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International and comparative criminal justice and urban governance

ADAM CRAWFORD

Introduction

The power to define acts as crimes and the institutionalisation of processes of criminalisation are intimately bound up with the law-making power and identity of the nation state. Similarly, the ability to enforce criminal norms through coercion is equally entwined with the state's claim to sovereignty and its monopoly over the use of legitimate force. Consequently, criminal law and criminal justice represent pre-eminent and central symbols of state sovereignty, and claims over the state's capacity to regulate populations and activities within the confines of its territorial borders. Crime control, therefore, is intrinsically tied up with questions of national identity and self-characterisation. It is infused with, and reflects, the moral, cultural and political frames of reference that inform a society and constitute membership (i.e. citizenship) for given peoples within specified geographical boundaries.

Increasingly in recent years, the capacities, competencies and legitimisation claims of the nation state have been called into question – in the field of crime and social control as elsewhere. 'Fluidity', 'liquidity' and 'movement' appear as the defining characteristics of the contemporary age (Lash and Urry 1994; Bauman 2000; Castells 2000). In the modern era, people, goods, capital, technologies, information and communications, as well as 'risks', appear to be on the move in ways that cut across territorial boundaries and question the capability of the state as the ultimate 'power-container'. The development of cross-border and international political, legal and economic institutions has directly challenged the sovereignty of a nation state within its own borders in the most obvious and tangible ways. In the UK, it is the challenge presented by the progression and enlargement of the European Union that excites the most heated public and political debates about sovereignty.

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However, the trends are not merely *upward* to transnational and supranational institutions under pressures of globalisation. They are also *downward* to regions, localities, communities and consumers and *outward* into the new policy networks and ‘partnerships’ incorporating commercial businesses, private interests and ‘third sector’ or charitable organisations, which are increasingly refiguring relations between centre and periphery in diverse spheres of social life – including the crime control complex. Thus, the decline of state sovereignty in the face of greater interdependencies of political economies and the globalisation of world markets only present one dimension of contemporary trends. Global pressures co-exist alongside an increasing salience of locality. The sameness of globalisation also confronts and affronts assertions of local identity. Place is at one instance ‘disembedded’ (Giddens 1990) – disconnected from and stretched across time and space – but also re-embedded in an increased significance accorded to locality, local social order and the local ‘structures of feeling’ (Taylor *et al.* 1996) that remain essential in how ordinary people interpret and make sense of the world. There appears to be an increasingly profound relationship between globalised conditions and local circumstances and outlooks. And yet, the manner in which these tensions are played out, expressed and resolved are decidedly uneven. As commentators have noted, processes of ‘globalisation’ and ‘localisation’ are not necessarily antagonistic but often are interconnected through pressures towards social integration. Giddens has insisted that ‘the ever increasing abundance of global connections. . . should not be regarded as intrinsically diminishing the sovereignty’ of states, but rather seen as ‘in substantial part the chief condition of the world-wide extension of the nation-state system in current times’ (1985: 5). As such, it may be too soon to herald the ‘hollowing out of the state’ (Jessop 1993; Rhodes 1994) or celebrating its premature demise. As Bayley rightly warns, we should not get carried away with ‘a giddy sense at the moment among many intellectuals that the state is passé’ (2001: 212). Nonetheless, a re-articulation of powers and governmental authorities across diverse aspects of social life and at different levels of governance is well under way and the challenges to traditional ways of thinking about the ambitions and capabilities of the nation state remain pre-eminent questions of our time. In different ways these are some of the key themes that animate various chapters in this volume (notably in Parts 1 and 3)

Echoing Giddens’ insights into the impact of globalisation on state sovereignty, Katja Aas (in her chapter) uses the example of

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border controls in the EU to show how national borders are shifting under pressures of globalisation. She shows how nation states are becoming interlocked and decoupled from traditional geographic boundaries, not necessarily in ways that undermine or reduce sovereignty but rather in ways that frequently strengthen their security, working with, and through, other states and third parties. As Aas asserts: 'transnationalisation may be a way of achieving the goals of the national' (p. 407). Somewhat contradictorily, perhaps, on the one hand we see the 'de-territorialisation of the border' of nation states yet, on the other hand, we hear of the increased territorialisation of urban governance through the construction of differential 'zones' of security governance (as illustrated in the chapters by Boutellier and van Steden, and Blandy). Hence, the de-localisation of borders co-exists with the construction of new spatially defined zones and boundary formation with significant implications for policing and control (a theme developed in Crawford's contribution to this volume).

