

# POLITICS AND PENAL CHANGE: TOWARDS AN INTERPRETIVE POLITICAL ANALYSIS OF PENAL POLICYMAKING

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This is a pre-copyedited, author-produced version of an article accepted for publication in the Howard Journal of Crime and Justice following peer review. The version of record is available online at <https://doi.org/10.1111/hojo.12269>

## Abstract

This article offers an interpretive political analysis framework, exploring and asserting its value for understanding penal change. It is argued that this approach serves, in part, to emphasize the importance of the minutiae of political activity: the crucial impact that apparently minor decisions, unimportant participants, or particular ‘rules of the game’ can play in specific outcomes. It emphasizes the importance of human agency and meaning: the relationship between politics and fate. It further facilitates the connections of particular ‘micro’ analyses with ‘macro’ accounts of penal change. I argue that the approach set out here thereby enables us to place centre stage the beliefs and practices of policy participants, and the political dynamics of policymaking. Particular case studies thus serve as valuable ‘windows’ into the meanings in action that iteratively make sense of, respond to, and thereby (re-)constitute the realities in which actors operate, specific penal outcomes, and broader penal change.

**Keywords:** Penal change; interpretive political analysis; penal politics; policymaking

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<sup>1</sup> Southampton Law School. Thanks to Mary Rogan, Mark Telford, Hendrik Wagenaar and Ian Loader, and to attendees of the ‘Interpreting Penal Policymaking’ workshop at Southampton University on 4 April 2017, for comments on earlier drafts. Particular thanks to the anonymous reviewers for their incisive comments. Funding Acknowledgements: This work was supported by the Economic and Social Research Council 1+3 studentship [grant ES/G010307/1].

## Introduction

There has been a welcome proliferation, in recent years, of works examining the complex causal dynamics of penal change. Much of this has involved sociological perspectives and methodological frameworks being brought to bear on questions of penal policy and punishment.<sup>2</sup> This paper examines, and argues for, the value of a methodological framework that has an alternative origin: the interpretive political analysis approach developed within political science. Specifically, the approach set out in the path-breaking works of political scientists Bevir and Rhodes (2003; 2006; 2010) and policy studies scholar Hendrik Wagenaar (2011).

This approach has been forged through scholarly debates that differ from those that shaped the development of the field that has come to be known as the sociology of punishment literature. It arose from a reaction to the predominance within political science for top-down, ‘objective’, (social) scientific modes of analysis and explanation that, for proponents of an interpretive approach, were inconsistent with a philosophically appropriate conception of the meaningful nature of human action (Bevir and Rhodes, 2004).

It is argued that the interpretive framework set out here complements and contributes to existing approaches to understanding penal change in a number of ways. It serves, in part, to emphasize the importance of the minutiae of political activity: the crucial impact that apparently minor decisions, unimportant participants, or particular ‘rules of the game’, can play in specific outcomes. It emphasizes the importance of human agency (but not autonomy) and meaning: the relationship between politics and fate (Gamble, 2000). And due to its theoretical orientation (as set out in detail below),

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<sup>2</sup> Facilitated and exemplified, not least, by the journal *Punishment and Society*, inaugurated in 1999.

it facilitates the connections of such ‘micro’ analysis with ‘macro’ debates regarding penal change.

While emerging from a different lineage, and via different scholarly debates, there are connections here with a number of recent interventions into debates on the analysis of penal change. Goodman et al have argued persuasively for the value of sustained analysis of the ongoing ‘agonistic’ struggles that underpin penal development (Goodman et al., 2015; Goodman et al., 2017). Rubin and Phelps (2017) have raised concern at the tendency in some works on penal change to speak as if ‘there is a single, unified, and actor-less state responsible for punishment’ (Rubin and Phelps, 2017: 422).

They instead encourage the study of:

[The] diverse array of actors from bureaucratic leaders down to the front-line staff implementing policy, each with their own (shifting) penal preferences and concerns (Rubin and Phelps, 2017: 434).

Further, Loader and Sparks have criticised the tendency of much extant literature within the sociology of punishment to underplay – or even reject – the role of politics and political ideologies (in a non-reductive, non-pejorative, sense) in penal change (Loader and Sparks, 2016: 2).

It is argued that the interpretive approach set out below provides one valuable means of analysing specific instances of penal change in a manner that flows with the concerns and contentions noted immediately above. In order to make this claim, the paper proceeds as follows: First, I situate the interpretive framework by surveying existing literature on penal change. I identify a number of dominant approaches, examining their underlying assumptions, their strengths and also criticisms that have been levelled against them.

I then set out the interpretive political analysis framework, spending some time discussing the key concepts in play (including, most centrally, belief, tradition, practice and dilemma). Finally, I consider the ways in which concepts utilized within policy studies can further enrich the analysis of penal policymaking advanced here. I then discuss findings from projects examining penal policy under the 2010-15 UK coalition government in order to illustrate the practical application, and implications, of this framework.

