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Prisons and State Building: Promoting 'The Fiasco of the Prison' in a Global Context[1]

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Abstract

Prison expansionism around the world is, in part, facilitated by extolling the prison as a symbol of 'Western-democracy' which is justified as an effective and transparent means of enforcing the rule of law and as an internationally recognised indicator of a strong state. This article, however, argues that the realities of prisons do not match up with their symbolic and extolled virtues. Drawing on existing empirical and theoretical literature, this article argues that the role of the prison as a symbol of effective 'state-building' ignores the irrefutable evidence of the 'fiasco' of the prison, either to fulfil its own stated purposes or to operate in ways that adhere to or strengthen democratic ideals. Further, it suggests that international bodies, non-government organisations, state officials and scholars must engage more honestly with the 'truth about prisons' and their failure to function in the ways they are imagined to.

Keywords

Prisons; democracy; rule of law; human rights; global South.

Introduction

The prison is a seemingly unquestioned and accepted social institution in many democracies around the world (Cavadino and Dignan 2006; De Giorgi 2007; Drake 2012). Part of the way in which this consensus is accumulating is through the mandates placed on so-called 'developing democracies' to establish criminal justice systems that uphold the rule of law, following models from the West. The demands for transparent criminal justice processes seem to inevitably assume that the prison is part and parcel of a 'well-functioning rule of law chain' (UN Department of Peacekeeping Operations 2010). This article questions this assumption.

There is a growing body of criminological and sociological work drawing attention away from the myopic, self-obsessed and exclusionary narratives of 'Western' or global North thinking to highlight the importance of locally-produced knowledges, expertise and experiences in global South countries (Carrington et al. 2015; Connell 2007; Fonseca 2017). Within this same vein, ethnographic prisons researchers working in the global South have noted and lamented the import (or export) of Western ideas about how best to run prisons (Jefferson 2005, 2007; Martin et al. 2014). Through examination of the skilled detail work of Jefferson (2010, 2014) and other prison researchers who have studied the everyday lives of prisons in the global South (Bandyopadhyay 2007; Martin 2014), it is evident that knowledge from the West is held up as a blueprint for implementing human rights protections and effective prison management. Western prison practices and ideals are prescribed as the gold standard that should be followed by those in post-conflict or less bureaucratically developed countries which are attempting to create more democratic, transparent and politically legitimate state institutions. In these contexts, the prison is not only cast as an effective crime control tool, it is also held up as a necessary feature of effective state-building.

This article argues that the international drive to create 'better' prison places and systems demonstrates a worldwide lack of 'truth-telling' about the ability of the prison to effectively fulfil its stated purposes. Far from being a cornerstone of the rule of law, prisons systematically and foundationally undermine it, both in their daily practices and structuring foundations. Prisons are held up as symbols of democracy by those working to establish more transparent political regimes in post-conflict countries. However, this article argues that prisons—in design and operation—are anti-democratic institutions that cannot help but result in persistent human rights violations and thus should not be promoted as symbols of a strong state or a healthy democracy. The article concludes by suggesting that international bodies, non-government organisations (NGOs), state officials and scholars must engage more honestly with the 'truth about prisons' if more democratic, effective and less destructive methods of responding to crime and social disharmony are to be found.

The fiasco of the prison

One of the problems that this article is concerned with is the disconnection between the assumed or imagined function of prisons as symbols of democracy and their abject failure to consistently operate humanely or to fulfil their stated goals. Mathiesen (2000) has unequivocally argued that the prison has no defence. It is a fiasco in its own purposes, continually and inevitably failing to achieve its stated aims. Evidence that dismisses the conventional justifications of the prison is abundant (Cayley 1998; Christie 2000; Kupers 2006; Mathiesen 2000; Reiman and Leighton 2010; Scott 2013; *inter alia*). Mathiesen and others have tended to focus their arguments on the incapacity of the prison to achieve its goals of rehabilitation, punishment, retribution, deterrence and so on. But, it is also the case that prisons fail to operate in ways that can ensure consistent respect for human life, dignity, freedom and autonomy. These are not the goals of the prison; they are the casualties of it because they are fundamentally incompatible with the punitive and exclusionary goals of the prison. Yet, somehow, it is imagined, that prisons can serve to bolster and protect these same civilising values. This poses a significant problem for prisons as social institutions and is a fundamental aspect of why they repeatedly fail. To help flesh out the nub of

this argument, it is useful to draw attention to the universal elements of prisoner experiences. In so doing, it is also shown that differentiating between the material conditions of prisons—identifying 'better' and 'worse' prison practices and conditions—means that one of the most fundamental fault lines of the prison is repeatedly and perilously ignored.

