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Understanding transnational policy flows in security and justice

Trevor Jones* and Tim Newburn**

This paper examines the contribution of scholarly work on 'policy transfer' and related concepts to our knowledge of how far, and in what ways, particular policy 'models' of security and justice travel across national boundaries, and what might explain this phenomenon. The paper begins by summarising the key findings of extant empirical studies of cross-national policy movement in the fields of crime, security and justice. It then considers the normative dimension to debates about policy transfer, observing that much of the literature adopts a pessimistic position about the problematic nature of international policy movement in security and justice, and discusses some of the reasons for such pessimism. The paper then reflects on ways in which normative principles could be applied to considerations of prospective policy transfer, and the implications for the broader possibilities for 'progressive' policy transfer in relation to crime, security and justice.

Key words: Policy transfer, diffusion, mobilities, crime control, security, justice, normative theory

In security and justice, as with other areas of public policy, it often appears that the world is getting smaller. The increasingly transnational nature of social problems and their associated public policy responses has been widely recognised in contemporary scholarly analysis, not least within research on crime control, security and justice.¹ Criminologists and socio-legal scholars have become particularly interested in 'extra-jurisdictional' influences that shape policies, and in the potential value of cross-national comparative research in helping us to understand such phenomena. In relation to crime control and penal policy, previous research has revealed the broader macro-social factors² and distinctive 'domestic' institutional features of political economy³ that work to shape policy trajectories in different national contexts. Although comparative criminologists and legal scholars have to date devoted less attention to *processes* of policy formation, and more specifically, the role of cross-national movement of particular policies and practices,⁴ there is a

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¹ T. Newburn and R. Sparks (eds.), *Criminal Justice and Political Cultures* (2004).

² D. Garland, *The Culture of Control* (2001).

³ N. Lacey, *The Prisoners' Dilemma* (2011).

⁴ M. Tonry, 'Is cross-national and comparative research on the criminal justice system useful?' (2015) 12 *European J. of Criminology* 505; T. Jones, J. Blaustein and T. Newburn, 'Researching cross-national mobilities in crime control' *Criminology and Criminal Justice* (2019) DOI: 10.1177/1748895819864627

small and developing body of empirical work that focuses on the international mobility of crime control, justice and security policies. This paper reflects on the contribution of this research to thinking about the possibilities for and the desirability of cross-national exchange in policies related to security and justice.

It addresses two broad categories of question. The first concerns empirical questions relating to how far and in what ways crime, security and justice policies actually travel across national boundaries, what happens to them in the process, and what factors might explain such phenomena. The second concerns how we might view cross-national policy flows normatively – assuming that they are a significant empirical reality. We begin with a brief overview of what existing research has revealed about the empirical questions concerning the extent, nature, and mechanisms of cross-national policy movement in security and justice. The second section considers the reasons why much research in relation to policy transfer in crime control has viewed the phenomenon in a negative light. The third section explores the possibilities for progressive cross-national policy movement and discusses some normative principles that might inform assessments of prospective policy transfer in crime, security and justice.

CROSS NATIONAL MOVEMENT OF SECURITY AND JUSTICE POLICIES: KEY RESEARCH FINDINGS

1. What is meant by ‘policy transfer’ and related concepts?

Space limitations preclude an extensive review of the policy transfer/mobilities literatures generally or specifically in relation to the field of crime control.⁵ For current purposes, we attempt to offer some conceptual clarity together with a summary of key empirical findings in the field of security and justice. The scholarly study of cross national policy movement started with studies of what was termed policy ‘diffusion’.⁶ This examined the ‘spreading, dispersion and dissemination of ideas or practices from a common source or point of origin’.⁷ It involved mapping and developing explanations for the spread of particular policy approaches across space and time, and for the most part was explored via large scale statistical studies.⁸ From the 1990s onwards, scholars – largely from within political science and policy analysis – became interested in the phenomenon of cross-national ‘lesson drawing’: meaning the ways in which policy-makers take active steps to ‘learn from elsewhere’ and to what effect.⁹ The broader notion of ‘policy transfer’, which moves beyond voluntarist notions of ‘learning’ to include more coerced or imposed forms of cross-jurisdictional

⁵ Broader reviews can be found in Newburn and Sparks, *op. cit.*, n. 2; T. Newburn, T. Jones and J. Blaustein, ‘Policy mobilities and comparative penalty’ (2018) 22 *Theoretical Criminology* 563; Jones *et al*, *op. cit.*, n. 4.

⁶ J. Walker, ‘The diffusion of innovations among the American states’ (1969) 63 *Am. Political Science Rev*, 880.

⁷ D. Stone, ‘Transfer agents and global networks in the ‘transnationalization’ of policy’ (2004) 11 *J of European Policy* 545, at 546.

⁸ D. Marsh and J. Sharman, ‘Policy diffusion and policy transfer’ (2009) 30 *Policy Studies* 269.

⁹ R. Rose, ‘What is lesson-drawing?’ (1991) 11 *J. of Public Policy* 3.

policy movement, gained currency within political science during the 1990s. This was defined as the process via which 'knowledge about policies, administrative arrangements, institutions and ideas in one political setting (past or present) is used in the development of policies, administrative arrangements, institutions and ideas in another political setting'.¹⁰ Such work is mostly based on qualitative case studies of the transfer of 'concrete' manifestations of 'policy' (e.g. particular institutional forms, legislation, legal rulings or written policy programmes) comprising a mixture of interviews with key policy actors and documentary analysis. This has been arguably the dominant influence to date on studies of policy movement in crime, security and justice.

