

WHY PRISON? POSING THE QUESTION

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The question ‘why prison?’ has never been more pertinent or compelling than it is today. Rates of penal incarceration in many countries around the world have reached record levels, and the combined world prison population recently surpassed 10 million.¹ When such enormous figures are presented to us it can be difficult to conceptualise what the data actually mean, but if all the people imprisoned in just three nations – the USA, China and Russia – were to stand next to each other, the resulting line would stretch across the surface of the planet. Notwithstanding a few notable exceptions, the global data are clear and decisive: penal incarceration has risen and continues to rise at an alarmingly fast pace (Walmsley, 2012). For Dario Melossi (2011: 50), global penal excess at the beginning of the twenty-first century is tantamount to a ‘great internment’. Such phraseology immediately brings to mind a possible connection between the current penal incarceration binge and the emergence of the Great Confinement in the late sixteenth and early seventeenth centuries (Rusche and Kirchheimer, 1939/2003; Foucault, 1967). It also begs parallels with the emergence in the eighteenth century of a centralised bureaucratic state with the mandate to manage rising economic inequality and manifestations of class struggle. The mission of the new sites of state detention was unequivocal: to survey, classify, regulate and control unwanted and unwelcome populations

¹ Due to categorisation and recording problems, even this figure is likely to be an underestimate. For example, it is estimated that there are more than 650,000 people in detention centres in China. If these data are included, the overall total for China is 2.3 million and the world total 10.75 million (Walmsley, 2012: 1).

DAVID SCOTT

(Rothman, 1971; Foucault, 1977; Ignatieff, 1978; Melossi and Pavarini, 1981; S. Cohen, 1985; Scull, 1993). As Thomas Mathiesen (1990: 14) maintained some twenty or more years ago, the rapid and spectacular growth of penal incarceration since the early 1970s may indicate a new *third stage* in the development of imprisonment, this time in response to a perceived '*need for discipline in given segments and groups of the population*' (emphasis in original). Perhaps, then, we should not be surprised that prisons everywhere are bursting at the seams with the poor, marginalised and socially deprived.

Asking the question 'why prison?' connects contemporary critical analysis of penal incarceration with an enquiry that has been the attention of some of the greatest thinkers on the 'confinement project' in the past and provides the central premise of this edited collection. This introductory chapter is divided into three parts. The section directly below explores data from twelve countries to update and evidence Thomas Mathiesen's (1990) argument regarding the emergence of a third stage of penal incarceration. The discussion then moves on to critically evaluate five of the main 'common sense' justifications proposed in defence of the prison. Finding such justifications unconvincing, it is maintained that the global explosion in the use of imprisonment in the last four decades has more to do with its role in the control of certain identifiable groups of people rather than as a rational response to 'crime'. The introduction closes with a brief summary of the following fourteen chapters by some of the leading contemporary writers on imprisonment.

GLOBAL HYPER-INCARCERATION

Even the most cursory glance at Table 1.1, which details penal incarceration rates in twelve countries since 1970, can leave no doubt about current trends in the Western world. In ten of the twelve nations, which are either predominantly English speaking or located in Europe, the prisoner rate has increased in the last forty years. In one country, Germany, the prisoner rate rose in the late twentieth century but by 2010 had returned to virtually the same level as 1970. Only in Finland can we find evidence of a clear downward trend. This deviant case has attracted considerable academic attention (Lappi-Seppala, 2012), and it is worth noting that whilst in 1970 Finland had a prisoner rate second only to the USA, by 2010 it had by far the lowest recorded rate of the twelve selected countries. Let us take this analysis of prisoner rates further by first considering in some depth the USA, and then moving

WHY PRISON? POSING THE QUESTION

TABLE 1.1 Selected prisoner rates (per 100,000) in twelve countries (1970–2010)

Country	1970	1980	1990	2000	2005	2010
USA	166	221	461	684	738	748
New Zealand	83	88	114	151	186	199
England and Wales	71	85	90	125	144	153
Australia	48	59	84	113	125	133
Canada	88	98	113	101	107	117
Spain	38	85	113	145	160	159
France	55	66	77	88	96	96
Netherlands	21	23	43	84	127	94
Germany	86	92	82	97	97	85
Sweden	65	55	58	60	78	78
Norway	44	44	56	57	68	73
Finland	113	106	69	55	74	59

(Source: Lappi-Seppala, 2012; Walmsley, 2012)

on to reflect upon the situation in four other Anglophone countries before concluding this overview with an account of the seven other selected countries in Europe, paying particular attention to the recently debated notion of ‘Nordic exceptionalism’.

