Blind Spots of Abolitionist Thought in Academia
On Longstanding and Emerging Challenges

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Introduction

1 As we have shown in the introduction to the special issue, abolitionist objectives have increased in their scope and complexity in recent years. With the continued normalization and proliferation of carceral controls within and beyond penal systems around the world, abolitionists have increasingly looked beyond the prison and ‘criminal justice’ institutions, calling for the eradication of immigration detention, camps, mass surveillance and the like (Piché, Larsen, 2010). The attempt of carceral abolitionism is thus to go beyond prison and penal abolitionism, which constitute the traditional – and still the most usual forms – of abolitionism. Alongside these three forms, abolitionist struggles also pursue ends that are both narrower (e.g. focusing on a type of infraction or punishment) and more ambitious (e.g. socialist calls for the elimination of the capitalistic prison industrial complex (PIC) in favour of a socialist order (Davis, 2003) and anarchists calls for the abolition of the state itself that perpetuates hierarchal relations central to domination (Walby, 2011)).

2 In our analysis of the state of abolitionism – an inquiry limited to the communication of abolitionist thought in academic networks – we have identified and discussed seven core logics sustaining abolitionist ends (Carrier, Piché, 2015). First, criminalization hides the complexity of situations and problematizes them in a way that imposes third party retribution by the state as the primary victim as a condition of just resolution. Second, punishment meted-out by national criminal legal systems is harmful to victims, perpetrators and their communities. Moreover, criminalization and penalization result in neglecting the needs and interests of those in conflict. Third, the critique of heteronomy highlights that penal agents, institutions and policies take ownership of how some conflicts are to be conceptualized and responded to with little space afforded to the
autonomy of the actors involved. Fourth, the moral justification of punishment is simply impossible. Fifth, it is irrational to continue the imprisonment and punishment experiment in light of its dismal track record as it relates to meeting its stated objectives. Sixth, contemporary processes of penal intensification testify to a strengthened capitalist order in which the deprivation of liberty, designed to maximize the accumulation of wealth and other forms of power, disproportionately targets populations marked by difference according to classist, racist, sexist, heteronormative, ageist and ableist lines. A final logic animating abolitionist work concerns the normalized use of confinement outside the realm of penality, through a suspension or absence of law removing due process protections, as a significant emerging force that needs to be contended with in working towards a world without carceral logics, policies and practices.

Abolitionist thought, as it manifests itself within academic communications, thus presents a complexity in both its aims and the logics that sustain them. Despite the richness of analyses offered by its interlocutors, abolitionist work continues to be the object of harsh and ill-informed critiques, mobilizing caricatures of abolitionist ends, logics and praxes (Ryan, Sim, 2007). With this said, not all critiques directed at abolitionism are misguided, rhetorical or Machiavellian. It is our contention that the marginality of abolitionism, in the realm of scholarship and elsewhere, is at least partly the result of failures to adequately confront a set of longstanding and emerging challenges, compromising its very tenability.

Perhaps the last comprehensive critical self-assessment of abolitionism has been Saleh-Hanna’s (2000) chapter “Taking Too Much for Granted: Studying the Movement and Re-Assessing the Terms”. In it, she dedicates considerable space towards reviewing and responding to critiques concerning prison and penal abolitionism debated in criminological literature during the 1960s, 1970s, 1980s and 1990s, which include accusations from its critics that it is a hopelessly utopian pursuit that will never be realized. Saleh-Hanna (2000, 49-63) also notes how its proponents are said to romanticize criminalized harms and populations, fail to advance alternatives that would deal with the ‘dangerous few’ in ways that would keep communities safe, prefer activism over working towards tangible solutions, and hold the naïve belief that the abolition of penalty will lead to a ‘crime-free society’. In many instances, Salah-Hanna turns the tables on penal abolitionism’s critics, noting that penal reform is a utopian pursuit whose promises have not been achieved in practice. She goes further by illustrating that penal abolitionists, like neo-Marxist radical criminologists, are concerned about the damage stemming from criminalized harms while also locating such acts within social structures that shape them. She notes that they have participated in the development of practical alternatives to penalty like peacemaking criminology and restorative justice to work towards peace amongst those in conflict, while making it clear that what penal abolitionists seek to abolish is penality and this need for punishment. The response to crime is the target, not necessarily crime itself (63). With regards to the ‘dangerous few’, Saleh-Hanna admits, penal abolition needs to work harder at refining its stance... and in figuring out what can be done in response to this matter (62).

Much has changed since Saleh-Hanna’s (2000) assessment of penal abolitionism. Still, abolitionists have not satisfactorily confronted some critiques that have been forwarded to prison and penal abolitionism, including the irresolution, illustrated in Saleh-Hanna’s (2000) text, of the problem of the ‘dangerous few’. In this paper, we revisit some old critiques directed at abolitionism, but also identify emerging blind spots and challenges.
characterizing contemporary abolitionist thought that could undermine its viability as a social movement, amalgam of theoretical perspectives, and political stance. Our discussion is structured around the following themes: the ‘dangerous few’; the carnival of punishment; the problems with community; racism, capitalism and punishment; and legal pluralism. This engagement stems from the collision of our abolitionist sensibilities with our sociological ones – a collision in which neither are obliterated. If academia offers the privilege of indulging in abolitionist communications, then an academic discussion of some its problems and unsolved dimensions ought not to be interpreted as a negation of its possibility.

I - The ‘Dangerous Few’

6 Perhaps the dirtiest words within abolitionist activist networks, nearly invisible within contemporary abolitionist academic communications, the ‘dangerous few’ constitute a spectral force haunting abolitionist thought, whose presence inexorably materializes itself as soon as abolitionist discourses navigate towards the programmatic and enter the public arena (Ben-Moshe, 2013). Most, if not all, cultural configurations have their compendiums of ‘monsters’ (see Foucault, 1974a [1999]), a set of constantly updated names and faces associated with acts so revoltingly egregious that they seem to defy the very possibility of language.

