

Conceptualizations of the Notion of Criminal Justice Through the Mitigation of the Migration Experience: The Case of Syrian Refugee Incomers to Greece

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Our study aims at exhibiting the various meanings attributed to the notion of criminal law and criminal justice by migrant social actors living in two different socio-cultural environments: the environment of their country of origin and the environment of their host country. The data provided are based on a qualitative research conducted in Syrian refugee population living in Athens. The field took place during the second semester of 2019. The research is a joint-project undertaken by the National Center for Social Research (Athens, Greece) and the Center for the Study of Crime (Athens, Greece). The research initiative has focused on the Syrian refugee population in Greece, since Syrians have not only submitted the most asylum applications in this country between 2013-2018 but they also have the highest rate of recognition as beneficiaries of international protection. As a result, it is expected that this great majority of refugee population will reside in Greece for a long time, and so, they are expected to conform, together with the natives, to their host country's laws and regulations. To this end their perceptions of the legal system and important legal institutions are of great importance, in that they guide behaviors. In this respect they also facilitate or burden social integration to the new and host socio-cultural environments. In this context, in our present study, some initial remarks and findings of the qualitative research conducted through in-depth interviews are presented, in order to provide a meaningful understanding of refugees' notions and attitudes on what is permitted and/or forbidden in both: their country of origin and their host country. It is generally anticipated that our findings—although emanated from a case study and therefore are not suitable for generalizations—may broaden our understanding of the immigration-integration issue with respect to foreigners' legal inclusion and enrich the respective public debate.

Keywords: migration, refugees, criminal justice, social integration, qualitative research, Greece

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The Conceptual Framework

We are used to mainstream criminological literature which tends to explain law as a formalized and/or an abstracted version of custom, depending on the system of overarching legal system adopted by individual nation-states (Smith, 1994). It follows that law and law enforcement are most easily understood within the “sovereignty” of a nation state’s regulatory powers on a more or less homogeneous society having a single religious, cultural, and moral tradition (Kuhnelt, 2010; Hinsch, 2010). As clearly stated, “law is primarily a national institution and adherence to its rule symbolizes the imagined community of the nation and expresses the fundamental unity and equality of its citizens” (Gilroy, 1987, p. 74).

However, contemporary societies tend to evade such a unified social imagery, since growing numbers of travelling populations are seeking refuge on a more or less permanent basis to host societies, countries, and nations and have created a multicultural environment upon which state law is implemented and enforced. Thus, the law seeks to impose a universal framework on diverse groups which may differ in their perceptions and definitions of crime and deviance, in the methods they use to control it and in their readiness to appeal to the formal legal process. More importantly diverge ethnic groups may differ in their conceptualizations on law and the legal system, as well as their meanings attached to the administration of justice with two main and important implications: their readiness to obey the rules of the host society and, in effect, their readiness to adapt and be socially integrated to the host social formation (Smith, 1994, pp. 1041-1042).

In fact the question of “why people obey the law” is treated almost in a unidimensional fashion as it is addressed to audiences within a nation state’s social organization (Tyler, 2006; 2012; Hough, Jackson, & Bradford, 2013). As it has been repeatedly argued in the literature the ethnic dimension in crime and criminal justice highlights the fundamental relationship between morals, social expectations, and informal controls on the one hand and the law and the criminal justice process on the other, both important components of the relationship between law and social change as well as consensual or conflictual social organization. On the other hand, from the *local versus global* point of view (Findlay, 2008; Pakes, 2012; McGrew & Held, 2007; Morrison, 2006), a common assertion in much of contemporary criminological thinking is that we live in a world marked by profound social transformations, instability, and multiple crises (economic, humanitarian, security, ecological and, lately, health pandemics). Many of the social issues that capture contemporary research imagination are transnational, rather than simply local and national in nature, the migration question among them. Thus, contemporary societies are as Bauman observes, “faced with a need to seek (in vain it seems) local solutions to globally produced problems” (2004, p. 6). In the field of criminology, through much of its history, criminal justice and criminal law have, in fact, been inherently territorial and tied to individual national states (Franko, 2017, p. 353). Criminal justice has been conceived and imagined as what Nancy Frazer (2008) terms “normal justice”, a type of justice which is practiced territorially, as a domestic relation among fellow citizens where parties and pressure groups frame their disputes as matters internal to territorial states, thereby equating the “who of justice” with the citizenry of a bounded polity (Frazer, 2008, p. 54).

