

Editorial

Between a Rock and a Hard Place: Pakistan's Criminal Justice System in Transition

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Previous special issues of this journal have been devoted to single issue-areas such as juvenile justice, violence against women and terrorism. This issue will depart from this trend by focussing on Pakistan's criminal justice system. This constitutes a significant development. The interpretation of crime and criminal justice has been the preserve of foreign academics and policy intellectuals. Inevitably they brought their own cultural assumptions and preconceptions to bear on their view of the subject. Interest in Pakistan's criminal justice system has therefore been sporadic and limited to those of its aspects deemed sufficiently "policy-relevant" to merit international interest – the impact of Islamic law, the treatment of women, militancy to name only a few. Yet little attention has been devoted to the criminal justice system in its own right. This issue, for the first time, allows practitioners from the different sectors of its criminal justice system to have their say.

Studying a criminal justice system raises difficult questions. What is Pakistan's criminal justice system? To what extent is it possible to study it in isolation? The contributions to this issue chart the successes and failures of a largely implanted institution, an amalgamation of pre-colonial and colonial elements, combined with a variety of Islamic legal interpretations. Moreover, it is constantly changing as the result of government reform initiatives, often undertaken in cooperation with a wide variety of donor organizations that are bringing their own culturally specific views about criminal justice to the table. The contributors deal with these challenges in their own ways.

In his contribution on the "Role and Responsibilities of the Public Prosecution: A case study of Khyber-Pakhtunkhwa Province" **Mashhood Ahmad Mirza** gives us an overview of the structure of Pakistan's system of public prosecution and critically evaluates it in the light of international prosecutorial guidelines. Pakistan's prosecution services have undergone a transformation over the last decade, having been made independent of the command structure of the police – an overhang from the days of the colonial magistracy system – and now falling within the jurisdiction of the provincial ministries of law. These reforms, however, have had little impact on raising the convictions rate within the province, even for the most serious crimes. The author argues that a lack of coordination between the police and the newly

independent prosecution service as well as severe understaffing undermines the latter's effectiveness. Prospects of conviction are, apparently, much better under "special law provisions" presumably the author is referring to special courts created by the Terrorist Activities (Special Courts) Act of 1975 and the Anti-terrorism Act of 1997. It would be interesting to find out more about these courts, how they fit into the prosecutorial system, the laws under which they operate, how they impact conviction rates, and how they fare in comparison with the international prosecutorial standards the author mentions at the outset? A further question concerns the re-introduction of the executive magistracy in the province in 2010: what has been the situation of local prosecution services in the wake of this change?

The article by **Barakatullah** on the "Judicial system of Pakistan" gives us an overview of Pakistan's court system, its structure and development. He also includes some observations and recommendations regarding the National Judicial Policy and a detailed description of the office of the Ombudsman and its role since its creation.

Muhammad Masood Khan gives us a rare insight into the workings of Pakistan's prison service. He outlines the many colonial and post-colonial legal provisions concerning prisons and points out a variety of problems in the running of the service. There is an urgent need for reform in prison management and staff training. Efforts to implement these measures have failed because of a lack of resources and specialist staff. Without social workers and psychologists, prisons are unable to provide rehabilitation, education and post-release support to offenders.

The move towards restorative justice and other alternatives to imprisonment has not bypassed Pakistan as can be seen from **Mazhar Bhutta's** article on Pakistan's probation and parole system. Various legal provisions attempted to reverse the punitive focus of British Imperial penal policy. Yet unfortunately they remain merely theoretical possibilities as these possibilities are underutilized by judges. There is also an acute shortage of parole officers needed in order to make these alternatives viable in practice. It is important that donor governments and organizations dedicate themselves to this much-neglected area of justice reform because of the parlous state of Pakistan's prisons. Not only are overcrowded prisons crime factories but also havens for radicalization.¹ Although probation and parole options do not come cheap, the scope for developing community rehabilitation programs is feasible in developing countries as it frequently opens the possibility of drawing on pre-colonial non-punitive traditions.² In comparison with such experiences with the rehabilitation of offenders in Africa it would be interesting and fruitful to ask whether there were any similar models in pre-colonial South Asia that could be drawn on? Ideas of reparation and conciliation are also prominent in the Islamic legal traditions and their potential to contribute to a debate about non-custodial sentencing in Pakistan should not be underestimated.

