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Straus Working Paper 01/11

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**Explaining Penal Contrasts.
Scandinavia V. The Anglophone Countries.**

EXPLAINING PENAL CONTRASTS.

SCANDINAVIA V. THE ANGLOPHONE COUNTRIES.

By John Pratt[*]

Abstract

There are major differences in the punishment of offenders between Anglophone and Scandinavian societies, both in terms of prison rates and prison conditions. This paper provides an overview of both how these differences have been investigated in a research programme that I am engaged on and the reasons for these differences. The argument that has been developed is that these differences are the product of (i) long term cultural values specific to each particular cluster of societies and (ii) the way in which these values were subsequently embedded in these societies through the development of the post 1945 models of welfare state.

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This paper provides an outline of a research project that has engaged me for several years now. The project provides an explanation of the penal differences that exist between two clusters of modern, Western societies: the Scandinavian countries on the one hand, a particular group of Anglophone on the other. Specifically, Finland, Norway and Sweden against England, Australia and New Zealand. A number of journal articles, chapters in edited books and conference papers have been produced from this research and is intended that the eventual product will be a book.[1] Nonetheless, the paper still represents ideas that are in the process of development and should be read in that context. Let me begin first by explaining the reasons for the selection of these particular societies. This will also include a little of the history of this project. Social science research has to be intellectually rigorous and coherent in conjunction with what it is practically possible to do and the size of one's available research budget. Thereafter, I will sketch in some of the contours and themes of the research that are being developed.

Why these societies?

The reason for selecting these two groups of societies is because that, while the penal arrangements are similar within each cluster, there are major differences between the two clusters. For example, they both sit at opposite ends of the Western / OECD imprisonment spectrum. With the exception of Japan, the Scandinavian countries have the lowest rates of imprisonment - Finland 60 per 100000 of population, Norway 68. In contrast, the Anglophone countries have some of the highest rates - New Zealand 205 per 100000 of population, England 155, and some two to three times that of the Scandinavian countries. Of course, there are all kinds of methodological pitfalls in trying to compare prison rates; nonetheless, by using the World Prison Brief website of the International Centre for Prison Studies at Kings College, University of London, we are at least provided with consistent calculations and details of, for example, the number of foreign prisoners, number on remand etc. And, as has been said during the course of these seminars, while not ideal, imprisonment rates at least provide a start towards understanding penal differences.

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[1] See, for example, Pratt (2008a, 2008b); Pratt and Eriksson (2011).

These differences become starker when we examine sentencing patterns in the two clusters. Essentially (with some exceptions such as drug offences in Sweden, to be discussed later), sentences are much shorter in the Scandinavian countries than in the Anglophone. For example, In New Zealand, the average prison sentence length is 325 days, compared with 100 in Norway, 220 in Sweden and 250 in Finland. Average prison sentences in England are twice the length of those in Norway: 'only seven per cent of Norwegian prisoners serve more than ten years whereas a full seventeen per cent of prisoners in England are serving over ten years' (Green 2008: 67). In Norway the maximum term of imprisonment is twenty years and there is minimal use of indefinite sentences in this region. In contrast, in New Zealand in 2010, there were more than 250 prisoners serving indefinite preventive detention sentences (there had been only twelve in 1986). In England, more than six thousand indeterminate sentences for public protection have been passed between the introduction of this new measure in 2005 and 2009. Those serving life / indeterminate sentences constituted 10.4 per cent of New Zealand's prison population in 2009 (an increase from six per cent in 1990); and 18.3 per cent of the English prison population (an increase from 8.2 in 1990). In Scandinavia, there are no vestiges of three strikes laws or powers to extend prison sentences after the term set by the courts has finished, as is variously the case in these Anglophone societies. While there are hardly any prisoners under the age of eighteen in Scandinavia, this group made up three per cent (2402 offenders) of England's prison population in 2007 (Green 2008). At the same, penal differences between these clusters are not specific to the early 21st century. As regards capital punishment, the Scandinavian countries for all intents and purposes had abolished this sanction by the 1870s – nearly a century before the Anglophone countries did so in the 1960s. Much the same can be said for judicially imposed corporal punishment. This disappeared in the Scandinavian countries in the 19th century. It was abolished in New Zealand in 1941, England in 1948 and New South Wales in 1974.

These differences in prison rates and sentencing patterns are compounded by differences in prison conditions between these societies (the data for this includes fieldwork that involved visits to 42 penal institutions some several times) in the six societies, as well as interviews with 80 'key players' in the development and

administration of penal and prison policy. (Please note as well that Australian fieldwork was undertaken in the state of New South Wales, the most populous state [now about 5.5 million] and the one with the longest history). Differences in prison conditions can be summarized as follows[2]:

1. Differences in Size

- Scandinavian prisons are much smaller and there are more of them:

Table 1: Contrasts in Prison Size

Country	Prison Population	Number of Penal Institutions	Average Prison Size
England	85147	140	608
New South Wales	11330	35	324
New Zealand	8706	19	458
Finland	3231	35	92
Norway	3446	47	73
Sweden	7286	84	87

Source: World Prison Brief 2010, I.C.P.S, London University

2. Officer / Inmate relations

- there is more routine interaction and less social distance between officers and inmates in Scandinavia. For example, the use of the same canteen at mealtimes by inmates and staff in some institutions, and mutual use of Christian name terms when addressing each other.

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[2] Garland was writing about public attitudes in the Southern states of the USA towards lynching.

3. Quality of Prison Life

- diet, cleanliness, quietness, personal space and visiting arrangements - in both open and closed prisons - seem much higher in Scandinavia. For example, in Oslo Prison, the cell is 8 x 8 metres for a single prisoner. In Wellington prison, the cell is 4 x 2 metres and two prisoners have to share this.

4. Prison Officers

- there are significant differences in prison officer culture, recruitment and training. For example, there is much less evidence of the military origins and traditions of the prison service in Scandinavia.   In Norway, there are ten applicants for every place at the Prison Officer training college in Oslo (in New Zealand the ratio is more the other way round). There is a more equitable gender ratio amongst officers (around 3: 2 Male / Female in male prisons, compared to 3 or 4 to 1 in the Anglophone countries). In Norway, recruitment is now largely restricted to graduates who then take a two year training course.   In the Anglophone countries, training lasts between six weeks and three months and there are no educational prerequisites.

5. Work, education, programmes

- inmates more likely to be occupied in Scandinavia; education is not seen as a remedial extra, as it has been during much of the history of the Anglophone prison systems - something that illiterates could turn their mind to at the end of the working day, even if there was no work for them during the day itself. In Scandinavia education can be an alternative to work. Tuition is offered up to and including tertiary level.   One third of the Scandinavian prison population is involved in educational studies.

