

NILS CHRISTIE

ON MAN-MADE PAIN

1. THE INVISIBILITY OF SUFFERING

I have lived close to penal law most of my life. As a member of a Faculty of Law, I met experts in the domain, listened and also slowly took part in their learned discussions on reasons for punishment. It was particularly the debate between two major positions that took most of time and energy – the debate between absolute theories of punishment and the relative ones. Emmanuel Kant stood there as a pillar. The killer, convicted to die, had to be executed even if we knew that these were the last days before Global extinction. Against the absolutists, the relativists mobilized. No punishment was right without a good purpose. The discussion continues.

But slowly other participants entered the arena. Social scientists came with descriptions of life behind walls, with descriptions on who they were, those forced to live there, and with reports on the effects of imprisonment. The society of captives came closer. Sykes¹, Cohen and Taylor² and Goffman³ told us much about prisoners' life, like Liebling and Arnold⁴ told us about the life of prison officers.

Nonetheless, I get a feeling of futility.

Maybe I can relate it to an experience in Norway far back in time. A new prison had just been opened. I brought a group of law students there as part of their education in criminology. They were interested and attentive as we walked through the whole establishment. On our way out of the prison, out to freedom, I heard one student whisper to the other: "What a nice building. And excellent rooms. I would have nothing against having to stay here for two or three months, preparing for the next exam".

What went wrong?

The exposure to the pain of punishment went wrong.

It was the same as in the learned discussions among philosophers, and in the concentrated attention given to facts and figures among the many bookkeepers attempting

¹ G. Sykes, *The Society of Captives: Study of Maximum Security Prison*, Princeton University Press, Princeton 1958.

² S. Cohen, L. Taylor, *Psychological Survival: The Experience of Long-Term Imprisonment*, Harmondsworth – Penguin, London 1981.

³ E. Goffman, *Asylums. Essays on the Social Situation of Mental Patients and Other Inmates*, Anchor Books, New York 1961.

⁴ E. Liebling, H. Arnold, *Prisons and Their Moral Performance. A Study of Values, Quality and Prison Life*, Oxford University Press, Oxford 2006.

to measure the effect of punishment on later behaviour: What went so wrong was the essence of the whole operation.

It hurts, to be punished. If it did not hurt, we would not do it. In my country, we have no prisons. We call them *anstalter*. It is a word in Norwegian, I believe also in German. In these *anstalter*, we have no cells, we have rooms, no punishment cells, but “single-room-treatment”, no guards but *betjenter* that is “servants” in literal translation. The whole system is called *Kriminalomsorgen* – *omsorg* means “care” or “caretaking”. It is all so good and kind, and so are actually many of those working in the system. Kind and careful.

Kind are also most of those persons deciding on punishment. There is a book by Arne Johan Vetlesen⁵ that brought the irony of this to my attention. “Evil and human agency” was the title. The definition of being evil is this: “to do evil, I propose, is to intentionally inflict pain and suffering on another human being, against her will, and causing serious and foreseeable harm to her” (p. 2). My trouble with this definition is the penal judge. He is intentionally creating pain. Professors of Penal Law are likewise working with pain all the time. I have, without success, since long suggested they ought to change their title from professors of Penal law to professors of Pain Law.

One last element bringing distance to what goes on is in the prisoners themselves. Most are men. Most want to be seen as men, real men, as Sykes describes it. Real men cry in the hiding, not for the public eye. Real men are supposed to endure pain with dignity. Unjust, yes. Encircled by idiots, yes. But pain? That element is left to others to convey.

It is as if the pain of imprisonment was hidden behind a veil (*ein Schleier*) of conspiracy. Theoreticians can discuss reasons for punishment, researchers can observe and count, and prisoners can complain about the lack of justice, but prisons live their own lives, develop along their own paths. The amount of intentional use of pain varies immensely between nations, and within nations. It is not the evil act that determines the pain level within a society. It is the character of the state it happens within.

