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Democratic Confederalist Approaches to Addressing Patriarchal Violence Within the Justice System

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ABSTRACT

In the midst of an ongoing civil war, the people of North and East Syria have been building a society based on the ideas of direct-democratic and decentralized self-administration. Differently put, they have embraced the principles and ideas of democratic confederalism, which is the political ideology developed by Partiya Karkerên Kurdistanê (PPK, Kurdistan Workers' Party) founder Abdullah Öcalan. The purpose of this essay is to give an overview of the governance system of NES for the purpose of demonstrating the democratic confederalist approach to addressing patriarchal violence. In addition, the ambition is to assess the traditional notion of law and punishment as a solution for dealing with patriarchal violence, or, as Kropotkin would describe it, "a remedy for evil." In addition to the more traditional and hierarchical court systems of contemporary societies, there are reconciliation committees in North and East Syria which seek to eliminate patriarchal violence through means of rehabilitation rather than punishment. In conclusion, NES serves as a fairly successful example of how patriarchal violence can be addressed within a justice system that is based on principles of restorative and transformative justice.

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Introduction

You have to act as if it were possible to radically transform the world. And you have to do it all the time. – Angela Davis, Talk at Southern Illinois University Carbondale

Traditionally, laws and international conventions have been enacted and ratified in order to fight discrimination, exploitation, sexual violence and other forms of injustice. According to Kropotkin (1886, 1), the law is looked upon as:

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... a remedy for evil. Instead of themselves altering what is bad, people begin by demanding a law to alter it.

Despite these efforts, inequality is ever-present, no matter where in the world one would travel, and it seems as if gender inequality, racism and poverty are inescapable elements of human societies. However, undeterred by this rather gloomy state of affairs, people are mobilizing and making demands for better societies. In the Autonomous Administration of North and East Syria (NES)¹ locals are organizing society by embracing the political ideology of Abdullah Öcalan, which is based on the ideas of social ecologist Murray Bookchin. One could suggest that Syria is the last place to expect this development, due to the Syrian civil war and mass atrocities committed there. On the other hand, it could be claimed that Syria is the first place to expect such development, for precisely the same reason. It is an ambitious political project, currently threatened by the invasion of the Turkish state which commenced on October 9, 2019, as reported on the same day by the BBC on its website. Despite the fact that a cease-fire has been declared and political discussions are underway, Turkey has not announced the cessation of its military operations (Groll and Seligman 2019). Although it is not clear what will remain of the autonomy of NES, also considering the presence of Syrian troops in the region, the administration has stressed that the civil and political administration of NES remains within the region (Rwanduzy 2019; Wali 2019).

The purpose of this essay is twofold. In writing this text, my primary ambition is to give an overview of the governance system of NES in order to demonstrate the democratic confederalist approach to addressing patriarchal violence.² In Western liberal societies, justice has often been equated with punishment (or retributive justice), especially so in cases of patriarchal violence (see McGlynn 2011 for a discussion on retributive and restorative justice in relation to rape crimes). Thus, I will investigate how the justice system of NES is organized and how cases of patriarchal violence are addressed and handled within (and outside) the system. The primary materials used for this essay are books and articles written by researchers, activists and journalists who have visited NES. In addition, excerpts from interviews which have been conducted and provided by the Rojava Information Center, for the purpose of this essay, are included. My second aim is to assess the traditional notion of law and punishment as a solution for dealing with patriarchal violence, or, as Kropotkin would describe it, as “a remedy for evil.” This will be done by presenting a reconceptualized idea of

¹Although formally referred to as NES, the region is famously known by the name Rojava, which is the Kurdish word for West (referring to Western Kurdistan). In consideration of the political project being a multiethnic one, the name was formally changed to its current one on September 6, in 2018.

²Violence in this context is understood as physical, psychological, material and economic. Patriarchal violence is thereby understood as any violence that is rooted in the patriarchal power structures that it upholds and reproduces.

law and justice inspired by anarchist legal theory and based on principles of restorative and transformative justice.

