

Research article

Bordered penal populism: when populism and Scandinavian exceptionalism meet

Abstract

Penalty in Scandinavia has been seen as somewhat of an outlier, a redoubt against the punitive turn witnessed in other parts of Western Europe and the United States. This article examines contemporary discourses of penalty in Norway following the entry into government of the populist-right Progress Party. The analysis describes how government representatives frame themselves as protecting individual security and prioritising victims whilst pursuing a bordered version of penal populism directed against non-citizens. These non-Norwegians are shown to be the focus of a range of penal populist policies, including fast-track justice, a warehousing prison regime, targeting of petty offenders and the double punishment of imprisonment and deportation. In a context where the penal welfare consensus with respect to Norwegian citizens remains relatively strong, it is easier for the Progress Party to 'do populism' by focusing on non-citizens.

Keywords

Bordered penalty • Scandinavian exceptionalism • crimmigration • Norway • discourse analysis • penal populism

The status of penal exceptionalism in Scandinavia has been under scrutiny for some time. What began with Pratt's (2008a) seminal article (see also Green, 2008) has given way to debate over the nature and trajectory of Scandinavian exceptionalism (Pratt, 2008b; Ugelvik and Dullum, 2012; Nilsson, 2013; Shamma, 2014; Pratt and McLean, 2015; 2016). This article focuses on Norway, where in 2013 a left-of-centre government was replaced by a minority coalition of the centre-right Conservative Party and the populist-right Progress Party, with the Progress Party taking charge of the Ministry of Justice and Public Security. This article seeks to examine how government and media voices frame issues of punishment, prisons policy and offending. The main question to be addressed is whether there has been a discursive upsurge in penal populism? Or, conversely, does Norway retain a sufficiently resilient penal welfare consensus that leaves little room for such populism?

The article first summarises key features of the punitive turn and the debates around Scandinavian exceptionalism and the Norwegian penal welfare model. It then assesses how governing voices in Norway represent themselves as dynamic, prioritising victims, keen to quickly increase prison capacity, focused on individual security and as actively deporting foreign criminals. The analysis then shows how foreign criminals are framed as unwanted, in need of deportation, requiring swift justice, deserving of a lesser prison regime and as not requiring rehabilitation. The article interprets the relative silence regarding the mission of the criminal care system when it comes to Norwegian citizens

as a passive erosion of penal exceptionalism, and that the bordered penal populism that permeates the discourse risks negative implications for the criminal care system as a whole and for the position of non-citizens within Norwegian society. In conclusion, a broader theoretical point is made about moving away from a Westphalian notion of unitary national sovereignty to Bartelson's (1995) concept of a frame that may be drawn and re-drawn in a range of contexts, including within the penal system.

The punitive turn versus exceptionalism in Norway

The punitive turn has been well documented in this journal and elsewhere. But it is worth revisiting some of the milestone texts in order to set out the values and policies that we could expect from a justice minister of the populist right Progress Party in Norway.¹ This is not to say that it *will* be possible to observe all of the developments set out below, but rather what we *might* expect from the extant literature on penal populism. David Garland sets out the following penal populist trends in this journal's inaugural editorial as follows:

The erosion of correctionalist ideologies; the turn to expressive justice and punitive measures; the return of the victim; the stress upon public protection and the management of risk; the changing objectives of community corrections and custodial institutions; the politicization of penal policy discourse; the commercialization of

penalty; the drift towards mass imprisonment (Garland, 1999: 7; see also 1996; 2000; 2001).

John Pratt (2007) has usefully described penal populism as being nourished by division and dissent (p.12-13) and as being accelerated by processes of globalisation (p. 37 and 55-8). Pratt also notes the importance of globalisation. Loïc Wacquant meanwhile has written extensively on penalty and neoliberalism, arguing that denunciations of ‘urban violence’, targeting of petty drug offenders, the deregulation and privatization of the criminal justice system, ‘prison works’ and ‘zero tolerance’ policies have all diffused across the Atlantic from the United States into Europe, often via the UK (Wacquant, 1999), and that the penal system is increasingly used to manage the social insecurity that is a by-product of neoliberalism (ibid, 2001; 2009). Dario Melossi’s work would lead us to anticipate a change in representation of the criminal, from sympathetic to antipathetic, and to observe an affinity between the devaluation of the criminal and a rise in prison numbers (Melossi, 2000). Feeley and Simon (1992) describe the emergence of discourses based on risk management and the aggregating of groups of ‘dangerous offenders’, whilst Jock Young (1999) details the transition from “a society whose accent was on assimilation and incorporation to one that separates and excludes” (p. 10). The extent to which the narrative of the Norwegian government embraces these trends is a key focus of this analysis.

Penalty in Scandinavia has been described as exceptional in terms of its incarceration rates and humane prison conditions (Pratt, 2008a). That being said, Norway's exceptional status has been under scrutiny for some time, both regarding its nature (how exceptional is it really?) and its trajectory (is exceptionalism being eroded?) For example, Ugelvik and Dullum's (2012) anthology sets out some darker sides of exceptionalism, including regarding remand conditions, liminal migrants and drug sentencing (see also Lappi-Seppälä, 2007; Shamma et al., 2014: on drug sentencing). Shamma's (2016) recent study meanwhile argues that Norwegian penal exceptionalism is attenuating and that a more punitive approach is being adopted in the context of the "nascent neoliberalization of the welfare state" (of course, whilst elements of neoliberal workfare approaches have been introduced in Norway, the level of welfare provision remains significantly higher than even many other European states). Overall, we can observe a state that continues to have relatively low, if slowly increasing, prison numbers (74 per 100,000 people as per the 2016 World Prisons Brief), though with higher 'flows' through the system than many other European countries (Smith and Ugelvik, 2017: 22).

The aim of this article is to supplement these findings by shedding new light on the discourses that are shaping contemporary Norwegian penalty. One of the most salient and disturbing features of Norwegian penalty is its increasingly bordered nature (Aas, 2014; Ugelvik, 2012b; Ugelvik and Ugelvik, 2013; Pakes and Holt, 2017a). As such,

this article highlights important recent developments that are the result of the Norwegian Progress Party's bordered penal populism.

