
VISITING EXPERTS' PAPERS

A SUITABLE AMOUNT OF CRIME

*Prof. Nils Christie**



I. INCARCERATION AS AN ANSWER**

A. Social Arrangements for the Promotion of Crime

If my power was that of a dictator and if I had the urge to construct a situation for the promotion of crime, then I would have shaped our societies in a form very close to what we find in a great number of modern states.

We have constructed societies where it is particularly easy, and also in the interest of many, to define unwanted behaviour as acts of crime - this in contrast to being examples of bad, mad, eccentric, exceptional, indecent or just unwanted acts. We have also shaped these societies in ways that encourage unwanted forms of behaviour, and at the same time reduce possibilities for informal control. This whole situation is obviously one that will influence the prison situation in the industrialised world. It will first and foremost create a situation with increased pressure on the prison systems within most of these societies. But this is not without exceptions. The size of the prison population in any society is also a result of past national history, of major political ideas, and not at least the willingness to look for solutions other than the penal ones.

The table in Appendix A presents the number of prisoners per 100,000 inhabitants in some major areas of our globe. The countries within each area are ranked according to size of their prison populations, in each case with the high-raters at the top. Most of the figures are taken from the useful statistics gathered by Roy Walmsley (2003 and continuously updated and made available through International Centre for Prison Studies.¹ Some figures are based on material I have obtained in direct contact with representatives from various prison administrations in countries I have visited. Some of my figures differ from those made available from Roy Walmsley and International Centre for Prison Studies, but these differences are not of importance for the reasoning in what follows. Most figures are from the years 2000-2002.

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The huge variation between countries is one of the most striking features in the table. We find Iceland at the very bottom and USA and Russia as the absolute champions in incarceration among industrialised countries.

We will come back to this major table several times in what follows, but let us here, as a first question, ask if they have something in common, the two giant incarcerators.

B. The Great Incarcerators

The USA has today more than 2.1 million prisoners. This means 730 prisoners per 100,000 inhabitants - more than 0.7%. The increase has been unbelievable since 1975. The growth has slowed down recently, but has not come to a full stop. In addition to those imprisoned comes 4.7 millions on bail, probation and parole. This means that 6.8 million of the US population in 2003 is under some sort of control of the institution for penal law. Of the total population in the US, 2.4% is at any time under the control of this institution. Among those 15 years or older, 3.1% of the population is under the same sort of control.

Russia is solidly behind, and increasingly so. On January 1st 2003, they had 866,000 prisoners or 607 per

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¹ <http://www.kcl.ac.uk/depsta/rel/icps/home.html>.

100,000 inhabitants. Two years earlier, they had more than a million prisoners, or 680 per 100,000 inhabitants. The number of prisoners waiting for trial went from 282,000 in year 2000 to 145,000 in 2003². It is the prisons for people waiting for trial that are the particular chambers of horror in Russia. Vivian Stern (1999) has edited a book on Russian prison conditions. "Sentenced to die" is the title. This formulation captures the essence. Sleeping in three shifts in damp rooms with hundreds of prisoners does not give the best of protection against an explosion of TB, HIV and AIDS within these establishments, an explosion that later will affect the whole Russian population. After sentencing, those sentenced are moved out of Moscow to the Colonies, the former Gulag's. Here conditions are considerably better.

The Duma, their Parliament, passed several important laws in May 2001 with the intention to reduce the prison population with 1/3. The effects of these new laws are easy to observe. Prior to these reforms, the average space in the remand prisons was less than 1 square metre per person. Today the average is 3.5 square metres, while the norm laid down by the public health authorities is 4 square metres (Kalinin 2002, p.17).

C. Common Features

What do they have in common these two states, in addition to being high on incarceration?

A first and obvious similarity between the USA and Russia is simply their size, in land, power and population. With all this, there is also created a foundation for organisational patterns that encourage *social* distance. At the broad avenues of Moscow there is a special lane in the middle, reserved for the President and the cortège of dignitaries following him. At the small scale of a visiting scholar and on ordinary bumpy roads in Russia, I have mentally been in the same social setting. For several hours, we had one police-car with sirens and blue lights in front and one behind. Ordinary cars were forced to stop, here we come, the emperors or at least someone somehow related to those high up.

But not only in Moscow. Western capitals have their helicopters for their rulers as alternatives to the reserved middle lane. And they have their quota of close-knit associations for power-holders. I have vivid memories from an occasion in Washington DC. It was a setting filled with particularly dignified persons. My lasting memory from the evening was the welcome speech by the host. Many were invited and most came, but some had been unable to attend. But they had all - and we got the name for every invited dignitaries not there - they had all personally phoned the host and explained why they were not able to attend. No secretary could do. I felt as in a party for those close to the King. You were supposed to be there, or personally give over-whelmingly good reasons for absence. Otherwise you might be at the edge of expulsion.

All this is in a way obvious: In large social systems, and I am talking about pyramidal ones, a relatively small part of the population will be at the very top. Or, it demands at least exceptional political ingenuity to create conditions for a broader representation. With a small group at the top, those up there will become extremely important to each other. But then, at the same time, the logic of the situation is that they become distant from those they rule. Social distance is one of the conditions for heavy use of the penal system.

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Another similarity between Russia and the US: they have in common a weak position of their judges. In the US, this is obviously the case. Compared to judges in Western Europe, those in the US have gradually lost their power to the politicians and to the prosecutors. The US system of sentencing tables gives the politicians - who are those deciding on the sentencing tables - detailed regulatory power in deciding on punishment.³ So does also the extensive use of mandatory sentencing laws. If the facts of the case are clear, the judge has nearly no room for discretion. In a survey of United States judges, 86% of district judges and chief probation officers agrees that the guidelines give too much discretion and control to prosecutors. 71.5% were moderately or strongly opposed to retain the current system of mandatory sentencing guidelines.⁴

² Source: Ludmilla Alpern, Moscow Centre for Prison Reform.

³ Kaataja Franko Aas has written a fascinating doctoral thesis on the relationship between technology and sentencing theory and practice. (Aas (2003): From Faust to Macintosh: Sentencing in the Age of Information.)

⁴ (Federal Judicial Centre at <http://www.fjc.gov/pubs.html>).

Judges in the US are also to a large extent directly elected. But the political process is based on limited participation in the election process. More than 4 million people, including 1.4 million black men, cannot vote because they have a criminal record. Many will never regain their right to vote (Mauer and Chesney-Lind 2002). For a politician, there is not much to gain. In contrast to the judge, the prosecutor has kept his power. He can make a deal with the suspect, drop parts of the charge if the suspect admits certain other acts. In a system with sentencing tables, the prosecutor can heavily influence the end result.

But also in the classical Eastern European situation, the judge will to a large extent be dependent on political powers to get the job, and retain it. Of particular importance here is the prosecutor. This is one of the major reasons for the great number of people in detention waiting for trial. Russian and Belarus judges hesitate to acquit. Instead, they return cases to the prosecutor. While the prosecutor thinks, the prisoner is waiting it out. Often it takes years.

I cannot prove my point on the balance of power. But I observe, and I listen. I experienced an exposure of this situation during a meeting in Belarus in May 2002. Belarus will soon become the leading country of incarceration in Europe if Russia reduces as planned. A few years ago, Belarus had 500 prisoners per 100,000 inhabitants. In 2001 they had 560. In absolute figures this means 56,000 prisoners. Belarus has 10 million inhabitants.

In this meeting in Belarus, the prison administration attended, together with several directors of prisons and colonies. So did also some judges and prosecutors. Towards the end of the meeting, a little woman far down the table asked for the floor. She had been a judge, but quit, and told us why. While she was speaking, the atmosphere in the room became ice-cold, but she continued. She was trained in law, and had learnt her lesson: The major goal was to catch a maximum number of criminals and then jail them. So she did, as a police jurist. She did it so well that she advanced. She became a judge, with the proper status and apartment belonging to this kind of job. Again she knew the rules of the game: To get the accused sentenced. Lenient punishments and an acquittal-rate of more than at a tiny percentage would be unacceptable. At one point in time, she saw her dependence on the state she was supposed to control, and quit.