Reconceptualizing Law and Justice

The confused mass of rules of conduct called Law, which has been bequeathed to us by slavery, serfdom, feudalism, and royalty, has taken the place of those stone monsters before whom human victims used to be immolated, and whom slavish savages dared not even touch lest they should be slain by the thunderbolts of heaven. –Pëtr Kropotkin 1886.

Before presenting a reconceptualized idea of law and justice, a brief description of democratic confederalism will be given, since this is the ideological basis which the society of NES and its justice system rest upon and function within. According to its founder, Abdullah Öcalan (2017, 39), democratic confederalism is “democracy without a state.” It is a political ideology drawing upon the ideas of Murray Bookchin, a social ecologist who advocated governance through municipal democratic assemblies. These local municipalities constitute a confederation which, according to Bookchin and Öcalan, cannot exist as a nation-state (Vanek 2001; Öcalan 2017, 47; Allsopp and van Wilgenburg 2019, 63). Thus, democratic confederalism can be described as direct democratic self-administration, as well as a rejection of the traditional Westphalian state:

Democratic confederalism is based on grassroots participation. Its decision-making processes lie with the communities. Higher levels only serve the coordination and implementation of the will of the communities that send their delegates to the general assemblies. For one year they are both mouthpiece and executive institutions. However, the basic power of decision rests with the local grass-roots institutions. (Öcalan 2017, 47)

With this in mind, should (or can) law be used as a tool to promote gender equality in such societies? Is it possible to resolve cases of patriarchal violence within a justice system that rejects the authority of the state? NES shows us that this is possible, but before the democratic confederalist approach to addressing patriarchal violence is presented, something brief will be said about how we can understand law and justice within such non-state societies.

Law as commonly understood in contemporary Western societies, that is, enacted and executed by the authority and power of the state, cannot operate within a consensus-oriented direct democratic self-administrative non-state society. For law to properly function within a democratic confederalist society, an anarchist conception of law is necessary. This conception of law is provided by Pëtr Kropotkin, and to a large extent implemented by the democratic confederation that is NES.

The word anarchism is derived from the Greek word *anarchos* which means “no ruler.” Anarchists have been challenging the traditional Western

idea of the state and its concept of law as imposed by a sovereign. Therefore, anarchist rejections of law are tied to rejections of the state, but not necessarily of law understood as order in society (Davies 2017a, 29):

Such was law; and it has maintained its two-fold character to this day. Its origin is the desire of the ruling class to give permanence to customs imposed by themselves for their own advantage. Its character is the skilful commingling of customs useful to society, customs which have no need of law to insure respect, with other customs useful only to rulers, injurious to the mass of the people, and maintained only by the fear of punishment. (Kropotkin 1886, 10–11).

Thus, Kropotkin distinguishes between two forms of law: written and customary law (Bradey 1985, 139). Written law is understood as coercive and advantageous for the ruling class, while customary law is understood as useful for society and consensual (see also Davies 2017b). This understanding of written law as a body of law clearly demarcated and separated from customary law (which is regarded as a pure social fact) can of course be criticized. However, that would necessitate going beyond the aim and intended scope of this essay. Kropotkin's anarchist understanding of governance and law challenges the idea of using the law as a tool for societal engineering (Bradey 1985, 149) and paves the way for democratic self-governance. It also rejects the traditional liberal concept of retributive justice:

Peoples without political organization, and therefore less depraved than ourselves, have perfectly understood that the man who is called "criminal" is simply unfortunate; that the remedy is not to flog him, to chain him up, or to kill him on the scaffold or in prison, but to relieve him by the most brotherly care, by treatment based on equality, by the usages of life amongst honest men. (Kropotkin 1886, 23)

Consistent with this approach, remedies against a person who has committed a crime should be based on principles of restorative and transformative justice, not retribution (Bradey 1985, 144–145). Restorative justice can be understood as resolving criminal cases by means of arbitration and dispute settlement for the purpose of achieving reconciliation between the victim and the offender on an individual level, as well as social peace on a community level. As for transformative justice, this can be understood as achieving justice by *transforming* the offender on an individual level, as well as *transforming* societies on a community level. Thus, transformative justice encourages new responses to patriarchal violence, such as educating and rehabilitating the convicted person. From this perspective, criminal proceedings go beyond investigating whether or not a crime has been committed by also addressing *why* a crime has been committed, and how the communities can assist the individual in not returning to criminal behavior (Figure 1).

