

The Rise of a More Punitive State: On the Attenuation of Norwegian Penal Exceptionalism in an Era of Welfare State Transformation

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Abstract While sociologists of punishment have been interested in the notion of Nordic penal exceptionalism, rapid changes are taking place in the penal policies of one of the members of the Nordic zone. Norway's penal state is growing increasingly punitive, and penal exceptionalism appears to be on the wane, evidenced by a growing incarceration rate, increasingly punitive sentiments in the population, moral panics over street crime, raised sentencing levels, the forcible detention and extradition of asylum seekers, punitive drug policies, and the creation of segregated correctional facilities for stigmatized foreign offenders. Penal transformation should be understood as the outcome of symbolic contestation between politicians eager to present themselves as “tough on crime,” increasing differentiation of the social structure that has led to the declining fortunes of rehabilitationism, and a nascent neoliberalization of the welfare state. As a consequence, Europe's penal landscape may be growing more homogeneous.

Introduction

In recent decades, the United States and Western Europe have witnessed rising incarceration rates and an increasingly populist public discourse centered on the perceived problems of crime, policing, and public safety (Garland 2001; Pratt 2007; Wacquant 2008a, b). Amidst US penal expansionism and a European turn to punitiveness, the Nordic countries—Denmark, Finland, Norway, and Sweden—have been presumed to have largely withstood such trends. In a series of influential articles, Pratt (2008a, b) argued that the Nordic countries exhibited a regime of “penal exceptionalism,” characterized by relatively humane standards of incarceration and a low incidence of criminal confinement (see also

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Green 2008; Pratt and Eriksson 2013). A series of critical rejoinders sought to illuminate the ways in which the Nordic countries were expressly not exceptional (Ugelvik and Dullum 2012), drawing attention to an extensive use of police lock-ups and pre-trial remand detention, the disciplinary aspects of seemingly liberal “open” prisons, and other cracks in the apparently gleaming façade of Nordic punishment practices. However, Pratt (2008b) was careful to qualify the thesis of penal exceptionalism by noting the growing incarceration rates, zero tolerance drug legislation, sensationalized media reporting on crime, fissures in the social compact underpinning the welfare state, brought about by the twin pressures of growing immigration and declining egalitarianism, in these societies. The sum of these contradictory tendencies led Pratt to ask the prescient question: “Does Scandinavian exceptionalism have a future?”

This article demonstrates a series of important strides that have been taken away from exceptionalism in Norway’s penal state.¹ While developments in Norway cannot be assumed to be representative of its neighboring countries—both dramatic and subtle differences exist among the constituents of the Nordic model (Hilson 2008)—a turn towards punitiveness in recent years has been detected and described in a number of Nordic societies (Balvig 2005; Estrada et al. 2012; Lappi-Seppälä 2012; Tham 2001). This suggests that the policy reforms and institutional developments outlined below may hold true for ongoing changes in the remainder of the Nordic societies, although more work remains to be done in the domain of comparative penology in this part of the world.

The first part of the article outlines the increasingly punitive character of Norway’s penal state. The key dimensions of Norway’s gradual turn towards the careful resurgence of punishment as an integral element of statecraft include increasingly punitive sentiments and growing concerns over security and “law and order” issues in the population, raised sentencing levels by legislators in the national parliament, the rolling out of surveillant and disciplinarian counterterrorism legislation, increased rates of incarceration, increased confinement beyond the penal system proper through institutions of immigration detention, the increased penalization and policing of drug offenses, and increasingly virulent public debates about street-level crimes and aggressive policing of impoverished “problem populations.” The second part of the article discusses three theoretical dimensions that can be used to understand these changes: the growing importance of symbolic politics as a method for staging sovereignty, diminishing symbolic and fiscal investments in rehabilitative policies as social differentiation increases along ethnonational and socioeconomic class lines, and an incipient transformation of the social-democratic welfare state in the direction of neoliberal restructuring.

¹ Drawing on Garland (2013), the notion of the penal state is used throughout as a neutral, “non-evaluative” label referring to the sprawling web of interconnected criminal justice policies and institutions that are tasked with punishing offenders. Unlike Garland, however, the term is used to denote both the “leadership elites” and the ground-level decisions made by the courts, prisons, parole boards, probation agencies, street-level bureaucrats, and related venues, chiefly because these institutions are of signal importance in shaping the texture of punishment as it is enacted, enforced, and experienced in a frequently dispersed, decentered, and agonistic manner (Goodman et al. 2014).

The Intensification of Law and Order

Against the backdrop of a decade characterized by high levels of economic growth, expansive wage gains and historically low levels of unemployment (OECD 2014a), Norway witnessed a simultaneous growth in punitive sentiment.² Concerns over “security” entered the public domain with fresh vigor. Between 2002 and 2012, the proportion of respondents to the European Social Survey (ESS) in Norway who strongly or moderately identified (“very like me” and “like me”) with the importance of a government that was “strong and ensures safety” increased from 40.6 percent to 53.1 percent of respondents. Similarly, the proportion of respondents who strongly or moderately agreed (“like me” and “very like me”) that it was important to “live in secure and safe surroundings” increased from 41.5 to 53.1 percent (Statistics Norway 2012). More than half of Norway’s respondents to the ESS in 2012 agreed or agreed strongly that persons who break the law should face “much harsher sentences.” Between 1989 and 2005, the proportion of the public that would opt for imprisonment as the punitive sanction of choice for the hypothetical case of a recidivist burglar facing criminal charges, increased from 14 percent to 29 percent (van Kesteren 2009: 29). A 2007 World Values Survey asked respondents in Norway to assess on a 10-point rating scale to what extent they believed the notion that “criminals are severely punished” was an essential “characteristic of democracy.” (1 = not essential; 10 = essential) Notably, one-quarter of respondents were concentrated along the highest three points of the scale, believing that severe punishments for criminals was in some way essential to democracy. A poll in 2009 revealed that 68 percent of the population believed punishment levels were generally too low, 84 percent felt violent offenders should face harsher sanctions, and approximately half the respondents likened Norway’s prison conditions to a “stay in a hotel” (Balvig et al. 2010: 236). Such figures suggest the existence of increasingly punitive sentiments in Norway.³

