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To max or not to max

Dealing with high risk prisoners in the Netherlands and England and Wales

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Abstract

Following a number of high profile escapes during the 1990s, policy makers in the Dutch Prison Service and in the Prison Service of England and Wales faced stark choices about how to house their highest risk offenders. They made those choices in the spotlight of publicity and under pressure from politicians and the press. In this article we seek to present the choices made in the light of the respective histories of the two systems by using a framework drawn from the literature on public policy formation. Our aim is not so much to develop or test hypotheses about policy formation, but rather to try to understand two things: first, how these particular policies compare with so-called supermax solutions developed in the United States and second, why policy makers decided to choose one policy option rather than the other.

Key Words

control problems • escapes • learning • prison service • reform • supermax • third order change

INTRODUCTION

In this article we consider the use of so-called supermax solutions to deal with high risk prisoners. By high risk prisoners we mean both those who are prone to attempt escapes, and who would thereby constitute a serious risk to the police, the public or the security of the State, and those who, through their violent, subversive or persistently disruptive behaviour in custody, may constitute a major threat to the stability and good order of the prison system. Of course, some prisoners who, for example, take hostages with a view to making an escape attempt fall into both categories. In particular we consider two ostensibly similar scenarios, one in the Netherlands and the other in England and Wales, in which prison escapes led to public outcry, official inquiries and reports recommending major changes in prison policies. The eventual outcomes, however, were very different: the Netherlands accepted the recommended supermax solution while England and Wales rejected it. These decisions are important to understand for two

reasons. First, in light of the comparison of prison conditions in the two countries by Downes (1988), these outcomes might seem counterintuitive, although in view of Downes' later work perhaps the Dutch decision was not so surprising (Downes, 1998). Second, since politicians and prison administrators are notoriously absent minded when it comes to penal history, it is important to document how and why decisions are actually reached – if only to be better prepared the next time the same recommendations are proposed.

The first scenario played out in Holland in 1992–3. After a series of dramatic escapes from several types of prisons, including from some Special Security Units (SSUs), an external inquiry concluded that the philosophy behind the SSUs was sound, but that its execution had been poor. It recommended that two new SSUs should be built which adhered more closely to the ideas laid down in a 1987 civil service report (Hoekstra, 1992). Correct implementation of the SSU philosophy would create prison units along the lines of what had come to be called supermax facilities in the United States. Following another series of escapes, junior Minister of Justice, Kosto, quickly accepted the supermax solution. In the event the number of SSU prisoners remained limited, and only one unit was created which finally opened in August 1997.

The second scenario played out in England between 1994–7. In September 1994, six prisoners, including five IRA terrorists, escaped from the supposedly escape-proof SSU at HMP Whitemoor. The report of the Woodcock inquiry (Home Office, 1994) into the escape made many detailed recommendations to increase security and following its publication the Home Secretary invited General Learmont to conduct a wider ranging review of security policy. When a further escape by high security risk prisoners took place in January 1995 from another dispersal prison at Parkhurst, the inquiry into that escape was added to Learmont's brief. Learmont endorsed Woodcock's recommendations and added some of his own, including the building of two new supermax prisons, of 200 beds each – one for escape-prone prisoners and one for difficult and dangerous prisoners who posed control problems (Home Office, 1995). Even before the Learmont Report was published, a project team to consider the feasibility of developing supermax facilities was established. It reported that building a supermax facility would only be financially viable if one or more dispersal prisons were removed from the high security estate. The inquiry team expressed grave doubts about the need for a supermax to house control risk prisoners (King, 1999).¹ In the event, none was built.

Stated baldly, the two scenarios appear almost identical. Indeed, the problem in all its essentials – the escape of potentially dangerous prisoners from the most secure facilities which had been specially designed for their detention – was identical except in one regard, namely the taking of hostages. Conventionally, criminologists attempt to explain late modern developments in prison policy in terms of the application of the techniques of New Public Management (Ferlie et al., 1996) driven by a new penology of control (Feeley and Simon, 1992; Cullen et al., 2000; Garland, 2001). Undoubtedly, the emergence of New Public Management and of the new penology formed part of the context in both our scenarios. But the contexts in which these scenarios were played out also differed in crucially important ways. Our two-fold aim in this article is to try to understand these events both in the historical context of the development of security and control policies in the two prison systems and the political contexts in which these

events took place. In pursuit of this we borrow conceptual ideas from the wider public administration literature intended as explanatory tools in the formation of public policy.

We begin by sketching in a little more of the historical background before explaining how we define supermax, how the concept is used in the United States and the extent to which it has application in the Netherlands and in England and Wales. We then outline the conceptual apparatus we use for our analysis of the emerging policies in relation to high risk prisoners in both countries. In the process we try to clarify the meanings given to terms such as dispersal, concentration, supermax and the various kinds of special units for prisoners defined as security or control problems.

THE NETHERLANDS: A FAILURE OF IMPLEMENTATION

For many years the Dutch Prison Service operated with just three types of prisons at its disposal: open, semi-open and closed prisons, together with a few institutions for mentally disturbed prisoners (DJI, 1998). Escapes did occur, but without the use of hostage takings, and there was no pressure to develop prisons with higher levels of security. All this changed, however, in the 1980s, when prisoners adopted more violent tactics and took people hostage in order to flee the prison as a result of which 'prison officers felt unsafe while doing their job and there was a feeling of anxiety in Dutch society' (Ministry of Justice, 1987: 1).