6. Open prisons

- there is a much higher proportion of Scandinavian inmates in open prisons - about 1/3 compared to less than ten per cent in the Anglophone countries. Another distinguishing feature is the complete absence of security arrangements

in Scandinavian open prisons. Inmates are free to walk away anyway time they choose to do so, and there are no penalties for escaping from them - they are simply returned to closed institution and serve the remainder of their sentence there.

Why these societies and not others?

As regards the Anglophone countries, the USA was not selected because of its phenomenally high rate of imprisonment (752 per 100000 of population, three and a half times higher than that of the second highest imprisoning Western country, New Zealand), making it an 'exception' to the rest of the selected Anglophone cluster (and everything I have read, heard and seen on this subject since being a Straus Fellow confirms this for me). Furthermore, its current penal arrangements have already been the subject of much sociological research and analysis (see particularly Garland 2001, Whitman 2003). In addition, its size, complexity, diversity, history, again point to dramatic differences from the selected Anglophone societies.

Canada was not selected because of its relatively low and stable imprisonment rate (105 per 100000 of population) that would have weakened the penal homogeneity of the Anglophone cluster (see Doob and Webster 2006, Tonry 2007). Furthermore, England, New Zealand and Australia are not only more similar in terms of penal trends but would also seem to share closer cultural, political and historical traditions. Miller (1987: 178) thus wrote that, up to 1945, 'Australians considered they were more truly Britain's children than the Canadians (because of the French Canadians) or South Africans (because of the Afrikaaners); only the New Zealanders could claim the same outright familial connection, while Indians and Africans and others within the British Empire could claim nothing but efficient administration.' The date 1945 is relevant here because this marked the end of the 'White Australia' settlement policy – the 'White New Zealand' policy lasted until 1973. What this had meant was that, up to these dates, immigration to these countries had been almost exclusively British, and had led to the recreations of quasi-replica British societies in the South Pacific (New Zealand in the 19th century was variously referred to by settlers as 'New Britain', 'Better Britain', and 'the Britain of the South Pacific'). Their indigenous populations were largely invisible after their

pacification. The numerically very small numbers of Australian Aborigines (now about one percent of Australia's total population) lived in the 'outback' and were rarely seen in the six main Australian cities where around 90 per cent of the population now live - indeed Aborigines were not even granted citizenship until 1970. In New Zealand, the Maori (now around 14 per cent of the total population) also lived in rural, outback areas, before urban migration in the 1960s. By this time, in both countries, the replicas of British society - cultural, social, political - had been constructed around them.

Constitutional ties to Britain also seem to have been stronger in Australia and New Zealand. Unlike Canada, these countries were reluctant signatories to the Statute of Westminster 1931, giving these Dominions legislative independence. It was not ratified in Australia until 1942 (because of wartime exigencies) and New Zealand until 1947: in other words, these two countries were more reluctant to be cut loose from the colonial umbilical cord. The differences in the national flags of these three former colonies are emblematic of the differences that exist regarding their relationship to Britain. Both the Australian and New Zealand flags still contain Union Jacks. In Canada, however, this was abandoned in 1965 (seemingly with little dissent) in favour of 'the Maple Leaf.' Ward (2001: 2) thus writes that 'for much of the 20th century Australian political culture was characterized by a deep attachment to the British embrace. London formed the centre of an imperial imagination in which Australia was firmly cast as a loyal outpost of British culture and British civilization.' There is every reason to think that these comments could be applied equally, if not more so, to New Zealand. The point is then that, despite the geographical distances, there were very strong links and ties between these three particular Anglophone societies – that justify their selection as a relatively homogenous cluster – and a more homogenous one than if Canada had been included.

Why choose the Scandinavian countries?
The idea of undertaking comparative research developed almost by accident, with a few lucky (or otherwise) breaks along the way, rather than some carefully worked out plan that was then rewarded with a generous research budget (this has never been the case). Instead, it has been funded by a succession of small grants from my university, and some extraneous assistance, including two travel grants from the Scandinavian Criminological Research Council (basically this provided return airfares from

Wellington to one of the Scandinavian capitals); one of the curiosities of the James Cook Research Fellowship that I currently hold is that, while it buys me out of teaching, it provides little research funding - enough to do the Australian fieldwork in a month and some translation money, but nothing more than this.

As it was, in 2004, my university, for the one and only time in my 23 years of employment there, announced, towards the end of the financial year, that it had some money that had to be spent, otherwise it would be lost, and invited bids for research seeding. At that time, New Zealand's prison population, always high, had really begun to accelerate, due to the influence of a particularly virulent law and order lobby group and a Labour-led coalition government that faithfully replicated Tony Blair's 'tough on crime' programme (see Pratt and Clark 2005). Without ever having any inclination to be placed in the position, I found that I, along with a few other individuals and one or two penal reform groups, had suddenly become the public focus of resistance to these forces in this small society. It was at this point that the idea came to me – although I then had very little idea of what it would actually involve - that I would like to do research on low imprisonment societies. There was both a sociological interest in what I had in mind (why are some types of modern society more / less punitive than others?); but also a normative one (is it possible for societies such as New Zealand to move towards the *ostensibly* more liberal and less punitive penal systems of the Scandinavian countries?). I put in a bid for seeding money and received some that allowed me, at very short notice, to undertake a European tour that lasted one month, visiting Switzerland, Holland, the Republic of Ireland, and the four Scandinavian countries (Professor Nils Christie, at the Institute of Criminology, University of Oslo, whom I already knew, arranged my trip for Norway, and also provided me with contact people in the other Scandinavian countries). I spent a few days in each country, visiting one or two prisons, having discussions with academics and civil servants. I found that Holland was already in the process of moving out of the low imprisonment category of nations, while Switzerland and Ireland were really 'one-offs'. To maximise the value of any research that I undertook, it was going to be important to look at *clusters of societies*: a comparison of two clusters would have much more sociological impact and than a

comparison between one small society at the bottom of the world and another small society in Europe.

In these respects, the Scandinavian countries as a cluster would obviously be the best choice. Furthermore, there were no *immediate* language difficulties since just about everybody spoke excellent English (although for more in depth research language was to become much more of an issue). Furthermore, in the course of these pilot visits, I was offered Teaching Fellowships for 2006 (which coincided with a sabbatical I was due) in Stockholm and Helsinki: in return for teaching a course I would be offered four to six weeks free accommodation and an honorarium. This would mean that, in the certain absence of large scale funding to cover the visits, these would at least be self-financing (warning: the Scandinavian countries are very expensive places to visit, Norway especially). But it was also clear that I would need institutional support in each host country in terms of having a community of interested others whom I could turn to for guidance, introductions etc. There was not this in Copenhagen, where the Institute of Criminal Science was closing on the retirement of its professor. Accordingly, with the financial incentives to go to Stockholm and Helsinki, and a lively and interested research community at the Oslo University Institute of Criminology, I chose Norway, Finland and Sweden for the Scandinavian research.