Methodology

Government voices make proposals and calls for action on the basis of identity constructions – both of themselves and of those subject to the justice system. These identity constructions not only have consequences in shaping society's views of government, the penal system and offender, but are also linked to tangible policy proposals that define the scope of punishment and how it is implemented. Penal policies are based on representations of identity, but these identities are also produced and reproduced through penal policy (see Hansen 2006 and Campbell 1998 for related arguments on foreign policy). The analysis below sets out how the Norwegian governing discourse represents itself and those subject to the justice system. There is of course the question is this just talk? Is this rhetoric just intended to play to the party faithful whilst in practice maintaining the status quo? Whilst discussing intentionality when conducting discourse analysis is a tricky endeavour, the most recent general election results show that the Progress Party's rhetoric has enabled them to improve their electoral performance whilst also enacting tangible change in penal policy and practice.

Empirical data analysed include all press releases and op-eds produced by the Ministry of Justice and Public Security and all debates in the Norwegian parliament that address criminal justice issues over the period autumn 2013 to summer 2016. All politicians cited in the analysis are representatives in the national parliament and thus have a high or relatively high profile. Whilst the debates included contributions from all political parties with representation in parliament, this analysis focuses on those representing the governing parties. In total, 60 press releases and op-eds and 24 parliamentary debates were analysed. In addition, editorials that address crime and prisons policy from the broadsheet *Aftenposten* (Norway's highest circulation newspaper, n=28) and tabloid *Verdens Gang* (the most-read online newspaper, n=15) were used to supplement the analysis. Editorials provide a useful proxy for the overall tone and content of each newspaper.

These sources were first parsed with respect to *who* was being discussed – in addition to the governing self, which types of offender were identified in the discourse? Having identified the main narratives of the governing self and a foreign criminal other, the texts were coded openly—though with key aspects of penal populism in mind—for *how* self and other were represented. Having identified major representations for both the governing self and foreign criminal narratives, a more focused analysis of the empirical data was carried out in order to develop and deepen these representations and check for any conflicting examples.

Analysis: discourses of penalty in Norway

The most striking aspects of the governing discourse are first, its relatively minimal discussion of the general prison population and second, the focus on non-citizens. Whilst issues like rehabilitation, mental health and drug addiction are mentioned by government voices and reference is made at points to inmates and offenders, it is difficult to carve out any clear and coherent offender-narrative. It is interesting that the new government did *not* take the opportunity to set out its broad policy position on criminal justice issues, particularly given the Conservative Party had been in opposition for eight years and the Progress Party had never been in government before. Although there are elements of penal populism to be observed in the discourse, these are relatively limited—except where non-citizens are concerned. It is these ‘foreign criminals’ that receive most attention from former Justice Minister Anders Anundsen (who held office from October 2013 to December 2016) and others from the Progress Party and Conservative Party. The other two groups that are more briefly discussed are young offenders and extremists (not analysed here on grounds of space). The analysis below first sets out how the Norwegian government describes itself, before focusing on how it frames foreign criminals.

The governing self narrative

The governing self describes itself as capacity-building and queue-reducing, dynamic and effective, prioritising victims, deporting and transferring non-citizens, and

safeguarding the individual. These representations are summarised in Figure 1 below, which is based on Hansen’s (2006: 46; 2007: 11) graphic technique:

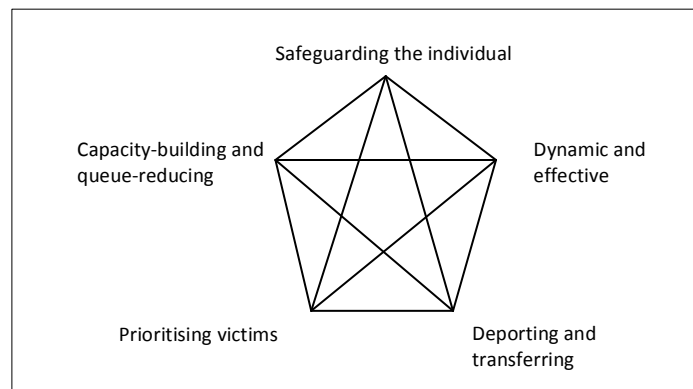


Figure 1: The Governing Self

Overall, the governing voices are keen to present themselves as *safeguarding the individual*. The Justice Minister released in 2015 a much-discussed film entitled *Security in everyday life* aimed at highlighting his achievements whilst in office. In announcing the film Anders Anundsen asserts the government has “implemented a range of initiatives to ensure that citizens have a safer everyday life” (Justis- Og Beredskapsdepartementet, 2015e). In a speech to Stortinget, Anundsen similarly asserts that “The government will deliver politics that takes care of the individual’s need for safety and the rule of law” (Stortingsforhandlinger, 2014d: 1416-1417). This representation of the government as safeguarding the individual is also made by Conservative representatives, who note that “The safety of citizens has the highest priority” (Stortingsforhandlinger, 2013: 481), and that their party “builds its justice

policy on the individual's need for everyday security"(ibid: 1390). Progress Party voices link the government's focus on individual security to a number of 'crime-waves', with one representative alleging that:

In Oslo we have pointed out that we feel it is safer to live in New York. We have had a wave of robberies, a wave of rapes and we have had few police on the streets. ... The new government prioritises the most important things first, namely strong police power. Safer everyday life is an overarching goal for the new government, and this makes those of us in Oslo very happy. (Stortingsforhandlinger, 2013: 492)

In this quotation we can see a contrast being made between the new government, framed as prioritising citizen safety and 'strong police power', and the past when Oslo was witness to waves of robberies and rapes. The contrast with New York is noteworthy given its invocation justifying broken windows and zero tolerance policies (Wacquant, 1999). This representation of *individual* security also carries with it neoliberal meta-narratives and their privileging of the individual over society.

A Conservative representative gives two versions of a story featuring a young potential offender to illustrate his view that police deterrence is important when it comes to the safety of individuals:

A young man needs money quickly. He sees a lady standing at an ATM. The plan is to grab her bag and run. He walks with determined steps towards the lady. He sees no

police. Knowing that the police are not around - they might be 15 minutes or half an hour away - he chooses to turn to the lady, grab the bag and run. The mugging victim's sense of security may be lost forever. The tax bill for society begins to mount up quickly: tens of thousands of kroner for the police investigation, tens of thousands of kroner for custody, hundreds of thousands of kroner for defence lawyers, prosecutors and the courts, hundreds of thousands of kroner to imprisonment and aftercare, tragedy for the victim, the family and close relations - and for the perpetrator. A crime which is committed means lost opportunities for the individual, lost opportunities for society and not least many, many millions that could be used for completely different purposes. Now let's change the story a little. Just before the young man is about to rob the lady, he sees the police a few hundred metres down the street. They are implementing situational prevention in this area. He gives up the robbery attempt and disappears. This incident cost society zero kroner, and the lady gets to keep both her handbag and her sense of security.

