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BOOK REVIEW

Appealing to Justice: Prisoner Grievances, Rights and Carceral Logic. By Kitty Calavita and Valerie Jenness (University of California Press, 2015, 247pp. $34.95)

Among the many puzzles raised by current levels and styles of US incarceration is the fact that the prison system gained its enormous size over the same time period in which civil rights expanded in American law. Scholars have explained this puzzle by tracing how opponents of civil rights galvanized a powerful counterattack by shifting focus to matters of crime and punishment. When the civil rights countermovement combined in the early 1970s with rising crime rates, the stage was set for an incarceration surge. Under this view, liberalizing civil rights and more repressive forms of social control are not 'independent trajectories' but, rather, 'part of the same political stream' (Weaver 2007: 231). Such large-scale explanatory theories focus on how events in the non-prison context converged to create the current scale of the prison system. Until *Appealing to Justice*, no account had so masterfully traced the unfolding of this discordant pair—rights consciousness and punitive severity—inside the prison itself.

Leading law and society scholars Kitty Calavita and Valerie Jenness have conducted a study of the California prisoner grievance system. First implemented in California in 1973 at the height of the prisoners' rights movement, grievance systems are mechanisms internal to the prison designed to receive and address prisoner complaints about all aspects of prison life. The authors were given unprecedented access to both prisoners and California Department of Corrections and Rehabilitation (CDCR) officials, along with hundreds of written prisoner grievances and decisions rendered by prison officials in 2005–06 at four levels of review. Calavita and Jenness use the grievances partly to conduct a form of prison ethnography. The written claims disclose a rich portrait of prison food, medical care, staff conduct, physical safety, cell assignments, disciplinary action, visitation procedures, and—a topic vital to prisoners, which outsiders often fail to grasp—the 'chaos of transfers and missing property' (p. 2). In an era when access problems have contributed to a decline in prison ethnography (Simon 2000), this single aspect of the book is a valuable contribution to our knowledge of the prisoner society, conditions of confinement and operational realities in the California prison system.

But there is a deeper question that motivates this study, namely how the grievance process can shed light on the 'nature of disputing in an extremely hierarchical setting' (p. 2). Here, Calavita and Jenness position the book as a twist on a standard literature that emphasizes the barriers and hesitations that vulnerable or self-blaming populations face in asserting legal claims. Rather than shying away from asserting legal rights and utilizing a system that is partly responsible for their current status, time and again the prisoners interviewed expressed a 'profound faith in law and evidence' (p. 2). The study's data confirm a high rate of prisoner filings. Faith in the grievance process is somewhat peculiar given the near-total absence of fully vindicated claims, but the authors explain that law is highly salient in the prison context; this is a total institution

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where 'law is a hyper-visible organizing force' (p. 20). Notwithstanding that few complaints succeed, the presence of the grievance system animates the rights consciousness of those residing in penal institutions. Inmates referred constantly in their interviews to Title 15 of the California Code of Regulations—the section that regulates every aspect of prison and prisoners' entitlements. Only one prisoner expressed a more sceptical view: that Title 15 is not enforceable law but mere guidelines, to be interpreted 'any way you want[.] … And inmates think they've got some powerful tool. They don't' (p. 90).

Puzzling attitudes abound on the other side of the system as well. The authors discovered that while CDCR staff regularly deride prisoners who make use of the grievance system as 'narcissists' and 'whiners', they simultaneously hold firm that the system accords an important right to prisoners and that it performs an important safety function by allowing prisoners to 'vent'. Over the course of a single interview, one official was at first emphatic that prisoners have a legitimate right to file complaints about any aspect of their prison experience, only to then opine that the only prisoners who make use of the system are those who refuse to take responsibility for their criminal offences. The actual substance of decisions is not examined until the final Chapter 7, when we discover the ease with which claims are rejected and appeals denied through modes of decision-making that the authors properly code as 'legalistic' and 'bureaucratic'. With rare and narrow exception—and even when troubling substantive issues are depicted in the prisoner submission—most claims are dismissed by way of mechanical and often irrelevant recitations of law and policy.

The material in Chapter 7 underscores the scandal of Congress and courts delegating the resolution of even constitutional issues to the prisoner grievance system. As Calavita and Jenness explain and as many US legal scholars have lamented, the Prisoner Litigation Reform Act of 1996 requires prisoners to exhaust internal grievance systems before gaining access to federal courts, even where the topic is one of constitutional concern. At first blush, such a rule reasonably aims to ensure that prisoners are given a more accessible forum to resolve issues, before bothering judges. Moreover, exhaustion requirements are a standard feature of the field of administrative law—the rule is not limited to prisons. But the question is whether such a rule makes sense for the prison context, given the importance of legal compliance and external oversight in a setting where the excessive control and neglect of human beings is an ever-present risk. And while the Act's purpose may have been to ensure that administrative remedies are utilized before prisoners take up judicial time, the law has been interpreted in ways that extend far beyond that purpose, including to permanently bar claims if prisoners make any procedural errors along the way (Schlanger 2003; Shay 2012).

