Naomi Zack
Applicative Justice: A Pragmatic Empirical Approach to Racial Injustice
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Naomi Zack's *Applicative Justice: A Pragmatic Empirical Approach to Racial Injustice* is a grounded critical inquiry that engages the racial injustices pervading the US. Her approach is unique on a number of counts. First, in developing a critique of ideal theory via nonideal theory, she initiates her project through the lens of American pragmatism, but not from the usual suspects--Dewey, James, or Mead--but through the work of pragmatic social scientist and social reformer Arthur Bentley. Second, she provides a critique of justice theories, which are designed to help us analyze justice and create a more just society, as themselves biased and unjust, starting from the perspective of privileged lives. Thus, Zack argues, these theories are not capable of addressing the pervasive and entrenched inequalities in US society. Third, Zack seeks the gaps in justice, where whites benefit and blacks do not, thus providing a comparative and case-based approach to injustice that creates room to apply practical justice in creating change.

In the Introduction to *Applicative Justice*, Zack defines terms that are key for understanding the significance of her book. Most important, in this chapter Zack defines "applicative justice." She describes it as a type of "*injustice correction theory or injustice theory,*" arguing that if our goal is to have a more just society by mitigating injustice, what we need is a theory that starts from "past events and practices" that were unjust and then build from these to understanding practices that can "chang[e] law and force" to create a more justice society (3). Applicative justice is both descriptive and normative. It describes what is just and unjust in current law. It is normative in that it morally assesses instances of injustice and justice and prescribes laws and practices to eradicate injustice and promote justice. Zack notes that although there are numerous types of human experiences to which applicative justice theory and practice could be applied, *Applicative Justice: A Pragmatic Empirical Approach to Racial Injustice* looks explicitly at poverty and the lives of African Americans. Because of the racial violence against African Americans that has always existed, but has come to a head in the last few years through numerous overt and well-publicized cases of police violence against African Americans and the significant problems in our criminal justice system, her focus is not only apt, but timely. It therefore gives her book numerous examples of areas for intervention, critique, and change.

Like many authors who seek to challenge the legitimacy of ideal theory, Zack starts off with a critique of John Rawls's work on distributive justice. Although this is an obvious and necessary starting point, she critiques Rawls's approach to justice from the perspective of pragmatic political scientist Arthur Bentley. She develops this critique through the first two chapters of her work, "Ideal Theory, Nonideal Theory, and Empirical Political Theory" and "The Limits of Law and Government," by interweaving and analyzing Bentley's arguments about government and group action with the work of several theorists, including Amartya Sen, Walter Benjamin, and Hannah Arendt. Zack makes clear that although Bentley had a poor grasp of the significance and horrors of African Americans' experiences during his lifetime, his arguments can provide a basis for thinking about justice as the practices and outcomes of a "network of activities" (38) and for developing an "empirical political theory" (21). This pragmatic account also makes clear that social injustices, and society in general, cannot be explained by factors external to it, such as biology, but must be explained by internal social factors; that is, society must be explained by appeal to society. Thus, for example, if we want to explain racial injustice, we can't turn to biological categories of race, but must look to societal factors that instigate and perpetuate racism.

In chapter 3, "The Ideal of Equality and Real Inequality," Zack digs into the history of philosophy through Kant to analyze equality as an ideal, one that extends from the eighteenth century, is then more formally codified in the twentieth by the Universal Declaration of Human Rights, and serves as a foundation for Rawls's concept of fairness. This leads me to one of the things that I have always admired about Zack's work, which is her ability to mine the history of philosophy to critique and comment about historical and contemporary issues. I remember as a graduate student, after reading *Race and Mixed Race* (Zack 1993) and *Bachelors of Science: Seventeenth Century Identity, Then and Now* (Zack 1996), being struck by her remarkable range of thinking in and through the history of philosophy and her ability to apply this analysis to understanding, critiquing, and providing direction for remedying contemporary problems. This ability to think creatively and constructively through the history of philosophy pervades *Applicative Justice*.

Zack notes early on in this chapter that though equality is an ideal, it is certainly not actual practice nor has it been practiced historically, since what it meant to be human and equal has always been subject to social norms that have been racist. If equality is an ideal that is not practiced, we need to look at actual instances of injustice in order to understand how we can move legally and socially toward a greater level of equality. Thus, inequality needs to be our starting point of analysis to create social change. Zack picks up Sen's capabilities principle and his arguments concerning procedural justice as a starting point for mitigating inequality.

In chapter 4, "The Distribution of Procedural Justice," Zack starts off with an analysis of Sen's distinction between distributive and procedural justice. Following Bentley, she argues that we need to look at the actual applications or instances of law in practice to deal with on-the-ground procedural injustices, such as criminal sentencing inequalities, as

2

instances of improperly distributed goods. From this perspective we can note the distinctions between "those that are well served by [our social systems] and those that are not" and then rectify the unequal distribution of "liberty and just procedures" (94). Zack moves on to look at examples in US legal and judicial history, including *Brown v. Board of Education*, *Berea College v. Commonwealth of Kentucky*, and the 1964 Civil Rights Act, discussing not just the cases themselves, but also the social milieu surrounding the cases, which had a bearing on the outcome. She uses these cases to illustrate the nature of procedural justice as distributed good. Like her work in earlier chapters, her analysis of these cases is thorough and critical. I especially appreciated her treatment of *Brown v. Board of Education*, which she links to Cold War politics instead of any explicit desire on the part of US lawmakers to create justice in US higher education. What this case shows is that the movement toward a more just society does not always occur because lawmakers are seeking justice. Instead, citizens' calls for justice are frequently met by lawmakers with motives other than ending injustice.