In closing, I argue that the interpretive framework set out in this paper offers one means by which to place centre stage the beliefs and practices of policy participants, and the political dynamics of policymaking, in understanding penal change. And it does so in a manner that allows them to operate as valuable ‘windows’ into the meanings in action that iteratively make sense of, respond to, and thereby (re-)constitute the realities in which actors operate, specific penal outcomes, and broader penal change.

### **Situating an Interpretive Approach**

This section situates the interpretive approach, set out in detail below, within dominant approaches to understanding penal change. For present purposes, existing prominent approaches to understanding penal change are characterized as falling into three main categories. These are termed social theoretical; political economic; and historical. The motivations, and valuable contributions, of works that have sought to fortify historical analysis with capabilities of (social) theoretical incisiveness are then discussed, leading to a consideration of where the interpretive political analysis framework set out here is situated.

David Garland's *Culture of Control* is a striking exemplar of the first category. It has had a remarkable influence on the field, flowing with – and indeed propelling – the growth of the scholarly domain defined as the sociology of punishment.<sup>3</sup> The *Culture of Control* sets out an account of transformations in crime control in the UK and US in the three decades from 1970. Drawing on Foucault's work on governmentality, it provides a 'history of the present', a 'structural account of how crime control and criminal justice are presently organised' (Garland, 2001: 23).

Garland argues that the rise of late modernity – and responses to it – led to the settled penal-welfarist culture of the modern criminal justice state being eclipsed by a 'culture of control'. Levels of crime increased; there was a less secure middle class; and a broader disillusionment with a welfarist model of governance. These were underpinned by structural changes in the economy and the family, and by the influence of the mass media.

A dominant governance response ensued with two facets: a 'criminology of the self' (embedding apparently neutral crime control technologies in everyday settings) and a 'criminology of the other' (a visceral, anti-modern concern with denouncing dangerous criminal others) (see especially Garland, 2001: Chapter 7). Notwithstanding their apparent stark differences, both responses serve to mask the state's growing inability to provide security to its citizens.<sup>4</sup>

Feeley and Simon's development of the new penology thesis (1992) is another work that has been remarkably influential and shares some methodological commonalities with the *Culture of Control*. Chronicalling the rise of 'actuarial justice'

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<sup>3</sup> For a discussion of the current state of the art, see Simon and Sparks (2013).

<sup>4</sup> There is, of course, much more that could be said, which space here precludes. See for example the special issue of *Critical Review of International Social and Political Philosophy* 7(2).

in the penal sphere, they depicted the displacement of the penal-welfare complex of the mid-late 20<sup>th</sup> century by a prioritization of ‘groups, categories and classes’ (Simon, 1998: 453). For Feeley and Simon, ‘What distinguish[ed] the new priority of groups is the dominance of statistical over characterological conceptions of group boundaries’ (Simon, 1998: 453), with ‘priority given to the language of risk in the administration of justice’ (Simon, 1998: 453).

Works on the rise of the ‘culture of control’ and the ‘new penology’, underpinned by a Foucauldian conception of the power-knowledge nexus, seek to reveal what we might term the ‘conditions for possibility’ and ‘conditions of desirability’ for dominant strategies. That is, they seek to identify first the emergence of particular ways of thinking (the development of the psy-disciplines, for example: Foucault, 1977; Pratt, 2000); and second the sensibilities and mentalities that make particular strategies desirable.

Such accounts thus centre the analytical attention upon meaning formation, but not at the level of individual actors. Rather, the goal is to identify and examine larger, sedimented meaning structures. Individual actors are channelled by the interplay of larger social forces – and the emergent power-knowledge relationships therein – along particular courses of understanding. Actors cannot see beyond the discursive horizons that surround them (Wagenaar, 2011: 52).

The second category, political economy, is illustrated by Nicola Lacey’s *The Prisoners’ Dilemma* (2008). Lacey advanced a refined analysis of how underlying economic structural features of nation states are mediated by institutional and cultural differences. In short, Lacey argues that co-ordinated market economies (such as Scandinavian nation states) tend to support long-term, stable investment in public goods, and the sustained involvement of a range of social groups and institutions in a

co-ordinated governance structure. They tend also to utilize proportional representation systems for national elections. Lacey argues that, taken together, these economic and institutional features combine to make exclusionary stigmatization in punishment ‘structurally less likely’ (Lacey, 2012: 211) in comparison to liberal market economies such as the US and UK.

The *Prisoners’ Dilemma* relates most directly to works such Cavadino and Dignan’s analysis of the relationship between social democratic, corporatist and neo-liberal states and levels of punishment (Cavadino and Dignan, 2006). But it relates more broadly to a range of works that have operated in a similar methodological vein. These include Gilmore (2007), and Beckett and Western’s (2001) examinations of the relationship between political economic factors and the use of imprisonment in California and more broadly the United States, respectively. Further, De Giorgi has drawn on the neo-Marxist roots of the political economy of punishment literature to examine the current post-Fordist landscape and its implications for penal change (De Giorgi, 2006). Works such as Lisa Miller’s *The Myth of Mob Rule* have, in turn, sought to explore the role of levels of violent crime, and public concern, within a political economic framework (Miller, 2016).

