Degrees of estrangement:

*The cultural theory of risk and comparative penology*

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**Abstract**

We can accept that risk is a key idea in understanding contemporary penalty—but which constructions of risk are most compelling? Moreover, how does risk-based practice intersect with other structuring principles of penal systems and penal politics? I compare and contrast the views of Feeley and Simon (1992) and of Mary Douglas's 'cultural theory' (Douglas, 1992), and conclude that among the attractions of the latter are its orientation towards comparative empirical inquiry and its understanding of the notion of 'political culture'. I conclude with some reflections on the comparative penological work in a period marked by both globalizing and particularizing trends.

**Key Words**

comparison • culture • new penology • politics • risk

**Introduction**

It can plausibly—perhaps even uncontroversially—be maintained that the claim to address offender-risk holds an important place among the rationales and legitimating principles of contemporary western penal systems.
Moreover, it has been observed internationally and with mounting frequency in recent years that many of the characteristic practices of adjudication and decision making of such systems (principally whether and when to confine, supervise and release persons convicted of crimes) increasingly make express reference to vocabularies of risk assessment and risk reduction.

In principle the question of risk arises wherever individuals or institutions attempt to define and scale negative outcomes (hazards, losses, 'bads') and to attach probabilities to their future occurrence (Adams, 1995: 7–8). For the penal system as such (as distinct from its more various meanings in policing, crime prevention and insurance, for example, let alone in other arenas of social and economic policy) risk refers primarily to the likelihood of reoffending by the already convicted. To the extent that risk guides intervention it dictates an evidence-based practice oriented towards allocating probabilities to cases. Probability is notoriously counter-intuitive, and the outcomes of technical procedures for establishing risk do not always bear an easy relation with 'common sense' or clinical judgement. Rather, a putatively rational assessor of risk working within a given system will seek reliable markers of prospective risk (such that they would always reach the same decision on the same information). Similarly, if they occupy a sufficiently powerful position in the administration to determine its systemic aims this rational actor would seek so to dispose their resources as to minimize 'bads' within a pre-defined range of tolerances arrayed against costs. They would probably conclude that certain very high consequence risks were virtually never tolerable except where their probability dwindled to near zero despite the fact that preventing particular occurrences was very costly. In this respect they would be behaving in a manner somewhat analogous to regulators in the nuclear power, chemical, aerospace or shipping industries. Conversely, they would accept (perhaps reluctantly) that some more mundane risks could only be reduced to a degree compatible with certain determinate limits on expenditure and effort (such as the availability of costly prison space). In either case they would have regard only to the means that they knew with confidence to fall under their control (they would only act where they knew that she could influence the outcome or, more rarely, as a precaution against imponderable hazards of great magnitude). This would focus their attention on certain basic dimensions of their capacities, for example the number of persons entering the system, the duration of their stay under its supervision and the relative costs of different interventions. They would tend to begin from a position of agnosticism as to the best means of achieving reductions in risk—whether accomplished, for example, by incapacitation through incarceration; non-custodial supervision of varying degrees of intensity; deterrence; or corrective interventions of various kinds: any of the above alone or in combination. However, they might also reveal a preference for those means that could best be unitized and monetized, and this might well be expressed (given, they would insist the present state of knowledge) in an emphasis on
custodial and supervisory sanctions over corrective or deterrent measures. Or, to put the point another way, as Zimring and Hawkins do, that in the face of the erosion of other substantive justifications for punishment incapacitation achieves dominance by default (1995: 4).

