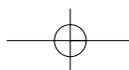
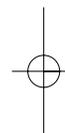
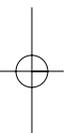


Part 2

PENAL SYSTEMS IN CRISIS?



2

Globalized Penal Crisis?

In some Western countries we have become accustomed to what could almost be called institutionalized penal crisis. Prisons are continually reported to be overpopulated, overcrowded, squalid and insecure, inhabited on the one hand by staff who are demoralized, disaffected and restless, and on the other by inmates simmering on the point of riot and rebellion. There is a general *crisis of penal resources* as places in prison and other facilities are stretched to deal with ever-increasing numbers. The whole criminal justice system – not just the penal system – suffers from a chronic *crisis of legitimacy*, being generally viewed as simultaneously ineffective in controlling crime, inefficient and often inhumane. And none of this is new: the situation has been prevailing for decades – although it may appear to be constantly deteriorating – to such an extent that the ‘crisis’ has become institutionalized as part of our routinized expectations of the social scene.

It may consequently come as a surprise to some that penal crisis is not a universal and inevitable feature of life at the beginning of the twenty-first century. As we shall see, some countries – such as the USA and England and Wales¹ – can be fairly said to suffer from penal crises of the kind we have described – although even in these countries not all the supposed characteristics of a crisis may be currently present. Other countries, however – such as Finland and Germany – cannot be said to have penal crises. In Chapters 3 to 11 we shall deal with each of the countries in our sample in turn and detail the ways in which the features of a stereotypical penal crisis are and are not exhibited by each countries’ penal systems and discuss the reasons for both the similarities and differences which exist. Before we do so, however, we shall discuss some of the characteristics of ‘penal crisis’ in more general terms.

The first of these, and in many ways the most notable and crucial characteristic of penal crisis, concerns the sheer number of people imprisoned. There is a very widespread international trend as regards numbers of prison² inmates. Numbers – both absolute and in proportion to general populations – are at historically very high or even all-time record levels; there has been dramatic growth in recent years; and the current trend is still sharply upwards. But, though this may be *generally* true, it is not true of all countries, as we shall see.

PENAL SYSTEMS

Table 2.1 *Total prison populations in selected countries, 1986, 1995, 1997/8 and 2002/3*

Country	Total prison population			
	1986	1995	1998	2002/3
USA***	744,208	1,585,589	1,725,842	2,033,331
South Africa	110,481**	112,572	142,410	180,952
New Zealand	2,654	4,375	5,236	5,881
England and Wales	46,581	51,265	65,906	74,452
Australia	10,815	15,327	17,661	22,492
The Netherlands	4,906	10,200	13,618	16,239
Italy	43,685	49,642	49,477	56,574
(West) Germany	53,619	66,146	74,317	81,176
France	47,628	53,178	53,259	55,382
Sweden	4,649	5,767	5,221	6,506
Finland	4,219	3,018	2,798	3,617
Japan	++	45,057	49,414	67,255

Sources: Council of Europe, Prison Information Bulletin, June 1986 and January 1987; *Prison Statistics England and Wales* 1995, 1996; Walker et al. (1990); Törnudd (1993); Walmsley (1999, 2003b); contributors' questionnaire responses. Figures are for 1 September wherever possible.

**1989 figures

***Includes prisons and local jails

++Data not available

The USA, where there has been a massive 400 per cent increase in the prison population between the mid-1970s and the present day, is the most prominent and dramatic current example of hyperincarceration. Other countries, as in so many other respects, tend to trail along behind the USA in this regard, but the general direction is the same. For example, the English prison population has risen from under 40,000 in 1975 to 46,581 in 1986 and 66,300 in 2001, exceeding 75,000 in 2004. New Zealand has seen its prison population rise even more sharply, from 2,654 in 1986 to 7,327 in August 2004, while in next-door Australia the numbers of those imprisoned went from 10,815 in 1986 to 22,492 in 2002.

