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DAVID DOWNES

CONTRASTS IN TOLERANCE

Post-war Penal Policy in the Netherlands
and England and Wales



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*Post-war Penal Policy in The Netherlands
and England and Wales*

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Contrasts in Tolerance

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In memory of
Ronald Orr-Ewing
(1913-1988)
Friend and mentor

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D. D.

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London School of Economics
July 1987

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1 The Criminal Justice Systems of The Netherlands and England ¹

Comparative criminology is nothing new. In their broadest sense, of contrasting institutional arrangements and/or forms of conduct between whole societies, comparative studies have long been an invaluable, though under-used, resource in historical and socio-economic studies. Travels abroad can be as influential as journeyings at home in the realm of criminal and penal policies. It is difficult otherwise to account for such phenomena as the rapid rise of the penitentiary across the continents of Europe and North America in the first few decades of the nineteenth century. More recently, the appeal of victim-related measures has, from relatively small beginnings in the United States in the late 1960s, fanned out to most liberal democratic societies around the globe. From time to time, Britain has attracted streams of enquirers into the workings of the latest penal or reformatory innovation. The Borstal system in the interwar period was much admired abroad. Latterly, the Barlinnie Special Unit offered a ray of hope to those who aim to open up greater possibilities of freedom within walls. In the late 1940s, the Henderson Hospital was one source of inspiration for those embarking on the planning of a new wave of mental hospitals for offenders designated mentally ill in The Netherlands. Reformers naturally look for different things at different times. In the late eighteenth century, the spartan regimentation of the penitentiary was seen as infinitely preferable to the chaos of the old 'clinks', where prisoners in chains could be visited or pestered by passers-by in the foul yards that adjoined the prison. In a different vein, *Jane Eyre* offers a grim parody of community care. Custodians would travel in search of different objectives from those of the reformers: more effective security devices, systems of surveillance and control. With air travel,

¹ 'England' is used throughout to denote 'England and Wales', unless otherwise stated. Scotland and N. Ireland are specifically excluded because their criminal justice and penal system differ in crucial respects from those of England and Wales—'Britain' is thus used only in the context of comments of a more general nature that can apply to Scotland and N. Ireland as well.

regular conference circuits, and the internationalization of much deviance and control, currently at its most prominent in the terrorism and drugs fields, it is not surprising that criminologists have begun to talk of 'import-export' models in the exchange of systems and ideas. (For an acerbic view of the imbalance in the terms of trade on this front, see S Cohen 1982.)

Much, perhaps most, of the exchanges that occur on the subject of crime and its control emanate not from academic criminology but from journalistic work, and often from the *ad hoc* concerns of professionals and administrators in such fields as police or probation work to learn about the doings of their colleagues overseas. They may derive from short-term governmental agendas regarding pressing social problems, such as soccer hooliganism or drug-trafficking. Criminology has in general been strikingly uncomparative. At the time of its publication, Hermann Mannheim's *Comparative Criminology* (1965) made curiously little impact². A few comparative works have attained classic status, Rusche and Kirchheimers's *Punishment and Social Structure* (1939) being the most notable. There are many possible reasons for this state of affairs. The legendary insulation of criminology from mainstream sociology for most of its history meant that the significance which the comparative method held for the latter simply passed the former by. Moreover, even when sociology impinged most influentially on the study of deviance, in the 1960s and 1970s, it did so from interactionism and phenomenalist perspectives, both of which tended to stress the primacy of the local context and to avoid large-scale comparative projects which rested flimsily on notions such as 'culture' and 'structure' (Robertson and Taylor 1973). Yet phenomenology produced, in Schutz's (1967) essay on the 'stranger', what could be taken as a directive for sociological travel. The stranger may be vouchsafed confidences withheld from fellow-members of the host community (they may also be cast as deviant, ignored, or peddled convenient clichés: there are presumably limits to the tolerance accorded strangers). One does not have to travel abroad to be a stranger: that is possible on the next street. But to be a foreigner may confer certain privileges, in particular a licence to naïveté. In short, there

² Nor did Eric Stockdale's *The Court and the Offender*, Gollancz, 1967, a stimulating comparison of the systems of justice in England, Holland, Denmark, and Sweden.

is an affinity between the role of stranger and comparative sociology which render its dearth in many fields of the subject surprising. Anthropology is a different story.

The inhibitions of administratively based social researchers perhaps stem from different sources. The overwhelming requirement for the allocation of state resources to a project is salience (cf. Banting 1979). If the field were military, economic, or environmental, comparative work would be relatively easy to justify in such terms. But in the social or cultural fields, salience is almost monopolized by domestic horizons. The problem with 'abroad' is that the demand of governments for precise answers to limited questions—for example, how to deal with 'soccer hooliganism'—rarely shows more than the broad correspondence of other societies' concerns with our own, and limited forays which simply reveal greater complexity become difficult to justify. For the complexities of a methodological character in comparative work are formidable. Categories and definitions of seriousness and specific crimes may vary; what counts as a 'penal' institution in one country may be labelled differently in another; and persons diverted from the criminal justice system at various stages may be regarded for some purposes as 'sentenced', for others not. The process of attempting to ensure that like is being compared with like is protracted and often imprecise.

