in debates in Ireland and Britain. This happened most dramatically in 1997, when phrases such as ‘get tough on crime’, ‘zero tolerance’, ‘prison works’ and ‘career criminals’ were used extensively in general elections that were held in both countries that year.

In Ireland, the three centre-right parties that dominated politics at that time competed with each other in their promises to put more people in prison. So, at a time when Ireland’s prison population was about 2,400, the Fine Gael Minister for Justice pledged 800 additional prison places, an increase of one-third. The Progressive Democrats, whose policy document on criminal justice was called ‘Winning the War against Crime’ advocated 1,500 extra places, while the then main opposition party, Fianna Fáil, committed to an additional 2,000 spaces. Fianna Fáil subsequently won the election. Fianna Fáil’s policy paper on justice claimed that crime had brought “destruction, death and menace to our communities” and spoke of “hardened prisoners” and “predator criminals”. A *Sunday Tribune* headline at the time of the previous Irish general election in November 1992 stated ‘Crime is not

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an issue in this election’, but the same newspaper in 1997 reported ‘Crime–wave central to election battleground’.²⁰

Although it did not happen as quickly as promised in that election, Irish governments did come close to doubling prison numbers over the following years – the prison population reached about 4,600 in 2011. The most extreme proposal in this escalation was the decision in 2004 to build a very large prison for 2,200 at Thornton Hall near Dublin, supplemented by another prison for 450 in Kilworth, County Cork. Approximately 3,200 were held in the Irish prison system in 2004, so building these two prisons would have represented a massive escalation in the scale of incarceration. In the economic down-turn that followed some years later, these particular construction projects were abandoned. However, considerable expansion did take place through the addition of numerous cell-blocks to existing prisons, often for several hundred at a time, and the building of a new prison for some 300 men in Cork City. Almost all of the prison expansions took place without a corresponding increase in opportunities such as education and work-training for those in prison. In both the Thornton Hall and Kilworth proposals, and in the subsequent construction that did happen, the great majority of new cells were planned to be ‘doubled-up’, in defiance of the European Prison Rules (2006).²¹ Significantly, in planning Thornton Hall in particular, the Irish Prison Service relied heavily on consultation with an American multi-national company involved in the correctional business and the British Home Office, while ignoring suggestions that they also study the prisons being planned at East Jutland in Denmark and Halden in Norway just at that time.

Ireland’s propensity to imprison is seen to be even more severe when its very high rate of committals is considered, i.e. the ‘flow’ into prison of many who receive short sentences. Further, most of the men and women sent to prison for short sentences are the poor, with O’Mahony stating that “while this profile of multiple disadvantage is typical of prisoners around the world... the prison population in Ireland come from the most deprived groups and lowest socio-economic classes to a far more concentrated degree than is the case in Britain” (2002, p.551). O’Mahony also finds that “the majority of convicted Irish offenders are sent to prison for relatively minor acts of property theft” and that “imprisonment rates [in Ireland] clearly point to a comparative overuse of prison, particularly in regard to the breadth of use” (2002, pp.552-3).

Reinforcing this picture, Kilcommins *et al* find that “Ireland appears relatively punitive when the prison population is expressed per 1,000 crimes. The proportionate use of custody was three times as high as England and Wales and the Netherlands, and five times as high as Finland” (2004, p.251). They also note how prison in Ireland tends to be used “as a default sanction”, in the absence of sufficient options for sanctions in the community, so that there is “a strong orientation towards

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custody among Irish judges”, a relationship which they argue is reversed in other jurisdictions (2004, p.244).

The intensification in recent decades of Ireland’s inclination to imprison its marginalised groups reinforces, and is reinforced by, a clear deterioration in the representation of people held in prison, i.e. greater punitiveness in both the scale of imprisonment and in the characterization of those found to have broken the law tend to develop together. There has been a marked change in this latter aspect in Ireland since the mid-1990s. People in prison are now seen in public discourse in ways that are more demonising and socially-excluding, in marked contrast to Nordic countries, and this is reflected in their official designation – from being regarded by the Department of Justice as “valued members of society” in 1994 to a position where they are presumed to be outside such status in 2001 (see Warner, 2011).

