OUR SENSE OF JUSTICE: VALUES, JUSTICE AND PUNISHMENT

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Introduction: Meeting a Republican

As much as the criminological community has endorsed John Braithwaite’s theory of shaming, and the idea, concept and practice of restorative justice, as little attention criminologists have paid to the conceptual framework where he situated these ideas. A Republican Theory of Criminal Justice – the subtitle to “Not Just Deserts” which was written in collaboration with political philosopher Philip Pettit (1990) - was published shortly after the path breaking Crime, Shame and Reintegration (1989), and in his collection of essays (Braithwaite 2002: 12) he reiterated and strengthened the link between restorative justice and a republican perspective. He named the following dimensions of restorative justice as important from a “republican perspective”: “restoring property loss, restoring injury, restoring a sense of security, restoring dignity, restoring a sense of empowerment, restoring deliberative democracy, restoring harmony based on a feeling that justice has been done, and restoring social support.” In Not Just Deserts he broadened the republican perspective and transcended the field of restorative justice. He called for a “Republican Criminology” to address the problem of inequality as one of genuine concern for criminologists (1995a), and embedded the emerging theory of regulation and criminal justice (“Speaking softly and carrying sticks”) in a republican perspective on the separation of powers (1997).

Republican theory and republicanism are of twofold importance for Braithwaite’s work, as he wrote in 2000 (Braithwaite 2000). Republicanism provides “an explanatory as well as a normative connection” for restorative justice. Braithwaite here follows the tradition of giving normative grounding to criminal justice, and in linking both empirical and normative theory he does not deviate from other pathways of establishing the foundations for criminal justice like deterrence theory. It is not by coincidence that he develops his republican perspective by contesting deterrence theory which can be deemed the only rival theory of criminal justice that encompasses both an empirical and normative dimension (Braithwaite and Pettit 1990). Republicanism defines the values on which restorative justice rests and the objectives it
should achieve in “restoring” the lives of individuals and communities (1995b), as well as it sets and changes the objectives for criminal justice more broadly. “Republican Criminological Praxis” would shift the focus from street crime to corporate crime, and would endorse a top-down transfer of criminal procedures by handing the more restorative practices from which mainly elite offenders have profited so far, down to street crime offenders, and channelling the more severe sanctions traditionally meted out to street crime offenders up to elite criminals (1995c).

Surprisingly, the republican perspective of restorative justice includes a democratic dimension, namely “restoring deliberative democracy”. In fact, Braithwaite’s republicanism has a strong democratic strand. The Tocquevil-lean vision of democratic communities perpetually deliberating and ensuring themselves of their common values and morality is part and parcel of Braithwaite’s republicanism, and finds its expression in the very idea of restorative justice and its communicative and deliberative elements. Further to this, Braithwaite’s republicanism has a strong foundation in egalitarian values and attitudes. In contrast to republican perspectives that endorse a more meritocratic egalitarianism like in the US or the UK, Braithwaite’s republicanism supports welfare policies and an egalitarianism that does not neglect those who ultimately failed and struggled (see below). Braithwaite’s republicanism reminds me of a (true?) story told about the people from my hometown Lübeck, one of the oldest and longest lasting republics of Europe, by Thomas Mann in his Nobel prize winning novel Buddenbrooks. As the revolution of 1848 finally reached Lübeck, a crowd gathered in front of the house of the mayor, who was then head of a sovereign state. When he asked them in Low German dialect what they wanted, the answer was “We want a republic!” and the following exchange ensued: “You have already got one!” - “Then give us another one”. What exactly was the merit of republicanism and republican theory, if democracies which admittedly would profit from improvements, and democratic theory were in place?