... Our goal, whether we are in opposition or government, must be to help the police do this even more and even better. 100 million kroner extra to the police is an important step on the road. A police service with fewer targets, fewer detailed directives, but more independence and freedom with responsibility, will be another. (Stortingsforhandlinger, 2013: 491-492)

Here we can see how safeguarding of a potential victim—fulfilling Christie's (1986) attributes of the ideal victim—is emphasised via preventative deterrence (though the

story can also be read as one of dispersal in action). This enables the representative to claim credit for increased spending on the police but also make a familiar right-of-centre critique of overly detailed management and insufficient 'freedom'. The rhetoric employed here is emotive, with talk of a tragedy for the victim and perpetrator and the prospect of the victim's sense of security being lost forever.

Capacity-building and queue-reducing. Government voices frame themselves as working quickly to increase the capacity of the Norwegian prison estate whilst also bringing down the waiting list for serving a prison sentence. The queue is an unusual feature of Norwegian penality, in that whilst those convicted of serious offences are sent straight to prison, those convicted of more minor offences must, like with other public services, take their place on a waiting list. The queue, intended to avoid running prisons over their capacity, has been the subject of criticism for some years. The need to increase prison capacity is also as justification for introducing doubling in certain wings (Justis- Og Beredskapsdepartementet, 2013a). In connection with the opening of Norgerhaven prison in the Netherlands (Norgerhaven is a Dutch prison rented by the Norwegian government - both foreign national and Norwegian prisoners have been transferred there since September 2015), Anders Anundsen links the two issues of capacity-increase and queue-reduction:

“I am proud that we have so quickly put in place 242 closed prison places. Increased prison capacity is important in achieving the goal of abolishing the prison-queue that Norway has struggled with for years” (Justis- Og Beredskapsdepartementet, 2015c)

Overall, the Justice Minister argues that increased capacity is a key priority for the government (Justis- Og Beredskapsdepartementet, 2016a), and that

“In order to secure enough places for the future, we must build prisons with closed capacity. That we do not have them in place is a threat to the rule of law” (Justis- Og Beredskapsdepartementet, 2014c)

Here, more emotive rhetoric is being employed, with a lack of capacity being framed as a threat to the rule of law. It is worth observing that the Justice Minister and his colleagues argue for the building of closed places, not open places or the extension of a programme of serving sentences under electronic monitoring at home. Increased capacity is also described as benefitting those sentenced to prison because it enables more focus on rehabilitation (Stortingsforhandlinger, 2015a: 3770). This focus on increasing prison capacity comes at a time when reported crime is at its lowest point over a 24-year recording period (Statistics Norway, 2017).

Deporting and transferring prisoners. This self-representation is made time and again by the Justice Minister and other governing voices. The Justice Minister describes how he wants to increase the number of forced returns and his Department

affirms that “criminals are being prioritised” (Justis- Og Beredskapsdepartementet, 2014a). Anundsen argues that “This increase [in forced returns] will contribute to preventing criminality because many of those transported out of the country are either sentenced or have had a sanction imposed” (Justis- Og Beredskapsdepartementet, 2013b).

One could label this the ‘fighting crimmigration’ narrative, with government figures seeking to represent themselves as taking action on foreign criminals via a strong focus on Melossi’s (2003) ‘deviant immigrant’. Aas (2013: 82) argues that being tough on immigrant crime may carry double rewards, in that ‘criminal immigrants’ may be doubly othered. Ugelvik (2012a) notes accordingly that this group has been given a position of radical otherness in Norway. It could be argued that there remains sufficient consensus around the way the criminal care system works for Norwegian citizens, such that society is not sufficiently receptive to overt penal populism. However, when it comes to foreign criminals, there is less need for reticence and government figures are free to represent themselves as being tough on this group of radical others. Whilst Aas has noted that the practices of bordered penalty in Norway are in a sense invisible in terms of policy documents and legal and normative debates (2014: 530), this analysis shows that the Norwegian political discourse is now replete with the explicit exclusionary rhetoric of bordered penal populism. What was once difficult to observe is now difficult to avoid. What we are witnessing is the rhetoric—and practices—of

punishment being used to other non-citizens, whilst simultaneously bolstering the ‘law and order’ credentials of the Progress Party: a clear example of penal populism.

Prioritising victims. This self-representation is hardly unusual: the rise in prominence of victims in crime policy debates has seen politicians from left and right present themselves as safeguarding the needs and rights of victims (Garland, 2000: 351-352; Walklate, 2016: 12 inter alia). Anders Anundsen is no different: “The government is extremely focused on better safeguarding of victims of crime” (Stortingsforhandling, 2014c: 812). A party colleague goes further, arguing that whilst rehabilitation is important, “ethically it is even more important to take care of the victims” (Stortingsforhandling, 2014b: 3243). He makes this statement in a debate on removing the statute of limitations for a number of serious offences, and later makes the following emotive contribution:

We as a society need to admit that time does not always heal all wounds. Some crimes are so brutal, so fundamentally inhumane, that we as a society should not allow punishment to fall away because of procedural rules. The victim of violence who has lost their confidence, the grieving and lonely widow with no answers, the mother of an abused child: these are people who have gone through the worst. ... These victims and their families deserve answers, they deserve respect and they deserve not least to be taken seriously. (ibid)

Not only can we trace characteristics of Christie's (1986) ideal victim here, we can also see them set in opposition to "brutal" and "fundamentally inhumane" crimes. It is worth noting the crime rather than the criminal is framed as inhumane and brutal. Even so, it is clear that governing voices present themselves as prioritising victims, including explicitly prioritising their needs over those of offenders. In terms of practice, the Norwegian trial process gives a formal role to counsel for the injured party, whose role is to "protect[s] the interests of the victim and deceased's next of kin during the investigation and court case." (The Courts of Norway, 2016). These lawyers are also active in the media, including in arguing for longer prison sentences.

