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Reimagining Citizenship: Justice, responsibility and non-penal real utopias

Emma Bell and David Scott¹

Abstract

This article regards exclusive conceptions of citizenship as the principal stumbling block to developing alternatives to repressive penal policies. Indeed, exclusive communities foster mistrust and suspicion of the Other, leading to punitive responses to 'outsiders'. It is therefore argued that the very notion of citizenship needs to be 'reimagined' in such a way that it is genuinely inclusive and encourages shared responsibility, thus enabling us to go beyond exclusive communities and penal policies generative of irresponsibilities. The idea of an inclusive citizenship of the common, founded on justice and responsibility, is promoted as a real utopian vision. Transformative justice is put forward as one means of realising this vision by allowing citizens to collectively institute a genuinely new penal rationality.

Introduction

As has long been recognised, any attempts to develop alternatives to current penal practices are seriously hindered by the social distance created between offenders and a mythical law-abiding majority. The commonplace treatment of the majority of offenders as non-citizens precludes meaningful dialogue and debate with 'the citizenry'. In recent years, debate about penal issues amongst those who are seen to be worthy of citizenship has often been reduced to base populism (Pratt, 2007). Consequently, if we wish to move beyond exclusionary responses to 'crime' and social harm, the very notion of citizenship needs to be 'reimagined' in such a way that it is genuinely pluralist and inclusive, incorporating all those affected by harmful behaviour, whether they are

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regarded as victims or offenders. This will entail rejecting all forms of penal fatalism in favour of a 'real utopian' approach (Wright, 2009) which seeks to recreate citizenship based on the principle of mutual responsibility and social action within institutions of 'the common'. Following Pierre Dardot and Christian Laval (2014), the 'common' is understood here as emancipatory praxis, as the shared activity through which people come together to develop alternatives to social problems, different from those proposed by either the State or private interests. It is a useful concept in that it is genuinely inclusive and encourages shared responsibility, thus enabling us to go beyond exclusive communities and penal policies generative of irresponsibilities. Rather than de-responsibilising citizens regarding their response to social harm, as occurs when criminal justice issues are captured by the State, a real utopian conception of citizenship, based on this idea of the common would allow individuals and communities to play an active role in finding solutions to shared problems.

This article begins by discussing how exclusive notions of citizenship are detrimental to the very existence of a moral community based on mutual responsibility. It then explores how citizenship may be reimagined following the logic of 'considered utopianism' (Bourdieu) to foster a genuinely 'common' approach to problems of social harm. Drawing on the work of radical social theorists such as Proudhon (2011) and Dardot and Laval (2014), it is argued that a 'reimagined citizenship of the common' should foster both justice and responsibility. It is a citizenship that goes beyond communitarianism which, while fostering responsibility, often fails to promote justice, focusing as it does on the level of community rather than of state institutions. It is recognised that practices of the common will not emerge naturally and spontaneously but must be instituted (Dardot and Laval, 227). The final part of the paper aims to demonstrate how constructing non-penal real utopias may both result from and help to institute a reimagined citizenship of the common. Picking up on Enrique Dussel's (2013), notion of 'liberation praxis', it suggests that citizenship must not be merely inclusive but also transformative if it is to be truly just. Transformative justice is thus promoted as a means of instituting a genuinely new non-penal rationality through emancipatory praxis.

Exclusive citizenship and irresponsibility

Conditional citizenship

As Reiner has pointed out, ‘the term “citizenship” is now more often used in political discussion in exclusive, nationalistic, and particularistic terms, focusing on barriers to the status of citizen, with the stress on hurdles, testing, pedigree, and desert’ (Reiner, 2010: 244). This trend has largely coincided with the rise of neoliberalism with its emphasis on the need for individual citizens to become more ‘active’ in dealing with their own problems, rather than relying on the State. Consequently, citizenship has become increasingly conditional upon behaviour (Dwyer, 1998), upon individuals’ capacity to accept personal responsibility. Those who are seen to have flouted the rules of the game are excluded from the normal rights of citizenship, notably ‘social citizenship’ (Marshall, 1950), as they find their social security benefits withdrawn. Access to political citizenship is also increasingly restricted: for foreign nationals, it is increasingly subject to formal testing and economic status – for example, citizens or settled foreign nationals wishing to sponsor their partner or spouse to join them in the United Kingdom must prove that they have a minimum gross annual income of £18,600. The civil rights of citizenship are also hard to enforce as individual freedoms are threatened by new surveillance technologies and strengthened police powers.