The problem with 'better' and 'worse' prisons

Despite the well-established recognition in the academic literature of the 'pains of imprisonment' (Sykes 1958), the universality of the existential strain of *being imprisoned* is less often considered and debated. Assessing the pains of imprisonment is an inevitably subjective exercise and does not easily lend itself to objective consensus. However, it does seem to be the case that studies which consider the 'lived experience' of prisons reveal a universally shared aspect of prison experience, namely: that the loss of freedom and the loss of autonomy deliver a profound kind of existential suffering that exists independently of material conditions (Drake et al. 2015; Egelund 2016; Jefferson 2010; Reiter et al. 2018; Scraton 2016; Shammas 2014).

Consider the work of Egelund (2016) who has conducted research in prisons in Zambia. Prisons in Zambia are, as Egelund's work describes, overcrowded and lacking in sanitation, decent nutrition and appropriate health-care standards. These can be chronic issues in many prisons both in the global South and elsewhere. Such conditions cannot and, of course, should not be dismissed or overlooked. Egelund acknowledges the importance of recognising the difference between African and Western prisons, but her findings also demonstrated the enduring, or what might be seen as universal, problems of prisons that have long been identified and reported in the West too. A quote from a prisoner in her study reads:

> Putting my relationships, thoughts, ideas and many other things into proper context has been a bit of a challenge. I am not denying that this prison is heavily congested, but even so, I feel just as poorly off as a prisoner in solitary confinement. I yearn every day for company I can easily relate to—especially when I wake up in the morning. (in Egelund 2016: 88)

A second person states:

> Then also the freedom to do things. When we were outside we did things as we pleased. When you missed your sister, you go see her. You get to do all sorts of things or see a friend when you want to, you can do it. Now, in here, even if I want to see a relative of mine, how do I see them? We are far from everyone, and they can't afford it, do you know how much it is to come here ...? (in Egelund 2016: 96)

And finally:

> It (the lack of control) is really beginning to get to me in ways you cannot imagine. And the worst of it all is the feeling of obscurity and insignificance. My powers fail me. (in Egelund 2016: 96)

The above quotations are from prisoners living in prisons where material conditions would be seen as deplorable by international prisons standards. Even though such conditions sometimes feature in prison systems in the West too (see, for example, American Civil Liberties Union 2015; Silvestri 2013), the 'outsider' (often Western) assessment of the state of African prisons (for example) often focuses only on how various international material standards are failing to be met. These objective facts about prison conditions and their deviation from international standards seem to blind the outside observer from considering the ways in which aspects of the lived experience of the prison—no matter what the conditions—can be the same.

Egelund's work is a notable deviation from prison studies which focus solely on material or policy failings because she highlights prisoner experiences that speak specifically to the elements of imprisonment that are universal. Egelund's quotations above reveal a lived experience of imprisonment that resonates very closely—identically, in fact—with prisoner experiences in the United Kingdom, the United States, Scandinavia or any other prison in the world. The existential pains that prisoners endure are common the world over, as captured in the following excerpt from work in high-security prisons in England and Wales:

> ... it was evident that the use of [long-term imprisonment] was not well designed or equipped to restore or otherwise overcome the personal and social damage that can result either when one human being physically harms another or when other types of illegal offences are committed. It is, however, very well designed to punish relentlessly—to the point of meaninglessness. Those who were subjected to it had to struggle against every pressure inherent in the structure of the prison to retain a sense of identity, feelings of self-worth and of human dignity. (Drake 2012: 105-106)

To further underscore the ideas I am aiming to highlight, I turn to considerations of Scandinavian prisons which have often been set apart as the most humane in the world.