Complacent Irish Narratives

Despite such trends in the scale of imprisonment and the representation of those held in prison, and perhaps even some starker deteriorations in the depth of imprisonment (to be discussed more fully below), there has been a degree of denial in Irish criminological discourse in relation to these developments. A certain narrative, which suggests Ireland has avoided the ‘punitive turn’ taken by other countries, has gained some dominance among Irish criminologists.²² Kilcommins *et al* took the view, albeit in 2004, that in Ireland “there has been no real shift towards penal austerity, in the way that is seen elsewhere” (2004, p.259). They also stated that the Irish edition of Garland’s crime complex “has emerged in a dilute and distinctive hybrid form” (2004, p.292).

While this latter statement may well be valid, as it may be for many countries, it does leave open the questions as to *how* diluted the punitive trends might be, and what components exactly make up the hybrid policies. As was noted above, Garland did, after all, argue that in the new crime control field “new practices and mentalities co-exist with the residues and continuations of older arrangements” (2001, p.167), thus recognising the hybrid nature of the new arrangements and seeing changes in thought and action in relation to crime as significant *changes in emphasis*. It is this author’s argument that such changes in emphasis in a punitive direction have certainly occurred in Ireland’s penal system since the mid-1990s.

Rogan’s 2011 study is more assertive in making the case that Ireland has not taken a punitive turn, “that Garland’s theories in *The Culture of Control* may not be applicable to contemporary Ireland” (2011, p.213). Moreover, she took the view that “penal welfarism did not become significantly apparent or embedded in Irish penal policy” (2011, p.210), somehow discounting the establishment of open prisons and other progressive institutions such as the Training Unit and the Dóchas Centre

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(women's prison) between the late 1960s and mid-1990s, as well as the thinking (which was very congruent with that of the Council of Europe) in Irish policy documents in the 1980s and 1990s (Brangan, 2019; Lonergan, 2010; Warner, 2011).

Brangan, in particular, "challenges the dominant narrative that Irish penal policy was stagnant or merely pragmatic" around the 1970s, and she makes the case that policy at that time is best described as 'pastoral penalty', which was very much focused on "addressing the pains of imprisonment" (2019, p.1). Whatever way policy and practice in relation to prisons prior to the late 1990s is conceived, there is evidence of greater social-inclusion in the way the person in prison was seen and treated then. Moreover, despite the undoubted shortcomings in Irish prisons and penal policy in the past, it is clear that the prison system in this earlier period was at a more caring place on the 'care-custody' spectrum than is generally the case today.

A Shift Towards Penal Austerity?

However questionable was the claim by Kilcommins *et al* in 2004 that there was "no real shift towards penal austerity" (p.259) in the Irish penal system, it was certainly untenable some years later. Indeed, Ian O'Donnell, one of the authors of that earlier text, took a much more critical view of Irish penal policy nearly a decade later, noting a sharp increase in the imprisonment rate and speaking of "a punitive shift within the criminal justice system and the emergence of a less-forgiving mentality" (2013, p.321). A range of other writing has documented excessive restrictions and very poor conditions, many of which have deteriorated considerably in the past quarter of a century. John Lonergan, former Governor of Mountjoy and other Irish prisons, offered sharp insights into the Irish prison system in his autobiography, including his judgement that "the daily regime in prisons is seriously impoverished as a direct result of overcrowding, and prisons are now just warehousing" (Lonergan, 2010, p.202).

Elsewhere, John Lonergan is particularly critical of the consequences of overcrowding, including the increase in 'doubling-up' in cells, the 'one size fits all' approach to security,²³ and the fact that, with further cell-blocks and other facilities being added, existing prisons had become "dominated by concrete buildings with very little open space" so that they became bland and claustrophobic places (Carroll and Warner, 2014, pp.xvii-xix). His term 'warehousing' is a reasonable description, in particular, of the thinking inherent in the Thornton Hall and Kilworth projects and much of the additional accommodation that has been shoe-horned into the Irish prison estate. Yet, despite its intended massive scale and the sub-standard cell and other arrangements envisaged for Thornton Hall, Rogan's view was that "it cannot be said with any certainty that a punitive agenda was behind the decision to establish Thornton Hall" (2011, p.196).

