



CAMBRIDGE STUDIES IN LAW AND SOCIETY

# Why Prison?

Edited by  
DAVID SCOTT

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## WHY PRISON?

Prison studies has experienced a period of great creativity in recent years, and this collection draws together some of the field's most exciting and innovative contemporary critical writers in order to engage directly with one of the most profound questions in penology – *why prison?* In addressing this question, the authors connect contemporary penological thought with an enquiry that has received the attention of some of the greatest thinkers on punishment in the past. Through critical exploration of the theories, policies and practices of imprisonment, the authors analyse why prison persists and why prisoner populations are rapidly rising in many countries. Collectively, the chapters not only provide a sophisticated diagnosis and critique of global hyper-incarceration but also suggest principles and strategies that could be adopted to radically reduce our reliance upon imprisonment.

DAVID SCOTT is a senior lecturer in criminology at Liverpool John Moores University.

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## FOREWORD

### On stemming the tide

*Thomas Mathiesen*

This is an important book.

*Why prison?* At the outset it seems obvious. We have prisons because we have crime. We have prisons also because we want to stop or at least reduce crime. But as David Scott shows in the opening chapter of this book, it is not so simple. There is an unclear relationship between prison and crime. Prisons have something to do with crime, but it is not clear how the two interact.

The question of ‘why prison?’ becomes all the more thorny when we go into detail. From a large number of empirical studies, we know that recidivism from standard prisons (and most prisons are ‘standard’ or less) is very great, despite attempts at rehabilitation. This holds for old as well as new attempts – from the ‘Nothing works’ period of the 1970s to the ‘What works?’ period of our own time (Mathiesen, 2011). Prisons are generally a fiasco. Why, then, do we keep on? *Why prison?*

## FUNCTIONS OF PRISONS

Of course, prisons may have a variety of other presumed official functions. If they generally do not rehabilitate, prisons may, presumably at least, incapacitate the offender, through collective or individual incapacitation. Prisons may also deter others from committing crime. And prisons may provide retributive justice. But in terms of these official functions, prisons are also fiascos. When you look at it more closely (which I have spent large parts of my life doing), prisons in fact largely do not incapacitate and in very many cases do not deter others. In terms of retributive justice, there are far too many differences between individuals, groups, cultures and nations to make the construction of a common ‘system of justice’ possible (Mathiesen, 1990/2006). Why, then, do we continue this? *Why prison?*

We have to differentiate between the causes why prisons came to be and the causes why prisons persist today, despite their fiasco. The causes why prisons came to be, why they were ‘invented’, are historical and are to do with deep-seated changes in social structure in the 1600s and specifically in the 1800s. But from sociology, and perhaps particularly from Max Weber in his famous essay *The Protestant Ethic and the Spirit of Capitalism* (Weber 1930, original German edition 1904–5), we have learned that why something persists today may differ from why it came to be. Weber argued that the protestant ethic in its Calvinist variety was a necessary (though hardly a sufficient) condition for the rise of capitalism. Few would argue that the same conditions, and especially the Calvinist ethic, not only allow capitalism to exist but also allow it to thrive as a major economic system across the world today. So with prisons. The various historical conditions for their ‘invention’ are at least partly different from their stubborn persistence and, indeed, grave expansion in our own time.

Below I concentrate on the latter question. Through the years, I have ventured several attempts at explaining ‘why prisons?’ in this sense. One attempt came in my *Prison on Trial* (Mathiesen, 1990/2006). There I said that ‘we have prisons despite their fiasco because there exists a pervasive and persistent *ideology of prison* in our society. . . An ideology of prison. . . renders the prison as an institution and a sanction meaningful and legitimate’ (ibid.: 141–5, emphasis in original). The ideology has a supportive and a negating component.

Very briefly: assuming an advanced capitalist society, prisons serve, I said, four or five important ideological functions: (i) an *expurgatory* function (getting rid of a sizeable – and, I might have added, an increasing – proportion of the unproductive population); (ii) a *power-draining* function (getting rid of them in a controlled way, draining off whatever power they used to have); (iii) a *diverting* function (diverting our attention away from the deviance of those who have power in our class society); and (iv) a *symbolic* function (closely related to the diverting function). Because prisons are the most observable of all sanctions, I added a fifth function which I called an overt *action* function, important to those who administrate the sanctioning system and want to show that they do something about crime. I add here that the five functions are probably largely intended but considered as more or less illegitimate or as asides from the official functions by high-ranking decision-making personnel or politicians.

These five functions, I said, imbue prisons with something ‘positive’; the prison performs something. Some of them are also visible.

That certainly goes for the first of the five – the expurgatory function of getting rid of a sizeable part of the unproductive population. Prisons in the Western world are filled with sick, vagrant, unemployed people.

But the ideology of prison also contains a negating function – that is, the fiasco of the prison is negated throughout the various public spheres of society.

Functions such as these are in my mind important. They may also contribute to an explanation of variations in the use of prisons. A state with a low unemployment rate, a high standard of living and a low degree of class division may be expected to have relatively few prisoners per capita, whereas the opposite situation may be expected to provide many prisoners. There are indeed such variations in the Western world.

## AN ALTERNATIVE HYPOTHESIS: CONFIDENCE

However, though coming from a society which at present has the former features, and a low number of prisoners per capita, I venture an alternative hypothesis. The great differences in terms of prisoners per capita between various states in the Western world may partly be explained by differences in *confidence* in our various societies.

