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Victims, criminals and scapegoats

Ours is, again, a time of fears.

BAUMAN, 2006

They were working in a textile workshop making all kinds of clothes. They had come to Europe in search of a better future, looking for a job that would give them money to maintain themselves and the relatives they had left behind. But suddenly one day a group of uniformed men and women burst into the workshop. They were carrying weapons – although they did not use them– and they told the women to leave the workshop. They told them that they had come to save them from working in slave-like conditions. With no prior warning, they had to abandon their place of work, and some their home too. The police closed the workshop down because it was illegal and arrested the bosses, who had given the women jobs because they were Chinese, because they were their own nationality. They trooped out of the workshop into the street, dismayed. How long was this going to last? When would they be able to go back to work?

Some of them hurried home or to their relatives' house, as they were afraid of being sent back to their country. However, after the first few hours the rumour began to spread that they wouldn't be able to go back to work: their bosses were in the police station accused of infringing the workers' rights. What fault was it of theirs? Why had their only security been taken away? Who would employ them now? Who would give them a roof over their heads?

What was known as Operation Wei took place on June 16th 2009 in the town of Mataró. In the course of a huge police operation surprise raids were carried out on seventy-two Chinese textile workshops in the largest town in El Maresme. Their owners were arrested and the employees were “liberated” from labour exploitation. The criminals were locked up and the victims redeemed. But suddenly, the victims of this exploitation found themselves jobless, with no income to keep themselves and their families, with no home. Their “saviours”, although without meaning to, had left them with none of that. They did not understand what kind of justice this was that left them in the street without warning. The police had prepared a surprise raid, as they wanted to make sure the operation was a success. Out of fear that news of the operation would be leaked, the police had not told the local authorities, who found themselves with hundreds of Chinese citizens wandering the streets, jobless, helpless, some of them with nowhere to live.

The police have the job of enforcing the law. A law that draws the line between what is legal and what is not; between those who break the law, the criminals, and those who suffer the consequences of this, the victims. But, in the case of the Chinese workers, were they not the greater victims after losing their jobs? They thought so. Many of them did not feel exploited; they *were* in China, that’s why they came to Europe. The decision to raid the workshops to put a stop to worker exploitation also seems to be a response to some kind of civic demand. In this case, perhaps the local Catalan businessmen in the textile sector pressed for forceful action to be taken to rid them of competition from the textile workshops run by the Chinese.

Bauman¹ reminds us that citizens, as potential victims, can sense two kinds of danger. The most direct and palpable are threats against our persons and what we possess, the fear of being injured or assaulted or being robbed, threats against “personal safety”. Other dangers are more general, as they do not endanger specific things, but they threaten the social order that ensures for us the maintenance, for example, of an income or a job that enables us to live. It is a threat to the safety that makes us immune to degradation and exclusion and ensures our position in the social pyramid and our identity, namely, “safety in society”. In the case of the workers in the Chinese workshops, the law intervened to protect their personal safety. However, with this action, it neglected their safety in society.

One of the functions of the State is to protect citizens against insecurity. This is one of the promises that always appear in election campaigns. However, as this promise cannot be kept, especially as regards “safety in society”, the State is forced to apply this promise exclusively to “personal safety” and it therefore concentrates most of the actions of the law on protecting citizens individually, as was the case in Operation Wei.

THE “CREATION” OF VICTIMS AND CRIMES

Let’s go back to our consideration of the double victimisation of the Chinese workers. They were victims of labour exploitation and with the action of the law they lost their social position. Can the strict enforcement of the law create new victims? Let’s look

■ ¹ BAUMAN, Z., *Liquid Fear*, Polity, Cambridge 2006.

at the definition of “victim of crime” provided by the United Nations: “Victims’ means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power²”. It is the criminal law in force in each country, then, that defines what “acts or omissions” constitute a crime; hence it also defines who can be considered a criminal and who a victim.