Third are what I have termed ‘historical’ accounts. In differing ways, these works explore the historical developments – across a broader or more proximate time span – that relate to specific policy issues. These include Lord Windlesham’s detailed contemporary history of political debates, policy formations and legislative battles (Windlesham, 1987; Windlesham, 1993; Windlesham, 1996) and Rock’s similarly detailed accounts of the development of victims’ rights in the United Kingdom (Rock, 1990; 2004). Further examples include Tonry’s analysis of crime policy under New Labour (Tonry, 2004), contributions to Dunbar and Langdon’s *Tough Justice* that

explored the developments surrounding the 1991 Criminal Justice Act of England and Wales (Dunbar and Langdon, 1998), and Faulkner's *Crime, State and Justice* (Faulkner, 2006).

More recent important examples include Page's study of the a detailed history of the California Correctional Peace Officers Association's (CCPOA) role in the ramping up of penal rhetoric and action in the 'Golden State' since the mid-1970s (Page, 2011), Miller's examination of the ways in which crime and social justice issues are fought within, and conditioned by, the various levels of government in the United States (Miller, 2008), and Gottschalk's analysis of the political dynamics (and their supporting institutional structures and historical contexts) that have underpinned the historically unprecedented level of incarceration in the United States (Gottschalk, 2006).

In order to better define the goals and orientation of the interpretive approach set out in the following section, we can usefully note some challenges that have been posed to the frameworks sketched above, from a broadly interpretive perspective. First, social theoretical accounts utilizing a governmentality framework have been subjected to the more general critique of Foucauldian analysis: that the role of individual agency is dramatically reduced, sometimes even eliminated. The discursive conception of meaning that is utilized by such works operates on a 'trope of captivity; individuals are locked into larger meaning structures of their place and age' (Wagenaar, 2011: 52). We are faced with actors who are effectively 'cultural dupes' (Jessop, 1996: 126), lacking the capacity to challenge or reject a hegemonic culture.

Flowing from this, critics have highlighted the 'dangers of dystopia' inherent in accounts such as *The Culture of Control* (Zedner, 2002). Such works can leave themselves with no foundations from which they can 'galvanize people into making the



structural changes necessary to secure a different social order’ (2002: 363).<sup>5</sup> Third, while gesturing towards ‘countervailing forces’ (Garland, 2001: xii) and the likelihood of local variation, such works have been criticized for failing to take seriously ‘the “local” political and cultural struggles out of which “global” change is fashioned’ (Loader and Sparks, 2004: 17). As interpretive political scientist Mark Bevir has argued, ‘any viable social theory must grapple with the micro-level of action and the beliefs and desires informing it’ (Bevir, 2011: 191).<sup>6</sup>

As Rogan has argued in relation to understanding penal *politics*, such developments ‘are difficult to capture without very close reading of the policy processes’ in specific locales (Rogan, 2016: 446). Washington is not California (Barker, 2009); Scotland is not England (McAra, 2008); European nations (for example the Netherlands: Downes, 1988), Australia (Cunneen et al., 2013) and elsewhere can justifiably claim to be in some relevant sense ‘exceptional’.

As Reiner has lamented, works underpinned by political economy frameworks have seen repeated waves of criticism over the past three decades (Reiner, 2017: 131). For our present purposes, we can identify some challenges posed to Lacey’s *The Prisoners’ Dilemma* as indicative of challenges posed to works operating within this paradigm. Related to the criticism that the nation state is not the appropriate level of analysis (that scholars need to look both ‘beyond’ and ‘beneath’ the state: McAra, 2011), from an interpretive perspective the tendency to assume that politicians act ‘rational[ly] within given institutional settings’ (Bevir and Rhodes, 2010: 74) is problematic. By contrast, while political actors certainly follow (more or less

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<sup>5</sup> For a contrasting view, see Wacquant (2011).

<sup>6</sup> See also Tonry (2007).

consistent) *rationalities*, institutionalist assumptions that this equates to objectively rational behaviour is not sustainable as an empirical fact.<sup>7</sup>

Further, the ‘macro’ analysis of penal change and ‘micro’ analysis of more specific dynamics in particular locales can appear to be mutually supportive: the latter provide local detail, or add nuance to, the former. And in a sense this is indeed the case.<sup>8</sup> But this point of view can obscure the deeper epistemological differences between political economic (and other modernist-empiricist) and interpretive frameworks.

