

Afterword: Justice in Modernity¹

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Here she is: Lady Justice. We can find her at the entrances of many courts and she can also be found in sculptures or paintings. She carries the scales of justice and, being blindfolded, she is free from any undue influence or distraction. She communicates important symbolic messages. And, once inside the court, more is to follow. With some luck, we might find the room for the proceedings and also a seat. We may even feel able to relax for a while in this 'foreign territory' until the door in front of us opens and the judge(s) enter(s) often in colourful gowns. We all stand up. When the judge(s) are seated, we too can sit down again. A ceremony of grandeur: they, above us all.

Once upon a time much of this was highly needed. And it still is, in some settings. When *The Emperor* and those close to

¹ Thanks to Hedda Giertsen (Oslo) for inspiration and useful comments, and also to Sebastian Scheerer (Bremen) for important clarifications.

him where all mighty, Lady Justice was essential to settle any conflicts that might emerge between them. This was also the case when the bourgeoisie gained influence. But now?

Welfare states have emerged and consolidated in large parts of Europe. Such states claim they are there to satisfy the needs of *all* citizens and especially those in need of welfare in all situations. But, and this is the simple question that I wish to raise here, has Lady Justice seen to it that similar universal welfare ideals prevail within the penal institutions? May be it is timely to move Lady Justice for a while? From the entrances of the courts to the gates of some of our major prisons?

New equipment for Lady Justice

But if Lady Justice were to be moved to the gates of prisons, we would have to equip her differently. In particular, we would need to remove her blindfold in order that she could see what sort of people were entering the prisons. She would soon observe that those arriving as prisoners were nearly all from the same social class and enduring poverty at the bottom of society.

Study after study of prison populations in modern western societies persistently produce similar results and conclusions, aptly communicated in the title of a recent postgraduate thesis: 'Too much of nothing' (Thorsen 2010). Too much of unemployment, too much of divorce and absent family-ties, too much of miserable housing conditions. And, we might add, too much of minority ethnic status. Loïc Wacquant (2009) captures such phenomena succinctly with the title of his book: 'Punishing the Poor'.

This has, of course, always characterised modern penal practices. The rich and powerful operate with relative

impunity whilst the poor and miserable are routinely held to account. Paradoxically this is especially accentuated in societies that claim to be 'welfare' states: 'more pain to the poor!' Not the most attractive banner for the penal systems of welfare states!

As noted, such states are supposed to provide welfare for all but their penal systems represent an anachronism; in paying insufficient attention to the primary significance of social class. In particular, poverty is typically overlooked in any deliberations concerning mitigating factors when punishment is dispensed. The notion that you don't hit a person who is already down is deeply embedded in our moral sensibilities. But such thinking and, welfare discourse more broadly, has been excluded from the courts and penal institutions.

Standing at the prison gates Lady Justice might also have to lay down another piece of equipment? Surrounded by prison guards she would have no need for her sword in her right hand. Instead she might take hold of a microphone to report on her findings: 'they are poor and miserable and this ought to form a major consideration if they are sentenced to receive even more pain'.

Given this, how might penal policy and practice be reformulated in welfare states worth the name?

My basic response to this question is: let us invite welfare into the court when punishment is to be decided upon. Many among those awaiting sentence have had a miserable life from the very beginning and 'witnesses' might be invited to submit 'evidence': school friends and teachers, family members of all sorts, not least favourite aunts. Furthermore, functionaries from the range of welfare agencies might be expected to explain their negligence. If the 'offender' lived on the street and was without work, for example, why was

his/her housing situation and unemployment not put right? How could s/he have been left behind in this misery? What sort of help had s/he received? Court practice such as this might function as a constant reminder to the system of pressing and enduring unmet needs. Instead of functioning in a way that legitimises the system of social service, removes 'troublemakers' and conceals deficiencies through the imprisonment of unsolved needs, this alternative court practice would serve to expose weaknesses in the welfare system. In doing so, the same exposure might function as a driving force for progressive reform of the welfare system itself.