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A further common feature between some of the leading incarcerators, is the root their prison systems have in *servitude* or *slavery*.

Liberty for some is the title Scott Christianson (1998) has given his important book on this theme. In the simplification necessary here and now, it is not much of an exaggeration to say that when the black in the South were set free, also to move, they took their seat in the front of the bus and went North, to the inner cities, and from there to the prisons. Per 100,000 black males, 3535 were in prison on year-end 2001, against 462 per 100,000 of white males.⁵ Large prison figures are linked to the tradition of slavery.

The very same phenomena can also be seen in Russian history, a history that here includes Belarus. There were not extremely many prisoners during the era of the Tsar. They had an alternative. They had servitude. Peasants were the property of their masters. They could not move or marry without the consent of the aristocrat who owned them. This meant that the lower classes were under severe control. And should this control fail, or non-peasants misbehave, they had Siberia. The colonisation of that huge country was to a large extent done by prisoners.⁶ In this perspective, the Gulag's were not that much of a break with the past. They were not first and foremost for dissenters. They were production units, filled with males from the lower classes. The servitude found its new form.

So, basically, these are similar systems for the maxi/maxi-incarcerators. And they are developing similar

⁵ To me, one person epitomises the *resistance* against *all* this. It is Al Bronstein, legal adviser to black people during their actions in Alabama in the dangerous 1960s. And then, until the present, a central activist against the prison development in the North. Today, he is still an important adviser for Prison Reform International in London.

⁶ Anton Chekov (1967) gives a unique description of the life among the deported to the island Sakhalin, close to Japan, which was colonised in this way in the 1890s. Anton Chekhov was not there as a prisoner, but as a doctor with social consciousness for his country-fellows. I am most grateful to Ludmilla Alpern who made me aware of this unique penological report.

social and cultural traits; their particular music, language, clothes. There exists a FM radio station in Moscow where most of the talk and music is prison talk and prison music. The same is obviously the case in parts of the US culture. There seems also to be similarities in the inner organisation of these systems. At least for the Russian system, it seems clear that it everywhere, except earlier among most of the political dissidents, develops extremely stratified systems with the untouchable losers at the very bottom. Due to better material conditions, more possibilities for isolation of individual prisoners and also more guards per inmate, this might be different in most US system, even though the many reports on gang wars indicate that authorities are far from having complete control.

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But there are also differences. Most importantly, the use-value of prisons differs among the high incarcerators.

Russia is, and has for some time, been in trouble with their prisons and colonies. The colonies are simply not profitable any more. We might dislike it, but the Gulags were essential for the Russian war efforts in 1940-45. They were also possible to operate with some sort of efficiency in command-economy functioning in the USSR after World War II, or the great Patriotic War as it is called in the East. But in a market economy, they cannot compete. In Russia of today, their prison system therefore represent a great drain on their economy.

Laura Piacentini (2002) has worked to find out what happened to the Russian Colonies when the economic system changed. She conveyed two interesting observations. First, adaptation to the new situation was dependent on distance from Moscow. The further away, the freer was the situation of the local prison administration; inspectors from Moscow were few and far between. Close to Moscow, the situation was different. Here, they had to play to the tunes of the central administrators. These were tunes well known in penology. The colonies had no more work to offer, large factory-halls were literally empty, or with small groups of prisoners fiddling with some minor tasks in a corner of the premises. The answer from all penological theory, as well as from the central prison administration, was clear and powerful: Prisoners are here to be changed into law-abiding citizens. Therefore, the colony must offer treatment and education. But in Russian colonies, as in most penal establishments around the world, this turned out to be mere words.

Quite different was the situation in inner Siberia, far from the watching eyes of the central administration. The situation had been difficult to the extreme in the years after 1990. In the colonies, as in ordinary places for work, it had passed months without payment for the staff. Parallel to this, it had also been a critical lack of food, clothes and heating for the prisoners. In this situation, an elaborate system of barter was created. Local colonies scrutinised the local communities for tasks to be done; they had hungry prisoners willing to do nearly everything for a return in something the colony could use for survival.

Gradually, this developed some of the colonies in the periphery of Russia into rather efficient units for production. And here comes the dilemma for those who feel competent on penal matters: These colonies do not offer treatment. Bad, according to theory and international conventions. But they offer work, even food. But then to the other side of the coin, and it is here we come close to a new similarity between USA and Russia: The danger in this situation is that here, solidly planted in both the giant incarcerators - is laid the foundation for a new system of forced labour.

In contrast to the Russian situation, the US can more easily afford its great prison population. To many in the US, the building and running of prisons means profit. This is a major point in my book *Crime Control as Industry* (Christie 2000). Recently, it has also been described cases where prisons inside the USA prove they can compete with Third World countries in offering cheap labour to the US industry in general. And it is, of course, better that prisoners eat than starve. It is also better that they work than suffer through idle hours. But it is a danger in these obvious advantages. It is convenient for authorities that they work. A captive workforce combines in a beautiful way the need for control of the lower classes with the need for inexpensive labour. It may lead states into temptations. It may lead to revivals of the institution of slavery.

D. On Welfare

The giant incarcerators have been our point of departure for this chapter. But our table in Appendix A on prison populations does also open other important questions and concerns. Of particular interest is what we

find concerning the difference between the US and Canada. The difference here is close to unbelievable. Canada has 116 prisoners per 100,000 inhabitants, against the US with their 702. Two countries so close and still so different. Joint border from coast to coast, same language, mostly same religion, to some extent same content in the media, and also with much of the same ideals when it comes to money and style of life. How can we explain these differences in volume of incarceration? Even if the US had been *without* any overrepresentation of blacks in their prisons, they would have had more than three times the prison rate of Canada.

First, and before any attempts to explain, it is plainly important to register that the exceptional status of Canada is possible! Canada is a highly developed, well functioning, modern state. They have their troubles with crime as other modern states. They have politicians using crime problems as an agenda for self-presentation. Nonetheless, they have a volume of prisoners at one sixth of their neighbour further south! And this difference has increased during the past years. Canada is steadily decreasing its prison population, while the US continuously is on the increase. When it comes to the volume of crime-control, we are not up to destinies, but to political decisions open to choice.

And then, what is so peculiar to Canada?

It is embarrassing, but I have no clear answers, again only some hunches, this time based on a long life of visits to that country.

First, to visit Canada is for a Scandinavian very much as visiting one of the other Scandinavian countries. A bit dull, perhaps. Well-regulated, orderly behaviour, polite relationships.

Second, penetrating the system a bit, one also finds another basic similarity: Canada is simply a welfare state. They have it all, - old age pension, health insurance, leave of absence before birth and months thereafter, unemployment benefits. Of course, there are defects in the system, and vivid discussions on how to mend the defects, eventually reduce the safety net for the poor. But the situation of the poor is fundamentally different in Canada and the US. Their welfare system is defended from the very top of the political establishment. Increased income inequality in the United States has not taken place in Canada, "due to the offsetting influence of government transfers" (Sharpe 2000, p.158).

Related to this is a third difference. Canada has for years had a staff of civil servants with a conscious policy of keeping the prison population under control. I have a personal experience here, being involved in meetings in the Ministry of Finance in Ottawa on the budget for their prison system. All ministries had been ordered to cut their budgets, but those responsible for law and order said it was impossible, they had to increase their budget since crime increased! But was it impossible, that was the question I was invited to comment on. The question led to fascinating discussions on how to reduce harm - all sorts of harm - in the Canadian society, and for what price.

As a conclusion: To use the penal system as a functional alternative to social welfare seems not to be a major alternative in the Canadian society.

E. East and West in Europe

If we again take a look at the table and then concentrate on the European arena, two observations are striking. First: The major difference in prison figures is between East and West. Only four countries in Western Europe have more than 100 prisoners per 100,000 of their population, while the majority of the Eastern European countries are above this level.

