

Comparative criminal justice policy

**Section C: Aspects of comparative
criminal policy**

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Contents

| | |
|------------------------------------------------------|-----------|
| Introduction | 1 |
| Chapter 1: Policing and prosecution | 5 |
| 1.1 Policing and the state | 6 |
| 1.2 Policing and discretion | 8 |
| 1.3 The role of the public prosecutor | 10 |
| 1.4 The prosecutor's discretion and non-prosecution | 13 |
| Chapter 2: Trials and sentencing | 21 |
| 2.1 Tribunals | 21 |
| 2.2 The judiciary | 23 |
| 2.3 Sentencing | 24 |
| Chapter 3: The use of imprisonment | 31 |
| 3.1 A policy of expansionism | 32 |
| 3.2 A policy of reductionism | 33 |
| 3.3 Abolitionism and prison reform | 34 |
| 3.4 Prison regimes | 35 |
| 3.5 Bricks of shame | 35 |
| 3.6 A culture of human rights in prisons? | 36 |
| 3.7 Prisoner rights | 37 |
| 3.8 What needs to be done? | 37 |
| Chapter 4: Probation and community punishment | 43 |
| 4.1 Non-custodial sanctions | 44 |
| 4.2 Probation agencies | 46 |
| 4.3 Welfare and social control | 48 |
| 4.4 Case example – youth justice | 49 |

Chapter 3: The use of imprisonment

Introduction

When discussing a country's criminal justice policy it is always crucial to explore their policy on imprisonment, as very often the state of a nation's prisons is a key indicator of its commitment to a successful criminal justice policy which in turn impacts upon any system as a whole. There are presently over 8.5 million people imprisoned across the world and most of them are concentrated in a few countries with large populations and particularly high prison rates.

Learning outcomes

By the end of this chapter and the relevant readings you should be able to:

demonstrate the extent of the use of imprisonment as a punishment in different criminal justice systems

examine and evaluate contrasting policies of expansion, reduction and abolition of the use of imprisonment

review and assess the regimes in prison systems around the world and consider the human rights implications of these regimes.

Essential reading

Cheney, D. et al. *Criminal Justice and Human Rights*. (London: Jordan, 2001) [ISBN: 08253087245], Chapter 6. [In reader]

Christie, N. *Crime Control as Industry*. (London: Routledge, 1994) [ISBN: 0415234875], Chapter 8. [In reader]

Downes, D. *Contrasts in Tolerance*. (Oxford: Clarendon, 1992) [ISBN: 019825833X], Chapter 3.

Mathiesen, T. *Prison on Trial*. (Winchester: Waterside, 2000) [ISBN: 1872870856] Postscript. [In reader]

Rutherford, A. *Prisons and the Process of Justice*. (Oxford: Oxford University Press, 1986) [ISBN: 0192819321], Chapter 5. [In reader]

Stern, V. *Bricks of Shame*. (London: Penguin, 1987) [ISBN: 0140523839], Chapter 11. [In reader]

Stern, V. *Imprisoned by our prisons*. (London: Unwin, 1989) [ISBN: 0044452977]. Chapter 3. [In reader]

Stern, V. *A Sin Against the Future*. (Boston: Northeastern University Press, 1998) [ISBN: 1555533612].

3.1 A policy of expansionism

The use of imprisonment has seen a steady rise during the past two hundred years. In the US Rothman (1990) charted the rise of the use of imprisonment which took place during the presidency of Andrew Jackson in the 1820s and 1830s. As crime and social depravation became significant social problems so the use of imprisonment rocketed when a vision of social control with the main aim of rehabilitation took hold.

Alternatively Foucault (1979) considered the rise of the prison in France before the Revolution in 1789. The King would use corporal punishment to demonstrate and maintain his power over his citizens. This made punishment a very public spectacle. As public disgust grew so the prison became more popular as it removed the punishment of prisoners from the public gaze and changed its method from being corporal (on the body) to carcereal (on the soul). The result is that even though expansionism in the US was praised because Jackson was enlightened and wished to rehabilitate offenders, so Foucault observed that the rise in the use of prisons in France was not to punish any less but to make the punishment more effective.

From this base some countries in the world have witnessed a huge rise in their use of imprisonment. Those countries now associated with huge prison populations include the US, Russia and China. They have continuously adopted a policy known as expansionism.

Activities 3.1–3.3

3.1 Read Stern (1998), pp. 36–101 and critically consider why she labels the US as ‘the great incarcerator’. Why does she suggest that Russia’s prison population is moving towards the New Gulag and why China has another less well-known gulag in the form of the *laoga*?

3.2

effective as a punishment or because politically the use of imprisonment is preferable to alternatives. This section explores

3.3 Abolitionism and prison reform

A logical extension of the reductionist agenda is to suggest that for various reasons the prison system should be abolished altogether. This may seem a radical idea but given that history has shown us that abolition is possible in the context of both slavery and the death penalty any attempt to move this agenda towards the use of

Activities 3.7–3.8

3.7 How does Mathiesen claim that we can learn to live in a society without prisons?

3.8 No country in the world has managed to sustain a programme of prison abolition. Is this because there is little political inclination to do so or does this suggest that abolition is impossible?

Feedback: see page 40.

Summary

Having considered why some countries choose, for various reasons, to reduce the use of imprisonment, this section examines how that policy could be extended to abolish the use of prisons entirely. Some commentators argue emphatically that prisons are ineffective, ethically inappropriate and unnecessary in fulfilling the aims of punishment. These views, however, are controversial and where such a policy has been implemented at all it has been only partially successful.