Reiter, Sexton and Sumner (2018) recently explored prisoners' experiences of Danish prisons. In particular, their work drew attention to power struggles that take place between prisoners and prison officers in attempting to negotiate the 'normalisation' of life in these prisons. Their close examination of the lived experience in Danish prisons reveals that suffering is an essential characteristic of the experience of imprisonment; brutality or inadequate material conditions *may or may not* be overlaid on top of this. One of the conclusions that Reiter et al. (2018: 108) draw is that:

> Exceptionalism literature glosses over the primary purpose of prisons as punishment (or, more specifically, as a limitation to autonomy), allowing a particularly rosy image of the system to emerge. While this picture is not wholly inaccurate, neither is it complete.

Scandinavian prisons are often held up by prison reformers and other commentators as beacons of guiding light and practice (Pratt 2008a, 2008b). They are perceived as amongst the most progressive in the world. Bostoy prison in Norway, for example, is an open prison and is a good example of Norway's commitment to the 'Principle of Normality' (similar to that discussed and explored by Reiter et al. 2018, in Denmark) wherein people go to prison *as* and not *for* punishment and where conditions mirror, as closely as possible, conditions in the community. Prisoners can sometimes maintain the jobs they had before they were sentenced by commuting to work from the prison daily. Other provisions, such as health care, education, training and so on, are often facilitated outside of the prison, in the community, with prisoners attending appointments in the same way any member of society would. Imprisonment in Norway, then, is focused more on ideas about addressing whatever problems led to a person's imprisonment, ensuring he or she is better socialised to return fully to society. It is, importantly, not solely organised around delivering punishment. However, scholarly work in prisons in Norway emphasises that, no matter how observably 'good' material conditions may seem, experiences of imprisonment are universally accompanied by human suffering. Shammas (2014; but see also Ugelvik and Dullum 2011) has argued that even in the exceptional conditions of Scandinavian prisons, the experience of imprisonment remains, above all, painful, with both existential fears and personal deprivations affecting prisoner experiences. That is, Scandinavian prison experiences invariably draw out the same existential pains as the prisoners in Africa, as described in Egelund's research. The point that needs to be vigorously underscored is that, no matter the degree of humane exceptionalism in prison policy and practice, the lived experience of the loss of

liberty and autonomy that is the foundation of all prison experiences delivers a kind of pain to the human spirit that is universal.

Much of the research on prisons seems to downplay the profound painfulness associated with the loss of liberty and autonomy, dismissing its importance on the basis that it is an obvious and accepted side-effect of the practice of imprisonment. Instead, research on prisons around the world is often more concerned with describing the minutia of prison life or managing prison problems (Crewe 2009; Garces et al. 2013; Kruttschnitt and Gartner 2005), discrete examination of prison programmes or interventions (Quan-Baffour and Zawada 2012; Tett et al. 2016), or empirical and theoretical examinations of 'what matters' for maintaining the internal order of prisons (Liebling and Arnold 2004; Narag and Jones 2017). Likewise, there is a continuing and growing body of empirical and theoretical work aiming to differentiate prison policy, management approaches or the observed conditions of prison life in different jurisdictions or in broad political and cultural systems. These efforts seemingly aim to plot degrees of difference between prison systems along a continuum. Different anchors at each end of a proposed spectrum attempt to pinpoint subtle or gross differences between lenience/liberty versus harshness/punitiveness, between 'better' versus 'worse' material conditions, or between numerous elements of operational specificity due to differences in legal systems, local cultural differences or differing political climates. One of the outcomes of this work has been a tendency in the literature to broadly categorise prison systems as exceptionally 'humane' (for example, Scandinavia) or exceptionally harsh (for example, the United States). For the most part, such characterisations privilege prison systems in the West, with the Western spectrum forming the scale against which all other systems are weighed up.

Reiter et al. (2018) raise questions about the role that the idea of 'Scandinavian Exceptionalism' has played in the scholarship of punishment and social control. Reiter et al. (2018: 93-94) argue:

> Rather than being an accurate or nuanced analysis of the lived experience of punishment, Scandinavian Exceptionalism has served as both a rhetorical tool with which to critique harsher prison systems, especially in other developed countries, and as an aspirational goal implying that harsher prison systems are fixable with just a little more humanity, a little more normalization, or a little less brutality.

