Prisons of Labor: Social Democracy and the Triple Transformation of the Politics of Punishment in Norway, 1900–2014

Victor L. Shammas

Introduction

This chapter charts the structural transformation of the Norwegian welfare state and attendant shifts in the modality of punishment over the course of the 20th century and beyond. Between 1900 and 2014, the Norwegian welfare state embodied three distinctive forms: first, a residualist, minimally decommodifying regime of Bismarckian welfare politics; second, a comprehensive, universalist regime of social democracy that was broadly redistributive and decommodifying along Fordist-Keynesian lines; third, a hybridized semi-neoliberal regime that maintained important elements of social democracy while implementing marketized logics of state governance, relying increasingly on private providers to deliver core state services and witnessing accelerating

V.L. Shammas (✉)
Department of Sociology and Human Geography, University of Oslo, Oslo, Norway
e-mail: victor.shammas@gmail.com

P.S. Smith, T. Ugelvik (eds.), *Scandinavian Penal History, Culture and Prison Practice,* Palgrave Studies in Prisons and Penology,
DOI 10.1057/978-1-137-58529-5_3

socioeconomic disparities. Three modalities of penality arose out of and in conjunction with these stages of transformation of the welfare state in this period (see also Hauge 2002): first, *penality as paternalism*, mobilizing prisons to act as warehouses for the poor and disreputable, particularly the unemployed, vagrants, thieves and alcoholics; second, *penality as treatment*, entailing the medicalization of social pathologies and the resurgence of prison labor schemes, paving the way for a reintegrative system of treatment and work that was fundamentally aimed at bringing wayward social agents back into the fold of the citizenry through gainful employment; third, *penality as dualization*, in which the prison system diverged along lines of citizenship, giving rise to a rehabilitation-oriented track increasingly reserved for national insiders and slowly mounting a residual, punitive wing to be mobilized vis-à-vis foreign outsiders and non-Norwegian citizens. In this third and last period, incarceration rates slowly crept upwards to levels not seen since social democracy's apex at mid-century.

More generally, there exists a nexus between *social policy* and *penal policy*, and understanding changes in the latter domain mandates attending to transformations in the former. In teasing out the myriad ways in which the political economy of the state—more traditionally the provenance of economists political scientists—impacts the objects of study held to be the preserve of criminologists, penologists, historians of the prison, and sociologists of punishment, this historical account of transformation of welfare and penality in Norway throughout the 20th century and beyond underscores the importance of "bringing the state back in," to use Theda Skocpol's phrase, in studies of the politics of punishment. Admittedly, while there is a *covariation* between the structure and logic of the welfare state and the modality of the penal state, the latter is not reducible to the former (Wacquant 2009); the penal field is relatively autonomous, and the contours of punishment adhere in some measure to a principle of autochthony in which agents internal to the field determine policy agendas that are not immediately translatable to transformations in the wider state (e.g. Goodman et al. 2015). While detailing the totality of mechanisms underpinning the coevality of social policy with penal policy remains beyond the scope of this chapter, for the purposes of a macrohistorical account of systemic evolution over the

longue durée, a "state-centered approach" offers an initial, parsimonious mapping that would otherwise threaten to be as large and unwieldy as the terrain it purports to describe.[1]

Three Faces of Penality

Penality as Paternalism (1900–1945)

At the outset of the 20th century, Norway was a poor, underdeveloped, and largely nonindustrialized member of the European periphery. Despite its backward economic condition and subservient membership in a political union with Sweden (lasting until national independence in 1905), a series of early attempts at constructing an embryonic welfare state had started in the 1880s which had resulted in a series of carefully circumscribed, moderately protective social policies. This constituted the second half of Polanyi's (2001 [1944]) famed "double movement," the first being the institution of *laissez-faire* capitalism across large parts of the industrialized and industrializing world, revolving around the fantasy of the "self-regulating market," the second being the counterreaction that saw a movement towards growing "collectivism" across the advanced world. This latter "movement" entailed a form of primitive welfarism, including policies like workers' safety legislation to deal with decrepit conditions of life in factories and mines, sickness insurance, public housing, healthcare, sanitation, and public education. On Polanyi's account, this collectivist reaction to the dream of market society was not the outcome of a "conspiracy"; rather, it was the natural and expected counter-reaction to the visibly harmful effects of the self-regulating market—of excessive inflation, rampant unemployment, and squalid living conditions.

[1] For alternative mappings and periodizations of the history of imprisonment in the Scandinavian countries, see Nilsson's (2013) account of Swedish incarceration in the mid-sections of the 20th century; Søbye's (2010) micro-level account of the historical transformation of a prison in Oslo, Norway; Pratt and Eriksson's (2013) comparative analysis of incarceration in three Nordic and three Anglophone societies; and Smith's (2003) study of the rise of the modern prison in Denmark over one century.

In Norway, excessive commodification and marketization were counteracted by policies that were, as Bjørnson (2001) notes, limited in scope and aimed at preventing only the most destitute and impoverished elements of society from falling off the cliff of social risks into abject misery. In this age, "it was accepted that the authorities would take care of the elderly, disabled and indigent if 'utter impoverishment threatened'" (Bjørnson 2001, p. 199). As part of the wave of moderately decommodifying Bismarckian welfare reforms that began in the 1880s on the European continent (Briggs 2006, pp. 20–23), a series of social policies and legislative reforms were enacted that sought to protect the poor, sick, and elderly as well as injured or disabled workers, including such legislation as the Factory Inspection Act of 1892, the Accident Insurance Act of 1894, and the Sickness Insurance Act of 1909 (Bjørnson 2001). In this period, as Esping-Andersen and Korpi (1986) note, social insurance was of a clasically *liberal* kind, in part because of the fact that these legislative reforms were enacted by non-socialists. Norway implemented a voluntary scheme for unemployment insurance, operated by unions, and mandatory insurance policies for low-income laborers, but would not see universal and compulsory forms of accident, sickness, and unemployment insurance or universal old-age pensions introduced until mid-century. This was, then, a "predominantly liberal era" (Esping-Andersen and Korpi 1986, p. 46).

