

Researching criminal justice systems

Faculty of Law, Yangon University, November 23rd 2016

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Structure of lecture

- What is a prison?
 - Prisons as Total Institutions
- What is prison for?
- What is prison like for its occupants?
 - Pains of imprisonment, effects of imprisonment
- Are prisons the same all over the world? (Comparing prisons)

Total Institutions

- Introduced by an American sociologist
- Erving Goffman
- *“Asylums: Essays on the Social Situation of Mental Patients and Other Inmates”*. (1961)

Definition of total institutions

- “places of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life.” (Goffman, Asylums xiii).

Stanford Prison experiment

- a classic study of how ordinary people have the capacity to do bad things under specific circumstances.
- <http://www.prisonexp.org/>

Mortification of the self

- = civil death
 - Loss of identity
 - Ritual stripping
 - Humiliation
-
- Might this be only a western phenomenon?

What is prison for?

- Prison is for retribution or revenge: the state acts on behalf of a citizen who has been wronged by depriving the perpetrator of their liberty
- Prison is for deterrence: it is supposed to serve to inhibit criminal behavior. The thought is that if we know committing a criminal act will result in prison then we will not do it
- Prison is for rehabilitation/reintegration/reform: it is supposed to help the prisoner learn how to live a crime-free life
- Prison protects society by taking criminal individuals out of society

What is prison like for its occupants?

- Gresham Sykes, *"Society of captives: A study of Maximum Security Prisons"* (1959)

5 deprivations

1. Deprivation of liberty: prisoners lose liberty in two ways, says Sykes. They lose their physical liberty as well as their status as members of free society. They are stigmatised.
2. Deprivation of access to goods and services: prisoners lose access to material possessions and services they were used to. This is experienced as a loss.
3. Deprivation of sexual relations.
4. Deprivation of autonomy: prisoners lose their ability to make their own decisions and choices, but rather have to obey rules and instructions. This loss of control over their lives produces a kind of infantilization of adults and can hamper development of skills needed to live life after prison.
5. Deprivation of security: Prisons feature a constant sense of insecurity and lack of safety. They are, for many people, low trust, high-risk environments.

Effects of imprisonment

- Levels of distress, anxiety, and depression are extremely high among prison populations.
- The combination of routine, control and unpredictability of prison is psychologically very demanding and potentially damaging.
- Prison weakens social and relational bonds with people outside. This has major effects on the prospects of reintegration in society.

What counts in prisons?

- Values matter in prison: prisoners clearly express their wish to be in environments where key values are upheld and personal development is advanced.
- How people treat each other and how people relate to each other is a fundamentally important part of prison.
- Values and relationships matter more than material conditions.

- The key dimensions identified as relevant to the quality of prison are **values relating to interpersonal treatment: respect, humanity, fairness, order, safety and prisoner-staff relationships.**
- Absence of respect and fairness is perceived as psychologically painful and may generate negative emotions such as anger, tension, indignation and rage. This may easily lead to conflict.
- *“A growing body of empirical and theoretical work in penology has established that concepts of fairness and legitimacy are critical to life in prison, with demonstrable effects on order and well-being. (Liebling, Moral performance, 533)*

Are prisons the same all over the world?

- General commonalities but specific differences
 - Security is always an issue
 - Order is always an issue
 - The use of authority is always an issue

How do prisons reflect society's values?

- *“A prison regime reflects the political imperatives and societal perceptions...of those who rule”* (Brown 2007: 306).

How to compare prisons...

- Quantitatively: populations, types of prisoners, number of staff/prisoner, number of prisons etc.
- Qualitatively: comparing relationships between people; how people are treated, how order is maintained, how power is used.
- Both are important



Human rights, prisons and legal pluralism

Researching the criminal justice system – international approaches

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Yangon University, 23 November 2016

Human Rights: Basic definitions

- Human rights “are the rights one has because one is human” (Donnelly and Howard 1987:1)
- Inalienable, universal and egalitarian and protected through a regime of rights (Goodale and Merry 2007)
- Preservation of life and the promotion of human welfare (Shivji 1989; Ulrich 2011):
 - human dignity and respect for the integrity of person
 - Equality and non-discrimination
 - Self-determination
 - A commitment to rectifying extreme inequities

Institutionalisation and proliferation

- **Universal Declaration of Human Rights (1948)**: Establishing a universally valid regime of rights that transcend state sovereignty as part of international law.
- **UN instruments (1960s)**, regional mechanisms (Europe, the Americas and Africa), domestic laws and national constitutions.
- **Human rights movement (1970s-)**: non-governmental institutions and independent promotion and monitoring bodies has expanded.
- Post-1989 growth of liberal democracy: **development and state building**