But then, as the second observation, we find huge differences also inside the Eastern European camp. Next to the Russian Federation and Belarus, we find at the top first the Ukraine, and then the Baltic republics, all with figures of 300 and more. At the very bottom we find Slovenia, - that little country has a prison population at level with the Nordic countries, and have had this position for years.

The general picture is clear: Russia is the super-incarcerator in Europe, then follows the former members of the Soviet-Union. Visiting prisons in these countries, it is striking how similar they are in social organisation and material form to the prisons in Russia. Behind these core countries, with lower relative figure of prisoners, but still high, we find those formerly independent states that up to the end of the cold

war belonged to the Eastern block.

These countries are in so many ways squeezed in between East and West. I have, in *Crime Control as Industry*, described how Finland shortly after World War II made a conscious decision to leave Eastern Europe, also when it came to penal policy. And they succeeded; they have now for years had lower prison figures than Denmark, Norway and Sweden. But, of course, Finland was during the cold war outside the Eastern block, their penal policy was an instrument in their struggle to link themselves to Scandinavia.

But it is clear that the same struggles around penal policy now also go on in the other countries of the former Eastern block. Poland is one of the interesting examples.

F. Polish Rhythms

Seen from a criminological perspective, the diagram in Appendix B is a treasure,⁷ - and a grim reality for those behind the figures. It is a diagram of the total number of prisoners in Poland from 1945 until October 2002. Three features of the diagram are remarkable.

First, the rhythm in the line. From a start close to the bottom in 1945, it reached its first peak in 1950 with 98,000 prisoners. Six years later it was down to 35,000 then up again in 1963 to 105,000. The maximum came in 1973 with 125,000 prisoners. Like this it ran until 1989, when it again was down, this time to 40,000.

In my interpretation, this is a picture of a prison system without ordinary backdoors, without release procedures to use when the internal pressure on the system becomes too strong. A repressive state, strong prosecutors, stern judges, - it was easier to say yes to imprisonment, than to say no. But tensions build up. There were limits to the number of prisoners that could be accommodated, and also to the number that could be given meaningful work. And prisoners protested. Several riots occurred. The rhythmic answers to this were amnesties. Big ones in 1956, 1964, 1969, 1974, 1977, 1981, - and particularly in 1989, the year when the wall between East and West crumbled. Appendix B illustrates how badly suited prison figures are as indicators of the crime situation in a country. Here it is bluntly clear how the prison population is a reflection of political decisions. Other countries handle this matter more discretely.

Another fascinating development in the *Diagram* is the period after 1989. The old regime was broken. Freedom, now also for the prisoners!

But it did not last, at the low level of 40,000 prisoners, but seemed for a period to stabilise around the 55-60,000. These were the years of the political movement - later political party - with the name Solidarity, obviously also with prisoners. But then the new freedom became old, and so also the trend in the diagram. From 1999 and until October 2002 the figures have, to say it in the exact figures, gone up from 56,765 to 81,654. This is the figure I have used in *Appendix A* where we find Poland with 260 prisoners per 100,000 inhabitants. But in reality, the situation is even more extreme. Prisons are jammed. In the last months of 2002 the official estimate was that 18,000 persons were on the waiting list for serving their prison sentences. This is probably a large underestimate. Had those at the waiting-list also been included, the Polish prison figures would again have passed their 100,000. Once more.

What has happened?

First: Amnesties were seen as belonging to the past, a crude instrument to correct for failures in the system. And it can, rightly, be argued that amnesties are not the best of all solutions. Great numbers of prisoners are released at the same time, putting the system for social assistance under sudden and dramatic pressure. But that strain has, of course, to be weighted against the strain of a dramatically increasing prison population.

A second explanation of the increase in prison figures is simply that Poland is being partially "Westernised". The old penal system is still there, the police, prosecutors, judges - no great purge took place after 1989. But in this very situation comes the elements discussed in earlier chapters: Poland is on its

⁷ I got the diagram and additional figures from Monika Platek and Pawel Moczydlowski during a week of lectures and seminars in Warsaw, and was also assisted by Klaus Witold and Dagmara Wozniakowska.

way towards mono-cultures. And a great number of politicians in Poland as elsewhere in the west use the crime-arena for self-presentation. In this endeavour, they receive perfect assistance from the media. As Maria Los (2002) states, a radical shift has taken place in the mass media profile, from *good news* in state propaganda to *bad news* in private media. And she continues:

For a population used to a criminal justice system characterized by routine detention of suspects, disregard for legal niceties, long sentences and a ban on public criticism, these developments (the exposure of the bad news, N.C.) understandably produced images of a system verging on chaos or collapse (p. 166).

My estimate, and I say this with particular reference to the diagram, is that this is a prison-system in great risk of severe turmoil. Poland is now to enter the European Union. This will inevitably lead to a great reduction in the number of farmers. The surplus labour will move towards the towns. Social problems will increase. The pressure on the prisons will increase. Amnesties have regularly followed prison riots. Riot will come, and amnesties will follow. But this is a type of reform with great costs.

G. England and Wales - So Close to Eastern Europe

We have seen that East is East, and West is West, also when it comes to prison figures. But not completely. Slovenia belongs to the Nordic countries. But surprisingly, England and Wales seem to be on a steady course towards East European standards. In 2003, England and Wales have 139 prisoners per 100,000. The figures are steadily raising, with some 600 new prisoners every week⁸ A few years back, Portugal was the leading incarcerator in Western Europe. But that was before, not now. England and Wales have entered Eastern Europe in the meaning that they have passed Bulgaria in relative number of prisoners, and now stand even to Slovakia. Nothing indicates they are about to turn. They have passed Canada, that state previously so close to them, and they have soon - in relative figures - twice as many prisoners as their close neighbour Ireland. They have since long lost connection with the historical period when Winston Churchill and his likeminded looked at imprisonment with considerable suspicion (Bennet 2003) and saw to it that their figures were kept among the lowest in Western Europe. England's similarity to the US is also visible through colours inside the prisons. One in every 100 black British adults is now in prison according to the latest Home Office figures.⁹

Attempting to understand this situation, I feel the handicaps of the combination of closeness and a large portion of love, - a solid base for blindness. But of course, I cannot escape observing that step by step, England and Wales have changed important elements in their system.

First of all, they are in a process of radical adaptation to the uni-dimensional society. All are better off, compared to the period just after World War II, but the social differences within the population have increased. Poor people are not so poor as before, but they experience the differences and feel unhappy by them. The welfare state is clearly less so, than that state was some 50 years earlier.

Three generations of Britains have been followed from 1946 up to year 2000. In a conclusion on income and living standards, Dearden, Goodman and Saunders (2003) write:

In conclusion, this chapter has demonstrated quite strikingly that, whilst living standards have, in general, risen steadily with each successive cohort, inequalities in income and wages have also increased. These findings alone represent a significant indicator of the changes in British society in the last decades of the twentieth century. However, it is also important to recall our finding that there was also a significant gradient in the incomes of cohort members according to their own parental background, as measured by their fathers' social class, and that this gradient appeared to have become *steeper* amongst more recent cohorts. Thus, not only has Britain become an increasingly unequal society, but the income achieved by the more recently born is more strongly linked to the social class position of their own parental generation (p.189).

A second important element: England and Wales have also reduced *the power of the judiciary*. The Home Office provides the courts with extensive statistics where each court can compare their own sentencing

⁸ The Guardian, June 16, 2003.