In the first half of the 20th century, Norway's prison system was to fulfill one central function: to control and contain problem populations and their attendant social pathologies and perceived vices. At the outset of the century, more than one-half of all convicted persons—some 2,231 persons out of a total of 3,951 convicted persons in 1900—were punished on charges of theft (Det Statistiske Centralbureau 1903, p. 107). Nearly three-quarters of incarcerated men in Oslo's central prison, Botsfengselet, between 1920 and 1939 were classified as manual laborers or precariously employed by contemporary observers (Møglestue 1962, pp. 172–173). But this was also a period of liberal reform. It was a period that was deeply self-conscious of its own perceived liberality. "There has been a momentous development, particularly in a milder and more humanitarian direction, in the domain of penal policy," wrote a group of state statisticians on the period lasting from the closing

decades of the 19th century to the first years of the 20th century (Det Statistiske Centralbyraa 1913, p. 8). A new penal code was introduced in 1902, widely lauded in Europe for being in the vanguard of legal reform; it abolished the use of the death penalty in times of peace, raised the age of criminal responsibility from 10 years to 14 years, and would allow convict laborers to be considered for release after 6 months of hard labor (see Heivoll and Flaatten 2014; Hauge 2002).

This was an era of liberal-paternalist concern with the socially deleterious effects of punishment. Particularly among legal elites there was a growing belief that corporal punishment would not fulfill its aims. "We all know that bodily infliction of pain and corporal punishment have not helped," said Andreas Urbye, a state prosecutor, at a meeting of Nordic legal experts in 1899, "and that they have been repealed not only on account of their inhumanity, but also—and first and foremost—because of their futility" (Den Norske Bestyrelsesafdeling 1899). There were efforts to curb the imposition of penal constraint. On 22 January 1925, a 32-year-old man, Hjalmar Sigvard Olsen, was sentenced to 60 days in prison for vagrancy (Ministry of Justice 1925). Olsen was a renowned recidivist, a man who had "previously been sentenced on 10 separate occasions" for breaking the law against vagrancy and committing an act of violence against a public official, and who had accumulated in excess of 40 fines during his rootless wanderings. A pardon was sought for his sentence. Olsen's petitioners—four character witnesses, all respectable members of conventional society, including the chief of police in Olsen's hometown, his employer, and a representative of the *Fattigstyre*, a public agency tasked with providing for the indigent—noted that Olsen was gainfully employed as a gardener and able to provide for his wife and three children. Incarceration would cancel his terms of employment, and his wife and children would consequently be cast into deeper poverty. One of the petitioners noted that he was "under the impression that Olsen would make amends"; his employer remarked that Olsen had been sober and dutiful throughout the period of his employment, and that he had "lately not been seen to be intoxicated"; the police chief was more hesitant, noting in qualified terms that "there may possibly be reason to hope that the applicant . . . will quit his inebriated lifestyle." Nevertheless he supported

Olsen's request for pardon. There was room for contrition within the confines of the system, especially when the crimes were considered to be broadly social in origin: Olsen was pardoned by the Ministry, which had observed that a previous court had noted that Olsen's inebriation had been of a "relatively innocent character."

Indeed, all across the penal system there were signs that an incipient humanitarian transformation of criminal justice was under way. There was a growing concern with the problem of ensuring that conditions of confinement were "rational," a notion that was thought to entail incarceration in a single cell under conditions that were not to be excessively austere with the possibility of engaging in meaningful work. In 1927, the Ministry of Justice circulated a memo to a number of other government ministries emphasizing that a wide range of artisanal and semi-industrial products would now be manufactured in prisons around the country, permitting prisoners to work as bookbinders, carpenters, cobblers, painters, and saddle makers in the hire of the state (Fengselsvesenet 1936, p. 5). Certainly, such work had already been ongoing in some penitentiaries since the late 18th century, but by the end of the 1920s, skilled work activities became the norm for prisoners at the nation's central prisons (*landsfengsel*): on average, inmates in Oslo's two largest prisons spent some five-and-a-half days per week in gainful employment (Fengselsvesenet 1936, pp. 24–25). The desire for a rationally ordered prison also made the administrators of the prison wary of collective living quarters, overcrowding, and the formation of a hardened society of captives. In a missive to the Ministry of Justice, the warden of the penal colony (*tvangsarbeidshus*) at Opstad observed that the colony was filled to excess, that inmates were being housed in overfull dormitories rather than in solitary cells, and that overcrowding would create a criminogenic environment. Conditions would not improve, the warden complained, until a series of new cells could be constructed, but no money was forthcoming from the government to carry out its mission; more satisfyingly, it was noted that primitive forms of coercion, such as using irons and straitjackets, had not been in use at Opstad for a full year (Fengselsvesenet 1929, pp. 13–14).

Just as the risks facing the newly formed industrial proletariat in the course of their labors were to be collectivized and mitigated by the proto-welfare state, so too did the state consider laboring inmates as deserving

some modicum of social protection. One 39-year-old inmate who was held at Akershus Landsfengsel in 1918 lost the use of four of his fingers while laboring in the prison sawmill (Ministry of Justice 1918). After reviewing the facts of the inmate's case, the Ministry of Justice declared that the incident "must be characterized as an accident, which now and then will take place in any industrial enterprise." Inmates were laborers, and prisons were industrial enterprises: the overlapping sociodemographic characteristics of the industrial proletariat and the prison populations revealed a vision of the prison as an industrial enterprise. For the inmate, compensation for his injuries was to be calculated following the procedures that were used to allocate compensation in ordinary "private enterprise," the Ministry observed. The National Insurance Administration was consulted, and the agency calculated the inmate's invalidity to the preposterously precise figure of "16 and two-thirds percent," which should have afforded the inmate an annual compensation of "10 percent of annual wages." But such precise metrics only gave rise to further problems of computation, for what was the *value* of the inmate's labor? In a firm, the value of labor was represented by the laborer's wages. Inmates, however, received only the most minimal remunerations. Cutting a clear path through such metaphysical quandaries, the Ministry simply decreed that the inmate's annual salary "under the present circumstances" was to be pegged to the wholly artificial level of 1,200 Norwegian kroner. An insurance payment of 120 kroner per annum was therefore to ensue upon his release. In light of the inmate's record of theft and recidivism—the man had previously been convicted 12 times for "crimes of theft" (*tyvsforbrydelser*) and once for robbery—the Ministry stipulated that compensation should not be permitted to accumulate "if he were to be placed in prison for forced labor" in the future or "in any other way be placed under public or municipal supervision for any considerable duration."

