

“Shelving out old conceptual dilemmas in prison sociology?”

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Abstract: Congestion in prisons reflects the social policy upon which it stands with the old conceptual dilemmas and mathematical fallacy: ‘more prisoners equal more prisons.’ The other causal aspects (i.e. speedy trial, shorter prison sentence, early release schemes, jail integration) become obliterated. This paper articulates a new policy framework that injects into the collective psyche of police, prosecution, courts, judges, and legislators what best practice in prison governance may be tried and read into social policy since prisoners are not the proverbial ‘slaves of the state’. Imprisonment is first and foremost a serious morality issue. How should a society prescribe a desired better ‘model of just deserts’? This paper draws a new path to reply upon a more orderly, humane, and service-oriented prison bureaucracy. This shift swings the sociological pendulum from retributive to rights-based philosophies in order to reform prison practice and bureaucratic culture.

Keywords: congestion, correctional management, just deserts, prison governance, prison sociology

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Preliminary Statement & Situationaire

This paper titled, “Shelving out old conceptual dilemmas in prison sociology?” is the product of the course ‘PA 323: Seminar on the Administration of Social Development’ under

Dr. Emmanuel M. Luna. It has been presented in class in an earlier powerpoint version – discussed, dissected, and ‘desecrated’ – given the university’s grand tradition in dialectics than in sophistry.

The acquisition costs of the responses from the members of the class are much too valuable to be taken for granted more so ignored. For whereas in a seminar course the presumption is that the members of the class are ‘co-equal’ as associates in the field, it cannot be gainsaid that in truth, they serve as gatekeepers and as such serve as ‘monsters guarding the gates’ as one Harvard student aptly describes. It is not without just cause. The author is just too grateful to let these responses breathe into the final work.

Let us go through the chaos of these responses, albeit in no particular order, with the end in view that it will make the paper more synthetic in the process.

One. A classmate-lawyer who is a former politician (i.e. congressman) intruded in my apparent bias to cite Swedish prison system as one kind of best practice which for him is inapplicable in our local jurisdiction and particular environment given his rather hard-line view that punishment for violation of laws is constitutionally-enshrined and legally enforced. That offhand embraces the retributive philosophy of punishment to a crime. To that this author must say that it is no strain of logic to say that most Filipino congressmen especially tend to craft laws with much stronger and heavier punitive content (i.e. higher penalties) each time a new regulation is drafted. The overarching value of ‘grandstanding’ surely cannot be discounted.

Two. Another classmate-lawyer who is an incumbent barangay chair suggested my inclusion into the paper of the five pillars of the criminal justice system and thereby profound discussion on social development and prison sociology. To that this author will even go further as to say that in fact, there is an emerging need to integrate all the agencies, mandates, and functions of the various agencies and officials running them in this one big tent we call the ‘criminal justice system’ precisely in order to find the solutions to congestion in the Philippine corrections system. And in fact, we can see that there are regulatory ‘capture sites’ (Findlay 2012) in the whole problem of congestion that if thoroughly examined just might open opportunity for what Findlay calls ‘regulatory sociability’ or ‘collaborative regulation’. In short, if all the five pillars of the criminal justice system, namely: *law enforcement, prosecution,*

courts, corrections, and community can be aligned smoothly at no slightest instance of operating at cross-purposes then it will effectively address congestion as a forever problem. More than just an adjunct to the Medium-Term Development Plan for the Pillars of the Philippine Criminal Justice System 2010-2016, a unifying bureaucratic thread must weave into all five pillars to truly access justice and social development.

Three. Yet another classmate thought that important distinction should be drawn between the prisoners and detainees or those in city jails awaiting trial and those in penitentiaries serving their sentence in terms of the programs being implemented. To that this author argues that essentially the same programs implemented in penitentiaries are likewise implemented in the city jails but perhaps in some comparative sense, they have certain variance in terms of measuring short term impacts with long term ones which is quite understandable.

