

Jarosław Utrat-Milecki
General penology.
A culturally integrated perspective
Volume 2: Theoretical foundations
of penal policy

Abstract

The second volume of the two-volume monograph presents theoretical foundations of penal policy in a systematic way. The intention of the presented culturally integrated theoretical approach is to conduct analyses in an interdisciplinary manner that makes possible the integration of various types of social science knowledge, which can be used for the purposes of widely understood penal practices. A new classification of the theory and criticism of punishment is also connected with the culturally integrated perspective. The author, referring to contemporary research and concepts with particular emphasis on the scientific literature of the Anglo-Saxon cultural circle and taking into account the Polish tradition of penology studies, analyses the results of his own research on criminal punishment conducted in a systematic way since 1997, which formed the basis for the development of the theoretical framework of culturally integrated penology.

Keywords: criminal punishment, penology, culturally integrated research, penal policy, criminal policy

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Preface

The second volume of general penology refers in a special way to the opinions expressed in the classic studies by Bronisław Wróblewski and Leszek Lernell, according to whom penology should constitute one of the theoretical foundations of criminal policy. Lernell wrote:

because the basic task of the science of criminal policy is to search for the most effective methods and means of crime prevention, which of course include criminal penalties. The foreground to such searches is the conducting of research on the sense and *raison d'être* of criminal punishment. Penology, which is a necessary introduction to the science of criminal policy, and at the same time its theoretical foundation, is called upon to conduct such research.¹

I analysed the issue of the foundations of penology and the theory of punishment related to them more broadly in the study *Podstawy penologii. Teoria kary* from 2006.² On the other hand, the range and assumptions of general penology within the penal sciences as a lecture and research field are presented in the first volume entitled *Kara kryminalna jako ogólna kategoria instytucji prawnej i społecznej*.³ The basis for the systematisation of general penology is the classification of the

¹ Leszek Lernell, *Podstawowe zagadnienia penologii*, Wydawnictwo Prawnicze, Warszawa 1977, p. 15.

² Jarosław Utrat-Milecki, *Podstawy penologii. Teoria kary*, Wydawnictwa Uniwersytetu Warszawskiego, Warszawa 2006.

³ Cf. idem, *Penologia ogólna. Perspektywa integralnokulturowa*, vol. 1: *Kara kryminalna jako ogólna kategoria instytucji prawnej i społecznej*, Wydawnictwa Uniwersytetu Warszawskiego, Warszawa 2022.

theory and criticism of punishment, which I formulated in the paper from 2010 *Kara. Teoria i kultura penalna: perspektywa integralnokulturowa*.⁴

In the first volume of *Penologia ogólna* I presented the range, assumptions, and concepts of general penology, and its place in the penal sciences. I discussed the basic theoretical issues of punishment in relation to the adopted classification of the descriptive categories of the theory of punishment, the culturally integrated theory of punishment, and the imperative rationalisations of punishment. The issues discussed in the first volume are fundamental to the determination of the *differentia specifica* of criminal punishment as a measure of social control, which is the subject of separate lectures and research. The issues discussed in the second volume relate to the theoretical foundations of criminal policy. Similarly to the issues presented in the first volume, they summarise the results of research and analyses conducted by me for many years. The second volume contains both an amplification of the analyses from the first volume and, to some extent, their detailed elaboration in the context of the theoretical analyses of the foundations of criminal policy.

Some of these analyses in various forms were also discussed previously through the publication of partial results, which I note in the footnotes. It was important that the results of the multi-year studies documented the holistic research approach. It is only from this perspective that they enable the implementation of the task of penology, which was outlined by the above-mentioned Wróblewski.

In the second volume, therefore, I discuss issues from a contemporary perspective (including their historical origins), which, in my opinion, are particularly important for criminal policy. At the beginning, on selected, specific, historical examples, I outline the context of the development of contemporary penal policy. The historical introduction makes it possible for us to show a certain continuity of the very idea of criminal punishment and the fundamental changes that have taken place in the punishment process in the modern era, and in particular, those changes that result from the development of the idea of human

⁴ Cf. idem, *Kara. Teoria i kultura penalna: perspektywa integralnokulturowa*, Wydawnictwa Uniwersytetu Warszawskiego, Warszawa 2010.

rights and the concept of a democratic state ruled by law. I discuss the important issues of today, as in the first volume, with reference to the adopted classification of the theory and criticism of punishment. Therefore, these are primarily theoretical analyses, and not a presentation of various criminal policies from a comparative legal perspective.