This was also an age of ascendant biopolitics, of the medicalization of correctional expertise, and of scientistic schemes of prisoner classification (see Schaanning 2007; Søbye 2010). In a letter to the prison warden of Oslo Central Prison, the institution's chief medical officer, the renowned psychiatrist and eugenicist Johan Scharffenberg, requested that all inmates that were to be released and who had been classified as "expressly abnormal," should be noted as such in their criminal records

(Ministry of Justice 1924). Taking the example of one of his inmate-patients, who had exhibited "groundless delusions of persecution" and "elevated self-confidence," Scharffenberg recommended that an annotation be added to the man's files that this man should be categorized as a "homosexual, paranoid psychopath." Such classificatory designations were to be used in the probable event of any future dealings with the criminal justice system. The other face of a seemingly progressive and high-minded project of social engineering found its legal expression in a 1934 law that permitted both quasi-voluntary and explicitly compulsory sterilization on the basis of eugenic grounds (Haave 2007, p. 46). Unlike most other European societies, the Scandinavian turn to eugenics took place under the auspices of democratic governments in relatively egalitarian societies and were "linked to a liberal movement for social reforms rather than a politically conservative agenda" (Dikötter 1998, p. 469). The intrusive nature of liberal paternalism found its dual expression in incipient rehabilitationism within the correctional apparatus and, more broadly, in concerns with reproductive suitability in wider society; it was a movement that was supported by broad sections of the Scandinavian social-democratic parties (Roll-Hansen 1989).

This was a time of contradictions, then, characterized by a strengthened belief in the possibility of the rational and utilitarian treatment of persons liable to be categorized as incorrigible in the previous century, the advent of medical-psychiatric instruments of classification and assessment, and growing rehabilitative ambitions that were constricted by narrow fiscal means. A wave of liberal-humanist sentiments confronted the continuing material austerity of penal confinement and servitude as well as the extrapenological functions of social control directed against the unemployed, destitute, homeless, morally outrageous, and related constitutents of the "dangerous classes." At the heart of the primordial welfare state there existed a tension between the growing recognition of the need to relieve the plight of the burgeoning industrial proletariat and the desire to maintain the essential balance of power within the framework of the conventional social order, a tension that was made visible in the structure and operation of the penal state in this era.

Penality as Treatment (1945–2000)

While the social-democratic Norwegian Labour Party had formed its first durable cabinet government in 1935, it was not until the postwar years of national reconstruction that the project of erecting a universal, generous, and strongly decommodifying welfare state began to gain ground. After 5 years of occupation under Nazi rule between 1940 and 1945, the Norwegian social democrats, taking a cue from the British Labour Party, urged that a "people's war" of popular and partisan resistance should be followed by a "people's peace" of fervent restoration and modernization. In a flourish of Marxist phraseology, the party noted that its goal was to construct a "socialist Norway" wherein "broad masses of the people" would secure the right to work, leisure, education, and gender equality "in all areas of social life" (Norwegian Labour Party 1945).

With a program for vibrant postwar reconstructionism, the party secured some 41 % of the vote for the national assembly, laying the foundations for a stable period of governance—interrupted by two short-lived center-right coalition governments and a more long-lasting center-right coalition government from the mid-1960s to the mid-1970s—by a (nominally) social-democratic party for decades to come. Facing weak opposition from conservative parties, the Norwegian Labour Party, allied with a strong trade union movement, took advantage of this "golden age" of social democracy to roll out a series of Keynesian welfare reforms with an aim of full employment (Esping-Andersen 1990, pp. 167–169). With absolute parliamentary majorities in the immediate postwar decades and a strong neo-corporatist model of wage setting, the Norwegian Labour Party was able to secure historically low levels of unemployment: an average of 2 % between 1950 and 1960(Esping-Andersen 1990, p. 170). A series of universal, protective social policies were implemented in the postwar era: universal and compulsory accident, sickness, and unemployment insurance as well as universal, state-financed flat-rate old-age pensions were rolled out in the second half of the 1950s (Esping-Andersen and Korpi 1986, p. 48).

Crime control was not of great concern for the architects of the Norwegian welfare state at mid-century. The prison remained an

inconspicuous institution: on average, around 1,375 inmates were held in confinement on any given day in 1902, and by 1952, this figured had crept marginally upwards to 1,587 persons (Statistics Norway 2015). To the reigning Norwegian Labour Party, building a universal healthcare system, constructing public housing, establishing social security programs, and securing full employment were the primary objectives of postwar reconstruction: a strategic plan for the country for the years between 1953 and 1957 does not so much as mention the criminal justice system with a word (Norwegian Labour Party 1953). Crime was viewed as a pathology whose causes were largely social in origin; it was to be combated indirectly by building a more just social order. Macroeconomic policies were criminal justice policies in disguise. An all-embracing welfare state was the best bulwark against offensive acts of crime and the attendant need to punish, a view that was fully in evidence by the time the postwar social democrats published their first major white paper on crime policy in the late 1970s. "Crime and community are connected," observed the authors, noting that a respect for the law was simultaneously a vote of confidence for the "key political lines" governing the social order, and "in this respect, a just distribution of goods is of central importance"; furthermore, crime was to be viewed as something of a social construct because of the way in which society categorized acts as deviant (Ministry of Justice 1978, p. 5). While such statements echoed the logic of penal modernism sweeping across the Western world in the postwar era, their publication in a 1978 white paper on criminal justice policy produced widespread criticism of the apparent naïvete of penal modernism, finally resulting in the early departure of the Minister of Justice, Inger Louise Valle. Such controversies were a symptom of the continuous ebb and flow of supportive and critical sentiment surrounding penal modernism in the second half of the 20th century.

