

Feeling the absence of justice: Notes on our pathological reliance on punitive justice

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Abstract

This article critically examines our relationship with justice in contemporary Western liberal settings, with a particular focus on why our pursuit of justice is intimately entangled with punitive logics. It starts by arguing that we have a predominantly pathological approach to justice, in the sense that it follows a logic that is akin to that displayed in contemporary sensibilities regarding bodily pain. We deploy Drew Leder's concept of 'disappearance' to discuss how, in Western liberal societies, justice is primarily experienced negatively as a phenomenon; that is, we mainly become conscious of justice through the painful and episodic experience of injustice. We then explore this phenomenological quality of justice which, we argue, is linked to how the pursuit of justice in these settings predominantly takes a hostile, punitive aspect. The article concludes by exploring how this punitive impulse can be resisted, through what we term a 'lived sense of justice'.

KEYWORDS

carceral justice, criminal justice, embodiment, justice, pain, punishment, punitive justice, punitiveness, restorative justice, transformative justice

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1 | INTRODUCTION

The body conceals itself precisely in the act of revealing what is Other. (Leder, 1990, p.22)

This article critically analyses the predominance of punitive approaches to justice in Western, liberal democratic societies, advancing the proposition that such predominance is the result of a pathological relationship to justice. By pathological we mean that in these societies, we are obsessed with matters of justice, and that the tone and orientation of our engagement with such matters have a compulsive, immediatist and hostile character. In spite of growing recognition for the need for more integrative, solidary and socially-aware approaches to justice in these settings (Barry, 2005; Cooper, Dhawan & Newman, 2019), we continually see justice primarily in ways that are dominated by punitive logics and outcomes. In political, media and public discourse alike, the main focus of justice claims is on specific, often individualised instances of harm and violation, and particularly on identifying those responsible for such violations and holding them to account. Even when other, broader issues are acknowledged in connection with these injustices, they mostly appear as complementary concerns, subsidiary to the need for retribution.

Criminological scholarship has extensively explored the phenomenon of punitiveness as an emotional and cultural practice related to criminal justice. Since David Garland's (2001) seminal book *The culture of control*, there has largely been a consensus in such scholarship that, since the late 20th century, criminal justice policy and practice adopted a retributivist agenda that departed from the more welfarist objectives that were advanced for most of that century. Politicians more openly expressed 'punitive sentiments' which were then reflected in a more 'draconian' regime of penalties (Garland, 2001). This shift in orientation both fuelled and was fuelled by a more active media sensationalism that signalled the return of a sort of 'gothic populism' (Valier, 2002; see also Bottoms, 1995; Chamberlen & Carvalho, 2019; Jennings et al., 2017; Newburn & Jones, 2005) in which punitiveness became a stable feature of much public discussion on issues of crime and justice (Costelloe, Chiricos & Gertz, 2009; van Marle & Maruna, 2010). Such discourses privileged a language of blame, guilt and responsabilisation, driven by a sense of fear, anger and aggression towards offenders.

Despite this consensus regarding the role of punitiveness on the shaping of our cultural and institutional discourses and practices around justice, there have been limited efforts to properly examine and illustrate the broader impact of punitive logics beyond the institutional confines of criminal justice, with few notable exceptions (on this, see Carvalho, Chamberlen & Lewis, 2020). This neglect has hindered a more comprehensive appreciation of the psychosocial influence of punitiveness on our perception and experience of justice, and on our engagement with it. This article draws an analogy which can arguably illustrate and ground an exploration of this pervasive cultural and affective rooting of punitiveness in our social imagination, and of how it affects our self-understandings and relationships with the world around us. Furthermore, we believe this approach can highlight the importance of thinking about justice as a personal and social phenomenon and practice, and not simply casting it as a set of legal and political institutions. So, while we critique punitive justice as predominantly performed by states and criminal justice institutions, we seek to recognise that the punitiveness enacted in those criminal justice rituals is intimately related to how we, as individuals and societies, often feel about, and have come to understand, justice.

The analogy in question is that the way in which we currently approach matters of justice is akin to modern attitudes and sensibilities toward bodily pain, and it is this *pathological* (from the ancient Greek word *πάθος*, meaning pain, suffering or disease) aspect of justice that gears it towards hostility. It is easy to see how pain is related to punitive justice. The word ‘punishment’ itself denotes the infliction of pain (from the Latin *poena*), and even though modern punishment has largely been characterised by efforts to make punishment more ‘humane’ or ‘civilised’ (Foucault, 1977; Pratt, 2002), research has shown that modern punishment – and particularly its most illustrious form, imprisonment – is inherently painful (Chamberlen, 2016; Christie, 2007; Liebling & Maruna, 2005; Sykes, 1958). This is because its experience is embodied: people feel its stigma and deprivations on their bodies, and this, in turn, shapes and conditions their sense of self and belonging and their perception of the world around them (Chamberlen, 2018; Moran, 2012). In other words, being subjected to punishment *hurts*, and this pain becomes a part of the person’s identity and of the social role of punishment more broadly.