Partly as a response to the perception of increasingly punitive sentiments in the population, in 2010 the Norwegian Parliament decided to amend penal sentencing guidelines upwards for a total of 18 categories of offenses, including raising the maximum imprisonment term for sexual assault from 2 to 3 years, from 6 months to 1 year for assault, and from 8 to 10 years for aggravated assault (Norwegian Ministry of Justice 2010).⁴ Some members of parliament were motivated by a sense that legislation was out of step with

² Punitive sentiment refers to the aggregate of public support for criminal justice policies that punish criminal offenders (Ramirez 2013). While actual policy output is the result of a complex interplay of agents, forces, and interests—which could be thought of as being the product of ongoing struggles between members of what Page (2011), drawing on Bourdieusian field theory, calls the “penal field”—public opinion plays at least a partial role in shaping criminal justice policies. Understanding the extent of punishment in a society therefore mandates paying close attention to how the public thinks about punishment, while bearing in mind that public opinion is in part an artefact constructed by the methods one uses to plumb the depths of popular sentiment (Hutton 2005), public opinion is itself subject to feedback loops in which policy outputs shape public opinion inputs, and policy output is itself not a one-to-one expression of public sentiment but the product of struggles between agents (see also Frost 2010).

³ However, there are a number of methodological issues that suggest that caution should be exercised in making assumptions about punitive sentiment on the basis of surveys and opinion polls. Balvig et al. (2015) suggest that Nordic public opinion on criminal justice issues appears to be less severe when additional information about hypothetical offenders and offenses is provided, and that the public is less punitive than judges when provided with “vignettes” about hypothetical crimes. What matters more than the real incidence of punitive sentiment may be the ways in which political elites appropriate and construct a representation of public sentiment concerning appropriate levels of punishment.

⁴ It should be noted that while sentencing levels have been raised for violent and sexual offenses, the most common decision made by public prosecutors in the case of sex crimes is that of dismissal.

increasingly punitive sentiments in the population, the public “sense of justice” (*allmenn rettsfølelse*). However, when Norwegian members of the public were asked to estimate how they believed the courts would rule in a series of courtroom scenarios, they consistently underestimated the actual severity of sentencing outcomes (Olaussen 2013). While judges were in actual fact meting out relatively long sentences, participants adhered to an outmoded belief in the restraint of judges.

Meanwhile, Norway’s prison system expanded along a number of dimensions. The incarceration rate surged up from 58 inmates per 100,000 persons above the age of criminal responsibility in 1960 to 93 inmates per 100,000 persons above the age of criminal responsibility in 2011. Figure 1 suggests that the average incarceration rate was generally low for the entire postwar period, but the past three decades have seen a long and steady upwards climb. Norway’s incarceration rate has attained a scale not seen since the era prior to the postwar construction of the social-democratic welfare state.

More recently, operating expenditures on correctional services increased by more than 80 percent between 2005 and 2012, from around 2.6 billion Norwegian *krone* (NOK) to 4.8 billion NOK.⁵ Staff employed in the correctional system increased by 18 percent from 2007 to 2012 (Norwegian Correctional Services 2012: 3). On the other hand, new prison entries declined from 12,003 persons in 2005 to 10,485 persons in 2012. But far from signaling a decline in punitiveness, this reduction in new entries to prison was achieved by the proliferation of a number of non-custodial sentences, chief among them the deployment of electronic monitoring, producing novel and insidious forms of penal constraint (Vanhaelmeesch et al. 2014). Simultaneously, the average prison population grew from 3124 inmates in 2005 to 3727 inmates in 2011. This occurred due to two significant shifts: First, the average number of pre-trial remand prisoners (*varetektsfanger*) nearly doubled between 2006 and 2013, from 569 persons to 1027 persons, a consequence of both a growth in new instances of pre-trial remand detention (from 3018 new remands in 2006 to 3963 new remands in 2013) and a lengthening of remand stays (from an average of 64 days in 2006 to 81 days in 2013). Second, the average time spent in prison grew; for persons sentenced to prison, the average duration spent in prison rose by more than 46 percent between 2007 and 2013 from 96 days to 141 days (Norwegian Correctional Services 2014: 8–12). While fewer people were being sentenced to prison, the prison population grew: due to the growth and increased severity of the pre-trial remand wing of the penal state, and due to the lengthening of prison stays for the category of convicted offenders. Perhaps the most parsimonious summary of the expansion of the Norwegian prison system is provided by a snapshot of the growth in the number of “prison days” passed in all the various forms of penal detention: from 1,158,039 days in 2005 to 1,369,960 days in 2012 (Norwegian Correctional Services 2014: 8). To summarize, then, from 2005 to 2012 there was an 18 percent increase in total person-time being passed within the confines of the prison.

