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When the Innocent are Punished

The Children of
Imprisoned Parents

PETER SCHARFF SMITH



When the Innocent are Punished

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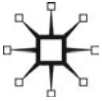
When the Innocent are Punished

The Children of Imprisoned Parents

Peter Scharff Smith

Senior Research Fellow, Danish Institute for Human Rights, Denmark

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Part I

Prison, Society and Prisoners' Children

1

Scenes from Family Life

One Saturday night in Denmark, Malene, Carina and Tenna's father was arrested. Carina explained that her little sister had hardly woken up before a police officer ordered a dog to jump up onto the bed to sniff out drugs: "My little sister screamed as loud as she could. We had to leave the room so the officer could check it for drugs. When we were on the way out of the room, he opened my drawers and began throwing my underwear and other things all over the place. It was so insulting, I felt like I was the criminal." The father was arrested, and the girls (who were 18, 16 and 14 years old, respectively) were left behind – apparently without the police having contacted any family members or the social authorities, or even asking if the girls had somewhere to go. Seven days later, the eldest girl visited their father in prison. Tenna, the youngest, didn't want to go along. She was still very upset and mostly stayed in bed for the two months following the arrest. After three and a half months in remand custody, the girls' father was sentenced to three years. Malene and Carina had a poor relationship with their mother and her boyfriend, so they continued living in their father's house. They worked as much as they could after school and studying, but despite their efforts, the house was put on a foreclosure auction after six months. The girls then moved into an apartment, and Carina applied to the municipality for financial assistance. She received half of the rent for three months.¹

Alicia was a 15-year-old girl living with her mother in Sweden. One night she was home alone when the police came and searched the apartment. Later her mom came and made her dinner. The police returned: "I remember that I just stayed in kitchen. It was as if I tried to forget that someone else was there. I just stood there and ate my dinner. My mom came out into the kitchen and told me that she had to go but that she would be back in an hour. But she did not return within the hour. I

didn't get to talk with her for a month. I had no one, I was completely alone in the apartment. I didn't know what to do. The police did not contact me, nor did the social authorities or anyone else. It was difficult because I did not have any good contact with my Dad either."²

A Norwegian boy remembers the time his mother told him about his father's sentence: "I remember extremely well when dad got his sentence for 13 years." The boy was on his way to an after-school activity: "Then my mother tells me that dad has been sent to prison for 13 years. I began to cry. I remember I ran out of the car and hid myself behind a trash bin. That's when I had really needed someone to talk to."³

A Danish police officer remember an experience that still haunts him 30 years later:

Once, many years ago, I had to carry out an arrest of a female drunk driver together with another officer. Unfortunately, she managed to get into her apartment before we could get hold of her. When we rang the doorbell, she opened the door and was clearly very intoxicated. Her husband, who didn't appear to be under the influence, stood behind her with their almost 5-year-old son. We asked the husband to go into another room with the child and explained: "We just need to chat with your wife and take her down to the station for a blood test. It won't take that long". But he refused and remained standing where he was. The woman certainly did not want to go to the station and began kicking and fighting. She was a very heavy-built and strong lady and very infuriated, so we couldn't get her to come with us just like that. We continued to urge the husband to leave with the child, but he refused. The situation with the woman developed and it all ended very unfortunately by us having to get her to lie down with two officers almost sitting on top of her out in the stairwell. And if that wasn't enough, the husband wouldn't go away with the boy; he didn't even have a proper hold on him. Suddenly, the boy attacked me and beat furiously on my back while shouting, "Get away from my mother! Get away from my mother!" I will never forget the boy's eyes and I often wonder where he is today, how it has affected him and what he thinks about the police and about the episode. It's almost 28 years ago, so he is an adult man now.⁴

Ten-year-old Jonas lived with his father and little brother in Denmark. When his father went on a two-week sailing trip, Jonas and his brother moved in with their cousin. But his father didn't come home after the

voyage. For a week Jonas feared that the ship had sunk and his father had perished. Then the police phoned and said his father was remanded in custody. It took three months before the boys were allowed to visit their father, a visit Jonas was looking forward to. The cell was “small and gross”, and a police officer supervised the visit. “When it was time for us to leave we cried and clung to his legs.... It was so sickening to drive away from the prison knowing that your father was in there.” Sixteen months went by before the case went before the court. This was a trying time for Jonas. He constantly thought about his father, began bullying his classmates and had difficulty keeping up in class. The case ended with an acquittal and DKK 150,000 in compensation. Nine years later, Jonas was still marked by the whole process and very scared of losing his father.⁵

