

PRAGNIENIE, KULTURA I SPRAWIEDLIWOŚĆ

Segev Dana

PhD., Uniwersytet w Sheffield, Sheffield, Wielka Brytania

dsegev@sheffield.ac.uk

DESISTANCE, CULTURE, AND THE DELIVERY OF JUSTICE

Segev Dana,

PhD., University of Sheffield, Sheffield, UK

Streszczenie. W artykule przeprowadzono niewielką uwagę zwrócono na porównanie sprzecznych procesów w różnych krajach. Ponadto trudno jest znaleźć badanie, które daje pogłębione porównanie tego, jak szersze czynniki społeczne (takie jak ekonomia, instytucje społeczne i rodziny) mogą kształtować sposoby, w jakie ludzie opuszczają różne kraje.

Słowa kluczowe: kultura, proces, ekonomia, instytucje społeczne, modele rodzinne, sprawiedliwość.

Introduction

Little attention has been given to comparing desistance processes across different countries. Moreover, it is difficult to find research that provides an in-depth comparison into how broader social factors (such as the economy, social institutions and familial patterns) may shape the ways in which people desist in different countries. Much of the research in the field is mainly UK or US based and often involve longitudinal cohort studies, which tracks individuals and change over time (Farrall and Calverley, 2006; for examples of studies see Burnett and Maruna, 2004; Sampson and Laub, 1993). Other studies focus on the self-narratives of people with convictions, in which they describe change in their life retrospectively (for example, Maruna, 2001). Some studies involve a combination of both methods, focusing on self-narratives and track change over time (see Farrall et al., 2014; Giordano et al., 2002; Leverentz, 2006).

A key feature examined in longitudinal studies is the development and change of desistance over time. And a common feature in self narrative studies is an overemphasis on individual processes, while little attention is given to the social and penal contexts, which may shape these processes (see Farrall and Bowling, 1999). The gap in research into the spatial dynamics of desistance, how these processes vary or are alike in different countries with different social, economic, and criminal justice conditions, may be a missed opportunity. The delivery of justice and other social factors influences people with convictions when they try to move away from crime. A study that explores how these processes are alike or vary in different places can deepen our understanding of how social, political, and criminal justice matters may shape the dynamics of desistance and how people approach the obstacles and avenues under different (or comparable) conditions.

As part of a doctoral study that aims to fill this gap, I compare desistance processes in England and Israel. This study explores the social issues desisters face; the delivery of justice; and individual's narratives of how they are 'going-about' desisting from crime. Participants were recruited from the Probation Services in England and Israel. The study places emphasis on factors related to reintegration that are unique to each county and culture. There are two types of comparisons which are undertaken. First, is a comparison of the social, economic, political, cultural etc. contexts in the two countries which (possibly) structure routes away from crime. There are four sources of data that inform this analysis:

1. interviews with professionals that work with people with convictions, such as mentors, probation officers, and those who work in non-profit organisations;
2. data from the European Social Survey (ESS);
3. official statistics; and 4. the experience of living in each country.

The second type of comparison is of the narratives and processes of adult men on probation who wish to stop offending. Here, what is explored is how participants frame their wish to desist; the issues they face; and how they approach these issues. The main aim here was to interview people as they try to negotiate their desistance and are, thus, in the midst of it; rather than narrating their stories retrospectively.

For the purpose of this paper, I focus on the social conditions and penal policies in England and Israel, which can have consequences for the avenues and obstacles that people with

convictions face when they try and reintegrate back to society. Several themes emerged from the first type of comparison: employment; family; culture; and criminal justice aspects. This is followed by a brief description of what is meant by culture and different social conditions, before discussing the themes that emerged.

A place to desist

England and Israel, each, had different 'set conditions' at the time of the research, for example, the geography and population, political climate, socio-economical conditions, the laws and bureaucracy in place. The countries also display different cultures, which, borrowing Karstedt's (2001) definition, is viewed as an overarching frame for values and patterns of actions by individuals. Culture can be unique to a place, 'expressed' in a certain way and demonstrate a pattern (Nelken, 2010). An expression of culture (patterns of people's values, perceptions, wants, and actions) is, arguably in interplay with certain realities or 'set conditions' of that place (Bourdieu, 1977). The themes discussed next describe the 'set conditions' in the two countries and offer some conclusions on the patterns that emerge in each country. Particularly, how these patterns can have implications for the avenues and obstacles that people with convictions face.

