

The Fragmentation of Social Theory and its Implications for Penal Policy

An Age of Fragmentation

In *Punishment and Modern Society* David Garland¹ argues for a “multidimensional interpretative” approach towards the study of punishment. Instead of seeing the punishment of an offender as primarily a moral, technical or oppressive instrument, Garland makes a convincing case for treating punishment as a social institution, much like familiar ones such as the family, the law, religion and government. As such, punishment represents one of “society’s means of dealing with certain needs relationships, conflicts and problems which repeatedly recur”.² But in trying to explain how punishment has evolved to its present form, Garland refuses to produce a general theory, dismissing global theories and rigid models as “a legacy of the nineteenth-century scientism which viewed society as a closed, mechanical system, and left little room for agency, contingency, and accident in the historical process”.³ Rather, his aim is to work through a number of theoretical traditions so as “to bring to light as many facets of punishment as possible, and also to bring the different interpretations into conversation with one another”.⁴ By refusing to limit his analysis to a “single vocabulary”, Garland is joining an increasing number of “postmodern” scholars who have moved away from totalising narratives and reductionist frameworks — a move which contributes to the already fragmented field of criminology.⁵ Fragmentation, uncertainty and contradiction, however, seem to characterise both the state of social theory and the condition of social and political life in our times.⁶ Many find this state of fragmentation confusing, worrying, or even dangerous. This paper is an attempt to come to terms with the consequences of theoretical fragmentation implicit in Garland’s work and to argue for an approach to the subject of punishment which begins to accommodate the equally important but perhaps irreconcilable concerns for *useful descriptions* as well as *liberating politics*.

Arguments for Analytical Pluralism

Garland sets out to investigate the broad questions of “how penal processes come to exist in their present form and with what kinds of consequences” using a distinctively sociological and historical perspective.⁷ It is evident from the beginning, however, that this is not simply an exercise in drawing from a pre-existing, coherent body of theory and re-

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1 Garland, D, *Punishment and Modern Society* (1990).

2 Id at 282.

3 Id at 284.

4 Id at 15.

5 Ericson, R and Carriere, K, “The Fragmentation of Criminology” (1993) in Nelken, D (ed), *The Futures of Criminology*.

6 Williams, F “Somewhere over the rainbow: universality and diversity in social policy” (1992) in Manning, N and Page, R (eds), *Social Policy Review No. 4*.

7 Garland, above n1 at 3.

search which seeks to explain and describe punishment and its historical manifestations. Instead, Garland works with clashing perspectives and contradictory paradigms — the book is itself a “reinvention” of the sociology of punishment, having set up its own interpretations of the various perspectives and initiated “conversations” among these interpretations. The main theoretical approaches discussed in *Punishment and Modern Society* include the Durkheimian tradition, Marxist studies, the work of Michel Foucault, as well as the extension of the work of Max Weber and that of Norbert Elias. For those of us who have been in the habit over the years of “privileging” particular social theoretical approaches over others, Garland’s treatment of these diverse traditions is both informative and refreshing. Not only does he present a clear exposition of what each perspective has to offer in terms of the “foundations, functions, and effects of punishment”, he is both incisive in his critique and creative in his application of each perspective to contemporary punishment.

The exercise of viewing punishment through a variety of lenses may be confusing and rather disconcerting: no longer can we hang on to our “comfort zones” of familiar arguments and theoretical structures. The ground on which we have got used to standing seems to be constantly disappearing from under our feet. However, to extend the lenses metaphor further, it is impossible to ignore or dismiss what one has seen through a microscope or a telescope, even though it may be difficult to reconcile it with what one sees with the naked eye. But, of course, that’s where the metaphor fails — in the institution of punishment, as in other social institutions, there is no “essential truth” out there for us to discover, if only we had better instruments for discovering them. This is not to deny that there is a world “out there”, but truth, as Rorty⁸ argues, is made rather than found; it does not exist independently of our descriptions of the world. If we treat theory as a set of tools — as Garland does — which are useful for guiding and analysing empirical inquiries, then it is not difficult to agree with the author that “[t]here is no settled hierarchy of purposes or causal priorities which prevails at every point allowing us to describe, once and for all, the sequence of forces and considerations which ‘determine’ the specific forms which penalty displays”.⁹ No matter how justified and convinced we may feel about making statements such as “punishment is *essentially* about ...”, we might do well to pause and consider the instances in which particular forms of punishment do not fit the mould. Broad historical patterns which are associated with changing forms of punishment — for example secularisation, rationalisation, civilisation, and so on — are themselves theoretical constructs and analytical tools used by researchers to make sense of events and actions. As theoretical explanations, they are “likely to be so unspecific as to be banal”, so Garland concludes that “it is only in combination with specific histories, empirical studies, and concrete analyses that any theoretical ‘model’ can be of much use in this field”.¹⁰

