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Punitiveness beyond Criminal Justice: Punishable and Punitive Subjects in an Era of Prevention, Anti-Migration and Austerity

Henrique Carvalho, Anastasia Chamberlen, and Rachel Lewis, University of Warwick

Abstract

This paper advances a holistic conceptualisation of punitiveness that acknowledges its complexity and contemporary social and political pervasiveness. We argue that punitiveness is best understood as a phenomenological complex operating at a personal, symbolic, political and structural level, which borrows from, but extrapolates the confines of criminal justice institutions. The article examines limitations in articulations of punitiveness in criminological scholarship, and then draws on three contemporary case studies to examine how the political deployment of anxieties and hostilities around the ‘crises’ of prevention, anti-migration and austerity reveal and reproduce punitive logics. It then outlines an original conceptual framework to argue that punitiveness ultimately revolves around the construction of, and dynamics between, punitive and punishable subjects.

Introduction

The notions of ‘punitiveness’ or ‘punitivity’ have become commonplace in contemporary criminological research; however, although widely deployed, there is still a notable lack of clarity and consensus on how these notions can be precisely conceptualised (Matthews 2005; Brown 2006). Research on punitiveness has often relied on contradictory terminology and methodologies and offered narrow and inconsistent results (Andriassen and Aertsen 2015). Most significantly, although acknowledged as an issue of broad concern that carries significant socio-political repercussions, discussion on punitiveness has been mostly confined to a criminal justice-centred framework, obstructing observations of its proliferation in other areas of social life. This has had implications both for our understanding of punitiveness in criminological scholarship, and for sociological and political examinations of current social phenomena that, as we argue, are intimately linked to punitive logics.

This paper argues that, to comprehensively understand punitiveness as a social phenomenon, we ought to divorce it, or at least see it as broader than the state’s institutions of punishment and criminal justice, taking it beyond the realms of crime control, sentencing attitudes and mass incarceration rates. Focusing our analysis primarily on the twenty-first century, we define punitiveness as a phenomenological complex, that is, a central feature of a range of intersecting experiences and practices, operating at a personal, symbolic, political and structural level. This discussion seeks to expose how punitiveness acts in a targeted (i.e. focusing on specific subjects) yet expansive and self-reproducing manner (i.e. constructing and espousing authoritarian and hostile worldviews that generate from and perpetuate a sense of insecurity on a variety of issues).

Methodologically, we hope to set an agenda towards a more comprehensive study of punitiveness, connecting discussions in different disciplines, and particularly in various fields within sociology. Sociological investigations, especially those linked to discussions of difference, scapegoating, citizenship and authoritarianism, are imperative for a more systematic and comprehensive theory of punitiveness that avoids putting forward a ‘fragmented, abstracted from the density’ (Cohen 1979: 340) of social life framework and is mindful of contextual specificities. The paper considers three questions. First, what is

punitiveness and how might we conceptualise it? Second, how and where can we observe manifestations of punitiveness beyond criminal justice? Finally, what can a new conceptualisation of punitiveness as a broader and thicker phenomenological complex tell us about its nature and allure in the twenty-first century?

The article starts with a brief consideration of extant research on punitiveness within criminological scholarship, identifying useful leads as well as problems with narrow articulations of punitiveness. It then goes on to consider three contemporary case studies through which we can observe punitiveness more holistically, looking at the framing of social and political life in the past twenty years through the logics of prevention, anti-migration and austerity. Through these tropes, we go on to argue for a more systematic and socio-politically contextualised conceptualisation of punitiveness, seeing it as a phenomenological complex. Specifically, we show that a sense of vulnerability or perceived fragility and a sentiment of entitlement combine through symbolic processes, institutional arrangements and structural conditions to enable and justify the proliferation of hostile feelings and practices in a context where many of us are made to feel a prevailing sense of anxiety and injustice. Finally, we conclude by briefly considering the implications of this thicker theorisation of punitiveness for studies within criminology and beyond.

Setting the problem: Punitiveness in criminal justice

In recent decades we have seen growing research interest on punitiveness, predominantly within criminology (see Cheliotis 2013; Pratt et. al 2005; Skinns 2016). The central narrative in these discussions has been that since the late 1980s, and certainly since the turn of the century, a key feature of contemporary criminal justice practice and ideology is an emotional and politically driven ‘urge’ to punish (Garland 2001). Such punitive sentiments were mostly observed in their endorsement of criminalisation and longer and harsher penalties (Skinns 2016). These observations have been accompanied by studies on public attitudes to punishment, including survey-based research on sentencing preferences and some research on juries (for a review of data on punitiveness, see Andriassen and Aertsen 2015: 94-95 on global research; Warner and Davis 2012; Roberts and Hough 2013; Hough et. al 2013). Although, in general terms, consistent and reliable poll data on punitive attitudes (Ramirez 2013: 330, 356) are scarce, the idea of punitiveness as the desire to see harsher, longer and more punishments imposed within criminal justice has enjoyed criminological consensus (although see Matthews 2005), and is seen as a defining feature of the most recent penological turn in the longer history of punishment (Pratt *et al.* 2005).