This began in 2006. A two part article, based on this research, one where the Anglophone countries were silent comparators, appeared in the *British Journal of Criminology* (Pratt 2008a, 2008b). But now I had an important decision to make. How much further did I want to take the research? Instead of signing off at this point, I chose to continue with it. The Scandinavian fieldwork, with the assistance of two more Teaching Fellowships, was completed in 2008/9 (and was replicated in the Anglophone countries in 2009/10). But this also meant I now had to learn a Scandinavian language - there had been enough available English material (from visitors or Scandinavians themselves) for the *British Journal of Criminology* articles: to move beyond them I had to mine untranslated sources. Accordingly, I began to learn Swedish with the help of a tutor in Wellington that now leaves me with an ability to read some Swedish newspapers. It never developed beyond that since virtually all Scandinavians (including shop assistants, taxi drivers etc) insisted on speaking to me in English when I tried my

Swedish on them. Furthermore, Swedish documents prior to the 1920s are written in an archaic version of the Swedish language (there is a similar kind of problem in Norway) - the difference is much bigger than reading, say, 19th century English official documents today. I thus had to recruit translators (I had to do so anyway in Finland since, despite assurances I had received to the contrary, their official documents are not bilingual - that is Finnish and Swedish: Swedish versions terminate in 1939 and thereafter documents are only available in the impenetrable Finnish language). I was able to raise some money for some translations, but not the amount I wanted. However, I was able to recruit an early career Swedish criminologist, Dr Anna Eriksson, based at Monash University, Australia, as a junior partner to the research programme. I met her, quite fortuitously, at a conference in Perth in 2008. She had been very interested in the *BJ Crim* articles and now basically provides translations and editorial guidance, as the project has taken its current shape.

Why the Differences in Punishment?

One of the first questions I am usually asked when I talk about this research to criminological and non-criminological audiences is 'what about crime differences between these societies?' So far as it is possible to ascertain (and notwithstanding the usual caveats and cautions regarding interpretations of crime statistics), there has actually been a high level of symmetry between crime patterns in these societies since the 1950s, as Figure 1 illustrates.

Crime Rate: 1950 - 2010
[per 100,000 total national population]
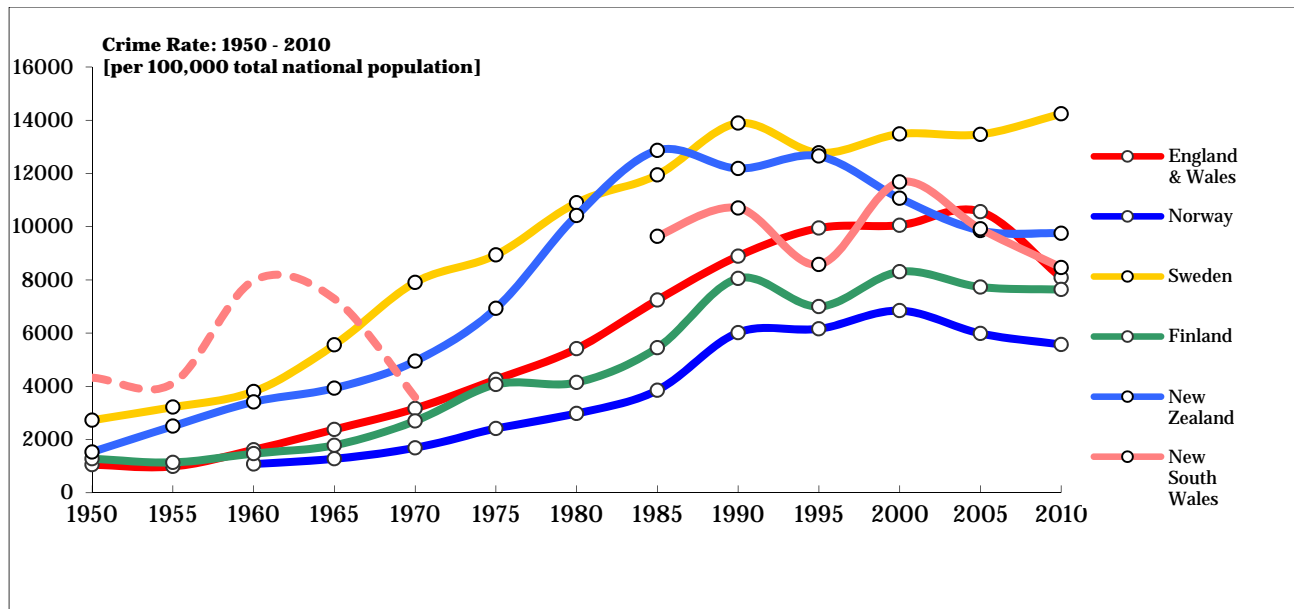
Essentially, crime rates in these societies have gone up at the same time then stabilized and declined at the same time (although Sweden is currently proving to be an exception to this pattern).

That there is no direct fit between prison rates and crime rates should come as no surprise, though. Punishment is not merely a 'utilitarian instrument', the use of which is determined by the quantities of crime being committed in a given society. Instead, it can also be understood as 'an expressive form of moral action ... a means of conveying a moral message, and, of indicating the strength of feeling which lies behind it' (Garland 1990: 44). In these respects, it is as if punishment in the Anglophone societies has come to carry an excessive, overladen baggage of signs and symbols, designed to give messages of reassurance to anxious and insecure communities: uniformed offenders working on their 'community payback' programmes before the gaze of the whole community; inflammatory speeches by politicians about the need for more use of imprisonment through longer sentences and curtailment of early release mechanisms; avowals from politicians that prisons will no longer resemble 'holiday camps'; assurances to crime victims that 'the justice gap' that is supposed to exist between their treatment in the criminal justice system and the allegedly superior treatment given to their offenders is to be closed. Excesses of this kind that give a moral message to the particular societies in which they are made have been characterized by Garland (2005:

814), albeit in a different penal context[2], as 'a deliberate flouting of the norms of modern and civilized penology, a self conscious choice'; an indicator that 'official justice was too slow, too uncertain, too prone to reversal on appeal because of technical loopholes.' Again, these comments resonate with criticisms of the criminal justice system that we have become familiar with in these societies: why does it release prisoners who are going to offend again, why are criminals given legal aid but not their victims? At the same time, such excesses represent a 'gesture of nullification' - of legal rights, of expert opinion, of any empathy with and pity for the offender, of all those sensibilities and knowledges that, since the Enlightenment, have cautioned against over-severity in punishment. Instead, from the early 1990s politicians of both Left and Right in these societies have maintained that 'prison works', flying in the face of the mountain of research evidence to the contrary, and that there should be more prisons rather than less.