Reiter et al.'s work queries declarations of the remarkableness of Scandinavian exceptionalism (see, for example, Pratt 2008a, 2008b). Pratt (2008a: 124) has argued that: 'the exceptional conditions in most Scandinavian prisons, while not eliminating the pains of imprisonment, must surely ease them.' As Reiter et al. (2018: 93) point out, however, such statements are debatable. Their findings suggested that:

> Scandinavian exceptionalism debates have, ironically, failed to diversify prison studies. The debates have, instead, re-focused scholarship on the United States (and, to a lesser degree, the United Kingdom) as the definitive paradigm against which all punitive systems are compared.

It is not strictly the case that there is no diversification in prison studies. There is some excellent work which attempts to elucidate variations providing strong counter arguments that more attention needs to be given to local knowledge and cultural contexts (for example, Dikötter and Brown 2007; Ugelvik and Dullum 2011; Martin et al. 2014; *inter alia*). As Reiter et al. imply, however, efforts to identify such nuance in prison policy, history, cultural context, and practice are essential, in relative terms, for addressing failures and limits of prison management and for improving the material conditions of prison environments for both staff and prisoners.

The issue that this article is concerned with, by contrast, is to consider the problem of prisons from an absolute perspective: that is, in relation to the universal elements of the prisoner

experience and whether or not they can ever be effective social institutions that fulfil the function of safeguarding both society and democratic ideals. From the perspective of the totality, therefore, considerations of nuance within and between prison practices become less pertinent. From this point of view, the profound painfulness associated with the loss of liberty and autonomy—which are essential elements of the whole foundation of the concept of imprisonment—should be considered as the potentially fatal and irreparable flaw of prisons as symbols of democracy. To move through the implications of this argument, it is necessary to examine how it is that prisons are promoted as symbols of democracy and how their very foundations inevitably undermine democratic ideals.

Prisons and the project of state-building

Prisons are structurally linked to the rule of law. The rule of law is promoted by international bodies, such as the United Nations (UN) and the World Bank, as essential for economic development, establishing human rights protections, and for conflict resolution (Chesterman 2008; Office of the United Nations High Commissioner for Human Rights 2017). Its virtues, how it is conceptualised, and its universal relevance for social regulation and state legitimacy has been widely discussed in both legal and social science literatures (Dyzenhaus 2001; Raz 1990; Shklar 1987; Thompson 1975). Chesterman (2008) suggests that it important to consider the specific grounds on which the rule of law is promoted and by whom, and the functions it is intended to serve in a society. He argues that:

> … rule of law assistance is supported because of perceived outcomes it may achieve
> in the recipient community: in addition to promoting human rights and providing
> a stable foundation for economic development, it has also been used to establish
> non-violent mechanisms for resolving political disputes. (Chesterman 2008: 341)

Thus, 'developing states' that are aiming to prove their worthiness both to the international community and amongst their own governed populations are advised by the UN and other international bodies to embrace the rule of law as a means of establishing authority, democracy and political legitimacy.

The outcome document from the 2005 World Summit of developing states argued that: 'good governance and the rule of law at the national and international levels are essential for sustained economic growth, sustainable development and the eradication of poverty and hunger' (UN General Assembly 2005, cited by Chesterman 2008: 347). Amongst intergovernmental organisations such as the World Bank and the International Monetary Fund, transparency and accountability within government are cornerstones of good governance, which can, arguably, be reinforced in the way the rule of law is operationalised. Whilst there are problems with formulations of the law and of justice in an international or global context—principally in terms of definition and application, as Chesterman (2008) and other scholars (Nagel 2005) thoroughly discuss—the particular concern that this article takes up is the prison.

Prisons as well as 'correctional' and penal affairs are bound up in policy and rhetorical discourses associated with the rule of law. The UN Department of Peacekeeping Operations (2010: 1) promotes the idea that 'prisons are an essential link in the rule of law chain'. Through peacekeeping operations in post-conflict and developing societies, the UN aims to uphold international prison standards and address prison conditions.

The UN Standard Minimum Rules for the Treatment of Prisoners were first set out in 1955, but were revised in 2015 and adopted as the Nelson Mandela Rules. These rules set out the minimum prison conditions which are accepted as suitable by the UN. They serve as a set of guidelines on which prison management practices could be built, but they are not legally binding. They cover such issues as (but are not limited to): respect for prisoners' inherent dignity; guidance on

medical and healthcare; standard rules for investigating death and injury in custody; protection of the vulnerable; and staff training. They are also the standards upon which the UN draws when advising post-conflict or otherwise 'developing' countries as part of transparent, accountable democracy-building.