From an interpretive standpoint, while the former ultimately understands ‘big entities external to the individual (economy, institution, state)...[to] determine the beliefs, preferences and actions of [an] individual’ (Wagenaar, 2016), the latter ultimately understands specific outcomes – in this case penal change – as the results of ‘conditional connections between beliefs, preferences and actions in such a way that the actions become plausible’ (Wagenaar, 2016).

This is illustrated by Melossi et al’s (Melossi et al., 2011) discussion of Rusche and Kirchheimer’s (1939) landmark study of punishment and social structure. While being sympathetic to its broad argument that there is a relationship between economic change and use of imprisonment, they observe that it is crucial to explore the specific reasons actors give (to themselves, and to others) for their actions under specific economic circumstances. We must, in other words, pay close attention to the ‘*meanings* that social actors attach to what they do’ because there is no social action that is not ‘culturally embedded’ (Melossi et al., 2011: 10).

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<sup>7</sup> Of course, the particular rationalities in a specific setting, and objectively rational choices (at an individual or group level) *may* coincide in particular cases.

<sup>8</sup> See for example Jennings et al (2018) and Lacey et al (2018).

A number of works in the third category have been criticized for presenting merely ‘narrative history’ (Garland, 2001: 2); they serve a useful ‘archival’ purpose (Garland, 2001: 2), but do no more. Loader and Sparks (2004), for example, criticized the ‘scant reference to either the economic, social and cultural contexts within which [events] are played out’ in the detailed accounts of Lord Windlesham, and the lack of references to the ‘criminological and political ideas that relevant actors implicitly or expressly mobilise and tussle over’ (Loader and Sparks, 2004: 11).

However, more recently there have emerged a number of valuable works that develop narrative accounts, but within methodological frameworks that facilitate a far more rich and theoretically informed analysis of specific developments in penal change. To give but a few examples in addition to those noted above (Gottschalk, 2006; Miller, 2008; Page, 2011), Mona Lynch has explored the local cultures in the US ‘Sunbelt’ states, exploring the politics and practices of institutional actors and their connections with larger cultural patterns (Lynch, 2009). Vanessa Barker has examined the role of structures and styles of state governance in US penal policy (Barker, 2009). There has been detailed investigation of local, and urban, governance of crime (Crawford, 1997; Crawford, 2011). Political science concepts such as policy transfer (Jones and Newburn, 2007) and policy networks (Ryan et al., 2001) have been applied to the penal field. Further, there has been analysis of specific internal political dynamics, including the relationship between politicians and senior policy officials (Rogan, 2011) and their connections with broader questions of penal change (Annison, 2015).

The interpretive political analysis approach set out in this paper aligns with the motivations of these works. Its emergence has come from a different set of disciplinary debates, primarily as a response to the dominance of neo-institutionalism within political science (Bevir and Rhodes, 2010: chapter 1). It orients us in two regards

(which are generally complementary and consonant with the works discussed immediately above): it encourages us, as Rogan has aptly put it,

[To pay] as close attention to the senior civil servant faced with a slashed budget and a deadline as to changes in the structure of the family. (Rogan, 2016: 446)

But it also, more importantly and foundationally, sensitizes us to the importance of politics and the normative implications of this analytical standpoint (Gamble, 2000).

Change occurs through:

Situated agents respond[ing] to novel ideas or problems. It is a result of people's ability to adopt beliefs and perform actions through a reasoning that is embedded in the tradition they inherit (Bevir and Rhodes, 2006: 5).

Thus, politicians (and judges, officials and so on) are not bound to act as they do, but rather operate within (their perception of) a particular cultural, structural and institutional reality that presents constraints *and opportunities* (Hay, 2002: 209).

The following section now begins by setting out in more detail the broad perspective from which this framework approaches the study of specific developments/sites of penal policymaking. It then moves to examine the specific terms that are utilized within the interpretive framework offered here, namely 'belief', 'tradition', 'dilemma' and 'practice'.

## **Interpreting Penal Policymaking**

To take an interpretive stance is to view political activity as meaning in action (Wagenaar, 2011). We can begin to unpack this deceptively simple statement, first by noting the central role of ideas, recognizing that individuals grasp 'concepts, and the associated behaviours, in terms of what they *mean* to us' (Wagenaar, 2011: 15). Interpretivism rejects an absolute realist foundation of knowledge, seeing instead

objects as being embedded in ‘a communal background of intelligibility that preshapes how the world appears and who we are as agents’ (Guignon, 1991: 84, quoted at Wagenaar, 2011: 40). The crucial and defining role of ideas on this view cannot be over-emphasized. They go ‘all the way down’, as Hay makes clear in his version of the Thomas theorem:<sup>9</sup>

It is the ideas actors hold about the context in which they find themselves rather than the context itself which *ultimately* informs the way in which they behave. This is no less true of policy-makers and governments than it is of you or I (Hay, 2002: 258, emphasis in original).

