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Punishment, Justice and Emotions *Henrique Carvalho and Anastasia Chamberlen*

This essay discusses the relationship between emotions, punishment and justice. It reviews theoretical scholarship on the role of punishment in society and sociological research on emotions, including the 'emotive turn' in criminal justice and scholarship on the painful experience of incarceration. It argues that although punishment has been justified as a rational response to the problem of crime, there are emotional dimensions to its practice and function that go beyond crime. We suggest that the phenomenon of punishment is inherently affective, and propose that scholars of criminal justice should pursue a more rigorous study of how emotions, subjectivity and self-identities contribute to the existence and framework of punishment in late modern societies, in order to properly examine its role and limitations.

Keywords: punishment; emotions; punitiveness; imprisonment; justice; affect; identity.

Introduction

In recent years, emotions have occupied an important place in criminological discussions on crime, punishment and control. This essay will explore the emotions of punishment, drawing from recent work in theoretical criminology and the sociology of prisons and punishment. It will explain the role of emotions in understanding the relation between justice and punishment, and in so doing, the essay puts forward the argument that beyond the legal rationales for punishment, there is an emotional dimension to the practice and function of punishment that is worth more serious criminological attention. The essay illustrates that, if further explored, the emotional and affective nature of punishment has significant implications for future directions in criminal justice practice and criminological scholarship and critique on punishment.

The question of what are the emotional components of punishment is increasingly more pertinent in British and American societies. Political rhetoric, the media and arguably the public are increasingly preoccupied with an impulse to see austere punishment be practiced, and the idea of justice has progressively been linked with a symbolic exposition and an emotionally austere performance of state power. The idea of 'doing justice' is often manifested through the exercise of excessive and tough sentencing, the maintenance of hostile prison environments that not only monitor and discipline offenders but also expressively dehumanise them while targeting particular social groups that are stigmatised on various levels. Punitive attitudes can also be seen in the expansion of penal control and discipline beyond prison walls, including the relatively recent Home Office report proposing that the public should be better informed and see offenders perform community 'payback' sentences more visibly (Karstedt 2011). Furthermore, in even more controversial situations, punitive emotions can be alleged as motivating authorities to feel justified in using, and often abusing, state power before an individual has even reached the courtroom (e.g. in police custody or in immigration removal centres). Indeed, the past few decades have seen a dispersal of penal power, and the spectacle of justice and punishment can no longer be said to be exclusively in the remit of criminal justice systems (Cohen 1979; Wacquant 2009). For example, we can witness punitive logics and emotions in the areas of health, welfare and housing, schooling and higher education. Arguably then, the emotional dimension of punitive approaches is increasingly becoming more and more protuberant and less and less questioned.

The main focus of this essay is on the relationship between punishment and emotions, both in terms of the emotions that motivate punishment and those that result from punishment, and only secondarily on the relation between punishment and justice. This is precisely because the essay aims to illustrate that the emotions that are linked to punishment make the purpose and application of justice deeply problematic. For this purpose, one of the main questions raised in this essay is that of *why do we punish*. This is arguably a fundamental question to the study of the relation between punishment and emotions, as there are strong reasons to believe that the urge to punish is deeply linked to the role of punishment in society (Garland 2001; Durkheim 1893 [2014]). If this is so, then in order to understand punishment, criminologists and criminal justice scholars have to examine what the origins of the emotional motivation to pursue punishment are, and consider how these are linked to contemporary identities and societies. This field of enquiry can both provide interesting insights in developments in debates on retributive and distributive justice, and also highlight the difficulties in pursuing a fulfilling sense of justice through punishment. Consequently, as the emotional framework of punishment is connected to broader aspects of social life, an idea of justice that is primarily linked to punishment as a response to crime is arguably doomed to fail in fulfilling its objectives. As a possible alternative, we argue that the 'problem of punishment' is to be examined as more than an exclusive feature of law and criminal justice, and the scholarship on emotions can provide a starting point from which to pursue a more appropriate understanding of this problem.

The essay starts with an interdisciplinary introduction to the notion of emotions. The first section explores how emotions have been conceptualised and theorised. This is then followed by a discussion of the historically uncomfortable relationship that criminology has had with emotions and how this has more recently been remedied. This section looks at how emotions have featured in criminological scholarship in understanding the emotional dimension of modern thinking on justice. The third section contextualises emotions in relation to contemporary debates on the social function of punishment, exploring the return to more expressive and visual forms of punishment that arguably have significant consequences for how we ought to conduct research on punishment today. The fourth section then goes on to analyse how a deeper understanding of emotions can guide an investigation of the role of punishment in society, including the increasingly pervasive 'urge' to punish in late modernity. In this section, we theorise the emotional makeup of punishment by focusing in particular on the work of Durkheim, one of the first scholars to acknowledge the emotional dimension of punishment, and then by considering how his critical insights can inform research on the field. The essay ends with a brief consideration of the implications that a more emotionally-situated account of punishment has for future directions in scholarship and practice in this area.

I. What are emotions?

Emotions have traditionally been relegated to the expertise of psychologists or scholars of the humanities, assuming that emotions are a merely individual-based concept that defies social-theoretical and even empirical examination. This disciplinary separation goes back to the traditional distinction in western philosophy between reason and emotions. For much of the history of philosophy, emotions retained a peripheral position, and even when discussed by ancient, scholastic and Enlightenment philosophers (including Aristotle, Descartes, Spinoza, Kant and Hegel) they tended to be given an inferior role to that of reason. This is a position that held the problematic distinction between the two concepts and established a categorical hierarchy between them. According to Solomon (2010) prior to the twentieth century, philosophy's general approach towards emotions can be summarised

through the metaphor of master and slave. In much of this philosophy, emotions are analysed as primitive, less intelligent or even more dangerous than reason, and the conclusion often drawn in such analyses is that emotions ought to be controlled and separated by reason. Within this philosophical trend, there were, of course, exceptions. For example, David Hume (1888) famously proclaimed that "reason is, and ought to be, the slave of emotions", but nonetheless, even Hume's work remained largely a celebration of reason.