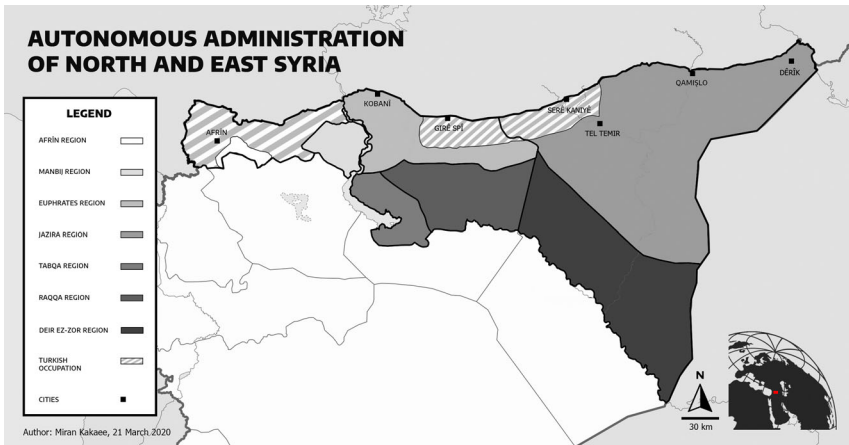


Figure 1. Map of NES and its seven administrative regions.³ Prepared by the author.

A Consensus-oriented Justice System

Thousands of volumes have been written to record the acts of governments; the most trifling amelioration due to law has been recorded; its good effects have been exaggerated, its bad effects passed by in silence. But where is the book recording what has been achieved by the free co-operation of well-inspired men? – Pëtr Kropotkin, *Anarchist Communism: Its Basis and Principles*, 1927.

Basic Structure

The justice system of NES is structured in different levels. On the communal, neighborhood and district levels there are Peace and Consensus Committees, which constitute the basis of the justice system. The Peace and Consensus Committees not only resolve cases of criminality, but also social injustice, and the goal of the committees is to reach social peace through consensus, rather than retribution. Instead of incarceration and using other means of punishment, the accused is therefore made to understand the injustice and damage that the person has caused, through a process of dialogue and reconciliation amongst the parties (Knapp, Flach, and Aybogan 2016, 180). According to Xelid Ehme, member of the reconciliation committee in the Dêrik region (see Figure 1), instead of “imposing a given measure, they propose a solution. When the solution is accepted, it is normally written and signed by all parties to the conflict.” In some cases, compensation is paid to the

³Note that although the region of Afrin is formally a part of NES, it is currently under occupation after a Turkish invasion which commenced in January 2018. The same goes for parts of the Euphrates and Jazira regions of NES in which the cities of Serê Kaniyê, Girê Spî and its surrounding villages are under Turkish occupation.

affected party, and in other cases religion plays an important role in seeking forgiveness. If consensus is not reached on the communal level, the matter is taken to the *Peace and Consensus Committee* on the neighborhood level. The structure and proceedings of the committee are essentially the same as on the communal level and settling the case through consensus is once again the primary objective. The *Peace and Consensus Committees* are not authorized to imprison people (Duman 2017, 88).

If it is not possible to solve local matters within the *Peace and Consensus Committees*, the cases are referred to the judiciary, or the courts, which is the next level. In addition, according to Ehme, more severe cases are directly referred to the judiciary:

When any violation of human rights take place, the case is redirected to the Justice Court. For example killings or grand larceny ... cases that need an individual to be protected, along with deeper interrogation and investigation.

