



The Meaning of Justice

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REFLECTIONS

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Justice, Power & Resistance

In the 'reflections' section in volume 1 of the journal we provide brief, but focussed, discussions of the ideas of 'justice', 'power' and 'resistance'. In this issue we consider the meaning of justice, drawing upon the insights of critical criminologists, most notably Barbara Hudson.

Justice is not law

The idea of justice is often defined by the State and presented to the general public as if it can be delivered by the courts. Reference is made to the 'Royal Courts of Justice' in the UK and to the 'European Court of Justice' in the European Union. Yet, it is important to recognise that the assumption that justice can be achieved by the criminal law is highly problematic. Firstly, criminal law can only provide redress or 'justice' for those acts which it expressly prohibits. As critical criminologists have long pointed out, this excludes many harms which may in practice lead to significant injustice. For instance, criminal law fails to provide adequate means of redressing the daily harms inflicted by large corporations or indeed by the State itself. Secondly, an assumption that criminal law is a vehicle for justice blinds us to the *injustices* which it may cause. It fails to understand that the application of the law may serve to compound a whole host of social injustices on account of the fact that it is used disproportionately against the most disadvantaged members of our society. Despite attempts by the courts and the institutions of the State to respect procedural safeguards, there is much evidence to suggest that these are inadequate to ensure the 'just' application of the law. Criminal law manifestly fails to provide substantive justice whereby outcomes are the same for all sectors of society: it continues to disproportionately target ethnic minority groups, the mentally-ill, the poor, the emotionally-damaged and the under-educated.

Another problem with conflating criminal law and justice is the tendency to assume that formal punishment achieves justice. Barbara Hudson took the

principled stance that punishment can never lead to justice. In *Justice Through Punishment* Hudson (1987) critically explored one of the most influential attempts to couple together 'punishment and justice': 'just deserts' sentencing. Predicated on the assumption that all are equal under the law, the justice model reflected a retributive logic that justice would be done if law breakers were punished exactly according to what they deserved. Barbara Hudson identified that in reality 'just deserts' was neither fair nor humane, failing both in *philosophy* and *practice*. Philosophically, the ideals of justice deserts were compromised in two ways. First, they failed to adequately take account of existing structural divisions, inequitable power relations, and social injustices. Indeed, to talk of dishing out desert exclusively through the criminal law in contemporary societies is illusory. To be sure, where rewards are unevenly distributed in society, so inevitably are obligations and responsibilities (Scott, 2015). Rather than deliver justice, 'just deserts' simply renders invisible the very real human costs of economic and social inequalities. As discretion and discriminatory stereotyping continue to operate across the criminal process, just deserts 'freezes in' (Hudson, 1987: 114) rather than 'magically eliminates' injustice. Second, through its focus on the act of 'crime' just deserts became a 'dehumanising ideology' (Ibid:166), leading to abstractions, reification and inadequate reflections of humanity. Given the complexity and diversity of human life, a more holistic analysis is clearly required.

Justice Beyond Law

Real justice can only be achieved by thinking outside the narrow framework of criminal law to deliver substantive justice. This entails adopting a broad conception of justice. Justice cannot have a legal dimension alone but must include moral and political dimensions, capable of grappling with questions concerning the delivery of social justice. Such a conception of justice must be founded on substantive equality: all members of a given society must not only share the same procedural rights but also the same rights to access the social and material benefits of that society. Yet, it is necessary to move beyond a Rawlsian theory of justice which suggests that mere equality of opportunity is sufficient to guarantee substantive justice (Rawls, 1971). We ought to be concerned by injustice, by unequal outcomes that may result regardless of equal chances. This concern cannot be limited to injustices caused by breach of the law but more broadly to a certain state of affairs with which we disagree (Wolgast, 1987).

We should be concerned by the criminal injustice which results when laws compound existing social divisions and inflict violence and suffering, as well as with social injustice concerning issues of income, wealth, property ownership, race, gender, sexuality and environmental and ecological harms. It is therefore essential to recognise that there is no single, universalistic notion of justice. For some feminists, for instance, the abstract and universalistic reasoning of 'justice' should be exposed as being a profoundly masculine form of logic. For Barbara Hudson (2011) feminine logic is relational, situational and interested in solving problems and promoting an 'ethic of care'. Rather than focus on 'equality before a universal law', feminists recognise that human subjects are not 'unencumbered selves' but instead each one of us has an individualised biography shaped by contexts and contingencies. All human beings have a socially 'situated self'. In other words, though never fully constituted by our life worlds, we all have different subjectivities reflecting our specific social backgrounds and lived experiences. We therefore all have very different ideas about justice.