7 Academic communications on abolitionism can certainly rely efficiently on a massive literature to trouble any faith in the ability of criminal legal systems to adequately and accurately construct dangerousness. They can also mobilize a massive academic literature problematizing the colonization of juridical and ‘correctional’ decisions by the logics of precaution and risk. Yet, this strategy does not seem to even convince many abolitionists of the possibility, nor the desirability, of abolishing the incapacitation of the ‘dangerous few’. Indeed, it is not uncommon to find in academic abolitionist communications the assertion that incapacitation would still be used in the eventuality of the abolition of prisons, perhaps with the caveat that incapacitation would operate through modalities of confinement that cannot be associated with our contemporary inhumane way of warehousing criminalized bodies. For instance:

The problem of truly evil or mad individuals remains. In such, relatively few, cases, and as a last resort measure, the deprivation of liberty might be unavoidable, at least in the current state of affairs. It is an exceptional decision which should be taken exclusively as a measure of neutralization and applied in a humane fashion, as would be any other morally debatable decision in a problematic situation. Nevertheless, even in such cases, it would be preferable to look for fairer and more humane options based on solidarity, neighborly relations and a communitarian spirit, rather than continuing to resort to solutions advanced by bureaucrats, professionals, and a centralizing State (de Haan, 1992, 122, our translation).

8 The unavoidable incapacitating confinement of the ‘dangerous few’ can thus be presented as symptomatic of problematic social arrangements – de Haan’s ‘current state of affairs’ – pointing to the need for a revolution, rather than as symptoms of pathologies that can be individualized. As such, it seems that only the dubious hypothesis of a post-revolutionary disappearance of the ‘dangerous few’ can rescue abolitionism qua abolitionism from the problems they pose. In other words, the irresolution of the problem of the ‘dangerous few’ appears to transform abolitionism into a de facto minimalist posture. Why even stick to the massively unknown and/or misunderstood abolitionist identity if what is at stake
is to reaffirm that the principle of subsidiarity and the critique of heteronomy (see Carrier, Piché, 2015) are valid in a vast majority of currently criminalizable events? Why mobilize this self-identity if what is at stake is to assemble normative and factual elements in a discourse suggesting that it is neither rational nor desirable to incarcerate or punish the vast majority of criminalized individuals?

9 One response might be found in Golash’s (2005) arguments that social defense does not provide a sound moral justification for punishment, but even here a close reading shows that this lack of justifiability is premised on the exceptional rarity of instances where dangerousness can be posited. As such, the argument dodges, rather than confronts, the problem of the ‘dangerous few’. A normative discourse problematizing the fact that penal policies are established towards exceptional events is totally uncontroversial, but does not dispense abolitionist thought of solving the question of the ‘dangerous few’ (see also Saleh-Hanna, 2000, 62).

10 Yet, some abolitionists might oppose the task of formalizing strategies for the management of the ‘dangerous few’, instead advancing Mathiesen’s (1974) notion of the ‘unfinished’. By developing this notion, Mathiesen submits that struggles against the existing penal order shall be neutralized (or transformed into reformist reforms) if they advance a final, complete version of a more desirable order. Abolitionism relying on the notion of the ‘unfinished’ must thus conceive of struggles as being unending, without finality. Adopting such a perspective would enable the negation that the problem of the ‘dangerous few’ constitutes a fatal blow to abolitionist thought:

[Abolitionism] is a negative critique in the tradition of enlightenment, skeptical towards the frame of reference of criminal law and criminal justice, but unable and unwilling to erect alternative constructions today for the society of tomorrow. (....)

As a sensitizing theory the abolitionist perspective demands credit for its intellectual core which in the long run has to live up to its implied practical research perspective, but which at present should be accepted as a potential for new kinds of questions (Scheerer, 1986, 10).

11 Commenting on what has become of abolitionism two decades after the description of abolitionism as a sensitizing theory, Bianchi (2007) suggested that too few have really come forwards with real alternatives to serious crimes, and Scheerer (2007) proposed that as long as we cannot argue convincingly that the prison system (or the criminal [legal] system) are political “sins” just like slave trade and slavery used to be, we shall have a hard time convincing anybody. In academic communications, abolitionist thought seems indeed unable to present, even to itself, the incapacitation of the ‘dangerous few’ as a political sin. One recent exception is provided by Ben-Moshe (2013), who links abolitionist struggles to similar ones in the fields of disabilities and anti-psychiatry. One lesson she takes from the work of radical inclusionists is that segregation is never a viable response, and that the emphasis can be instead placed on putting in place accessible and inclusive social supports in the community, with one’s peers, and without coercion (91). It is also argued that the problem posed by the ‘dangerous few’ can be addressed frontally, by beginning with the most severe cases, as was the case with Miller’s (1991) abolition of youth reform schools in Massachusetts, whereby those deemed the most violent and dangerous were safely decarcerated first.
II - The Carnival of Punishment

Abolitionist thought can be supported by various oppositions to the very idea of ‘criminal justice’, and contests in multiple ways the usefulness of incarceration and punishment, sometimes through a critique extended to the inutility of the notion of ‘crime’ (see Carrier, Piché, 2015). Criminal legal systems’ references to the utilitarian doctrine are smashed into pieces on both factual and normative grounds, since it does not provide a satisfactory moral justification for punishment, and that other means of coping with problematic situations provide a greater utility at a lesser cost (particularly in terms of the autonomy of subjects and communities).

The abolitionist engagements with retribution are also both normative and factual. Factually, retribution is problematized on the grounds that it is impossible to devise institutionalized harms that would be the exact equivalent of the harms they are meant to annihilate or avenge (Mathiesen, 2006, 115-138; Golash, 2005, 79-85). Normatively, retribution is essentially problematized by seeing in the deontological posture a vision of justice inferior to those geared towards productivity: compensating, reconciling, restoring, transforming. In other words, it supposes that a consequentialist posture is normatively superior to a deontological one. Indeed, it can be suggested that abolitionist thought rests on a negation of the possibility to contest this normative hierarchy. This is illustrated in Mathiesen and Hjemdal’s (2011, 228) denial of the legitimacy of any pain that would be inflicted institutionally in order to provide the pleasure of naked revenge to ‘suitable victims’. The challenge for abolitionist thought that we want to discuss summarily rests on the neglect or denial of the cultural weight of desires for the suffering of those othered on the grounds of the harm they caused, or even simply because they have harmlessly contravened to criminal legal systems’ injunctions.