David Garland’s (2001) leading study was one of the main drivers of the discussion on punitiveness as an emotional and cultural practice. He argued that in the late 20th and early 21st century, penal policy and practice re-legitimised a retributivist agenda that deviated from more welfarist objectives in sentencing and punishment. In this process, Garland argues, politicians openly expressed ‘punitive sentiments’ which then found representation in ‘more draconian laws’ and harsher penalties (Garland 2001: 9). More broadly, scholars of punishment including John Pratt (2007) and Jonathan Simon (2007) have suggested that under neoliberalism we have seen an increase in expressive and visual penalties, mediated by political and media interventions, representing a return to a ‘gothic populism’ (Valier 2002). Criminologists have associated this focus on punitive sentiments with a wider process of ‘re-emotionalisation of the law’ (Laster and O’Malley 1996) that includes the proliferation of emotional language and rhetoric in criminal justice policy and practice. Such discourses have displayed a preference for a language of blame, guilt and responsibility, often driven by a sense of fear and hostility

towards offenders and, in relative terms, also growing recognition of victims' narratives in the justice process (Walklate 2012; Rock 1990, 2012).

In sum, while espousing the emotional aspect of issues like crime and justice is in no way a problematic pursuit in itself, in practice, criminologists have concluded, this process of emotionalization within criminal justice has informed a cultural and political turn which legitimised increased criminalisation and intensified punishment, particularly exemplified through the rise in mass incarceration in the Anglo-American context. This, in turn, enabled more active media sensationalism around issues of justice and fed a growing political context of populism (Chamberlen and Carvalho 2019a; Jennings *et al.* 2017; Newburn and Jones 2005; Bottoms 1995; although see also Koch 2017a). These considerations have positioned punitiveness as a stable feature of much public discussion on issues of crime and justice (van Marle and Maruna 2010; Costelloe *et al.* 2009; Carvalho and Chamberlen 2018).

Observations on the 'rise' of punitiveness have also directed scholars towards its different dimensions, associating it with a range of structural and psychosocial factors. Correlates to punitiveness have been identified as including: the rise of social and economic insecurity and anxiety under neoliberalism (Xenakis and Cheliotis 2018; Costelloe *et al.* 2009; Tyler 2013); growing levels of inequality (Downes and Hansen 2006; Lacey 2007); and persistently high levels of fear of crime (Klarna and Egan 2011), often but not always linked to concerns with growing crime rates (Jennings *et al.* 2017). Some of these sentiments may be driven by intersecting variables like gender, ethnicity and class (Hogan *et al.* 2007), and a tendency for scapegoating that is racially, or class motivated (see Hogan *et al.* 2007; Tyler 2013). The more psychosocially-oriented research has also alluded to connections between punitiveness and individual life narratives (Hallsworth 2004; Millburn *et al.* 2014) and considered an association between punitive sentiments and one's worldview and notion of self-identity (King 2008). This has included links between punitive attitudes and dispositions like authoritarianism (Gerber and Jackson 2015) and instances of political affiliation, such as support for Brexit in the UK (Kentish and Walker 2017).

However, while this field has espoused intense discussion on the rise in punitive sentiments and attitudes that inform much of criminal justice today and identified a range of factors associated with punitiveness, making it a widely mobilised concept in the criminological field, scholarship in this area has remained rather unclear and inconsistent about two fundamental questions. First, what exactly is punitiveness, or how might we systematically conceptualise it; and second, if it is a thriving feature of contemporary criminal justice, why have we not examined it as a broader and thus more integral feature of our political and personal lives? In other words, although widely recognised, punitiveness has been largely under-theorised (Andriaenssen and Aertsen 2015; Matthews 2005) and has not been adequately contextualised.

One of the reasons for this is due to a thin operationalisation of the concept. Punitiveness is often narrowly and almost exclusively linked to crime control and punishment policy. This has meant that factors traditionally used to determine or measure state punitiveness, such as rates of incarceration or public attitudes on sentencing, obscure attention away from other manifestations of punitiveness and see it mainly as the desire to impose harsher penalties or imprison more people. Such a close alignment with criminal justice-specific variables also means that we may end up confusing the latest developments in certain criminal justice jurisdictions with shifts in punitiveness on a broader level. For instance, given some recent indications of a decrease in the US prison population, some have suggested that the punitiveness thesis may no longer be applicable (Karstedt *et al.* 2019; Phelps and Pager 2016;

see also Xenakis and Cheliotis 2018). As such, the pluralism and expansionism of punitive sentiments and practices may be easily overlooked when observed only within pre-determined associations with specific penal policies. Having said that, some criminological research has attempted to broaden the scope of punitiveness by observing its manifestations in distinct, but parallel institutions to those of the criminal justice system (see e.g. Bosworth 2019; Bowling and Westera 2018). However, the bulk of this research remains conceptually too close to an understanding of punitiveness through state punishment, for instance, by focusing on modalities of exclusionary incapacitation like immigration detention.