The USA today stands at the top of the world penal incarceration rate. It was not always so. For most of the twentieth century until the mid 1970s, the USA had a relatively stable rate of penal incarceration, remaining well below 200 per 100,000 of the national population.² In 1970 the average daily population (ADP) of those confined in prison or jail was 250,000,³ yet the rise since this time has been quite staggering. By the early 1980s the USA prisoner ADP had doubled to more than 500,000 prisoners, and by February 2000 this number had surpassed 2 million (Lacey, 2011). In 2010 the USA imprisoned 2.3 million people at a rate of 748 per 100,000 and 7.3 million people – or 1 in 33 adults – were either in prison, on parole or on probation. Prisoner rates in the USA are now five times greater than those of Western-European and English-speaking countries.⁴

² I will subsequently just refer to the figure 100,000.
³ There is some debate over the accuracy of this number, with one commentator pointing to the figure of 380,000 prisoners in the USA at this time (Wacquant, 2009).
⁴ It should be noted that these USA data do not include juveniles and persons in police lockups, a figure which Loïc Wacquant (2009) estimates at around 140,000 people.

DAVID SCOTT

Whilst politicians in the USA have recently raised concerns about the financial cost of imprisonment (the USA spent \$47 billion on prisons in 2008), penologists have primarily focused on the social dimensions of penal incarceration. The phenomenal rise in the US prison population has been described as 'mass imprisonment' for much of the last decade (Garland, 2001d). Recently, however, Loïc Wacquant (2010a) has argued that this term is inappropriate because penal excess has not been experienced by the 'mass' of the populace, but almost exclusively by poor black, Latino and Hispanic Americans. US prison data support his assertion. Whilst more than 1 in 100 American adults are in prison, the figure is 1 in 50 for Hispanic men and 1 in 20 for black men. The overall penal incarceration rate for men in the USA is 943 per 100,000. When analysed via categorisations of 'race', the rate falls to 487 for white men but rises to 1,261 for Hispanic and Latino men and 3,042 for black men (Lacey, 2011). African Americans make up 13 per cent of the general population but 60 per cent of the US prison population, and are eight times more likely to be incarcerated than the white population (Downes, 2012). The centrality of class should not be forgotten here. Undoubtedly middle-class black populations have benefited from social mobility. By some estimates the probability of middle-class African Americans going to prison dropped by 50 per cent in the last twenty years (Wacquant, 2001; 2010a). This being said, more African Americans are today under correctional supervision than were enslaved during the antebellum period (Alexander, 2011). Loïc Wacquant (2010a) refers to this phenomenon as 'hyper-incarceration', indicating the existence of 'penal excess' (J. Pratt, 2008b) without obfuscating its real target: poor and black or minority ethnic (BME) populations. The contention of this chapter is that such 'hyper-incarceration' also has a global dimension (A. Y. Davis, 2012).

In other Anglophone countries we can also find evidence of escalating prisoner populations and an intensification in the discipline and control of BME populations from the poorest segments of the working class. In New Zealand in the 1960s, the prisoner ADP was around 1,700, and although it remained relatively stable until the mid 1980s, from this point the prisoner rate rose from 80 per 100,000 to 126 per 100,000 in 1996 (Cavadino and Dignan, 2006). It increased still further to 199 per 100,000 in 2010 and in March 2011 the prisoner ADP peaked at 8,844. Like the USA, when prisoner rates are examined through the lens of 'race', disturbing patterns emerge. Maori men constitute 15 per cent of the national population but account for 51 per cent of the male prisoner

population. They are eight times more likely to be imprisoned than non-Maori men by New Zealand criminal processes. In Australia there has been a steady rise in prisoner population since the 1970s, and by March 2012 it had a prisoner rate of 133 per 100,000 and a prisoner ADP of 29,226. Two of the most striking aspects of Australian prison populations are the divergences between different territories and the over-penalisation of Aboriginal and Torres Strait Islanders. In March 2012 the Northern Territory had a prisoner rate of 821 per 100,000, which, if it was nation in its own right, would be the number one penal incarcerator in the world. Aboriginal and Torres Strait Islander people represent just 2 per cent of the national population but 27 per cent of the prisoner population, and have an imprisonment rate of 2,247 per 100,000 (Australian Bureau of Statistics, 2012).

