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Citizens and denizens

*Clifford Shearing**

The editors of this symposium have asked each of us contributors to reflect on an issue that John Braithwaite has considered in the course of his writings, with particular reference to his writing on restorative justice. The question that this article considers is the question of citizenship and, in particular, 'citizenship that is responsible and innovative'.

Citizenship has not, for the most part, been an explicit focus of attention across John's corpus. Yet, as my colleague Cameron Holley has reminded me, citizenship, and the issues surrounding it, have constituted a central and integrative weft across John's thinking – a golden thread. This is hardly surprising given John's long-established commitment to republican thinking about freedom as non-domination and given that this thinking has brought 'to the fore a new focus on citizenship' (Honohan, 2017: 83). In what follows I explore how John weaves this somewhat subterranean thread, together with other threads that characterise his work to create a rich tapestry of thought.

One of the reasons that has enabled the idea of citizen and citizenship to play the role it has in John's work is that a pervasive backdrop, a foil, to his thinking and writing has been the Westphalian/Hobbesian 'project' that has brought us the 'nation state', as an inspiring dream that has left an indelible mark on the reality of contemporary 'governance' – a term that John and Christine Parker (Parker & Braithwaite, 2003) have conceived of as referencing activities intended to shape the flow of events. In his work on forms of governance, John has always been careful to distinguish between the Hobbesian dream, of an inclusive monopoly on governance by benign Leviathans, and the nodal and networked reality that has, in fact, never been eliminated by the hope of unified governance that this dream articulated.

In his thinking on governance, John has always accorded a central place to people, to individuals, as the ultimate sources of 'buzz' in governance (Braithwaite, Healy & Dwan, 2005: 9). It is in this context that John's interest in citizens, as bearers of rights and duties that if enacted will constitute conditions that will enable inclusive forms of governance (Acemoglu & Robinson, 2012), has emerged – a vision of inclusive governance that Abraham Bose captured, so wonderfully, in his frontispiece for Hobbes's Leviathan.

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If states are to govern in ways that realise a republican ideal of freedom as non-domination, a normative constant throughout John's work and life, active citizens, and active citizenship, are an essential, and constitutive, requirement. For John, citizens, acting responsibly, is something that democracy, as an inclusive form of governance, requires. This, in turn, requires institutional arrangements that enable, and promote, active engagement by citizens – an ideal that the concept of 'contestatory citizenship' (Braithwaite, 2007) expresses and requires. Practices that have enabled what Pettit (1999: 187) has termed a 'contestatory turn in thinking about democracy'.

For John, the institutional arrangements that the term 'restorative justice' references have constituted an emblematic example of governance that both enables and promotes active, and sometimes contestatory, citizenship. It is thus not surprising that he has spent so much of his life, and energy, promoting the use of restorative processes in an astonishingly wide variety of settings.

He has done so not only in his scholarly writings but in the thick of the many crucibles of practice that have constituted so much of his life – a life that has retained much of the rough and tumble of his Rugby League days. I had direct experience of this rough and tumble side of John's personality in the mid-1990s when I witnessed him leading an impromptu restorative conference, in response to an alleged rape within a disadvantaged South African community. John tried to insist that he was not the right person to convene the conference, and that more preparation was needed, but the victim, her family and the perpetrator all urged him to help them talk it through with each other.

Witnessing John dive headlong into this highly charged and volatile situation, has remained one of my most cherished, and valued, memories. Reflecting on this masterful intervention by John had a profound impact on the development of a safety programme in South Africa, that became known as the Zwelethemba – a Xhosa word that means 'place of hope' – programme (see Shearing & Froestad, 2010) that drew significantly on restorative principles.

John's exploration of the core ideas of restorative justice across settings – ranging from communities, through business to, most recently, his mammoth decades-long programme of research on 'Peacebuilding Compared' – has led to his involvement in exploring developments, quite literally, across the globe. This work has focused, and is focused, on three central interconnected questions – How do we prevent war? How do we prevent crime? How do we prevent domination by big businesses, governments and other actors?¹ Right from the beginning, and throughout this enormous, and exponentially expanding, corpus of work, citizens, and their ability to contribute through active engagements in deliberative processes, have been at the forefront of his thinking.

Across the entire terrain of his work, John has focused on how active individuals, active citizens, can, and do, engage in activities that deepen democracy, by making it more 'freedom friendly' (Pettit, 1999). In this work he has been especially interested in exploring processes that cascade, as benign social viruses, that infect other processes. For John, cascades that lead to virtuous outcomes often

1 See details here: <http://johnbraithwaite.com/about-research/> (last accessed 25 June 2019).

begin in pockets of activity, coffer dams, islands. In his work John has consistently looked for 'islands of civility' (Kaldor, 2007: 117) that can become sources of cascades. These islands, because they can be fulcrums that can initiate virtuous cascades, are crucial harbingers of future benign possibilities – see, for example, John's discussion of 'flipping markets in vice to markets in virtue' (Braithwaite, 2005). These islands are often islands produced by active citizens who, through their engagements, can, and do, promote virtuous cascades that enhance freedom.

None of John's work has been normatively neutral – 'Restorative justice is about righting the wrongs of injustice' (Braithwaite, 2007: 170). 'Peacebuilding compared', as expected, has been no different, as these words from an introduction he and Wardak provide to the second of two papers on 'Crime and war in Afghanistan' make clear:

Anomic spaces where policing and justice do not work are vacuums that can attract tyrannical forms of law and order, such as the rule of the Taliban. Peace and Justice cannot prevail in the aftermath of such an occupation without a reliance on both local community justice and state justice that are mutually constitutive. Supporting checks on abuse of power through balancing local and national institutions that deliver justice is a more sustainably peace-building project than regime change and top-down re-engineering of successor regimes (Wardak & Braithwaite, 2013: 197).