An important recent development in the field has been provided by 'critical policy scholars', primarily working in the field of human geography, who have proposed the notion of 'policy mobilities'.¹¹ This research has provided a vigorous critique of the terminology and methodologies associated with the 'orthodox' study of 'policy transfer'. It suggests that such perspectives present a simplified notion of 'policy', and adopt naive 'rational choice' assumptions about the process of policy transfer based on overly-narrow analyses of 'formal' policy documents and the accounts of national elite policy actors. Policy mobilities scholars advocate a focus on the social construction of the more fluid and emergent notion of 'policy assemblages' that are shaped within particular ideological and political contexts, drawing on ethnographic research in a variety of state, non-state and supra-state policy-making sites.¹² Across all of these different perspectives, there has been relatively little focus to date upon the arenas of crime, security and justice compared with other areas of public policy, although there are some important exemplars in each category which we will draw upon below.

2. How much policy transfer?

The starting point for most work on cross-national crime policy movement, including our own, is the assumption that this is a significant empirical feature of contemporary policy-making that is growing in frequency and velocity. Though rigorous evidence about scale and trends is not available, we know that the cross-national movement of policies, and self-conscious attempts at importing and/or exporting policy ideas and practices across national boundaries have a long history¹³ and it is plausible to assume that pressures towards cross-national policy movement have increased substantially in recent years. This is certainly the strong impression of many informed commentators, and is also based on the widespread acknowledgement of

¹⁰ D. Dolowitz and D. Marsh, 'Learning from abroad: The role of policy transfer in policy making' (2000) 13 *Governance* 5, at 5.

¹¹ J. Peck, 'Geographies of policy: From transfer-diffusion to mobility-mutation' (2011) 35 *Progress in Human Geography* 773.

¹² See Newburn et al, op. cit. n. 5

¹³ S. Karstedt, (2004) 'Durkheim, Tarde and beyond: The global travel of crime policies', in Newburn and Sparks op. cit, n. 1, at 16.

the enhanced mobility of people, goods and services – licit and illicit - across the globe, the speeding up of electronic communications and knowledge exchange, and the growth of formal governance institutions at the global and regional levels. However, we should beware of exaggerating the extent of the phenomenon, at least in terms of ‘successful’ policy transfers, and critical policy studies scholars have raised concerns about the ‘fetishisation’ of mobility based on the selection of particular high profile examples of ‘mobile’ policies as the focus for empirical study.¹⁴ Such approaches fail to acknowledge the numerous examples of failed or not-even-attempted transfer, as well as the local and national policies that develop in blissful ignorance of similar developments elsewhere. Furthermore, it is worth noting how empirical studies of crime policy transfer have emphasized the difficulty of policy transfer between national contexts. As Tonry notes, despite the undoubted globalising pressures within the fields of crime control, security and justice and the related transfer activities, ‘[i]n practice, remarkably little policy transfer takes place’.¹⁵ Even when focusing on high profile examples of policy developments widely perceived as having been the outcome of cross national transfer, empirical evidence suggests that transfer is never a straightforward matter of ‘importing’ off-the-shelf policy models from elsewhere. Actual examples of ‘successful’ replication of concrete policies and practices are rare.¹⁶ *Contra* some of the later arguments of policy mobilities scholars, these and other studies, rooted firmly in political science approaches, emphasise the profound complexity and contingency of policy transfer processes. They suggest that policies rarely if ever travel as ‘complete packages’, are shaped by a variety of actors operating at different levels in the system, and provide sharp illustrations of how particular policies mutate and change shape when introduced into different contexts from those in which they developed.¹⁷

3. How are policies transferred?

Within the broader literature on policy transfer and diffusion, and in relation to crime, security and justice, four main mechanisms have been identified:¹⁸ learning, competition, coercion and mimicry.

(a) Learning

A key theme within work on crime (and by extension, security and justice) policy transfer has been the detailed examination of cases from the ‘voluntary’ end of the continuum in which policy actors appear to have actively sought to learn from elsewhere, or, alternatively, to ‘export’ their policy ideas and innovations beyond their

¹⁴ S. Webber, ‘Mobile Adaptation and Sticky Experiments: Circulating Best Practices and Lessons Learned in Climate Change Adaption’ (2015) 53 *Geographical Research* 26.

¹⁵ Tonry, *op. cit.*, n. 5, at 510.

¹⁶ T. Jones and T. Newburn, *Policy Transfer and Criminal Justice* (2007); D Brown et al., *Justice Reinvestment: Winding Back Imprisonment* (2016).

¹⁷ Jones and Newburn, *id.*; Brown et al, *id.*; D. Marsh and M. Evans, ‘Policy transfer: into the future, learning from the past’ (2012) 33 *Policy Studies* 587.

¹⁸ Marsh and Sharman, *op. cit.*, n. 8.

places of origin. For example, our work on the extent to which ideas associated with 'zero tolerance policing' crossed the Atlantic from New York to the UK documented the very significant amount of self-conscious transfer activity that was involved.¹⁹ The recent history of crime control policies in Western developed democracies provides many examples of attempts to import/export elements of high profile policy innovations, including 'Justice Reinvestment',²⁰ drugs courts,²¹ electronic monitoring,²² restorative justice,²³ youth justice,²⁴ criminal justice approaches to domestic violence,²⁵ community policing models,²⁶ among others.

While of course it is important not to adopt unrealistic assumptions of 'pure' rational choice in relation to learning mechanisms, empirical research has suggested that self-conscious and purposive 'learning' – under conditions of bounded rationality – has been an important mechanism of attempted policy transfer within these fields. One important avenue for policy learning that has been identified in the literature has been the development of transnational 'epistemic communities' – expert networks including policy-makers, senior practitioners, scholars, representatives of commercial firms, and NGOs working in the fields of security and justice – which not only facilitate knowledge exchange about particular policy ideas and models but also propagate among members an increasingly shared set of norms and ways of seeing the world. They have been linked with policy learning in a range of security and justice-related fields, not least in the realm of policing.²⁷ This is not to argue that such epistemic communities necessarily facilitate highly rational forms of policy learning, only that on some levels at least there are efforts to share knowledge, ideas and practices that go on to inform policy development in different jurisdictions.