Four. Dr. Luna inquired whether I had myself exposed to the female dormitory and what programs are implemented compared with the male dormitory. At best, this author could simply point out his reservation having to go to the female dormitory after knowledge that the same set up exists there as it does in the male dormitory, namely: there are all of six cells with the same number of beds and comfort room and in each. More importantly, the professor did not fail to ask about the rights of the prisoners affected by imprisonment. The same will be incorporated into the paper. In fact, the orientation of the paper is a rights-based approach which argues that the rights of an ordinary citizen ought to be the same with any single prisoner behind bars, at least ideologically.

Five. A classmate suggested the case of private prisons in terms of efficient services and programs for inmates understandably focusing on certain social development concerns. This author is totally appreciative of the interesting point by a classmate who suggested looking into the possibility of privatizing prisons for efficient services and programming for inmates in terms of social development concerns. This author has slightly discussed this in connection with the so-called 'Private Prisons Debate' as found in the literature arguing that it entails possibly more costs to get to privatize the Philippine corrections systems quite apart from certain legal 'deformities' that may result in such an institutional and structural arrangement. For now, this direction is yet culture-bound.

Six. Fusing two responses from two other classmates saying namely about: 1) a discussion on justice on wheels project and mediation as measures toward decongestion of prisons and 2) possible programs that allow inmates to have contacts with the outside world, this author endorses in fact the case of the Swedish prison system as a ‘one best way approach’ to cut a line from Taylor, if it were possible at all do launch quite a parallel arrangement across a rather broad variety of concerns. For one, can we really let a prisoner leave jail and back?

Quick historical context

To get a bird’s eye view of the problem presented here, namely, congestion, let us do some crunching of available historical evidence or data as follows:

- 1) imprisonment rates per 100 000 population in 218 countries:
- 2) at the top of the scale remains the US with 760 prisoners/100 000 population
- 3) the lowest figures, around 10-20, can be found in the smaller (mostly Western) African countries, as well as in some micro-states (Liechtenstein, San Marino, Faeroe Islands, Tuvalu, Nauru, Timor Leste)
- 4) the overall mean lies around 165 prisoners / 100,000
- 5) regional analyses within continents show the lowest overall rates in Europe (mean 144) with the figures ranging regionally from 56 in Scandinavia to over 300 (Russia and the former Soviet Union region)
- 6) in Africa (mean 111) the figures range from 50 in Western Africa to 250 in Southern Africa, in Asia (mean 158) between 110 (South-Central Asia) and a little below 200 (Central-Asia)
- 7) the Highest overall figures are found in the Americas (mean 282) ranging between 200 (South America) and 750 (USA, and 350 Canada included).

In terms of congestion or overcrowding, the following are used as substantial standards, namely:

- a) ***spatial density*** (sq meters /person)

- b) *social density* (number of persons in one space)
- c) *privacy* (the time individuals can spend on their own). In Philippine prison, there is in each cell only one comfort room.

Still however, the subjective criteria of overcrowding would also include feelings of helplessness and stress, etc. However, for the moment there is no data of these measures for comparative purposes. Neither is there agreement on international standards of what constitutes prison overcrowding. The Council of Europe Prison Rules has no provisions for the minimum space in the EPR (as there is the risk that the minimum will become a norm, see Zyl Smit & Snacken 2008 p.131)

Morality of imprisonment

Let us begin to discuss the morality of imprisonment. Many actually oppose imprisonment or view it as a necessary evil. At its relative worse, students or scholars of prison sociology describe it as the ‘warehousing of humans’.

In the case of the statement made by an inmate at the Marikina City Jail who is the ‘Assistant Barangay Chairman’ (euphemism for the concept of ‘mayor’), he replies in response to how it is in prisons that ‘life behind bars is hell’ (*mahirap makulong*). Apparently, all his children are already grown up and he was incarcerated late in his life (in his 50s) for the first time on charges on drugs.

So do prisons brutalize or coddle? Is prison a morally bankrupt institution? This question is better left reflected upon than answered.