Renewed focus on the responsibilities rather than the rights of citizens has been a useful way for neoliberal governments to scapegoat individuals for social problems whilst simultaneously justifying reductions in state spending. Yet, the focus on the individual over the State was much criticised, notably by New Labour seeking to build a ‘third way’ between the excessive individualism of the Thatcher years and the statism of the post-war period, and by Cameron seeking to ‘detoxify’ the Conservative Party of its ‘nasty’ (May, 2002), uncaring image. For both, the active citizen was not to be regarded solely as an individual but as a member of a wider community. What Jean and John Comaroff describe as the ‘Second Coming of Civil Society’ was to be ‘the ultimate magic bullet in the Age of Millennial Capitalism’ (2001: 44), capable of providing the necessary social glue to hold together societies fragmented by the ravages of neoliberalism, whilst enabling successive politicians to rebrand their politics. For New Labour, civil society was to be boosted by communitarianism which would ensure that individuals assumed responsibility, not for their own ends, but in the best interests of the community as a whole. For Cameron’s conservatives, the ‘Big Society’ was to enable individuals to work together to create ‘communities with

oomph – neighbourhoods who are in charge of their own destiny, who feel if they club together and get involved they can shape the world around them’ (Cameron, 2010a). In both cases, individuals and communities were to be liberated from the State and all of its coercive capacity. Yet, this vision ignored the coercive power of communities themselves.

Coercive communities and deresponsibilisation

For Barbara Hudson, communities can be extremely coercive, especially when they seek to enforce values, often imposing ‘a constriction of freedom of choice about how one lives’ and grouping together to exclude those who fail to conform (Hudson, 2003: 91). Erik Olin Wright has also drawn attention to the fact that communities can foster ‘exclusionary solidarities’ as well as ‘universalistic ones’ (Wright, 2009: 267). The problem is often one of responsibility as the onus tends to be placed on individuals to integrate into the community rather than on the community to integrate individuals: responsibility is often ‘a one-way street’ (Hudson, *ibid*: 107).

Even more problematic is the fact that communities habitually divest themselves of responsibility altogether for individuals who they deem to be unworthy of citizenship. Offenders in particular are often cast out of the community, both physically – in prison – and symbolically – by loss of the basic rights of citizenship. This is illustrated by the loss of the right to vote. As Duff has explained, the law can no longer bind us as citizens, as it is no longer ‘the law of an “us” to which [offenders] unqualifiedly belong’: it becomes the law of a ‘we’ that they no longer form a part of (Duff, 2005: 213). Yet, the current Prime Minister regards stripping offenders of such essential civil rights as entirely normal. David Cameron, commenting on the issue following the European Court of Human Rights’ declaration that the UK’s current blanket ban on voting is incompatible with article 3 of the European Convention on Human Rights, declared, ‘when people commit a crime and go to prison, they should lose their rights, including the right to vote’ (Cameron, 2010b). The exclusivity of communities is thus supported, and even encouraged, by the State, demonstrating the importance of moving beyond the State when developing real utopias, a point we shall return to below.

Once communities exclude ‘undesirables’ from their midst, they are effectively exempt from further responsibility for them, despite the government rhetoric of community responsabilisation. Such deresponsibilisation is regarded as legitimate once the community is accorded the status of victim. Indeed, as crime is always seen as being perpetrated *against* the community rather than

being produced *in and by* the community, responsibility is seen to lie solely with offending individuals. This line of thinking helps to construct offenders as ‘Other’, as lying outside the moral community. As Zygmunt Bauman has so eloquently explained, once such social distance is created, undesirables can be dehumanised and ‘moral inhibition’ regarding their treatment suspended (1989: 25). Using the work of Helen Fein, he effectively demonstrates how they are placed outside the ‘universe of obligation’, cast into a world where moral precepts do not bind. Punitive rather than welfarist responses to social harm are thus favoured.

The failure of liberal penal policies

Liberal penal policies have attempted to foster the development of more inclusive communities underpinned by the notion of responsibility. Communities have been encouraged to take more responsibility for dealing with harmful behaviour and reintegrating offenders whilst wrongdoers themselves have been encouraged to take more responsibility for their own actions. One of the most influential liberal penological approaches in this mould is the ‘responsibility and justice paradigm’ (Scott, 2001). Primarily influential in the 1990s and 2000s, this approach accepts the legitimacy of state punishments but advocates a new, more inclusive relationship between the prison and community (King and Morgan, 1980; Woolf, 1991). Prisons should be more like the community with ‘permeable walls’ and stronger ‘community ties’ (Woolf, 1991, para 1.148). Prisons should also be normalised in the sense that basic living standards and legal protection ought to be the same for all citizens, whether they reside inside or outside prison. Yet even this liberal rhetoric can be misleading. The prisoner is to be treated with ‘respect’ only if they make responsible choices whilst inside (Woolf, 1991; Scott, 2001). Community responsibility to reintegrate offenders is only to be activated once offenders deem themselves worthy by demonstrating their own capacity to take responsibility. In recent times, the new conservative government has sought to get communities involved in the rehabilitation of prisoners. The Justice Secretary, Michael Gove, exhorted ordinary citizens to ‘help the hungry, the sick and the imprisoned’ by playing a role in prisoner rehabilitation (Gove, 2015) whilst the Prime Minister encouraged businesses to offer former prisoners a second chance by providing them with employment (Cameron, 2016). Prisoners themselves are to be responsabilised for their own rehabilitation, with privileges and earned release determined by participation in educational activity in particular (Gove, 2015). Yet, in continuity with other ‘liberal’ reforms,

community responsibility is conditional and selective: only those wrongdoers who are considered responsible are deemed worthy of reintegration into the moral community. As Cameron put it, the aim is to find the ‘diamonds in the rough and [help] them shine’ (Cameron, 2016). The ‘irredeemables’ can presumably then legitimately be kept apart from society, preferably behind bars.