⁹ The Observer, March 30, 2003.

practice with what happens in all other courts in the country. Judges also receive various *guidelines*, not sentencing-tables in the US style, but various forms of central guidance where precise tariffs are specified. And this process is in steady continuation. The Guardian Weekly (May 8, 2003) describes a proposal from the home secretary the day before as this:

Life will mean life for:

- Multiple murders with a high degree of premeditation, involving abduction or sadistic conduct
- Murder of a child in similar circumstances
- Terrorist murderer
- Term will not apply to killers under 20

30-year minimum for killing:

- On-duty police or prison officer
- With gun or explosive
- On contract for other gain such as for racist, religious or sexist motives
- Adult for sadistic or sexual reasons
- Other multiple offences

15 year minimum:

- Other murders by adults and all murders by children under 17

The Guardian reports that “Senior lawyers were unhappy with the announcement. ... The Bar Council described it as constitutionally a leap in the dark” and said Mr Blunkett (The home secretary) was trying to “institutionalise a grip of the executive around the neck of the judiciary”. The Howard League for Penal Reform said the package could increase the present 3,900 life-sentence prisoners by 50%”.

Britain has also streamlined their system by establishing a position similar to that of a general procurator. They call him Solicitor General - a position with authority to control that lines are kept. It is also, for the higher courts, developed a system of professional prosecutors, and opened for appeals if prosecution so wants. Earlier, only the sentenced person could appeal. The official reasons for much of this is often named “consistency in sentencing”. But it can also be seen as strong centralising trends. I have met British judges that express the same complaints as some of the US judges; we are not to the same extent free to use discretion as we were earlier! Central authorities are distant from those to be sentenced, but close to politicians. Politicians are sensitive to punitive attitudes in the population and do also encourage such attitudes. Chances are great that a shift in the balance of power - from the judiciary to the politicians and their administrators - will open for more punitive measures.

Important changes have also taken place in the probation service in Great Britain. Once upon a time, the ruling idea here was to befriend the offender. Gradually, this has been changed. As in the US, probation is increasingly seen as an enforcement service. Probation has also been centralised, it is also here possible to control that the workers keep in line.

* * *

Penal systems are indicators of type of society.

Changes in penal systems relate to changes within any particular society. The centralising tendencies described in the penal system of England and Wales, the move from befriending offenders to enforcing control, and the strong growth in the prison population, are all probably linked to other basic changes. For the general political process within a country, it is important to be aware of what happens, and use that awareness for self-reflection.

II. STATE - OR NEIGHBOURS?

A. Icelandic Blues?

Iceland is the country of Western Europe with the lowest number of prisoners. In summer 2002 they had one hundred prisoners, which means 35 per 100,000. They have one large prison with a capacity of 87 prisoners. But Icelanders do not like them that big, so happily enough they have also four small prisons with

a capacity of between 6 and 14 persons. Erlendur Baldursson (2000) is from their prison administration. He tells that "...difficult prisoners have repeatedly been transferred from the largest prison to the smaller prisons, as a rule successfully".

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It is so easy to dismiss this experience. That little country Iceland, what happens there has no relevance for huge nations. I agree. On the other hand, some of these other nations also have lots of Iceland in the form of islands - inside their borders. First, in the form of small towns or cities. But large cities also have islands, inside. New York has several, Paris is said to consist of a great number of French villages, and London is also, as far as I can observe, a conglomeration of villages. In my little city, Oslo, I live in one. I moved to this island some 18 years ago, and have ever since been forced to reflect on why it is so extraordinarily good to live there.

Basically, because this part of the city by and large, but with exceptions such as myself, is a low-income district. Simply, there are a large number of poor people around. From that follows four social facts:

- A considerable amount of misery. The length of life for males here is ten years shorter than in the West End. Living as single is more common here than elsewhere, so is it also to have problems with alcohol and drugs.
- As a consequence of poverty, most people here do not have cars. From this follows that most people do not shop outside the local neighbourhood. There is no convenient transport available to supermarkets outside the district borders. In addition, many will not have so much cash available that they can load up for several days. From this follows:
- Local shops survive. There are not many parts of Oslo so filled with kiosks and small shops as in this area.
- And one additional factor, a very important one: An extraordinary number of those living here are on welfare of one sort or another. This means they have more time available than most people have.

So, when Saturday arrives, and I should have been out skiing in the forest, that is how many natives are conditioned, then I am instead tempted out into the local streets, shopping, talking, or just being.

This has other consequences. This island is, as you might have gathered, a place for all sorts of people; some might be in official files with some sort of diagnosis. But in local neighbourhoods with much interaction, people do not remain *only* as diagnostic categories. People become characters: that man with the blind dog, the cigarette-butt collector, the kind old lady, that youngster to keep away from...

This also means that we have less crime in such neighbourhoods than in the more affluent parts of the city. Of course, I do not, with this statement, say that less property disappears without the consent of the owner in my neighbourhood than in other neighbourhoods. Nor do I say that fewer people are bodily harmed than elsewhere. Probably there is more of both. What I do say is that these activities get another meaning on my island. We are not so scared, since we know our neighbours. And chances are great that we know some of the involved parties, or someone who knows some. This again means it does not feel quite so natural to use official designations such as "Theft" or "Violence". Crime is a man-made phenomenon. Among people who know something about each other, it is less natural to use crime categories. We might dislike what they do, and attempt to hinder it. But we do not have quite the same need for the simple categories from penal law. And if applied, these labels do not stick to the same extent.

B. Extermination of Primary Relations

We know particularly well what follows when primary relations dissolve.

Some among us can still remember George Caspar Homans, that US Navy officer with a voice trained to deafen storms. He turned anthropologist, and in his book from 1951 with the title "*The Human Group*", he presented the beautiful horror-story about the demise of "Hilltown". Once this was a town filled with important decision-making. You could not be away from social life for long, or wrong decisions on important

matters might be taken. It was a place with all the pleasures and pains of social life, a social system well suited for primary control. We know that primary control needs somebody close and concerned. If no one there, the state will provide someone. Then to the sad end of the story: A railway appeared at the bottom of the Hill, giving easy access to the big world. The town converted into a sleepy suburb where internal life became of small consequence.

Forty-nine years later, Robert Putnam (2000) published his book "*Bowling alone*". From being socially outgoing, with many friends who often meet, deeply involved in civic life, the ordinary US person of today seems to be much more of a social isolate. From myriads of studies, Putnam compares generations. How did people 50 years old behave in 1955, compared to those of the same age in year 1995? He describes a clear trend towards increased social isolation. As a symbol of it all: Bowling is not so much a group activity any more, it has become an individual one. Bowling Halls acquire huge TV-screens to be watched while waiting for the next play. The adjacent restaurant is gone. So are the friends you used to meet there in-between. Now, after the game – which has become a competition against yourself – you drive home to another suburb, to a household where seven hours of TV watching is waiting - seven hours and two TV-sets is the statistical norm for the country. Life in social networks is shrinking, while consumption of crime from the screen is increasing.

Putnam's analysis is met with criticism as to its importance for political life. His study is also to a surprising extent without a class perspective. Nonetheless, it is an essential finding that people do not meet people to the extent they once did. This means increased reliance on the media for describing what happens and what gives meaning to the occurrences. It also means greater dependence on the state to cope with these perceived dangers.

If I am acquainted with my neighbours and have some sort of network close to me, I have an easy time if some youngsters misbehave in my hallway. I can call for someone who might know some of them, or I can turn to the athletic neighbour one floor up - or perhaps better - I can ask for help from the little lady I know as particularly good at handling local conflicts.

But *without* a network, and with all the information on the increase of crime in mind, I would have locked the door and called the police. I would thereby have created conditions both for encouraging unwanted behaviour, and for giving that unwanted behaviour the meaning of crime. Maybe I would also have encouraged conditions leading to an acceptance of some e-mail I received while I was working on this paper.

This was an irresistible offer launched under the title: "*Spy on your baby-sitter.*" A few days later, I got the same offer under the title: "*Watch your teens or keep an eye on the babysitter.*"

...it is a secret wireless camera used professionally by CIA, FBI and others And here is how it works: A small camera hidden inside a light bulb so inconspicuous no one will suspect they are being watched. You screw it into any lamp, (even over the shower, it could be in a dark place it doesn't matter. ... Then you take the other piece and plug it into your VCR (or any type of TV, they say in other ads) and it is as if you were standing over the person with a video camera.... "The video signal "wraps around" the power line, completely separate from the AC voltage. This is a security no home or office should be without.