Against this background, the nation state as both an institutional and conceptual 'container' appears under threat like never before. Conceptually, in the political and social sciences, it has become something of a 'clunky' yet 'solid' term with overwhelming fixity in the face of the modernising tendencies of capitalism in which, as Marshal Berman (1983) (following Marx) noted, 'all that is solid melts into air'. Along with the nation state, fixed notions of boundaries and borders (both geographical and conceptual) have been called into question. Moreover, this traversing of borders and institutional fluidity raises important concerns about our capacity to understand social phenomena – like crime, criminal justice, social control and punishment – at different scales of analysis. The complex social production of transnational connections, city-to-city linkages, and the manner in which the 'global' and the 'local' are intertwined, destabilises taken-for-granted choices about scale and the connections between different frames of analysis. Can we deploy the same terms, vocabularies and conceptual understandings as we move between different scales (micro, mezzo, macro or local, national, global)? This is a question directly posed and explored by Mariana Valverde, in her contribution to this collection of essays. If new institutional forms and normative orderings are emerging at the intersection between flows, at the edges of traditional borders and cutting across place and scales of analysis, then what are the theoretical and empirical implications for our traditional ways of thinking about crime, law and criminology? What are the implications of the changing

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relationship between political traditions and national cultures in crime control (and elsewhere) both in relation to each other and vis-à-vis, on the one hand, some emerging notion of international norms, standards, procedures and legal order(s) and, on the other, local expressions of values and sensibilities?

On the move: borders and boundaries

In keeping with the 'fluid' or 'liquid' metaphor, crime and insecurity appear in particular to be on the move (Bauman 2006). They circulate in novel ways, penetrating public, private and hybrid spheres, seeping through new technologies and turning apparently benign and taken-for-granted aspects of contemporary life – such as shopping, travel, working and using the Internet – into potential threats. They simultaneously invade local and transnational arenas and confuse the two as international developments inform local insecurities and vice versa. Considerable new sources of harm – and by implication challenges of governance – present themselves from above and beyond, as well as below and within, the territories of the nation state. Some of these arise as a result of the dangers and opportunities presented by new technologies, scientific innovations, the flow of information and as populations become more mobile. The new prominence of risk connects individual autonomy with the influence and role of scientific innovation and technological change. We have witnessed both a growing sensitisation to risk and the problematisation of risk itself. As Ulrich Beck (1992), amongst others has argued, the contemporary 'risk society' constitutes a stage of modernity in which a defining feature is the production of new risks and harms that lie beyond the control of nation states with potential impact that transcends national territories. Global warming is the archetypical example of such a risk. However, transnational (organised) crimes and terrorism constitute further distinctive aspects of the types of harms generated by the greater mobility and flow of people, goods, capital and information facilitated by technological advances and innovations. In the process, it is argued, managing hazards (notably those that cut across borders) has become a central preoccupation of contemporary societies. Beck's argument has obvious implications for governments' limited capacity to manage and assert sovereign control over contemporary risks, notably in the face of global forces. So too, it has implications for individuals and the level of micro-social interactions. The break-up of the welfare state and the onset of neoliberal reforms – in

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many advanced Western societies – have served to proliferate and disperse risks once deemed the responsibility of the nation state. Where previously contained through social insurance – public welfare provisions – risks have increasingly become individualised. In this light, a defining feature of contemporary living is the institutionalised need, on behalf of individuals, to construct and invent the ‘self’ and actively shape one’s future in the face of contemporary risks. According to Bauman, ‘Modernity replaces determination of social standing with compulsive and obligatory self-determination’ (2001: xv); individuals’ life trajectories become ‘elective’. Here ‘choice’ becomes not only a meta-narrative and defining condition, but also a requirement. How one lives becomes a ‘biographical solution to systemic contradictions’ (Beck 1992). Despite globalising forces, the micro-social context of local order takes on a greater – not lesser – salience.

