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Review essay: Justice, rights, agency and childhood research
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Stevenson, B. (2015) *Just Mercy: A Story of Justice and Redemption*. London: Scribe. ISBN 9781925106381 £14.99 paperback.
Chakrabarti, S. (2014) *On Liberty.* London: Allen Lane. ISBN 9781846148095 £17.99 hardback.
Oswell, D. (2013) *The Agency of Children: From Family to Global Human Rights.* Cambridge: Cambridge University Press. ISBN 9780521604703 $32.33 paperback.

The three books in this review are very different, but they illuminate one another in sharing strong themes of justice, rights and agency.

The black lawyer, Bryan Stevenson, looked back over his 25 years of working in Alabama and across the USA. As a student at Harvard, he found that his law studies seemed dull and remote, until he was sent to see a client in death row. He and the black prisoner spoke intensely for three hours until the guards rushed in, angry the visit had been far too long. They shackled the prisoner, Henry, and were dragging him away when he firmly stood still and sang a hymn to freedom. Stevenson was amazed at the humanity of the man he had dreaded to meet, and from then on he became a dedicated lawyer.

This gripping book can be divided into four stages of growing insight, stages which the philosopher Roy Bhaskar (2008) analysed as crucial to move forward practical and reflective projects, including research. (My book (Alderson 2013) explains how useful these stages are to analyse process and change in research with children.) The first stage is non-identity: searching for real meanings and underlying causes, seeing the difference between presumed knowledge versus reality, and noting absences. Stevenson saw how the university law courses and the 'justice' system differed from the reality of endemic injustice, and how they produced the countless complacent lawyers who calmly administered the injustice system, and whom Bryan worked hard to foil over the years. There were massive absences: of due process of law and non-discrimination, of fair punishment, of truth, accurate police evidence, honest witnesses and jurors and judges, of respect for human rights and of any concern with causes of crime when almost all criminals are poor and black. There are now well over two million prisoners in the USA, and young black men who have left school early have a one in three chance of being imprisoned.

Like some other states, Alabama treats children as adults, puts them unsupported through adult courts, and sends them to adult jails where they are appallingly abused by guards and inmates. Thousands of mainly black and brown Americans are serving life sentences with no parole, which means death in prison, often for non-homicide crimes. Many were sentenced when they were aged 13 or 14 or younger, and the book includes detailed personal histories that bring these victims of the penal system alive on the page.

They may spend years in windowless rooms in solitary confinement, serving far longer sentences than adults would receive for the same crime, as if children deserve greater punishment than adults. Yet even if they were convicted of homicide, the children tended to be trying desperately to defend themselves or others, or to have been pressured by others to shoot. Most of them have suffered childhoods of nightmarish abuse and neglect, and many have mental illness or learning difficulties or both. Stevenson is convinced that all

these young people are capable of redemption and reform, an entirely different identity from the system's perception that they are dangerous trash.

Bhaskar's second stage is active negation, to negate or absent the problems identified at stage one. Powerful groups tend to begin at this practical stage, omitting the vital first moment of non-identity that scrutinises real causes. They assume that crime committed by the poor must simply be met with severe punishment. Stevenson, however, took the initial inquiry into underlying causes very seriously, and worked to negate injustices and causes of crime, by setting up the Equal Justice Initiative (EJI www.eji.org). For years, with few staff and little funding though through the steadily growing EJI, he defended death row prisoners in repeated court hearings to get their sentence altered, to have innocent prisoners released, and to get lawyers to admit failings of the injustice system. Very slowly, he began to succeed and there were more and more triumphant cases. He trained many young lawyers who spread through the USA national injustice system and helped to reform it. The chapters include ones especially on children and young people, imprisoned mothers and their bereft children, and prisoners with severe learning difficulties who remain childlike and extremely vulnerable.

