HUMAN RIGHTS IN RUSSIA IN THE SHADOW OF THE GULAG: PENAL TRANSITOLOGY AS BUREAUCRATIC DRAMA

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Abstract

In this paper, I develop a new theoretical framework that brings offers a muti-disciplinary approach (history, criminology, sociology, and political science) to better understand Russian penal development since the collapse of the USSR in 1991. The new theoretical framework, penal transitology, aims to locate a significant time of penal change in diverse, and disputative, external compliance-building and bureaucratic regimes. I argue that due to transnational regulation dominating post-Soviet imprisonment, the penal system operates in a state of constant institutional risk and regulation. This transnational milieu is one where shaming strategies have created new sociological contexts for thinking critically about penal reform. Those contexts concern the extent to which European institutions and legal and powerful NGO regulation have produced and embedded compliance regimes that have the effect (intended or otherwise) of erasing discourse on the role of the prison in state-society relations.

Keywords: penal; transitology; compliance; conformance; risk; bureaucracy

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Prisons and Social and Cultural Heritage

Russian civil society is in a state of acute social emergency. In August 2020, Alexei Naval'ny, Russia's leading opponent to the current President, Vladimir Putin, fell seriously ill on a flight from Tomsk to Moscow and was admitted to a Berlin hospital with Novichok poisoning (a nerve agent used in the Soviet era, and which has been implicated in the poisoning and murder of former spy Alexander Litvinenko in 2006 in London). On Alexei Naval'ny's poisoning and near death, the German Chancellor Angela Merkel stated 'It is now clear: Alexei Naval'ny was the victim of a crime; he was meant to be silenced. This raises very difficult questions that only the Russian government can answer'[2]. What followed was a political global crisis surrounding Naval'ny, and corresponding mass protests. With ongoing expulsions and the imprisonment of opponents and journalists,[3] it is undoubtedly the case that the penal/political nexus where Russian prisons sit remains extremely hard to understand and operate around. Then, in March 2022, Russia invaded Ukraine with

Imprisonment in Russia is a subject that remains geographically and intellectually elusive to scholars working in global criminology and in socio-legal studies. The Russian penal system is certainly *known* (or notoriously framed) internationally, where it is the subject of television shows, social media platforms and YouTube clips. Indeed, international case law is saturated with alleged violations of human rights, torture of prisoners and professional malpractice of staff in places of confinement. The socio-legal studies field in recent years has certainly begun to interrogate how prisons are situated in of the complex geo-politics of the region (see Cliquennois and Champetier, 2016 and Cliquennois *et. al* 2022). So too the

[2] https://www.theguardian.com/world/video/2020/sep/02/angela-merkel-unequivocal-proof-alexei-navalny-was-poisoned-with-novichok-video, accessed on the 03rd of September 2020. At the time of writing (September 2021), Navaln'y faces further charges.

[3] Sarah Rainsford: 'My last despatch before Russian expulsion', https://www.bbc.co.uk/news/world-europe-58395121?at_medium=RSS&at_campaign=KARANGA, accessed on the 31st of August 2021.

undisputed role of international law delivered through Strasbourg Courts has been to tame the penal system (see below). Nevertheless, Russia's contemporary penal system while infamous, is, curiously, under-researched from sociological and political science perspectives, and the size of incarceration is unfathomable to most. With 499, 406 persons held in penal establishments in mid-2020, Russia now has the fourth largest prison population in the world as a total number of persons held in places of confinement[4], and is ranked twenty-fourth in the world per 100,000 of the population (346 persons per 100,000 of the population). Ten years ago, these figures could not have been more different, unimaginable even, with 1,060,404 persons held in penal establishments, and a per 100,000 of the population rate of 729. The striking drop is in both the total number of persons held, and the per head 100,000 rate is around 52% over the last ten years. These dramatic drops are significant for the study of imprisonment in former Soviet Union (FSU) countries because for most of the 1990s', and the noughties, Russia sat in the top three for both largest total penal population, and prison population rate. I do not discuss in detail what accounted for the reduction in prison population rates, but two points are instructive for this paper. First, as Snacken and Dumortier (2011) note, to fully understand punitiveness and prison population levels in the European institutional context (the Council of Europe or the European Union) a horizontal understanding (sentence reduction policies, oversight, reduction of pre-trial facilities, and monitoring of health facilities) of the risks to penal moderation (see also Loader, 2010) is required. All these human rights measures were successfully used to minimise Russian penal elites' propensity to overuse penal sentences as the default punitive response to the effect of having a restraining impact on prison growth. At the same time, relations with the US and Russia in the early 1990's warmed in no small way due in part to regional and transnational conventions such as the ECHR and the Helsinki

[4] On 10th August 2020, Russia's total prison population was 499,406, behind Brazil (755, 274) and ahead of India (466,084) (see The World Prison Brief at: https://www.prisonstudies.org/country/russian-federation, accessed on the 10th of August 2020).

Agreements (see Madsen *et. al.* 2018). As I go on to show further on, the horizontal understanding of prison rate downsizing is also due, in part, to the uneasy and complex alliances between transnational Non-Governmental Groups (NGOS) that are funded by Western donors and the European institutions that Russia now must serve. The well-funded sections of the NGO community have acted as successful litigators in Russia, and they have certainly played a part in penal moderation and driving numbers down. Yet, as Cliquennois and Champetier (2016: 93) note:

"The NGOs that once and again are involved in cases against Russia can afford to do that because they have significant resources at their disposal. On the basis of a close analysis of litigation and funding patterns, we conclude that the donors that most generously fund litigation against Russia are pursuing political and financial objectives that can be fairly constructed as fostering what may be labelled as a 'new cold war' against Russia".

The notion of a new cold war, discussed further on, has led to a compliance context of *rights instrumentalism*. That is, a full protection rights culture in an industry of rights litigation where those who occupy a different position of power in the penal-political context of Russia and Europe's institutions - the well-funded NGO – thrive the most. Second, population deceases have also come about because of a more vertical approach to prisoner litigation. Cliquennois *et. al* (2022) note that the recurring cases in the European Court of Human Rights (ECtHR) on overcrowding have given many of Europe's governments (including Russia as a non-EU member) *'clear indications of the type of remedial measures, including changes to national penal policies, needed to resolve underlying structural problems responsible for human rights violations* (Cliquennois *et. al,* 2021: 14). Such judgments, including one from nearly twenty years ago (Kalashnikov v. Russia)[5] and more recently the pilot judgment of Ananyev and others

[5] Case no 47095/99, Kalashnikov v Russia, 15 July 2002, available at http://hudoc.echr.coe.int/eng?i=001- 60606.

v. Russia in 2012)[6] reveal just how far Russia has indeed come to reducing its penal estate)[7].

Nevertheless, contradictions in penal development are never far away. One example can be found in a penal political backlash of sorts *against* the power of Europe's institutions, when in 2012, not long after the Foreign Agents Law[8], Russia's Constitutional Courts stated that rulings of international bodies would be 'impossible to implement', despite international law having precedence over domestic courts (see Cliquennois *et.* al 2021). The ECtHR judgment in Anchugov and Gladkov v. Russia (12 September 2013) then ruled that prisoners' voting rights in Russia are inconsistent with the Russian Constitution and therefore not enforceable[9].

