

Punitiveness and political culture: Notes from some small countries

European Journal of Criminology
10(2) 154–167
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DOI: 10.1177/1477370812464469
euc.sagepub.com



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Abstract

Green's (2007, 2008, 2009) recent comparative work on child-on-child homicides in England and Norway has drawn attention to political and cultural explanations to account for differences in levels of state punitiveness. His work finds support for the distinction made by Arend Lijphart (1999) between consensus and majoritarian democracy, through his argument that English majoritarian political culture created powerful incentives to exploit the homicide of James Bulger in ways that were not present in Norway. Drawing on comparative research in Ireland, Scotland and New Zealand, this article joins with Green in enlisting political culture as an important explanatory variable yet challenges the usefulness of Lijphart's typology in explaining penal difference.

Keywords

Cultural values, determinants, penal policy, political culture

Introduction

Garland's (2001) insightful and detailed description of the 'culture of crime control' in the UK and the US has sparked a lively debate within criminology about the relative importance of, on the one hand, the social forces associated with the onset of late or post modernity and, on the other, local factors in determining penal policy. The spatial limits of the 'new punitiveness' (Pratt et al., 2005) have important implications for globalizing arguments concerning a 'new punitiveness' or conditions of 'late modernity' because they point up not only the fact that late modernity may be pushing us towards leniency as well as away from it, but also the historically contingent nature of current punitiveness, even in those countries that have succumbed to it. Such 'cultural' accounts are

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necessarily less pessimistic than Garland's argument in that the 'punitive turn' can be understood less as a facet of late modernity and more as an embedded aspect of American exceptionalism (Nelken, 2006).

Previous research in this vein has suggested that institutional structures, religion, historical events and cultural vocabularies may play a role in shaping a country's crime policies. Savelsberg (1999, 2002, 2004), for example, explains Germany's steady imprisonment rate by reference to its model of bureaucracy, which insulates decision-makers from public opinion, and also its experience of the Nazi regime, which led to a post-war secularization of traditional Protestant concepts of rehabilitation and forgiveness. In his view, the case of Germany supports the idea that 'foundation cultures', major historical events and institutional structures should be considered when we seek to explain variation in penal severity. Melossi (2001) has expressed support for Savelsberg's ideas in his own work on the differences between the Italian and American cultures of punishment. Echoing Savelsberg, he argues that religious beliefs are important influences on penal policy, not as strict 'determinants of punitive attitudes but [as] resources available within a cultural "toolkit"'. Melossi sees a dynamic relationship between historical conditions and cultural vocabularies giving rise to certain unique features within a society in a given historical period. For him, 'punishment is deeply embedded in the national/cultural specificity of the environment which produces it' (2001: 407).

Although research has examined institutional arrangements, national culture and the interaction between the two, the impact of a jurisdiction's political culture on penal policy has remained a largely under-examined topic. One notable exception is Green's (2007, 2008, 2009) recent comparative work on child-on-child homicides in England and Norway in the early 1990s. Green argues that political culture forms a significant part of the explanation for the very different reactions to the killing of young children by other children in these countries. He enlists the distinction made by the political scientist Arend Lijphart between consensus and majoritarian democracy as a key element in explaining why the English response was so punitive and the responses in Norway comparatively 'muted'. This article revisits Green's work in this area with the empirical dimension being provided by three small jurisdictions, namely Ireland, Scotland and New Zealand. Drawing on comparative research conducted in these countries, it is argued that Lijphart's typology has limited usefulness in explaining differences in criminal justice policy, particularly in terms of its failure to account for the influence of national culture. Consequently, it is suggested that a more promising conception of political culture is offered by Elkins and Simeon (1979), who suggest that political culture operates to constrain choices made by policy-makers through the elimination of culturally inappropriate policy alternatives.

This article falls in three parts. The first section briefly reviews the literature relating to political culture and penal policy and outlines the nature of the comparative research undertaken in the three jurisdictions. The second part uses the findings from the research in the three comparator countries to critically discuss the utility of Lijphart's model, with particular reference to the relationship between electoral and other institutional arrangements and between national culture and political culture. The final part of the article suggests some directions for future criminological research.