This article explores how this phenomenological quality of punishment extends beyond its application, affecting the very idea of justice as a cultural artefact and as a practice. Punitiveness – understood as a phenomenological complex related to the urge to punish (Carvalho, Chamberlen & Lewis, 2020) – puts the experience of pain at the heart of how we think and feel about justice. The hegemony of punitive justice drives us to experience justice mainly in a negative form; that is, we become conscious of justice predominantly through the need to address specific instances of injustice – which punitive logics identify as coming from the conduct of dangerous others. These episodic violations of justice overwhelmingly capture our attention, so that the need to have them addressed in a decisive and robust manner takes over, and consequentially detracts us from enquiring about the deeper roots of these issues and from engaging with other, more holistic and persistent forms of justice. Justice therefore becomes trapped in a pathologic cycle: we feel pain, we seek to put an end to it, and we do so by inflicting pain upon others who we identify as the source of our suffering.

We draw this parallel between justice and pain by looking at scholarship on embodiment. In particular, we look at the work of Drew Leder, a medical philosopher who in the 1990s put forward a compelling analysis on the lived experience of pain. The article starts by introducing Leder’s perspective on embodiment, and more specifically on the absent presence of the body; that is, on how we tend to take our bodies for granted in most of our lived experiences. Instead, we become aware of our embodied nature mainly when we experience our bodies as limiting, dysfunctional or antagonistic. In these moments, the body appears to us primarily as an obstacle, a problem to be resolved. This context enables us to draw the key allegoric elements that will ground our analysis of the pathological character of our approach to justice through a discussion of the experience of pain and its effects, focusing on how pain and discomfort lead to a sense of alienation and to a process of othering the feeling and source of pain from the rest of the self, which often enables a hostile response to this source. We argue that punitive justice mimics this process. The second part of the article unpacks the roots and the functioning of the link between justice and hostility, discussing the affective dynamics that lead us to addictively rely on punitive logics in our pursuit of justice. The third and final part reflects on the implications of this pain-killing orientation and considers how an embodied perspective can ground possible avenues that can lead us away from hostility and towards a more concrete, lived sense of justice.

Our contemporary moment arguably offers an unprecedented opportunity to re-examine our relationship to justice, as the public sphere has in recent years been inundated by demands for justice in an intensity and scope rarely seen out of situations of open conflict and revolt. These demands have been materialised in a number of movements, campaigns and struggles, ranging

from the Occupy movement, to Black Lives Matter, to #MeToo, to efforts around climate change, refugees and migration, on to protests against political and corporate wrongdoing and lack of accountability such as those concerning the Grenfell Tower fire and its consequences (BBC, 2019; Grierson & Gayle, 2017; Justice4Grenfell, nd). Through this active engagement with matters of justice, not only are we becoming increasingly aware of the breadth and depth of injustices plaguing our societies, but we are also – perhaps still tentatively – becoming conscious of the need to reimagine what justice actually and concretely means, as well as the ways in which we can achieve it. This article aims to make a contribution towards these efforts, by reflecting on the roots and the consequences of what we consider to be their main obstacle: the predominance and allure of a narrow, hostile conception of justice.

2 | ABSENCE AND *DYS*-APPEARANCE: THE PHENOMENOLOGY OF PAIN AND ITS RELATION TO JUSTICE

To unpack our discussion on the allegoric relationship between our experiences of pain and our approach to justice, we consider the work of Drew Leder, an important contributor to philosophical discussions on Merleau-Ponty's phenomenology and an influential scholar in the sociology of embodiment and emotions, who has also written extensively on criminal justice experiences and the world of maximum-security prisons (see Leder, 1999, 2016, 2018). Leder's early work on lived bodily experiences articulated in particular in *The absent body* (Leder, 1990) offers an authoritative critique of Cartesian dualism. In this book, Leder argues that while central to our everyday experiences and interactions with the world, bodies are mostly absent from our self-perception. That is, most of the time, we are unconscious of ourselves as having and being a body. Consequently, we go about perceiving ourselves and the world around us in a largely disembodied state that takes the embodied, affective aspects of our existence for granted:

As I go through the day, my extended body ebbs and flows, now absorbing things, now casting them back onto shore. I do not notice my body, but neither do I, for the most part, notice the bed on which I sleep, the clothes I wear, the chair on which I sit down to breakfast, the car I drive to work. I live in bodies beyond bodies, clothes, furniture, room, house, city, recapitulating in ever expanding circles aspects of my corporeality. As such, it is not simply my surface organs that disappear but entire regions of the world with which I dwell in intimacy. (Leder, 1990, p.35)

But as the quote above suggests, despite our neglect of ourselves as embodied, we heavily rely on our bodies for our lived experience. The body is always 'there', and all that we do emanates from it; but we rarely take notice that this is the case. And when we focus on our bodies, it is usually by means of a phenomenological distinction between the part of the body that is being acted upon and that which is acting upon it, which remains in the background; for instance, when we use one of our hands to touch the other. The body thus remains mostly invisible to our consciousness, as an absent presence. This bodily disappearance is usually only interrupted, according to Leder and other phenomenologists (e.g., Williams & Bendelow, 1998), in occasions when our bodies force us to directly engage with them.