What is, moreover, thwarting penal moderation is not only the failure to implement judgements (see Cliquennois, *et. al* 2021), or how Western NGOS might be driving compliance in a specific direction that generates political hostility. A further consideration is that the circuits of power in the institutions of Europe, through which the penal transitological model flows, are failing to shift penal discourse *within* Russia towards a penal cultural approach that

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[6] Ananyev and others against Russian Federation (Application No.5140/02, 4795/99 and 42525/07)', DH-DD(2013)92, 4 February 2013, available at https://wcd.coe.int/ViewDoc.
jsp?id=2027885&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383.

[7] Some further comments on rates. The remarkable decrease in the number of prisoners is due to several factors. First, is that courts pronounce prison sentences for minor crimes much less frequently than in the past ten years and tend to issue alternative penalties (such as non-custodial sentences or community service). Second, are the demographic changes in Russian society such as depopulation and an ageing population. Third, is the closure of a significant number of 'general regime' (the least severe) penal colonies together with amnesties. Consequently, prison overcrowding decreased, but only marginally, and there has been no evident improvement in prison conditions (see The European Court of Human Rights judgment in Tomov and Others vs. Russia, 2019). Full details: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-12442%22]}. The recidivism ratio also remains very high: around 63% of inmates in Russian prisons are reoffenders. Sources: www.prionstudies.org, accessed on the 10th of August 2020, https://meduza.io/feature/2018/12, accessed 10th of August 2020 and https://www.osw.waw.pl/en/publikacje/osw-commentary/2019-02-07/russia-behind-bars-peculiarities-russian-prison-system#_ftnref2, accessed on the10th of August 2020.

[8] I refer here to 'The Law on Non-Commercial Organisations (2012)' that requires collaborators of NGOs receiving funding from abroad/outside Russia to register as 'foreign agents'. The full title is Law N° 121-FZ or "Law on Foreign Agents" but is referred to in public discourse as the 'Foreign Agents Law'. Introduced at the same time, was the Federal Law on 'Treason and Espionage' 2012 that made amendments to the Criminal Code of the Russian Federation and widened the scope of the criminal provisions on 'treason'. The strict conditions now facing NGOs in Russia damage significantly the principle of freedom of association guaranteed in international treaties and human rights norms and law that Russia has ratified. The official title of this law is Law N. 190-FZ or "Law on Treason").

[9] Anchugov and Gladkov v. Russia (Application No. 12-П/2016)
https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-7644%22]}

locates penal moderation not just in reduction of populations but within a wider public and political discourse on the role of the prison in historical and cultural understandings of contemporary Russia today. Penal culture remains something of a vector for politics, and human rights have become deeply, and more profoundly, politicised (see below).

What do I mean by culture in this context? Here I am referring to heritage. It remains the case that Russia's penal system remains deeply scarred by its brutal penal past, with regular international prison rule violations[10], inhumane and degrading treatment of prisoners reported often and the legacies and residues of past penal pain looming large. Russia's deplorable human rights record is so embedded in its penal culture and documented fearlessly, and hauntingly for about two centuries. Some of the most notable accounts come from Dostoevsky's commonly regarded *roman à clef* of his experiences in prison *Notes from the House of the Dead* (1860), which represents the Imperial period of Tsarist prisons, to the Soviet era such as Solzhenitsyn's *Gulag Archipelago* (1973) and to Ginzburg's *Journey into the Whirlwind* (1967)[11]. Cut to the present day, there is the authoritarian Presidency of Vladimir Putin, under whom prisons remain veiled in secrecy in a culture where civil society is weak and where the failures in meeting international legal obligations for humane treatment return the reader of prison stories back to the brutal Soviet Gulag - surely one of the twentieth century's most abhorrent penal systems. Such contemporary penal social history rests on the assumption that the 'prison doors opened with post-Soviet reforms' but remained locked and to a large degree culturally determined to carry forward the Gulag's heritage legacies and infrastructure that are not easily shaken off and stop being hidden.

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[10] Cliquennois *et.* al (2022) record that the Russian Federation has one of the highest numbers of non-implemented judgments of the Strasbourg Court at nearly 1500.

[11] Dr Sarah J. Young has produced a full Gulag Bibliography in Russian with English translations. This is a full and comprehensive list in English of Gulag literature, poetry, memoirs, and prose. See http://sarahjyoung.com/site/gulag-bibliography/ for full details.

There is a further paradox to the visibility of human rights violations afore mentioned in that only a handful of researchers around the world are working on post-Soviet imprisonment. Despite nations that too were part of the USSR operating totalitarian regimes which manifestly promulgated a Sovietised penal ideology, Russia is an outlier in critical sociological scholarship of penal culture. Why Russian criminology remains unknown to Western criminology, and, relatedly, why Russian criminology's engagement with penality is patchy, is down to several factors. The first concerns how indigenous Russian scholars engage with heritage in understanding criminology today. As Gurinskaya (2017) carefully notes, Soviet theory of crime causation has an embedded grounding in the cornerstones of Marxian philosophy. Yet, for Russian academics in the post-1991 context, economic survival trumped academic advancement; scholarly bias towards former socialist ideology as 'unworthy' of global academic scrutiny prevailed, and relatedly, a view came to be embedded that Soviet criminology was a monolithic product. Staying open to indigenous knowledges has proven to be a significant challenge not least if the state offers patchy support for the subject. Gurinskaya (2017) asserts:

'Criminology is one among many disciplines that currently do not have much voice in deciding the government policy' (Gurinskaya (2017: 135).

The picture is, therefore, mixed with Russian scholars on the one hand decrying the subject in crisis, yet there is a plethora of textbooks offering descriptive accounts of crime and punishment from which it is entirely possible to develop criminological research. It is therefore, perhaps, not surprising to learn that large scale research projects, funded by Western research councils (and Western NGOs) tend to dominate the scholarship coming *into* Russia from the outside which raises all sorts of questions around ethics of global research, co-production of

research, colonisation of knowledge and the neo-liberal turn in funding, which is through regimes of knowledge that seek to 'change systems and society for the better'.

The second reason for the neglect of the region in criminology and punishment and society studies concerns the geo-politics of carceral knowledge that has led to a linguistic, cultural, and political Othering of Russia in academic disciplines. Cheskin (forthcoming) outlines the disconnection between English language Area Studies and Russian language Area Studies and, concurrently, the debates in criminology around the Global North to Global South transfer have largely excluded Eastness from analyses. The geo-politics of the Global North-Global South transfer, which recently has seen Southern criminologists critique the work of other Global South academics for omitting key regions, scholars, and empirical and theoretical questions, centre on what, where and who is missing, mainly African nations and indigenous voices (see Goyes, *et.* al 2021). Yet, in the enterprise of re-aligning the geo-politics of criminological knowledge to be more inclusive, de-colonised and equitous, the former Soviet Union is nowhere. Russia, viewed as sub-altern and falling adrift from the established binary of coloniser (the Global North) and colonised (the global South) complicates this further. As Müller (2021) notes, Russia, as both colonised and coloniser, has its own imperial ambitions and does not fit readily into existing binaries of North and South.