Strictly speaking, societies “create” crimes when they legislate. For example, if new criminal laws are introduced against pollution, then new forms of criminal behaviour will appear that were previously neither considered offences nor prosecuted by the legal system. If on the other hand the laws against the use of marijuana or against prostitution

are repealed, so that these previously criminal activities are legalised, many types of crimes that were associated with them simply vanish. Another example: in many societies there are people who assault their partner if they discover that he or she is having an affair. Some societies consider it a crime, others condemn it but consider it understandable, and there are even those that consider it honourable conduct.

Defining an act as a crime is part of a broad social process, that of defining and trying to suppress social deviation

The conclusion is, then, that whether or not a form of conduct is defined as a crime (which, as a result, may be prosecuted by the legal system) depends on what it means for the majority of society and this meaning being covered by criminal law. I am by no means championing moral relativism, but I do wish to consider the absolute value of the laws that are based on what the world ought to be like, instead of referring to what the real world is actually like.

But, what mechanism does society use to consider as reprehensible the fact that a person strikes his or her partner, for whatever reason? The process of defining an act as a crime is part of a broader social process: that of defining and trying to suppress social deviation. Deviation is defined socially when certain forms of conduct are declared “bad” and, as a result, attempts are made to minimise or eliminate them.

According to Becker³, social groups create deviation by creating laws, the breaking of which will be a deviation, and applying these laws to certain people who will be labelled as deviants or outsiders.

Becker mentions another level of selection: the extent to which an act is treated as deviant also depends on who commits this act and who feels prejudiced by it. Thus, laws tend to be applied more to some people than to others. We can mention the example of the United States, where the law is applied differently to blacks and to whites. Everyone knows that a black man suspected of having assaulted a white woman is far more likely to be punished than a white man committing the same crime. But, paradoxically, a black man who murders another black man is less likely to be punished than a white

man doing the murder. The type of victim also plays a part in the way the legal system reacts.

If we look back at the history of the legal system, we see that in the 18th and 19th centuries differences of rank and social status were part of the hierarchical culture of society and resulted in criminal law being applied

differently. Thus, noblemen were treated differently from commoners. For example, they were fined instead of being lashed, and beheaded instead of being hanged, or the conditions were different if they were imprisoned. Differences of status were then considered a legitimate basis for being treated differently by the law (these differences included the categories local/foreigner, upper class/lower class, acquaintance/stranger).

These kinds of differences are now unacceptable in democratic countries, and are no longer found in our legal systems. However, cultural and class differences continue to operate, though in a subtler and less visible way. According to Garland⁴, the main difficulty for eliminating these differences is the survival of informal mechanisms that function through the prejudices that have a bearing on the way the legal system treats certain ethnic and status groups even when this discrimination has been made illegal. This fact shows how deeply rooted these cultural patterns and their resistance to change are.

In defining a form of conduct as a crime, power also plays an important part. Individuals and groups construct laws of conduct based on their own moral values and interests and compete with one another for these laws to be included in criminal law and for the legal system to take action when someone breaks them. The likelihood of them being successful, in this competition, is directly related to the degree of power they possess: the more power or influence they have, the greater the coincidence will be between their values and interests and those of the law and its enforcement. In this respect, to go back to the case with which I began this consideration, Operation Wei, we could say that the law defended the interests of local textile businessmen from the Chinese competition because they possess, without a shadow of a doubt, more influence and power to exert pressure on the authorities.

THROW THE GUILTY OUT!

We have a tendency to blame others for our misfortunes, third parties we lay the blame on. This is what psychoanalytical theory calls a projection mechanism, consisting in projecting our fears or guilt externally onto other individuals and groups. We seek a

The scapegoat acts as the symbolic personification of guilt, so that, when it is sacrificed, the others are absolved of guilt

■ ² Article 1 of the *Declaration of basic principles of justice for the victims of crime and abuse of power*, adopted by the General Assembly of the United Nations in Resolution 40/34, 29th November 1985.

³ BECKER, H.S., *Outsiders: Studies in the Sociology of Deviance*, Free Press, New York 1966.

⁴ GARLAND, D., *Punishment and Modern Society: a Study in Social Theory*, Clarendon House, Oxford 1990.