Awareness of our embodiment is most likely to occur when individuals suddenly experience ill-health and physical or emotional distress or when they undergo fundamental change (Chamberlen, 2017, 2018; Leder, 2016; Williams & Bendelow, 1998). So, for instance, sufferers of acute or

chronic pain, or victims of trauma and abuse, are more likely to be bodily aware (Leder, 2016). In particular, as feminists have shown, women tend to be more exposed and more socially pressured to perceive themselves in bodily terms, especially given the heightened attention and hyperregulation of female bodies in contemporary Western societies (Bartky, 1990; Young, 2005). In other words, we tend to notice our bodies more when we perceive them (or are socialised to perceive them) as somehow 'failing' or 'disrupting' our 'taken-for-granted' attitude towards them. In those occasions of embodied suffering or bodily challenge, our absent bodies reappear in our perceptive field:

Insofar as the body tends to disappear when functioning unproblematically, it often seizes our attention most strongly at times of dysfunction; we then experience the body as the very *absence* of a desired or ordinary state, and as a force that stands opposed to the self. (Leder, 1990, p.4, italics in original)

In those occasions we become violently conscious of ourselves as embodied, but we focus on the body primarily as a source of pain or dysfunction. Leder calls this a process of '*dys*-appearance' whereby our bodies re-emerge to our attention in a primarily negative way:

That is, [in moments of pain] the body *appears* as thematic focus, but precisely as in a *dys* state – *dys* is from the Greek prefix signifying 'bad,' 'hard,' or 'ill,' and is found in English words such as 'dysfunctional' ... At times of illness one may experience one's body as more or less 'unusable.' It no longer can do what once it could. Certain possibilities of sensation and action, certain resources of energy, are simply 'missing.' ... , the sick body may be experienced as that which 'stands in the way,' an obstinate force interfering with our projects. (Leder, 1990, p.84, italics in original)

This is an important observation about our approach towards our own bodies as it goes some way to explain the concrete role of suffering and pain in determining our own lived experiences and relations with ourselves as embodied beings. Sociologists of health and illness have argued that apart from being a medical 'problem', pain is also an everyday experience constituted by a set of complex embodied emotions (Bendelow & Williams, 1995, p.139) which, as Morris (1991) argues, engages the 'interaction of bodies, minds and cultures', that is central to positing our self-meanings (pp.1–2) and can have a significant impact on our perceptions and identities (see also Grosz, 1994). Therefore, when we mostly engage with our bodies in moments of pain and turmoil, we tend to develop an ambivalent and ultimately alienating attitude towards them, in which we see and treat our bodies first and foremost as sites of concern and anxiety, as problems to be fixed rather than a constitutive part of who we are. Our contention in this article is that our relationship to matters of justice largely mirrors this general attitude which Leder identifies in relation to our bodies and their experience of pain.

3 | FROM PAIN TO PUNITIVENESS: THE PATHOLOGY OF JUSTICE

At the heart of our general attitudes towards justice, there lies the idea that justice is a constitutive element of society; at the very least, it is seen to be an indispensable condition for any modern, 'civilised' society to exist (Rawls, 1971). Justice is always already 'there', as an inherent aspect of government and an institution to which we can have recourse. At the same time, justice

as a practice is mostly absent from our everyday lives, so that most people – with the possible exception of political philosophers – simply assume that they know what it is. Most of us only really become conscious of, and concerned with, justice when we notice its disruption or violation. When this happens, matters of justice come to the fore; but just like with the body, they also take a mostly negative connotation: we see justice through the prism of injustice. In this process, justice primarily *dys*-appears as something which only has meaningful existence in relation to a harmful occurrence, and which fades back into the background as soon as that occurrence has been resolved.

This subordination of justice to instances of violation that are experienced as painful has significant implications to how we come to conceive of the purpose of justice and the means to achieve it. To see how this dynamic unfolds, it is helpful to explore the experience of bodily *dys*-appearance through pain in further detail. Leder (1990, pp.71–73) highlights how the sensation of pain has three main effects which characterise ‘its peculiar hold upon our attention’: *sensory intensification* (pain amplifies a section of the body to our perception that was previously neglected); *episodic structure* (it happens in what appears to us as distinct, mostly isolated events); and *affective call* (it overwhelms our senses and urges us to focus on it above anything else, possessing ‘a quality of compulsion’). The result of these effects is that ‘pain is the very concretization of the unpleasant, the aversive’ – ‘it *hurts*’, and in so doing, it ‘reorganizes our lived space and time, our relations with others and with ourselves’ (p.73, italics in original).