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Hamilton's assessment of the Irish prison system is much more critical, and challenges the narrative of other criminologists who detect little punitiveness within it. She says: "While rehabilitation certainly remains an aspiration of the Irish Prison Service... this is seriously compromised by overcrowding and... the general poverty of the daily regime" (2014, p.51). She notes that "in most institutions prisoners are locked up for 18 hours per day", in some there is a "lack of any meaningful activity... [and] violence and bullying appear endemic in Irish prisons" (2014, p.51). While also recognizing some positive aspect of the system, including a measure of humanity and reasonably good relations between staff and prisoners, she raises concern that "Irish penal policy and practice is worryingly out of line with international human rights standards in a range of areas" (2014, p.52).

Other studies point to deteriorations in regimes in recent decades, such as those by the Jesuit Centre for Faith and Justice in 2012 and 2016, the latter highlighting the very poor arrangements there are now for young men aged between 18 and 24, with the closure of specific institutions for the younger part of this age group, including the open prison, Shanganagh Castle, in 2002. These young adults have, in effect, been abandoned, their particular needs and vulnerabilities not recognized by the justice system and hundreds of them are now incarcerated with full adults in large inappropriate closed prisons. Deteriorations in basic living conditions in general have also been documented, including how they fall short of those set out by a landmark government inquiry (Whitaker Report, 1985) and how standards prescribed by a recent Inspector of Prisons fall far short of those established by the Council of Europe or that pertained previously in Ireland (Warner, 2012a, 2014). Recently, the Irish Penal Reform Trust has begun to monitor annually whether the prison system meets particular targets, and, even though the targets they set often fall very far short of international best practice (and certainly short of what usually pertains in Nordic countries) – relating for example to matters such as lock-up times, cell-sharing, privacy in toilet arrangements, percentage in open prisons, access to structured activity, etc. – progress is often found to be very limited, if at all (Irish Penal Reform Trust, 2019).

Two other aspects of prison regimes in Ireland will now be explored in a little more detail. Each illuminates current thinking and practice, and the change from a relatively supportive approach to one focused more on control or punishment. Each may be seen to show the change in emphasis referred to earlier, indicative of a shift from ways of doing things that put more emphasis on care (whether that be termed penal welfarism or 'pastoral penalty' or something else) to a more punitive approach. An Irish government report in 1997, generally known as the McAuley Report, stipulated that there should be a rebalancing of 'care/custody' in the direction of more care in the prison system, and as part of that a "strengthening of healthcare and of the psychological, educational and training elements" (Report of

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Expert Group, 1997, p.13). This thinking resonates with that of the former Danish Director General, William Rentzmann, cited above, where he spoke of balancing “*the soft and the hard*”, a balance that is clearly evident in Danish penal policy and practice. Even more so, it is in tune with thinking of the Norwegian Director General, Kristen Bolgen Bronebakk, who asserted, “*We have enough of the locks and gates and cameras... we need to have more activities.*”

However, rather than the rebalancing towards ‘care’ advocated by the McAuley Report, the prison system in Ireland moved sharply in the other direction, giving huge priority to ‘security’ in its most physically restraining sense (see Jesuit Centre for Faith and Justice, 2012). Two episodes indicating this more punitive philosophy will now be examined: one, the introduction of the so-called ‘incentivised regimes’ scheme in 2012; and two, the response of Irish authorities in 2011 to a critique by a Council of Europe body to the way they deal with inter-prisoner violence.

‘For the few not the Many’

In noting deteriorations in Irish prison regimes or penal policy generally, or even in simply recognizing that certain poor conditions or treatment have long been present, it is important also to acknowledge that some things are done well. In all prisons and among all disciplines working within them, examples of good and professional work can be found, sometimes indeed even excellent initiatives. To criticize the overall drift of policy or practice is not to deny such positives, nor the admirable work of many genuine individuals in all spheres. Nor is it to deny that some people held in prison ‘make good’, sometimes even in the most unlikely of circumstances. However, neither the fact that some held in prison achieve against all the odds, nor that some working within the system manage to do extraordinary things, excuses shortcomings elsewhere or an overall drift in the prison system which leads to services and opportunities becoming more limited, tending to be available for some but not for all.