However, as a moment’s reflection on this partial thought experiment reveals, the extent to which risk-based practices, properly so-called, are indeed among the structuring principles of the organization of these systems would seem to be somewhat variable both as between different facets of penal practice and in different national contexts. Among the issues at stake here, therefore, are on one hand, the degree to which technical procedures for risk assessment (as it were standing alone) do in fact govern practice versus the ways in which the vocabulary of risk continues to share the penal field with other values, commitments, ambitions and constraints. To this extent we might argue that the concept of risk can inform the analysis of contemporary penalty in at least two distinct ways. The first is to discover whether and in what ways penal practices and institutions are indeed being reconfigured by rationalities of risk assessment and management. The second would be to wonder counter-factually why it is that penal systems in fact so often, indeed chronically, depart from an ideally (or better notionally) rational model of risk-based practice. The former approach would dispose us to look in detail at the ways in which penal techniques and innovations claiming attention on grounds of their contribution to risk management arise, gain adherents and sometimes displace existing methods, practices and vocational ideologies, perhaps in ways that exceed national and jurisdictional boundaries. The latter, per contra, would draw attention to some of the intractable sources of variation, conflict and national distinctiveness and cultural particularity in the penal realm. The advantage of such an account would be that it sought a theoretical accommodation between a fully contemporary analysis of changes in the infrastructure of penal technique (some of which take place beyond or beneath the level of overt public debate, media representations or party-political alignments) and the well-documented but arguably under-theorized persistence of overt controversies, contradictions, political manoeuvres and instances of populist opportunism that remain abundant in the field. I am hardly alone in seeking some such reconciliation. Something similar is also clearly envisaged in recent work by David Garland (1996, 1997) and Pat O’Malley (1992, 1997, 1999) among others. What I hope is somewhat distinctive here is:

1. the direct counterpoint between two divergent constructions of ‘risk’;
2. the attention to analogies with debates in other fields of risk analysis and perception; and
3. a more explicit orientation towards comparative penological work.

Thus, I will argue, even if it is true, as some influential social theories broadly contend (e.g. Giddens, 1990, 1991, 1998; Beck, 1992, 1998) that today major political arguments take place on the terrain of risk, it in no
way follows that we can know in advance how those arguments will turn out, still less that they will turn out identically in different national-political settings. In a complex institutional and political domain such as penalty no given dispensation of affairs is entirely novel or free of the weight of its historical antecedents (Garland, 1990) and the influences which shape it are rarely univocal or coeval in their origins. We can, for this reason, no more deduce the contemporary condition of the penal realm from a totalizing idea such as ‘the risk society’ than we formerly could from an undifferentiated notion of ‘capitalism’, though both can be seen as crucial to its analysis. Neither ‘risk society’ nor ‘capitalism’ anywhere exists in its pure, unalloyed, essential form; rather both are theoretical constructs that claim to illuminate some important properties of social reality. It follows that attempts at deductive analysis will tend to resort to undefended teleologies (as if all systems that claimed risk regulation among their objectives were in process of convergence towards a common form) and to mistake for merely transitional states of affairs what are in fact more deeply embedded conflicts. Regimes of risk regulation in many spheres of contemporary social life (nuclear safety, genetic engineering, transport policy and so on) are beset by controversy, and this is also sometimes acutely the case in penal affairs. The language of risk is in this respect not merely the diction of administration (and hence of domination and control) but is also the idiom of critique, dissidence and counter-accusation. To suggest that some constructions of risk in the penal realm have been unduly singular and one-dimensional is also to say that they have neglected what is most interesting about it, namely that like the languages of rights, justice and legitimacy, with which it so closely intersects, it is a site of struggles for influence, credibility and recognition.

To pose the questions underlying this article in this way is to propose an approach to punishment that is intrinsically comparative and critical and which is therefore also political in a fuller sense than is often undertaken. To argue thus is to attempt to recover and explore those traditions of interpretation that recognize in penal practices a clue to social relations. To apply this sensibility to the particular dispensations of punishment that prevail now is to contribute to our understanding of our own time in some of its most troubling but perhaps most characteristic aspects. In this article I therefore want to explore a little bit further the question of how the penal realm intersects with the cultural and the political, and of what we mean by each of those terms when we use them together (‘penal culture’, ‘penal politics’). This is a topic on which we might rightly sense the need of some theoretical guidance, perhaps from points well outside criminology as a disciplinary space. Let us begin with ‘cultural theory’.