First, this neglect or denial might seem quite contradictory with the customary abolitionist emphasis on autonomy. As was discussed at greater length in the introduction of the special issue, this is sometimes justified through the Kantian ethical opposition to using individuals as means to an end. It can be argued that citizens of liberal democracies largely relate to punishment on the basis of their experience of penal spectators (Brown, 2009, 8). Many (non-abolitionist) criminological research agendas are aimed at deciphering and weighing various sources of ‘punitive attitudes’, including the consumption of fictional and non-fictional mass mediated realities of ‘crime’ and punishment. One undisputed finding of such empiricist endeavors is that, as a general rule, a greater knowledge of criminalized situations and of the operations of criminal legal systems positively correlates with what is framed as ‘less punitive’ attitudes (Roberts, Hough, 2002). Yet, the abolitionist discourse according to which proximity and knowledge trumps desires for painful retribution can be observed as normatively heavy and factually fragile. Hulsman’s solution to see in desires for the suffering of victimizing others the alienating results of heteronomous criminalization is perhaps the weakest aspect of his abolitionist perspective.

If academic abolitionist communications can normatively oppose retribution, the grounds on which abolitionist thought posits that, as a general rule, an autonomous and knowledgeable subject should also do so appear less normatively evident. For instance, the Kantian conviction that impunity is the fundamental injustice, which is embedded in so many cultural, political, scientific, pedagogical and legal forms, is not so obviously...
morally problematic, nor is it so evidently morally inferior to productive strategies forgoing punishment. Abolitionist thought might thus be seen as a reason oriented towards the future which fails to engage with the (socially constructed) sense of justice that some may experience in the pointless infliction of suffering upon beings regarded as malicious or remorseless.

This challenge can be reformulated perhaps more sharply by quickly pointing out that Nietzsche’s (1887 [1971]) analysis of punishment as a carnivalesque, dramatic, ecstatic mode of debt collection and production of collective identities is largely absent from academic communications on abolitionism. An important exception here is Ruggiero’s (2010) *Penal Abolitionism*, which discusses Hulsman’s and Christie’s work (and guilt and judgement in Christianity) through diverse engagements with Nietzschean themes. Ruggiero connects Nietzsche’s contempt for moralists to abolitionist discourses, particularly to the critique of heteronomous criminalization. He underscores that abolitionism can see retribution much like Nietzsche did, as a *vulgar commercial exchange* (Ruggiero, 2010, 97). Yet, if Ruggiero and other abolitionists condemn the vulgarity of the idea that punishment enacts compensation, Nietzsche’s (1887 [1971, 84-89]) hilarity towards the idea that punishment’s roots are to be found in deontological or utilitarian stances, rather than in the petty bonding joys of penal exhibitionism, does not appear to be taken very seriously. In other words, if Nietzsche’s normative critique of retribution is revisited in a few academic communications on abolitionism, the pleasure that can be found in the suffering of the debtor, that Nietzsche highlights, is denied or neglected. For instance, Golash (2005, 164) simply asserts that it is preferable to devise ways to assure compensation *rather than to indulge* Nietzsche’s diagnosis that punishment is compensatory because we revel in the suffering of others. As such, his disdainful description of the carnival of punishment is not questioned. Rather than engaging with the joys sometimes experienced in the suffering of criminalized others who are often transformed into commodities consumed for entertainment (Lynch, 2004; also see Loader, 2009), abolitionist thought seems to content itself with formulating the injunction that reactions to problematic situation ought to be located outside the carnival of punishment.

It can be suggested that, in the official discourses of contemporary criminal legal systems, punishment is never understood as a mere semiotic shroud placed on what is essentially vengeance (Pires, 2008, 67). For instance, even the enacting of the death penalty in the United States is accompanied by a *prohibition of vengefulness* to which only relatives and friends are exempted (Garland, 2010, 56). Yet, the ability of criminal legal systems to negate any idea of vengeance even when putting individuals to death cannot be interpreted as testifying to the disappearance of the carnival of punishment, like some analyses relying on Foucault (1975) or Elias (1939 [1994]) might suggest.

Executions were once occasions on which rulers communicated to subjects about the larger political and cosmic forces at work in state justice. Today’s officials represent the execution, in symbolic terms, as a non-event: as merely the dutiful execution of a court order by bureaucrats. Instead of a ceremony in which power is sacralized, we have a procedure in which power is made minimally visible, its character coded as the inevitable unfolding of legal mandates and bureaucratic processes. (...) That is the official line, the declarative norm. But there is a subterranean current, a sentiment of righteous revenge and punitive pleasure that continues to flow beneath the surface. America’s hall of justice and legislative assemblies may protest that vengeance, sadism, and shadenfreude have no place in death penalty discourse. But the crowds in the parking lot tell a different story (Garland, 2010, 55, 58).
If desires for the suffering of at least some categories of criminalized individuals ('murderers', 'rapists', 'child molesters', 'serial killers', 'terrorists', etc.) are indeed still observable in various cultural forms, then abolitionist thought has, at the very least, to face the challenge that the carnival of punishment presents for its claim that, given their documented harmful failures, incarceration and punishment ought to be abolished. Indeed, the claim that current legal policies are 'irrational' might be seen as particularly moot if one experiences joy from the idea that criminalization and punishment are adequate ways to destroy lives. Moreover, insisting on the failures of criminal legal systems in relation to stated utilitarian objectives (e.g. the 'de-habilitation' of individuals) might stimulate retaliatory might and incapacitating intents rather than a move towards abolition, as it is made clear by analyses suggesting that the avalanche of attacks on rehabilitation led to a 're-discovery' and 're-legitimation' of incarceration (Wacquant, 2008; Garland, 2001).