Political culture and punitiveness

Writing outside the criminological field, Lijphart (1999: 301) has observed that what he terms 'consensus' democracies outperform 'majoritarian' or 'conflict' democracies with regard to the quality of democracy and democratic representation. Importantly, from the point of view of the present analysis, he argues that they hold special advantages over majoritarian societies in terms of the 'kindness and gentleness of their public policy orientation', such as increased welfare spending, lower imprisonment rates and lesser use of the death penalty. As noted by Lappi-Seppälä (2008), the main distinctions between the two models can be derived from the terms themselves. Majoritarian democracies are based on a two-party, 'winner takes all' philosophy where the will of the majority dictates the choices that are made by policy-makers. There is little incentive to compromise because the object is to oust the opposition from power and coalition government is rare. Consensus-style democracies, on the other hand, seek to protect minorities and share power with as many views as possible being taken into account. Power is shared and dispersed in various ways such as through coalitions or minority governments; stronger legislatures; interest group participation; and multiparty systems with proportional representation election systems.

Lijphart's suggestion that consensus-style democracy leads a country to be less punitive in its policy orientation is supported by statistical analyses carried out by Lappi-Seppälä (2008: 368), which found that, 'among western European countries, about half of imprisonment rate variation is explained by type of democracy and degree of corporatism'. He accounts for this largely through the basic characteristics of political discourse: majoritarian democracies encourage conflict between political parties in terms of their policies, including criminal justice policies. They may therefore be tempted to raise their profiles by making dramatic policy changes in this area in much the same manner as the Labour Party did in the UK under Tony Blair in the early 1990s (Tonry, 2004). The same drives towards dramatic policy changes for political gain do not exist in consensus democracies.

Recent work by Green (2007, 2008, 2009) on political culture and penal policy similarly views Lijphart's dichotomy as a useful heuristic device in explaining a country's propensity to penal populism. He uses the concept of 'political culture' or 'ways of doing politics' to explain the contrasting reactions to two child-on-child homicides in Norway and England respectively in the early 1990s. Whereas public reaction to the killing of two-year-old James Bulger in England in 1993 was 'rhetorically demonstrative and punitive', responses to the killing of a young girl by three six-year-old boys in Norway one year later were comparatively 'muted'. This is explained by Green by reference to a number of factors, including crime rates, differences in the ages of the killers, different cultural conceptions of childhood and the complex interaction of politics with the media. In a detailed analysis, he examines several political-cultural frameworks that could help to explain the differing outcomes in the two countries, including views on political culture as an 'agenda-setting' mechanism or 'set of cognitive constraints' (Elkins and Simeon, 1979), operating to guide policy choice decision-making by filtering out culturally inappropriate policy alternatives. In line with arguments made by Lappi-Seppälä (2008), his thesis returns frequently to the relationship between declining trust – in

government, elite expertise and fellow citizens – and the rise of penal populism. He consequently posits that trust-building structures such as aspects of deliberative democracy may assist in slowing the ‘late modern march’.

At its core, however, Green’s argument concerns incentives to penal populism or the exploitation of crime for political gain based on the Lijphartian distinction between majoritarian and consensus democracy. The majoritarian style of English political culture meant that incentives to exploit the Bulger murder were considerable, whereas far fewer of these incentives faced Norwegian politicians owing to their consensus style of democracy. Green’s contribution to the literature on punitiveness and penal populism is important and nuanced. He does not pretend to ‘categorize democracies monolithically’ (2007: 635) and recognizes that conditions in different countries falling into either category may affect their susceptibility to penal populism. In drawing attention to the explanatory power held by political cultures (and acknowledging its limitations), he has cleared the way for further work in this area.