On the city and regional level there are people's courts which consist of judges nominated by a justice commission or anyone living in the affected area (Shilton 2019; Allsopp and van Wilgenburg 2019, 63; Ayboga 2014). Additionally, there are four appellate courts on the regional level, as well as one cantonal court to cover all three regions (Knapp, Flach, and Aybogan 2016, 180). The people's courts system has been criticized for resembling courts in existing hierarchical justice systems. As a response to this criticism, Justice Platforms were established as an alternative to the people's courts. The Justice Platforms can be described as larger *Peace and Consensus Committees*, consisting of up to 300 people from related communes and civil society organizations. These people meet, discuss the case and try to reach reconciliation through consensus (Anderson and Egret 2016). If it is not possible to reach consensus, they vote (Knapp, Flach, and Aybogan 2016, 184). Thus, it is clear that consensus is key on all levels, and that the primary goal is to settle the case through reconciliation, due to the fact that it is understood to ensure social peace. Prisons, however, still exist in NES, but they are considered to be last resorts to resolving cases (Anderson and Egret 2016). In the introductory chapter to his study *Justice Without Law*, Jerold S. Auerbach (1984, 4) tries to provide an answer to why arbitration and mediation, or restorative justice, were the preferred alternatives to settling cases (in an American context):

Historically arbitration and mediation were the preferred alternatives. They expressed an ideology of communitarian justice without formal law, an equitable process based on reciprocal access and trust among community members. They flourished as indigenous forms of self-government.

Although they do use formal law, the population of NES seem to be skeptical towards resolving conflicts with within the criminal justice system. According

to Aytan Dayika Medya, member of the reconciliation committee of Serê Kaniyê, who was interviewed by the Rojava Information Center in 2019, law alone is not capable of solving all issues:

Because the formal law alone is not always right, it cannot cover everything ... We engage with our society, and we feel that our existence as a justice committee has value. Not only in Serê Kaniyê, but outside Serê Kaniyê, we go into society and work with them. We are not content with the law alone.⁴

This view possibly stems from an understanding that law is only necessary in a society which is not living as a community, or differently put: where law begins, community ends. NES, however, adds another layer to this understanding of restorative justice, which is the layer of transformative justice. The mission of NES is an emancipatory one, with the aim of eliminating patriarchy. Thus, transformation is necessary on an individual and societal level.

Parallel Women's Justice System

Separate women's communes are located within the cities and villages of NES. These communes organize women in each area by doing educational work, reading books and organizing group discussions. Additionally, they make house visits and talk to women so that they are included in the commune system:

We want women to become self-reliant. We go to the villages too and talk to women there. Many of them don't dare speak to us, but afterward, secretly, they make their way to us. (Knapp, Flach, and Aybogon 2016, 87; see also Allsopp and van Wilgenburg 2019, 155–156)

Moreover, the women's organizations intervene in cases of patriarchal violence, childhood marriage, polygamy etc. This entails documentation and investigation, making house visits, talking to the man and trying to resolve the cases. In addition, there is a separate women's unit in the internal security forces, Asayîşa Jin, which intervenes in cases of patriarchal violence if it is deemed necessary. The women's organizations and Asayîşa Jin work together, and if they are unable to resolve the issue, the matter is taken to the *Peace and Consensus Committees* (Shilton 2019). On the commune and neighbor levels there exist separate women's *Peace and Consensus Committees*. These committees are responsible for resolving cases of patriarchal violence and consist solely of women in order to minimize the degree of patriarchal influence on the decision-making process (Knapp, Flach, and Aybogon 2016, 182). There are evidence which suggest that the inclusion of women in domestic courts does have an effect on reasoning as well as outcomes of cases (Edwards 2010, 102–107). In these cases of patriarchal violence, the

⁴Translated by the Center.

committees ask for the contribution and input of women's organizations such as Kongreya Star⁵ and other civil society organizations. The organizations also support the victims of patriarchal violence and offer protection from physical violence by accommodation at Mala Parastina Jinê (Women's Protection Houses) (Allsopp and van Wilgenburg 2019, 155; Duman 2017, 86).