In addition, Loader (2010: 350) suggests penal excess is also associated with 'hyperactivity.' That is, 'the satisfaction of immediate desires by recourse to speed, urgency, indulgence, decisiveness, here and now gratification.' Much of the pattern of penal development in these Anglophone countries in recent years fits these characteristics. For example, in England from 1997 to 2008 'fifty three new Acts were introduced dealing with crime and punishment - there had only been forty two Crime Acts in the preceding century. As this has happened, the penal system has been relaid and rebranded time and again, with increasingly complex and indigestible ideas and strategies, now imposed on the civil service by its political masters rather than originating from it (Loader 2006). The Home Office (2002: 81) White Paper, *Justice for All*, thus set out what were its latest plans for an overhaul of the penal system that involved 'a series of new and innovative sentences; a new suspended sentence called Custody Minus; reform of short custodial sentences through the introduction of Custody Plus; a new Intermittent Custody scheme that denies liberty through a custodial sentence served intermittently, for example, at the weekend, but allows the offender to continue working and maintain family ties; and a new special sentence for dangerous sexual or violent offenders.'

In Scandinavia, however, such excesses have largely been avoided. Law-making has usually involved lengthy deliberation, allowing all the evidence to be digested before arriving at a consensual rather than polarizing conclusion. As Jareborg (1995: 99) explained this matter in relation to Sweden, 'a legislative committee typically works for a number of years. All this serves to make the process as rational as possible. The issue is "cooled down" and political difficulties are normally solved within the committee whose members continually consult important persons in their respective political parties.' Similarly, Lappi-Seppala (2007: 69-70) refers to the revision of the Finnish penal code that commenced in 1972. After four years, 'the Committee ... laid down its principal paper. Again, after four years of preparation a specific Task-Force for criminal law reform was established ... practically all key figures stayed active from the start to the closing of the project (1980-1999) and some remained in the work from their initial start in 1972 till the last official sub-reform in 1999.' At the same time, the use of punishment has been more 'modest', that is, used with 'restraint, parsimony and dignity' (Loader 2010: 351). Overall, in these countries, penal policy has been directed towards reducing the prison population rather than increasing it; priority can still be given to expert opinion rather than common sense; and prisoners, rather than being the disgraced recipients of punishment, are considered worthy of making an input to the reform process. For example, the Norwegian Ministry of Justice (2008: 4) White Paper, *Punishment that Works*, describes consultations for its preparation that involved discussions with 'first, former Justice Ministers, then a think tank of professors and artists.' In addition, there were 'two big professional conferences.' In six prisons 'both inmates and staff had a dialogue and discussed what a good day in prison would look like for them ... Victims and family and friends of inmates also had the opportunity to have their say, both orally and in writing.' And while 'public safety is a paramount objective of the government's crime policy, *security work in Norwegian Correctional Care shall not, however, mean unnecessarily high levels of security for all inmates* ... it is only a minority that constitute a threat to the public ... no convicted person shall undergo a penalty under tougher conditions above and beyond necessary.' Furthermore, the impact of victims' rights groups has been minimal - there do not seem to be 'justice gaps' that then become essential to bridge in the Scandinavian countries. Victim impact statements are unknown. Lappi-Seppala (2007: 65) writes that 'a search from the

Finnish supreme court case register covering the years 1980-2004 did not find a single case with the words 'public opinion' or 'general sense of justice' cited in the decision.'

These different distributions of punishment are likely to be related to the way in which punishment itself has to perform very different moral actions and convey different messages in these societies. In his review of Emile Durkheim's contribution to penal theory, Garland (1990: 75) writes that 'the bonds holding people together and regulating their conduct are always moral bonds, ties of shared sentiment and morality - [but] where moral community is often absent or fragmented ... the role of control and policing is much greater. By the same token, 'the more authoritative, stable and legitimate the political-moral order, the less need there is for terroristic or force-displaying uses of punishment.' On this basis, the Anglophone levels and intensity of punishment are indicative of the inability of these states to maintain cohesion and social stability from other sources. Excessive levels of punishment become necessary to perform this role. But this also means that cohesion and stability can only be achieved by *excluding* significant sections of the population. The rest of the community is united around their exclusion and feels the better for it (Durkheim 1893, 1933). In contrast, in those societies where there tends to be an *absence* of the signs and symbols of punishment, as in the Scandinavian countries, or where, instead of 'censure, condemnation and reprobation', these signs and symbols convey messages of forbearance, tolerance and restoration, we can surmise that these states are able to provide social cohesion by forces that are more likely to bind communities together through *inclusionary* mechanisms: 'a strong and legitimately established moral order requires only token sanctions to restore itself and deal with violators' (Garland 1990: 60). Under these circumstances, there is no need for punishment to perform the role it has in the Anglophone countries: nor, judging from the relative stability of the Swedish and Norwegian prison populations from the nineteenth century onwards, has it ever had to carry the excessive baggage that has come to be a characteristic of the Anglophone societies.

As such, a key question for a sociological analysis of these penal differences is, what is it about these two clusters that has brought about their respective inclusionary and exclusionary penal characteristics?

The Welfare State: Explanations and Problems

The welfare state has become a familiar starting point. Esping-Andersen's (1990) typologies of welfare are crucial here. He characterizes the Scandinavian welfare state as a 'social democratic model', with generous, largely universal welfare provision, that is associated with a politics of acceptance and inclusion. Penal leniency and tolerance then become by-products: 'social democracy ideology, with its emphasis on equality and social solidarity and caring for those at the bottom of society, is likely to see the criminal as a victim of adverse social conditions' (Cavadino and Dignan 2006: 155). In contrast, the Anglophone societies are seen as having a liberal welfare state, characterized by modest, means tested and often discretionary benefits usually targeted at low income dependents that is associated with a politics of intolerance and exclusion. High imprisonment rates and inhumane prison conditions then become its by-product: 'crime is seen as entirely the responsibility of the offending individual. The social soil is fertile ground for a harsh "law and order ideology" (ibid: 24).

Certainly there have been changes to the framework of the Scandinavian welfare state since Andersen presented his thesis. We find deinstitutionalization in relation to mental institutions and children's homes, although in these countries there is minimal evidence that this has been accompanied by any concomitant growth in the prison population - in Finland exactly the opposite has occurred, as Figure 2 illustrates.