By ‘cultural theory’ here I do not mean ‘all about culture’. I mean specifically the views of Mary Douglas and her various associates (e.g. Schwarz and Thompson, 1990; Rayner, 1992) that go under that name, as she has developed them in various places such as Risk Acceptability (1986), How Institutions Think (1987) and especially Risk and Blame (1992).
Cultural theory can be seen for our purposes as an account of how particular communities think about risk (danger, dread, insecurity) and the kinds of controversies and disputes that arise within and between them about risk-laden topics such as nuclear safety, genetic engineering and crime and punishment. Douglas developed her account of cultural theory in opposition to those accounts of such risky topics which saw them as being *decidable* by the perfection of technical knowledge. Rather, she points to the persistence of moral and political controversy on ostensibly ‘technical’ matters. Cultural theory (hereafter CT) analyses such disputes in terms of the ‘*thought styles*’ (the implied classificatory schemata and world-views) of their participants. CT sometimes also refers to these styles (perhaps confusingly) as ‘political cultures’. It is not my aim here to give a complete exposition of CT, nor to defend all its claims. But I do want to suggest that there are some aspects of Douglas’s views, and the views of those influenced by her, that are potentially very fruitful for the comparative analysis of penalty and penal politics—especially where what is involved includes controversies and disputes between elites (e.g. between judges and politicians) or between ‘expert’ and ‘lay’ opinion.

In other words, Douglas suggests, one aim of cultural analysis is the *classification of classificatory styles* (and here she expressly compares her intellectual project with those of Foucault, 1977 and Hacking, 1991). As such it is inherently a critical and comparative enterprise—a ‘challenge to the sovereignty of our own institutionalized thought style’ and a ‘small, provisional ladder of escape from the circle of self-reference’ (1987: 108–9). This is not to assume the position of Quine’s ‘cosmic exile’ (1969) but it is to hope that we can subject our own and others’ thought styles to quite rigorous analysis. It is a question of how we denaturalize the self-evidence of our own moral and political responses without supposing that we thereby escape the necessity of moral and political judgement. Cultural theory, therefore, does not (unlike some other theories of risk) imagine putting an end to dispute, but neither does it see us as necessarily entrapped in a ‘prison-house’ of language in a way that makes any kind of rational adjudication or comparative analysis impossible. How far does this contribute to a prospectus for comparative penology?

**Varieties of comparative penology**

Let us begin from the question of what comparative analysis in the penal realm is and is for in the contemporary scene. Then we can glance at some currently influential positions, perhaps with a sharper awareness of some of their problems. To this end I compare the notion of risk mobilized by the body of work known as ‘the new penology’ (Feeley and Simon, 1992) with the one mooted in cultural theory. Finally, we may be able to sketch an approach, drawing selectively on Douglas’s views among others, that is both theoretically cosmopolitan and context-sensitive.
Comparative analysis of penal systems has of course a long history. It dates back at least to John Howard (1777), although Beaumont and de Tocqueville (1833) might make a more fitting starting point because of their more developed interest in cultural and political comparison—the latter expressly read punishment as an ironic symptom of social organization, whereas Howard mostly engages in the exhaustive listing of prison conditions. Indeed it might not be too fanciful to argue that these two texts (The State of the Prisons and The Penitentiary in America) initiate tendencies whose traces we can still discern now. Howard is empirical, documentary, oriented towards administration and improvement, confidently applying the same methods of enquiry to prison conditions wherever he finds them; Beaumont and de Tocqueville are strangers abroad, struck by the oddness and disparity of penal arrangements. Perhaps one could argue that the tension—or hiatus even—between a focus on system and a focus on culture is present from the outset.

If on the other hand one wants a more modern lineage one might begin with the almost simultaneous publication on the eve of the Second World War of Rusche and Kirchheimer’s Punishment and Social Structure (1939) and Herman Mannheim’s The Dilemma of Penal Reform (1939) (a coincidence remarkably neglected by historians of the discipline, largely owing to the extraordinary inattention paid to the latter by comparison with the former). Perhaps it is not too fanciful to see this pair of texts as similarly embodying the tension between system and culture in penal analysis? Coming closer to our own time and concerns it makes, arguably, at least as much sense to read Discipline and Punish as an exercise in comparative penology in the context of the emergence of European modernity as it does to read it in some of the other ways in which it gets read (i.e. we tend to read Foucault in terms of his implied social theory rather than his substantive analysis, somewhat against his own admonitions). This is what Jonathan Simon means when he refers to Foucault’s views in Discipline and Punish as a ‘middle-range’ theory.