In this contribution I wish to explore Braithwaite’s republican theory and confront it with results from two cross-cultural studies. I analyse their impact on two decisive and significant features of criminal justice: the use of (illegal) violence by the state, mainly in criminal justice —, and punishment, i.e. the numbers of individuals who are deprived of liberty and the ways in which this is done. Taken together they will help to understand the role of values in criminal justice generally, and the normative thrust of republican values in particular.
Normative theory and the question of values

Braithwaite openly has brought back values into criminological reasoning. Values had been admitted to criminological discourse only as subjects of critique and de-constructing efforts. The denunciation of values, on the one hand, was based on conceptualising them as ideological dimension of a “superstructure” that determined criminal justice systems and defined its deep flaws. On the other hand, from the rational choice and liberal point of view, values emanate from rational choices by individuals as far as they ensure collaboration, and as such are a collective good. Deterrence is the predominant mechanism through which social order and norm compliance could be achieved. Braithwaite did subscribe to neither of these positions, and in a most courageous move outlined and constructed a normative theory, certainly a no-go area for many criminologists. He argued that the criminological knowledge base could provide the foundations for a normative theory of justice, and given its empirical foundation, when put to practice a normative theory would have measurable results in terms of more justice and less crime (Braithwaite and Pettit 2000). Any conception of criminal justice (and regulation) should be based on more than one mechanism of compliance, and individuals were not only rational beings, but also moral beings wanting to live up to their own values and those of their community (see Braithwaite and Drahos 2000).

A normative theory should provide answers to the key normative questions of criminal justice that criminologists have found difficult. What types of behaviour should be deterred, shamed and prohibited, how should justice be done, and what sanctions should be provided? As criminological theories are mostly mute on these questions, republican theory as a theory informed by philosophical and political reasoning indeed was in a position to answer these questions. Its key elements as developed by Braithwaite and Pettit (1990, 2000) are based on two foundational values: on the one hand, autonomy and freedom of the individual, defined as non-domination by others and freedom from interference, and, on the other hand, equality as a necessary precondition for the equal enjoyment of autonomy and freedom.

Republicanism thus transcends the mere notion of non-interference by individuals, governments, and states, and instead “require(s) the assurance of not being exposed to the possibility of arbitrary interference by an uncontrolled power “ (Braithwaite 2000: 89; emphasis added). As such assurance can best be achieved through active participation and deliberation of individuals,
and delivery of justice that strives for this ideal should be participatory and deliberative, all the more so since criminal justice implies without any doubt acts of domination and interference into the liberty of individuals. Restorative justice is capable of providing these participatory and deliberative forms of justice in practice. Normative republican theory of justice therefore is not a mere utopian vision, which lacks the connection with practice. Braithwaite’s scholarship indeed integrates “concrete and normative aspects” in a way so aptly described by Koskenniemi (2005, 20): “By lacking connection with practice [it] … would seem unable to demonstrate its norms in a tangible fashion. It would seem utopian. If [the normative aspect] was lacking then scholarship would lack critical distance from state behaviour, will or interest.”

A normative theory of justice therefore implies that its norms and the values on which it rests have an empirical foundation and are part of the practice to which it refers. Values of justice are experienced and lived in communities, as Herbert Mead noted in 1918: “We do not respect law in the abstract but the values which the laws of the community preserve” (Mead 1964, 220). Laws should provide a vision of justice, as they need to rule the imagination of individuals and collectives before they can govern the state. The republican principle of freedom from arbitrary interference by the powerful particularly defines the realm of (international) human rights, where morality, values and policy are inextricably linked, and consequently Donnelly’s observation equally applies to Braithwaite’s republican theory of justice, that “… built into … their very character is … an interaction between moral vision and political reality” (Donelly, 1985, 32).

This provides the key to an empirical test of republican theory as a normative theory of justice. Values of freedom from interference and equality need to direct the actions of communities, institutions and individuals, and where they dominate better and more, not less justice should be found. Our sense of justice and the values it is based on guides the forms of justice that we find acceptable or unacceptable, and the ways in which we allow criminal justice and particularly punishment to interfere with the freedom of individuals, and non-egalitarian hierarchies to be established through punishment and interference. In that they guide the form of justice we want to achieve and define the objectives of justice that we seek, values are open for empirical analysis.

The first of the two republican values is explicitly linked to republican and liberal traditions, while egalitarian values have their roots more in democratic
rather than republican traditions. As Michael Mann (2005) observes, their strong emphasis on egalitarian values endangers democracies as this fosters a drive towards interference with liberties. Braithwaite is aware of the tensions and potential imbalances between the two basic values in his republican theory; he therefore insists on strong egalitarian values that are capable of counteracting the forces of liberal non-interference, or even might overrule non-interference in some instances. Assurance of non-interference can only be guaranteed if powers are separated, calibrated and attenuated (Braithwaite 1997), and egalitarian values are the seedbed of the institutions that can deliver such assurance for individuals and communities. While republicans and democrats share these values, they assign a different weight and importance to them.