Tables 2.1 and 2.2 present comparative figures for the countries in this study for the years 1986, 1995, 1997/8 and 2002/3. Table 2.1 provides actual numbers of people incarcerated; Table 2.2, more helpfully, presents imprisonment *rates*: numbers imprisoned per 100,000 of the population. They demonstrate an overall increase in the prison populations in eleven out of our twelve countries between 1986 and 2002/3. Contrasting with large increases in countries such as the USA, the Netherlands and New Zealand, Finland is the only country out of the twelve which has *reduced* her imprisonment rate over this time period. However, it should be noted that several countries – South Africa, West Germany, France, Italy, Sweden and England have all seen reductions in their prison populations *at times* during the 1986–2003 period.³

GLOBALIZED PENAL CRISIS?

Table 2.2 *Imprisonment rates in selected countries, 1986, 1995, 1997/8 and 2002/3*

Country	No. of prisoners per 100,000 population			
	1986	1995	1997/8	2002/3
USA***	313	601	645	701
South Africa	373**	273	321	402
New Zealand	75*	120*	145	155
England and Wales	93	99	125	141
Australia	70	90*	95	115
The Netherlands	34	67	87	100
Italy	76	90*	86	100
(West) Germany	88	80*	90	98
France	84	91	91	93
Sweden	56	65	59	73
Finland	86	60	55	70
Japan	++	35	39	53

Sources: Council of Europe, Prison Information Bulletin, June 1986 and January 1987; *Prison Statistics England and Wales* 1995, 1996; Walker et al. (1990); Törnudd (1993); Walmsley (1999, 2003b); contributors' questionnaire responses. Figures are for 1 September wherever possible.

*Rounded to nearest 5

**1989 figures

***Includes prisons and local jails

++Data not available

It may come as no great surprise to learn that, as a general rule, high and fast-rising prison populations tend to be associated with the other indices of crisis mentioned at the start of this chapter.⁴ The more inmates a system has to accommodate, the more stretched resources are likely to be, leading to prison overcrowding, low morale among correctional staff and the likelihood of disturbances and incidents and practices that decrease the legitimacy of the penal system. Abstractly, one might imagine that one could avoid a 'crisis of resources' and its effects by increasing spending on prisons in line with the increase in prison population, but in practice this is near-impossible even for the richest of nations, as the USA has found. Given such rising trends, even a determined attempt to increase resources is likely to lag woefully behind the upwards spiral of incarceration. Put bluntly, it is generally found that in such times, prisons fill up faster than you can build them.

Before we proceed to explore whether and to what extent punishment and crisis levels have risen in our individual countries, we shall discuss briefly some of the reasons why there might have been this *general* (if not universal) increase in apparent punitiveness.

First of all, is it really only an increase in *apparent* punitiveness? Is it simply that there is more crime and more criminals leading to more prisoners, or perhaps,

are more criminals being caught and ultimately incarcerated? The short answer is no. It is true that the general trend is for crime to rise, but studies have not found any consistent relationship between crime rates and imprisonment rates.⁵ Countries such as the USA, and England have been seeing *declining* crime rates recently (after 1980 in the USA and from the mid-1990s in England) – but their imprisonment rates have gone on rising apace. Nor can their imprisonment rates be attributed to more offenders, or more serious offenders, coming before the courts for sentencing (see, for example, Halliday, 2001: 79–80). Rather, what is generally found is that – to use one of our own soundbites – *sentencing is the crux of the crisis* (Cavadino and Dignan, 2002: Chapter 3). This is not to say that other factors, such as the operation of laws on pre-trial detention and the early release of prisoners cannot have important effects on prison populations. But as a general rule the most salient factor in imprisonment rates and changes in those rates is the sentencing practice of the courts when dealing with offenders.