However, more recently, philosophical discussion on emotions has revived. Today philosophical analyses on emotions tend to focus on their conceptual structures and though varied in many ways, philosophical analyses on emotion have concluded that emotions must entail two central features, a cognitive basis and an object of intentionality (Goldie 2002; Solomon 2010).

In the twentieth century some important philosophical questions were raised including not only the question of what are emotions, but also what orientation, or approach one should take in conceptualising emotions (Goldie 2010). Other discussions observed the relationship between emotions and feeling, and considered how bodily and affective sensations relate to the cognition, value and context of emotions (Mulligan 2010). Similarly, the relationship between emotions, rationality and ethics raised questions about the rationality of emotions, and about how ethics are affected by emotions (Neu 2010). Philosophical discussions also considered the lived experience of emotions, so as to problematize how much cognition and socio-cultural learning are required in attaining the specific feelings that we identify with certain emotions and social situations (Solomon 2010). The social and cultural context of emotions has also been subject to discussion in the history of emotions, which as a developing subfield came to challenge the notion that emotions are universal, purely individually made and unchangeable (Stearns 2008; Reddy 2001; Bourke 2003; Rosenwein 2010). The history of emotions has also made an important contribution to understanding the political and relational dimension of emotions. For example, Bourke (2003, p. 111) has argued that through a historical 'aesthesiology', or 'the knowledge of the history of bodily and emotional reactions to the world' we can observe how emotions are fundamentally concerned with power relations.

Emotions have also attracted considerable research attention in more scientific disciplines. Particularly, as neurology developed, the traditional notion of a contrast between rationality and emotions was scientifically challenged. Indeed, it is now recognized by biologists, neurologists and psychologists that rational decision-making relies on a combination of work between cognitions that denote available options, and emotions that provide a person with a sense of these options' utility (Turner 2009; Damasio 1994). As Turner explains:

one cannot maximise utility without the ability to load options with affect; and this loading can only occur by connecting the prefrontal cortex with the subcortical areas of the brain generating emotions. (2009, p. 343)

The now accepted biological notion that all cognition and reasoning are emotionally constructed (in varying degrees), otherwise they would not arise nor have meaning, has significant implications for philosophical, historical and sociological analyses on various institutional and cultural rationales and practices, including punishment.

As social scientific research became more trans-disciplinary, in the past forty or so years considerable sociological attention on emotions contributed to a wide range of research that is particularly relevant to scholars of crime and punishment (e.g. Collins 2008; Hochschild 1983; Turner 2007). Generally, it can be said that emotions have been sociologically explained within seven key paradigms, first through biological approaches, then in symbolic interactionism, in dramaturgical theory, in ritual theory, in power-related theorising, stratification and through exchange theories (Turner 2009).

Oddly enough, however, and despite the acceleration of research on emotions, one of the biggest challenges faced by researchers in this area from a range of disciplines is establishing a definition of emotions. This definitional issue exists mainly because emotion is a fluid concept that operates on different levels. As Turner explains, emotions operate on a:

[...] biological and neurological, behavioural, cultural, structural and situational [level] and depending upon which aspects of emotions are relevant to a researcher, a somewhat different definition will emerge. (2009, p. 341)

Thus, it can be said that the emergence of emotions in our experience is not entirely constrained and conditioned by social factors, ideologies, norms, language and social rules. This is evidenced when emotions often supersede such social shaping, suggesting that their origins and much of their substance is found in the human body.

Accordingly, a number of analysts have suggested that the study of emotions demands the collaboration of a number of disciplines (Williams and Bendelow 1998; Bendelow 2009; Craib 1995; Ahmed 2004; Hemmings 2005; Vogler 2001), so that a more holistic conceptual understanding of emotions can be pursued. A psychosocial approach that intersects the psychic, biological, social and cultural dimensions of lived experiences is arguably more suitably positioned to address the complexity of emotions and their impact in the makeup of social life and institutions. Similarly, a sociological understanding of emotions has to consider a psychoanalytic perspective as well as a cultural account of emotions; failure to do this, Craib (1995, p. 151) argues, could end up limiting emotions to mere socio-historical constructions or to be rationalised into ideas. Instead, Craib suggests that a sociological account of emotions should consider them as 'necessarily contradictory' (1995, p. 155) experiences that inform different forms of coping or 'emotion work' (Hochschild 1983 [2003]).

Sociologists have emphasised the relevance of emotions in the study of relationships and interactions (Bendelow 2009), but as Craib explains, the social function of emotions can also pose a methodological problem. He questions how sociologists can ask their participants to talk about their emotions 'in a way that can perhaps take them to the reality beneath the ideology' (1995: p. 157) when it is evident in client-therapist relations that people tend to express emotions through performances that are familiar to them rather than seeking genuine expressions of their feelings. As he suggests, it is common that people will express more readily what their listeners want to hear rather than what they sincerely feel. This analysis leads to the conclusion that emotions are shared entities which cannot be observed as discrete, individualised feelings isolated from those who express and those who witness them, thus raising interesting questions about the conduct of criminological research on punishment and emotions.

As Sarbin (2001, p. 217) argues, emotional life is better studied as a form of 'narrative plot' where emotional states are roles we perform, to ourselves and others. These roles are embodied, and their bodily manifestation is what makes emotions 'real' and actualised. Emotions therefore cannot be expressed nor understood without an appreciation of both their social and their embodied qualities. For this reason, deconstructing deeply complex, different and 'dangerous' emotions, which prevail in extreme experiences such as imprisonment, requires attentiveness to the close relationship between social structures, emotions and bodies. Following feminist and psychosocial approaches in criminology (e.g. Chamberlen 2015; Phillips and Earle 2010; Gelsthorpe 2007), it is possible to conceptualise emotions as collectively experienced, communicated and constructed under pressure and in negotiation with one's lived environment, and to see emotions as sources of active subjectivity and agency (Ferrell et. al 2004) that form the foundation of one's engagement with the world.