A study of values and punishment

Non-interference, equality and punishment

In republican or democratic communities we expect that criminal punishment expresses or at least relates to the values that these communities hold. Intuitively, values should shape the regimes of criminal punishment that communities adopt and that are supported by their populations. Both values are vital in shaping the regimes and institutions of punishment (see e.g. Whitman 2003). Values of individual autonomy, freedom and non-interference should clearly restrict the power of criminal justice institutions, support due process and also reduce restrictions of freedom that are imposed as sanctions. Further, these values should impact on the treatment of offenders within the criminal justice system, which implies treating them with dignity and the respect that individuals can expect from and are afforded by democratic and republican institutions alike, by those who represent these as well as their fellow citizens. Values of autonomy should reduce interference with individual liberty to the necessary minimum. Egalitarian values are important as they define the status that we are willing to afford to offenders, and the ways in which we are willing to treat them as one of us. Egalitarian values define practices and politics of status: restrictions on power and the powerful, as well as on the exertion of power by those invested with it, the extent to which status differences shape everyday encounters, and finally the extent to which any kind of debasing or degrading treatment is accepted as an expression of status differences. Criminal punishment therefore signifies and redefines status differences (Whitman 2003).
Countries where values of individual autonomy and individual freedom are dominant, as well as countries with high levels of egalitarianism values will differ in their regimes of punishment from those with less emphasis on individual autonomy and higher levels of authoritarian or non-egalitarian values, with the latter generally having higher imprisonment rates and harsher punishment regimes. However, the two values are unfolding in two distinct patterns. Where non-interference is dominating, egalitarianism is meritocratic, which represents the republican-liberal tradition. Where non-interference is given less weight, egalitarianism is defined by substantive equality, a pattern that represents democratic and welfare states. These different patterns should be discernible even in societies with mature and stable democratic institutions and governments and should account for differences in imprisonment rates and prison conditions. Finally, the precarious nature of both values becomes visible when structural inequality is high, and the reality of living conditions and the distribution of chances widely differ from egalitarian ideals and values (Braithwaite 1995a). Such tensions between values and structure should make criminal justice harsher, both in terms of imprisonment rates and prison conditions.

Republicanism would prefer chance-oriented or absolute meritocratic egalitarianism, whilst democracies would prefer the strong egalitarianism as outcome-oriented egalitarianism. Chance-oriented egalitarianism assumes that individuals have equal chances, but concedes that individuals make bad choices and do not use the chances open to them. Outcome-oriented egalitarianism in contrast focuses on amending where social injustice disadvantages people thoroughly. Chance-oriented meritocratic egalitarianism is characterised by low interference, whilst outcome-oriented egalitarianism implies a higher level of interference. Chance oriented meritocratic egalitarianism not only allows for considerable status differences, but also defines them as functioning as incentives for integration and compliance. This type of value pattern and the ensuing status practices are epitomised by the steep ‘fall from grace’ in case of failure, and exclusion in the case of non-compliance. Need is seen as the result of personal failure, rather than social injustice. In contrast, outcome-oriented egalitarianism focuses on reducing status differences, and on achieving inclusion by supporting even those who fail. It thus attenuates the absolute meritocratic position. The United States represent chance-oriented egalitarianism, while e.g. Scandinavian and other European countries like Germany represent outcome-oriented egalitarianism.
Where value patterns are dominated by chance-oriented egalitarianism, penal regimes should operate in a way that increases status differences between offenders and others; confirming and deepening status differences are both built into the practices of punishment regimes, resulting in harsher sentencing practices and penal regimes than in countries with outcome-oriented egalitarianism. In sum, in the following paragraphs three hypotheses will be explored:

(a) values of individual autonomy and non-interference as well as egalitarian values generally reduce the harshness of criminal justice;
(b) the specific patterns of egalitarianism account for differences between punishment regimes in mature democracies;
(c) tensions between democratic values and actual status differences and equality account for differences between punishment regimes in mature democracies.