If one were to include in the incarceration rate all those convicted offenders who live in society at large while waiting for prison beds to be freed up, the incarceration rate in 2013 would have risen from 72 inmates per 100,000 persons to around 86 inmates per 100,000

⁵ These figures are extracted from the Correctional Services StatRes database, available online at http://www.ssb.no/en/sosiale-forhold-og-kriminalitet/statistikker/kriminal_statres. The operating expenditure figures have been re-calculated in 2013 NOK equivalents in order to adjust for inflation. Recalculated figures were produced using the Statistics Norway’s Consumer Price Index (CPI) calculator: <https://www.ssb.no/en/priser-og-prisindekser/statistikker/kpi>.

persons.⁶ *Ceteris paribus*, this would place Norway ahead of Bosnia and Herzegovina, Germany, and the Netherlands in terms of the rate of incarceration (see Walmsley 2013). Allowing prison construction to be outpaced by the growth in prison convictions has the effect of masking the real incidence of punishment. The gap between the number of prison beds and the number of sentenced offenders permits the continued existence of a smaller prison population than if the entire population of sentenced offenders were to be placed in a correctional facility rather than be kept on hold and awaiting incarceration. The gap between supply and demand also imposes pains of imprisonment beyond the prison by keeping convicts in a frustrating state of limbo as they wait for the implementation of their sentences. Tapping into the crisis of prison capacity, the right-wing, neoliberal Progress Party proposed renting prison cells from Sweden, a proposal that was ultimately rejected (Norwegian Broadcasting Corporation 2013). Not to be deterred, the following year the Progress Party, having gained control of the Ministry of Justice following a favorable outcome in the 2013 parliamentary elections, proposed leasing a prison in the Netherlands. The Progress Party's Minister of Justice, Anders Anundsen, noted that the prison was probably to be reserved for foreign citizens who faced deportation after release (Aftenposten 2014a). Both proposals demonstrate how demand has outstripped supply in Norway's once-trim prison system.

Counterterrorism legislation became another venue for raised sentencing levels and extended police powers. In the years following the 9/11 terrorist attacks, Norway's counterterrorism laws were calibrated with the rest of the European Union. The police were granted the power to conduct covert audio surveillance of suspected terrorists, and the maximum penalty for terrorist offenses was raised from 21 to 30 years (Husabø 2009: 81). The latter reform represented a rupture with legal orthodoxy; for over a century, Norway's penal code had capped prison sentences at 21 years (Norwegian Ministry of Justice 2013a: 65). Following the 22 July 2011 terrorist attacks in Norway, the Ministry of Justice further cemented the police's proactive powers, including proposals that extended well beyond terrorism proper, particularly into the fields of organized crime and drug offending (Husabø 2013: 12–14).

Simultaneously, a growing incidence of confinement is taking place outside the correctional system. Mirroring a broader European trend toward immigrant detention (De Giorgi 2010), the Trandum Detention Center—operated by the national police and therefore excluded from official rates of imprisonment produced by the correctional services—added another 150 places of confinement to the national carceral stock. In 2009 alone, some 4359 persons were forcibly extradited by the National Police Immigration Service (Global Detention Project 2010), many of whom passed through Trandum. By 2012, this recent unit of the national police employed some 438 officers and caseworkers responsible for evicting 4902 persons; in 2011 alone, some 2500 persons were incarcerated at the asylum detention center (National Police Immigration Service 2012). As a reward for their efficiency at evicting illegal and irregular refugees, the police service even received the international 2014 Workflow Management Coalition award for “excellence in law enforcement.” Ugelvik and Ugelvik (2013) note that Trandum has been the site of fires,

⁶ These calculations are based on figures from the World Prison Brief (2013) and the Norwegian Correctional Services (2014). In 2013, there were a total of 1176 prison sentences waiting to be fulfilled in the “sentencing line.” The average length of sentences was 234 days in 2013. Converting this into a rate of imprisonment per 100,000 persons would generate an added 14.73 inmates per 100,000 persons. A counter-charge could be made that the *ceteris paribus* assumption masks the fact that other societies might also have “sentencing lines” or their national equivalent. As with all comparative criminological statistics, caution should be the order of the day when drawing conclusions on the basis of divergent modes of categorization.

attempted escapes, small-scale riots, requiring the extensive deployment of coercive force to pacify the detainee population and resulting in criticism from civil society organizations. In line with broader European trends (Welch and Schuster 2005), asylum detention is growing, and it is capturing a growing stock of resources, manpower and detainees.

Drug use and distribution has also been a growing target of police surveillance and penalization. Between 1970 and 2000, the number of reported drug offenses per capita increased 170 times over: from 5 drug offenses per 100,000 persons to 853 drug offenses per 100,000 persons (Falck et al. 2003: 41). They constitute the category of crime that sits most uncomfortably with the Nordic penal exceptionalism thesis, a point recognized by Pratt (2008b: 285), who observed that both “Norway and Sweden have very strict anti-drugs laws.” In the Nordic countries, “criminal justice policies tend to have a moralistic tinge, especially in relation to drug and sexual offenses,” Lappi-Seppälä and Tonry (2011) suggest. Sweden transitioned from a rehabilitationist “harm reduction” program in the 1960s and 1970s to a series of “zero tolerance” and “punitive prohibition” policies in the following decades (Bewley-Taylor 2012: 62). There is little to suggest that Norway has deviated from its Nordic neighbor in the criminalization and penalization of drug consumption and distribution; indeed, drug crime has been a major concern for Norway’s penal state over the past three decades. The number of drug crimes reported to the national police grew from around 12,000 cases in 1993 to around 45,000 cases in 2012 (Statistics Norway 2013b). Between 1985 and 2009, the police were seizing around ten times more cannabis, 25 times more heroin, and 60 times more cocaine (National Police Directorate 2010: 6). One-quarter of Norway’s inmates are in prison for drug-related offenses.⁷

By now, the “crime-incarceration disconnect” is a widely recognized phenomenon (Lappi-Seppälä 2011: 308), strikingly evident in the coexistence of US mass incarceration and the “great American crime decline” (Zimring 2006). Mimicking the growing incidence of punishment amidst declining crime rates seen elsewhere, the Norwegian penal state was rolled out precisely as crime rates generally declined, from a total of 319,523 instances of police-recorded offenses against the penal code in 2002 to 264,199 offenses in 2008 (Eurostat 2010: 6).⁸ The growing incidence of more serious crimes like homicides cannot be said to explain the expansion of punishment either: homicides resulted in 51 deaths in 2003 and 29 deaths in 2009 (Eurostat 2012: 8).⁹ Declining proportions of the population reported being exposed to violence or theft between 2001 and 2012. The percentage of the population exposed to “violence, threats of violence, theft or criminal

⁷ The actual contribution of drug crime to the prison population is probably higher. Persons who have committed multiple types of offenses only appear in the official statistics with offense category that carries the longest maximum sentence.