In the following section, we consider three key case studies that represent certain logics that have not only significantly shaped political discourse, but also fundamentally affected social life in the past twenty or so years. All three cases have been explored in recent criminological scholarship as ‘crises’ that illustrate the expansion and dispersal of criminal justice policies. However, as our analysis will suggest, these case studies can be seen as manifestations of a more pervasive and socially embedded framework, of which criminal justice is only one aspect—albeit an important one. The logics driving these crises, which we characterise as punitive, spread well beyond notions of crime and punishment, as they construct broader images of exclusion and marginalisation, which support an urge to be hostile towards particular subjects as a way of legitimising a particular vision of self, citizenship and order.

Mapping punitiveness today: Three intersecting cases

Two main interrelated themes bind the following case studies together as primary manifestations of punitiveness. The first revolves around insecurity and anxiety. As mentioned earlier, research has traditionally established that punitive attitudes tend to be especially prominent in periods of social anxiety (Garland 2001; Sparks 2012; Carvalho and Chamberlen 2018). These periods can refer to particular moments and events that feed into moral panics (Cohen 1972), but they have also been linked to a more generalised sense of ontological insecurity, an anxiety-generating difficulty to feel reassured about one’s identity and place in the world, often related to a feeling of ‘disembeddedness’ (Young 2003: 400) from social structures. Each of the settings under analysis (re)produces specific prevailing anxieties that appear constitutive of contemporary society and identity, at the same time as they heighten such anxieties by giving them a sense of emergency and exceptionality. They are ‘crises’ that have become normalised, so that they have to be permanently managed without any real hopes of being concretely resolved (on the links between crisis and hostility, see Chamberlen and Carvalho 2019b). As such, these anxieties encourage neurotic forms of subjectivity that are constantly concerned with risks and dangers.

The second theme is that of hostility. Each of these case studies frames the discourse, language, policies and practices in these ‘crises’ around the image of a community under threat, which in turn presents an aggressive and assertive response as not only appropriate, but also necessary, even desirable (Carvalho and Chamberlen 2018). This symbolic process relies on the construction of a *punishable subject*, a type or types of individual or group who are deemed responsible for the ‘crisis’ in question in one way or another, and who therefore can be legitimately treated with hostility. This effectively reinterprets the generalised anxieties grounding each trope, mobilising them in the form of fear, indignation and anger towards those identified as responsible for perceived threats. As the subsequent section will explore, the subjective and affective dimension that is central to hostility can provide the basis for a reconceptualization of punitiveness that takes it beyond the confines of criminal justice.

The logics of prevention: Existential threats, suspect communities and the enemy

While the literature on ontological insecurity proposes social unease as a distinguishing feature of late modernity in general, few images come to embody and manifest this sense of insecurity more acutely than ‘the terrorist threat’. The events surrounding the attacks of the 11th September 2001 in the USA symbolically precipitated a new, more overt preoccupation with security, risk, and threat amongst ‘industrialised’ nations, where a ‘sensitivity of vulnerability’ (Kinnvall and Nesbitt-Larking 2013: 347) now prevails. This consensus led to the continuous development of the preventive state (Steiker 1998), whose neurotic concern with security led to increasing calls and efforts to intervene externally (both in military terms and otherwise) in so-called enemy or failed states, to regulate and control borders (Rygiel 2011), and to fortify and embolden domestic criminal law and security systems.

The pervasiveness of this sensitivity of vulnerability derives from the existential nature of the threat ascribed to terrorism. In a worst-case scenario, a terrorist attack can claim thousands of lives; but the threat is also existential due to its symbolic and political message, which often rejects the core values of the society against which it is set. This combination characterises the terrorist as the ultimate *enemy*, as an individual or group positioned against society. Moreover, the anxiety about terrorism is particularly acute because, at the same time as there is a significant degree of ‘estrangement’ (Sparks 2001) in relation to the terrorist, there is also a pervasive sense that terrorist attacks can happen anywhere, anytime. This uncertainty displaces and magnifies its danger, legitimating a constant state of alarm that pervades many aspects of everyday social life, especially in big urban environments and political and financial capitals.

However, while the logics of prevention fuel a generalised sense of anxiety, they simultaneously also identify specific individuals and communities as primary targets of hostility. Such targeting is presented as legitimate precisely due to the ambivalent character of the terrorist as an ‘enemy within’, as someone who is inimical to the social order but who can also be residing within it, so that they need to be actively sought, uncovered and stopped. Just like the uncertainty surrounding terrorist attacks, the image of the terrorist is also given an aura of unpredictability: they can be anywhere, and potentially be anyone. Paradoxically, the distrust generated by this aura is disproportionately felt by suspect communities (Pantazis and Pemberton 2009), whose biased identification as ‘potential terrorists’ effectively imposes upon them a burden to constantly reassure society that they pose no danger and engenders hostile responses against failures to offer such reassurance. In particular, there is a significant racial and religious bias inherent in this identification, especially with regards to the targeting of Muslim communities, who still retain their ‘popular image’ of ‘folk devils of late modernity’ (Bonino 2013). Within these parameters, any ‘suspect’ terrorist, no matter how broadly conceived, becomes a punishable subject.