Moments of pain are those in which we are most acutely aware of our embodiment; however, and perhaps ironically, in these moments we tend to perceive our bodies not as a part of ourselves, but as ‘an *alien presence* that exerts upon us a *telic demand*’ (Leder, 1990, p.73, italics in original; Leder, 2016). ‘Aversive, involuntary, and disruptive, the painful body emerges as a foreign thing’ (Leder, 1990, p.77) from which we want to distance ourselves, as we see it not only as distinct from us but actively *against* us. As Elaine Scarry (1985) describes: ‘The ceaseless, self-announcing signal of the body in pain, at once so empty and undifferentiated and so full of blaring adversity, contains not only the feeling “my body hurts” but the feeling “my body hurts me”’ (p.47). This process of alienation distances us from the disruptive, dysfunctional body, and thus it facilitates a hostile attitude towards the body in pain:

As Bakan points out, when the affected part of the body becomes ‘other’ to the ego, one becomes more ready to take whatever means are necessary to rid oneself of it. A tooth may need to be pulled or a limb amputated; one is prepared for physical invasions and separations by an existential separation already effected. With pain that cannot be so removed, a process of distancing still provides consolation. To experience the painful body as merely an ‘it,’ that which is separate from the essential self, yields some relief and reestablishes one’s integrity in the face of an overwhelming threat. (Leder, 1990, p.77)

Here, Leder points to how the alien presence and the telic demand of the body in pain narrow our horizon of possibilities by imposing an overwhelming goal: to get rid of it, or to make it stop. Furthermore, this passage also highlights how this hostile outlook serves a reassuring function: it ‘yields ... relief’ and ‘reestablishes one’s integrity’ by separating the self from that which appears to act against it. In this process, the struggle against pain becomes a fight to be won, an enemy to be defeated, a ‘bad part’ to be removed.

Punitive justice engenders a similar relation. It targets individualised forms of harm which are constituted as hurtful social experiences (‘public wrongs’; see Duff (2001, 2018)) that require a

strong, immediate response. In so doing, it identifies the wrongdoers not only as the sources of such harm but also as social dangers (Carvalho, 2020), as threats to the 'body politic' (Foucault, 1977; Kantorowicz, 1957/2016). Crime, no matter how ubiquitous, always appears in criminal justice discourses and practices as an alien presence that imparts upon society a telic demand to prevent and condemn it. This symbolic and affective role of punitive justice is also what grounds its significant allure, as part of a scapegoating apparatus geared at managing generalised feelings of insecurity and anxiety. This 'governmentality of unease' (Bigo, 2002) relies on a hostile form of solidarity (Carvalho & Chamberlen, 2018) that effectively promotes a sense of identification through estrangement (Bauman, 2000; Sparks, 2001) by advancing an image of community in which individuals are bonded together through their vulnerability against crime and their antagonism towards criminals. In this process, the parts of our social body that are identified as sources of the pain of injustice become other to it, while the exclusion and removal of these 'bad parts' becomes the main way to preserve and reinforce a sense of social integrity.

In many ways, just like our reaction to pain, this scapegoating ritual (see Carvalho, Chamberlen & Lewis, 2020) in punitive justice can be seen to be a 'natural' reaction, the result of how justice as a phenomenon is perceived and experienced in society. However, the phenomenological quality of these attitudes should not be used as an excuse to naturalise them; quite the contrary. An analysis of the phenomenology of punitive justice can be used as a means to examine its socially constructed nature as a cultural artefact with a hegemonic (Gramsci, 1971; Silbey, 2005) character that makes it appear common-sensical, but which is in fact contingent upon specific structural and sociopolitical conditions.

For instance, much of the sociological literature exploring bodily *dys*-appearance presents it as problematic, especially with regard to its role in constructing late-modern identities and relations (e.g., Featherstone, 1991; Shilling, 2005; Turner, 2008). This literature notes how, in recent decades, we have become increasingly obsessed with perfecting or controlling our bodies. Effectively, our negative orientation toward our bodies has extended beyond instances of pain and discomfort to become a continuous preoccupation with self-improvement projects (examples include the proliferation of exercise and diet regimes and the increasing focus on various forms of medicalisation, treatment, therapies and aesthetic interventions). As Turner (2008) warns, such projects often involve an othering and objectification of our own bodies, casting them as obstacles to our self-actualisation that can easily feed into capitalist, consumerist pressures to permanently seek more correction, perfection or restructuring.¹ Therefore, our bodily discomfort gets simultaneously used as a coping mechanism and as a catalyst for more generalised anxieties. This highlights how the contemporary urge to compulsively see our bodies as problems is ultimately self-defeating and ought to be resisted.