To such view, there are isolating claims that not all who are in jails are guilty of the crimes they were charged and rightly so since some of them, on later orders of the courts, receive release orders and this is not quite uncommon, matter-of-factly. To the extent that some are detained quite procedurally for incapacity to pay bail bonds only imply that their imprisonment stems from an inequality of wealth

As to what are prisons for, there are four general answers given:

- a) punishment or retribution
- b) deterrence
- c) incapacitation or public protection
- d) rehabilitation or reformation

It is to be pointed out that the ‘principle of punishment should be to the crime’ is many centuries old, stated even in Plato’s *Laws* (Dilulio 1987: p. 261). It said that ‘the idea of depriving people of their liberty as a punishment for criminal deeds is novel (barely two hundred years old) and rests on the arguably bizarre, metaphysical notion that one can make the punishment fit the crime by calibrating its severity in the metric of time: say five years for a rape, thirty years for a murder – but why not longer (or shorter) for each?’ (Dilulio, p. 260).

It came late in the day for judges to realize that there should have been other ways that right at the outset decongest prisons. Soon legal and prison scholars can flung doors wide open to some approaches to go about declogging courts dockets, decongesting prisons, and the like

Models of correctional philosophy

At this juncture, let us just, though in passing, make mention of the three models of correctional philosophy and leadership as a way to acquire a working understanding of prison philosophies subscribe to.

These are based on the differing ideas about the duties of the keepers that hence give rise to their models of correction management. These are:

a) Texas keepers and the Control Model – this involves the strict enforcement of discipline and a daily routine in which inmates had virtually no say

b) Michigan keepers and the Responsibility Model – under this, it was enough for inmates to refrain from violence and to participate, if they so desire, in the treatment and work opportunities offered to them by the state

c) California keepers and the Consensual Model – views criminality as a complex phenomenon with roots deeper than the individual criminal's decision to break the law

Development of crime explanations

For a start up, let the questions be posed:

a) why does crime occur (i.e. why people hurt even kill one another and steal from each other)?

b) what causes some people to do it, perhaps repeatedly, while others do not?

c) why does crime happen much more frequently in some situations, neighbourhoods, or groups?

d) what social conditions cause crime to increase or decrease?

With these, there ought to be explanations for crimes and therefore a criminological theory. So there are certain explanations or ideas about crime which should be mentioned in passing as they vary from:

a) viewing crime as the work of the devil to

b) describing it as the rational choice of free-willed economic calculators to

c) explaining it as the involuntary causal effects of biological, mental, and environmental conditions and then back to b (Wells 1995: 37)

All these views gave rise to the three distinctive themes or ways of thinking about crime labelled as:

a) *supernatural* – human behaviour is shaped and prompted by powerful forces of good and evil existing beyond mundane reality

b) *classical* – human nature in materialistic and individualistic terms (here outside forces or spirits were irrelevant to explaining crime)

c) *positivistic* – sought to extend scientific logic and method to cover all aspects of human experience and one central element here is that the positivist model explains the occurrence of crime based on reliance on ‘causal determinism’ (Wells, p. 41).

Future of incarceration

Lombardo in his article, ‘The Pen and the Pendulum: Finding Our Way to the Future of Incarceration’ has come up with a number of predictions and let us just cite in passing three samples of them:

a) the institutional structures that we construct today (and those that we have constructed in the past) will be with us for some time to come

b) during the next twenty years, we will see the consolidation of the retributive “just desserts” perspective in the sentencing process and the growing recognition and development of programming and services to support inmate attempts at living lives free of further contacts with the law

c) the changing demographics of crime and criminal justice processing will extend these changes into the correctional system (i.e. new experiences of cultural self-definition into prisons)

Contextualizing a rights-based approach

A rights-based approach to congestion in Philippine corrections system cuts two ways, namely:

- a) justice for victims of crimes
- b) due process for the detainees or inmates

It is perhaps akin to squaring the circle between due process and crime control (*Introduction*, Scott and Ward). In terms precisely of so-called “Positive Rights Agenda”, it is said that probation’s involvement in the criminal justice process and in community safety partnerships should be on the basis of three fundamental principles (Scott & Ward) that:

- a) offenders remain part of the community
- b) justice embraces principles of fair punishment as well as principles of risk control
- c) community justice means commitment to principles of equal freedom and equal respect (citing Hudson 2001a, p. 112)

Interestingly, the Criminal Justice and Court Services Act 2000, given Royal Assent on 30 November 2000, restructured the probation service and created a unified service to be known as the National Probation Service for England and Wales. This replaced about 54 Probation Committees (Scott and Ward, xvii).