Getting a job

The first theme regarding employment relates to the laws and regulations around the rights of employer to ask about a criminal conviction. The second relates to the patterns in which these laws are practiced by society. There are two laws or regulations in England and Israel that are relevant for our discussion: in England the Rehabilitation of Offenders Act 1974 (ROA); and, in Israel the regulations around the disclosure of a criminal record 'Tehodat Yosher' (direct translation: 'integrity certificate'). Very broadly, the ROA was created for the purpose of supporting the rehabilitation of people with convictions into employment and their overall reintegration to society (ROA, 1974). For most people and offence types, after a set time (the period of which depends on the sentence that was imposed), a conviction becomes spent which then means persons are not required to declare their convictions when they apply for, for instance, employment, housing, or insurance (ROA, 1974). Thus, in most cases a person only has to disclose previous criminal convictions if they are 'unspent'. In 2014, amendments to the ROA increased the length of maximum custodial sentences that can become spent (after a set time). Previously, custodial sentences over 30 months were never classed as spent but the 2014 amendments pushed this upper limit to 48 months (Beard and Lipscombe 2015). Furthermore, in most cases, but not all, the length of time that people have to wait until a conviction is regarded as spent has been reduced (ibid.). Generally speaking, until a conviction is 'spent', a person will often 'ticks a box' when applying to most jobs, to indicate that he or she has a criminal record. Professionals working in non-profit organisations actively approaching potential employers to get them to delay asking questions regarding previous criminal records until the latter stages of a recruitment/ process – and preferably until after the interview stage. While some employers are doing this and seem more willing to hire people with previous convictions, it is still a challenge to foster change in social attitudes to this issue.

Like England, in Israel a conviction can be regarded as 'spent' after a set time in which a person has avoided any trouble with the law (CRARR, 1981). A potential employer sometimes asks for a document that is referred to as 'Tehodat Yosher' ('integrity certificate'), however it is not clear how frequently they do so. Unlike England, where you can expect that in most cases a person will be asked to 'tick a box' to indicate whether they have a criminal conviction, the way this issue is approached in Israel is less consistent or organised. Furthermore, it is illegal in Israel for a public or private figure or organisation to ask a person to handout information about a criminal record. People or organisations that 'should' have access to such information are supposed to already have independent access to it (ISP, 2016).

To deal with the pressure from potential employers that request 'Tehodat Yosher', there is a new government format in which the first page does not disclose any information of a criminal conviction (ISP, 2016). Rather, all criminal convictions are disclosed only on the second page. A person may only handout the first page giving the impression that this is the whole document (ISP, 2016). Thereby giving a potential employer the impression that there is no second page which would contain a list of criminal convictions or past involvement with the criminal justice system (ISP, 2016). This is the solution suggested by the Israeli government, which proposes that a person has a right to privacy (ISP, 2016) and, in a way, that one's history should not be grounds for

bias. On the other hand, in England, a person may be 'rightfully' fired for not disclosing a conviction during a job application, even after he or she worked in the company for a while.

An important additional consideration is the way things work in practice. England shows a more consistent pattern that better corresponds to the laws and regulations in place. Professionals in England talked about employers and potential employees having to 'tick a box' in the application process to indicate whether a person has a conviction or not. They also thought that this discourages some people from applying in the first place and that employers tend to not employ a person with a criminal record. Professionals suggested that the social attitudes towards people with convictions in England posed a challenge, and that they were often viewed as less trustworthy and hiring them may be perceived as a risk.

As noted earlier, the day-to-day practice in Israel is more 'messy', can be informal, and less organised — in short, it does not always correspond to the laws and regulations in place. For people with convictions, this sort of informality may allow for flexibility in how to gain employment or how to make a change. There are more varied avenues for a person with convictions to pursue in Israel. An Israeli professional noted that to find a job, an important source of support is 'knowing people', and the help of family (one was born into) and friends. Although professionals in Israel often attributed re-offending to unhealthy familial dynamics, for those who do not have familial support, professionals suggested that it is particularly difficult to find jobs or get one's life 'sorted'.