Important questions remain, however, about the role played by foundation cultures and cultural histories in Green’s model. Based as it is on Lijphart’s ideal types, the definition of political culture appears thin and unduly narrow, without reference to underlying cultural values. Green concedes a role for national culture, acknowledging the possibility that the different reactions ‘simply reflected cultural norms and assumptions that could not countenance the exclusion of children so young’ (2007: 634). Significantly, he also recognizes the links between political values and the broader culture in his observation that ‘consensual and cooperative political cultures can survive only if the values that underpin them survive’ (2009: 528). Yet, as Pratt (2009) observes, ‘he has placed his eggs in one basket’ and ultimately comes down in favour of an institutional explanation, per Lijphart, conducing to or militating against populist penal politics. In doing so, it may be asked whether the important mediating role played by politico-structural arrangements has been overplayed at the expense of other factors such as constitutional arrangements (Tonry, 2007) and national culture (Melossi, 2001; Savelsberg, 1999, 2002, 2004). Pratt (2009) has levelled similar criticism at Green’s work through his argument that the geopolitical histories of Norway and Sweden cannot be ignored in assessing their relative resistance to populist punitiveness. He maintains that it is the homogeneous, egalitarian and strongly unified nature of the Norwegian state that forms the crucible in which the cultures and values underpinning its consensual democracies were formed.

Punitiveness and politics in comparative perspective

Given the tendency in much of the literature to view punitiveness as a ‘one size fits all’ phenomenon extending from the US into Europe and beyond, it was decided to test the limits of the ‘new punitiveness’ thesis through an examination of policy formation in three small jurisdictions. The prevalence of punitiveness – defined primarily by reference to imprisonment rates, propensity to penal populism and commitment to ‘welfarism’ (Garland, 2001)¹ – was examined in three countries with very different criminal justice profiles, namely Ireland, Scotland and New Zealand. Diversity in this regard was considered desirable because, as Cavadino and Dignan (2006) have argued, an understanding of both commonalities and discontinuities between countries and the reasons for them is

required if we are to make sense of contemporary penalty. A summary of the criminal justice policy in each of the three sites selected for comparison is presented below. Although the brevity of the summary necessarily does violence to the empirical reality in each of these jurisdictions, certain patterns are discernible. The existing literature suggests a 'mixed report card' for Scotland, a stronger 'culture of control' in New Zealand and an Irish version that is considerably more 'diluted and distinct' (Kilcommins et al., 2004).

Ireland's imprisonment rate remains low by international standards (76 per 100,000 population in October 2007), affirming its early reputation as a country 'not obsessed by crime' (Adler, 1983). However, the rate of increase in its prison population has also been very significant, particularly in the period 1996–2001, when Ireland outstripped its European neighbours (Kilcommins et al., 2004: 249). A further twist in the tale is provided by research conducted by O'Donnell (2005) that shows that the convicted prisoner rate remained constant in the period between 1994 and 2004 so that the volume of sentenced prisoners has remained the same. Although on many fronts Ireland appears to have resisted punitive trends, for example in terms of the absence of formal risk assessment tools, there have also been periodic crime crises that have resulted in seismic changes in legal protections for defendants (Walsh, 2002: x). Overall, however, there has not been a 'sustained commitment' to the politics of crime control in Ireland, and rehabilitation and individuated justice remain core aims of the sentencing system (Kilcommins et al., 2004).

Scotland presents as something of a paradox in penal terms in that, as Young (1997: 116) has written, it has 'a reputation at one and the same time for penal harshness and for penal innovation'. On one index of punitiveness – imprisonment rates – it would appear quite punitive and, indeed, until the late 1990s its rate of imprisonment surpassed even that of England and Wales. A closer look, however, reveals a continued commitment to welfarism, not least through the distinctive system of youth justice operating in the form of the Children's Hearing System. McAra (1999: 372) has examined developments in three aspects of the Scottish penal system in the late 1990s (the role of social work, juvenile justice and the prison service) and has concluded that, 'within all of the policy sites reviewed, core aspects of rehabilitation remain'. Preliminary analysis, therefore, reveals some points of convergence and divergence between Ireland and Scotland: although their imprisonment rates differ considerably, both jurisdictions demonstrate some form of resistance to the 'punitive turn' through their continued commitment to rehabilitative policies and progressive youth justice systems (Kilcommins et al., 2004; McAra, 1999; Murray, 2006; Young, 1996/7).