In response, the then junior minister, Korte-Van Hemel, asked a project team to make proposals regarding the secure imprisonment of those prisoners who posed a high flight risk; those considered to be dangerous to the good order of the prison by virtue of their anti-social or mentally disturbed behaviour; and those who were both escape prone and dangerous at the same time (Ministry of Justice, 1987).

The project team recommended that prisoners in these categories should be separated from the rest of the prison population. The alternative of dispersing them throughout the system – which the project team called dilution – was rejected on grounds that it would burden other prisoners with greater security and stricter regimes than they needed, that mixing different prison populations would be difficult and the existing prison buildings were not secure enough (Ministry of Justice, 1987). Having opted for a policy of separation, the choice was then between concentrating these prisoners in a single prison or placing them in a number of special units. The project team recommended building new Special Security Units (SSUs) because they feared a single prison would be unmanageable and would involve an unnecessarily harsh regime, whereas several special units offered the possibility of rotating prisoners and making it more difficult for them to plan escapes (Ministry of Justice, 1987; cf. Advisory Council on the Penal System (ACPS), 1968). The SSUs were intended to be prisons within prisons, operating quite independently from their parent prison in a strict security setting. However, early in the team's deliberations the Junior Minister suggested that the reception and induction units – the so-called entry-units – of some new prisons already in the pipeline be converted into SSUs, and the team agreed, provided that the new units were genuinely independent of the parent establishments (Ministry of Justice, 1987).

In 1990, three SSU-remand units and three SSU-prisons became operational, but it quickly became clear that combining these three groups of prisoners did not work. It was thus decided to place only escape-prone prisoners, including those likely to use

violence in an escape attempt and those comparatively few dangerous prisoners who were also serious escape risks, in the SSUs (Hoekstra, 1992). The other anti-social and mentally disturbed prisoners required more individual attention and a more structured regime which could be better provided elsewhere. Nevertheless, the SSUs turned out to be less escape-proof than anticipated and by spring 1992 seven out of 55 SSU-prisoners had escaped (Hoekstra, 1992).

The independent inquiry into the escapes concluded that an otherwise sound idea had not been properly implemented and noted that the escapes occurred because the entry-unit SSUs depended too heavily for many facilities on the parent prisons which were themselves insufficiently secure (Hoekstra, 1992). It recommended the building of two completely new SSU prisons. They would be fully self-sufficient, with a secure physical structure and deploying operational policies, which would effectively separate staff and prisoners turning them into American style supermax facilities (Hoekstra, 1992). Junior Minister Kosto, agreed to consider this option, but on 23 October 1992 his hand was forced when four prisoners took six people hostage and escaped from the SSU De Grittenborgh (Hooerveen) and he accepted Hoekstra's recommendation. When six more prisoners escaped from the SSU De Geerhorst (Sittard) on 3 April 1993, Kosto announced that a temporary SSU would be built at Nieuw Vosseveld Prison, Vught, until the new SSUs became operational (Resodihardjo, 2009). The temporary SSU opened in August 1993, and it remains to function as a back-up unit to the permanent SSU, also at Vught, which became operational in August 1997.

ENGLAND AND WALES: LEARNING FROM EXPERIENCE

England and Wales has a longer history of dealing with security and control problems but until the 1960s it also operated a system of open, semi-open and closed prisons without the need for maximum security accommodation. However, Special Wings, the precursors of British SSUs, were established as an emergency measure following some spectacular escapes including that of train robber Charles Wilson in April 1964 – nearly a quarter of a century earlier than the need was recognized in The Netherlands. Lord Mountbatten, in his report on prison security, criticized the Special Wings as uncivilized (Home Office, 1966: para. 212) and proposed categorizing all prisoners according to security risk (paras 212–17) and concentrating the highest escape risks in a single maximum security prison (paras 272–7). Before it was built, however, a subcommittee of the Advisory Council on the Penal System, chaired by Sir Leon Radzinowicz, fearing that such a prison would be impossible to control, recommended such prisoners be dispersed among several maximum security prisons within which they would be subject to a more relaxed regime (ACPS, 1968: paras 48, 62, 154).

The dispersal policy was implemented in 1970 initially in four prisons, but as it turned out the dispersal prisons themselves proved difficult to manage. In response to problems of control, the Prison Service adopted a policy of further 'dilution' by expanding the dispersal system, at one point to as many as nine prisons. But as alternative ways were found of dealing with control problems, the system has become consolidated in recent years around six such prisons despite the doubling of the prison population (see King and Elliott, 1977; King and Morgan, 1980; King, 1985, 2007 for analyses of these developments). The Special Wings, and then the SSUs which replaced them, continued

alongside the dispersal system and have been used primarily for the custody of Irish terrorist prisoners (Walmsley, 1989) and those deemed to be exceptionally high risk (Hadfield and Lakes, 1991). It is important to note that neither Mountbatten's 'fortress' prison, nor the Special Wings and SSUs, involved the physical separation of staff from prisoners: and that following the peace process and the establishment of power-sharing in Northern Ireland, there have been few, if any, prisoners categorized as 'exceptional risk' and the SSUs have been rather rarely used. Time will tell whether they will be used for the new threat of Islamic terrorists, although thus far this seems not to have happened.²

