

Punishment in Europe

*A Critical Anatomy
of Penal Systems*

EDITED BY
VINCENZO RUGGIERO ET AL.

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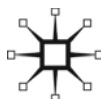
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Editorial matter, selection, introduction and conclusion

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Preface

It was over 20 years ago that we began working, with Joe Sim, to put together a collection on European penal systems (*European Penal Systems: A Critical Anatomy*, 1995). We were all aware, in the aftermath of the collapse of the Berlin Wall, of the great political change that we were living through, and were therefore tempted to include some of the newly independent Eastern Bloc states in our collection. However, it soon became clear that the transition period to even what President Putin has recently called “managed democracies” was going to be a long and difficult one, and so we went ahead, limiting our collection to western European systems, and even more narrowly, to those in the European Union.

We have always regretted this – how shall we put it? – confirmation of the brutal division of Europe with which we had all grown up since 1945. This collection enables us to make a timid start in overcoming this omission – a chance to catch up with history, so to speak. However, our readers will find that there is still a long way to go before a comparison between west and east Europe can be constructively made, and that differences between eastern countries themselves are, if anything, greater than between themselves and countries further west.

We believed such a collection, albeit a limited one, was needed in 1995 because evidence at the time suggested that both academic criminologists and criminal practitioners in the UK were ill-informed about penal regimes in neighbouring western European countries, including the more exclusive European Union. Instead, their reference point was more likely to be the USA than Europe, so inviting us to consider, for example, the advantages of private prisons or the potential of electronic tagging. As a result, we knew more about punishment in America than in Germany, France, Sweden, Italy or Spain.

This Anglo-Saxon bias is still with us, but perhaps it has diminished in stature. Explaining this change is far from easy. The fact that over 20 years later we now pay more attention to penal practice in other countries is partly due to the growing number of academic courses in comparative penal systems. While we see some virtues in this comparative work, and discuss our position in this respect in our introduction and conclusion, we have encouraged our contributors, instead, to conduct

their enquiries into national penal systems. We hope this volume will ultimately persuade the public to engage with different ways of thinking about delivering punishment in European societies, inside or outside the European Union, which challenge taken-for-granted categories and create new alliances in defence of the excluded and the socially disadvantaged, caught up in Europe's expanding penal networks. We invited contributors who were sympathetic to this wider political purpose.

We are extremely grateful to Emma Bell for her perceptive translation of Philippe Robert's chapter on France. Philippe came to this project late and, using his considerable expertise, chose to interpret the brief we gave him in a highly individual way. We thank him for generously coming to our rescue.

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Vincenzo Ruggiero would like to thank all those who, over the years, have discussed with him issues relating to penal systems, particularly the regular and occasional scholars, colleagues, comrades and friends who attend the annual conference of the European Group for the Study of Deviance and Social Control. Special thanks go to Mick Ryan, whose original idea it was to engage me in this joint effort after a similar effort resulted in the publication of a book on the same topic in 1995. Finally, Lucia Ruggiero, from her European observatory located in Madrid, gave me invaluable advice as to how to bring the project to fruition.

Mick Ryan would like to thank the University of Greenwich (London) for extending his role as Emeritus Professor in Greenwich Law School, and for the support and interest of his criminology colleagues in this project, particularly Dr Richard Wild and Dr Maria Kaspersson. The former contributed his considerable language skills, and straightened out several technical hitches.

More directly, the work of Rebecca Roberts and Helen Mills at the Centre for Criminal Justice Studies in London into how penal policy is made, and how such research might be used to facilitate the creation of more progressive penal policies, has reinforced my views about the limited value of chasing a fully developed comparative criminology.

Joan Ryan's eye for an inconsistent argument is as sharp as ever and this collection could not have been put together without her strong support when the going got tough.

The editors are particularly grateful to Emma Bell for her rapid translation of Chapter 5. Finally, this project was conceived at a conference in France in September 2011, where the editors first met with Palgrave Macmillan. They wish to express their thanks to Julia Willan for her editorial patience, and to all our contributors for their independent, critical contributions.