Today however, this predicament has come to be profoundly challenged. Today, questions on the criminal-law making and criminal justice implementation are increasingly becoming international, overcoming the confines of traditional jurisdictional constraints. The issues of crime and punishment are not simply a

question of how individual states use power over citizens but have become issues of world-wide politics and engage a global audience. Today, terms of detention are not determined solely by individual states but also by a growing body of inter-state institutional regulatory and penal arrangements. At the same time the social parameters of crime, social harm, and their regulation are increasingly gaining a transborder reach. Nor can it be any longer assumed that the “who of criminal justice” today are only citizens of a given state. In fact numbers of foreign prisoners in most western European countries are well above 20% reaching a staggering 73.8% in Switzerland and 60.4% in Greece (Franko, 2017, p. 354). Thus, contemporary penal regimes process not only national marginalized populations, but also, and increasingly, populations of what might be termed global outcasts (Bauman, 2002; 2004) and are engaging in a series of strategies to control globally marginalized populations among which the growing numbers of migrants and refugees.

Thus, in order to address the issue of migrant and refugee social integration through their law abiding behavior we should be able to expand the geographical reach of our research topics and imagination beyond the borders of the nation-state. However, the global, as Ana Tsing (2005) observed “needs to be imagined in order to exist”. In fact, the global has been often approached as operating at high levels of generalization and abstraction. Global interconnectedness has been conceptualized primarily as a trend towards universality and convergence. Early stages of globalization research were marked by a tendency to “zoom out” to the planetary level and to conceive of the global as a scale which is distinct and above the local and the national (Aas, 2011). This conceptual and methodological dichotomy has been challenged by assertions supporting the view that certain phenomena might not “engender planetary social uniformity unfolding to some inherent logic, but form particular milieus that vary historically and geographically” (Ong in Kenway & Fahey, 2009, p. 89). As Franko states, in order to

fully understand the dynamics of crime, criminalization and punishment in a global perspective, we need to challenge the established habits of thought, methodological pathways, and theoretical and conceptual assumptions which have made the national frame of understanding “the normal” also within criminology. (Franko, 2017, p. 354; Morrison, 2006; Findlay, 2008; Nelken, 2011; Pakes, 2012; Aas, 2013)

Our case study on travelling populations from Syria, therefore, demands not only attention to overarching global structures and phenomena, but mainly “faith in single sites within an attention to motion” (Appadurai in Kenway & Fahey, 2009, p. 48). Such “sites” while sometimes requiring methodological innovation are nevertheless still accessible through traditional criminological approaches and knowledge which is grounded and embodied. Crime ethnography has thus offered a wealth on insights into our work. At this point, we wish to refer to some further epistemological-methodological issues addressed in our research approach. In fact, “state’s sovereignty” literature within globalizations’ ability to perforate state sovereignty “shadow sovereigns” famous term of Carolyn Nordstrom (2000).

The problem is whether the migrant or refugee populations act and/or are perceived of “beyond the state” sovereigns or “within the state” sovereigns. According to D. Garland (1996),

there is an emerging distinction between the punishment of crime, which remains the business of the state (and as evidenced from our research it becomes once again, a significant symbol of state power) and the control of crime, which is increasingly deemed to be “beyond the state” in significant respects. (p. 459)

Instead, other social institutions, namely families, corporations, schools, etc. (Lea, 2002) undertake the process of crime control in the context of “governmentality” where “governmental power is not concentrated exclusively in the state but is instead dispersed throughout the social field” (Garland, 1997, p. 179).

As said already, globalization demands an “eye for the less visible” and involves a process of destabilization and breaking down of what, earlier, seemed to be stable categories. For most modernity the national frame has been the natural category of practice of domestic criminal justice systems, underpinning the imagery of homogenous territorially bonded nation states. Thus, we have proceeded with caution in “destabilising the national frame” (Franko, 2017, pp. 354-355), while proceeding with the globalization discourse critique against the co-called methodological nationalism as Beck has described it (2002, p. 51). Our aim was to transcend the perception of the social phenomena as boarded, since phenomena such as migration control demand to bring the “outside in” and the “inside out”. The reason for that lies within the literature on the importance of legal integration of migrants and refugees to the host society as one of the principal aspects of their social integration to the host societies (Balourdos & Tsiganou, 2013).

What follows are some preliminary results of our qualitative research on refugees from Syria on their perceptions and experiences about the rule of law and the legal system, as well as crime and harm production in both, their country of origin, and Greece, as their hosting destination in order to assess the before mentioned assertions.

