RETHINKING PUNITIVE PATERNALISM: ABOLITIONISM, THE PERSONAL

AND POLITICAL

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Introduction

The utopian impulse that beats within abolitionism requires the (re)imagining and (re)building of a just world. It is by reimagining and transforming the world that it becomes possible to facilitate emancipatory changes beyond the doxa in which 'justice' implies 'punishment'. For many feminists and radical activists, the failure of existing institutions to respond adequately or appropriately to gender and sex-based violence remains a challenging issue in re-visioning societies where punishment is contested. Thus gender and sex-based violence presents a troubling issue in social movements towards abolitionism. Nevertheless, a shift away from punishment necessitates the transformation of existing social relationships.

This chapter questions the penal orthodoxy that drives the call for increased state power and punitive mechanisms directed towards the perpetrators of gender and sex-based crime. We examine the underlying influence of this punishment-based ethos. In doing so, we highlight that even within dominated and marginalised groups, those who have higher levels of economic and cultural capital can exert a disproportionate level of influence over proposed solutions unless wider transformative practices are sought. We conclude with a demonstration that alternative perspectives are not only possible, but actually exist in the world today. From Catalonia to Rojava, groups of people are rethinking the organisation of their societies and exploring alternatives.

We begin by considering the importance of attention to gendered and sex-based violence that has seen activist movements challenge male power and privilege. However, such challenges have often focused on calls to augment policing and punishment, resulting in moves towards an increasingly carceral state. Support for hate crime legislation, calls for more police in less prosperous neighbourhoods, participation in police recruitment campaigns, and calls for tougher sentencing has seen organisations that formerly campaigned against criminalisation trends now actively supporting the expansion of state punishment and control. Activist movements, organised around grass-root and social welfare solutions, have increasingly turned towards criminal justice systems in pursuit of political goals. This has been notable in relation to domestic abuse, sex-based violence and, more recently, responses to the trafficking of people.

This chapter will explore the shift in some contemporary feminist and queer rights' discourse away from previous critiques of the carceral state towards increasingly punitive politics. Crucially, it will explore the implications of this for an abolitionist agenda and reflect upon requirements for a cohesive movement towards decriminalisation, depenalisation and destigmatisation. In challenging 'punitive paternalism' as a form of contemporary governance, this chapter engages with the challenges that face an abolitionist agenda in a context characterised by social polarisation and the corresponding punitive upsurge. We begin by acknowledging the extreme social and collective harm that gendered violence imposes and recognise that it requires serious and effective intervention. However, we argue that current criminal justice responses reinforce and reproduce 'punitive paternalism' as a mode of governance, while also augmenting and strengthening the policing and punishment role of the state.

We suggest that the state's role is increasingly to manage the social insecurity and economic precarity that it creates (Sudbury, 2005; Wacquant, 2008). Accordingly, the only feasible way to end structural oppression is to 'destitute' the state (The Invisible Committee, 2017), to withdraw from its institutional conventions and to create, from the bottom up, a form of direct democracy that serves the interests of all citizens. We acknowledge at the outset, the challenging and complex nature of this terrain and the limitations of this short chapter. However, we aim to explore potential and actual forms of resistance to this carceral politics through critical and integrated political movements.

Moves towards the carceral state and punitive politics

Lancaster (2011) highlights how, since the 1960s, there has been a notable shift to more authoritarian responses toward issues of sex, punitiveness and criminal justice. In the 1970s and 1980s, research and campaigns by women's groups highlighted the extent and nature of violence against women and children, and importantly, the failure of society in general and the criminal justice system in particular, to acknowledge the serious and harmful nature of this violence (Stanko, 1985; Kelly, 1988; Dobash and Dobash, 1992). For many feminists, reform of the law/s and legal practices was necessary to attain equal rights for women and to achieve a greater balance in power between men and women. Arguing that violence against women was a 'crime' provided a basis from which the patriarchal state would be required to take action. Indeed much attention was given by early feminist scholars to highlighting the failure of the state to sanction male violence, and arguments in favour of this often focused on the need to use custodial sentences to practically and symbolically censor such behaviour. However, black activists and critical scholars in particular, urged for caution in any

engagement with the law in its existing form (e.g. Brophy and Smart, 1985; Richie, 2000; Critical Resistance, 2011). Nevertheless, calls for action were resounding. The voices of liberal feminists, engaged with activist causes that focused on legal reforms, were the dominant voices to which government and institutional representatives responded. As a result, during the 1980s and 1990s, with campaigns for gay rights and recognition of gender diversity becoming louder and better organised, the wider issue of gender-based violence became a priority for policy-makers.