The victims of discrimination are the modern equivalent of the ritual sacrifices of the scapegoat

group and are aimed at minorities and marginal groups, and always at those who look different from the majority. Throughout history we can find examples of the use of this mechanism with terrible consequences. In Renaissance Europe nearly half a million people accused of witchcraft were executed. During the Second World War, Hitler used race to define deviation and condemned the Jews to extermination.

Szasz⁵, in his theory of the scapegoat, considers that people have a basic need to confirm that they are good, innocent and normal and that they do so by defining individuals or groups that stray from this “normality” in any way as bad or sinful. The scapegoat acts as the symbolic personification of guilt and sin, so that, when it is sacrificed, the others are absolved of guilt. We find the best-known case in the Bible, that of Jesus, who bore the sins of all humankind to redeem them.

Anthropology and history have recorded similar stories of scapegoats in different cultures. All forms of discrimination, whether based on race or skin colour or different lifestyles or other religions, are essentially variants of the same phenomenon. In this way, all the people discriminated against can be grouped together as scapegoats, whether due to congenital characteristics (like race or skin colour) or acquired attributes (like religion or sexual orientation), or a peculiarity that others attribute to them (as in the case of witches or the mentally ill). The victims of discrimination are the modern equivalent of the ritual sacrifices of the scapegoat.

The fact that it is most improbable, if not impossible, to find the true causes of our insecurity means that, in view of the impossibility of finding those to blame for it, we end up laying the blame at the door of a group easy to identify, close to us, which we make the scapegoat for the citizens' insecurity. A few years ago it was drug addicts, now it is immigrants and ethnic minorities. The mass media play an important part in this external projection, making the projection of fear onto types of individuals or groups belonging to minorities easier.

scapegoat, a group or a series of individuals to blame for this lack of security that we feel in relation to our person or our position in the world. We try to transfer our fears by separating good from evil and identifying individuals that represent this evil. We can choose them because of their behaviour, but also according to other criteria.

These ways of projecting our fears can be dangerous when they come from a whole

■ ⁵ SZASZ, T.S., *The Manufacture of Madness: A Comparative Study of the Inquisition and the Mental Health Movement*, Routledge & Kegan Paul, London. 1971.

Image on previous page:

Doble Coloïdea 5 (Double coleïdeia 5), Miquel Barceló (2008)

Mixed media on paper, 102,5 x 152 cm

PROMINENCE IN THE NEWS

Migracom⁶, an observatory and research group on migration and communication, carried out a study on the way news programmes treated immigration in Spain from 2002 to 2007 based on a sample of the Spanish media with the highest audience ratings. The study tells us that the presence of immigration gains prominence in a block of news stories strongly featuring themes like gender violence, in which the immigrant population is involved, males, females or both. On television, immigrants continue to be shown at a distance and in groups. The part played by immigrants in news stories about them is minimal in the press and insignificant on TV and radio. Politicians, people in charge of organisations, State security agents and other people in civil society speak for them. In only two out of every ten news items are the immigrants themselves the information sources giving their opinion or version of the events on themes related to migratory processes.

The media still does not show us the reality of immigration. It barely informs on the sociological context surrounding the migratory process. Nor does it take the trouble to explain the reasons why people emigrate from their countries of origin. Television news bulletins devote a lot of time to the association of immigration with certain cases or crimes in which the population called “immigrant” and/or linked by the country or region of origin appears involved, either as alleged offenders or criminals or as victims.

The report highlights the changes that take place in the media during an election or the run-up to an election. In these periods the number of more direct and discriminatory speeches increases. For example, the improper associations between immigration and crime increase.

Let’s look at one example in the press:

“The PP promises a plan of action to offset the effects of immigration”, read the headline over that party’s proposals published by *ABC* newspaper on May 23rd 2007. In the text it said that, “Alberto Fernandez Diaz announced that, if he becomes mayor of Barcelona, he will spend the first week presenting a plan of action on immigration”. The association between immigration and violence was clear, not only by the politician, but also from the paper’s editorial line, as, alongside the piece reproduced, there appeared the headline of a second news item: “Trias defends the installation of video surveillance cameras in the most problematic streets”.