According to a social worker employed with the Danish social services, “it is not widely recognized that one can have a severe social problem” when you “have a man who is in prison, who might also be the father of your child.... I can think back on at least ten times where I haven’t thought of the fact that both a child and an adult need help. We (the social services) have failed especially with regard to the perspective of the child. If the prisoner is a parent, there is also a child who practically has lost a mom or dad. We as social workers are usually not afraid to act on this. However, in this situation, it is just not customary”.⁶

A Danish boy with several younger siblings was 12 years old when both parents were imprisoned on the same day: “Our father was arrested in the afternoon.... At that time my mother became ill, she fainted and was taken to the hospital.... She came home and was with us in the evening. Then the police arrived; they came in several cars with the blue lights flashing. They were there to arrest our mother and us kids were put in another car and driven to the children’s home. We were told that they were arrested because of drugs.... So we were put in the children’s home... 1½ months passed before we were able to see our mother and 2½ months before we saw our father.... The children’s home was organised in a way so you lived in groups according to ages; so we didn’t live together but we spent all day together.... I told the little ones that our mother and father were on holiday. I didn’t know what to tell them, but I thought that if I said they were on holiday, then the little ones would know that our mother and father would come back again.”⁷

A Danish prison officer remembers a time she was working in the prison visiting area and “praised a little girl’s dress. The girl became very happy and the mother got tears in her eyes just because I was nice. Imagine that so little can mean so much”.⁸

As a 12 year old, the Danish boy Kristian recounts how as a 7 year old he waited to hear what his father's sentence would be: "Mum explained that I had to prepare myself that my father would probably be imprisoned. It was sort of like waiting for something that you know will be unpleasant, but you don't know how bad it will be.... And it was also as if every time we thought that now we were sure we would be told something, we would have to wait even longer." Kristian's father was in remand custody for ten months and then sentenced to 14 years; Kristian has visited his father many times. He clearly remembers his first visit to the prison. The visit was supervised: "An officer had to stand there and listen to what we talked about. We sat in such a small room and it felt as if you were completely surrounded by people you didn't know." Today, Kristian quite enjoys visiting his father in prison, but "just not when some of those hard-core types are at work. Then it's just stupid because, well, you're allowed to take a drawing in with you one time, and then you're not the next time. You can't take a gift inside one time and then you're allowed to take something along anyway another time and it's just really annoying. It changes all the time." When Kristian is asked about the most difficult aspect of having a father in prison, he responds very promptly: "The most difficult thing is that I can't play football with him. Or do anything else. When he's in prison, I can hardly do anything together with him."⁹

According to a Danish police officer, "it always makes a strong impression when there are children involved, as they are always the losers in all of this. They have under no circumstances chosen the situation they are in, which makes it all distressingly hard."¹⁰

2

When the Innocent are Punished

Prisoners' children

When a person commits a crime and is punished with imprisonment, it can be a very tough ordeal for the relatives. This is certainly the case when parents are imprisoned and one or more children are left behind. In a sense, the short glimpses of the various “family scenes” in the previous chapter and the children’s own stories and emotional reactions tell us almost everything. The naked, straightforward and almost archetypical accounts of loss, fear and anxiety clearly illustrate how imprisonment can affect *some* prisoners’ children particularly hard and have extensive negative repercussions on their daily life, well-being and future.

But how shall the state and society approach such an issue when we cannot refrain from prosecuting and punishing persons who commit crimes simply because they are parents? This is certainly not an easy question to answer, and in some ways the issue of prisoners’ children seems to be one of the major Gordian knots facing our modern system of punishment and imprisonment. This can seem strange given the fact that there have been prisoners’ children for as long as there have been prisons. We are dealing with a problem that has existed for centuries but has only recently begun to attract serious attention.

Today we know quite a bit about the problems prisoners’ children face. Yet many questions regarding the scope of various problems and the degree to which parental imprisonment causes or perhaps exacerbates these issues are still unanswered. We do know from qualitative research how individual children can experience parental imprisonment as a major life crisis, and we know from quantitative research that parental imprisonment is a risk factor for a number of problems, including anti-social behaviour, offending and possibly mental health problems, drug

abuse, school failure and unemployment.¹ From the rising number of research studies and qualitative accounts it is clear that, while the physical removal of a parent can be positive for some children, parental imprisonment certainly affect many children's lives in negative ways, which can include stigmatisation, psychological distress, behavioural changes and economic problems.²