⁸ Crime victimization surveys are not regularly carried out in Norway. Instead one is forced to rely on police-recorded crime, which risks underreporting or skewing representations of the “real” incidence of crime (Walklate 2007: 58–66). Van Kesteren et al. (2000) suggest that Norway’s crime victimization has increased slightly between 1988 and 2003/2004, but the findings are based on two entirely different survey instruments: 1989 ICVS data and 2003–2004 EU ICS data. See also Falck et al. (2003) for a survey of crime trends between 1950 and 2000, suggesting that the number of reported offenses per 100,000 persons doubled between 1980 and 2000. Again, however, this may be more indicative of police strategies and reporting habits than the “real” incidence of crime.

⁹ Other data sources corroborate this tendency. Official crime statistics in Norway suggest that the number of murder victims remained stable and low throughout the 2000 s with 33 victims in 2004 and 29 victims in 2012. There was, however, a spike the preceding year, with 77 victims from the 22 July 2011 terrorist attacks alone, and in the following year, with 45 victims in 2013 (National Crime Investigation Service 2013: 2).

damage” declined from 17.3 percent in 1991 to 11.8 percent in 2012 (Statistics Norway 2013a). Growing punitiveness seems to have coincided with a broad decline in crime rates.

To take but one illustrative example: a moral panic broke out in the press in 2013 over an alleged spike in robbery incidents in the capital of Norway. Following a well-trodden European path towards the construction of foreigners as “suitable enemies,” (Wacquant 1999), the panic centered on the trope of “child robbers”—roving, predatory juvenile offenders, drawn from the ethnoracially diverse communities of the eastern, working-class suburbs of the city—and the notion of a “crime wave.” Sudden and widespread concern over a supposed “robbery wave” (*ransbølge*) is evidenced by an abrupt surge in national newspaper reporting on this topic: In 2011 and 2012, nine and ten newspaper articles respectively made use of the term “robbery wave”; in 2013, the number of reports employing the term had jumped 13-fold.¹⁰ A typical example of reporting during this alleged surge in street crime was a brief piece in the daily newspaper *Dagsavisen* (2013), which reported beneath the headline, “The Crime Wave Continues,” that a “young man armed with a pistol yesterday robbed a store in downtown Oslo,” described as being of “eastern African appearance between 16 and 18 years old and wearing all-black clothing.” The article further noted that on the same night, “a 46-year-old man was hit on his forehead and had his cell phone stolen from him by a youth gang,” described as “possibly Eastern European.” Foreignness and dangerousness were intimately woven together, as in earlier instances of moral panic over the shadowy figure of the Muslim male in public debate (Bangstad 2011).

Sensationalist crime reporting was disconnected from underlying realities. There was no extensive surge in robberies to explain the sudden boost in reporting. Admittedly the police recorded 874 robberies in 2012 and 997 robberies in 2013, a 15.5 percent increase, but on the other hand the number of aggravated robberies between 2012 and 2013 fell by 9.2 percent. Between 2003 and 2013, the number of robberies per year hovered between ca. 800–1100 cases per year, making 2013 a typical year by that decade’s standards. The phenomenon of increased reporting of crimes to the police when the perceived likelihood that a crime will be resolved (e.g. Levitt 1998) might have contributed to the slight increase in reported incidents from 2012 to 2013. And when taking into account the booming population growth in Oslo over the course of that decade, the rate of robberies per 100,000 persons actually declined from 165 robberies per 100,000 persons in 2003 to 160 robberies per 100,000 persons in 2013. Such factual details were, however, increasingly irrelevant in an ever-more punitive atmosphere. The Oslo Chief of Police expressed support for “stricter punishment” so that criminal offenders could be “kept out of circulation for a long time.” (Storeng 2013) The Conservative Party Prime Minister, Erna Solberg, believed “immigrant parents” needed to “crack down” on their offspring’s unacceptable behavior; the Progress Party Justice Minister, Anders Anundsen, enumerated a series of “immediate measures,” including the creation of a police special task force, expanding the Trandum asylum detention center, ensuring the rapid deportation of foreign offenders, and establishing separate juvenile facilities for juvenile offenders (Norwegian Ministry of Justice 2013b). Moderating statements from police officials suggesting that the “crime wave” was partly uncorroborated by statistical records were drowned out when robbery victims and punitive politicians were trotted out to demand stricter sentencing and increased police surveillance.

At the same time, the policing of urban disorders and the criminalization of poverty seemed to take on a new salience. In May 2013, a ban on sleeping outdoors in Oslo was

¹⁰ These findings are based on searches in the Retriever Database (<http://www.retriever.no>).

Searches were confined to the Norwegian national press and employed the search term “robbery wave” (“*ransbølge**”) with an asterisk appended to capture suffixes after the word stem.

rolled out in response to growing discontent with the influx of disreputable Roma populations (Riaz 2013). A proposal by the Progress Party-Conservative Party coalition government to ban begging was publicized the following year, explicitly targeting an alleged spike in “organized crime in the wake of mobile begging groups,” according to the Progress Party (Aftenposten 2014b). Framing the debate in such a way as to attach the stigma of criminal pathology to the Roma populations, presented by politicians as consisting of “beggar gangs” orchestrated by “criminal masterminds,” was contradicted by findings that most visiting Roma people were essentially poor, unskilled migrant laborers from an economically depressed corner of Europe traveling to one of the richest countries in the world to eke out a meager living (Engebrigtsen 2012).