Critical criminology and the European Group have long grappled with the idea of justice, proposing revised conceptions beyond the structures of formal legal procedures.

Transformative Justice

Seeking to respond to concerns that disputes had been effectively 'stolen' from both offenders and victims by state institutions (Christie, 1977), critical criminologists propose to restore powers of resolution to the parties affected by the conflict (Braithwaite, 1989). Rather than the State playing a leading role in defining justice, victims and offenders are encouraged to find a solution that they both perceive as being 'just', capable of restoring (as far as possible) the situation of the victim prior to the dispute. Restorative justice is intended to encourage dialogue and understanding, placing offending behaviour in its broader context but the focus remains on the harmful act and on the offender's responsibility to repair the harm caused by that act (Hudson, 2003).

Transformative justice, on the contrary, locates conflict handling within wider social contexts and seeks not only to repair harm done but to tackle the underlying problems that lead to harm in the first place. As Barak has put it:

Transformative justice is about dealing with both the injustice of being victimised and with the injustice of distributive justice [P]olicies of non-violence are called for that seek to transform the dominant

practices of our penal-justice systems and of the larger systems of distributive injustice throughout society (Barak, 2003:323).

The aim is to go beyond restorative justice to favour a holistic approach that prioritises policies and programmes that include interaction between all levels of society, from the macro- to the micro-level (Milanovic, 2014:167). The aim is thus to challenge problems on a structural level as well as attempt to help those who have experienced interpersonal harms (Harris, 2006). This entails adopting a broader notion of the victim, recognising that those who perpetrate harms may also be the victims of social harms themselves. Such an approach has the potential to open new dialogue about the nature of conflict and the meaning of harms, connecting with lived experiences of people in communities. The key principles of transformative justice are summarised below by Dragan Milanovic (2014:199):

The first is *recognition*, a reversal of practices of misrecognition leading to exclusion, and it has two expressions: *affirmative recognition*, although recognising harms of reduction, recognition does not go as far as recognising institutional forms of harms; *transformative recognition* goes further to challenge cultural and symbolic forms. The second is *redistribution*, a reversing of economic injustices that lead to disenfranchisement and marginality. It has two forms: *affirmative recognition* deals with superficial compensatory actions; *transformative recognition* concerns addressing institutional-wide economic forms of diminishment and exploitation. Third is representation, which concerns voice provided for the otherwise disenfranchised, and their two forms are: *affirmative representation* which merely provides minimal voice representation and stops short of system challenging; and *transformative representation* which gives opportunities for voice to all members.

In practice, this means; recognising the harms of institutions, corporations and the state, notably the harms of power and violations of human dignity; ensuring that personal and structural transformation go hand in hand (Sullivan and Tifft, 2005); and giving marginalised individuals and communities the tools to handle conflict and work towards new forms of organisation based upon meeting human needs (ibid.).

Cosmopolitan Justice

Whilst transformative justice seeks to go beyond the individual to look at the wider social context in which harm occurs, cosmopolitan (or global) justice aims to go beyond the nation state to develop a concept of justice that applies to *all* by the simple fact of being human. It is justice shaped by the demands of the Other – it is a way of conceiving justice as alterity. Justice as alterity demands that we meet the Other without violence and seek to understand him/her. It essentially translates into *love of the other*. In terms of slogans, whilst equality, liberty and fraternity still pertain, we could perhaps articulate them today in terms of recognition and respect for irreducible differences; freedom from dominance and oppression of the majority; and solidarity with, and responsibility for, sufferers. In short, this is not too far removed from the old (and academically old-fashioned) socialist ideas of the *love of humanity* and social justice (Scott, 2015). Indeed, the personal ethical demands of ‘responsibility for the other’ would be impossible without radical egalitarian transformations at a political level. In this sense, cosmopolitan justice overlaps with transformative justice.