A series of counterpunitive policies and legislative acts were implemented throughout the period. The scope of conditional sentencing was expanded by legal reform in 1955, young offenders between 14 and 17 years old were largely not imprisoned but had their criminal sentences dropped (*påtaleunnlatelse*) by the early 1960s, and an extrapunitive option of "hard time" (*skjerpet fengsel*), which included the option of sentencing offenders to a barebones subsistence diet of "bread and water," was dropped in the Prison Act of 1958 (Hauge

2002, pp. 53–54). The crime policy architects of the late 1970s emphasized the importance of preventing the commission of crimes, developing a "humane" system of punishment that was in accord with the nation's "culture," and a criminal justice apparatus that made effective use of available resources (Ministry of Justice 1978, p. 6). Obviously, these were woolly notions that did not immediately translate into definite policies. But there existed a prevailing notion that prisons should restrict the pains they imposed on their institutional charges and that rehabilitation was a moral, sensible, and cost-effective course of action: the criminal age of responsibility was raised to 15 years, crimes of theft were to be met with alternative sanctions besides imprisonment, persons who could not pay their fines were not to be incarcerated, a form of preventive detention (*forvaring*) was to be abolished, and life imprisonment was also removed (Ministry of Justice 1978, pp. 169–170).

The period started with an exception. The immediate postwar trials against Nazi collaborators exhibited a veritable penal rampage. Nowhere else in Western Europe were such large proportions of collaborating members of the population subjected to legal punishment: all 55,000 members of the Norwegian pro-Nazi party, *Nasjonal Samling*, and an additional 40,000 citizens were set to be tried in the postwar proceedings (Judt 2007, p. 45). Around 9,000 persons were sentenced to prison, an additional 9,000 individuals were sentenced to forced labor, 48 persons were sentenced to a "loss of public trust"—a novel punitive option that entailed, among other things, permanent disenfranchisement and the loss of right to hold public office—and 25 individuals were executed (Central Bureau of Statistics of Norway 1954). From mid-1945 to mid-1946, nearly 23,000 persons were incarcerated, suspected of collaborating with the Nazi occupying powers (Fengselsstyret 1954, p. 16), a remarkable figure for a relatively low-incarceration society.

Some accounts of punishment policies in Norway avoid mention of such proceedings (see e.g. Pratt and Eriksson 2013, p. 212, footnote 12). But there is no sound basis for excluding a deviant case simply because it is deviant. In the postwar proceedings, retributivist sentiment were activated and mobilized by the social-democratic builders of the welfare state, suggestive of the fact that social democracy did not necessarily or

intrinsically entail counterpunitive practices. What obtained for an unusual situation was suggestive of trends that were ongoing, if less pronounced, during periods of relative normalcy, captured by the notion of a "Janus-faced" exclusionary dimension in the ideology and practices of social democracy (Barker 2013). Indeed, despite progressive practices and rhetoric, there was still a definite class dimension to the deployment of punishment in this period: in 1960, for instance, one-third of all inmates were in prison for theft, alcohol consumption, or vagrancy (Statistisk Sentralbyrå 1962, p. 8). And it was the moral opprobrium generated by the visibly austere conditions of incarceration that led the prominent Norwegian writer Jens Bjørneboe to engage in a series of scathing public commentaries of penal practices in the late 1950s, revealing a profound disbelief in the promise of rehabilitation and resulting in the formation of a radical prison reform group, the Norwegian Association for Penal Reform (KROM), in the late 1960s.

Throughout this period there was a growing realization that prisoners would be returned to society. Man was condemned to live in society, and that society would contain former convicts. The 1958 Prison Act paved the way for a series of "open," minimum-security prisons and a furlough program that granted prisoners the possibility of home leave. Rehabilitation was humane but seemed also to be rational. To take a mundane example, in 1980, fully one-fourth of all "long-term prisoners" were let out on home leave for annual Christmas celebrations (Verdens Gang 1980). Penal modernism (Garland 2001) found its doctrinal expression in the "principle of normalization"; inmates were in the main to "maintain all their rights during the term of incarceration" (Ministry of Justice 1988, p. 301): it was the mere loss of freedom that was to constitute the central deprivation of criminal confinement. From this it followed that conditions of confinement should be made to mimic conventional life in the community as far as would be possible within the strictures of a correctional environment. But even this formula, apparently concrete and definite, concealed a pragmatic open-endedness, and the principle contained a greater latitude of possible interpretations than its proponents would admit. Ethnographic accounts of maximum-security incarceration in this era suggest that imprisonment was not particularly exceptional or humane relative to the rest of

the Western world (Mathiesen 1965). But if penal modernism had limited institutional effects in these decades, its political-economic manifestations were considerable: a sturdy social safety was constructed that prevented social pathologies from flourishing, prisoner populations remained small, and the very need for a prison system remained limited due to the existence of a protective and generous state.

Drugs did not sit quite so well with the apparent lenience of this political-economic modality of punishment. Alcohol was already sufficiently dubious to merit censure: "When a large proportion of crime is committed in a state of intoxication, each individual must take responsibility for limiting the consumption of alcohol in society," the Ministry of Justice (1978, p. 6) emphasized. If the tone was timid, the policies were comprehensive: alcohol distribution was subject to comprehensive regulation through a state monopoly on its sale. As drug use increased during the 1960s, Scandinavian social democrats envisioned a society that was to be "drug-free" (Tham 2005). A "drug paragraph" was introduced into the national penal code in 1968 that stipulated a maximum length of imprisonment of 6 years for drug offenses; gradually, upper sentencing limits inched upwards, and by 1984, serious drug offenses were punishable by up to 21 years in prison (Shammas et al. 2014, pp. 593–594). While this legislative agenda was part of a broader, global coalition against drugs, a horror at the specter of unproductive hedonism or costly pathologies associated with the consumption of illicit substances also fed off a distinctly social-democratic impulse: the very normative order seemed at stake as the project of constructing and maintaining a generous, comprehensive system of social provision helped elevate the role of labor to a position of sacrality; work was instrumental in securing the reproduction of the welfare state. Drugs undermined the tight reciprocal bonds between citizens and the state under social democracy and were consequently criminalized and penalized at levels that seemed conspicuously disconnected from a wider regime of penal moderation (Pratt 2008, p. 285). Between 1968 and 1998, the number of drug offenses investigated by the police rose more than 150-fold from around 200 cases per year to more than 30,000 cases per year (Statistics Norway 1999). By the late 1980s, nearly 60 % of inmates in the nation's district prisons were locked up for drug offenses

(Ministry of Justice 1988, p. 35). On the occasion of the publication of a Ministry of Social Affairs white paper that took a prohibitionist stance toward drug use, one newspaper commentator noted that "a drug-free society" had become the state's "key objective in the field of drug policy." It was a "goal that is strongly anchored in public opinion, in all political parties, and in the remainder of civil society," and there existed, according to this observer, a broad "agreement that we cannot accept drug abuse in any form" (Verdens Gang 1985).