England and Wales has been on a clear expansionist penal trajectory since at least the 1970s.⁵ Although there was a small reversal in this trend from 1989 to 1992 when the prison population fell from 50,000 to 41,000, since 1993 the prisoner ADP has increased year-on-year by an average of 3.7 per cent for nearly twenty years (Berman, 2012). The result is a more than doubling of the ADP of prisoners, which surpassed 80,000 for the first time in December 2006 and reached a record high of 88,179 prisoners on 2 December 2011. People categorised as either 'black' or 'black British' make up 2.7 per cent of the national population but 13.4 per cent of the prisoner population. 'African Caribbean' women make up 1 per cent of the national population but 24 per cent of women in prison, whilst 'African Caribbean' men are eight times more likely to face the sanction of penal incarceration than white men (Sudbury, 2005b; Berman, 2012). Canada, the final Anglophone country considered here, has experienced what may be described as a 'slow creep' towards hyper-incarceration. The prisoner rate in the 1970s and 1980s remained fractionally under 100 per 100,000, although in the last two decades it has consistently exceeded this rate and in 2011 stood at 117 per 100,000. It is important to note, however, that when data on those admitted to custody is analysed, Canada appears not less but more punitive than England and Wales. For example, in 2006 over 232,800 adults were admitted to some form of penal custody, a much higher number than in England and Wales, which is approximately 120,000 (Webster and Doob, 2007). Whatever the difficulties in comparing prisoner rates, Canadian prisons undoubtedly share the same mission

⁵ This is also broadly the case for other countries in the UK.

DAVID SCOTT

to control impoverished BME populations and other members of the 'subproletariat' (Hall et al., 1978). Aboriginal adults make up 4 per cent of the national population but 21 per cent of male prisoners and 30 per cent of female prisoners. In some places such as in Manitoba or Saskatchewan, Aboriginals account for more than for 70 per cent of men and 80 per cent of women sentenced to imprisonment, despite being only 15 per cent of the population. Prisons have always drawn their clientele from the poorest segments of the proletariat but, as the above data indicate, the racist legacy of English colonialism is also clearly evident in prisoner populations across Anglophone nations.

Penal excess and the disproportionate imprisonment of impoverished BME populations are widespread in Western Europe. Spain, France and the Netherlands have all seen record-number prisoner populations in the last decade, although Germany has resisted this trend somewhat. Spanish prison populations have sharply increased since the early 1970s: the 2011 prisoner ADP of 73,459 is four times higher than the equivalent figure in 1970, and the enlargement of the prisoner population has been particularly marked since the new millennium (Institute of Penitentiaries, 2012). With a prisoner rate of 159 per 100,000, Spain is the highest penal incarcerator in Western Europe, and like many other countries in this region, Spain also has a large number of foreign nationals serving long sentences (De Giorgi, 2011; Walmsley, 2012; see also De Giorgi, Chapter 2 of this volume). The prisoner rate in France has fluctuated considerably (Cavadino and Dignan, 2006). In 1985, for example, the prisoner rate was 72 prisoners per 100,000. Within three years the prisoner population increased by over 12,000 to leave a rate of 92 prisoners per 100,000 in 1988, yet by 1990 it had fallen back to 81 prisoners per 100,000. Despite regular amnesties and pardons, there is evidence of a 'slow creep' in France.⁶ In July 2012 the French prisoner ADP reached a record high of 67,373 prisoners – a prisoner rate of 101 per 100,000. Although foreign nationals comprised only 6 per cent of the population, they accounted for 21 per cent of the prison population.

The Netherlands, once eulogised as a leading example of penal tolerance, has witnessed one of the most dramatic increases in prisoner rates on the planet. In 1973 the Netherlands had a prisoner rate of just

⁶ The last amnesty law in France was in 2007. The tradition of granting presidential pardons to mark the 14 July celebrations was also ended by President Sarkozy. The recently elected socialist President François Hollande has, so far, refused to sanction any further prisoner amnesties.