The ‘war on terror’ has thus engendered widespread re-bordering practices across much of the industrialised world, which have normalised surveillance and continuously redefined spaces of belonging and exclusion. Moreover, although criminal justice, especially policing (Pantazis and Pemberton 2009) constitutes an acute expression of these practices, they are one part of a much more pervasive framework, which includes public perceptions and political discourse, and influences a wide array of institutional responses. In the UK, for instance, there has been an inculcation of hostile attitudes in areas as diverse as welfare, education and healthcare provision, as part of the government’s Prevent strategy (Heath-Kelly and Strausz 2018).

The logics of prevention therefore produce an interesting dynamic, whereby a generalised sense of vulnerability to the terrorist threat is channelled towards specific suspect communities, while the hostility engendered through such channelling is simultaneously spread to many different spheres of social life, providing a wide range of opportunities for punitive sentiments to be expressed and deployed. Such deployment has gone as far as the revocation of citizenship status based on affiliation with international terrorist organisations and suspicion of radicalisation; this has now become a widespread practice in countries such as the UK, where the case of Shamima Begum is only the most recent and notorious to date (see Kapoor 2019, 2018).

Anti-migration logics: Borders, hostile environments and the non-citizen

The re-bordering practices grounded on the logics of prevention have had significant consequences on perceptions, attitudes and governmental practices around migration. Perhaps the most evident and concerning illustration of this tendency is the image of the refugee, whose discursive articulation as a potential source of terrorist activity has been widespread across multiple national contexts (see, for instance, Farage's statements in the UK, Trump's justification for a travel ban for refugees from certain (Muslim-majority) nations in the US, Orban's 'Trojan horse' comments in Hungary, and Frontex's latest naval operation to 'combat the threat of Islamist terrorists' (Squires 2018) arriving on European soil).

However, although the politics of anti-migration borrow substantially from the existential threat posed by terrorism, they also mobilise a more complex set of fears circulating around the supposed 'culture' and 'identity' of the nation-state, which is presented as fragile and vulnerable to the risk posed by those perceived as outsiders. The burgeoning body of research around 'crimmigration' (Stumpf 2006) and border criminologies has examined how 'immigration itself has become, in part, criminalised' (Barker 2012: 113; see also Aliverti 2013; Bowling and Westenra 2018; Bosworth *et al.* 2018), and how the securitisation of migration is increasingly intermeshed with punishment (Bosworth 2019). This punitive stance on so-called 'crimes of mobility' (Aliverti 2013) has also led to the widespread targeting of suspect communities, who effectively suffer a form of collective criminalisation due to the ascription of dangerousness to their ethnic or national identities. The imprisonment of North African migrants in Lampedusa (Barker 2012), the separation of children from their parents at the US-Mexico border (Holpuch 2018) and the expulsion of Roma from Italy and France (Barker 2012; Ivasiuc 2018) are only a few examples.

The panics around migration have fuelled the image of a 'hyper-securitised' (Bonino 2013: 393; see also Crawford and Hutchinson 2016) nation-state. This has led to a form of governmentality that actively pursues punitive logics to produce and manage contemporary anxieties as central features of a particular governmental project. One of the most evident illustrations of this tendency can be found in the UK, where visible displays of hostility have become a quotidian feature of contemporary statecraft. The UK's hostile environment for undocumented migrants has been constructed through a 'militarisation' of immigration enforcement and aggressive performances of authority in campaigns such as the 'Go Home vans' (Jones *et al.* 2017) and the illegal deportation of British citizens of Jamaican descent. These highly visible performances work to 'stok[e] anxiety' (APPG 2017) not only among those with irregular status, but also other minoritized communities and, crucially, among the British public more generally, creating and manipulating fears of a threatening (racialised) Other who lurks within the body politic.

What these performances also show is how the borders between citizen and migrant are constructed, and more normative than formal. As Bridget Anderson (2013, 2014) explains, our social imaginaries primarily see states not as formal legal bodies but as ‘communities of value’, which are populated ‘not simply by Citizens, but by *Good* Citizens, imagined law-abiding and hard-working members of stable and respectable families’ (2014: 3, emphasis in original). The boundaries of these communities are defined both from the outside, through the image of the *non-citizen*, and from the inside, through what Anderson (2013) calls the *failed citizen*, a term she uses ‘to allude to those individuals and groups who are imagined as incapable of achieving, or failing to live up to, national ideals’ (2014: 4).

The normative and discursive character of anti-migration logics means that ideas of non-citizenship and failed citizenship become intermeshed in the figure of the migrant, who comes to represent not simply those who lack formal citizenship status, but those who come to embody undesirable characteristics deemed incompatible with the community of value. Firstly, it is not all migrants who are routinely subjected to such punitive logics; rather, there is a specifically ‘racist crisis’ (Tyler 2013) at play, underpinned by historical and geographical legacies of racism, colonialism and exploitation. While all travellers are certainly required to submit to securitising practices at the national frontier (Salter 2008), the border is ‘polysemic’ (Balibar 2002: 79), and this new ‘border imperialism’ (Walia 2013) is experienced as particularly violent by specific, impoverished and racialised, populations. Secondly, individuals and groups identified as ‘migrant’ or ‘foreign’ can be targets of hostility regardless of whether they formally possess citizenship status. The punitive logics underpinning anti-migration implicate not only foreign subjects (Kauffman 2015) but also certain citizen subjects (Kapoor 2018), especially those from BAME and Roma (see Phillips 2017; van Baar 2018) communities who are ‘othered’ by public perceptions.