Russian penality and its heritage is still terra incognito for other reasons (Gurinskaya, 2017). These include language wherein most countries of the Global South speak languages of the Global North as a first or second language. Hence, there is a familiarity that is not there with Russia. Also, many countries in the former Soviet arc that lie closer to Europe operate dual language speaking in policy circles to a more significant degree than in Russia. Human rights scholars' activists and academics in Russia still, mainly, speak Russian and significantly so to the outside world (which is something personally experienced most of the time). While Russian crime and punishment research also needs an 'urgent upgrade' to establish systems of

knowledge about matters such as how rights are felt and experienced in penal contexts (Gurinskaya, 2017: 136), the wilful closing of Russian academic departments from research collaboration, by Russia itself, has produced barriers for building research capacity to indigenous researchers to do work, particularly on punishment. The evidence for this can be found in the Foreign Agents Law (2012) now extending to universities, deportation of UK scholars, the closure of long-standing NGO organisations focusing on addressing Soviet penal trauma such as *Memorial* in 2021, which many argue was a political move to silence the current government's alleged re-vision of the Stalinist atrocity[12]. Russia's Eastern European neighbours have, simply put, not experienced this degree of authoritarian control of criminological knowledge. Scale is another reason as to why Russia remains elusive to scholarship on penal development. Russia is the largest country on earth and contains within it an incredibly complex society of multiple languages and cultures. It would take academics a lifetime to scratch its surface.

How do we make sense of Russia's exceptional history of penal power in a human rights context? I argue in this paper that a multi-disciplinary approach that views the prison as a cultural and political-legal site embedded within, and a reflection of, external and internal social relations is crucial. In other words, to study the Russian prison, one must study its place in transnational cultural and legal imaginations (state governance, social welfare, political culture, and economic concerns). Prisons connect individuals and groups to institutionalized practices, which, in turn, mediate culture. Of importance to the subject of prisons and punishment, therefore, is how social relations (such as human rights) bind culture to policy and how and which institutions hold hierarchies of power. Having researched contemporary

[12] According to Amnesty International (2021) "International Memorial is a highly respected human rights organization that has worked tirelessly to document the atrocities and political repression carried out under the rule of Joseph Stalin and other Soviet leaders. By closing the organization, Russian authorities trample on the memory of millions of victims lost to the Gulag". https://www.amnesty.org/en/latest/news/2021/12/russia-closure-of-international-memorial-is-an-insult-to-victims-of-the-russian-gulag/.

Russian imprisonment for nearly three decades, it has become apparent to me that human rights in penal cultural forms are a product of value systems and are a function of cultural interests, ideology, and politics. Penal policy, as articulated in public discourse, contains bold messages that are deeply implicated in society's 'lost trust' of individuals and groups. An essentialist view is that prisons are necessary and reflect a sense of chaos and society's attempt to manage it. Their presence directs us towards a need for stability. The prison, hence, is as much a part of our cultural fabric, as is, say, the hospital and the school, because penal space is laden with messages of public accountability, resource management, history, and bureaucracy. Prisons are absorbed into the national cultural psyche. The prison in Russia is a profound cultural object and heritage artefact; a national economic operation due to the indissoluble connection between political economy and punishment, where the scale of penal power was extraordinary in its capacity to legitimatize mass incarceration on an industrial scale through forced displacement of many millions of people and mass penal death under the auspices of political correction (Barnes, 2011). Somewhat differently to Western penal development, the Soviets sought not only to *industrialize society* with brutal forced labour but also to *sculpt society* according to some idealised image of a class struggle. Prisons, therefore, not only reflect cultural and social heritage. They are artefacts from the past and microcosms of where society intended itself to be. The socio-cultural exceptionality of Soviet penal development presents the sociologist of the prison, therefore, with a dilemma in how to frame and make sense of a subverted and supplanted carceral logic that stood in opposition to 'capitalist penal policy' (Holquist, 2003: 38). Barnes (2011) underscores this point and argues that framing Soviet prisons (particularly during the Gulag) as primarily for correction rather than punishment was aimed to isolate, purify, re-educate and in doing so, ultimately re-integrate offenders as fully fledged members of society (Barnes, 2011). Moving forward to today's penal culture, Russian prisons remain locked into a version of the legacy of the past where echoes, shadows and leitmotifs emerge

across a range of fora (see Piacentini and Katz, 2022) to create usable memories. These hallmarks, scars and embedded ideals of the Gulag are never far away from official discourse to popular fiction.

In this paper, I argue that penal development has evolved through a *continuum of penal transformation* that I define as a responsiveness to acute political-institutional traction. As I will go on to show, human rights narratives are embedded in Russian penal culture through legal and norm compliance levers and rules, from the corridors of power in Europe's institutions, and through the forces of powerful – Westernised – NGO organisations. These dimensions are, of course, foundational to penal cultures in many places but they have created a transitional context of complex geo-political carcerality. The overall aim of this paper is, therefore, to discuss how interpretations of rights have a rhetorical effect and, in doing so, 'frame' punishment in a particular way that alters the shape of the prison as an object of study. The paper offers a degree of comparative insight from North American prison research and international prison research. Global prison research suggests that the broad outlines of the legal empowerment of prisoners co-occurs with continued prison building and risk management (see Loader 2010), which leave the institutional dynamics of incarceration intact so much so that human rights have not de-centred the prison, nor minimised its pains, but have instead aimed at *enhancing penal power*. In this sense, I am also interested in what the prison does to rights discourse. I aim to contribute to global debates on exceptionality in penal systems and, at the same time, address the absence in critical prison sociological scholarship of human rights by building an inter-disciplinary dialogue under a conceptual framework I define as penal transitology. *Penal transitology refers to the process tracing and multi-layered discourses that come to form practices and norms that enable societies to withstand the impact and practical challenges of penal change.* The bureaucratic drama I refer to in the title refers to conceptualisations of imprisonment as performance where from the interstices of prison

sociology and human rights, power is fought for between institutions sometimes in ideological alignment, but more often where competing interests are played out.

Penal Transitology: Towards global prison governance

Since the collapse of the Soviet Union, global research into Russian penality has given pre-eminence to penal reform through legal, judicial, and political processes with accountability to legal rules a central step towards penal change (Guidice, 2020). Yet, scholars of the prison – across different subject fields – have yet to develop a multi-disciplinary approach to penal reform beyond examining law as a social construct or the transitional justice context to look at the effects of legal reform sociologically (see Guidice, 2020)[13]. It is this very tension between judicial/legal reform and penal/political culture that has placed Russian imprisonment and reform under various cross-pressures and contradictions.