The dispersal prisons were plagued by disturbances, which initially the Prison Service regarded as a product of particularly difficult prisoners. When forced to abandon an attempt to introduce 'control units' in 1974, the Service decided to rotate these prisoners through the segregation units around the dispersal estate. But as roof-top demonstrations and hostage takings continued the Control Review Committee (CRC) (Home Office, 1984) adopted an alternative approach, following which the Service established a series of small units offering different regimes for different types of difficult to manage prisoners. Although the CRC's units were not widely used (Bottomley, 1995), the Committee had successfully rejected the idea that staff safety was to be preserved either by locking prisoners down or by erecting physical barriers between staff and inmate domains. Instead, they opted for maintaining high staff ratios and providing innovative regimes to which prisoners could more peacefully respond. Since this was expensive, it was important that the units be used parsimoniously with a careful approach to the selection of prisoners.

The riots at Strangeways and other prisons in 1990 demonstrated that problems of order and control were actually endemic throughout the system and Lord Justice Woolf's report recognized that security and control would only be achieved if prisoners were also treated fairly and had access to justice (Home Office, 1991a; Resodihardjo, 2006, 2009). Woolf's recommendations, to some extent embraced by the White Paper (Home Office, 1991b; but see Liebling, 2004), did much to return the prison system to a state of legitimacy. However, a further high security escape from Brixton brought with it a retrenchment and many of Woolf's reforms were progressively undermined by Howard's claims that 'prison works', and his insistence on 'austere regimes' (Resodihardjo, 2009).

The furore following the Whitemoor escape and the two reports it engendered reinforced this change of direction (Dockley, 1996; Morgan, 1996, 2001; Home Affairs Committee, 1997; Dunbar and Langdon, 1998; see also Lewis, 1997). Howard accepted all 64 of Woodcock's recommendations (Home Office, 1994), most of those contained in the Learmont Report (Home Office, 1995), and ousted Lewis, the Director General of the Prison Service. Our concern here is with Learmont's recommendation that two supermax prisons should be built, one for escape risk prisoners and one for control problem prisoners despite the absence of control problems since the Woolf Report. The project team established to consider the feasibility of the supermax prisons immediately rejected Learmont's novel proposal for a second supermax to house young and unruly Category C prisoners as completely unnecessary. It did note that establishing a supermax for the highest escape risk prisoners would restore the logic of Mountbatten's categorization of prisoners which had become confusing because

Category A, Category B and some Category C prisoners could all be allocated to dispersal prisons, but it also recognized that there were not enough high escape risk prisoners to fill a supermax facility which could only be paid for by downgrading one or more existing dispersal prisons to lower security status. Reluctantly, the project team considered that the prisoners then in the CRC units might make up the numbers in a supermax, providing the independent nature of those units could be preserved. The future of the CRC units, however, was already being considered by another project team.

When the two project teams reported to the Prisons Board, there was little enthusiasm for the idea of the supermax, either for escape risks or control problems, and much support for reforming the CRC units into Close Supervision Centres (CSCs). The report on the supermax was then caught up in a planning blight pending a general election, and when the new Labour government came to power in 1997 it was clear that the peace process in Northern Ireland had reduced the need for accommodation for terrorist prisoners. Moreover, the implementation of the Woodcock recommendations had both dramatically upgraded security in the dispersal estate and exhausted the available resources. With the transformation of the old CRC units into the new CSCs, Tilt who replaced Lewis as Director General, was able to tell ministers that an expensive supermax was no longer needed (King, 1999).

It is now time for us to consider the characteristics of the American supermax prisons which inspired the Hoekstra and Learmont recommendations, and the extent to which they are found in the solutions adopted in the Netherlands and England and Wales.

THE SUPERMAX SYSTEM

Supermax prisons were first introduced in the United States of America (NIC, 1997, 1999; King, 1999; Boin, 2001; Ward and Werlich, 2003; Mears and Watson, 2006). American supermax prisons differ somewhat between the federal and state systems, and from state to state, both in terms of their construction and details of operational policy, but we use King's (1999: 171) definition as the basis for comparison. There are three essential elements to the definition of supermax:

- (1) accommodation which is physically separate . . . from other units or facilities,
- (2) in which a controlled environment emphasizing safety and security, via separation from staff and other prisoners and restricted movement,
- (3) is provided for prisoners who have been identified through an administrative rather than a disciplinary process as needing such control on grounds of their violent or seriously disruptive behaviour in other high security facilities.

For the American and Dutch supermax systems, we will describe the physical construction of the prison, the regime, its intended population, entry and exit criteria and the consequences of this system for human rights. For the British scenario, we will refrain from discussing the hypothetical supermaxes since they were never built, although we will consider the extent to which the alternative system of CSCs for dealing with violent and disruptive prisoners meets the supermax criteria.