(b) Competition

This mechanism of policy exchange has perhaps been most associated with the spread of policy approaches outside of the field of security and (criminal) justice, in particular relating to the imposition of international standards in relation to environmental, fiscal or labour market policy.²⁸ The main thrust of argument is that

¹⁹ Jones and Newburn, op. cit., n. 16.

²⁰ Brown et al, op. cit., n. 16.

²¹ S. Butler, 'The symbolic qualities of the Dublin drug court: The complexities of policy transfer' (2013) 20 *Drugs: Education, Prevention and Policy* 5.

²² M. Nellis, 'Law and Order: The electronic monitoring of offenders' in *Policy Transfer and British Social Policy: Learning from the USA?* ed. D. Dolowitz (2000)

²³ G. Maxwell, 'Crossing cultural boundaries: Implementing restorative justice in international and indigenous contexts' (2008) 11 *Sociology of Crime, Law and Deviance* 81.

²⁴ J. Muncie, 'Policy Transfers and 'What Works': Some Reflections on Comparative Youth Justice' (2001) 1 *Youth Justice* 27.

²⁵ P. Erwin, 'Exporting US Domestic Violence Reforms: An analysis of Human Rights frameworks and US "Best Practices"' (2006) 1 *Feminist Criminology* 188.

²⁶ A Robertson, 'Criminal Justice Policy Transfer to Post-Soviet States: Two Case Studies Of Police Reform In Russia And Ukraine' (2005) 11 *European J. on Criminal Policy and Research* 1.

²⁷ Jones and Newburn, op. cit., n. 16.

²⁸ Marsh and Sharman, op. cit., n. 8.

nations come to adopt similar investor-friendly policies, including a range of 'neoliberal' reforms such as privatization, deregulation, public sector reform, labour market liberalisation etc. This has been presented by some theorists as a key mechanism in promoting policy convergence between nation states, competing to attract international capital flows.²⁹ The empirical literature on crime policy flows has, to date, had little to say about this mechanism of policy transfer, although the features of national political economy which it concerns are of course a vital conditioning factor in shaping domestic justice and security problems and policies. An important exception to this general absence is Sharman's³⁰ work on policy diffusion of Anti Money Laundering (AML) policies driven in developing countries by the Financial Action Task Force (FATF). Although he found evidence of a combination of mechanisms at work, competition between developing states to demonstrate to potential inward investors that they were compliant with international AML regulations and could be a safe haven for capital investment was especially important. More recently, this form of mechanism, in combination with aspects of those described under 'coercion' below, has been seen as an active feature of the transfer of 'Northern' approaches to crime reduction, policing and justice reform: crime and insecurity have become defined by international financial organisations and donor countries as important obstacles to the promotion of economic growth in developing countries.³¹

(c) Coercion

An important theme within work on international policy transfer has been forms of coercion as mechanisms for promoting similar security and justice policies across different countries. The history of colonialism is of course littered with examples of the imposition of 'western' traditions and institutions on indigenous communities, the most overt and explicit forms of coerced international policy movement. More recently, attention has focused upon the ways in which powerful 'hegemon' states (most usually the USA), international financial institutions such as the IMF or World Bank (most usually via loan conditions), international institutions of global or regional governance such as the United Nations or European Union, and bi-lateral/multi-lateral aid packages (again often via loan conditions) work to promote the adoption of similar policy models. These latter forms, perhaps best thought of as less directly coercive policy transfer but nevertheless clearly far from voluntary, have perhaps been particularly relevant in recent decades with Western intervention in post-conflict societies and emerging democracies. These present the export of 'best practices' in security and justice policies as a key foundation for the development of stable

²⁹ F. Dobbin, B. Simmons and G. Garrett, G., 'The global diffusion of public policies: Social construction, coercion, competition, or learning?' (2007) 33 *Annual Review of Sociology* 449.

³⁰ J. Sharman, 'Power and Discourse in Policy Diffusion: Anti-Money Laundering in Developing States' (2008) 52 *International Studies Q.* 635.

³¹ J. Blaustein, 'Exporting criminological innovation abroad: Discursive representation, 'evidence-based crime prevention' and the post-neoliberal development agenda in Latin America' (2016) 20 *Theoretical Criminology* 165.

democracies. Overseas 'police missions' have been an important example of such interventions, deploying police officers from North America and Western Europe to help the process of police reform in transitional democracies.³² Bi-lateral aid has also been an important part of reform in the penal sector, illustrated, for example, by the UK government funded probation reform project in Romania.³³ More recent work relevant to this type of 'policy transfer' has developed within the field of 'Border Criminology', focusing on the intersection between policies relating to security, justice, immigration and border controls. For example, the UK's 'Returns and Reintegration Fund', funded a range of projects in different countries with the aim of 'managing migration'.³⁴ Bosworth's work has explored prison building and training programmes in Nigeria and Jamaica, and mandatory prisoner transfer agreements funded by the UK government, which have blurred the boundaries between policies on migration and punishment, and, under the veneer of humanitarian aid, have worked to expand the reach of the penal system. Many scholarly accounts understandably focus upon the problematic aspects of these forms of 'coerced' (or, perhaps incentivised/imposed) policy transfer, although there are counter-examples which focus on changes that would more generally be viewed as progressive. In particular we think here of the role of global or regional governance institutions in promoting abolition of the death penalty,³⁵ or in improving protections against ill-treatment of those held in custody by the state.³⁶

(d) Mimicry

'Mimicry' or emulation denotes 'the process of copying foreign models in terms of symbolic or normative factors, rather than a technical or rational concern with functional efficiency'.³⁷ Some countries adopt the policy models and approaches of other countries perceived as 'international leaders' or those proposed by international organisations in order to be seen as part of a civilised and advanced international community and bolster legitimacy in the eyes of domestic or international audiences.³⁸ Sharman's work on the spread of AML policies, discussed above, found that the desire of policy actors in developing nations to be seen as members of a responsible international community contributed to the adoption of policies advocated by the FATF even in the absence of any solid evidence about

³² A. Aitchison, 'Police Reform in Bosnia and Herzegovina: State, Democracy and International Assistance' (2007) 17 *Policing and Society* 321; G. Ellison and N. Pino, *Globalization, Police Reform and Development: Doing it the Western Way?* (2012); J. Blaustein, *Speaking Truths to Power: Policy Ethnography and Policy Reform in Bosnia and Herzegovina* (2015).