Preliminary Research Results

While assessing results, one has to bear in mind that our research population of Syrian refugees had experienced a state of war which has caused a lengthy break-down of the rule of law in their country of origin. At the same time they were still at a state of a dis-organizing refugee experience. These had a bearing upon narratives. For once, respondents had to recall in memory, the pre-war conditions, and conventions of life. This resorted to a re-arrangement of their narratives chronicle. Secondly, obvious was their anxiety to “make things right”. Syria was not a traditional traveler’s community but a modern western like organized State with normative orders in place. Thirdly, in certain cases the war condition and the regime in power seem to have affected their perceptions of justice. Finally, narratives seem to have been filtered through the experience of the refuge to the western type country of destination. With these in mind, from the rich material collected, we have chosen to refer, indicatively, and for reasons of economy, to the following:

On the Narrative Frame of the Pre-war Rule of Law in the Country of Origin

Respondents were clear enough on what was permitted and what was forbidden during the pre-war period in Syria. Nobody is to question that the rule of law in Syria was applied regulating lawful and unlawful behavior. After all, Syria had entered the modernization era and had left behind traditional nomadic practices:

We are not Beduins! Some people think that we do not have laws and regulations, that we do not have a government, that we have nothing. On the contrary we had not only laws but also a legal system. The law-breakers confronted the Courts, the Police, they were risking imprisonment or fines.

Among others, we detect in quotations like the above, an attempt made often in international history of nations by westernizer reformers to place countries and societies on the road to modern government and a clash between the conditions of modernity and tradition, within the modernization perspective.

However, even before the war, the political regime in Syria was not allowed to be questioned and therefore the list of political crimes (in terms of the “resistance to the regime” in western type classification of crimes index) was running high.

It is not allowed to talk for politics otherwise we are facing imprisonment.

This is in accord with identical evidence provided in all countries witnessing war but especially civil war, globally. To this respect, the Syrian political regime is conceived as the dominant field of defining what one should or should not do. Within this vein of narratives the rule of law includes issues of criminal justice and its administration. Syrian refugees mainly focus on the authoritative, as they put it, political regime in Syria. In particular, they have mentioned either subtly or literally the violation of the rights of freedom of expression and opinion which became more pronounced through global communication technologies. Moreover, respondents often expressed fears towards the political status quo in Syria, as they felt oppressed because of their political opinions, their ethnicity, and/or their religious background.

We used to have no internet and we only watched our own Syrian radios/TVs. With the Internet, we started to know that others live more freely; they can speak freely, without fear. And we had rebelled asking for change... But he (the president) “ate” us, “slaughtered” us.

The most strict prohibitions and penalties involve politics. Rules prohibit interference in politics. We have a Kurdish party and even when we want to gather secretly, the state knows of it.

In Syria all are permitted... Something, however is forbidden ... to talk about the government.

We are oppressed, we have Shiites, and we are Sunnis. I really want to go to the Army (Military School). If I am not a Shiite... I do not go for an Officer; I am not accepted to the school. Here in Greece, in Europe you do not have such a problem.

Despite this factual realization of contemporary social circumstances in Europe, we recognize practices which were also enforced and witnessed in European countries under conditions of civil war and/or dictatorial regimes, as those experienced in Greece, Spain, Portugal, in the European south in general as well as in Latin America in the post war decades.

On the Narrative Frame of the Pre-war Rule of Law in the Country of Origin on Criminality Issues

Turning now to aspects of street crime and more particularly crimes against property (various types of thefts), as witnessed by most respondents, they are punishable by law. In most cases, perpetrators are prosecuted. However, there are cases of recognizable perpetrators, caught red handed, subdued to self-judgement by victims. Such customary practices are evidenced in pre-modern and early modernization eras and do not constitute a novelty. The same holds true for cases of petty thefts which are considered as being left to the discretion of the victim, a practice also met in most legal systems globally. Corruption runs high but relevant practices are also met in varying socio-political circumstances around the world. The custom based gravity of societal reactions, however, is making a marking difference.

With those weak (poor), the law of prison is strict but if they have any known officer in the police the next day they take them out. Everyone agrees on this in Syria.

The rich get easily prison release but the poor get prison.

Also, authoritative regimes protect their officialdom:

If someone who is in charge of the Government has been robbed, you do not escape strict punishment.

