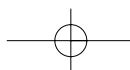
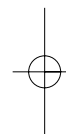
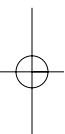


# Part 1

# ABOUT COMPARATIVE PENOLOGY

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## 1

# Introducing Comparative Penology

This book was largely prompted by the uneasy feeling that understanding the international dimensions of punishment is on the one hand increasingly vital for the student of penology, and on the other hand inherently problematic.

It is increasingly vital for a number of reasons. Firstly, because developments in penal ideas and practices are flitting ever faster around the globe like epidemics of Asian (or more often American) influenza. Whatever one takes to be the nature of 'globalization', this is partly because of the accelerating international velocity of both information and people in the late modern age, and partly because of the increasing activity of multinational agencies such as inter-governmental bodies and large capitalist corporations. We need to understand all this if we are to comprehend the directions in which punishment in any country has been developing and is likely to go in the future. And this is the case whether we approve of these trends or not. Comparative study can serve to elucidate which trends are likely to spread pretty well inexorably, because they are linked to other economic and social developments common to many countries, and which ones might fail to catch on, or be successfully resisted. In Part 2, for example, we investigate the apparent absence of a penal crisis centred on a drastically high prison population in countries such as Finland and Japan, contrary to the general picture which has been developing in English-speaking countries and much of the rest of Europe. We need to understand both *commonalities and discontinuities* between countries, and the reasons for them, if we are to make sense of penalty generally, analyse it and engage with it.

Comparative knowledge is not only a requisite in academic discourse, but also in the realm of penal political debate. It is, of course, one of the commonest tricks in the book when advocating or criticizing any social policy to declare (whether accurately or otherwise, but usually in the hope that one's opponents are insufficiently knowledgeable to contradict you) that they do things so much better/worse in Ruritania. But it remains of real importance to know how they do things elsewhere and what effects different policies do have, even if only for

the purpose of participating in arguments about whether 'three strikes and you're out' penalties are efficient in reducing crime in the USA<sup>1</sup> or whether Sweden's experiences with electronic tagging should encourage us to follow their example. Indeed, the realm of political discourse is more vital than ever. As icy trade winds of punitive law and order ideology seemingly sweep the globe, we need to hold fast to the recognition that things can be done differently to the dictates of the current gurus of penal fashion.

### **Is comparative penology possible?**

But all this is inherently problematic. Is it possible to compare different penal systems at all? How do we begin to think about and explain the differences and similarities which are apparent between penal systems in countries with widely differing cultures, traditions, political and economic systems, histories and crime patterns? Is there even such a thing as a single entity of 'punishment' or 'penality' that exists in all societies, and if so how is it to be conceptualized? Can any of the existing theoretical frameworks cope with the diversity of penal systems in a wide range of societies?

We discuss some of these deep theoretical issues in due course. But at a less profound level, there are also pervasively knotty methodological problems involved in international comparison-making. Even when dealing with supposedly 'hard' statistical data, how sure can we be (for instance) that the meaning of a category such as 'property offender' or 'remand in custody' is even roughly consistent between countries; let alone that the number of people in each category is computed in a similar manner in different systems? Knowing as we do that practices of recording of crimes and clear-ups can vary alarmingly between adjacent police stations in a single country, the only honest answer is that we can never be at all sure. In many, perhaps most cases we can on the contrary be fairly certain that supposedly comparative figures never really comparing like with like. To some extent these problems are intractable, so that any such statistics in this book must be taken with at least a pinch of low-sodium salt. Nevertheless, if we do not attempt to use too fine a brush, we still think it is valid to point to, for example, the 2002 difference between Finland's 70 prisoners per 100,000 population with the USA's 701 (Walmsley, 2003b) as demonstrating some significant discontinuity between penal practices in these two countries.

One particular issue here concerns the standard measure of 'punitiveness' that we employed in the previous paragraph. This is the 'imprisonment rate' of a country, by which is meant the number of prisoners in a country expressed as a proportion of its total population (usually the number of prisoners per 100,000 general population). It has been argued, most strenuously and cogently by Ken Pease (1991, 1992, 1994), that it is a cardinal error to use this 'imprisonment rate'

as a general index of how harshly each country punishes offenders. Such a crude measure, Pease argues, ignores vital factors such as differing crime and conviction rates and may severely distort the ways in which countries respond to crime in relation to each other.

We fully accept that 'imprisonment rate' is a highly imperfect and in many ways unsatisfactory statistic to use. Unfortunately, it is often the best available. And this is not only because it is the one most commonly and easily calculated and promulgated on a comparative basis. Alternative measures – such as numbers in prison as a proportion of crimes officially recorded, or prison population per number of criminal convictions – might in theory seem preferable, but suffer from their own drawbacks. The official recording of crimes reported to the police is notoriously unreliable and variable even within the same jurisdiction,<sup>2</sup> let alone across national frontiers; and even before that there is every reason to believe that the proportion of crimes that are reported to the police in the first place is also likely to vary widely. Concentrating on criminal convictions will distort matters because it leads us to ignore the differing ways in which minor offenders in particular are dealt with from country to country. In some countries, police or prosecutors may discontinue cases or in effect levy a fine as a functional equivalent to what elsewhere would result in prosecution, conviction and a lesser court sentence. If so, a 'prisoners per conviction' statistic would be likely to make such a country appear much more punitive than it really is, since a much higher proportion of court convictions would lead to prison rather than a minor disposal such as a fine, these lesser cases having been kept out of the court's caseload in the first place.

Ideally, when we are assessing a country's relative punitiveness we should try to compare the penalties it inflicts (and the other penal-related and procedural decisions it makes) upon similar offenders at similar stages of the criminal and penal process. Strangely enough, when this has been attempted at the crucial stage of sentencing of offenders convicted of similar offences, the rank ordering of countries' punitiveness tends to come out looking very much like the ordering produced by the crude 'imprisonment rate' statistic (NACRO, 1999; Pease, 1992; cf. Cavadino and Dignan, 2002: 110–11). This suggests – fortunately for our purposes – that with all the caveats issued above, it may be valid to use the imprisonment rate as at least a rough and initial measure with which to compare the punitiveness of countries, or to trace trends in punitiveness in individual jurisdictions over time.

### **Theorizing comparative penology**

Both common sense and rational theorizing suggest that comparative penology is actually possible – although, as we have already indicated, we need to take care

PENAL SYSTEMS

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when doing it. To begin with, we *can* validly speak of an entity of 'punishment' in any society. It is not necessary to be a thoroughgoing functionalist in social theory to hold that in any human society it must be the case – almost by definition – that there will be deviant actions and that any society will require some system for responding to and sanctioning at least certain kinds of deviance. And this will be the case whether the society is simple or complex, early capitalist or late modern, Western or Eastern, or whatever.<sup>3</sup> This is a fairly minimal proposition. It does not mean, for example, that every society needs formal, official punishment institutions regulated by law; so it allows for the existence of non-legal punishment in simple societies and even for possibilities such as the stateless communist society ultimately envisaged by Lenin (1965) in which anti-social acts are prevented by spontaneous informal action by the community. But it does mean that every society needs punishment – or at the very least some functional equivalent – if it is to survive as a society. Societies organized along different lines will diverge to some extent in the social rules that are vital to maintain their diverse social orders, as well as in the precise methods of social control employed. But, as famously argued by H.L.A. Hart (1961: Chapter IX), in any society there must be a 'minimum content of natural law', with at least some effective rules governing the use of violence on the one hand and of scarce resources on the other.

We can go further than this. In general, we might expect societies which are similar in other ways – in their economies, cultures, languages and politics – also to resemble each other in penalty, although we should perhaps be prepared for a few surprises and anomalies. Thus, for example, we have developed a typology of late-modern capitalist societies (based on that of Esping-Andersen, 1990) to distinguish between the countries in our study and to relate these differences in political economy to penal differences. And we have found in general – to give away and summarize what is perhaps our main finding in this research – that countries with a similar profile in terms of this typology do indeed tend to resemble each other in the penal realm.

In some important respects, all the societies discussed in this book – with the notable exception of Japan – are extremely similar. They are all 'Western', developed, industrial democracies (albeit that universal suffrage has of course only just arrived in South Africa, and the Eastern part of Germany only recently joined the club of Western democracy) at the beginning of the twenty-first century. All of them seem to be societies that can be analysed in terms of the 'radical pluralist' theory of society, which we sketch out both below and elsewhere (Cavadino and Dignan, 2002: Chapter 3). So it will not be surprising to discover a high level of commonality in punishment among these countries compared with societies of more widely varying types. We should expect this commonality to be pre-existing even before any convergence was brought about by the 'globalization' that is generally reckoned to be a special characteristic of the late twentieth and early twenty-first centuries.

This is certainly borne out in respect of the role of the 'rule of law' in penalty. One unifying dimension of Western democracies is, in the words of our Australian contributor Andrew McLean Williams, 'the broad acceptance of the law as a mechanism for social ordering and dispute resolution. This applies in both the common law legal tradition, and in countries that have embraced the continental or Roman tradition'.<sup>4</sup> (Again, the South African case can be seen as something of an exception among our countries, given its extremely partial application of the rule of law doctrine in the apartheid era.) Associated with the rule of law is the still-evolving notion of human rights. It is implausible to see this as a mere accident of juristic or political culture; rather, the rule of law is an inherently desirable quality of the state in developed industrial human societies, necessary for providing a basic level of predictability and efficiency as well as legitimacy. It is a central component in the 'legal authority' that Weber (1968) saw as being, for good reasons, the characteristic form of authority in modern Western societies. One might add that much of the juristic and political cogence of individual 'human rights' can be seen as deriving from the individualization of culture associated with contemporary consumer capitalism.

Following these considerations further, we should expect the following pattern to be followed - barring the unlikely event of the state ultimately withering away as envisaged by Lenin, or of a Brave New World in which deviance is extirpated by total technological manipulation of the population. All developed societies in the late modern age and hereafter will not only have highly developed legalized systems of punishment, but ones which become increasingly complex, sophisticated and regulated. This would be in line with Weber's analysis, which suggests that the further development of bureaucracy and legal authority is concomitant with economic change and social modernization. Such changes are likely to happen in the same general direction (if not at an equally even pace) in more or less all the countries under scrutiny. Thus, to take just one example, we find that - unevenly, but pretty well unidirectionally - there is a growing tendency towards *managerialism* in criminal justice (Cavadino et al., 1999: 41-5, 212-13).

Our conceptualization of this process differs from that of one currently popular school of thought - notably propounded by Jonathan Simon (1993; Feeley and Simon, 1992; Simon and Feeley, 1995), but also by others including our New Zealand contributor John Pratt (2000a). This is the notion that some recent trends in penalty (dubbed 'the new penology' by Feeley and Simon [1992]) indicate a transition from the 'modern' age of punishment into a coming era which some call 'postmodern' penalty. Features of this new postmodern penology are said to include a burgeoning technocratic managerialism, abandonment of the 'modernist' project of diagnosing, treating and rehabilitating individual offenders ('the collapse of the rehabilitative ideal' or of 'penal welfarism'), a shift towards managing and controlling aggregate categories of deviants rather than individuals, a retreat from notions of individual rights, and the adoption of a diverse range of

penal techniques both novel (such as electronic tagging) and 'premodern' (including informal and restorative justice). And, perhaps more salient than any other recent trend, *rising levels of imprisonment* in most countries.