Following the collapse of the Soviet Union a momentum for change in Russia's excessively harsh penal culture gathered pace. Despite the erratic developments in the early post-Soviet years, Russia set on a path of penal reform led by legal elites (see Bowring, 2013). Somewhat inevitably, through partnership with Europe's institutions, a political justification emerged for reforming the (widely perceived as) exceptionally different Soviet penal system into one that would now be *obligated* to comply with Western norms. A post-Soviet society would be democratic, marked by a dynamic, partner-competitor relationship where sometimes politics prevails and other times the law prevails (Cerar, 2009). Despite the driver being political alignment with Europe, interestingly and somewhat surprisingly, legal reform aside, sociological questions around what made Russian prisons *exceptional* and what made Russian

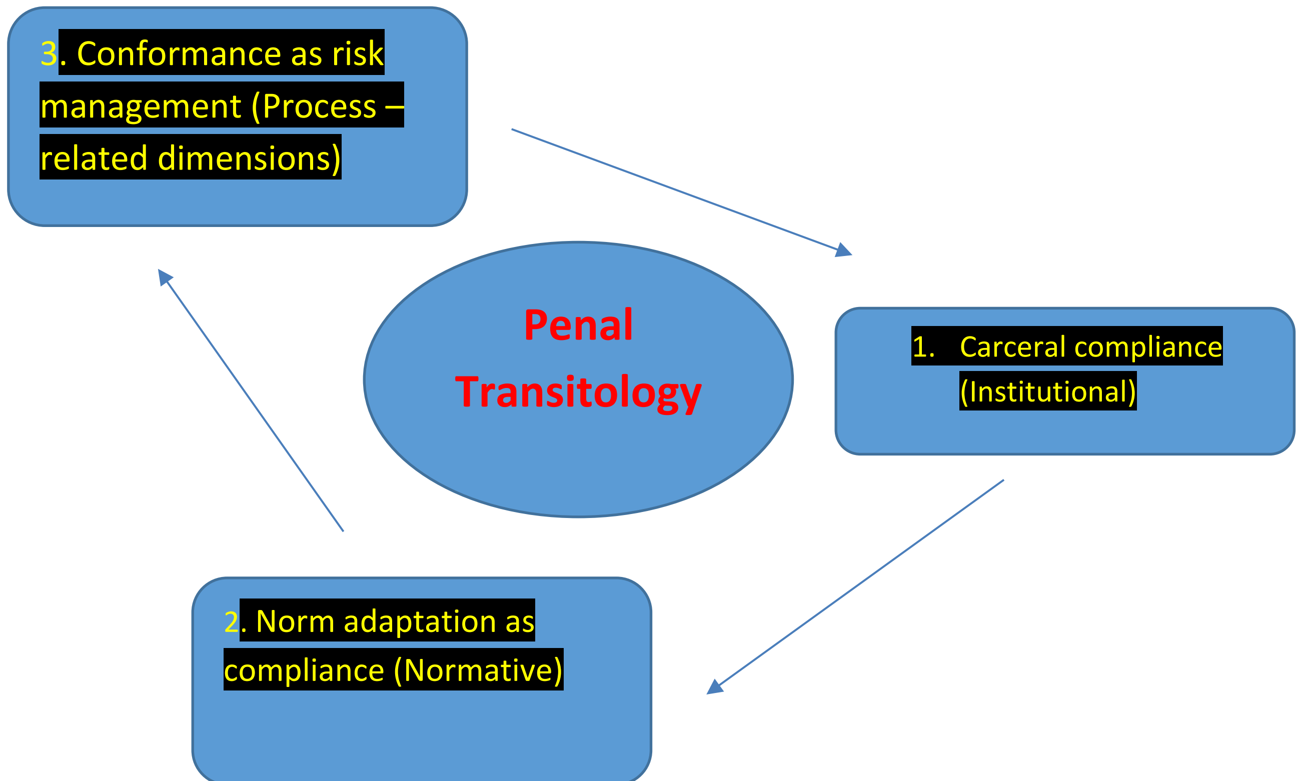
[13] I recognise the widespread scholarship on criminal justice transition's impact on civil society engagement (see Vinjamuri and Snyder, 2015), but here I focus specifically on transition in penal systems which continue to be addressed and researched, in the main, within legal scholarship and political atrocity scholarship.

prisons *comparable* to global punishment systems did not materialise so much so that normative, ideological understandings of how the Soviet system were intertwined with social relations were subordinated to political will perhaps because change needed to happen swiftly and so doing what was legally imperative dominated displaced sociological questions such as what are punishment's values and goals? How does a society review the continual need for incarceration? The subject of the relationship between law and politics requires a more in-depth analysis than I can provide here, however, a fundamental point of relevance to post-Soviet Russian imprisonment is that the political context overlapped with legal reforms to create *institutional, normative,* and *process-related* dimensions of penal change. Policy makers in Russia were committed to the law's expressive and active function in justice - through human rights - to ensure that Russia was connected as a legal entity. Yet, it cannot be under-estimated that the rule-framer was Europe's institutions, which had the strongest – indeed most legitimate - political and legal influence over internal penal matters (Cerar, 2009). As with all conditions around political and legal governance, layers of risk emerged from discussions of how the political and legal authorities would adapt to these risks. This state led discourse of managing political risk through compliance became, *de facto,* the key foundational principle to penal reform.

To explain some of these tensions and paradoxes in this compliance led context, requires a nuanced and multi-disciplinary approach that points to the ebbs and flows, the interplay of roles and the performativity - the drama – that leads to tensions and contradictions with 'western alignment'. Penal Transitology, which I define as an inter-disciplinary dialogue *comprising of a set of processes and norms that enable societies to withstand the impact and practical challenges of penal change by governing through risk*, outlines this compliance context. At penal transitology's centre are understandings (there is penal trauma in the former USSR), goals (the penal system urgently requires reform and humanity) and means (legal and

political measures). The framework of penal transitology is institutional, normative, and process-related and it is helpful for understanding Soviet punishment as a political *event* that has evolved into a post-Soviet penal context of *objectives* geared towards conspicuously present compliance to human rights underscored by bureaucracy and politicised relations.

Penal Transitology: a model for understanding penal change



The above framework is discussed in detail below but briefly here, the driver for penal transitological development is the international political and partnership context that Russia entered when the Soviet Union collapsed in 1991 (labelled phase number 1. 'Carceral compliance'). Second, is the legal and human rights/normative phase (that has dominated penal discourse since 1991 (labelled phase number 2. 'Norm adaptation as compliance'). I propose that the first two phases facilitated Russia to inadvertently preserve the cultural antecedents of the Soviet penal system and, at the same time, have organisational relationships with transnational organisations such as the Council of Europe and powerful NGOs. These phases, I assert, have diminished the prospect of a fuller sociological understanding of the meaning of punishment. Instead, they produce phase three, which is where modernity is understood - in a Russian penal context - as risky (labelled phase number 3. 'Conformance as risk management').