This prioritization of victims is also linked to specific policy proposals. For example:

when I see a proposal to once again start releasing people before their sentence is fully served, we [the Progress Party] believe that this is a bad solution first and foremost because it tramples on victims." (Stortingsforhandlinger, 2015a: 3787)

When discussing extending a pilot project of serving prison sentences at home under electronic monitoring, victims are again brought to the fore: "A possible expansion must not be at the expense of consideration for the victims, their families and the common sense of justice" (Justis- Og Beredskapsdepartementet, 2016b). The transfer of prisoners to the Netherlands is justified via reference to victims getting to see sentences

being served (Stortingsforhandlinger, 2015c: 607). These quotes show how victim-talk carries both an expressive function in the framing of the governing self, but also an instrumental function as a tool for evaluating policy (Garland, 2000: 350).

Dynamic and effective. This claim of being effective, dynamic and implementation-focused is in the main about differentiating the governing parties from their predecessors. As one Conservative representative argues:

The voters wanted a new politics for the country and a new government. We now have that. Indeed, our justice policy will be marked by the fact that we have a new, more active and implementation-focused government (Stortingsforhandlinger, 2013: Innst. 6 S (2013–2014), p. 481).

A Progress Party representative asserts similarly: “We now have a new and dynamic government that is prioritising safety on the streets.” (Stortingsforhandlinger, 2013: Innst. 6 S (2014–2015), s. 1373), while the Justice Minister states “We have halved the prison-queue ... This is dynamism.” (Stortingsforhandlinger, 2014a: 3103). That a government seeks to present itself as dynamic and effective is hardly surprising. Neither is the linking of these self-representations to claimed achievements (e.g. reducing the prison queue) unexpected. The emphasis on dynamism and effectiveness does though help create the rhetorical space for measures like transferring prisoners to the Netherlands. Creating a sense of urgency is useful when proposing unusual

solutions (Buzan et al., 1998) – like renting a prison in a foreign state (Pakes and Holt, 2017b).

In summary, the governing self does not self-represent as overtly punitive via claims of being ‘tough on crime’ or that ‘prison works’. But there is little penal exceptionalism to observe either, with governing voices describing themselves as prioritising victims and individual security and seeking to increase prisons capacity during a period of low recorded crime.

The foreign criminal narrative

Foreign criminals are, with one exception², the only group to receive the label ‘criminal’ in the governing discourse. Norwegian citizens are generally described as offenders (*lovbrytere*). In a clear demonstration Aas’s bordered penalty (2014), the foreign criminal is represented as unwanted, in need of deportation as soon as possible, requiring of swift justice, deserving of a different prison regime and not requiring rehabilitation (see Figure 2 below):

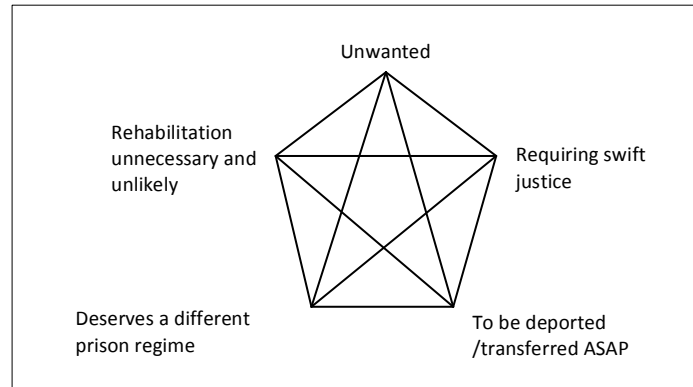


Figure 2: The Foreign Criminal

Ugelvik (Ugelvik, 2012a) has previously noted the phenomenon of the liminal criminal migrant (*kriminelle innvandrere*), a label that encompasses both non-Norwegian citizens and Norwegian citizens with a minority background (p. 122). However, the discourse analysed here refers instead to criminal foreigners (*kriminelle utlendinger*). I would argue that this small discursive shift—from criminal migrants to criminal foreigners—has even greater potential for ‘othering’ since the citizenship demarcation is clearer. Differential treatment on the basis of citizenship is much easier to justify and implement than differential treatment on the basis of ethnicity or ancestry. It is worth highlighting that the label ‘criminal foreigners’ is broad enough to include people who have lived legally in Norway for many years without obtaining citizenship. The foreign criminal ‘other’ is therefore both external (for example visiting criminals committing burglary) and internal (those non-citizens with established lives in Norway who receive a criminal conviction). The discourse analysed here taps into a broader cultural narrative that

expresses concern about how immigration will affect the Norwegian welfare state, or ‘what we have worked hard to build up’.

Unwanted. Foreign criminals both within Norway and outside its borders are clearly represented as unwanted. As Connolly (1989: 326) notes: "The definition of the internal other and the external other compound one another." In terms of those individuals outside the borders of Norway, the Justice Minister asserts the importance of effective immigration controls in order to “prevent entry of those who are unwanted here [in Norway] on the grounds of criminality” (Stortingsforhandlinger, 2015b: 928). Of course, it is hardly the height of penal populism that a government is less than keen to allow those who have committed criminal offences into the country. But those non-Norwegian citizens within the system are also framed as unwanted. Ulf Leirstein (Progress Party) complains that:

prisons that were meant to be reserved for Norwegian inmates - inmates that should have been rehabilitated - have been inundated with foreign criminals. Foreign criminals who should have been imprisoned in their homeland, but the previous government could not manage it. (Stortingsforhandlinger, 2013: 482).

Leirstein seeks a Norwegian prison estate for Norwegian citizens. The rehabilitation of Norwegian inmates is represented as being prevented by an undesirable ‘inundation’ of foreigners. As the following subsection demonstrates, the logical extension of this

undesirability is removing foreign criminals from Norway. In terms of the media, an editorial in *Verdens Gang* entitled *Dangerous asylum seekers* highlights a concrete example of an unwanted foreigner, who is described as “a convicted criminal Norway is unable to send out of the country” (VG, 2015) The article affirms that “Out of consideration for public safety, this notorious violent offender without legal residence must be held in custody so that he does not represent a danger to the lives and health of others.” (ibid) This story with its reference to violence and danger helps to underline the unwontedness of foreigners involved in criminality.