The stylebooks on the treatment of immigration suggest that the news items on immigration should look in depth at the sociological contexts and the everyday lives of

For the media, the immigrant as a criminal or victim is news, but not the everyday dynamics once they are “among us”

■ ⁶ Migracom Report: *Tratamiento informativo de la inmigración en España*. Dirección General de Integración de los Inmigrantes, Ministerio de Trabajo y Asuntos Sociales, Madrid 2007. Available at: www.migracom.com/linea.

Since the 1990s, there has been in Europe a very sharp rise in the number of foreign prisoners, particularly young men in preventive custody

news, but not the sociological context of the arrival or the everyday dynamics once they are “among us”. These facts are essential for enlightening the local host society on the reality of immigration and to avoid the erroneous stereotyping of the “others”.

immigrants. However, items on the everyday lives of immigrants in their home, working, festive or cultural life rarely make the news. These details are usually added as a positive or anecdotic note, complementary to the other usual news items, like Operation Wei, which are usually more hard-hitting.

For the media, the immigrant as a criminal or victim is

THE “CRIME” OF BEING AN IMMIGRANT

The question of the link between immigration and crime, or between ethnic minorities and insecurity, loomed large in the public debate in the 1990s. At the same time, criminological studies have revived the interest in this subject and research has been carried out based chiefly on official statistics coming from police arrests, the courts and the prison administration. This data has not yet been compared with surveys of large-scale victimisation or self-incrimination, focused on the immigrant or ethnic minority population, which would give a truer picture of existing crime. To reflect on Garland’s idea, mentioned above, according to which cultural and class differences continue to function in the legal system, I shall mention some factors that play a part in the over-representation of immigrants and minorities in the said system.

The sex and age group in which there are greater percentages of crime coincide with the sex and age group in which we find most representatives of immigrant groups.

If we analyse the known crime in most Western societies and, particularly, the group of people that commit crimes, we shall see that the most repetitive characteristic is that they are men and they are young. So the group committing most crimes would be young men. At the same time, if we analyse the immigrant community residing in Spain, we shall see that it is mainly formed of young men: the average age of immigrants coming from Africa is twenty-eight, and for Latin American and Eastern European citizens, it is thirty-two⁷.

The members of ethnic minorities are more closely watched and identified due to the application of the immigration control laws.

■ ⁷ Data taken from CEA, M.A. *Inmigración, racismo y xenofobia en la España del nuevo contexto europeo*, Ministerio de Trabajo y Asuntos Sociales, Madrid, 2007.

Breaking the immigration laws is an administrative offence, with the odd exception that we shall comment upon later. It is not a criminal offence, not a crime. Nevertheless, very often, when the police identify and/or arrest an immigrant whose papers are not in order, they treat him like a criminal, even when no criminal offence has been committed. A second problem is that an image of the immigrant as criminal is being reinforced in the eyes of citizens. Moreover, these groups have a higher profile because they often look different from the local majority.

We see one example in the internment centres for foreigners in an irregular situation awaiting deportation. The regime in these centres is very similar to that of prisons, but the internees have fewer rights than ordinary prisoners. Many of them have a long history of residing in the country they are interned in and have been part of one of the minorities established in the country. In these centres criminals rub shoulders with individuals whose only problem with the law is their irregular situation as immigrants.

Recently, in Italy clandestine immigration has ceased to be an administrative offence and has become a criminal offence. On July 2nd 2009 the Italian senate passed the security law, which introduced the crime of being an illegal immigrant and created the controversial citizens' patrols against crime. Under the new law, the immigrant without papers can receive a fine of five thousand to ten thousand Euros and be expelled. The maximum stay in internment centres for foreigners lengthens and goes from two to six months. This case is a very clear example of how a new "criminal" has been constructed through criminal law. I wonder who the victims of the crime of clandestine immigration are. Once more, the criminals and the victims are mixed up.