At any rate, contemporary discussion of common and variable features of penal practices and penal cultures has long and rather intriguing antecedents. Moreover, the sense that there is a need to discuss the perplexities and troubles of the penal realm in a comparative way is something of which we see plenty of evidence lately. David Downes’s work in Contrasts in Tolerance (1988) is deservedly one of the best known and most fully fledged attempts to connect penal system with penal culture (and in turn penal culture with political culture). Ruggiero et al. (1993) in their introduction to Western European Penal Systems take on directly the question of the persistent differences between European penal cultures while also noting the increasing structural convergences between them. But it is elsewhere too—in Mathiesen (1990), Zimring and Hawkins (1991), Christie (1993) and in the collections by Dunkel and van zyl Smit (1992), King and Maguire (1994) and Matthews and Francis (1996); not to mention the numerous publications, conferences, symposia and gatherings.
of the Council of Europe, the UN and so on. There is, one would think, a little avalanche of penal comparisons. How can I say I still feel the absence of theoretical orientation? Is this not a perverse suggestion? Perhaps not; rather the point is the same one made by Weiss and South (1998: 11) in introducing the most comprehensive and comparatively aware collection of essays that we yet have on this topic (see also Worrall, 2000: 392–97), namely to stress the necessity of grasping ‘the internal features of prison systems and [their relation to] the societies that produce them before attempting external comparisons’.

At this point in the development of comparative penological thinking, therefore, we confront certain challenges that go to the questions of the aims of comparison and the models of explanation and interpretation implied in comparing. Some of these challenges become rather acute when we try to raise our attention from the mass of comparative information that daily accumulates to the level of theory—what resources in current social theory present themselves that may help give some sort of shape or sense to the pile of observations?

One special difficulty currently is the sometimes distracting sway of the American case as a pole of attraction. The sheer scale of incarceration in the United States, and its disparity from that in other countries, cries out for explanation. Yet this same disparity makes it difficult or impossible to calibrate US and European penal practices on the same scales. Can the penology of Europe and the penology of the United States make use of the same conceptual resources? Students of American politics and history are used to the idea of ‘American exceptionalism’. Yet both the volumetric predominance of American criminology and the brute scale of the explanandum make it difficult for us to put it to one side. What kind of theoretical resources do we need in order to translate between European and American contexts, let alone between either of these and the penal circumstances of Asian, African and South American countries?

Thinking comparatively about penalty today raises lots of the same issues and dilemmas that arise in social analysis generally, plus some special ones of its own. The common issues present a familiar list—how do we relate globality and specificity? Do we adopt a ‘gradualist’ or a ‘suddenist’ (Thompson, 1979) conception of institutional and political change? Is it the proper task of ‘theory’ to uncover long-run tendencies in the infrastructure of penal arrangements (Garland, 1995)—a level at which contemporary western societies may look more similar than different to one another? Or is it its role to explain what experience also tells us—that both absolute and relative levels of penal severity vary with time and place; that changes in penal practice are sometimes jagged and sudden; that the centrality of punishment to political debate and electoral competition is episodic and changeable; that the penetration of ideas on, for example, prisoners’ rights and entitlements is uneven and indeed in some degree reversible, as is the credibility of alternative conceptions of penalty (restorative justice, decarceration)? How do we handle the question of the nation-state—both its
powers and limits, incapacities and legitimation problems—when at least some of the most relevant developments and challenges appear to be supranational in scope (yet we still acknowledge that most important penal decisions lie within the competence of sovereign national governments and, moreover, stand quite close to the definitional heart of what a state is)? This is the perplexity with which Garland grapples in a much-cited article (1996) where he argues that in the face of routinely high volumes of garden-variety crime the state encounters limits on its capacity. Responses to this circumstance include various forms of delegation, privatization and pragmatic managerialism that ‘responsibilize’ non-state actors; but the same conditions also provoke a ‘punitive counter-tendency’ in which the state seeks to mobilize the power to punish in order to reassert its traditional claims to sovereign command and authority. The problem is that this seems to me to be an argument about the British state without explicitly saying so.