Unfortunately, there are millions of children experiencing parental imprisonment all over the world right now. There are no official statistics on the number of children of imprisoned parents in any country, but several attempts have been made to calculate and investigate this in various ways and the resulting numbers are striking. In the United States in 2007, approximately 810,000 imprisoned fathers and mothers had more than 1.7 million children under the age of 18. One third of those would turn 18 while their parents were still in prison.³ In England, 2007 estimates indicated that 127,000 children experienced parental imprisonment every year.⁴ In 2006, it was further estimated that on a single day there were 88,000 children of prisoners in England and Wales.⁵ A more recent estimate based on a study of 3,849 prisoners in England and Wales produced the striking result that approximately 200,000 children had a parent in prison at some point during 2009 – 90,000 on a single day by the end of June that year.⁶

By looking at the average number of children per prisoner and the prison populations in Europe, the international NGO Eurochips has calculated that around 800,000 children in the European Union are separated from an imprisoned parent on a given day each year. Estimates from several countries in fact indicate that there are typically more children of prisoners than there are prisoners.⁷ But while prisons and prisoners have been the object of serious research since the latter half of the 19th century, the same thing can by no means be said about the millions of children experiencing parental imprisonment.

Prison and society

Historians normally agree that prisons have existed since the 16th century as institutions specifically constructed to incarcerate a significant number of people for prolonged periods of time.⁸ In much of this time, and especially during the last 200 years, the effects of imprisonment have been discussed intensively. These many discussions have typically focused on either the effects on the individual prisoner (individual deterrence and rehabilitation) or the possible preventive effect on society at large (general deterrence). The question of how imprisonment

has otherwise affected society, particularly the relatives and children of those imprisoned, has by comparison gained sparse attention during the last two centuries.⁹ One could say that a critical philosophical and sociological literature on prisons and their relation to society appeared during the 1970s – inspired not least by Foucault's *Discipline and Punish* – but these writings have generally explored prisons as symbols of modern society and modern technologies of power rather than analysing how prisons and society interrelate on a more practical level.¹⁰ In other words, prisons have been studied as a reflection of society and modernity. This “Foucauldian” discourse and other critical interpretations have produced an interesting theoretical literature on power technologies, “governmentality” and so on – and theories of punishment in general – but have certainly not led to any focus on prisoners’ relatives and children.

Bearing in mind that we have had prisons for more than four centuries, it might seem rather strange, or even bewildering, that children of imprisoned parents have received so relatively little – and until recently almost no – attention. It is after all a rather logical proposition that the imprisonment of a parent can have a significant negative impact on the lives of the children, in terms of both their current and future well-being, as well as in the context of crime prevention. Yet, as late as 2005, Alison Lieblich and Shadd Maruna concluded in *The Effects of Imprisonment* that “there is little research emphasis on the effects of imprisonment on prisoners’ families” and that “the impact of imprisonment upon the children of prisoners has been slow to appear in the literature on the effects of imprisonment”.¹¹

But why are children of imprisoned parents a “new” area of research, with only a recent academic literature? How can this be the case? How can such a seemingly obvious product of any use of imprisonment go more or less unnoticed and untouched for so long? It is difficult to imagine, for example, a political discussion and public debate on a planned new highway that focuses only on how fast one can get from A to B, while completely ignoring such a project’s possible effects on nature in aesthetical and environmental terms. The debate on such an issue would involve discussing the impact not only on those driving along the roads but also society and the environment more broadly. It would simply seem absurd not to include these concerns in a discussion on modern-day transportation. But, unfortunately, the recent international trend of rising prison populations in many parts of the world clearly illustrates how penal politics, prison constructions and the use of imprisonment have generally not been “troubled” – or even

informed – by political interest in the secondary effects and “collateral damage” that these institutions cause.¹²

The last 10–15 years have, however, witnessed a gradually rising interest in and research on the broader societal effects of imprisonment – thanks to the alarming rise in prison populations. In the United States, the phenomenon of “mass imprisonment” has driven the incarceration rate to hitherto unknown levels, which makes the societal impact of imprisonment obvious in many different ways and therefore impossible to hide. The more than two million people currently incarcerated in the United States make Foucault’s so-called great confinement of the 17th century look like a bump in the road.¹³ In several other places, Europe for example, prison populations have also expanded significantly over the last couple of decades. This trend also means that an increasing number of children experience parental imprisonment and that families and relationships are challenged and broken up on a massive scale. That millions of children each year become separated from their parents looks, at first glance, more like something caused by war or perhaps natural disaster than a product of a carefully planned and well-thought-out policy on crime and imprisonment in a modern democratic nation.