Phase 1. Penal transitology as carceral compliance

The veritable avalanche of legal responses was developed to create a doctrinal shift to new legal norms, respect of international rules and standards and a new emerging approach that Russia now had no Soviet Union to govern by. Yet, Russia would not wish to alienate its neighbours (already scrutinising from a position where Russia in the early 1990s was viewed as internationally weak and dependent on the US, see Cohen, 2011) so a transformation and an acceptance of international law, would, it was hoped, change public perceptions of external audiences (see Bowring, 2013). Hence, the framing of Russia as 'exceptional', that has dominated scholarship and policy reform, has produced a context wherein penal elites (legal and some NGOs and policy makers) operate boundaried penal reform agendas within their own subject fields (usually in the political and legal spheres) to produce not a cold war context of difference but one of harmonization. This led to a dynamic and, crucially, enduring legal-

penological response, and a distinctive carcerality, around the extent to which Soviet and non-Soviet are differentiated as exceptional with (Council of Europe) laws and norms holding penal power because law controlled the area of penal reform for the entire first decade after the collapse of the USSR. Post-Soviet prisons, one might contend then, have been shaped by ambitious - but externally driven by different actors - discourses, norms, and practices. Despite the recognised flows between polity, politics, and policy; in its own social interrogation of values, symbols and ideational ties, punishment and society scholarship, nevertheless, often overlooks the cultural tropes that are the foundations to penal systems (Brangan, 2020). Penal culture as mentioned might be understood as the different causal processes that connect, or create ruptures between, the institutional with the cultural that ultimately shape the contours of punishment. When it is considered that cultural norms pass through institutions (see Smith, 2008, Brangan 2020), this omission is perplexing because the tensions produced from this complex carceral compliance context, have enabled the bureaucratic drama referred to in the paper's title to thrive due on no small way to *infusions or input* from important players (see Cliquennois and Champetier 2016).

The obligations and commitments Russia had to human rights in the immediate post-Soviet years required Russia to be immediately attentive to the legal dilemmas of human rights abuses. This explains in part why and how the subject of human rights in prisons is derived from - and locked down by – political and legal doctrine, which generates specific outcomes for penality: a penal transitological experience of legal compliance and norm diffusion that has diminished socio-cultural understandings of penality. A question to consider is whether human rights in prisons exist only in an *ideational form* or whether human rights can become embedded into existing models of punishment as a *penal innovation* whose widespread diffusion into institutions of the state and non-state, is indicative of something else (see Rubin

2017). The point made by Rubin (2017) and Ruggie (1998) on *ideationality* in penal spaces and institutions, can guide us through this first phase of carceral compliance:

'Constructivists hold the view that the building blocks of international reality are ideational as well as material; that ideational factors have normative as well as instrumental dimensions; that they express not only individual but also collective intentionality; and that the meaning of ideational factors are not independent of time and place' (Ruggie, 1998; 879).

The ideationality of international norms, I argue, constrain, and shape the behaviours of domestic nations and because norms are both spatial and temporal, they can in turn reshape the purposes for which power is exercised. This is referred to by social constructivists as 'social learning', which is driven by desired effects as much as instrumental self-interests (see Wendt, 1999). One outcome of social learning about human rights in Russian penal development was the intended (or otherwise) trajectory that led to political and ideational dependency delivered through not only politics and law, but also through powerful NGO voices and actions delivered through philanthropy and private partners. Looking at the powerful NGO context through a carceral compliance lens, social movements and legal doctrine have led to huge successes in human rights litigation and reform. So much of that success is due to how social influence is funded because rights advocacy organisation requires seemingly limitless funds to reach successful litigation. This is of consequence in the context of Russian prisons because litigation against Russia in the European Court of Human Rights (ECtHR) is disproportionately high (Cliquennois and Champetier, 2016). Consequently, for a country with eleven time zones, which is the largest country in the world and defined as part of the wide range of middle-income economies, the financial, intellectual, legal, cultural and penological impetus required to create political influence that leads to reform cannot be drawn solely from public donations. If NGOs are critical levers for norm compliance, how might their funding then impact on their capacity to contribute to norm compliance? Cliquennois and Champetier (2016: 97) argue that NGOs

with 'deep pockets' are able to exert influence in the ECtHR because the latter is focussed on the technical quality of a complaint coming before it. In doing so, a selection of cases can produce that then facilitate what are referred to as sound pilot judgements (successful litigation).

Leach (2013) records that it is not uncommon for judges in the ECtHR to refer to the routes towards successful litigation by directing lawyers and barristers representing NGOs towards a pilot judgment outcome. Complicating the context of public interest work is that since the financial crash of 2008, austerity has struck in the funding of NGOs and other bodies such a monitors and Ombudsmen (Cliquennois and Champetier, 2016). This squeeze on resources is made all the worse in Russia with the ongoing weakening of civil society and legislation that curtails NGO work. Into this context, private resourcing of NGO litigation is, perhaps unsurprisingly, a somewhat inevitable development. So much so, that NGO activity in the Russian penal context comes in the main from NGOs in the USA and the UK (Cliquennois and Champetier, 2016). There is not the space in this article to probe in-depth the operations and funding of powerful externally financed NGO organisations, but key players are funded to varying degrees from European Embassies and large UN-located institutions to wealthy financiers who provide millions of Euros, UK Sterling and US dollars in endowment funds to support litigation and NGO work against the Russian government. Their number is limited but collectively, these privately funded NGOS have been successful in adding force to case law against Russia. As Cliquennois and Champetier (2016), following Leach (2013), re-iterate, this does not mean that Russia is the most serious violator but that private funding has led to a sense of compliance inflation that is inextricably linked to the political context where private donors become agents of change in a fraught relationship between the East and the West. We revisit this further on and raise the question of Russian penal transitology operating within a new Cold War context in terms of patchy national policy engagement with penal reform strategies and

the use of shaming strategies to create a condemnatory context that is rubber stamped by the institutions of Europe. Cases cited in Cliquennois and Champetier (2016) do indicate the power and influence of privately resourced NGOs in forcing the Russian government to make changes to not only the judicial system but, also, to criminal justice places of detention where acute human rights abuses are recorded often. The authors do add the cautionary note that NGO groups play down the positive steps Russia makes, which is hardly surprising when it is considered that Russia is outlawing many NGO groups of notable repute such as Memorial in December 2021. Piacentini and Katz (2022) note that in constant tension with externally led penal reform agendas, are the cultural echoes and nationalistic residues of the Soviet Gulag and Russian imperialist tropes of colonising its near abroad, that create a penal-nationalism found across a range of online prison-related forums that the authors analysed. Whether it is a group of cases brought against Russia for violations in places of detention, or political discussions about the cessation of funding for NGO groups and banning organisations, the key point here is that whether a judgment on human rights violation is executed or not, the process of advocacy for the welfare of people held in confinement is threatened by a penal political culture of compliance which has generated impacts on international relations and the foreign policy context: foreign agents do not control Russia's engagement with international human rights law. Thus, the carceral compliance context is constantly evolving but as I outline below, when human rights outcomes are considered alongside how risky-ness unfolds in penal space in Russia, the question arises about how acutely politicised penal culture is in a post-cold war international relations context where East and West binaries are re-erected.

In summary, where theorisations of ideationality in international relations connect with the punishment and society scholarship on penal innovations such as human rights, is in two ways. First, in revealing that human rights norms and punishment forms exist as ideations before they come to be manifest as technologies or tools. Each has a lengthy history before

becoming a product of its time. Second, both human rights and punishment shape the behaviours of powerful political actors and NGO groups and the structures within which they operate. Hence, human rights emerge out from specific types of social and, crucially, political, and economic relations and are then constituted as social structures and motivated by a wide range of public and private power relations (Jordan, 2003). The power relations can be understood as operationalised around rule-making, rule-following, and rule enforcing behaviour where different levers of power and finance are pulled and then used to create not only compliance but a mode of compliance along a re-ignited binary of East versus West. The section that follows looks at the second phase of penal transitology in Russia since 1991: norm adaptation as compliance, which led to the mapping of European human rights doctrine onto criminal justice and legal discourse.