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1

Introduction

Mick Ryan

In this short introduction we outline three ways of looking at penal systems, the purpose of which is to locate our own perspective, and to better illustrate the brief that we have invited our contributors to follow.

The common sense approach

Let us begin with some basic ideas about punishment which are usually *taken for granted* by members of the public, our first year law students and many criminal justice professionals.

In most societies there are rules, and it is anticipated that those who break these rules, who come up against the criminal law, will be identified, charged and then taken before the courts. If found guilty by the criminal courts, offenders will then be sentenced to a punishment in proportion to the harm or injury they are judged to have caused. The punishment (and the tariff) ordered by the criminal courts will have been codified by politicians in Parliament, either in the form of a comprehensive penal code, or as a cumulative series of separate criminal justice statutes.

We take it that this way of thinking about punishment is *fairly routine*, as is the understanding that in most western societies the penal apparatus in place for delivering these punishments extends from deep end capital punishment or imprisonment, to supervision in the community, or a fine for less serious offences.

To suggest that thinking about punishment in this way is *taken for granted*, or is *fairly routine*, is not to suggest that there are no areas of difference or disagreement. That would be clearly wrong.

For example, people disagree about what the rules are and what behaviour should be designated criminal. And, even where they do agree about

these things, they frequently quarrel over what punishments are appropriate for those who break the rules. These quarrels sometimes arise because of differences of opinion over what the penal apparatus in any society can be expected to deliver: punishment or reform of the offender, or both. Such disagreements, within the banal sociological observation that all societies have rules which people expect to be enforced through the application of sanctions or punishments, should therefore hardly surprise us. In mature democracies they constitute the legitimate *politics of punishment*.

Nor should we be surprised to learn that such disagreements have different outcomes in different societies, something that many thoughtful members of the public are aware of in our increasingly inter-connected world. So, many German, Italian and French people will be aware that the rules governing the public purchase and use of certain so-called 'recreational' drugs in the Netherlands differ from their own national practices; while the use of imprisonment in the USA as a whole, and in California in particular, is far greater than in most European countries.

To emphasise different penal practices or structures within and across continents is hardly, therefore, a provocative insight. So, we are back again in the world of the sociologically banal.

A comparative approach

However, there are those who suggest that we should go beyond what is superficially obvious and pay more attention to analysing penal systems in order to understand why some are more punitive than others.

Michael Cavadino and James Dignan (2006), for example, claim that the severity of different penal systems, as measured by rates of imprisonment, is related to the type of political economy in which they operate.¹ This is a bold claim. It is one thing cheerfully to argue, as we have done, that there are rules and those who break those rules are likely to be punished; it is quite another to claim that the relative severity of the punishment they are likely to receive is somehow related to the organisation of the wider political economy.

Briefly, Cavadino and Dignan present a typology drawn from several sources (e.g. Esping-Anderson 1990; Lash and Urry 1987) that divides modern capitalist societies into four broad categories: neo-liberal, free market capitalist states (e.g. America and the UK); conservative, corporatist states (e.g. France and Germany); social democratic, corporatist states (e.g. Sweden); and then finally oriental corporatist states such as Japan. It is claimed that countries *within* each of these categories are in

most cases closely matched in terms of their imprisonment rates with neo-liberal states having the highest rates, conservative corporatist states the next highest, and so on, in descending order. Liberal states are characterised as favouring low welfare expenditure and *exclusive* penal policies, while social democratic states are more likely to implement more *inclusive* penal policies and spend generously on welfare.²

Liberal states are further defined by their reliance on informal mechanisms of social control and support, such as the family, which acts as a break on their prison sanctions.

It is very important to register that these categories can be contested, as can the allocation of countries to this or that category. These definitions and boundaries are thus far from certain. But this should not surprise us unduly, most heuristic devices can be challenged in this way. And such exercises are rarely without a teleological bias. The time frame is also relatively short to sustain a general theory. Nor, as Cavadino and Dignan freely admit, are imprisonment rates necessarily the most reliable guide to the overall severity of any penal system (Pease 1994).

