

# Preface

The question mark in the short title of this book, *European Penology?*, should alert the reader to two important but difficult questions that troubled us as editors as we began to conceive of this book as a means of understanding what was happening in the sphere of punishment in one part of the globe. What do we mean by 'penology'? And, how is what we mean by penology modified by the adjective, 'European'? Neither question can be answered satisfactorily by dictionary definitions, for the meaning of the words depends on the context of their usage. In the papers collected in this book this context is approached in several ways, which, we believe, collectively provide some answers that have hitherto been lacking to these questions.

In **Part One**, the underlying questions relating to **concepts and institutions** are addressed most directly: in Chapter 1 two editors, Sonja Snacken and Dirk van Zyl Smit, tackle the definitional issue head-on by pointing out that even within Europe, definitions of 'penology' vary greatly. They proceed to argue that an understanding of European penology is better reached by focusing on the specific European institutional context: the existence and roles of two pan-European organisations, the Council of Europe and the European Union, which are involved in intergovernmental and supranational penal policy-making and penological standard setting. Snacken and van Zyl Smit focus in particular on the Council of Europe which, as a result of the recommendations of its Committee of Ministers, the judgments of the European Court of Human Rights and the standards developed by the European Committee for the Prevention of Torture (CPT), has long been the leading European body in the penological field. They also seek to demonstrate that insights into the core of the collective meaning of penology for Europeans emerge from an examination of how European institutions, which act on behalf of European states jointly, intervene in penological issues, such as the death penalty, when they arise outside Europe.

The third editor, Tom Daems, addresses the meaning of 'European' in Chapter 2, by asking how notions of what Europe is have impacted on the overall approach to penology. Daems relies particularly on Ulrich Beck's idea of a 'cosmopolitan Europe' to ground his conception of Europe as an area which, while remaining open to the world, allows particular normative values to triumph. In Chapter 3 the theoretical discussion of the meaning and normative content of both 'penology' and 'European' are taken further by Ian Loader and Richard Sparks, who argue that the policy values that

they identified in their earlier work as being inherent in ‘public criminology’, should apply on the European penological stage also.

The discussion of the European institutional context is developed further in Chapters 4 and 5 by Estella Baker and Roland Miklau respectively. Both focus on the European Union. Baker in her chapter considers how an increasing role has been carved out for the EU in penological matters and emphasises that, while the EU has a great deal of power that it can and increasingly does exercise in matters of penological concern, it also has a commitment, similar if not identical to that of the Council of Europe, to human right values that impact on the penological sphere. Baker’s chapter is complemented by that of Miklau, which concentrates on attempts to approximate sanctions across the member states of the EU. Miklau warns that efficiency and necessary severity are often the primary concerns of the EU, and contrasts this unfavourably with the emphasis on proportionality and minimum intervention in the sentencing recommendations of the Council of Europe.

**Part Two** of the book groups together chapters that address a range of **cross-cutting issues** that arise in all European states and which can benefit from being studied at a European level. Prominent amongst these is immigration, which has placed pressures on European penal systems of a kind they have not experienced before. In Chapter 6, Dario Melossi argues strongly that a different pan-European approach is required to this issue. This approach would involve a dialogue, which has not been conducted hitherto, about fundamental ‘European’ values and their application to immigrants. Chapter 7 by Frieder Dünkler is more optimistic. On the basis of his comparative research, Dünkler discerns youth justice in Europe as being ‘relatively invulnerable’ to wider punitive tendencies and, while recognising that much more needs to be done at the national level, emphasises the important role that European and international human rights standards play in protecting young people against the worst excesses of the penal system. There is some cautious optimism too in Fergus McNeill’s account of community sanctions and their place in European penology in Chapter 8. While McNeill recognises the danger of community sanctions increasingly becoming part of a culture of control that is imbued, particularly in Anglo-American jurisdictions, with a ‘new punitiveness’, he sees significant countervailing tendencies in the continued and even growing consensus at the pan-European level on social justice and on working with offenders in the community to foster their social inclusion.

Although in law remand detention should never be used as a punishment, it can increase the penal impact of the criminal justice system: certainly as it is perceived by the detained offender. In Chapter 9 Christine Morgenstern outlines national and European measures that are taken to prevent this abuse. Alison Liebling in Chapter 10 addresses the question of privatisation of (aspects of) imprisonment. Liebling points out that, although prison

privatisation is primarily associated with common-law jurisdictions within and outside Europe, the reality is that all European states have to purchase some goods and services from private sector providers. More attention should therefore be paid, at the European level too, to how this is done and what impact privatisation, whether full or partial, will have both on penal policy and on prison conditions.