Familial characteristics

Professionals in both countries suggested that one's family can be an important source of support. However, the fieldwork undertaken and the interviews with professionals suggested that the role of the family has a greater influence on Israeli day-to-day life than in British. Israel is characterised as having traditional family patterns and collective attitude (Scharf, 2014). A close and frequent contact with family members, especially parents, is maintained throughout a person's life in the Jewish culture (Ibid.) Israeli professionals in this study suggested that it can be particularly difficult to rebuild a life without such familial support.

In England, in order to rebuild one's life, a concept that came up in the fieldwork is 'growing up': how a person 'should grow up' and 'sort out their life'. Being a grown up in England was culturally linked to finding a job, or, rather, starting to build a life that is no longer dependent on the family. In Israel, on the other hand, when a child reaches 18 and undertakes mandatory national military service, parental involvement often becomes more intense (Lavee and Katz, 2003). The involvement of (and dependence on) the family continues into young adulthood and there are indications that family ties remain strong throughout a person's life. The Israeli concept of growing up can be characterised as 'can wait for later' and there is less of a tendency for 'growing up' to equate with being no longer dependent on your family.

Moving on from familial and friends' support, one can question the role of government assistance and the type of resources people with convictions would require when they reintegrate back to society. While some Israeli professionals attributed family, friends, or 'knowing people', as an important resource of social support for desisters, English professionals raised the issue of the role of communities and the government in assisting people, noting the role of communities in taking care of each other was replaced by statutory bodies. Importantly though the impact of government cut backs to social assistance were also highlighted and the suggestion made that this role is currently not being fulfilled either by communities or by statutory bodies. However, this is outside the scope of this paper.

Informal background checks and 'information segregation'

Israel demonstrates a greater type of 'bridging social capital' than England. Bridging social capital is the ability to link people of different social groups more easily together, and thereby inform people about various opportunities such as employment (see Hawkins and Maurer 2010; Szreter and Woolcock 2004). Why is there a difference? Israel is a small country with a mandatory military service requirement, both these factors may facilitate relationships and social links across the country, including among people from different sociodemographic groups (eg different ethnic groups, class or education style). England is larger and has no mandatory military service. This difference has led to reflections regarding i) the ability to conduct informal background checks on people with convictions, and ii) the ability to create a sort of 'information segregation' in each country (ie the ability of preventing people from learning information about one's past or present, and the possible implications for people with convictions).

It is difficult to be completely anonymous in Israel, while anonymity can be more easily achieved in England. If a person is financially able (and chooses) to move to another city in the UK that is far enough from where he or she used to live, they can then more easily cut ties with people from the past and from people that know something about their past. This, in turn, makes it easier to 'block' the information flow – create a sort of 'information segregation' – between a person and the people around him or her. While in Israel, it is easier to seek information about other people, undertake 'informal background checks', and 'figure-out something' about a specific person. Moving to a different area in Israel means that you are not moving too far away from people you know, or people that know people you know and so on.

There can be both positive and negative consequences for the patterns in each country. The ability to 'distance' oneself from a type of life, people's knowledge about your past and remain more anonymous may be helpful for 'building up' something different. Yet, England demonstrates less of a bridging type of social capital which can help in linking people together and inform people about employment opportunities, for example (see Coleman, 1988). Israel demonstrates a greater source of bridging social capital that can inform people about various opportunities. Having someone 'who knows' you, even not entirely well, can lessen the 'need' for informal background checks and bridge over trust between people. There would be less of a need to 'check' on a person, whether that person has a criminal conviction or not, because someone you know can 'vouch' for you. This can be beneficial for employment prospects, especially if Israel shows a more flexible pattern that does not always correspond to the laws and regulations in place. However, the other 'set conditions' in Israel can have negative consequences for people with convictions: such as running into people from your past that you are trying to avoid and having an easier access to informal background checks.

Where to next?

Many more questions need to be answered in this research study. The main question to now ask is: what, if at all, are the consequences of these differences for desistance processes? With a comparative analysis into the two countries explores the link between social, cultural and criminal justice aspects and the issues that people with convictions can face. This, in turn, raises questions about how desisters 'manoeuvre through' these social structural conditions and how these processes unfold differently or the same in the two countries.

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