18 per 100,000. By 2005 the prisoner rate had ballooned to 127 per 100,000.⁷ Indeed, of the twelve selected countries, only the USA has experienced a similar escalation in the use of penal incarceration. During this time the proportion of foreign national prisoners grew rapidly, rising from 12 per cent in 1981 to 26 per cent in 1992. Whilst there is some evidence that the Netherlands has turned a corner in terms of penal expansionism, with the prisoner rate declining to 94 by 2010, in the same year the share of foreign national prisoners rose to 32 per cent. The case of Germany is a little different, at least in terms of rising prisoner populations. Whilst the prisoner population did increase in the latter part of the twentieth century, in recent times it has declined. The 2010 figure of 85 per 100,000 had returned to the exact same figure as 1970. Notwithstanding, Germany does not deviate in terms of the over-representation of foreign nationals, with 34 per cent of its prisoners designated as ‘immigrants’ (De Giorgi, 2011). Undoubtedly it is those foreign nationals who face precarious working and living conditions that fill such prisons (Wacquant, 2006, 2010b; De Giorgi, 2011; see also De Giorgi, Chapter 2 of this volume).

Whereas Anglophone and many Western-European countries have indulged in penal excess, for some commentators Nordic countries are places of penal moderation with humane prison conditions (J. Pratt, 2008a, 2008b, 2011; Pratt and Erickson, 2012). Particular focus in recent years has been on Finland, as it is the one country in Europe which has seen a concerted long-term decline in prisoner populations. In the early 1950s the imprisonment rate in Finland stood at 200 per 100,000, and even in the 1970s the Finnish incarceration rate remained one of the highest in Europe. It was not until the 1990s that Finland reached a comparative rate with other Nordic countries, and in 2010 Finland had a prisoner rate of 59 per 100,000 (Lappi-Seppälä, 2012). In contrast to many other European countries, Finland also has a low proportion of foreign national prisoners, constituting a relatively modest 13 per cent in 2011.⁸ By comparison, Sweden and Norway have experienced a ‘slow creep’ in prisoner rates and have high numbers of (lower working-class) foreign nationals behind bars. In the 1950s Sweden had a prisoner rate of 35 per 100,000. This figure had doubled by the 1960s,

⁷ The Netherlands include juveniles and other detainees in its official prison rates. The problem of how different detained populations included in the prisoner rates of different countries can make international comparisons difficult is discussed below.

⁸ This is approximately the same number of foreign national prisoners as England and Wales in 2012.

DAVID SCOTT

and since the 1970s there has been a gradual increase in prisoner rates. In 2010 Sweden had a prisoner rate of 78 per 100,000, and foreign nationals constituted 28 per cent of the prisoner population (Dullum and Ugelvik, 2012; Walmsley, 2012). A 'slow creep' in Norwegian prisons has also been evident since the mid 1980s. Whilst there have been only modest increases, from for example 56 per 100,000 in 1990 to 73 per 100,000 in 2011, what is most notable is the drastic increase in the number of foreign national prisoner, rising from 19 per cent of the prison population in 2007 to 33 per cent by June 2012 (International Centre for Prison Studies, 2012). Though both Norway and Sweden continue to have low populations compared to most other countries in Europe, prisoner rates are not as low as they once were.

Before reaching any firm conclusions, some of the problems associated with analysing comparative prison data should be highlighted. Let us first consider the disquiet regarding 'Nordic exceptionalism' (Dullum and Ugelvik, 2012). Concerns have been raised about accepting official data without sufficient consideration of the 'subaltern' voices of prisoners, prisoner collective struggles or alternative 'non-official' sources of information (A. M. Jefferson, 2012). Critics note that rates of prisoners per 100,000 of the population may obscure as much as they reveal because: Nordic countries have, in the main, short sentences but reasonably large numbers of people processed through penal systems (Mathiesen, 2012); low prisoner rates do not indicate a humane penal system, and rates of self-inflicted deaths, which are relatively high in Nordic prisons, may prove more reliable in terms of indicating how prisoners experience penal incarceration (Mathiesen, 2012); it is impossible to grade pain (Christie, 1981), understand prison conditions outside the wider material conditions pertaining in a society (Neumann, 2012) or remove the inherent harms and pains of penal incarceration (Scott and Codd, 2010); and pre-trial detention and solitary confinement in Nordic nations provide a significant example of inhumane penal practices that are obscured by a focus on official quantitative data (Sharff-Smith, 2012). It is important to recognise that the intensification of penal discipline and control that Thomas Mathiesen (1990) highlights is not only about rising prisoner ADP rates.