Bhaskar's third stage is to reflect on the larger scene and on complex 'totalities' and connections within and between them. The interlinked and colliding 'totalities' include: the penal system and courts; the law that protects property, wealth and status; the terrible prisons; the prisoners and their childhood background of severe poverty, broken families, cruel foster care, of being former child soldiers who now suffer PTSD, and other severe disadvantages. Stage three connects the legal-penal system to the social, economic and political spheres, whereas blind justice ignores and splits these totalities apart. In a pretence of equality, the courts did not consider mediation, and made no allowance for individual defendants' especial difficulties.

Recognising the gross injustices, Stevenson appealed several times to the US Supreme Court. In 2010, the Court at last agreed that life without parole should not be mandatory for juveniles accused of non-homicide offences. In 2012, the Court extended this ruling to juveniles accused of homicide. These were triumphant steps forward, though they did not guarantee protection for young offenders. However, hundreds of prisoners were eligible to request retrial, but there were not enough lawyers to defend them – more training work for EJI to do.

Racism is another and perhaps the overwhelming totality, filtering through all the others. Stevenson traced the gross abuses by a mainly white penal system on mainly black defendants through four historical stages: slavery; segregation; American 'Jim Crow' apartheid with suppression of basic rights; and fourth, mass incarceration of black Americans. He believes that most white Americans have no idea of this history or the present engrained wrongs of deep racism. These will not be righted, he believes, without public acknowledgement through a formal truth and reconciliation process.

Bhaskar's fourth stage is inner transformation because real change is both political and personal. Bryan Stevenson described how after a hard fight for justice, another of his innocent clients was executed. After 25 years work he felt deep despair and wanted to give up. But his despair helped him to see that because he suffered and 'was broken' he was enabled to feel solidarity with others and to fight with them for their rights. He learned from his clients, who forgave others after years of intensely harsh imprisonment amounting to torture, that just mercy is freely given. Mercy is most powerful and transformative when it is directed at the undeserving.

Stevenson's mixture of writing with legal authority and a defence barrister's advocacy combines fact and drama, history and social observation, despair and hope, political and personal life, and hard-won philosophical reflection. This creates an admirable book.

Shami Chakrabarti, Director of Liberty, used to be a Home Office lawyer. Her book *On Liberty* recounts how in 2001 she moved from advising ministers to challenging them, giving her a unique double insight into the government and their leading NGO critic on their human rights record. During the 1990s, decisions from the European Court on Human Rights pressured the UK government to revise their policies, such as on immigration, leading to the 1998 Human Rights Act. The Act respects universal rights whereas, in a crucial contrast, US law respects only the rights of American citizens.

Chakrabarti emphasises that international human rights are not airy fairy, over-liberal or irrelevant, as many allege. They were enshrined in the 1948 United Nations *Declaration* and the 1950 *European Convention,* in the hope that the atrocities during the Second World War would never be repeated. She gives vital reasons for respecting fundamental, equal, international rights for everyone including refugees, asylum seekers and prisoners, however undeserving they may seem. The child of immigrants and thankful to live in the UK, she is deeply concerned at the erosion of our vital civil liberties.

The Human Rights Act is alleged to give judges too much power. The courts can strike down unlawful acts and decisions made by government when it breaks its own laws, as the courts could do before the 1998 Act, and judges can declare when laws are incompatible with human rights. However, Parliament still has the final say on which laws stand. Few of its friends have read the Act, Chakrabarti believes, and still fewer of its enemies have done so, and the book includes the whole Act. It is worth comparing the Act that includes the European *Convention* with the UNCRC to see all the 'children's rights' and adult rights held in common.

Following the 9/11 bombing in 2001, the US and UK governments have worked to extend their power and surveillance greatly, in order to 'combat terrorism'. This has increased Liberty's vigilant work on immigration, torture, secret trials and national security as Chakrabarti recounts. She has all age groups in mind. An example of all-pervading surveillance is when schools fingerprint children, and thereby give powerful anti-liberty messages that children must support such casual invasion of their privacy unquestioningly, and that privacy rights are irrelevant where efficiency, safety and school authority are concerned.