According to the UN, working to improve prison standards strengthens the rule of law and, in so doing, confirms the UN commitment to 'the dignity and worth of every human being, thereby helping to establish the foundations for long-term development, stability and peace' (UN Department of Peacekeeping Operations 2010: 1). As a result, newly democratised or developing states are often strongly encouraged to look to and implement prison practices and systems from the West and to introduce prescribed reform measures that seem to have 'worked' in Western democracies. In this sense, prisons in the West are viewed as universally relevant, whilst prisons in the global South (for example) tend to be cast as wholly deviant, dysfunctional and in need of reforms that will make them more like prisons in the West.

There are a number of problems with both the promotion of the prison as an essential link in the rule of law chain in order to promote democracy and Western prison standards as the exemplar for global South prisons to follow. The latter sections of this article tackle the problem of prisons as symbols of democracy. But, an intervening step needs to be taken: specifically, the exploration of the problem of promoting Western prison standards to global South (and other) countries. The next section aims to establish the way the prison itself stands in the way of transparent, accountable state-building.

Can deviant prisons be reformed?

Prison reform measures, the application of human rights legislation within prisons and the training of prison staff are often prescribed as the remedies that will help place a 'deviant prison' firmly on the straight and narrow and will grease the wheels of change towards achieving international prison standards. The notion of 'deviant prisons' was first discussed by Jefferson (2005), drawing on his research in Nigeria. He argued that human rights training interventions, for example, could be seen as an attempt to 'rehabilitate' and 'correct' corrupt or otherwise questionable state practices (Jefferson 2005: 487). Moreover, a 'deviant prison', according to Jefferson, can be viewed as an indicator of a 'deviant state' by external (Western) observers who base these assessments of 'deviance' on failures to meet international human rights standards or by continuing to rely on modes of prison governance that are non-transparent, authoritarian, repressive or, in the worst of circumstances, prone to using torture. By addressing such 'offending behaviour', new democracies can work to strengthen the legitimacy of the rule of law which, in turn, can restore or establish their international political respectability. The argument seems to be that applying the right (that is, often Western) prison reforms will lead to adherence with international standards and that, once achieved, this will mean the cessation of human rights violations in 'deviant' prisons.

Prison ethnographer Bandyopadhyay (2007) has drawn attention to the linkages between commitments to internationally endorsed prison reforms and existing state structures in prisons in India. She identifies the disjuncture between 'the idea' and 'the practice' or implementation of reform. Bandyopadhyay argues that, internationally, the 'official discourse, in keeping with the idea of a modern welfare state, introduces reform as an objective of the prison system. Within this paradigm, prisons are [meant] to provide spaces of recovery' (Bandyopadhyay 2007: 414). However, 'the prison is an institution where the state deliberately maintains opacity by restricting its interaction with civil society' (Bandyopadhyay 2007: 387). She further argues that 'through the idea and practice of reform, the state only replicates its repressive machinery; thereby perpetuating its authoritarian structures ...' (Bandyopadhyay 2007: 414). Bandyopadhyay's astute observations draw attention to the questionability and achievability of prison reform, not just in India, but everywhere. Moreover, she makes a point that is universally

relevant to the management of prisons: that the mechanisms utilised within an individual state to monitor, investigate and reform its own prison practices are often repressive and authoritarian and far from open, accountable or transparent.