Penality as Dualization (2000–2014)

By the late 1970s, the "golden age" of the Fordist-Keynesian social compact had run into severe difficulties and sustained political opposition across the Western world. Starting in this decade, a transition from the Keynesian state to a Schumpeterian "competitive state" was initiated in many of those countries where social democracy had previously produced a virtuous circle of sustained levels of economic growth, low levels of employment, rising productivity, growing incomes, and high levels of aggregate demand (Jessop 2002). So too in Norway. With the formation of Kåre Willoch's Conservative government in October 1981, the near-hegemonic status of Keynesian, universalist decommodification in the postwar era drew to an end.

Riding on the wave of post-Keynesian, Reaganite-Thatcherite "market revolutions" in the early 1980s (Harvey 2005), a series of Conservative governments or Conservative-led coalition governments traded off with the Labour Party in holding the reins of power throughout the 1980s. What is more, the Labour Party governments formed in the 1990s were largely modeled on the "New Labour" model of Blairite centrism, based on the one hand on the conviction, fueled by the "median voter theorem," that centrists were the only viable means of securing electoral victory, and, on the other hand, that under novel conditions of post-Fordist global competitiveness, the renewal of social democracy along a "Third Way" was an ineluctable necessity. National enterprises were privatized starting in the 1990s. Healthcare remained firmly universal and public, but a growing reliance on private general practitioners, rising co-payments for

consultations, and the proliferation of private alternatives to state healthcare meant that one of the pillars of Keynesian welfare state was looking increasingly unstable. Workfare policies proliferated (Kildal and Kuhnle 2005, pp. 26–29). Tax reforms were initiated in the 1980s that over the next decades generated increasingly inegalitarian distributions of wealth (Aaberge and Atkinson 2008). While union membership—the plinth of leftist state capitalism in the postwar era—remained strong, its semantic meaning had transitioned from serving as a fount of radical agitation to functioning as an instrument of macroeconomic corporatist management and providing inexpensive benefits, such as home insurance policies, for individual members. As a result of widening socioeconomic inequalities, a "New Nordic Model" (Hansen 2014, p. 478) had arisen that was neither fully neoliberal nor recognizably social-democratic in the sense suggested by that term in the immediate postwar years.

By the start of the new millennium, Norway had made a circumscribed turn towards increasingly punitive politics (Shammas 2015): the incarceration rate increased by more than 25 % between 2000 and 2012;[2] legislative changes raised maximum sentencing levels for violent offenses throughout the 2000s; post-9/11 counterterrorist legislation increased the maximum penalty for offenses considered acts of terrorism from 21 years to 30 years in prison; penal expenditures grew by 80 % between 2005 and 2012; a novel and intrusive mode of criminal sanctioning like electronic monitoring of non-incarcerated offenders using ankle bracelets may in the long term contribute to a widening of the penal dragnet, even as it may in the short term have had a counterpunitive effect on the system as a whole by replacing prison sentences with the possibility of serving time at home. A new penal sanction of "incarceration under preventive detention" introduced the theoretical possibility of life imprisonment in a country that at the beginning of the

[2] The incarceration rate for Norwegian citizens remained relatively stable over the period; the growth in criminal confinement should be viewed in conjunction with targeted police action aimed at arriving citizens from postcolonial developing countries in and around the Middle East following American military incursions in Iraq and Afghanistan as well as the eastwards expansion of the European Union that attracted tens of thousands of migrants through the increased mobility offered by a widened Schengen Area.

21st century had capped prison terms at 21 years. Prison construction failed to keep apace with the growing number of prison sentences generated by the court system, so that by 2014 some 1,300 persons with unconditional sentences were waiting to begin their sentences, the pretrial remand system was overflowing, and some prisons began housing two inmates per cell in formerly single-occupancy cells—a move that was considered a departure from an important constituent pillar of penal welfarism. Taken as a whole, the penal field underwent a moderate rightwards tilt in this period, a transformation that was accelerated and catalyzed by competition between the previously predominant Labour Party and the newly ascendant right-wing, neoliberal Progress Party over the right to "stage sovereignty" by taking a "tough on crime" stance toward perceived social pathologies. The fundamental axis of transformation in Norway's penal field in this period stretched between the Labour Party and the Progress Party as both parties entered into a cyclical and punitive arms race, each attempting to outbid the other in adopting stricter measures to respond to the perceived interconnections between crime, immigration, and "permissive punishment"—and thereby demonstrating that parties of both the left and right remain susceptible to the perceived attractions and symbolic profits stemming from the politics of penal austerity (e.g., Tham 2001).

Emblematic of this struggle was the growing deployment of surveillant and punitive energies trained on foreign citizens.[3] In 2005, some 12 % of

[3] The police trained its gaze on "foreign" criminals in this period. "Norwegians constitute the majority of registered criminal offenders responsible for less serious drug crimes, while foreign citizens are responsible for most serious drug offenses," observed a Norwegian police report in 2014 (National Crime Investigation Service 2014, p. 9); the report enumerates a panoply of "criminal networks" presumed to be stratified along ethnonational or ethnoracial lines and organized by social agents hailing from the Baltic states, Poland, the Balkans, Vietnam, Morocco, Somalia, Kurdish regions, and West-African nations. The report notes, "Statistics show a tenfold increase in the number of drug cases where west-Africans were suspected, accused, and convicted [of drug crimes] between 2000 and 2009." And yet it remains unclear whether this "explosion"—the term used by the police, enclosed in quotation marks, to characterize the outsized prevalence of "West-African" offenders in the commission of drug offenses—is a function of disproportionate commission of crime by definite social groups or rather an *ethnoracially targeted police surveillance* aimed at uncovering drug offenses by those already presumed to be primarily responsible for the importation of cocaine and heroin into Norwegian society.

