



Competing Exceptionalisms:

A Commentary on Garland's Characterisation of American Criminal Justice

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In 2020, David Garland's article *Penal controls and social controls: Toward a theory of American penal exceptionalism* proposed a framework to categorise and explain American penal exceptionalism within the sociology of punishment. The following commentary will firstly situate Garland's work in the United States (US), then show its applicability by relating it to Norwegian penal exceptionalism. Finally, an extension of Garland's framework will be proposed: integrating the role of correctional officers (commonly referred to as prison guards) and correctional officer training as a proxy through which exceptionalism can be observed.

American penal exceptionalism is usually framed in an outcome-based way, taking imprisonment rates as a measurement to conclude that the 'rate of imprisonment and size of [the] prison population [...] is markedly above the historical and comparative norm for societies of this type' (ed. Garland 2001, p. 2). However, it is important to note that 'American authorities do not just impose more punishment: they also punish in a distinctive way' (Garland 2020, p. 4). Garland convincingly claims American penalty is exceptional in that it relies overwhelmingly on one mode of penal action: penal control. Drawing from Foucault's (1977) notion of penal 'tactics', Garland establishes a sociological analysis of the overlooked 'action dimension' by identifying four penal action modes: penal afflictions ('punishments that wound offenders' bodies'), penal levies ('punishments that appropriate offenders' resources'), penal controls ('punishments that impose restraints on offenders'), and penal assistance ('punishments that provide resources to offenders') (ibid., p. 6). A variety of these are typically

used together. In Western Europe, it is common for penal levies, control, and assistance to be used conjunctively (ibid.). Different penological *aims* (such as retribution and rehabilitation) can also fall within the same type of penal action. Overreliance on penal control is exemplified by extreme sentencing practices (such as life without parole), severe austerity in prisons (including practices of solitary confinement), and restrictive impositions on supervisee behaviors (ibid.).

After this sociological analysis, Garland works backwards to establish which distinctiveness in US systems allows for this exceptional overuse of penal controls. He uncovers two causal links between US penal controls and US political economy. Firstly, Garland establishes an indirect one, whereby processes of social control — present in every society and mediated through social structures such as labor markets, schools, and families — are said to be weakened, leading to heightened social disorder (ibid.). Garland notes that ‘interpersonal violence is a product of social and economic structures, mediated by patterns of social control, and enacted in specific social situations by particular individuals’: increased violence is therefore attributable to a breakdown of social control patterns (ibid., p. 12). This weakening is explained by the failure of American institutions to contend with de-industrialisation (the decline in urban manufacturing jobs and subsequent urban exodus of middle-income families), allowing for an exorbitant rise in crime compared to Western European counterparts. Crucially, Garland argues that social controls are ‘extended by market exchanges and social networks; reinforced by the social protections and services of the welfare state; and backed up, in the last resort, by the remedial controls of criminal law’ (ibid., p. 13). Hyper-liberal, *laissez-faire* American political economy ensures that risks are shouldered by individuals exposed to pure market forces. As a result, it is far less likely that communities (where people are systemically forced to work several jobs, vulnerable to unemployment, and exposed to a lack of social mobility, addiction, and homelessness, along with a plethora of other social problems), faced with an unresponsive state, will be able to raise well-socialised children (ibid.). American political economy therefore leads to a particularly criminogenic society, reactively remediated by penal control.

Secondly, Garland establishes a direct causal link between penal controls and US political economy: ‘the limited capacities of a minimalist welfare state’ (ibid., p. 3). American federal and state governments respond to social instability and disorder with penal control measures instead of attempting to use long-term social policy. This, Garland argues, is due to relatively small state capacity (ibid., p. 11). Various American afflictions are to blame: aversion

to taxation, Republican resistance to state spending, the extensive division of power that allows for ‘vetoing controversial legislation’, and widespread mistrust of welfare and ex-criminals, all contribute to a systematic rejection of *New Deal* and *Great Society* ‘flirtations’ with social democracy (ibid., p. 16). Garland maintains that ‘America’s ultra-liberal political economy has produced a welfare state that is much less expansive and much less enabling’ (ibid., p.17). Therefore, there is simply less space for responses outside that of penal control. In other words, response is chronically *post-facto* (ibid., p. 16); resorting to ‘soft power’, like penal assistance (i.e. social workers, treatment programs, community initiatives), is not possible due to the lack of access to and creation of soft power infrastructure and institutions.

