

## WHERE TWO ‘EXCEPTIONAL’ PRISON CULTURES MEET: NEGOTIATING ORDER IN A TRANSNATIONAL PRISON

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*Can a prison in the Netherlands, that is neither ‘Dutch’ nor ‘Norwegian’, be ‘legitimate?’ What are the moral challenges? Our study of the controversial Norgerhaven project—a Norwegian prison located in the Netherlands—found that this ‘experiment’ generated one of the most reflexive, ‘de-liberative’ prisons we have encountered. Officials involved in the decision assumed that the two jurisdictions were alike in their values. Few were prepared for the differences that arose. This hybrid prison made punishment, the use of authority, and the meanings of fairness, professionalism and discipline unusually explicit as staff negotiated their practices, creating a shift from ‘practical’ to ‘discursive’ consciousness and exposing many of the complexities of liberal penal power.*

**Key Words:** prison, Nordic exceptionalism, culture, transnational detention, quality of prison life, comparative research

When I first heard about it, I thought it would never go through. It is so controversial. You don’t export the use of force over a person to another country. ... We are not far apart ethically. Still, I didn’t think it would happen. I thought, if we do, I want to be part of it. Make sure we do it right. (Norwegian staff member)

### *Introduction*

Penologists often raise moral, legal and practical objections to the common practice of prisoners being located far from their home areas. What happens when prisoners are held in another country, where staff speak a different language, and where efforts to prepare prisoners for release are limited? Can such a prison be legitimate, e.g. if prisoners prefer its interior culture and practices to those of their home institutions? Sparks (1994) has argued that prisons suffer from an ‘inherent legitimacy deficit’ because of the imbalance of power they embody and the unacknowledged political and economic purposes they serve. He distinguishes between ‘exterior’ (broadly, structural) and ‘interior’ legitimacy (what we might call their moral climates, which differ; see Liebling, with Arnold 2004: 462–4). The term is useful because, whilst its meaning is not fixed, it provides us with ways of linking empirical observations (e.g. on levels of perceived fairness, respect, humanity, safety and so on) with broader questions about whether the specific forms that prisons take, or practices applied in them, are more or less morally defensible.

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We attempt here to account for what went on in Norgerhaven: a transnational prison housed in the Netherlands but contracted to accommodate Norwegian prisoners. What does this development tell us about contemporary penalty? How did this practice come to seem acceptable in a place of ‘liberal Nordic exceptionalism’ of a much-lauded kind?

The purpose of this article is to describe a small, self-contained research project conducted by a ‘transnational team’. We explored an unusual, complex and surprisingly positively evaluated prison that was being disbanded, at least for the purposes it served at the time, as we left. Here we consider the main findings and the controversies involved. We disapproved of the prison in principle (outsourcing punishment is morally risky), as did others (NPM 2016; Todd-Kvam 2018), but we found appreciative prisoners, important lessons to be learned, and a highly engaged and committed staff group, who wanted it to survive, as well as some deeply troubling practices. Our research report (Johnsen *et al.* 2017) was used lightly by Norwegian politicians and prison officials to give the project a ‘happy ending’ or clean official narrative, before the prison was recommissioned to house Dutch prisoners once more. We felt that an account of this transnational prison and its moral qualities and deficits was required, particularly as others are planned.

We were observers and recorders of a unique ‘experiment’ that was never characterized as such, albeit it was intended to be temporary. We learned a great deal, as did prisoners, staff and managers, about the moral complexity of penal decision-making and practice, as well as about what happens when two apparently like, ‘liberal’ penal cultures meet. In fact, this attempt at penal cooperation revealed radically different penal philosophies and practices, which staff from each country had to articulate and make explicit, in order to negotiate and adjust their practices accordingly. This shift from ‘practical’ to ‘discursive’ consciousness was unusual and deeply instructive. Just as in the privatization ‘experiment’ (Sparks 1994), assumptions made by critics about where the moral high ground lies are often oversimplified (e.g. in the privatization debate it lies in the public sector), because prisons are rarely decent or legitimate in the eyes of prisoners whoever runs them, and interior quality varies significantly within each sector (see Crewe *et al.* 2014). We found that describing and evaluating Norgerhaven *morally* required considerable effort. We were surprised to find that many prisoners preferred being imprisoned in a foreign country, in a prison with obliging staff, to being imprisoned ‘at home’, despite the apparent illegitimacy of this concept, because they felt ‘treated more equally’. These findings have an ongoing theoretical and moral importance beyond the life of this specific prison. In what follows, we introduce the prison, describe the study and its main findings, and discuss some of the issues raised.

### *Norgerhaven: The Legal and Penal Context*

Between September 2015 and August 2018 the Norwegian authorities rented prison capacity in the Netherlands. For decades, Norway has had a ‘lack of prison capacity’ (a gap between its population numbers and its accommodation provision), but to avoid overcrowding, many waited in a ‘prison queue’ to serve their sentence. The existence of this queue has been portrayed as a signal of Norway’s liberal humanitarian credentials, or ‘penal mildness’ (Pratt 2008), because for those less risky offenders, time could be taken to plan their lives before going to prison. Over the years, the definition and the size of the queue have varied, from 4,508 in 1981–4 to 126 in 2018 (Norwegian Ministry

of Justice 2006; Norwegian Correctional Service 2009, 2018). Sentenced offenders were at times waiting years rather than months before starting their sentences. Its rationale as well as its operation in practice faced criticism over time, largely because it looked like ineffective crime control, and it sent a flawed message to victims of crime. Thus, the queue had become a moral *and* political problem. Outside the political sphere, there were also concerns about the legitimacy of ‘the wait’ (Laursen *et al.* 2020). In spite of a political promise to reduce the size of the queue, first proposed in 2005 (Johnsen and Granheim 2012), it fell to 522 in 2009, but then more than doubled to 1,186 in 2014 (Norwegian Correctional Service 2018).