State responses focused on improving existing systems and practices and adopting liberal reforms. Public campaigns came to the fore during the 2000s (e.g. #metoo) aimed at identifying and 'calling out' gender-based violence and broader discriminatory practices. 'Hate crime' and how best to respond to it, became a focus for the police and other agencies, both within and beyond the criminal justice system, although international evidence showed that enforcement was often used against the minorities it was intended to protect (Franklin, 2002; Snider, 2003). Similarly, pro-and mandatory arrest policies resulted in the increased prosecution of women (acting in self-defence) and discriminatory policing and prosecution practices (Miller, 2001; Chesney-Lind, 2002; Richie, 2000).

Perhaps unsurprisingly, as police and criminal justice powers increased, so too did claims that 'justice' remained out of reach. This was reflected in the reinforcement of a system based on punitive and individualistic retribution, which Martin (1998: 155) refers to as "the dark irony at the core of feminist law reform efforts". A claim that had regularly been identified by women of colour and indigenous women who drew attention to the racist implications of many of these emerging strategies (Richie, 2000; Sudbury, 2005).

Feminist activism has a mixed record in relation to penal reform and radical and reformist agendas have sat uncomfortably together. Campaigns aimed at reducing and/or improving the prison system for women, internationally, have led to claims that reform has too frequently been used to enhance the penal system and indeed, that penal reforms have been incorporated by prison systems to effectively extend the carceral estate (Hannah-Moffat, 2001; Carlen and Tombs, 2006; Malloch and McIvor, 2013). Yet there has been significant progress in the connections made between activists and the coalitional campaigns that emerged (Sudbury, 1988; Sudbury and Okazawa-Rey, 2009; Carlton, 2018) creating spaces for ongoing action.

In relation to challenges to gender-based violence, there have been significant improvements in state acknowledgement of the nature and extent of gendered violence. The criminalisation of 'domestic' abuse has drawn attention to gender violence as a 'crime' resulting in law reform and changes in both policy and practice at an international level. Recent developments have seen the criminalisation of 'coercive control' across the UK which can result in the prosecution of perpetrators who enact behaviour that stops short of serious physical violence, but amounts to extreme psychological and emotional abuse. The widening of categories of sexual violence now include legislation aimed at 'stalking' and new offences of 'upskirting', recently introduced in a number of jurisdictions. However, despite the production of a plethora of legislative developments and policies, reported gender-based violence in England and Wales has increased significantly across all categories (ONS, 2019), while rates of clear-up and successful prosecutions have declined to just 9%, the lowest figure in a decade (Home Office, 2018). This appears to be reflected internationally.

More broadly, contemporary concerns oscillate around particular punitive discourses (Wacquant, 2009) in legitimating the new penal order and focusing wider social concerns. The shift in focus towards criminal justice interventions has also resulted in the redirection of resources from grass-root, activist movements towards professional victim-focused services and improved policing and conviction approaches. This does not seem to have significantly improved criminal justice responses and indeed, the system itself continues to re-victimise (Moran, 2004; Spencer et al. 2018)[i]. Survivor accounts often support abolitionist arguments that a 'transformation of society' is required to address the 'justice gap' that is all too often experienced.