This challenge might appear even bigger when we also underscore that the strong equation impunity=inequality powerfully structures communications related to many problematic situations not only in the mass media, in politics and in law, but also within many self-styled progressive or critical academic and activist networks. An exhaustive listing of the problematized situations towards which the absence of criminalization and punishment is constituted as instantiations of injustice represents in itself a research agenda, and we shall here provide only a few illustrations: many forms of critical criminologies construct the rarity of pain inflicted institutionally as a response to various forms of 'crimes' of the economic and/or political elite as a form of injustice, and rejoice when some 'big sharks' are captured in penal nets (Kramer, 2010; Kramer et al., 2010); many forms of academic communications problematize the fact that the grammar of criminalization is not used to describe various atrocious forms of mass political violence (see Carrier, Park, 2013); some forms of contemporary feminism, sometimes re-described as 'carceral feminism' (Bernstein, 2007), see the repression and punishment of some activities related to sex work (e.g. 'pimping') as the conditio sine qua non of gender justice (Women's Coalition for the Abolition of Prostitution, 2013); many harms to the environment lead some 'green' criminologists to work towards expanding the reach of criminalization and studying ways to improve policing strategies without which punishments cannot be secured (Potter, 2010). The seduction that criminalization and punishment, or the call for justice-as-punishment, operates in great many microsociological interactions and macrosociological communications is a challenge that abolitionist thought must confront. Such a call to justice is done with cultural ease and efficiency, and reveals the cumbersome quality of abolitionism in contemporary society: in a context where punishment has been deeply naturalized one typically fails to explain how retribution is unjust, whereas one easily and efficiently asserts that justice is done when pain is inflicted within the boundaries of legality.

III - The Problems with Community

A different set of challenges for abolitionist thought coalesce around the elusive notion of community. Some forms of academic communications on abolitionism are less embarrassed than others when thorny philosophical and sociological questions about the constitution and reproduction of communities are raised. For instance, some abolitionist
logics do not necessarily question the values expressed in criminal norms, but oppose the idea that the affirmation and protection of such values is best achieved, or morally possible, through afflictive, retributive sanctions. In such cases, the idea that criminal norms embody the values of a political community might be left unproblematic, so long as their connection to a punitive imperative is torn apart.10

The challenges for abolitionist thought are made visible when we focus on abolitionist logics refusing to frame problematic situations within a national scale. This refusal manifests itself in multiple forms, such as in the idea that criminal legal systems are disempowering and de-autonomizing individuals and communities, whose needs and interests are negated or neglected. What abolitionist thought has failed to articulate thus far is an adequate sociology or philosophy of political community or identity that can do without penal norms. Is a political community possible without claims to the monopoly of the legitimate use of physical force within some necessarily clearly demarcated space (Weber, 1921 [1946, 78])?

This is not a challenge for abolitionism established from an anarchistic perspective, which obviously contests the need for a political community in the first place. Still, whether anarchistic or not, abolitionists usually advocate for responses to problematic situations as advanced by the individuals and communities involved, leaving unresolved the question of the borders of communities. The face-to-face model of conflict typically used by abolitionism, largely inspired by Christie (1977) and Hulsman (1986), implies a conception of community-as-tribe that might not always be adequate for many problematic situations that are seen as a legitimate realm of intervention by criminal legal systems, such as those involving state actors and corporate ‘moral persons’. Problems highlighted by the mobilization of the PIC or the critique of global carceralization, such as a capitalism (Davis, 2003), racism (Sudbury, 2005) and sovereign exceptionality (Larsen, Piché, 2009), clearly affects communities larger than those constituted through nationality (Carrier, Piché, 2015).

Moreover, penal abolitionism dictates a norm prohibiting retaliatory harm to which, paradoxically, communities that should be self-governed nevertheless ought to obey. This norm has been unevenly enforced through the use of physical force by sovereign powers since what Foucault (1974b) called the devilish invention of the notion of ‘crime’ as infraction (Carrier, Piché, 2015). The question as to how a norm of non-retaliatory harm can be imposed without physical force remains open, at both theoretical and practical levels. Similarly to challenges stemming from the carnival of punishment, abolitionist thought indeed seems a bit sociologically nonchalant towards challenges raised by various forms of vigilantism. While we certainly agree with the idea of working towards eliminating the violence of incarceration, penality and carceral controls more broadly, how does one subscribing to an ‘unfinished’ alternative guard against equally or more insidious material forms of violence taking their place in the void stemming from abolitionist victories? The posing of this question, however, should not be interpreted as an attempt to reject work aimed towards the dismantling existing structures of state repression (i.e. what abolitionists are against), but abolitionism could be more mindful of its potential pitfalls and more clearly articulate possible futures (i.e. what abolitionists support)11 as a means of refining its promise.

The challenge of imposing a norm of non-retaliatory harm without relying on the threat of, and actual use of, physical force gets even larger if we locate the discussion not at the typical abolitionist level of urban and suburban neighborhoods, but instead at the level of
national, international or cosmopolitan imagined communities (Anderson, 2006). Doing this locates incarcerated, punished and detained individuals within a continuous communal space. This continuity might seem unproblematic if one’s point of departure is traditional forms of abolitionist thought. It might be more difficult to establish if one is not informed by this tradition. Academic literatures on the abject treatment of individuals as bodies without political existence, and literatures on exceptional measures of control officially targeting ‘terrorism’, do not usually operate in reverse the logical and topical extension that carceral abolitionism achieves: the critique of the camp does not necessarily lead to a problematization of the incarceration or the punishment of criminalized individuals even if Agamben’s (1998) analysis of homo sacer constantly associates it to the biopolitical figure of the ‘bandit’. This is particularly the case when the critique of confinement is based on the absence of any formal criminal charges laid against individuals, which performs an association between criminal law and the production of justice with which most abolitionists would be uncomfortable. The critique of carceral spaces such as those found at the American Guantanamo Bay Naval Base or in the transit zone of Paris-Orly Airport does not magically lead one to find something scandalous in incarcerating or otherwise punishing someone who has been found guilty of aggravated sexual assault. In other words, being interpolated as a ‘citizen of the world’ to problematize the predicament of individuals detained and stripped of political existence does not trouble in itself the idea of ‘criminal justice’, particularly in a context where the International Criminal Court attempts to further expand, symbolically and materially, the reach of the idea that impunity is the fundamental injustice.