It is meaning in *action* because we are concerned with the *practices* that are motivated and informed by – and in turn tend often themselves to influence – prevalent ideas held by groups and individuals. The view of meaning as foundational leads interpretive scholars to see ‘no shortcut to the extrapolation of meaning from concrete, microscopic behaviour’ (Wagenaar, 2011: 21). We therefore seek to interview, to observe, or to otherwise examine, specific actors’ understandings of pertinent developments. We seek to understand their conceptions of their own activity and also the context ‘out there’ within which they operate. We seek to perceive their self-understandings of, and goals for, particular policy positions, political statements and so on.<sup>10</sup>

Wagenaar emphasizes that this is not to promote an ‘anything goes’ relativism (Wagenaar, 2016), but it does involve recognizing the necessary absence of an essential truth and rather the analytical value of exploring competing narratives of events, from a range of perspectives. We can now turn to the specific terms that are utilized within

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<sup>9</sup> ‘If men define situations as real, they are real in their consequences’ (Thomas and Thomas, 1928).

<sup>10</sup> For a range of illustrative case studies, see Rhodes (2018).

the interpretive framework offered here, initially developed by Bevir and Rhodes (Bever and Rhodes, 2010).

### *Belief, Tradition, Dilemma and Practice*

Both belief and tradition are forms of ideas. The first, belief, is conceptualized as:

Not just big commitments people reach through deliberate reflection. They include the everyday tacit understandings on which people act without any noticeable deliberation (Bever and Rhodes, 2006: 7).

Beliefs here refer to actors' understandings of concepts such as legitimacy, justice, safety, fairness and so on (which in turn influence their understanding of the context and constraints which they encounter),<sup>11</sup> and also actors' political ideologies (liberal; social democratic; conservative, neo-liberal and so on). Political ideologies are understood within this framework, in line with Freedman (1996), as a system of:

Political thinking, loose or rigid, deliberate or unintended, through which individuals or groups construct an understanding of the political world they, or those who preoccupy their thoughts, inhabit, and then act on that understanding. (Freedman, 1996: 43)

The second term is that of tradition. Tradition is used by Bevir and Rhodes to capture 'the social context in which individuals both exercise their reason and act' (Bever and Rhodes, 2006: 7), reflecting the constructivist recognition that 'political institutions, practices, routines and conventions appear to exhibit some regularity or structure over time' (Hay, 2002: 94). Predominantly a 'first influence on people' (Bever and Rhodes, 2006: 7), traditions are 'a set of understandings someone receives during socialization' (Bever and Rhodes, 2006: 7).

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<sup>11</sup> On likely central concepts in relation to penal policy, see Loader and Sparks (2004: 13).

We can think here, for example, of Zimring's argument regarding a 'culture of vigilantism' in parts of the US explaining the correlation between the distribution of lynching events in the 1890s and executions in the 1990s (Zimring, 2003). While this has been challenged for its 'speculative' nature (Garland, 2011), a conception of vigilantism as a tradition that is relied upon and sustained by relevant individuals, would within the framework set out here, and supported by appropriate empirical evidence, operate as a means by which to trace the narratives in play, the influence that these had on relevant actors, and the manner in which they (iteratively) informed practice.

A further pertinent example in the UK context is the Westminster model of British politics (Rhodes et al., 2009). This is used as shorthand by constitutional scholars to point to the system of parliamentary democracy, the existence of the 'elective dictatorship' approach to governance, the impartiality of the civil service and other central elements of the British political system. But from an interpretive view, the Westminster model rather denotes a tradition into which politicians, civil servants and others are inculcated upon becoming involved with the internal world of British politics (Bevir and Rhodes, 2006: chapter 8). These beliefs are not a fixed model, but an ever-evolving constellation of understandings. The sense of 'how things are done', as well as understandings of pertinent concepts (the public, justice, risk and so on) fundamentally informs actions that influence penal change in particular contexts.

This has been illustrated by recent developments in New Zealand, where following, and notwithstanding, the introduction of a proportional representation electoral system, the 'heat' of penal politics rose substantially with a concomitant rise in the imprisonment rate (Lacey, 2012: 216-217). In the New Zealand case, proportional representation – in theory associated with stable levels of punishment and

moderate penal politics – was ‘grafted on’ to a ‘substantially different set of economic, social and political institutions’ (Lacey, 2008: 64). For our purposes the key point is that prior traditions, ‘the adversarial nature of Westminster-style first-past-the-post politics’ that had become tied up with and sustained by those institutions, shaped the practical actions taken in relation to criminal justice (Lacey, 2012: 220; Pratt and Clark, 2005).

This interpretive framework thus turns our interest away from, for example, accounting for the *effect* of the ‘rise of risk’ and the ‘rise of the public voice’ (Pratt et al., 2005; Ryan, 2005) on individuals *per se*. Rather, we are encouraged to examine how the actors’ beliefs and goals influenced their understanding of, and response to, specific problems (and indeed the construction of such ‘problems’) which relate to such broader theoretical debates.