This is an attractive theoretical framework. As Garland suggests (ibid., p. 19), it could be applied comparatively to Norway, whose prison conditions, low rates of incarceration, and low recidivism contribute to the term ‘Scandinavian [penal] exceptionalism’ (Pratt 2008). The ‘exceptional conditions in most Scandinavian prisons, while not eliminating the pains of imprisonment, must surely ease them’ (ibid., p. 124).

It can be said that Norway favours penal assistance over penal control, even when the two are used together. Norwegian prisons are chiefly ruled by two principles: the ‘principle of normality’ and the ‘progression towards reintegration’ (Kriminalomsorgen [Norwegian Correctional Service] 2020). Prison sentences are also far shorter in Norway; ‘[t]he longest prison sentence [...] is 21 years¹ [and] the average sentence is around 8 months. More than 60% of unconditional prison sentences are up to 3 months, and almost 90% [are] less than a year’ (ibid.). Norway is also comparatively less restrictive of prisoner movement than the US, going as far as having ‘open prisons’, housing prisoners with lesser offenses — like drunk driving — and those coming from closed prisons who are at the end of their sentence as a means to prepare them for release (Pratt 2008).

Following Garland’s framework, this different penal exceptionalism in Norway, researched by John Pratt among others, can be explained by its political economy indirectly and directly due to the specificities of its welfare state. Pratt (2008) highlights that social control is highly developed in Norway. The structures of family, school, and labour markets enable social control to be highly active and effective. Humanistic values are intrinsic to Scandinavian identity. There is an ‘emphasis on collective interest’; ‘trust, self-regulation and cooperation’ ensure that this societally enforced norm is created and respected (ibid., p. 123, 125). Strict cultural egalitarianism ‘seeks to bring about rule compliance through inclusiveness

and solidarity, giving emphasis to everything that visitors [to collective spaces] are *allowed to do*, instead of the punishments that will follow for rule breaking' (ibid.): there can be 'no dangerous "other"' (ibid., p. 130). Class divisions are negligible. Whilst capital punishments such as the death penalty have historically been said to represent a desire by the ruling class to exert its supreme authority, minimal class distinctions in Norway mean 'the spectacle of punishment could serve no such function' (ibid., p. 129). Norway's social democratic political economy enables the strengthening of this social control, with emphasis placed on Keynesian orthodox economic policies which used increased state spending to create jobs and guarantee their protection (ibid.). This ensures the structures preserving social control remain in place, with minimal disruptions to family, school and labour markets; it also ensures the presence of a responsive state to contend with any emerging social disruption. Therefore, crime itself is low as Norwegian society self-regulates, and little resort to penal control is necessary for public security.

Following Garland, Norway's reliance on penal assistance can also be directly causally linked to the development of the Scandinavian welfare state, which led to the institutionalisation of this characteristic egalitarianism. Security is instead ensured through the workings of the welfare state. Pratt emphasises that Norway's political structure is conducive to this. Due to 'unicameral parliaments', legislation is unlikely to be delayed or 'watered down'; 'proportional representation necessitated a politics of consensus'; there is a strong preference for deepening welfare and increased taxation; and prisoners are largely viewed as welfare recipients, the stigma for which is non-existent (ibid., p. 128). As a result, Norway has an exceptionally large state capacity unburdened by its unicameral parliamentary system; it is believed that 'welfare reforms can bring relief from crime', and it is ensured that tax funds exist for this purpose (ibid., p. 130). Norway's expansive, robust welfare state ensures there is firstly the drive and funds for penal assistance, and secondly that there are alternatives to penal control that address the roots of social problems. Applying Garland's framework helps explain the nature and reason behind Norway's penal exceptionalism.

I will now propose a possible extension of Garland's research by integrating the correctional officer as an archetype of penal exceptionalism. Correctional officers have significant influence over prison cultures (Johnsen, Granheim & Helgesen 2011). Garland's structure can be shown clearly at a micro-level through an analysis of the role of correctional officer. He mentions that 'probation and parole officers in the US are routinely armed and, unlike their European counterparts, bear little resemblance to social workers' as an example of

the extreme focus on violent penal control that constructs America's exceptional penalty (Garland 2020, p. 4). This establishes a link between modes of penal control and the importance of correctional officers as actors, an important facet of modes of penal action that I believe Garland neglects to fully delve into.