The possibility of the moral inclusion of wrongdoers is thus generally predicated on a logic of exclusion. The current focus on the normalisation of prisons through education, as promoted by Gove, can be understood as playing a role in shaping hegemonic understandings of the most appropriate responses to ‘crime’ and social harm. However, imprisonment is profoundly unnatural. Without doubt, prisons are cruel, lonely and destructive places. Confinement within such painful, isolating and brutal institutions is compounded by the constant menace of systematic abuse, maltreatment and ultimately dehumanisation. Threats to dignity, self respect, personal safety and other prerequisites of humanity seem endemic to the largely hidden world of the prison. The problem is that current policies and initiatives aimed at reform and education are defined and defended on the terrain of the State. The prison aims to coerce offenders into being responsible citizens, ignoring the fact that prisons are hardly the appropriate environment for such purposes. There is an urgent requirement to develop non-penal real utopian interventions, grounded in non-state understandings and practices of responsibilities and justice, which may effectively responsabilise *all* citizens, whether they are offenders, victims or potential victims of crime. It is necessary to reimagine the very concept of citizenship on which inclusive communities may thrive. We propose a real utopian vision of citizenship based on responsibility and justice which we hope may invite non-penal real utopian interventions to deal with offending behaviour. Rather than embedding ‘penal utopias’, it is hoped that these visions may open up possibilities for real *non-penal* utopian alternatives to the penal rationale.

Towards a real utopian citizenship of the common

Citizenship as real utopia

Reimagining citizenship entails abandoning fatalism – the idea that only exclusionary responses are appropriate for problematic behaviour – in favour of a ‘considered utopianism’. Following Ernst Bloch, Pierre Bourdieu described this strategy as one whereby we ‘work *collectively* on analyses able to launch

realistic projects and actions closely matched to the objective processes of the order they are meant to transform' (Bourdieu, 1997: 128, authors' emphasis). This idea fits closely with Wright's notion of real utopia: 'utopian ideals that are grounded in the real potentials of humanity, utopian destinations that have accessible waystations, utopian designs of institutions that can inform our practical tasks of navigating a world of imperfect conditions for social change' (Wright, 2009: 4). With regard to developing a more inclusive notion of citizenship on which non-penal real utopian solutions might be based, this entails delineating the actually existing principles which would inform such a notion and exploring the real potentialities of collective action. Non-penal real utopias are about thinking differently, visualising new possibilities and realities and facilitating transformative change (Scott, 2013). They involve enhancing life and promoting human flourishing and showing that another world is possible (Wright, 2009; this volume). Yet, they must be feasible and desirable – they must be possible in our historical conjuncture and also meet the demands of justice – that is, be democratic, be rights-regarding and facilitate (or are at least be consistent with) an equitable distribution of the social product and the meeting of human need (Dussel, 1985).

Key principles for inclusive citizenship

The first key principle which should inform an inclusive notion of citizenship is that of horizontality. Citizenship is commonly understood as a vertical relationship with the State whereby the latter determines the terms of that relationship in a top-down manner. Indeed, citizenship has been historically tied to the nation-state under whose authority associated rights and obligations are determined (Isin and Turner, 2002: 3). Although the State claims to delegate greater power to communities, it is essentially the State which determines which citizens should have access to which rights. Following John Hoffman, it is necessary to go beyond the State when thinking about citizenship since its monopoly on the 'legitimate' use of force means that those subject to force are necessarily prevented from exercising the rights and duties of citizenship (Hoffman, 2004). Furthermore, and this point is particularly relevant with regard to penal policy, 'the use of force is inimical to conflict resolution: only negotiation and arbitration can resolve conflicts of interest, since force crushes agency, and the agency of all the parties is essential if a dispute is to be successfully tackled' (Hoffman, 2004: 173).

Agency is the second key principle which must underpin inclusive citizenship. As suggested above, agency is effectively denied in mainstream notions of

citizenship as communities are divested of responsibility for ‘undesirable’ citizens. Those who are excluded from citizenship, whilst deemed responsible for their own exclusion, are also denied the opportunity to exercise agency in terms of determining how reparation can be made for harmful behaviour. As Hoffman underlines, the agency of *all* parties to a dispute is essential. This leads us to the third key principle supporting inclusive citizenship: the idea that citizenship should be plural, excluding no one. This means including those on the margins and periphery of society as well as those in the centre.

Fourthly, all should be included on equal terms. As Nancy Fraser has explained, there must be ‘parity of participation’ based on ‘social arrangements that permit all (adult) members of society to interact with one another as peers’. The principle of equality is best upheld by affirming basic human rights, not limited to narrowly-defined, and often conditional, citizenship rights. We thus suggest that it is necessary to go beyond ‘remarshalling citizenship’, as Robert Reiner advises, calling for a restoration of the political, social and civil rights of citizenship (2010: 261). Whilst this would certainly lead to a more inclusive notion of citizenship than that which currently exists, it is a version of citizenship which is understood primarily vis-à-vis the State rather than as solidaristic interaction with other citizens.