While all these trends can indeed be discerned, we think that it adds little coherence to the picture simply to label them all 'postmodern' or 'new'. Along with David Garland (1995, 2001), we think all these developments are more comprehensibly conceptualized as facets of *a continuing process of modernization*, in line with the Weberian analysis already mentioned. We would prefer to talk, therefore, not of postmodern penalty but of a penalty of 'late' or 'high' modernity (Giddens, 1990) – or perhaps even (to borrow a term from an avant-garde school of chess players of the 1920s) *hypermodern penalty*. Increased managerialism clearly fits this analysis; as does the deployment of new technology in the penal realm. More complex, however, is the relationship of modernization to harsher phenomena such as rising levels of punishment, the apparent decline of human rights discourse in the penal realm<sup>5</sup> and the resurgence of interest in 'premodern' modes of punishment.

Relevant here is the typology of 'penal strategies' we explained in the Preface: the harshly punitive Strategy A, the managerialist Strategy B and the human rights approach we call Strategy C. As already noted in the Preface, Strategy C has several variants, since there has been (and remains) a wide range of views and schools of thought about what it should mean to respect human rights and to be humane in the penal context. For much of the twentieth century it was assumed that humanitarianism necessitated pursuing the reform and rehabilitation of individual offenders: the 'welfare' or 'individualized treatment model'. From the 1970s onwards, by contrast, proponents of the 'justice model' school argued – on the contrary, and reverting to early Enlightenment thinking on the subject – that the treatment model violated human rights, which would be better served by giving offenders their 'just deserts' in the form of punishment proportionate to the severity of the crime. Yet another school advocates 'restorative justice', whereby positive measures (such as reparation) are taken to repair the relationships between offenders, victims and their communities.

The undeniable onward march of 'Strategy B' managerialism – perhaps the most powerful of all penal trends in the late twentieth century – is clearly a 'modernizing' one. The decline of individualized rehabilitation – and hence the near-demise of one version of Strategy C in such countries as the USA and the UK<sup>6</sup> – has been seen by some as a sign of 'postmodernism'. However, it can also be seen as a combination of, on the one hand, a development within modern human rights discourse (replacing one interpretation of human rights with others), and, on the other hand, a result of the *rationalizing* tendency of modernism. Rational research and auditing of penal techniques seemed to show that attempts to 'treat' offenders were in reality ineffective, inefficient and arbitrary – because it seemed that 'nothing worked' to reform criminals – while the attempt to do so by leaving them in the hands of supposed experts who had vast discretion



over their treatment led to unacceptable disparity and waste of resources.<sup>7</sup> Tellingly, now that since the 1990s it has become the received managerialist wisdom in the UK that some things *do* work to some extent to reduce reconviction rates for the right kind of offender there has been a revival of official interest in rehabilitation as one strand within managerialist strategy. (Postmodernists might have difficulty explaining such an apparent lapse back into modernism.)

The rise of the harsh punitiveness of Strategy A since the early 1970s in many (but not all<sup>8</sup>) countries can also be seen as representing the eclipse of modernism in favour of postmodernism and/or 'regression to a stone-age morality' (as Stuart Hall (1980: 3) once put it – nicely, if without total historical accuracy). Conversely, it can be seen as another consequence of late modernity. In modern societies, traditional authority and traditional deference thereto crumble and need to be replaced by new legitimations for authority, which accord with the understandings of modern citizens. We have seen a general decline in public trust in and deference to their social 'betters', including politicians, judges and supposed experts in crime and punishment. One result has been a rise in 'the popularization of crime politics' (Simon and Feeley, 1995: 168), whereby politicians appeal over the heads of the experts and criminal justice practitioners to Ordinary Joe voters at the level of common sense rather than rely on knowledge imparted by experts. Since at present most people's common sense (falsely) tells them that a strategy of harsh punishments is likely to be effective in reducing crime rates – or at any rate this is what politicians believe most people think<sup>9</sup> – this is what politicians have been increasingly promising and delivering. (This could be conceptualized as a mechanism whereby the collective punitive sentiments of the populace are translated and expressed into punitive practices, as classically postulated by Émile Durkheim – see Cavadino and Dignan [2002: 71–4] – although we shall later be casting some doubt upon this.) The irrationalism of this development, with its appeals to emotion rather than to intellect, pulls strongly against the general rationalizing tendency of modernity. But it is nevertheless also a product of the same modernization of society; both ultimately spring from the decline of traditional authority and the search for new methods of legitimating authority in a modern age.

Something similar can be said about the reintroduction of elements of informal and restorative justice into penalty. Paradoxically, one possible consequence of late modernity's quest for greater efficiency may be to recognize the limitations that are inherent in the bureaucratizing process, which fails to satisfy the personal needs of people for less formal relationships and interactions. Moreover, the intransigent fact remains that any social system (so far) is always held in being to a much greater extent by informal than by formal processes of social control. This leads, for example, to official interest (albeit often intermittent and uncomprehending) in *informal justice* – including forms of 'restorative justice', discussed further in Chapter 12 – which may be granted a licensed role within or alongside the formal criminal justice system.

Another prominent characteristic of late modern society is of course globalization. ('Modernity is inherently globalising' - Giddens [1990: 63].) If, as we suggest, it is true that the more societies resemble each other in other respects the more similar they will be in penalty, does this mean that globalization is likely to bring about *penal convergence*, or even a homogenization of punishment across the world? To some extent this depends on what view is taken of globalization, the subject of the next section.

### **Globalization and penal convergence**

A poll of Russian schoolchildren in the mid-1980s (presumably employing multiple choice questions) found that the majority of them believed Madonna to be the owner of the world's largest chain of burger restaurants. This illustrates at least four points about globalization<sup>10</sup> - its extent, its limitations, its overwhelmingly capitalist and commercial nature (linked to the transnationalization of capital) and the cultural and economic predominance of the USA.

To begin with, we need to bear in mind that 'globalization' has several different meanings and aspects that are not always synchronized. Firstly, and undeniably, there has been and continues to be a massive increase in the international flow of information, and also of people and products of all kinds. This has been associated with a burgeoning of international commerce and a world-wide onward march of free market ideology and practice, although we would not see such an association as an inevitable one. Aspects of culture - especially of politically and economically dominant cultures, pre-eminently the USA - have also been exported around the globe. But the progress of all of these 'globalizations' has been uneven, and in particular non-American cultures have remained in many ways stubbornly, even sometimes defiantly, non-American. For although globalization enables people to gain a greater awareness of others, how people choose to use such information will be influenced by their own local cultures. To put it simply, if banally, hardly anywhere is untouched by the ever more rapid movement of ideas, culture, products and people around the world, yet localities remain distinct and different. Not everyone in the world eats Disney-sponsored Big Macs while listening to Britney Spears on their iPods; and even for those who do, it is certainly possible to buy some of the products without buying the whole culture and philosophy they may be seen as representing. (Indeed, if anything sums up the supposedly postmodern consumer it could be this very pick-and-mix superficial eclecticism.)

This is as true in the realm of penalty as it is true of globalization generally. There has certainly been an enormous increase in the international traffic of information about punishment, and much greater readiness to import ideas and practices from elsewhere. For example, even as recently as the 1970s it took several

years before an American school of thought as influential as the 'justice model' started making much impact in England (Bottomley, 1980), whereas in the 1990s concepts such as 'three strikes and you're out' and 'zero tolerance' have made the same Atlantic crossing with considerably greater speed. And the same is true of practices such as electronic monitoring or tagging. But this increased swiftness of transit has hardly equalized US and English imprisonment rates (see Table 1.2 later in this chapter, and Chapters 3 and 4), let alone led to the reintroduction of capital punishment in Western Europe. Indeed, if the USA races ahead of the rest of the world as it so often does, this could well mean that the distance between them actually *increases* as other nations are pulled along in the American slipstream but with less velocity. We are still different countries. Moreover, in some countries national pride can provide incentives to *differentiate* oneself from the USA in certain respects rather than slavishly imitating in all things. It should follow, to answer the question posed at the end of the previous section, that while we are likely to see an acceleration of *penal convergence*, we are still a long way from global *homogenization of punishment*, which may never occur.

To the extent that 'penal globalization' does exist, its process and effects are uneven, but the influence of the USA undoubtedly retains predominance. For example, Andrew McLean Williams reports that 'Australian correctional practice closely parallels (particularly) American trends, to the extent that often unique aspects of the local system seem to be replaced with a generic product. Convergence may not even be the correct form of imagery (which suggests some kind of hybridized blending). Given the presence now in Australia of large American correctional companies, what we are seeing is more a kind of *correctional imperialism* than convergence, as American-style prison facilities are becoming the new uniform standard. At the same time, the politicization of correctional policy is following an American lead (i.e. "truth in sentencing"; "boot camps", "three strikes" legislation, and so on).<sup>11</sup> Important players in this process are not only policy makers in government and lobbying governments, but increasingly, as McLean Williams indicates, commercial concerns (often American-based multinationals) who have a vested interest in the export sale of their penal products, giving rise to what has been nicely called 'a corrections-commercial complex' (Lilly and Knepper, 1992) between private corporations, government agencies and professional organizations. The economic power of American capitalism allies with American cultural dominance to ensure that the USA has a substantial balance of payments surplus in penal ideas and practices. As we shall see. But we shall also see countries taking a lead from nations other than the USA, especially from politicians who are viewed as successful. Thus, centre-left politicians in the Netherlands, Germany, Sweden, Australia and New Zealand have all to some extent copied the 'tough on crime, tough on the causes of crime' approach of Tony Blair and New Labour in the UK.