Phase 2. Penal transitology and norm adaptation as compliance

Since there has been very little scholarship on the impact of litigation (Cliquennois and Champetier, 2016)[14], and how litigants try to influence institutions, in this section I offer an emerging exploration of some of the pitfalls of the processes underpinning the so-called 'ordinary enforcement mechanisms' (Clinnequois and Champetier (2016: 96) to create norm adaptation as a compliance.

Prisons, almost everywhere, are tragic, and relentlessly subjected to debates on reform and population reduction. Nevertheless, solely numbers, scale and extent cannot determine what makes a prison system in need of change. Hence, proliferating legal changes into penal systems following the collapse of one type of political order was an inevitable trajectory (see McEvoy and Mallinder, 2012). Examining the *efficacy* of human rights in prisons is highly

[14] See also Ahmed (2011) and Hitoshi Mayer (2011).

contingent, complex, and saturated with legal, political, and institutional problems that make prisoners' rights uncertain and unprotected (see Behan 2014; McEvoy and Mallinder, 2012; van Zyl Smit and Appleton, 2019). Why this is the case has focussed the minds of international law scholars for decades (Hathaway, 2002). First, the levels and levers for compliance, which exist in other areas of international law, are mostly absent in human rights law (Hathaway, 2002). Second, are the assumptions that most nations observe international law, although competitive market influences press for compliance in other branches of international law and they do not carry the same commitment to compliance on matters of human rights. In other words, 'the forces that induce compliance with other law . . . do not pertain equally to the law of human rights' (Henkin 1979: 235). This has been explained as a matter of cost (Hathaway 2002) with non-compliance to human rights law costing less than non-compliance in other areas of law. In testing then what the normative benefits are of human rights treaties to the practice of human rights on the ground, Hathaway (2002) adds:

'In an analysis of individual cases, there is virtually no way to know whether better or worse human rights practices are due to treaty ratification or instead to any number of other changes in country conditions, such as a change in regime, involvement in civil war, or a change in economic context' (Hathaway, 2002: 1939).

The well-documented challenges around human rights enforcement generally, alongside the powerful normative hold of rights doctrine, are well established in the literature as due to international law's persuasive power to create and sustain international legitimate legal obligations through treaty ratification (Milanovic, 2011). This is not to say that national governments then go on to honour these positions but in ratifying human rights treaties, norm adaption may follow via a public and political commitment to improvements in practice down the line.

Despite the position that human rights standards work better than any known alternative (for offenders, for correctional staff, and for society at large) (Zinger, 2006), the reality is that

enforcement is often minimal due mainly to the cost to meet the international incentives for improving human rights. This is particularly so for countries where democracy is weak and the weight of expectation for human rights reform is greatest (McEvoy and Mallinder, 2012); a point of note for Russia because after the collapse of the USSR, Russia was not a strong democracy and so was widely perceived as a country that would struggle with treaty ratification (van Zyl Smit and Appleton, 2019). Yet, treaty ratification became the legal and political priority because ratifying human rights treaties would engender a legal compliance culture, and liberal democracy would thrive (Kuijer, 2018). Bear in mind that Russia has a distinctive geo-political position with the EU and NATO lying the furthest distance to Russia compared to other former Soviet bloc countries. This complex geo-politics led to compliance to national security concerns and in doing so, dominated any social learning that could arise from the previously mentioned *ideational processes* that marked Russia joining the Council of Europe in 1991 (harmony, connectedness and even hopefulness). Bowring (2013) argues that norm adaptation happened for instrumental reasons with the Council of Europe re-aligning and adjusting its own expectations to 'justify keeping its members on board' (see also Jordan, 2003: 688). The political and economic benefits of the trajectory of norm adaptation may then be understood as 'norm entrepreneurship', which is aimed at gradual country internalization of the norms embodied in the treaty (see Cassel, 2001; Risse and Sikkink, 2016). Norm adaptation, argues Chayes and Chayes (1993), need not mean full compliance but can be expressive of intent and aspiration. Considering this point sociologically, how does a declaration towards human rights capture meaning and social acculturation through, for example, social persuasion? In other words, what is the cultural rationale for *conforming* to rights-based approaches to human rights. Risse and Sikkink (2016) argue that the successful internal adoption of international norms is best understood as a process of socialisation, which is necessary for cultural changes to endure. Underpinning socialisation are processes of

instrumental adaptation and *strategic bargaining*; processes of moral consciousness, argumentation, dialogue and persuasion, conformity over acceptance and processes of internalisation institutionalisation and habitualisation (Neumayer, 2005c). Thus, if there is a need for aligned legal arrangements, there is then a need for strategic conformity. This supports points made earlier about compliance being good for foreign policy. Thus, I want to argue that normative, yet instrumental adaptation defines phase 2 of the penal transitological framework, and it has endured and not fully been succeeded by habitualisation, which is the process through which state actors internalise norms that are codified in international relations.

The political worldview at that time was to 'bring Russia' into Europe[15] and what followed was an epistemic human rights community of transnational moral entrepreneurs (transnational state actors, diplomats, and powerful NGOS) (Neumayer, 2005b, Cliquennois *et. al* 2022), who were instrumentally positioned to define and measure effective plans for action that could correct and secure remedies for rights violations (Finnemore, 1996; McAuley, 2016). State actors become acculturated and socialised into becoming signatories to human rights treaties through the power and impetus of regular interactions that create cognitive and social psychological pressures to conform. This is referred to as 'cognitive comfort' (Neumayer, 2005b: 929) that is created where the psychological benefits of being in an insider group are offset against the prospect of shaming and state exclusion which can arise from non-conformity. Of relevance to the study Russian prisons, is that cognitive comfort produces *conformity with* rather than *normativity about* rights (see Goodman and Jinks, 2013) because norm adaptation as compliance comes to be present in the process of ensuring security and political stability in regions where the rule of law prevails in an effective, democratic political democracy.

[15] This is different from other theories of human rights regimes that deal with states as unified actors and state-to-state behaviour in international contexts.

It was not always thus. In 1990's Russia the large number of state actors and interactions with domestic groups laid the foundation for a persuasive, interactive and democratic engagement with what were described as the normative benefits of becoming a signatory to human rights treaties; a notion of democratisation and habitualisation, weaving its way into public consciousness. The criminal justice sector achieved notable change beyond norm adaptation, through the establishment of a reasonably robust civil society. This created some traction and stability in improving the governance of human rights treaties through various civil society networks. For example, when the Soviet Union collapsed in 1991 the new President Boris Yeltsin reached out to various social groups for 'social accord' to achieve support for his political and economic reforms in 1992 and 1994. Scholars working in civil society argued that these efforts by Yeltsin were populist-driven (Weigle, 2002) because Russia's growing civil society was undeveloped by western measurements and, crucially, practitioners for human rights reform were to some degree becoming compelled to operate from a more interest-driven set of priorities (such as foreign policy and security interests). Nevertheless, as Weigle (2002) notes, the early years of post-Soviet reform were a time when human rights treaties started to become part of public discourse and entered the parlance of transition. In this early 1990's context, the charge of double standards was never far away. Piacentini (2004) and Cliquennois, *et. al* (2022) have explained this period as one where on the one hand, the ECtHR operated selected tolerance and instrumental bias. The UK, on the one hand, non-compliant over various treaties and measures such as prisoners' right to vote. Yet, on the other hand, the ECtHR pointing its radar East and working through and from powerful privately funded NGOs uses to great effect the litigation and judicial lobbies that push to shame the former Soviet nations into compliance and norm adaptation.