Therefore, although the main channel for resentment and anger in the politics of anti-migration is found in and justified through the image of the ‘illegal immigrant’, such channelling is broadened by bordering practices grounded in the discursive articulation of normative ideas of citizenship and community and of the threat posed by those who are deemed not to belong. Just as in the logics of prevention, this image is deployed to both manage and produce a wide set of anxieties, and to engender hostility towards individuals and groups who are identified as dangerous and substantively categorised as non-citizens (even when that is not formally the case). Similarly, the engendered hostility also expands well beyond the confines of criminal justice, as healthcare providers, educational institutions, landlords, and indeed the entire public are enlisted in the policing of migration (Aliverti 2014). The Immigration Act 2014 in the UK is a notorious example of the institutionalisation of such practices.

The dynamics underpinning anti-migration thus exemplify a widespread set of punitive attitudes and practices that not only embolden the securitisation of borders and the criminalisation of mobility, but which significantly and pervasively condition the lived experiences of individuals, by affecting an ever-increasing proportion of their social lives. This hostile orientation towards the non-citizen as punishable subject can easily become culturally embedded when it is coupled with heightened socio-political anxieties; these, in turn, can exacerbate punitive attitudes and practices, allowing them to stretch beyond the already wide spectrum of legally-accepted measures. An example of this can be found in the steep rise in hate crimes in the UK, in the aftermath of the EU Referendum (Burnett 2017); in this context, the term ‘hostile environment’ becomes an accurate representation of a generalised socio-cultural orientation that is linked to but reaches well beyond the governmental policy towards illegal immigrants.

The logics of austerity: Economic individualism, neoliberal logics and the undeserving citizen

There undoubtedly is a symbolic and cultural association between poverty, marginalisation, welfare dependency and crime (see Jensen and Tyler 2015) which significantly contributes to the construction of the socially and economically disadvantaged as punishable subjects. Although punitive attitudes towards welfare claimants have been entrenched in political discourse, especially in the Anglo-American context, at least since the 1970s (Garland 2001), they have become more predominant and widespread since the 2008 economic crisis. Particularly in Europe, the main reaction by affected nation-states has been that of politically and 'legally entrenching austerity' (Gallo 2018: 7) as the only possible or credible solution to the 'crisis' (see Dawson and De Vitte 2013). The politics of austerity have further magnified public anxieties concerning the state's responsibilities over poverty and inequality, which have been discursively presented not only as a burden, but also as an active threat to the nation's economic health.

From this perspective, one's lack of capacity to provide for themselves and to 'contribute to society' has been constituted as a marker of moral and social failure and as a potential danger to the fragile welfare structure, and therefore used as an enabler for hostility. Research has shown that this connection is further exacerbated by 'economic individualism', which suggests a relation between economic wellbeing, individual effort and personal responsibility (Kornhauser 2015), and by neoliberal logics, which engender the 'ongoing reconstruction of poverty and unemployment as manifestations of personal failure and poor social behaviour' (Wiggan 2012: 384). Such research also highlights how the politics of austerity are driven by ideology rather than any concrete notion of economic necessity (see also Alston 2018).

Returning to Anderson's notions of non-citizenship and failed citizenship, socio-economic disadvantage is regarded as one of the main characteristics of the failed citizen, the subject who 'belongs' but who does not contribute to the community of value. However, as mentioned above, these two categories are not clearly distinguishable; 'the excluded also fail, and the failed are also excluded' (Anderson 2014: 5). Disadvantage often appears as an inherent trait of both the non-citizen and the failed citizen, as they are not only 'strongly imagined as the poor, but also as the *undeserving* poor who want something for nothing' (Anderson 2014: 5, emphasis in the original). This notion of lack of desert or entitlement plays a significant symbolic role in the complex of hostility against marginalised populations, as it works to legitimise and justify both public anxiety against and aggressive attitudes towards them. The discriminating, marginalising and exclusionary aspects of criminal justice are a clear manifestation of these punitive logics, but they are only part of a 'general constellation of resentment towards, and scapegoating of,' (Hogan *et al.* 2007: 405) those identified as undeserving.

The recent changes to welfare in the UK are one of the clearest illustrations of how this constellation has been magnified and weaponised by the logics of austerity, as they have constituted what has been described as the 'harshest regime of conditionality and sanctions in the history of the benefits system' (Reeve 2017: 1). The Welfare Reform Act 2012 is a prime example of this regime, having introduced measures such as a 'bedroom tax' for housing benefit claimants and the implementation of 'Universal Credit', a new system designed to replace six separate means-tested benefits with a single benefit, and accompanied by increased conditionality and harsher sanctions. The breadth and opacity of the benefits system enable levels of hostility that can often surpass those of the criminal justice system and yet attract less

notoriety; for instance, in 2013, the Department for Work and Pensions imposed more benefit sanctions than the number of fines imposed by criminal courts (Adler 2018).