Prisoners’ children and children’s rights

But regardless of whether or not a given prison population counts thousands or millions of prisoners, the impact on their children is often significant and help is typically scarce. These issues can be addressed from different perspectives and be framed as questions of child welfare, criminal policy, social problems, welfare state policy and so on. In this sense, we are clearly dealing with a problem that will benefit from a cross-disciplinary approach. Another important point is that these children not only have problems, they also have rights. Rights that are – or rather ought to be – legally enforceable. In fact, the whole question of children’s rights makes for an interesting approach to this issue as a human rights case study of the problems surrounding actual implementation of children’s rights and as a reform tool that can be used to empower these children.

It is therefore arguably necessary to study not only the problems these children face but also their rights and how the latter can be both enforced and strengthened. According to the United Nations Convention on the Rights of the Child, children can claim several rights of obvious importance for children experiencing parental imprisonment. They include the right to maintain contact with parents, the right to be heard and the

right to have their best interest taken into account as a primary concern “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies” (article 3). These are potentially far-reaching rights to hold for a child – but what do they mean in practice for children experiencing parental imprisonment?

When I began my research in this field in 2005, I had to start almost from scratch when looking at children of imprisoned parents from a human rights perspective. At that time few would question that these children had rights – in fact no other human rights convention has the same international support as the Convention on the Rights of the Child – but what it meant in practice for this particular group of children in the concrete situations they faced was unclear, to say the least. This had simply not been discussed in any great detail, neither by researchers, national lawmakers nor international human rights mechanisms.

One reason is that the broader field of prisons and human rights has almost exclusively focused on balancing the relationship between the rights of the imprisoned on the one hand and society’s legitimate use of power on the other hand. So while judgements from various national courts and the European Court of Human Rights in Strasbourg have secured and enforced the rights of prisoners in several ways (and confirmed the state’s right to wield considerable power), there has generally been little attention given to rights holders outside of prison and the question of how the use of imprisonment influence their lives and human rights. This is especially obvious in the case of prisoners’ children, compared to prisoners’ spouses, since children have very limited personal access to legal remedies and their cases are typically not taken to court. It is therefore highly relevant to examine and define the rights of these children in the context of the many practical problems they experience.

The background of this study – research, dialogue and reforms

In 2005, my former director at the Danish Institute for Human Rights, Morten Kjærum, approached me with the question: “Shouldn’t we do something on prisons in Denmark?” I suggested a number of possible areas of intervention – prisoners’ children being one of them. This particular area appealed to both of us for three basic reasons. It was clearly an important area, as it involved a lot of vulnerable and more or less forgotten children. Secondly, it was a new area – both in terms of

researching these children's situations and the treatment they received but also in terms of discussing and analysing their human rights. Furthermore, it was an area where it seemed plausible that we had a relatively good chance of making an impact in terms of implementing human rights and producing an actual, substantial difference for a large group of children.

At that time the Danish political agenda was very "tough on crime" and, as in so many other countries, heavily influenced by penal populism.¹⁴ The former Danish minister of justice Lene Espersen explained when taking office in 2002 that she wanted to govern with her "inner sense of justice", which she claimed to share with "ordinary citizens". She clearly regarded criminological advice and research as less important. What this meant was that she wanted to introduce tougher sentencing policies in a number of areas and seldom missed a chance to appear "tough" and talk about "zero tolerance".¹⁵ How this attitude could harm prisoners' children became apparent on several occasions. For example in 2005, Espersen published a bill, which called for three months' home leave suspension for all prisoners who appeared late for their commitment to prison. Espersen claimed that it would have "a pedagogical effect if you cannot visit your family for three months or participate in your child's birthday".¹⁶ The problems and harm that this would (obviously one should think) cause prisoners' children was never mentioned in the bill and did not become a political issue. At the same time, new "tough-on-crime" legislation caused a rise in the Danish prison population and thereby in the number of prisoners' children – as it had been the case in several European countries from the 1990s and onwards.

The general influence of penal populism meant that it was difficult to discuss a lot of issues involving prisons, punishment and police work. But perhaps serious research on prisoners' children would produce a different result? What, for example, would happen if the ever present public opinion and sense of justice was informed about these children, their situation and their sense of justice?