Data

The following analyses are based on a cross-national sample of 67 countries, for which data on penal regimes, value patterns and structural indicators were collected (see appendix). The data are spanning a period from the 1980s for the first wave of the World Value Survey until 2005. The data on penal regimes are covering the period from 1999-2005, and mean values for the respective periods are used. Two indicators of the penal regime are used, the rate of imprisonment and prison conditions. The rate of imprisonment was based on Walmsley’s data base (Walmsley 1999-2009). The rating of prison conditions was based on the Country Reports from the US State Department (1999-2006) and Neapolitano’s (2001) ratings, which were extended from three to five ranks. These indicate that (1) prisons ‘meet minimum standards’, (2) ‘meets minimum standards with some deficits’, usually caused by overcrowding, (3) ‘do not meet minimum standards’, (4) have ‘harsh but not life threatening conditions’, and (5) are ‘life threatening’. Both indicators are not correlated, and prison conditions (which do not include the U.S.) are only linked to the average length of prison sentences.

Measurement of the values of individual autonomy and egalitarianism are based on a study by Hofstede (Hofstede & Hofstede 2005), and are presently available for more than 60 countries. These value patterns are related to cultural and social practices, and as such represent ‘lived values’ rather than ideals. ‘Individualism/Collectivism’ measures the detachment from traditional group and family bonds, and as such non-interference and freedom of domination
from others, particularly groups. This pattern emphasises individual autonomy and achievement, and thus meritocratic and individualistic values. As such it represents the first and most republican of the two values. ‘Power Distance’ in Hofstede’s original terminology, or ‘Egalitarianism’ defines the extent to which relationships of dominance, power and subordination, and hierarchical relationships between different social classes prevail or are replaced by more egalitarian orientations. As such it represents the egalitarian component of the republican and democratic value pattern. High values on the ‘Individualism’ scale indicate strong individualism, and high values on the ‘Egalitarianism’ scale indicate egalitarian value patterns. In all Western industrialized societies, including Australia and New Zealand, high Individualism is the dominating value pattern, while in Latin American and Islamic countries mostly collectivistic orientations prevail. Asian societies have a medium to stronger collectivistic orientation. Western industrialized countries, with the exception of Latin European countries (e.g. France and Italy), rank at the higher end of the egalitarianism scale, while Latin American and Asian countries are characterized by a comparably low level of egalitarian values. Both value patterns are strongly correlated to the Polity Index (Marshall & Jaggers 2005) and the Freedom House Index of Civil Liberties, indicating that they foster those institutions that ensure freedom of non-interference as well as egalitarianism (see Triandis and Trafimov 2001; Jaggers and Gurr 1995).

The variables indicating chance-oriented/ meritocratic or outcome-oriented egalitarianism were selected from the four waves of the World Value Survey from 1982, 1990, 1995 and 2000. They are measured as the mean percentage of those who supported the following statements in all waves available in a country, with high levels of support indicating the chance-oriented / meritocratic value pattern and low levels pointing towards outcome-oriented egalitarianism: ‘We need larger income differences as incentives’; and ‘Laziness or lack of willpower’ as ‘reason why people live in need in this country’. Two indicators of structural inequality were used, the Gini-Index of income inequality (United Nations 2002), and the index of ethnic fractionalisation, which measures the level of differentiation between ethnic groups in a country (Alesina et al. 2003).

Analyses comprise of two steps: first, penal regimes are compared for different levels of individualistic and egalitarian value patterns; and second, differences in values and status practices are analysed for mature democracies. This categorisation was based on the Polity Index (Marshall and Jaggers 2005), which ranks countries on a scale from ‘autocratic’ (-10) to ‘fully democratic’
(+ 10), with ranks between +8 and +10 defined as ‘mature democracies’. In this way, a more homogeneous sample was achieved, in which the institutional assurance of non-interference was at similar, high and sufficient levels, and thus, the actual contribution of values could be more precisely assessed.