Third, we come to the notion of dilemma. Dilemmas denote perceived changes in the landscape, or novel ideas. Examples could include the 2008 global financial crisis; the rise of violence and self-harm in British prisons; or the rise of nationalism. We could further point to examples such as the perceived failure of existing centralised models of service delivery (the rise of new public management within public administration); the perceived failure of ‘old’ social democratic governance (the rise of the Third Way ideology of New Labour in the UK); or the perceived failure of rehabilitative models of criminal justice (and hence the emergence of risk and public protection as organizing paradigms).

These examples highlight the manner in which, within this interpretive framework, ‘external’ structural changes and ‘internal’ individual understandings stand side-by-side; they are ontologically entwined. The dilemmas do not have automatic and inevitable responses built into their very nature. This is so not only because alternative



responses are possible, but also because the very problematization on which a specific dilemma is premised is open to widely differing interpretations.<sup>12</sup> And these differing interpretations will depend upon the pre-existing beliefs, traditions and practices of relevant actors.

Dilemmas, within this framework, arise for an individual or group ‘when a new idea stands in opposition to existing beliefs or practices and so forces a reconsideration of these existing beliefs and associated traditions’ (Bevir and Rhodes, 2003: 36). The changed landscape, or novel idea, as interpreted by that actor, challenges their existing ‘webs of belief’ (Bevir, 1999: 221). The tensions raised by this perceived changed context and/or questions it provokes may be resolved either by accommodating it within an existing tradition, or by a more abrupt discarding of either existing beliefs or the novel idea seeking inclusion. But it must be resolved.

Finally, the concept of practice refers to ‘a set of actions’, which exhibit a degree of stability across time (Bevir and Rhodes, 2010: 75). This might apply to the ongoing business, the quotidian activities, that make up much policy practice. It may also point to specific activities by policy participants that relate to a specific policy development at a particular time.

But more foundationally, this concept points to the interpretive view that ‘realities emerge from our practical engagement with the world in an ongoing stream of commonplace, task-oriented, local practices’ (Wagenaar, 2016). The elements of beliefs and practices (and related intentions, senses of rules of the game, and so on)

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<sup>12</sup> This is, of course, an argument made more generally by social constructivists (Berger and Luckmann, 1971).

dialectically emerge, in the course of this ongoing practice (Cook and Wagenaar, 2012: ; Wagenaar, this issue).

For this reason, ‘structures’ – institutions, organizations, and so on – are understood here rather as constellations of practice (Bevir and Rhodes, 2010: 89). In order to conceive of such structures, interpretive researchers ‘clarify the social rules and practices in which the activities of the actors in our study are embedded’ (Wagenaar, 2011: 33). Examples could include the ongoing activities of the police, prison officers and the many other actors and organizations who populate the penological field. Practice is inherently ‘fragmented, conflictual and thus unstable’ (Wagenaar, 2016). Specific participants can never see the whole picture. Hence the constitution, by practice, of ‘the police’, ‘the government’ and so on, in an apparently stable form is always an ongoing (and transient) accomplishment.

### *Interpreting Policymaking*

There is value, given the focus of this paper, to discuss in a little more detail approaches to the examination and understanding of the dynamics of policymaking activity. Most pertinently, political scientist John Kingdon’s (1995) conceptualization of policymaking provides us with a useful set of heuristic tools that can support the interpretive approach set out above, by informing our conception of the processes which are subject to, and (re)constituted by, the contestation and contingency inherent in the political process.<sup>13</sup> The policy making process is seen to consist of three ‘streams’: ‘problem’, ‘policy’ and ‘political’ (Kingdon, 1995: 16-7). These come together to affect the setting of an agenda and the working up and consideration of alternatives which

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<sup>13</sup> While Kingdon does not identify his work as interpretive or constructivist, his emphasis on contingency, the importance of human interactions and key political ideas means that the work can be read as a particularly straightforward depiction of the key tenets of an interpretive approach to political analysis (Kingdon, 1995: chapter 9).

result in a particular legislative or administrative outcome. This ‘multiple streams’ approach has been highly influential across political science, and in the study of a range of policy areas (see Newburn et al, this volume).

Kingdon’s discussion of the problem stream echoes our earlier observations regarding the meaning and importance of dilemmas. Kingdon observes that, ‘We put up with all manner of conditions every day...Conditions become defined as problems when we come to believe that we should do something about them’ (1995: 90). We should therefore remain curious as to how and why a particular condition comes to be seen as a ‘problem’ worthy of attention, at that time and in those terms. Kingdon suggests that problems often come to the attention of decision makers because data reveal a problem to be ‘out there’. However,

The data do not speak for themselves. Interpretations of the data transform them from statements of conditions to statements of policy problems (Kingdon, 1995: 94).<sup>14</sup>

At the political level, particular events – a prison riot (Sparks, 2000), a ‘preventable’ attack (Rutherford, 2006), a horrific murder by a repeat offender (Annison, 2015) – may give an issue ‘a little push’ (Kingdon, 1995: 94). Further, a change of government, or the appointment of a particular minister, leads to some issues gaining prominence, while others are effectively shelved (Kingdon, 1995: 94, 145).