Turning now to the gravest violent crime globally, that is homicide, it is treated by Syrian law in much the same way as in most countries of the West. Corruption and bribery, however, runs high, minimizing the penalty effect. Neither this belief on the operation of the criminal justice administration system under conditions of strict controls of people's life under authoritarian rule is new. In the history of nations similar circumstances are often met, even at the present.

Homicide perpetrators, if arrested, will go to prison... but if their family pays money... then the perpetrator will stay in jail for a while but then he will be released. Rich perpetrators' money—mainly offered to the victim's family—may pay off and lead to redemption for their crimes... This (however), it is not good. People's soul is not exchangeable for money.

Sometimes the one who commits... such a crime, if he has the means and the judge is liable to bribery, the sentence provided by law might be reduced... Instead of a life sentence perpetrators project mental or psychic problems and obtain reduced penalties... However vendetta like arrangements dictates relatives to seek revenge irrespective of court proceedings.

However, consensus over the capital punishment (provided still by law for homicide) does not have nowadays faithful supporters. Often it is defined as "execution" not in accord with religious laws. Though homicide is broadly considered the most highly ranking crime on a gravity scale, a social consensus on the taking of a human life in the context of an institutional reaction is lacking as it is through that it cannot be provided without further consideration or it cannot be accepted on principle.

The punishment of execution is wrong. Because human soul should not be taken by man. God made it, God takes it. ... God forbids.

On the punitiveness domain, narratives reveal a rather punitive stance since imprisonment is considered the only suitable penalty to be imposed. Prison it is conceptualized as the dominant—if not the only—response to crime, to any crime.

Our people do not just want the (imposition) of a fine. Perpetrators should go to prison and pay additionally a fine.

This is explicable if one considers the above high corruption and bribery rates which distort courts' rulings. Further, it is coupled with the practices witnessed in certain cases when relatives' behavior to homicide perpetrators resembles honor killings' rationale. Custom has not been disarranged by the rule of law.

They are either waiting to kill him when he comes out (of court), or they attempt to kill his brother.

Also, in certain quotations we detect a type of extra-institutional mediation being also in place:

Families intervene ... outside the Court... but a third party, such as a highly respected family must intervene (get in the middle).

Corruption does not affect serious offending alone and it is interconnected to patronage politics in "making people pay" (Rock, 1973).¹ In cases of administrative fines imposed, for example, for violations of the Highway Code, only those with no access to government, as no belonging or opposing the regime in force, are obliged to

¹ Para-phrasing P. Rock's title of his book. Rock, P. (1973), *Making People Pay*. London: Routledge.

pay. Neither this element constitutes a novelty, since it has been also met elsewhere. The European history is full of similar examples,

It is the same with seeking a job. In Syria it holds true for the 100% of the cases... Only those who are on the side of the government can break the law and remain unpunished.

On the More Generic Narrative Frame of Law Obedience in the Country of Origin

Respondent's conceptualizations on the rule of law in Syria were underlined by a more or less consensual agreement on the following:

The rule of law is seriously undermined and its implications damaged by extended corruption practices fed by the authoritarian regime in force. The serious breach of confidence and trust to the administration of criminal justice system raising issues of its operational legitimacy, coupled with police brutality, exhibited often upon arrests for criminal offences not only political crimes, is enhancing punitiveness. To these, custom is recruited to make things right. Thus to take the right into own hands is legitimized and a reactionary notion of retributive justice is broadly accepted. On the other hand, religious laws govern justification of choices.

The Rule of Law in Greece—as a Host Country

Our respondents arrive in Greece with already structured mentality and ideals. However, they are cognizant enough of their refugee status which impedes them from revealing involvement in unlawful behavior and they are anxious to reaffirm their conformity to host country's laws and regulations. After all they do not consider them very different than their own in the criminality domain.

I want to be with the law. Since this is not my country, I must be under the law.

To be a wise man... stay away from problems, drugs, etc. What I see around here is that they are taking drugs and I feel sorry for that. I see those who take drugs in plain view... I wonder how Greece as a civilized country, a tourists country (copes with the drug habit)... is not good to see such things. It is not for me, it is not good for Greece.

The refugee status is guiding law-abiding behavior in the host country to the extreme, for probable fear of reprisals.

If I see someone stealing something, I go and nail him (to the police). I do not leave it. I do not want to do wrong.