I decided to focus on the perspective of these children and on the rights of the child and began doing some initial research. After publishing an article in a Danish journal, Morten Kjærum and I wanted to see what a dialogue among the involved actors could bring to the arena. Accordingly, on 9 February and 9 October 2006, I arranged two meetings, which took place at the Danish Institute for Human Rights. Present at these meetings were, among others, representatives of the Danish Prison and Probation Service, the National Council for Children, the police, the social authorities, the Danish Red Cross, associations for

prisoners' relatives, inmate spokespersons and previously imprisoned parents. The meetings were arranged as round-table discussions where all parties met each other eye to eye, on neutral ground and with the same rights and speaking time. The topic was prisoners' children and the idea was to have an informal discussion about what could possibly be done to help these children.

In many ways, the participants' points of departure were very different. Experiences were shared and accounts were given from prison staff, prisoners' parents, relatives, researchers and others who in one way or another were involved with children of imprisoned parents. For some of the parties, this was the first time they met in this way. There were some heated arguments, and it was clear that not everyone agreed on everything. This was in no way surprising. However, it was striking that after both meetings, despite the very different points of departure, all participants were willing to do something for children who experienced parental imprisonment. It was furthermore clear that there was an abundance of ideas on how things could be done better and how to improve the conditions for these children. It was also quite apparent that the majority of those present – regardless of whether they were from the Danish Prison and Probation Service or an NGO, or someone who had personal experience as an imprisoned parent or relative – left the meeting uplifted with a sense of having a common goal and a feeling that innovative thinking was both possible and necessary. We felt this way, and subsequent talks with several of the participants confirmed this interpretation. This seemed quite remarkable and whetted our appetites for continuing the work.

Equivalent meetings on similarly relevant human rights problems, which have given rise to criticism of the authorities, will generally not result in finding such common ground. If you work with prisons and human rights, the Danish use of solitary confinement is an excellent example of a topic that has often given rise to conflicting and irreconcilable views between state representatives and various NGOs and, not least, prisoners themselves. A round-table meeting about such a topic would hardly have resulted in the same optimism and reformatory zeal of the participants.

The basis for the round-table meetings was dialogue and cooperation as methods and tools in a reform process. But from the outset, the goal was that this dialogue should have a well-developed foundation in research. My colleague Janne Jakobsen and I therefore drew up a research based project and we applied for funding. Since then I have secured funding for and participated in three different substantial

projects on children of imprisoned parents. This research forms the background for this book.

Denmark and Europe: perspectives, data and methodology in three projects

The first research project was carried out from 2007–2010 and consisted of data collection and analysis of children of imprisoned parents in Denmark. Focus was on how these children were met and treated by the state representatives they encountered throughout the whole process from their parents' arrest to their imprisonment and release – especially the police, prison service and social services. A sociological/criminological and legal analysis of the situation was carried out. Data collection consisted of interviews with more than 80 practitioners and representatives from various institutions and NGOs, and numerous prison visits primarily in Denmark, but also in Italy, the United Kingdom and Sweden. Furthermore, a countrywide survey with comprehensive questionnaires was also sent to all prisons, police districts and local social services in Denmark.¹⁷ We had a response from 28 remand prisons (which corresponds to a response rate of 68.3%), 17 prisons for sentenced prisoners (response rate: 94.4%) and 6 halfway houses (response rate: 75%), as well as 34 police districts (response rate: 47.2%) and 28 municipal social services (response rate: 40.8%).

Parallel to the data collection, a survey of the relevant human rights laws and Danish legal conditions was also carried out. This survey was initially conducted by lawyers at the Danish Institute for Human Rights and then an external legal consultant and I expanded the work. The largest group of interviewees has or has had affiliation to the Danish Prison and Probation Service – the majority as employees and some as prisoners or former prisoners – while the remainder of interviewees came from the police, social services, various NGOs, the Swedish Prison Service and other organisations. We were also in contact with relatives and relatives' associations throughout the project.

In other words, we chose to focus on the most important state actors – in this context the prison service, the police and the social authorities – instead of conducting a large, systematic survey of prisoners' children. Others had already interviewed the children thoroughly, and we knew from the outset that we were able to gather these children's stories and statements from many other sources. This will also be apparent in the current study, which quotes many Danish children, as well as children from other countries (see appendix).

But while we had access to numerous interviews with prisoner's children from different sources, almost no interviews with the relevant state actors could be found. No one else had conducted systematic interviews with prison officers, the police or social workers for the purpose of studying how they approached, perceived and treated issues related to children of imprisoned parents. This was certainly not the case in Denmark and, as far as I can see, neither has this been done yet on a similar scale elsewhere. But by consciously focusing on the relevant state actors – including their working methods, culture and the legal frameworks within which they take action – we hoped to produce research that could be used in practice. The idea was that dialogue and research should go hand in hand with practical exploratory proposals for reforms. This is also a principal and methodological starting point for the book you are now reading. If one wants to propose better conditions for prisoners' children, it is in my opinion necessary to carefully study the work and working conditions of the prison service, the police and the social welfare system, and combine such knowledge with what we know about the children's problems, situations and needs.