In the process, crime and insecurity have come to constitute major global and local challenges of immense contemporary significance for diverse governments (national and local), international organisations, NGOs, businesses, voluntary sector bodies and citizens alike. Security concerns inform the work and operations of numerous public, private and third-sector organisations stretching from the local to the national and the international sphere. It is now widely recognised that on the one hand policing and security measures designed to prevent and manage international threats – from terrorism and drugs or people-trafficking to inter-group conflict, for example – demand local intelligence and community-based responses whilst on the other hand the experience and salience of neighbourhood safety are informed and influenced by international trends and distant conflicts. Local crime and security concerns are interwoven with far-flung developments, global trends and experiences of injustices and inequalities in remote and sometimes far-away corners of the world. In many senses, the attacks in the USA on 11 September 2001 – as well as the subsequent bombings in Madrid, London and elsewhere – poignantly highlighted the mobile nature of security threats and allied risks and the interconnections between international conflicts and local safety, as well as problems of foresight, established methodologies for generating actionable intelligence and governmental responses to conditions of uncertainty (Zedner 2009; Crawford 2010).

Moreover, as these examples testify, the complex interpenetration of the local and the global has been unfolding (as well as having become more clearly a focus of analysis in its own right) at a time when threats to

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security and personal safety have come to constitute more pivotal concerns of governance. As Jonathan Simon (2007) has recently argued, in contemporary societies crime has become an intrinsic aspect of contemporary governance and an organising concept central to the exercise of authority. In his terms, societies are increasingly ‘governed through crime’, as a result of which the ‘technologies, discourses and metaphors of crime and criminal justice have become more visible features of all kinds of institutions, where they can easily gravitate into new opportunities for governance’ (Simon 2007: 4–5). In fact, as Garland (1996) has demonstrated, the very questioning of the capacity of the state to guarantee order and protect its citizenry from crime has itself prompted more volatile, contradictory and punitive expressions of punishment. As the limitations of the state have been acknowledged, at one instance, and sovereignty over crime denied – as being ‘beyond the state’ – so too, at another moment sovereignty is symbolically reasserted, through periodic episodes of (sometimes) hysterical and populist punitiveness. This dualistic denial and recognition produces ambivalent shifts in the state’s presentation of its own capacity for effective action in crime control which subsequently generates uncertainties among on-looking anxious citizens. According to some commentators, the resultant punitiveness, born of fear, appears to induce an obsession with rules, an insistence on uncompromising lines of demarcation between appropriate and inappropriate behaviour, a dwindling tolerance of deviance and disorder, and a disproportionate response to rule-breaking and incivility (Young 2007; Crawford 2009a). Despite the turn-around in the long rise of (recorded) crime rates across many advanced capitalist jurisdictions in the last decade or so, and unprecedented historic reductions in victimisation risks to the person, we appear to be in the grip of a pervasive preoccupation with insecurity, fear of crime and threats to safety (Boutellier 2004).

Just as crimes and insecurities appear to be shifting, so too responses to crime and insecurity are on the move. They are on the move both in the sense that the new institutions and arrangements of policing and regulation are loosened from their fixed association with the modern nation state, incorporating a diversity of actors that transcend territorial boundaries, and in the sense that crime control policies (at least at the level of rhetoric) are being transported – exported and imported – around the world. As crime and insecurity have become unbounded so too the governance of crime and insecurity is being refashioned through the forging of new regulatory institutions and infrastructures,

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as well as on the back of processes of policy diffusion and transfer (Newburn and Sparks 2004).