From an abolitionist perspective, criminalisation and punishment are harmful to 'victims', 'perpetrators' and the wider community. Bianchi (1985: 53) notes that "(p)unishment is destructive to society because it is violent: reconciliation serves society, and is a lesson in humanity". Alternative forms of justice require different principles aimed at enabling, empowering and restoring (Mathieson and Hjemdal, 2016). Abolitionism is a theory and social movement towards 'alternative' forms of 'harm resolution', where crime is recognised as a 'harm' and resolution of this harm is best served, not via punishment which causes further harm, but through restoration and reconciliation (e.g. Christie, 1977 and 1981; Hulsman, 1991). However, this process can become problematic when issues of power and gendered violence are considered. This has been an ongoing subject of debate among feminists (Daly and Stubbs, 2006). Solutions based on 'restorative justice', 'conflict resolution' or 'alternative dispute settlement' in the context of gender-based violence raise challenges of establishing the wider 'community interest'.

Representation of the 'community' in restorative practice is, Hudson (1998) argues, highly problematic, as is the 'punitive inflation' that can take place "if, whenever a group gains recognition for its harms, such recognition is expressed through increased penalization" (Hudson, 1998: 253). This dichotomy has been a troubling feature of feminist discourse and activism in response to gendered and sex-based violence. Contemporaneously, many of the debates exercised during the 1970s and 1980s are now being reiterated around appropriate responses to 'human trafficking' (Kempadoo, 2015). Although often over-simplified, this is a complex and confusing theoretical and conceptual terrain that has caused significant controversy among feminists and human rights activists (Soderlund, 2005; Bernstein, 2010) both in terms of definition and response.

Resulting calls for nation states, businesses and industries to take responsibility for identifying the trafficking and exploitation of people has given rise to more laws, increasing criminalisation and subsequent policing and surveillance. This often overlaps with increasing control of migration and border security. Bernstein, (2010) refers to anti-trafficking activism that has brought together evangelical Christians and feminists as being committed to "carceral paradigms of social, and in particular gender, justice" (2010: 47). Global intervention by states like the USA and UK in the affairs of other countries, particularly the granting and/or withdrawing of financial support from other countries, has been possible ostensibly on the grounds of human rights issues via the enactment of anti-trafficking laws (Soderlund, 2005). The anathema of caring and humanitarian neoliberalism has become the focus of campaigns that have served to depoliticise global capitalism.

As Soderlund (2005) argues, representations of victim discourse have also been used to curtail the rights of women internationally under the guise of 'protection' which is underpinned by law enforcement tactics aimed at wider projections of state power. Bernstein (2012) notes that contemporary anti-trafficking campaigns have specifically targeted non-familial forms of heterosexuality (2012: 247). In this way, contemporary anti-trafficking activists "utilize and promote the carceral state in order to securitize the sexual boundaries of home" (2012: 247). Rather than engaging with the gender politics of the family, this represents a focus on gender and sexual violence in the public sphere. Bernstein (2012: 251) suggests this process of criminalisation has been incorporated by the state, constituting "feminism-as-crime-control".

Internationally (certainly in the US and UK), anti-trafficking policies have resulted in police operations that have targeted people of colour under the guise of searching for victims of human trafficking, while simultaneously expanding the criminalisation of migration[ii]. As Brown and Schept (2017: 447) note: "…law normalizes, obscures, and reproduces the sexism, racism and anti-queer and transgender politics constitutive of racial capitalism".

In relation to responses to gendered violence, achieving recognition of the harms experienced by individuals and groups is crucial in quests for justice (Honneth, 1995; Fraser, 2013). However, since the ability to change the world is optimised from a position of power, it is easier for those in relatively more 'privileged' positions within stigmatised groups, to gain access to these fields of power. Thus dissent becomes neutralised. The exclusion of a discourse around assemblages of intersectionality leaves dominated groups vulnerable to incorporation, assimilation and tokenistic inclusion in ways that, while appearing to augment

the rights of LGBTQIA₊ and feminist activists, unconsciously strengthen the patriarchal structures that oppress them (Harris, 2011). Demanding that the state continues to ratchet-up the process of criminalisation, as well as pursuing demands for increased levels of punitive action against those who commit patriarchal crimes against women and LGBTQIA+ groups, is one such example; but undoubtedly, one that is difficult to identify creative alternatives to, within current state structures.