To be deported/transferred as soon as possible. As already noted, the Justice Minister and his colleagues are keen to present themselves as excluding non-citizens involved in criminality. This naturally has implications for the framing of those being deported or denied entry. In a press release entitled *More forced returns and prison transfers*, Anders Anundsen proposes increasing the police budget to finance the transfer of around 15 inmates to serve out their sentences in their countries of origin (Justis- Og Beredskapsdepartementet, 2013b). In terms of deportations, the Justice Minister argues that:

It is important to change immigration law so that people who are residing illegally in Norway, and who for example are engaged in shoplifting, may still be expelled³ under the Immigration Act. Shoplifting is today an important basis for expulsion of foreign

criminals and without a change in immigration law it would no longer be usable as grounds for expulsion. (Justis- Og Beredskapsdepartementet, 2015a)

In terms of the media, *Aftenposten*, in a leading article critical of the transfer of prisoners to the Netherlands (entitled *Prisoners are no commodity*), notes also “especially in the east of the country, foreign citizens fill the prisons. They will be sent out of the country after serving their sentences.” (Aftenposten, 2014) It is interesting to note that in an article that attacks the Justice Minister for “selling prisoners as exports”, the deportation of foreign prisoners does not receive the same level of critical attention. The framing of foreign criminals as requiring deportation extends also to those held unfit to stand trial, with the Justice Minister announcing his intention to simplify the expulsion process for this group (Justis- Og Beredskapsdepartementet, 2014b). The demarcation here of a radical, foreign other is clear: non-Norwegians who commit crime on Norwegian soil are to be sent out of the country as soon as possible. This is penalty both bordered and populist, in that non-citizens are subject to the double punishment of imprisonment and deportation and the government seeks to reap political capital for this double punishment.

Requiring swift justice. This sense of urgency is borne out by the Justice Minister’s proposal of a fast-track pilot project whereby criminal cases with “uncomplicated evidence” can be processed within a few days while suspects are in police custody (Justis- Og Beredskapsdepartementet, 2015d). The project’s aim is to “ensure a rapid

connection between offense and judgment in cases where criminals today evade prosecution” (ibid), with the target groups including “visiting criminals” and those who have violated their conditions of entry. Anundsen states that “I do not want Norway to be a refuge for any form of criminality, and the use of such a fast-track is one initiative that can contribute to preventing this.” (ibid). This gets some support in the media, with an editorial in *Aftenposten* asserting that “in cases where the offense is non-serious enough to be dealt with quickly yet serious enough that the district court may impose remand for 28 days, a fast track could lead to eviction a few weeks after arrest. This would be an improvement, especially in the most serious cases.” (Aftenposten, 2015) The Justice Minister makes the Panglossian claim that this project has the potential to strengthen criminals’ security under the law, on the basis that a swift conviction gives a stronger burden of proof for continued imprisonment than a remand hearing (Justis- Og Beredskapsdepartementet, 2015d).

In a further blurring of the lines between immigration control and the criminal justice system, the Justice Ministry also notes that asylum seekers subject to a separate fast-track procedure may considered for police arrest and imprisonment whilst their cases are processed (Justis- Og Beredskapsdepartementet, 2015b) The Justice Minister argues that “The measure will make it harder to abuse the asylum system, not least for the minority who have intentions of criminal activity.” (ibid) Røren and Todd (2014) have previously noted the Progress Party’s linking of crime with asylum seeking.

Deserving a different prison regime. Those foreign citizens who remain subject to the Norwegian justice system are represented as requiring a different prison regime. This applies both to foreign national prisoners transferred to Norgerhaven prison in the Netherlands and to those held in Kongsvinger prison, which is dedicated to foreign prisoners (and which was originally to provide the same standard as other Norwegian prisons). The Justice Minister highlights that: “there is a foreigners’ prison in Norway today, where there is a completely different provision than in other prisons” (Stortingsforhandlinger, 2013: 812). He claims credit on behalf of the Progress Party, noting that the different regime is justified because inmates are to be deported at the end of their sentences:

the Progress Party have gained acceptance for a different level of services provided to prisoners serving in the foreign national prison [Kongsvinger] than to prisoners who are not serving their sentence there. Inmates in the foreign national prison will be deported after imprisonment, and it is natural that they receive different provision than other inmates. (ibid)

Here we see Anundsen claiming that a more restrictive prison regime for non-citizen prisoners is ‘natural’. This is a clear case of bordered penal populism, in that non-citizens are so suitable for marginalisation that Anundsen can make political capital out of underplaying the level of public goods this group receives. Ugelvik (2017) has described Kongsvinger as a ‘crimmigration prison’, noting that the prospect of

deportation has indeed produced a move away from the rehabilitatory and reintegratory efforts that take place in other Norwegian prisons. In a blog post in the run-up to the 2013 general election, Conservative Party leader and current Prime Minister Erna Solberg made clear her view that:

There is no reason that the scarce resources of the criminal care system be used to provide the same services to foreign prisoners who will be sent out of the country when their sentences are complete, or who will be transferred to serve their sentence in their homeland. There is a difference between our ambitions for inmates who will return to Norwegian society, and for foreigners who have committed a crime and will be deported. Foreign criminals must be deported immediately on completion of their sentence. Measures to facilitate release into Norwegian society after prison are not relevant for these inmates who will in any case be deported. (Solberg, 2013)

The privileging of Norwegian citizens over non-Norwegians is once again made crystal clear. Solberg goes on to describe her concerns that “Foreign citizens on remand or serving a sentence in Norwegian prisons can develop contacts with established Norwegian criminal groups. They learn the language and get a foothold in this country. This is not desirable.” (ibid) Given that ‘learning the language’ is seen as a key goal for integration of immigrants, there is a certain irony in this being framed as undesirable: not least when considering that this undesirability is extended to those on remand who have not been convicted of a crime. This point is underlined by the fact that over half of

those on remand in Norwegian prisons are foreign citizens (57% of remand prisoners are foreign versus 23% of sentenced prisoners (Statistics Norway, 2016)).

Rehabilitation unnecessary. As Erna Solberg's blog sets out, governing voices represent the goal of rehabilitation as unnecessary and irrelevant for non-Norwegians, since they will be deported upon finishing their prison sentence. One of her party colleagues makes the same point:

In fact a third of inmates in Norwegian prisons are foreigners, people who do not have Norwegian citizenship. They are not entitled to the same rehabilitation and release programs that Norwegian inmates receive. Many of them who are going to serve their sentence in the Netherlands will not return to Norway and are not entitled to the same prison programs that Norwegian inmates receive, including further education.