³³ I. Durnescu and K. Haines, 'Probation in Romania: Archaeology of a partnership' (2012) 52 *Brit. J. of Criminology* 889.

³⁴ M. Bosworth, 'Penal humanitarianism? Sovereign power in an era of mass migration' (2017) 21 *New Criminal Law Rev.* 39.

³⁵ M. Mathias, 'The sacralization of the individual: Human rights and the abolition of the death penalty' (2013) 118 *Am. J. of Sociology* 1246.

³⁶ T. Daems, 'Slaves and statues: Torture prevention in contemporary Europe' (2017) 57 *Brit. J. of Criminology* 627.

³⁷ Marsh and Sharman, *op. cit.*, n. 8

³⁸ P. DiMaggio and W. Powell (eds.) *The new institutionalism in organizational analysis* (2009).

their likely instrumental effectiveness.³⁹ Similarly, Jakobi found evidence of countries adopting UN-promoted changes in laws on human trafficking, primarily for the purposes of international legitimisation, but not actually implementing the legislation in terms of enforcement.⁴⁰ Policy adoption thus takes on an entirely symbolic character. The policy mobilities literature has provided important illustrations of how apparent 'learning' activities can often amount to little more than 'policy tourism'⁴¹ and 'mimicry' of the kind discussed here. For example, Gonzalez recounted the visits of policy professionals from across the globe who visited Barcelona and Bilbao during the 1990s and 2000s to explore models of urban governance in those cities (both of which had become widely celebrated as international models of 'best practice').⁴² These visits were brief and stage-managed encounters, being more focused on legitimising the visitors' existing approaches rather than being a genuine source of new policy ideas.

4. From where and to where are policies transferred?

Much work has focused on the North-to-North policy mobility, arguably reflecting the early literature's 'excessive preoccupation with Western countries'.⁴³ Many early studies of crime policy transfer focused on US-inspired models⁴⁴ with a broader focus more generally on relations between Anglophone democracies. However, policy exchange between the Global North and the Global South has received increasing attention, with scholars highlighting the problematic aspects of the imposition of 'Northern' models.⁴⁵ There has also been some attention to the ways in which some policy ideas which had their origins in indigenous communities in the Global South and First Nations communities in North America appear to have travelled to the countries of the Global North, not least in the field of restorative justice.⁴⁶ In contrast to the work in political science, the 'critical policy studies' literature has focused on the circulation of policy models in urban governance within and between countries of the Global South, with a particular interest in Latin

³⁹ For a more recent analysis see T. Halliday M. Levi and P. Reuter, 'Why Do Transnational Legal Orders Persist? The Curious Case of Anti-Money Laundering' (forthcoming) in G. Shaffer and E. Aaronson (eds.) *Transnational Legal Ordering of Criminal Justice*.

⁴⁰ A. Jakobi, *A. Common Goods and Evils?* (2013).

⁴¹ N. Clarke, 'Urban Policy Mobility, Anti-Politics and Histories of the Transnational Municipal Movement' (2012) 36 *Progress in Human Geography* 25.

⁴² S. Gonzalez, 'Bilbao and Barcelona "in motion": How urban regeneration models travel and mutate in the global flows of policy tourism' (2011) 48 *Urban Studies* 1397.

⁴³ Marsh and Sharman, *op. cit.*, n. 8, p. 270

⁴⁴ L. Wacquant, 'How penal common sense comes to Europeans: Notes on the transatlantic diffusion of the neoliberal doxa' (1999) 1 *European Societies* 319; N. Christie, *Crime Control as Industry* (2000); Jones and Newburn, *op. cit.*, n. 16; Brown et al, *op. cit.*, n. 16.

⁴⁵ K. Carrington, R. Hogg, and M. Sozzo, 'Southern criminology', (2016) 56 *Brit. J. Criminology* 1; Blaustein, *op. cit.* n. 31; J. Steinberg, 'Crime prevention goes abroad: Policy transfer and policing in post-apartheid South Africa', (2011) 15 *Theoretical Criminology* 349.

⁴⁶ Karstedt, *op. cit.*, n. 13; J. Tauri, 'An Indigenous commentary on the globalization of restorative justice' (2014) 21 *Brit. J. of Community Justice* 35.

America.⁴⁷ However, with the exception of some discussion of urban security and policing policies,⁴⁸ little of this work to date has touched on policies relating to crime, security and justice. In addition, even where there do appear to be examples of South-South policy exchange, Montero notes that such processes are often mediated by North-based international governmental and non-governmental organisations such that ‘Southern policies that reach world recognition are also deeply entangled with Northern policy networks and agendas’.⁴⁹ Finally, it is worth noting that whilst criminal justice policies remain focused on the level of the nation state, the growing focus on ‘security’ (which tends to incorporate a wider range of agents below, beyond and above the level of the nation state) has helped to highlight issues of cross-national transfer that occur between sub-state units, not least ‘city regions’.⁵⁰

5. What factors constrain or facilitate policy movement?

Diffusion and transfer studies generally have focused respectively upon structural explanations and those more predicated on the agency of political actors. Within the specific fields of security and justice, research has suggested a number of factors that limit or facilitate policy transfer, not least the supposed political, legal and ideological proximity of Anglophone countries. Our research on crime control policy transfer from the USA found that shared language, common law traditions and perceived cultural similarities were important explanations for why politicians and policy-makers appeared to look across the Atlantic rather than towards mainland Europe for inspiration.⁵¹ However, we also found that once policies, or elements of them, found their way across the Atlantic, the very different political, cultural and legal contexts constrained policy transfer in practice, providing space and levers for resistance, reworking and reconfiguration (so that policies hardly developed at all, or developed in very different ways in the UK context).⁵² Others have highlighted the ways in which UK/US ‘community policing’ models took on a very different shape when introduced into the contrasting environments of South Africa and the

⁴⁷ S. Montero, ‘Worlding Bogota’s Ciclovía: From urban experiment to international “best practice”’ (2017) 44 *Latin Am. Perspectives* 111.