IV - Capitalism, Racism and Punishment

In an ethnographic study of the American prison abolitionist movement, Mayrl (2013) argues that the notion of the prison industrial complex has been essential in the movement’s ability to accumulate symbolic capital in the field of social justice. His Bourdieusian analysis suggests that this accumulation has been possible because the PIC has been made consistent with the doxa of this field, which notably assumes the interconnectedness of all forms of injustice. If his diagnosis is correct – if the abolitionist movement is indeed recognized as a legitimate and important form of activism within contemporary social movements – then the notion of the PIC has enabled a major achievement from an abolitionist perspective. Indeed, within social movements, criminalized and incarcerated individuals have usually been regarded as less eligible subjects whose activities have placed them beyond the “real” and “respectable” struggles that are happening around the globe (Sim, 2004, 46). Is the PIC the solution to the challenges faced by carceral abolitionism that we discussed above? Even if the bond that carceral abolitionism aims to institute between incarceration, punishment and detention has yet to be solidly established within academic communications, the connective force of the PIC within activist networks might indeed give the impression that it could also be operative within academic communications. Our analysis troubles this impression.

The PIC problematizes capitalism and racism as fiendish parasites over-determining the concrete social uses of incarceration. It can hardly be debated that surveillance, repression, prevention, and punishment allow for surplus extraction, although its extent and signification are contentious. It can also be hardly debated that the activities of surveillance, repression, prevention, and punishment target racialized groups en masse.
However, the PIC can be used as a tool within a critique of capitalism and racism that remains totally foreign to abolitionism. This is illustrated by its mobilization within the characteristically non-abolitionist sociologies of the ‘punitive turn’ (Carrier, 2010). And when the PIC is indeed constituted as an abolitionist logic, it problematizes capitalistic and racist usages of incarceration; it is not enacting a problematization of incarceration and punishment in toto.

The result seems to be the following one: in order to be formed as an abolitionist logic, the critique of the PIC has to posit that its actual dismantling would cause the obsolescence of the prison on the grounds of the disappearance of problematic situations involving violence,17 including those associated to the ‘dangerous few’. For instance, abolitionists mobilizing the PIC might demand the formal and substantive right to be free of violence, alongside formal and substantive rights to employment, housing, healthcare, and quality education (Davis, Mendieta, 2005, 103). Leaving aside the challenge that mounting effective counter-rhetorical strategies to face accusations of idealism represents, one major challenge here is that, given the socio-historical weight of the centuries-old institutionalization of criminal legal systems, the PIC does not evidently problematize incarceration imposed as a response to problematic situations which are not stemming from racism and capitalism. Suggesting that all problematic situations are reducible to capitalism and racism would be ludicrous, and quite contrary to the phenomenological tradition supporting the notion of problematic situations. Moreover, provided that one finds immoral that surplus value is extracted from the incarceration or punishment of criminalized individuals, it does not magically lead one to conclude that incarceration and punishment are therefore political sins. The PIC can thus hardly be constituted as an abolitionist logic supporting penal abolitionism, in that the notion itself cannot properly instrument a critique of retribution and social defense.

Furthermore, from the sociological perspective of social systems theory (Luhmann, 2013, 2012), the notion of the PIC performs a problematic annihilation of the internal complexity of criminal legal systems and their multiple organizations, as well as a problematic de-differentiation of numerous social systems – primarily law, economy, politics and the mass media (Carrier, 2010). In other words, the PIC imposes too much coherence and finalism upon a colossal set of incongruent social and institutional practices. There are obviously various structural couplings between politics, the mass media, the economic system and law, much like there are between criminological truth claims and various penal spaces of non discursive practice (Foucault, 1969, 90; our translation). If these structural couplings might allow for surplus extraction and prison or penal lobbying, they hardly result in the constitution of an elite of power in the sense of C. Wright Mills (1956). That is, a complex having concentrated, de-differentiated and monopolized the sites of military-political-economic decision-making, and effectively commanding penal policies for its own economic benefit (and the maintenance of structural racism). As it has been suggested, the link between the prison industrial complex and the military industrial complex might preferably be seen as metaphorical rather than analogical:

Even if some malevolent alliance of politicians, corporate owners, and correctional officials wished to harness carceral institutions to the pecuniary aims of “multinational globalization” and foster “a project in racialization and macro injustice” (Brewer, Heitzeg 2008, 625), they would lack the bureaucratic means to do so. Rather than explaining it, PIC precludes posing the crucial question of how and why a de facto national policy of penal expansion has emerged out of the
organizational hodge-podge formed by criminal justice institutions (Wacquant, 2010, 607).

V - Legal Pluralism

Finally, a different set of challenges for abolitionist thought might be observed by discussing it in relation to legal pluralism, a perspective that foregrounds the multiplicity and co-occurrence of normative regimes (Carrier, 2008a, 2008b; Walby, 2007; Santos, 2002; Macdonald, 1998, 1986; Teubner, 1997, 1992). The perspective of legal pluralism might appear as reinforcing some abolitionist logics, given that it necessarily constructs the constitution of national legal systems as the enactment of a massive juricide (Santos, 2002, 16) or the confiscation of all the mechanism of inter-individual liquidation of disputes (Foucault, 1974b [2001, 1448], our translation). But the perspective of legal pluralism frames the legal expropriation of problematic situations in terms of attempted processes of monopolization rather than effective ones. As such, legal pluralism shows that sovereign power never actually realized this monopolization:

The working of the world system, operating at the suprastate level, developed its own systemic law, which was superimposed on the national law of the individual states across the world system. Moreover, alongside this suprastate law, different forms of infrastate law continued to exist or indeed emerged anew: local legal orders with or without a territorial base, governing specific clusters of social relations and interacting with the state law in different ways, even if denied the quality of law by the state law (Santos, 2002, 67).