The final comparator country, New Zealand, is often cited in the literature (Cavadino and Dignan, 2006; Pratt, 2007) as an example of a country that has to a large degree followed the anglophone drift towards punitiveness (if same exists). The significant upward spiral of its prison population to reach 179 per 100,000 population in 2004 and the sustained commitment of its political parties to tough rhetoric on crime rest comfortably with this characterization. In 1999, a citizens initiated referendum was held where 9 percent voted for greater emphasis on the needs of victims and the imposition of minimum sentences and hard labour for all serious violent offences (Pratt and Clark, 2005). The subsequent Sentencing, Parole and Victims' Rights Acts in 2002 led to significant increases in penalties for murder and other serious violent and sexual offences and restricted parole for these groups of offenders. In terms of the overall depiction of the

New Zealand penal system, however, it is important to remember that the country is also well known for its pioneering approach to juvenile justice in the form of restorative family group conferencing (Morris and Maxwell, 1993), and, as Cavadino and Dignan (2006: 88) observe, despite high levels of imprisonment there ‘does not as yet appear to be any generalized state of “penal crisis”’.

Developments in all three countries were examined for the period 1976–2006 in light of the fact that many commentators appear to have identified these decades as the period during which policies and practices have become more punitive (Garland, 2001: 1–2). Case studies, interviews and field visits were undertaken to provide some understanding of the context in which the three criminal justice systems operated and also to elicit richer data to flesh out quantitative data gathered on imprisonment, crime rates and sentencing practices. Interviews allowed the views of stakeholders involved in the criminal justice systems of each of the countries concerned to give their interpretations of developments and provided the respondents with space to reflect on the complex, discursive nature of the subject matter. Following a pilot phase, interviews were held with eight or nine criminal justice stakeholders in each jurisdiction, including at least one current/former Minister for Justice (two where possible) and a senior civil servant involved in criminal justice matters.

The limits of Lijphart’s model

The comparator countries chosen provide ample scope for testing theories concerning the effects of political culture on criminal justice policy given their very different criminal justice profiles (discussed above) yet ostensibly homogeneous political systems. All three countries can be described as liberal market economies with minimal welfare states, both factors that have been linked with harsher penal policies in the comparative literature (Cavadino and Dignan, 2006; Lacey, 2008). Further, and most significantly for present purposes, all three can be characterized as traditional conflict democracies that have moved at some point in their history from a first-past-the-post system of voting to a system of proportional representation in which coalition government is now the norm.² Unlike Green’s research, therefore, which compares political culture across majoritarian (English) and consensus (Norwegian) democracies, all the jurisdictions selected share certain structural (that is, electoral) features of the consensus model.³ Although a different research model is adopted in the current case, it is argued that the research nevertheless contributes to the debate by elaborating an argument that consensual politics are not necessarily achieved by structural arrangements alone, namely electoral arrangements such as proportional representation (PR).

In this regard, the first point to be noted is that Ireland does not fit comfortably within the ideal types identified by Lijphart. The unique feature of the Irish system of PR (proportional representation by single transferable vote) is that candidates of one party can be elected on the transfers of votes for other parties and this is believed to reduce partisanship and enhance the prospect of coalition government. Yet it was not until 1989 that the largest political party, Fianna Fáil, abandoned its traditional reluctance to form coalition governments. Even with this development, the high level of control wielded by Irish governments over parliamentary business (Döring and Hallerberg, 2004) left little room

for consensual politics because governments saw little need to negotiate with the opposition (MacCarthaigh, 2007). This may be partly explained by the historical character of the parties: an adversarial 'Fianna Fáil versus the rest' dynamic has permeated Irish politics since independence (MacCarthaigh, 2005: 62).