A citizenship of the common

These key principles ought to underpin what we describe as ‘an inclusive citizenship of the common’, based on justice and responsibility. This idea finds its origins in commonism. Commonism is a form of socialism promoting communities of mutual care and support and the collective organisation of the relations of production so that it can meet human needs for all. The concept has a long tradition. It finds its origins in the ideas of early English socialists such as Gerrard Winstanley (1649/2010) whose writings and activism aimed to emancipate ‘common land’ for the people and liberate the ‘spirit of community’ and the French socialist tradition of ‘mutualism’ promoted by Pierre-Joseph Proudhon² (2011). Yet, it is as a contemporary social movement that it has recently attracted renewed attention (Dardot and Laval, 2014). It aims to build non-authoritarian partnerships and networks of cooperation and collaboration in everyday settings such as the workplace, family, and wider community (Shantz, 2013). Symbolically, commonism is a means of identifying our ‘common

² Whilst we give a positive appraisal of the writings of Proudhon on justice, responsibility and non-penal real utopias, we distance ourselves from his notoriously anti-emancipatory writings on women and gender issues.

heritage', recognising each person's 'common humanity' and facilitating 'meaningful participation in decision-making processes around housing, work, education and food' (ibid: 11). Of central concern is the development of anti-capitalist real utopian practices in the here and now, but there is also interest in non-penal means of resolving conflicts and addressing social harms.

Commonism questions the legitimacy of authoritarian power, structural inequalities and institutionalised practices of domination, exploitation and dehumanisation. Commonism morally condemns coercion and violence in all their manifestations, promoting instead non-authoritarian ways of organising human life through free agreements, voluntary associations and mutual reciprocation. Rather than cajole, control and destroy, commonism is life-affirming and promotes what Jun (2010: 56) calls 'vitality': the point is to help people live. Commonism is radically egalitarian with a strong emphasis on ethical judgement, diversity, freedom, direct participation in decision-making and the democratisation of political representation. As a basic principle of human dignity, ordinary people should be able to speak for themselves and democratic procedures ensure that their voice is both heard and listened to (Scott, 2016a, 2016b).

For Dardot and Laval, 'the common' is not just about ideals or institutions, it is about social action and *praxis*. This is what gives the notion of 'an inclusive citizenship of the common' its real utopian dimension: it is utopian in the sense that it goes beyond what actually exists, beyond a mere reformist agenda, yet it is real to the extent that it can only exist as lived experience. Commonism must therefore emerge from the common actions of *all* citizens. Dardot and Laval (2014) imagine a 'federation of commons' that is not limited to the boundaries of a nation state but one which is plural and decentred, based not on formal rights granted by the State but instead on practice. It aims to be 'popular' without being 'populist', guided by commonly-held principles such as dignity, solidarity, equity and freedom. It is also emancipatory in the sense that it enables individuals to directly participate in bringing about social change. Indeed, emancipatory praxis occurs when an individual consistently acts directly in accordance with the normative values and principles of human liberation – that is integrating their broader ethical worldview within daily practice (Scott, 2016c). Fundamentally, this entails taking on responsibility to act in the common good.

Concretely, in terms of developing a citizenship of the common, commonism may encourage collective practices such as 'associational democracy' whereby collective organisations come together to take decisions and directly influence

the political process (Wright, 2009). This would certainly encourage an active, emancipatory politics of the common, provided that these organisations remain as porous as possible, avoiding an exclusive membership ethos. In the current neoliberal context in which many different states are facing the same problems of inequality and injustice caused by transnational corporate power networks, it is also necessary that these groups do not confine themselves to the nation state but join together across borders to seek common solutions. Associational approaches are particularly attractive, addressing as they do the problems of irresponsibility highlighted above by allowing citizens to take joint responsibility for social problems and engage in a common endeavour to institute new practices.

Commonism thus directly challenges state power from below through everyday collective actions and praxis. *Contra* Proudhon, we cannot assume that these practices of the common will emerge naturally and spontaneously (Dardot and Laval, 227). It is necessary to think strategically about how to institute the common. In other words, the utopia of the common must be *real*. In the next section, we will attempt to show how constructing non-penal real utopias may be regarded as both emerging from and helping to construct a truly common notion of citizenship.

Non-penal real utopias of the common

Non-penal real utopianism should draw upon both a radical imagination that steps outside of the assumptions of the penal rationale and currently existing community-based interventions that engage with human troubles and problematic conduct. Exploring alternatives to exclusionary penal practices should be regarded as social action, as part of exercising citizenship as praxis. This entails reclaiming the issue from the State in order to develop alternative forms of justice firmly rooted in inclusive communities: from stateless citizenship it may perhaps be possible to imagine forms of stateless justice, a genuine 'justice of the common'.