Within the framework of the developed modern classification of the theory and critique of punishment, I refer in this volume to the categories of instrumental theories of punishment, conciliatory theories of punishment, the humanistic critique of penal practices, penal negationism, and populist punitiveness. The division of content between the first and second volumes, despite the fact that their specific structural framework is already outlined in the titles, is of a conventional nature. The contents of both volumes complement each other and form a coherent whole in the author's plan. They contain a proposal for the description and systematisation of the conceptual grid related to the studied issues, based on the conducted research. Their intention is primarily to constitute a penological theoretical basis for analyses of criminal policy.

Summary

The role of general penology in the penal sciences and in penal policy

General penology is intended to present a certain systematic way of looking at the issue of criminal punishment understood as a legal and social institution of a procedural nature. The intention of this approach is to conduct analyses in an interdisciplinary manner, allowing the integration of various types of knowledge in the field of social sciences that can be used for the purposes of widely understood penal practices. Many years ago I described the cognitive perspective of general penology as a culturally integrated perspective.

In my opinion, in recent decades there has been a very intensive development of the individual disciplines of social and legal sciences. The problem, however, is the rational integration of knowledge obtained with their help. As Jadwiga Królikowska and I wrote on the subject of culturally integrated research,

The specialisation of research and education is not a value in itself, it is rather treated as a practical necessity. In the modern era, it is determined by the breadth of knowledge in the field of social and legal sciences (and not only). It is therefore the result of an objective necessity rather than an advantage of research or a lecture. In other words, from the point of view of the development of knowledge and the principles of general methodology, if in a given case it were possible to conduct equally profound and in-depth research of a less specialised nature, it should be done, just as, if possible, in the process of scientific cognition, in relation to the general principles of methodology, the findings of individual specialist studies should be incorporated into the broader group of knowledge. The propositions formulated in connection with these studies should be integrated with a set of propositions building a specific and systematic picture of the phenomena

related to the fragment of social reality under research, and thus included in a broader scientific theory. That is why, from the perspective of culturally integrated research, the division into classical scientific disciplines should not be “ontologised”. This means that one should remember, above all, the functional nature of the differentiation of social and legal disciplines, and the humanities, and thus avoid the hypostasis of the existence of completely different social and linguistic worlds under research in individual sciences. From the point of view of cognitive needs, the extremely important and necessary division of work, including research, should be used instrumentally to increase our general knowledge about a specific fragment of social and normative reality, and not only about its aspects. The relationship between general and detailed knowledge on a given topic should be arranged in such a way that, as part of his/her specialisation, a researcher, specialist in the field of specific legal or social issues, can always refer to the broader socio-legal context of the phenomenon he/she investigates, or the research or professional activities he/she performs. It can be indicated that today science recognises the need to develop interdisciplinary research conducted at the intersection of the competences of various scientific disciplines. Important scientific works are being prepared in the area of such studies. It can be argued that, in fact, many institutionally distinguished scientific disciplines (research and teaching) are interdisciplinary studies [...]. The development of culturally integrated research is a response to the real need to develop some general guidelines for the integration of knowledge in the field of legal and social sciences. Such integration is needed and is currently underway.⁵

The research conducted in this way makes possible the fulfilment of the general methodological postulate of the comprehensiveness and impartiality of analyses as well as extent of knowledge about the subject of the research. As Jadwiga Królikowska and I wrote about the development of contemporary social research,

while scientific research is developing dynamically, the ability of science to present a relatively coherent view of man and society is unlikely to increase. This can be associated with the revival of religious thought, which performs integrating functions necessary to maintain social balance, but in the world of Western culture this phenomenon is probably also associated with the crisis

⁵ Jarosław Utrat-Milecki, Jadwiga Królikowska, *Badania integralnokulturowe, in: Europejski Ośrodek Studiów Penologicznych. Uniwersytet Warszawski. Wydział Stosowanych Nauk Społecznych i Resocjalizacji. Instytut Profilaktyki Społecznej i Resocjalizacji. Zakład Prawnych i Społecznych Badań Integralnokulturowych*, eds Jarosław Utrat-Milecki, Jadwiga Królikowska, IPSiR UW, Warszawa 2010, pp. 34–35.

of the modernist world-view, a crisis that is defined as a separate concept of post-modernism, late modernity, post-industrialism, or it can be described by paraphrasing Giovanni Sartori's post-thought. Taking into account this state of affairs, the development of culturally integrated research can be associated with the scientific trend that, with all objective difficulties, tries to make a rational and objectively verifiable scientific integration of human experience. It is worth noting that such integration of human experience is a vital need of individuals and societies. As science withdraws from this task, it is taken over by other institutions, sometimes of a religious, but also a political, or business nature. It seems that both cognitive and social considerations support people in undertaking a synthesis of legal and social experiences in various fields. [...] Culturally integrated research can be treated as one of the proposals containing some guidelines for conducting such integrative and unifying research on legal and social issues.⁶

