Theorizing punishment’s boundaries: An introduction

Over the past few decades, a body of work known as ‘punishment and society’ has emerged at the juncture of the interdisciplinary fields of criminology and law and society. This line of scholarship has theoretical roots that date back to Marx, Weber, and Durkheim, but it was Foucault’s (1977) _Discipline and Punish_ that stimulated theoretically attuned studies of punishment. In 1990, David Garland’s _Punishment and Modern Society_ provided punishment scholars with a blueprint for theorizing contemporary punishment, by integrating classical and contemporary thinking about the role of penality in our social world.

Despite its inter-disciplinary commitment and ‘place’ in the scholarly world, the sub-field of punishment and society has been somewhat constricted by its own success. Specifically, it is predominated by macro-level sociological approaches to theorization. Such works have come to define the level of analysis in much of the theoretical scholarship; they have also mapped out the definitional boundaries of the category of ‘punishment’. These contributions have been immensely valuable in revealing the complexities of contemporary penality and its social purposes, but they tend to neglect a number of questions about what constitutes punishment in diverse settings, and are limited in their ability to explain on-the-ground punitive practices, particularly in contexts that challenge traditional understandings of the penal realm.

Our goal with this special issue is to expand and invigorate the theory and substance of ‘punishment and society’ scholarship. The articles in this volume explicitly question the taken-for-granted boundaries of punishment, and provide ideographic accounts of penal practices that challenge how objects, subjects, and levels of analysis are defined in most sociological work on contemporary penalty. Together, they begin to remake substantive, theoretical, and disciplinary boundaries by directly confronting a number of questions: How have states expanded punitive power through ostensibly non-punitive means, and how do these innovations complicate theorizations about contemporary punishment? Where and how does state punishment overlap with the logics and practices of contemporary immigration control, and do these phenomena differ by locale? Is state punishment really distinct from the processes that precede it—law enforcement, adjudication, and sentencing—and how can punishment theory and empirical scholarship benefit from more fully engaging in these predecessor stages? How can non-sociological analyses be more fully integrated into the theoretical work on punishment? What do all of these things
mean for clarifying why the poor and ethnic minorities are persistently (and globally) over-targeted for punitive intervention, and how is punishment gendered in unexpected ways?

This issue interrogates penal boundaries substantively (what counts as punishment and what are the boundaries of the field?); disciplinarily (how can we integrate other disciplinary contributions with the more dominant sociological approaches?); and methodologically and theoretically (does the tendency toward macro-level analyses and explanations, with less attention to localized on-the-ground processes, constrain inquiries into penal phenomena?). The articles provide grounded accounts of the social and cultural, institutional/organizational, political, and economic mechanisms and processes of punishment that move beyond analyses of causes and effects.

The first three articles in this issue deal directly with the problem of confinement and the confined subject. Mary Bosworth’s account of the punitive aspects of immigration detention in the UK is at once local and global in scope. She draws on her ethnographic research in British detention centers to examine how this formally non-punitive legal institution metes out punishment, how its operation addresses the issue of globalization and globalized inequalities, and how those who experience detention manage their identity in relation to citizenship. Rod Earle and Coretta Phillips’ article takes us inside a domestic men’s prison in England, and explores how globalization shapes the lived penal experience. Although the men confined in this setting have all been convicted of domestic crimes, they come from vastly different cultural backgrounds, and bring to the prison a diverse array of norms, expectations, and needs that are negotiated in everyday life ‘inside’, particularly around the preparation of food. Sora Han’s piece uses the case of the US ‘supermax’ and its function in the global ‘war on terror’. She uses it as a jumping-off point to critique the prevailing theoretical logic that such forms and uses of punishment are exceptional. Specifically, she turns to cultural artifacts: the language of First Amendment case law, film, texts and images to reveal how ordinary and accepted logics are actually embedded within the seemingly extraordinary and extreme penal innovations that have emerged in the USA and elsewhere.

The second set of three essays asks readers to consider where punishment resides, and how it is exercised beyond formal legal structures and punitive institutions such as the prison. They call for new definitions of ‘punishment’ that are less dependent on law-on-the-books. Katherine Beckett and Naomi Murakawa’s article examines the increasing reliance on ostensibly non-punitive ‘civil’ law mechanisms as sanctions in the US context, which consequently eliminate the legal protections afforded defendants and even convicted offenders in criminal cases. The authors argue that ignoring these developments results in incomplete accounts of ‘carceral state power’ and therefore make it difficult to estimate how such developments reproduce and exacerbate social inequalities (within and outside of formal criminal justice systems). Kelly Hannah-Moffat and Paula Maururutto use their findings from field work in Canadian specialized courts to present a theoretical account of punishment before sanctioning (in this case, while specialized court defendants are on bail), and to challenge prevailing theories that dichotomize and contrast ‘punishment’ and ‘welfare’. Their work reveals how boundaries within criminal law are blurred, as well as how this process has helped expand the carceral net and produce new architectures of risk/need management. Mona Lynch’s article uses the
contemporary US ‘war on drugs’ as a case study to demonstrate how this campaign has expanded and intensified punishment beyond its direct effect of mass incarceration. She suggests that accounts that focus on only the front and back ends of the drug war miss the bulk of the action, including how it has transformed policing, alternative sanctions, and local regulation of drug offenders. She demonstrates that these theoretical accounts of the relationship between the war on drugs, racialization, and punishment understate the magnitude and diversity of racial harms caused by drug regulation and overstate the role of top–down, structural causes of the drug war and its consequences.

The volume concludes with Mariana Valverde’s article, which takes the contributors (and other punishment scholars) to task for neglecting the core issue within the study of punishment: the death of penology beyond its current fixation on ‘the workings of state coercion’ at any scope or scale. She argues that we (and criminologists more broadly) have abandoned the ‘whole field of “human nature” to today’s neo-Calvinism’ (p. 248) which has dangerous real-world consequences (most concretely realized in the proliferation of prisons). She reminds us that the kind of questions about scope and scale raised in this issue do not have single correct answers—that on-the-ground examinations can be richly informed by broad theoretical arguments, and that those macro-theories can also richly benefit from attending to messy, micro-level empirical realities, even ones that complicate the clean, spare lines of the argument. We agree, and hope that this issue will further those exchanges across and between analytic frames.

References

Kelly Hannah-Moffat and Mona Lynch