As regards the policy stream, Kingdon (1995: 16-7) reminds us that agendas and potential alternative responses are influenced by a wide range of actors, including civil servants, practitioners, interest groups, academics, politicians, political advisors and others. Political scientist Edward Page’s detailed research has made clear ‘the importance of relatively junior civil servants from middle ranking grades, operating

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<sup>14</sup> For detailed examination of the notion of social problems, see Loseke (2017).

with significant autonomy producing key legislation' (Page, 2003: 672). Mary Rogan has observed the importance of the politician-senior civil servant dyad (Rogan, 2011). Ogg has identified the role of internal (and external) policy transfer in policymaking (Ogg, 2015), whereby crucial developments such as the emergence of a 'preventive justice system' is 'constructed by expedient actions by policy-makers who seek (often with good intentions) to respond to distinct crime policy problems' by drawing on existing policies and practices (Ogg, 2015: 204).

Kingdon identified the important role that can be played by 'policy entrepreneurs'. They might be elected politicians, leaders of interest groups or more 'unofficial' campaigners; they 'lie in wait in and around government with their solutions at hand', waiting for a problem to float by (down the 'stream') that they can use to their advantage (Kingdon, 1995: 165-6). They wait, in other words, for a 'policy window' to open (Kingdon, 1995: 176) The development of prison privatization in the United Kingdom, and 'zero tolerance policing' in New York, provide two examples of the centrality of such individuals (Jones and Newburn, 2002).<sup>15</sup>

The process of policymaking is messy and non-linear (Page, 2009: 790). Unexpected events occur, ongoing political battles buffet specific policy goals. Belated concerns, 'ostensibly about matters of fine detail', can 'fundamentally shape the nature of the resulting policy' (Page, 2009: 790). The decision of a junior civil servant, or the impact of one parliamentary statement, can alter dramatically the course of penal policy.

To give one brief example, from the late 1990s the UK Labour government was determined to develop novel measures to tackle the perceived problem of dangerous

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<sup>15</sup> A more recent example is the role of Conservative politician Baroness (Sayeeda) Warsi in the UK government's decision to prohibit the sale and supply of khat (Telford, 2017).

individuals released from determinate sentences who go on to attack again. Sustained principled challenges and practical concerns led to initial efforts resulting in within-prison units for ‘dangerous’ individuals, rather than a distinct system, as originally envisaged (O’Loughlin, 2014).

A renewed drive in the early 2000s saw proposals made by key politicians successfully lead to new sentencing provisions. Many of these politicians were impatient with human rights concerns in this area, and saw the British judiciary as part of the problem, a barrier to public protection. But these ‘dangerous offender’ sentences came to be crafted by policy officials – for well-intentioned, prosaic, reasons – to match closely the existing (human rights compliant) life sentence provisions and procedures, and to place the British judiciary at the heart of the process (Annison, 2015: chapter 3).<sup>16</sup>

Both of these governmental efforts to address (a particular conception of) the dangerous offender problem point to the distance that can be travelled between original intentions and ultimate outcomes. And, from an interpretive political analysis perspective, the crucial role that apparently minor actions by political actors and policy participants can play in such developments.

## **The Case of UK Penal Policy 2010-15**

In this final section, I use an illustrative, though necessarily brief, discussion of English penal policy under the 2010-15 Conservative-Liberal Democrat coalition government, in the aftermath of the global financial crisis, to indicate how such a period can profitably be examined through an interpretive political analysis lens. This section points to some key findings from two related projects, which together saw 89 interviews

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<sup>16</sup> Albeit the judiciary in this case the trial judge’s discretion was highly constrained.

conducted from 2010-2016 with a range of ‘elite’ policy participants involved in English penal policymaking from 2002-2015, complemented by analysis of a range of publicly available and internal documents.<sup>17</sup>

Following the 2008 financial crisis, an ‘austerity agenda’ came to dominate in the UK, one which fundamentally challenged the settled assumptions regarding public expenditure that had predominated in preceding decades (Blyth, 2013). This saw relatively modest reductions in public spending accelerated dramatically by the incoming Conservative-Liberal Democrat coalition government in 2010. The required cuts in departmental budgets hit criminal justice particularly hard (Garside, 2015).

As regards prisons, the resulting perceived dilemma – the need to substantially reduce expenditure on imprisonment – was considered to present two policy choices: reduction of the prison population or reduction of expenditure per prisoner. What eventuated across the 2010-15 period was a limited effort at the former – a stabilization of the prison population – and a sustained drive towards the latter (Garside, 2015). The former was achieved in part due to the abolition of the indeterminate Imprisonment for Public Protection (IPP) sentence, a ‘dangerous offender’ measure that had become widely discredited amongst penal reformers and legal commentators (Annison, 2015: chapter 7). By contrast, conditions within prisons, including policies on Incentives and Earned Privileges (IEP), were considerably hardened (Day, 2014).