Lastly, Section 1 of the 2000 Act sets out the following aims:

- a) to protect the public
- b) to reduce reoffending
- c) to provide for the proper punishment of offenders
- d) to ensure that the offenders are aware of the effects of their crimes on their victims and on the public and
- e) to rehabilitate offenders

Social and criminal policy context

In terms of context, it is clear that the National Probation Service operates within the Government's Correctional Policy Framework, contributing to two aims (Fullwood 2002, p. 55):

a) delivery of justice through effective and efficient investigating, prosecution, trial and sentencing, and through support of victims

b) the effective execution of the sentences of the courts so as to reduce re-offending and protect the public

Rights-based approach to social development

If there were to be a straightforward rights-based approach to prison congestion sensitive to the demands of social development, then it would have been the width and breadth of judicial intervention.

In his article, Robert Bradley argues for judicial intervention in which case, courts picked up the gauntlet of prison reform and were using structural reform decrees (Bradley 1990, p. 250) as a major weapon to meet the challenge. Judges then created and supervised judicial formulations for reforms in state prisons without relying on the expertise or inclination of possibly intransigent state officials (Bradley).

As a scholar can actually come across, literature on the subject is rather dated and leading lights do come from Europe and US since they have a maturing prison system than emerging democracies which includes the Philippines not the least.

In other words, by judicial intervention, 'judges examine state prisons in great detail and fashioned remedies that touched on every aspect of institutional life' following Bradley's argument.

As a matter of fact, John Dilulio, Jr., a leading light, thinks that more is to come from judicial intervention in the case of the American prison landscape.

Overcrowding according to Dilulio has figured in most instances of judicial intervention into prisons and jails and as overcrowding becomes more severe, judicial intervention may well become more frequent and extensive.

The case of the Philippines is far from so – at this point in time unless perhaps, the problem of intransigence is first resolved.

Marikina City Jail

There are a number of findings that another researcher trying to study prisons might gather from a two-day limited ‘participant observation’ done to check whether or not the congestion problem in prisons carries a grain of truth in its supposition.

Hereunder, in no particular order, are such observations, as follows:

- a) a monthly counterpart incentive from the LGU (local government unit) of P1,000 per BJMP personnel
- b) a daily subsistence allowance for inmates of P50 per individual (as an increase from P30 to P50 daily)
- c) the yellow shirt/uniform that reflects detainees under the BJMP is covered under a quarterly clothing allowance for every such prisoner or detainee
- d) a dormitory for male occupying the 5th Floor of the Sangguniang Pangkatarungan Building or Hall of Justice
- e) a dormitory for female occupying the 6th Floor of the Marikina City, Hall of Justice
- f) an average of 70 to 80 inmates per cell with a single comfort room in every single cell (sink, lavatory, shower)
- g) a row of triple deckers consists of 5 sets on each side or 10 sets per cell equivalent to 30 bunks/bed as the bed capacity
- h) a bunk or bed is shared by 2 inmates or at least 60 inmates sleep in bunks/beds and the rest would do without the remaining space between rows of triple deckers

i) the crimes of inmates were committed within the territorial jurisdiction of the City of Marikina that explains why they are detained or incarcerated thereat

j) each cell is headed by a 'Barangay Chairman' and an 'Assistant Barangay Chairman' voted from among the occupants of that particular cell – such practice mimics mainstream political life to shed off negative image of old concepts (i.e. 'mayor')

k) the dormitories, both male or female, are centrally located it being just at the back of the City Hall of Marikina with just a road that divides them and therefore is accessible for visits by families, friends, lawyers or other guests

l) roving doctors instead of in-house or resident doctors attend to the medical or hospital needs and services for inmates under contract with BJMP although nursing or allied health services are in-house (i.e. registered nurses of BJMP)

m) no support or no assistance of other kinds is given to inmates by the host LGU where they are tenants/occupants of a significant portion (i.e. two storeys) of the building

n) there is no case of communicable or contagious disease has been a problem in these dormitories