⁴⁸ D. Davis, ‘Zero-tolerance policing, stealth real estate development, and the transformation of public space: evidence from Mexico City’ (2013) 40 *Latin Am. Perspectives* 53; L Sotomayor, ‘Dealing with dangerous spaces: The construction of urban policy in Medellín’ (2017) 44 *Latin Am. Perspectives* 71; K Swanson, ‘Zero Tolerance in Latin America: Punitive Paradox in Urban Policy Mobilities’ (2013) 34 *J. of Urban Geography*, 972; A Mountz, and W Curran, ‘Policing in drag: Giuliani goes global with the illusion of control’ (2009) 40 *Geoforum* 1033.

⁴⁹ Montero, op. cit., n. 43, at 127.

⁵⁰ A. Edwards and K. Stenson, ‘Policy Transfer in local crime control: Beyond naïve emulation’, in Newburn and Sparks op. cit. n.1, pp. 209-233; E. Devroe et al., (eds) *Policing European Metropolises: The politics of security in City-Regions* (2017); L. Bainbridge, ‘Transferring 24/7 sobriety from South Dakota to South London: the case of MOPAC’s Alcohol Abstinence Monitoring Requirement Pilot’ (2019) *Addiction*, doi:10.1111/add.14609

⁵¹ Jones and Newburn, op. cit. n. 16.

⁵² See also T. Jones and T. Newburn, ‘Policy convergence, politics and comparative penal reform: sex offender notification schemes in the USA and UK’ (2013) 15 *Punishment and Society* 439.

Caribbean.⁵³ The nature of policies may also help explain their 'portability', for as Tonry notes: 'One theme that emerges is that purely technological innovations with few self-evident ideological implications transfer easily and comparatively quickly. Policies that raise political and ideological implications do not.'⁵⁴

Interestingly, a contrast is visible between policies relating to (criminal) justice on the one hand, and those relating to 'security' on the other. Forms of sentencing and penal interventions may be more closely associated with the identity and function of the sovereign nation state, and may explain why they appear to be less mobile internationally when compared with broader issues relating to security provision, especially those in which actors below and beyond the nation state are increasingly active (see Jones and Newburn for the role of commercial corporations in shaping technology transfers relating to electronic monitoring,⁵⁵ or Edwards and Stenson in relation to transfers of crime prevention approaches between sub-national governing bodies in different countries).⁵⁶

6. Who transfers policy?

There are a number of key state-level 'policy transfer' agents including politicians, civil servants, and political advisors. In addition, a range of actors above and below the level of the state are involved in cross-national policy movement, including NGOs, think tanks, criminal justice practitioners and 'local' government politicians and officials, (state agents), commercial organisations, mid-level consultants and technocrats. In addition, academic criminologists are themselves 'increasingly eager exporters of knowledge', in effect operating as 'transfer agents' in these fields.⁵⁷ Importantly, policy mobilities scholars argue for an expansion of the analytic gaze to include 'non-elite' actors such as frontline workers, service users and activists, operating in a range of policy-making sites.⁵⁸ The work on urban policy mobilities has also been particularly helpful in focusing attention on the ways in which certain policy models or approaches are actively constructed and mobilised as 'international best practice',⁵⁹ although again much of this has focused on broader notions of urban planning and governance rather than specific issues of crime, security and justice.

7. What is transferred?

As noted above, much of the work on policy transfer in crime control has focused upon the concrete and substantive, in the form of written programmes, legislation,

⁵³ Steinberg, *op. cit.*, n. 41; M. Mendez Beck and R. Jaffe, 'Community Policing Goes South: Policy Mobilities and the New Geographies of Criminological Theory' (2019) 59 *Brit. J. of Criminology* 823.

⁵⁴ Tonry, *op. cit.* n. 5., at 511

⁵⁵ Jones and Newburn, *op. cit.*, n. 16.

⁵⁶ Edwards and Stenson, *op. cit.*, n. 46.

⁵⁷ K. Aas, 'Visions of global control: Cosmopolitan aspiration in a world of friction' in *What Is Criminology?* eds. M. Bosworth and C. Hoyle (2011) at p. 409.

⁵⁸ T. Baker, E. McCann and C. Tenemos, 'Into the Ordinary: Non-elite actors and the mobility of harm reduction policies', (2019) *Policy and Society* (online first) DOI: 10.1080/14494035.2019.1626079.

⁵⁹ Montero, *op. cit.*, n. 43.

institutions, institutional forms, and technologies. However, a key finding of the extant literature has been the importance of the symbolic and rhetorical dimensions of policy. Indeed, research shows that ‘hard’ forms of policy transfer – in terms of the substantial replication of concrete policy programmes – are difficult to identify. By contrast, ‘soft’ transfer – including initial ideas or inspiration, and particular forms of symbol or policy rhetoric – have proved much more mobile internationally. US-inspired rhetoric around ‘zero tolerance’ and ‘three strikes’ sentencing found its way with surprising ease into the British political lexicon, for example, even though the concrete reforms in policy and practice associated with such rhetoric were hardly visible.⁶⁰ The critical policy studies literature explores the physical mobility of policy-makers, advisers, advocates themselves, along with the physical artefacts of policy knowledge/models in the form of best practice manuals, institutional forms and so on. In addition, there is work that examines the ‘imaginative mobility’ which shapes urban policy developments via comparisons in competitive rankings and league tables.⁶¹ Such work potentially helps widen our gaze about the ‘what’ of security and justice policy transfer, and focus on the disparate elements that are assembled/disassembled/reassembled in different policy-making sites.