The dangers of community responses to social harm

Moving beyond the State will entail citizens assuming real responsibility for the social problems that affect them, engaging in collaborative practices to address these in a meaningful way. It is not about communities getting involved in the existing institutions of the State, such as assuming a sense of 'ownership' of the prison (Faulkner, 2003: 306), but about communities being genuinely 'active' in

developing inclusive, non-penal solutions. So far, attempts to resolve issues arising from harmful behaviour in the community context, notably restorative justice initiatives, have frequently been captured by the State (see, for example, Convery et al, 2008; Copson, this volume). Restorative justice, in placing the victim at the centre of analysis; providing a voice to all parties, including the voice of the offender; downplaying or removing coercive solutions; placing relationships at the heart of the response to a given problematic or troublesome act; focusing on positive and constructive *outcomes* and emphasising fixing, compensating, repairing or restoring balance, can certainly be deployed as a non-penal intervention. Yet, in practice, restorative justice is often punishment under a different name. Whatever the definition or benevolent intentions of practitioners, the application of pain infliction continues, but disturbingly now its reality is disguised (Scott, 2009). Restorative justice remains a vague and illusive concept. On a practical level, the concern is that the capitalist state is still given penal power, but that legal rights, safeguards and protections of wrongdoers are in effect removed, resulting in potentially heavier pain infliction than through the penal law. Restorative and shaming interventions, whilst non-penal in nature, have been and are used in addition to existing penal responses. Non-custodial responses to wrongdoing *must never* follow the logic that there must be a strengthening of community punishments to appear politically plausible. Finally, they do nothing to address structural inequalities and imbalances in power. There is no consideration of the implications (or harms) of the inequitable distribution of social product or how life choices, including the perpetration of wrongs and harms, are shaped by structural contexts. This example of restorative justice demonstrates that there is no guarantee that the community response/ stateless justice will be free of domination and coercion, especially when applied in profoundly unjust contexts. Non-penal real utopian solutions to social harm must therefore seek above all to promote genuine justice and responsibility.

Justice, responsibility and non-penal utopias

In his work on mutualism, Proudhon addressed the issue of justice and social harm (1989). He grounded his notions of justice in respect, inherent dignity and guaranteed mutually reciprocating relations. Citizens had a duty to protect the dignity of their neighbour and ensure that there was 'natural harmony'. However, Proudhon also recognised that conflict and troubles would be inevitable. Proudhon, himself imprisoned for three years where he experienced solitary confinement and 'forced relationality' and where his health was, in the

long term, broken, was a penal abolitionist. For him, no authority had the right to punish: punishment has nothing to do with justice, only with 'iniquitous and atrocious vengeance'. He was against penal servitude and argued that punishment was symbolic of the moral problems regarding inequality and injustice. Justice required that conflicts be handled through non-violent methods, such as reparations. There was for Proudhon a need to replace penal discipline with the morality of justice (Hyman, 1979).

Yet, Proudhon's vision of justice is limited to the extent that it fails to focus on the wider context in which injustice may occur. Enrique Dussel (2013: 413), on the other hand, though his vision of 'liberation praxis', demonstrates how we might broaden this focus by showing us how exactly justice may replace penal discipline. Central to the liberation praxis of Dussel (2013) is the 'paradigm of life'. Without ensuring that there are appropriate material conditions, there can be no justice. Both his understanding of responsibilities and justice are predicated on 'an ethics of life' (Dussel, 2013: 108), a 'community of living beings' where the 'ethical duty [is] to reproduce and develop the life of the human subject' (ibid: 217). For Dussel, there is an ethical responsibility to ensure that those who are in an 'asymmetrical' position to us – that is they have less power and resources than we do – are treated with dignity and that their basic needs are met. Such a responsibility does not have to be demanded by another person, but rather arises automatically through appearance of 'the face'. Through an encounter with, or knowledge of, a weaker person we are compelled to abandon reciprocity and undertake non-reciprocal acts of hospitality. Praxis 'is this and nothing more' (Dussel, 1985: 170): praxis is to make the stranger, the lost, the outcast and begotten part of our moral universe and to actively respond in aid of their plight.

Dussel (2013: 207) refers to such people, who are excluded, marginalised denied dignity and 'affected by a situation akin to death' as 'victims'. Liberation praxis entails not only recognising that such victims of social injustice are ethical subjects who have legitimate demands upon us in terms of meeting their needs but also ensuring that their voice is heard (Scott, 2016b). Victims are often silenced or their voice cannot be heard and liberation praxis demands that we challenge the validity of such denials from the perspective of the victim themselves. This means listening and learning to learn from victims. Whilst there is 'no single voice of all human kind' and to be treated the same is not equivalent to being treated equally, we must recognise the fluidity and contingency of categorisations; demonstrate a willingness to pay attention to the voices of 'concrete others'; and acknowledge that each voice comes from a specifically

situated position, standpoint or worldview rather than a generalised and abstract universalism (Hudson, 2003; Scott, 2016a). Equality will be ‘complex’ (i.e. equity) but we must somehow find a way in which it can encompass the diversity of human subjectivities. For real justice there is a need for reflexivity and the promotion of freedom and autonomy; to hear different voices; and reconstruct a notion of universality that is sensitive to social contexts (Hudson, 2003).