As a consequence, migration itself – the movement of peoples across borders – has become intimately bound up with debates about crime and its policing and punishment. Migrants and refugees, as embodiments of (uncontrolled) mobility and extraterritoriality, have become the outlet for contemporary insecurities and fears. In many ways, they constitute sitting targets upon which anxieties about the uncontrollable forces of mobility are easily projected and focused. Borders and boundaries constitute an impediment to mobility and fluidity. As such, they are key focal points that represent symbolic locations where contests are played out and new institutional apparatuses constructed. In this light, Aas describes borders as ‘immobilisation strategies’ that constitute an attempt at ‘imposing control in world in motion’. In this regard, borders and boundaries are pivotal to processes and dynamics of both exclusion and inclusion. They reinforce the attachments of inclusion, membership and citizenship, as well as seeking to insulate these from outside, external invasion. The EU borders construct the inclusive bonds of European citizenship which give rise to human rights protections, *inter alia*, as van Zyl Smit and Snacken’s analysis (in their chapter) testifies, on the one hand, but which also exclude non-citizens. In the process, such boundaries of membership create categories of aliens, ‘outsiders’ or internal ‘non-persons’ in the shape of what the French describe as *sans papier*. But forces of inclusion and exclusion operate outside of the territorial boundaries of the nation state or ‘clubs’ of member states. Sarah Blandy (in her chapter) highlights the growing salience of boundary-building as an integral tool of urban governance, in which processes of exclusion (and inclusion) are symbolically reinforced through physical ‘gating’.

Just as mobility and free movement are deemed to constitute fundamental aspects of free trade – as embodied in supranational constitutional arrangements such as the EU, where the free movement of people, goods and capital are sacrosanct ideals (see Aas 2007; and this volume) – so too, they are perceived to be central to the good economic order of the city (as Crawford argues in his chapter). This prompts ambiguous attempts to differentiate between what Aas terms ‘good’ and ‘bad’ mobilities. Consequently, there is a tension between the liberality of the inclusive invitation to ‘good mobilities’ and governing authorities’ desire to keep out ‘undesirables’ and ‘bad mobilities’. In the context of the city, Crawford describes this as ‘enticements to “good customers” . . . [which] are frequently mirrored by subterranean interdictions aimed at

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the “unwelcome” or what Bauman describes as “flawed consumers” (Crawford this volume: 495; Bauman 1998: 38–41 ref). As Aas argues, the intention is not to erect impenetrable borders but rather to manage the flow across boundaries and borders in an orderly and efficient manner; ‘not to arrest mobility but to tame it’ (Walters 2004: 248). As Crawford shows in the context of urban governance, these borders are often porous, but nevertheless have very real regulatory effects.

In urban, national and global governance, pre-emptive and preventive forms of control have become more evident (Ericson 2007). What is inferred is the need for intervention and action to occur before a threat or risk becomes an expressed and obvious ‘known’. This pre-emptive governance and a focus on what Zedner (2007) calls ‘pre-crime’ constitute a clarion call for early intervention even before risks have expressed themselves. It proclaims the need to anticipate and forestall potential harms. Rather than acting in the present to avoid an occurrence in the future, pre-emption brings the future into the present: ‘It makes present the future consequences of an eventuality that may or may not occur, indifferent to its actual occurrence’ (Massumi 2005: 7–8). This focus on pre-emption and prevention is to be found informing strategies stretching across international relations – most notably the US and UK justifications for the war against Iraq – and in local community safety – especially in the UK governments’ focus on ‘antisocial behaviour’ and the policing of incivilities in other jurisdictions. It also has implications for the blurring of disciplinary boundaries and policy fields as well as border controls, as modes of governance seek to push the policing of possible ‘risks’ before they express themselves, i.e. before they enter national borders and before they cross the threshold of contemporary security ‘clubs’ (Hope 2000; Crawford 2006). This strategy of pre-emption highlights the interconnections between internal and external dimensions of policing and security policies, and the blurring of migration policy, foreign affairs and international development and aid.