8. Temporality and the study of policy transfer

For understandable reasons the bulk of research in this field has been *retrospective* in character, looking back at the emergence of criminal justice and penal policies in particular jurisdictions and seeking to assess the degree of ‘borrowing’ and international influence. Occasionally, there have been studies that have adopted a more *contemporaneous* approach, utilising opportunities on the ground to observe policy development as it emerges and, once again, assessing the extent to which some form of policy transfer may have occurred. In what follows, and in thinking about the potential of research in this field to identify policy developments that might be considered normatively desirable, we argue that greater utilisation of *contemporaneous* approaches is likely to be valuable and, moreover, suggest greater thought should be given to the role for *prospective* policy transfer research: work that identifies possible directions for penal reform and seeks to assess, using extant research findings, how best such policy changes might be effected. Doing so, as we have implied, necessarily involves normative judgements about the direction of change and it is to this we turn our attention next.

NORMATIVE ISSUES: THE PROBLEMS OF CROSS-NATIONAL POLICY MOBILITY?

Although normative issues have rarely been addressed explicitly in extant policy mobility research, they have been far from absent. As we noted in the introduction,

⁶⁰ T. Jones and T. Newburn, ‘Comparative criminal justice policy-making in the US and UK: The case of private prisons’ (2004) 45 *Brit. J. of Criminology* 58.

⁶¹ See Clarke, *op. cit.*, n. 41, on the ‘imaginative mobility’ which shapes urban policy developments

much scholarly work in this field has adopted a somewhat critical and pessimistic position, focussing on policy movements that have tended to be seen negatively. We think this is so for three broad reasons: the dominant concern has been with the international movement of *punitive and regressive* policies; although much existing work has been largely located in the northern hemisphere, there have also been plentiful examples of possible policy movement that contain *neo-colonialist* echoes; and, finally, research has increasingly identified the problematic nature of much policy transfer activity, leading to significant *practical concerns* about ineffective or negative outcomes of policy transfer.

First then, and most important, there is an understandable focus within work on convergence, transfer and mobility in crime control policy on the 'punitive turn' that emerged in many western countries in the final decades of the twentieth century, and the perceived spread of such policies globally.⁶² In part this reflects the timing of such scholarship: policy transfer research only really gained any traction in the 1990s, and it was the beginning of the new century before criminology showed any concrete interest. This was a time when (northern hemispheric) criminology was preoccupied with the dramatic increases in prison populations and other indicators of the so-called 'new punitiveness'⁶³ that was affecting the majority of liberal democracies. Although such work had little to say about the possible influence of active policy exchange and transfer, the same policies also became the focus of the work of scholars more formally interested in the mobility of policy.⁶⁴ Broader work on the internationalisation of crime control has presented a view of globalising forces as tainted with the hue of authoritarianism and punitiveness, perhaps most particularly in relation to the US-led 'War on Drugs'.⁶⁵ The criminological preoccupation with the punitive turn, whether the focus was on penal change in general, or policy transfer more specifically, meant that much research at this time was focused on criminal justice and penal policies that were viewed almost entirely negatively.

Although the bulk of such research focused on developments in the northern hemisphere, another factor shaping the negative tone of much commentary on policy mobility concerns what are viewed as being the neo-colonialist implications or potential of policy transfers from the Global North to the Global South, or more generally from more to less powerful nations. As Tauri notes: 'the indigenous peoples of Africa, the Americas and the South Pacific have experienced an almost continuous process of cross-border transfer of crime control products throughout the

⁶² Christie, *op. cit.*, n. 39.

⁶³ J. Pratt et al., (eds.), *The New Punitiveness: Trends, theories, perspectives* (2005).

⁶⁴ Wacquant, *op. cit.*, n. 39; T. Jones and T. Newburn, 'Three strikes and you're out: Exploring symbol and substance in American and British crime control policy' (2006) 46 *Brit. J. of Criminology* 781; Jones and Newburn, *id.*, n. 56; Jones and Newburn, *op. cit.*, n. 16.

⁶⁵ P. Andreas and E. Nadelmann, *Policing the Globe: Criminalization and Crime Control in International Relations* (2006); R. Colson, this issue

last 200 years or more'.⁶⁶ Furthermore, Stan Cohen noted the irony that 'the type of crime-control models (and criminological theories that sometimes inform them) being exported by criminologists, crime-control officials, international agencies, and various other "experts", are the very ones that are now being discredited in the West'.⁶⁷ Cohen's analysis and critique can be seen as an early forerunner of at least elements of what subsequently has come to be called Southern Criminology.⁶⁸ Central to this critical approach, and very much linked to the putative transfer of penal technologies from North to South, is the view that traditional activity has not only privileged Northern concerns and ideas, but has acted in a way that 'overlooks the role of penal policy as imperial statecraft in the modern world'.⁶⁹

The third factor influencing the often negative connotations of policy mobility in crime control is a largely *practical* one, and focuses on the considerable potential for ineffective or inappropriate policy transfer. Much work in this field has served to indicate just how difficult, indeed often problematic, policy transfer is in practice. A wide range of influences – from local political interests and cultural predispositions to material circumstances – all potentially act to shape mobile policies in ways that are often unexpected and unanticipated. Thus, even in cases of policies that are seen as broadly benign (sometimes even as progressive), such as the spread of 'restorative justice' or 'community policing', the outcomes may be far from positive. Significant problems are seen to arise in relation to implementation, effectiveness and unwanted consequences. For example, inappropriate or crude attempts at 'naïve emulation'⁷⁰ between different contexts (even when carried out from the best of intentions) can have demonstrably poor policy outcomes.⁷¹

NORMATIVE ISSUES: THE PROMISE OF CROSS-NATIONAL POLICY MOBILITY?