United States of America

What the majority of American purpose-built supermax facilities have in common in their *physical construction* is an arrangement of small, spartan living units or 'pods' which are separate from each other but grouped around a central control room or security bubble from which staff exercise indirect or remote supervision. Prisoners occupy tiers of single cells which are separated from staff areas by steel bars or plexiglass panels or both. Several US supermax facilities have been retro-fitted – that is, adapted out of existing accommodation in an attempt to create the same kind of environment.

The supermax regime is extremely limited. In most states, prisoners have at least minimal access to physical and mental health care, token law and ordinary libraries and to religious services. A minority of states provide some educational or other programmes, although this is often only after prisoners have earned their way into transitional housing, or step-down units. Usually these services are provided either at cell fronts or via in-house television channels. Typically, prisoners remain in lock-down for 23 hours a day coming out only for periods of exercise which often take place in individual dog runs, or for showers, telephone calls, visits or medical consultations. Staff typically do not enter the living units except to extract prisoners or to collect and escort them to somewhere else. Rules dictate how many staff are required to control prisoners in different situations. When out of cells, prisoners wear jump suits and are routinely handcuffed, leg-ironed, belly chained and, sometimes, spit-masked and accompanied by at least two, and often more, officers (see *Madrid v. Gomez*, 1995; Humans Rights Watch, 1997; Kurki and Morris, 2001; Rhodes, 2004 for accounts of supermax regimes in California, Indiana, Illinois and Washington respectively).

The supermax population consists of people 'loosely defined as the "worst of the worst" . . . who are said to be so dangerously predatory, or so disruptive, that they are impossible to manage in "normal" maximum security prisons' (King, 1999: 163–4). Although, unsurprisingly, escape-prone prisoners are classified accordingly and sent to maximum security prisons, it should be noted that American supermax facilities have been developed as a response to perceived control problems rather than to prevent escapes, which to a considerable degree are factored out of the equation by the presence of armed perimeter guards and operational policies which permit the use of lethal force.³ In 1999 there were well over 20,000 prisoners in supermax confinement in the United States, nearly 2 per cent of all prisoners serving a year or longer (King, 1999). Today the proportion is almost certainly higher.

Entry and exit criteria vary from state to state, are often unclear, and are sometimes honoured in the breach as much as the observance (King, 1999, 2005). Administrators and politicians frequently resort to simplified mantras, such as 'bad behaviour gets you in, good behaviour gets you out', without considering the degree of discretionary power vested in staff who make the decisions or the meaning of 'good behaviour' in such a restricted regime. Even where specific entry criteria are laid down, there is usually a catch-all criterion which can be invoked in widely differing circumstances. Few states exercise rigorous central control over the allocation process. In some, entry may be automatic for even the lowest level of assault on staff. In some states the duration of stay is fixed but in others it is indeterminate and dependent upon prisoners progressing through a stage system and remaining clear of negative reports. Typically there is no appeal against these administrative decisions.

Human rights are difficult to protect in American supermax prisons. The Eighth Amendment, which bars the infliction of cruel and unusual punishment, affords a lower level of protection than the International Covenant on Civil and Political Rights (ICCPR) or the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Human Rights Watch, 1997). Thus, despite the fact that the United States is party to both these instruments, and the Federal District Court found that the regime at Pelican Bay in Northern California was at the outer limits of what normal human beings could endure, the Judge nevertheless ruled that it did not breach Eighth Amendment rights precisely because *some people could* endure it. Only for those who were already mentally ill or at risk of becoming so was the regime deemed constitutionally unfit (*Madrid v. Gomez*, 1995). It might be thought that the *Madrid* court has set the threshold for constitutional protections rather high.

The Netherlands

The physical construction of the supermax prison at Vught is aimed at deterring prisoners from taking hostages in furtherance of escape attempts by minimizing contact between prisoners and staff through the erection of armoured glass walls. Moreover, further armoured glass walls separate prisoners in the main living area from those in the recreation area, and a fenced-in yard has helicopter wires to prevent escapes. These glass walls promote effective supervision from outside the living unit but create additional barriers through which staff need to pass in the event of an incident. In this sense, the Dutch model closely follows the American pattern and crucially departs from past Dutch practice and the approach in Britain where no such barriers exist. The supermax is a real prison within a prison with its own secure entrance. Once inside, staff, prisoners and visitors proceed via secure concrete corridors and sally ports to their destinations. The individual cells are 50 per cent larger than regular cells (Boin, 2001) and contain a toilet, sink and shower and there is also a kitchen area for prisoner use. Although the risk of staff being taken hostage has been reduced by the separation of staff from prisoners, all doors will lock automatically and cannot be opened from the inside during a hostage situation.

The supermax regime at Vught is more restricted than in a regular prison but more extended than in a Dutch remand prison or an American supermax. Staff assigned to the unit comprise prison officers, social workers, sports instructors, a psychologist, a religious adviser, a librarian and a psychiatrist (Verhagen, 1994). The weekly programme is quite liberal compared to its American counterparts and may include a one hour visit behind glass; two phone calls; a 12.5 hours programme of activity; and 75 minutes of daily outside recreation (Boin, 2001). Prisoners are not handcuffed unless they are considered very dangerous (Ministry of Justice, 1999: 11–12). Operational policies impose limits both on the numbers of prisoners who may be out of cells at any one time and the numbers of staff required to supervise them. The normal size of a group of prisoners during recreation, for example, is four (Ministry of Justice, 1999) and prison officers are never in a room where there is more than one prisoner present. In situations where contact is necessary the prisoner is always outnumbered by prison officers in a ratio of at least 2:1 (Molenkamp, 2001). Prisoners in the supermax are not required to work but they are subject to frequent cell and body searches.