Chapter 4 about children should be read by everyone who works with them, to see how the law relates to every part of their lives and free agency. More funding for penal systems means less funding for welfare. CCTVs, curfews, mosquitoes in shopping malls, loss of youth services and evictions of 'problem families' are among many ways to harass young people that have greatly increased over the past 18 years. They are being scooped into crime networks when they need other services, such as mental health care. None of the deaths of young people in custody has had a formal inquiry. The ASBO – anti-social behaviour order – hugely expanded definitions of crime into 'what the victim says it means', and has expanded police power without due process of law especially over disadvantaged young people. Cuts to legal aid disable children and young people from challenging abuses in criminal justice systems, and in social and other services including unjust exclusion from school.

Chakrabarti analyses ASBO-related violations of rights, and the further problems of the supposed revisions in the 2014 Anti-social Behaviour Crime and Policing Act. This has expanded crime into anything that might cause 'nuisance and annoyance'. She comments,

'In authoritarian times, it always seems to be the children who get the roughest end of the stick', and proposes fair alternatives to the present law.

We are heading for a future like that in the United States, she warns, where there is no legal aid or NHS. There is one law for the rich and another for the poor who include those in greatest need, such as young asylum seekers and those with mental health problems. Now that Liberty is 80 years old and Magna Carta is 800 years old, *On Liberty* ends by emphasising that no person or authority is above the law, that justice should not be sold or delayed and, as we realise more fully in the 21st century, there must be equal respect for everyone's human rights. All of us never know when we might need their protection.

Yet we are seeing 'the near death of privacy' rights. Elite powerful groups want ever more control. The public and especially perhaps the young are seduced by fun, 'cool technology' that constantly betrays their privacy. 'Sloppy laws' are used and abused to erode liberties. A culture of 'them and us' wears away respect for the common humanity in which fair international law thrives. Chakrabarti ends: 'Human rights empower the vulnerable and irritate and inconvenience the mighty. But, trust me, you won't know what you had till it's gone'.

The two books by lawyers assume that human rights and freedoms are embodied and enacted in real everyday life through rights holders who are human agents. *The Agency of Children: From Family to Global Human Rights* by the sociologist David Oswell is highly relevant, to see how sociology can complement and support the lawyers' vital advocacy. Oswell begins with an erudite review of the history and classical and contemporary sociology of childhood, covering far wider areas than is usual in childhood research. He expertly positions many major texts within their theoretical traditions, drawing out deeper meanings and connections. He closely examines concepts and he challenges taken-for-granted meanings, for example, of childhood, generation, family and society. Oswell rightly describes the unusual range of his book as 'huge', crossing boundaries between usually separated subspecialties in childhood research. Besides family, school, play and consumerism, he addresses crime, health, the political economy of child labour, and children's rights and political participation, all from sociological perspectives. Strengths of the book include the careful summarising of major texts, valuable analysis of how they raise questions and new openings for childhood research, followed by respectful but critical analysis of their inherent limitations and contradictions.

Oswell aims radically to reconceptualise agency, agents and rights-holders through a sustained review of the immense complexities, ambiguities and uncertainties about agency. He shows how agents are powerfully influenced by networks, powers, institutions, markets, cultures, assemblages and processes, how agency is sourced from multiple systems, things and other people, and how it spreads out into its effects on others. Oswell asks whether agency is individual or collective, is hybrid across the social, biological and psychological, and is age-related and capacity-related. Can agency belong to non-human resources? Do we have rights over our agency or must we rely on others to mediate and interpret it? (p. 41). He aims to provide an analytics that deepens and enriches analysis and is able to explain agency in relation to contingent empirical realities. He plans to avoid simplistic analysis and to open up problem spaces within which sociologists can analyse, define, interpret and research agency. There are valuable sections on tactical agency, on agency in resistance and compliance, and Alcinda Honwana's concept of the interstitial agency of child soldiers is cited, which is hybrid and in-between. Oswell is primarily concerned with (adults') sociological theories that structure (children's) agency.