Prison is used more readily with immigrants: they show higher ratios of preventive custody and have more difficulty gaining access to prison benefits.

Since the 1990s there has been in Europe a very sharp rise in the number of foreign prisoners, particularly young men in preventive custody. In Spain the number of foreign prisoners in custody shot up after 2000, while the number of Spaniards in preventive custody dropped sharply, so much so that there are now more foreigners than Spaniards in custody. As to the total number of prisoners serving sentences, the trend is the same, although the percentage in relation to Spaniards is not as high.

Among the explanations given for this explosion in the number of foreign prisoners are the types of crimes responsible for the increase in the prison population in recent decades: drug trafficking and crimes against property are the kind of crimes that lead to more arrests of foreigners. They are crimes against "personal safety", which, as we

The over-representation of immigrants and minorities in the criminal justice system shows an indirect discrimination in the application of justice

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have said, are the ones the State prosecutes the most. One of the causes is the application of a repressive policy against drug markets, which are controlled mainly by people belonging to ethnic minorities. In Catalonia, seven out of every ten foreigners in prison are there for these two types of

crime. Another reason explaining the increase in the presence of foreigners in prison, in this case of those serving a sentence, is that they have more difficulties gaining access to prison benefits in general and probation or leave permits. Thus, the fact that foreigners stay in prison for longer increases the proportion of foreigners in prison.

The most significant difference is in preventive custody. The legal conditions are such that there is a greater risk a priori of foreigners being placed in preventive custody, particularly because they have no fixed abode. It is an indirect discrimination: formally the way prisoners are treated is the same, there are no different laws for different groups, but in practice the law is discriminatory in its application because, for example, it is applied mainly to people with no fixed abode or without a steady job. The laws are formally neutral, but they lead the criminal justice system to function in a biased way.

The conclusion is, then, that there is indirect discrimination in the application of justice, reflected in the over-representation of immigrants and minorities in the criminal justice system.

In the legal system there are various levels of discretion in which institutions or people make decisions that may be based on their prejudices and which, in the end, may constitute a filter that selects, at the different stages of the legal process, those who will be prosecuted, arrested, tried and imprisoned. The first filter is the decision about which forms of antisocial conduct are classed as crimes and what penalty is attributed to them. Then there is the decision about which crimes will be prosecuted more; the choice of which groups will be more watched and identified; the decisions at the police court: time under arrest, access to a paid or court appointed lawyer, bail, access to an interpreter, and so on; the decisions in the courts: the type of sentence the prosecutor demands, the application of aggravating or extenuating circumstances, the substitution of the prison sentence; the decisions during imprisonment: initial classification, access to work or activities, assessment of the treatment team; and finally, the decisions at the prison supervision court: access to day release and permits, the granting of probation, and so on.

In Spain criminal law establishes the maximum sentence for financial crimes as three years, but they are rarely prosecuted because they involve highly complex investigations. On the other hand, the crime of small-scale drug trafficking is very much prosecuted. A paradigmatic example is Sentence 982/2005 of the Supreme Court, which sentenced an African who had sold heroin worth five Euros to three years in jail. Moments of economic uncertainty with crisis and the loss of jobs, like the current one, mean that citizens are highly reluctant for foreigners to have the same

rights as them. In the same way, for political convenience, the rumour goes round that immigrants contribute to unemployment and crime, which represents a threat to Spanish citizens. Society then tends to seek a simple explanation, a cause easy to visualise, a scapegoat on which to concentrate fears and arrests, something it has now found in immigrants and ethnic minorities. The criminalisation of ethnic minorities is also a “self-fulfilling” prophecy. As they do not understand the underlying legal and social mechanisms, the majority groups incorporate the persisting prejudices towards ethnic minorities and foreigners and end up believing that these beliefs are the result of their own experiences, not of their prejudices. So, if over a third of the prison population in the countries of the European Union belongs to ethnic minorities and/or they are foreigners, the average citizen will not question this situation, but they will interpret it as proof that the minorities and foreigners are “criminals”; namely, the consequence will be taken to be the cause and the prophecy will be fulfilled ■