Brief comparison of the operation of the PR systems in New Zealand and Scotland, though strikingly similar in nature,⁴ also yields very different results in terms of its impact on criminal justice policy. Only in Scotland has this brought about a more cooperative system of parliamentary politics, with the need to bring other parties along in the policy-making process acting as a brake on penal excess. Several Scottish interviewees referred to the composition of post-devolution governments as relevant in mitigating the effects of tougher policies pursued by the Scottish Labour Party. More specifically, one interviewee who had direct involvement with the policy-making process at the time noted that the Liberal Democrat party had managed to 'water down' Labour Party proposals relating to anti-social behaviour orders (ASBOs), the automatic retention of DNA from all crime suspects and the law on double jeopardy. In New Zealand, on the other hand, the new political arrangements have had the paradoxical effect of an increased politicization of criminal justice issues (Pratt, 2007, 2009). Crime has been intensively politicized in the last decade and is now used as a 'wedge issue' by small political parties in New Zealand such as New Zealand First and ACT. Indeed, it is not uncommon for 'law and order' policies to form part of coalition agreements with larger parties.

In seeking to explain this, the influence of institutional structures clearly cannot be ignored. Several features of New Zealand's constitutional and political framework were highlighted by interviewees as relevant in this regard, including the unitary and centralized nature of the political system (the government and bureaucracy are all in Wellington), the three-year election cycle and the unicameral system of government. As one interviewee put it, 'there's no checks and balances around [legislation] so that is a sort of difference between some other larger democracies I suppose that have much more process' (NZ interviewee #7, p. 19). Though not mentioned by respondents, the absence of a written Constitution and a strong judiciary may also be added to this list (Barker and McLeay, 2000). In Scotland, one of the institutional factors that may have had a protective influence on the policy-making process is the committee system, which forms a central element of the Scottish legislative process and which is stronger than the equivalent systems in Ireland and New Zealand (Barker and McLeay, 2000; MacCarthaigh, 2005). Stronger parliamentary control of the political process is conducive to greater deliberation of justice policies and greater regard for evidence-led policy. Questioned on the role of evidence in Scottish justice policy, one former policy-maker described evidence-based legislation as 'one of the founding principles of the Parliament'; with legislation based on evidence 'expected' by the committees (Scottish interviewee #5, p. 16). Clearly, electoral arrangements such as PR may perform differently even in similar political cultures depending on their interaction with other institutional factors.

National culture and political culture

The tension between the global and policy convergence on the one hand and local political cultures and national differences on the other was evident throughout the research (Jones

and Newburn, 2007). Common themes emerged from the interviews that resonate nicely with various aspects of Garland's (2001) punitive 'culture of control' such as the emergence of the victims' lobby; the change in the tone of reporting; the growing preoccupation with risk in the penal sphere; and the increasing importance of expressive law enforcement and sentencing policies. Similarly, processes of globalization and policy diffusion are evident in the manner in which, for example, the Canadian 'what works' research has been influential in prisons and probation policy in all three jurisdictions. For Ireland and Scotland in particular, geographical proximity also meant that England's criminal justice policies were very influential. Overall, however, the interview data presented below are suggestive of national considerations appearing foremost in the minds of the respondents.

Ireland. Interestingly, two of the Irish policy-makers spoken with viewed the US and even recent criminal justice policies adopted in England and Wales as negative and extreme. As Jones and Newburn (2007) have argued, specific national and cultural differences and the views of political actors themselves act as important constraints on policy transfer. This is evidenced by the following extract from an interview with a former Irish minister who (while acknowledging the special influence of English criminal justice policy in Ireland) described the difficulties in implementing new managerialist techniques in an Irish context:

The Blairite stuff of targets and quotas ... maybe it's one way of doing it but it's repugnant to the Irish psyche ... I mean the Irish media would be horrified if they saw a circular saying you are to catch, you are to increase your detection rate for burglars by 18 per cent... they'd say what kind of nut decided that. (Irish interviewee #8, p. 8)