o) there is no case of serious riots resulting to jail escape, death or injury has ever happened in the dormitories (true or false)

p) a CCTV is installed in the common spaces/areas of inmates manned by a desk jail personnel

q) there is a separate BJMP office for the male dormitory as it is to the female dormitory

r) there is about an average of 607 inmates, the bigger portion of which are in the male dormitory and lesser on the female dormitory (i.e. over a 100 inmates)

s) in both dormitories or whenever inmates from either dormitory have to go out to attend court hearings, it seems that they look just like mainstream (i.e. across social and economic wrungs)

t) all told, congestion is not felt by BJMP as truly a problem but a simple reality to contend with so there ought to be a more critical way of looking at this problematique

u) with about 122 city jails/dormitories on a nationwide scale, congestion as a problem must come at different threshold levels

w) there is a store and seller in every cell and they celebrate birthday with foods for all inmates in that cell

x) if the size of a typical prison cell is approximately the area of an ordinary classroom, then it means that the government has afforded only 12 classrooms all in all (i.e. male and female dormitories) for the entire City of Marikina where to house its detainees.

Studying prisons

By far, literature on the subject from local scholars is typically limited even dated which imply that it is an understudied area in need of more points of light on a matter of concern central to social development and public policy.

In a special paper submitted in partial fulfilment for an MPA degree to the UP-NCPAG titled, “Toward a Prison Reform Act in the Philippines”, Ramon Chito Mendoza at best assailed two legislative measures to reform the prison system and therefore they constitute approaches to the congestion problematique, namely:

- a) decriminalization of crimes
- b) diversion programs

Interestingly, some of the crimes enumerated consist of the following:

- a) vagrancy
- b) simple disobedience to an agent of person in authority (Art. 151)
- c) alarms and scandals (Art. 155)
- d) refusal to discharge elective office (Art. 234)
- e) abandonment of minors entrusted with his custody and care and indifference of parents (Art. 351)
- f) unjust vexation

Further, then Senate Bill 984 of former Senator Raul Roco no longer penalizes with deprivation of liberty the crimes of anticipation of duties of a public office (Art. 236) and reckless imprudence and negligence respecting damage only to property (Art. 365) and instead

finances, indemnification, restitution, compensation and community services are alternative punishments imposed.

Also, it liberalizes release on recognizance and exempts from the requirement of bail those charged with offenses punishable by 3 years imprisonment and/or fine of P3,000.00 (instead of 6 months imprisonment or P2,000.00 fine) in order to decongest the jails.

An amendment to P.D. 968 or the Probation Law is likewise sought since a new law or P.D. 1990 apparently removed from the coverage of P.D. 968 those sentenced to serve a maximum term of 6 years and 1 day. Now it qualifies even those offenses punishable by not more than six months imprisonment and/or a fine.

Whereas on the diversion programs, it means the 'avoidance of any direction action on the part of the criminal justice official except that of referring the individual for some kind of action to agencies outside the criminal justice system' (Mendoza 2004: 14). Examples of these are offenders like juveniles, drunks, addicts and the mentally ill who are diverted to the jurisdiction of public health and other authorities.

Interestingly, author invokes the opinion of sociologists on the ceremony of a public trial describing it thus as 'one status-degradation ceremony in a series of such ceremonies which begin at the time of contact with the police and terminate with the completion of the criminal penalty' (Mendoza, p. 15). Not slightly, this means that if we the state is to hit the ground running and address congestion as a business, it must bring together the five pillars of the criminal justice system in perfect operation not as mere links but in fact as inter-operating gears to the run the wheels of justice extremely smooth.

Overview of criminal justice

It is of keen interest to look at crime and justice in terms of their future. Prison studies are not as easy to understand as they may seem given certain complexities derived from statistics, histories, culture, regime types and the like.

The work in forecasting is therefore elusive as well. In short, it is difficult to predict growth in the prison population in certain ways due to changing realities. For instance, it is said that prison population would slow as ‘baby boomers matured out of the crime-prone age group (i.e. 16 to 24)’ which sounds quite logical (Stojkovic and Klofas 1995: 281).