Implications for Penal Policy

What, then, are the implications of theoretical pluralism for penal policy? I would suggest that the implications are very different for the *analysis* of penal policy, as compared with the *practice* and *politics* of penal policy. At the analytical level, Garland’s characterisation of punishment as a social policy rather than a technical task opens up a range of useful

8 Rorty, R *Contingency, Irony and Solidarity* (1989) at 3.

9 Above n1 at 285.

10 Ibid.

perspectives for understanding penal policy. For example, my own work on penal reform in New South Wales¹¹ supports the pluralistic framework which sees penal policy as reflecting the political economy, moral order, cultural traditions and organisational imperatives of the society in which it becomes institutionalised. It also agrees with Garland's conceptualisation of the modern penal process as being largely compartmentalised. Penal policy is the product of social and political choices made by state and civil institutions under specific historical conditions. Decision-makers are not usually armed with detailed knowledge of the consequences of such choices, and are almost never in total control of how these choices are translated into practice. Public debates about punishment are centred around its ideology and technology: the morality of different forms of punishment, the justifications for state-imposed sanctions, the effectiveness of penal practices, and so on. Yet there is never a direct relation between public sentiments and penal policy. Legislators and policy-makers respond to a variety of pressures and constraints, public sentiments being only one of them. The penal bureaucracy, when scrutinised at close range, is less of a perfectly running apparatus of power and control, but more of a "loosely coupled"¹² collection of intentions, beliefs, ideas, blueprints, tools, procedures, planners, practitioners, etc, all working at different levels and not always towards the same general direction. Penal policy has a repetitive history of rationalisation and "repair" which has its roots in the fragmentation of interests, ideologies, sensibilities and power inherent in the institution of punishment. Garland has met the challenge of capturing this messy picture by presenting the various ways in which punishment can be conceptualised.

At the level of prescribing penal practices and political action, however, I am less certain about the direct applicability of Garland's analysis. Garland is himself ambivalent about this point. On the one hand, he has argued that a universal framework to explain punishment and penal policy — using a single narrative — is "distinctly unhelpful" in *analytical* terms, since it tends to "skate over" the significance of other descriptions. On the other hand, he also admits that at a *rhetorical* level, totalising arguments such as "power" and "control" can be powerful as "the basis for some formidable polemics against the institutions concerned".¹³ In his concluding chapter Garland insists that theorising is a form of practical action: "When theory does succeed as a form of action, it does so first of all by changing how people perceive things and the attitudes they adopt towards them".¹⁴ Yet in the same chapter he tacitly implies that the analytical enterprise is different from the reforming one:

It will always be open to critics of the prison to point to its failures of crime control and use these as an argument for reform. But it seems altogether inappropriate for a sociologist or a historian to take these same arguments and draw from them the conclusion that the prison is a penological failure which owes its existence to some covert political strategy or else to the dead hand of history.¹⁵

While he tries to demonstrate that a "more thoroughgoing, informed, and incisive"¹⁶ critique of prison can emerge from better theorising, his characterisation of punishment as a

11 Chan, J, *Doing Less Time: Penal Reform in Crisis* (1992).

12 Weick, K, "Educational Organizations as Loosely Coupled Systems" (1976) *Admin Sci Q* 1–19.

13 Above n1 at 286.

14 Id at 278.

15 Id at 289.

16 Id at 290.

“necessary evil”, marked by “moral contradictions and unwanted irony”,¹⁷ does not seem to offer much linkage between theoretical critique and policy choice.

Theory in Practice

Does analytical pluralism, then, provide any useful guidance for the practice and politics of punishment? There are at least three different ways to answer this question. The first answer is it does not, and therefore it ought to be rejected both as an analytical tool and as a guide for policy. Theoretical pluralism is often identified with postmodernist or post-structuralist tendency to “avoid forms of political oppression that are legitimized by resorts to reason”.¹⁸ A common criticism of postmodernism is that by denying terms like freedom and justice any emancipatory meaning, it provides “no space left to struggle over, to struggle from, or even to struggle towards”, turning political struggles into eclectic and opportunistic exercises towards “complexification”.¹⁹ Kerruish,²⁰ for example, has taken issue with the scepticism towards general theory among critical theorists and argued that a general theory of law is a “necessary guide to emancipatory and transformative politics of law”. Far from escaping from dogmatism and closures, arguments against totalisation merely engage in a different form of dogmatism. Poster²¹ makes a similar point that “[a]n aspect of totalization necessarily emerges in every effort to counter the prevailing ideology and appears to be necessary to the process of thought itself”. Deconstructionist strategy, for example, “becomes itself a totalization, excluding all other positions in spite of itself”.²² The rejection of theoretical pluralism, however, carries a heavy price: not only will we be back to the endless search for the most appropriate grand theory, we may again have to traverse the tortuous path of fighting dogmatism and resisting closures.