It is difficult to capture precisely the cultural values referred to by the interviewee but it is likely closely allied to the inherent conservativeness of politics in Ireland and, more generally, what O'Toole (2009: 215) describes as the 'anarchic attitude [of the Irish] to law and morality'. The less deferential approach taken by Irish people to authority, perhaps an overhang from colonial days, was cited by many interviewees as a critical factor in understanding the way in which criminal justice was done in Ireland. One referred to the cultural preference Irish people often exhibit for resolving matters informally, without the involvement of the formal criminal justice system; another suggested that it may speak to elements of a Catholic indulgentist tradition. Several respondents mentioned the tradition of Gardaí speaking up for criminal defendants at the sentencing stage or, in the past, withdrawing summary prosecutions in the District Court (this practice has since been discontinued). Even tacit acknowledgement from a Garda of the difficulties that a defendant has faced in his/her life to date lends an important ring of authenticity to a plea in mitigation, so this is not without practical significance. Moreover, Gardaí usually adopt a reasonable attitude in their dealings with defence solicitors and barristers and, as one interviewee noted, 'there isn't such a black and white approach to everything' (Irish interviewee #3, p. 4).

A note of caution must be sounded here though lest we should fall prey to a one-dimensional, simplistic view of Irish informalism as something that is 'good', mitigating the effects of more punitive policies, which are 'bad' (see, further, Nelken, 2006). It is perhaps the subject of another discussion whether this cultural willingness to bend

the rules (even those which are not viewed as sensible or humane) can correctly be described as the country's 'saving grace' (Irish interviewee #4, p. 7). Suffice it to note for present purposes that this broader informality of approach operated on the minds of policy-makers too.

Scotland. Cultural explanations also appeared to hold considerable purchase with Scottish interviewees. Strikingly, all of the respondents referenced Scottish civic culture, with its values of fairness, welfare and community support, at some point during the interview. Indeed, one former policy-maker described it as something that united all Scots and transcends party loyalties (Scottish interviewee #5, p. 10). This culture holds important implications for criminal justice policy, in that more punitive, exclusionary policies (what Garland would term the 'criminologies of the other') may clash with deeply held Scottish traditions and beliefs. Rehabilitative policies that ultimately seek to reintegrate offenders into the community carry an instinctive attraction or elective affinity with Scottish civic culture in a manner that more punitive repertoires did not. This was eloquently explained by one senior policy-maker in the following terms:

[Social democracy] ... isn't political in Scotland. It's as much based upon Presbyterianism or indeed Calvinism. It's part of the egalitarian interest of Scotland: 'we're all Jock Tamson's bairns'; these are our kids. These kids who are misbehaving, there's some right bad people who have to go to prison ... but the rest of them, they're our laddies ... they're our folk. We can't send them to the colonies, they don't come from somewhere else, they're our people. (Scottish interviewee #9, p. 3)

The same policy-maker went on to explain how policies incorporating 'shaming techniques' were rejected in recent years as incompatible with Scottish cultural sensibilities. The roots of this culture, as with Ireland, are difficult to locate but may be related to the higher levels of poverty in certain Scottish cities such as Glasgow, its history of trade unionism or indeed democratic traditions within the Church. It is most probably connected to the egalitarian tradition as reflected in the poetry of Robert Burns, supposedly the originator of the phrase cited by the interviewee above 'we're all Jock Tamson's bairns' – meaning we're all God's children.

Given the conservative nature of the Scottish criminal justice system (also strongly referenced by interviewees) there is small doubt that choices made by policy-makers continue to be circumscribed by local cultural influences. This is not to suggest, however, that on other occasions 'harsher' policies do not win out against prevailing civic cultural values. Scotland remains particularly vulnerable to policy transfer from England given the shared border, media outlets, political parties and the fact that significant areas of criminal justice policy (terrorism, drugs and firearms) are reserved to Westminster. Interviewees acknowledged the special place occupied by England in this regard (as one interviewee put it, 'I think the international factor is England', Scottish interviewee #3, p. 8) but also viewed its influence as somewhat contingent upon the political party holding power. Elite networking between the Labour Party in Scotland and England was viewed as important in the transfer of policy north of the border in the early 2000s, whereas the Scottish National Party was now understood to be actively forging a different path in penal policy.