But there are other dangers. Another e-mail gave comfort: The subject line was "Stop child molesters", and the offer was to get access to a database with more than 50,000,000 criminal files. And we learn:

The odds are great that one or more of these dangerous criminals may be living in your neighbourhood. Approximately 200,000 convicted rapists are required to be registered in America at any one time. Many are repeat offenders.

Access to the database of sex offenders is free of charge, but access to the file for the 50 million costs ten dollars. The ads are as taken out of the documentary by Michael Moore, "*Bowling for Columbine*".

C. Trivial Truths

And what do we do and say, we, the legions of social scientists around?

We know, as a profession, some of the consequences of all this. But we do not tell, not often, not strongly, and particularly, not concretely, with examples and detail. What we have to say is so much against the spirit of our time.

We know about city planning. A large shopping centre is projected outside an old city. Gains: Reduced unemployment during the construction period, increased income to the construction firms and later to the firms running the centres, and probably also a greater assortment of goods and improved conditions for parking. But then the penal costs: Increased number of arrests for shop-lifting, and also the social death of the old city in the neighbourhood, leading to an increased amount of unwanted behaviour. Police and guards become necessary as functional alternatives to the missing counters and the neighbourhood shops.

So, we can say: Dissolve the supermarkets. And let all shops have a counter between customers and commodities.

Or, as an alternative to the methods of the N.Y. subway police, we can say: To reduce penal costs, let no bus or streetcar run without a conductor. Social control carried out by a person who does not give the situation the meaning of having crime control as its primary purpose leads to an increased feeling of security among all passengers, it creates a more quiet atmosphere, more co-operation from other passengers and less use of force. But, of course, economic costs: Salaries to conductors minus costs for ticket machines, electronic surveillance, and an increase in payment from those who usually do not pay.

Or we might turn really radical and say: Poverty is a relative phenomenon. Reduce the wealth of the rich, and the poor would not be that poor.

We know a lot, if questioned by journalists or others. But, of course, we also know the journalists will not be particularly interested and not come back. They will turn to more useful criminologists, not to free eggheads.

D. Old-fashioned Russia

I have the privilege of living close to Eastern Europe. Norway and Russia have a joint border up in the North. And we have had no wars - except for Norwegian invasions in Viking times. But there is more to it than that. I feel at home going East. This is not because of a similarity there with my present living in my home country. It is more like coming back to the days of my grandmother. It is not only in Russia this happens. So is it also in Poland, in Hungary and in many of the other Eastern European countries.

Why?

I have no solid explanation, again only a vague hunch: Perhaps it is due to communism. But not as stated in the old propaganda, not due to the effects of communism as we were told about in their fairytales back in time about workers paradise and all that. Not because of the transformation of some of these societies that took place after 1918. And particularly not because of the efficiency in the changes. On the contrary, it is because of the *inefficiency*. Capitalism was able to change Western countries, change them into their present monolithic form, change their forms as well as their basic values. State communism of the eastern type was also able to change their societies. They changed the type of government, and exchanged the incumbents of power positions. With enormous human and material costs, they improved living conditions for many. They modernised the material structures. But they were not very good in modernising the human soul.

E. Societies with More than One Leg

Even in the middle of the Cold War, there existed some professional contacts between the East and West of Europe. We received some official visitors from Soviet criminology in Norway in the early 1960s, and returned the visit in 1968. From then onwards, exchanges were frequent. A book of mine - "*Limits to pain*" (Christie 1981) - was published in the USSR in 1985; I think it was the first "Western" criminology published there. This made contacts more legitimate and opened up for further interaction with the Russians, and by that legitimising fact also with their colleagues in other East European countries.

I give this little sketch of background to establish some sort of credibility to my next point, which simply is as follows: These countries were, and still to some extent are, so remarkably old-fashioned. Again and again the same strikes me when visiting East European countries, or receiving visitors from there: I am, in a

way, back to the days I remember described by my oldest relatives, or find in writings from that time.

Of course, it is like that. These were societies functioning at a much lower technical and material level than in the West. Their populations were living under a political system where the state was supposed to provide the material goods needed for life. But that state was not particularly reliable in delivery. And it was a one-party system. Political opposition was a dangerous matter. People did not want to talk to you in the streets, visits in private homes might be a dangerous endeavour - for the host. Leaving Eastern Europe by train was an unpleasant experience. Armed inspectors entered, scrutinising the luggage compartments, maybe someone had attempted to escape their state, flashlights under the trains, dogs, and of course guns. It was like leaving a prison.

A scarcity of commodities, and an abundance of state control. No wonder many looked for other systems of protection!

I brought a granddaughter to Russia quite recently. It was for a seminar in Astrakhan, a long journey with ample time for talks with the participants. Most encounters had the same beginning: My granddaughter, 14 years old, was warmly greeted, so nice to meet a Norwegian girl. And then, with certainty, a few seconds later came the fatal question: What was she planning to do in her life, what sort of study, and what sort of work was she preparing for? My granddaughter looked at me in despair, until she got accustomed to the repeated question. She was an ordinary Norwegian teenager. Life is open. She would finish her compulsory education, maybe a year of travel abroad, maybe university, maybe first some years of ordinary work to earn money ... Then, perhaps, some years of study, but this would certainly not be a choice for grandfathers to interfere with. "I have with one exception never got such a question at home," she told me after the first cross-examinations. But I felt the blame from my Russian colleagues. They thought of me as a bad grandfather. Careless in the extreme. With such a clever and lively granddaughter - and he has not been able to put her on the right track for a vocation!

I ought to have been prepared. For years, I have been struck by the survival ability of the intelligentsia in Eastern Europe. In these societies, constructed to benefit the working class, I was rarely able to meet academic people who had not one or two academicians as parents, and often also as grandparents. Probably, but here I am on less safe ice, probably this is only a special case of what had happened in other segments of Russian society. In scarcity, and under daily control of a powerful state, families, and family values, became of greater importance than in the West. Under scarcity, generations are forced into proximity. For a young couple, she might be pregnant - the only solution is a room or a part of a room in the parents' dwelling. The family has small children and both mother and father need paid work to survive. Grandparents become a treasure, just as children are to them when the old age pension fails to appear. Or the "datcha", the little summer house so dear to those that had one, a fortune for the extended family, a place to be for the kids, a place for the production of vegetables for them all. To be an outsider in such a system means serious danger. Social capital has material realities.

The dark side of the one-party state pushed in the same direction. Informers are essential in such systems, as was so clearly documented in the Stasi-archives after the collapse of the Federal Republic of Germany. You never could know, for certain, who the informers were. Probably (but not certainly) they were not in the close family. *Ivo Moszny*, a perceptive sociologist from Brno in the Czech Republic, has in conversations and lectures repeatedly pointed to this phenomenon.

I met him during the "Spring of Prague", a short period with decreased political oppression. When that peculiar spring had passed, he was in a way rescued. He got a position as a janitor at his old university. Today, he is the Dean of the same faculty. Once, in an old Norwegian bus, a group of Scandinavian criminologists travelled to Vienna via Poland and what was then Czechoslovakia. This was in the period when he still was a janitor. He gave a remarkable lecture, inside our bus, outside of the ears of state control. It was precisely on the importance of the family for resistance against totalitarian states that he spoke.

Hundreds of small lagoons for a life alternative to the one controlled by the state were constructed. The family was one. But so also was the culture of the past, the heritage, the large novels, the music, the poetry. To live in scarcity might also give room for an alternative life. This is one explanation for the cultural interest one also meets today in Russia and in some of the neighbouring states. But maybe there is more to this interest than just being a refuge against a totalitarian regime. Maybe the pronounced cultural/aesthetic

interest is a deep feature of what it is to be Russian. Maybe it will survive material affluence. That crucial test is happily enough not close to us in time.