A crucial analytical and normative innovation of liberation praxis is to view the world from the ‘exterior’ – to look at the world from the outside through the eyes of the marginalised and excluded victim (Scott, 2016a). The engagement with community then is through an external lens. Liberation praxis looks at life from its negation (Dussel, 2008). Ethical responsibility and principles of justice are based on the experiences of those on the outside of the system: the Other. More than this, Dussel (2008) develops a clear set of normative political principles upon which community values and attitudes can be externally evaluated. The ‘formal principle’ allows procedural safeguards ensuring the promotion of the voice of all people (including ‘victims’) so that a community is genuinely based on participatory democracy. The ‘material principle’ notes that the social organisation of any society must be grounded in principles of distributive and social justice. Finally, the ‘feasibility principle’ looks to promote and foster the most appropriate ways of delivering justice in the here and now.

The key question is not simply ‘is this just?’ but also ‘who is granted justice and to whom is justice denied’ (Hudson, 2003)? Those who most lack justice (and indeed also security) are the poor, powerless and disadvantaged. Too often their sufferings are neglected or marginalised; too often their voice delegitimised; and too often their claims to equal respect denied. For Dussel (1985: 65) liberation praxis should result in ‘liberative justice’:

Liberative justice, which does not give to each what is due within the law and the prevailing order, but grants to all what they deserve in their dignity as others. Thus liberative justice is not legal justice, whether distributive or communicative, but real justice – that is, subversive: subverting the established unjust order. (ibid)

An ethics of justice requires acknowledgement and respect towards people not like us. Hudson (2003) refers to this as ‘justice as alterity’ and it has significant connections to Dussel’s (1985) liberative justice:

Justice involves recognition of the likeness in the sense of shared humanness, but not insistence on reduction or elimination of differences, rather the respecting of differences. (Hudson 2003: 190)

Justice as alterity demands that we meet the other without violence and this approach in effect 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. Like Dussel (2013), critical scholars such as Barbara Hudson (2003) have also argued that 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. We must learn to accept differences, acknowledge the existence of the stranger/ 'victim', but also to recognise what we share – *common humanity*. It is important that rather than focusing on the 'enemies within', we should look to find new suitable friends (Scott, 2013):

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. Prisons, detention centres, ghettos and gated estates demonstrate the refusal of hospitality and the desire to avoid encounters with strangers, rather than to respond to their claims and needs. (Hudson, 2011: 120)

Drawing on the insights of Hudson (2011) and Dussel (2013), Scott (2016a) has argued that liberative praxis leads us down an emancipatory path that intimately connects debates around justice and responsibilities with the promotion of human rights. From an abolitionist perspective, Scott (2016a) argues that such a human rights agenda will always be 'unfinished' for it must be forged through emancipatory struggle and acts of defiance. An 'abolitionist human rights agenda' from below will continuously evolve and should be focussed on making more visible the institutionally-structured violence of incarceration alongside broader structural inequalities that blight human life. Such abolitionist critiques must aim to reveal the ideological closure of the existing foundations of legal rights and reignite their more emancipatory potential. Abolitionist human rights agendas therefore move beyond a merely

humanitarian approach reflecting the content of international covenants and grounded in the amelioration of suffering. Theirs is an agenda that reflects the liberation struggles of the powerless and contributes to emancipatory and transformative praxis. Consequently, for Scott (2016a) the aspiration of those struggling for justice and human rights must be for freedom from domination and the removal of the causes of human suffering.

For abolitionists such as Hudson (2003, 2011) and Scott (2016a) human rights must reflect our responsibilities *for* the Other rather than for the self. To protect human rights, society must learn to hear and learn to learn from the voice of the estranged Other, recognise their inherent dignity, and meet them with non-violence (Scott, 2016b). Radical alternatives should be historically immanent, in place of an existing sanction and not be grounded in authoritarian forms of domination (Scott, 2013). Non-penal interventions must reflect the normative frameworks of human rights, democratic accountability and social justice (Scott, 2013, 2016c). In this sense, the ‘abolitionist real utopia’ (see Scott and Bell, this volume) perspective maps directly onto the concerns of those of Wright (2010) and Dussel (2013).

For Dussel (2013), liberative justice is not just about creating freedom for victims, but also responsibility for the social, economic and political transformation of the conditions and structures which create victimhood in the first instance. In an argument reminiscent of that found in commonism, the aim of the praxis of liberation is to create symmetrical relationships resulting in mutual aid and responsibility. There is an ‘ethical obligation of “transforming” the reality that produced victims’ (Dussel, 2013: 288) and the creation of a new ‘mutual responsibility’ (ibid: 281).

The excluded should not be merely *included* in the *old* system – as this would be to introduce the Other into the Same – but rather ought to participate as equals in a new *institutional moment* ... This is a struggle not for *inclusion*, but for *transformation*. (Dussel, 2008: 89, *emphases in the original*)

Transformation must entail direct engagement with the ‘victim’. For the purposes of non-penal utopian justice, the victim here must be understood widely to include *all* victims of social injustice, whether they have broken the law and caused harm or not. The encounter with the victim, for Dussel (2013: 352) is the ‘*possible utopia*’ (*emphasis in the original*). We must work, day-in-day-out with the people of the ‘present utopia: the peripheral peoples, the oppressed classes’ (Dussel, 1985: 48) Emancipatory politics and praxis must then

exercise an *'ethical-utopian reason'* (Dussel, 2013: 223, *emphasis in the original*) and draw upon the 'feasibility' principle to build upon interventions that are real and viable in our historical moment.