2. THE PAIN PICTURE⁶

There are two types of countries relatively low on the use of imprisonment. It is those so poor, in terms of money, that they can not afford such use of resources, and it is the states still to be characterized as welfare states.

For the poor ones, we can just take a glance at some characteristic figures from Africa as reflected in Table 1.

Table 1. Prisoners per 100,000 inhabitants in Burkina Faso, Mali and Chad – 2003/04

Burkina Faso	23
Mali	33
Chad	35

⁵ A.J. Vetlesen, *Evil and Human Agency. Understanding Collective Evildoing*, Cambridge University Press, Cambridge 2005.

⁶ Most figures here are from the *World Population Prison Brief*, International Centre for Prison Studies, Kings College London. Some are based on private communication.

I think these countries solve many of their conflicts in other, more civilized ways than with prisons. And additionally: they can't afford the costs of a huge prison population. But then, moving to more industrialized African countries, we find quite a different pattern. With modernity comes large-scale imprisonment as illustrated in Table 2:

Table 2. Prisoners per 100,000 inhabitants in four more industrialized African countries, 2004/08

Algeria	158
Morocco	167
Tunisia	263
South Africa	342

Within Europe, there are also considerable differences between countries, as illustrated in our next table:

Table 3. Prisoners per 100,000 inhabitants in some countries of North-western Europe 1992–2006/08

	1992	2006/8
Iceland	39	36
Denmark	66	66
Finland	65	68
Norway	58	75
Sweden	63	79
Switzerland	79	76
France	84	91
Germany	71	91
Belgium	71	95
Austria	87	100
The Netherlands	49	117
England/Wales	88	154

We find here relatively low rates up in the North and somewhat higher rates in the middle of Europe. In this table, we can also observe another trend: with the exception of Iceland, the general trend is one of increased prison populations. The growth is not a large one, but clearly visible. Two countries are particularly strong in their growth. The Netherlands has more than doubled its prison population per 100,000 inhabitants in this period. This country was in the old days the prime example of low prison figures in a highly industrialized society. An excellent book was written to explain how they managed⁷. But, as illustrated, it did not last. England and Wales have also had an exceptional growth and represent the major incarcerator in Table 3. Under the rule of social democratic governments, they have moved their prison population towards Eastern-European standards.

⁷ D. Downes, *Contrasts in Tolerance. Post-War Penal Policy in The Netherlands and England and Wales*, Clarendon Press, Oxford 1988.

Next, Eastern Europe:

Table 4. Prison figures per 100,000 in some countries in Eastern Europe in 1992 and 2006/8

	1992	2006/8
Romania	171	130
Hungary	153	147
Slovakia	119	155
Czech	123	186
Poland	153	225
Lithuania	250	239
Estonia	306	259
Latvia	314	288
Belarus	327	426
Russian Federation	487	635

The major trend here is increased number of prisoners the closer one comes to Russia. Russia is the major incarcerator in Europe.

But as by now so well known, the champion is the USA. At present, they have 755 prisoners per 100,000 of the population. In Canada, just across the border, the figure is 108. Same language, same type of media – but an administrative structure and a system for social security of a Western-European type.

Table 5. Prisoners per 100,000 in USA and Canada 1992 and 2006

	1992	2007
USA	505	762
Canada	123	108

3. DOES KNOWLEDGE OF PRISON FIGURES BRING US CLOSER TO THE PAIN IN PUNISHMENT?

I have come to doubt it.

Politically, prison figures might be useful. When the US goes to war to create freedom somewhere, it seems clear that a prison population of 2,2 million at home hampers the message. (If those on parole and probation are included, the total number of persons under control of the penal system increases to some 7 million inhabitants in the US these last years.) It is also clear, that low prison rates within welfare states can be used as arguments for such states in contrast to states with free reign for market liberalism. Or increases in the prison populations can be used as warning signals against political developments. It does not seem unreasonable to interpret the recent increase in the Polish prison figures as a sign that there might be a need for some reflections as to where this development will lead the Polish society. In my calculations), prison figures in Poland per 100,000 inhabitants were the following:

1989: 107,
1999: 145,
2006: 225.