* * *

But the Soviet heritage is not that far back in time. Let me turn to that.

F. Those Polish Students

I was invited to lecture in Poland, and used some of the themes above: the need for informal social networks, the need for knowing your neighbours, and the need for primary control as an alternative to state control. I met blank faces. Of course I met blank faces. Trained to distrust your neighbour, conditioned to situations where that neighbour might be a spy for the system, it might all come back, why establish ties that might prove dangerous? This is one of the serious costs of having been trained into life in a one-party state.

These same costs are also clear when attempts are made to introduce mediation or restorative justice in Eastern Europe. They have had their quota of it. They have had house committees or neighbourhood committees. Or they have had workers courts in the factories - no more of this, thank you!

Again, it is easy to understand. They had it all, but were strictly politically governed. Those who decided, were perhaps mediators, but they were also party members. The great interest for alternative conflict solutions in the West is met with considerably less enthusiasm in Eastern Europe, and with good historical reasons.

But this might also be an important experience for Western attempts to curb the state by introducing civil ways of handling conflicts. Let me turn to this theme.

III. NO PUNISHMENT

A. Two Types of Justice

We know the picture: Females gathering at the water fountain or at natural meeting places along the river. Here they come, often every day at the same time. Fetch the water, wash the clothes, - and exchange information and evaluations. The point of departure for their conversations will often be concrete acts and situations. These are described, compared with similar occurrences in the past and evaluated; was it right or wrong what happened, was it beautiful or ugly, was it a sign of strength or weakness? Males will often do the same, at their places of meeting. Slowly, but far from always, some common understanding of the occurrences might emerge. This is a process whereby norms are created through interaction. Let us call it *horizontal* justice, created by persons with considerable equality brought about by closeness. Of course, not complete equality. Some have better clothes than others, some are from better families, some have more wit. But compared to what now follows, they are equals. And their decisions are based on being part of a process.

* * *

Horizontal justice has three major characteristics:

1. Decisions are *locally* anchored. How cases are solved in villages far away is of limited interest. What matters is here and now, compared with the past, and with concern for the future. This can lead to inequality between districts, the "same" act can be evaluated differently in district A than in district B and C. But the opinion inside each of these districts might unanimously be that justice has been achieved in their particular area.
2. Questions of relevance are handled in a radically different way from what happens in the legal system. Relevance is seen as a central concern, but in situations with horizontal justice as one *without pre-defined solutions*. Relevance is established through the process itself. Relevant is what the participants find relevant. A minimum degree of consensus on relevance must be created among all interested parties. That Kari 15 years back in time was humiliated by Per, might be seen as of considerable importance by all interested discussants when Kari's little sister has now covered Per's

little brother with tar and thereafter rolled him in feathers.

3. At the water well, compensation becomes more important than retribution. This is related to several structural elements in small-scale societies. Such societies are often relatively egalitarian. Not necessarily in the meaning that all are equal in wealth or prestige, but in the meaning that *if* conflicts appear, parties will move into alliances with their relatives and friends and thus mobilise until they become somehow equal to their opponents. Many such societies also exist far away from external authorities with power at their disposal. This means that they themselves will have to cope with the conflicts. This is a situation where the participants know each other from far back in time, and also know that they will have to live together in the future. They can not do as modern people, just break off relationships and move to another social system when conflicts loom. Punishments are particularly dysfunctional in such systems. Punishment - infliction of pain intended as pain - means moving towards civil war in fragile systems. With a distant external authority, with nowhere else to move, and with no superiority of power, compensation rather than pain becomes the natural answer.

* * *

Then the other picture: Moses, down from the mountain. Under his arm he carried the rules, engraved in stone, dictated to him by one even higher up than the top of that mountain. Moses was only a messenger; the people - the populace - were the receivers, controlled from far above. Much later, Jesus and Mohammed functioned according to the same principles. These are classical cases of what here will be designated as “*vertical justice*”.

In the case of Moses and his vertical justice, the situation is different from the one of horizontal justice. With rules engraved in stone, an idea of the existence of general validity is created. Equal cases have to be treated equally and according to the rules. But cases are never equal, if everything is taken into consideration. Of course not. Therefore, *everything can not be taken into consideration* in formal law. It becomes necessary to eliminate most of the factors surrounding any act to be able to create cases that can be presumed to be similar or equal. This process is called eliminating what is *irrelevant*. But what is irrelevant is a matter of values. To create equality, it is therefore necessary to create rules for irrelevancy. It is a dogmatically decided irrelevance - as lay people so often experience when their lawyers forbid them to bring up in court what they believe is their best argument. This is what we train law students to know and apply. This type of justice is reached by establishing limitations on what can be taken into account, otherwise equality could not be established in this setting. This is in sharp contrast to horizontal justice where the question of relevance is decided among the participants in the process.

With vertical justice, and the social distance implied in that process, there is also created a situation that opens up for the application of punishment, for pain intended as pain. Modernity means to a large extent a life amidst people we do not know and never will come to know. This is a situation where penal law can be applied with great ease. Penal law and modern time suits each other.

B. The Growth of Formal Law

Every second year, a new edition of a peculiar book comes to my office. It is a book published by The Faculty of Law at the University of Oslo, the book is red, large, and voluminous, even printed on “Bible paper”. In 1930, the book contained 2099 pages, in 2002, the number of pages had increased to 3111. This is the book that contains all valid Norwegian laws from 1687 and up to the present. No lawyer will be without a new edition of this book. Students of law will often carry the book under their arm, - the book has some of the same symbolic function for law students as the stethoscope for students of medicine.

In addition to laws in books, these days there are also the electronically conveyed messages. With the morning coffee, the last legal decisions can be called up on the screen by all the legal experts who are connected to a legal data base. And they will all soon *have* to be connected if they want to be taken seriously. The courts are under continuous electronic upgrading in all highly industrialised countries. In the case of the penal courts, the sentencing tables of the US type will soon be outdated. Information on offender and offence can be fed into the electronic system, and out comes details of the “profile” - the range of sentences in “similar” cases, not obligatory to follow, but yet persuasive examples of how other judges act. From carved in stone to a diagram on what is a normal sentence on a screen. The electronic revolution has not created equalitarian justice, but a pyramidal one.

In the meantime, the water wells and a great number of other arenas for informal discussions are abolished, even though coffee shops to some extent have taken over. Disappeared have also many of the old villages. But a new type of village has recently appeared. What there happens illustrates some of the strength in the horizontal participatory justice system.

C. The Global Village

The females at the water well would often look differently at much of this. It was as if they were not so sure of their classifications. What is what, and who is who? But they are not there, any more. Instead, a new type of users of mediation has grown in strength and importance. These are the large economic enterprises.

It is often said that in modern societies the village is dead. Gone. Just an empty shell to sleep in. Our destiny is life in the megatown, a life among strangers. That is right. But also wrong. The villages have died. All but the global village.

If we want to study a village of importance today, we must not go to the countryside, but to the very centre of countries. We must go to the City. Literally. We must go to the City of London, Wall Street, or to some of the inner districts of Tokyo or Singapore, perhaps even to Oslo. Arriving there, we must look for some of the best-protected buildings, and then within these, try to get access to some of the major enterprises occupying these premises. In my country, it might be one of the major oil companies, or even better, one of the large law firms. Entering their premises is similar to entering a hut in an African village.

How can I utter such an absurdity?

For three good reasons. But as I list them, you will have to accept that, in what follows, I have had to simplify and give an ideal-typical description

First, those living in the modern hut are *linked* to their neighbours in ways having functional similarities with the old ones: by telephones, sometimes integrated with TV pictures, by telephone-conferences, often with participants with oceans between them, or faxes or e-mails. Linked together, and with a common cultural landscape from reading the Financial Times, the Wall Street Journal or The Economist.