Garland frames his typology 'within a "social control" perspective that highlights the collective processes through which social order is routinely reproduced and views them as the context in which state policy operates' (ibid., p. 2). Penal control, however, is ultimately reproduced through and by the figure of the correctional officer. Modes of penal action are 'the concrete practices by which penal actors operationalize punishments and contrive to produce their intended effects': correctional officers, more than just (re)producing penal control, are archetypes of this control (ibid., p. 6). This is because correctional officers are the transmission of forms of penal action that are most hyper-present for prisoners and how they experience punishment in the penal system. This highlights the importance of correctional officer training. The workings of state mechanisms, through which penal control is enforced, is shown in the concept of setting out to shape the 'ideal' correctional officer -- 'the right to punish for violations of law is within the core of a state's perpetual monopoly of force, and to achieve compliance with the criminal justice system, the state uses or threatens force against inmates. Most visibly, [US] prisons have watch towers where armed guards literally threaten inmates with death if they try to escape' (Leider 2018, p. 988). It is therefore plausible that correctional officer training can show modes of penal action, both in the training's conception, and in the symbolic importance of the correctional officer as keeper of penal order. Exceptionalism is too abstract to usefully measure, but correctional officer training is a valid proxy for modes of penal action: it reflects a society's conceptualisation of punishment.

A concise example of the usefulness of integrating the concept of the correctional officer more closely with Garland's framework is a comparison of correctional officer training in the US and Norway. In the US, length of training varies from state to state, but is measured on average in terms of weeks, not years (New York State Department of Civil Service 2020). Training requirements largely focus on the 'Physical Abilities Test [which includes] the ability to "see a human figure at a distance of one quarter mile or a target at 250 yards"' (Federal Bureau of Prisons 2020), the assumption being that prisoners will attempt to escape and must be brought under harsh physical control. This is a translation of *laissez-faire* policies into the micro-level of prisons: mindsets of competition are encouraged as prisoners are painted as inherently self-interested, wishing only to cause disruption and, ultimately, harm. US

correctional officers, trained in the ‘use [of] firearms; [ability to] perform self-defense movements, lift, drag, and carry objects’ (ibid.), inevitably use force to exert control over this constant, perceived unsafety, as the use of force is the only avenue of suppression available within the penal system and the neoliberal state. Empathy and forming connections with inmates are not central in training. This shows the workings of penal control through its ideal perceived arbiter, the most direct form of penal control experienced by prisoners in the US. In contrast, Norway’s training program for correctional officers is two years long and more holistic, entailing ‘practical [...] immersion in complex problem-solving scenarios and time spent in training prisons’ as well as ‘purely theoretical’ training (Høidal 2018, p. 65; Strandberg 2010, p. 76). Crucial fields of training are ‘security and safety [...] and social work and reintegration’ (Bruhn, Nylander & Johnsen 2017, p. 73). Creating a high-trust prison environment is prioritised, and ‘security, safety, control and order, as well as rehabilitative work, are achieved most successfully through positive officer–prisoner relationships’ (Johnsen, Granheim & Helgesen 2011, p. 517). Norway’s guard training reflects the country’s reliance on penal assistance, and the socially embedded role of the correctional officer as a figure that translates policy into direct impact.

To conclude, Garland’s analysis is a timely one. Following the Minneapolis Police Department’s murder of George Floyd on 25 May 2020 igniting nationwide protests and riots in the US, an organised push towards defunding police departments and funding a more diverse welfare structure comprising social workers and community policing schemes is underway. Due to the connectivity between policing and correctional systems and their operationalisation of control, this shift in thinking away from penal control could make its way from concept to application in policing and then the prison system. Only the creation of an American welfare state could reform the mentality of punishment embedded in American society.

Notes

1. There is one exception to this general rule. Norway’s ‘[...] Penal Code provides for a 30-year maximum sentence for crimes related to genocide, crimes against humanity or some other war crimes’ (Kriminalomsorgen, 2020)

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