**Results**

Both individualistic and egalitarian values have an impact on prison conditions in the sample that comprises of all 67 countries, as figures 1 to 4 show. The more individual autonomy is valued, and the more egalitarian values are adopted, the better are prison conditions. However, countries with higher levels of individualistic values do not significantly differ or even have slightly higher imprisonment rates than collectivistic countries. The exceptional position of the United States is clearly visible in this pattern. Both, individualism as it generates respect for individual autonomy and generates caution in interfering with liberties, and egalitarianism, as it reduces power differentials and attenuates degrading status strategies, impact on the way in which offenders are punished, but do not define the use of imprisonment in a criminal justice system. The cultural and institutional practices that build on these values shape criminal justice. Countries ranking high on these values might not punish less, but they treat those in prison better. This holds true for mature democracies; a certain level of institutional assurance of non-interference given, both values show the same pattern of impact, a significant impact in the case of prison conditions, and none for imprisonment rates. This speaks to a rather robust impact of values on punishment regimes (not shown).

Penal regimes further differ between countries with chance-oriented meritocratic value patterns and those with outcome-oriented egalitarianism, even if comparable levels of institutional assurance of non-interference are given in mature democracies. Both indicators of chance-oriented meritocratic egalitarianism point towards a significant impact on prison conditions, however are not linked to rates of imprisonment. If the population of a country support large income differences, and deem laziness a reason of need, offenders in prison live under worse conditions than in those where the population is more in favour of the opposing statements. The chance-oriented meritocratic pattern distinctly and significantly coincides with deteriorating prison conditions. In addition, where laziness is seen as a cause of poverty, rates of imprisonment

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1 This applies with and without inclusion of the U.S.
Figure 1a: Individualism and Prison Conditions 1999-2005

Prison Conditions = 4.253 – .034 * Individualism; R² = .368

Figure 1b: Individualism and Prison Population (per 100,000) 1999-2005

Prison Population = 129.938 + .272 * Individualism; adj. R² = .012
Figure 2a: Egalitarianism and Prison Conditions 1999-2005

Prison Conditions = 4.483 - .036 * Egalitarianism; R² = .360

Figure 2b: Egalitarianism and Prison Population (per 100,000) 1999-2005

Prison Population = 137.424 + .090 * Egalitarianism; R² = .016
increase significantly (United States included). Republican egalitarianism with a strong emphasis on non-interference makes punishment regimes harsher, as it fosters attitudes that support debasing and degrading status practices in dealing with offenders, and acceptance of bad prison conditions is just one expression of these.

Figure 3: Mature Democracies: Support for Large Income Differences, prison population and prison conditions 1999-2005

Figure 4: Mature Democracies: Support for laziness as reason for personal need, prison population and prison conditions 1999-2005

2 The results do not differ if the U.S. are excluded.
Actual structural inequality and ethnic fractionalisation have a likewise impact on prison conditions and imprisonment rates in mature democracies. Structural inequality significantly increases the rate of imprisonment, and both considerably and significantly downgrade prison conditions. Whether such structural inequalities are more supported by the specific meritocratic value pattern, or in themselves challenge the foundational values and thus produce additional tensions in societies that perceive of themselves as egalitarian, cannot be decided (see Karstedt 2006). However, the results show that republican values need a strong foundation in social equality and inclusion, as Braithwaite so convincingly argued (Braithwaite 1995a).

**Figure 5:** Mature Democracies: Income inequality, prison population and prison conditions 1999-2005

**Figure 6:** Mature Democracies: Ethnic fractionalization, prison population and prison conditions 1999-2005
A study of values and state violence

The egalitarian foundations of non-interference and state violence

State violence exemplifies the ‘arbitrary interference by an uncontrolled power’ from which republican values and institutions should protect citizens, and also an unlawful one. This poses a dilemma, as the (nation) state is responsible for guaranteeing and assuring non-interference and the respective rights of citizens in the first instance. The legacy of early republican theory was (and still is) a lasting paradox. It introduced the notion of individual autonomy and liberty, and thus of freedom from unlawful interference and deprivation, and simultaneously the notion that the state had to secure these rights and act as their guarantor, including its very own actions. The state is thus ‘both the guardian of basic rights and … the behemoth against which one’s rights need to be defended’ (Ishay 2004: 363). Freedom from unlawful interference by the state, it seems therefore requires a reasonably strong state, not a weak one, and a state that can guarantee for its own institutions and its agents that the minimal and necessary interference is not transgressed, its legality, and for its representatives compliance with the respective norms of conduct.

