

Comparison for Standardisation?

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Outline of Talk

- A Why are we comparing?
- B An Italian Case study- probation in context

Jobs for comparers

- From information gathering to comparison:
- Classifying- what type of system is it?
- Describing – what are they doing in it?
- Explaining- why are they doing it?
- /Interpreting- what do they think they are doing?
- Evaluating- what do we think of what they are doing?

Work so far

- Description (mainly of roles and rules) and evaluation of outcomes and procedures
- Variable Tasks? Case management, assistance, surveillance, record keeping, advising court sentencers, liason etc etc. Their place in the larger system(s)?
- Need for sharpening the focus on what is meant by probation as occupation and as process, to account for what is really being done, and (unsentimentally) theorise its micro and macro challenges.
- Do they have the job of 'concealing criminal law's limits'?
- How is 'impersonal friendship' constructed in different cultures? How is it experienced?

Why compare probation practice?

1. To contribute to penology

a).-Explaining what is happening to penalty/
punitiveness (Michelle Phelps)

But what are the boundaries of penalty? (Family?
religion?) The (variable) 'formal' and 'informal'.

b).-To interpret your own system in the light of
others (and vice versa)

2 To predict the effects of any change(s)

Problems of transplants and transferability

Why compare probation? – cont.

3. To help standardise or harmonise

(distinguish convergence, copying and cooperation see Nelken. Comparing Criminal Justice Sage, 2009)

Questions. What to standardise? How to standardise?

But why standardise?

- -To spread 'best practice'. (To make a standard standard.
- Problems : One size fits all?
- What is the EU after? Why?

My Worries about harmonisation

- 1. 'Depoliticises'- (deliberately?) misses the 'local politics' of criminal justice .An example from prosecution- are heavy case-loads the problem throughout Europe? For whom?
- Is recidivism the only issue for probation?
- 2.-Does standardising assumes problems and solutions are the same?
- But local conditions and values can be different
- 3.We need (first) to learn from other places (before trying to change them).
- 4. BUT some values really are non- negotiable –
- like the right to a fair trial? Does that mean quick trials?

Difficulties in describing

Words v deeds?

‘Law in books’ and ‘law in action’

May be similar in one way and not in the other.

But both are important – (for examples from prosecution, see the debate between Goldstein and Marcus V. Langbein and Weinreb and Nelken on ‘Obligatory prosecution’ in Italy)

A note on evaluation



- Distinguish the individual and system levels
- E.g Does moving towards the accusatorial system help the accused? (more protection from judges, less from politics and the public) Or can you have both?

B. Studying probation in Italy

- Beyond Anglo American Hegemony-
- Empiricism – ‘what works ‘ recidivism and managerialism’
- Can you successfully respond to crime as an individual(s) problem whilst avoiding what really ‘causes it’ and what it means ?

Probation in Italy cont.

- No empirical research in Italy of everyday practice (but there is not even any of the police) But brilliant legal discussions of the aims of law and of particular procedures
- Is probation a universal? Probation in Italy is not an independent sentencing option, but is a substitute for short prison sentences and for supervising last part of prison sentence. Yes in juvenile justice (done mainly by ministerial social workers') But crucially this is pre-trial probation (with all sorts of due process problems that are concealed because the priority is NOT punishing young people).
- Equivalents to probation? Some similar tasks done by police; the ' family' adoption of unaccompanied immigrants.

Italy case- study cont.

- Lost in translation (cf Martin Grapes) : e.g.
- Does the concept of 'criminal justice' exist? In Italy the lack of unity of system is seen as a value.
- The State and ' the community' conceived differently
- Judges v politicians
- The (non) threat (to the state) of what they call (ed)'Micro- criminality' as compared to corruption, terrorism and organised crime
- - this now changed because of immigration

The Italian context (cont.)

- Penal populism/ media / politics very different
- Status of victims is different- should forgive
- Meanings of responsibility- group related
- How are jobs and homes got normally?
Depends more on family and group links

Italian context (cont)

- Procedure after the 1989 reform
- The 'success' of 'Messa alla prova' for juveniles?
- (How the Ministry fudges recidivism rates to make them look good)
- 'System delay as a resource'- avoiding labeling at all costs
- Surveillance through domestic confinement and extra requirements.
- Maybe 'over- leniency'? (except to immigrants)
- Not 'right because it works,' but 'works because it's right'
- Italy helps 'us' (i.e. Anglo-Americans as they call us) learn the limits of managerialism

Methodologies

- Finding out 'what you don't know you don't know'.(Tony Grapes)
- a) Virtually there
- b) Researching there
- c) Being there
- (see Nelken (2000) Contrasting Criminal Justice , Ashgate)
- -Which places / areas to compare? Theorising similarities and differences.
- Who to believe?
- Beware of experts bearing views
- Frame the debate/Understand the variation in practices

THE END

- Enough mapping- now try climbing some mountains