Fasihuddin and Kam C Wong tackle the fraught issue of the policing of hate crime in Pakistan with reference to the two Danish cartoon crises in 2006 and 2008. They sketch the police response to these two crises as well as the mobilization tactics of the demonstrators with the support of an extensive survey. The cartoon crises throws light on the difficulty of combating hate crime in the absence of clear legislation on the subject. The authors also argue that in a conflict-ridden environment where religion is used for purposes of political mobilization such legislation would be difficult to design and implement.

In the only historical contribution to this issue, **Aftab Nabi and Dost Ali Baloch** turn their attention to the Sindh police under Charles Napier. Their contribution entitled "Policing Colonisation. The Evolution and Role of Sind Police and the Views of Sir Charles Napier on the Administration of Criminal Justice in Sind" mentions some of the difficulties in enforcing "alien law" that still bedevil criminal justice in Pakistan today. The combination of indirect rule with paramilitary policing of tribal societies the hallmark of the Napier regime - have created significant path-dependencies for policing in the modern era. The article shows that the decline of law and order played into the hands of collaborators with the colonial regime, who could extract resources and substantial local autonomy in return for their help in "pacifying" the borders of the British Empire. The logic of the national security state was in constant conflict with the administration of justice and the decision about which to adopt mostly a matter of expediency. The parallels to modern-day Pakistan are obvious. They highlight the need for further research into the history of criminal justice in the subcontinent.

Fasihuddin's contribution on "Police and Policing in Pakistan" chronicles attempts to reform the police, culminating in the comprehensive reform legislation of 2002. Especially interesting is his discussion of crime figures in the wake of these reforms and possible causes for what has been described as a breakdown of law and order at the local level.³

Fasihuddin's acute observation of the divergence in policing priorities between the elite officer cadre of the PSP and those on the front line echoes themes mentioned in Goldsmith's work on "policing in weak states": that the police can be victims as well as perpetrators, that they do not necessarily represent the state and that they are frequently only one of a number of providers of security (and insecurity).⁴ The article raises the difficult question of whether the "grafting-on" of western institutions promises success in the long term. The criminologist should inform policy-makers not only with respect to international trends and developments but also "about the dangers of mindlessly importing foreign solutions to local crime problems."⁵ Especially in the case of police reforms, it has become apparent that a

lack of legitimacy and responsiveness to community made them the plaything of powerful political interests. In this regard it seems that the police service itself has missed a chance by failing to build constituencies through the civilian oversight structures established by the Police Order 2002 and thus establishing a measure of legitimacy and independence from military and bureaucracy. If "every criminology worthy of its name should have a comparative dimension to it" this is perhaps especially true of criminology in Pakistan.⁶ All contributors to this issue are aware of this, their perspective on Pakistan's criminal justice system informed by a desire to compare, to diagnose and to make policy recommendations with the aim of reducing crime. Beyond these pragmatic reasons for viewing Pakistan's criminal justice system in light of experiences made in Britain, Japan and elsewhere there is also an awareness that institutions are a reflection of the society. Bhutta, Nabi and Fasihuddin in particular are also aware that criminal justice can provide us with an understanding of "the way culture conditions the boundaries of law and the way criminal law helps shape those self-same boundaries."⁷ If further expanded on, such an ethnographic perspective could perhaps counter the "occidentalism" that is near-ubiquitous in the contributions to this issue: the assumption that formal-legal provisions tell us most of what we need to know about the day-to-day operation of criminal justice in Pakistan and that, in essence, they are fundamentally the same as their Western counterparts. This perspective stands in need of serious qualification in the case of Pakistan. Indeed, it is ethnographers who have made some of the most important contributions to the study of law, crime and punishment in this country. Chaudary's study of justice in a Punjabi village and Keiser's work on vengeance in Kohat are only some examples.⁸ Equally unexplored by the contributors is the impact of Islamic law on criminal justice, especially in the light of very recent developments and debates on the subject.⁹ By ignoring legal pluralism as one of the most salient features of criminal justice in Pakistan, the contributors present the institutions of criminal justice as based on a unified and centralized legal system, further reinforcing the occidentalism already referred to.¹⁰ This is not to encourage falling into the opposite extreme of assuming that Pakistan's criminal justice system is fundamentally unique and therefore incommensurable. These are not just matters for idle speculation by armchair criminologists. The ongoing conflict about the interpretation of the law in Afghanistan shows how much is at stake in striking a balance between the implementation of international standards and the reflection of multiple local legal traditions and practices.¹¹

