

The concept of justice in sociolegal studies
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Justice is one of the most overused and underspecified concepts in the social scientific study of law. One reason for the lack of conceptual specificity is the uneasiness social scientists experience when asked to make a moral assessment of some decision, act or state of affairs. Naming and observing justice necessitates making a judgment rooted in values: Was an act or decision fair? Was it appropriate? Did it achieve some measure of justness? To engage in such assessments means we need to leave the value-free realm of so-called objective social science. Curiously- given the reluctance of social scientists to analyze justice - there seems to be general agreement that there are different *sorts* of justice. Often the word is preceded by an adjective connoting the various distinctions that have been drawn: procedural, substantive, and distributive. Although on the surface these qualifiers would seem to represent ever-finer distinctions of justice, they are actually evasions. Inflecting the qualifier allows us to ignore the core term (procedural justice has something to do with process, but what exactly about a process makes it just?).

To avoid such epistemological exile, socio-legal scholars are much more likely to focus on justice's evil twin: power. Unlike justice, power leaves a mark: it maims, it destroys, and (if we are to believe Foucault) it produces all sorts of things. In short it can be known by the trail it leaves and, thus, it avails itself of being observed, recorded and measured.

Although I have written about – and thus must have been aware of - how social scientists tend to neglect justice by making it an understudy of power (Ewick 1997), I hadn't fully recognized the degree to which this tendency marks my own empirical research and scholarship. For instance, in *The Common Place of Law* (Ewick and Silbey, 1997), the term "power," has 17 entries (with instruction for the reader to "see also, ideology, hegemony and hierarchy"); "Resistance" has 37 entries. "Justice" does not appear in the index at all (nor does the term "injustice"). Although this is a crude measure, it would suggest that justice has little to do with law and legality in either the legal consciousness of ordinary citizens or the imagination of sociolegal scholars.

More recently, I have been studying a chapter of Voice of the Faithful, an international organization of faithful Catholics who formed after the sex scandal in order to bring about structural change in the Church (empowering the laity) and to support the victims of clergy sex abuse. In light of the group's outrage at the scandal, and especially at the complicity of the Church hierarchy, I expected that notions of justice and injustice would be a central part of their experience and discourse. Yet, much like the citizens of New

Jersey, members of VOTF are strangely silent on the subject of justice - expressing anger, hurt, outrage, betrayal, but rarely a sense of injustice.

What, then, are we to make of this preoccupation with power? Is it merely epistemological? How are we to explain the relative infrequency with which people (who are not as wedded to positivist social science as social scientists of law might be) employ a discourse of justice?

I have elsewhere theorized the relationship between justice and power as mutually constitutive. This relationship, moreover, offers a possible clarification of the eclipse of justice in both our understanding of law and the absent discourse about justice/injustice among citizens. Typically justice is thought of as external from legal power, functioning to demarcate the limits of such power by specifying standards against which it can be held accountable or by offering ideals that law does not yet embody. By contrast, I have proposed that justice and power stand in a dialectical relationship to one another. Conceptions of justice, in other words, catalyze, rather than simply contain power. Justice calls forth power; it demands actions as much as it limits it. Moreover, to the extent that conceptions of justice are historical constructions, whose articulation and acceptance needs to be explained, power is implicated in the construction of justice. In other words, just as the exercise of legal power is constituted by conceptions of justice, cultural understandings of justice are likewise defined by the power against which they are poised. This conceptualization invites us to examine the dynamic, historical processes through which power and justice operate and the sorts of misrecognitions that might result.

Recently, for instance, I explored this process in an essay entitled “The Scale of Injustice” (2009). The essay examines transformation in the operation of power that make the recognition of injustice increasingly difficult. In the contemporary world of neoliberal law, hyper-rationalized governance, and global economies, power often operate from a distance and yet, at the same time, through finer circuitries of social life. In this world, individuals are part of shifting and overlapping networks rather than role-based relationships. Law exists at multiple, parallel planes. As a result, injustices often occur from a distance and, simultaneously, at a smaller scale. Responsibility for redressing systemic harms is shifting and vague. Woven into markets and bureaucracies, embedded into protocols and standard operating procedures, the scope of injustice is wide and deep. Such injustices are frequent, systemic and impersonal. Their consequences are often erosive rather than violent, they are cumulative rather than singular. In other words, as the scalar resolution of power shifts, the ability to apprehend its operation from the ground of everyday life diminishes. Finally, because it becomes increasingly difficult to name an event as unjust, to attribute agency or motive, or even calculate injury, these mundane injustices often go unrecognized and thus unnamed, although not unfelt.

Perhaps our preoccupation with power (and correlative neglect of justice) , then, can be traced to the thing itself. Globalization and what Foucault has called governmentality have seemingly effaced power by removing it from the “here” and “now.” The apparent evacuation of power from everyday life inhibits the naming of injustice insofar as the

incommensurability between the scale at which injuries are felt and the scale at which power operates incapacitates the sorts of ideological revisions that activate a sense of injustice.