These are highly significant qualifications, nonetheless, as are the consequences of raising, albeit somewhat casually, the question of whether or not punishment is a single 'entity' (Cavadino and Dignan 2006), a question which immediately raises for us, albeit at a tangent, a whole raft of other philosophical problems (Ruggiero 2010). Finally, Cavadino and Dignan's pioneering work is arguably stronger in establishing correlations than identifying causal links, a point well made by Nicola Lacey (2007) who, although highly appreciative of their work, as we are, prefers instead the greater explanatory power offered by the typologies of western economies put forward by Hall and Soskice (2003).

However, in our view what is really significant for our present purpose is that, when it comes to making sense of penal policy in any specific country, the wider material framework – corporatist, liberal market or whatever – interfaces with a whole range of other ideological, historical and administrative inputs that will likely produce very individual results, even within one category. Hence the different rates of imprisonment between America and several key European countries, including the UK. In other words, the shape and direction of a national penal system is significantly influenced by the wider political economy, but is far from being *determined* by it. Cavadino and Dignan characterise this complex, not to say messy, interaction in the following way:

The precise nature of the relationship between politics and economics, ideological and material factors, and the interplay between them,

is likely to vary within different kinds of societies. A society's *penal* ideology and culture will be greatly shaped by (and to some extent will also shape) the more general ideology and culture of the society, as well as by its material conditions. Finally, penal practices will be influenced by both general and penal ideology and the culture and the material realm in which they operate, and will also have some reciprocal effect on these forces and factors. (Cavadino and Dignan 2006: 12–3)

In their search for ways of reducing the overall level of the UK's prison population, Mills and Roberts appear to endorse this interpretation, recently observing that:

For [Cavadino and Dignan], therefore, the use of imprisonment is embedded in wider political economy, economic, social structural, cultural and ideological factors are all part of this. They argue that these factors can best be interpreted as a complex whole for any one nation rather than being reduced to straightforward fixed variables that can be applied universally. (Mills and Roberts 2012: 15–6)

This conclusion, one which in our view relies heavily on the lesson we all learnt many years ago from David Garland (1985), mercifully takes us well beyond relying on single variables to explain levels of imprisonment, the state of the labour market, for example, which can be applied across the board. (Rusche and Kirhchemier 1939).

However, at the same time it does make the task that Mills and Roberts³ have set themselves, of discovering ways of reducing the prison population, that much more difficult because, while connection has been made by Cavadino and Dignan between wide social and economic circumstances and imprisonment:

it is not clear from these accounts that a more specific set of interventions can be identified that could be straightforwardly adopted by those seeking to significantly reduce imprisonment. (Roberts and Mills: 17)

So there can be no 'cherry picking', no simple cross-national transplants to ease the delivery of pain. Indeed, such accounts are said to raise as many problems as they solve (Mills and Roberts: 17). This position is largely consistent with the one taken by Nicola Lacey who has suggested that, while policy transfers cannot be ruled out, these are always

problematic and ‘contingent on the dynamics of the local environment’ (Lacey 2007: 31). Of course, even if policy transfers do not accrue, we can at least agree that comparative work is likely to contribute towards a better general understanding of how penal cultures are formed, differ and operate (Lacey 2007). But this is a relatively modest gain when set against what is often the implied promise of comparative penology, namely, that it will provide us with the knowledge to secure progressive penal practice.

Penal systems in their national contexts

In the context of our present investigation of 12 European penal systems, this encounter with comparative penology, while providing useful suggestions about the relationship between welfare expenditure and levels of imprisonment (Beckett and Western 2001, Downes and Hansen 2006), has nonetheless reinforced our view: that in order to prepare the ground for effective strategic interventions, penal systems need to be first and foremost interrogated in their own terms; that we should focus more on national *particularities* rather than across the board *commonalities*, even though we are likely to find that countries at similar stages of economic development will share some trends in common (see below).

We acknowledge that this preference for emphasising the particular is perhaps reinforced by having lived and worked in the UK, where levels of welfare expenditure, for example, are mediated through the lens of a highly distinctive, not to say unique, penal culture which has been routinely mobilised at strategic moments (e.g. Hall 1978; Downes 1988) by ruling elites to discipline those at the margins who challenge ‘the rule of law’. The harsh political and judicial response to the English city riots of 2011 is just the most recent example (*The Guardian*, 4 July 2012 *Analysis*).