One pattern of the punitive drift that has happened in Irish prisons is that resources become ‘targeted’ on a minority to the detriment of the larger population. Universal rights, such as the right to education or the right to family contact, become seen as ‘privileges’ which are provided only to some (Warner, 2018). The fact that things may work out for certain people in prison does not excuse the reality that matters have worsened for others – indeed, at times, as we shall see, they may be somewhat worse for everyone. An example of such a pattern is the new ‘incentivised regimes’ system introduced into Irish prisons in 2012. A copy of the Incentives and Earned Privileges (IEP) scheme that has operated in English prisons since 1995, this departure in Ireland clearly indicates a focus on ‘the few not the many’ (to reverse the slogan of a British political leader).

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For many decades, a man or woman held in an Irish prison received a meagre payment that was meant to cover the purchase of personal items like soap or toothpaste and whatever else they choose to buy from prison shops such as sweets, cigarettes, batteries for radio, newspapers, etc. The amount, which was €2-35 per day before 2012, was long recognized as too low to meet this purpose, so that many in prison were obliged to subsist at a poor level or pressure their families to give in money for them. However, nearly all in prison used to receive this same gratuity.

However, in 2012, Irish prison authorities cut this payment for all in prison, but cut it by more for some than others, and in the process saved about €500,000 per year in the prison budget. They created three levels of new payment: a so-called ‘enhanced’ rate of €2.20 per day, a standard rate of €1-70 and a ‘reduced’ rate of €0-95 cents. What was already a pathetically low payment was cut by 28 per cent on average. What are regarded as ‘privileges’ such as visiting by family members or time allowed on phone-calls – and usually meagre measures of these also – are also differentially apportioned under this scheme. The rationale for this new scheme was put by the then Director General of the Irish Prison Service: “We want to encourage prisoners to join the programmes, the education, the supports, take the drug counselling so we can create a safer society” (Warner, 2012b). Yet, the authorities have set a limit to the number of those who can be in receipt of the ‘enhanced’ rate; no more than one-third in prison can receive this level of payment. Further, it has been found in practice that young adults, those with disabilities or otherwise vulnerable, and those who seek protection and are thereby confined to their cells for most of the day are disproportionately on the lower rates. Moreover, one of the major and growing problems within Irish prisons is the failure of authorities to ensure that those seeking to participate in activities such as education *can actually access such services*; that is the problem rather than any need for ‘incentives’ to participate.

A significant aspect of this type of scheme is the neo-liberal ideology underpinning it (Crewe, 2009) and this represents a departure from previous universal principles whereby services were offered to all on the basis of a duty of care. This change is linked to a narrowing in the concept of rehabilitation, with much more emphasis now placed on the individual’s ‘responsibility’ and choice, and much less recognition of the role of society in supporting reintegration. Previously, rehabilitation was seen in a wider social context, as in the Whitaker Report which spoke of it as efforts to help the person’s “inability to cope with society” (1985, p.89), and such thinking was also evident in Department of Justice policy in the 1980s and up to the mid-1990s (see Warner, 2011). However, by the turn of the century, a shift had taken place, with the then Director General of the Irish Prison Service emphasising the centrality of a prisoner’s “personal decision-making capacity” (O’Mahony, 2002, p.591). The change can also be seen in the way the role and purpose of education, still by far the largest structured activity within Irish prisons, has also been narrowed. Where once

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education was officially regarded within the Irish prison system as a right to which all in prison were entitled, and which was envisaged as a wide curriculum aimed at helping ‘the whole person’ in line with an adult education philosophy, it is now seen by prison authorities merely as one among a range of ‘rehabilitation services’ – but with the idea of rehabilitation now narrowly conceived as an individual choosing to ‘address offending behaviour’ (Warner, 2018).