Prison rate: 1950 - 2010
[per 100,000 total national population]
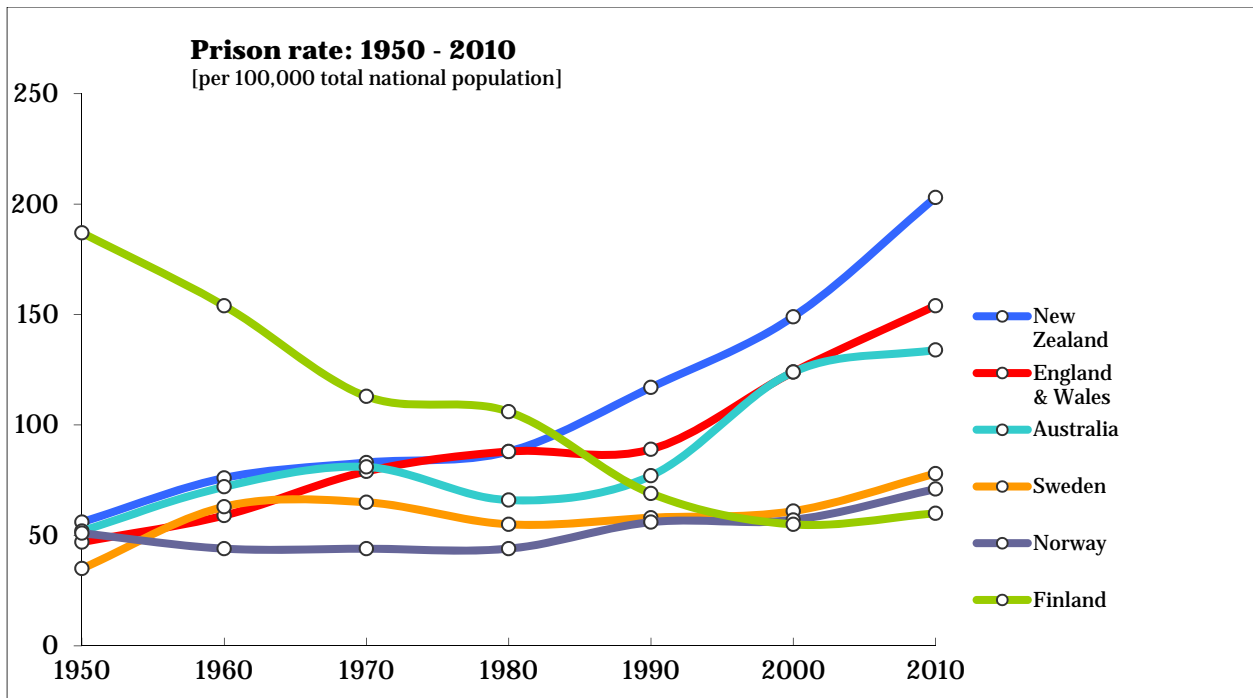
Some welfare services have been privatized, but this has not been entertained for prisons. And there have been marginal adjustments to benefit levels (for example, earnings related unemployment benefit has been cut from 90% to 80% of previous salary in Sweden). Nonetheless, there is not the slightest doubt that this welfare model is dramatically more generous and extensive than the liberal model. It is also likely to build high levels of egalitarianism, social capital and civic responsibility, with correspondingly low levels of fear of crime and puntivity: the Scandinavian countries have the lowest income differentials in the OECD (the Anglophone countries some of the highest) and the highest per capita spending on education (Lappi-Seppala 2009). It is also likely to build high levels of trust in the institutions of government, with the consequence that there is a greater legitimacy for policy that remains expert driven. And high levels of trust between citizens who do not regard each other as potential welfare 'cheats' or rivals for contested benefits (Rothstein and Uslaner 2005). This high level of inter-personal trust seems to carry over to the administration of prison life (without this, the open prisons would simply be unable to function). Furthermore, the strong mutual interdependencies that exist in the prisons and the reduced social distance between most prisons and the rest of society is in keeping with the inclusionary and egalitarian nature of these societies.

But there are also important deficiencies in tying penal development and differences to these welfare models. *First*, when did the welfare state actually begin? Most of the penological attention given to it seems to be on the post 1945 period, yet the groundwork for the Swedish welfare state was set down in 1928 in a speech of the Social Democrat Prime Minister Per Albin Hansson. He conceptualised the welfare state as 'the people's home' (*folkhemmet*), in which 'the basis ... is togetherness and common feeling. The good home does not consider anyone as privileged or unappreciated; it knows no special favourites and no stepchildren. There, no-one looks down upon anyone else ... no-one tries to gain advantage at another's expense, and the stronger do not suppress and plunder the weaker' (quoted by Tilton 1990: 126). *Second,* whatever the agreed date, penal differences predate the welfare state. We have seen this already in relation to the death penalty, and we can see it in relation to prison development in the late 19th and early 20th century. Summarizing very simplistically, the Anglophone prisons (England especially) became terrifying places in this period, designed to break the spirit of the prisoners, through afflictive labour, meagre diets, stigmatic uniforms, head shaving etc. Education was minimal. The system was designed to ensure that prisoners gained nothing productive from their experience, only a desire never to return. In contrast, in the Scandinavian prisons, the experience was much more productive (Pratt and Eriksson 2011): diet the same as everyone else outside the prison (usually at that time potatoes, boiled meat and porridge), non-stigmatic workmen's clothing; no head shaving; educational provision throughout the sentence and regular testing of progress; separate confinement for up to three years (which lasted into the 1940s), in the course of which Lutheran priests would manage the 'soul care' of each inmate and 'contagion' from other inmates would be prevented. Work was productive if simple.

Third, post 1945, the development of the welfare state did not necessarily equate with low imprisonment levels. In fact, as Swedish welfare state investment increased in the 1950s, its imprisonment levels increased (see Figure 2). It may well be that, at the beginning of the 21st century, the social democratic model of welfare now provides inclusionary mechanisms that act as a barrier to most of the punitive forces that have been at work in the Anglophone countries, but at the same time it raises a different set

of questions about the place and function of the welfare state in the 1950s and 1960s - at that time, institutionalization was increasing right across the Scandinavian countries in all sectors. The reason for this is connected, *fourth*, to the question of *why* these particular models of welfare came to be characteristic of the two clusters - they obviously did not simply fall out of the sky. While in both cases their emergence can be explained as a result of concessions won by labour movements, the coming to power of Labour / Social Democrat political parties etc etc, this does not explain *the different value systems* that these welfare models incorporate. The willingness to accept the high levels of state intervention and regulation that are built into the social democratic model speak to a longstanding aspect of Scandinavian culture - *trygghet*. The nearest English translation of this concept means 'safety *and* security.' Of course, security is a highly valued commodity in any society. However, in addition to the issue of the means by which this is provided - in the Scandinavian countries it is still primarily the responsibility of the state to provide this - the multi-layered and deeply embedded *trygghet* had a particular value and significance in this region, with its endemic poverty upto the 1930s, dangers posed by the natural elements to its small isolated communities, and the proximity of large, bellicose neighbours. As the then Swedish Minister of Social Affairs (quoted by Fleisher 1967: 197) put the matter, 'nothing good has ever come out of insecurity. Security is the most basic foundation of the individual.'