The book traces continuing historical growth of democratic respect for children's agency within households and schools. However, the review of schools shifts uncertainly between more liberal regimes (in early years education and since the 1960s) and much more controlled regimes (for older age groups and increasingly since 1988). Little is said on new undemocratic rigidities that counteract the view school students have more freedom now than they did 40 years ago.

In the crime chapter Oswell elucidates the quite common over-simplifying of Mary Douglas's (2010) famous concept of the meaning of dirt as 'matter out of place'. (Dirt is very valuable as top soil but a worthless nuisance on a dirty sofa.) Douglas makes a careful distinction between anomaly and ambiguity. For example, delinquent youth is 'matter out of place' both as an anomaly ('innocent' youth and delinquency are unacceptable contradictions) and an ambiguity (are the youths villains or neglected victims?). Douglas's distinction opens up much more subtle analysis of, for example, the two young boys' murder of Jamie Bulger.

Gangs and youth offending are carefully analysed by Oswell, such as in Loic Wacquant's (2008) contrasting of racial segregation into the bleak outer suburbs of Paris versus the extremely violent inner city ghettos in Chicago. Racism and neoliberal policies that increase crime, as Wacquant has so intensively analysed, are very briefly considered by Oswell. The chapter tends to distance young people and their agency through an analytical adult lens. The lens foregrounds sociologists' and criminologists' theories of delinquency, its causes and controls, and its numerous social influences, but this seems to blur and fade away the separate existence of agency and young agents.

'Health and medicine' could be the most definitive chapter on children's agency. Children who have major treatments face exceptionally complex, distressing and risky personal decisions. They also tend to show exceptional courage, endurance, insight and wisdom, partly drawn from their intense embodied experiences of their long-term problems and their hope of relief from suffering. My book on the consent to major surgery of children aged between 8 and 16 showed their highly developed agency (Alderson 1993). However Oswell's chapter ignores long-term illness and disability and major treatment. My book is cited later as being about babies (but the book does not mention them) and how babies make decisions (babies cannot make informed voluntary decisions). That misreading is used to support the growing theme through the book that children's agency is extremely vague and diffuse. Aspects of health emphasised in the chapter include psychology experiments, ADHD, charting and testing growth and development, Foucault's critiques of socially controlling bio-power, eugenics, and adults' management of trivial childhood illness. In all these areas, mainly of the mind rather than the body, children's embodied agency and rights tend to be ignored or overridden, pathologised or collapsed into the adult gaze. The great advances over the past century in medicine and surgery, which have transformed so many children's lives, and have hugely increased their health and capacity for agency, are not mentioned so that medicine seems to be only a sinister Foucauldian bio-power.

Many useful points are made in the chapter on 'the political economy of labour', although the section on international evidence about children's work is rather disconnected from the rest of the book, which increasingly stresses a uniform model of 'the child'. Oswell acknowledges terribly exploited child labour but says, 'It would be a mistake to understand children's labour in terms of a moral response' (p 233), without explaining how or why there can be sociology without morality. His main themes are adults' theories and academic debates in this and the following chapter on 'rights and political participation'. Here,

'problematising' and controversies about children's rights, and about implementing ambiguities in the UNCRC, with dichotomies of local/global, adult/child, private family life/state intrusion are stressed. Children's 'very being (with regard to their infancy and lack of maturity) places them a priori outside of both the political and global humanity' (p 234) Oswin states controversially. There is an important section on migrants' rights and Hannah Arendt's claims for stateless refugees after World War II (also a main concern in Chakrabarti's book). Oswell thinks young migrants' rights are doubly complicated by their status as (non)citizens of any state and as dependents within families. He wants new thinking on how to implement children's rights within complex political and economic tensions.

The Agency of Children begins with important questioning of tenuous, oppressive, socially constructed child-adult divisions. However, these tend to be assumed and to dominate later on, as in the child-play versus adult-work chapter, forgetting that adults play a lot too. Children are 'construed' as having speech, or are 'presented' with speech, or are said to have 'immaturity with regard to language' (p 245) in deconstructing sociological approaches that treat them as not fully human. This does not allow for the great range of children's and young people's capacities, freedoms and oppressions.