Discussion

Scholars are constantly detailing ruptures, revolutions, and new beginnings where adaptation and evolution are commonly the order of the day; as Bourdieu (2014: 357) notes, social scientists are all too often subject to a rupture bias that operates as a “prophetic strategy” that tends to produce academic profits—owing more to the contingent characteristics of the scholarly field than to the empirical parameters of the social world that is under study—at the expense of descriptive adequacy. This poses a properly dialectical problem, one of avoiding the excesses of “catastrophic criminology” (Hutchinson 2006) while at the same time remaining open to the possibilities of significant shifts in forms of penal governance.

One should be careful not to exaggerate the present scale of transformation in the domain of Norwegian penal policy. First, prison conditions remain markedly more generous than those found in many advanced societies. Case in point: in 2015, prisoners could receive 63.50 NOK (around 8 US dollars) per day in exchange for working or studying,¹¹ and even after taking into account elevated costs of living, this is far more generous than the minimum employment remuneration of 4 British pounds (around 6 USD) paid by prison authorities in England and Wales *per week*.¹² One-third of all Norwegian prisoners reside in minimum-security, “open” facilities, which are in many ways less intrusive than higher-security facilities. Norwegian prisoners are allowed to vote in national elections; one might compare this with the widespread practice of felony disenfranchisement in the United States, which in some cases extends even beyond the immediate period of confinement, or the British blanket prohibition on inmate voting in elections. The principle of “normalization” holds a dominant position in official discourse on imprisonment, and a strong commitment to replicating “normal” conditions within prison does give the prison system a peculiar character. Thus Anders Behring Breivik, the perpetrator of the 22 July 2011 terrorist attacks and one of the worst spree killers in modern history, was granted conditional permission to study political science at the University of Oslo while remaining in high-security confinement. And while Norway’s incarceration rate has increased in recent decades, it has done so at a slower pace than that of other Western European societies.

¹¹ Particularly important prison jobs were remunerated with an additional 24 kroner per day. Regulations governing prison inmate pay is outlined by the Norwegian Correctional Services in an annually renewed directive: <http://www.kriminalomsorgen.no/getfile.php/2855696.823.fdxuwcvetf/KDI+rundskriv+1-2015.pdf>.

¹² Prisoners in Norway are paid some six times a greater amount (in nominal terms) compared with the minimum wage received by prisoners employed under the auspices of Her Majesty’s Prison Service in England and Wales.

Second, alternatives to imprisonment are being deployed on a large scale by the court system. The number of community sentences (*samfunnsstraff*) more than tripled between 2002 and 2013, outpacing the 30 percent hike in the number of unconditional prison sentences over the same time period.¹³ Electronic monitoring has become an increasingly popular alternative to incarceration, with an increase from 95 persons who served their entire sentences using electronic monitoring in 2008 to some 1681 persons in 2013. In many ways, these sentences may be preferable to serving time in a prison, and they have been interpreted by some as an instantiation of lenience; the crucial questions, however, are whether electronic monitoring represents a widening of the “penal dragnet,” that is, whether it replaces imprisonment with a more lenient alternative (or whether they expand the menu of penal choices available to the courts), and whether this apparently anodyne legal sanction does not in itself involve the introduction of a novel set of unanticipated, intrusive vectors of social suffering.

Third, drugs for personal use (defined as the possession of 1–2 “user doses”) are typically sanctioned with a fine rather than the use of imprisonment, and this includes “hard” drugs like heroin and cocaine. While official statistics suggest that the punitive sanctions leveled against drug consumption have remained confined to the imposition of fines, the police have aggressively pursued drug offenders in recent decades. The *policing and surveillance* of drug use and possession has increased dramatically: from 4785 police-reported offenses in 1993 to 24,168 offenses in 2013, a 405 percent increase over the course of two decades (Statistics Norway 2015). Between 2002 and 2013, the total number of punitive reactions (conditional and unconditional prison sentences, court-mandated fines, and administrative fines) towards drug offenses increased from 11,866 instances of penal sanctioning to 16,288 instances. Drug use and consumption should still be considered an increasingly important target of the penal state, as evidenced by the remarkable expansion of the police dragnet surrounding drug consumption.

While a synchronic, cross-national comparisons may suggest the continued existence of an exceptional penal regime in Norway, an internal, diachronic assessment of the country’s mode of punishment suggests that the trajectory of the penal regime as a whole seems geared more towards expansion than contraction, towards growing penalization rather than greater lenience, and towards the growth of policing, security, and surveillance.

Drawing on the work by Wacquant (2008b) on the link between neoliberal transformations of the state and the resurgence of punitive policymaking, I propose interpreting the transformation of the Norwegian penal state along three different theoretical dimensions. First, political contestation is increasingly oriented around symbolic rather than material issues; crime and punishment are well-suited targets for political contestation because they allow politicians to portray themselves as decisive (Jones and Newburn 2006). Second, the willingness to invest—in both the symbolic and fiscal sense—in criminal justice policies that are rehabilitative and tolerant is under pressure because of growing differentiation in the social structure along ethnonational and socioeconomic class lines. Finally, the universalist, social-democratic welfare state is gradually being restructured in the direction of increased neoliberalism, which generates problem populations that are increasingly likely targets of containment by a punitive penal state rather than an assistive social state.