new entrants to prison were foreign citizens (Norwegian Correctional Services 2005, p. 6), but by 2013, this figure had grown to 29 % of new entrants, and a full one-third of the prison population was now composed of non-Norwegian citizens (Norwegian Correctional Services 2013, p. 7). For leading politicians on both the left and right of the political spectrum, this seemed to spell crisis for the penal order; the alleged influx of roving bands of predatory criminals from Eastern Europe, rapacious sex offenders, and exploitative drug dealers of African or Middle Eastern origin, was seized upon by politicians from both the Labour Party and right-wing populist Progress Party (Shammas 2015). Through a more aggressive application of the provisions of Norway's Immigration Act, foreign citizens suspected of a crime while residing in Norway could be subject to deportation, sometimes even in the absence of a legal conviction due to the lower evidentiary standards required for deportation to occur (as with asylum seekers suspected of providing false information about their true identity); a veritable boom in the number of deportations of foreign citizens followed, operated largely under the auspices of the immigration bureaucracy and therefore not considered a bona fide legal sanction; the number of such deportations grew from 190 orders in 1991 to nearly 2,500 orders by 2014 (Aas and Mohn 2015).

Declaring that foreign citiziens would not be sufficiently deterred from committing criminal acts due to the elevated standards of the Norwegian correctional system, the deputy leader of the Progress Party, Per Sandberg, contended that "foreign criminals are a big problem, and mild sentences and high-quality facilities aren't helping" (Progress Party 2011). Defying the reigning "principle of normalization," Sandberg proposed a 10-point plan for prison reform aimed at making conditions of confinement more austere: Norwegian inmates were to have their prison wages cut in half and foreign inmates were not to receive any wages whatsoever; foreign citizens were to be placed in penitentiaries with "lower standards" than those inhabited by Norwegian citizens; the names of pedophile sex offenders were to be publicized in the mold of a US-style Megan's Law; parole opportunities for early release were to be curtailed; and work programs were to be made mandatory, reducing the opportunity to pursue educational programs. The proposal, put forth at a national party congress and given to

rousing rhetoric and grandstanding, was ridiculed by the Labour Party Minister of Justice, Knut Storberget, who called the proposals "unspeakably poor" and observed that "the countries that try to worsen inmates' conditions, struggle the most with crime" (Verdens Gang 2011).

And yet only a few months later, one of the Progress Party's proposals had become official government policy: Ullersmo Prison in eastern Norway was set to house foreign citizens in an ethnonationally segregated cell block. A year later, it was announced that a 97-bed prison in eastern Norway, Kongsvinger Prison, was to be converted into a segregated facility for foreign citizens (Ministry of Justice 2012). While political elites promised that this prison was to offer tailor-made rehabilitative programs for offenders who were destined for extradition to other national cultures upon release, this was also a rhetorical strategy that served to reap dual symbolic profits. On the one hand, it assuaged supporters of penal modernism who would not accept the wholesale degradation along ethnonational lines of one of the core pillars of the rehabilitative regime of criminal justice, namely the principle of normalization; on the other hand, it signaled to those sections of the electorate that were increasingly given to ecstasies of denunciation of allegedly crime-prone asylum seekers and stigmatized, mobile economic migrants that toughened measures were being taken.

Punishment is one of the core functions of the state. However, the twin pressures of a growing prison population and a declining willingness to invest rehabilitative energies in stigmatized foreign offenders within sections of the penal field, placed even the most fundamental functions of the state under pressure.[4] Arguing that the Conservative Party and Progress Party coalition government had inherited a deficit in

[4] A growing number of political agents in the Norwegian penal field believe that rehabilitative functions should be reserved for a privileged core of national insiders by reducing correctional standards for non-national offenders. In 2010, the Conservative Party expressed a desire to establish a "differential treatment" of foreign inmates by "moving foreigners out of ordinary Norwegian prisons and into separate, more basic prison wings." The party's spokesperson on criminal justice issues believed it would be desirable to construct "separate wings for foreign criminals with somewhat lowered standards in regards to amenities and rehabilitative services" (Conservative Party 2010). Similarly, the Progress Party's manifesto notes, "The proportion of foreign convicts is approaching 40 percent [of the inmate population], and high standards in

public spending on prison construction, efforts were made in 2013 to lease spare prison space in neighboring countries. The newly elected Progress Party Minister of Justice, Anders Anundsen, contacted his Swedish counterpart, requesting permission to lease unutilized space in one of Sweden's correctional facilities. After some delay, the Swedish Ministry of Justice rejected the request, noting the troubling issue of ceding sovereignty to another state: "Either Sweden would take on the exercise of authority on behalf of the Norwegian government, or representatives of the Norwegian state would exercise such authority in Sweden" (Svenska Dagbladet 2014). Both options were viewed as deeply problematic.

Not to be deterred, the Progress Party minister sought assistance from the Netherlands. Having housed some 500 prisoners for Belgian authorities under a similar program in 2010 and successfully reduced the use of criminal confinement over the previous decade, the Netherlands accepted the Norwegian request. Gradually, the terms of public debate shifted from moving prisoners per se to the Dutch prison to moving *foreign* prisoners who would be extradited following the completion of their sentence. Rehabilitation would be made more difficult by the great distance between Norway and the Netherlands. Visits from friends and family would not be possible to the same extent as before. But this was considered a less salient issue when the inmates were foreign citizens, who, it might be supposed, would lack such social bonds and affiliations. A Conservative Party spokesperson contended that the Norwegian-Dutch prison would be modeled on the ethnonationally segregated section of Kongsvinger Prison. "We have a situation in Norwegian prisons where one-third of the prisoners are foreign citizens," said the spokesperson. "This will first and foremost be an initiative aimed at inmates who will be extradited, and who will therefore not be remaining in Norway" (NRK 2014). By October 2014, the Dutch-Norwegian prison housed 153 inmates and around 80 % of the inmates were non-Norwegian citizens; while it was not a facility reserved for incarcerating foreigners, it was disproportionately deployed to this end.

Norwegian prisons are not having a deterrent effect on these criminals. We must establish separate prisons for foreign criminals" (Progress Party 2011).

In a period of a transformation of the logic of service provision by the state where core capacities from elderly care to asylum housing were increasingly subcontracted to private providers, and the offshoring and mass migration of manufacturing capacities to low-cost countries, it seemed only a slight stretch of the imagination to combine these dual transformations and to outsource yet another central capacity of the state—the power to punish—to an extraterritorial entity. Penal modernism had increasingly become the preserve of the national citizenry.