The research assumptions indicated in general penology have been developed on the basis of my experience in research and teaching since 1989 at the Institute of Social Prevention and Resocialisation at the University of Warsaw. They were first announced at a meeting of the Polish Scientific Society of Criminal Law chaired by Professor Genowefa Rejman in 2002. General penology applies these general guidelines to its subject of research. As part of this research, it is possible to present such a theoretical approach to the problem of criminal punishment, which makes possible an integrated image of criminal punishment as a legal and social institution understood procedurally. This is to facilitate the view of detailed issues relating to the criminal justice system from the perspective of individual disciplines for which criminal punishment may be important in penal science. Accordingly, one can also make more extensive use of the thus acquired and integrated knowledge about penal practices in other social sciences and in the humanities. This may also help penal sciences to be reopened to a greater extent to the achievements of other disciplines of social sciences and the humanities. It also becomes the theoretical basis for involving representatives of other disciplines in a broader discussion of criminal punishment and criminal policy.

⁶ Ibidem, pp. 39–40.

O Autorze / About the author



Dr hab. Jarosław Utrat-Milecki, prof. UW – zatrudniony w Instytucie Profilaktyki Społecznej i Resocjalizacji UW; kierownik Zakładu Prawnych i Społecznych Badań Integralnokulturowych oraz Europejskiego Ośrodka Studiów Penologicznych im. prof. G. Rejman, powołanych z jego inicjatywy w 2008 r. Z Uniwersytetem Warszawskim związany od początku swojej kariery naukowej – doktoryzował się i habilitował na Wydziale Prawa i Administracji UW. Działalność naukową łączył przez wiele lat z pracą w wymiarze sprawiedliwości. Autor takich monografii, jak:

Więziennictwo w Polsce w latach 1944–1956 (1996),
Polityczność przestępstwa (1997, 2007),
Podstawy penologii. Teoria kary (2006),
Kara. Teoria i kultura penalna: perspektywa integralnokulturowa (2010),
Penologia ogólna. Perspektywa integralnokulturowa. Tom I: Kara kryminalna jako ogólna kategoria instytucji prawnej i społecznej (2022).

Dr hab. Jarosław Utrat-Milecki, Prof. UW – employed at the Institute of Social Prevention and Resocialisation of the University of Warsaw; the head of the Department of Legal and Social Culturally Integrated Research and of the Prof. G. Rejman European Centre for Penological Studies, founded on his initiative in 2008. Connected with the University of Warsaw from the beginning of his academic career – he obtained his doctorate and habilitation at the Faculty of Law and Administration of the University of Warsaw. For many years, he combined his scientific activity with work in the judiciary. He is the author of such monographs as: *Więziennictwo w Polsce w latach 1944–1956* [Prisons in Poland in 1944–1956] (1996), *Polityczność przestępstwa* [Politicality of the Crime] (1997, 2007), *Podstawy penologii. Teoria kary* [Foundations of Penology. Theory of Punishment] (2006), *Kara. Teoria i kultura penalna: perspektywa integralnokulturowa* [Punishment. Penal Theory and Culture: A Culturally Integrated Perspective] (2010) *Penologia ogólna. Perspektywa integralnokulturowa. Tom I: Kara kryminalna jako ogólna kategoria instytucji prawnej i społecznej* [General penology. A culturally integrated perspective. Volume I: Criminal punishment as a general category of legal and social institution] (2022).

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On the occasion of the publication of the two-volume monograph *General penology. A culturally integrated perspective*, the Prof. Genowefa Rejman European Centre for Penological Studies, in consultation with the Wydawnictwa Uniwersytetu Warszawskiego, has considered it justified to formally separate the publishing series **penology.org**, the assumption of which is to promote broadly understood, interdisciplinary penology studies devoted to the concept of punishment, the operation of the criminal justice system, and the functioning of other, and in particular repressive, measures of social control.

The European Centre for Penological Studies, established at the Institute of Social Prevention and Resocialisation of the University of Warsaw in 2008, has published eleven monographs and collective studies to date. *General penology* is, therefore, the twelfth and thirteenth volumes of this series. Most of the earlier publications were also published by the Wydawnictwa Uniwersytetu Warszawskiego, and their list is included in each of our subsequent publications.

The aim of the European Centre for Penological Studies, in accordance with the idea of its patron, Professor Genowefa Rejman, is to achieve a greater impact of Polish legal and social thought on the shape of European criminal policy; more information on the assumptions and programme of the ECPS can be found on the website **penology.org**. However, in order for these goals to become a reality, it is necessary to obtain an appropriate point of reference for such a debate in Poland.

We invite you to cooperate. We hope that an exchange of views – both in Polish and in other European languages – on the criminal justice system and other spheres of repressive social control will be conducive to the obtaining of a broader, interdisciplinary, view on the theoretical and practical dimensions of these enormously complex problems in Poland, Europe, and the world.

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