Consequently in failed states or transitional countries, violence by the state prevails and reaches extraordinarily high levels. As Juan Mendez and his colleagues (1999) describe, this gives rise to high levels of ‘lawless violence’ in Latin America, predominantly in criminal justice institutions (see Caldeira and Hollstein 1999). According to Mendez, lawless violence indicates a “clear abdication of democratic authority (of the state)” (Mendez 1999: 19). The state is not capable of restraining its own bodies in providing security and guaranteeing physical integrity to its citizens, nor do governments put a lot of effort into restraining state violence. In 2007, in one Brazilian state alone, more than 2,000 people were killed by police, most of them very young and many of them living on the streets. The lack of physical security for its citizens is a defining characteristic of the failed state, and governments in failed states are deeply implicated themselves; my own data show that the Failed States Index (Fund for Peace 2005 – 2009) as well as its individual dimensions like the rise of factionalised elites or delegitimisation of its institutions correlate with the index of state violence, that is used in this study at about $r=0.8$.  

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3 The Failed States Index is published by the Fund for Peace and has been developed as part of an early warning system since 2005, comprising of 177 countries in 2009, which are ranked according to 12 criteria, each on a scale from 0 (low intensity) to 10 (high intensity). The 12 criteria cover an array of demographic, economic and political indicators, see http://www.fundforpeace.org/web/index.php?option=com_content&task=view&id=99&Itemid=323.
From early on, John Braithwaite has emphasised the necessity of a strong state and simultaneously of a strong civil society for republican values to thrive, and has never been an advocate of weak government (1998; 2000). In the case of state violence, strong states are capable of restricting their agencies in the unlawful use of violence, and a strong civil society will monitor such abuse. As necessary as freedom of the press, opposition parties systems and other principles and institutions of government are, as important are values and moral visions amongst the public. Finally criminal justice agents are part of these communities, and often engage in unlawful violence in the belief that they are expressing the will of a silent majority. Citizens need to be willing to stand up for their visions of non-interference, and acting against state violence means “acting as if the rule of law existed and by doing so, challenging others to do so as well” (Goldston 1999: 463). Values embody the moral vision that counts in communities, and guides their sense of justice. “The rule of law must train its citizens to see themselves and their communities one way rather than the other” Kahn 1999, 83). State violence needs to be named, blamed and shamed, but also prosecuted.

State violence is rarely indiscriminate and targets all citizens / inhabitants of a nation state. It is decisive that it is directed against specific groups that are singled out, ethnic and religious minorities, elites, professionals, political opposition parties, opponents of the regime, the young and the poor, offenders, or any combination of these. Both values of non-interference and egalitarianism are equally fundamental, as freedom from arbitrary and unlawful interference has to be equally distributed, and the relevant principles and procedures have to apply to everybody independent of their affiliation to specific groups. As state violence targets minority positions of all kinds and from all ranks, both moral condemnation of state violence and taking action require a strong sense of egalitarian and non-discriminating values within society. Citizens need to perceive of themselves as being part of the same ‘moral collective’ in order to impede state violence against specific and singled-out groups, and mass atrocities often start with severing ties of allegiance between the majority and the targeted group, and excluding the latter from the moral universe of the community. Structural divisions like income inequality or ethnic fractionalization further restrict the outreach between social groups that seems to be a prerequisite of support for egalitarianism in acting against state violence.

This study explores the impact of both value patterns -autonomy / non-interference and egalitarianism- on unlawful violence mostly within the
criminal justice system where the state transgresses the boundaries drawn by human rights law as well as democratic and as such republican institutions. Likewise as in the first study, the specific patterns of egalitarianism will be analysed, as well as structural conditions. Institutional regimes of democracies like e.g. the rule of law, independence of courts, freedom of the press establish mechanisms of assurance against unlawful and violent interference by the state and by agents of criminal justice institutions in particular, and consequently the level of state violence will considerably vary across countries and institutional regimes. Again, mostly the homogenised sample of mature democracies (see above) was used in order to control for institutional mechanisms.