This line of reasoning does not necessarily lead to a total rejection of all forms of punishment. But, and this is the major point, in welfare states utmost care is required when the extent and nature of punishment is to be decided. People who, by circumstances in life, have suffered more than most others, must be offered compassion and understanding when they encounter those vested with the power to deliver pain.

'They could have been my children'

At the same time, a thorough examination of the biographical circumstances of the person to be punished, might also serve to convert the simple image of a 'criminal' to a picture of 'a full human being'.

We know, from personal life experiences in addition to scientific research that the closer we come to people who have broken the law, the less attractive the delivery of pain becomes as an appropriate response.

We have an interesting illustration of this phenomenon in Norway some time back. A relatively high profile politician

was well known for his stern attitudes and lack of lenient sentiments. But then he was to function as a lay judge and he was confronted with a case involving three young 'delinquents'. The newspapers had reported that their behaviour was particularly problematic and a stern sentence was expected but, in actual fact, the three youngsters received the most lenient sentences imaginable in the circumstances. Bewildered journalists flocked around the politician and asked if he had changed his views on penal policy. Oh no, absolutely not. 'Delinquent' youngsters deserve stern punishments he maintained. But these three – who were completely unknown to him before he met them in court – were not of that 'sort'. Deep down these were 'good boys': 'they could have been my children!'

Here lies a central challenge for penal reform in welfare states. We have to resist the anonymity created by modernity. We have to create social systems where we see each other as full human beings and where we can evaluate human acts in full social context. But this is a complex task to accomplish and it appears to be at odds with the prevailing mood of our time.

The fruits of modernity

We have a tradition in my country, Norway. Each New Year evening our prime minister appears on Radio and TV with wishes for a happy new year, followed with some political reflections. A central topic in their short speeches has regularly been the need for further development of the country. No stagnation, we have to move on! It is as if we are on a train in a beautiful landscape – a good country, well run – but nonetheless, we have to see to it that we do not stand still, we must always move on, develop the land, the districts, the towns and, not least, ourselves.

But such developmental progress has a twin-sister. Her name is mobility. And mobility serves to dissolve social networks and human interactions. We 'develop' and 'progress' from living in tight knit stable communities to looser and more fluid ones. Poets might write about the blessings of open landscapes. Sociologists are, rightly so, more concerned about empty social landscapes, societies without cohesion or, even worse, societies where we don't know one another. Neighbours, fellow students, colleagues, potential friends or wrongdoers – they are, in many ways, foreign to us in some forms of modernity. Classical accounts are provided by George Homans (1951) and Robert Putnam (1999). Trains and cars have changed social life, you can move in and out of your community, you belong everywhere, and nowhere. Or you can retreat into privacy² away from neighbours and they from you. Virtual communication prevails. Sherry Turkle (2000) analyses this in her book 'Alone Together'. And then, what has become so clearly brought in focus by Richard Wilkinson and Kate Pickett (2009) and by Thomas Piketty (2014), economic distance between classes widens and it increasingly becomes more and more difficult to 'feel', know and understand those who are either far above or far below us.

Centralized ignorance

Modernity is also increasingly characterised by large centralised bureaucracies, organisations and institutions. Modern medicine, for example, has spawned a flora of specialities claiming they need to be based together in the same institution and under a monolithic administration. This, it is claimed, will provide more effective, more efficient and more economical services to the population. The small,

² The concept "privacy" has its root in the "priver", the Latin word for "deprived", one who has lost the benefits of participating on the important arenas; the public life.

local hospitals disappear as a consequence, eaten by the mastodons.