The news that Norway had formed an agreement with the Netherlands to rent prison capacity was sensational.<sup>1</sup> Central stakeholders, such as prison officers’ unions and left-wing political parties, were strongly against the rental: partly on the grounds that Norwegian prison labour should remain in Norway. But the ‘Bill of renting prison capacity abroad (not for more than five years)’ received a majority in Parliament (Norwegian Ministry of Justice 2014–15). The rental represented a significant political shift. In 2013, the populist Progress Party came into power together with the Conservative Party, and this position allowed the Progress Party to put forward one of their most important manifesto promises regarding crime politics: to ‘get rid of the prison queue’ (Todd-Kvam 2018; Pakes and Holt 2017). The lack of closed capacity was considered a ‘threat to the rule of law’ (Todd-Kvam 2018: 7). Solving this problem had become so politically urgent in Norway that there was no time to wait for the building of new prisons.

While Norway apparently lacked prison capacity, the prison population in the Netherlands decreased by 44 per cent during the period 2005–15. This led to the closure of more than 20 prisons, a development that penal reformers welcomed. The reduction of the Dutch prison population, and concerns about the future employment of Dutch prison staff, had formed the background to a similar agreement between the Dutch and the Belgian Government in 2009. Under this agreement, 650 Belgian prisoners were transferred to Tilburg prison, located in the southern part of the Netherlands, to serve their sentences (Beyens and Boone 2013, 2015). Belgian prisoners left Tilburg at the end of 2016, when the prison was closed. This earlier experience, the relatively positive evaluation of the prison, and strong networks between key policy and professional players, planted the seed for the negotiations to house Norwegian prisoners in the Netherlands.

Several rounds of negotiations in spring 2015 resulted in the agreement between the Netherlands and Norway to rent 242 prison beds for an annual amount of €25,500,000 during the period 2015–18, with an opportunity to extend the rental for at least 1 year (Norwegian Ministry of Justice 2014–15, article 27, 3). The question of whether prisoners who did not hold Norwegian citizenship could be housed there, and deported from the Netherlands after serving the sentence, became a sensitive theme in the negotiations (Pakes and Holt 2017; Todd-Kvam 2018). The Dutch did not want the prison to be a ‘foreigners’ prison’, but agreed to host a representative prison mirroring the prisoner population in Norway. To avoid prisoners claiming asylum in the Netherlands, prisoners should be transferred back to Norway at least 2 months before their release (Agreement 2015, article 9, 2). The delicacy of the project required guidelines to define which prisoners should be sent to Norgerhaven, specifying that male prisoners

<sup>1</sup>An approach to Sweden, a ‘more similar country’, failed to develop into a formal agreement once presented to Parliament due to the complex changes to the law required (personal communication, November 2017).

above the age of 18 could be sent, but excluded those requiring health services outside the prison, or those receiving visits from children or having rights to education (Instructions § 4). The [Norwegian Ministry of Justice \(2014–15\)](#) specified that prisoners should be transferred ‘voluntarily’. However, the number of volunteers was insufficient, resulting in many non-voluntary prisoners being moved to Norgerhaven (see later).

Throughout the rental period, an experienced Norwegian Governor was placed in charge of the prison. Under the Governor’s authority, a Dutch manager had oversight of the facilities and the Dutch personnel, who were mostly prison officers (Agreement, article 6). He effectively acted as ‘Head of Operations’. The Norwegian Director was responsible for the treatment of prisoners and the Norwegian staff (a Deputy Governor and caseworkers). It was assumed, albeit vaguely, that the two countries’ penal cultures and conditions of confinement were basically alike: liberal humanitarian, welfarist, tolerant, progressive and decent. They both belonged to the ‘exceptional’ (mainly Scandinavian) rather than the ‘punitive’ ideal type of penal models ([Smith and Ugelvik 2017](#)). One characteristic of this ‘exceptional’ type is an explicit emphasis on rehabilitation rather than punishment: i.e. a future-orientation towards prisoners.

The rented prison was situated in Veenhuizen, a small town in the north of the Netherlands. Many people, including entire families living in this area, find their employment within prison services, either at Norgerhaven, Esserheem prison next door, or at a young offender’s institution on the same site. The staff mostly lived in the neighbourhood, and many had been working for decades in prisons often alongside other members of their families. Staff and families had been concerned about the possible closure of Norgerhaven for years. Increasing unemployment rates in this area, together with the age of staff, added to concerns about finding alternative sources of employment ([Benak, March 25, 2016](#)).

Within the Netherlands, Norgerhaven prison was ‘special’. It was appreciated by its existing long-term prisoners<sup>2</sup> due to its architectural structure, the amount of freedom, and its specialist regime. It had resisted some of the ‘new penological’ ([Feeley and Simon 1992](#)) developments and regime encroachments visible in other, especially newly built, Dutch prisons largely due to its ageing and stable staff group and the open nature of the site. Norgerhaven’s houseblocks are constructed in a square that surrounds a large grassy courtyard with a volleyball court, fitness equipment, park benches and 53 mature trees, bordered by a concrete perimeter pathway for walking or jogging. Prisoners from different units are allowed to use this square simultaneously, and they cross it when they go to work, medical health services, the library, sports, visits or the Skype room, prayer services and the ‘soos’ (an indoor socializing area). Inside the square, prisoners move around unaccompanied, but can be easily seen by staff from a distance, giving the establishment a ‘light-present’ feel ([Crewe et al. 2014](#)). Norgerhaven was selected, partly due to its relatively small size, as the most suitable prison in which to house Norwegian prisoners.

### *The Research*

This research project was commissioned and funded by the Norwegian Directorate of the Correctional Service, but some important adaptations were made to the original

<sup>2</sup>Several prisoners unsuccessfully sought legal action against the change of role of Norgerhaven because they wanted to stay. Their action failed and they were transferred elsewhere.