Data

The sample was the same as in the preceding study of punishment (see appendix 1). State violence was measured by the Physical Integrity Index which is part of the Cingranelli-Richards Human Rights Database that measures respect for 13 human rights. David L. Cingranelli and David L. Richards (2007) based their measurements on the United States State Department Country Reports on Human Rights Practices, which explains the exclusion of the United States from the data. The Physical Integrity Index measures adherence by governments to the first four human rights, and comprises of political and extrajudicial killings (since 2001: unlawful or arbitrary deprivation of life), disappearances, torture and political imprisonment which are added up in an index ranging from ‘no government respect for these rights’ (0) to ‘full government respect for these rights’ (8), with each right receiving a rating of one or two. In this study, political imprisonment was excluded in order to achieve a more precise indicator of violence, and consequently the Physical Integrity Index used here has a range from 0 to 6.4

Value patterns were measured in the same way as in the first study. In complementing the values of individual autonomy and egalitarianism as in the Hofstede study, three additional indicators were selected from the four waves of the World Value Survey of 1982, 1990, 1995 and 2000, and measured as the mean percentage of those who supported the statements in all waves available in a country. As this study targets the divisive nature of meritocratic egalitarianism, a different set of two indicators will be used,

4 For 2005 and 2006, data were separately collected from the Country Reports of the U.S. State Department (http://www.state.gov/g/drl/rls/hrrpt/2005/ and http://www.state.gov/g/drl/rls/hrrpt/2006).
including support for large income differences (as above) and support for unrestrained competition. Further, willingness of the public to allow for more interference and simultaneously less egalitarianism was measured as support for the statement that ‘greater respect for authority would be a good thing’. Structural inequality and divisions between ethnic groups were the same as in the first study.

**Results**

Both individualistic and egalitarian values have an impact on state violence, in the total sample (Figures 7 and 8) as well as in the homogenised sample of mature democracies (Figures 9 and 10). The more individual autonomy and non-interference is valued, and the more egalitarian values are adopted, the more state violence in particular in the criminal justice system is restricted, as both the regression line and the comparison of mean levels show. Both values retain their impact even if institutional regimes are in place capable of restraining state violence and violence by agents of criminal justice. Individualism as it generates respect for the individual and fosters non-interference, and egalitarianism, as it reduces power differentials and supports outreach across group boundaries, both decrease levels of state violence. Cultural and institutional practices that build on these values shape criminal justice practices, and countries ranking high on both values do guarantee and respect the physical integrity of their citizens, including those who have violated their laws.
Figure 7: Individualism and Physical Integrity 1999-2005

Figure 8: Egalitarianism and Physical Integrity 1999 – 2005
Figure 9: Mature Democracies: Individualism and Physical Integrity 1995 – 2006

Figure 10: Mature Democracies: Egalitarianism and Physical Integrity 1995 – 2006

Figure 10: Mature Democracies: Support for more authority and Physical Integrity 1995 – 2006
In mature democracies the overall impact of value patterns and structural conditions is considerably less strong, given the strength of their institutional regimes. Support for large income differences and unrestrained competition both make state violence much more likely, while support for more authority does not make a difference. Variants of chance oriented and meritocratic egalitarianism, in particular when more divisive forms of competition are supported, increase the level of unlawful violence in the criminal justice system.

Figure 11: Mature Democracies: Support for more authority and Physical Integrity 1995 – 2006

Figure 12: Mature Democracies: Egalitarianism and Physical Integrity 1995 – 2006

5 For the total sample the differences are substantial and highly significant.
In mature democracies, income differences and ethnic fractionalization make less of a difference in the unlawful use of force against citizens than in the total sample. Income differences have a just significant impact, while the impact of ethnic fractionalisation ostensibly is more robust in these countries. Democracies in general and even mature ones have difficulties to accommodate and deal with their ethnic minorities (see Mann 2005).
Normative theory, moral visions and penal systems