Risk and penalty

This for me is the heart of the matter, namely that some of the most appealing and even compelling theoretical prospectuses around, especially those that make central reference to notions of risk or ‘risk society’, lack the kind of secure location in time and place that make comparative understanding feasible. They may acknowledge the persistence of local variation and the need for contextual sensitivity but they do not actually generate these theoretically. This is why I think it is instructive to compare and contrast Feeley and Simon’s thesis of ‘the new penology’ (1992) with Douglas’s ‘cultural theory’ of risk as expounded in Risk and Blame (1992).

A new penology?

Feeley and Simon’s argument is in certain respects the penological version of a widespread tendency in current social theory. The problem of risk arises wherever institutions and individuals encounter a need to weigh the possibility of harm or loss against desired outcomes and thus to institute practices which will manage or reduce their risks. For Giddens (1991) the capacity of late modern societies to generate ‘manufactured uncertainty’ is such that the assessment of risk has become the quintessential form of calculative activity in the contemporary world. In similar vein Feeley and Simon contend that risk assessment and actuarial devices for the prediction and management of future conduct are key developmental tendencies of contemporary criminal justice systems.

These changes, though incremental, amount to a shift in the aims and purposes of penalty. Whereas older penologies have at different times accorded primacy variously to proportionate blaming, rehabilitative treat-
ment, deterrence or clinical dangerousness the new penology is less concerned with any of these features of the individual offender. Rather it centres on ‘techniques to identify, classify and manage’ categories sorted for risk (Feeley and Simon, 1992: 452). Thus interventions in the life and career of the offender (whether on grounds of helping or disciplining) lose their centrality: ‘the task is managerial not transformative’ (Feeley and Simon, 1992: 452). It follows that the main rationales for penal action (whether these relate to prison sentences, release from prison or to ‘intermediate’ sanctions short of incarceration) will be incapacitative, precautionary and/or supervisory in nature (Byrne et al., 1992; Christie, 1993; Simon, 1993).

Simon and Feeley have been quick and candid in acknowledging some outstanding questions and problems with their original formulation (e.g. Simon, 1995, 1996; Simon and Feeley, 1995). In particular, they adopt a less antinomian position and accept that many innovations in the penal field are ambiguously coded and often include powerfully recognizable elements of both discipline and retributive severity (see especially Simon’s (1995) account of the nostalgic iconography of the ‘boot camp’).

Similarly, although new forms of penal sanction draw upon current advances in knowledge about prediction and control, they are not for this reason entirely discontinuous with older ones. In this respect the stiffening of sentencing and parole provisions under so-called ‘three strikes’ laws clearly recall earlier versions of ‘habitual offender’ legislation (Simon, 1996). Although Simon rightly continues to insist that the notions of the recidivist individual activated in ‘old’ (Progressive Era) and ‘new’ penologies are not identical, they have in common criminology’s chronically ‘tense proximity to power’ and its inability to escape ‘highly politicized conceptions of crime as a social problem’ (Simon, 1996: 25). Thus, the march of new penological thinking through professional practice does not equate to the capture of public discourse on punishment—these may be as much at variance as ever, perhaps more so. The ‘new penology’, Simon and Feeley conclude, faces a problem of ‘cultural sterility’ (1995: 169). It does not address the relationship of crime and punishment to the ‘more fundamental tasks of government’ (1995: 171), nor to the passions involved in the public’s fears and feelings about crime. It exhibits a ‘blindness . . . to the cultural effects of penalty itself’ (1995: 172). Perhaps, then, the present configuration of penal politics, although particular, is not so unique or unprecedented as Feeley and Simon originally appeared to want to claim (Garland, 1995: 201). As Garland notes the logic of state punishment remains at bottom ‘political . . . rather than penological’ (1995: 18).

But are Simon and Feeley’s recognitions of these difficulties merely extensions or amendments to their views? Or do they signify a more fundamental problem, a problem with the conceptualization of risk as such? It is at this point that we rejoin Douglas’s way of thinking about these questions.
For a cultural theory of risk

I began by asking how the penal intersects with the cultural and the political. I think that Douglas’s cultural theory of risk offers one way into this problem. For example, one question that the ‘new penology’ leaves dangling is: how do the professional (calculative, pragmatic, results-led) and public (rhetorical, performative) ‘faces’ of the penal question intersect, and with what consequences for each?