Similarly, through extensive consideration of rights-based NGO work in prisons in The Philippines, Kosovo and Sierra Leone, Jefferson and Gaborit (2015) explore the various processes that come into play between prisons and NGOs. Their work shows the myriad ways that the prison affects the NGO more than the NGO affects the prison. Jefferson and Gaborit aim to encourage a re-casting of the terrain in which NGOs and prisons work together, so that their interdependence can be acknowledge and, perhaps, embraced. This work is, of course, essential in tackling the issues that Jefferson and others researching prisons in the global South encounter because it draws attention to the importance of preserving the capacity for local openness and creativity and argues against imposing interventions from outside. They make clear the reality that prisons are inevitably influenced by local and cultural contexts and that this is often overlooked by reformers and intervention strategies. At this level of thinking and acting, it is unhelpful for those aiming to bring in reforms from outside to ignore, smother or otherwise dismiss the context surrounding the prison. However, Jefferson and Gaborit's and also Bandyopadhyay's research might also suggest that prisons themselves stand squarely in the way of transparent, open and democratic ways of working. Some of the fundamental elements of the prison—those that are essential to its very character and definition—are potentially the very elements that mean that, no matter where it is located and no matter how many interventions are implemented, it cannot be sufficiently reformed; nor can it become either a symbol or a mechanism of democracy, transparency or accountability.

Prisons as symbols of democracy

There is a foregone conclusion, implicitly promoted in many democratic societies, that the use of imprisonment is, in effect, a collectively agreed response to a crisis. In other words, it is the means by which a society imagines it is mending a ripple in the social order. The choice to imprison is an action taken in the name of society, on behalf of the public, who implicitly consent to the use of the prison as an agreed social response to transgression. Arguably, however, sending a person to prison cannot just be viewed as the final, end product or outcome of social censure. Sending someone to prison is not merely the *end result* of the process by which the rule of law is upheld and after which normal social conditions will resume. Prisons are also a *means* by which the symbolic demands of society are tangibly met. It is here, in the practice and daily experience of the prison, that its flaws as a bastion of democracy begin to be laid bare.

According to the UN, 'democracy is a universal value based on the freely expressed will of the people to determine their political, economic, social and cultural systems and their full participation in all aspects of their lives' (UN General Assembly 2005: para. 135: 30). The 'will of the people' in the case of imprisonment seems to translate into a commitment to retribution and punishment and to social censure, ostracism and condemnation. It involves the loss of liberty, the loss of autonomy, the loss of many (or most) social freedoms and the deprivation of material and other tangible and intangible human needs. Thus, prisons, in their very essence, curtail or strip citizens of their rights as social members and give licence to practices and forms of treatment that often result in standards and experiences that are less than human. Prison environments are built on a form of order designed to meet society's expectations of an appropriate state response to crime: that is, punishment, retribution and social ostracism. To create such environments, prisons cannot be run in ways that are in keeping with democratic principles. Punishment and retribution cannot be delivered without coercion and control. If this is true, however, then on what basis is the prison run? If prisons are spaces of social censure, ostracism and repression, what model of governance reigns? How are prisons, these so-called symbols of democracy, managed behind closed gates?

I suggest that the governance of prisons must be viewed as if they were separate 'states' in and of themselves. That is, the prison is, in practice, a state within a state, complete with its own self-contained society, codes, cultures, systems of governance, and legal and informal social control frameworks. Prisons are mini-states, operating somewhat independently as 'special' social and political spaces. Although every nation's prisons are deeply influenced and inflected by the political, legal and cultural ethos of that nation, the principles on which all prisons are based mean that they all replicate certain unsavoury state practices that ultimately undermine the so-called democratic ideals of the parent nation they are purported to serve. Moreover, I also suggest that the prison, in its very design and by definition, is governed and run as a perpetual state of exception.

Prisons as 'states of exception' and constitutional dictatorships

Agamben's (2005: 3) important work on states of exception specifically considered this concept in relation to President George W Bush's order that led to individuals captured in Afghanistan being held in Guantánamo Bay without trial. By contrast, I wish to consider not the specific legal grounds on which states of exception are declared within a democracy, but instead the idea that prisons, as mini-states—and as a matter of routine—run as perpetual states of exception in their operating practices.

In a state of exception, government powers are extended and the rights of citizens can be greatly reduced. Agamben sets out Rossiter's (1948: 5, cited in Agamben 2005: 8) justification of the state of exception, stating:

> ... in time of crisis a democratic, constitutional government must temporarily be altered to whatever degree is necessary to overcome the peril and restore normal conditions. This alteration invariably involves government of a stronger character; that is, the government will have more power and the people fewer rights.