(Stortingsforhandlinger, 2015a: 3786)

The citations in the previous section are also relevant here, given that the “completely different service provision” described by the Justice Minister (Stortingsforhandlinger, 2014c: 812) carries with it an implication that the availability of education, training and healthcare will be inferior for inmates in Kongsvinger prison. This is an expression of Andersen and Bjørklund's (1990) welfare chauvinism, whereby immigrants are framed as inappropriate recipients of the social goods provided by the state. So although there is limited desire expressed to make prison conditions worse for Norwegian citizens, this is not the case for non-citizens. Whilst to international visitors with a background in

policy or academia, Norway presents itself as a humanitarian and rehabilitatory superpower, the discourse analysed here demonstrates that a different face is presented to visitors who fall foul of the justice system (Barker, 2012: makes this point regarding Sweden). Charity clearly begins at home in the Norwegian penal context.

Concluding discussion

There are some clear aspects of a penal populist approach that can be found amongst contemporary government discourse with respect to Norwegian citizens who fall foul of the law, though these are reasonably limited. Overall governing voices are relatively quiet on issues of rehabilitation and change. This can be interpreted as a passive erosion of Norway's correctionalist ideologies: if the messages from the political leadership of the Ministry of Justice and Public Security are essentially silent on such issues this creates uncertainty about the mission of the criminal care system. However, it should be noted that the rhetoric and practice regarding young offenders does not bear the hallmarks of penal populism. Indeed, statements from the Justice Minister and parliamentary representatives expressly support using welfare state resources to help and support young Norwegians move away from crime (Justis- Og Beredskapsdepartementet, 2014d; Justis- Og Beredskapsdepartementet, 2014e). This is in itself relatively exceptional—that a party of the populist right would espouse progressive rhetoric about a group that in other penal contexts might be described as

‘jobs’ requiring stiff punishment. In addition, whilst the privatisation of criminal care has been proposed by both Høyre representatives (Helsingeng, 2013) and the Progress Party’s most recent draft manifesto (FrP, 2016: 31), the sources analysed here are silent on this issue. Overall, it must be remarked that prison conditions have not changed dramatically for the worse in those prisons that house Norwegian inmates.

One interpretation of the relative lack of penal populism (though increasing prison capacity and prison sentences, and a focus on victims and individual security are to be observed) regarding Norwegian citizens is that the receiving context (Garland, 2000: 354) of Norwegian society is such that a dramatic populist shift would have been too difficult and controversial for the Progress Party. It has been more straightforward for the party to ‘do populism’ by focusing on non-citizens. This group receive a full gamut of bordered penal populism, including fast-track justice, greater police resources, the call for a warehousing prison regime, targeting of petty offenders and the double punishment of imprisonment and deportation. As such this development chimes with Pratt and Miao’s (2017: 75) observation that “crime concerns have become conflated with concerns about ‘difference’ and ‘otherness’—of which being a stranger, a foreigner, or an immigrant, legal or otherwise, have become one of the most potent symbols.”

The implications of this bordered penal populism are clearly severe for non-citizens who fall foul of the law. There were 899 deportations of convicted offenders in 2016 and 996 in 2015 (Utlendingsdirektoratet, n.d.) and legislation is being changed to widen

the net over who can be deported (Justis- Og Beredskapsdepartementet, 2017). This more exclusionary direction of travel is likely to continue given that the Progress Party are set to continue in government for another four years from September 2017. I would posit also that this bordered penal populism has potential implications for the criminal care system more broadly and indeed for the position of non-citizens in Norwegian society. Regarding the criminal care system, the distancing and othering of “foreign criminals” at the political level has already affected practice with this group (including a lesser prison regime and deportations), but it is also possible that practices of distancing ‘bleed across’ into how penalty is experienced by Norwegian inmates as well – particularly if they are of ethnic minority background. In terms of how these discourses of deportation and exclusion might affect migrants to Norway more generally, the exclusionary rhetoric and Damoclean sword of deportation that hangs over them are unlikely to assist integration.

There is also a broader theoretical point to be made on the conceptualisation of sovereignty. Aas highlights the problems of viewing penal culture as a “unitary national phenomenon” (2014: 534) bound up in the Westphalian concept of territorial sovereignty. The analysis presented here underlines this point. It might therefore be helpful to employ instead Jens Bartelson’s (1995) conceptualisation of sovereignty as a parergon, or frame. This conceptualisation focuses on how the line between inside and outside, domestic and international, is drawn and redrawn without reifying this line.

Viewing sovereignty in this way should help us analyse how borders—the frame—are drawn in a range of contexts (including within the penal system), not just at the territorial boundaries of the state. As Neumann puts it, we are then able to analyse “how *social boundaries* between human collectives are maintained” (1999: 36). This will thereby enable us to understand the implications of bordered penal populism for citizens, migrants and penalty—and indeed sovereignty itself—in a context of increasing insularity in the face of globalisation.

Funding

The author received no financial support for the research, authorship, and/or publication of this article.

Notes

1 Whilst the Norwegian Progress Party are of the populist right, they are less extreme in their policies than populist-nationalist parties elsewhere, such as the Alternative für Deutschland, Front National or Partij voor de Vrijheid.

2 One press release refers to young offenders as “young criminals” (unge kriminelle), though reference is more often made to “young offenders” (unge lovbytere).

3 The Norwegian state employs three terms in this area: ‘utvisning’, which they translate as expulsion and which comes with a prohibition against re-entry of at least one year; ‘bortvisning’, which is translated as rejection of entry and means either being

refused entry into Norway or being notified that one must leave Norway; and
‘uttransportering’, which is translated as deportation and means being escorted out of
Norway by the police.