Likewise, there are good reasons to be wary of the naturalisation of punitive justice, and to try and understand why it is that we are compelled to pursue it. First, we should be suspicious of the 'taken-for-granted' aspect of justice that underpins the focus on episodic instances of violation. The idea that justice primarily becomes compromised through individualised wrongful conduct, and that violations can always be traced back to someone who is to blame for it, assumes that our society is inherently ordered and just, and that crimes and other social harms are atypical, or abnormal. This idea, however, is in stark contrast to the reality of punitive justice. Indeed, research has suggested that appeals for punitive justice are strongest whenever the conditions for social order and justice are at their most precarious: punitiveness has been shown to be directly correlated to social inequality, lack of welfare provision and limited democratic participation in Western liberal contexts (see, e.g., Downes & Hansen, 2006; Lacey, 2007; Pickett & Wilkinson, 2010). But instead of recognising and addressing the systemic and structural injustice that appears

to fuel them, punitive logics neglect and actively conceal these issues, by focusing their energy on punishable subjects.

However, although the absent presence of justice implied in the punitive outlook is mostly artificial, we should not assume it is easy to dismiss it; rather, this 'persecutory phantasy' (Reeves, 2019) is at the core of the affective hold that punitive justice maintains in our consciousness. This episodic, 'ab-normalising' focus on particularised instances of injustice acts as a psychosocial defence mechanism (Brown, 2003) against the anxiety brought about by conditions of social insecurity and fragmentation, which safeguards the idea of order within our social imaginaries, and the sense of identity and belonging which it engenders. It is precisely this 'illusion of order' (Carvalho & Chamberlen, 2018, p.226) that gives punitive justice its compulsive, addictive quality, as it allows individuals 'to experience an idealised world with just resolutions' (King & Maruna, 2006, p.23) in circumstances in which such feelings would not otherwise be possible.

Punitive justice thus institutionalises a mechanism through which painful circumstances can be managed, and negative feelings can be worked on and soothed. However, the solution it provides comes at the cost of overlooking the structural conditions that give rise to these circumstances in the first place, a cost which is disproportionately and violently inflicted upon those who are scapegoated in the process (see Fassin, 2018; Wacquant, 2009). This scapegoating, in turn, primarily targets racialised and marginalised groups, such as immigrants, refugees, ethnic minorities and socially deprived populations, whose perceived otherness is both relied upon and reinforced by their construction as punishable subjects (see Carvalho, Chamberlen & Lewis, 2020). This alone should give us impetus to question the hegemony of punitive justice and to look for alternatives.

4 | TOWARDS A LIVED SENSE OF JUSTICE

The diagnosis put forward in this article is thus that our societies' over-reliance on punitive logics and practices to pursue a sense of justice is a symptom of a pathological relationship with justice: we have a constant need to address matters of injustice, but we do so in a way that avoids dealing with the structural problems underpinning such matters. Instead, we focus on immediate solutions that can quickly and visibly alleviate our feelings of insecurity. But since these solutions only target the manifestation of these problems and not the problems themselves, they are temporary at best and inefficacious at worst. Just like a painkiller used by someone suffering from a chronic condition, we find ourselves continuously reaching out for hostile justice, seeking stronger doses that can numb us before we eventually have to go back for more.

Perhaps the main issue is that we lack a comprehensive understanding of how to actively practise justice in non-hostile ways. Our affective focus on justice as the remedy to hurtful bursts of injustice means that we only become conscious of it in this episodic manner, and as soon as the event is over, justice fades into the background, and is simply assumed to exist. We rely too heavily on the idea of a righteous and civil social order for our sense of identity and belonging, and this strong but fragile attachment encourages us to externalise the feeling of harm, and thus to avoid seriously engaging with the possibility that the fault may lie within this order. A different, non-hostile sense of justice would need to resist this pathologic approach, and that necessarily involves problematising the assumption that justice as a value or idea is something straightforward, which does not require questioning or reflection. We need to learn to be less reactive to the affective call of episodic injustices, and to see justice as a more complex and laborious pursuit.

To be clear, this does not mean that the grave violations which constitute the core of punitive justice, such as interpersonal violence, do not require due attention, or that they are somehow not as serious. What needs to be put in question is the idea that these problems can be solved through the tools we currently have. This is particularly important when the institutional solutions that are mostly on offer have not only been repeatedly proven to underdeliver, if at all, but also involve the targeting and scapegoating of individuals and populations who are themselves the victims of significant social marginalisation and deprivation (Mauer & Chesney-Lind, 2002), and in many cases actively contribute to the perpetuation of violence (Pritikin, 2008). A cultural phenomenological approach highlights how a concrete path to justice requires awareness of its multifaceted, 'kaleidoscopic' (McGlynn & Westmarland, 2018) nature, as a living and changing phenomenon which requires sustained engagement. The demands of justice, especially when they refer to life-changing instances of harm or to long-standing structural imbalances, cannot be expected to be easily met, or even understood.