remit. When the research team from KRUS approached Alison Liebling, Director of the Cambridge Prisons Research Centre, to request use of the MQPL survey (see further below) for this purpose, she offered to join the study, with others, in order to encourage the implementation of the more qualitative version of it: a research exercise we refer to as ‘Measuring the Quality of Prison Life *Plus*’ (‘MQPL+’). This was welcomed. In the end, the Norgerhaven study was conducted with a team of 10 researchers<sup>3</sup> over a total of 60 person-days.<sup>4</sup> ‘MQPL+’ is a quasi-ethnographic application of the MQPL (prisoner) and SQL (staff) surveys, earlier versions of which had already been used in Norway (Johnsen and Granheim 2012).<sup>5</sup> It is an in-depth exploration of the cultural, social and moral climate of a prison, which relies on the cumulative expertise of the research team and a methodology developed over many years. We refer to this approach as ‘ethnography-led measurement’ (Liebling 2015). The prisoner survey arguably stands as the closest approximation to an operationalization of the concept of ‘interior legitimacy’ in prisons, among other things (see Sparks and Bottoms 2008). The research entails a full staff meeting at which a presentation about the research is given, observations of most areas and functions of the prison, interviews with staff, prisoners and members of the senior management group, and intensive research team debriefings are carried out each evening. We engaged in lengthy one-to-one conversations, some of us scattered around the prison’s outdoor landscape, on benches and under trees. Some staff members came in on their rest days in order to talk at length. Whilst the surveys, and the quantitative data generated from them, act as a ‘hinge’ in gaining systematic data, our emphasis is on observation and dialogue—with those in the prison and within the team—and immersed qualitative inquiry. The well-grounded surveys are used to confirm our observations and penological instincts, and to report back in detail to the prison.

It was significant that, in line with the transnational context of our study, we were an international group of experienced prison researchers with diverse characteristics, such as nationality (Dutch, Norwegian, English, American and Belgian), language proficiency (Dutch, Norwegian, English and French), professional career (early career and more experienced researchers), discipline (sociology, criminology, law, sports science and political science) and experience in the use of MQPL, as well as in studying transnational prisons. The ‘working language’ used in the prison was English. This posed a challenge to many staff and prisoners.

The fieldwork was short but intense, with each of us covering different parts of the prison. It was exploratory, but we used a ‘ready-made’ relevant survey as an organizing framework. The presence of up to ten researchers in the prison at the same time was

<sup>3</sup>The core team consisted of the eight co-authors of this article. Yvonne Jewkes and Kristian Mjaland were invited to join the team for 2–3 days to offer insights on prison design and Norwegian prisons, respectively.

<sup>4</sup>This is the number of fieldwork days. There was much preparation and analysis time in addition. The fieldwork took place at two intervals in 2017: in May (mainly to conduct the full staff briefing and administer the SQL survey) and August–September (to carry out the MQPL survey and other fieldwork). We spent around 500 person-hours in the prison. The response rate was good overall (89 usable surveys; 40 per cent of Norgerhaven’s population). We achieved representation from all of the wings and from most nationalities, with Norwegians as the most represented group. Whilst the results are generally reliable, there was under-representation of some nationalities (e.g. Romanian prisoners).

<sup>5</sup>The surveys consist of 100+ statements measuring prisoner and staff quality of life across several dimensions. The surveys are self-administered, with research staff present. Participants are asked to consider statements concerning their quality of life and rate them according to a 5-point Likert scale—strongly agree to strongly disagree. Factor analysis allows for the overall dimension score to be calculated as a mean of the composite items. The conceptual and operational development of the MQPL and SQL surveys has been fully documented elsewhere (see: Liebling, with Arnold 2004; Liebling *et al.* 1999, 2011a).

noticed and encouraged prisoners to be curious. The research questions (there was no *explicit* question) were: How is this transnational prison experienced? How does it work? Can such a prison be legitimate?

### *The Findings*

At the time of the main fieldwork (August 2017), Norgerhaven's population consisted of 224 prisoners; 46 with Norwegian citizenship and 178 non-Norwegians or foreign nationals. Despite its diverse prison population and complex socio-historical and geo-legal context, Norgerhaven was surprisingly positively evaluated by staff and prisoners in both the survey and in informal conversations. However, some moral doubts arose about the concept of a transnational prison.<sup>6</sup> Prisoners scored their overall quality of life high, at 7.39 out of 10. They were especially positive about the respectful treatment they received, staff professionalism and the 'relaxed' atmosphere of the prison. They described staff-prisoner relationships as generally positive, well bounded and helpful. Prisoners appreciated the fact that officers were 'laid back' and 'approachable, but not overbearing'. What mattered to prisoners were relationships with and treatment by staff, the use of authority, the scope for exercising agency and material conditions, particularly as they related to freedom of movement and family contact.

The prisoner survey results were in line with the most positively rated prisons in England and Wales (i.e. HMPs Grendon and Warren Hill, which have a 'therapeutic' and 'enabling environment' approach).<sup>7</sup> Of 21 MQPL dimensions, 19 were scored positively. The two that scored below 3.00 (the maximum score is 5)—'bureaucratic legitimacy' and 'personal development'—were only narrowly below this neutral threshold, at 2.96 and 2.95, respectively (see [Table 1](#)).<sup>8</sup> Some significant and less positively rated aspects of life at Norgerhaven were apparent when different population groups were compared. Norwegian citizens, example considered their time in the prison to be unproductive and felt that rehabilitative and constructive activities (such as educational, vocational or creative arts), were not comparable to the programmes they would have access to in Norway. Similarly, prisoners who had involuntarily transferred to the prison (an average of 38 per cent during the rental period<sup>9</sup>) rated their quality of life more poorly than those who had been voluntarily sent to the prison. We shall return to these results in more detail later.

The staff results were also very positive. They rated their quality of life at 7.59 out of 10. For all staff, 18/18 dimensions were scored positively, or over the neutral threshold of 3.00. The highest rated items were 'relationships with peers' (4.31) and 'commitment' to the prison (4.12). These positive feelings were related to high satisfaction with senior management and with their roles, a strong commitment to their jobs and the prison, and decent relationships with prisoners. They were, of course, grateful to be in continued employment and that their prison had been kept open.

<sup>6</sup>For a detailed account of the findings, see [Johnsen et al. \(2017\)](#).

<sup>7</sup>See [Liebling et al. \(2019\)](#).

<sup>8</sup>For both the staff and prisoner surveys, negative statements are recoded positively so that a higher mean score *always* reflects a more positive response. Thus, scores above the neutral threshold of 3.00 are positive/good, and scores below are less positive or indicate areas of concern where improvement is needed.

<sup>9</sup>Source: Norwegian Correctional Service, Region East.