¹³ The number of community sentences increased from 750 sentences in 2002–2427 sentences in 2012, while the sum total of unconditional prison sentences grew from 9041 sentences to 11,676 sentences in the same time interval, according to data from Statistics Norway (<https://www.ssb.no/statistikkbanken/selectout/ShowTable.asp?FileformatId=2&Queryfile=2015713231832455118502Reaksjon01&PLanguage=0&MainTable=Reaksjon01&potsize=240>).

Symbolic Contestation

Politicians increasingly compete over the right to differentiate themselves in the field of symbolic politics, that is, in a symbolic-culturalist, value-oriented policy domain, which includes topics like immigration, asylum seekers, crime, and punishment. Politicians construct and exploit perceived social problems in these fields to present themselves as competent and potent agents of change and state responsibility, differentiating themselves from their peer-competitors in a crowded multi-party political landscape. It is not at all clear why a rightward shift in the politics of crime control has become such potent force for party differentiation and voter mobilization, and the causes are no doubt complex. One clue resides in the hiatus in expansive *material* welfare spending in Norwegian society. Between 2005 and 2013, the Red-Green Coalition government introduced an 8-year freeze on tax increases, effectively locking taxes to their 2004 levels. As income poured in from the booming oil and natural gas industry, the state found itself in a peculiar position: on the one hand, it enjoyed a steady and expansive flow of income from heavily-taxed natural resources, resulting in the accumulation of hundreds of billions of dollars in cash in a Sovereign Wealth Fund, potentially providing practically limitless state spending. On the other hand, without the opportunity to rein in private spending through raised tax levels, the natural resources revenue streams could not be used to fund expansive welfare spending programs without raising inflation and destabilizing inflation-oriented macroeconomic policy goals. With few opportunities to embark on large-scale public works programs or investments in public infrastructure, then, what was left to politicians was the opportunity to mobilize voters over value-laden and symbolic questions.

As Newburn (2002) points out, law and order policies permit politicians to stage a profitable “tough on crime” stance: politicians can appear formidable as they embark on campaigns against disorderly youths and drug dealers or lengthening sentences for violent offenders. In the case of Norway, the Progress Party has mobilized a law and order agenda to capture the public imagination. In the process, it has pulled the Labor Party towards its own position. The mechanisms of such attraction are undoubtedly intricate. Plausibly, the Labor Party has feared the possibility of the Progress Party appropriating supernormal profits by being the sole voice of law and order—and therefore of *punitive common sense and reason*—in the public sphere. Whatever the cause, the two parties have engaged in an inter-necine struggle for the position of leading exponent of punitive policies.

A clear case in point: in 2010 the right-wing populist Progress Party launched a 10-point prison reform proposal aimed at creating harsher conditions of confinement in Norway’s prisons. While it remained a proposal from a government opposition party, it signaled a sea change in political discourse. Prison allowances for Norwegian inmates were to be cut in half and foreign inmates were to have no right to wages at all. Foreign citizens were to serve their sentences in prisons with “lower standards” than those enjoyed by Norwegian citizens. The names of child sex offenders were to be made public. Early release on parole was to be subject to stricter scrutiny. Inmates were to take part in mandatory work activities during the daytime, and all social welfare provisions from other parts of the welfare state to foreign citizens were to be reduced to zero. “No one is frightened by Norway’s prisons,” Per Sandberg, deputy leader of the neoliberal Progress Party, said at the party’s national conference. “Foreign criminals are a big problem, and mild sentences and high-quality facilities aren’t helping” (Fremskrittspartiet 2011). Their proposals were ridiculed by the Labor Party’s Minister of Justice, Knut Storberget, who described the proposals as “unspeakably bad,” and he observed that “the countries that try to worsen inmates’ conditions struggle the most with crime” (Johnsrud 2011). Despite the initial rejection the Labor Party-led coalition

government established a segregated prison reserved for foreign citizens the following year (Norwegian Broadcasting Corporation 2012). In this way, the rhetoric and policies of crime control by the governing social-democratic party were drawn in the direction of the Progress Party's law and order orientation.

Differentiation and Social Solidarity

Both the universal welfare state and the rehabilitationist penal state depend on a minimum of social solidarity for their sustenance. "Everyone who receives the protection of society owes a return for the benefit," Mill ([1859] 2003: 147) noted. Comprehensive webs of mutual rights and obligations are crucial for maintaining generous social provisions and comparatively mild penal strategies. What matters most is perhaps not population homogeneity as such, since homogeneity is a contingent and constructed property and the outcome of boundary-drawing activities, but that collective representations are shaped in such a way that members of the polity conceive of their fellow citizens as honorable, worthy recipients of welfare state goods. There is much to suggest that such collective representations are being transformed in Norwegian society.

First, the distribution of income and wealth has grown increasingly polarized. According to the OECD (2014b), since the 1980s, Norway has experienced rising poverty and income inequality on a number of important measures: The S90/S10 disposable income decile share increased from 4.500 in 1986 to 6.100 in 2011; the Gini coefficient, post taxes and transfers, increased from 0.222 in 1986 to a peak of 0.276 in 2004 before decreasing slightly to 0.250 in 2011. The median poverty gap after taxes and transfers (with a poverty line set at 50 percent) more than doubled between 1986 and 2011. Hansen (2014) shows that the concentration of income in the top 1 percent of income earners more than doubled from 1990 to 2006, and that the wealthiest 1 percent control around 20 percent of total net wealth, arguing that the Norwegian "safety net provided by welfare state institutions [...] does not seem to limit the opportunities to acquire high incomes or accumulate large holdings of wealth."