Oswell aims to dispel five myths (pp. 264-70). 'The individual child' myth, which 'few believe', falsely sees children as possessing capacities individually, instead of 'only by virtue of their relationship with others' as facets of each local situations. The difficulty when social constructionists deny individual embodied being in this way is theory/practice inconsistency (Bhaskar 2008). They deny individual being in theory, but claim it for themselves in practice, such as when they name themselves as the individual author of a book, and fend off plagiarism by other individuals. If children really had no individual being, it would not matter which baby parents took home from the maternity hospital, or which child arrived home from school each day.

Myth two is childhood identity defined as separate from adulthood. I agree this is a myth, and that childhood and adulthood overlap far more than they differ. Yet I think that the myth is too much relied on rather than refuted through the book. Oswell aims to defuse this myth with the example of a range of professionals arguing over whether Ngisti, who claimed asylum, was aged over- or under-16-years. Customs officers and paediatricians were, Oswell claims, fruitlessly competing over biopower through discourse when debating her age. However, this was not an abstract, epistemological, professional dispute but an economic one, when Ngisti's real age was not the question. The customs officers were pressured to restrict entry of potentially expensive child immigrants; the doctors wanted to give expensive care to a needy child. So I agree with Oswell that age is not the relevant marker, but for different reasons.

Myth three is that childhood is a distinct separate space. Oswell argues that children and adults share spaces from sandpits to hospitals. Agreed. Myth four concerns scale, when spaces are either local or global, micro or macro. Oswell says scale is also at all levels and complex interactions in between. Agreed. Yet he then adds that 'agency circulates around children' impersonally through these complexities, and this links to myth five: the fiction of the social agent. Oswell believes 'agency neither starts nor finishes with any individual agent'. It is orchestrated within narrative structures, character is not 'real' and there is no single author but always multiple authors of agency. He illustrates his view that the distinct existence of the active or passive child's agency is uncertain with a dying Rwandan child who seems to become lost into state statistics, politics, and mass media accounts. Yet another

view would see a whole range of other agents and structures interacting with and about the individual child but not wholly merged into him. However, Oswell concludes that agency is never a property and is always relational, in-between, dispersed (p 270). This would leave rights without rights holders, in an uncertainty that is not explained. Oswell seems to believe that sociology is a thin theoretical discipline, detached from physical nature and bodies, from economics and morality, in an esoteric analysing of social complexity, assemblages and discourses.

To conclude: the two books by lawyers compellingly and urgently advocate social justice, human rights and equity for all, and show how children and their freedoms and suffering are central to the 'adult' world. Sociology could support their work with uniquely broad-ranging evidence and analysis, which connects local, national and global levels in all aspects of children's and adults' social-natural complex lives.

I will close by suggesting a working definition for agency in rights-based research with children, based on my empirical research about children's views and experiences of agency (Alderson 1993). Agency is more than activity. It involves 1) physical activity by the unique embodied agent with 2) thought and conscious decisions, purpose and motive within 3) often very powerful and more or less enabling or constraining social relationships and structures. These may evoke varying reactions in the agent from willing cooperation to active resistance. There is 4) some moral awareness about need and desire, harm and benefit to self and others (though awareness does not dictate action, many still decide to do wrong but agents do so consciously). And 5) time, space and resources essentially enhance and restrict agency. However, inadequate resources do not preclude agency, they may generate it: hungry children may be active workers; prisoners may sing of freedom. Finally 6) agency may affect others and cause change.

Human agency is weak and limited; our motives may be subconscious, or misunderstood, or highly pressured by circumstances beyond our choosing or control; the effects are often inadvertent or counterproductive. But within all these manifold weaknesses and complications individual agency exists. My list raises more questions than answers. Yet I hope that it might help to promote practical, interdisciplinary, emancipatory research into children's human rights, freedoms and agency.

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