Maybe and understandably so, the war on drugs still continue an ‘upward spiral in prison population’ but otherwise changing characteristics of prison population are borne out of various factors. We cannot possibly describe futures along a straight line path but one such model more helpful according to Stojkovic and Klofas is that of ‘chaos theory’ (1995, p. 283). It simply recognizes the relevance of a host of multiple variables and the importance of ‘playfulness’ among variables.

According to Kalinich, the ‘inmate population of the nation’s jails will increase by a greater rate than the general population and at a rate exceeding the reported crime rate’ (Kalinich 1995, p. 168). Further, it will continue disproportionately to represent the economic underclass. The inmate population will be a job to manage as inmates will bring a myriad of medical, mental health, and behavioural problems into the jail system with them.

This could then lead to chronic budget problems. It seems true that ‘jails managed by the public sector will be overcrowded, overtaxed, and rundown’ (Kalinich and Embert 1995, p. 170). This brings us to the question called the ‘Private Prisons Debate’ on whether it makes the government better off or worse off if prisons were privatized or are managed by the private sector but it seems that at the level of culture, public policy, and the social environment, the Philippine corrections system is yet unprepared for this new arrangement.

The Swedish prison system – the ‘best of possible worlds’

It is said that since the end of the 1980s, the penal system in Sweden is based on a model of ‘just desserts’. This only means that the ‘perceived gravity of the offense, or the ‘penal

value', is the most important factor in the decision of an appropriate sanction for the crime (Lindstrom and Leijonram 2007, p. 559).

Suffice to state that the development of penal law has been, over the years, aimed at reducing the use of shorter prison sentences by finding alternatives that do not entail deprivation of person's liberty.

Thus, probation, community service, civil commitment (contract treatment), suspended sentences and fines are the more preferred methods of punishment (2007, p. 559).

Interestingly, the average prison population amounted to 6,420 prisoners (of whom 1,740 were remand prisoners) or to a total of 70 prisoners per 100,000 population. In particular, 'lifeters' were admitted to prison of whom approximately one-third were foreign citizens.

The same spectrum of prison cases characterizes prison system but much better off than any prison system in the world. It is still based on a 'just deserts model'. Its Prison Treatment Act of 1974 has as primary goal of the prison sentence to promote the inmate's adjustment to the community as well as to counteract the detrimental effects of imprisonment.

Let us just go over the four principles of the PTA of 1974 for our education:

- a) imprisonment as last resort – the usual punishment should be a fine or community service
- b) normalization – same rules concerning social and medical care and other forms of public service should apply to prisoners just as they apply to ordinary citizens
- c) vicinity – prisoner should be placed in prison as close as possible to his or her home town (though now considered to be more or less obsolete)
- d) cooperation – all parts of the correctional system (probation service, remand prisons and prisons) should work closely together in individual cases as well as in general.

All told, the aim of prison system can be described as follows:

“The correctional system’s operations shall be characterized by a humane attitude, good care of and active influence upon the prisoner, observing a high degree of security as well as by due reference to the prisoner’s integrity and to due process.

Operations shall be directed towards measures, which influence the prisoner not to commit further crimes. The objective should be to promote and maintain the humane treatment of offenders without jeopardizing security.” (2007, p. 565).

In tune with rights-based approach to social development, under the Swedish system, here are the prisoners’ rights, namely:

- a) contacts with the outside world
- b) education
- c) prison labour
- d) leisure activities
- e) religion and faith
- f) medical treatment of prisoners
- g) medical treatment of drug addicts
- h) treatment programmes

All these rights are deemed self-explanatory in general but interestingly detailed in the more specific practice in the case of the Swedish prison system for interested further research by scholars.

The Swedish model certainly offers a rich menu of social development and public administration as its ingredients.

A bureaucratic construct

In the chapter, ‘The Private Prisons Debate’ of his book, *The Privatization Decision*, Donahue simply affirms that the Corrections Corporation of America estimates that private management should lead to costs 10 to 25 percent below those of public corrections bureaucracies’ (Donahue 1989: 160) as his argument to the private prisons debate

Quite importantly, it is true that some collective tasks are more difficult to value such as incarcerating malefactors. Does it even resemble dispatching a naval task force to intimidate potential enemies than it does sweeping city streets?

