

The political economy of rights: exporting penal norms to Africa

Andrew M Jefferson says that exporting the West's penal, criminal and human rights policy to Africa without questioning its relevance to African society, will have negative consequences.

‘Justice’, claimed Jacques Derrida, ‘is not reducible to the law’. It is over and above and always beyond the law (in Caputo 1997). Nevertheless, in the contemporary world, justice for the poor is increasingly understood in terms of universal, inalienable, *legal* rights. This is a sign that human rights have come to occupy a position in global political discourse which some see as nothing less than constituting a dominant global ethics (Badiou 2001). The idea of human rights as a dominant discourse might sound surprising to those who equate rights discourse with political struggles for recognition and equality for marginalised and repressed groups in the world. And yet if we examine the language of rights we discover that rights discourse is in practice

state security apparatus, including prisons and the police, has often been used as a repressive tool of the state pre-transition to democracy. Thus, in a new dispensation the old security institutions are seen as illegitimate and in need of transformation. In addition, aid packages are often conditional upon new governments making commitments to human rights and the reform of state security apparatus.

Development projects typically focus on rebuilding infrastructure (police stations, prisons); reorganising organisational structures and redefining roles; mainstreaming human rights in training curricula; and training police and prison officers in the applicable universal rules that should govern their conduct. My case

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profoundly ambivalent. For example, rights talk is used to protest the occupation of Iraq but rights talk is also used to justify the removal of Saddam Hussein, in the name of the right to freedom, democracy and good governance.

The idea of generalised standards for prison practice which are applicable universally is not a new one. The United Nations Standard Minimum Rules, for example, date from over three decades ago. Yet with recent shifts in development aid policy to encompass security and justice sector reform in developing countries, we have witnessed the emergence of a phenomenon we can aptly call ‘penal norm export’.

It is within a framework of human rights, democracy and good governance that justice sector reforms exported to the ‘global south’ are located. Justice sector reform has become integral to development aid policy as a part of what we might call ‘state building projects’. In countries emerging from war (Sierra Leone since 2002) or moving from authoritarian rule to democracy (Nigeria since 1999) criminal justice systems are targeted for two major reasons. Firstly, because an accountable justice system is necessary to ensure the rule of law is followed. Secondly, the

studies in Nigeria and Sierra Leone (Jefferson 2005, 2007), however, suggest two fundamental weaknesses in the training projects. Firstly, whilst couched in talk of reaching out to the poorest of the poor, the marginal and the vulnerable, such projects seldom pay much attention to the needs of these groups. In practice, projects have a tendency to focus more on the supply of justice (e.g. better accommodation for judges) than on the demand for justice (e.g. legal aid provision for the poor). In this way projects can unwittingly follow legitimate dubious practices of governance whilst neglecting the needs of those who continue to suffer under conditions of extreme poverty and lack of justice. The elites and not the poor, benefit.

A second weakness of training interventions is that they fail to grant sufficient legitimacy to the peculiar local perspectives of police or prison officers subject to training. Recipients of training are regarded not as state officials struggling to negotiate the tension between the demands of the job and the demand to survive, but as faulty operators, in need of a quick mechanical fix namely, an injection of rights discourse. In

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the same way that much scholarship on Africa constructs Africa as an abyss, a void, an essential nothingness (Mbembe 2001), so justice sector personnel are conceptualised as empty containers waiting to receive the corrective medicine of rights-based education. Structural conditions related to the dynamics of prison practice are typically ignored. The fact that in Nigeria, for example, the dynamics of prison practice are rooted in strict paramilitary hierarchies where innovation is largely off-limits, is not considered, whilst reform agencies and sponsors insist that the individual officer, armed with their new knowledge of the minimum standards, is ready to go out and initiate change.

This analysis gives rise to three sets of questions related to presumptions of expertise, universality and deviance which I will briefly elaborate on below.

Firstly, why do we in the West insist on neglecting local perspectives on developing countries' prisons, refuse to see them on their own terms, and refuse to face up to the relative ineffectiveness of our own standardised intervention forms? Why do we consistently maintain that our view from without is more valid than any views from within? The export of penal norms under the guise of development is a presumption of expertise which is itself questionable. What kind of expertise is represented by the soaring prison populations in the West and the increasingly punitive distribution of justice? What kind of legitimacy do Western penal reform experts have, given the criminal justice and prison chaos in their own countries?

A related problem is the presumption of universality implicit in the strategy of strengthening state institutions. For example, it is far from clear that increasing the capacity and expanding the scope of state institutions in fragile states is a move that will promote justice. Currently most West African states have relatively low incarceration rates. Analysis of the global prison business suggests that strengthening the state apparatus will inevitably lead to more people in prison rather than fewer. Conditions are not likely to improve as the incarcerated population increases. When this population consists predominantly of the poorest of the poor this is surely counterproductive to the pursuit of justice.

And thirdly we must ask: what does the assumption of deviance, at the heart of penal reform interventions imposed on the global south, mean for attempts to bring justice? What does it mean to apply a predominantly moral-legal yardstick when diagnosing the problems of developing countries' legal, judicial and penal systems? What effect does it have on the possibility of transforming inequitable, inefficient and often violent systems when reform is couched in terms of the condemnation and judgement of countries' failure to live up to externally imposed norms of practice?

If we cannot find justice in justice sector reform where should we look? Perhaps Derrida was correct when he said that justice cannot be reduced to the law? For the disturbing reality seems to be that the legal-moral framework of rights, as channelled through exported packages of penal norms, serves not to enhance justice but to negate it. Thus, whilst justice may not be reducible to the law it seems ironically and tragically true that justice can be reduced *by* the law.

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References

- Badiou, A. (2001), *Ethics: An essay on the understanding of evil*, London: Verso.
- Caputo, J. (1997), *Deconstruction in a nutshell. A conversation with Jacques Derrida*. New York: Fordham University Press.
- Jefferson, A.M. (2007), 'Prison officer training and practice in Nigeria: contention, contradiction and re-imagining reform strategies', *Punishment and Society*, Nacro, London.
- Jefferson, A.M. (2005), 'Reforming Nigerian prisons: rehabilitating a 'deviant' state', *British Journal of Criminology*, Vol 45 No. 4.
- Mbembe, A. (2001), *On the Postcolony*. Berkeley: University of California Press.