Both empirical studies were presented as ‘tests’ of the normative theory of republican justice, as they explored the role of the values on which John Braithwaite’s normative theory rests, and assessed these against outcomes and mechanisms of criminal justice. The latter were indicated by imprisonment rates and prison conditions, which can be termed as the lawful dimension of criminal justice systems, and its interference into the liberties of individuals, whilst the index of state violence mainly addresses unlawful violence and interference by criminal justice agencies. However, both coincide at the life threatening end of prison conditions, as these include unrestricted violence and threat within the prison system itself. In the ‘real world’ of governments, criminal justice systems, communities and citizens, the republican values that John Braithwaite sees as foundational for his theory, provide moral visions and an imagination of justice for individuals and communities; they foster institutional regimes that imbue criminal justice with such values; and finally criminal justice expresses and represents these values.

The moral vision that a republican theory of criminal justice provides is neither unequivocally achieving better justice, nor more successful in restraining uncontrolled power in the form of unlawful state violence. Whilst there was support for both values – autonomy and non-interference into the liberty of individuals, as well as egalitarianism - in principle to improve punishment regimes, i.e. prison conditions, and to reduce exertion of unlawful violence in the criminal justice system, it was found that a particular combination of

Figure 14: Mature Democracies: Ethnic Fractionalization and Physical Integrity 1995 – 2006
non-interfering egalitarianism – chance-oriented meritocratic egalitarianism – was linked to deteriorating prison conditions, and higher levels of state violence. In contrast, where the public supported outcome-oriented and more interfering egalitarianism, which represents mainly democratic welfare states, prison conditions were significantly better and state violence within criminal justice at lower levels. It comes as a paradox, that decisively non-interfering egalitarianism actually results in more, not less violent state interference. However, this type of egalitarianism allows for and actively endorses debasing status politics and practices for those who fail and who do not play by the rules. These then articulate themselves in particularly poor prison conditions that put offenders ‘into their place’ and might encourage the use of violence in treating those in the criminal justice system.

Conclusion

The results of the two empirical studies reported on emphasise the importance of equality for a republican theory of justice in two ways, and thus corroborate Braithwaite’s argument that equality is a necessary precondition for the two values to flourish and to be put into practice in criminal justice. First, support for more active and interfering welfare policies, and ostensibly their implementation will improve prison conditions and reduce the use of unlawful violence within criminal justice. This is corroborated by comparative studies and case studies of penal systems in Scandinavian countries (Cavadino and Dignan 2006). Second, equality and inclusion of different ethnic groups are necessary structural conditions for better criminal justice, better prison conditions and lawful treatment of citizens within this system. Without equality realised in many respects, values and institutions lose power in shaping and improving criminal justice. As both (income) equality and ethnic fractionalisation retain their impact on both outcomes in mature democracies which are characterised by a more homogenous institutional structure, inequality leads to deteriorating prison conditions and more state violence even under such usually beneficial institutional regimes.

Where as in mature democracies institutional regimes overall can be deemed to foster and embody the two foundational values of republican theory, in particular non-interference into the liberties of individuals, the impact of values and related attitudes as well as of structural conditions on criminal justice tends to be smaller. As such the two studies strongly support Braithwaite’s argument that criminal justice based on a republican theory needs strong, rather than
weak institutions, as these can attenuate and mediate structural impact and channel public attitudes and sentiments. Disappointingly, no impact of values on imprisonment could be discerned. Political decisions and legal systems might be the more powerful agents in defining numbers of prisoners (Zimring, Hawkins and Kamin 2001; Zimring and Johnston 2006; van Zyl Smit and Snacken 2009). As a normative theory, republican theory prescribes to use imprisonment as a last resort and to achieve lowest levels of imprisonment (or even abolition) as imprisonment violates the principle of non-interference. In the real world, its foundational values do not make a difference, which leaves restorative justice which is based on these values as a means to reduce imprisonment in the long run.

As both empirical studies show, the norms of republican theory can be demonstrated in a “tangible fashion”, and thus are not “utopian”. Braithwaite has integrated both “concrete and normative aspects” in his republican theory, which provide as much a critical distance from criminal justice as it is, as a moral vision of how it could be.

References


OUR SENSE OF JUSTICE: VALUES, JUSTICE AND PUNISHMENT