New Zealand. Turning now to New Zealand, a cultural strain to conformity was referenced in the interviews reflecting the arguments of Pratt (2006) and others on the 'perfect society'. Pratt's (2006) writing on the excessive emphasis on conformity arising out of a desire to create a 'Better Britain' links this cultural proclivity with the consequent harsh treatment of those who threatened social cohesion. One respondent put this quite baldly: 'it's a hospitable, friendly place provided you conform ... conformity is valued and non-conformity is not' (New Zealand interviewee #9, p. 2). There was a suggestion in the interviews that policy-makers, together with other stakeholders, were not unaware of this cultural attachment to strict law enforcement, raising the possibility that this may (consciously or unconsciously) exert an influence on political decision-making. One former minister opined: 'New Zealanders are to some degree the Prussians of the South Pacific, you know; they do want to have law enforced, they take it very seriously' (New Zealand interviewee #3, p. 5).

Linked with this desire for conformity is an anti-intellectual strain to New Zealand culture, which was referred to by five of the nine respondents interviewed, including those within the administration itself. None of the interviewees in Ireland and Scotland expressed a similar view concerning their own jurisdiction. In New Zealand, the idealized image of a New Zealander as someone who engages in manual labour and worships sports is sometimes encapsulated in the phrase 'Number 8 wire mentality', meaning that a New Zealander can make or fix anything with basic or everyday materials, such as Number 8 fencing wire. Debate and flowery language were therefore seen as demonstrations of elitism and as alien to the New Zealand tradition of egalitarianism (New Zealand interviewee #5, p. 2). It is interesting to note how this general suspicion of experts also appeared to extend to distrust of their own bureaucracy. Interviews with victims' groups that had been prominent in campaigning for harsher policies revealed a strong distrust of bureaucrats, who were seen as 'undermining' political successes in this area.

Conclusions

The data discussed above do little to disturb the argument advanced by Green (and others such as Lacey, 2008) in relation to the key role played by political culture in the determination of criminal justice policy. In line with the analysis, however, questions may be raised as to the usefulness of political culture, as defined by Lijphart (1999) and subsequently relied on by Green, in explaining differences in a state's level of punitiveness. Ireland's proportional representation election system and strong executive do not fit easily into Lijphart's typology. Moreover, the palpably different effects that very similar political structures had in all three comparator countries call into question the explanatory value of the majoritarian-consensus distinction and are suggestive of a number of other factors at play, including constitutional and other institutional arrangements, local culture and national psyche. In particular, the close relationship between national culture and political culture suggested by the interview data mirrors research in Lijphart's own discipline of political science that seriously questions the applicability of Lijphart's models in different cultural settings (Bormann, 2010). Researchers examining political cultures beyond Lijphart's original sample have attributed the different

results in these areas to different cultural prerequisites (Fortin, 2008). Spinner's (2007) work in East Germany and Hungary, for example, found that a largely consensual institutional set-up does not guarantee a consensual political culture, drawing attention to the collective memories of 'deep impact historical junctures', in that case the collapse of communism.

In light of this, a number of areas suggest themselves for future research. The first issue that requires further attention is whether a definition of political culture based solely on electoral arrangements can adequately capture the complexity of different types of democracy. Lijphart's definition in *Patterns of Democracy* is actually two-dimensional, incorporating a 'federal-unitary' dimension as well as a 'parties-executive' dimension. The latter concerns the arrangements discussed above relating to the dispersal of political power. The former, however, measures constitutional structures such as federal governments, unicameral legislatures and judicial review as structures that disperse or concentrate governmental authority. The current research would suggest that this dimension too should not be neglected in any analysis of the effect of political culture on criminal justice policy.⁵