TABLE 1 *Norgerhøven MQPL prisoner dimension means—All prisoners, Norwegians/Non-Norwegians, and Voluntary/Non-Voluntary Compared (2017)*

	All prisoners		Norwegians		Non-Norwegians		Voluntary		Non-voluntary	
	N = 71		N = 35		N = 36		N = 43		N = 28	
Harmony dimensions										
Entry into custody	Reliability	3.44	3.48	3.41	3.61	3.12***				
Respect/courtesy	$\alpha = 0.627$	3.64	3.79	3.51 *	3.76	3.43*				
Staff-prisoner relationships	$\alpha = 0.792$	3.46	3.51	3.42	3.61	3.19**				
Humanity	$\alpha = 0.816$	3.49	3.51	3.47	3.61	3.28*				
Decency	$\alpha = 0.774$	3.47	3.51	3.43	3.51	3.39				
Care for the vulnerable	$\alpha = 0.415$	3.12	3.07	3.17	3.16	3.07				
Help and assistance	— <sup>a</sup>	3.16	3.07	3.24	3.23	3.04				
Professionalism dimensions										
Staff professionalism	$\alpha = 0.837$	3.55	3.44	3.65	3.66	3.36*				
Bureaucratic legitimacy	—	2.96	2.91	3.00	3.05	2.79				
Fairness	$\alpha = 0.717$	3.22	3.09	3.34	3.31	3.05				
Organization and consistency	$\alpha = 0.736$	3.36	3.33	3.38	3.53	3.02***				
Security dimensions										
Policing and security	$\alpha = 0.674$	3.52	3.41	3.61	3.58	3.41				
Prisoner safety	$\alpha = 0.659$	3.53	3.57	3.50	3.62	3.37				
Prisoner adaptation	$\alpha = 0.540$	3.64	3.49	3.79	3.58	3.76				
Drugs and exploitation	$\alpha = 0.773$	3.49	3.26	3.69**	3.47	3.52				
Conditions and family contact dimensions										
Conditions	$\alpha = 0.706$	3.69	3.60	3.76	3.79	3.49				
Family contact	$\alpha = 0.628$	3.36	3.35	3.38	3.42	3.27				
Well-being and development dimensions										
Personal development	$\alpha = 0.770$	2.95	2.77	3.13*	3.09	2.72*				
Personal autonomy	$\alpha = 0.568$	3.36	3.30	3.42	3.45	3.22				
Wellbeing	$\alpha = 0.715$	3.23	3.12	3.33	3.41	2.90**				
Distress	$\alpha = 0.472$	3.54	3.41	3.66	3.62	3.41				
Quality of life score (1–10 mean)		7.30	7.21	7.39	7.52	6.93				

The following statistical notation is used: † < 0.1; \* < 0.05; \*\* < 0.01; \*\*\* < 0.001. Scores above the neutral threshold of 3.00 are shaded. <sup>a</sup>Too few cases.

These positive results were somewhat surprising due to the complicated context in which daily prison life had to be negotiated, though similar findings emerged from the Tilburg study (Van der Broeck *et al.* 2011; Beyens and Boone 2013, 2015) where Belgian prisoners had been housed in the Netherlands. There was a particular positive energy and ‘lightness’ to Norgerhaven: the opposite of Downes’ psychological ‘weight’ (1988), or Crewe’s ‘tightness’ (2011). Several factors help to explain these findings: the competent execution of a complex project by a skilled senior management team; the presence of a motivated and highly experienced staff group; the effort and energy being expended in making the prison and the collaboration ‘a success’; and some material advantages. But, did prisoners really ‘prefer’ this prison to (i.e. evaluate it more positively than) prisons in Norway?

### *Prisoners’ Experiences of Norgerhaven Compared with Other Norwegian Prisons*

The Nordic prison model has widely been regarded as ‘superior’ (more liberal, humane and less punitive) than the model in other European countries. It was arguably surprising, then, that Norwegian prisoners in a Norwegian/Dutch prison considered their quality of life to be better than in similar closed prisons in Norway (even if the latter figures are somewhat dated; Johnsen *et al.* 2011; Johnsen and Granheim 2012).<sup>10</sup> In that study, Norwegian prisoners rated their quality of life similarly to prisoners in England and Wales, a finding which, like much recent work, challenges the thesis of Nordic exceptionalism (Pratt 2008; Pratt and Eriksson 2013). This thesis asserts that Nordic prisons are more humane than prisons in Anglophone countries (but see Ugelvik and Dullum 2012; Smith and Ugelvik 2017). The results from Norgerhaven were similar to the findings from *small* closed prisons in Norway (defined as fewer than 50 prisoners). These prisons attract significantly better scores on several dimensions than larger prisons (Johnsen and Granheim 2012). However, from a Norwegian perspective, Norgerhaven prison is considered a large prison (defined as more than 100 prisoners), so compared with other large Norwegian closed prisons, the results from Norgerhaven can be considered exceptionally positive. The only prisons in Norway that match the quality of life in Norgerhaven are the three open prisons: Bastøy, Hassel and Leira (see Table 2). Together with Halden prison (not included in the original study of closed prisons as it was not yet open), Bastøy prison has become the material expression of the concept of Nordic exceptionalism (despite some ‘pains of freedom’ described by Shammas 2014). The quality of life in Bastøy prison was positively evaluated at 7.43 out of 10. The scores at Leira and Hassel are higher still—8.56 and 8.50, respectively. Three features characterize these prisons: they have few prisoners in large spaces, they are farms, and the activities in these prisons are based on pedagogical ideas (Johnsen and Granheim, *in progress*). Norgerhaven prison has none of these characteristics, so how do we understand these apparently positive results?

On the basis of our qualitative data, several possible hypotheses explained the high scores in Norgerhaven: its design and freedom of movement, its relatively generous material provision and family contact, good staff–prisoner relationships, lack of discrimination and, most intriguing for us, a ‘non-intrusive penal sensibility’. We describe each of these features below.