Chapters 5 and 6, "Discourse, Prophecy, and Atmosphere" and "The Discourse of Political Activism," apply Bentley's understanding of political discourse, which includes speech and action in political/social life, to think about the necessity of engaging in oppositional political discourse to mitigate injustices. Chapter 5 takes up verbal speech and analyzes the ineffective role of white-guilt discourse in whites' critique of white privilege. Zack argues, among other things, that for many white people their guilt is an endpoint in discourse and it inappropriately continues to keep the gaze on whites, thus perpetuating their privilege. If whites actually want to dismantle their privilege it will take much more than an admission of their privilege. At minimum it requires a recognition that this is merely a starting point in ending racial injustice, as well as a recognition that as long as there is racial injustice, racial reconciliation is a far reach. In this chapter Zack also analyzes academic political discourse and studies Cornel West's Prophetic Pragmatism as a model of oppositional political discourse inside and outside of the academy. Her critique of West's public persona is interesting because she clearly pushes the ways in which his oppositional voice has been important and critical in reshaping public dialogue about race and US politics, but also how it has been alienating in its "insistent ideology" for those who might have similar end goals as West--ending racial injustice--but who believe that process and path should be different (140).

Chapter 6 takes up political active discourse, which Zack describes also as political activism. Political active discourse/political activism "has a verbal form in descriptions of existing unjust conditions and goals for justice, and descriptions of strategies and tactics for action; its nonverbal form is real life action" (145). I found this chapter particularly interesting because Zack provides a unique critique of Michelle Alexander's *The New Jim Crow* (Alexander 2011). Alexander's book is an extremely important book in the growing cadre of books arguing for significant reform in the US criminal justice system. It has developed a framework that enables many people to see the injustices in the carceral system that have been occluded by numerous social and political structures and practices. Yet Zack's critique seems to be on target in a way that I hadn't anticipated. Zack argues that Alexander's approach is revisionist and problematic in its ascription of the current criminal justice system being an extension of the "old" Jim Crow. Zack provides her own

3

analysis of the history leading up to current injustices in the criminal justice system, arguing that because Alexander focuses more narrowly on the construction of race as a historical construction of black and poor, she fails to see the ways in which race is newly constructed in this system such that she doesn't recognize it as a "reconstruction of black maleness" that plays out across economic class in the construction of "criminalblackman" (158). Alexander's approach doesn't recognize the ways in which the vast majority of American blacks who "are not at this time poor ghetto dwellers" are "endangered by stereotypes that connect the prison to the ghetto" (160). In doing so, she argues, Alexander's "big global picture" approach blocks political activism for justice reform because it doesn't "focus on comparative ways in which American blacks and whites, poor and middle class, are treated by their--everyone's--government" (159).

Zack finishes chapter 6 with a discussion of Judith Shklar's *The Faces of Injustice* (Shklar 1990). She clearly admires Shklar's work, describing it as "parallel to the project undertaken in [*Applicative Justice*]" (173) and, in tandem with Shklar, she argues for the necessity of political activism and critiques of injustice as part of democratic social systems that seek to create significant and long-term social change.

In "Postscript: An Invitation to the Reader," the final chapter of her book, Zack asks us to contribute to a "common narrative" about race in the US so we can form a shared, agreed upon account to serve as a starting point and ongoing dialogue to improve race relations and to ameliorate racial injustices in the US. Zack invites her readers to email her our racial narratives to begin the process of building a common narrative. Although I appreciated the goal of this chapter, it left me wanting more, perhaps a better understanding of what Zack would do with these narratives, how they would create change, and, also, a discussion of the limitations of this approach. For example, since she is appealing to academics with her call for narratives, and the academy is still predominantly white, does this privilege white narratives? Also, could writing one's narrative, even gathering to write collective narratives, serve for academics as an endpoint instead of a starting point for activism because they might believe they have thus "done their part" to work toward racial justice?

These concerns aside, I found *Applicative Justice* to be a thought-provoking, engaging work that provokes the reader not only to rethink past approaches to mitigating injustice, but also one that challenges the reader to see the gaps in how we frame our understanding of racial injustice. Zack is always a clear, crisp writer. Her work is replete with examples that make her arguments more persuasive and illuminating. But what really hit me about her book was the utter applicability of applicative justice. As I was reading Zack's book, the media coverage of the Brock Turner rape case was coming to a head. Watching the events unfold with Brock Turner's sentencing highlights exactly the types of problems that Zack is trying to rectify with applicative justice. Where are the on-the-ground instances of racial injustice? What do they tell us about our processes and practices concerning the application of the law? What do they tell us about our social values: that is, whose lives we value, why, and what about them do we value? The Brock Turner case, including the words of the judge and the letters from family and friends, clearly points out that in US culture, white, upper-class, athletic, Ivy League-educated males do not fit

4

the profile of a predatory rapist. As Zack's analysis can help us see, when we look from the lens of applicative justice and the actual conditions of society, we are able to see that racial profiling goes both ways. Just as black males are frequently racially profiled as criminals (criminalblackman), white, economically privileged criminals (perhaps "whitetrustworthyman") are racially profiled as innocent and misguided people who are inherently trustworthy, redeemable, and assets to society. In the words of Judge Aaron Persky in the Turner case, "I take him at his word" (Tamura 2016) and, "Is incarceration in a state prison the right answer [for this defendant]?" (Jackson 2016). Turner's father notes that his son, a violent rapist, should not be incarcerated because his ability to tell the story of his mistakes while partying will make a contribution to society. When Zack asks us to think about the ways in which the procedures of justice are distributed unfairly, this is exactly the sort of case she is thinking about. In her words: "Elite membership may translate into . . . an ability to evade procedural justice when its results would be disadvantageous" to the privileged individual. This "is simply unjust" (94). Thank you to Zack for providing the language that so keenly homes in on this and other racial injustices.

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