The core of human rights in prisons

- The International Convention on Civil and Political Rights
Article 10: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”
- “... persons deprived of their liberty [may not] be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment”

*(Human Rights Committee
Gen. Comm. 21[44], art.10 (1-3) 1992)*

Three categories of rights in prison

- 1. *Forfeited rights*** by nature of imprisonment i.e. the right to: personal liberty, freedom of movement, peaceful assembly
- 2. *In principle available***, but with 'implied limitations' i.e. the right to: family, privacy, education, work, expression, information religion, vote, marry etc
- 3. *Never to be limited*** i.e. the right to: life, physical and mental integrity, human dignity, freedom from torture, freedom from slavery, recognition before the law, freedom from discrimination, freedom of thought, habeas corpus, due process etc

(Cumaraswamy and Nowak 2009)

What rights do prisoners actually retain?

Different perspectives on the right to vote in UK and Denmark...

The idea of giving prisoners the right to vote makes Prime Minister David Cameron feel “physically ill”.



The creation of a modern human rights framework for prisons

- International Covenant on Civil and Political Rights 1966 (1976)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (1987)

UN
Conventions

- Standard Minimum Rules for the Treatment of Prisoners 1955 (Mandela Rules revised 2015)
- Basic Principles for the Treatment of Prisoners 1990

Soft law

- Treaty bodies: The Human Rights Committee, CAT, OPCAT (NPMs)
- Charter mechanisms: Special procedures (special rapporteur on torture), UPR

UN
monitoring
mechanisms

- ECHR
- The European Prison Rules 1987 (revised 2006)
- CPT
- ECtHR

The
European
system

Elements of a rights-based approach

- "prisoners are human beings"
- Freedom from torture
- Healthy environment
- Fair procedures, just and proportionate punishments
- Work and education activities
- Contact with the outside world
- Complaint procedures and inspections
- Access to justice – remands
- Attention to special categories and needs (juveniles, women, long-termers, minorities, disabled etc)
- Promoting alternatives to custody

(Andrew Coyle, ICPS)

Rights-based approach to imprisonment

Human rights addresses all aspects of prison practice in a coherent legal/moral framework, which is universal.

“HR is the right thing to do” (normative/intrinsic)

“HR works” (instrumental)

Immediately apparent and meaningful to all prison actors.

...Well that is the question?

(Andrew Coyle, ICPS)

HR as a terrain for struggle

Since human rights are consistent with existing structures and patterns of authority in the West, their implementation is a matter of *'fine-tuning'*...

Human rights in the South are “a constant challenge to vested interests and authority in societies riven by enormous disparities of wealth and power, with traditions of authoritarianism and the helplessness of disadvantaged communities, of militarisation and the conjunction of corrupt politicians and predatory domestic and international capital. **Human rights are therefore a terrain for struggle** for power and the conceptions of a good society”

(Ghai 1995:65)

From universal to global?

Human rights has expanded in reach and scope as a “*societal presence (...) manifested in state and non-state institutions, in legal changes, in a proliferation of popular discourse, and in a whole range of interventions done in the name of human rights, from workshops to wars*” (Hornberger 2010:264).

- ***Human rights mean different things to different people!***

Looking at “**the social life of rights**” – “how are rights applied – and what are they applied *for*?” (Wilson and Mitchell 2003:5).

Right or wrong?

An Indian prison officer:

- *“The human rights people ask us to take the snake out of the basket and put it around our neck. We are bound to get bitten in the forehead, because prisoners are snakes!”*

A Danish minister for development:

- *“Human rights are one of the most powerful visions ever established by man. They are the bedrock of democratic societies. They underpin the foundation of our global coexistence”.*

Different contexts...



Researching normative pluralism

- Understanding the **translation** or ‘vernacularisation’ of human rights in local cultures and institutions (Merry 2006).
- Exploring the **competing repertoires of norms** empirically and locally (Olivier-de-Sardan 2014):
 - official norms (laws)
 - practical norms (‘road rules’ of bureaucracy)
 - social norms (values)

“Law as Process”

Laws (and other rules) gain traction and have effects as they resonate with local social arrangements (Moore 1973)

Tracing the dynamic processes of:

- Regularisation; and
- Situational adjustment

Questions

- What does human rights do in Myanmar?
- What does the 'translation' of human rights entail here? And who are the 'translators'?
- What rules matter in the criminal justice system?
- Is formal law the only important repertoire of norms? Or are there other rules that dominate or influence the functioning of institutions and the actions of people?