The use of war as punishment in the international sphere

Introduction

Since 9/11, discourses, rationalisations and justifications of war have merged with those of crime in such a way that the pursuit of military conflict is often represented in terms of punishment by a plurality of sources. Both the war in Afghanistan and the war in Iraq were represented by the US administration and the UK Prime Minister Tony Blair as a form of punishment for the events of 9/11, and as a fight against terrorism. Both George W. Bush and Tony Blair depicted war as a way to “to bring terrorists to justice” or “eliminate the threat that they pose”. Further, the Bush Doctrine labelling some states as “rogue” has further facilitated this understanding of war as a means of sanctioning defiant behaviour and imposing order in the international sphere.

This representation of war as punishment has become increasingly common in recent times. The Israel campaign against Lebanon in July 2006 was portrayed as a response to Hezbollah’s actions, and the US bombardment of Somalia in January 2007 was also meant to be directed against Al Qaeda groups. This is not to say that since 9/11 the ways in which wars are fought and launched have dramatically changed. There are elements of continuity with previous military campaigns that similarly incorporated punitive aspects. The Kosovo campaign, for instance, sought to punish Slobodan Milosevic for violations of human rights. Similarly the 1991 Gulf
War was a response to the illegal occupation of Kuwait. However, with the emergence of the threat of terrorism, and what some identified as the figure of the “global criminal”, this narrative and representation of war as punishment has become more easily available (Slaughter and Burke White, 2002).

This association between war and punishment has been utilised in other respects by scholars seeking to demonstrate how these military campaigns pursue the imposition of a new world order as promoted by the US administration. Many have suggested, following the influential work of Hardt and Negri on Empire, that the US is using war as a way to punish those countries who are not complacent to their leading role at international level (Zolo, 2000; Douzinas, 2002; Callinicos, 2002; Mann, 2003; Mandel, 2004). However, the notion of punishment was also utilised by some journalists, who defined military operations as “collective punishment” for the populations of Iraq and Afghanistan. In this different sense, the notion of punishment was used in association to that of war to describe either the unjust killing of innocent civilians as a form of capital punishment, or to record the level of brutality displayed by allied forces towards whole populations (see Jamail, Pilger, Cockburn, Steele, Monbiot on Fallujah). It is thus possible to note that in these last diverse instances, rather than legitimising war, the association between war and punishment has been used to discredit the military operations and reveal their blatant illegality. How can this be explained?

This paper will firstly demonstrate how the notion of punishment has entered political discourses on the war in Afghanistan and in Iraq. Secondly, it will give an overview on the changes in forms of punitive reaction and the function that these are called to fulfil. Thirdly, it will expose the effects of current forms of penalty and its consequences. At this point it will explain how the practices of punishment and war are strongly interrelated thus showing how their elements and functions can overlap or follow similar paradigms. Adopting a social constructivist perspective, it will then suggest that institutions and practices are not stable entities and they are constantly re-created and re-shaped. Therefore, it will focus on the possible consequences of current practices and their structuring of our international sphere. It is at this point that some questions will be posed as useful platform for a dialogue. The suggestion is that a

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1 It needs to be said that Hardt and Negri were not suggesting that the US was taking on this role. They actually argued that a form of Empire was emerging as result of the complex implications of network of states, corporations, NGOs and the likes. However, since the publication of Empire, this world has gained fortune in many other scholars’ works.
proper dialogue on the different models of international justice should be initiated instead of maintaining that our current form of international law constitutes a consensual institution. To this end, the possible effects of current practices will be highlighted to suggest that it is from these known unwanted effects that we should start thinking of the ways in which we seek to shape our emergent global community and global justice rather than only from a normative point of view.

This paper will run along the boundaries within which the disciplines of criminology and international relations are constructed. In an attempt to overcome these disciplinarian limits, this work seeks to analyse alternative forms of punishment to those usually covered by the discipline of criminology, thus expanding the traditional boundaries of the discipline to cover forms of punishment within the international sphere organised by a plurality of states and agencies. At the same time, it will draw upon learning from both criminology and the sociology of punishment in order to show how specific actions could have dangerous effects when applied to the international sphere and when utilised against communities.