In **Part Three** the focus moves to **nationally based perspectives** for, as David Nelken has emphasised, all efforts to develop Europe-wide standards must face the challenges of ingrained differences in practice in national jurisdictions. In Chapter 11 Nelken illustrates this truth by describing the intricate debates about prosecutorial independence in Italy and the complexity of the impact that reliance on European standards can have in these debates—with further unintended consequences for offenders caught up in the system. Chapter 12 by Kristel Beyens, Sonja Snacken and Dirk van Zyl Smit also refers to unintended, or at least hidden, consequences of oversimplification. Surely, one may ask ironically, everyone should favour truth in sentencing, if its opposite would be dishonesty? However, by focusing on how complex the interaction between the decision to impose a sentence and the manner of its implementation is in Belgium and elsewhere, Beyens, Snacken and van Zyl Smit expose the shallowness of a slogan such as ‘truth in sentencing’, which tends to focus only on the formal imposition of a sentence and ignores the rest of the penal process of which it forms part. Complexity is also the keynote issue underlying the conviction-based employment discrimination that is described by Elena Larrauri and James B Jacobs in Chapter 13. Larrauri and Jacobs point out that whether there is such discrimination has not been studied systematically in Spain or elsewhere in Europe, and they speculate that this might be because criminal records are not made public in European jurisdictions in the same way they are in the United States. However, as they point out, this is not a guarantee that there is no such discrimination, for in Spain, as in other European countries, some positions may not be filled by persons who have a criminal record, and there may be discrimination for other, less legally acceptable reasons too.

Finally, Part Three concludes with two chapters dealing with the complexities of the impact of punitive tendencies in different parts of Europe. In Chapter 14 Krzysztof Krajewski reflects on the changes in penal policies in Poland and other Eastern European countries, where the impact of European policies and the desire to be ‘European’ played a very important part in the years immediately after the collapse of the Soviet Union. Krajewski finds that, while there was such an impact, it does not fully explain the changes that took place immediately after the political changes and certainly does not account for the subsequent changes where punitive policies have emerged in new guises. In Chapter 15 René van Swaaningen addresses a particularly complex issue: the fluctuations in

penal policy in the Netherlands. In this jurisdiction, when imprisonment rates rose in the last decades of the twentieth century, this was seen as being directly related to the wave of popular punitivism sweeping Europe and the western world generally. However, in recent years incarceration rates have declined somewhat. This cannot be explained as easily, and van Swaaningen highlights the importance of looking closely at local factors to explain this partial reversal of the trend, while warning that it might not reflect a move away from underlying punitivism at all.

Taken as a whole, this book on European penology is therefore a combination of a search for a European identity in penal policies and research, a discussion of European institutional developments in penal policies, an overview of comparative research on specific topics in Europe, and a cautious attempt to highlight the differences between European countries, when European-level explanations provide only partial answers. Certainly, the book does not purport to provide definitive answers to our initial questions. Much more can be said about European penology, and much more certainly will be. Nonetheless, we believe that, taken together, the chapters in this volume and the broad range of themes they touch upon, illustrate why publishing a regionally focused book, such as this one, is so urgently necessary at this particular juncture of European (penal) history. We hope, therefore, that the contributions in this book will not merely introduce readers to the particular details of an emerging and fascinating European world of punishment, but also offer them inspiration and food for thought for future research and debate on the intricate analytic and normative questions that surround the topic of punishment and Europe—questions that have come to the fore only recently but will undoubtedly grow in significance in the years to come.

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The idea for this book grew out of a workshop that we as editors organised at the Oñati International Institute for the Sociology of Law (IISL). The workshop was originally planned for April 2010, but the volcanic ash-cloud that was interfering with flights over Europe at that time put paid to that, as most participants were unable to travel. We are very grateful to the IISL for welcoming the idea of our workshop and for enabling us to reschedule it for 22 and 23 July 2010. In Oñati the IISL provided us with logistical and administrative support and made our stay in the Basque country a very pleasant experience. We would like to mention in particular its coordinator, Malen Gordo Mendizabal, and its then director, Sol Picciotto.

A follow-up meeting with about half of the authors, including most of those who could not attend the rescheduled Oñati seminar, took place on 22 September 2011 in the Law Institute of Lithuania on the occasion of the 11th annual meeting of the European Society of Criminology (ESC). We would like to express our gratitude to Skirmantas Bikelis, Algimantas

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Finally, we wish to thank our contributing authors who stuck with us through the long gestation process of this book. We hope that they share our satisfaction in having contributed to the understanding and, in the process, to the development of European penology.

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