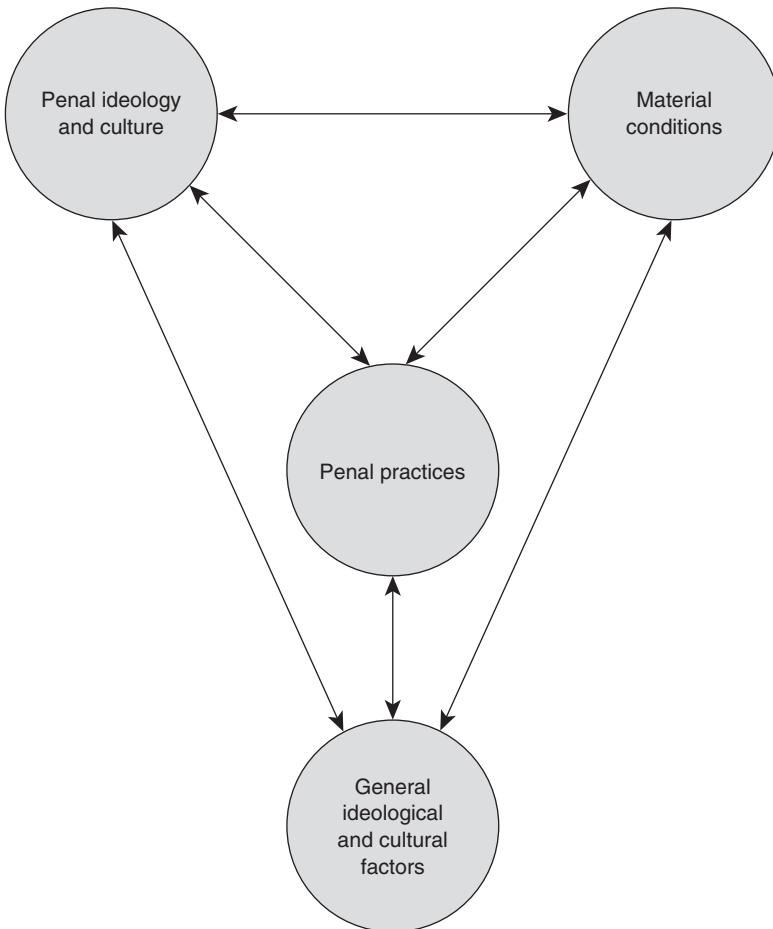
Finally we should mention the role of intergovernmental organizations and cooperation in fostering both globalization and indeed a degree of penal convergence

(see Sim et al., 1995: 3–8). Although we detect as yet relatively little sign of such deliberate ‘harmonization’ between countries in the penal field, there are already some notable examples. Perhaps the most remarkable single instance has been the discontinuance of capital punishment in Russia brought about by Russia’s desire to join the Council of Europe (which she did in 1996)<sup>12</sup> – interesting for several reasons, not the least being that this took Russia in a penal direction *opposite* to that of the USA. Similarly, the operation of the European Convention on Human Rights, to which Council of Europe countries must subscribe, has played a role in improving and harmonizing the rights of prisoners in European countries. Again this is interesting, partly because this development can be seen as an aspect of increasing modernization (not postmodernization) – being the application of an extrapolation of the modernist ideology of the rule of law – and partly because it in some respects runs counter to other international trends towards excluding offenders from the normal realms of citizenship. Conversely, we will also see examples where such harmonization and modernization threatens to flow in the opposite direction, such as the ending of the ‘waiting list’ system for Dutch prisons and the feared threats to Finland’s lenient penality from the international harmonization of criminal justice policies (see Chapters 8 and 10). Clearly, the relationships between internationalization of penality and the actual directions that punishment may take as a result are by no means simple.

### **A radical pluralist analytical framework**

We contend that, at least in the countries studied in this book, all this can be adequately conceptualized within the framework of what we call a ‘radical pluralist’ theory of society, which seeks to synthesize aspects of the Marxist, Durkhemian and Weberian traditions in sociology (Cavadino and Dignan, 2002: 76–9). Radical pluralism conceives of societies as containing a plurality of interest groups which contend to have power exerted in their favour. These interest groups *include* economic classes: it is in no way our intention to write class conflict out of the equation. Class (and race – and increasingly nationality – and gender) relations are critical to any adequate social analysis. The state<sup>13</sup> mediates this contest between groups, but not in an impartial manner, being inherently biased towards groups that already possess wealth, established power and status. The social world in which this all occurs, like any social realm (including penality), has material, cultural and ideological<sup>14</sup> components, which interact reciprocally. Whereas Marxism traditionally sees economics as the ‘base’ of society that ultimately determines the ‘superstructure’ containing the realms of ideology, politics and law, we do not believe that any one realm is ‘basic’: neither economics, culture nor ideology are the ultimate fundamental determinant of social reality.<sup>15</sup> However, the precise nature of the relationships between politics and economics, ideological and material

## INTRODUCING COMPARATIVE PENOLOGY



**Figure 1.1** *A radical pluralist analytical framework*

factors, and the interplay between them, is likely to vary within different kinds of societies. A society's *penal* ideology and culture will be greatly shaped by (and to some extent will also shape) the more general ideology and culture of the society, as well as by its material conditions. Finally, penal practices will be influenced by both general and penal ideology and the culture and the material realm in which they operate, and will also have some reciprocal effect on these forces and factors. (This is presented diagrammatically – in greatly simplified form<sup>16</sup> – in Figure 1.1.)

We do not claim that the radical pluralist model as outlined above is an adequate framework for analysing all present-day human societies, let alone any societies that have been or might be. For example, the model clearly does not fit simple stateless societies. It is also unlikely that it could be made to fit totalitarian or colonized countries.<sup>17</sup> And there may well be large and important societies in

which the ruling elite is so compact and dominant or the interest groups with any real access to the levers of political power are so few that the plurality of power postulated here does not prevail – and so on. We reserve judgement, therefore, over whether (and if so, to what extent) this framework can be usefully applied to such globally significant countries as China, the former Eastern bloc countries, and indeed to much of Africa and the rest of the Third World. (And indeed we shall see in Chapter 11 that Japan, where political power is largely monopolized by a relatively small elite, can be seen as a partial exception.) We think that a modified version of the theory should also work for such countries; power relations in these societies may not be ‘pluralist’ in the way we have described, but a similarly ‘plural’ theory, which sees a range of different and interacting realms in operation, could also be made to apply. In any event, the radical pluralist vision of society does seem broadly to characterize all the countries covered by this book.<sup>18</sup>

### **Political economy and punishment**

Not, of course, that the countries in our sample are all the same. In particular, the relationship between the state, its citizens and interest groups differs significantly across these countries. Several attempts have been made to analyse the main differences in terms of their social and economic organization between different contemporary ‘welfare capitalist’<sup>19</sup> societies (Esping-Andersen, 1990; Lash and Urry, 1987, 1994; Mishra, 1999). We have utilized these reflections to develop profiles of four different types of contemporary capitalist society (see also Dignan and Cavadino, 2003). These are depicted in the form of a typology in Table 1.1. The main aim of the typology is to identify similarities – in terms of their form of economic organization and social structure – that appear to characterize societies which belong to the same ‘family grouping’, and at the same time distinguish them from those belonging to different groupings. One of the central themes we will be exploring in this book is the expectation that societies which share the same type of social and economic organization (and cultural and ideological predilections) will also tend to resemble one another to some extent in terms of their penalty. (It is perhaps not giving away too much of the plot at this stage to say that we do find this expectation satisfied.) We will also be examining the extent to which these material, cultural and ideological factors may help to explain differences in the forms of penalty that are encountered in societies belonging to different ‘family models’.<sup>20</sup>

#### ***The neo-liberal state***

One ideal type of modern state (on the political right) is the *neo-liberal* state exemplified by the USA. We must immediately make it clear that the concept of

## INTRODUCING COMPARATIVE PENOLOGY

**Table 1.1** *Typology of political economies and their penal tendencies*

Socio-economic and penal indices	Regime types			
	Neo-liberalism	Conservative corporatism	Social democratic corporatism	Oriental corporatism
Economic and social policy organization	Free market, minimalist or residual welfare state	Status-related, moderately generous welfare state	Universalistic, generous welfare state	Private sector based 'welfare corporatism'; bureaucratic, paternalistic
Income differentials	Extreme	Pronounced but not extreme	Relatively limited	Very limited
Status differentials	Formally egalitarian	Moderately hierarchical, based on traditional occupational rankings	Broadly egalitarian, only limited occupational status differentials	Markedly hierarchical, based on traditional patriarchal ranking
Citizen-state relations	Individualized, atomized, limited social rights	Conditional and moderate social rights	Relatively unconditional and generous social rights	Quasi-feudal corporatism; strong sense of duty
Social inclusivity/exclusivity	Pronounced tendency towards social exclusion, ghetto-formation, etc.	Some exclusion in form of limited participation in civil society for some	Very limited tendency towards 'social exclusion'	Alienation of 'outsiders', but otherwise little social exclusion
Political orientation	Right-wing	Centrist	Left-wing	Centre-right
Dominant penal ideology	'Law and order'	Rehabilitation	Rights-based	Apology-based restoration and rehabilitation
Mode of punishment	Exclusionary	Mixed	Inclusionary	Inclusionary
Imprisonment rate	High	Medium	Low	Low
Receptiveness to prison privatization	High	Moderate	Low	Low
Archetypal examples	USA	Germany	Sweden	Japan
Other examples	England and Wales, Australia, New Zealand, South Africa	France, Italy, the Netherlands	Finland	

'neo-liberalism' means something very different from – in fact, almost the opposite of – the standard meaning of the word 'liberal' when applied to American politics. 'Neo-liberalism' refers to the (politically conservative) late twentieth-century

revival of the nineteenth-century approach of *economic* liberalism, based on free-market capitalism. Typically – though by no means universally – those who favour such arrangements tend to be politically less ‘liberal’ in other senses. Those usually thought of as ‘political liberals’ tend to favour greater social and personal liberty, but also a *greater* degree of government regulation of the economy including tax and welfare arrangements designed to minimize inequality and poverty. ‘Liberals’ such as these favour relatively high taxation, high levels of public spending, less material inequality and more regulated markets. ‘Neo-liberalism’, however, is the other way around: under economic neo-liberalism the welfare state is minimalist and residual. It is founded chiefly on the principle of means-tested welfare benefits, and any universalistic benefits that may have evolved – for example non-means tested pensions, health or unemployment benefits – are limited in scope and tend to be supplemented (by those who can afford them) by private pensions and health care insurance. Moreover, entitlement to benefit is often heavily stigmatized. Consequently, in comparison with the other groupings of states we will be examining, the status and economic well-being of citizens tends to be much more heavily dependent on the market in this type of society.

Although social relationships in neo-liberal societies are formally egalitarian, the strong commitment to market forces, which are only marginally attenuated by welfare payments, results in extremely marked (and currently still widening) income differentials. This material inequality – combined with a certain lack of social entitlements afforded to individuals as of right – results in the *social exclusion* of those who find themselves marginalized by the markets, particularly the labour market and the housing market (Lash and Urry, 1994: 156ff.). The term ‘social exclusion’ is not merely a synonym for poverty, but is used to refer to the denial of full and effective rights of citizenship in civil, political and social life.

There is a marked tendency in neo-liberal states for whole communities to experience the effects of social exclusion, one symptom of which is a withdrawal from the area of a variety of institutions, ranging from commodity markets (in the form of neighbourhood shops), employment markets (in the form of job opportunities), welfare state institutions and trade unions. To the extent that these institutions may have had a regulatory effect (whether in economic or social terms) their disappearance is likely to leave a normative vacuum. Moreover, the one remaining institution that has traditionally fulfilled an important informal social control function – the family – has itself been severely dislocated as a result of the economic and social changes brought about by the unmitigated effects of deindustrialization. In the USA, the phenomenon of social exclusion is most often discussed in terms of an emerging ‘underclass’, and is frequently associated with ‘ghettos’ of acute economic deprivation. It is also much more likely to be depicted as a racial and black phenomenon than is the case elsewhere, even in those parts of the world (for example, the UK) that have experienced a combination of relatively high levels of immigration by ethnically different peoples together with a comparable process of deindustrialization and concomitant increased levels of deprivation.