Rather than 'restorative' justice, what is required is 'transformative' justice, which places anti-subordination at the centre of all its practices, and which acknowledges and resists privilege and power (Malloch and Munro, 2013). Neither state institutions nor civil society institutions such as 'the family' or 'the community' can be relied on uncritically; all these institutions are embedded in unequal relations of power. Therefore, what is required is a restructuring and rebuilding of society that challenges all forms of state violence and involves a grass-root building of 'safe' communities. Safety and security, in this context requires social, political and economic safety capable of generating long-term security based on forms of autonomy and democracy that are ultimate challenges to patriarchal privilege and can eradicate gender-based violence.

Developing an approach aimed at the liberation of the oppressed

A real alternative to this carceral justice formulation is one that refuses to engage with the system of punitive paternalism, adopting instead a radically different approach within a system of direct democracy that promotes and serves the interests of all strata of a diverse population. This cannot be achieved through a reformist agenda and must take the form of radical restructuring of society's functions from the ground up. Through developing a

political system based on direct democracy, founded on a decision-making process that operates almost exclusively at the community level, possibilities open up for radical alternatives to the punitive paternalism favoured in the governance of subjects under regulatory capitalism.

In short, the abolitionist agenda, when combined with feminist forms of direct democracy, has the potential to dismantle the carceral state and can serve as a starting point for the liberation of all oppressed groups. Perhaps one of the most encouraging developments centres on the fact that these abolitionist-friendly forms of political organisation that incorporate an assemblage of feminism, social ecology and direct democracy may sound utopian in nature, but they do already exist. Practical, real world examples can be found in the evolving political experiments that actually exist in the world today.

There is a rich vein of 'critical resistance' internationally with a wide range of alternatives to the penal process spanning a continuum of restorative and transformative justice possibilities. Examples include INCITE, a national collective of women (including transwomen) of colour, founded in 2000 with chapters in a number of north American cities, who actively campaign against the professionalisation and therefore depoliticisation of institutional oppression and state forms of gendered violence (Critical Resistance, 2011). INCITE highlights the problems caused by separate struggles by the anti-violence movement and mainstream anti-prison movement.

In a call to social justice movements working to end violence in all its forms, INCITE states the need for a number of actions including: the dissemination of information on

transformative practices located within local communities aimed at promoting collective responses to violence; collective alternatives to state funding for social justice organisations; explicit connection-making between state and interpersonal violence; prioritisation of women's experiences and opportunities for organising and leadership in the struggle. Other points include: opposition to legislative change that promotes prison expansion, promotion of political education within communities, mobilisation strategies to challenge sexism and homophobia within communities, challenging men in social justice movements to take responsibility for, and organise around, gender justice and the linking of 'struggles for personal transformation and healing with struggles for social justice'.

No Exceptions Prison Collective is a grass-roots initiative in Nashville, Tennessee that considers mass incarceration to be the extension of slavery and therefore seeks its abolition. They advocate community solutions to harm and support models of restorative justice. Safe OUTside The System, based in New York is an anti-violence collective of Lesbian, Gay, Bisexual, Two-Spirit, Trans and Gender Non-Conforming people of colour, who advocate the use of community-based strategies for dealing with harm, as a radical alternative to relying on the police. Other examples of campaign and activist groups working to instigate transformative justice practices can be found across Europe and indeed, globally.

The global Occupy/Decolonize Movement has served to illustrate the ways in which active participation and direct action has led to attempts at alternative forms of organising that challenge violence and oppressive practices. Organising through formal working groups and informal interventions, the moment has highlighted the potential for different ways of co-operation and engagement. Feminists (such as Occupy Boston's Women's Caucus), trans activists and alliances (such as the Occupy Wall Street Safer Spaces Working Group) have

worked to challenge the movement to create safe and anti-oppressive spaces, calling for the abandonment of sexism and racism [patriarchy and imperialism] alongside the abandonment of capitalist exploitation.