Alternatively, we could try to reconcile theoretical pluralism with practical action. One consequence of the rejection of universal ideologies and the acknowledgment of analytical diversity has been the “fragmentation of traditional class politics and the emergence of a ‘politics of identity’ based on ... ethnicity, gender, and/or sexuality”.²³ In the field of penal policy, an appreciation of theoretical pluralism can lead to a more strategic and less dogmatic style of penal politics. For example, the move towards the privatisation of prisons in New South Wales was not automatically rejected by the Left.²⁴ The emphasis is on the politics of localised and specific struggles which need not lose sight of the underlying desire for justice.²⁵ The point, as Taylor-Gooby²⁶ suggests in the context of social policy, is “that what will be acceptable as justice cannot be laid down in advance by the theoretician

17 Id at 292.

18 Poster, M, *Critical Theory and Poststructuralism: In Search of a Context* (1989) at 16.

19 Boehringer, K, “Radical criminology and media regulation” in Zdenkowski, G, et al (eds), *The Criminal Injustice System* (vol 2, 1987) at 235–253.

20 Kerruish, V, “Epistemology and General Legal Theory” (1987) in Wickham, G (ed), *Social Theory and Legal Politics*.

21 Above n19 at 107.

22 Ibid.

23 Above n7 at 205.

24 Brown, D, “The Prison Sell” (1992) *Aust Left R* 141 at 32–34; see also Chan, J, “The Privatisation of Punishment: A Review of the Key Issues” (1992) *Aust J Soc Iss* 27(4) at 223–247.

25 Brown, D, “Politics of reform” (1987) in Zdenkowski above n19 at 254–281.

26 Taylor-Gooby, P, “Postmodernism and Social Policy: A Great Leap Backwards?” paper presented at the Social Policy Research Centre, UNSW, July 1993.

or the government agency existing independently from the various groups involved in the issue". This may lead to what Cohen calls "moral pragmatism" in making policy choices — an antidote to "mindless progressivism (everything gets better)" and "analytic despair (everything gets worse)".²⁷ The usefulness of theoretical pluralism is that it rejects nihilistic conclusions such as "if nothing works because nothing can work, then perhaps nothing should be done at all".²⁸ But being aware of the contingency of theoretical claims and the limitations of descriptions is not the same as being analytically impotent. Theoretical pluralism can in fact open up rather than impose closures on policy debates, political actions as well as theory development simply by recognising these contingencies and limitations. However, the problem of strategic struggles and moral pragmatism is, as Garland has pointed out, they lack the rhetorical force and popular appeal of totalising narratives. Apart from the dangers of fragmentation, confusion and contradiction, theoretical pluralism may lead to political strategies which rely too heavily on a "correct" reading of specific situations.

Finally, we may simply acknowledge the separateness between theorising as an intellectual enterprise and politics as an act of identification with humanity. Rorty,²⁹ for example, has argued that we should "treat the demands of self-creation and of human solidarity as equally valid, yet forever incommensurable", and stop trying to unify the two enterprises in a single theory. His portrait of a "liberal ironist" combines the virtue of one who faces up to the "contingency of her own most central beliefs" (the ironist), and one who thinks that "cruelty is the worst thing we do" (the liberal). For Rorty, solidarity is not an essence of humanity to be discovered by reflection, but *created* by increasing our capacity to recognise that what we share with other people — the ability to feel pain and humiliation — is far more important than traditional differences such as race, gender and culture.³⁰ To extend Rorty's argument to penal politics, human solidarity is created by increasing our sensitivity to the pain and humiliation of other people — those who suffer as a result of criminal offences as well as those who suffer under the regime of punishment. This is a task Rorty reserves not for theory but for "genres such as ethnography, the journalist's report, the comic book, the docudrama, and, especially, the novel", some of which "have, gradually but steadily, replaced the sermon and the treatise as the principal vehicle of moral change and progress".³¹ The act of theorising and revising one's descriptions is, according to Rorty, ultimately one of self-creation. Rorty's compromise is to privatise the attempts at self-creation "in order to prevent yourself from slipping into a political attitude which will lead you to think that there is some social goal more important than avoiding cruelty".³² The strength of Rorty's argument is that we are constantly reminded of the fact that theories are intellectual constructs which should never be taken as final blueprints for social action, and certainly not as a way of silencing other voices. Rorty's position is, however, disappointing for those who want their theories to influence policy and politics.

27 Cohen, S, *Visions of Social Control* (1985) at 252–253.

28 Id at 242.

29 Above n9 at xv.

30 Id at 192.

31 Id at xvi.

32 Id at 65.

Regardless of how we individually and collectively resolve the problems of relating theory to practice, Garland's important work has opened up new channels for debate and further research. It may be that the fragmentation of criminology, as Ericson and Carriere³³ suggest, is something for celebration rather than a source of worry or a motivation for returning to reductionism and essentialism to bring back "order" to the field.

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