Second, large-scale immigration has taken place in a society that has traditionally been considered ethnically homogeneous. Immigration has been fueled by the demand for inexpensive labor in manual and low-skilled sectors of the economy, work that is increasingly viewed as undesirable by the symbolically prestigious population of non-immigrant Norwegians. One-third of all immigration since 1990 has been motivated by the search for work, and nearly 200,000 persons moved to the country (Statistics Norway 2014). Simultaneously, non-Norwegian citizens now make up around one-third of the prison population. The perceived intersection between immigration and crime has had a destabilizing effect on penal regimes all across Europe (Aas 2013: 20). A *dualization* of the penal system has occurred where foreigners are channeled into divided modes of punishment in the form of "separate but parallel systems, one for citizens, another for non-citizens" (Ugelvik 2013: 196).¹⁴ It remains to be seen whether such separate-but-equal measures will degenerate into the kinds of inferior treatment such measures have

¹⁴ The concept of "dualization" has been used by political scientists to study the transformation of labor market regimes; it has been mobilized to describe the unfurling of a two-track system in labor protection, job quality, and employment stability in recent decades, as labor market segmentation arises between "insiders" in standard, protective, high-quality employment and "outsiders" in precarious, irregular, and atypical employment (see e.g. Thelen 2012). The concept can be applied to penological inquiries to capture the split between generous rehabilitationist policies, reserved for national "insiders," and penal austerity, targeted towards non-citizen "outsiders."

tended toward in other historical situations. Some political rhetoric is suggestive of this tendency: “We don’t need to spend resources on rehabilitating offenders who will be extradited and who won’t be returning to Norwegian society after release,” said the deputy leader of the Conservative Party in 2012. “We would also like to end the notion that certain foreign criminals consider serving time in Norwegian prisons like a holiday” (Aftenposten 2012).

Growing differentiation of the national population threatens to wear down the social compact underpinning both the universal welfare state and the rehabilitationist penal state. Differentiation can threaten the cosmology of social democracy. One should hasten to add that difference per se does not necessarily challenge social democracy but rather the meaning attached to difference. A perfectly homogeneous society might receive a large influx of immigrants and have no trouble accommodating them. It is only through symbolic struggles that construct salient differences out of an aggregate of individual properties that such population flows might make a difference for the state of the social compact. The conditions that make such symbolic struggles more likely to occur remain to be specified. One such condition may be a period of economic austerity where competition for scarce jobs becomes refracted through an ethnoracial optic, but even here, crucially, “the intensity of conflict does not depend on real competition in the job market,” as Wimmer (1997: 21) observed. “Rather, it stems from the perception of equality and difference, of legitimate and illegitimate competition.” Another condition may be the degree of generosity of the welfare state: the more generous, the more important it becomes to draw boundaries between worthy and unworthy recipients of those generous provisions. A dualized penal state becomes one mechanism by which the generosity of the welfare state can be protected and reserved for the core of the worthy citizenry.

Transforming the Welfare State

Under Esping-Andersen’s (1990) tripartite model of welfare capitalism, Norway has been characterized as a social-democratic welfare state. According to Esping-Andersen’s model, the social-democratic welfare state is characterized by generous, universal, and strongly de-commodifying welfare provisions. As Przeworski (1985) observes, social democracy in a broad panoply of variants has been the dominant form of democratic capitalism in the twentieth century, producing a relatively stable and prosperous brand of market capitalism: markets with a human face. In Norway, social democracy arose out of a powerful Labor Party and trade union movement in the first half of the twentieth century, ushering in the “age of social democracy” in the second half of the twentieth century: the ideology of social democracy achieved hegemony more or less uninterrupted during the postwar Golden Age of Keynesian welfarism until the rupture and transformation of the 1980s *laissez-faire* revolution (Sejersted 2011). However, the Nordic social democracies have been transformed in the past three decades. The Reaganite-Thatcherite neoliberal revolution of the 1980s swept across large sections of the industrialized world (Harvey 2005), and the uncertain fate of Nordic social democracy in the face of this revolution was observed by social scientists at an early stage. In Sweden, Pontusson (1984: 70–71) noted that “party politics has become increasingly polarized” and that “the traditional hegemony of social democracy appears to have been eroded.” To all those who held out hope for the Nordic countries as a bastion of opposition against the tide of neoliberalism, Pontusson (1987: 5) warned: “Against the background of what has actually happened in this period, it cannot but seem odd, and frankly disheartening, that the

current government in Stockholm should be construed as the flagship of the European Left.” In Norway, observers warned of the “decline of social-democratic state capitalism” altogether (Fagerberg et al. 1990).

Following Wacquant (2012), I understand neoliberalism not as the replacement of the state by markets; rather, neoliberalism entails three fundamental points of political alteration: First, neoliberalism is a project of statecraft that involves a transformation rather than a downsizing or destruction of the state. Second, neoliberalism involves as a rightward shift in the political common sense of the state. Third, the order-maintaining institutions of the state are scaled up and attain positions of central importance because they are needed to regulate the disorderly conduct of problem populations and to act as a stage on which politicians can forcefully pose to bolster public support.

The ascendancy of neoliberalism should not be exaggerated. Its deployment has been uneven, its trajectory littered with “contradictory obstacles...to the realisation of its liberal programme at the global level” (Turner 2008: 3). In Norway, replacement rates for unemployment and sick pay increased between 1975 and 1999 (Allan and Scruggs 2004: 500). Social spending remains high and generous. At the same time, however, there have been significant shifts in the political economy of the welfare state, and the sum total of these changes has been the dilution and diminution of social democracy (see e.g. Mydske et al. 2007).