John has always been on the lookout for processes that enable freedom as non-domination to take hold. In doing so he has been especially concerned with identifying islands of civility and then exploring possibilities that enable these islands to become continents. In reflecting on this, John recently recalled the way in which General Sir Peter Cosgrove, a Chief of Staff of the Australian Defence Force, 'used to speak of spreading ink spots of peace zones in Timor and then connecting them up' (personal communication).

Central to John's thinking has long been a recognition of non-state entities, nodes, that can be harnessed to promote freedom. A good example of this recognition, and the thinking it has prompted, is provided by his thoughts on the 'weapons of the weak' (Braithwaite, 2004; Scott, 1987) – thinking that explores how non-state sites of governance can contribute to freedom as non-domination. He expresses this nodal thinking in his characteristic pithy style when he writes that '[t]he sovereign is not dead, but it is just one source of power' (Braithwaite, 1999: 90).

John has explored this theme of nodal governance within the context of accountability as 'The realities of the new regulatory state pose severe accountability problems' (Braithwaite, 1999: 90). In this context he has considered, and advocated, the use of alternatives to top-down command and control forms of accountability. This has led him to explore horizontal and circular forms of accountability that rely on multiple auspices of governance to constitute accountability networks and assemblages. He expresses this nicely as 'arranging guardianship in a circle' (Braithwaite, 1999: 92). The idea here is one of 'communities of

dialogue wherein each is recursively accountable to every other' (Braithwaite, 1999: 93). Once again we find John arguing that the buzz of governance comes from networks of intersecting nodes and the actors within them – 'nodes of governance make networked governance buzz' (2007: 166).

This theme of nodal governance is at the heart of John's thinking about 'responsive regulation' that John's well-known regulatory 'triangle' expresses so emblematically. In developing this conception, John, as is his wont, has taken ideas and processes that are central to restorative justice and generalised them in ways that enable them to be utilised within a wide variety of contexts.

In his thinking about nodes and governance, John has explored how multiple sources of governance can be utilised to promote outcomes that enable freedom and, in the course of doing so, deepen democracy. In his work on responsive regulation and accountability, he has consistently identified concrete pathways that can be used to enable freedom as non-domination. While John's thinking always rises above context – as his 'Peacebuilding Compared' makes so clear – his attention has always been on articulating concrete pathways that work in particular contexts, where the 'rubber' of governance 'hits the road' of context.

Again and again, in his work on non-state auspices and providers of governance, John has repeatedly recognised, and sought to take advantage of, nodal arrangements that enable governance to be top-down, bottom-up and horizontal. Indeed, this is a theme that he began exploring some three decades ago in a piece on regulatory capture with Ian Ayres in which they look for ways of giving greater voice to 'relevant public interest groups or nongovernmental organisations' in 'republican form of tripartism' that have at their heart what they term 'contestable guardianship' (Ayres & Braithwaite, 1991: 439).

While much of John's work is pitched at a level that practitioners might find, in his words, 'excessively abstract' (Braithwaite, 1999: 93), he has been careful throughout to find ways of bridging theory and practice. He has done so via his penchant for using compelling images and metaphors that unite the conceptual and the concrete. This ability is beautifully captured in his advice to 'speak softly but carry a big stick', which he articulated in his influential 1997 article entitled 'Speaking Softly and Carrying Sticks'.

This concern with soft speaking and sticks, which is so central to responsive regulation, brings me, even more directly than I have to this point, to the 'innovate' part of the question with which I began. I do so via the idea of denizens. In developing his thinking on the nodal features of contemporary governance, John has taken a step beyond citizens and citizenship through his exploration of the twin notions of denizens and denizenship. He uses the concept of denizens to expand the weft of citizens and citizenship to better recognise the nodal and networked features of governance – features that he describes via phrases such as 'pluralised governance through networks', 'radically pluralised nodes of governance' and a 'complex web of governance'. Throughout he has sought to use these ideas to explore the restorative possibilities that networks of governance can enable – possibilities that the idea of 'responsive regulation' articulates.

What the concept of 'denizens' allows, via its reference to the idea of belonging to place, and to the constituencies that place enables, is an explicit recogni-

tion of people's nodal placements, and nodal identities, and what it means for a person to be responsibly and actively engaged in the processes that include, but are not limited to, their status as citizens.

Just as realities of plurally networked governance make electoral democracy a less serviceable ideal than contestatory democracy, so the realities of nodal governance should cause a return to a rediscovered serviceability of deliberative democracy at the nodes that count. (Braithwaite, 2007: 167)

In making this argument, John is responding to Philip Pettit's 'rather dismissive' response to the 'feasibility of the ideal of direct deliberative democracy' given that we no longer live our lives in 'the village, the New England town, or ancient Athens' (2007: 167). In developing this argument, John mobilises the idea of 'contested denizenship' (2007: 168). In the course of doing so he skilfully resurrects the idea of denizens – 'habitual, or even temporary, residents of a place' (2007: 168) – which he describes as a 'pre-Westphalian term that has disappeared from the latest edition of the on-line Oxford English Dictionary'. An idea that 'the triumph of Westphalianism' (2007: 168) has devalued.

What John seeks to do in this thinking is not to devalue citizenship, or the ideal of contestatory citizenship, but rather to weave this together with the idea of contesting and deliberative denizenship to develop an analysis that realises a republican 'design of a circle of widening circles of deliberative accountability' that insist upon 'active responsibility' (2007: 169). He uses the notion of denizenship, as parallel weft to that of citizenship, around which to weave the warp of the many threads that constitute his rich and nuanced story of governance and regulation along with his central motif of freedom as non-domination.

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