ICTY Evidence on Detention Sites: an Agenda for Comparative Research

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Outline

• Background
• ‘Camps’ or sites of detention in three historical contexts
• Violence and ethnic cleansing in three disciplinary perspectives
• ICTY cases and sites of detention
• The possibilities of comparison
• *Croat Republic of Herceg Bosna sites of detention and provisional comparison with Republika Srpska*
Background to study

Handle with Care: ICTY, juridical by-products and criminological analyses

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This paper starts with claims made for the potential historical value of the evidence gathered, presented and scrutinised in international criminal courts. Human Rights Watch claimed of the ICTY that “future generations will use the evidence to understand the region’s history”, while...
Documenting police violence (2016)

• Disarmament of non-Serb population
  • Accompanied with violence
  • Presented as a rationale for some forms of violence
  • Facilitates other violence

• Detention camps
  • Inhumane conditions (overcrowding, sanitation, nutrition)
  • Humiliation, denigration, beatings and killings

• Violent interrogations
• Violence during arrest and transportation
• Cooperation with military and paramilitary forces in attacks on settlements
• Massacres

A combination of killings, detention and harassment to rid the area of non-Serbs by elimination and by creating a hostile environment to promote mass population movements out of the region
The ‘camp’: Sites of detention

• As a site of atrocities in Krajina
• Detention as violence; the camp as a site of further violence
• ‘Sensitising’ historical review using secondary sources on camps
  • Fin de siècle colonial wars (Anglo-Boer War)
  • 20th century authoritarianism (Nazi Germany)
  • Late colonialism (UK in Kenya)
Fin de siècle colonial wars

- Anglo-Boer War (1899-1902)
- Cuban War of Independence (1895-1908)
- Philippine-American War (1899-1902)
- German-Herero Wars (1904-1908)

- Concentration of civilian population
  - Blocking support to guerrillas
  - Dealing with displacement
  - Punishment of population
  - Social and military control
  - Humanitarian claims

- Featuring
  - Improvisation, poor planning, negligence through to more active violence against detainees
Nazi-era Germany

• ‘Early camps’
  • Heterogeneous in substance and authority; improvised; Dachau as a link to later camps

• Development
  • from ‘brutal abuse’ and ‘terror’ to ‘unprecedented atrocity’ and ‘systematic destruction’

• Consolidation and systematisation 1934-1937

• Part of wider set of exclusionary activities

• ‘Marking’ enemy

• Economic role (expropriation and redistribution)
Late-British rule in Kenya

- ‘Emergency’ period in response to Mau Mau movement
- ‘Hanslope disclosure’ confirms Kenyan accounts
- 160,000-320,000 held in camps
- 1.5 million in ‘Emergency Villages’
- Up to 300,000 Kikuyu Kenyans unaccounted for in subsequent census
- Structural torture in a system of camps
- Denial, obstruction and accountability deficit
- Role of settlers with white supremacist ideology, integrated into formal structures
Orienting points: Sites of detention

• A site where coercion is used, under, or anticipating the support of a governing authority, in order to secure and maintain custody of a population perceived as enemy, suspect or to be excluded

• Descriptive questions
• Functions and system
• Process
• Innovation and templates for practice
• Authority
• Ideology
• Oversight and accountability
Perspectives on (ethnic) violence

• Malešević – The Rise of Organised Brutality
  Sociology, tracing long term interrelated changes in organisation, ideology and capacity for and legitimation of violence

• Bergholz – Violence as a Generative Force
  History, micro-level study of violence and restraint

• Bulutgil – The Roots of Ethnic Cleansing in Europe
  Political science, theorising internal power shifts between factions in states, and the role of territorial conflict in this
Malešević: Organisation, ideology & solidarity

- Longue durée account of the rise of violence as a social phenomenon
- Violent social action requires special legitimation
- Organisation as a cumulative process producing large, complex, hierarchic, bureaucratic organisations
- Centrifugal ideologisation – increasing in penetration, increasingly uncompromising
- Penetrating and utilising micro-solidarity networks
- Focus on state, but space for meso-level
Bergholz: A micro-history of violence

• Providing an ‘eventful analysis’ of escalating violence around Kulen Vakuf, July to September 1941
• Archives, memoirs, testimony – ‘close to the ground’
• Temporal and spatial differences in violence and restraint
• Prior (communist, cross-communal) organisational activity favours restraint
• Emotional stability
• Skills to counter ‘antagonistic collective categorisation’
• Structure and contingency in micro-events
Bulutgil: The politics of ethnic cleansing

• Statistical analysis of dominant/non-dominant ethnicity dyads and detailed case studies

• Social cleavages (e.g. class, urban/rural, secular/religious) divide a dominant ethnic group and increase cross-ethnic alliances
  • Socialism and secularism in Yugoslavia was successful at eradicating these cleavages

• Territorial conflict is particularly likely to upset the balance of dominance
Interim position

• Detention sites are mid-level organisational forms that provide a lens linking state or state-like authorities with the individuals who implement atrocity crimes.