Among the countries that are featured in this book, the USA is the archetypal example of a neo-liberal society. The other 'Anglo-Saxon' nations (the UK, Australia and New Zealand) also feature in this group because – at least since the 1980s – the attenuated nature of the social rights that are conceded to their citizens also makes them highly dependent on the market for their status and well-being, and these countries have seen marked increases in material inequality with the introduction of free-market economic policies. However, as we shall see in Part 2, none of these countries can be regarded as *prime* examples of neo-liberalism, due to their having moved significantly in the direction of social democracy prior to the 1980s. South Africa can also be seen to be a non-archetypal example of neo-liberalism, although as we shall see its particular historical legacy has led to a very idiosyncratic and interesting amalgam of neo-liberal and social democratic corporatist elements (see Chapter 6).

### ***The conservative corporatist welfare state***

A second ideal type of modern society (in the political centre) is the conservative version of '*corporatism*' whose standard case is the Federal Republic of Germany. Under corporatism, in contrast to neo-liberalism, important national interest groups (notably and pre-eminently, organizations representing employers and workers) are integrated with the national state and granted a degree of control over those they represent on condition that this control is exercised in line with a consensual 'national interest'. In return, members of those national interest groups enjoy welfare benefits that are more generous than those associated with neo-liberal states. And perhaps more importantly, these benefits are enjoyed as *a social right* of a kind not recognized in the neo-liberal system. The overall philosophy and ethos of conservative corporatism is a *communitarian* one, which seeks to include and integrate all citizens within the nation, with individuals' membership of interest groups and other social groupings providing a vital link between the individual and the nation state.

The conservative corporatist model tends to generate significantly less inequality than does neo-liberalism; but it is not egalitarian since its welfare state enshrines and perpetuates traditional class and status divisions between different groups of citizens.<sup>21</sup> The system is based on a hierarchical ordering of occupational groups (with civil servants at the apex) whose members are subject to different regimes of social insurance. In comparison with neo-liberal states, conservative corporatist states offer their citizens somewhat greater protection against the vagaries of unbridled market forces; but the social rights they are willing to concede are nevertheless conditional on beneficiaries' observance of the reciprocal obligations (particularly with respect to employment and family) that are placed upon them.

Another typical feature of the conservative corporatist state is its strong support for, and reliance upon, other traditional institutions such as churches.<sup>22</sup> In Europe, the typical form of conservative corporatism has been 'Christian Democracy', based upon Christian moral values (including the Christian obligations to feed the hungry and take care of the sick), and predicated upon the assumed existence of a Christian community, and a Christian moral consensus, in the nation as a whole. In some countries (such as Italy) this has been founded upon a single church to which the great majority of the population traditionally belong, while in others (such as Germany, Belgium and the Netherlands) Christian Democracy has embraced more than one denomination.

Corporatism also relies heavily upon the traditional institution of the family, including expecting the family to discharge some of the welfare functions that might otherwise be undertaken by the state itself. One consequence has been the retention of a more traditional pattern of employment, which assumes a single (relatively highly paid) wage earner and a relatively low rate of participation by women in the labour force. Conversely, family benefits tend to encourage motherhood, and the state assumes a residual role in providing welfare support, which only comes into operation where the family is unable to cope.

Possibly as a result of these factors, conservative corporatist states appear to experience a rather different form of social exclusion from that associated with neo-liberal states. While the formation of ghettos and the development of a distinct 'underclass' appear to have been mostly avoided – although strains are now showing, as traditional ties between individuals, social groups and the state have been weakened – this may have been achieved at the expense of full participation in the labour market (and consequently in other aspects of civil, political and social life also) by women and many minority groups.

Although the Federal Republic of Germany is correctly acknowledged as the prime exemplar of the conservative corporatist approach, its position is nevertheless complicated by the strains imposed by the unification of West Germany with its previously Communist Eastern neighbour in 1990. Other countries featured in this book that have also experienced conservative social policies, particularly during the postwar period, include France and Italy. The Netherlands is more difficult to place within the typology, as we discuss at greater length in Chapter 8. Although we see the Netherlands as an essentially Christian Democratic country, in social policy terms (and in terms of punishment) it has for a long time had more in common with the Nordic social democratic model, which we describe next, although more recently it has moved with some swiftness in the direction of neo-liberalism (and of harsher penal policies).

### ***Social democratic corporatism***

A third arrangement (on the political left) is the 'social democratic'<sup>23</sup> version of corporatism – both more egalitarian and more secular than Christian

Democracy. The prime example is Sweden. Here, the wellsprings of social policy were lubricated by a powerful and unified trade union movement committed to the principle of 'universalism' and a willingness on the part of employers to accept high levels of investment in return for wage restraint by the unions. For its part, the state undertook a commitment to promote full employment, the pursuit of profit, the funding of generous welfare reforms, and an active labour market programme, which would seek to minimize the disruptive effects of deindustrialization and changes in economic conditions (for example by absorbing, retraining and moving redundant workers).

In terms of social policy, the approach has sought to combine corporatism with an egalitarian ethos and generous universalistic welfare benefits. Thus, all citizens are covered by the one universal insurance programme. Benefit levels are substantial, rather than being pegged at minimum rates, as elsewhere, though they are graduated according to accustomed earnings. This model goes furthest in acknowledging unrestricted rights of social citizenship, and also in assuming direct responsibility for the care of the very young, the elderly and the infirm. It appears to offer a high level of emancipation for all sectors of the community, but at the same time requires all who are capable to assume responsibility for themselves by working, since the cost to the state would otherwise be prohibitive. This is reflected in the much higher rate of female participation in the Swedish labour force (over 75 per cent of non-student females between the ages 16-64) compared with Germany (39 per cent, Lash and Urry, 1994: 182; see also Esping-Andersen, 1990: 208ff.).

The cluster of social democratic corporatist countries is comparatively small. Among the countries that are featured in this book, only Sweden and Finland qualify (although we shall see elements of social democracy in some other countries, such as the UK, Australia and New Zealand). In both Sweden and Finland, the adoption of relatively generous social security and income protections systems appear to have largely avoided any serious 'social exclusion' problems, despite a substantial increase in the number of people who are unemployed in recent decades.

### ***The oriental corporatist state***

The fourth and final ideal type is yet another variant of the corporatist approach – the oriental corporatist society found in Japan. (There may be no other countries which fit this model; certainly we know of no country quite like Japan.) While in many respects Japan appears to come within the family cluster of corporate welfare states, the social and political context in which this operates is so distinctive as to place it in a separate hybrid category that combines elements of a corporatist approach with those found in neo-liberal systems.

Japanese capitalism has been described (Hill, 1981) as a form of bureaucratized corporate paternalism, which embodies a number of distinctive features. These include a high degree of occupational security (sometimes characterized

as 'employment for life') and a hierarchical but progressive career structure. The latter ensures that wages and a wide range of other occupational benefits (such as company housing and medical, educational and leisure facilities) are related to an employee's age and increasing social responsibilities (including family commitments) rather than their productivity or the market value of their skills. For their part employees are both dependent on and loyal to their employers.

This employment structure is by no means universal in Japan, since it is mainly associated with the 'core' labour force employed by the larger private sector corporations. It thus excludes many women, temporary workers and employees of subcontractors as well as those working for small- and medium-sized firms.<sup>24</sup> Other groups in Japanese society – notably the elderly and non-working members of extended families – also lost out as the rapid economic growth which Japan experienced after the period of postwar reconstruction placed increasing strains on more traditional family or community based systems of mutual support.

Japan's initial response to these economic changes and their associated effect on the country's social structure was to lay the foundations for a comprehensive welfare state along Western European (corporatist) lines (Tabata, 1990). Thus, by 1973 wholesale improvements had been made in the coverage of Japanese health insurance and pension schemes (Yamasaki and Hosaka, 1995), and further improvements followed during the 1970s, which included the introduction of children's allowances and the socialization of medical expenses for the elderly. Although the scale of social security expenditure still looked relatively modest in comparison with that of most European countries,<sup>25</sup> it appeared to be changing. In 1994 the Ministry of Health and Welfare estimated that by 2025 expenditure on social security payments would represent 28.5–32.5 per cent of national income, which is comparable to the current levels for Germany and France.

From the late 1970s, however, Japan's economy entered a low-growth phase and this, together with the escalating costs of its social security spending, has prompted a radical reassessment of its social welfare policies. This has resulted in an explicit renunciation of the erstwhile goal of creating a Western European style 'welfare state', and the adoption in its place of a 'Japanese-type welfare society' (Tabata, 1990: 2). Although this is portrayed as an indigenous adaptation that is more in keeping with Japan's own distinctive traditions and circumstances, the reality is that this change of approach is just as heavily influenced by a 'foreign model' as its predecessor was. But this time, the model owes more to the neo-liberal strategies that were being adopted during the early 1980s by the USA and UK. The result has been a drastic scaling-back in the level of a wide range of benefits,<sup>26</sup> in an attempt to keep welfare spending under control, and an increasing reliance on the operation of the market within a reinvigorated private-sector economy.

Although the long-term effect of these changes may well be to push Japan increasingly in the direction of a 'market-oriented society' which is qualitatively

different from the West-European-type welfare states' (Tabata, 1990: 24), it also differs significantly in many respects from other neo-liberal states. We will comment briefly on differences in income and status differentials and also in the way Japanese citizens and institutions relate to one another.

In terms of income differentials, Japan has a much less unequal income distribution than the USA, and in this respect at least resembles much more closely the pattern found in such European welfare states as the Netherlands, Sweden and Norway (Currie, 1985). At the same time Japan is a much more hierarchical society than any of the others we have been describing, and is much more highly 'relational' in the sense that people are likely to belong to a relatively complex, dense and inter-locking set of relationships whether at home or in work and social settings. Moreover, Japanese institutions of all kinds appear to be much more 'inclusive' in seeking to foster and maintain such relationships where possible. 'Authoritarian communitarianism' sums it up well.

Following the latest social policy changes in Japan, the notion of 'social rights' may appear to be just as attenuated there as in the neo-liberal model. However, compared with their neo-liberal counterparts, Japanese citizens seem to be imbued with a much more highly developed sense of 'social duties', with respect to their families, teachers, class and workmates, friends and social superiors. These sharp contrasts between the oriental corporatist and neo-liberal models would appear to render the former much less vulnerable than the latter to the more extreme forms of 'social exclusion' and their attendant symptoms of alienation, despite the fact that sections of Japanese society do also experience an increasingly high degree of economic, social and cultural deprivation.