But the UK is not alone in displaying its own *particularities*.

So we have encouraged our authors to interpret in a critical spirit the dynamics of individual national penal systems, without paying overdue attention to any anxiety that their accounts might be massaged to fit into a pre-ordained descriptive (or comparative) box – whether it be classified neo-liberal, corporatist or adjusted to account for post-communist countries, such as Bulgaria, Poland or Russia, as *transitional*. (And history alone suggests that this particular classification would quickly divide into component, national parts.)

Mobilising a more critical and accessible public criminology

We would repeat that, while we have encouraged our contributors to concentrate on the particular, to focus on interpreting penal systems within their national contexts, it is highly likely that their investigations will reveal common features.

For example, the liberalisation of western markets during the last two decades, facilitated by globalisation, has destabilised labour markets. This has swollen the number of un- or under-employed, who are targeted through increasingly harsh social policies aimed more at *exclusion* and control than *inclusion* and integration. Europe's porous borders exacerbate this problem, mobilising public opinion against incoming 'Others' who, shunted from one form of detention to another, are portrayed as the cause of current instability, rather than its victims (Young 1999; Garland 2001). Those living on low pay or benefits see their living standards reduced as many European states struggle to reduce spiralling fiscal deficits. Some states even hope that newly created markets within the penal system, from prison to probation, will help to balance the books in a new age of austerity.

A full understanding of the processes at work here will require, first and foremost, the development of a more critical and accessible *public criminology* that goes beyond the academy to embrace wider social movements (Ruggiero 2012). This wider connection is needed to heighten public awareness and ensure that the public debate goes beyond the parameters of conventional penal discourse, the *taken for granted* categories that hide so many inequalities, injustices and prejudices, and which invite the suspicion that it is mostly the poor and the underprivileged who end up being punished while those who do the most damage go largely unpunished (Barbara Hudson 1993; Hillyard and Tombs 2007).

Only when this general level of awareness has been raised can we hope to build (and sustain) public support for progressive penal change – a consent that is informed by an understanding of the political, material and ideological forces that help to shape individual national systems. We hope these essays will contribute towards building up this awareness in the countries they cover.

Achieving this ambitious goal is not entirely at odds with Loader and Spark's (2011) promotion of a more cautious and interlocutory public criminology. However, working in the slipstream of neo-liberalism we are not inclined to see academic criminology cast in such a *passive* trajectory. In such troubled times some of the 'under labourers' identified

by Loader and Sparks are more relevant than others when it comes to standing up for the disadvantaged and the dispossessed.

We feel there is no choice but to engage in a critical way with social movements against imprisoning the poor and the disadvantaged, against racism and sexism in the criminal justice system (Ruggiero 2010). Interlocutors *take sides by standing aside*, and when they do, albeit under the commendable guise of modesty and (very properly) in the name of *objectivity*, their case for building such a broadly based *public criminology* can be interpreted as a very conservative one.

Finally, we will later raise more critical questions about how those *taken for granted* views of punishment we began with might be contested by excavating an alternative, critical discourse that is deeply rooted in European culture.

Notes

1. Nicola Lacey (2007) explores this thesis in some detail, though overlays it with the suggestive cultural historical perspective of James Q. Whitman.
2. Leon Radzinowicz recognised this convergence in his autobiography when he wrote about Labour's post 1945 consolidation of the Welfare State: The continued advancement of social policy, in the widest sense of the term, was increasingly being recognised as one of the more sensitive tasks of the state. This evolution inevitably exercised a profound influence on the evolution of criminal policy. A state which recognises, as one of the basic aims of its domestic policy, improvements in the condition of the population especially of its poor and underprivileged strata of society, cannot maintain a merely formal, passive attitude towards penal repression... Under such a political climate social policy and criminal policy come closer to each other... at certain sensitive crossings (Radzinowicz 1999: 115).
3. Mick Ryan made a contribution to part one of the Esmee Fairbairn Foundations 2012 investigation into *Reducing the numbers in custody: Looking beyond criminal justice solutions* (London: Centre for Criminal Justice Studies).

