A Case from Guatemala I

Situation: In August, 2004, local indigenous authorities ('The 48 Cantons') and the District Prosecutor, the Police and the Local Tribunals sign an agreement to strengthen cooperation in investigating crime and respect each others jurisdictions in the province of Totonicapán.

In 2011, the agreement is still not respected and mostly unknown by staff in all the above institutions. Guatemala is party to all relevant international law in question (ILO 169/1989, ICCPR, IACtHR, etc ...)

Possible legal problems / topics for legal research:

Possible historical or social science-defined research questions and how to do it:

Why the impasse? Four hypotheses:
- Conceptual distance (transgression as disruption v transgression as crime)
- Contrasting practices (repairing relaitions v punishing perpetrators following national prosecution manuals)
- Asymmetric power relations
- Lack of incentives inside partner institutions

A Case from Guatemala II

Interpretation of situation varies with choice of contextual frame:

➢ - (ethnicity as frame:) a 'plural' or 'multiethnic' state, a result of colonialism, a case of indigenous peoples in a nation-state

➢ - (social conflict:) a peace process, a case of transitional justice, of nation-building, modernisation, globalisation, etc.

- Applying ethnicity and 'indigeneity' as frames highlights the cultural aspects of state building

- Applying the social conflict frame highlights the economic and political aspects of state building and the role of power asymmetries

The Maya community is 'dual': both Maya and Guatemalan

The view from below/building selves: how residents become 'the children of the community' by acquiring respectability (performing community service etc.)

A Case from Guatemala III

The view from above and at the boundary: residents are citizens, peasants or Indians now fast becoming ethnicised as Mayan citizens

> ➤ - before: incorporation through colonialism
> ➤ - now: incorporation through development and modernity

The role of human rights:

> ➤ - group rights empower community authority against state authority
> ➤ - individual rights force social change

Human rights: a device for creating republican nation-states?

HR Research in the Social Sciences: Fundamental Problems

- Disagreement about philosophical status; but as an object of inquiry HR is comparable to 'democracy' and 'development'

- What is 'causality'?

- Few, if any, general rules or 'laws' in the social sciences because its 'facts' are normative rather than empirical; 'social' or 'institutional' rather than 'brute' or 'natural', the social sciences deal with cultural rather than natural phenomena

- Human behaviour is social behaviour: Understandable rather than explainable

- Choice of method: Qualitative or quantitative?

- Uncovering causes , (re-)constructing meaning

HR Research in the Social Sciences: Fundamental Problems

- Landman: The evidentiary base of HR: human rights practices
- Any social action or behaviour with an impact on the enjoyment of individual or collective rights, positive or negative, across all human rights categories and fields
- Categories:
  - Civil/political
  - Economic / social / cultural
  - Solidarity
- Dimensions.
  - Negative: (reporting and discussing) violations
  - Positive: (designing and promoting) policies

HR Research in the Social Sciences

- Exercise: explain the fact of a signpost 'no swimming; drinking water'
  - Physical cause: impact of a sledgehammer
  - Social 'cause':
    - worker's action
    - political decision
  - Cultural 'cause':
    - informing the public
    - discourse of bacteriological contamination

  - Rational choice / realism / economic modelling
  - Structuralism
  - Culturalism / meaning

Cause or correlation?

- Beyond Correlation: Dessler's discussion of the epistemological limitations of the 'Causes of War' project

- Classes of 'facts': existential, correlational, explanatory

- Correlates of thunderstorms: cold fronts, solar heating, mountains
- Correlates of war: borders, arms races, power concentration
- What sort of 'facts'?
  - Natural facts, embedded in natural laws
  - Social facts, embedded in meaning

- What sort of relations?
- Causes are generative mechanisms; can be deduced from general laws
- Correlations are ...

- The behavioural turn (positivism)
- The interpretative turn (post-modernism)

Explanation vs understanding?

- Window Logic: Trachtenberg's question-led method of historical inquiry

- Classes of 'facts': natural and social facts (Searle)

- Positivist history (Hempel): Events as instances of general law (all is structure)
- Idealistic history (Collingwood): History writing is the reenactment of original reasoning (all is agency)
- Constructivist history (White): Writing history is a poetic act (all is invention)

- Neither objectivism nor subjectivism: there is a reality, it is possible to communicate our representations of it

- History the product of strategic considerations, Pearl Harbour a window of opportunity

- The 'element of necessity'; the logic that links the general with the specific

HR Research in the Social Sciences

- Rationalism (rational choice, realism, positivism)
  - mimicks physics (or engineering) by proposing experimental models
  - behaviour is reduced to observable, identical and countable units, causal models are proposed, alternative explanations are falsified or verified
  - tends to stress individual agency (at the cost of social constraints)
  - a common variety is game theory

- Structuralism
  - observable behaviour seen as a manifestation of deep structures ('cultural patterns', 'historical laws', etc.)
  - tends to stress institutional relations and social constraints (at the cost of individual agency)

- Culturalism
  - focusses on what behaviour means; i.e., human behaviour seen as 'symbolic action'
  - tends to stress equilibrium and stability (at the cost of change and dynamism)

HR Research in the Social Sciences

Uses of torture in prisons

Rational choice: observable as a repeatable mechanism

(individual strategic action)

Structuralism: Indirectly observable through quantification,
(institutionally shaped action)

Culturalism: indirectly recognised through interpretation

(symbolic aspect of action)

Anthropological Method

- Ekern: discussing the limitations of framing 'extrajudicial killings' as such in a civil war
  - When classified in HR terms, an act of violence will be read as state violence (or state omission) and the state held responsible
  - When classified locally, it cane be read as a family feud, a case of settling scores. Human rights becomes an alien discourse
- Stripped-down, neutral texts will inevitably be restored with context from the reader's world
- Kidder: how to discuss 'conflict' and 'law' in 'law-avoiding societies'?
  - The Amish: no conflict, just misunderstanding created by 'hochmut' (hybris)
  - Japan: shame as a regulatory mechanism (in contrast to court disputes)
- Beware of conflict statistics!