Second, they are *glued* to each other, just as the old-fashioned villagers were. There is no other globe available. They live there with the understanding that they will have to remain, or leave for the desert.

Third, the external authorities are far away, and with limited power. One modern law firm might have a larger legally trained staff than the whole Ministry of Justice and the Ministry of the Interior put together. They know more of law, and dispose more resources than their rulers.

This, then, also makes them similar to the old-fashioned villagers when conflicts loom. They have nowhere else to go, so they continue the relationships. But since they have no external authority to turn to for protection they are again forced into ordinary village behaviour. They must solve the conflicts by civil means. We know from personal experience, or from social anthropology, that attempts to punish others in the village mean breaking off relationships. It is a call for war. Conflicts in villages without external authority and where people intend to remain, such conflicts will most often take a form whereby the parties create coalitions to muster some sort of balance of strength. After this groundwork is done, they meet and work towards civil solutions. If wrong acts have been performed, compensation to the victim, not pain to the offender, becomes the major answer where relationships are to continue. As for the villagers everywhere, so also for General Electric.

Penal law is a perfect instrument for certain purposes, but clumsy for others. It is one where we eliminate many concerns, and it is one based on dichotomies - all or nothing - guilty or not guilty. In many situations we are half-guilty. If that half-guilt is seen in the light of earlier misdeeds of the other party - or her or his associates - an opening is given for compromise. Civil solutions are more integrative solutions striving to preserve the social system as a body of interacting individuals.

In analogy with what happens in village law, lawyers in the global village will most often consider the totality of situations and look for peaceful compromises and compensation rather than the use of swords.

They will, as peacemakers and mediators everywhere, be highly regarded and, in our culture, highly paid. Without a high reputation, they will, in certain types of villages, have trouble creating peace. They will therefore guard their honour both against political involvement and against clients of low regard. High salary is a corollary to high regard. In addition to money and prestige, they have probably also more fun than other kinds of lawyers. In their global village, inside the limits of their economic-administrative system, they are back to working with totalities. They have the fun of old-fashioned tribal members in finding out about the law, participating in finding solutions all parties can live with, and thereafter the satisfaction of creating peace inside their system. They are engaged in a holistic activity directed towards peace, in contrast to a specialised one directed towards war.

The paradox is that, as these lawyers are enjoying their global village, they are so often causing destruction of the remaining local villages. Their decisions on the economy are part of the driving forces in the international development of industrialisation. Their activities in their global village are one of the key elements in the process of modernity. Their activities create the conditions where another kind of legal personnel is called for, a kind in extreme contrast to the civil one suited for conflicts at the water well.

* * *

So, what have I described so far?

I have described two ways of coping with conflicts, the way of Moses, and the way of the women at the water well. And I have said there is growth and expansion in *both* solutions. Growth in penal law, but also growth in the interest for mediation.

D. Abolish Punishment?

In discussions on penal matters, a major position is called Abolitionism.

The Abolitionists raise questions like: What logic, and ethic, makes it so certain that punishment has priority over peacemaking? You lost an eye due to my deplorable behaviour, but I will give you my house. You hurt me with your crazy driving, but I have forgiven you. Punishment is intended pain. Has the intended delivery of pain advantages as an instrument for restoring broken values? Has such pain advantages, and therefore priority, over reconciliation, restoration, and forgiveness? I agree with the position behind these questions, but can not follow the Abolitionists all the way.

The most radical among them want to eliminate penal law and formal punishment altogether. But there are several major problems with that position if followed to the extreme.

The first is a concern for those who do not wish to participate in a process of reconciliation or in reaching of a possible agreement. Some offenders do not have the ability, nor would they dare to look the victim in the eye, let alone ask for forgiveness; they panic and want an impersonal court procedure. Neither would some victims consider reconciliation; they prefer the offender being punished. In both cases, a criminal legal process commences. A civil conflict-solving process can hardly be considered in a modern state without a criminal law solution being available as a possible alternative. This might result in one person being forgiven in a civil case, while another person is punished. But it can not be against the code of ethics that some, though not all, receive forgiveness. Those punished encounter what they would have faced if restoration did not exist. Probably, those punished will receive a bit less. If forgiveness exists as a viable alternative in some cases, this would possibly reduce the severity of punishments in general within the system.

Another major concern if punishments were completely abolished, is that reconciliation processes could degenerate. The offender, or his close relatives, might in despair promise too much in order to turn matters into a more favourable direction. The arbitrator, the mediator or participants in a circle must stop this, and might be forced to return such a case to the penal courts. Or the offender might be exposed to too strong pressure from the other party. There are instances from small communities where the men dominate the conflict-solving body and where the abused women are subjected to continued suppression.

For conflicts at the state level, the same objection can be raised. Laura Nader (2002), p. 144) expresses it like this:

Fine-grained fieldwork indicates how coercive harmony operates to silence disputing indigenous peoples who speak or act angrily (p. 127).

It began to look very much as if ADR (Alternative Dispute Resolution, N.C.) were a pacification scheme, an attempt on the part of powerful interests in law and in economics to stem litigation by the masses, disguised by the rhetoric of an imaginary litigation explosion (p. 144).

In enthusiasm for mediation, it is important not to forget that rituals and arrangements in penal courts might have important protective functions. When tensions run high, maybe even immediate violence threatens, the solemn and also often utterly tedious and dull rituals in the penal apparatus might have a calming effect. Court procedures might make certain situations of conflict bearable, just as church rituals - or nowadays the fast developing "human ethical rituals" - make it possible to endure the sufferings at funerals for a beloved one.

A special situation is created when an individual stands against an organisation. It might be the shoplifter against the big firm, the graffiti-youngster against the municipality, or the passenger who did not pay against the subway system. The point here is not necessarily the inequality in power, but that one party will be a representative for a big organisation. It might be a representative with a large amount of routine, but a limited amount of personal interest in the conflict. In contrast, the other party might represent herself or himself for the first time. Our official system for mediation in Norway is soaked with shoplifters, cases particularly unsuited for mediation. The system for mediation might easily be perverted into juvenile courts in disguise. Høigård (2002, pp. 288-293) has a highly relevant critique of this development in her book on graffiti; *"Street Galleries"*. What goes on in these boards is, in her view, punishment of children.

An exception would be if the mediators in the boards were able to include the top management of the big firm or of the subway system or the municipality. In that case, it would have been possible to raise questions about how the shops are organised, if the temptations in the shop are exhibited in a way that make them close to irresistible to youngsters, and if the shop in order to increase profit has far too few sales' attendants around. Or the question might be raised if the graffiti on the wall was not more beautiful and/or interesting than the huge advertisements for underwear? Such meetings might be very useful for the social system in general. But to get them going is probably utopian.

A third case for penal procedure is a situation in which there is no actual victim. Perhaps a belief has been offended against. Some people might curse God or Allah in nations where this is considered a serious sin. Or perhaps there is a need to regulate what some people are doing to themselves and their own bodies. Actions against the use of drugs is at present the dominant example.

And then comes the more trivial concern that some simple regulations would ultimately need support. Some drivers insist on driving at the speed of their choice. Civil measures, such as the withdrawal of a driving licence or the impounding of a vehicle, could be attempted, but are not always sufficient. Punishment should remain as a last resort.

For some, none of the above concerns are of importance. Still they would punish. They will say: Society has to do it. Independently of any utility or practical use of punishment, certain acts are so terrible that the perpetrator(s) must receive the vengeance of society. This would be their claim.

E. A Winter Night

Forty thousand citizens of Oslo took to the streets the very same week I was writing this chapter. It was on the first day of February, and it was dark and bitterly cold. A strong northern wind swept through the streets, the temperature was 13 Celsius below zero, nonetheless, it was warming to be there.

Benjamin was the reason for it all. Some of his friends gave speeches, so also did the Prime Minister. A young woman sang. Thereafter followed a solemn procession through the streets.