As such, state power was something to be welcomed, not viewed as a threat to individual freedom, as in the Anglophone countries. Tage Erlander, Sweden's Prime Minister from 1946 to 1969 (quoted by Fleisher 1967: 63-4) explained that 'the state is not a threat to or an enemy of the individual. On the contrary, many of their problems can only be solved through cooperation and solidarity, through the state and the municipality.' But in providing high levels of security, it was also expected that the state would eliminate those forms of unpredictable behaviour that put this at risk: for example, alcohol consumption, giving birth to unwanted or defective children [hence the legalization of abortion in Sweden in 1938 in conjunction with compulsory sterilization laws that lasted until the 1970s]; zero tolerance of drink driving and now of drug use. Referring back to the issue of the growth of imprisonment in Sweden in the 1950s and 1960s, we can suggest that this was likely to have been because the use of state power, in whatever way,

was thought to be neither stigmatic nor threatening. By this time, the state was now providing psychological 'cures' rather than 'soul care' in the prisons (and anyway going to prison was unlikely to be accompanied by sensational press reporting - in most cases the names of those sentenced were not published); and if they were sent to an open prison they were likely to be able to continue in their employment, returning to the prison in the evenings; and if serving a short sentence could ask for its commencement to be deferred for upto six months (as is still the case) while they 'put things in order' and then made their own way to prison on the appointed day to start their sentence.

Such developments are characteristic of the way in which on the one hand we find very liberal and humane penal and social reforms in the Scandinavian countries for most of the 20th century and beyond; on the other, in the name of social protection, there have been extensive controls (formal and informal) over those who have seemed different or who, particularly from the 1930s to the 1970s, seemed to suffer from 'mental abnormalities' and thereby threatened state efficiency and well-being.

Furthermore, other features of Scandinavian society that are associated with its welfare model also predate its existence (the same can be said for features of the Anglophone societies, but here, because shortage of time and space, I will concentrate on the former): income equality, as observed in surveys and travellers' accounts going back to the mid-19th century; a high value placed on education; respect for civic responsibilities; and a strong sense of social cohesion that was the product of intense racial and religious homogeneity. In such ways, egalitarianism and inclusion - qualities that have come to be associated with the social democratic model of welfare - were long standing cultural characteristics of the Scandinavian countries.

This can be demonstrated by the importance placed on *likhet* in this region. Although there is, again, no direct English equivalent, literally translated the term means equality *and* sameness - the two concepts being indivisible, implying a uniformity in both standards and appearances. These characteristics are also demonstrated, in Sweden in particular, by the importance placed on *lagom*. The nearest equivalent English expressions are 'just enough', 'just right' or 'everything in moderation', but these do not adequately express the moral force of this term. *Lagom* became a standard that

conveyed strong disapproval of anything that suggested over-indulgence, with a simultaneously strong approval of moderation and self-effacement. But just as these two concepts are signifiers of the values of egalitarianism and inclusion that these societies have become known for, so at the same time they also became signifiers of high levels of informal social control and pressure to conform. *Lagom*, for example*,* also brought a dislike of pretentiousness, of elitism, of people 'getting above themselves.' These aspects of Scandinavian society became, as it were, the price that had to be paid for egalitarianism and inclusion. Cohesion and conformity were mutually reinforcing qualities.

What this means for our purposes is that the Scandinavian welfare state, rather than creating these values, is likely to have further embedded, institutionalized them and have given them a material basis. As such, explaining the roots of the differences in punishment that we find between these two clusters of societies in the early 21st century predate post-war welfare arrangements. Instead, these begin to take effect with the development of modern society itself during the 19th century and it is from this point that the reasons for their current differences can be traced in. The book that is currently being written sets the differing penal routes that have been taken by these types of societies and the reasons for this.

Book Synopsis.
The introduction and first chapter of the book set out the differing levels and intensities of punishment in the two clusters of societies - as per the opening pages of this paper. As an explanation of them, the subsequent chapter argues that their respective inclusionary and exclusionary natures are based on longstanding cultural values: egalitarianism and cohesion in the Scandinavian countries, inequality and division in the Anglophone. How did these cultural values emerge? From a constellation that was made up of the patterns and degrees of class relations in these societies, levels of racial and religious homogeneity, the respective values given to education, and the extent and tolerance of central state governance and authority. Again, I am rather reduced to shorthand here, but if we take an example - class relations - then we find that these were flatter and more egalitarian in the Scandinavian countries. For example, while there was a nobility in

Sweden, very few of its members had great estates. Instead, they had to work for a living, usually in the armed forces or civil service (which is also likely to have been instrumental in the development of the high status of this occupation in this region). The respective development of these cultures will be traced to the mid twentieth century, showing how they came to inform and represent 'ways of life' that were *inclusionary* in the Scandinavian countries, *exclusionary* in the Anglophone. To illustrate these processes, sources that include official commentaries, official reports and enquiries, as well as memoirs, travelogues, literary works and diaries, will be used, in the manner in which Norbert Elias (1939, 1979) pursued in his *magnum opus*.