Such an approach does not mean that I want to remove the responsibility from parents who have put themselves in a position such that their children experience parental imprisonment. These parents are, of course, ultimately responsible and the immediate cause of the problems. But this does not relieve state and society of responsibility. On the contrary, it is painfully obvious that a lot can still be done in this area in any country with parents in prison.

The second substantial project on children of imprisoned parents that I secured funding for, initiated and participated in at the Danish Institute of Human Rights was an EU project based on the model of our first Danish study.¹⁸ The idea was, once again, to combine academic research with knowledge and information drawn from all relevant professionals and NGOs working in the field – including prison staff in prison visiting areas, police officers doing arrests, social workers involved with prisoners' families, prison education workers and psychologists, as well as prisoners' relatives and children.¹⁹ The primary project partners were the University of Ulster, the Italian NGO *Bambinisenzabarre*, the European NGO *Eurochips* and the Danish Institute for Human Rights.

Four studies of varying scale and scope were conducted on the treatment of children of imprisoned parents in Northern Ireland, Denmark, Italy and Poland, and a separate analysis of the relevant human rights instruments and standards was carried out by my colleague Stephanie Lagoutte. In Northern Ireland, Linda Moore, Una Convery and Phil

Scraton produced a thorough qualitative study on prisoners' children, and two valuable contributions were made by Bambinisenzabarre in Italy and by Eurochips in Poland. In all countries, research, dialogue, fieldwork and knowledge drawn from the expertise of those conducting the studies was combined in order to produce not only theoretical but also practical recommendations based on examples of good practice and grounded in children's rights. The research uncovered many issues, problems and good practices and basically demonstrated that although prison conditions and economic and legal situations vary substantially in the chosen countries, prisoners' children face many of the same problems and challenges no matter where they live.²⁰

The third project constituted a very concrete attempt to implement children's rights and alleviate some of the problems that children of imprisoned parents face. The project was to introduce children's officers in Danish remand prisons as well as open and closed prisons. Janne Jakobsen and I initiated the project, which was later managed by our colleague Lise Garkier Hendriksen and carried out together with the Danish Prison and Probation Service. The funding came from Ole Kirks Foundation, which belongs to the toy manufacturer Lego. The purpose was to train selected prison staff, primarily prison officers, as children's officers who should work in their respective institutions to firmly anchor the child's perspective in the individual prisons. The project ran for two years (2010–2011) in two remand prisons, one open prison and one closed prison. We focused on introducing simple and reliable measures to improve children's contact with their parents as well as their experience when visiting in prison. Activities conducted by the children's officers included improving visiting facilities and visiting procedures, arranging child-friendly events, introducing different measures to help imprisoned parents deal with parenthood (parenting study groups, individual talks, running "bedtime stories" projects, etc.) and disseminating information to colleagues on how to welcome and handle children visiting the institution. We also collected information and knowledge about other relevant initiatives in the prison service, interviewed staff and conducted a small survey among imprisoned parents.²¹ When the project was over and the funding spent, the Danish Prison and Probation Service continued the activities in the four institutions. In November 2012, the Danish government and parliament decided to implement the children's officers scheme on a national basis beginning in 2013. All Danish prisons (for remand and sentenced prisoners) now have children's officers as a result of this project.²²

Initiating and running the children's officer project gave valuable insight into the many dilemmas and concrete practical issues faced by staff, prisoners, relatives and prisoners' children. Every step of the project – each meeting, training session, prison visit, interview, survey, evaluation, etc. – generated new knowledge and empirical data that could be used in the present study. Working with the children's officers also provided my colleagues and me with a sense of having achieved some very concrete and practical results, results that mattered to the children and their imprisoned parents. It was very uplifting to see how the work also mattered to the children's officers, who put an amazing amount of time, energy and purpose into the project – sometimes while facing scepticism or criticism from colleagues. In that sense, the children's officer project was also about prison culture and reform in a broader sense, which – in my opinion – constituted an effort to decrease the barriers between prisoners and prison officers, as well as between prisons and the surrounding society.