The aim of the committees is to resolve cases of patriarchal violence by means of consensus and reconciliation rather than sending the case to a court, where there is a risk that the court will sentence the accused to prison. This preference for reconciliation is consistent with the restorative and transformative principles of justice, since even though imprisonment might temporarily protect the women who have suffered patriarchal violence, in order to eliminate patriarchy a societal transformation is needed, and in order to transform society, the individuals constituting society must be transformed as well. Therefore, other sanctions that are used against perpetrators are: "work in a cooperative or public service; exclusion from the commune; social isolation ... boycott if the convicted person has a shop; temporary relocation to another neighborhood; and exclusion from some public rights" (Knapp, Flach, and Aybogan 2016, 182).

In accordance with the ambition of transforming society and eliminating patriarchy, education is one the main sanctions used against persons convicted of patriarchal violence. Thus, a person might have to undergo education, which can last until the trainers are convinced that the person has changed (Knapp, Flach, and Aybogan 2016, 182; see also Sly 2019). Influenced by Kropotkin's view on prisons, incarceration in NES is no longer conceived of as a means of punishing the convicted person. Rather, the prisons have been reconceived as educational institutions, with the ambition of transforming them into rehabilitation centers once the means are available (Sly 2019; Knapp, Flach, and Aybogan 2016, 182–183). Additionally, several women from the women organizations in NES have expressed a wish to "move away from prison and other non-restorative forms of punishment" (Magpie 2016).

Before concluding this section, something will be said about the effect of the new justice system in NES, although it is difficult to generalize on the matter. The number of prisoners is reported to be on a low level. In mid 2012, when the new justice system was put into practice, prisoners were released after consensus was reached between the affected parties (Knapp, Flach, and Aybogan 2016, 179). In the city of Serê Kaniyê the number of prisoners has dropped from 200 during the Assad regime time to 20 as of early 2016 (Anderson and Egret 2016). Overall, there is a high rate of case resolution at the level of the Peace and Consensus Committees, which indicates wide acceptance of the new justice system by the local population (Shilton

⁵Kongreya Star is an umbrella organization, founded in 2005, which consists of different women's organizations in NES.

2019; Cemgil and Hoffman 2016, 65). Crime rates have dropped, especially with regard to theft, and as for crimes related to patriarchal violence, the number of honor killings have declined noticeably in NES (Ayboga 2014). According to the women's organizations in NES, their work has resulted in abusive men leaving their wives. In Hileli, Qamişlo, any man who beats his wife is socially ostracized and domestic violence seems to have vanished (Knapp, Flach, and Aybogan 2016, 87). In 2017 there were approximately 200 divorces, mostly due to cases of polygamy and child marriage (Nordland 2018). In Kobani, leading politician Idris Nasser states that

A lot of husbands would not let women go out and would force them to stay in the house to take care of the children. Now everything has changed. (quoted in Argentieri 2016)

Finally, according to Khawla Diad, co-chairwoman in Til Temir, the lives of women have changed in many ways thanks to the communal organization of the local administration:

For example, underage marriage. A girl of only 14 would be given to a man to be married. But not any more. Another thing is a second marriage. A man could take four women for himself. But not anymore. Now only one woman. Before, if I had brothers ... within our house I didn't have the right to anything in my family—not property or money or land. But now, women have the right to all those things. (Shilton 2019)

Conclusion

In conclusion, NES serves as an interesting example of how patriarchal violence can be addressed within a justice system that is based on principles of restorative and transformative justice. It is most likely that the exact approach of NES to addressing patriarchal violence cannot be copied and implemented in other societies and legal cultures, however, I hope that this text has inspired the reader and provided new ways of thinking about law and justice as tools for achieving societal change. I come from a Swedish legal context and consider it unfortunate that the discussion on addressing patriarchal violence mostly revolves around further criminalization and increasing punishment (see Johansson 2018). While it is necessary for society to send the message that patriarchal violence is unacceptable, reconciliation is equally necessary if we want to be able to ensure social peace on an individual and community level. At the same time, transforming the offender through means of education and rehabilitation is vital in order to eliminate patriarchal attitudes in society. However, we must keep in mind that patriarchal attitudes cannot be eliminated in the legal arena only. They need to be confronted everywhere, all the time. Only then is it possible to radically transform the world.

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