To develop this more engaged sense of justice, instead of the *dys*-engaged approach promoted by punitive justice, it is necessary for everyone to feel invested in the pursuit of justice, to take responsibility for it. Punitive justice is presented as the monopoly of the state and its representatives, and this largely essentialises the pursuit of justice by individuals as the demand for state action and recognition. Furthermore, the primary role of the state in these processes is to shift and impose responsibility on to those who are blamed for injustice. Consequentially, justice as a practice is estranged from ordinary people, placed beyond their reach and effectively outside their purview, as something which is only done *for* them and *to* others. Thus, while we have a strong feeling of connection to matters of injustice, we are simultaneously alienated from any active engagement with justice itself, except by proxy. This separation is part of the dichotomic logic of hostility: if you are a law-abiding, 'good' citizen (Anderson, 2013) then justice is something that already belongs to you; the only moment in which it becomes an issue of concern is when it is taken from you, when it is violated by others. Within this logic, responsibility for justice is something that only concerns those who have wronged it. This outlook on justice is not only alienating but also disempowering, as it discourages political participation and public deliberation on such matters.

Taking responsibility for justice would require acknowledging that notions of justice are contested, and that matters of justice concern us all. This would allow us to realise that individualised justice claims usually reflect specific notions of identity, and in so doing they tend to reproduce structures of domination and oppression that are tied to such notions (Young, 1990). Justice served from a single standpoint is therefore mostly incomplete – and, worse still, what feels like justice to some may always be experienced as an injustice by others. This is why we all have a responsibility to ensure that whatever justice we pursue is not biased and one-sided. More than that, we need to engage with our own accountability in relation to forms of violence or harm that occur in our societies and seriously consider how we might be implicated in the occurrence of such harms (see Young, 2011). Fostering a collective responsibility around justice is essential to overcome the us/them distinction that is at the heart of hostility and that reinforces a narrow conception of solidarity that only concerns those who are 'like us' (Lamble, 2020, p.225), thus allowing us to move towards an idea of justice that is centred on more concrete notions of solidarity.

This effort thus requires people to experience and to have the space to be active participants in justice efforts, not only in terms of the 'delivery' of pre-determined conceptions and institutionalised processes but primarily as co-producers. This notion that we are all implicated in the process of co-producing justice is only possible if we accept that justice is something towards which we are all still striving; we still do not fully know what it is, and we certainly don't have it yet – not in any concrete sense.

4.1 | Incorporating justice

One of the main challenges in overcoming our over-reliance on punitive justice has to do precisely with its pathological character: punitiveness helps us cope with the pain of living in unjust societies, by channelling it towards others and therefore helping us maintain a sense of integrity; in this sense, punitive justice is pleasing and reassuring (Carvalho & Chamberlen, 2018). An alternative approach to justice necessitates for this painkilling allure of punitiveness to be resisted – and this, in turn, requires us to challenge our aversion to pain, and to embrace the notion that dealing with systemic injustice is a slow and often painful process.

Again, an analogy with bodily experience can help illustrate this point. In *The absent body*, Leder (1990) discusses another occasion, beyond instances of pain and disease, in which the body appears to us in a problematic manner, which is when we are learning a new skill. He calls this process ‘incorporation’, to signify how it brings new perceptions and possibilities into our sense of embodiment, effectively transforming our bodies and consciousness. ‘From the Latin *corpus*, or “body”, the etymology of this word literally means to “bring within a body.” A skill is finally and fully learned when something that once was extrinsic, grasped only through explicit rules of examples, now comes to pervade my own corporeality’ (p.31).

The main examples Leder uses to illustrate what he means by incorporation are that of learning how to swim and of learning a new language. Doing so requires us to ‘pay explicit attention to certain rules of performance’ (Leder, 1990, p.30), and it certainly helps to have these rules explained to us by a teacher, but it is much more useful to watch others practising the skill and, ultimately, we need to do it ourselves. The first moments of learning a new skill are always very uncomfortable, as we become painfully aware of our limitations. Furthermore, the learning process demands effort and – as the example of swimming very adequately suggests – the taking of (often quite serious) risks. Thus, it might be understandable why people may choose not to embark on such endeavours, especially when they feel they have gotten used to living without these abilities, or when they think there is an easier way to achieve what they believe is the same outcome. However, learning involves more than achieving something for one’s own purpose or satisfaction; it is about embracing a desire to engage with the world, and to open up new possibilities or, in Jungian terms, it is about owning up to one’s shadow (Jung, 1969; see also Maruna, Matravers & King, 2004). As Leder (1990) explains:

