

BOOK REVIEW/COMPTE RENDU

Andrew Woolford and **R.S. Ratner**, *Informal Reckonings: Conflict Resolution in Mediation, Restorative Justice and Reparations*. Abingdon: Routledge-Cavendish, 2007, 160 pp. \$US 35.95 paper (978-1-904385-86-8), \$US 150.00 hardcover (978-0-415-42934-4)

This well-researched critical study of informal conflict resolution revolves around the contention that informal and formal conflict resolution practices entwine in an informal-formal justice complex which reproduces the juridical status quo. Nevertheless, informal justice has the potential to promote social and juridical transformation, conceived within “deliberative spaces designed to disrupt the legal status quo and to open up new justice possibilities” (p. vii).

Three forms of informal justice are discussed in this book: mediation, restorative justice and reparations. In mediation, a presumably neutral intermediary assists the parties in reaching consensus. Restorative justice brings together victims, offenders, and possibly other parties, seeking resolution to problems created by an offence. Reparations involve tribunals, truth commissions, commemorations, restitutions, and lustrations (removals of offending officials) intended to normalize social relations.

Unlike those who praise informal justice as an antithesis to its formal counterpart, Woolford and Ratner caution that “so-called informal modes” of conflict resolution “often receive resources and endorsement from ... the state,” which places them within legal order, not beyond it (p. 3). Entwinement of formal and informal justice brings informal into formal practices (plea bargains), syphons off the case overflow clogging the formal justice system, and thereby reproduces “the hegemony of law.” The formal-informal justice dichotomy should therefore be replaced by a wider notion of “informal-formal justice complex” (p. 4).

Informal justice historically declined and formal justice ascended, as kinship-based societies gave way to state-dominated ones. This trend was reversed in the late 20th century, but instead of restoring the hegemony of informal practices, it split their adherents into oppositional and complementary tendencies which differ by cooperating with the formal justice system or not; espousing social justice or managerialist goals; and resisting professionalization or not. Mediation, restorative

justice and reparations regularly involve state intercession and formal justice professionals, which distances them from “any pure notion of informality.” The reparative turn that emerged since the 1970s, bolstered by the “ascendancy of political liberalism” and “growing economic and cultural globalisation” (pp. 11–12) triggered contrary tendencies of co-optation of informal justice by the formal system, and its subversion by transformative informal justice.

Woolford and Ratner depart from Foucault’s notions of governmentality and Habermas’s communicative action, aiming at a theoretical-practical synthesis geared to wider social transformation. They accept Foucault’s rejection of the view that all power emanates from the state, and his suggestion that governmentality disseminates hegemonic power throughout society, furthering state control of society without direct coercion — because people discipline themselves. They accept theories deriving from Foucault which question the formal-informal divide in justice, the actual possibility of autonomy and of informal justice beyond governmentality. Dissatisfied with the practical-political closure in such theorizing, they turn to the communicative action which envisions spaces of informal justice capable of resisting juridification and instrumentalization, and promoting “collective communicative action that attains the sanctity of law.” Sensing that this theorizing remains within the formal-informal justice dichotomy they seek to transcend both theories in the project of transformative informal justice.

The authors maintain that mediation was hegemonic in homogeneous, nonstratified societies, but by the 20th century no social space remained free of the hegemony of the informal-formal justice complex. Community mediation initiatives attempted to increase the autonomy of conflict resolution from the state, but they were soon co-opted and infiltrated by professionals. Critiques from the viewpoints of Foucault’s governmentality and Habermas’s communicative action theories contend that instead of reducing state control over society, mediation replaces state-control with self-control, and that its practices fall below the standards of discourse ethics. This does not apply to all forms of mediation equally: transformative mediation remains most closely related to informal justice; facilitative mediation sits around the middle of informal-formal continuum; and evaluative mediation comes closest to formal justice.

Restorative justice shares the history of mediation, and is likewise co-opted by the informal-formal justice complex through the involvement of professionals and the formal juridical system. Of the two trends in restorative justice — “governmentalist” and “communitarian” — the former comes closer to formal justice. Adherents of governmentality

theory argue that restorative justice reinforces juridical status quo instead of transcending it, and communicative action theory adherents contend that restorative justice would be less system-bound if it were wedded to practices of deliberative democracy — secured by the state. While partly agreeing with such critiques, Woolford and Ratner argue that they fail to envision a project of transformative informal justice.

Reparations involve truth commissions, compensation, restitution, symbolic politics (regrets, apologies), and communicative history acts (commemorations). While belonging to the informal-formal justice continuum they nonetheless remain open to disruptions by transformative informal justice. Woolford and Ratner apparently believe that unlike mediation and restoration, reparations are practices established only after the Second World War — which is moot (Thucydides, Arrian, Caesar and others describe practices akin to formal and informal reparations of our time).

Broader systems of power, juridification, instrumentalization, and inequities within the reparations processes lock it within the informal-formal justice continuum, and thereby reinforce the status quo. This is more so with affirmative than transformative reparations, as the former rather openly support the social order, while the latter seek to transform it away from conditions conducive to actions requiring reparations. Such limitations do not render reparations futile, as their potential can be released through transformative informal justice.

Woolford and Ratner offer four types of transformative informal justice. First, it could be situated beyond the informal-formal justice complex (communes or communities beyond the social mainstream) — with risks of self-isolation and impotence. Second, it may remain within the informal-formal justice complex while aiming to transform it — which remains elusive. Third, spaces for informal justice may be carved within the informal-formal complex — which raises the question of their expansion without co-optation. Fourth, “informal justice counterpublics” may be created as spaces from which disruptions and transformation of the informal-formal justice complex are staged — our authors’ preferred option.

While acknowledging that informal justice counterpublics are ideals, Woolford and Ratner maintain that they are attainable to degrees adequate to their transformative goals. They fulfil Foucault’s demand to disrupt the ubiquity of governance and domination, and Habermas’s quest for dialogical space whence critical engagements could spread out into policy deliberations. True to their critical orientation, the authors recognize only Zapatista public-oriented guerrilla tactics as approximating the ideal, and they close this illuminating and commendable work

with an invitation to multiply and broaden such disruptive actions with the aim of encouraging public debates directed at deeper changes in institutional social order. My single critical remark of consequence may best be put as a question: Is the plain old repression of radical opposition absent from their analysis because it is assumed that it does not occur in the presumed — and never evidenced — “liberal democracy”?

RYERSON UNIVERSITY

SLOBODAN DRAKULIC

A native of Zagreb, Croatia, Slobodan Drakulic has taught at the universities of Rijeka, Zagreb and Toronto. He currently teaches courses on war and peace, history of ideas and introductory sociology. His most recent published work is “Whence Nationalism?” *Nations and Nationalism*, 14, 2 (2008).