Thus, says Donahue, ‘the community demand for imprisonment, like its demand for military power, depends only in part on objective facts about the world, and perhaps in larger part on the shifting hopes and fears of the citizenry’ (p. 174). Since in fact, American incarceration rate is only loosely linked with the crime rate, yet feelings about crime affect inclinations to lock people up.

The case of the US gives us a whole idea of the punishment industry. For instance, the ‘total American corrections budget is roughly \$10 billion a year and this is so because roughly there are 5,000 institutions in the US for holding adults in custody to include 33,000 local and county jails, 700 state prisons, work farms, and other secure facilities, and several hundred halfway houses, federal prisons, detention centers for illegal aliens’.

Certainly, the privatization of prisons is just one of several other options to address the congestion or overcrowding issue on jails especially in the light of any country’s own history. For instance, it is quite of a concern that recidivism in the US is pegged at 50% and that it costs about \$25 to \$31 per inmate per day.

Reflection and Recommendation

Tentative platform

At this point and in summing up, let us take as a platform the baseline study of the Supreme Court of the Philippines titled, National Survey of Inmates and Institutional Assessment which lengthily covered an overview and research framework of justice, the Philippine criminal justice and corrections system, access to justice by inmates, institutional assessment (i.e. jail management, parole and probation), and reform directions.

In this study, the Action Program for Judicial Reform (APJR) is the contribution of the Swiss Agency for Development and Cooperation and on the other hand, the United Nations Declaration of Human Rights is the parallel contribution made by the United Nations Development Programme. And no less than Chief Justice of the Supreme Court of the Philippines declared the need for ‘each one of the pillars – the law enforcement, prosecution, corrections and rehabilitation, and the community – have significant roles to play in insuring that the collective voice of the poor and marginalized sectors of our society will not remain unheard’ (Davide 2004).

By and large, that official line of thinking sets the direction of reform that must be injected into the veins of the criminal justice system, the dimensions of rights-based concerns, and implications to social development or public administration.

Allow this author to drive a wedge right at the substance of the congestion issue.

Advocacy

Policy instruments somehow grow from a bud, call it advocacy. A Chinese leader refers to it as ‘a hundred flowers blooming’. This author advocates that there must be a scenario aptly described as a ‘prisonless prison’. This requires that aside from being legal and regulatory compliant, it must also be in the words of Simon, ‘satisficing’, as a variant of public choice. In other words, if the Swedish prison system as much as allow their inmates to go and study, to go out and work, and to do other productive activity conformant with human dignity, then the same arrangement may be tried as well in the case of Philippine corrections system. If that requires

‘human tagging’ (a microchip or GPS attached to the foot/ankle), then government must try so likewise.

There are x number of other approaches to approximate this ‘prisonless prison’ argument conceived by this author and they are largely those that were actually already proposed. For instance, the market may have to take a role in the case of those inmates or detainees whose lamentable incapacity to bail themselves out through payment of bail bonds could be facilitated if their families are offered terms of premium payments reasonable enough for them to afford the amount and let the inmate or detainee enjoy freedom in exchange. This simple approach may redound to the benefit of the government in terms of subsidies inmates or detainees receive while in jail or prison.

Modern penitentiaries – an indecent proposal

When a single modern penitentiary complex could run into a few billions of pesos and regional jail facilities throughout the country might even prove more indecent a proposal due to their aggregate costs, then it must be a mistake to even have to propose each time there is a rise in population of inmates a corresponding addition to the number of prisons. This is a mathematical fallacy that ought no longer be embraced by our policy makers and economic managers since they defeat the very purpose of ‘reinventing’ (Osborne & Gaebler) systems in place in the bureaucracy. Instead, prison scholars should be able to show that the roots of the problem are well diffused and dispersed in the five pillars of the criminal justice system creating every kind of impediment, barrier, and resistance to innovation or reform. For instance, why should the law enforcement agency finds itself in the wild orgy of arresting more people than prisons can house? For another, why should the adversarial tradition in legal services between petitioners and respondents to a case contribute to delay in the speedy disposition of justice? Why the courts cannot render judgments within the mandatory period prescribed? These and many more have to be revisited.