A comparative perspective highlights the significance of the book and calls for similar studies to be undertaken elsewhere. In 1992, Canada passed new legislation, the Corrections and Conditional Release Act, which includes a mandate that inmates have access to a fair and expeditious internal grievance procedure. Much like the CDCR system that Calavita and Jenness describe, inmates in federal Canadian prisons are able to pursue complaints up successive administrative rungs so that supervisors are reviewing the actions of their subordinates. Initially, the new grievance system was widely considered to be a progressive reform. But the system was soon marked by excessive delay and frustration, with many claims rejected in decisions that parroted prison law and policy without substantive engagement with the issues underlying complaints. In decisions that would scandalize law and society scholars, decision-makers with no legal training

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would often point to the presence of law or policy on the books as a way to deny the truth of claims alleging violations of that same law or policy on the ground. Even successful complaints generated few enforceable remedies and the process could do little to reform legislation and policy that was itself inadequate.

Before long, the Canadian government took the position that the presence of the grievance system justified narrowing prisoner access to judicial review. In 2005, the Supreme Court of Canada had to decide whether the grievance system was a 'complete, comprehensive and expert procedure' such that it could justify barring federal prisoners' traditional access to raise 'grievable' issues through *habeas corpus* in the courts (May v. Ferndale 2005, para. 59–60). In rejecting that proposition, the Court emphasized several flaws in the system. First, the grievance system prescribes the review of decisions made by prison authorities by other prison authorities. In cases where the legality of a prison policy is contested, it could not be reasonably expected that the decision-maker, who is subordinate to the policy-making function, could fairly and impartially decide the issue. Second, there were no articulated grounds upon which grievances could be reviewed, and the system could grant few meaningful remedies and had no ability to award financial compensation. Finally, even successful decisions were not legally enforceable like a judicial decision. In view of these structural weaknesses, the Supreme Court concluded that it could not justify altering the powers of Canadian courts to hear *habeas corpus* complaints in favour of the grievance system (though for most non-constitutional complaints, Canadian prisoners must continue to exhaust the grievance process prior to seeking judicial review). Much of the value of *Appealing to Justice* is in the first-hand attitudinal accounts that confirm these structural shortcomings of an internal complaint system that lacks both independence and expertise. The Supreme Court of Canada was able to deduce these features from the design of the system, but did so without the benefit of a jurisdiction-specific account like the one offered about California in *Appealing to Justice*, which could enrich legal analysis when such issues arise again.

One concern about the book relates to how the authors seem to take the prisoner grievance system too seriously, at times, as a system of law. Relatedly, they too easily conceptualize prison employees who render largely perfunctory decisions as legal actors. The authors even borrow from Robert Cover's powerful account of how judges deploy particular legal justifications as a way to minimize and avoid the moral stakes of their decisions (pp. 119–20 and pp. 151–2). But as Calavita and Jenness teach us, the reality of these prison 'decision-makers' is that 78.3 per cent of them receive no specific training to do work related to inmate appeals (p. 148). The lack of even a basic 'legal' orientation is manifest in the ethical attitudes, modes of reasoning and techniques of resolution reported throughout the book.

As just one example, officials are not shy to describe how they respond when an inmate appeal raises an issue of credibility. They describe their task as "simple" and "black-and-white" (p. 119). That description is apt: they simply accept the facts advanced by prison staff over any prisoner, on the grounds that staff are peace officers sworn to tell the truth. In this and myriad other ways, these are not judicial or even legal actors, and this is not a court. The authors are too generous when they analyze these decisions by referring to how 'legal practitioners' always 'struggle' to impose the 'rigid boundaries of law on the infinite variety and complexity of human social life' (p. 162). That struggle is, at least officially, part of the legal system, but there is no such struggle here.

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Officials allude only superficially and strategically to a 'legal' mode of decision-making. As Calavita and Jenness admit in their Conclusion, the prisoner grievance process is 'hardly a contest in the usual sense, as the parameters, rules, and outcomes are dictated by the CDCR' (p. 186). Given the absence of legal training and legal reasoning, perhaps we should hesitate before dignifying the processing of inmate complaints in California as a system of law staffed by legal practitioners. The promise of the book is rather to demonstrate how the prison grievance system fails, in almost every respect, to be law-like.

This one point of concern does not detract from the fascinating questions and substantial research at the heart of this highly original book: how prisoners regularly utilize a largely hopeless system, how prison officials both endorse and disparage it, how prisoners and officials alike express empathy for one another while endorsing the logic of carceral institutions, and what these complaints reveal about the meaning of a prison sentence in California's age of mass incarceration.

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