States of exception, then, tend to be declared under conditions of emergency, when threat is so high and so unpredictable that it is deemed that there is little or no alternative but to declare a constitutional dictatorship. A constitutional dictatorship can be defined as:

> ... a system (or subsystem) of constitutional government that bestows on certain individuals or institutions the right to make binding rules, directives and decisions and apply them to concrete circumstances, unhindered by timely legal checks to their authority. When they act according to this right, they act clothed with all the authority of the state. (Balkin and Levinson 2010: 1805)

In some respects, it is, perhaps, obvious to suggest that prisons are legitimised and legitimated on the basis that they operate routinely and as part of their very organisation as constitutional dictatorships. Whilst such an observation may be a foregone conclusion—in that it is expected that prisons are, at the very least, authoritarian and, when necessary, run as dictatorships—these ideas become problematic when it is remembered that prisons are promoted, in part, as symbols of democracy. Moreover, the human rights record of prisons around the world would suggest that prisons are more often run under an 'exceptional' model of governance that all too frequently relies on a 'by whatever means necessary' form of order (see Drake 2011).

Although prisons are governed, in principle, by the rule of law of their parent society, the extent to which the canon of law is faithfully applied within prisons can be called into question. If we consider the rights of prisoners in comparison to free citizens, we see the prisoner society as a site of precarious and uncertain personhood. Prison regimes are ordered, controlled and operated on the basis of rules, norms and accepted practices that bear little, if any, resemblance to 'democratic' governance. Moreover, the knife edge on which prison regimes often tend to

operate include a perpetual pressure-cooker environment that could, in effect, explode into disorder or a perceived threat to security at a moment's notice. For example, I have previously argued (Drake 2011) that it is not uncommon for prison staff in the legal jurisdiction of England and Wales, particularly those in high-security environments (but also in lower category prisons too), to construct and respond to problems of order and security in 'disaster terms'. Moreover I have further suggested (Drake 2012) that, under the guise of 'security', the operating model for many prisons in England and Wales is relentlessly repressive.

All too often in prisons throughout the West, daily life is fraught and frenetic: too many prisoners, too few staff, high rates of self-harm, assault and verbal altercation. This means that all parties within a given 'prison society' view the environment as hostile. From the perspective of staff and managers, this can mean viewing daily life in the prison through the lens of an ersatz emergency situation. Thus, in the day-to-day operation of the prison, there is, arguably, virtually no distinction between what is required for 'good order and discipline' and the need for exceptional measures. When viewing the prison as a mini-state within a state, it is immediately obvious that the very foundations of prison order are built on an operating model that is borne of crisis and normatively organised around a permanent state of potential emergency. Prison environments are, therefore, more often than not anomic manifestations of their parent states, operating as if their illicit and unconstitutional governance practices are licit, 'normal' and, above all, necessary. Lauding such social institutions as the 'essential link in the rule of law chain' is a highly problematic state of affairs. It would, perhaps, be more accurate to view them as the 'weakest link' in this relationship.

It would seem that there is what Cohen (2001) might have called a culture of denial on a grand scale regarding the promises of the prison. Scott (2008, 2011, 2015) has explicitly considered the denial of prisoners' human rights by prison officers in prisons in England and Wales, but there is a much bigger illusion and denial project underway. The UN promotion of Western prison standards in global South countries and the notion that, 'if prison systems could all strive to be more like Scandinavia, prisons would work' represent sentiments that fail to recognise what must be seen as the fatal flaw in the conception of the prison: that is, that prisons are organised and run on profoundly undemocratic foundations.

It has long been understood that the coercive and punishing environment of prisons creates an environment that is unsafe and dangerous for both staff and prisoners (Haney et al. 1973; Kupers 2006; Scraton et al. 1991). As already discussed, one of the enduring problems of prisons, which applies equally to prisons in the global South and the West, is that all prisons are in need of continual reform. This is a problem grounded in the very foundations of these social institutions and is a result of the ideological bases on which prisons are purported to 'work'. Prisons the world over replicate certain essential, but less-tangible, conditions: a hierarchical power structure of 'guards' and 'prisoners', ostracism, pain, punishment, suffering and retribution. These conditions cannot help but create fraught, conflict-ridden and dangerous environments. Prisons, therefore, routinely operate in states of chronic crisis and are frequently in contravention of various international guidelines, conventions and even the rule of law in their own country. This is not something that is peculiar to the global South or to post-conflict, repressive state regimes; it is peculiar to the exceptional social and political space of the prison. It might be suggested that prisons—from their inception, by definition, and whether they are located in Norway, the United States or West Africa—inevitably result in deviant state practices. Their environments are not only chronically vulnerable to human rights abuses but the potential and likelihood of such abuses are also built-in to their very fabric. Whilst it must be acknowledged that human rights protections can be improved, in relative terms, in some prisons some of the time, it is misleading to suggest that importing prison practices from the West will solve the problem of human rights abuses in global South prisons or anywhere else for that matter. The mini-state of the prison is—foundationally and fundamentally—based on a model of state governance that is always and