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2

Regression to the Mean: Punishment in the Netherlands

Miranda Boone and René van Swaaningen

Introduction

When René van Swaaningen and Gerard de Jonge (1995) wrote their chapter on the Netherlands in the previous volume of critical anatomies of European penal systems nearly 20 years ago, they observed a trend, from humanitarian paternalism in the 1960s and 70s to a rather bleak penal business management in the 1980s and 90s. Their key conclusions then were that policymakers no longer considered rehabilitation to be the main goal of punishment, but the protection of society; that non-custodial sanctions were no longer intended as alternatives to custody, but as relatively cheap remedies to ease the capacity problem in prisons; that the sharp distinctions between custodial and non-custodial, repression and prevention were blurring; and that penal policy has become increasingly motivated by an alleged public sentiment against leniency in law enforcement. All of these conclusions can be reiterated in this chapter.

Yet, it would be wrong to conclude that there has been a standstill in the last 20 years. If we are to choose two new phrases to characterise today's penal policy it would be 'risk-assessment' and 'evidence-based best practice': two aspects that were not yet central in the mid-1990s. The prefix 'pre-' would cover a lot of what has happened since: the focus is increasingly on 'pre-crime', to be countered by 'precautionary' measures which lead to a politics of 'prepression' – that is the complete merger of prevention and repression. The change of emphasis is now embodied in new multi-disciplinary and multi-agency approaches to tackling crime which are accepted as preferred policy options among politicians and their advisors, who need to be seen to be doing something to combat the public's growing sense of insecurity.

The political and cultural context

Since the mid-1980s, playing the ‘tough on crime’ card has become an important tactic in Dutch electoral campaigns. Before that, crime was hardly an issue in the Netherlands. Yet, by 2002 every single political party, from the far right to the radical left, had an elaborate paragraph on crime and insecurity in its electoral manifesto. Moreover, these paragraphs also became rather similar in their orientation: more punitive responses, more prevention and early intervention – though obviously within the limits of due process. In this period the number of parliamentary debates on crime and insecurity has risen from 15 in 1995 to almost 60 in 2003: that is a fourfold increase in less than a decade (Keijzers 2005: 90). From the late 1990s onwards there is strong support for the ‘governance through crime (and insecurity)’ thesis in the Netherlands (Tonry 2001: 524; van Swaaningen 2005). This policy shift, in which crime and insecurity are central themes in the political debate, is accompanied by a shift from a rather general disbelief in the effectiveness of prison sentences up to the 1990s, to a renewed belief in prison as the obvious, sound reaction to crime from the 90s on. ‘Prison works’ is the new slogan, albeit mainly as a symbol of collective condemnation and not so much because of its actual effects in reducing crime. Similarly, community safety gains another dimension too. It is no longer linked to positive ideals, such as a social policy guaranteeing everyone full participation in society. From the mid-1990s on, community safety is merely interpreted as taking action against those who threaten the citizen’s feelings of security. Apart from people who really menace or rob, here it is also a question of beggars, streetwalkers and ‘addicts avoiding treatment’: in short, all those who the law-abiding citizen finds an ‘anti-social’ irritant (van Swaaningen 2005).

The political debate on crime and insecurity largely focuses on mischief in the public domain. Little distinction is made between crime and nuisance. Moreover, politicians often display unwarrantedly high, if not naive, expectations of ‘strong intervention’. Not only are general nuisances, incivilities and disorder all too easily treated as crime, but also the boundaries between policing and intelligence are often blurred – especially with respect to the fight against jihadi terrorism. Compared to David Garland (2001), who discerns a process in which crime is on the one hand ‘defined up’ and on the other hand ‘defined down’ – depending on the political context – we argue that, in the Netherlands a process of defining crime down took place in the early 1980s (notably with respect to petty criminality), but in the 1990s and 2000s we witness

a continual tendency to define crime up. Examples of this tendency in the public domain are the increased criminalisation of begging, of alcohol or cannabis consumption, of gatherings of the homeless or the young in certain urban areas, of urinating in the street and of swearing at police officers. Also, the more recent plans to criminalise wearing a burka or undocumented stays in the Netherlands are highly symbolic of the immanent belief that criminal law serves to make a statement to the general public.