Working with such a practical and normative endeavour as the children's officer project can have implications for the way one works and writes as a researcher – simply because one gets involved in the institutions and issues in a different way. To me this accentuates some of the theoretical and methodological issues inherent in studying more or less vulnerable and marginalised groups in society, that is, questions concerning bias, personal sympathies, research perspectives and ultimately the relationship between values and social science. To put it in other words, one question that often emerges when researching prisons and prison staff is “Whose side are we on?” – and how is that reflected in, or influenced by, the way we approach and conduct our work?²³ Alison Liebling highlight some of the important issues in that regard by asking: “Does acquiring sympathy for those whose worlds we study undermine our professional integrity? And does it matter which social groups draw these feelings from us?”²⁴ The short answer is yes, of course it matters, and it is therefore important to try to balance “different or competing perspectives” when designing and carrying out research studies, unless one believes in either complete objectivity or “epistemological relativism” as possible avenues.²⁵

I believe that working with both prisoners relatives organisations and childrens NGOs on the one hand, and the prison service and the police on the other hand – both as research subjects, dialogue partners and even implementation partners – has helped inform my work with these different and competing perspectives. At the same time, I have undoubtedly also become submerged in the field in different ways. I have come

to respect and like people representing these different perspectives, and I appreciate the conditions under which they work, live and act. All this has influenced my values, my research and what I write.

Still, there is no doubt that one perspective has been given priority over others, and that is the perspective of the situation and rights of the child. Not that this is less normative or less informed by different and competing agendas than other research objects and perspectives. On the contrary, it is more a declaration of a basic normative foundation upon which a hopefully thorough and scientific research effort rests.

The aim of this study

In this book I have attempted to gather in one place the knowledge, data and experience on children of imprisoned parents from all my previous work in this area, including what I have learned from the above-mentioned work and research in Denmark and the European Union, as well as the many other concrete practical projects, dialogues, conferences and meetings that I have participated in with prison staff, police officers, prisoner relatives NGOs and children's ombudsmen in Denmark, Sweden and Norway during the last eight or so years. I have also visited nearly 20 prisons and remand prisons in Denmark (as well as a number of prisons in Sweden, Norway, Italy, Poland and the United Kingdom) to observe visiting conditions and child-friendly initiatives.

More specifically, I hope to achieve the following in this book:

1. I want to map all the major problems that prisoners' children face and the way that they are likely to be treated by the authorities they encounter throughout the whole process from a parent's arrest through remand imprisonment and imprisonment following a sentence, until release. I also want to tell the story of these children and their situation as seen and perceived not only by themselves but also by these authorities – especially the police, prison officers and involved social workers. This includes describing and analysing situations, and asking questions such as: What happens when children witness the arrest of a parent? What happens when parents are arrested without their children's knowledge? How do the police treat children during the arrest of a parent? Why and how are many children of imprisoned parents lied to? When, for how long and under what circumstances can the children visit their imprisoned parents? What happens during a prison visit, and how do children react? What are some of the major obstacles for parent-child contact during imprisonment? How

exactly can children and incarcerated parents keep in contact? What happens when young children are incarcerated with their parents? What happens when parents are released from prison?

2. I want to explore, discuss and define what children's rights should mean for this particular group of children throughout the various steps of the process from arrest to release. What does – or rather, what should – children's rights mean in the very concrete situations listed above? What rights, for example, does a child witnessing the arrest of a parent have? And what rights can a child wanting to visit an imprisoned parent claim? Analysing these issues involves acknowledging children's rights according to both international and regional conventions and law in the form of both existing jurisprudence and soft law. As will become apparent, children's rights have up until recently rarely been used or mentioned in the context of children of imprisoned parents. The United Nations has taken important steps in that regard during recent years. By incorporating the most recent human rights developments in the area this study constitutes an attempt to analyse what the principles in the Convention on the Rights of Child and other relevant international and regional human rights covenants and instruments ought to mean for children of imprisoned parents, that is, how our systems of punishment should be shaped to increasingly consider the rights of these children. Such an approach can hopefully strengthen children's rights internationally and overcome the paradox that while there is broad support for children's rights throughout most of the world, children are still a group of citizens who are often not heard, have poor complaint options and are, in practice, easy victims of human rights violations.
3. I also look at children of imprisoned parents as a case study, which is part of a broader discussion of how prisons influence and relate to the surrounding society. This includes adopting a historical perspective on the question of "prison and society" and asking the question of to what degree the barriers and the level of interaction between the world of the prison and society at large have changed (or perhaps will, or should change).
4. Though my empirical data is primarily Danish, I also draw on findings from several other European countries and the United States, highlighting similarities and differences in the various societies and penal systems. This does not turn the present study into a true piece of comparative criminology, but it should help make this work internationally relevant and hopefully useful as a source for comparative criminological research.