If analysts of criminal justice and penalty deploy a concept of risk that is unduly self-limiting they will be unable to address the interface between the public–political and backstage–professional worlds. That question requires attention to the ways in which risks are communicated and how they are politicized. In Risk and Blame (1992) Douglas comments wondrously on the ‘innocence’ of those who seem to suggest that risk can be domesticated, kept strictly within the bounds of probability calculations. In Douglas’s view our rationalities of risk management exist to address dread, danger and catastrophe; they do not thereby eliminate them nor drain them of their meaning. Moreover, Douglas argues, risk comes into public focus in ‘forensic moments’—i.e. when the question of accountability arises (is someone to blame?).

In the wider literatures on the social nature of risk (i.e. largely outside the domain of current criminology) there have been numerous attempts to tease out the implications of this sort of position. This is perhaps most evident in studies of industrial accidents and environmental threats. There it is increasingly recognized that technological risks generate not only corresponding forms of expert technical assessment and management but also chronically give rise to public controversies, including passionate feelings of anger, anxiety and recrimination. While there are advocates of ‘hard science’ positions who remain apt to interpret all such public responses as manifestations of irrationality and sources of interference with the dispassionate business of risk assessment others insist that the questions of how awareness of risk enters public consciousness, how it is communicated and deliberated and how decisions on risk acceptability are made are intrinsic and permanent issues for any risk domain (see on this Kaspersen, 1992; Rayner, 1992; and the debates collected in Hood and Jones, 1996).

For Douglas, therefore, how a particular political community addresses questions of risk provides a clue to its organization (its ‘constitution’ as she puts it), its characteristic ‘thought styles’, and the nature of its current conflicts and divisions. One consequence is that moments of intense controversy or recrimination (such as those engendered in debates about criminal sentencing or prison escapes or the release of convicted sex offenders) crystallize societal anxieties and expose lines of division about the competence, trustworthiness and legitimacy of authorities. But this is also why, in Douglas’s view, the vocabulary and associations of risk are always semantically denser, more culturally embedded, more episodic in
their appearance and more open to politicization than attempts by specialists to numericize and rationalize them can admit. Risk does not ‘unload its ancient moral freight’. Instead it has ‘fallen into antique mode’:

Risk, danger and sin are used around the world to legitimate policy or to discredit it, to protect individuals from predatory institutions or to protect institutions from predatory individuals. Indeed, risk provides secular terms for rewriting scripture: not the sins of the fathers, but the risks unleashed by the fathers are visited on the heads of their children, even to the nth generation.

(Douglas, 1992: 26)

If we take cultural theory seriously we should expect risk discourse to be a mixed discourse—moral, emotive and political as well as calculative (see Garland, 1990). And we should expect societal risk controversies to work out in different ways in different times and places. In other words cultural theory provides an agenda for comparative, contextual penological research in ways that some other accounts of risk currently in play do not even where their proponents expressly recognize that such problems exist. Thus when we encounter particular political formations of penalty in particular times and places—‘Prison Works’!, ‘Three Strikes’, the ‘war on drugs’, ‘zero tolerance’, perhaps anxieties about illegal immigration in Italy or Greece—we can see them for the hybrid formations that they are. They are instrumental and rhetorical, archaic sometimes and advanced, culturally embedded and politically tactical, political speech acts and institutional logics.

Implications

In my view this perspective helps us to frame theoretically some of the key issues about comparison, cosmopolitanism and, conversely, local variety and specificity that the social analysis of penalty currently generates. We begin to see (I at least find this helpful) that contemporary states may encounter similar problems, perhaps using similar vocabularies and techniques and yet that the way in which those debates transpire in each case may remain distinct and vulnerable to the particular play of political conflicts, interests and tactics that characterize that national political culture at that time. It is a matter of bringing the tendencies that Bottoms (1995) identifies as ‘managerialism’ and ‘ populist punitiveness’ into a single analytic frame and of opening those topics to comparative analysis (see Melossi, 1994; Nelken, 1994; Pavarini, 1997).