First, national industries have been denationalized and privatized. The leading national oil company Statoil was partially privatized in 2001 and became a public listed corporation on the Oslo Stock Exchange and the New York Stock Exchange. The national telecom company Telenor was partly privatized in 2000 and listed on the stock exchange. While the state maintains large ownership shares, the marketization of national industries represents a fundamental shift “from state to market” (Megginson and Netter 2001). Second, welfare provision has increasingly been conditional on workfare policies, increasingly obliging recipients to work in exchange for benefits. Following Clinton’s promise to “end welfare as we know it” in the mid-1990s, resulting in a rollback of crucial elements of US social policy (Zylan and Soule 2000), Norway has gradually made moves in the direction of workfare, albeit timidly and to a circumscribed degree (Kildal 2001). Third, as an illustrative example of the decline of universalist policies, co-payments for medical consultations have increased, and a nationwide general practitioner program was rolled out almost solely with the aid of privately contracted physicians (Lian 2003). Finally, Norway has established one of the world’s largest Sovereign Wealth Funds (Chesterman 2007), investing some 5500 billion NOK (around 860 billion US dollars) on world markets, effectively making the state dependent on the continued good fortunes of liberal financial markets and the profitmaking abilities of some 7000 separate corporations.

Conclusion

Norway’s penal state has moved in a punitive direction in recent decades. “Nordic crime policy has become more offensive, more politicized, and more adaptive to the voices of the media,” notes Lappi-Seppälä (2012) in a review of recent policy developments. For Norway’s part, the incarceration rate has increased, a dualization within the prison system between Norwegians and non-nationals has taken place, and concerns over security and public safety have increased. Along with this penal convergence with the rest of the advanced world, Norway’s welfare state has been transformed: there has been

a rightward shift in the bureaucratic field, a movement towards market-oriented restructuring of the public sector, growing socioeconomic inequality, and an expanding dependence on private providers of welfare state services. One might plausibly view these developments in conjunction: changes in the welfare state are linked to transformations in the penal state.

These changes have been gradual and glacier-like. The result of those minor incremental steps, however, has been a significant change of course. The diminution of Nordic penal exceptionalism can be viewed along three dimensions. First, the collective representations and state practices that permitted a humane and rehabilitationist orientation towards criminal offenders was driven by a belief in the undifferentiated qualities of the population, a lack of difference that countered a process of “othering” vis-à-vis criminal offenders. As differentiation has set in the social compact underlying both *universal welfare policies* and *rehabilitationist penal policies* has been destabilized. Second, generous welfare states seem to require the production of boundaries between worthy recipients and unworthy outsiders. Typically such boundaries are minimally drawn on the basis of citizenship. As immigrant laborers and asylum seekers have entered the country in growing numbers, a *dualization* of the institutions of confinement has taken place, resulting in a differentiated set of facilities and practices for foreign citizens. Third, the dwindling material-economic space of policy competition has added prominence to the *symbolic-cultural* domain of political contestation.

Crime and punishment have proven fertile ground for electoral contest, allowing politicians to present themselves as vigorous proponents of social improvement through “law and order” rhetoric and punitive policymaking. What we are witnessing is perhaps a homogenization of Europe’s penal landscape.

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Appendix

See Fig. 1.

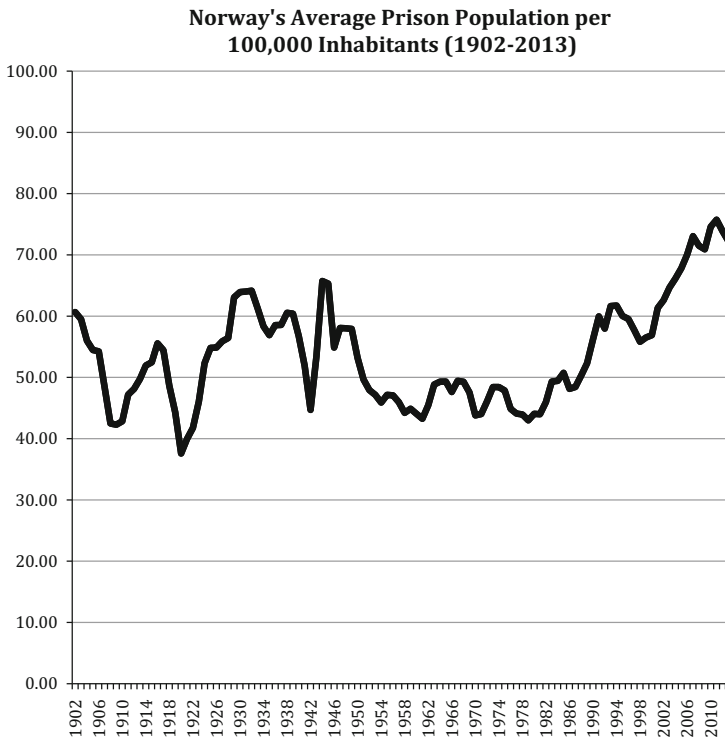


Fig. 1 Average Prison Population per 100,000 Inhabitants in Norway (1902–2013). Average prison population figures are drawn from a series of official government sources: *Fengselsstyrets historie, 1931–1950*; *Statistisk årbok 1957*; *Statistisk årbok 1960*; *Statistics Norway*, “Belegget i fengselsanstalene”; *Statistics Norway*, “Some main results from the statistics on imprisonment, 1960–2011”; *Statistics Norway*, “Imprisonments, 2012.” Average annual prison populations were converted to rates of imprisonment per 100,000 inhabitants using annual demographic records from Statistics Norway. For the years 1940–1945, persons imprisoned on orders from the Nazi occupying powers were later excluded from official correctional statistics. Norway’s Ministry of Justice also excluded persons who were imprisoned after World War II for collaborating with the Nazi regime from their statistical reports. No doubt this artificially deflates the postwar imprisonment rate: for several years following World War II, some 18,128 persons were imprisoned or convicted of forced labor on grounds of wartime collaboration, and around 70 percent of prison sentences were 6 months or longer (Central Bureau of Statistics of Norway 1954: 30–34). However, in lieu of precise records of the duration of imprisonment, those persons have not been included here

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