Benjamin was killed three days earlier. He had just turned 15. Knifed by three young people with some sympathies for Nazi ideology. Enough is enough was the dominant mood of the country. Benjamin had black skin. A year earlier he had, on national TV, condemned Norwegian racism. That might have been one of the reasons for his death.

The procession was a manifestation of common values, and also an example of the new types of funeral rites coming into being - as flowers for Diana, candles on graves, or at the places where terrible events had occurred. Public participation encouraged by and broadly covered by the media.

But then the question: Is this enough?

Much has already been done to prevent the spread of Nazi ideology and the establishment of Nazi organisations. The State gives money to youth activists to help to get young people involved in Nazi groups to retreat from these settings, and return to normal life. Parents are active, schools likewise, researchers attempt to get close to the Nazi groups to understand their behaviour and their motivation.¹⁰

But again, is this enough? Two young men and a woman have been found guilty.¹¹ Is it possible to think in terms of restorative justice in such a case? The value of a human life has been infringed upon. And not only this. The act has been carried out by persons that at least initially might have thought the act was a positive one, a move to fight back the invasion of a less valuable culture, or maybe even a less valuable race.

Would I still insist that this also is a case for restorative justice?

* * *

There are other difficult cases. In Norway recently, the entire population was shocked by the murder of two small girls who were going to swim in a little lake in a forest somewhere in the south of the country. They were sexually molested and killed. Two young men were found guilty and sentenced to long sentences. One of them seemed to laugh when he left the court. The population was outraged, and so was I.

Nonetheless, let us try to imagine another end to the story. What would have happened if mediation had been arranged and the relatives, after a long process, said: You killed our children, but we have forgiven you. With our present knowledge of your past life-history, and with an acceptance of the sincerity of your deep remorse, we have forgiven you. We know what your future will be if you have to spend years in prison, therefore we beg the authorities to release you. What would have happened if this had been said by the relatives, and followed up by the authorities?

I have no doubts about this being a solution in accordance with deep roots in our morality. But at the same time I do not have any doubt that it is completely unreasonable to *expect* this to happen, let alone to demand that the next of kin to those murdered, should take part in a negotiation process that could possibly lead to an end result like this. It is perfectly understandable and morally above blame for the next of kin to choose punishment for the offender. But *if* mediation took place, could we then conceive of a situation where the case *ended* there – ended with forgiveness? Why should it be obvious that the case still belonged to the prosecutor and prison authorities?

If all the victims, and all the relatives of those who could no longer talk had claimed that forgiveness should reign, then, maybe, maybe, a sociologist would take Emile Durkheim in hand and argue that for the sake of the social cohesion of that particular society it might be necessary to let punishment follow the disgusting acts. But the possibility of such a forgiveness from the parties involved is so distant that this kind of warning is as realistic as a warning of the breakdown of the oil market because most people have found it morally right to drop any use of private cars. But if it happened, I would be at the side of those parents that asked for forgiveness. The whole process of finding out what had happened, the determination of guilt, the quest for forgiveness, and then the act of forgiving - it would all be a powerful exposure of terrible, close to unbelievable horrible gruesome acts. The exposure of it all would represent a powerful distancing from those acts, at the same time as the act of forgiveness would take care of another equally important set of fundamental values in our society.

* * *

But would that be justice? In extreme cases, children are sexually abused in a horrible way, then killed. It

¹⁰ Cf. Fangen (2001) and Bjørge (1997).

¹¹ In February 2003 one of the men was sentenced to 17 years of imprisonment, the other 18 years.

can not be right to let the guilty ones get away with words only? But the opposite position might also be a wrong answer. The punishment can never be equal to the wrong done. As Giertsen (2003) writes, here in my translation:

Punishment is a symbolic expression, it can not become equal to the crime on a one to one basis, and can not be used as a measure-stick expressing the value of the victim. Punishment is first and foremost a statement that an act has damaged an important value, a value that must be re-established (p13).

Punishment can not be equal to damage. Relatives might say; he who killed was only sentenced to twelve years, while my boy lost his whole life. That is not right! And they are also right, so far. But they are reasoning in a way that would lead society into unacceptable conditions. If we want to preserve humanity, it is not a question of simple retribution. The lost son can not be brought back, a similar harm would be to take the culprit's life under conditions equal to his ways of acting. Our ethic must have a broader perspective. If punishment is to take place, this punishment must represent the totality of our values.

Victims, and victim movements, will often feel deeply hurt when their sufferings are not reflected in the punishment on a basis of one to one. This will often be expressed as sharp criticism of the courts, a criticism eagerly brought to the surface in the media and from there to the politicians.

How to handle this situation?

There are no other ways than the usual: counter-arguments, exchange of ideas, attempts at clarification. Choice of penal policy is a cultural question. It is not a question of instinctive actions and re-actions. It is an area filled with deep moral questions. It is an area for novelists, playwrights, artists, - and for all citizens. It is not only for experts, of course not. But it is not only for victims either. It must be a chorus of voices, introducing a forest of concerns, partly concerns that are not easily digested, and also to a large extent not in harmony. The more the field is seen as a cultural one, the less room remains for the simplified solutions.

F. Minimalism

The reasoning up to this point makes it hopefully clear that *Abolitionism*, in its purified form, is not an attainable position. We can not abolish the penal institution totally. But I have also, hopefully, been able to show that we can go a long way in that direction. Crime does not exist as a natural phenomenon. Crime is just one among several possible ways of looking at deplorable acts. We are free to choose, and the variation in punishment levels over time in individual states and also between states is an illustration of that freedom.

In this situation, what comes close to my heart might be called *Minimalism*.¹² This is close to the abolitionist position, but accepts that in certain cases, punishment is unavoidable. Both abolition-ists and minimalists take undesirable acts as their point of departure, not acts defined as crimes. And they ask how these acts can be dealt with. Can compensating the injured party help to handle the case, or establishing a truth commission, or helping the offender to ask for forgiveness? A minimalist position opens up choice. By taking the point of departure in the whole sequence of events leading to the undesirable action, punishment becomes one, but only one, among several options. To let the analysis stem from conflicts, rather than from crime, opens up a liberating perspective. It means that we are not captured in a "penal necessity", but are free to choose.

Good - and bad. It takes away the rigidity in seeing punishment as an absolute obligation, but forces us to give some reasons for our choice of punishment versus non-punishment. Let us, in what follows, test the possibilities of the minimalist position on some catastrophes of our time.

¹² The term *abolitionism* is inherited from the struggle against slavery, especially in the USA. Within this movement, the conflict was between those who wanted to abolish slavery altogether, and those who, by various means, wished to limit slavery. And, as in the struggle against slavery, a more moderate group also exists within the abolitionist movement. They are the minimalists. It is a bad name from the history of slavery, but a good one confronted with the complexities of finding answers to severely unwanted acts.

APPENDIX A

Prison Population Rate per 100,000 of National Populations

Western Europe

England/Wales	139
Portugal	135
Spain	126
Italy	100
France	99
Netherlands	93
Germany	91
Ireland	86
Austria	85
Belgium	85
Greece	80
Switzerland	69
Denmark	66
Finland	66
Sweden	64
Norway	62
Iceland	37

Central and Eastern Europe

Russian Fed.	597
Belarus	554
Ukraine	406
Latvia	361
Estonia	328
Lithuania	327
Moldova	300
Poland	260
Romania	215
Georgia	196
Hungary	176
Czech Rep	159
Slovakia	139
Bulgaria	114
Turkey	89
Slovenia	56

North America

USA	730
Canada	116

Central America

Belize	459
Cuba (estimate)	500
Panama	359
Costa Rica	229
Honduras	172
El Salvador	158
Mexico	156
Nicaragua	143
Guatemala	71

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South America

Chile	204
Uruguay	166
Brazil	137
Colombia	126
Argentina	154
Peru	104
Bolivia	102
Paraguay	75
Venezuela	62
Ecuador	59

Oceania

New Zealand	155
Australia	112

APPENDIX B

Prison Population in Poland 1945-2002