### ***Welfare state types and penalty***

Is there a significant association between these different types of welfare state and penalty? There certainly seems to be if you look at the twelve countries in our sample and their imprisonment rates as set out in Table 1.2. At the beginning of the twenty-first century there are clear dividing lines between the different types of political economy as regards imprisonment rates. All the neo-liberal countries have higher rates than all the conservative corporatist countries; next come the social democracies, with our single oriental corporatist country (Japan) having the lowest imprisonment rate of all. Admittedly, this particularly neat result will not necessarily hold 100 per cent true if one compares a greater range of countries, or even some of the same countries at different points in history. (For example, as we shall see in Chapter 10, in the 1970s social democratic Finland had a very high imprisonment rate by contemporary Western European standards. And conversely, as we shall see in Chapter 8, in the 1970s and 1980s the conservative corporatist Netherlands had a rate of imprisonment lower than the Nordic social democracies.) But it is striking nonetheless.

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**Table 1.2** *Political economy and imprisonment rates*

	<b>Imprisonment rate (per 100,000 population)</b>	<b>Year</b>
Neo-liberal countries		
USA	701	2002
South Africa	402	2003
New Zealand	155	2002
England and Wales	141	2003
Australia	115	2002
Conservative corporatist countries		
Italy	100	2002
Germany	98	2003
The Netherlands	100	2002
France	93	2003
Social democracies		
Sweden	73	2002
Finland	70	2002
Oriental corporatism		
Japan	53	2002

Source: Walmsley (2003b)

Thus, at least on this measure, it is the neo-liberal states who are the most punitive out of the range of countries covered in this book. And it is the USA – the archetypal and increasingly neo-liberal polity – that has in many ways been a world leader in escalating harshness of punishment in recent years. The USA not only imprisons a higher proportion of its population than any other country in the world but also resorts to the death penalty on a scale that is again unrivalled in any other late capitalist country (see Chapter 3). But why should there be this relationship between neo-liberalism and harsh punishment?

One likely factor in any explanation concerns *the balance between different methods of social control* in different types of society, including the balance between formal and informal social control. We have already noted that the kind of social and economic policies that are associated with neo-liberal societies are highly exclusionary – socially marginalizing – in their impact on some individuals and indeed whole communities. This is likely to have *criminogenic* consequences, which in turn will tend to influence the balance between different types of social control. Failure to provide adequately for those who are adversely affected by the vagaries of the market place (and stigmatizing those in receipt of whatever residual benefits *are* available) is itself likely to result in

more crime being committed. This will be particularly likely if the society as a whole remains relatively affluent, giving rise to gross material inequalities, relative deprivation, and that staple element of criminology known as *anomie*: the 'strain' between people's socially-induced aspirations to material prosperity and the practical unlikelihood for many of achieving such material rewards by legal means. Moreover, free market social and economic policies are also likely to disrupt existing communities and thereby undermine the informal social controls that might otherwise have been exerted by family, friends, colleagues or neighbours. As Paul Ormerod (1977: 88) has noted, societies with relatively low crime rates tend to be those with strong community relationships which 'both foster a sense of belonging and provide ... the setting in which informal social sanctions against aggression and crime can operate effectively'.<sup>27</sup> An aggressively individualistic society, of course, provides the opposite kind of setting. It will also tend to inhibit the development of possible alternative, welfare-based methods of social control such as subsist within other advanced welfare capitalist societies. To put it bluntly (while misquoting Bob Dylan), when you've got nothing – and the welfare state won't give you anything – you have relatively little to lose by misbehaving. Except, of course, that you may be punished.

So it is perhaps not surprising that in neo-liberal societies the level of public demand for, and recourse to, formal methods of social control based on the prosecution and punishment of offenders appears to be far greater than in other advanced welfare capitalist countries. For example, as we shall see in Chapter 15, the age of criminal responsibility tends to be far lower in most neo-liberal societies than in any other type of state. Moreover, the penal sanctions that are imposed also tend to be highly '*exclusionary*' – notably in the extensive use of imprisonment, which excludes the offender from mainstream society in the most literal, physical manner as well as symbolically by the stigmatization which imprisonment confers.

But it is certainly not simply – and perhaps hardly at all – the fact that neo-liberalism may be criminogenic that leads to high levels of formal punishment. For this to be so, there would have to be a strong association between the level of crime and the amount of punishment meted out by the state – and (perhaps strange to say), there is not very much good evidence of any such strong association.<sup>28</sup> It is more to do with the cultural attitudes towards our deviant and marginalized fellow citizens as embodied (and embedded) in the political economy. The neo-liberal exclusion both of those who fail in the economic marketplace and of those who fail to abide by the law is no coincidence, as several commentators have suggested (Currie, 1996; Dignan, 1999a; Faulkner, 1996; Greenberg, 1999). Both are associated with a highly individualistic social ethos. The individualistic ethos leads a society to adopt a neo-liberal economy in the first place, but conversely the existence of such an economy in return fosters the social belief that individuals are solely responsible for looking after themselves, thus reproducing the individualistic culture. In neo-liberal society, economic

failure is seen as being the fault of the atomized, free-willed individual, not any responsibility of society – hence the minimal, safety-net welfare state. Crime is likewise seen as entirely the responsibility of the offending individual. The social soil is fertile ground for a harsh ‘law and order ideology’. And as neo-liberal societies have become even more neo-liberal in recent decades, so have they become more punitive. Speaking of the USA, Greenberg (1999: 306) refers to the toughening of criminal justice and penal policies during the Reagan and Bush (senior) presidencies, which accompanied a systematic reversal of various ‘incorporative’ social policy initiatives in other spheres. These included the weakening or dismantling of regulatory regimes that had been set up to protect employees, consumers and the environment. (See further Chapter 3.) A similar observation could be made in respect of parallel penal and social policy developments during the Conservative governments led by Prime Ministers Thatcher and Major in the UK during the same period. There, too, the adoption of a variety of exclusionary social policies in the spheres of housing, employment, and welfare benefits accompanied the pursuit of an increasingly harsh and punitive penal policy – as we shall discuss further in Chapter 4.

Conversely, corporatist societies such as Germany – and to an even greater extent, social democratic ones like Sweden – have traditionally had a different culture and a different attitude. These other late capitalist countries differ greatly from neo-liberal states both in the balance between formal and informal methods of social control and in the attitude towards the failing or deviant citizen. As we have already noted, corporatist and social democratic states tend to pursue more inclusionary economic and social policies that offer their citizens a far greater degree of protection against the vicissitudes of unfettered market forces, binding citizens to the state via national interest groups and ensuring the provision of welfare benefits and care of various kinds to ensure that all citizens are looked after. The communitarian ethos, which gives rise to these policies (and which is in return shaped by them), also finds expression in a less individualistic and less rejecting attitude towards the offender, who is regarded not as an isolated culpable individual but as a social being in need of *resocialization*, which is the responsibility of the community as a whole. The corporate citizen, unlike the neo-liberal, is much more his brother’s keeper – even if he has done wrong – with a stronger sense that ‘there but for the grace of God go I’ – in terms of both economic failure and criminal activity. A more developed welfare state goes along with a less punitive penal culture.

Such a culture typically, although not invariably<sup>29</sup> and never in a pure form, takes the form of a *penal welfarism* (Garland, 1985, 2001) which seeks to respond to crime with measures aimed at improving the lot of the offender and thereby effecting his or her reformation and reintegration into society. Thus ‘welfare’ is the response to the offender as well as the economically disadvantaged citizen. Of course, the two categories in any event overlap to a significant extent, and providing welfare to impoverished non-offenders can also be seen as a way of



trying to prevent them from becoming offenders. As Greenberg (2001: 81) puts it, 'locking people up or giving them money might be considered alternative ways of handling marginal poor populations – repressive in one case, generous in the other'.

In *conservative corporatist* states, the protection and maintenance of traditional informal social control institutions, such as the family and religion, are major social policy objectives in their own right. As such, they have not only shaped the content of other social welfare policies but are also likely to act as a 'brake' that will tend to increase resistance towards some of the more exclusionary economic and social policies that are associated with neo-liberal countries. With regard to those who break the law, there is a greater emphasis on rehabilitation and resocialization than on punishment, and a more welfare-based approach towards young offenders in particular, than is found in most neo-liberal states. Compared with the latter, conservative corporatist states also tend to have a higher age of criminal responsibility, show a greater willingness to divert young offenders from prosecution and, conversely, a greater reluctance to routinely transfer young offenders to the adult jurisdiction (see Part 3). All these tendencies are consistent with a tendency to place less reliance on formal social control methods, particularly where they are related to the use of exclusionary sanctions.

*Social democracies* are also 'inclusionary', in the sense that they have developed a relatively egalitarian concept of citizenship that affords extensive protection against a variety of economic, social and also biological and physical misfortunes. In contrast with conservative corporatist countries and Japan's oriental corporatist variant, however – which tend to delegate responsibility for citizens' welfare to non-state institutions such as the family, church, employers and voluntary organisations (Hallett and Hazel, 1998) – in social democracies the state itself is likely to assume a much more active role in providing this protection. This is likely to have mixed implications for the balance between formal and informal methods of social control.

On the one hand, the fact that the state is less likely to espouse the protection and maintenance of traditional social institutions such as the family and organized religion as overriding policy objectives in their own right could result in a weakening of their informal social control potential. Indeed, Bottoms (1983: 194) has suggested that a decline in the provision of 'lay care' by such institutions in welfare-capitalist societies could be linked to an increase in both the actual volume of crime (presumably because of the weakening of informal social controls); and also in its *apparent* volume. The latter seems plausible since people may be more likely to call in an official agency (the police) to deal with a crime – which will increase its likelihood of being recorded – instead of handling it themselves within the informal community networks that are likely to have flourished more successfully in the past. The decline in the effectiveness of such informal social control methods (whether real or apparent) is likely to increase

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the pressure for a more formal (and potentially more exclusionary) response to those crimes that are committed.

On the other hand, however, the social democratic state's commitment to full employment and broadly redistributive social and economic policies, if successful, might be expected to reduce the amount of crime that can be attributed to economic misfortune and relative disadvantage. Moreover, Bottoms (1983) and others have also suggested that the development of more extensive state welfare provisions could *increase* the scope for different forms of social control to be exercised within the informal structures of society without having to rely so heavily on formal penal measures. If this were to happen, then it could offset (in whole or in part) the reduction in the effectiveness of other, more traditional kinds of informal social control. And this in turn could reduce the (perceived) need for, and dependence on, formal externally imposed social controls that are linked to the application of 'exclusionary' sanctions on those who have offended.

As might be expected, social democratic corporatist states also appear to have a rather distinctive type of penalty, notably with regard to the overall level of punishment, which appears to be remarkably low; even in comparison with conservative corporatist states. It is not entirely clear why this might be, though it could be linked to the very strong emphasis on inclusiveness, the feeling that everyone is a part of the same society. Perhaps it is also associated with the principle of egalitarianism, since most forms of exclusionary punishment will tend to make offenders worse off than the rest of society, which is inconsistent with this ideal. The social democratic society is the one which 'cares' the most about those at the bottom of the heap. It is also possible that in a social democratic culture people are not so ruthlessly held responsible for the offences they have committed, which are less likely to be attributed to the free will of the individual offender. Without necessarily going so far as to say that 'society is to blame' for all crime, there could nevertheless be a greater willingness to assume a degree of collective responsibility for the fact that an offence has been committed.