Conclusion

The history of punishment in Norway between 1900 and 2014 can be understood as a series of struggles over the state. The social state was transformed from a minimally decommodifying liberal welfare state, followed by a generous and expansive Keynesian-Fordist regime of social democracy, which finally culminated in a semi-neoliberal regime of state capitalism. To each of these welfare state regimes belonged, with some measure of contingency and variation, a definite stage of penality, shifting from a regime that can be described as *penality as paternalism*, wherein humanitarian and liberal reforms imposed a minimal set of constraints on punitive austerity, followed by *penality as treatment* that saw the ramping up of social policies and rehabilitationist sentiment, and replaced by *penality as dualization* that witnessed a growing bifurcation along ethnonational lines at the core of the criminal justice system. Certainly, the exertion of force from the structure of the social state to the operation of the penal state is far from unmediated or unidirectional. Exigencies intervene, scientific expertise and the media impose their own logic of autonomy, and global trends transmute the operation of the bureaucratic field by forcing it into a condition of heteronomy. However, the structure of the social state remains vitally important, and it is here that all accounts of penality must begin.

Throughout the modern period, the prison has been a riveted, conflict-ridden institution, both from within and beyond its jealously guarded perimeter. There has been a constant labor of imagination revolving

around the fevered fantasy of *alternatives*, of additional ways of arranging entities in penal space, of novel sanctions and instruments, of dealing with the "immense task, [the] extreme ambiguity of the prison" (Petit 1990, p. 10). Perhaps no other institution has been quite so haunted by the perpetual desire, even from within its professional core, to imagine other ways of ordering and practicing the art of punishment. The prison has always been a remarkably recalcitrant institution, proving resistant to reform and modification at nearly every turn. Even during the course of its apparently smooth operation, it has always generated more pathologies, vices, and problematics than it has been able to quell or resolve. Even when the prison has done what it has nominally been tasked with accomplishing, it has generated more discord than contentment.

References

Aaberge, R., & Atkinson, A. B. (2008, July). Top incomes in Norway. Statistics Norway Discussion Papers, no. 552.

Aas, K. F., & Mohn, S. B. (2015). Utvisning som straff? Om grensesnittet mellom strafferett og utlendingskontroll. *Tidsskrift for strafferett, 15*(2), 154–176.

Barker, V. (2013). Nordic exceptionalism revisited: explaining the paradox of a Janus-faced penal regime. *Theoretical Criminology, 17*(1), 5–25.

Bjørnson, Ø. (2001). The social democrats and the Norwegian welfare state: some perspectives. *Scandinavian Journal of History, 26*(3), 197–223.

Briggs, A. (2006). The welfare state in historical perspective. In C. Pierson (Ed.), *The welfare state reader* (pp. 16–29). Cambridge: Polity Press.

Central Bureau of Statistics of Norway. (1954). *Statistics on treason and collaboration, 1940–1945.* Oslo: Central Bureau of Statistics.

Conservative Party. (2010). Vil forskjellsbehandle innsatte. http://www.hoyre.no/nb-no/aktuelt/arkiv/vil-forskjellsbehandle-innsatte. Accessed 31 August 2016.

Den Norske Bestyrelsesafdeling af Nordisk Juristmøde. (1899). *Forhandlinger Paa Niende Nordiske Juristmøde i Kristiania.* Kristiania: Aktie-Bogtrykkeriet.

Det Statistiske Centralbureau. (1903). *Statistisk Aarbog for Kongeriget Norge.* Kristiania: H. Aschehoug & Co.

Det Statistiske Centralbyraa. (1913). *Oversigt over de vigtigste resultater av kriminalstatistikken for aarene 1886–1904.* Kristiania: H. Aschehoug & Co.

Dikötter, F. (1998). Race culture: recent perspectives on the history of eugenics. *American Historical Review, 103*(2), 467–478.

Esping-Andersen, G. (1990). *The three worlds of welfare capitalism.* Cambridge: Polity Press.

Esping-Andersen, G., & Korpi, W. (1986). From poor relief to institutional welfare states: the development of Scandinavian social policy. *International Journal of Sociology, 16*(3/4), 39–74.

Fengselsvesenet. (1929). *Fengselsstyrets årbok, 1925.* Oslo: H. Aschehoug & Co.

Fengselsvesenet. (1936). *Fengselsstyrets årbok, 1926–1930.* Oslo: H. Aschehoug & Co.

Fengselsstyret. (1954). *Report of the prison administration, 1931–1950.* Oslo: Fengselsstyret.

Garland, D. (2001). *The culture of control*. Chicago: University of Chicago Press.

Goodman, P., Page, J., & Phelps, M. (2015). The long struggle: An agonistic perspective on penal development. *Theoretical Criminology, 19*(3), 315–335.

Haave, P. (2007). Sterilization under the Swastika: the case of Norway. *International Journal of Mental Health, 36*(1), 45–57.

Hansen, M. N. (2014). Self-made wealth or family wealth? Changes in intergenerational wealth mobility. *Social Forces, 93*(2), 457–481.

Harvey, D. (2005). *A brief history of neoliberalism.* Oxford: Oxford University Press.

Hauge, R. (2002). Utviklingslinjer i straffelovgivningen i det 20. århundre. In Norwegian Ministry of Justice (Ed.), *Ny straffelov: Straffelovkommisjonens delutredning VII (NOU 2002: 04)* (pp. 41–77). Oslo: Justis- og politidepartementet.

Heivoll, G., & Flaatten, S. (Eds.) (2014). *Straff, lov, historie: Historiske perspektiver på straffeloven av 1902.* Oslo: Dreyers Forlag.

Jessop, B. (2002). *The future of the capitalist state.* Cambridge: Polity Press.

Judt, T. (2007). *Postwar: a history of Europe since 1945.* London: Vintage Books.

Kildal, N., & Kuhnle, S. (Eds.) (2005). The Nordic welfare model and the idea of universalism. In *Normative foundations of the welfare state: the Nordic experience* (pp. 13–34). London: Routledge.