Such sentencing practice can in turn be affected by many external factors, such as (obviously) the legal framework within which sentencing operates – introducing new minimum sentences such as ‘three strikes and you’re out’ provisions are indeed likely to have a measurable effect, as can ‘sentencing guidelines’ which steer rather than fetter the court’s discretion in sentencing. Above all, perhaps, sentencing is affected by the penal mood and temper of the times, as expressed in political and media discourse about crime and punishment (and indeed this mood and temper will also obviously shape any legislation which affects the legal sentencing framework). Thus ultimately – and in line with our general thesis – it will often be a country’s *penal culture and ideology* which is largely responsible for bringing about a particular rate of imprisonment rather than any material truths about the amount of crime or the number of criminals.

This is not necessarily to say, however, that the long term postwar increase in crime has had no effect at all on imprisonment rates – but the effects could be mostly indirect. David Garland (2001) propounds a theory about the development of a punitive ‘culture of control’ in late modern societies, in which the growth of crime plays an important part. However, it is not that more crime means more criminals which means more prisoners. Rather, it is that more crime means less tolerance of crime in general, which leads to harsher punishment and consequently more prisoners. In particular, Garland suggests that the politically influential professional middle classes – previously largely isolated from the everyday effects of crime – now feel more threatened by crime and less inclined to favour policies aimed at the rehabilitation of offenders rather than excluding them and making them suffer. This seems plausible, and has been supported by some empirical research (Cesaroni and Doob, 2003).

We should also add that such shifts in attitude are what might be expected in societies which have *all* – even the most social-democratic of societies such as Sweden – moved in the direction of neo-liberalism in recent decades. As we

mentioned in Chapter 1, other developments which have been associated with this move towards neo-liberalism include a more populist politics and more competitive and sensationalist mass media representations of crime, which we can also reasonably assume have played their part in shaping public attitudes and official policies regarding punishment. These factors all combine and conspire over time. The march of globalization, free market forces and other rapid changes in technology, economics and culture – not least the fragmentation and destruction of traditional communities and traditional lifelong jobs – has led to both an increase in crime and to deep-seated feelings of insecurity in the psyche of the late modern individual. This in turn has fed a tendency to fear and hate 'outsiders' such as criminals – what Garland (2001) calls 'the criminology of the other'⁶ – and consequently to reward politicians who offer a punitive, exclusionary fix for crime. At the same time, modern politicians have increasingly tended to orientate their policies and pronouncements in line with opinion polls and focus groups, with the result that they are more and more likely to adopt policies which are (superficially) attractive to these more punitive voters (Cavadino et al., 1999: 215). By such means, politicians hope to garner votes despite a long-term decline in the public's confidence in governments, a lack of legitimacy fuelled by governments' apparent inability to satisfy their citizens in a number of areas, including keeping them safe from crime.

One factor which deserves a special mention is increased levels of migration towards the end of the twentieth century and at the commencement of the twenty-first. Developments such as economic decline in Eastern Europe and wars in various parts of the world have caused mass movements of refugees and would-be economic migrants, leading to people in Western nations increasingly feeling under siege from a tidal wave of foreigners who are seen as a threat to well-being and way of life. All of these dislocations can also be seen as products of the 'globalization' that has brought about the fall of the Iron Curtain, brought the ravages of free market capitalism to Eastern Europe, widened the global gap between rich and poor, and simultaneously in various ways encouraged and facilitated the movement of displaced, impoverished and persecuted people from one place to another. This has come at a time when many in the West have, as we have seen, felt pretty dislocated and insecure themselves. And, to put it glibly, during the Cold War there may have been the threat of nuclear war, but short of that eventuality you knew where you were and who the enemy was, and at least the Iron Curtain and other barriers kept them more or less safely away from you. Now there is a growing perception of seemingly strange and scary foreigners and outsiders flooding in – a feeling hardly likely to be alleviated by terrorist acts such as the attack on the World Trade Center on 11 September 2001. Both geographical and psychological boundaries and barriers feel under threat. One result has been increased levels of support for right-wing anti-immigration parties in many countries, and perhaps more importantly an adoption of harder policies on immigration and asylum by mainstream politicians.