II. Weaving Emotions into Criminology: Affect and Social Research in Criminal Justice

Until recently, emotions were strangely missing from studies of punishment. Beyond the work of a few scholars in this area (e.g. Durkheim 1893 [2014]; Braithwaite 1989; Douglas 1993; Garland 2001; De Haan and Loader 2002; Karstedt 2002, 2006; Karstedt, Loader, and Strang 2011), emotions were usually ignored from this field of scholarship, which tended to view the conceptualisation and justifications for punishment as legally framed and (thus) reliant on 'rational' and pragmatic reasoning. This way of thinking about punishment as a rational response to violations of the criminal law stems from a legal and philosophical-normative approach that dates back to its intellectual origins in Enlightenment thinking (cf. Norrie 1991, 2014). However, this framework can also be traced in some critical sociological critiques of punishment that often addressed it as a social structural model that reflects dynamics of socio-economic inequality and exclusion (e.g. Rusche and Kirchheimer 1939; Melossi and Pavarini 1981; Wacquant 2009). Although, in these sociological works, punishment is a structurally functional and segregating form of control, these analyses oddly neglect the affective dimension of punishment's exclusionary and exploitative nature. Thus, sociological theorising on punishment has consistently assumed that punishment has a rational and social-functional basis, which we think requires some re-investigation.

More consistent and careful consideration of the role of emotions in understanding punishment's social role appears to have revived in the past twenty years, especially after cultural-criminological and psychosocial approaches that pay attention to issues of affect have become more widely applied in criminology. This scholarly interest was itself influenced by developments in criminal justice, especially by the increased presence of emotions in public debates on criminal justice practice observed in the past thirty years (Karstedt 2011). Since the 1990s rationalistic perspectives in law and criminal justice were abruptly side-lined, and as Lastaer and O'Malley (1996) argue, our contemporary criminal justice environment suffered a process of 're-emotionalisation' where, for example, shame appeared as a central emotion and, especially through restorative justice but also in the criminal courts, there was a revived focus on victims of crime—meaning also a more concentrated focus on victims' needs, and the introduction of expensive and elaborate efforts to more directly involve them in the justice process (Morgan and Zedner 1992; Walklate 2012; Rock 1990; 2012). As Walklate has argued, the victim's role in criminal proceedings has changed and more recently the victim 'has been used more and more as a political and symbolic reference point' (Walklate 2012: p. 15). This more victim-centred approach has reflected various policy changes in criminal justice since 1997, most of which were not based on evidence but political rhetoric. For instance, according to Hall (2013: p.216) new legislation has created numerous new offences and aimed to put victims at 'the heart of the criminal justice system' but not with many real benefits, particularly for those victims not easily identifiable as 'ideal victims'. The introduction of victim impact statements and the state victim compensation arrangements for example, have excluded those victims of crime deemed 'unworthy' (Hall 2013: p 216). It has generally been observed that the involvement of victims in the criminal justice process has acted as a means of imposing harsher sentences essentially working in the service of punitiveness.

More broadly, we have been witnessing an increased tendency to seek more expressive and visual penalties, some of which are purposefully public and stigmatising and, more generally, a return of a highly emotional public discourse on crime and punishment that has been linked to the rise of punitive populism (Sparks 2011; Garland 2001). Indeed, the development and increase of restorative justice practices at a period in which public and political discourse on punishment became more acutely punitive attests to a common ground between the two developments (Pratt 2006).

This emotionalising process in criminal justice is arguably part of a more general turn to emotions in late-modern societies. After a long period of emotional repression and distancing in modernity, public and individual consciousness are said to have undergone an 'informalisation' (Wouters 2004: p. 209), and a new form of emotional expression and emotional management (Hochschild 2003) has emerged. A significant aspect of this turn to emotions has been that values of self-expression appear to have gained more social significance and prominence over the past few decades.

Thus, recent criminological scholarship has seen a wide range of its research become affectively-aware and critical of this affective turn in punishment. This tendency can be identified in macro-level theorisations on historical shifts on the function of punishment, such as Garland's (2001) *Culture of Control* and Pratt's (2002) *Punishment and Civilization*, as well as micro-level ethnographies of the effects of imprisonment (Crewe 2009) or even of the emotional components of restorative justice conferences and their ritualistic elements (Rossner 2013)*. The relationship between justice and emotions has been especially fruitful in discussing the possibility of transforming and reinventing justice through emotions (e.g. see research on transitional and restorative justice such as in Harris and Maruna 2006; Sherman and Strang 2007).

A question that becomes relevant when tracing this process of emotionalisation in law and criminal justice is whether the emotional foundations of punishment are inherent to the nature of the concept itself, or whether they became an important feature of punishment only under the neo-liberal changes that occurred in criminal justice in the past thirty years. Arguably, an interdisciplinary and rigorous exploration of emotions, and of their impact in human conduct, would suggest that the concept of punishment is itself emotional, even if this has become more acutely obvious in recent years. This, however, does not necessarily mean that negative emotions such as vengeance or fear have to be the central emotional features of justice. In other words, while all the institutions of criminal justice are 'simultaneously objects and representations of collective emotions' (Karstedt 2011, p. 7), it should be feasible to re-imagine justice in more 'emotionally intelligent' (Sherman 2003) practices that rely more on 'positive' emotions such as forgiveness and regret, so that it can generally act as an institution whose social function is not emotive punishment but emotional transformation. This essay suggests that in order to do this, criminal justice practice and scholarship on punishment need to move beyond problematic dualisms, and especially ought to problematize and overcome the Cartesian dichotomy between rational and emotional approaches to justice. As Karstedt (2011) argues, the creative making of processes through which criminal justice transforms the emotions and lived experiences of offenders, victims, and the public are questions that ought to be more closely observed by criminologists.