5. Finally, I highlight various reform initiatives throughout the text to promote good practice, which can make an impact for children of imprisoned parents. I also want to draw attention to the question of how research and empirical data can help inform and even create a process towards reforming state institutions and practices in the area of penal policy and practice – at least implicitly by using my own work, data and experience in this field.

To accomplish these various goals, it has been necessary to adopt a cross-disciplinary approach drawing upon research from, and to some extent combining, disciplines such as sociology, law, criminology, history and human rights. I have been able to do that because I have had the great benefit of working with many different experts, researchers and practitioners from many different fields. Several of them have been participants and/or employed as consultants in the various projects (lawyers, criminologists, psychologists, family therapists, etc.). By adopting such a multidisciplinary approach and by including the voices of prison staff, police officers, prisoners and the children themselves, I hope to have achieved a fair, facts-based and broad societal perspective on a very problematic and still often neglected side effect of the use of imprisonment.

Millions of prisoners' children are still the innocent victims of our system of punishment. This book is about these children, their problems, their human rights and the way in which they are treated.

3

Prison and Society

A historical perspective

If we want to look at the relationship between prisons and the surrounding society today, and thereby the possible interrelations between prisoners and their families, it makes sense to take a step backwards in time to when the modern prison system broke through in the Western world and created the foundation for our current system of imprisonment. How did it all start; how were prisons used and constructed; and what did that mean for prisoners, their families and children?

While the history of the prison – as an institution used for punishment – dates back to the 16th century, it was not until the late 18th century and especially the 19th century that imprisonment came to play the central role it does today as a state tool in the fight against crime and deviance. Accordingly, it was in the 19th century that prisons were constructed on a large scale throughout Europe and North America. These prisons shaped our prison practices in both an ideological and physical sense which is important even today. Many 19th-century European prisons are still in use and, although refurbished to a greater or lesser extent, their original architectural design and appearance still influence the way imprisonment is practiced.

In the early prisons – the “tuchthuisen”, bridewells, etc., which came before the modern penitentiaries – punishment was often both corporal and draconian, and living conditions were horrible. But the regimes in these premodern prisons could also be relatively liberal when it came to allowing prisoners contact with both each other and the outside world. In the premodern Danish prisons, for example, which were constructed more or less along the lines of the Dutch “tuchthuis” model, the conditions and regimes allowed practices and cultures during the 18th and

well into the 19th century that would become entirely unthinkable in the modern penitentiaries just decades later. In the premodern prisons it was, for example, common practice that large numbers of prisoners slept together in large dormitories. Sexual relations between prisoners, as well as between guards and female prisoners, were not uncommon and sometimes resulted in births in prison. Another familiar early practice, which was later totally banned, was alcohol consumption. In the Danish “*tuchthuis*” in Odense, the regulations clearly described how smoking and alcohol consumption were forbidden outside the allowed times, unless they took place within sight of the doorman.¹

These liberal cultures changed dramatically with the coming of the 19th-century modern penitentiary, and the freedom of the individual prisoner was minimised. The new prisons rested on a system of isolation, through which almost all prisoner contact with his or her family and the outside world was cut off.

The birth of the modern prison – isolating prisoners from family and society

“Day after day, with no companion but his thoughts, the convict is compelled to listen to the reproofs of conscience. He is led to dwell upon past errors, and to cherish whatever better feelings he may at any time have imbibed.... The mind becomes open to the best impressions and prepared for the reception of those truths and consolations which Christianity can alone impart.”²

From the 1770s until the middle of the 19th century, the ideology of the modern penitentiary was established. The construction of the so-called Auburn and Pennsylvania prison models in the United States in the 1820s confirmed that the aim of this system was to rehabilitate criminals through the use of isolation. The Auburn system (developed in the Auburn prison in New York) permitted the inmates to work together during the day, but under a regime of total silence. In Pennsylvania-model institutions (developed in Philadelphia in the “Cherry Hill” prison) there was no compromise with the ideal of isolation: the prisoners spent almost all their time in their cells, where they worked and slept. At Cherry Hill, the prisoner was supposed to turn his thoughts inward, to meet God, to repent of his crimes and eventually to return to society as a morally cleansed Christian citizen.³

This philosophy was expressed very precisely by the English prison inspection, which, for example, explained in 1838 that the Pennsylvania model should “produce that self-communion, that introversion of mind,