<sup>10</sup>We await the results of the recent COMPEN study by Ben Crewe *et al.*

TABLE 2 *MQPL prisoner dimension means—Norwegian open prisons compared (2013–14)*

	Bastøy		Hassel		Leira	
	Mean	N	Mean	N	Mean	N
Staff–prisoner relationships	3.59	34	4.03	24	4.35	9
Conditions	3.40	34	3.84	24	3.91	9
Wellbeing	3.67	33	4.03	24	4.22	9
Prisoner safety	3.74	35	4.10	24	4.28	9
Personal development	3.21	33	3.76	24	4.00	9
Respect/courtesy	3.08	33	3.61	24	3.93	9
Decency	4.00	33	4.21	24	3.96	9
Entry into custody	3.33	32	3.71	24	4.19	9
Organization and consistency	3.45	33	4.01	24	4.13	9
Fairness	3.25	33	3.59	24	3.83	9
Ethnic background and treatment	3.69	33	4.03	24	4.10	9
Family contact	3.96	21	3.33	16	4.13	8
Prisoner adaptation	3.58	33	3.77	24	4.07	9
Program activity	3.82	7	—	—	—	—
Care for the vulnerable	3.03	30	3.61	24	3.43	9
Health care	3.40	23	3.77	18	4.32	3
Food in this prison*	2.97	33	4.08	24	3.50	8
Decency and respect*	3.56	34	3.92	24	4.44	9
Treatment in isolation*	3.11	19	3.43	7	3.33	3
Use of control and restraint*	3.23	22	3.25	8	4.75	4
Quality of life score (1–10 mean)	7.43	35	8.50	18	8.56	9

\*Standalone questions.

Norgerhaven's large green courtyard and mature trees are among its most striking features. Free movements were possible during many hours of the day, so prisoners could meet in the grounds, walk long distances together, and play sports. This allowed them both a sense of freedom, and a sense of pride and fitness. There were many outside leisure activities, and prisoners were busy, which facilitated the 'doing of time'. Other aspects of the material conditions appreciated by prisoners included access to money. Intended as a planned concession and recruitment incentive, the wages were higher in Norgerhaven than in Norway. Living expenses in the Netherlands were significantly less (the price of tobacco, for example, was six times higher in Norway), which meant that prisoners' money went further. Prices were relatively low for all goods in the prison shop. Prisoners felt they were 'earning good money'.

A potential disadvantage of being detained in a foreign country might be difficulties with the possibility or frequency of family visits (see [Beyens and Boone \(2013\)](#) on Tilburg). However, due to the size of Norway, the location of its prisons, and the country of origin for many non-Norwegian prisoners, being in the Netherlands brought them geographically closer to their families, which made it easier to receive visits. There was also Skype access in Norgerhaven, which was not allowed in Norwegian prisons, and longer telephone time (a total of 60 minutes per week compared with 20 minutes in Norway).

One of the most significant aspects of life in the prison, and the most positively rated compared to elsewhere, however, was staff–prisoner relationships. They were distinctive in several ways. Prisoners talked in very positive terms about officers. They were polite, careful and used their authority sparingly. Dutch staff were both 'responsive' and yet 'left prisoners alone' (see [Kruttschnitt and Dirkzwager 2011](#)). Several studies have

shown that the quality of staff–prisoner relationships has a powerful impact on the detention experiences of prisoners (Liebling, with Arnold 2004; Liebling 2011). The Dutch approach was ‘friendly, equal and approachable; a chat-culture’, particularly where prisoners spoke Dutch (see also Kox *et al.* 2014).

Norwegian prisoners appreciated the approachable nature of the Dutch staff and their overall orientation to their work. As one prisoner said: ‘The Norwegians are too strict; by the book. The Dutch [staff] are forgiving – they understand we’re people, and that people sometimes make mistakes’. Prisoners were clear that staff responded to prisoners’ requests where possible and did their best to find solutions. For prisoners this meant that Dutch officers were relaxed and able to handle situations without imposing strict rules. Prisoners noted that discretion was often used in the handling of day-to-day problems to avoid disciplinary interventions. Staff took prisoners’ particular situations and problems into account. Prisoners still felt that privileges were fairly distributed, however. The MQPL+ results showed that the score for ‘staff professionalism’ (confidence and competence in the use of authority) was especially high, at 3.55. As this was one of the main areas of commentary, we explore the use of authority in more detail below. First, we introduce the staff and their experience. Their position was difficult to evaluate objectively in the context of their positive feelings about retaining their jobs.

### *Staff Perspectives*

The majority of the staff were positive about this ‘experiment’. Most did not question the agreement (‘that’s politics and we cannot do anything about it’), but tried to execute it in the best manner possible. Some staff were more critical towards the arrangement, expressing discomfort about the detention of foreign national offenders in particular. This staff group felt that foreign national prisoners were being punished relatively severely in the Dutch context for violating the ‘entry-ban’ (Aas 2014). They ended up awaiting deportation in a foreign country, some of them away from the relatives they had left behind in Norway. Other staff felt some moral unease regarding prisoners’ lack of access to needed services and the involuntariness of their detention in Dutch territory. It was difficult for these staff to air their views, or to ‘problematize’ the cooperation in itself, in the face of an overall commitment to ‘making it work’. The success of the Agreement represented an act of international diplomacy between the two countries. The feelings of the ‘moral doubts’ group were therefore somewhat ‘suppressed’ or underrepresented in our research due to the general concern about losing their jobs. We repeatedly heard prison staff say that the project *had* to be successful, especially after Tilburg prison closed despite positive evaluations. Subtly and otherwise, staff implored us to tell a positive story about the prison. We cannot exclude the possibility that their attitude, and the stories they told us about the prison, were, at least partly influenced by their interest in continuing the cooperation with Norway and keeping the prison open.

### *Where Two Exceptional Penal Cultures Meet: Rules, Discretion and the Moral Uses of Punishment*

The most striking finding of this project was the complexity of the handling of authority and the use of discretion by staff. No prison has ever been found to follow its own rules