This is not to say, though, that the emergence of the different models of welfare had no effect on the penal arrangements of these societies. But *why* did the two models of welfare state take their particular forms and what was the impact of this on penal development in these societies? As such, rather than representing a break from what had gone before, the next chapter argues that the different models of welfare incorporated and consolidated already existing cultural characteristics of these societies, For example, the already existing value given to education in the Scandinavian countries meant that experts, planners and civil servants were able to be highly influential on policy development - but much less so in the Anglophone countries where, historically, intellectuals have been more remote from the mainstream of these societies, often regarded with suspicion rather than respect. Furthermore, with the emphasis given to wealth creation rather than equalization in the Anglophone countries, the term 'bureaucrat' has become a pejorative expression, rather than one that commands respect - as if those who work for the state are only marginally superior to those who claim benefits from it. And the already existing levels of homogeneity of the Scandinavian countries was reflected in higher levels of tolerance for the poor and dependent - for the most part, this did not condemn them to a workhouse existence, and, thereafter, generational memories of how badly the poor are treated in these societies. Instead, the design of Hansson's *folkhemme*t was as a building designed to house all, not some cheap, shoddy construction that was the last resort for the worthless. Bolton (1938: 236-7) thus wrote that 'in England, our social services have been generally blighted with Poor Law stigma which has acted as it was meant to do: as a deterrent against people

making the fullest use of them.   In Sweden, social services are provided as much for middle as the working classes - all classes use the social services they need, and pay for those which are not free on a graduated scale according to their ability.' And at the time when 'scroungerphobia' [that is fraudulent claims for welfare benefits] (Deacon 1978) was becoming endemic in England, Huntford (1972: 201) noted that 'if a Swedish mother is away from Sweden while her child allowance is due, she receives a notice from the Department of Social Security which says "don't forget that, even if you are abroad, you can still enjoy your social benefits. Fill in the enclosed form, and we will send your children's allowance to you wherever you may be."'

The chapter goes on to show how the two models of welfare then reinforced the inclusionary and exclusionary characteristics of these societies: in Scandinavia, the strong interdependencies, high levels of trust, reciprocities and respect for civic responsibilities that were features of the Scandinavian societies in the 19th and early 20th century have been maintained and are features of everyday life in these societies today (including the administration of their open prisons).   As an example, a sign at the entrance to woods on the outskirts of Oslo reads 'Welcome to the City's Forests ... These are our common property. Wherever you move around in these forests, you have rights and responsibilities. Take care of the forests and the animals and plants there. Help us keep the area clean ... You can ride on all roads covered with gravel during the summer and on roads cleared of snow during the winter. But riding is forbidden between 11.00 am and 15. 00 pm on saturdays, sundays and holy days. For other travel by horse, you need permission from the authorities. When on horseback, you must pay attention to other users of the forests ... You can bathe in all rivers and lakes where there are no restrictions to protect drinking water. The same rules are valid for rowing and paddling in a boat you might have brought with you ... Fishing is permitted from land in all rivers and lakes that are without restrictions to protect drinking water ... You can camp (with tents) wherever you want, except at spots with restrictions to protect drinking water and at special shores reserved for bathing.'

In contrast, in Wellington, there are three signs to the entrance to woods on its outskirts. One indicates, with drawings in circles with red lines through them, that no guns, fires, bicycles, camping or taking of plants were allowed. A second warns car

owners to 'Lock it or Lose it' – the responsibility for its safety is all theirs. A third warns dog owners, 'don't risk a fine. Keep your dog on its lead and clean up its mess.' The Norwegian sign, that speaks of shared rights and responsibilities, that needs no threats or warnings to enforce its rules, that emphasises all the activities that are permitted in the forests, rather than everything that is disallowed, is characteristic of a society with high levels of social capital and the inclusionary arrangements associated with this. Here, it is as if social control can be internalized by informal mechanisms - through family, friends, keeping face by maintaining or not deviating from expected standards – without the need for more punitive state sanctions. However, the New Zealand signs, that proliferate as each new problem behaviour comes to light, and where each individual is informed that they are responsible for their own conduct, where they are warned of what is not allowed, and of the criminal penalties that follow rule breaking, are indicative of a society which is low on social capital; a society where, because of weak interdependencies and trust, social exclusion is necessary to maintain order and stability and the punitive actions of the state become necessary to reinforce this.

In the final three chapters, the book illustrates how these values – reinforced by the respective models of welfare – threaded their way through the history of modern penal development in these societies. As such, in both clusters of societies, the penal arrangements of the pre-modern world (public executions, chaotic prisons) disappear by the 1860s. However, important differences then emerge between them regarding (i) the place of the death penalty, (ii) the administration and purpose of imprisonment. In effect, while the emphasis in the Anglophone countries was on *deterrence,* that in the Scandinavian countries was on *reclaiming* the offender. As regards the death penalty, this had fallen into disuse in the Scandinavian countries by 1870 (barring five subsequent executions from this time until 1910). While there was legislation in the 1870s that shifted the site of executions from public to private, by that time the debate about the place of the death penalty in these societies had been largely settled. It had become non-mandatory for murder in the 1860s in Norway and Sweden and thereafter commutation became the norm, prior to *de iure* abolition in peacetime in the early 20th century. In the Anglophone countries, however, it moved from public to private in the

1850s and 1860s but did not disappear as a sanction until the 1960s (albeit that upto then it had come to be used with decreasing frequency).

Why these differences? From the research so far undertaken, two features seem particularly important in these developments. *First,* in Scandinavia, the role played by jurists, intellectuals, law professors and civil servants - the usual constituency of various law reform commissions at work on codifying penal law in the 19th century – and the post-Enlightenment values they brought to their work. For them, the death penalty had no place in the 'better world' that they anticipated their countries were moving towards. In contrast, in the Anglophone countries, the opinions of judges and lawyers (the overwhelming majority of whom seemed to favour retention on the basis that the death penalty was a deterrent) were given very high importance before the various Commissions and parliamentary committees that looked at this issue. *Second*, differences in crowd behaviour. One of the consequences of concerns about raucous and debauched crowds at these events in the Anglophone countries meant that debates about this sanction focussed more on its location than its legitimacy in the mid 19th century. In contrast, Scandinavian crowds behaved very differently: common features of the newspaper reports of the last nine executions in Norway all speak of the solemnity of the occasion and the silence, interspersed with sobbing of the crowd. Here, the concern was to protect *the crowd* from such sights. But what this also meant was that the issue of location never obscured the arguments and discussions about the legitimacy of this sanction. The following two descriptions of public executions from England and Norway from prominent writers in these societies in the 1840s illustrate the dramatic contrasts.

William Thackeray (1840:) attended the execution of Courvoisier outside Newgate Prison in London: 'the character of the crowd [at 6. 00 am] was as yet, however, quite festive. Jokes bandying about here and there, and jolly laughs breaking out. All sorts of voices issued from the crowd, and uttered choice expression of slang ... the front line, as far as I could see, was chiefly occupied by blackguards and boys – professional persons, no doubt, who saluted the policemen on their appearance with a volley of jokes and ribaldry ... the audience included several peers, members of the House of Commons, a number of ladies armed with opera glasses, some foreign princes and counts ... from

under the black prison door a pale quiet head peered out. It was shockingly bright and distinct; it rose up directly, and a man in black appeared on the scaffold, and was silently followed by about four more dark figures. The first was a tall grave man: we all knew who the second man was. "That's he, that's he', you heard the people say" ... His mouth was constritced into a sort of pitiful smile. He went and placed himself at once under the beam ... the tall grave man in black twisted him round swiftly in the [right] direction, and drawing from his pocket a night cap, pulled it tight over the patient's head and face. I am not ashamed to say that I could look no more, but shut my eyes as the last dreadful act was going on which sent this wretched guilty soul into the presence of God ... forty thousand persons of all ranks and degrees – mechanics, gentlemen, pickpockets members of both Houses of Parliament, street walkers, newspaper writers, gather together at Newgate at a very early hour; the most of them give up their nattural quiet night's rest, in order to partake of this hideous debauchery, which is more exciting than sleep, or wine, or the last new ballet, or any other amusement they can have. Pickpocket and peer each is tickled by the sight alike.