‘Dynamic Security and Care’

Finally, this chapter will explore an illustrative episode from around 2011. The Council of Europe inspection body, the CPT, in their report on Irish places of custody issued that year, addressed the problem of inter-prisoner violence. Among other suggestions, they gave the following advice to Irish authorities:

Addressing the phenomenon of inter-prisoner violence requires that prison staff must be alert to signs of trouble and both resolved and properly trained to intervene. The existence of positive relations between staff and prisoners, based on the notions of dynamic security and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills... Moreover, it is imperative that concerted action is taken to provide prisoners with purposeful activities. (Council of Europe CPT, 2011a, p.19)

It is worth exploring here two of the key strategies they recommended, ‘dynamic security’ and ‘care’. Dynamic security is a concept that occurs often in Council of Europe documents and in the penal policies of Nordic and other countries. Dunbar (1985) defined it as encompassing three key features in the way staff deal with those in prison: relationships, activity and treating each person in prison as an individual. Coyle explains it further:

It is the opposite of the arrangement whereby staff observe prisoners at a distance, often via television monitors, and rarely come into physical contact with them. In the dynamic security model, staff mix with the prisoners. They will move among them, talk to them and listen to them; there will be the normal dynamics of human interaction. (2005, p.139)

Clearly, this is the approach advocated above by the former Norwegian Director General in speaking about the role of staff in Norwegian prisons. It should be noted also that ‘interpersonal communication’ between staff and prisoners, as advocated by the CPT, would clearly be much more feasible in a typical Nordic prison, where people are out of their rooms or cells for 12 to 14 hours or more in the day – East

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Jutland or Bastoy, which were described earlier, being fairly typical in this regard of closed and open prisons respectively. The norm in Ireland of six hours out-of-cell time, with several hundred being locked away for much longer, obviously offers far less opportunity for such communication. Likewise, high lock-up times severely restrict the opportunities for ‘purposeful activity’, another of the CPT’s prescriptions, while by contrast the range of activity even in a closed prison like East Jutland is considerable.

The other concept highlighted by the CPT, that of care, also has a long tradition in penology, and in many ways indicates the supportive dimension of penal welfarism. It was noted already that the Swedish word ‘kriminalvard’ and the Finnish word ‘vankeinhoito’, each usually translated as ‘correctional services’, actually literally mean ‘care of criminals’ and ‘care of prisoners’ respectively (Lang, 1993, p.65). Care clearly suggests helping rather than controlling, and complements the idea of ‘dynamic security’, as it does other suggestions of the CPT such as promoting communication and activity.

The unusually lengthy response by the Irish authorities to the CPT advice is striking. They set out over three pages a long list of restrictive physical measures which they had deployed or proposed to deploy, not one of which reflects the progressive concepts advocated by the CPT (Council of Europe CPT, 2011b, pp.22-24). This Irish list includes, among similar initiatives:

- solitary confinement for men deemed in danger
- tighter control and monitoring generally, including of visits
- increased random searches of cells and occupants
- greater use of cameras and probe systems
- the installation of nets over yards
- a drug detection dog service
- Operational Support Units, for searching/intelligence-gathering
- the introduction of BOSS (Body Orifice Security Scanner) chairs.

It is not easy to work out whether the Irish authorities failed to understand the concepts being proposed by the CPT or simply choose to ignore them. Either way, the chasm in thinking and practice between what the CPT proposed and what the Irish prison system considered appropriate indicates the gulf between a penology based on humane values and decency, which one finds in the Council of Europe and Nordic countries, and the punitive mind-set and unimaginative practices that now span the Irish prison system.