For Barbara Hudson (2011), our responsibilities to other humans stretch way beyond our close family, friends and community to also include the ‘stranger’, ‘outcast’ and others not known to us directly or sharing similar characteristics or social backgrounds:

For me, cosmopolitan justice... takes into account the outcast, the impoverished, the homeless and stateless, the person without possessions and without membership of a state or society. Cosmopolitan justice responds to the powerless, the non-citizen, to members of excluded and subordinate groups, to the deviant and the different. (Hudson, 2011:119)

We must learn to accept differences, acknowledge the existence of the stranger, but also to recognise that we share common humanity. It is important that instead of focussing on the ‘enemies within’, we should look to find new suitable friends. Of particular pertinence in a contemporary context was her exhortation to provide safety and sanctuary for migrants and asylum seekers, emphasising their right to be ‘met with non-violence’. Deprived of both security and justice, she considered migrant as especially vulnerable to injustice: dehumanisation, monsterring and state detention. Indeed, far too often, in the real rather than the theoretical world, the response to the presence of the stranger – the

application for entry, the beggar, the disorderly and disreputable – is to confine them, to segregate them, or to exclude them altogether. The penal apparatus of the capitalist state – such as prisons and detention centres – demonstrate the ‘refusal of hospitality’ and the desire to avoid encounters with strangers, rather than respond to their needs (Ibid:120).

Both transformative and cosmopolitan justice have a utopian element. As Hudson has underlined (2003), justice is ‘aspirational’ since there will always be a gap between law and justice. Indeed, justice is *à venir*, ‘to come’, as the law, deconstructed to reveal its principal function of maintaining existing power relations, often fails to uphold justice (Derrida, 1989). Whereas law is characterised by hierarchies of power, inflexible rules and violence, justice should be shaped by equal respect and non-hierarchical relationships. In order to realise justice, to make it a *real* utopia (Wright, 2010 – see also Bell and Scott, 2016), it is therefore essential to develop a broad-based notion of justice based on several normative principles which challenge the power relations inherent in formal legal procedures. For Barbara Hudson, justice must be:

- *Relational* – it must take account of relationships between individuals, groups and communities;
- *Discursive* – it must allow claims and counter-claims, critiques and defences of existing values to be weighed against each other in undominated discourse;
- *Plurivocal* – it must recognise and hear the different voices of the plurality of identities and social groups that must have their claims met and find ways of living together, in radically pluralist contemporary societies;
- *Rights regarding* – justice involves defending the rights of individuals and of communities;
- *Reflective* – justice must flow from consideration of the particulars of the individual case rather than subsuming unique circumstances under general categories (Hudson, 2003:206).

Only then can ‘justice’ be truly ‘just’ and actually exist as opposed to being ‘to come’. Delivering justice automatically entails challenging power and the unjust power relations on which it is based (Hudson, 2003; Scott, 2013). In future volumes of this journal we hope to encourage further reflections on the meaning of ‘justice’ and how this connects with the insights of critical criminology and the core values and principles of the *European Group for the Study of Deviance and Social Control*.

References

- Barak, G. (2003) *Violence and Non-violence* London: Sage
- Bell, E. and Scott, D. (eds) *Justice, Power and Resistance: Non Penal Real Utopias* Foundation Volume, September 2016
- Braithwaite, J. (1989) *Crime, Shame and Reintegration* Cambridge: Cambridge University Press.
- Christie, N. (1977) 'Conflicts as Property' in *British Journal of Criminology* Volume 17, N° 1 pp 1-15
- Derrida, J. (1989) 'Force of Law', tr. Mary Quaintance in *Deconstruction and the Possibility of Justice*, Cornell, D., Rosenfeld, M. and Carlson, D. (eds) New York: Routledge
- Harris, K. (2006) 'Transformative justice: the transformation of restorative justice' in Sullivan, D. and Tiftt, L. (eds) (2006) *Handbook of Restorative Justice* London: Routledge
- Hudson, B.A. (1987) *Justice Through Punishment* London: Macmillan
- Hudson, B.A. (2003) *Justice in the Risk Society* London: Sage
- Hudson, B.A. (2011) "All the People in All the World: A cosmopolitan perspective on migration and torture" in Baillet, C, & Franko-Aas, K. (eds)(2011) *Cosmopolitan Justice and its Discontents* London: Routledge
- Milovanovic, D. (2014) *Quantum Holographic Criminology* Durham: Carolina Academic Press
- Rawls, J. (1971) *A Theory of Justice* Harvard: Harvard University Press
- Scott, D. (2013) "Rehumanising the Other and the meaning of Justice: An essay on the contribution of Barbara Hudson" *European Group Newsletter* November 2013
- Scott, D. (2015) 'Against criminal injustice, for social justice' in *European Group Newsletter* May 2015
- Sullivan, D. and Tiftt, L. (2005) *Restorative Justice* New York: Willow Tree Press
- Wolgast, E. (1987) *The Grammar of Justice* New York: Cornell University Press
- Wright, E.O (2010) *Envisioning a Real Utopia* Cambridge: Polity Press