References

- Aas KF. (2013) *Globalization and crime*: SAGE Publications Limited.
- Aas KF. (2014) Bordered penalty: Precarious membership and abnormal justice. *Punishment & Society* 16: 520-541.
- Aftenposten. (2014) En fange er ingen vare. *Aftenposten*. Oslo.
- Aftenposten. (2015) «Hurtigdomstol» med snubletråder. *Aftenposten*. Oslo.
- Andersen JG and Bjørklund T. (1990) Structural Changes and New Cleavages: the Progress Parties in Denmark and Norway. *Acta Sociologica* 33: 195-217.
- Barker V. (2012) Nordic Exceptionalism revisited: Explaining the paradox of a Janus-faced penal regime. *Theoretical criminology* 17: 5-25.
- Bartelson J. (1995) *A genealogy of sovereignty*, Cambridge ; New York: Cambridge University Press.
- Buzan B, Wæver O and Wilde Jd. (1998) *Security : a new framework for analysis*, Boulder, Colo. ; London: Lynne Rienner.
- Campbell D. (1998) *Writing security : United States foreign policy and the politics of identity*, Minneapolis: University of Minnesota Press.
- Christie N. (1986) The ideal victim. *From crime policy to victim policy*. Springer, 17-30.
- Connolly W. (1989) Identity and Difference in World Politics. In: Shapiro MJ and Der Derian J (eds) *International/intertextual relations: postmodern readings of world politics*. Lexington, Mass.: Lexington.
- Feeley MM and Simon J. (1992) The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications*. *Criminology* 30: 449-474.
- FrP. (2016) Forslag til nytt partiprogram. Fremskrittspartiet.
- Garland D. (1996) The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society. *British Journal of Criminology* 36: 445-471.
- Garland D. (1999) Editorial: Punishment and society today. *Punishment & Society* 1: 5-10.
- Garland D. (2000) The Culture of High Crime Societies. *British Journal of Criminology* 40: 347-375.
- Garland D. (2001) *The culture of control : crime and social order in contemporary society*, Oxford: Oxford University Press.
- Green DA. (2008) *When children kill children: Penal populism and political culture*, Oxford: Oxford University Press.
- Hansen L. (2006) *Security as practice : discourse analysis and the Bosnian war*, London; New York: Routledge.
- Hansen L. (2007) The Clash of Cartoons? The Clash of Civilizations? Media and Identity in the Danish 2006 Cartoon Case. *International Studies Association 48th Annual Convention*. Chicago, USA.
- Helsingeng T. (2013) Høyre vil la private aktører drive norske fengsler. VG.
- Justis- Og Beredskapsdepartementet. (2013a) *Flere lukkede fengselsplasser*. Available at: <https://www.regjeringen.no/no/aktuelt/flere-lukkede-fengselsplasser/id745302/>.
- Justis- Og Beredskapsdepartementet. (2013b) *Flere tvangsreturer og soningsoverføringer*. Available at: <https://www.regjeringen.no/no/aktuelt/flere-tvangsreturer-og-soningsoverforing/id746209/>.
- Justis- Og Beredskapsdepartementet. (2014a) *100 dager i regjering*. Available at: <https://www.regjeringen.no/no/aktuelt/100-dager-i-regjering/id749846/>.
- Justis- Og Beredskapsdepartementet. (2014b) *Enklere regler for utvisning av utilregnelige utlendinger*. Available at: <https://www.regjeringen.no/no/aktuelt/Enklere-regler-for-utvisning-av-utilregnelige-utlendinger/id2342595/>.
- Justis- Og Beredskapsdepartementet. (2014c) *Stortingsmelding om kriminalomsorgen - Østlandet, Agderfylkene og Vestlandet blir prioritert*. Available at:

- <https://www.regjeringen.no/no/aktuelt/stortingsmelding-om-kriminalomsorgen-ostlandet-agderfylkene-og-vestlandet-blir-prioritert/id2356529/>.
- Justis- Og Beredskapsdepartementet. (2014d) *Ungdomsstraff erstatter fengsel for unge kriminelle*. Available at: <https://www.regjeringen.no/no/aktuelt/Ungdomsstraff-erstatter-fengsel-for-unge-kriminelle/id762905/>.
- Justis- Og Beredskapsdepartementet. (2014e) *Vil øke bruk av konfliktråd overfor unge lovbrøyttere*. Available at: <https://www.regjeringen.no/no/aktuelt/Vil-oke-bruk-av-konfliktrad-overfor-unge-lovbrytere/id755306/>.
- Justis- Og Beredskapsdepartementet. (2015a) *Endringer i utlendingsloven som følge av endrede strafferammer i ny straffelov*. Available at: <https://www.regjeringen.no/no/aktuelt/enderinger-i-utlendingsloven-som-folge-av-endrede-strafferammer-i-ny-straffelov/id2424006/>.
- Justis- Og Beredskapsdepartementet. (2015b) *Fengsling i grunnlause asylsaker*. Available at: <https://www.regjeringen.no/no/aktuelt/fengsling-i-grunnlause-asylsaker/id2426507/>.
- Justis- Og Beredskapsdepartementet. (2015c) *Norgerhaven fengsel i Nederland åpnet*. Available at: <https://www.regjeringen.no/no/aktuelt/norgerhaven-fengsel-i-nederland-apnet/id2438108/>.
- Justis- Og Beredskapsdepartementet. (2015d) *Prøveprosjekt for raskere gjennomføring av straffesaker*. Available at: <https://www.regjeringen.no/no/aktuelt/proveprosjekt-for-raskere-gjennomforing-av-straffesaker/id2404820/>.
- Justis- Og Beredskapsdepartementet. (2015e) *Se filmen «Trygghet i hverdagen»*. Available at: <https://www.regjeringen.no/no/aktuelt/se-filmen-trygghet-i-hverdagen/id2435528/>.
- Justis- Og Beredskapsdepartementet. (2016a) *Nytt fengsel i Agder*.
- Justis- Og Beredskapsdepartementet. (2016b) *Vi vil fortsatt trenge fengslene*. Available at: <https://www.regjeringen.no/no/aktuelt/vi-vil-fortsatt-trenge-fengslene/id2501624/>.
- Justis- Og Beredskapsdepartementet. (2017) *Nye utvisningsregler for straffedømte utlendinger*. Available at: <https://www.regjeringen.no/no/aktuelt/departementet-har-vedtatt-nye-utvisningsregler-for-straffedomte-utlendinger/id2568063/>.
- Lappi-Seppälä T. (2007) Penal Policy in Scandinavia. *Crime and Justice* 36: 217-295.
- Melossi D. (2000) Changing Representations of the Criminal. *British Journal of Criminology* 40: 296-320.
- Neumann IB. (1999) *Uses of the other : the "East" in European identity formation*, Manchester: Manchester University Press.
- Nilsson R. (2013) From Learning to Labour to Learning to Self-Control: The Paradigmatic Change in Swedish Prison Policy. *Journal of Scandinavian studies in criminology and crime prevention* 14: 24-45.
- Pakes F and Holt K. (2017a) Crimmigration and the prison: Comparing trends in prison policy and practice in England & Wales and Norway. *European Journal of Criminology* 14: 63-77.
- Pakes F and Holt K. (2017b) The transnational prisoner: Exploring themes and trends involving a prison deal with the Netherlands and Norway. *The British Journal of Criminology* 57: 79-93.
- Pratt J. (2007) *Penal populism*: Routledge.
- Pratt J. (2008a) Scandinavian exceptionalism in an era of penal excess part I: The nature and roots of scandinavian exceptionalism. *British Journal of Criminology* 48: 119-137.
- Pratt J. (2008b) Scandinavian Exceptionalism in an Era of Penal Excess Part II: Does Scandinavian Exceptionalism Have a Future? *British Journal of Criminology* 48: 275-292.
- Pratt J and McLean T. (2015) Inspector Wallander's angst, social change and the reconfiguration of Swedish exceptionalism. *Punishment & Society* 17: 322-344.
- Pratt J and Miao M. (2017) Penal Populism: The End of Reason.
- Røren P and Todd J. (2014) We the people? Political populism in the UK and Norway. *NMBU Journal of Life Sciences* 4: 23-29.
- Shammas VL. (2014) The pains of freedom: Assessing the ambiguity of Scandinavian penal exceptionalism on Norway's Prison Island. *Punishment & Society* 16: 104-123.