Notwithstanding these three major areas of difficulty, nothing we have observed thus far lessens the importance of the study of policy or technology transfer for understanding the difficulties, barriers, problems and sources of resistance to policy mobility. Indeed, the three areas of difficulty can be used to explore aspects of the positive potential of research in this field.

While much extant discussion has focused on punitive and regressive penal policies, significant examples of 'progressive' policy transfer can also be identified. Such examples provide an important contrast both in the principles underlying such mobile

⁶⁶ Tauri, *op. cit.*, n. 48., p. 36

⁶⁷ S. Cohen, 'Western crime control models in the third world: Benign or malignant?' In *Against Criminology*, ed. S. Cohen (1988) at 173.

⁶⁸ Carrington et al., *op. cit.*, n. 40.

⁶⁹ Carrington et al., *op. cit.*, n. 40., at 6.

⁷⁰ Edwards and Stenson, *op. cit.*, n. 46.

⁷¹ See for example, Blaustein, *op. cit.*, n. 30.

policies, their avowed objectives and the forms of language used in their promotion. Examples of such mobilities most obviously include the global movement towards the abolition of the death penalty, and related developments associated with the emergence of global 'human rights' regimes such as increasing protections against torture and due process protections for people held in custody.⁷² Paradoxically, many of these developments are undoubtedly associated with what might come under the non-voluntary mechanisms outlined earlier in the category of 'coercion', in that they have been very much influenced by global and regional governmental institutions, although clearly a variety of other mechanisms have been involved. Other high profile examples of 'non-punitive' policy transfer to which we might draw attention include, for example, cross national policy learning regarding harm reduction approaches to substance misuse,⁷³ 'public health' as opposed to enforcement-based approaches to violence reduction,⁷⁴ the development of positive alternatives to custody,⁷⁵ the 'Justice Reinvestment' movement,⁷⁶ and the international spread of restorative justice.⁷⁷ These examples no doubt provide plentiful evidence of the problems, pitfalls and unintended effects associated with policy mobility generally, but they are an important reminder that there is nothing *inherently* punitive or authoritarian about cross-national policy transfer in crime control.

The question that arises is how might a normative assessment of such policies proceed? How are we to judge what might be considered to be preferable and desirable? In an important scholarly contribution some years ago, John Braithwaite⁷⁸ discussed the potential of republican theory for considering reform in criminal justice and penal policy and, more particularly, of the importance of normative theory to the criminological enterprise. Braithwaite's core argument is that while 'criminologists take explanatory theory increasingly seriously, they do not take normative theory seriously at all'.⁷⁹ In short, what is required, he suggests, is both a fully-theorised understanding of the way the world is, together with a clear set of propositions about how the world should be. Now, as we have suggested, criminology's normative stance has often tended to be unstated, and also to be focused more on what is felt to be undesirable (penal expansion for example) than on an explicit detailing of what is considered to be beneficial or preferable. Republican theory, as one possibility, Braithwaite argues, offers both a normative ideal for criminal justice policy, as well as

⁷² Matthias, op. cit., n. 37; Daems, op. cit., n. 38.

⁷³ Baker et al., op. cit., n. 61.

⁷⁴ House of Commons Library, *Public health model to help reduce youth violence*, Debate Pack (2018); 'Mayor launches new public health approach to tackling serious violence', <https://www.london.gov.uk/press-releases/mayoral/new-public-health-approach-to-tackling-violence>

⁷⁵ Durnescu and Haines, op. cit., n. 35

⁷⁶ Brown et al, op. cit., n. 16

⁷⁷ D. Miers, 'The international development of restorative justice', in *Handbook of Restorative Justice* eds. G. Johnstone and D. Van Ness (2006).

⁷⁸ J. Braithwaite, 'Republican theory and crime control', in *Social Dynamics of Crime and Control* eds. S. Karstedt and K-D. Bussman (2000).

⁷⁹ Braithwaite, id, at 87.

forming part of a broader political programme that aims to stimulate progressive social change. Braithwaite's republicanism calls attention to such values as: freedom, equality, parsimony, checking of power, reprobation and reintegration. Each, naturally, requires considerable elucidation in order to make clear how they might potentially be operationalised in the context of criminal justice.⁸⁰ If the development of principled frameworks for the operation of criminal justice systems is difficult, then questions relating to security are arguably even more complex, not least because of the issues of pre-emption associated with them. In an effort to deal with these Zedner, for example, sets out a series of principles that could provide a normative guide for decisions about the nature and scale of security.⁸¹ Though broader, these also parallel elements of Republican theory and include principles of necessity, minimalism, social defence, parsimony, transparency/accountability, proportionality, presumption against threat, compelling evidence (as to the nature and magnitude of the threat), fairness and equal impact, attention to human rights, and finally, adequate provision for redress.

A second challenge for progressive policy transfer is that of neo-colonialism. Considering transfers from more to less powerful countries also raises further normative challenges, even if it were possible to reach some agreement about what might be thought to constitute 'good' policies in security and justice. These concern issues of sovereignty and respect for indigenous rights to self-determination, as well as the risk of (often unintended) harms associated with exports in security and justice policies. The international death penalty abolition movement, for example, has faced criticism for cultural imperialism and for attempting to impose 'Northern' liberal standards on very different cultures and political systems.⁸² This area is fraught with challenges, and the export of policies or approaches that might be widely viewed by scholars as 'progressive' policy models or approaches cannot be disentangled from fundamental structural inequalities in international power relations. The recent work of Lohne on international criminal justice, for example, highlights the normative complexities of forms of transnational 'penal aid', that remain, however laudable their original intentions, 'imbued with neo-colonialism and global inequalities'.⁸³ Nevertheless, we would argue that normatively positive forms of international policy mobility and exchange remain possible, if undertaken with due regard for the challenges and complexities involved. Such processes of knowledge and policy exchange can be facilitated by sensitive and systematic scholarly research that remains alive to the dangers of neo-colonialist imposition. For example, in terms of the application of general principles in relation to North-South transfer activity, Blaustein argues that 'ethical engagement should seek to minimize

⁸⁰ See J. Braithwaite and P. Petit, *Not Just Deserts: A Republican Theory of Criminal Justice* (2006).