These two problems that we sometimes think of as separate

1. changes in the ‘mode of calculation’ (debates about risk and prediction, cost-benefit political arithmetic, the predominance of incapacitation—the view that there is an intrinsic affinity between these postures and the ideas and practices of ‘neo-liberal’ political strategy); and
2. changes in the ‘mode of representation’ (how and why, in some countries much more than in others, is punishment invoked in response to allegations of social crisis or emergency? Under what conditions does it take a central position in political rhetoric, and what kinds of rhetorics are these? What are the formats and institutions of communication that sustain the prominence of punishment in public consciousness? When are the conditions ripe for the appropriation of the penal question by politicians and demagogues for strategic effect?),

are generally not found separately in empirical reality.

Some of the more characteristic and perplexing developments of recent times (the ‘three-strikes’ and ‘truth in sentencing’ movements in the USA and Michael Howard’s ‘Prison Works!’ initiative in the UK, for example) can perhaps best be understood as hybrids between the calculative and the representational. Their power lies in the mingling that they effect between a certain kind of instrumental rationality and a certain set of punitive emotions. It is this mingling that links the longer-term development of an infrastructure of penal technique and the episodic uses of punishment as a political tactic. In these cases, while risk calculation and expressive politics may be logically in contradiction they are nevertheless folded together in the same rhetorical package. In other words even as certain features of the contemporary penal complex show signs of ‘going global’ and we begin to be able to discern common elements in the plant, management and indeed justificatory rationales for the use of imprisonment we also continue to press up against abiding differences of history, political culture and current circumstances (see Weiss and South, 1998: 12–14).

In this respect at least the social analysis of punishment is subject to the same difficulty as are all the social sciences today in specifying the relations between the globalizing and convergent and the local and contingent dimensions of their subject matter. Which of these strikes us as more significant is in part a matter of how distant and dispassionate or how proximate and engaged a view we take. Seen from afar, from a lofty and rather uninvolved vantage point, taking in wide sweeps of time and distance, it may be the essential similarities between modern societies in their ways of punishing that seem salient to us. Looking from up close, where the noise of current battle reaches our ears, it is more likely to be the assaults, repulses and manoeuvres immediately before us that fascinate and perplex us. The challenges facing the development of a critical and comparative account of contemporary punishment include the attempt (to continue the optical metaphor for a moment) to keep both the foreground of the scene (some local and maybe short-run variations in national penal rhetorics and practices, condensed into the familiar political slogans) and the background (the more deeply embedded but less obvious tendencies of contemporary crime-control systems) adequately in focus in the same shot.
What kind of programme for comparative penological research does a perspective informed by cultural theory disclose? *Inter alia*, I suspect it would have some of the following characteristics:

First, developing Garland’s view in *Punishment and Modern Society* that the penal realm is an arena of conflict in which the ‘swarming circumstances’ that confront and embroil penalty are only ever (and then *provisionally*) resolved by means of ‘struggles, negotiations, actions and decisions’ (1990: 285), it would be acutely conscious of the historicity and embeddedness of penal arrangements in any given national political formation. This would seem to be the avenue of inquiry that David Downes opened in *Contrasts in Tolerance* but which requires to be further explored in current empirical work (for current attempts see, *inter alia*, Dutton and Xu, 1998; Melossi and Lettiere, 1998).

Second, it would accept, with Douglas, that every risk classification (and indeed every act of penal decision making whatever) involves the application of meaningful categories; and is intrinsically underlain by (hence reproducing or in some cases modifying) implicit representations of the offender, their motivations, circumstances, needs and so on. This would stand close in spirit to the concern initiated by Foucault to discover the particular features of the *penal subject* who is constituted by any given historical dispensation of penalty. In Douglas’s terms this is the anthropological moment in penology, wherein disputes about dangerousness, deterrence or desert betray the diverse ‘cosmologies’ of the contending parties.