Will 70% in drug-related cases not matter?

If found that 70% of the cases that clog court dockets in the various courts throughout the country are those that are drug-related, is it not cause for alarm and that something so compelling must be done? It will not even be difficult to now suppose that perhaps the 'Comprehensive Dangerous Drugs Act of 2002' or Republic Act 9165 deserves to be revisited for having opened the floodgates of drug cases and that somewhat pushed the ship of the criminal justice system out of anchorage.

No politician has ever yet taken a bold move to amend it with the end in view that it will be the key to declog the courts' dockets from this phenomenal and unprecedented rise of the drug crime rate. Neither has the law enforcement pillar apparently slowed down on its job and the link to other pillar triggered a chain reaction. Prosecution and courts also prove equal to the task. Soon prisons are filled to congestion levels unprecedented in other jurisdictions in the process bringing about issues human rights issues on the state of the prisoners, the treatment, and the programs implemented to promote prisoners' rights. The law can be undone and amended but first it has to be examined very carefully taking into mind rights-based perspective and social development as well.

The agency study conducted by the Supreme Court shows a 'socio-demographic, economic and case profile' (Supreme Court 2004, p. 4) of a male and female inmate under each of the 4 jail/prison categories. Not surprisingly, except for the female inmate under the national prisons category, all have reached only up to high school and most are mere elementary graduates. Surprisingly, on the other hand, all of them are employed before detention. The agency study makes for an interesting read. In a survey, it find that around '53% of the male and 60% of the female inmates in the national prisons do not know their rights against involuntary admission' (Supreme Court, p. 5).

This fact alone is an inducement for policymakers to effect remedial actions since it serves as a trap and contributes to the whole problem that a system should address in the first place but failed.

Suffice to say that we must defer to the wisdom of the reform directions that the agency study has conceptualized but in general most programs are geared toward how the system should deal with inmates given a broad theoretical framework so designed.

Reorienting falsely-held beliefs

Congress can be a powerful institution to initiate new policy directions. We may have to proceed piecemeal social engineering and not by some grand-scale utopian engineering if we are to effect immediate and effective reforms in the problem of congestion in Philippine corrections system.

Prison scholars know the value of institutions and new institutional arrangements could only be effected through the policymaking process. This seminar paper provides, it is hoped, a clear roadmap on how to go about the future work of reform(s) in the Philippine corrections system.

The way forward – time starts now

We learned that if we are to understand crime in regard to population, that its incidence is per se mathematical. It simply means that if one compares two cities, it will be the case that the more densely populated a city is, the more crimes there will be compared to one with much less population.

We also learned that the application of punishment that subscribes to a retributive philosophical framework contributes more to the problem of congestion than when such positional view is relaxed in favour of a rights-based and more humanist approach. The case of the Swedish prison system throws ‘hundred points of light’ in this regard.

We have acquired a more enlightened understanding of the congestion problematique realizing that there are various approaches we could undertake to address it efficiently and effectively as well as on a sustainable basis. It is only important to be able to operationalize, for

instance, how to effect speedy trial and dispensation of justice within the five pillars of the criminal justice system. If law enforcement is wicked, it will create a chain reaction that makes it wicked from start to end. It is therefore important that goals are harmonized between and amongst these five integral links.

No longer should it be rationale to even propose the beefing up of more prisons as this will entail so much costs and therefore disadvantageous to the government. It will only aggravate the problem it purports to address – congestion.

Furthermore, there are best practices in terms of looking for the more suitable correctional model. As Dilulio (1987, p. 275) points out:

“The sociological approach encourages us to see prison government as derivative of inmate society and calls attention to the broader social and political currents that may shape the life of the prison. The government approach encourages us to see inmate society as derivative of prison government and to take a stock of how the agency’s immediate legal and political environment may influence the quality of prison life.”

Summing up, let it be said that we should ‘shelve out conceptual dilemmas’ that have already outlived their effect and force. On the dearth of literature on the subject of prisons sociology, let this humble think piece quench the thirst of any interested scholar. [END]

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