III. Emotions, Penal Power and Punitiveness

A usual starting point in initiating discussion on contemporary punishment is the social-historical debate on a key penological shift that occurred in the end of the twentieth century. Scholars observed that, from the 1970s onwards, policy and practice on punishment in the UK and US move from a penal welfarist approach onto a neo-liberal climate that is visibly more punitive, relies more on a rhetoric of fear and focuses on security, control and risk management. This is often referred to as a "new" penological (Feeley and Simon 1994) moment in the modern history of punishment. More specifically, in his discussion of recent

* The relationship between emotional drivers and criminal behaviour (Katz 1988), or of emotions and victimisation (Rose et al 2006), have also been explored in criminology. This scholarship seeks to pursue a more interdisciplinary account of crime that considers the impact of psychical, as well as environmental, factors in explaining human behaviour.

penal changes in the UK and the US, Garland (2001) argues that in the past thirty years penal policy has returned to a "just deserts" approach where retribution is the predominant goal (2001, p. 9). This re-legitimation of retributive purposes has allowed for politicians to express 'punitive sentiments' more openly and intensely, and for legislators to enact 'more draconian laws' (2001, p. 9). Garland (2001) summarises this affective historical shift in penal politics as follows:

Throughout the period when the penal-welfare framework prevailed [...] [t]he affect invoked to justify penal reforms was most often a progressive sense of justice, an evocation of what 'decency' and 'humanity' required and a compassion for the needs and rights of the less fortunate. [...] Since the 1970s fear of crime has come to have new salience. What was once regarded as a localised, situational anxiety, afflicting the worst-off individuals and neighbourhoods, has come to be regarded as a major social problem and a characteristic of contemporary culture. [...] This sense of fearful, angry, public has had a large impact upon the style and content of policy making in recent years. Crime has been re-dramatised. (Garland 2001, p. 10)

Therefore, the current penal climate appears to be driven more by public belief and less by trust in relevant expertise and optimism in the potential to reform offenders (as arguably was the case under more welfarist programmes). The old idea that the causes of crime lie in the offender's socio-economic conditions and reflect social disadvantage is now challenged by stereotypical assumptions regarding public safety and the targeting of particular "dangerous" groups and classes, such as 'unruly youth' and 'incorrigible career criminals' (Box 1983), as well as categories such as 'the sex offender, the migrant, and, above all, the terrorist' (Lacey 2011, p. 173). Overall, it could be argued that as a reflection of many of these stereotypes, current policy in crime control calls upon the public's *feelings* of insecurity and general sense of anxiety, and expresses a demand for harsh and exclusionary punishments as a sort of short-term remedy to these individual feelings of uncertainty. Therefore, we propose that the 'hegemonic' domination of the idea of the prison and of punishment (Sim 2009: p. 129) lie partly in its *emotional* resonance with the public's perception of crime and criminality, but also go beyond these to respond to a series of other emotional needs that define the ambivalence (Bauman 1991) and insecurity (Carvalho 2015) of our late-modern selves.

More particularly, the prison appears to provide the public and the state with a secure and conceivably easy solution to acts of injustice, invoking a much-needed sense of satisfaction and the illusion of efficiency at times of constant uncertainty. Although rehabilitative programmes still exist, and in some cases appear as a central aspect of recent penal policy, it has been argued that in high-modernity (Giddens 1991) the main purpose of punishment is its segregationist and exclusionary function (Garland 2001; Wacquant 2009), and thus a means of maintaining the status quo.

The prison is used today as a kind of reservation, a quarantine zone in which purportedly dangerous individuals are segregated in the name of public safety. Those offenders who are released into the community are subject to much tighter control than previously. (Garland 2001, pp. 177-178)

Whilst acting as a space for segregation, the prison also has a function of *identification*, providing the symbolic border between citizen and other and, through its stigmatising elements, defining both those within and those outside its walls (cf. also Sim 2009).

In the contemporary British and American context, the imprisonment is the penalty that attracts the greatest emotional response, both by scholars and the public. Sociologists of imprisonment have repeatedly shown that imprisonment is imposed non-consensually, it infringes many human rights and can have extremely harmful effects on prisoners, their families and prison staff (Liebling 2011). For this reason, the concept of punishment and its materialization into imprisonment serves a complex and arguably objectionable social

function which, since its inception, has had to be repeatedly justified and its legitimacy has been constantly negotiated.

Most justifications for the existence of the prison can be summarised within the framework of five key objectives: denunciation, retribution, general and individual deterrence, incapacitation, and rehabilitation (Carlen and Worrall 2004). As these objectives adopt a teleological approach, it has been argued that proponents of the prison neglect repeated assessments that prison does not and cannot meet a synthesis of (all) these objectives without, in practice, prioritising one over the other (cf. Mathiesen 2000). For instance, in the reality of everyday life in prison, objectives that aim to stop crime, such as reform or rehabilitation, can become secondary to security priorities and cost limitations. Furthermore, the prison's overall social impact is more complex than these objectives indicate. For example, upon release, prisoners' socio-economic disadvantage and social isolation (in many instances caused or worsened by imprisonment) contribute to a perpetuation of criminal lifestyles, regardless of rehabilitative programmes and training opportunities made available during imprisonment. Therefore, critics of the prison have argued that it not only fails to be a solution, but it also contributes to the exacerbation of the 'crime problem' (Muncie 2001; Sim 2009).

In *Prison on Trial*, Mathiesen (2000) challenges the main justifications for imprisonment, and more generally for punishment, arguing that none of these objectives can be empirically justified. Mathiesen uses statistical evidence to show that rehabilitative programmes in prison do not contribute to a decline in recidivism, and suggests that the institutional features of the prison (such as security measures, and cultures of bullying and violence) undermine rehabilitative treatment and render it ineffective. Moreover, examining statistical data and penological arguments regarding prisons' deterrent effect, he concludes that:

[...] all available research results, as well as international comparisons show that the development of crime is not related in any definite way to the level maintained in the number of incarcerations and their length. (Mathiesen 2000: p. 84)

He argues that the moral and symbolic deterrent effects that imprisonment is believed to have are not evidenced in practice. Turning to the objective of incapacitation, Mathiesen distinguishes two issues. The first concerns the practical and methodological problem of accurately predicting the likelihood of future offending in relation to any specific individual. The second issue is one of principle. He argues that it is impossible to justify actuarial punishment (i.e. estimating one's future criminality based on a past offence) from an ethical perspective, and adds that this moral issue 'becomes more acute' when the people 'sentenced to a large extent are poor, socially handicapped and stigmatised' (2000: 95). Summing up, Mathiesen argues that the prison is a ludicrous failure, as it is inadequate to meet its own stated objectives. Moreover, it could be said that the harmful effects of a custodial sentence can be traced back to the very justifications and objectives of such punishment.