precisely: discretion is inevitable where complex rules are many and are ‘open-textured’ (Dixon 1997; Liebling *et al.* 2011b). To the surprise of many of the staff and senior managers involved, who assumed a basic ‘likeness’ between the two jurisdictions in their philosophy and practice, the original aspiration to ‘implement a Norwegian model of the rules and regulations’ in a Dutch prison did not work as easily in practice as they had anticipated. Aspects of the Norwegian model (including escorted moves around prisons) did not fit the physical or professional resources available at Norgerhaven. Other practices (e.g. increased emphasis on ‘due process’ aspects of disciplinary procedures) were required by law, but were not in line with typical Dutch practices (which were swift and highly discretionary). The Norwegian Governor and his senior team took an explicitly deliberative approach to this management task, which was consistent with his style of leadership and the relationships he sought to develop with his Dutch colleagues. No one was sure whether this was ‘a Norwegian prison, on Dutch soil’ or a ‘Dutch prison, with a Norwegian twist’. Practices were reconfigured, sometimes ‘in a Dutch way’ to suit the more ‘pedagogical’ or pragmatic Dutch approach, and sometimes in a ‘Norwegian way’, to honour those areas of prison life regulated most strictly by law, which tended to be practices related to the deprivation of liberty. In all these negotiations, the ‘best solution’ was sought. The most pressing areas where compromise was less possible in the eyes of Norwegian senior managers were (1) prison discipline and early release, (2) procedural responses to incidents, (3) case management and (4) privacy. In other areas: the staff attendance schedule, the split shift system for prisoners (half a day’s work), levels of prisoner autonomy and movement, and the attitudes of staff, a ‘Dutch flavour’ was successfully defended. This mixed or negotiated model often led to improvements and learning on both sides. In particular, it led to dialogue.

One of the most important professional differences between the Norwegian and the Dutch way, as it emerged here at least, was the basic orientation to work with prisoners. The Norwegians used the framework of the sentence, and the system of case management, for managing prisoners and ‘changing their lives’. This approach was explicitly linked to the aim of addressing or ‘confronting’ offending behaviour. The Dutch were more clearly focused on managing behaviour in prison. Relationships with prisoners were ‘for order’ and justice rather than ‘for change’. ‘Small talk’ with prisoners was more important than ‘offence talk’. This was both less intrusive, and less paternalistic, than the Norwegian ‘treatment-oriented’ model, according to prisoners. On a good day, according to the Dutch model, ‘nothing happened’; i.e., officers used their refined peacekeeping skills to create order (see Liebling *et al.* 2011b). According to the ‘Norwegian model’, as it was represented to us here, a good day involved a ‘meaningful conversation with a prisoner ... that changes something about the way he thinks’. This orientation was linked to the emphasis in Norwegian staff training on motivating and assisting offenders to change, and a mission aimed at ‘creating good neighbours’. The Dutch penal system was grounded in the principle of minimal restrictions: deprivation of liberty was the sole punishment and ‘humane containment’ was the objective of imprisonment. This resulted in less ‘interference’, or pressure placed on prisoners to engage in offending behaviour work, which they appreciated. But they reflected less directly on their ‘intrusions’ on liberty inside the prison.

The Norwegian ‘style’ focused on ‘principles of normalization’ (whereby life in prison mirrors life in the community as much as possible), but was ‘more sensitive’ to legal structures that protect prisoners’ rights and ‘the use of power’: a concern that

explained a much slower ‘due process’ approach to prison disciplinary offences (e.g. regarding the use of solitary confinement).<sup>11</sup> In this sense, the Norwegian approach was more protective. This ‘traditional-welfare oriented’ approach could be contrasted with the Dutch ‘traditional-professional’ approach<sup>12</sup> (see [Liebling 2011](#); [Crewe et al. 2014](#)) in which ‘humane custody’ was the more explicit goal. Many prisoners preferred the Dutch model, because it left them with more freedom and agency, and (they felt) generated higher levels of respect to and from officers.

Although this observation is speculative, it seemed to us that both models contained a paradox. Whereas the Dutch model prioritized equality, difference or individualization, humanity and rights, and yet tended to use more unchecked and discretionary power, the Norwegian model prioritized safety, protection and prevention, thus demanding more of prisoners and (put critically) exerting a more idealized, ‘moralizing’ or one-dimensional vision of what a good citizen should be on prisoners. Each seemed to attribute a different meaning to the term *liberty* (in Isaiah Berlin’s language (1969), ‘freedom from’, versus ‘freedom to’). The Dutch system was more *present-oriented*, and placed greater trust in *prison officers*, where the Norwegian model was more *future oriented* and placed greater trust in *prisoners* and *formal procedures*. These differences reflected the ‘conflicting aims of imprisonment’ debate between ‘humane containment’ versus the ‘rehabilitation’ or ‘good and useful life’ models evident throughout centuries of penal history (see [Bottoms 1990](#); [King and Morgan 1980](#)). Differences in the purposes of imprisonment constituted important territory for deliberation and reflection for both prison services. As one staff member said:

Norwegians are direct, and quite strict ... they follow the rules. The Dutch are indirect, they step to the side and back, there is more distance. ... They talk about daily things, uncomplicated things, but they don’t touch their crimes. The staff are educated differently. The Dutch staff prepared for them [prisoners] coming by putting their names and lots of details about their diets, and religion, sentence, on cards on the [cell] door. They were quite proud of that. The Norwegians said, ‘that has to go’. It violates privacy. The Norwegians place more checks on the use of force. ... They are trained to ask themselves, ‘did I use force in the right way today?’ (Norwegian staff member)

The meanings of fairness, authority, discipline, liberty and punishment (key concepts in each country’s political life) were being wrestled with in front of our eyes. The ‘taken for granted’ assumptions about the forms and consequences of power were out in the open. This was thrilling to watch and hear being deliberated. There was much creative tension in the prison, but the existence of the tensions revealed an underlying political self-understanding in each country’s penal operations that was quite distinct. In this respect, at least, the hybrid prison was making punishment practices, and the use of authority, unusually explicit (see also [Beyens and Boone 2015](#)).

Further complexities arose in specific areas. Within the overall picture of positive commentary, three groups of prisoners expressed more complicated feelings or moral reservations about the establishment, for different reasons: the vulnerable, foreign

<sup>11</sup>For example, immediate reactions to incidents could include isolating prisoners. Norwegian law does not allow this (but see [NPM 2016](#)). Our attempts to systematically compare segregation use between the two countries have led to interesting dialogue with colleagues, but as yet no reliable data (see [Lobel and Scharff Smith 2019](#)).

<sup>12</sup>A positive version of the term ‘old school’, which prisoners in England and Wales often use to describe experienced and professionally confident public sector staff and their good uses of authority, in contrast to the ‘stand back, jump forward’ style of younger, inexperienced officers (see [Crewe et al. 2014](#)).

nationals, and the involuntarily transferred. We look at what these prisoners had to say below.