• They bring together organisation, ideology, identity and individual in defined spatial and temporal limits that facilitate close, micro level study.

• Aim: to describe and explain violence in sites of detention and to situate the impact of the camps in the wider context of the war and related atrocity crimes.
ICTY evidence on detention sites*

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*Based on review of case info sheets and indictments at www.icty.org

# Includes 1 joint HRHB/ABiH camp (Konjic municipality)
Comparative potential

1. Intra-authority
   1. Intra-municipal
   2. Inter-municipal
   3. Clustered/regional
   
   *Keeping authority constant and comparing e.g. levels and forms of violence to identify (a) contribution of central leadership (b) local and contingent factors.*

2. Inter-authority but intra-ideology
   
   *Holding ideology constant, looking at different organisational forms, but also cross-fertilisation and learning.*

3. General inter-authority
   1. Intra-conflict
   2. Inter-conflict
   
   *Allowing differences in authority, ideology and organisation*
Current work

- Herzegovina detention sites under Croat Republic of Herceg Bosna Authority (HRHB)
- Naletilić & Martinović (Tuta & Stela)
  - 161 trial days (45)
  - 146 witnesses (41)
  - 1,485 exhibits (0)
  - 17k pages of testimony (c 4.5k)
• Municipalities coloured to show majority population group and degree of majority, 1991 census
• White municipalities have no majority
• Mostar
  • 34.6 Muslim
  • 34.0 Croat
  • 18.8 Serb
  • 12.5 Yugoslav/Other

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Provisional 1: HRHB sites of detention

• Main sites covered so far are Mostar Heliodrom, Ljubuški prison, and Siroki Brijeg police station and tobacco factory (16 others mentioned)

• Relative to number of detainees, more violence at Siroki Brijeg (base of one particular military unit)

• Heliodrom as a significant military base, guarded by Military Police

• Detainees taken out of Heliodrom for forced labour, including in military roles

• Role of international oversight in known sites
Provisional 2: HRHB compared to Republika Srpska

• Qualitative and quantitative difference in violence in sites identified in HRHB and RS (specifically Krajina), the latter being more:
  • Frequent, widespread, brutal and lethal
  • While being less limited to particular sub-units

• Questions for further research:
  • How do the belligerents compare in capture of disintegrating Yugoslav organisational and coercive capacity?
  • Do factors in Republika Srpska favour a more coherent organisation and ideology?
Provisional 3: Link to theory

• Organisations create capacity for violence, but specific configurations of organisation, ideology and micro-solidarity may release that violence in particular ways, thus intra-organisational differences are important.

• Sub-units may be configured in ways which cut out actors likely to encourage restraint.

• The impact of different timescales for the salience of ethnic difference needs further attention (e.g. early Croat/Muslim alliance in face of Serbs).
Upcoming event (March 7-8, 2019)

• Full day symposium (7th, 0830-1630) on using legal archives, testimony and other material traces of law in social science and socio-legal research and half day workshop (8th, morning)

Full programme out soon!
Key reference materials

• Andy Aitchison*/Aydin-Aitchison**
  • ‘ICTY evidence on detention sites: an agenda for comparative research (SSRN working paper, 2018) [http://ssrn.com/abstract=3278827]**

• Other works
  • Bergholz, M. Violence as a Generative Force: Identity, Nationalism, and Memory in a Balkan Community (Cornell University Press, 2016)
  • Bulutgil, H.Z. The Roots of Ethnic Cleansing in Europe (Cambridge University Press, 2016)
Review materials

- **On Fin de Siècle colonial conflicts and more generally**

- **On Germany**

- **Cont.**
Review materials

- On Kenya

- Cont.
  - Ndiki Mutua and Others v Foreign and Commonwealth Office (2012) EWHC 2678 QB.