Mathiesen, T. (1965). *The defence of the weak: a sociological study of aspects of a Norwegian correctional institution.* London: Tavistock.

Møglestue, I. (1962). *Kriminalitet og sosial bakgrunn.* Oslo: Statistisk Sentralbyrå.

National Crime Investigation Service. (2014). *Den organiserte kriminaliteten i Norge: Trender og utfordringer, 2013–2014.* Oslo: Kripos.

Nilsson, R. (2013). *Från cellfängelse till kognitiv beteendeterapi. Fängelse, politik och vetande, 1930–1980*. Malmö: Égalité.

Norwegian Correctional Services. (2005). *Kriminalomsorgens årsstatistikk 2005.* Oslo: Kriminalomsorgen.

Norwegian Correctional Services. (2013). *Kriminalomsorgens årsstatistikk 2013.* Oslo: Kriminalomsorgen.

Norwegian Labour Party. (1945). Det norske Arbeiderpartis Arbeidsprogram, 1945. http://arbeiderpartiet.no/file/download/5350/60954/file/Arbeidsprogram%201945.pdf. Accessed 1 September 2015.

Norwegian Labour Party. (1953). Arbeidsprogrammet for stortingsperioden 1953–57. http://www.nsd.uib.no/polsys/data/filer/parti/10045.rtf. Accessed 1 September 2015.

Norwegian Ministry of Justice. (1918). *1050/1918D. Nr. 6. Statsråd Blekr. [Justisdepartementet D del 2—RA/S-1043/A/Aa/L0017].* Oslo: National Archives of Norway.

Norwegian Ministry of Justice. (1924). *Brev fra Lægen ved Botsfengselet, Johan Scharffenberg, 3. juni 1924 [Justisdepartementet D del 2—RA/S-1043/D/Da/L0142].* Oslo: National Archives of Norway.

Norwegian Ministry of Justice. (1925). *J. nr. 1423-25 D. Statsråd Holmboe. Nr. 35 [Justisdepartementet, Fengselsstyret D del 1—RA/S-1043/A/Aa/L0018].* Oslo: National Archives of Norway.

Norwegian Ministry of Justice. (1978). *St.meld. nr. 104 (1977–78). Om kriminalpolitikken*. Oslo: Justis- og politidepartementet.

Norwegian Ministry of Justice. (1988). *NOU 1988/37: Ny fengselslov.* Oslo: Justis- og politidepartementet.

Norwegian Ministry of Justice. (2012). Kongsvinger fengsel: Ny avdeling for utenlandske innsatte. https://www.regjeringen.no/no/aktuelt/kongsvinger-fengsel-ny-avdeling-for-uten/id709573/. Accessed 10 December 2012.

NRK. (2014). Ap vil ha svar fra Anundsen om fengselsplasser i Nederland. http://www.nrk.no/norge/ap-vil-ha-svar-fra-anundsen-om-fengselsplasser-i-nederland-1.12070610. Accessed 29 November 2014.

Petit, J.-G. (1990). *Ces peines obscures: La prison pénale en France, 1780–1875.* Paris: Fayard.

Polanyi, K. (2001 [1944]). *The great transformation.* Boston: Beacon Press.

Pratt, J. (2008). Scandinavian exceptionalism in an era of penal excess. Part II: does Scandinavian exceptionalism have a future? *British Journal of Criminology, 48*(3), 275–292.

Pratt, J., & Eriksson, A. (2013). *Contrasts in punishment: an explanation of anglophone excess and Nordic exceptionalism.* Abingdon: Routledge.

Progress Party. (2011). Sandberg strammer inn. http://web.archive.org/web/20110519082142/http://www.frp.no/Sandberg+strammer+inn.d25-TxlDK5S.ips. Accessed 1 September 2016.

Roll-Hansen, N. (1989). Geneticists and the eugenics movement in Scandinavia. *British Journal for the History of Science, 22*(3), 335–346.

Schaanning, E. (2007). *Menneskelaboratoriet*. Oslo: Scandinavian Academic Press.

Shammas, V. L. (2015). The rise of a more punitive state: on the attenuation of Norwegian penal exceptionalism in an era of welfare state transformation. *Critical Criminology, 24*(1), 57–74.

Shammas, V. L., Sandberg, S., Pedersen, W. (2014). Trajectories to mid-and higher-level drug crimes: penal misrepresentations of drug dealers in Norway. *British Journal of Criminology, 54*(4), 592–612.

Smith, P. S. (2003). *Moralske hospitaler: Det moderne fængselsvæsens gennembrud 1770–1870*. Copenhagen: Forum.

Søbye, E. (2010). *En mann fra forgangne århundrer: Overlege Johan Scharffenbergs liv og virke 1869—1965. En arkivstudie*. Oslo: Forlaget Oktober.

Statistics Norway. (1999). Kraftig økning i narkoforbrytelser. http://www.ssb.no/sosiale-forhold-og-kriminalitet/artikler-og-publikasjoner/kraftig-okning-i-narkoforbrytelser. Accessed 1 September 2015.

Statistics Norway. (2015). Population of penal institutions. https://www.ssb.no/a/histstat/tabeller/8-8-12t.txt. Accessed 1 September 2015.

Svenska Dagbladet. (2014). Inga norska fångar i Sverige. http://www.svd.se/inga-norska-fangar-i-sverige. Accessed 5 February 2014.

Statistisk Sentralbyrå. (1962). *Kriminalstatistikk: Domfelte innsatt i og løslatt fra fengselsvesenets anstalter i 1960*. Oslo: Statistisk Sentralbyrå.

Tham, H. (2001). Law and order as a Leftist project? The case of Sweden. *Punishment & Society, 3*(3), 409–426.

Tham, H. (2005). Swedish drug policy and the vision of the good society. *Journal of Scandinavian Studies in Criminology and Crime Prevention, 6*(1), 57–73.

Verdens Gang. (1980, December 23). Hver fjerde langtidsfange hjem til jul, p. 10.

Verdens Gang. (1985, September 26). Narkotikapolitikken, p. 2.

Verdens Gang. (2011, May 13). FrPs fengselsreform (mest for utlendinger): Hard og simpel soning, pp. 4–5.

Wacquant, L. (2009). *Punishing the poor: the neoliberal government of social insecurity*. Durham, NC: Duke University Press.