Policies such as these, coupled with a generalised negative attitude towards benefit claimants by politicians, local authorities and the public, result in an experience of welfare by marginalised and disadvantaged populations that is akin to criminalisation. ‘Citizenship’, in the sense of having to adhere to these duties and being constantly under threat of sanction for non-compliance, ends up feeling ‘punitive’ (Koch 2017b: 228). Women, and especially minority women (Bassel and Emejulu 2018), are particularly vulnerable to such punitive experiences. This is acutely apparent in the case of single mothers. For instance, in 2011, around 70 per cent of tax credits and 94 per cent of child benefit were claimed by women, and between 2005 and 2008, 53 per cent of housing benefits were claimed by women, in comparison with 22 per cent claimed by couples and 25 per cent by men (Lansley 2011). This only adds to long-held biases in public discourse which present young working-class mothers as irresponsible ‘welfare scroungers’ who take advantage of the system, and as mothers of ‘a future criminal underclass’ (Sharpe 2013: 67). More broadly, for years now we have seen the direct imposition of punitive state policies towards those presented as ‘bad’ parents, which have sought to blame families for a ‘broken society’ and represent them as morally deficient (Jensen 2018).

The logics of austerity rely on these processes of stigmatisation and responsabilisation to manage generalised anxieties related to socio-economic insecurity, by channelling them towards socially deprived individuals and communities. In so doing, they often enable policies and practices that worsen or at least perpetuate the experiences of economic insecurity that fuel these anxieties in the first place. For instance, the benefit reforms in the UK have been directly linked to increases in food bank usage, destitution and homelessness (Portes and Reed, 2018). At the same time, the homeless themselves have been the target of increased hostility. This ranged from a rise in ‘softer’ control mechanisms deployed to keep homeless people away, such as placing spikes in covered spots where they would usually sleep or giving them one-way tickets out of town (Johnsen *et al.* 2018), to a rise in instances of direct physical and verbal abuse (Sanders and Albanese 2016).

Together, the logics underpinning these three ‘crises’ illustrate how a broad array of social arrangements and transformations can be characterised as punitive. The focus on the themes of anxiety and hostility also evidences how these logics intersect, by highlighting how they feed into each other and are largely interdependent within a particular context. This is because they all mobilise and reproduce specific anxieties in ways that engender hostility against individuals and groups constructed as punishable subjects. The same marginalised, racialised populations are repeatedly and interchangeably targeted and excluded as ‘actual’ or ‘potential’ enemies, non-citizens and undeserving. Furthermore, the worldviews exposed by these tropes seem to share a problematic conception of civil order within our social imaginaries (Carvalho 2017) and its accompanying notions of identity and belonging, which both fuel and feed upon hostility.

Conceptualising punitiveness beyond criminal justice

Given its scope, pervasiveness and complexity, punitiveness cannot be properly grasped by narrow conceptualisations that see it as primarily tied to penal and criminal justice policy. Likewise, perspectives that see punitiveness as a predominantly top-down process, guided by political discourse and ideology, or mainly a matter of public opinion (Matthews 2005) or the

consequence of specific personality traits (Brown 2006), fail to capture how these different elements relate and interact with one another as part of a broader framework. These misconceptions are important, because they can unduly limit our field of enquiry and lead to simplistic explanations.

Instead, we suggest that punitiveness is best understood as a *phenomenological complex*. It is phenomenological in the classic Hegelian sense, in that it is about both individuals and society, and located in the realm of experience, which provides a bridge between subjects and the world; and it is a complex in the sense that it is composed of different dimensions that are both indissociable from and irreducible to each other. In this section, we outline what we consider the main dimensions constituting this complex, and how they relate to the punitive logics examined in the previous section.

The Subjective Dimension: Being Punitive

The phenomenological character of punitiveness highlights how it is intimately connected to subjective lived experiences that underpin notions of social identity and belonging. While punitiveness relies on the construction of punishable subjects, whose lived experiences are fundamentally affected by the hostility directed against them, the main form of subjectivity that constitutes and drives hostility revolves around the experience and performance of *being punitive*. This involves more than holding certain attitudes or opinions. Rather, we can talk of a punitive *subjectivity* because it concerns emotional and affective processes that significantly shape a person's perception of the world around them and conditions their reactions towards events and circumstances.

At the heart of this form of subjectivity lies the experience of *fragile entitlement*. The element of fragility is expressed in feelings and experiences of insecurity, vulnerability, fear and frustration that lay the ground for a punitive outlook. It generally manifests as a sense of threat, which sets defensiveness and aggressiveness as appropriate outlets for release, urging the individual to 'act decisively' (Costelloe *et al.* 2009: 25). Entitlement, in turn, is what enables and legitimises the hostile disposition, by sustaining the notion that the punitive subject is on the 'right' side of things, that the punishable subject is on the 'wrong' side, and that the punitive response is thus something that the punitive subject is entitled to demand.