The term ‘incorporation’ seems to imply an absorptive process operating in a unilateral direction. However, incorporation is the result of a rich dialectic wherein the world transforms my body, even as my body transforms its world. Why did I first learn to swim? Because the lake outside my window invited me to do so. I acquired a new language because it was called for by the appearance of books I had to read. The demands and solicitations of the world gradually lead me to reshape the ability-structure of my body. (p.34)

Following this analogy, a non-hostile approach to justice involves seeing it as a skill that we still have to learn, or at least that we need to continuously develop. This, in turn, necessitates an acknowledgement of the pervasive lack of justice that is embedded in our social world, its structural inequalities and the dynamics of domination and oppression that it perpetuates, and a reckoning with our own limitations in addressing this lack.

It is possible to characterise this as a *lived* sense of justice, for the following reasons. First, this conception is active instead of merely reactive; while it still recognises the importance to address violations, it is not exhausted in them, but rather sees them as part of a more generalised lack that calls for its fulfilment. Furthermore, it constitutes justice as an ongoing practice. Second, this positioning sees the problem of justice as an inherent part of our lifeworld, and thus a collective, intersubjective endeavour, in which all concerned should be involved. Linking this to the previous point, the practice of justice must be socially explored and encouraged, so that we can learn from each other. Making an analogy with childhood development, a child's first encounter with ideas of justice is usually negative, when something uncomfortable or restrictive happens to them ('That's not fair!'); it is through the learning of and engagement with rituals (such as saying 'please', 'sorry' and 'thank you'; or by sharing), and especially by the experience of being nurtured and loved, that a child develops a more positive and holistic sense of justice that is tied to an ethic of care (Gilligan, 2016). Third, it is lived in the sense that it fully acknowledges the affective, experiential and embodied character of justice, as something that is intimately connected to the way we feel and in which we experience the world around us – and as something which can potentially transform such feelings and experiences, when properly incorporated.

This approach is perhaps best conceptualised, following Iris Marion Young (1990), as a desire – the desire for a just society. This brings forth an idea of justice that is directly contrary to the one at the core of the framework of hostile justice: not as something that is already there and is constantly being violated, but rather as something that we need, and therefore we must constantly and actively pursue – justice as a *present absence*, instead of an absent presence. This approach can arguably form the basis for a shift in the outlook of what justice demands, from the urge to inflict punishment upon deviant others to the 'call to "be just"' – one which 'is always situated in concrete social and political practices' (Young, 1990, p.5).

4.2 | Restoring justice

Insofar as the call to be just has to be situated in concrete practices, it is worth exploring what resources are already available that can provide a basis from which to pursue a lived sense of justice. There undeniably is a restorative dimension in this pursuit, in that it promotes the need to repair our engagement with justice, and that doing so requires us to reimagine and rework our relationships towards each other. Some elements of the restorative justice movement are useful in thinking about a less punitive and more participatory form of justice that engages with feelings of violation in a more productive manner. At its core, restorative justice acknowledges experiences of interpersonal injustice at the same time as it seeks to subvert punitive understandings linked to them, focusing instead on the social relations that underpin instances of harm (Zehr, 2015). This reorients attention towards notions such as remorse, healing and reparation (Pavlich, 2005) and places ideas of accountability and forgiveness at the centre of justice efforts. Also, the format of the restorative justice conference, at least in theory, explicitly understands justice as a collective effort, one which concerns the affected community as a whole and in which everyone involved gets a chance to be 'heard' (Strang & Braithwaite, 2001). Furthermore, restorative justice explicitly recognises the affective aspect of justice experiences, as well as its potential to transform social relations (Rossner, 2013).

However, as has been widely acknowledged, the success of the restorative justice movement came at the cost of its co-optation as a subsidiary feature of criminal justice (Wallis, 2014). This subordination not only hinders its purpose as an alternative approach, but it also affects the

very framing of its field of action, as it preserves individualised notions of harm and wrongdoing and thus reinforces essentialising binaries such as that of the perpetrator/victim distinction. In so doing, it refutes a proper engagement with the context and root-causes of harm, and thus denies a proper community-based opportunity to take collective responsibility for injustice. This is arguably because restorative justice is primarily preoccupied with restoring the state of affairs that preceded the identified violation, and thus it (at least implicitly) maintains the normative validity of a 'just' status quo (Acorn, 2004). In other words, conventional restorative justice only promotes a superficial conception of restoration, one which falls short of what is required to realise 'just' communities.