‘Confidence’ is a wide term, subject to interpretation. It may be seen as a synonym to ‘trust’. I have confidence, or trust, in a person selling me groceries in a normal grocery store. I trust that the woman behind the counter will give me the correct change back. I have less confidence in a vagrant who wants to sell me a cell phone at a street corner. Roughly, confidence or trust may be seen in terms of two aspects: (i) abstract or general confidence; and (ii) concrete confidence in institutions, politicians or individuals. Law is presumably a system of confidence across time and space, though we may have our doubts. Much more could be said about confidence, but this is enough for the purposes here. Let us then explore this concept.

### A study of confidence

On 22 July 2011, a bomb went off at the main government building in Oslo, causing serious destruction to the building and killing seven people. A little later on the same evening, sixty-nine young people were shot to death in a political summer camp on an island near Oslo. The blast and the later killings were committed by the same ultra-radical white extremist man.

A study of the confidence that people have in central social institutions and in foreigners was conducted (Wollebæk et al., 2011). Two representative population samples (1,000 people, internet users aged 16–79) were compared, one sample from a little before the terrorist attack in Oslo, in March/April 2011, and the other a short time after the terrorist attack, in August 2011. In addition, a panel study was carried out on persons who used so-called social media twice a week or more (a sample of people were asked questions in March/April, and again in August 2011).

In their study comparing the degree of confidence in Norway before and after 22 July 2011, Wollebæk et al. (2012:11) found a much higher degree of ‘generalised confidence’ (‘most people are to be trusted’) after the terrorist event than before. The increase had been clearest among grown-ups and middle-aged people, weaker among the oldest (*ibid.*: 12). The researchers found the greatest confidence in people close to those who were asked – family and so on (not an unexpected finding); the more abstract forms of confidence, where the respondents knew a lower proportion of the people in question, were somewhat weaker (*ibid.*: 13). But Wollebæk et al. (2012) summarise as follows:

[T]here is a clear increase in confidence in groups where you most of the time do not know everyone personally. People convey increased confidence in people who live in the same community. Aside from increased confidence in other Norwegians, we find the strongest increase in the most demanding types of confidence, that is, confidence in people who are unlike ourselves even as far as central criteria goes, meaning nationality and religion... In Norway, confidence in other people is closely related to confidence in institutions.

(Wollebæk et al., 2012: 15–16, my translation)

This was a time when criticism and antagonisms began to surface in Norway. So far, however, ‘the findings unambiguously indicate increasing trust’ (*ibid.*: 16). This is clearest regarding parliament and the government, but also regarding the courts, municipal authorities and the administration (*ibid.*), while the change was more moderate for the police, which, together with the government, was severely criticised during the months to come.

### Oslo and Oklahoma

It may be instructive briefly to compare the Oslo case of 2011 with the Oklahoma case of 1995, where there are comparable data. The



Oklahoma City bombing in 1995 claimed 168 lives and injured more than 680 people, destroying or damaging 324 buildings within a 16-block radius. Right after the Oklahoma bombing, 38 per cent of a national sample said they were very worried about terrorism and 40 per cent were a little worried. Of the representative study, 2.5 per cent and 16.6 per cent respectively said the same in Norway right after the Norwegian events (Wollebæk et al., 2012: 18). The difference is very large. Wollebæk et al. (2011: 19–21) also report other comparative data from Oklahoma which point in the same direction.

A number of studies have shown that the level of confidence between people is higher in Norway and the other Nordic countries than elsewhere in Europe. During the last fifteen to twenty years, the development has been more varied in Western Europe, somewhat negative in Southern and Eastern Europe and quite negative in the USA (ibid.: 9). In other words, international data seems to corroborate the first set of findings, the 2011 findings, from Norway.

### A second report

Wollebæk and associates wrote a second report. In their report *One Year after 22 July* (Wollebæk et al., 2012), they followed up their initial findings on opinions right before and right after 22 July 2011. Opinions a year afterward were somewhat different. Opinion surveys and panel studies were carried out during four different periods, entitled April 2011, August 2011, May 2012 and August 2012 (right after the publication of a critical ‘22 July Commission’s Report’). The data showed that a development back to the time before 22 July 2011 had occurred. But the terror event had neither become a societal collapse nor something like a permanent rose-gathering.<sup>1</sup> In August 2012, the social

<sup>1</sup> Right after the attack, on 25 July 2011, an estimated 200,000 people carrying roses gathered at the Oslo City Hall to listen to speeches by, among others, the Prime Minister, the Crown Prince and the Mayor of Oslo. For a city of less than 620,000 inhabitants (1 July 2012; close to 925,000 when 10 nearby municipalities are included), 200,000 is a very large crowd. It was televised nationwide. Similar gatherings occurred in many other cities. The speakers emphasised more democracy and more openness – presumably basic Norwegian values – as Norway’s reply to the terrorist. During the trial which followed in April 2012, an assembly of 40,000 people gathered at the City Square and outside the Court House, again carrying roses and singing a well-known children’s song – in the rain. Members of Parliament also sang in the Parliament building that day. The full story of 22 July 2011 and its aftermath should one day be told in English. A good part of the story is told in my forthcoming book *Towards a Surveillant State: The Rise of Surveillance Systems in Europe* (Matheisen, in press).