Bjornsterne Björnson (1894: 10) describes how as a child witnessed the execution of Peer Hagbo in 1842. It took place at a crossroads, for obvious symbolic reasons, and involved a seven mile walk from the murderer's village: 'by the wayside stood people curious to see him, and they joined the procession as it passed along. Among them were some of his comrades, to whom he sorrowfully nodded. Once or twice he lifted his cap ... it was evident that his comrades had a regard for him; and I saw, too, some young women who were crying, and made no attempt to conceal it. He walked along with his hands clasped at his breast, probably praying. [At the site of the execution] a great silent crowd stood round, and over their heads one saw the mounted figure of the sheriff in his cocked hat. The Dean [ie. Bishop] gave a short speech. His emotion forced him to break off suddenly. One thing alone we all understood: that he loved the pale young man whom he had prepared for death, and he wished that all of us might go to out God as happy and confident as he who was to die today. When he stepped down they embraced each other for the last time ... [After the execution, Björnson's father, also a priest], warned the young against the vices which prevailed in the parish - against drunkenness, fighting, unchastity and other misconduct ... as for me, I left the place as

sick at heart, as overwhelmed with horror, as if it were my turn to be executed next. Afterwards I compared notes with many others, who owned to exactly the same feeling.' When the crowds were discussed, it was in terms of how offensive such sights were to them, not the offensiveness of the crowds themselves.

As regards imprisonment, while the US penitentiary system had been influential in both clusters, its adaptations from the 1860s to the 1920s came to be very different: a brief summary of these differences was provided above. Overall, with their respective adaptations of modern penal sanctions, deterrence had become a dominant feature of the Anglophone penal systems in this period, the reclamation of the offender in the Scandinavian countries. How does this then fit with the inclusionary / exclusionary characteristics of these societies? Explanations are likely to include the way in which in societies with sharp social divisions and very shallow interdependencies, the life of another could mean very little. Or, as in relation to the crowd scenes at public executions in the Anglophone countries, it helped draw the rest of the population together, as they drew a vicarious excitement from the sufferings of the condemned. In contrast, in the Scandinavian countries, the emphasis on sameness and moderation was likely to act in favour of reductions in 'pain delivery' (Christie 1981). As such, it was as if the death penalty was a irrelevant anachronism, an unnecessary penal excess over and above what was needed in these stable and homogenous societies.   Hence the development of sanctions that were intended to reclaim the offender - they were neither to be put to death, nor turned into the pitiful, helpless wrecks that were the product of the English prison system at that time.

Thereafter, the initial development of the welfare state in both clusters had the effect of reinforcing the inclusionary culture of the Scandinavian countries, while the reclamatory nature of their penal systems became the foundation on which the Scandinavian welfare sanction was built. In the Anglophone countries welfare thinking helped to temper the emphasis on deterrence (although it still remained in the background and probably limits on the extent of welfare reforms) and encouraged the development of shorter social distances between law-breakers and the rest of society: they became, for a time, creatures to be pitied rather than hated - they were no longer to be excluded by a punishment modality charged with the burden of shoring up social

cohesion - the welfare state itself took responsibility for this task. In these respects, in the early part of the postwar period, we find convergences in penal development between these clusters and the deployment of similar signs and symbols of punishment. This convergence, however, was only temporary. As the commitment to welfare began to be undermined in the Anglophone countries in the 1960s, so we find increasing emphasis on security and control in the prisons, and concomitant increases in their populations: as social cohesion declined, so the culture of exclusion and division became more pronounced, with punishment reverting to its more familiar role in these societies and accompanied by its more repressive signs and symbols. However, the more deeply embedded Scandinavian welfare model ensured that the trajectory of liberal reform was maintained, as reflected in the signs and symbols of punishment in this region. The different way in which prisoners were understood and thought about in these respective societies at this juncture is reflected in the contrasting approaches to prison disturbances in these societies in the late 1960s and early 1970s (Mathiesen 1974, Fitzgerald 1977).

From the 1970s, the cultural and welfare arrangements of the Scandinavian countries have, to a large extent, continued to insulate them from the increasing penal excesses of the Anglophone countries. While the Anglophone countries have become preoccupied with prison security and control, in the Scandinavian countries there has been much more emphasis on the normalization of prison life - leading to the penal differences that now exist between these clusters. And the characteristics of these respective penal systems are reflective of those in the general populations and the value systems within them. In the Anglophone countries, there is the excess of repressive penal signs and symbols, as indicated earlier, as these societies have become more divided and unequal in the aftermath of post 1970s economic restructuring. In the Scandinavian countries, Finland and Norway especially continue to provide signs and symbols of punishment that are characteristic of these more inclusionary societies. In both clusters we find continuities in penal direction that reflects its longstanding historical roots. Yet, as the bedrock on which Scandinavian exceptionalism was built (particularly the emphasis on homogeneity and egalitarianism) begins to shift, so we find that there are no guarantees against penal excess. In Sweden especially, signs and symbols of punishment more

characteristic of the Anglophone countries are beginning to be found (no-fly zones over high security prisons, the appointment of a Head of Prisons from the national police, its zero-tolerance drugs policy).

Conclusion

While the main focus is theoretical and historical, it also raises, inevitably, normative issues. Is it possible for anything like the pattern of Scandinavian prison development to supplant the excesses and degradations that have become characteristics of most Anglophone societies? At one level, the answer is no. Scandinavian prison development has been dependent on contingent long-term social arrangements *specific to* those countries that are unlikely to be replicated outside of them. Furthermore, when these social arrangements are dislodged in some way, then the very possibility of difference begins to fade, as we have seen. At another level, however, it is clear that there are more general lessons to be learned from this history. For example, the consequences of inclusionary rather than exclusionary politics; the value placed on education and expertise as opposed to populist ignorance and intolerance; the capability of strong welfare states to contribute to social capital and cohesion, as opposed to more atomized social arrangements where weak central states rely on law and order to bring about solidarity. All these matters are political choices, with predictable results as to the kind of prison system that will be the outcome.

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