Given the pervasiveness of imprisonment and punishment more broadly, together with the significant difficulties and evident failures in achieving any socially desirable outcome through these practices, a more emotionally aware perspective on punishment is necessary in order to examine the question of the origins of contemporary punitive sentiments, and then potentially alter these sentiments (Loader 2005; Liebling 1999). If understood and studied as key determinants of perception, knowledge and attitude (Katz 2002; Maruna and King 2008), these emotional demands for punishment could be used in a strategy of "redirection", whereby negative emotions are turned into sensitive responses that focus on reconciliation and compassion (Loader 2005). It is suggested here that an *affective* sociology of punishment would contribute towards a renewed criminological imagination on the relationship between individual, punishment and society.

IV. Setting the Framework for an Affective Theory of Punishment

The importance of punishment, as practice and institution, to the constitution and condition of modern societies has been the focus of theoretical scholarly enquiry at least since the very inception of modernity (cf. Hobbes 1651 [1996]); furthermore, perhaps surprisingly, the role of punishment in society has, since as early as Hobbes, been conceptualised as having an important embodied dimension (cf. Ristroph 2014; Carvalho 2015). Indeed, the most fundamental theorist within sociology of punishment, Émile Durkheim, has famously argued that the role of punishment in society is primarily emotional, stating that 'passion (...) is the soul of punishment' (Durkheim 1893, cited in Garland 1990, p. 31). The idea that punishment and emotions are intimately related is therefore not new, and has been the focus of renewed and increased attention since scholars have identified a 'punitive turn' (Hallsworth 2000; Pratt et. al 2005), an increase in the pervasiveness and intensity of the urge to punish, in late modernity (Garland 2001). At the same time, however, this recognition of the role of emotions in punishment generally only pays lip service to this affective dimension, mainly investigating it in a superficial manner, as a facet of structural or ideological developments in social arrangements, if at all.

However, there are good reasons to address this gap, as the affective dimension of punishment arguably not only is at the core of what punishment is and how it is practiced, but it also can shed light upon the problems identified in attempts to justify and to seek justice through punishment. A starting point in this direction can be found in a re-examination of Durkheim's influential and revolutionary account of punishment, which for the present purposes can provide two main insights on how to build a theoretical framework for studying the affective dimension of punishment. The first is related to Durkheim's account of the role of punishment in society, of *what* punishment is for. Traditionally, justifications for punishment ultimately stem from a single basic premise: that punishment exists to address the problem of crime, or problems generated by crime. Durkheim, however, presents this justificatory premise with a serious challenge, by arguing that there is nothing intrinsically wrong or problematic about crime. Crime, he says, is primarily 'a sign of the manifestation of individual originality and moral plasticity' (Durkheim 2013, p. 114); it is a 'necessary' occurrence 'linked to the basic conditions of social life, but on this very account is useful, for the conditions to which it is bound are themselves indispensable to the normal evolution of morality and law' (2013, p. 116). The idea that crime is 'normal' has strong bases in social research (Garland 2001); but if this is so, then the normativity of punishment is presented with a problem:

If indeed crime is a sickness, punishment is the cure for it and cannot be conceived of otherwise; thus all the discussion aroused revolves round knowing what punishment should be to fulfil its role as a remedy. But if crime is in no way pathological, the object of punishment cannot be to cure it and its true function must be sought elsewhere. (Durkheim, 2013, p. 118)

Durkheim's answer to his own challenge is that the 'real function' of punishment is 'to maintain inviolate the cohesion of society by sustaining the common consciousness in all its vigour' (Durkheim 1893 [2014], p. 83). The common consciousness, or collective conscience, is a shared set of values and assumptions that maintains the bonds of solidarity in society. Crime, by its turn, is defined as that which society deems a violation of the moral order sustained by the common consciousness. Thus, 'We do not condemn [an act] because it is a crime, but it is a crime because we condemn it' (Durkheim 1893 [2014], p. 64).

In this account, there is nothing intrinsically wrongful or deviant about criminal behaviour, and the wrongfulness of crime is instead defined and constituted by society's

moral order; crime is a social construction (Hillyard and Tombs 2005; Farmer 1996). This does not mean that crime is not problematic for society; rather, this means that the main problem of crime is that society and its members *experience* criminal behaviour as wrong and dangerous, as a threat against what they deem to be the foundations for social solidarity. It is furthermore this experience of violation that leads to the urge to punish; for if:

'that consciousness were thwarted so categorically, it would necessarily lose some of its power, were an emotional reaction from the community not forthcoming to make good that loss. (...) The consciousness must therefore be conspicuously *reinforced* the moment it meets with opposition' (Durkheim 1893[2014], p. 83, emphasis added).

That, for Durkheim, is the real function of punishment: to reinforce the normative conditions of the moral order in society, or rather to provide individuals with reassurance (Carvalho 2015) that these normative conditions are strong and in place.

These observations lead us to the second, most perplexing and arguably most neglected insight to be taken from Durkheim's social theory, his suggestion that a proper study of the purpose of punishment has more to say about those who punish and who desire and approve of punishment, including society in general, than about those who are punished. According to Durkheim, although punishment is enforced upon those categorised as criminals, it 'is above all intended to have its effect upon honest people' (Durkheim 1893 [2014], p. 83). Punishment is therefore primarily directed at general members of society, especially those who strongly identify with its norms. Under this perspective, the real subject of punishment, those *who* punishment is for—for whose reason it exists and whom it is meant to affect, is the law-abiding, responsible individual. The social motivation to punish is thus not simply important to an understanding of punishment, but it is actually this concept's defining element.

Together, these two insights offer compelling grounds for a phenomenological, emotionally-aware, re-orientation of the study of the role of punishment in society. However, in order for this perspective to be taken forward, it is also necessary to address limitations in Durkheim's theoretical framework. The main problem with his account of punishment is that, in his work, 'Durkheim advocated an altogether too unitary view of the social community' (Douglas 1966, p. 27). This is easy to see in Durkheim's conception of crime. In spite of his revolutionary claim that crime is socially constructed, Durkheim conceded that an act is criminal when it offends against 'the strong, well-defined states of the collective consciousness' (Durkheim 1893 [2014], p. 64), so that it 'disturbs those feelings that in any one type of society are to be found in every healthy consciousness' (1893 [2014], p. 59). This universalistic, and arguably rationalistic, conception of the bases for the emotions of punishment reflects Durkheim's efforts in finding a clear basis for his study of social morality, which he claimed could be achieved by looking at the law as an index of social solidarity (Durkheim 1893 [2014]). Instead, if we want to take the emotional dimension of punishment seriously and analyse it in detail, 'We should start by recognising communal life for a much more complex experience than [Durkheim] allowed' (Douglas 1966, p. 27).