The Dutch supermax population consists of prisoners who are escape-prone and/or whose escape would pose a danger to society. In this regard they might seem to resemble the population in British SSUs rather than American supermax facilities whose primary function is to control violent and difficult to manage prisoners – except that the *modus operandi* of the Dutch escape attempts of the late 1980s and mid-1990s involved the taking of staff hostages. In total there are 35 supermax cells: 24 in the new facility and a further 11 in the ‘temporary’ supermax. As of 2006, suspected and convicted terrorists who may radicalize or recruit other prisoners for the Jihad are incarcerated in a special terrorist wing in the supermax (van Dongen, 2006a, 2006b).

Entry and exit criteria are stricter and more carefully monitored than is the case for most American supermax prisons. A special committee decides whether a prisoner poses such an escape and/or societal threat that he needs to be incarcerated in the supermax. Once the prisoner is allocated, the decision is reviewed every six months. When the threat has subsided, the prisoner will return to a normal (closed) prison. In order to avoid a prisoner returning to society directly from the supermax, the last one-and-a-half years of their sentence is spent in a mainstream prison. Prisoners can object to a decision to place them in a supermax by applying to an independent commission (Ministry of Justice, 1999).⁴

Human rights have been difficult to uphold in Vught. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Vught shortly after it opened and considered the regime inhumane (CPT, 1998) on the grounds of its impoverished regime, lack of time out of cells and its humiliating strip searching (Boin, 2001). The European Court of Human Rights ruled that ‘the combination of routine strip-searching [and] other stringent security measures . . . amounted to inhuman or degrading treatment in violation of Article 3 of the Convention’ (cited in court ruling AH9275, Rechtbank’s-Gravenhage, KG 03/624). Following this ruling in 2003, search rules in the supermax were modified and although prisoners demanded further relaxation this was largely unsuccessful (court ruling AH9275, Rechtbank’s-Gravenhage, KG 03/624). In a subsequent report, the CPT pointed out that a combination of armoured glass barriers and operational policies which prohibited staff entering into direct contact with more than one prisoner at a time meant that staff were unable to intervene to prevent the killing of a prisoner in the exercise yard in September 1999 (CPT, 2002b: para. 35).⁵

England and Wales

There is little point in discussing Learmont’s ill fated proposals for building two supermax prisons since neither they, nor the compromise hybrid which was reluctantly contemplated by the feasibility working party, came to fruition. But it is worth discussing here the solution to the problem of control as developed in England and Wales, because it was precisely in response to staff fears for their safety that the Americans devised the supermax solution, and which led the Dutch down the supermax route some years later. In England and Wales, the evolving solution to problems of control through the CRC special units to the CSCs had taken a very different path.

The CSCs serve to accommodate much the same kinds of prisoners as those for whom the Americans devised the supermax: prisoners who had killed in custody, taken staff or other prisoners hostage, engaged in roof top demonstrations or orchestrated

riots and disturbances, or who had been unresponsive to any other kind of remedial action. However, unlike most American Departments of Correction, HM Prison Service has always adopted a parsimonious approach to their use, and carefully monitors entry and exit procedures. The CSC Selection Committee meets on a monthly basis to review all prisoners currently in the system – and is happy for proceedings to be observed by the Inspectorate, the Office of the Prisons and Probation Ombudsman, and other bona fide observers including an Advisory Group of academics and non-Prison Service professionals.

They differ from American supermax style facilities in other ways also, but most crucially in that, like the dispersal prisons and the SSUs within them, they have never relied on physical barriers separating prisoners from staff. Instead, they have sought to ensure the safety of both staff and prisoners through the maintenance of high staff to prisoner ratios whenever prisoners were out of their cells. Initially, each of the CSCs offered a different programme and it was intended that prisoners should progress from more restricted to more open regimes – Woodhill offering the most structured and restricted regime. In the early days, some prisoners who resented their transfer to Woodhill and who found themselves in the most restrictive wing, engaged in dirty protests and fearful staff would only open cells when clothed in riot gear. Not surprisingly, this received adverse comment from researchers (Clare and Bottomley, 2001; Liebling, 2001) and from HM Inspectorate of Prisons, which described the prolonged isolation of prisoners in that wing as ‘unacceptable’ (Home Office, 2000: para. 5.2). The Inspectorate made many recommendations designed to provide an integrated model of care and control with better psychiatric oversight and with better and earlier diagnosis of prisoners’ needs. By the time of the CPT visit in February 2001, the committee welcomed the steps which had been taken to remedy the situation and received no complaints from prisoners in the CSC at Woodhill (CPT, 2002a).