⁸¹ L. Zedner, *Security* (2009); see also, I. Loader and N. Walker *Civilizing Security* (2007).

⁸² See S. Bae, *When the State no longer kills: International human rights norms and the abolition of capital punishment* (2007).

⁸³ K Lohne, 'Penal humanitarianism beyond the nation state: An analysis of international criminal justice' (2018) *Theoretical Criminology* DOI: 10.1177/1362480618806917.

harm and support discursive representation through glocal interactions that are “authentic, inclusive and consequential”.⁸⁴ Further, among other practices he stresses the importance of *reflexivity* – forcing Northern researchers to ‘confront any universalist assumptions that are embedded in their research and recommendations’⁸⁵ – and *transparency*, enabling ‘research users to recognize the formative intentions and influences of northern criminologists’.⁸⁶

Consideration of the ways in which the dangers inherent in North-South activity might be mitigated leads neatly to the third set of cognate problems we identified earlier: the more practical issues of ‘how to do’ policy transfer. Earlier we suggested that, rather than seeing research in the field of policy transfer as necessarily privileging retrospective studies, there is an argument for greater utilisation of *contemporaneous* approaches and, indeed, very considerable potential in what we might come to think of as *prospective* policy transfer research. By this we mean research which seeks to explore the *potential* for policy transfer and utilises existing research knowledge to identify the pitfalls and problems that are likely to affect policy mobility. Under this approach, cross-national transfer would become something akin to what Rose⁸⁷ has referred to as ‘prospective policy evaluation’.⁸⁸ Done effectively, it would involve the explicit utilisation of both explanatory and normative theory:⁸⁹ normative theory in order to identify putative policies worthy of borrowing or evaluating; explanatory theory as the basis for exploring how such borrowing might be expected to work in practice.

Explanatory theory requires us to go back to the questions asked earlier in the paper, in particular: which factors constrain or facilitate policy movement? Although, as we have shown, research now offers increasingly detailed answers to such questions, it remains the case that there are some quite profound limits to our knowledge in this field.⁹⁰ Despite this, the long-established traditions of policy borrowing across a variety of fields including security and justice, together with the impossibility of autarky, means that there remains much to be gained by seeking to enhance our explanatory understanding in this area. In this connection, Mossberger and Wolman offer some explicit practical criteria that might inform thinking about cross-national policy transfer in security and justice as a form of prospective policy evaluation. These include *awareness*, of potentially relevant policy models and approaches in operation in other jurisdictions, a systematic process of *assessment* of the suitability of the policy for transfer, and finally (based on the previous two criteria) informed *application* of the policy (or elements thereof) in a new context. The idea of

⁸⁴ Blaustein, op. cit. n. 31, at 180

⁸⁵ Blaustein, id. at 181

⁸⁶ id.

⁸⁷ Rose, op. cit., n. 9.

⁸⁸ See K. Mossberger and H. Wolman, ‘Policy transfer as a form of prospective policy evaluation: Challenges and recommendations’ (2003) 63 *Public Administration Review* 428.

⁸⁹ Something advocated by Braithwaite, op. cit., n. 78, at 101.

⁹⁰ See Mossberger and Walton, op. cit. n. 88.

prospective policy evaluation (related in this context to policy mobility) hinges, as Mossberger and Wolman put it, on ‘the ability to predict whether or how a borrowed idea will work in a new setting, and what adaptations are required for successful implementation’.⁹¹ This framework provides a promising basis for the development of ‘good practice’ in thinking about effective policy transfer, and it is clear that much transfer activity takes place without such systematic analysis and application. The potential for positive policy transfers could, we feel, be significantly enhanced by combining the pragmatic frameworks of policy analysis experts such as Mossberger and Wolman, with the normative analyses proposed by authors such as Braithwaite and Zedner.

CONCLUSION

In this paper, we have offered a critical examination of the research evidence on cross-national policy exchange in crime control, security and justice. Although only a limited amount of the research that draws explicitly on these concepts focuses on these issues, nevertheless, there is now a sufficient body of work for us to make some general observations. There is general consensus that recent decades have seen a significant increase in activity related to policy transfer and mobility, and that policy models and ideas appear to be circulating around the globe with greater frequency and velocity than in previous eras. Despite this, ‘successful’ policy transfers – in terms of origin-destination similarity and policy effectiveness – still appear to be relatively few and far between. To the extent that policy transfer happens or is attempted, the literature highlights a range of explanatory mechanisms. These can include more or less ‘rational’ attempts at policy learning from other jurisdictions, but also other mechanisms relating to ‘coercion’ (at least on some level), and ‘mimicry’ (whereby policies are copied or emulated for reasons other than likely instrumental effectiveness of adopted approaches). Research suggests that policy symbols, rhetoric and abstract ideas (perhaps of particular importance in the fields of justice and security) appear to travel more easily than more concrete manifestations of policy content and instruments. It also shows how similarly labelled policies often develop in very distinct ways in new social, political and legal contexts. The particular nature of the policy concerned, and key features of the cultural, political and economic contexts can provide important constraints and facilitators for the international mobility of policies. Whilst for a number of reasons much research to date has implied a critical and somewhat negative view of such phenomena, there are significant examples where positive penal policy outcomes appear to have emerged from processes of international policy transfer and convergence. Moreover, we argue that more explicit attention to combining the normative and practical dimensions of policy transfer in security and justice, and to exploring such processes prospectively, holds great promise for the further development of this field.

⁹¹ See Mossberger and Walton, *id.*, n. 88, at 437