3.4 Prison regimes

The quality of the conditions that prisoners face is an important facet to any discussion on imprisonment because their impact is often felt in a prison in two ways. Tired of oppressive and unhygienic conditions prisoners may collectively decide to riot. Alternatively, if a prisoner feels they cannot live with the conditions any more they may decide to take their own life. The debate therefore has to move to consider what basic conditions and regimes we can expect, or indeed prisoners can demand.

Summary

Having assessed the use of imprisonment on a policy level, this section now begins an examination of the conditions in which prisoners are held in any particular state.

3.5 Bricks of shame

Back in 1987 Vivien Stern wrote a damning account of British prisons which she entitled *Bricks of Shame*. She considered, in depth, the problems which faced British prisons and decided they were ‘an affront to civilised society’. She argued that too many people were unnecessarily in prison and this led to extreme examples of overcrowding which often placed a strain on the conditions prisoners found themselves in. Stern was appalled that prisoners continued to ‘slop out’, which meant they would have to urinate and defecate into a bucket whilst locked in their cells and then empty this bucket the next day. She was also concerned that prisoners were often left in soiled clothes for nearly a week. Her observations about the conditions of prisons are particularly damning because she explains that nearly every aspect of the prison system is left wanting.

Another criticism Stern makes is about the lack of structured regimes in prisons which do not expect or allow for prisoners to lead 'a good and useful life'. There is a tendency for activities to be limited in scope and as prisoners are often given very little to do they will attempt to amuse themselves, albeit sometimes with illegal activities.

Stern's indictment of English prisons was all the more potent because she explores the idea that other countries are doing better.

Activity 3.9

cruel, inhuman or degrading treatment or punishment'. This has been a guiding principle for over 50 years, but is it applicable to prisoners? The prison environment is governed by rules and the United Nations Standard Minimum Rules for the Treatment of Prisoners. These rules are now out of date but they do offer some guidance as to societies' expectations concerning how prisoners should be treated.

Stern (1989) makes the point that the US has never observed the UN Rules. When measured against the rules, Japan and China are often left wanting. The point to be made here is that it is not just less-developed countries who adopt prison regimes which do not meet international requirements.

Summary

The conditions in which prisoners are held in some systems may be so appalling that they breach the fundamental human rights of prisoners. Stern has conducted a review of prison regimes around the world to highlight some of these breaches.

3.7 Prisoner rights

The Human Rights Act 1998 saw the UK implement the European Convention on Human Rights. This obliges courts to find legislation compatible, or not, with the Convention. Traditionally prisoners have been viewed as bereft of rights due to their surrender when they arrive at the prison gates. However, this view is not popular in a changing culture of human rights. This last aspect of imprisonment requires you to consider the European Convention against prisons throughout Europe.

Activity 3.11

Read Chapter 6 of Cheney et al. (2001) on prisoner rights. Critically consider the case law presented when the articles of the Convention are considered. Do you think being in prison is, by definition, degrading and inhuman?

Feedback: see page 41.

Summary

This section reviews the ways in which various human rights conventions seek to protect the human rights of prisoners whose liberty is restricted.

3.8 What needs to be done?

If you take the view that prisons are a necessary evil to contain some people who have committed particularly heinous offences, then the most important aspect of comparative criminal justice policy would appear to be a focus on prison conditions. Stern (1998) has noted what needs to be done in prisons in the UK and around the world. To adopt a policy of reform is crucial if we are to be viewed as a civilised society. Poverty and disease are common features of societies outside of the prison and these are often

This trend has not been without its critics. Nils Christie (1994) has argued that the only way of managing an expansionism policy effectively is to resort to a greater use of private sector involvement. This can lead to a greater emphasis on doing well financially rather than doing good in any kind of humanitarian aim.

Activity 3.3 *This activity seeks to ensure that you have fully understood Christie's argument, developed through his book, regarding the consequences of an expansionist policy. Ensure that you read the book in its entirety and summarise briefly what you understand his argument to be.*

The second part of the activity requires you to think about whether Christie's view is a critique of privatisation in the prison system in particular, or a more general critique of expansionist policies.

Finally, think about your own views. Do you agree with Christie? Do you think his arguments are flawed in any way?

Activity 3.4 *This activity requires you to review the Dutch experience of implementing a reductionist policy in relation to imprisonment.*

Take each question in turn.

(a) Assess the ways in which a particular working ideology, which opposed the use of imprisonment, was adopted by practitioners at all stages of the Dutch criminal justice process at this time. Consider their legal education, their communication of this ideology with each other and the impact of policy documents from the Ministry of Justice.

(b) List the ways identified by Downes in which the policy was implemented and sustained through practice initiatives, legislation and guidance to practitioners and other methods.

(d) This question requires you to consider whether this reductionist policy was peculiar to the Dutch system at that time, bearing in mind their legal and social culture and the prevailing politics of the era. You might consider whether it is possible to replicate this policy in your own country. If not, why not?

Activity 3.5 *This activity seeks to ensure that you have understood Rutherford's analysis of reductionist penal policies. You should also take a critical perspective here and assess whether such policies are appropriate, possible to implement and desirable.*

Activity 3.6

| Aim | Flaws | Prison's failings |
|-----------------------|--------------|--------------------------|
| Retribution | | |
| Rehabilitation | | |
| Deterrence | | |
| Incapacitation | | |

Activity 3.7 *Summarise Mathiesen's argument in no more than 1,000 words. Assuming abolition has been adopted as a desirable policy, how can we convince society that we do not need a prison system?*

Activity 3.8 *Now you are asked to critically appraise a policy of abolition. List the advantages and disadvantages from both a principled and practical perspective of an abolitionist policy. Which list provides the stronger argument in your view?*

Activity 3.9 *First you are asked to examine the debate between Stern and abolitionist psin the prisonTakeui5 0 Tw-16.3F*