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- ¹ Examples of such stereotyping from Ireland in just a five-month period in 2009 included a front-page headline in the *Irish Daily Star* (9 February) which ran “DNA tests to nail jail scum”, with the term “scum” clearly referring to people in prison in general; two (factually incorrect) references by Irish public broadcasting (RTE) journalists to Mountjoy Prison in Dublin being “full” of violent prisoners (RTE television news, 25 April, and on radio, 16 June); and the equation by the Minister for Justice of life-sentence prisoners with continuing dangerousness on an RTE radio programme (‘Morning Ireland’, 12 June). A former Director General of the Irish Prison Service routinely spoke of prisoners in general as “a threat to the public”, including, on one occasion, the entire population of the main woman’s prison.
- ² The figures in this section come from www.prisonstudies.org, on 2 March 2020, other than those for Ireland, which are taken from www.ips.ie on the same date and relate to 28 February 2020.
- ³ This statistic is deduced from the Irish Prison Service website, www.ips.ie (visited on 2 March 2020), where it is noted that, out of a total prison population of 4,209 on 28 February 2020, just 240 were held in the two remaining open prisons in Ireland, Loughan House and Shelton Abbey.
- ⁴ Pratt says: “These countries have a large number of small prisons, often with 100 inmates or fewer... The largest prison in the region, in Sweden, holds around 350 inmates”. (2008, p.120) However, Oslo Prison had 392 in November 2006, and the new Turku Prison in Finland had places for 350 in July 2008, at the time of this author’s research visits.
- ⁵ Nordic figures are derived from www.prisonstudies.org on 2 March 2020. The Irish prison system held 4,209 in 12 institutions on 28 February 2020 (www.ips.ie, on 2 March 2020).
- ⁶ For further information on penal policy in Iceland, and how it contrasts with that of Ireland, see Warner (2016).
- ⁷ There were 261 full-time equivalent staff of all disciplines to the 228 prisoners at East Jutland.
- ⁸ These principles are explained further in another section.
- ⁹ In February 2008, two months after the visit to East Jutland for this research, the Council of Europe’s inspection body, the 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 intended for “negatively strong inmates” and note that material conditions and activities there were excellent

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and similar to the other units, except for “the limited amount of outdoor space available to them” (Council of Europe CPT, 2008, p.23).

10 In 2008, most people in prison in Norway were paid 51 NOK per day, the same standard rate applying whether they attend school, work, programmes or other organised activity. This amounted to about €32 per week at that time. In Ireland, the rate had been €16.45 per week for many years, but the Irish Prison Service introduced an average reduction of 28 per cent to this rate in 2012, bringing the average to €11.84 per week; it remains at this level in 2020.
11 Certainly, nothing in the three Norwegian prisons visited for the PhD research, nor in three others visited subsequently, would give rise to a questioning of that statement; the atmospheres and the relationships seemed good.

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

13 This is reported to be based on the thinking of the German writer, Axel Honneth.

14 Such narrow and one-dimensional views of the person in prison are challenged in Costelloe and Warner (2014) and Stern (2014).

15 Information on this course comes mainly from a brochure in English which describes it.

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

17 The newspaper was *VG* on 7 September 2003.

18 The input of those in prison was also sought for the White Paper: “In six prisons dialogue conferences were held in which both inmates and staff participated and discussed what a good day in prison would look like for them.” (Part 5)

19 The German rate is taken from World Prison Brief, www.prisonstudies.org on 2 March 2020. The rate for Ireland in 1994 is taken from the Council of Europe’s *Penological Information Bulletin*, Nos. 19 and 20, December 1994-1995; the rate was 58.6 on 1 September 1994.

20 Fuller details of the 1997 general election in Ireland, including the sources for the information given above, can be found in Warner, 2009, Chapter 1.

21 In fairness to more recent Irish politicians, an all-party parliamentary report in 2013 unanimously advocated the reduction of Ireland’s prison population (then, as now, just over 4,200) by one-third. They specifically pointed to Finland as a model to follow in this respect, although they might just as easily have used the recent example of Sweden. However, their progressive proposals have so

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far been ignored by the Department of Justice and the Minister for Justice. (House of the Oireachtas, 2013)

²² For example, such a statement was made by Professor Ivana Bacik in her concluding keynote address to the 11th North-South Criminology Conference at University College Dublin in September 2018.

²³ The approach to security in Irish prisons, designed to address the minority of very 'serious' criminals, tends to be applied to the prison population at large, so that the majority of those in prison are subject to more restrictions than is necessary. In part, this is due to the structure of the prison estate, which is mainly made up of a small number of relatively large closed prisons; in part, it is because of a particular mind-set among Irish prison authorities. The Irish approach to security contrasts sharply with the differentiated approach in Nordic countries, discussed extensively in sections 3 and 4 above.