There are many studies that explore how a sense of emotional and psychological fragility can stimulate a punitive outlook, from Freud's 'conflict of ambivalence' fuelled by guilt (Freud 2010[1930]), to how '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' (Carvalho and Chamberlen 2016: 12; see also Garland 2001), and how this function reproduces a problematic 'persecutory position' (Reeves 2019) in which individuals see others as essentialised 'part-objects', either good or bad. The impetus to resolve the feeling of fragility is what provides a powerful drive to essentialise others and to legitimately scapegoat them (see Young 2003). The sense of entitlement linked to this fragility complements the significant emotional allure of punitiveness (Carvalho and Chamberlen 2018), as it translates fragility into an affective experience of *injustice* which demands correction, thus feeding 'the indignation regarding the offence and the pleasure in the retribution' (Fassin 2018: 122) by making the punitive subject feel morally righteous.

In many ways, therefore, being punitive involves a neurotic (Isin 2004) disposition that deals with unresolved conflicts and insecurities by channelling aggression towards punishable

subjects. Punitive subjectivity also appears to be more persistent the more it is aligned with a specific normative, often also fragile, conception of society and civil order. In this sense, punitiveness seems to be at its strongest when it is coupled with an authoritarian worldview (Stenner 2005, 2009). Karen Stenner discusses how individuals with an authoritarian predisposition tend to be ‘relentlessly ‘sociotropic’ boundary-maintainers’ for whom any threat to the ‘normative order’ leads to particular ‘racial, political, and moral intolerance (and its corollary: punitiveness)’ (Stenner 2009: 143; see also King and Maruna 2006; Johnson 2009; Gerber and Jackson 2015).

The Symbolic Dimension: Punitiveness and Scapegoating

The neurotic element in punitiveness directly alludes to its intersubjective, symbolic dimension, in that punitiveness relies on the *mutual reinforcement* of values and images of society and order. The fragile entitlement involved in being punitive requires something on which to ground its moral validation. This is primarily achieved through ‘the ritualised re-affirmation’ of these values and images, which establishes them as collective artefacts and thus leads to a sense of ‘reinforcement of group solidarity’ (Garland 2013: 23; see also Durkheim 2013). The emotional allure of punitiveness thus derives its strength not only from how it provides a channel for the release of repressed feelings and insecurities, but also from its capacity to produce a sense of solidarity and social affirmation through hostility (for a detailed discussion, see Carvalho and Chamberlen 2018).

Symbolically, punitiveness takes the shape of a scapegoating ritual. ‘Scapegoating’, as Sylvia Brinton Perera (1986: 9) explains, ‘means finding the one or ones who can be identified with evil or wrong-doing, blamed for it, and cast out from the community in order to leave the remaining members with a feeling of guiltlessness, atoned (at-one) with the collective standards of behavior’. The ritual reaffirmation of a punitive outlook usually reproduces the basic elements of a scapegoating ritual: (a) the image of a community of value which represents the idea of purity with which individuals wish to be atoned; (b) the image of one or more victims, innocent and vulnerable individuals or groups (or even an innocent but vulnerable society) who are sacrificed due to the threat that needs to be expunged; (c) the ‘accuser’ or the moment of hostility, which expresses anger and judgement and channels aggression; and (d) the scapegoat, the punishable subject infused with all the ‘bad’ and excluded from the community of value. The scapegoating ritual may be geared towards atonement, but in its neurotic or ‘split’ form, which essentialises the punitive (who speak for the community and the victim in accusation) as inherently good and the punishable as inherently bad, it mainly provides an excusatory mechanism for aggression and exploitation.

Punitiveness thus inherently involves symbolically setting and maintaining boundaries between good and bad images of subjectivity and society, in order to manage and negate insecurity and ambivalence. This is managed by the dynamics of identification and estrangement, which define notions of belonging to and exclusion from the community of value. This process of scapegoating, or ‘otherisation’ (Fassin 2018), lies at the heart of the experience of being punitive.

The Political Dimension: Punitiveness as a Governmental Project

This aspect of punitiveness as a boundary-maintenance practice alludes directly to its political dimension, which is related to two main phenomena. First, punitiveness can often become *institutionalised*, that is, embedded within institutional arrangements and practices. The

criminal justice system may be the most obvious and substantively examined punitive institutional setting, but as discussed in the previous section, punitive logics have been reproduced in contexts as varied as welfare, education, health, tenancy rules, as well as in national security, border security and migration more broadly. In fact, since punitiveness evokes a symbolic apparatus that speaks directly to subjective drives and dispositions, which in turn inform notions of social identity, it is very rarely limited to, and cannot be restrained within any isolated institutional framework.

Rather, any particular institutional instance of punitiveness is best seen as a symptom of broader punitive tendencies in society, instead of its source. What these settings do is to provide punitiveness with an *outlet*, by symbolically linking subjective fragile entitlement to specific anxieties, and enabling its performance through mechanisms of hostility. For instance, the criminal justice system engenders hostility through rituals of criminalisation (Carvalho and Chamberlen 2018) which provide the basis for the state's penal practices; other institutional settings similarly produce rituals of otherisation grounding their own punitive practices.