A. *Bringing the Phenomenological Gaze back into Punishment Theory*

The belief in the existence of a stable, well-defined source for the sense of violation to which punishment appears as a reaction is arguably what led Durkheim and others to pose the urge to punish in itself as unproblematic, to take it (to a significant extent) for granted and to focus instead at specific social developments and configurations which could strengthen, weaken or modify this urge (Durkheim 1893 [2014]; Garland 2001). Likewise, theories of punishment that recognise its social and communicative elements are grounded on similar premises (Duff 2003; Matravers 2011). But if we start instead from the premise that social

life is complex, and so is the relation between individual and social moral conceptions and expectations, then the issue of why we punish, of what motivates individuals to seek punishment as a response to crime, is far from straightforward. And, since we are talking about the interaction between individual emotions and social morality, a proper investigation into modern notions of identity and subjectivity is essential to the pursuit of the affective dimension of punishment in contemporary societies. A predominant focus on the general, normative aspect of this social order tends to neglect the fact that punishment exercises its function primarily by reinforcing and reassuring feelings that pertain to the way individuals maintain, negotiate and share a social imaginary (Taylor 2004), so that the role of punishment has a personal, subjective dimension as well as a socio-structural one. Moreover, attention to the dynamics between individual and society which underlie the role of punishment in the shaping of a specific social imaginary can highlight problems and complications in the normative position of punishment, by challenging the 'strong, well-defined states of the collective consciousness' on which it is supposedly grounded.

Most contemporary sociological discussions of modern identity—and especially those focusing on 'late modern' (Giddens 1991), 'advanced liberal' (Rose 1999) or 'post-industrial' (Bauman 2000) societies—concede that a coherent, stable sense of belonging and social identity is something that modern individuals and societies mostly lack and long for, rather than possess. Instead, the modern condition is one predominantly marked by ontological insecurity (Giddens 1991), experiences of vulnerable autonomy (Anderson and Honneth 2005; Ramsay 2012) and of social unravelling (Ericson 2007). Issues of social identity are therefore inherently problematic in contemporary societies. While it is still possible to consider that there are specific notions that constitute a core moral order within a specific social imaginary, conferring a shared sense of legitimacy to norms and institutions (Taylor 2004), these notions have to be conceptualised as fluid and contentious, potentially as much a source of anxiety as of social cohesion. This ambivalence towards society's moral order can be seen in relation to individuals' experience and consciousness of the law (Ewick and Silbey 1998). Instead of having social solidarity merely as an assumption, then, a focus on identity promotes the need to recognise solidarity as a dynamic and contested field, perhaps more lacking and vulnerable than stable and abundant in late modern social settings.

A phenomenological approach can potentially provide a pathway towards conceptualising the affective function of punishment in a way which can be sensitive to the complexities of identity and subjectivity inherent to contemporary social settings. By phenomenological, we mean a perspective that is attentive to the dynamics of experience, to which attention to both the subjective and the structural aspects of social relations and conditions, as well as to the necessary interrelation between them, is indispensable. For instance, going back to Durkheim, if the institution of punishment is meant to express individuals' felt outrage or disapproval towards the violation of a social or moral norm, we then need to examine where these feelings originate, and why they demand a punitive response, something which can only be done by engaging with the aforementioned body of research on emotions. Once the role of emotions is taken seriously, however, common assumptions with regards to the framework of punishment start to be questioned. In particular, one of the main challenges that can be raised against the normativity of punishment is the notion that punitive responses to specific threats are not natural or automatic, but also constructed and conditioned by the specific framework in which they occur.

For instance, psychosocial studies show how punitive attitudes can surface as a defence mechanism which fashions and targets specific threats and fears in order to cope with deeper, more generalised feelings of insecurity and anxiety (Brown 2003, Marsh 1996). Freud (2010[1930]) had already suggested that the need for punishment experienced by an

individual arises from a sense of guilt generated by an ambivalence felt towards sources of authority. This 'conflict of ambivalence' (2010[1930], p. 121) is felt from the moment an individual realises the need to live in society, but intensifies with the development of what Freud calls culture or civilization. Norbert Elias (1991; 1994) advanced Freud's insight by developing a sociological perspective which is attentive to the influence that power relations exert over the development of subjectivity, through a series of relational interdependencies or figurations. What we call 'civilization' therefore conceals ambivalent power dynamics, which work to repress the negative forces it embodies in favour of a purely progressive perspective on social development. John Pratt (1999; 2002) has shown how such an essentialist notion of civilisation can be seen in the general perception of the development of punishment, showing for example how the 'cultural values which shaped the prison to fit civilized society produced an institution that inculcated the decivilizing forces that ultimately took hold of it and became its most dominant force.' (Pratt 1999, p. 293). Normative conceptions of punishment can be seen as part of this civilising process as, by posing punishment as something linked with individual freedom and rationality, they contribute to the process of individualisation of the 'Western self' (Newton 1999, p. 421), what Elias (1991, p. 201) calls the 'we-less I', which contribute to the masking of social interdependencies and therefore to the 'divorce of the individual from her history' (Beck 1992, p. 135).

Instead, awareness of these complexities and nuances bring attention to the role punishment plays as 'part of the *social defence system* against anxiety in legal institutions and practices' (Brown 2003, p. 427, emphasis in original); that is, punishment exercises a psychodynamic function that allows individuals in society to deal with their repressed feelings of anxiety, guilt, fear or even envy, by directing hostile feelings toward criminals (cf. Garland 1990, 2001; Elias 1994). More generally, the notion that punishment is related to emotional states that *pre-exist* the violation of the norm by the criminal suggests that the affective dimension of punishment does not really begin with the emotional reaction to crime, but rather with the establishment of the norm—that is, the reassurance function of punishment begins with the setting of a normative framework that conditions individuals to feel an emotional attachment to the legal norms, and to feel motivated to desire those who break these norms to be punished. Looking back at studies of identity in late modernity, the question of how individuals whose identities are so complex and vulnerable come to identify with a specific moral order, and why, is particularly relevant, and it can arguably only be answered through a reflexive, embodied, phenomenological gaze.