The same trend can be found in all public services. Increasing centralization is to be found in social services and policing. The old sheriff – the ‘lensmann’ we called him in Norway – who was obliged to live in the district in which he functioned is soon gone. He knew those he lived among, and they knew him. But he is now little more than a functionary among a multitude of other functionaries in a huge centralised police station, far removed from his original district. Local knowledge disappears, those who would have known the story of that strange, drunk, threatening man – are no longer consulted. Instead a policeperson in a car arrives and takes him away and the man receives his standardised punishment according to the tariff.

This trend toward centralization is also evident in the courts. In Norway, we have at present 66 courts in the country. The goal is to reduce this to 20. Small districts are to be merged with other small districts or else absorbed within larger cities. Large courts create a community of judges, colleagues that can help each other, learn from each other and meet as equals in and out of court. This it is claimed will create competence at a high level. But there are costs attached. In this situation, judges will become more insular and distant; living most of their professional and social lives with other judges or, as a minimum, they will associate with other highly educated professionals. But they will lose time and interest for social interactions with a diverse myriad of other people in the districts.

The story of Per and Ole is illustrative. The two men had always quarrelled - as had their fathers - about a wooden fence that separated their two farms. According to Per, the father of Ole had one dark night moved the fence several feet

to his advantage. But, according to Ole, this was because Per owed him money that he had never repaid. At a funeral attended by both men, Per struck Ole knocking out two of his teeth. The new police chief in the modernized, reorganized and enlarged police district did not know either Per or Ole, nor the tradition behind their quarrels. He imposed a a severe fine on Per for assaulting Ole. Of course, Per refused pay. Accordingly, the new judge in the equally modernized, reorganized and enlarged court district was also unfamiliar with the longstanding quarrel and sentenced Per to 30 days in the new centralized prison in Oslo!

Against progress

Progressive penal policy strategies seem to me to contain elements of regression. It appears to be necessary to re-establish forms of social organization so that people will re-learn to see and know each other as full social beings and to exercise reciprocal forms of socialisation and social control.

In Germany I once come across a postcard with a central message. An image of two strict looking women meeting in a street appeared over the text: 'The blessed Good sees all, but the neighbours see much more'.



With crime prevention in mind, neighbourhoods ought to be strengthened and democratised to become places where local people engage and participate. We currently have 428 municipalities in Norway. The Authorities are planning to reduce this number to 98. Conversely, I want the number of municipalities to increase and, in particular, to split our few large cities into several independent communes, enabling ordinary people to participate with their neighbours to create functioning and sustainable social systems.

And of course: Local courts ought to be preserved and, if necessary, increased in number in order that they might serve their local neighbourhoods. The same with police services and stations.

For these tasks, we need the assistance of Lady Justice. After her observations at the prison gates, she ought to move inside the doors of the city halls and say as follows:

‘It seems to me that the basic ideas of welfare states have not penetrated our institutions of penal law. Most of the people I observe moving in and out of prisons are miserable people living under exactly the conditions our welfare state was created to prevent. Their failure in life is a reflection of our failure in realizing our ideals of welfare for all’.

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Broken windows are not the best indicators of a neighbourhood in need of crime prevention. Locked doors everywhere – between apartments as well as humans – tell more about the urgent need for progressive change.

References

Homans, G. C. (1951) *The Human Group*. London: Routledge & Kegan Paul.

Picketty, T. (2014) *Capital in the Twenty-First Century*. Cambridge, MA: Harvard University Press.

Putnam, R. D. (2000) *Bowling Alone. The Collapse and Revival of American Community*. New York: Simon & Schuster.

Thorsen, L. R. (2004) *For mye av ingenting (Too much of nothing)*. Unpublished thesis. Oslo: University of Oslo.

Turkle, S. (2011) *Alone together. Why we expect more from technology and less from each other*. New York: Basic Books. .

Wacquant, L. (2009) *Punishing the Poor. The Neoliberal Government of Social Insecurity*. Durham, NC: Duke University Press.

Wilkinson, R. and Pickett, K. (2010) *The Spirit Level. Why equality is Better for everyone*. London: Penguin Books,