- Shammas VL. (2016) The Rise of a More Punitive State: On the Attenuation of Norwegian Penal Exceptionalism in an Era of Welfare State Transformation. *Critical Criminology* 24: 57-74.
- Shammas VL, Sandberg S and Pedersen W. (2014) Trajectories to Mid- and Higher-level Drug Crimes: Penal Misrepresentations of Drug Dealers in Norway. *British Journal of Criminology* 54: 592-612.
- Smith PS and Ugelvik T. (2017) Introduction: Punishment, Welfare and Prison History in Scandinavia. *Scandinavian Penal History, Culture and Prison Practice*. Springer, 3-31.
- Solberg E. (2013) *Norske innsatte må prioriteres (32 dager igjen til valget)*. Available at: <https://erna.no/2013/08/08/norske-innsatte-ma-prioriteres/>.
- Statistics Norway. (2016) *Imprisonments, 2014*. Available at: <https://www.ssb.no/en/sosiale-forhold-og-kriminalitet/statistikker/fengsling/aar/2016-03-16>.
- Statistics Norway. (2017) *Fewer thefts and narcotic offences*. Available at: <http://www.ssb.no/en/sosiale-forhold-og-kriminalitet/artikler-og-publikasjoner/fewer-thefts-and-narcotic-offences>.
- Stortingsforhandlinger. (2013) Møte tirsdag den 3. desember 2013 Sak nr 5 480-500.
- Stortingsforhandlinger. (2014a) Møte den fredag 12. desember 2014 Sak nr. 13 1369-1403.
- Stortingsforhandlinger. (2014b) Møte mandag den 16. juni 2014 Sak nr. 5 3243-3247.
- Stortingsforhandlinger. (2014c) Møte onsdag den 3. desember 2014 Sak nr. 2 810-814.
- Stortingsforhandlinger. (2014d) Møte torsdag den 30. januar 2014 Sak nr. 5. 1415-1421.
- Stortingsforhandlinger. (2015a) Møte mandag den 8. juni 2015 Sak nr. 5. 3766-3790.
- Stortingsforhandlinger. (2015b) Møte tirsdag den 8. desember 2015 Sak nr. 3. 927-928.
- Stortingsforhandlinger. (2015c) Møte torsdag den 26. november 2015 Sak nr. 6. 600-610.
- The Courts of Norway. (2016) *Counsel for the injured party*. Available at: <https://www.domstol.no/en/The-criminal-court-proceedings/who-is-involved/counsel-for-the-injured-party/>.
- Ugelvik S and Ugelvik T. (2013) Immigration control in Ultima Thule: Detention and exclusion, Norwegian style. *European Journal of Criminology* 10: 709-724.
- Ugelvik T. (2012a) The dark side of a culture of equality: Reimagining communities in a Norwegian remand prison. In: Ugelvik T and Dullum J (eds) *Penal Exceptionalism? Nordic Prison Policy and Practice*. London: Routledge.
- Ugelvik T. (2012b) Imprisoned on the border: Subjects and objects of the state in two Norwegian prisons. In: Hudson B and Ugelvik S (eds) *Justice and Security in the 21st century: Risks, Rights and the Rule of Law*. Abingdon: Routledge.
- Ugelvik T. (2017) The Limits of the Welfare State? Foreign National Prisoners in the Norwegian Crimmigration Prison. *Scandinavian Penal History, Culture and Prison Practice*. Springer, 405-423.
- Ugelvik T and Dullum J. (2012) *Penal Exceptionalism? Nordic Prison Policy and Practice*, London: Routledge.
- Utlendingsdirektoratet. (n.d.) *Statistikk om innvandring*. Available at: <https://www.udi.no/statistikk-og-analyse/statistikk/?filter=9&year=0>.
- VG. (2015) Farlige asylsøkere. *Verdens Gang*. Oslo.
- Wacquant L. (1999) How penal common sense comes to europeans. *European Societies* 1: 319-352.
- Wacquant L. (2001) The penalisation of poverty and the rise of neo-liberalism. *European Journal on Criminal Policy and Research* 9: 401-412.
- Wacquant L. (2009) *Prisons of poverty*, Minneapolis: U of Minnesota Press.
- Walklate S. (2016) The metamorphosis of the victim of crime: From crime to culture and the implications for justice. *International Journal for Crime, Justice and Social Democracy* 5: 4-16.
- World Prisons Brief. (2016) *Norway*. Available at: <http://www.prisonstudies.org/country/norway>.
- Young J. (1999) *The exclusive society : social exclusion, crime, and difference in late modernity*, London ; Thousand Oaks, Calif.: SAGE.