Comparisons

Comparison by necessity implies the identification of similarities and differences across spatial and temporal units of analysis; whether these are isolated variables such as imprisonment rates per capita or the more complex interactions between actors in institutions and processes, and the manner in which these are interpreted. Comparative criminal justice research, as Nelken notes, ‘is both about discovering surprising

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differences and unexpected similarities' (2010: 32). The first issue then is the question of equivalence; do the key concepts, terms, practices, datasets, processes, actors and institutions have the same meaning in different places? Are we comparing like with like or apples with pears? At one level, this raises issues of measurement and meaning; what are we measuring and what is its meaning? Can we identify a point of comparison – a facet or variable – which can be understood in its own terms and holds constant in the process of comparison? Or, is it so implicated in, and constituted by, other factors and forces that comparing it across time and/or space is invalid or undermined? In part due to both measurement difficulties and the fact that traditionally much criminology research and teaching has maintained a decidedly domestic focus, the comparative approach in crime and criminal justice – as contrasted with some fields like economics and healthcare (Wilkinson and Pickett 2009) – remains in its infancy. Nevertheless, in the quest for comparable cross-national data, criminologists have done much in recent years both in taking official datasets as a starting point for comparison and in developing new datasets, often based on survey instruments that bypass official statistics such as international crime victims surveys (ICVS). First conducted in 1988, the ICVS has expanded to incorporate some seventy-eight countries where it has been conducted more than once. This has allowed researchers to develop 'league tables' on various types of crime and to measure public attitudes to criminal justice institutions and processes (van Dijk *et al.* 2006; van Dijk 2008). However, as well as descriptive questions about similarities and differences, comparison raises analytical questions about what accounts for difference and similarities and how differences are not only classified and explained but also interpreted.

At another level, this prompts questions about translation across time/space. Here translation has two distinct dimensions. First, in some comparative research there is the complex task of translation from one language to another. In a European context, given the rich diversity of languages, this presents particularly acute challenges. The process of linguistic conversion, by necessity, expects the same term to carry the same meaning in each language. However, this can be a misguided assumption. Not only do practices and institutions differ considerably but the same term may carry very different meanings. What at first sight may appear to reflect the same expression may, on closer inspection, turn out to be dramatically distinct in significant and consequential ways. In some contexts, no direct translation may exist; such that a given

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term constitutes what Lacey and Zedner (1998) call a ‘significant absence’. The interpretation and explanation of such ‘absences’ (and conversely ‘presences’) in different cultural contexts is the stuff of much innovative comparative study (Nelken 2000). In this light, Legrand argues that ‘the comparativist must learn *not* to translate’ (1996: 234, emphasis in original) and he chastises much comparative legal research for ignoring issues of translation and the ‘foreignness of languages’ (*ibid.*: 235). In this light, there may be benefits, for comparative researchers, to be derived from the quest for, and analysis of, functional equivalence (rather than similar terms or institutions) within systems of crime control rather than too hastily assuming linguistic correspondence. Such functions may be intended or unintended and therefore, take us beyond an exploration of the formal purpose (or mission statement) that institutions and processes may formally hold out. Furthermore, such an approach should beg questions about the different interests served by specified functions – in other words, for whom is it functional? And yet, the search for functional equivalence assumes that all criminal justice systems both perform the same or similar tasks and have an internal logic and coherence. The danger of such an approach, however, derives from the potential functionalism that may ensue, whereby practices are understood primarily in terms of the function they perform as a constituent element of a larger system. Research findings in criminal justice have frequently highlighted the non-system-like nature of the interactions and interrelations between the constituent parts, the incongruities and conflicts that make up crime control and the irrational dynamics that infuse criminal justice processes (Crawford 1997). Furthermore, one of the enduring lessons from (comparative) criminology is precisely that there may be a significant disjuncture between the symbolic and affective dimensions to crime control as contrasted with its instrumental or managerial functions. As Garland has noted:

there are two contrasting visions at work in contemporary criminal justice – the passionate, morally toned desire to punish and the administrative, rationalistic, normalizing concern to manage. These visions clash in many important respects, but both are deeply embedded within the social process of punishing. It is in the conflict and tension between them that we find one of the key determinants of contemporary penal [and more broadly crime control] practice. [1990: 180]

The second sense in which translation occurs is the process whereby ideas, practices or activities are translated from one place to another. This process of contextual relocation assumes that the same practices