The above problems regarding data on 'Nordic exceptionalism' are characteristic of general difficulties measuring international prisoner rates (Brodeur, 2007; Scott, 2008; Snacken and Dumortier, 2012). Official 'prisoner rates' are not standardised tools comparing 'like with like'. For a start, not all nations define 'prison' and their populations in

the same way: some countries include juvenile offenders and/or those in psychiatric 'care' in penal custody statistics, whilst others provide data on adult prisoners only. Finland and Sweden include 15–17-year-olds in their prisoner rates, whilst the Netherlands include juveniles confined under both the civil and criminal law, resulting in competing estimations depending on which category is included or excluded (Tonry, 2007). In other words, widely different data are available on prisoner rates of the same country for a given year. This makes genuinely accurate measurement impossible. As in the Nordic case, the meanings of official prisoner rates are also contested. Measuring the prisoner ADP or prisoner rates may be less accurate at predicting sentencing trends than, for example, measures examining the average days served by prisoners or the relationship between arrests, prosecution and conviction in a given country (Pease, 1994). Though existing official quantitative data on prison populations should not be dismissed out of hand, it should be interpreted with the greatest of care and its limitations duly recognised.

There are also considerable differences in the way comparative data have been analysed. Three broad approaches can be identified: convergence, diversity and context. Theorists of convergence have aimed to highlight globalised socioeconomic and political developments in the last four decades that can explain the global penal incarceration binge (Garland, 2001c; Simon, 2007; Wacquant, 2009b) or identified particular clusters of nations that represent specific political economic or cultural commonalities (Cavadino and Dignan, 2006; Lacey, 2008; J. Pratt, 2011). Theorists of diversity have focused on the specific 'risk and protective factors' pertaining in a given nation shaping penal policy and incarceration rates (Tonry, 2007; Green, 2008; Snacken and Dumortier, 2012) or emphasised the manner in which the penal practices of each nation are so deeply embedded within their own history and culture that questions of their 'travels' must be considered very carefully (Melossi, 2011). A third approach recognises distinct national and historical penal practices but contextualises them within a recognition of the intensification of global economic and social inequalities underscoring liberal market and transnational capitalist economies, patriarchies, heteronormativity and neocolonial, racialised ideologies. This allows for an understanding of diversity between nations alongside recognition of a broader authoritarian drift towards a third historical stage of penal incarceration to control the global poor (Mathiesen, 1990; Sudbury, 2005a; A. Y. Davis, 2012; see also Scott, Chapter 15 of this volume).

DAVID SCOTT

Though it would be disingenuous to claim that the official prison data cited above, based as they are on quantitative snap shots of only twelve countries with no reference to rates in Africa, Asia or South America, alone provide incontrovertible evidence of global hyper-incarceration, it does strongly indicate a globalised trend towards an intensification of penal discipline. Prison populations, at different speeds in different countries, are in the main growing, and they not only contain poor people but disproportionately poor men and women classified as BME, migrants, refugees, asylum seekers or foreign nationals (see also De Giorgi, Chapter 2 of this volume). The question is: why?

QUESTIONING INCARCERATION

The global growth of penal incarceration could be taken to imply that prison has been successful in terms of meeting its stated aims. To some people it may even seem peculiar to ask the question ‘why prison?’ – surely the answer is self-evident: prisons have existed for centuries as places of punishment, so there must be a clear, uncontested rationale which explains their introduction, historical development and current expansion. And yet, like exposing an emperor with no clothes, when the apparently obvious reasons for imprisonment are closely examined, they are laid bare as a naked sham. Let us briefly, but critically, review five well-rehearsed arguments in defence of the prison.

1. Prisons are a natural and inevitable response to ‘crime’

No straightforward relationship exists between ‘crime’ and imprisonment. Prisoners (in most cases) have breached and been prosecuted under the criminal law. This, however, must be understood within the context of the meaning, definition and differential application of the criminal label. ‘Crime’ is an unstable concept, and the diverse sets of behaviours it brings together are united only by the criminal process itself (Hulsman, 1986). Rather than being fixed and constant, the meanings and content of ‘crime’ change depending upon time, place, perpetrator and audience, with the criminal label more likely to be applied if the perpetrator is successfully distanced (Christie, 2004). Selective police surveillance in societies shaped by the determining contexts of capitalism, patriarchies and neocolonialism has resulted in the unequal application of criminal law against socially disadvantaged groups (Sim et al., 1987; Barton et al., 2006; Sim, 2009). For as long as we continue to classify and control certain behaviour by certain people