The Rule of Law in Greece—as a Host Country: Stances and Beliefs

Turning now at the examination of respondents' stances and beliefs on the rule of law in Greece as their host country, one should keep in mind that our respondents arrive in Greece with already structured mentality and ideals. However, they are cognizant enough of their refugee status which impedes them from revealing involvement in unlawful behavior and they are anxious to reaffirm their conformity to host country's laws and regulations. After all they do not consider them very different than their own in the criminality domain. Most importantly, the ideal of justice is reinforced through conceptualizations of equal treatment.

Conceptualising Equal Treatment

"The ideal of Justice is abstract but it is also universal" (Smith, 1994, p. 1042). In modern times any rule or principle implying that members of one social group should be treated less favorably than members of another has been considered wrong and in conflict with the fundamental values of the system globally. The same holds true for the respondents of our case study. As stated, among the most important questions to be asked about

criminal justice is how close it comes to the ideal of treating everyone equally. To the extent that the system falls short of this ideal, it is either inconsistent and incoherent, or systematically discriminatory, either way it is unjust, and losses legitimacy (Smith, 1994, p. 1042).

A central objective of our research therefore was to establish how far different social groups are treated equally in Syria. What our respondents meant by equal treatment is more close to the Hudson thesis (Hudson, 1993), in that any policies, rules, and procedures that have the effect of punishing a higher proportion of one social group than of another are unjust and that law and policy should be adjusted so, as to achieve equal outcomes (say, in terms of the proportion imprisoned) for different groups or social classes. Based to this, the punitiveness stance earmarked is explicable.

In certain cases respondents wonder on how justice may not be “good”.

Justice may be or may not be good?

In other cases they praise justice in the host country.

The Greek state has justice, the good stands out.

Often enough they express the wish justice to prevail globally since they are coming from a country treated unfairly.

I wish the whole world had justice ...

Justice is justice. ... if there is justice, the person feels safe... The symbol comes first. Justice is not here on earth, she is there with God.

If there is equality, there is justice.

I hear on the rights of women, children, people. But only words. This is my opinion... Everyone has rights and I have rights to live... If a person has all his rights, he feels that he is alive.... (But if rights) existed we would not have reached this far. I would not have gone through all this, I would not have crossed the sea and I would not have come here to meet you.

However, the status of a refugee burdens the equal treatment so that the refugee populations to feel as prevented from the exercise of rights. To their views exploitative and discriminatory practices are not occurring only under authoritarian regimes but also under conditions of democracy.

Here... is democracy... We have no democracy, we have nothing. And if someone needs a certificate, they say come again, come tomorrow, until you have the required amount of money... That is like bribery.

Concluding Remarks

Our results, so far, are indicating that the *local* might resist the *global* in that particular milieus that vary historically and geographically are burdening our “zooming out” to the planetary level. Particular “sites” permit us to draw analogies in order to somehow serve the global convergence vision. Indeed values are *universal*² and people are struggling for justice, equality, living in dignity and security. To this respect and drawing upon the *universality versus relativity of values debate* (indicatvely, Aulis & Peczenik, 1996), our research has pointed out that there are indeed universal values and principles whose validity does not depend on the individual’s free

² Universal values (i.e., peace, justice, freedom, equality) and consensus, in principle, towards them are represented in the universal instruments of Human Rights and the International Human Rights Law.

preferences and though culture-bound there are something all cultures have and share in common. It is in this *prima-facie* universal character of certain values, global convergence is possible. However, universal values are not enough to “destabilizing of the national frame”, which in our case study is determined not only by a western type rule of law (fruitful in drafting analogies) but also by tradition, customs, and religion. Situational politics are also important to the drafting and implementation of the rule of law. In addition, state authoritarianism and state democracy do not coincide in policies and practices which are important in guiding behavior, neither acquire legitimacy. Finally, the historical phase and the place of a society on the road to modernization are not to be disregarded because it seems to matter in drafting the global map of interconnectedness.

What our case study revealed in our attempt to use the migratory experience in order to establish interconnectedness by bridging the “outside in” and the “inside out” is that while the universality and convergence of values are not to be questioned globally, specific claims are locally produced and promoted. An indication of this is that in Inglehart’s world cultural map of the last round (2017-2019), while in Greece the value of democracy is today interconnected with the value of security; in Syria it is obviously interconnected with the value of freedom (Inglehart, 1971; 2003; Inglehart & Catterberg, 2002; Inglehart & Welzel, 2005; Koniordos, 2018; Fanaras, 2018). This distinction is important in guiding personal claims, aspirations, beliefs, reactions, and stances also towards criminality and its control.

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