Further, while initial efforts at prison privatization foundered, probation services in England and Wales were fundamentally re-organized, marketized and (part-)privatized at a hectic pace. A ‘rump’ national probation service remained to provide services for the courts, and to supervise ‘high risk’ offenders, while the majority of

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<sup>17</sup> See Annison (2017; Annison, 2015; Annison, 2018) [and reference to an, eg SSRN, version of the Storylines paper]. See also Lacey (2012), Garside (2015) and Skinns (2016).

supervisory activities (of ‘low’ and ‘medium’ risk offenders) were contracted out to the private (and to some extent third) sector (Annison et al., 2014).

Detailed findings relating to this period, published elsewhere,<sup>18</sup> point to three central insights that can be gleaned from such interpretive accounts. First, that efforts to address (and conceive of) the ‘criminal question’ (Melossi et al., 2011) are always shaped by policy participants’ preoccupations with other political ‘questions’. This can speak to the influence of political ideologies (Loader and Sparks, 2016); the influence of other extant traditions; and related dilemmas about policy-as-process, broader political debates of the time, and so on.

The 2010-15 period saw a sustained dialogue (sometimes efforts at seeking synergy, sometimes hard-nosed contestation) between liberal, neo-liberal and Conservative positions. Further, examination of the period has made clear how the novelty of the coalition arrangement, and the potential for novel outcomes to flow from this, was severely constrained by policymakers drawing on, and re-affirming, practices underpinned by the dominant ‘Westminster tradition’ within elite English politics (Annison, 2017).

Second, interpretive analysis provides us with a ‘way in’ to examining how categories such as ‘risk’ are refracted through political traditions. During the 2010-15 period, we saw risk-based indeterminate sentencing subjected to sustained challenge by a ministerial team at the UK Ministry of Justice who considered indeterminate prison sentences targeted at dangerous offenders to be ‘cruel’, ‘a shocking tool’ and ‘fantastically unjust’ (Annison, 2015: 160). This period further saw decisions to demarcate the public/private split in probation marketization by way of the level of risk

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<sup>18</sup> See footnote 17.

presented by an offender clashing fundamentally with expert understandings of risk's inherently dynamic nature (Robinson, 2016). Therefore in order to be sustainable (at the level of policymaking logic or political rhetoric), the notion of risk was reshaped and reconceived in this policy field, which in turn poses ongoing dilemmas for practitioners in their daily activities (Burke et al., 2017).

Third, we are sensitized to the proximate political mechanisms whereby, for example, specific instances of neoliberal penalty are brought about. Interpretive analysis of the marketization of probation services during this period demonstrates the crucial importance of the capaciousness of the 'Transforming Rehabilitation' storyline within which the marketization was situated. Because the narrative was open to a range of meanings, this enabled policymakers from a range of perspectives to embrace this marketization project with verve and commitment, notwithstanding sustained concern by expert commentators and practitioners [ref SSRN version of my Storylines draft paper].

Exploring specific developments in penal policy, such as those identified here, and drawing on first hand accounts of those involved (suitably supplemented by, and triangulated with, other available data) thus facilitates the detailed analysis of case studies in penal policymaking, in a manner that enables engagement with broader debates regarding penal change, such as those regarding the rise of risk, and the emergence of neoliberal penalty. It is, in other words, one means by which to explore what Page has termed the relationship between 'social structural factors' and 'the battles between actors to shape criminal punishment' (Page, 2011: 218).



## Conclusion

In this paper, I have offered an interpretive political analysis framework, deriving primarily from the work of Bevir and Rhodes (Bever and Rhodes, 2010) and Wagenaar (Wagenaar, 2011), exploring its value for understanding penal change. It has been argued that the interpretive framework set out here complements and contributes to existing approaches to understanding penal change in a number of ways. It serves, in part, to emphasize the importance of the minutiae of political activity: the crucial impact that apparently minor decisions, unimportant participants, or particular ‘rules of the game’, can play in specific outcomes. It emphasizes the importance of human agency (but not autonomy) and meaning: the relationship between politics and fate (Gamble, 2000). And due to its theoretical orientation (as set out in detail below), it facilitates the connections of such ‘micro’ analyses with ‘macro’ accounts of penal change.

At the turn of the century, Richard Sparks pointed to the pressing need to bridge the ‘analytical hiatus’ between ideas of long-term structural, cultural and technological change ‘and the detail of policy change (and politicisation) in specific cultural and political environments’ (Sparks, 2000: 39). A number of works drawing on sociological theoretical resources have made important strides in responding to this concern. This paper has explored, and argued for, the value of interpretive political analysis as a further means by which to expand our understanding of the dynamics and determinants of penal change.

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