Third, in so far as even the driest of risk calculations therefore remain meaning-making activities and punishment is still (to propose a somewhat forced marriage between Wittgenstein and Nils Christie) ‘doing things with pain’ comparative penology cannot rest content only with the obvious quantitative data and indicia. For example the prison populations of different countries often present themselves as the hardest and perhaps most compellingly important data sets between which to draw comparisons of penal culture, style, degrees of ‘punitiveness’ and so on. Without in any way detracting form the importance of those comparisons (and leaving to one side the monumental methodological difficulties involved in doing them adequately) there would also seem to be ample scope for developing the more qualitative dimensions of comparative work. In this regard the questions of penal subjection entailed in *researchable questions* of regimes, aims, vocational cultures and ideologies, the proprieties of relationships between prisoners (or probation clients, parolees, young people in trouble) and professional personnel, arguments about the legitimacy or otherwise of the private management of penal institutions, food, clothing, entitlements to vote or otherwise participate in public affairs and so on would all seem to be at least as eloquently indicative of whatever is properly understood by a penal *culture* as the headline question ‘how many prisoners?’ could ever in principle be.

Perhaps such reminders are not strictly necessary, or not to readers of this journal. However, the question of just what it is that comparative
penological research compares does seem to me to stand in need of further theoretical elaboration. Some researchers (such as Melossi, 1994; Nelken, 1994) have indeed embarked upon the difficult questions of inter-cultural translation that are implied here, but that agenda remains empirically unfulfilled and conceptually taxing (but see further Worrall, 2000: 394–5). I have proposed that elements of Douglas’s views, among others, may provide one point of entry into it. Where we initiate a programme of study that considers seriously the location of the penal within the variety of actual or possible political outlooks (in Douglas’s terms ‘political cultures’, ‘cosmologies’) we also embark on the reconception of penological research with normative moral and political reflection.

Conventionally much criminology and penology only gestures at the political. Some decidedly thin and unilluminating conceptions of political ‘distortion’ or ‘interference’ (a skimply drawn idea of ‘populism’, for example) are introduced when explanation fails. These notions are not themselves explanations—rather they are the ‘et cetera clauses’ that fill the unexplained variance between the observer’s idea of what would, counterfactually, be rational and penal politics as they are actually conducted. Yet punishment is ineluctably a political matter. If we are to contest with any hope of success the dominance of certain current conceptions of punishment it is equally necessary to point out the frailties of their evidentiary claims to effectiveness and to spell out through comparative analysis the political rationalities and strategies that generate them—the relations, or lack thereof, between offender, state and community that they imply.

Notes

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1. This rather orthodox definition follows the line adopted by, for example, the Royal Society in its 1983 Study Group Report on Risk Assessment where a sharp distinction is drawn between objectively measurable and ‘perceived’ risk. For proponents of such positions where a divergence arises between measured risk and its perception it is the perception that is generally at fault (unless there has been a mistake in the measurement). Thus while risk perception might fruitfully be studied this would be largely with a view to discovering and correcting its tendencies to err. Much subsequent work on
lay actors’ appraisals of risk sharply disputes this view (see, for example, the essays by Rayner, Kaspersion, Funtowicz and Ravetz, Palmlund and Wynne collected in Krimsky and Golding (eds), 1992). In criminology this dispute is in some degree replicated in debates on the fear of crime (see, for example, Sparks, 1992) although with limited reference to the larger discussions of the social nature of risk. One of my aims in the present article is to bring debate on current penological developments into dialogue with advances in the conceptual treatment of risk in other domains.

2. Simon argues that much contemporary criminal careers research largely eschews explanation in favour of prediction. Simon thus takes as a watershed the publication of Wolfgang et al.’s Delinquency in a Birth Cohort (1972) which urges the efficiency of intervention against the small minority of ‘chronic offenders’, conceived in effect as ‘individual crime rates’ (Simon, 1996: 46). The latter view has, in Simon’s analysis, ‘helped legitimize a massive expansion of segregative strategies, mainly more use of incarceration’ (1996: 46). Simon acknowledges that this outcome has not in the main been consciously sought by criminologists, and certainly not in the blunderbuss form now embodied in many ‘three strikes’ laws. Rather criminology has become a resource plundered by policy entrepreneurs. Greenwood responds by querying the rationality of ‘three strikes’ using different models of cost-benefit accounting (emphasizing in particular the drain on state budgets engendered by policies of mass incarceration) (Greenwood et al., 1996).

References


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