Second, punitiveness often figures as a strategy of contemporary governance. Especially in periods of perceived heightened insecurity, the emotionally-driven symbolic appeal of punitiveness lends itself as a tool through which to govern subjects through their affects (Isin 2004). The punitiveness complex can therefore be instrumentalised through constructed images of anxiety and hostility that induce the governed populations to behave as punitive subjects towards scapegoated others. Thus characterised, punitiveness becomes a mode of governance through the management of insecurities (Lentzos and Rose 2009; Foucault 2009 [1978]), which is achieved by bordering practices that turn the punitive against the punishable. This strategy is particularly pervasive and detrimental in the governance of marginalised populations. Due to the 'permeable' quality of the borders of the community of value (Anderson 2014: 5), those who find themselves at the margins of society are under constant pressure to reaffirm their status in the community. Within the punitive outlook, this reaffirmation is best achieved by contrasting one's own status to that of someone who does not belong: 'I am one of 'us' because I am not 'them''. Consequently, punishable subjects are encouraged by the politics of punitiveness to turn against each other, embracing the identity of a punitive subject against those they deem more punishable than themselves. Such a strategy, which resonates with all three case studies examined above, encourages 'the destruction of increasingly fragile social bonds' (Carastathis 2015: 74) as a political project.

The Structural Dimension: Inequalities, Power Relations and Legacies of Oppression

The fourth dimension of punitiveness refers to the ways it is linked to processes that reproduce and perpetuate structures of domination. As seen in the previous discussion, all the paradigmatic punishable subjects share characteristics ascribed to them as stigmas of oppression within their social context: they are racialised, gendered, socio-economically deprived and politically excluded. Likewise, the experience of fragile entitlement grounding punitive subjectivity is more readily accessible, and more appealing, to those who identify themselves as 'dominant group members', who justify hostility by holding the belief that their rightful privileges are being 'eroded or threatened' (Ousey and Unnever 2012: 568; see also Wheelock *et al.* 2011; Unnever and Cullen 2010; Davis and Gibson-Light 2018).

This dimension thus evidences how punitiveness figures as a means through which to normatively express, justify or reclaim a power imbalance, or a relation of subjugation. Furthermore, by linking punitiveness to power relations and structural inequalities, this

dimension also highlights how punitive logics are always situated in specific historical, cultural, socio-political contexts. Instances of punitiveness in any society are therefore deeply embedded within specific legacies of oppression, such as historical links with slavery, or an imperial or colonial past (see Alexander 2010; Browne 2015; Moreton-Robinson 2015; Anderson 2018), so that these ties cannot be disentangled. These legacies and their effects on contemporary circumstances significantly condition not only the identities and lived experiences of punishable subjects, but also those of punitive subjects, which tend to be reinforced by and shaped around characteristics such as whiteness, masculinity and socio-economic privilege.

This dimension also highlights the deep structure of punitiveness. In so doing, it invites us to resist a 'chronocentrism' (Bowling *et al.* 2016) that privileges the novelty of recent events and phenomena in lieu of their historical roots, stressing how they cannot be properly grasped without due attention to their structural aspects. The interconnectedness of the three case studies discussed above evidences how they share heritages of violence, which underpin their worldviews and the processes of marginalisation, racialisation and exclusion engendered through them.

Conclusions

This article has argued that punitiveness is best understood as a phenomenological complex, one which reflects deep tendencies in society and which is manifested in a variety of affective, socio-political dimensions. From this perspective, social attitudes, arrangements and conditions can be constituted as punitive to the extent that they (a) speak to and encourage individuals to identify themselves and behave as punitive subjects; (b) reinforce a symbolic scapegoating apparatus; (c) institutionalise hostile practices and deploy them as part of a strategy of governance; and (d) reflect and contribute to the imposition or maintenance of structures of oppression. This conceptualisation arguably allows us to identify and examine how many defining features of contemporary politics and society are deeply infused with punitive logics: they are driven by a problematic dynamic between anxiety and hostility, which reflects bordering practices that define our notions of community, citizenship and order, and which disproportionately affect marginalised populations by scapegoating them as punishable subjects.

The aim of this conceptualisation is to contribute towards enriching scholarship on punitiveness, by providing a more holistic approach to what undoubtedly is a pervasive and concerning social tendency. As Didier Fassin (2018: 102) remarked, 'Retribution cannot be reduced to prison sentencing. Society has many other ways of punishing those it wants to punish.' This intervention will hopefully not only encourage criminologists to explore the wider implications of the phenomena they observe, but also entice scholars from other disciplines to more actively consider the impact of punitiveness within their own fields.

We would like to end on a cautionary note. Punitiveness works by feeding a sense of fragile entitlement, which entices us to see ourselves predominantly as vulnerable to external threats and as potential victims of injustice. This essentialising worldview focuses our attention on feelings of fear and indignation and provides an alluring avenue for release; however, it also blinds us to how hostilities are constructed and mediated by power relations and structural inequalities that it helps to preserve. Therefore, although it can be rather tempting to resort to punitiveness as a pathway to justice, as we have shown, punitiveness cannot be divorced from

the oppressive and exclusionary dimensions in its complex, so that it ultimately only serves, rather than tackles, social injustice.

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