everywhere coercive, repressive and brutal. It is hard to see how they could be governed in any other way.

Conclusion

Bolstering the legitimacy of prisons as a symbol of a strong and effective state is based on an unquestioned and implicit acceptance of the use of the prison as an effective or possibly even benevolent social institution or tool of crime control that is entirely defensible as an established symbol of democracy. The firm linking between the rule of law with prisons and with democratic leadership and 'good governance' is highly problematic (and simply erroneous) when the track-record of prisons is more carefully considered and truthfully exposed. The drive to homogenise prison standards globally on the basis of Western prison practices obfuscates the endemic problems of prisons and distracts from the reality of how prisons really operate in practice. This drive, however, is tragically informed by a myopic focus on a superficial reading of the prison that hones in on its purely symbolic functions. Prisons, in effect, have two contradictory faces. One face is formed of the internal life of prisons, run as a matter of routine by exceptional measures, resulting in a painful, inhumane, coercive, violent, and repressive reality in their daily operation. The other face of prisons, however, is a superficial and symbolic façade. In symbolic terms, the prison is lauded as a hallmark of democracy. The presence of a prison system is heralded as the necessary and legitimate cornerstone of the institutional armoury of a strong democratic state. It is this symbolic ideal that the UN endorses, one on which international standards are based and which prison systems are expected to emulate. But, if one inspects the practices of prisons more closely, the reality is that prisons, no matter where they are located, consistently fail to operate in ways that dignify the essence of human life. By design and in practice, they operate in undemocratic and constitutionally exceptional ways. As Stern has argued:

> Looked at rationally the limitations of prison are so obvious, the arguments so long standing and rehearsed, that by now one would have thought that there would be widespread disenchantment with it as the main response to crime. (Stern 1998: 310)

Thus, prisons persist, in part, because of the symbolic functions they serve. The UN may promote them as serving a central function in establishing stability and peace, but such a view is as naïve as it is dangerous. Prisons operate as repressive, unconstitutional spaces. They begin from the premise that the citizens they govern will not be afforded the same rights and freedoms as other social members. They stigmatise those they imprison, setting 'them' apart from 'us'. This function is reinforced by and, in turn, reinforces the principles of othering that are implicit in declared states of emergency and which accompany ideologies of security (Drake 2011, 2012). Prisons have long been instrumental in the project of separating the deserving from the undeserving, the less eligible from the eligible. Furthermore, De Giorgi (2007) argues that the prison is the centrepiece of a punitive continuum within a dystopic model of punitive democracy which sets out a pre-defined political economy of punishment. The notion of a punitive, repressive democracy is not just a problem for post-conflict, post-transition or developing counties. It is a problem for any country that extols the prison as the lynchpin of its justice system and, thereby, a conduit to social stability and peace.

There is considerable irony in the notion that the aspiration of establishing well-run prisons in countries attempting to demonstrate their democratic credentials both to their own citizens and to the international community is being measured and set by prison standards and operating models from the West. Indeed, Agamben writes that:

> At the very moment when it would like to give lessons in democracy to different traditions and cultures, the political culture of the West does not realize that it has entirely lost its canon. (Agamben 2005: 18)

The point that needs to be underscored is that it is not just prisons in conflict-ridden, developing and post-conflict societies that are deviant. All prisons are run on a deviant model of governance that is exceptional, unconstitutional and a continuing fiasco. This is the undeniable truth about how prisons operate. Every international body with influence in the functioning of prisons—such as the UN, well-meaning NGOs, state officials and scholars alike—must engage more honestly with the 'truth about prisons' if more democratic, effective and less destructive methods of responding to social conflict and upholding the rule of law are to be found.

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