A profoundly innovative experiment in radical democracy is currently taking place in the autonomous region of Rojava in North Eastern Syria, where the fight against oppression and for the liberation of oppressed groups is perhaps the most radical in the world today. A key concept developed in Rojava with great success is that of Jineology, literally 'women's science', more commonly known as Kurdish Feminism. This has been instrumental in transforming not only the lives of women in the region but the entire basis upon which this society is founded (Şimşek and Jongerdon, 2018). When, after the First World War, the British and French pragmatically restructured the Levant region, Kurdistan was erased and the Kurds were placed within the newly drawn borders of Turkey, Iraq, Iran and Syria - countries with the most overt patriarchal structures in the world (Sabio, 2015). With traditions such as honour killings, 'gendercide', and the emergence of ISIS with its extreme subjugation of women (and the use of rape as a weapon of war), the Kurdish Committee of Jineology was set up by the women of the Kurdistan Worker's Party (the PKK) committed to building democracy, socialism, ecology and feminism.

The lessons that this experiment in 'feminist democracy' provide, are both vast and inspiring, particularly in the area of penal abolitionism. The process of demasculinisation has entailed a shift away from the forms of punitive paternalism endemic in both the Muslim world and capitalist economies more generally. A new justice system was set up in the autonomous region of Rojava in 2014 following its liberation in 2012 (Sabio, 2015). It consists of self-

governing sub regions each of which have their own Peace and Consensus Committees for the delivery of justice via direct democracy. Women's Commissions were set up to deal with cases of patriarchal violence, and forced and plural marriage (Strangers, 2015). These Commissions were attached to the women's organization Yekîtiya Star [the Star Union of Women] and, as well as having an extensive programme of feminist education for women and men, they are responsible for the defence of their own region with control over their own system of justice (Knapp *et al,* 2016). The formation of the Women's Commission has effectively dismantled the power of the former feudal system that governed the region for centuries. It aims to eradicate patriarchal violence and to provide a positive example of how previously dominated groups such as ethnic minorities and women can challenge and change large and oppressive political structures, as well as the institutions through which they operate.

These developments have been central in building rights and recognition of the LGBTQIA+ community in North Eastern Syria. As well as the establishment of women only militias, there is also The Queer Insurrection and Liberation Army (TQILA) that was set up in 2017 to combat ISIS's brutal treatment of LGBTQIA+ communities across the Levant Region. This approach has advanced to certain spaces within Europe, with examples from groups of Kurdish Refugees in Hamburg and London where Women's Committees have been successfully set up to deal with issues of patriarchal violence (Gupta, 2017). The Roj Women's Association in London supports all women refugees in the UK and promotes feminist forms of direct democracy and mutual assistance (irrespective of sex, sexuality, religious, political or other opinions).

A study exploring the 'mothering work' of Kurdish women living in London (Erel, 2015) provides a useful insight into the ways in which the efforts of this group disrupt hegemonic citizenship narratives in the forging of new political subjects. The cultural work of Kurdish migrant mothers actively challenges orthodox state boundaries, opening up new possibilities of contestation in all areas of their cultural lives and those of their children. It is exactly these forms of cultural and political deterritorialisation that have led to attempts to reterritorialise the oppressive state apparatuses that are reproduced, largely through 'regular' and 'normative' forms of integration and assimilation of migrant groups. There are also parallels and connections with international struggles, many of which have drawn inspiration from the political innovations in Rojava.

The Kurdish people have also taken steps to address their own oppression through self-administration in several cities in the southeast of Turkey, particularly in Diyarbakir (the Sur district), Cizre (Cudi, Nur and Yafes), Nusaybin and Şırnak and other cities, notably, Silopi, Silvan and Yüksekova. One of the most progressive products of this radical alternative to 'state solutions' is the development of a transitional justice system that seeks to re-orientate interventions away from traditional forms of punishment towards increased focus on the concept of 'harm' and its reduction through education and the arts, all underpinned by ecofeminist forms of direct democracy (Jongerden, 2018).

In another example located in Catalonia, the Canditatura d'Unitat Popular's programmatic emphasis on feminism, social ecology and direct democracy recognises the state as an impediment to justice and other forms of progressive change. With the lengthy prison sentences handed to the Catalan academics, activists and politicians for their participation in

the organisation of the democratic referendum on independence on 1st October 2017, the need for an abolitionist debate in the country has never been more pressing.