Social democracies tend to have the highest age of criminal responsibility of any states that we have been considering. Moreover, in other respects also they appear to be far more reluctant to invoke formal social control measures against young offenders, many more of whom are either diverted from the criminal justice system altogether, or else are dealt with by social welfare authorities. This tendency is also consistent with the analysis above.

The *oriental corporatist* state found in Japan is of particular interest with regard to the variable balance between formal and informal methods of social control. As we have seen, although it lacks the generous levels of welfare spending associated with most European corporatist and social democratic states, its pattern of income distribution nevertheless closely resembles that of the Netherlands and Nordic countries, such as Sweden and Norway. Moreover, it appears to have retained a much more traditional hierarchical social structure, which Western observers are apt to associate with 'quasi-feudal' societies rather

than late capitalist ones. This is particularly true of the reciprocal obligations that traditionally defined the relationships between large private sector corporations and their employees, but a similar pattern of mutual expectations also characterizes many other relationships within a wide variety of social settings.

Japan has been described (Masters, 1998: 326ff.; Sato, 1996: 119) as a highly 'relational' or group-oriented society in the sense that the Japanese sense of personal identity is closely bound up with their membership of various informal social groupings, all of which have a legitimate claim on their social and personal obligations. The relatively weak sense of personal individuality, and the reciprocal desire to remain as part of the group, and not to be excluded from it, may also help to account for the significant role of the apology (Wagatsuma and Rosett, 1986: 472-8), both within Japanese society at large, and also as a major influence on decision-making within the Japanese criminal justice system.

The apparent willingness of Japanese wrongdoers to confess and voluntarily apologize for what they have done may be seen not only as a desire to maintain or restore positive relations with the person who has been harmed directly by their actions; but also because the maintenance of harmonious relations within the other social groups to which the wrongdoer belongs requires such obligations to be respected. A willingness to apologize and make restitution to the victim is thus likely to be interpreted by others – including criminal justice officials such as the public prosecutor and sentencing judge – as evidence of the wrongdoer's capacity for resocialization, based on their commitment to the preservation or restoration of harmonious relationships with those around them. Apology makes it possible for no formal action to be taken, even in the case of relatively serious wrongdoing. (The extent to which Japan relies on informal rather than formal methods of social control when dealing with offenders is highlighted by the fact that as many as 99 per cent of all juvenile offenders under the age of 20 are diverted from formal prosecution.) Conversely, as we shall see in Chapter 11, where an apology is not forthcoming or where persistent wrongdoing casts doubt on its likely sincerity or effectiveness, extremely harsh measures may be taken – but only against those who are deemed to have incorrigibly rejected the authoritarian norms of Japanese society.

The Japanese example represents a striking obverse to the linkage we remarked on previously between the pursuit of exclusionary penal policies and exclusionary social policies in countries that are characterized by relatively weak informal social control mechanisms. The overall impression is that Japan shows a marked preference for inclusionary social and penal policies that are linked with what appears to be a remarkably effective regime of informal social controls. There are notable exceptions, including the exceptionally harsh treatment that is meted out to a minority of convicted persistent offenders, and also Japan's continuing failure to observe internationally supported procedural standards and safeguards relating to the detention and interrogation of suspects. But there is still a remarkable contrast between Japan's broadly 'inclusionary' approach

to criminal justice and social policies and the predominantly 'exclusionary' approach that is associated with neo-liberal countries in general, and the USA in particular. The result, as can be seen from Table 1.2, is an imprisonment rate which even undercuts those of social-democratic countries such as Sweden and Finland.

Our analysis so far broadly concurs with that of David Greenberg (1999),<sup>30</sup> who also suggests that corporatist and especially social democratic countries tend to be both relatively lenient in terms of their penalty as well as being relatively generous and supportive in other aspects of their social policies, both of these being 'manifestations of a high degree of empathic identification and concern for the well-being of others (1999: 297). Greenberg also goes further, however, proposing that it is possible to demonstrate statistically a significant inverse correlation between a country's level of punishment and a single unidimensional factor, namely the country's degree of 'corporatism': in other words that 'the more corporatist societies are less punitive.' We are not so sure about this. Greenberg uses a complex quantitative measure of 'corporatism' derived from the work of Pampel et al. (1990), one limitation of which is that it does not distinguish national characteristics that we would identify as social-democratic from those we would call corporatist. In particular, the measure places a very heavy emphasis on state-funded public retirement benefits – the more generous, the more 'corporatist' the country is taken to be. Consequently, countries that we would typify as both social democratic *and* corporatist (such as Sweden) find themselves rated highest on this scale of 'corporatism'; though it certainly is interesting to note that these *are* among the least punitive of our four main groupings of late capitalist countries. (We would say that both corporatism and social democracy tend to lessen rates of punishment, and the Nordic combination of the two leads to particularly low rates.) In contrast, Japan appears to have a relatively low ranking on Pampel et al.'s 'corporatist score', at tenth place out of eighteen countries surveyed. This is almost certainly because the emphasis on state-funded public retirement benefits means that the measure fails to capture the highly distinctive contribution made by Japanese corporate enterprises in providing some of the redistributive benefits (such as pension expenditure) that in other countries (and particularly in social democracies) are considered to be primarily the responsibility of the state. France and Italy (see Chapter 9) also rank lower than they should on this score, appearing to be less 'corporatist' than New Zealand and Australia, a result which overemphasizes the financial quantum of state provision rather than national ethos as the touchstone of corporatism. We would speculate that a better measure than 'corporatism' for differentiating 'low punishment' from 'high punishment' societies would be one based on an index of 'social inclusiveness', were it possible to operationalize such a measure.

Both our analysis and our specific findings also have much in common with the work of Beckett and Western (2001) and Downes and Hansen (2003).

Downes and Hansen (forthcoming) found that countries with relatively high welfare spending as a proportion of gross domestic product (GDP) had relatively low imprisonment rates (although Japan was a major exception); Beckett and Western found something very similar when comparing different US states. Intriguingly, both studies found that this statistical relationship has become much stronger in recent years (and specifically since the 1990s).<sup>31</sup> Again, these facts fit our theory. More corporatist countries, and especially social democracies, generally have higher welfare spending and lower punishment levels. Japan, however, has low state welfare expenditure and lesser punishment – because the important factor is not state welfare as such but the inclusiveness of the society's culture towards its members. The reason for the inverse welfare–punishment ratio becoming stronger over time is perhaps because the differences between different countries and different states in both these respects were not so marked in the past: for example, the USA was not at all a consistently low spender on all aspects of public welfare in previous decades (Downes, 2001: 72). The worlds of welfare and of penalty are in many respects actually becoming more polarized, not globally homogenized, making the relationship between the two more marked.

Another empirical finding, which fits well with our analysis, is that, as a general rule, economic inequality is related to penal severity: the greater the inequality in a society the higher the overall level of punishment (Beckett and Western, 2001: 50; Wilkins and Pease, 1987; Young and Brown, 1993: 41–3). (Interestingly, Japan with its relatively low inequality of income but low expenditure on state welfare fits this pattern although not fitting into the welfare–punishment pattern discussed in the last paragraph.) One theory is that punishment is a sort of 'negative reward': societies which are prepared to reward 'success' with higher incomes and greater social status are also more willing to punish failure with both poverty and formal sanctions. Or one could say, as we would, that a more egalitarian society is both more inclusive and less willing to consign offenders to an even more unequally low level of existence. In any event, as we have seen, our typology of nations will also yield this general association between inequality and punishment.

One would expect, following this analysis, to find that public attitudes towards those who break the law would be significantly different in countries which fall within these different clusters of nations. Some empirical evidence is available here thanks to the International Crime Victim Survey (ICVS), which has conducted surveys in 58 countries from around the world in 1989, 1993, 1996 and 2000. Drawing on a recent analysis by Mayhew and van Kesteren (2002),<sup>32</sup> Table 1.3 shows how attitudes towards punishment vary in each of the countries in the current study (excepting Germany, which has not been covered by the ICVS since 1989). The table also shows how these attitudes relate to each country's imprisonment rate.

The ICVS measures attitudes towards punishment by using a standardized exercise in which respondents are asked what sentence they would recommend for a recidivist burglar. The 'punitiveness score' used in Column A of Table 1.3 takes

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**Table 1.3** *Political economy and attitudes to punishment*

	<b>A</b> Punitiveness score	<b>B</b> Average score for cluster	<b>C</b> Imprisonment rate 2002/3	<b>D</b> Ranking for A	<b>E</b> Ranking for C
Neo-liberal countries		13.6			
South Africa	31		402	1	2
USA	16		701	2	1
England and Wales	12		141	3	4
Australia	5		115	7	5
New Zealand	4		155	8	3
Conservative corporatist countries		4.7			
Italy	6		100	5=	6=
The Netherlands	6		100	5=	6=
France	2		93	10	8
Social democracies		2			
Sweden	3		73	9	9
Finland	1		70	11	10
Oriental Corporatism		10			
Japan	10		53	4	11

*Sources:* Mayhew and van Kesteren (2002: 87-9; data from the latest ICVS sweep in each country are used in the table); Walmsley (2003b)

into account both what proportion of respondents favoured a prison sentence and the lengths of sentence recommended by those who did so.<sup>33</sup> As can be seen from Table 1.3, public attitudes towards punishment are broadly (but not precisely) in line with expectations with regard to the different types of political economy. Thus, the average score for each cluster (Column B) shows clear differences in the expected direction, with the interesting and notable exception of Japan, though the comparatively low scores of New Zealand, Australia and France are also noteworthy. One factor that might account for the higher than expected punitiveness score for Japan is that the 'offender' in question was a recidivist and, consequently, may have been viewed as someone with a reduced capacity for resocialization and therefore less deserving of leniency. As for the lower than expected punitiveness scores for Australia and New Zealand, it may be worth reiterating our earlier observation that prior to the 1980s these were countries with pronounced social democratic tendencies. So it could be that these are still reflected to some extent in people's attitudes towards punishment, even though their politics and economies may subsequently have moved in a neo-liberal direction.