But back in 1979, they were 300. Will Poland come there again?

So, prison figures can be used as diagnostic tools. They tell us something of importance about the societies they exist in. Indirectly, they can be used to shame societies to reduce their prison populations. But used like this, new forms of distance to the pain in pain is created. The numbers of prisoners are used as indicators of the political situation, but the essence of imprisonment, the pain in punishment, remains as an abstraction.

Prison figures tell us something about societies. Fine. But as with the old penal philosophers I mentioned in my introduction, the pain is missing in these figures – the suffering in being held behind walls, those hit are barred from the beloved ones, intentionally brought to suffer.

4. ON THE REDUCTION OF PAIN

To reduce suffering has always looked to me as being an important task to strive for. That is why we have hospitals, that is why we have social security, that is why we have painkillers of various sorts. Most citizens share these views.

But not when it comes to punishment. It is as if we were unable to grasp what we are doing: we are intentionally delivering pain. It is a sort of torture, well-regulated as torture was in the old days. I remember a visit to the huge castle in Brno – in Czechoslovakia as it was at the time of my visit. Once upon a time, that castle was used as a prison for Italian freedom fighters – fighting for freedom from the Austrian-Hungarian oppression of Northern Italy. On the wall in one of the rooms, I found a placard with the detailed instructions on how torture was to be carried out. The rules had the signature of the Austrian Queen. Torture was natural at that time – just as natural as prisons seem to be for our times. The much hailed UN Standard Minimum Rules for the Treatment of Prisoners have borne in this perspective an ironic similarity to the Queen's Rules at the wall of the castle in Brno. Rules for the delivery of pain. Rules and regulations that make delivery of pain, intended as pain, a legitimate and natural activity for any modern state – as long as it is carried out according to the instructions.

5. IF WE WERE AS CHILDREN – AGAIN

There are some reforms that might bring us slightly closer to the reality of the pain of imprisonment. Not all the way, but some small steps. They have to do with coming close to pain.

In a way, I want those among us working in these fields to be as children again. Children have not learned, not yet, to hide their impressions behind the terminology in the Ministries. They do not know the word “institution”, but understand that houses behind walls, houses that parents are not allowed to leave to come home to their kids, must be rather bad to be in. Bad for those locked in there – and bad for their children. Children do not know the word “measure”, but they know the word punishment. Something bad, something that hurts.

An alternative budget to the usual one at state level, a state budget formulated by children, would contain words on: how much intentional pain in the form of punishment is to be delivered for what sort of misbehaviour? First, of course, how many

killings do the state plan to carry out to whom, in countries where this takes place? And then, for other states: how much pain measured in days, months and years in prison is planned to be used. Arguments for more punishments might appear. In the language of children, it would sound: “More pain for crime in the future. My party is absolutely in favour of increasing the amount of pain delivery in the country”.

* * *

I have, just this month, finished the manuscript for a little new book. I call the book “Small words for big problems”. A major message here is that language is a wonderful tool for opening – but also for hiding. If we pretend to live in a democracy, it is essential to re-establish a language that can be used, and understood, by a maximum of those living in that society. When we intentionally deliver pain to people, we must make crystal clear what we are doing.

* * *

Children are in a way as travellers in an unknown landscape. I felt as one just some months ago. It happened in a prison in Guatemala. In one big room, they had gathered 185 males. They were all supposed to be members of the “Maras” – a much despised and feared organization in Latin America. Most of them were young, nearly all heavily tattooed (also on their faces); none of them with much hope for getting a possibility for leaving the prison, alive. To me, they were gentle and kind. I asked for a song when we had to go away, and a young man dared to perform. It was about life in that very room – a second here is as a minute, a minute as an hour, and hour as a day, a day as a week – and like that it continued, all without end and hope.

Maybe this is the way to say it.