Unleashing transformative justice

We therefore have a responsibility when developing non-penal responses to social harm to work in common with all those affected in a common endeavour to develop a just response in opposition to the often unjust responses of the State. It is an opportunity to create a counter-revolution in response to these exclusionary responses by proposing a new non-penal rationality that is genuinely transformative. A citizenship of the common, and an emancipatory politics and praxis, ought therefore to favour transformative justice. Ruth Morris (2000:3) describes transformative justice as follows:

Transformative justice uses the power unleashed by the harm of crime to let those most affected find truly creative, healing solutions. Transformative justice includes victims, offenders and their families, and their communities, and invites them to use the past to dream of a better future ... Transformative justice recognises the wrongs of all victims, and recognises also that sooner or later, we are all both victims and offenders.

Transformative justice means handling conflicts and troubles by listening, acknowledging the victim's injury and hurt and finding ways that can lead to healing and just settlements for all. Transformative justice is victim-focused, but it recognises equally the victims of problematic and troublesome interpersonal harms and the 'victim' (Dussel, 2013) of the harms generated by 'distributive' and social injustices, multi-national corporations and state domination (Morris, 2000: 5). The focus is justice and the transformation of context and situations characterised by injustice and the facilitation of more caring, cooperative and inclusive communities. Only transformative social justice can lead to transformative non-penal justice: transformative justice is impossible in unjust contexts.

This goal of social transformation leads to an emphasis on finding answers, recognising wrong done, providing safety and security, providing an appropriate form of redress and helping the victim find new meanings and understandings (Morris, 2000). But it also means meeting needs – housing, relational, therapeutic – and reaffirming life. Transformative justice is about restoring 'world' for victims, providing them with voice and helping to create or rebuild

‘vitality’ – the paradigm of life (Dussel, 2013). The struggle for transformative justice is at the heart of our daily lives – interventions, direct action, writing, speaking, engaging with people about the issues that matter – living a life that connects with our principles and responsibility for Others: emancipatory politics and praxis.

Conclusion: commonism, real utopias and transformative justice

In neoliberal societies, individualism and competition constantly undermine the ‘common’ as the ties that bind us become weakened. As society becomes increasingly atomised, collective participation in social, institutional and political structures is limited, allowing power to become ever-more concentrated at the top. In a context of ‘decollectivisation’ and profound social inequality (Dardot and Laval, 2014: 15), attempts to reinvigorate communities have been unsuccessful. The discourse of individual responsabilisation has paradoxically justified the irresponsibility of communities with regard to individuals who are thought to have failed in their duties to the community. Once deresponsibilised in this way, communities have allowed the State to exercise its repressive power with regard to those who are deemed unworthy of citizenship.

A reimagined citizenship of the common offers a possibility to citizens to become genuinely active in imagining alternative social structures. Faced with the significant hegemonic power of the neoliberal model, such a concept of citizenship is unlikely to emerge spontaneously. Conscious efforts need to be made to get citizens involved in common projects to radically reimagine the way that society is currently ordered, thus fostering mutual responsibility. Dussel’s concept of ‘liberation praxis’ allows us to imagine how we may assume responsibility for developing a *just* social order. It suggests that citizen action needs to be transformative, capable of overturning hegemonic rationalities of all kinds. In that sense, it is utopian, but it is also real, grounded in the praxis of collective action. It is through working collectively to develop common responses to social problems such as crime that the notion of a citizenship of the common can go beyond the ideal to become a practical, transformative reality, capable of generating non-penal responses to social problems.

References

- Bauman, Z. (1989) *Modernity and the Holocaust* New York: Cornell University Press