The dearth of work in comparative criminology and the sociology of control may or may not derive from the above considerations. But it is ceasing to be so in the fields of deviance and control, despite the strength of the constraints. Relative economic decline may be leading to dissatisfaction, often exaggeratedly so, with all aspects of institutional life that were previously taken for granted or left out of account as grounds for failure.

In the case of the English penal system, no one could rationally suppose that its state was the cause of national economic decline. But its condition parodies it fairly representatively: 'high-cost squalor' is Rutherford's cogent phrase for a system that combines great costs with enormous waste and considerable inhumanity, where staff and prisoners alike, though in contrasting ways, suffer a measure of indignity and oppressiveness that shows every sign of increasing rather than waning. It embodies undue variations of discomfort and privation, with some jails being relatively humane—by and large the training prisons into which

proportionally more resources are sunk (King and Morgan 1980)—while others invite metaphors such as pressure-cookers, ‘cattle-pens’, and the like to capture the reek of overcrowding and subjugation endemic in the local prisons. Reforms are tried and found wanting—parole, suspended sentences, community service orders—in the pursuit of a reduced prison population. Its continuing rise is then declared something akin to a natural law, beyond the realms of political choice or informed decision-making. Crime, after all, has continued to rise. Reducing the prison population, as occurred in the late nineteenth century at a time of falling crime rates, is hardly to be expected or induced. This logic leads inexorably to penal expansion, since building more prisons is the only course that remains unless overcrowding is to be left to take its course, a course that risks ultimate loss of control within the jails: riots, staff resistance, and a visible breakdown of ‘law and order’ in its major institutional buttress.

The question ‘Does it have to be so?’ entails comparative study. First, the question invites a straightforward empirical search for negative cases. Examples abound, and tend to defy a simple relationship between crime rates and trends in penal populations. States as diverse as The Netherlands, Australia, and Ontario reduced their prison populations in the context of rising crime rates, as indeed did England in the 1920s and 1930s. Japan did so over a prolonged period of falling crime rates, but the reduction greatly exceeded that fall proportionately. (Rutherford 1986: 122) With the exception of Rutherford’s coverage of England, The Netherlands, and Japan, however, data on trends in crime and imprisonment are scattered and highly variable in quality. Enough is known, however, to cast the most serious doubt on the notion that some invariable law dictates a rising recourse to custody in the context of rising crime.

The second set of questions arising from the above concerns the consequences of deviating from meeting crime with custody on a *pro rata* basis. It is commonly assumed that were this to happen for an appreciable length of time, the adverse consequences would be dire—involving at the least a sharp spurt in the crime rate, and more generally a pervasive anomie, a breakdown of regulatory norms across the entire range of social and institutional life. Those who adhere to a more or less deterministic view of the relations between crime, custody, and anomie would logically also hold (to use Rutherford’s terms) expansionist or, at best, ‘standstill’ views

about penal policy. They would be joined by many holding 'reductionist' views, however, in relation to a third question: 'Would a falling prison population at a time of rising crime be politically feasible?' Few would venture a positive answer to that question in contemporary Britain, but again comparative evidence suggests that it has been possible both here and elsewhere.

Drawn to The Netherlands in what began as a cursory attempt to explore these questions, and fully expecting to find that they had already been largely dealt with, I learnt that post-war criminal justice and penal policy had not been the subject of much analytical interest. In retrospect, this should not have been surprising. We still lack a comprehensive analysis of post-war policies in these fields in Britain, though one is now under way at Cambridge, under the Economic and Social Research Council's 'Crime and the Criminal Justice System' initiative. There is every sign, however, that this period of neglect is over, and that in both countries the key questions of how best to account for sentencing trends and policy process are being actively pursued (Rutherford 1984, Bottomley 1986, van Dijk *et al.* 1986).

This study makes no claim to provide a comprehensive analysis of post-war criminal justice policy in The Netherlands, or a comparative study of such policy in The Netherlands and England. Its main objective is to ascertain why the prison population of The Netherlands has been progressively reduced over virtually the whole of the post-war period, to the point where it has become very nearly the lowest in the world. The origins, character, and consequences of so substantial a process of decarceration remain the focus throughout. There is, of course, nothing even remotely startling about the view that the Dutch penal estate is more humane and relatively milder than elsewhere. From the *rasphuis* of the late sixteenth century on, which is usually credited as the first penal site to offer prisoners work and reformation as distinct from sheer captivity and the infliction of pain (cf. Garland 1986a and b), the Dutch have in general been compared favourably with the rest of Europe on this score. John Howard was by no means the first to do so, though his accolade (1784) was based upon the most comprehensive survey of contrasting countries, and carried the most weight. The trajectory of Dutch penal policy for a century or more (van Ruller 1981, Blom-Cooper 1986) has been towards decarceration. But history is