Xenophobia, racism and harsh attitudes on law and order have always been in close alliance.⁷ 'The Other' is feared as a generally dangerous entity, and fear of crime melds with fear of the outsider: the arrival of outsiders is feared for the crime it may bring in, and when they have arrived crime is blamed on them (despite a general paucity of evidence that asylum seekers and immigrants are any worse behaved than the indigenous population). It is a commonplace observation that in the political realm harsh rhetoric and policies on 'law and order', asylum and immigration can be used and perceived as code for racist attitudes. As Joe Sim et al. (1995: 9) put it, 'Since 1990, the shifting social arrangements in Europe in general, and the attempt to construct a new hegemonic order in Western Europe in particular, have intensified the targeting of not only traditional but also new folk-devils whose presence has been not simply understood in terms of the crimes they may or may not engage in but more symbolically read in terms of the politics of internal infestation, a threat to these new shifting social arrangements.' Thus they seem to see the demonization of the foreigner and refugee as to an important extent politically engineered in a conscious attempt to create a new social order. Whether or not it is right to take such a 'conspiratorial' view of these phenomena,⁸ there can be no doubting the powerful nature of the demonization that is occurring.

Western politicians and governments have for many years been largely trying to 'pull up the drawbridge' and create, for example, 'Fortress (Western) Europe'. Many of the methods for dealing with incoming asylum seekers are essentially the same as or similar to those used for offenders – detention (including in some countries detention in prisons along with criminal offenders) and various methods of supervision and control in the community (which typically resemble bail conditions.) At the same time, disproportionately high proportions of the 'ordinary' prison populations in many countries are composed of non-nationals and ethnic minorities.⁹ Garland's (2001: 137) encompassing phrase 'the criminology of the other' is indeed apt: the outsider, whether perceived as criminal, foreign or both, is seen as 'the threatening outcast, the fearsome stranger, the excluded and embittered'.

Whether such developments are inevitable and bound to continue is a question to which we will briefly return in our final chapter. But we hope the answer is no – and we hope that some seeds of that answer can be found here and there in this part of this book.

Notes

1 England and Wales share a single legal and criminal justice system. (Scotland and Northern Ireland, which also form part of the United Kingdom, each have a separate system.) In this book, England and Wales are treated as a single country, often referred to for convenience simply as 'England' or 'English'.

GLOBALIZED PENAL CRISIS?

2 In this book we usually use the term 'prison' widely, to cover incarcerative penal institutions which may go under a variety of other names. In particular, there is a distinction in the USA between federal and state 'prisons' and local 'jails'. Unless otherwise indicated, we use the word 'prison' (and 'imprisonment') for all such institutions.

3 England's reduction in imprisonment - from a peak of 49,949 in 1988 to 44,565 in 1993 (a decline of 10 per cent) does not show up in Tables 2.1 and 2.2 because of the years selected for comparison; by 1995 England's prison population was already on a step upward trend. See further Chapter 4 and Cavadino and Dignan (2002). For the fluctuations in the prison population of the other countries mentioned, see Chapters 6, 7, 9 and 10.

4 For a 'radical pluralist' account of one country's penal crisis, see Cavadino and Dignan (2002: 28-31).

5 See Chapter 1, Note 2.

6 At the same time, paradoxically, there has been developing what Garland calls a 'criminology of the self'. This is the attempt to represent crime as a normal phenomenon which can be controlled by rational measures of crime prevention. This latter 'criminology' is one we are unable to focus upon in this book.

7 This is true at the level of individual psychology as well as the social level: strong correlations exist between racially prejudiced ideas and the belief that criminals should be harshly punished (Eysenck, 1954: 130; 1958: 286-7).

8 A less conspiratorial view would be that politicians are on the one hand responding to public concerns (of varying degrees of rationality), partly in the hope of electoral reward, partly to defuse the threat of right-wing parties, and partly because they share the same feelings themselves, while on the other hand trying to manage the economic and other problems caused by mass migrations.

9 This may have little to do with the propensity of different national or ethnic groups to commit crime. For example, the over-representation of ethnic minority groups in England's prison population is in part a product of the imprisonment of large numbers of foreign nationals from poor third world countries who are convicted of drug smuggling offences.