- Bourdieu, P. (1997) 'A Reasoned Utopia and Economic Fatalism', Speech of acceptance of the *Ernst-Bloch Preis der Stadt Ludwigshafen*
- Braithwaite, J. (1989) *Reintegrative Shaming* Cambridge: Cambridge University Press
- Cameron, D. (2016) 'Prison Reform', speech to the Policy Exchange, London, 8 February
- Cameron, D. (2010a) Speech on the Big Society.
<http://www.telegraph.co.uk/news/politics/david-cameron/7897445/David-Cameron-launches-his-Big-Society.html> (consulted 13 May 2016)
- Cameron, D. (2010b) HC deb 3 November 2010, Volume 517, col. 921
- Comaroff, J. and Comaroff, J. L. (eds) (2001) *Millennial Capitalism and the Culture of Neoliberalism* Durham: Duke University Press
- Convery, U., Haydon, D., Moore, L. and Scraton, P. (2008) 'Children, Rights and Justice in Northern Ireland: Community and Custody' in *Youth Justice* Volume 8, No. 3 pp 245-263
- Dardot, P. and Laval C. (2014) *Commun: Essai sur la révolution au XXIe siècle* Paris : La Découverte
- Duff, R. A. (2005) 'Introduction: Crime and Citizenship' in *Journal of Applied Philosophy* Volume 22, No. 3 pp 211-16
- Dussel, E. (1985) *Philosophy of Liberation* Oregon: Wipf and Stock
- Dussel, E. (1998) *The Underside of Modernity* New York: Humanity Books
- Dussel, E. (2008) *Twenty Theses on Politics* Durham: Duke University Press
- Dussel, E. (2013) *The ethics of Liberation* Durham: Duke University Press
- Dwyer, P. (1998) 'Conditional Citizens? Welfare Rights and Responsibilities in the Late 1990s' in *Critical Social Policy* Volume 18, No. 4 pp. 493-515
- Etzioni, A. (1995) *The Spirit of Community* London: Fontana Press
- Faulkner, D. (2003) 'Taking Citizenship Seriously: Social capital and criminal justice in a changing world' in *Criminal Justice* Volume 3, No. 3 pp 287-315
- Gove, M. (2015) 'The treasure in the heart of man – making prisons work', speech delivered to the Prisoners' Learning Alliance, London, 17 July.
- Hoffman, J. (2004) *Citizenship Beyond the State* London: Sage
- Hudson, B.A. (1993a) *Penal Policy and Social Justice* London: Macmillan
- Hudson, B.A. (2000) 'Punishing the Poor: Dilemmas of justice and difference', in Haffernan, W. and Kleinig; J. (eds) *From Social Justice to Criminal Justice* New York: Oxford University Press

- 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, and Franko-Aas, K. (eds) (2011) *Cosmopolitan Justice and its Discontents* Abingdon: Routledge
- Hudson, B.A. (2012) 'Who needs justice? Who needs security' in Hudson, B.A. and Ugelvik, S. (eds) (2012) *Justice and Security in the 21st Century* Abingdon: Routledge
- Hyams, E. (1979) *Pierre-Joseph Proudhon* London: John Murray
- Isin, E. F. and Turner B. S. (2002) 'Citizenship studies: An introduction' pp 1-10 in Isin, E. F. and Turner B. S. (eds) *Handbook of Citizenship Studies* London: Sage
- Jordan, B. (1993) *Theory of poverty and social exclusion* Cambridge: Polity Press
- Kelly, D. (1994) 'Introduction' in Proudhon, P.J. (1994) *What is Property?* Cambridge: Cambridge University Press
- King, R. and Morgan, R. (1980) *The Future of the Prison* Farnworth: Gower Publishing Ltd
- Marshall, T. H. (1950) *Citizenship and Social Class*; reprinted in T.H. Marshall, (1963 [1950]) *Sociology at the Crossroads* London: Heinemann
- Mathiesen T. (1974) *The Politics of Abolition* New York: John Wiley and Sons
- May, T. (2002) 'Speech to the Conservative Party Conference', <http://conservative-speeches.sayit.mysociety.org/speech/600929>
- Morris, R. (2000) *Stories of Transformative Justice* Toronto: Canadian Scholars Press
- Proudhon, P.J. (1989) *General Idea of Revolution in the Nineteenth Century* London: Pluto Press
- Proudhon, P.J. (2011) 'Justice in the Revolution and in the Church' in McKay, I. (ed) (2011) *Property is Theft* Edinburgh: AK Press
- Proudhon, P.J. (2011b) 'What is property?' in McKay, I. (ed) (2011) *Property is Theft* Edinburgh: AK Press
- Reiner, R. (2010) 'Citizenship, Crime, Criminalization: Marshalling a Social Democratic Perspective' in *New Criminal Law Review* Volume 13, No. 2 pp 241-261
- Scott, D. (2001) 'Prisoners' Rights and the "Responsibilities and Justice Paradigm": Which Rights? Whose Responsibility? What Justice?' in *Strangeways* pp 5-7

- Scott, D. (2009) 'Punishment' in Hucklesby, A. and Wahidin, A. (eds) (2009) *Criminal Justice* Oxford: Oxford University Press
- Scott, D. (2013) 'Visualising an Abolitionist Real Utopia: Principles, policy and praxis' in Malloch, M. and Munro, B. (eds) *Crime, Critique and Utopia* London: Palgrave
- Scott, D. (2016a) 'Regarding rights for the Other: Abolitionism and human rights from below' in Weber, L. et al (eds) (2016) *Routledge Handbook of Criminology and Human Rights* Abingdon: Routledge
- Scott, D. (2016b) 'Hearing the Voice of the Estranged Other: Abolitionist ethical hermeneutics' *Kriminologisches Journal*, to be published
- Scott, D. (2016c) *Emancipatory Politics and Praxis* Bristol: EG Press
- Shantz, J. (2013) *Commonist Tendencies* New York: Punctum Books
- Swaaningen, R. van (1997) *Critical Criminology* London: Sage
- Winstanley, G. (1649 /2010) *The New Law of Righteousness* London: EEBO Editions
- Wolf, L.J. (1991) *Prison disturbances* London: TSO
- Wright, E.O. (2010) *Envisioning Real Utopias* London: Verso
- Wright, E. O. (2009) *Envisioning Real Utopias*,
<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.152.6099andre p=rep1andtype=pdf>