Table 1.3 also demonstrates that a country's ranking in terms of its imprisonment rate is by no means totally determined by the 'punitiveness score' of its people. If it were, we would expect Australia, New Zealand and France to

have lower imprisonment rates than they have, and Japan's to be much higher.<sup>34</sup> And in general, while research to date has occasionally shown some correspondence between a country's imprisonment rate and the punitiveness of its public as measured by such surveys, the association does not always show up strongly (Mayhew and van Dijk, 1997; Mayhew and van Kesteren, 2002: 72-4). Consequently, imprisonment rates cannot be a simple Durkheimian reflection of the common sentiments of ordinary people; nor – it would appear – are these public attitudes entirely conditioned by the political economies of their countries. Hanns von Hofer (2003b) has referred recently to the extent to which punishment is 'a political construct' shaped by the policy choices of politicians and state functionaries – members of what we term a country's 'penal elite', comprising the group of people who have particular power to determine a nation's penalty. We would add that political economies are also largely political constructs in this sense, and that, for example, neo-liberal politicians can play a part in making the economy more neo-liberal and penalty more neo-punitive than one would expect when measuring the views of the public. (We shall return to this issue in our concluding chapter.) The interplays between public opinion, the political realm, public policy and penal practice are complex. But they are always conditioned by the type of society in which they occur.<sup>35</sup>

For example, within neo-liberal societies, not only are public attitudes towards law-breakers likely to be more punitive and intolerant, as we have seen, they are also more likely to be shaped and reinforced by privately-owned and market-oriented media, and by increasingly competitive, market-oriented and populist politicians. In some neo-liberal societies such as the USA, political parties are relatively weak in terms of the 'platform' they espouse, with the result that contenders for political office may feel the need to reflect and promote populist issues that are felt likely to resonate with the electorate. Where key criminal justice officials (including judges and public prosecutors) are themselves either elected or nominated and confirmed by political (and sometimes highly politicized) processes, as is also the case in many US jurisdictions, significant shifts in public opinion towards more hard-line 'law and order' approaches are more likely to result in dramatic increases in the rate of imprisonment. Again, however, this is not simply a transmission of punitiveness from public to politicians. Katherine Beckett (1997) has demonstrated how politicians and the media can *lead* public opinion in a more punitive direction, which politicians can then exploit for electoral purposes.

In other countries that show marked neo-liberal tendencies, there are likely to be similar pressures to adopt a more punitive response towards offenders. However their influence may be less profound, particularly where criminal justice officials are more likely to be appointed to tenured positions by means of less heavily politicized processes, as in most of the other neo-liberal jurisdictions within this study. Moreover, political parties tend to be stronger outside the USA, and tend to run for office on the basis of more comprehensive platforms,

in which 'law and order' issues will not necessarily be given the prominence that they have been in recent US elections.<sup>36</sup> In circumstances such as these, the effect which even increasingly punitive attitudes might have on penal policy is likely to be much more moderate.

In more collectively-oriented countries, not only are public attitudes likely in general to be considerably less punitive to begin with, but the institutional context in which penal policy is shaped is also markedly different from the American position. The ownership, control and role of the media, for example, are very different in countries with a more corporatist and bureaucratic power structure, such as Germany. Major portions of the German news media (including all radio and television stations, but not newspapers and magazines) were until recently publicly organized and controlled (Savelsberg, 1999: 929). Because the broadcasting media are largely controlled by governing boards, which include representatives from a range of corporatist institutions including the main political parties, churches, unions and employers' organizations, they are far less market-oriented, and likely to be much less populist, than their counterparts in the USA.

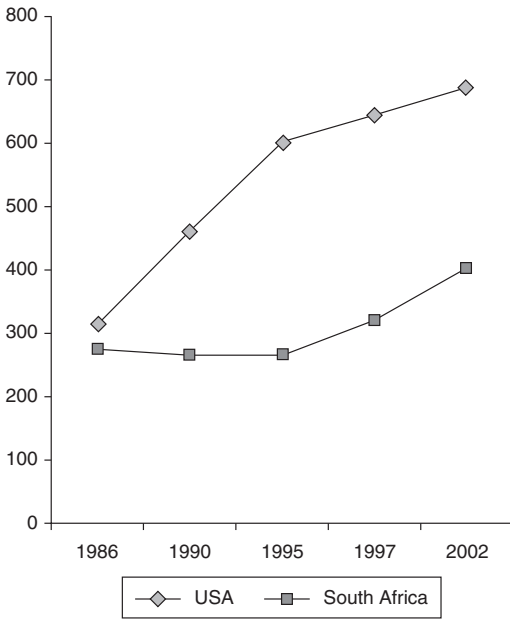
Also in contrast to the USA, German politicians are more likely to subscribe to well-defined and comprehensive party platforms, and are thus more likely to act and legislate in accordance with their party mandates than in direct response to public pressure. And because German criminal justice officials such as judges and prosecutors are appointed as tenured civil servants rather than being directly elected or nominated by politicians, they are likewise much more insulated from public and political pressures than their US counterparts. These marked differences in the institutional context within which political ideologies are shaped and find expression may be just as significant as the ideological differences themselves in helping to account for the relative leniency in punishment levels in many corporatist countries compared with neo-liberal nations.

We should like to be able to account, not only for differences in the apparent levels of punitiveness between different countries, but also for *changes* in these countries' punishment levels over time. One obvious line of explanation – and one from which we shall be getting plenty of mileage – is, as one might expect, also to do with our typology of modern states and developments in relation to it. Thus, for example, one might well find (as we often have) that as a society moves in the direction of neo-liberalism, its punishment will tend to become harsher. Conversely, a move in the direction of corporatism or social democracy (not that many countries have experienced strong developments like this recently) might make punishment more lenient or at least mitigate trends towards greater harshness.

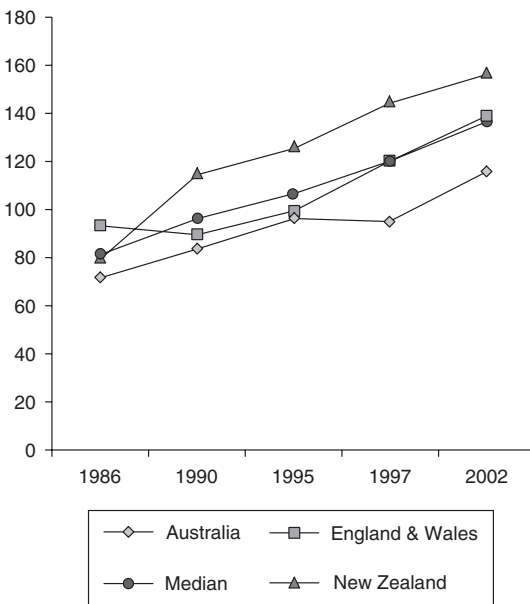
But this is not the whole story. For it is also important to be able to account for the relative *stability or instability* of punishment levels over time, as depicted in Figures 1.2–1.5. We find that punishment levels are relatively stable in the majority of conservative corporatist countries (with the notable exception of the Netherlands); relatively upwardly volatile in countries with marked neo-liberal



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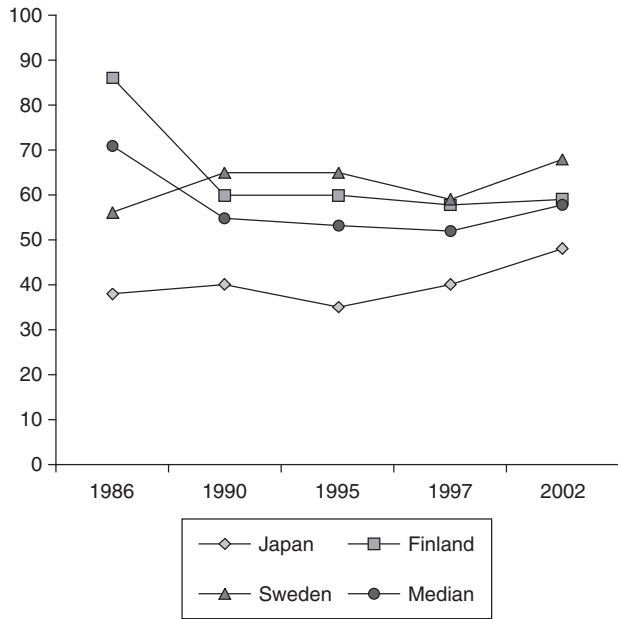


**Figure 1.2** *Imprisonment rates for the United States and South Africa*

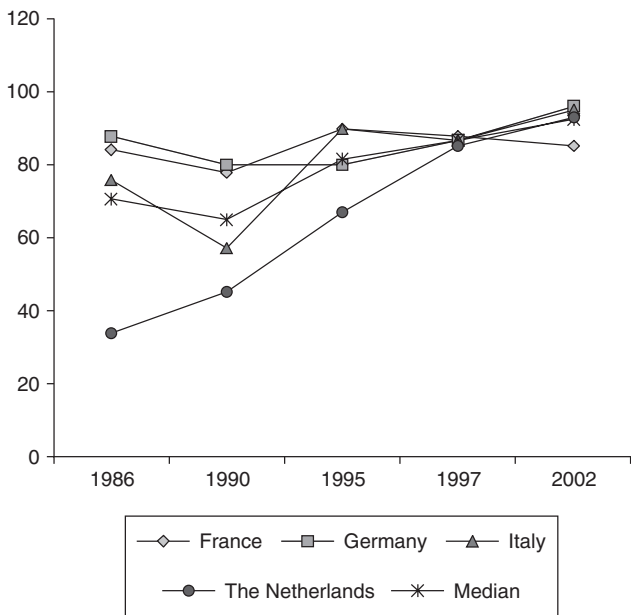


**Figure 1.3** *Imprisonment rates for Australia, England and Wales, and New Zealand*

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**Figure 1.4** *Imprisonment rates for Sweden, Finland and Japan*



**Figure 1.5** *Imprisonment rates for France, Germany, Italy and the Netherlands*

tendencies; and usually much less likely to increase rapidly in the social democracies – although Sweden may currently be proving something of an exception (see Chapter 10) – and in Japan (again, at least until very recently). Among the social democracies, the significant *reduction* in the national rate of imprisonment in Finland from 1976 to 1999 is of particular interest because it bucked the otherwise generally upward, or at best static, trends that characterize every other country in the study.

One cogent factor may well be the variable interrelationships that exist in different kinds of countries between ideological factors and attitudes on the one hand, and the institutional contexts within which these attitudes may be shaped, influenced and expressed, on the other. Changes in punishment levels – or indeed lack of change – may again be largely explicable in terms of the interplay between rival sets of influences. The first set of influences consists of pressure from public opinion, the influence of the media, and the degree of populism with regard to law and order issues on the part of rival political parties. Particularly in countries where they act in concert, such influences are capable of powerfully shaping the direction of criminal justice and penal policies. A second set of influences comprises the opinions and values of sections of the country's 'penal elite' namely senior public servants, including criminal justice professionals themselves. In other countries these appear to have been the predominant forces that have shaped the direction of penal policy. The institutional differences, which (as we saw above) typically exist between corporatist and neo-liberal countries and which generally make for a tendency to greater *leniency*, also tend to make for greater penal *stability* by partially insulating the penal elite and penal practitioners – and hence the penal system – from the effects of populist punitiveness.

With regard to the exceptional *decline* in the rate of imprisonment in Finland between 1976 and 1999 – in marked contrast to the trend seen in most other European, Commonwealth and North American jurisdictions – this has also been attributed by Patrik Törnudd to the more bureaucratic power structure that operates in Finland. Within this much more bureaucratic structure, senior civil servants and the penal experts who are regularly consulted by them are particularly powerful members of the penal elite, and their views have had a much greater impact on the direction of penal policy than public sentiment. Consequently, when this influential professional elite was persuaded during the early 1970s that Finland's rate of imprisonment was both unacceptably and needlessly high, it mobilized a consensus for reform on the part of key civil servants, the judiciary and prison authorities. This attitudinal shift on the part of a key professional elite was felt by Törnudd to have been a far more potent factor than any structural or demographic changes, and more important even than the precise mechanisms used to effect the change. A remarkably similar constellation of factors and circumstances has also been credited with the even more dramatic reduction in the early postwar rate of imprisonment in the Netherlands. (See further Chapters 8 and 10.)