*Vulnerability, Exclusion and Perceived Discrimination*

Whilst prisoners in general appreciated the ‘respectful distance’, and the ‘reactive’ rather than ‘proactive’ approach that staff took, this could cause difficulties for vulnerable prisoners. Fears, threats and pressures remained hidden, and the somewhat ‘hands-off’ approach of staff hampered the protection of less confident prisoners. They were not receiving enough help. When ‘light’ became ‘absent’, it could be dangerous (see [Crewe et al. 2014](#)). We found several prisoners ‘hidden’ on wings, who were reluctant to move freely around in the courtyard, or who were avoiding activities. Men convicted of sex offences were disproportionately represented among the Norwegian prisoners, and several prisoners from Eastern European countries (as well as some Norwegian prisoners) expressed disapproval about having to share space with such offenders.

On the other hand, in line with the level of attention paid to individual characteristics when everyday decisions were made, prisoners noted that staff treated the highly multicultural population with equal professionalism. Prisoners reported that, in contrast to some of the respondents’ accounts of their experiences in Norway, no distinction was made between different nationalities, cultures or religions. When asked for examples, prisoners referred to Dutch staff giving non-Norwegian prisoners trusted jobs such as cleaners on the wing, a practice that was, according to some prisoners, uncommon in some Norwegian prisons. They felt better and more equally treated in Norderhaven. Foreign prisoners argued that the Dutch staff were ‘less racist’, or as other prisoners put it, ‘more interested in other cultures’ and ‘less discriminatory’, than their Norwegian peers. This was a surprising finding, and one that was talked about at length.

The non-Norwegian group consisted of prisoners who had a Norwegian residence permit, prisoners who used to have a Norwegian residence permit, which had been withdrawn due to their criminal conviction, and prisoners without legal status to reside in Norway. These prisoners were mainly from other European countries but also included prisoners from Africa, the Americas and Asia. As a rule, foreign prisoners are expelled and deported from Norway by the police at the end of the sentence and are given an ‘entry ban’ that prohibits them from entering both Norway and the EU for at least one and up to ten years ([Aas 2014](#)). This practice is more often used on foreign offenders from the Schengen area, while foreigners from non-Schengen countries were expelled and deported as a direct result of the indictment. At the time of the research, approximately 10 per cent of the prisoners in Norderhaven were serving a sentence of 1 year for violating their entry ban.

Foreign national prisoners expressed a feeling of lack of legitimacy in relation to their punishment, especially if they had been convicted for a violation of the entry ban or another migration crime that would not be a criminal offence if they held Norwegian citizenship. They felt that they were being punished twice for the same offence: not only were they imprisoned but they were also to be deported as a consequence (see [Turnbull and Hasselberg 2017](#)). Exclusion and deportation decisions are administrative decisions in Norway and do not form part of the sentence ([Aas 2011, 2014](#)). This feeling of double punishment applied all the more directly if they had been

arrested for their unauthorized attendance in the country while they were on their way to the airport to leave Norway. This type of ‘extended detention’ was considered especially unfair.<sup>13</sup> These forms of ‘illegitimate punishment’ were frequently the first topics that non-Norwegian prisoners raised in their conversations with the research team. Although non-Norwegians rated their overall treatment by staff positively, they scored ‘respect/courtesy’ significantly less positively than Norwegians (3.51 and 3.79, respectively,  $p < 0.05$ ), arguing that the staff did not ‘speak on a level’ with them as they did with Norwegian prisoners due to language (i.e. greater proficiency in English among Norwegian prisoners) and cultural differences.

The third group of prisoners who felt less comfortable with their imprisonment on Dutch territory consisted of prisoners who resisted their transfer to Norgerhaven; half of this group were not Norwegian citizens. Some of these foreign national men were frustrated because their relationship to Norway was not recognized. They had strong ties in Norway as they had spent ‘over half of their lives in this country’ and/or their families were living there. Others saw the transfer to Norgerhaven as a ‘kind of waiting box on foreign soil’ before being deported. The Norwegian group consisted mainly of ethnic Norwegians but also included prisoners from other Nordic and European countries and Asia.

These involuntary prisoners contended that ‘promises made’ were not kept during their stay in Norgerhaven. The regime established for transport to and from the Netherlands (a handcuffed escort by small plane) strengthened the feeling of being involuntarily transported to a distant land. Many prisoners reported frustration because of the complications in contacting Norwegian administrators, slow application procedures and the lack of casework staff who could deal with welfare and practical matters. The slow and complex system of casework reinforced feelings of distance from ‘home’ and made it very difficult to plan for life after release. The survey results suggested that non-consensual transfers led to less positive evaluations of the prison. Those who were involuntarily sent to Norgerhaven rated ‘personal development’ (voluntary 3.09, non-voluntary 2.72,  $p < 0.05$ ) and ‘well-being’ (voluntary 3.41, non-voluntary 2.90,  $p < 0.01$ ) significantly lower than those who had voluntarily transferred. They believed that their situation would have been better in a Norwegian prison. However, it was also the case that some non-voluntary prisoners, who had been apprehensive about or resistant to the transfer, had since come to settle into life at Norgerhaven and now talked positively about their experience.

We concluded that, with some important exceptions, this prison had reasonably high levels of ‘interior legitimacy’ due to its relatively high scores overall, the role played by grateful and professionally competent staff, and its materially generous facilities, but its ‘exterior legitimacy’ (basic framework and rationale) was in serious doubt (Sparks 1994). In a relatively small number of days, we had stumbled into major questions of punishment, discipline and procedure, and some very different ideas about how, or whether it was possible, to make this prison morally intelligible.