As was extensively discussed in our introduction to the special issue, abolitionist thought typically advocates for a politics of autonomy, proximity and participatory dialogue taken as an effective strategy both to curb retributive impulses, and to fight against communities and individuals being dispossessed of, and disempowered in, their ability to define and manage problematic situations. Hulsman’s (1986) notion of problematic situations has indeed been developed in the hope that we can make more visible different forms of what Santos refers to as local legal orders: different modalities of definition of, and reaction to, problematic situations. The paradox is that abolitionist thought is often premised on the recognition that sovereign power never in fact realized the monopolization of law, but that it would have nevertheless achieved a monopolization of retributive, afflictive sanctions. In other words, abolitionist thought in general, and the Hulsmanian perspective in particular, does not seem to take into account that many problematic situations may well be the results of the harmful actions of social actors motivated by a desire for justice (see notably Katz, 1988). It is in this sense that Black (1984, 1983) has proposed that many criminalized events are actually modes of social control, by which he means that they are modes of redress or expression of grievances that are legitimate and categorically imperative phenomenologically, despite the ‘criminal’ quality that legal systems force upon them. One does not need to romanticize violence to be able to see that it represents a way of doing justice in the eyes of some social actors. The perspective of legal pluralism constructs vigilantism, for instance, as the instantiation of a local legal order in which problematized situations ought to be responded to by the use of physical force: violence is the infringement of a norm a legal order, while being simultaneously the enforcement of a norm of another one. In this sense, the perspective of legal pluralism challenges the abolitionist assumption that criminal legal systems have led communities to abandon infrastate legal orders of a penal
nature. Should, therefore, abolitionist thought be extended through a wider understanding of punishment?

Penal abolitionism tends to problematize punishments in intimate or interpersonal relationships, in sports, at school or at the workplace only insofar as they are first coded as ‘crimes’ requiring the institutionalized infliction of pain by national criminal legal systems. Perhaps this is the result of so many of its contributors targeting the role played by orthodox criminological truth claims integral to the reproduction of criminal legal systems (Cohen, 1988). Abolitionist thought in academic communications remains remarkably focused on mounting resistance against ideas and practices that are integral to institutionalized punishment and exclusion. One exception is Golash (2005), who also discusses parental punishment. She contends that we cannot associate the use of retributive sanctions by parents with the use of such sanctions by sovereign power. Her argument is that the emotional bond that exists between the punisher and the punished in the context of the family enables us to reasonably expect that punishment will perform well as a tool for moral improvement. This ‘reasonable expectation’, absent in the case of institutionalized punishment, would in turn establish a morally justified right to punish. If in this case punishment is indeed disciplinary, legal pluralism refuses to posit, against the conventionalized Foucaultian perspective, that all the tiny theatres exacting punishment are instantiating a disciplinary form of ‘power’ (Carrier, 2011). When enacted outside criminal legal systems, retribution can indeed be openly vengeful, purposeless and lethal. And such lethality might be massive: is not war, which in many cases is a form of retribution (Cohen, 2001; Pepinsky, 2007), the biggest, perhaps most intriguing, blind spot of abolitionist thought?

Conclusion

Our contribution has showed that abolitionist thought still faces many challenges and unresolved problems; if they certainly do not militate for stoicism in an era of penal intensification and global carceralization, they beg for the development of more robust and comprehensive forms of abolitionism. Such a development cannot avoid self-reference. The biggest limit of our contribution resides in our inability to account for the dynamic interpenetration of academic and non-academic communications in the constitution and evolution of abolitionist thought, and to rigorously assess whether or not the theories informing abolitionist praxes in a variety of settings present limitations similar to the ones we identified within academic communicational networks.

Within academic communications, abolitionist thought mobilizes an implicit conception of social change that posits the need for the support of consciousnesses, resulting notably in an also implicit sociology of law, which treats law as mirroring the conceptions (or misconceptions) that individuals have of criminalized situations and ‘criminal justice’. More simply, abolitionism operates with the assumption that the prison, punishment and detention are perennial institutions because they are seen as legitimate ones by an unenlightened ‘public’. As a result, abolitionist thought seems largely unable to observe law as being a powerful mode to enact social change in itself, particularly when going against the positions of the majority – however socially constructed – is seen as desirable. For instance, abolitionists regard the abolition of the death penalty in many countries as an abolitionist achievement, part of the socio-historical thread of their own contemporary struggles. Yet the fact that, in many national and historical contexts, the
death penalty was actually repealed as the result of a top-down, countermajoritarian reform, imposed with limited popular support and usually in direct contravention of majority public opinion (Garland, 2010, 130) troubles the conception of social change animating most forms of abolitionism.

Given the importance that abolitionist thought places on changing the ways in which we look at criminalized events and desirable ways to react to them, the virtual absence of abolitionist thought in mainstream mass media is oddly left unproblematic. This is perhaps a corollary of the fact that the scale used within abolitionism is typically that of the community-as-tribe, which makes sense in its politics of autonomy, proximity and participatory dialogue. Although contemporary individuals certainly still live in settings where communities, or a sense of belonging, are the products of territoriality, nearness and relatively unavoidable interactions, one does not know about, nor experience oneself as part of, society without various processes of symbolic mediation. The abolitionists' common refusal of the societal scale does not magically erase society as an order sui generis, which communicates reflexively about itself at multiple scales, including communicating about ‘wrongness’ by mobilizing the grammar of criminalization. If indeed penal spectatorship (Brown, 2009) and other forms of sequestrated experiences (Giddens, 1991) produced by mass mediated realities take part in the symbolic organization of, or meaning ascribed to, lived experiences based on proximity, then abolitionists need to reflect on the fact that their presence is almost entirely limited to specialized academic networks of communications, as well as activist and social circles of narrow diameters. Can abolitionist thought formulate itself in a way that can be communicated through mainstream mass media, if what is at stake is the production of a new common sense in which the prison, punishment, and exclusion are represented as unquestionably irrational and immoral? Even simply questioning publicly the need to criminalize and punish might prove arduous, if not dangerous, in contemporary society. This is clearly illustrated by a recent Canadian political controversy, with which we end this contribution.