One of the main reasons why punishment theory cannot afford to remain oblivious to the affective dimension of punishment is that this dimension can provide a robust critique of traditional rationalizations and justifications for punishment. Adding to more systematic, structural critiques of the role and purposes of punishment (Mathiesen 2000; Wacquant 2009), a phenomenological analysis of the urge to punish further displaces and compromises the justification of punishment as a response to crime. Understood as part of the same social dynamics of late modern identity, both crime and punishment are products of specific social conditions. Instead of crime generating punishment, therefore, this perspective suggests that, to a significant extent, crime and punishment are both generated and perpetuated by similar processes, so that punishment cannot hope to effectively address any of the problems allegedly generated by crime.

Similarly, this approach also significantly compromises the prospects of seeking justice through punishment. If justice is about correcting wrongs and redressing unjust circumstances, then the possibility that punishment is as much the result of problems and failures in society as crime puts in question the possibility that punishment can be an instrument for justice. Instead, a phenomenological perspective might point to the need to see punishment more as a symptom of than as a remedy for injustice, and to seek other pathways

to justice, such as distributive or restorative practices. On the other hand, since the urge to punish is linked to conditions of insecurity and anxiety that are inherent to late modern societies, it may be possible that any effort to pursue alternative forms of justice is bound to be met with significant resistance (Brown 2003), until these underlying conditions are properly examined and dealt with (Carvalho 2012). The question of why we punish is therefore, under these circumstances, one which we cannot afford to avoid.

B. Lived Experiences of Punishment: Pains and Emotions in the Sociology of Imprisonment

Lastly, an affective theory of punishment must also be attentive to the important emotional dimension of those who are punished, and for this purpose, it can learn invaluable lessons from the sociology of imprisonment. Prisons have attracted vast—though selective—attention from sociologists and criminologists (cf. Crewe 2009, 2012; Liebling and Maruna 2005; Bosworth 1999; Carlen 1983; Sykes 1958). In view of the prison environment, which has been presented both as a microcosm of society (Sykes 1958) and as an extreme and “unnatural” social environment (Galo and Ruggiero 1991), the prison has been a fertile ground for the sociological imagination (cf. Goffman 1961; Foucault 1979).

One of the earliest and, arguably, seminal studies of prison life was conducted by Gresham Sykes (1958) on the maximum security prison for men in New Jersey. The study concluded that the experience of imprisonment can be explained in terms of five vital deprivations or “pains” that reflect the prison’s direct effect on the prisoner: the *deprivation of liberty*; the *deprivation of goods and services*; the *deprivation of opportunities for the development of heterosexual relations*; the *deprivation of autonomy* and self-control; and finally the *deprivation of personal security* or exposure to danger (1958, pp. 63-83). Explaining these pains, Sykes wrote that ‘severe bodily suffering has long since disappeared as a significant aspect of the custodians’ regime’, but emphasised that these modern ‘pains of imprisonment (...) can be just as painful as the physical maltreatment which they have replaced’ (1958, p. 64). This seminal study thus introduces the concept of prison “pains” as *emotionally harmful experiences* that resonate with experiences of corporeal pain.

Arguably, these five ‘pains of imprisonment’ have influenced many (if not all) subsequent studies of men and women’s imprisonment (e.g. Crewe 2009; Liebling and Maruna 2005; Carlen 1983; Bosworth 1999). More recently, the ‘pains of imprisonment’ has been a concept used to encompass the effects of imprisonment, ‘to include the social, psychological, behavioural, and emotional impacts’ of experiences of imprisonment affecting prisoners during and after their incarceration (Liebling and Maruna 2005, p. 3). Moreover, much of the sociology of prison life claims to explore ‘the way in which the[se] deprivations and frustrations pose profound threats to the inmate’s personality or sense of self-worth’ (Sykes 1958, p. 64).

But although the first studies of imprisonment to appear after the Second World War focused on exposing the prison’s damaging and dangerous effects on its inmates and staff (e.g. Barton 1966; Goffman 1961; Sykes 1958), over the last three decades, researchers have received little support to examine the effects of imprisonment (Liebling and Maruna 2005). This absence—or relative ‘eclipse’—of sociological research in prisons (Wacquant 2002) produced limited (empirical) criticism of the functions of punishment and implicitly supported the political claim that, irrespective of the harms of punishment, inmates are resilient to them. As a consequence, this passive acceptance of the penal institution has failed to adequately address the full dimensions of penal harm, failing to explain the long-term implications of pain, humiliation and injustice as part of the lived-experience of punishment.

Having said this, prisons researchers continue to repeatedly expose how even modern, efficient, lenient and secure prisons cause harm, and have few positive effects on their inmates (e.g. Einat 2005; Kruttschnitt and Gartner 2005). Indeed, Liebling (1999) remarks that the issue lies not so much in an 'eclipse' in prisons research, but rather in that much of the existing research appears to display little *affective influence* in publicising that prison pain and the emotional impact of punishment constitute serious harm. Liebling wrote:

Prison is all about pain – the pain of separation and loss, the wrench of restricted contact in the context of often fragile relationships, of human failings and struggles. David Garland has argued that imprisonment has an expressive or an emotional function – why is this (to me, obvious) emotional function of prison so invisible in most empirical research? (Liebling 1999, p.165)

And a few years later, this empirical failing to consider the emotions of imprisonment is still persistent in much criminological-sociological research:

Fear, anxiety, loneliness, trauma, depression, injustice, powerlessness, violence and uncertainty are all part of the experience of prison life. These hidden but everywhere apparent features of prison life have not been measured or taken seriously enough by those interested in the question of prison effects. (Liebling and Maruna 2005, p. 3)

One way to address this problem would be to facilitate a new referential framework through which to research imprisonment and expose its debilitating effects in a more publically effective manner.