Despite this, according to Bowring (2013), democracy and civil society consolidated due to democratic citizenship giving promise of creating a support base for democratic leaders

and the free-market economy strengthening and the promotion of more efficient local resources at the regional level. Thus, the burgeoning civil society helped steer the Russian state towards norm adaption to treaty commitments. With warming of relations in the 1990s between the West and the East, the ECtHR grew in power and influence (Madsen *et.* al 2018)). However, the political events in the late 1990s changed this path considerably in moving the penal-political discourses towards more stringent compliance as political risk. This is discussed in part 3 of the penal transitological framework outlined below.

Phase 3: Penal transitology, conformance as risk management

The status and force of ratification in raising standards in prison settings is typically conditional on two crucial factors: the extent of democracy in a country, and the strength of civil society groups (Neumayer, 2005b).

A point of note is that the human rights norms outlined in the ECHR transcend national boundaries and traditional geographical boundaries are replaced by a salvational 'European identity' (Jordan, 2003: 663) defined by a community whose values and political and economic goals that transcend national interests. European culture itself would be saved by drawing in former communist countries into *its* 'family'. However, not all Council of Europe members have uniformly or consistently observed the organization's main goals in practice or ratified all its conventions. So much so that the Council of Europe has had to walk the fine line between ensuring that standards are developed, embedded, and enhanced, while respecting individual state choices. Norm democracy in penal and criminal justice institutional contexts was grouped in a loose, ideational way along with matters around citizenship, migration, and public services (phase 1 and 2 of the penal transitological framework). This is a key point because crucial to norm democracy was a human rights rhetoric that did not target specific public, social or

economic policies but was instead a generic force for good set to influence the practices of penal systems on their journey towards norm democracy. It is, therefore, intended to constitute, and be embedded in, the structure of how punishment is operationalised. Human rights not only describe the world of where prisons need to be heading; they also are intended to *create* that very world particularly for nations entering the European realm. Somewhat unsurprisingly, and despite European institutions situated in complex contradictions over double standards, a rhetoric of Europe as rescuer nevertheless evolved in the 1990s but it did not match or reflect how domestic nations performed politically through either their leaders or within their institutions.

Political pragmatism has been underpinning the legal compliance context of European prison regimes for decades and explains how bureaucracy becomes embedded as a key prison measurement. Nevertheless, it does not tell the full story of how norm compliance connects and coheres with penal culture. A possible route to understanding these processes of connectendness is to look at concepts around rehabilitation; a common-sensical transnational idea uniting prison regimes in European penal contexts, and crucially, one of the key benchmarks in the delivery of humane treatment. Rehabilitation has been doggedly pushing its way into the prison regimes of the former USSR since 1991. International human rights articles (especially article 10(3) of the International Covenant on Civil and Political Rights (ICCPR) 1976)) place a legal obligation on signatory states to provide positive prison environments with references to the essential aim of the treatment of prisoners stated as 'their reformation and social rehabilitation'. In contrast the United Nations Standard Minimum Rules for the Treatment of Prisoners (UNSMR 1957), although not formally binding upon states, do specifically link the *treatment needs* of prisoners to the *protection of society* against crime (see Rule 58). Between these polarities, the European Prison Rules (1987, 2006) advise that 'the regime for sentenced prisoners shall be designed to enable them to lead a responsible and crime

free life' (Rule 102.1). The duty under international law hence is to provide both a norm and a practice of rehabilitation. This is now recognized in European jurisprudence and has been incorporated into the domestic law of some member states. Rehabilitation also encapsulates the tensions between the basic standards and rules in regimes, versus basic rights of prisoners (see Hannah-Moffat 2004) because the wider context of international law provides legal obligations where rights and rehabilitation are intertwined. This is since the duty of prison regimes under international law is not only to provide rehabilitative regimes, but also it has become increasingly recognised in European jurisprudence that rights are incorporated into the domestic law of some (but not all) member states of the European Union. It is important to point out here that there may be differential interpretations of rehabilitation in prison regimes the world over. For example, in Germany, the principle of resocialisation aims to permit to prisoners' basic social and economic rights to state means (Lazarus 2020). The status and effectiveness of international rights obligations on rehabilitation in prisons is opaquer in the UK where it is widely argued that the government has failed to 'give sufficient weight to the offender's right to have his rehabilitative needs (in respect of family life) considered' (Genders and Player, 2014: 436). Institutional tensions in prisons between risks, rights and rehabilitation happen for many reasons and are mainly down to competing sociological narratives around what prison is for.

Human rights in prisons are organised around two legal and normative organising principles: improving the treatment of prisoners and prison raising standards. There is also an *outcome component* of these principles, and this is in the negotiations of prisoners' rights claims. I will return to these principles and outcomes shortly, but the move to embed rights discourse in Russian penality is some distance away from the kinds of conceptualisations of prisoners as agents with social and civil rights where there is recognition of prisoner citizenship as having a moral value 'grounded in social inclusion' (see Easton 2011: 1). There are many

societies where the movement of prisoners to a defined social status as a citizen while in custody, not only requires a reconstruction of law and managerialist strategies, but also a political, social, and cultural step change away from bureaucratic compliance towards something that brings with it public support for prisoners maybe a step too soon for Russia. Prisoner citizenship ought to take place in a socially inclusive society with genuinely progressive penal reform processes and where penal confinement is used with legal, policy, cultural, economic, and political restraint. Russia is not there yet.

The duty and obligation to rehabilitation as a benchmark of rights compliance also opens some significant, and problematic, questions on the tensions between prisons as risks to be monitored and prisoners as risks to be managed. This creates a double bind, particularly for states in penal transition, because if rehabilitation is the necessary purpose of grounds for detention but is imposed on the grounds of public protection and legal compliance, then the state is obligated to provide resources for rehabilitation of prisoners to diminish the risk to the public of re-offending. At the same time, a penal system must conform to transnational norms designed to ensure compliance. States do this in varied ways across the world (contingent on cultural, social, and indeed political contexts, definitions, and interpretations of the social value both of rehabilitation and of prisoners themselves). In prison contexts in Northern Europe and North America, for example, this has evolved into a *penal cultural* context where rights and risk meet and mesh (see Hannah Moffat, 2004). The consequences of this political and legal framing of rights in prisons therefore carries significant weight for the integrity of rights in prison but, also, can weigh *against* the integrity and legitimacy of prison regimes more broadly. This negotiated tension has coincided with an incremental, but certain, embedding of rights in prison as a rehabilitation management ideology where bureaucratic procedures and enhanced management outcomes are privileged over the normative and practical welfare of prisoners (see Feeley and Simon, 1992; Armstrong, 2018).