Tom Flanagan was professor of political science at the University of Calgary, who regularly appeared on the Canadian Broadcasting Corporation’s (CBC) programs as a political commentator. Over the years, Flanagan had been a key aid to current Canadian Prime Minister Stephen Harper at different times during his political career before he and the Conservative Party of Canada came to power in 2006. Flanagan was a controversial public figure, for instance suggesting on CBC in 2010 that a proper understanding of national security calls for the assassination of Julian Assange, the founder of Wikileaks (CBC, 2010). He was loathed among many groups, notably Indigenous activists, because he served the State in its legal contestation of their grievances concerning their stolen lands. Some of these activists were responsible for capturing statements that led to Flanagan’s fall from grace. During a public lecture he gave at a small Canadian university, they asked him to clarify a statement he made several months before about child pornography. His response, captured on a smartphone and soon ‘viral’ on the web, was: I certainly have no sympathy for child molesters, but I do have some grave doubts about putting people in jail because of their taste in pictures (Visher, 2013). The downfall was immediate: he got fired from CBC, the University of Calgary announced that he would soon retire, various political and public figures disowned him, while the mass media communicated catchy variations of ‘Flanagan okay with child pornography’ (the text placed on top of the video posted on the web). Some media concluded that since
Flanagan was questioning the need to imprison adults consuming pornographic pictures, he was saying that child porn shouldn’t be a crime (Green, 2013). This simple slip ‘no prison time = no crime’ testifies to the colossal cultural stature of the opponent of prison abolitionism, the least radical form of abolitionism in the penal field.

The successful strategy employed by the activists has been to effectively punish an individual through the exposure of his opposition to the involvement of the State towards currently criminalizable events that he considered to be devoid of manifest aggression, an opposition consistent with his right-wing libertarianism. Making massively public a discourse critical of incarceration in relation to pornographic material involving minors was a penal enterprise seen by a local legal order as a means to justice. If abolitionist thought is to become more robust, and if abolitionism means abolitionism rather than minimalism, then the Flanagan story shows at least two things. Firstly, abolitionist thought needs to take stock of the fact that ‘the community’ dispossessed from the legitimate use of physical force from the perspective of the State is still replete with various punitive orders. Secondly, the story suggests both the difficulty and the necessity to discuss the abolition of prisons, of punishment, or of detention in relation to the situations that are most likely to arouse contemporary anxieties, such as those involving forced sexual interactions, children, death, cannibalism, seriality, and political violence.

If abolitionism is to move from the margins to become a significant political force, we think it must find ways to grapple with these and other challenges we have identified above. Otherwise abolitionism continues to risk being ‘defined-out’ as irrelevant radicalism, while guarding itself against the forces of cooptation that aim to ‘define-in’ its revolutionary ideas to further entrench the existing order (Mathiesen, 2006). Facing these challenges are not easy tasks, but such is the work of thinking and speaking the ‘impossible’.

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NOTES

1. We wish to express our gratitude to Jean-François Cauchie, Gilles Chantraine, Augustine SJ Park, Dale Spencer, Jeffrey Monaghan and Kevin Walby for their astute comments on an earlier version of this article.
2. Other examples include Bianchi’s (1994, 1986) reference to the impossibility to forgo strategies of quarantine, Knopp et al. (1976) claim that there is a consensus on the desirability of the confinement of the dangerous few, and Mathiesen’s (2000, 344) vague statement: admittedly, perhaps a possibility to hold a few individuals would remain.

3. The deeply ingrained assumption that the ‘dangerous few’ are the puppets of a faulty nature is now powerfully re-actualized by the contemporary sciences of life (see Carrier, Walby, 2014; Walby, Carrier, 2010), and one can seriously doubt that abolitionists call for revolution can compete with the width and depth of fictional and non-fictional representations of ‘evil’ and ‘madness’.

4. This might lead one to ask why abolitionist struggles are not conceived as aiming to firmly enshrine legally a highly demanding principle of subsidiarity, stripping all penological principles except incapacitation of any juridical validity. This would obviously be unacceptable for anarchists and unsatisfactory for socialists, and many abolitionists might suggest that we have to tear down the notion of individualized guilt that criminalization supposes. Still, this would avoid conflating the performance of criminal legal systems with the function of law (see Luhmann, 2004). Many abolitionists consider punishment irrational on the basis that it does not rehabilitate, dissuade, or produce community safety (see Carrier, Piché, 2015). From the perspective of social systems theory, such critique is particularly moot since this perspective observes law as being, first and foremost, preoccupied by the validity of its legal operations (Carrier, 2008a, 2007). Criminal legal systems affirm the legitimacy, or the justness, of any decision (e.g. a prison sentence) that is (legally) seen as legally valid, whereas the question as to whether this decision produce the ends of evoked penological principles (e.g. rehabilitation) is either secondary or answered through mere assumptions. As such, saying that norms of criminalization and norms of sanctions do not reduce criminalized victimization (e.g. that the threat of punishment and actual inflictive sanctions do not curb sexual assaults, theft or fraud) can hardly be a communication that criminal legal systems can understand as questioning the validity of these norms.

5. As such, it is possible to debate Ruggiero’s (2010, 23) claim that penal abolitionism is inspired by an anti-Platonic philosophy (...) [since] it refrains from arranging good, bad, and other values hierarchically.

6. Being ‘less punitive’ or mounting a critique of ‘punitiveness’ cannot be conflated with being non-punitive or mounting an abolitionist critique of punishment (see Carrier, 2010).

7. The German term shadenfreude is the conjunction of joy and harm; it refers to the pleasure or enjoyment experienced as the result of the knowledge of the troubles or misfortunes of others.

8. The claim that the prison is a ‘school of crime’ is particularly uncontroversial culturally, and this shows that the abolition of the prison is not so clearly ‘rationally’ deduced from knowledge of its harmful failures. This represents, in typical Foucaultian lyricism, the vengeance of the prison over justice (Foucault, 1975, 297, our translation; see also Carrier, 2006).

9. On the “What is Green Criminology?” webpage (see [http://greencriminology.org/about-green-criminology/]) of the International Green Criminology Working Group, Potter writes: Green Criminology is the analysis of environmental harms from a criminological perspective, or the application of criminological thought to environmental issues. As elsewhere in criminology, this means thinking about offences (what crimes or harms are inflicted on the environment, and how), offenders (who commits crime against the environment, and why) and victims (who suffers as a result of environmental damage, and how), and also about responses to environmental crimes: policing, punishment and crime prevention. On a more theoretical level, green criminology is interested in the social, economic and political conditions that lead to environmental crimes; on a philosophical level it is concerned with which types of harms
should be considered as ‘crimes’ and therefore within the remit of a green criminology (emphasis added).