Much of this can be summarized in Joachim Savelsberg's (1999) suggestion that two general dimensions of political arrangements are important when explaining the stability or instability of a country's punishment levels. One is the degree of *centralization* of political power within the state (seen at its extreme in totalitarian countries); another is the degree to which a country's politics are *bureaucratized* (with powerful political parties and civil services and a high degree of regulation of decision-making) or '*personalized*', with a higher reliance on individual political and legal decision-makers.<sup>37</sup> He postulates that the decentralized but bureaucratic nature of the Federal Republic of Germany helps to explain its relative penal stability over time, in contrast to the highly centralized bureaucracies of East Germany and Poland, where punishment levels have varied dramatically over very short time periods in response to political edicts from the apices of power. Whereas in the USA – decentralized and personalized – he finds relative stability on punishment levels from one year to another, but dramatic changes over longer periods (decreases in the 1960s followed by very large increases from 1972 to the present day), as changing ideologies and populist politics make their way into penal practices. We shall be saying more about Savelsberg's thesis in Chapters 7, 8 and 10, and suggesting some modifications to it.<sup>38</sup>

All of these explanatory factors can, we think, be of use in explaining how countries compare in their penalty, and can also be assimilated successfully into the broad church of our general radical pluralist explanatory framework. We need to stress that our approach is not a reductionist one. We cannot explain all variations in punishment and penalty by reference to the differences in political economies and cultures we have mentioned. There are other factors as well. We have already mentioned, for example, the influence of penal ideologies from other countries and the operations of commercial interests in encouraging certain penal policies at the expense of others. However many factors we incorporate into our theory, it will still not give us the whole story. Individual nations can be just as quirky and esoteric as individual human beings. People sometimes talk about the 'exceptionalism' of France or the USA; but it is not going too far to say that we have found all of the 'countries in this study to be exceptional in at least some respect. Consequently, penalty remains irreducibly *relatively autonomous* from any particular factor or combination of factors, however powerful. Particularities of geography, history, and even highly specific political circumstances, can all play their part, as we shall see. All of which makes life, punishment – and, hopefully, this book – more interesting.

## Notes

1 They aren't, incidentally. See for example Stolzenberg and D'Alessio (1997) or Zimring et al. (2001).

2 For example in England, government studies have found that fewer than half the crimes suffered by victims are reported to the police, and that furthermore up to a half

of crimes which are reported to the police may not be recorded by them, and hence fail to make their way into the official figures (Simmons and Dodd, 2003: 29, 32).

Another reason for not attempting to relate imprisonment rates to crime rates is that – perhaps remarkably – most research studies have discovered little evidence of any statistical relationship between the two (although it may be that rates of *violent* crime have a stronger association with imprisonment rates than rates for all crimes). See, for example, Rutherford (1986: esp. 43–4); Young (1986: 126–7); Young and Brown (1993: 23–33); Zimring and Hawkins (1991); Halliday (2001: 99); Beckett and Western (2001: 49–50); Greenberg (2001: 82) and works cited therein.

3 This is analogous to the ‘law-jobs’ theory of the jurist Karl Llewellyn (1940), which postulates that for any human group to survive it requires social processes which have the function of performing certain ‘jobs’ concerned with the avoidance and settlement of disputes between members of the group.

4 Andrew McLean Williams, response to questionnaire.

5 In fact, this decline is only partial, and in some respects (and in some countries) the reverse has been happening. For example, the operation of the European Convention on Human Rights has contributed to a greater recognition of the formal legal rights of prisoners in many European countries, including several of those within our sample.

6 Not in all countries however, as we shall see (especially in Parts 2 and 3). As a generalization, the ‘collapse of the rehabilitative ideal’ can be said to have occurred in both the English-speaking ‘neo-liberal’ states (the USA, UK, Australia and New Zealand) and in the Nordic social democracies, but not in ‘conservative corporatist’ European states such as Germany, where belief in the ‘resocialization’ of the offender has remained strong.

7 Another (partial) explanation of this development concerns the role of penal subjects (especially prisoners in the USA) who struggled against the arbitrary injustices meted out to them under the guise of reformatory treatment. See below, Chapter 3, Note 6.

8 Finland is the obvious example within our sample of countries; but there have also recently been reductions in prison populations in some African and Eastern European countries. Various other countries have had relatively stable prison populations in recent years.

9 There is evidence to the contrary, at least in some countries. For example, a recent British study (Hough and Roberts, 1998: Chapter 4) found only 20 per cent of a representative national sample believing that the most effective way to prevent crime was to make sentences tougher (increasing discipline in the home and reducing unemployment were more popular strategies), while most respondents would rather develop community penalties than build more prisons at the taxpayer’s expense, an option favoured by only 18 per cent. Such findings are particularly interesting in the light of other studies showing British public opinion as relatively punitive compared with other countries (excepting the USA): see van Dijk and Mayhew (1992: 46); Mayhew (1994: 5); Mayhew and van Kesteren (2002).

10 Not only does globalization itself gather pace, so does the quantity of literature theorizing about it. See for example Giddens (1990), Lash and Urry (1994). See also Mishra (1999), who has written specifically about the impact of globalization on the welfare state. We are grateful to Tony Bottoms for drawing this particular source of theorizing to our attention. Although we only encountered it a relatively late stage in our inquiry, we were gratified to discover that Mishra’s general thesis with regard to globalization’s impact on social policy in general is broadly congruent with our own.

11 Andrew McLean Williams, questionnaire response.

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12 A similar point could be made in respect of Turkey, which also abolished capital punishment in 2003 for a similar reason.

13 Especially in more 'corporatist' countries, it is not only the state which performs this mediating operation: see Note 18 below.

14 A couple of definitions. By 'ideology' we mean the entire realm of ideas, including philosophies, which may affect people's attitudes and practices. This is wider than the classic Marxist concept, which sees 'ideologies' as ideas which function socially in the interests of particular classes. Within 'culture' we include both ideology and what Émile Durkheim called 'collective sentiments' – socially determined feelings, emotions and attitudes.

15 In this respect radical pluralism can be seen as 'Weberian': see Cavadino and Dignan (2002: 74–8).

16 One omission from Figure 1.1 is the realm of political practice. Like penal practice, politics has reciprocally influential relationships with the ideology, culture and material conditions of society, and is likely to impinge directly on penal practice as the result of political initiatives in the area of 'law and order'.

17 Though it may apply (with suitable modifications) to some countries that have recently made the transition to democracy (for example South Africa) or which have been conquered in the recent past (such as postwar Japan).

18 There is an important sense in which 'neo-liberal' states such as the USA are more 'pluralist' than other types of state within our sample. In these 'neo-liberal' countries, differing interest groups operate within something more like a 'free market' of political policy. In more 'corporatist' countries, policies tend to be determined by institutionalized elites containing representatives of different blocs of interests, who mediate their competing claims. Nevertheless, we still have a plurality of competing interests (and therefore the broad 'radical pluralist' framework fits); it is just that their competition is structured and mediated differently.

19 Lash and Urry (1987, 1994) see contemporary Western societies as having recently entered a realm of 'disorganised capitalism'.

20 One row in Table 1.1 refers to the receptivity of different types of state to privatization of punishment. We deal with this aspect of penalty at length in Chapter 16, but will say no more about it here.

21 Mishra (1999: 83) describes the German welfare state as a 'status-maintaining system, helping to reinforce rather than mitigate market differentials'.

22 An exception here is France – generally conservative corporatist in other respects – with its strong republican tradition of 'anti-clericalism'. See Chapter 9.

23 For our use of this term, see Chapter 10, Note 1.

24 For this reason Japan is often referred to as having a 'dual labour market'.

25 According to Mishra (1999: 93), Japan's spending on social protection initiatives was only 11.57 per cent of GDP in 1990, compared with an OECD average of 21.6 per cent.

26 But see Peng (2000: 100–2), who has pointed to evidence of a swing back towards state provision in the 1990s, due partly to the declining role of corporate welfare. One example he cites is the introduction of the Chronic Care Insurance programme for the elderly.

27 See for example Tham (1998). As Tham demonstrates, both the UK and Sweden saw increases in both economic inequality (and hence in the number of socially marginalized people) and crime in the 1980s. However, the more marked increase in inequality in the UK was accompanied by a greater increase in crime than that witnessed by Sweden.

28 See above, Note 2.

29 An exception is the (far from unalloyed) acceptance of the 'justice model' rather than a rehabilitative approach in Sweden and Finland (see Chapter 10).

30 Greenberg situates his account within a Durkheimian explanatory paradigm (see Cavadino and Dignan, 2002: Chapter 3). Following the sociological tradition of Émile Durkheim, Greenberg seeks the explanation for differing punishment levels and their association with different types of welfare state in societal culture, which is seen as explaining both the society's type of state and its penalty. Our radical pluralist account is subtly different from this. We would see the configuration of a country's welfare state as both largely *determined by* the national culture and also as contributing towards *determining* that culture and the mindset of its citizens, including their attitudes towards their less fortunate and less well-behaved fellow citizens and towards the responsibilities of the state vis-à-vis these citizens. Although, as we shall see shortly, public opinion is only part of the picture.

31 Similarly, Downes (1988: 78), when trying to explain the relative leniency of the Netherlands in the 1980s, failed to find any correlation between the proportion of GDP spent on welfare by different Western European countries and their imprisonment rates at the time.

32 We are grateful to Julian Roberts for drawing this study to our attention.

33 This is one of three measures used by Mayhew and van Kesteren (2002). Another is based on a simple percentage of those choosing imprisonment. The third is based on the mean number of months in prison recommended *by those who opted for imprisonment* as a punishment (referred to as the 'sentence length measure').

34 South Africa's 'punitiveness score' is also extraordinarily high. Mayhew and van Kesteren found high punitiveness scores in Africa generally.

35 Recent analyses by Törnudd (1993) and Savelsberg (1999) have helped to inform this account.

36 In the UK, for example, law and order issues played relatively little part in the 1992 General Election campaign, or in party politics generally over the preceding five years. This was, however, in sharp contrast to the 1979 British General Election campaign, and again during the five years culminating in the 1997 General Election (see Cavadino and Dignan, 2002: 334–8).

37 Clearly this factor is not independent of our 'neo-liberal/corporatist/social democratic' dimension, as corporatist countries (whether social democratic or not) will inevitably be relatively bureaucratic – although the converse is not necessarily true.

38 In particular, we shall be suggesting – in the light of the Finnish and Dutch historical experiences – that bureaucratized democracies are not necessarily as stable in their penalty as Savelsberg suggests.