In the UK and in North America, rehabilitation, and an engagement with, if not practices around, the rights of prisoners have re-emerged (Armstrong, 2018). As Hannah-Moffat (2004), building the theorisations from Feeley and Simon (1992), notes, the re-emergence of rehabilitation in the noughties as a central goal in penal policy is less concerned with welfare and more concerned with the governance and resilience of the prison within what has been called the 'new penology'. In the new penology prisons play a central role in the delivery of accredited offending behaviour programmes. To be clear, I am not arguing here that punitive turns towards neo-liberalism (the new penology) are in evidence in Russia. The point here is that prisons, like all public institutions, are managed and operated according to multiple bureaucracies and political considerations. Especially over the last thirty years or so, a prison committed to compassionate care is unlikely to thrive in political environments where crime and punishment discourse is punitive and authoritarian:

'A prison climate which sees the inmate as unworthy of humane treatment, and in prison or punishment, will engage in that punishment where the opportunity arises - in staff brutality toward the well and the sick, and in using opportunities as they arise to punish the body' (Ross, 2013: 54).

Penal values, therefore, are reflective of not only legally sanctioned practices manoeuvred through the machinations of compliance bureaucracies, but also social and cultural conditions that modern penal institutions across the world now follow. Prompted by the double bind of human rights as a compliance system for *regimes*, and human rights as a *regulatory* system for prisoner welfare, my concern here is how human rights ultimately then are operationalised as an administrative exercise geared towards prison governance. This is especially the case in prisons in societies undergoing transition. The legitimacy of such criminal justice systems becomes contingent, in a large part, on the obligations to human rights norms and laws and the positive obligations inherent in a prisoner's right to life. However, this does not necessarily guarantee that institutional practices come to be embedded in a culture of rights (Armstrong,

2018). Where this is most acutely felt is in the kinds of societies where penal transitology is experienced because there is a whole host of specific management and legal challenges moving from one form and idea of punishment to the next, which often means that relational, embedded and prisoner focused welfare and rights is diminished by other considerations.

Prisoners then risk falling through a kind of sociological void; they become lost in the penal transitological process; become victims of the bureaucratic drama. These are not rival discourses (Murphy and Whitty, 2007) because all rights talk and practice, be it externally driven through political governance obligations or through prisoner well-being, are governed and delivered through the institutional objectives of the routine management of a prison organization. The operational decisions in prisons, in turn, reflect a coercive power that is unrivalled in any other social institution (Genders and Player, 2014). What is notable in the penal transitological framework is that in these slightly differentiated responses to human rights as organised around carceral compliance, norm adaptation and as risk, is that the structural and cultural relations and conditions that rest and settle in penal regimes have been, at best, re-directed to a less important concern for securing penal transition. Indeed, they can create conditions whereby penal reform and prisoners' rights can malfunction due to the perception of human rights as a bureaucratic and organizational risk (Pickering, 2014). This political strategy might work as a driver of compliance, but it diminishes collective, institutional, and cultural understandings of the prison as a site of intractable social and cultural conflict.

In summary, campaigns for prisoners' human rights are symbolic and expansive in their efforts to challenge prison standards, administrative decisions, and legal rules. The penal transitology framework illustrates how human rights in prisons are debated from multiple standpoints and framed differently to include: their legal status and effects on law (Daems and Robert, 2017)), their framing as part of a struggle for equality and fairness (Snacken, 2010)

and their dominant influence in societies formerly marked by atrocity and the absence of the rule of law (Cliquennois *et. al,* 2022).

Prisoners' rights in Russia have evolved in a complex penal transitological context that has brought Russia closer politically, culturally and – crucially - penologically to its European neighbours. Consequently, for twenty-five years, penal reform in Russia has been constructed almost entirely from legal discourse but benefitted too from fluctuations in civil society and the power of and prestige of key NGO players. As the penal transitology framework illustrates, when prisoners' rights are constructed as entitlements overseen by law, this is embedded in norm adaptation, and conformance as risk management is the outcome, because it secures human rights compliance. A key question is, how are those held in prison caught up in the powerful crosscurrent - the drama - of rights and penal power and what are the consequences of this in a culture where both compliance and human degradation are acutely felt. Moreover, what does this reveal about where the levers of power lie in the geo-politics of carcerality in this region?

Conclusion

It is important to note that while research into the administration and experience of prisoners' rights, from the perspective of those held in custody, is under-researched in prison sociology, by contrast, law scholars have been talking about prisoners' rights for decades, securing ways of thinking and talking about punishment in prisons to capture national accountability and 'penal enthusiasm' (Loader, 2010: 352)[16]. Hannah-Moffat (2004) argues further that the carceral-legal framing of rights *disguises punishment* and may even enhance penal power through the processes that lead to norm conformance outlined earlier. This is because rights

[16] See Appleton, (2015); Behan, (2014); Johnson, (2011); Van zyl Smit and Snacken, (2013) for a more nuanced socio-legal discussion of prisoners' rights.

discourse is part of penal governmentality that leaves the institutional dynamics of incarceration intact. The effect of this is that understandings of how rights come to be spatially and temporally organised, and culturally and politically framed, can remain hidden. Moreover, the institutional and cultural power of imprisonment as a high-risk space is structurally framed in ways that can override rights claims. A human rights lens, therefore, can be valuable for interrogating questions around the cultural meaning of human rights in prisons, penal exceptionality, and the question of commonality between punishment systems.

The focus of this paper is to contribute to the absence of sociological debates on human rights in penal culture. In focussing on the legality and penal power nexus as at the centre of Russia's penal reform journey, I argue that the varying ways that multi-disciplinary discourses around rights are framed in the penal transitological framework are circular and very important because they reveal a cycle of socio-political pressures: obligation over dialogue and political alignment over a cultural debate about the role of the prison in society. Simultaneously, while penal change is operationalised by legal-institutional processes, nevertheless, human rights law gives a rare glimpse of daily life in prison regimes and the contested spaces where a grievance, a complaint and an abuse can be – and should be – discussed.

Penal transitology is presented as a framework of a visible bureaucracy of rights mobilisation; a bureaucratic drama of institutional regulation, a churn of procedural monitoring, regime regulation, adherence to legal obligations, norm conformance, carceral compliance and new public and private audiences to which penal bureaucracy must speak (see Feeley and Swearingen, 2003). It is the geo-political space where politics and penality meet and mesh to produce spikes in foreign policy and international relations, between the East and the West, between standards and double standards and the utilisation of compliance laws to usefully shame regimes into making life better for people held in penal establishments. While there are important points of connection and overlap across all the facets of the penal

transitological process, the turn towards *securing* human rights discourse also *secures* the prison (see Armstrong, 2018), which in Russia means securing an internationally compliant regime. Juxtaposed along-side human rights is the question of where and how prisoners express their everyday lives in prison. As the Navaln'y crisis illustrates, quite profoundly, the backward glances to Soviet penal forms are now so common in public discourse that they are implicated in the exercise of new forms of conservative power and control of Russia's resilient penal culture.

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