Since then the CSC system has evolved through a number of phases, building upon the recommendations of the Inspectorate and introducing a system of individual management plans which includes a regular assessment of risks (King, 2007). The most recent report on CSCs by HM Chief Inspector of Prisons (Home Office, 2006) found much less to criticize and subsequent visits to the UK by the CPT have been more concerned about the treatment of persons detained under anti-terror legislation, who, for the most part, seem not to have been held in either SSUs or CSCs. At any one time there are likely to be fewer than 50 prisoners in the CSCs, although a handful of notorious prisoners are kept in near permanent lockdown, for their own protection or the protection of others, in high control cells within the high security estate.

A MODEL FOR ANALYSING POLICY CHANGE

The Dutch and British governments faced an almost identical crisis when prisoners managed to escape from their highest-security prisons, yet the outcomes were markedly different: the Dutch opted for the supermax solution whereas the British did not. Understanding the policy decisions made at times of crisis in a highly charged atmosphere fed by politicians and the press is not easy. In addition to the vocal views expressed by interest groups of one kind or another, there is a much less visible process of sifting ideas and considering alternatives that goes on behind the scenes. To make sense of this

complex process we utilize a simplified model, borrowed from Hall (1993), which sees policy making as essentially a process of social learning. Hall's model combines the concept developed by Kuhn (1970) on paradigm shifts in scientific discourse with Hecló's (1974) comparative work on social policy making in Britain and Sweden. Hecló observed that '[p]olitics finds its sources not only in power but also in uncertainty – men (*sic*) collectively wondering what to do . . . Governments not only "power" . . . they also "puzzle". Policy-making is a form of collective puzzlement on society's behalf' (cited in Hall, 1993: 275–6).

Hall (1993) suggests that the concept of social learning needs to be disaggregated and that the learning process may take several forms. He suggests that we think of social policy making as a process involving three central variables: 'the overarching goals that guide policy in a particular field, the techniques or policy instruments used to attain those goals, and the precise settings of those instruments' (Hall, 1993: 278). By way of example, he suggests that 'if the goal of a policy is to alleviate the financial problems of the elderly, the chosen instrument might be an old age pension, and its setting would be the level at which benefits were set' (Hall, 1993: 278). Hall's example is, admittedly, oversimplified. Applying the model to the criminal justice field has to take account not only of what level one starts the analysis but also the fact that at any level there may be a multiplicity of goals. Thus, within a criminal justice system which has overarching goals of punishing the guilty, safeguarding the innocent and protecting the public, a prison service might have an overarching goal of 'keeping in custody those committed by the courts' (Home Office, 1991b: 9). In that case the chosen instrument to keep people in custody would be prison and the setting of the instrument would be the classification of prisoners by security risk and their allocation to prisons offering different degrees of security. However, the situation is complicated by the theoretical concepts of paradigm shift and what we would call paradigm change as well as the fact that most institutions have multiple and sometimes conflicting goals. At the level of the criminal justice system a paradigm *shift* might involve the abolition, or drastic reduction, of imprisonment and its replacement by, or a massive expansion of, non-custodial sentences. A paradigm *change* might entail changing priorities whereby one among a multiplicity of goals assumes a significantly more important role than the others, perhaps even displacing them temporarily, but the overall aim of the institution remains broadly the same.

In the remainder of this article our focus will be at the level of the prison system as a sub-system of the criminal justice system which pursues multiple goals. In particular, we try to understand how similar events in different countries shaped and re-prioritized those goals, as well as the norms and values relating to how to achieve them. We seek to examine the evolution of policies in regard to the custody of escape-prone prisoners and dangerous prisoners, who pose problems of control according to whether policy changes might be construed as differences in the level at which the instruments are calibrated, while the instruments and goals remain the same (what Hall refers to as first order change); or changes in the very nature of the instruments themselves while the goals remain the same (second order change); or where changes involve not merely the instruments of policy but the whole hierarchy of goals and objectives behind that policy (third order change) (see Table 1 for an overview). By analogy with Kuhn's analysis of the structure of scientific revolutions, first and second order changes constitute 'normal'

TABLE 1 Policy change according to Hall (1993)

	FIRST ORDER CHANGE	SECOND ORDER CHANGE	THIRD ORDER CHANGE (REFORM)
Kind of policy change	Incremental	Instrumental	Fundamental
What is changed	Incremental adjustments of current policy	<ul style="list-style-type: none"> • Adjustment of policy • New policy instruments 	<ul style="list-style-type: none"> • Setting of policy and instruments • Policy instruments change radically (the new paradigm needs a different kind of instrumentation)
Hierarchy of policy ends	Hierarchy stays the same	Hierarchy will not change radically, only minimally	Hierarchy changes radically

Source: Resodihardjo (2009: 28).

policy making comparable to the doing of 'normal' science in which the basic structure of the paradigm within which the scientific community works is not challenged. Third order change, however, represents a paradigm shift brought about because the old paradigm can no longer contain the deviant cases observed. Specifically, first order change in policy making is equivalent to incrementalism; second order change constitutes strategic action to deal with more extensive problems; while third order change involves a much more radical re-think of the whole problem.