A second, and critical, area for research concerns the impact of cultural norms and historical events on political culture. The interview data are less supportive of an understanding of political culture in purely structural terms and more as 'a set of cognitive constraints' (Stokes and Hewitt, 1976, cited in Green, 2007, 2008) determining the range of options open to policy-makers. Irish and Scottish policy-makers both cited criminal justice policies that they rejected on the basis that they would be considered unpalatable to their respective publics. Further, two of the Irish policy-makers spoken with cast a sceptical eye on recent US and English criminal justice policies. At a conceptual level, this suggests a broader definition of political culture that incorporates 'superficially non-political assumptions' as considered by Green (2007, 2008), in turn drawing on Elkins and Simeon (1979). These fundamental assumptions include presumptions about, *inter alia*: the nature of causality; the principal goals and value of political life; the relative benefits of optimistic or pessimistic political strategies; the value of the 'political'; and assumptions about others. For example, the Irish habit of playing games with authority supports an idealized notion of justice that makes room for informality and perhaps humanitarianism. The Scottish sense of collectivism and fairness evident in the interviews suggests a worldview wherein one's community is defined broadly and inclusively. New Zealand respondents, on the other hand, conveyed a cultural preference for strict law enforcement, together with a suggestion that the expertise of criminologists, academics and legal practitioners was not to be valued or trusted. Political cultures do not exist in isolation and are in turn supported by the broader cultural context. On the basis of the interview data above, it is argued that these broader cultural values operate to shape policy-makers' understanding of criminal justice problems and their solutions, thereby militating in favour of more optimistic or pessimistic political strategies.

This leads on to the third area of research concerning the interaction between underlying cultural factors and political institutions. Green (2008: 82–3) adopts a somewhat agnostic approach to this issue in his book, merely remarking that:

[T]he reciprocal interaction between the two precludes, at least for the purposes of this book, the need to solve the chicken-and-egg quandary of which came first. It is sufficient to say, as Christensen and Peters (1999: 133) do, that 'structures tend to embody values that their members, in turn, utilize to make decisions about public policy and delivery of services to clients.'

This may well be so. However, to take the example of the Scottish committee structures discussed above, the radically new legislative structures introduced in 1999 formed part of a 'new politics' that, it was hoped, would bridge the gap between parliament and civil society. This in turn was influenced by Scotland's civic culture, which 'valorises community, public provision of welfare and mutual support' (McAra, 2005: 294; Hutton, 2005). As argued by Pratt (2009) in the Norwegian context, political values are not formed in isolation and are most likely influenced by underlying cultural factors and histories. Future research could fruitfully examine the structural or historical preconditions for consensus or majoritarian systems and their impact on criminal justice policies. In particular, qualitative studies may provide insights into dynamic interactions between culture and institutions that could inform future research.

To join Green in drawing attention to the salience of political culture, albeit a broader characterization of the concept shored up by communal cultural values, is not to suggest a direct and straightforward relationship between cultural traditions, institutional arrangements and punitive penal practices. Such a suggestion is easily contested by reference to significant variations in penal policy in countries over time. However, as observed by Tonry (2007, 2008), the argument does have implications for generalizing arguments concerning the conditions of late modernity or the rise of populist punitiveness. The continued potency of national political culture and institutional arrangements in the determination of criminal justice policy serves to further reinforce the 'cultural embeddedness' of penal affairs and, concomitantly, the need for a comparative literature that takes account of such nuance.

Acknowledgements

Thanks go to Professor Ian O'Donnell for all his assistance with my research and to the anonymous reviewers for their very helpful comments.

Notes

1. It is appreciated that the definition of punitiveness is itself highly contestable and key to the debate on the prevalence of a new, punitive era. Indeed, I have written on this subject elsewhere (see, further, Hamilton, 2010, 2011).
2. It should be noted that Ireland introduced proportional representation upon gaining independence in 1922, whereas Scotland and New Zealand have moved to PR electoral arrangements more recently, in 1998 and 1993 respectively.
3. It is acknowledged that it may be difficult to definitively place the case studies into either the consensus or the majoritarian category. See, for example, Bulsara and Kissane (2009) on the difficulty of categorizing Ireland. Indeed, Lappi-Seppälä (2008) treats all three as majoritarian democracies in his statistical analysis of imprisonment rates in consensus and majoritarian democracies.

4. In Scotland, under the Scotland Act 1998 members of the Scottish Parliament are elected using a very similar system to the New Zealand system of mixed member proportional (MMP), which is known locally as the additional member system (AMS).
5. It is interesting that Tonry (2007: 21) suggests in relation to Lijphart's two dimensions that 'dispersal of political power is a better predictor than dispersal of governmental authority'.

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