What all of these groups share in common is a profound sense that the state is the problem, and that solutions to patriarchal violence can be found in community-based forms of direct democracy. There is no doubt that, as seen in the case of Rojava, some juridical structures, such as appeal courts and the legislative structures at their foundation, need to be part of the transition to a more 'restorative model. Both the street-level and the village level peace committees can provide mediation and 'legal solutions' without the requirement of professional legal expertise. This proves that the transition can be made from a patriarchal state system to one in which women and people from minority ethnic groups can participate and indeed shape the development of justice in ways previously unimaginable. The consensus is clear, in order to end patriarchy, the state must be the first target on the list.

Destituting the state

Calls for improved and effective responses to gender-based violence raise troubling issues within the framework of abolitionism, where restorative and reconciliatory approaches have been seen as problematic (Hudson, 1998) within an inherently unequal society. Rather than finding 'alternative sanctions', alternatives to 'criminal justice' are required (Hulsman, 1991; Brown and Schept, 2017). This 'active destitution' of the state can be achieved through withdrawal from its' punitive apparatus, non-cooperation with its institutions and ultimately through the development and implementation of a very different form of political organisation. Key to this transformation is the central inclusion of the political demands of feminists and other emancipatory-focused groups. However, calls for more severe

punishment as a solution to the problem of patriarchal violence against women, children and other oppressed and/or minority groups brings into proximity the state's punitive function with attempts to seek remedies that require its abolition. In doing so it forces what was previously a radical movement for the emancipation of women and minority groups to seek 'conciliatory' and 'conditional' acceptance within a set of structures that are founded on increasingly authoritarian forms of punitive patriarchy.

No doubt, certain aspects of the political objectives of women's and radical rights groups can be achieved through orthodox state processes of criminalisation and punishment. However, these 'short term victories' carry with them lasting implications for both the victim-survivor and the perpetrator of patriarchal harm. They do not provide satisfaction from the point of view of justice, and often result in cementing and in many cases augmenting patriarchal structures that cause 'institutional' harm. Within diverse groups, such as those representing the rights of women and the LGBTQIA+ community, there are strata that possess the forms of economic and cultural capital that facilitate their concessionary inclusion into 'mainstream' political life. This, we argue, always carries the risk that members of formerly radical groups become incorporated into the oppressive structures they previously fought to dismantle.

The short-term political gains become so enticing that sight of the longer-term objectives, which entail the destruction rather than the reformation of the state and its patriarchal structures, are lost. Minimal reforms can never achieve the broader objectives of dismantling the patriarchal structures that have such a vested interest in the maintenance of the status quo. This is an entirely political problem and it is one that requires an entirely political solution;

political strategies aimed at legal reforms have limited scope, operating as they do, within the dominant liberal consensus.

As we have argued, solutions are not merely utopian visions of an imagined future, but have their roots in radical practices that currently exist in the world today. It depends upon alliances that connect abolitionist and transformative struggles. From Catalonia to Rojava, the political assemblage of feminism, social ecology and direct democracy has led to some of the most radical experiments in political democracy ever attempted. The key to the success of these programmes is the 'destitution' of the state and its structures. In Rojava, Women's Commissions have successfully challenged centuries of patriarchal domination through undermining the feudal system of political and economic organisation.

This democratic experiment provides hope, not just for those seeking to abolish the penal system and the punitive paternalism that it fosters, for the very abolition of oppression itself. In our quest to rethink the forms of punitive paternalism that continue to dominate neoliberal forms of governance, we have highlighted the fact that the utopian impulse that beats within abolitionism requires the (re)imagining and (re)building of a just world. To reiterate, the shift away from punishment necessitates the transformation of existing social relationships in ways that, rather than reforming the state's punitive structures, must seek to 'destitute' them.

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[i] See Brubaker (2019) and Kipnis (2018) for examples of attempts to address sexual 'misconduct' within the US university campus.

[ii] Bernstein notes the shift in focus from international trafficking to internal trafficking with considerable consequences for people of colour convicted of 'domestic sex trafficking' formally prosecuted as 'pimping'. Prison sentences that were previously measured in months have now been extended to many years.