It should be noted that Hall's model is one of the few in the literature which specifically allows for third order changes. Most theories do not take paradigm shifts into account (Bennet and Howlett, 1992). According to Hall (1993: 279), who defines a paradigm as the interpretative framework 'of ideas and standards that specifies not only the goals of policy and the kind of instrument that can be used to attain them, but also the very nature of the problems they are meant to be addressing', it is unlikely that the choice between the existing paradigm of policy and any alternative paradigm will be clear cut. In such circumstances the choice is likely to be made more on sociological than technical grounds; politicians will need to make choices about which expert opinion is the more authoritative; and a period of experiment and policy failure is likely to undermine the existing paradigm before a shift to a new paradigm is possible (Hall, 1993).

Hall's model should not be regarded as definitive but more of an heuristic device to guide and shape analysis. How might it be applied to the two scenarios described in this article? It seems to us that, while the scenarios we describe fall short of a paradigm shift, there were undoubtedly profoundly consequential paradigm changes as the two countries changed their priorities.

Policy change: learning and leeway

First, it is necessary to enter a number of caveats. Hall acknowledged that paradigm shifts can follow an erratic pattern: they can be accompanied by experimentation and

policy failure; they involve a process of interaction between the pressure of external events and the accumulated learning from experience of past events on the part of policy makers and those who administer them; and the context may give greater or lesser leeway, or room to manoeuvre, in reaching decisions. Second, it is worth our pointing out that prisons, probably more than most public institutions, operate with multiple goals and objectives, which at least to some extent need to be pursued at the same time. At the risk of some oversimplification, we identify three sets of goals: keeping prisoners in custody (security); keeping staff and prisoners safe and the prisons in a state of good order (control); and maintaining regimes which respect human rights and pursue some form of preparation for return to the community, through treatment, training or other programmes (rehabilitation). With this in mind, paradigm changes as we use them here represent, usually temporary, but substantial, movements in the balance of priorities between these three objectives.

The two scenarios we have outlined above, as prisoners managed to escape from the highest security settings in their respective countries, appear almost identical. Hall's first order of change – recalibrating the level of the instruments – occurred in both cases. The initial response to the escapes was to tighten the security measures within the existing institutions, while leaving the institutions themselves – SSUs in the Netherlands and SSUs and dispersal prisons in England and Wales – in place. As the crises continued, however, both prison services faced a change in the ordering of their priorities (third order change). Home Secretary Howard and Director General Lewis memorably changed the Prison Service's top three priorities into 'security, security, security' (Lewis, 1997). Even allowing for some element of rhetorical hyperbole, there was no mistaking that the Prison Service was gearing up to a major cultural change that eventually cost Lewis his job. In the Netherlands, the Dutch Prison Service's new White Paper, *Effective Detention* (Ministry of Justice, 1994), emphasized security and retribution over rehabilitation (Boin, 1995; Downes, 1998). Even though both prison services experienced a paradigm change as security became the dominant priority, and both services were offered the prospect of supermax as the instrumental embodiment of that change, one service adopted it and the other did not. It seems to us that the reasons for these different outcomes are to be found in two features of the decision-making process: learning and leeway.

Learning

According to Hall, policy communities, in our case prison service, interest groups, academics and politicians, are the key players in the learning process (Bennet and Howlett, 1992). But these communities had different learning experiences in the two countries and drew different conclusions from them. It is our contention that the key to the different outcomes lies mainly in the different experiences relating to hostage taking.

In the Netherlands, hostage taking was (and is) a rare event which only came to public attention in the late 1980s. At the time that it first emerged as a phenomenon, it was linked to escape attempts and there were no specialist facilities for escape-prone prisoners. The first SSUs were introduced in response to these hostage taking incidents. But the escape-prone prisoners continued to use violence and hostage taking in escapes from the SSUs as did prisoners escaping from lower security prisons. As a result, hostage

taking became inseparably associated with escape attempts. Defining hostage taking as part of the process of escaping led inexorably to the adoption of a supermax philosophy once the newly established SSUs had failed so miserably (Rochefort and Cobb, 1994). One of the key elements of supermax custody, the separation of prisoners from staff and the reduction to a minimum of the occasions when they need to come into contact with each other, was designed to give protection to anxious prison officers who, as the Ministry of Justice (1987: 1) acknowledged, 'felt unsafe while doing their job'. It should be remembered that the rise of supermax prisons in the United States was driven by concerns about staff safety rather than fear of escapes (King, 1999). In the Netherlands the separation of staff and prisoners is reinforced by a closed doors policy introduced in the mid-1990s whereby a hostage situation will result in an automatic lockdown which cannot be ended from within.

In England and Wales there had been a far longer history of crises from which learning could take place. In analysing social policy, especially when making international comparisons, much depends upon the point at which one attempts to break into the process. It could be argued that the Prison Service had become used to periodic changes of priority – or paradigm changes. A case could be made, for example, that first Mountbatten in 1966, then Radzinowicz in 1968, followed by the Control Review Committee in 1984 and the Woolf Report in 1991 had, in their turn, changed the order of priorities between the multiple goals of the Prison Service in response to different kinds of crisis. In that sense, the paradigm changes which followed the Woodcock and Learmont Reports in 1994 and 1995 were only the latest elements in a long process of learning in which the prison system had experienced experiment and policy failure as well as relatively successful incremental change.