These shortfalls have been more successfully avoided by transformative, community-driven justice efforts. Transformative justice has gained prominence mostly within activist, grass-roots organising and social movement spaces that are in varying degrees associated with the police and prison abolition movement. Proponents of this kind of justice avoid any form of state-sponsored process, and they see any attempt to reform existing criminal justice mechanisms as working in the service of legitimising and potentially expanding punitive justice systems, which they see as complicit in perpetuating forms of structural violence and the oppression of marginalised communities (Generation FIVE, 2007; Herzing & Ontiveros, 2011; Kim, 2011). The many scattered efforts towards transformative justice across the globe thus share a commitment to responding to serious forms of violence, including gender, sexual or community violence through more informal, intimate arrangements in civil society settings (Kim, 2011) that deliberately exclude police and other law enforcement involvement (Bierria, Kim & Rojas, 2011; Coker, 2002).

Furthermore, besides recognising the importance of dealing with instances of interpersonal violence and promoting forms of collective participation and responsibility, these movements do so while also actively engaging with the structural underpinnings of such violence. Transformative justice thus strives for a more difficult process of 'unlearning' our current, mainstream and normalised means of doing justice, whereby the established, institutionalised tools available via hostile/state justice are abandoned, non-violent and structurally aware initiatives are pursued and new, community-based alternative sources of knowledge on justice interventions are created (see, e.g., Creative Interventions' STOP story-telling project (Kim, 2011) or the efforts of INCITE! Women of Color Against Violence (2006) and of Generation FIVE (2007)). This conjoining of a relational, intimate engagement with justice together with awareness of its structural dimension and an active resistance against institutionalised habits is arguably the first step towards incorporating a different, more emancipatory sense of justice.

The next step might be to apply this developing sense of justice towards actively challenging and dismantling the hegemonic hold of punitive justice upon predominant social orders. As we suggested in the beginning of this article, the current moment offers a unique opportunity to rethink our relationship to justice precisely because of the unprecedented scope of social justice movements which are actively challenging dominant justice arrangements. These mass movements have the potential to challenge institutions of justice at a scale that is not available to more localised and grass-roots initiatives. There is significant transformative potential in these movements, when they are sufficiently sensitive to the task of challenging the allure of punitive justice. This can be seen, for instance, in how Black Lives Matter has challenged the legitimacy of institutions like the prison and the police, and in how recent protests against gender-based violence have exposed the oppressive and violent character of social attitudes and dichotomies that are often taken for granted. These examples emphasise how the path to more concrete forms of justice requires us to face inconvenient, often hurtful truths about our societies and us, such as how

our current social arrangements were built upon centuries of exploitation and on the perpetuation of long-standing structures of domination. Perhaps more importantly, these approaches foster an environment where a different sense of justice can be lived and felt in a concretely embodied manner, through moments such as the vigil for Sarah Everard in London (BBC, 2021) or the numerous displays of solidarity that came as a response to the deaths of Eric Garner (*Guardian*, 2014), George Floyd (*NY Times*, 2020) and others, encapsulated in their powerful last words: 'I can't breathe'.

The main challenge facing these movements, especially as they gain force – and thus, inevitably, political and ideological power – is to not lose sight of the relational, contested dimension of a lived sense of justice, and therefore to resist falling into a new us/them dichotomy that grounds the allure of punitive justice. We must resist, for instance, reducing the idea of justice promoted by Black Lives Matter in the United States to Derek Chauvin's conviction for the murder of George Floyd, or allowing responses to gender-based violence to themselves reproduce carceral logics (Heiner & Tyson, 2017; Terwiel, 2020). It is essential that we strive to strike a careful – and admittedly difficult – balance between addressing systemic and structural injustices on the one hand while incorporating an intimate, relational and anti-essentialist (Gruber, 2020) – and therefore transformative – approach to justice on the other. Then, it might be possible to reimagine forms of institutional organisation that are more resilient to the affective call of punitive justice (Cooper, Dhawan & Newman, 2019).

5 | CONCLUSION

This article has argued that the pervasiveness of punitive logics in contemporary approaches to justice in Western liberal democratic settings is largely the reflection of a pathological tendency to relate justice predominantly to episodic instances of individualised wrongdoing, and so to neglect its structural roots in favour of superficial, albeit substantially violent and detrimental, 'solutions'. We relied on phenomenological investigations on bodily experience and pain, particularly in the work of Drew Leder, to investigate the pathology of punitive justice, and on the basis of this investigation we outlined what we believe are the requirements and the importance of seeking truly alternative, non-hostile engagements with justice. Such engagements, we argued, require us to see justice as a multifaceted, contested field, and something that we need but ultimately lack, so that we must actively and constantly pursue it in our lived experience. If this perspective is sound, then the path to incorporate justice is arduous and painful, and not without its perils. There is a risk we might drown along the way; but then again, we might just find out what being just really is all about.

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ENDNOTE

- ¹ Once again, it is important to acknowledge how these pressures and demands are disproportionately experienced by women, due to society's patriarchal structure.

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