One such methodological approach could be one that takes into account the affective and embodied elements of the experience of punishment (Chamberlen 2015); research focused on the direct target and impact of punishment as observed in the affective-bodily condition of prisoners can be an effective technique with which to demonstrate the severity of prison pain and introduce awareness and sympathy towards prisoners. More specifically, we argue that a phenomenology of emotions (Williams and Bendelow 1998, p. 138), which conceptualises emotions as active and embodied elements of lived experience, can offer a refined understanding of what incarceration and punishment feels like and thus potentially challenge and redirect the emotional urge to enforce punishment. In other words, the communicative and inter-subjective nature of emotions is central to the pursuit of a methodologically fresh approach that seeks to challenge existing penal practices, and attempts to elicit empathy to the pains of imprisonment by deconstructing the manifestation of emotions in the prison context. A more emotionally-directed research methodology could also serve as a means of allowing expression and visibility among prisoners and thus challenging the stigmatising and exclusionary function of punishment.

As we have seen, the 'pains of imprisonment' are at the core of prisons research. But although the central focus of prisons research increasingly is the emotional, lived-experience of the prison, the subject has not always been approached within an emotionally aware and reflexive perspective. This has been explained as part of an assumption that the purpose and the initial curiosity that leads to prisons research are irrelevant to the validity of the claims we make about prisons, and punishment more broadly (Liebling 1999). However, the emotional dimension of the role of punishment in society suggests otherwise, and a theoretical perspective that is sensitive to the embodied and socio-cultural connections between the lived experience of imprisonment and the urge to punish arguably can not only lead to a better understanding of prisoners' experiences, but also emphasise how such an understanding offers an essential contribution to an affective critique of punishment.

V. The Implications of Emotions for Scholarship on Punishment

As this essay has shown, emotions are an essential and defining feature of punishment and require more dedicated scholarly attention. Paying closer attention to the affective aspects of punishment can have several implications for future practice and scholarship in this area, as recognition of the emotional conditioning of punishment raises important theoretical, empirical and methodological issues.

First, an emotionally-aware account of punishment raises questions about who we are as punishers. We must examine the aetiological basis of our motivation to be punitive and, in so doing, scholarship should determine whether, in our current late-modern context, we are less inhibited about inflicting pain, or whether notions of 'risk' are increasingly attractive to us, because they allow blaming to be focused on others and therefore free us from the pressures of collective responsibility and concrete solidarity (Simon 2001). Moreover, the emotional features of punishment also raise questions about whether it should be observed as a pathological phenomenon. If we are to acknowledge the affective and thus deeply problematic and pathological elements of punishment, we then also ought to ask whether there is a therapeutic approach to punishment. There have already been attempts to consider how the negative emotions associated with punishment can be redirected in order to create and allow emotions such as forgiveness and remorse to enter the affective arena of criminal justice (Loader 2005; Matravers and Maruna 2005; Karstedt 2002).

Devising strategies of emotional redirection, however, should also entail a more rigorous understanding of the very notion of emotions, and of how feeling is activated and experienced. This alone could reshape how we analyse the emotions of punishment and how we attempt to change them. Moreover, a positive emotional transformation in criminal justice requires a more sustained critique of punishment as a concept and phenomenon; it thus requires a more activist account of how the very defining features of punishment are not only ineffective for those who experience it, but are also detrimental to all of us as communities. An emotional redirection, in other words, may mean that scholars of punishment need to consider and explore the possibility of a world without punishment.

In other words, a critical account of punishment should address the possibility of transforming and re-imagining justice outside and beyond punishment. Doing so would require engagement with the components of a renewed, affective theory of criminal justice, one that is necessarily engaged with notions of modern identity and subjectivity and situates the emotions of punishment beyond our feelings about crime, but traces our emotional urge to punish to how we feel about and perceive our own individual and social identities. Attention to the psychosocial aspects of modern identities can potentially position punishment in processes of late-modern ambivalent relations and our general sense of uncertainty. Doing this can draw more concretely the social function of criminal justice in our societies and relate it more productively, for purposes of critique, to notions of social control, power relations, and of the exploitation of particular social groups.

We argued in this paper that an interdisciplinary account of self-identity is necessary to scholars of punishment, as those who punish and those who are punished need to be understood as situated, embodied and relational (Hudson 2005; Norrie 2000; Matravers 2000). To do this, we suggested that scholars of punishment, both those who study punishment as a theoretical concept and those who empirically observe how it is experienced, need to develop a dialectical methodology that engages and moves beyond problematic dichotomies and disciplinary limitations. For example, the distance must be bridged between empirical and theoretical accounts on punishment. To show that punishment is emotionally motivated is an exercise of critique, and researchers of punishment should more actively reflect on the role of scholarship in not only observing and analysing such phenomena, but

also in opposing the expansion of the penal state and the exacerbation of negative emotions in the criminal justice field. As Karstedt asserts, "proper acknowledgement of emotions, might, in other words, avert some of the more detrimental effects of unrestrained emotions gushing into the arena of criminal justice" (Karstedt 2011, p. 3). For criminal justice scholars, this may mean moving towards 'a criminology of the shadow' (Matravers and Maruna 2005) where we actively engage with the more protected and concealed aspects of our self-identities, and embark on a more sustained psychoanalytic interpretation of penal politics.

Conclusion

In this essay we sought to illustrate that examining the relation between punishment and emotions is essential to a proper understanding of the role of punishment in late modern societies. By looking at the emotions of punishment, we sought to challenge the rationales and philosophical justifications for punishment, and questioned the possibility of seeking justice through punishment. Drawing on a critical examination of social theoretical work on punishment, the essay proposed an alternative perspective through which to explore the social 'urge' to punish (Garland 2001; Durkheim 1893 [2014]). It suggested that, by possessing a fundamental emotional dimension, punishment and justice are intrinsically linked to issues of individual and political identity, arising from the way in which modern societies are imagined and experienced in everyday life. Within this framework, we considered how the emotions of punishment can be deconstructed to challenge existing normative accounts and pave the way for a more 'emotionally-grounded' and phenomenological perspective on the study of punishment. We suggested that the ultimate objective of punishment research should be to seek a trans-disciplinary means through which to take seriously the questions of what punishment is for, who it is for, and how just it really is.

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