What is clear, however, is that hostage taking did not figure in the escape attempts from Whitemoor and Parkhurst or indeed any earlier high profile escapes. On the contrary, hostage taking had already been linked in the British learning experience to difficult and dangerous prisoners rather than escape-prone prisoners and had been dealt with, largely successfully, as a problem of order and control rather than as a problem of security and the prevention of escapes. Hostage takers had found their way first into segregation units, then the CRC units (and eventually into the system of CSCs which replaced them) and not into the SSUs. In addition, rather than introducing an automatic closed doors policy, there had long been a tradition in England and Wales of training staff as negotiators in dealing with hostage situations. When Learmont proposed a supermax solution not merely for escape-prone prisoners but also for control problem prisoners, it seemed a step too far in the English learning experience. The system had coped tolerably well with control problems, including hostage takers, and staff did not feel especially concerned for their safety (as distinct from their jobs) as a result of escapes. In the English learning experience supermax solutions seemed either unnecessary for control problems or merely a way of producing a theoretically more coherent policy for escape risks which linked security categorization more closely to prison allocation.

Leeway

Leeway refers to the amount of room for manoeuvre and the variety of policy options available to decision makers. Partly fortuitously leeway may provide the most convincing explanation for the different outcomes in the two countries.

In the Netherlands, the publication of Hoekstra's recommendation to build a supermax was not only preceded by a string of escapes but was also followed by a series of further escapes. In these circumstances, the pressure on policy makers to do something different was enormous. Although there was some resistance to the idea of supermax prisons, and some in the policy community tried to fit the new situation within the existing paradigm, continuing with the status quo was not an option. Something had to be done to end the crisis. There were no alternative measures or instruments to fall back on. In short, the leeway to act diminished to a single policy option: the introduction of supermax prisons, which complemented the recent trend towards more security and austere regimes and away from rehabilitation (Boin, 1995, 2001; Franke, 1996; Downes, 1998).

In contrast, British policy makers did not face anything like the same pressure when making the decision whether or not to opt for a supermax solution. Though Home Secretary Howard had little leeway on how to respond in general to the crisis – he had to 'act tough' (Resodihardjo, 2004) – there was plenty of room to manoeuvre when it was time to decide on the supermax solution. This freedom to act was a result of the establishment of a working group, the security measures already being installed following Woodcock, the progress in the peace talks, and national elections. DG Tilt had anticipated the Learmont recommendation which would have led to a major change of policy, and in time honoured fashion set up a working group to examine the feasibility of the supermax option. This bought time while nevertheless demonstrating that something was being done to explore this novel possibility. Meanwhile, the Prison Service had to respond to the earlier Woodcock recommendations and work was already underway, fully funded by the Treasury, to upgrade security in existing SSUs and dispersal prisons (Resodihardjo, 2009). Moreover, there was some evidence of progress in the Peace Process, and it was anticipated that many high security risk prisoners would soon be repatriated to Northern Ireland (King and McDermott, 1995; King, 1999). The working group on the feasibility of supermax delivered its report in a period of planning blight prior to a general election. By the time the report was considered by the incoming Labour government, and given that there had been no further escapes, there was a real sense that the problem had simply gone away and no longer needed attention.

CONCLUSION

In this article we have tried to understand why it was that in apparently similar circumstances the Netherlands decided to adopt a supermax solution to its problem of escape-prone prisoners while England and Wales rejected it, both for escape risk and control problem prisoners. We have tried to show the utility of Hall's (1993) model of policy change when analysing how the prison communities of the two countries responded to their situations by choosing different solutions even though both countries appeared to undergo a similar paradigm change. We argued that this might be explained in part by a learning process and found that whereas in the Netherlands the association of hostage taking with escape attempts led inexorably to the adoption of a supermax solution, in England and Wales hostage taking had already been dealt with as a problem of order and control rather than a problem of escapes and security lapses. The final outcome was shaped by the fact that in the Netherlands the leeway available to decision makers was

drastically reduced by the further escapes involving hostages and the paucity of alternatives. In England and Wales, an incremental upgrading of security, and changes in the political situation arising from the peace process in Northern Ireland, reduced the pressure to act, and delays resulting from a general election and a change of government enabled the Prison Service to suggest that the problem had been solved without the need for further action. Learning and leeway seem to us to be important conceptual tools in the explanation of why paradigm changes may take different forms in otherwise similar contexts, and may be useful in understanding change in other kinds of organizations, which like prison systems, operate with multiple goals.

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Notes

- 1 Roy King was the academic adviser to this group and this article draws upon that involvement in the policy making process. Sandra Resodihardjo conducted interviews with some of the key players in the decision-making process in England and Wales when she was a visiting researcher at the International Centre for Prison Studies.
- 2 See the response of the British government to the report of the Committee for the Prevention of Torture (CPT) following its visit in March 2004 (CPT, 2005).
- 3 Members of the working party on the feasibility of supermax who visited the United States found some supermax facilities 'underbuilt' from a British point of view as far as security was concerned.
- 4 TK, 1999–2000, 26800 VI, nr 51.
- 5 Although there have been many worse incidents in poorly run American supermax facilities, an almost identical incident occurred in the otherwise well managed Colorado State Penitentiary and for much the same reasons.

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