### *The Response to Our Report and the Developing Narrative*

In the Norwegian Parliamentary election campaign of 2017, the Progress Party stated that thanks to the rental of Norgerhaven prison, the Government had reached the

<sup>13</sup>This feeling of ‘double punishment’ and ‘extended detention’ is not unique to Norgerhaven and has been documented elsewhere when recounting the experiences of foreign national prisoners (Ugelvik and Damsa 2018).

goal of ‘getting rid of’ the prison queue. The Deputy Governor of the Norwegian Correctional Service characterized the rental of Norgerhaven and the execution of Norwegian sentences there as ‘brilliant’ and stated that there was no need to prolong the rental as the queue was ‘gone’ and sentences of imprisonment were decreasing in Norway (Hillesland 2018). However, the decision to end the project was not a straightforward one. The Parliamentary election returned the former Conservative/Progress Party coalition with support from the Liberal Party. The prolonging of Norgerhaven prison was one of the topics in their joint political platform. Despite this—and as a result of a steep reduction in the size of the prison queue and arguments from the Norwegian Prison and Probation Officers’ Unions to secure work for Norwegian prison staff—the Minister of Justice made an agreement not to prolong the rental in exchange for the possibility of double bunking prisoners (requiring them to share a cell designed for one) in existing Norwegian prisons (and until the building of a new prison with 300 beds is completed in 2020).

Our research project resulted in a detailed report. This was sent to the Norwegian Correctional Service Directorate in December 2017 (Johnsen *et al.* 2017). KRUS had already requested permission to conduct this research before the Directorate signalled their interest in doing a study of the quality of life in Norgerhaven prison in a letter in November 2017. We do not know why the Directorate wanted the research, and we experienced a surprising lack of engagement with the report from within the Directorate. It might have generated more attention (e.g. from within the prison service) if the Government had reached a decision prolonging the rental period. We were nervous that the positive results might have been used to support a story of success, and as an argument for legitimizing this decision, even though we appreciated the skills and commitments of the staff, and found the ‘experiment’ highly educational. The questions we are left with, now that we have experienced the reality of a transnational prison, include: what is going on, when a liberal country sends its prisoners abroad? What does it tell us, when foreign national prisoners seeking a life in Norway prefer to be imprisoned in a foreign place? What explains the lack of prison numbers in the Netherlands, and its willingness to house its neighbours’ prisoners? Is the ‘transnational prison’ a new phenomenon in a globalized world? Was the research a game, and did we understand how to play it (see Sparks 2002)?

### *Conclusion*

It was unexpected, given the international emphasis on Norwegian ‘exceptionalism’ to find Norway positioned as the more ‘punishing’ partner in a dyad with the Netherlands. There were major cultural differences between the two countries that made any argument about them having ‘like practices’ untenable. Working closely together made these differences visible to staff and prisoners, and they became the subject of considerable professional reflection within the prison. This was (in our view) the most valuable outcome of the research project, although no one from the policy world seemed interested in this observation (the staff and prisoners found it interesting, needless to say). Norwegian and Dutch staff used authority and discretion differently, and these differences were linked to very different criminologies: a ‘welfare’ or ‘correctional’ versus pragmatic model. Paradoxically, the ‘present-orientation’ of Dutch prison staff led to

a more legitimate (e.g. fair, responsive and respectful) version of imprisonment in the eyes of prisoners than the more ‘future-oriented version’ (i.e. offence-focused and ‘for change’) embodied by Norwegian corrections staff. This is in contrast to the assumptions made by many penal philosophers and reformists that rehabilitation aims have undisputed moral currency (on the long and intricate aims of imprisonment debate, see [Bottoms 1990](#)).

Much to our surprise, in relation to the use of power, and the purposes of punishment, the transnational project generated a remarkably reflexive and ‘deliberative’ prison. Many of the staff and policy-makers involved in the original decision to ‘contract out’ penal services (a curious notion in itself, for a Nordic country) assumed that these two jurisdictions were basically alike in their penal values. Few, including the Norwegian Director and the Dutch Manager, were prepared for the differences that arose once these values became translated into practices. There were major complexities to this version of imprisonment. We saw two penal narratives in conflict: one oriented more fully towards imprisonment as the deprivation of liberty, the other more rights-based, but because of its orientation towards future (largely unrealisable) hopes (for native Norwegians at least), speaking a different, ‘protective’ language, but not in a way that prisoners felt benefited or protected them. Staff tried to collaborate over what fairness, privacy, professionalism, punishment and discipline meant in day-to-day practices, and found they each meant different things. The moral as well as operational challenges faced by staff lay everywhere. The project was, however, an outstanding example of international cooperation, despite differences in the two countries’ penal cultures. As in many comparable penal experiments, the staff team had to work exceptionally hard to make this complex prison work well, and safely.

On the other hand, two groups of prisoners felt they were being punished twice by their imprisonment in Dutch territory: foreign national offenders and those who resisted their transfer to Norgerhaven. These unfairnesses were blamed on the Norwegian Government. The Dutch prison staff were, on the whole, and according to prisoners, doing their best to make an illegitimate arrangement ‘work’.

Norgerhaven was a ‘transitory outpost’. It was a long way from Norway. It lay ‘outwith’ legitimacy, due mainly to its lack of adequate oversight or guarantees for the protection of prisoners’ legal rights, and yet it did more to persuade at least foreign prisoners of its interior legitimacy than most, including ordinary Norwegian prisons. Unexpectedly, the ‘deep structures of penal practice’ were being developed morally in a place of little obvious legitimacy. [Sparks and Bottoms \(2008\)](#) proposed that the legitimacy question is ‘vexed’ and that prisoners’ analyses of its relevant dimensions are ‘vivid’. We certainly found both to be the case here. Yet our fieldwork also captured a unique shift from ‘practical’ or tacit to ‘discursive’ consciousness on precisely these matters, as staff challenged or defended many accepted practices, from disciplinary proceedings to the organization of ‘spiritual care’. There was a level of reflexivity present in the prison that could just have contributed to the ‘reconstruction and remaking of our social world’ ([Archer 2007](#): 314)

This was a challenging and curiosity-driven research project, carried out with generous resources from Norway. We each experienced deep discomfort about some aspects of the Norgerhaven project. Interesting lessons were learned in the prison, for both jurisdictions, of a kind that would feed usefully into staff training and development, and to broader thinking about forms of and justifications for punishment. Our

deep immersion was brief, but productive. In the end, the Norgerhaven project was rather like the privatization ‘experiment’ (see James *et al.* 1997; Liebling 2013): there was innovation, the exchange of money, a contract, some deviations from that contract, some new practices, a distance from the state, and an opportunity to observe and reflect on the risks and benefits of an unusual form of punishment provision. Like the privatization experiment, however, the opportunity for learning, improvement and moral reflection seemed not to be the point.

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