

# Researching and explaining the punitive: Lessons and reflections from a comparative empirical study of Taiwan and England and Wales

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## Abstract

This paper reports the findings from an empirical study on Taiwan and England and Wales, where comparisons both of the punitiveness of the penal system in each country as a whole (1994–2005), and of punitiveness of pronounced sentences, at the ‘front-end’ of the system were made. The significance of this collaborative empirical project is the attempt to use and develop relatively uncomplicated, yet criminologically meaningful, indices of punitiveness which allow for standardised measurement. As well as reporting the core findings, this paper highlights the methodological and conceptual issues at stake in any research on ‘penal geography’. The paper concludes with some systematic reflections on the persuasiveness or otherwise of existing explanations for area differences in punitiveness in the scientific literature.

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*Irrespective of what is felt to deserve the strongest legal protection within a given CJS, the God, the Ruler, human life, or the state, all such systems can be compared as far as their punitiveness is concerned. This is because we want to know not what is being protected but what is the amount of zeal applied to it.*

Jasinski, 1976: 45

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## 1. Background

Across time and space, levels of criminal punishment have varied hugely (Henings, 1937; Garland, 1990; Lu and Miethe, 2005; World Prison Population List, 2009). Trying to understand such differences in penal severity is a highly significant, enduring and elusive question in the criminological literature. Arguably, comparative and cross-national questions of this type have become easier to consider in recent years because a comparative literature on penal policy is accumulating. Yet, as we will describe and argue below, a number of conceptual and methodological issues remain to be managed (see generally Smelser, 1976; Grabosky, 1980; Tonry and Farrington, 2005; Tonry, 2007).

This paper reports a comparative collaboration on what one may term ‘penal geography’. Interest in the development of explanations for the differential use of imprisonment between nations (and between jurisdictions within nations) is a somewhat recent phenomenon of criminological study (as noted by Biles, 1982). While, Christie (1968), was arguably one of the first to make use of a calculation of standard ‘rate of imprisonment’, it was the seminal international comparison by Waller and Chan (1974) which drew attention to the fact that rates (prisoners per 100,000 of the population) varied between 295 and 41 for the states of Australia, and between 454 and 44 for the Canadian provinces. Although merely content with listing the then fashionable explanatory variables (level of violence, status of alcohol and drug use, attitudes to crime and criminal justice, alternatives to prison, war and amnesty). Waller and Chan importantly concluded that:

“it is unlikely that these variations are associated with extra protection, reduction in crime or indeed retributive relief for the public.”

(Waller and Chan, 1974: 66)

While comparisons between countries cannot be made simply or with great accuracy, differences of the order of magnitude in the use of imprisonment observed are too large to be dismissed as errors of counting or merely differences in legal definitions. Furthermore, in probably most countries, very large increases in the use of prison are not matched by increases in amounts or changes in types of recorded crime. Over the last thirty years, numerous studies have confirmed this lack of connection between ‘recorded crime rates’ (however construed) and variations in the use of imprisonment (see for example, detailed case-studies: Smith, 1999 for Scotland/England and Wales; and Tonry, 2004 for a Canada/USA comparison). Such a proposition undercuts the common and widely held public belief that the amount of punishment dispensed by the criminal justice system is a *response* to the amount or seriousness of crime; arguably, it provides adequate falsification of the simple view of the demand for punishment as a response to a presenting problem of ‘crime’. Penal geography should be of interest to all of us – “prison figures are no artefacts, they are transmitted through important actors tuned into major values and goals of their time.” (Christie, 1997: 29).

This paper reports the findings from an empirical study on Taiwan and England and Wales, where comparisons both of the punitiveness of the penal system in each country as a whole (1994–2005), and of punitiveness of pronounced sentences, at the ‘front-end’ of the system were made. The significance of this collaborative empirical project is the attempt to use and develop relatively uncomplicated, yet criminologically meaningful, indices of punitiveness which allow for standardised measurement. The time period 1994–2005 was selected for illustrative purposes; our approach can be adopted for any period where data are available.

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