The current tendency to govern through crime and insecurity is to be understood in the context of a process by which crime is increasingly situated amongst the 'other'; that is people who are not like 'us'. Through this process of othering, punitive responses become far more obvious than if you see an offender as a person who is just like yourself. Because ethnic minorities are the most prone to such othering, we need to focus on the changed attitude towards immigrants in the Netherlands. By the turn of the millennium, the multicultural ideal was seen to have resulted in a multicultural tragedy. It was thought that ethnic minorities were not sufficiently integrated into Dutch society, undermined social cohesion and just caused trouble. In this context, the public debate on crime control became increasingly defined in terms of 'us' – the white Dutch – against 'them' – the foreigners who make our society increasingly unpleasant. So, crime is implicitly portrayed as a problem outside 'our' society, rather than as a problem rooted in social and economic relations, as was hitherto the common vision.

Three events in particular have contributed to what we could call a social climate of fear and rancour in the Netherlands that reached its highest level in 2004. These are the 2001 attack on the Twin Towers in New York, the murder of the populist political leader Pim Fortuyn by a radical environmentalist in 2002, and the murder, in 2004, of film director Theo van Gogh – who had made a film about the allegedly misogynous nature of Islam – by a Dutch-Moroccan Muslim fundamentalist. The subsequent fear and moral panic about Muslims as a whole resulted in an Islamophobia that varied from attempts to refuse girls with headscarves into schools, a proposal for a so-called 'stop to immigration' in 'Muslim' neighbourhoods, cultural pleas to punish immigrant youths who commit misdemeanours differently (because they would not understand the 'soft' Dutch language of corrections), stiffening regulations for asylum-seekers and other immigrants after a number of – rather shadowy – terrorist trials and, last but not least, new anti-terrorist legislation that allowed very far-reaching infringements of civil liberties.

Ultimately, these events of the early 2000s marked the end of the Dutch self-image as a beacon of tolerance and enlightenment in a generally savage and uncivilised world. The mental consequences of this national identity crisis have been quite disturbing. It seemed as if the Dutch wanted to ‘close the curtains’ and keep the door closed to the evil world outside. Despite this, despite the long history of the Netherlands as a trading nation, and indeed despite the political process of European unification and economic globalisation, it seemed as if the mental horizon of the Dutch suddenly stopped at their own doorstep. Nearly forgotten words such as ‘community spirit’ and ‘decency’ gained importance again, albeit with narrow-minded, provincial connotations. The implicit message was: our communities were safe and the people were decent in the pre-globalised world of the 1950s, when we could still understand the world around us, so we should get back to that situation. The political naivety implied in this message is rather alarming. Despite being a country of commerce, with a long colonial history that now embraces the neo-liberal politics of globalisation and has supported military interventions in countries such as Afghanistan and Iraq, we did not expect ‘the bad world out there’ to disrupt our peaceful country. In this context, immigration is increasingly treated as a security risk and thus, argue criminologists Joanne van der Leun and Maartje van der Woude (2012), the Netherlands has witnessed a process of ‘cimmigration’ – the intertwining of crime control and migration control.

Till the 1990s it was politically incorrect to address social problems along ethnic lines. However, this ‘taboo’ gradually disappeared. By the early 2000s newspaper articles about street nuisances, gangs or terrorism seldom lacked reference to the cultural background of the offenders. In post-1990 Dutch criminology, we also find many studies that demonstrate a far larger involvement of various ethnic minority groups – mainly Moroccans and Antilleans – in crime, even when corrected for demographic and socio-economic differences. After 2010 a similar xenophobia was oriented increasingly against Poles, Bulgarians and Rumanians.

Politics and penal policy

The demise of tolerance as a key characteristic of Dutch society also marks a significant shift in penal policy. In penology, the ‘Dutch model’ traditionally referred to the period of sustained reduction of imprisonment rates between 1947 and 1974. David Downes and René van Swaaningen (2007) have shown how the Netherlands moved away