End Notes

1. See the article on Pakistan by Laila Bokhari in: Prisons and Terrorism. Radicalisation and De-radicalisation in 15 countries. ICSR Report, 2010, <http://www.icsr.info/publications/papers/1277699166PrisonsandTerrorismRadicalisationandDeradicalisationin15Countries.pdf>

2. Biggs, David. 1997. *Community Service in Practice*, <http://www.gsdrc.org/docs/open/SSAJ27.pdf>
3. Asian Development Bank, DFID, World Bank. 2004. *Devolution in Pakistan. An Overview*, <http://www.adb.org/Documents/Studies/Devolution-in-Pakistan/devolution-pak-es.pdf>, p 9.
4. Goldsmith, Andrew. 2003. *Policing Weak States: Citizen Safety and State Responsibility*, *Policing and Society*, 1(13): 3-21.
5. Hardie-Bick, James, James Sheptycki and Ali Wardak. 2005. *Introduction: Transnational and Comparative Criminology in a Global Perspective*: in: James Sheptycki & Ali Wardak, *Transnational and Comparative Criminology*. London: Glasshouse Press, p 14.
6. Hardie-Bick, James, James Sheptycki and Ali Wardak. 2005. *Introduction: Transnational and Comparative Criminology in a Global Perspective*: in: James Sheptycki & Ali Wardak, *Transnational and Comparative Criminology*. London: Glasshouse Press, p 1.
7. Nelken, David. 2007. *Comparing Criminal Justice*, in: Maguire, Mike, Rod Morgan and Robert Reiner (eds.), *The Oxford Handbook of Criminology*. Oxford: Oxford University Press, p 141.
8. M. Azam Chaudhary. 1999. *Justice in Practice: Legal Ethnography of a Pakistani Punjabi Village*. Karachi: Oxford University Press.
9. Wasti, Tahir. 2009. *The application of Islamic criminal law in Pakistan: Sharia in Practice*. Leiden: Brill. Lau, Martin. 2006. *The role of Islam in the legal system of Pakistan*. Leiden: Brill.
10. On legal pluralism see: Tanguay-Renaud, Francois. 2002. *Post-Colonial Pluralism, Human Rights and the Administration of Criminal Justice in the Federally Administered Tribal Areas of Pakistan*, *Singapore Journal of International & Comparative Law*, 6, 541-596.
11. Suhrke, Astri and Kaja Borchgrevink. 2009. *Negotiating justice sector reform in Afghanistan*. In: *Crime, Law & Social Change* 2(51) 211-230.

Dr. Paul Petzschmann has long association with research on Pakistan's civil security sector, especially police and policing. Pakistan Society of Criminology is highly indebted to Dr. Paul for being the Guest Editor of this special issue of the Journal. His contribution and his editorial will be remembered for years. There is not a single book on CJS in Pakistan and this special issue has tried to fulfill that gap, to a larger extent. {Pakistan Society of Criminology (PSC)}