10. This political community can even be decoupled from nationality, such as when the notion of ‘crime against humanity’ is seen as expressing the values of a global political community, rather than as the instantiation of a globalized Western localism conceived as a cultural process whereby a hegemonic local culture cannibalizes and digests other subordinate cultures (Santos, 2002, 275).

11. One example is Angela Y. Davis’ call for abolition democracy involving the eradication of the prison industrial complex and the creation of new socialist and democratic institutions aimed at enshrining and putting into practice substantive as well as formal rights, the right to be free of violence, the right to employment, housing, healthcare, and quality education (Davis, Mendieta, 2005, 103).

12. This seems to be a logical requirement of carceral abolitionism. If this is so, then does abolitionism really have the theoretical tools to produce even an ‘unfinished’ sketch of international relations in which security is produced without punishment and detention, and also without wars? What exactly would be the form of an abolitionist refusal of the ‘responsibility to protect’ doctrine?

13. On its website, the International Criminal Court self-describes itself as the first permanent, treaty based, international criminal court established to help end impunity for the perpetrators of the most serious crimes of concern to the international community (see notably Machado, 2013).

14. From such a perspective, one can represent the prison industrial complex as involving, among other elements, pollution, violence, malnutrition, poor education, material insecurity, victims’ rights groups, gentrification, police brutality, xenophobia, surveillance, addiction, the media and prison construction companies (see, for example, [iheartabolitiondemocracy.tumblr.com/image/37512865922]). According to Mayrl (2013, 301): one signal contribution of the [American prison abolitionist] movement has been to reframe contemporary penalty as a ‘prison industrial complex’. The PIC most prominently positions prisons at the center of the “overlapping interests of government and industry” (Critical Resistance, 2003, 59), but these connections are actually part of a much broader vision that equates the PIC with all forms of oppression. At root, abolitionists believe that “fighting the PIC is fighting to tear down cages”, by which they mean “all the things that restrict self-control and make someone exposed to harm…like white supremacy, heterosexism, and imperialism”: “We believe that if you can’t get rid of all the cages, you haven’t abolished the PIC” (Critical Resistance 2003, 16).

15. Abolitionist thought in academic communications mobilizing the PIC problematically interprets the fact that corporations profit from mass incarceration as an incontrovertible proof that they drive penal intensification processes. The importance of their political lobby has been clearly documented (at least in the United States), yet the PIC implies a simplistic causal model (Carrier, 2010). Moreover, the ways in which the PIC is used in academic communications has been criticized for aggrandizing its economic tentacles: To realize the exaggeration entailed in asserting that prisons have become central to American capitalism (to say nothing of world capitalism), consider that the country’s annual expenditures on penal confinement (...) come to just over one-half of the monies Americans devote annually to soft drinks (with $128 billion). How credible is the notion that the “Soda Industrial Complex” has become a locomotive for the American economy? Prisons (…) remain negligible in terms of economic weight and thus nonexistent as a vehicle for profit on a national scale - and a fortiori on the global stage (Wacquant, 2010, 608).

16. This is frequently formulated through the critique of over-representation, such as that of black and Latinos in American penal institutions, of Muslims in British or French ones, or of Indigenous peoples in penal institutions of white settler societies such as Canada and Australia. In this regard, it should be noted that the critique of over-representation carries little weight
from an abolitionist perspective given its implicit that adequate representation would be non-problematic, i.e. just.

17. This is an important break from the older European abolitionist tradition, in which conflict is a precious resource and has to be nurtured and cherished (Ruggiero, 2010, 158).

18. Perhaps abolitionist thought could seek to clarify its conception of social change. Perhaps it could questions the apparent assumption that social change ought to involve, factually rather than normatively, the seduction of consciousnesses in the mythical public sphere of a decidedly liberal and humanist imagination? What if the problem was the belief in the very possibility of political representation? What if the problem was, as the anti-humanist theory of social systems controversially proposes, the belief that political and legal systems depend on the support of consciousnesses?

19. While there is no doubt that the abolition of the death penalty is an achievement from a humanist perspective, the fact that it led to greater use of life without parole sentences and longer parole ineligibility periods for youth (Lashuay, 2014) and adults (Hartman, 2014) serving life sentences in some jurisdictions needs to be underscored, and constitute yet another reason for skepticism towards incremental legal changes that leave unproblematized the grammar of criminalization and its articulation to retributive sanctions.

20. Interpreting this processes of mediation as being alienating, as Hulsman does, seems to imply the fantasy of a lifeworld confined to the community-as-tribe and uncontaminated by society. Recognizing the complex interplay between nearness and distance in the social construction of reality does not challenge the norm of autonomy advocated by abolitionist thought, but complexifies the very notion of autonomy.

ABSTRACTS

This paper identifies and critically assesses old and new challenges that, we argue, must be reckoned with if abolitionism qua abolitionism is to be tenable. A companion piece to the introduction of the special issue that examined the state of abolitionist scholarship, this article discusses some old challenges associated to traditional forms of abolitionism (prison abolitionism and penal abolitionism), but also emerging challenges surrounding abolitionist critiques of the prison industrial complex and the growing use of detention decoupled from criminal law. Our discussion is focused on five key themes: the ‘dangerous few’; the carnival of punishment; the problems with community; racism, capitalism and punishment; and legal pluralism.

Cette contribution identifie et propose une discussion critique des enjeux principaux auxquels l’abolitionnisme semble devoir se confronter afin d’être défendable. Elle accompagne l’actualité de l’abolitionnisme proposée dans l’introduction au dossier. On y discute de certains défis qui datent et perdurent, associés aux formes traditionnelles de l’abolitionnisme (abolition de la prison et abolition du pénal), ainsi que d’autres plus récents, autour de l’enjeu du « complexe industriel carcéral » et du recours croissant à des stratégies de détention découplées de la question pénale. La discussion critique s’organise plus précisément autour de cinq grands thèmes : les ‘quelques personnes vraiment dangereuses’ ; le folklore de la peine ; les problèmes avec la notion de communauté ; racisme, capitalisme et pénalité ; et le pluralisme juridique.
INDEX

**Mots-clés:** abolitionnisme, criminalisation, pénalité, droit pénal, dangerosité

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