The representation of war as a form of punishment

By way of introduction to my argument, I will briefly review how especially political leaders, have represented war as a means of punishment, looking in particular at the ways in which the two wars have been represented by the US President George W. Bush and the UK Prime Minister Tony Blair.

The attack against Afghanistan was the first battle in the so called “war on terror”. It was launched in response to 9/11, on the basis of the fact that the Taliban regime had collaborated in staging the event, sheltering and giving safe haven to Osama bin Laden and Al Qaeda. Further, Afghanistan had been considered a ‘rogue state’ and a dangerous regime even by previous analyses, so it was possible to claim that military action was needed to halt human rights violations. The armed campaign was designed firstly to “bring terrorists to justice”, comprising the capture of Osama bin Laden and his followers, believed to be hiding in Tora Bora, and delivering appropriate punishment for involvement in 9/11 to both the Regime and those involved; secondly, military forces were meant to liberate women from sexist oppression, and change the life of Afghan people by transforming the regime into a democratic form of government.
Similarly, the Iraqi campaign was staged as part of the so called “war on terror”, to establish order and security in the international sphere. This time the problem was constituted by the alleged possession of weapons of mass destruction by the Iraqi regime and its untrustworthy nature. On many occasions George Bush referred in his discourse to the “tragedy” of 9/11 as evidence that there was a need to control various sources of danger to prevent future attacks. In this way he was implicitly invoking punitive feelings against those who had killed so many people and, by calling for punitive actions, re-enforcing popular fear of possible incoming tragedies. In addition, military operations against Iraq were represented as a means of enforcing United Nations resolutions on the retention of weapons of mass destruction, thus attempting to portray the action as legal. Further, it was strongly underlined how Saddam Hussein was a “murderous tyrant” who had killed thousand of his own citizens. Hence, it was claimed that armed forces were the only appropriate instrument to free Iraqi people from cruel oppression, transforming their poor lives and bringing them democracy.

In their speeches both the US President and the UK Prime Minister Blair recalled the 9/11 tragedy and invoked the need to “bring terrorists to justice”. In the US President’s words: “our military action is designed to drive terrorists out and bring them to justice” (Bush, 2001). The UK Prime Minister echoed: “we must bring bin Laden and Al Qaeda leaders to justice and eliminate the threat that they pose” (Blair, 2001). In these statements, made in support of the military campaign in Afghanistan there is a sense that war would be a proportionate response to the murder of so many. This implicitly refers to the retributive function of penal policies by which it is believed that punishment will ultimately restore justice (Hudson, 1993). Similarly with the Iraq campaign, the two political leaders represented war as a means of law enforcement and an instrument to incapacitate a “murderous tyrant”, “homicidal dictator”, and a “menace for the whole world”. The US President judged the Iraq dictator in these terms: “[the] Iraq regime has violated all … obligations”, “he should be held accountable” (Bush, 2002). The UK Prime Minister pointed out the need to “act within the terms set out in resolution 1441” and of enforcing international norms: “who will believe us [next]? What price our credibility with the next tyrant? (Blair, 2003). Again, in these statements it is possible to see how war is portrayed as a mechanism of law enforcement and of deterrence against future acts. Further, it was claimed that both actions would help bring democracy and freedom to oppressed
people, thus implicitly suggesting that war would have helped reform in both countries. In both cases, the legitimation of violence was achieved by mimicking a criminal process by the two political leaders that led the Coalitions (see Mégret, 2002). The concepts of responsibility and guilt were invoked, it was argued that evidence had been found, and the evil and criminal nature of Osama bin Laden, Mullah Omar and Saddam Hussein was condemned before a global audience.

Both campaigns were constructed as punitive because the notion of crime had entered the discourse of war. War was designed to pursue international terrorists, who are mainly individuals organized in groups with no special reference to a state or territory. Some heads of state, primarily Saddam Hussein, were considered criminal, defined as “murderous tyrant”, and the discourse of war called on the world to take action against him and his like. Finally some states were defined as “rogue”, for their being a “threat” to the whole of humanity in light of their defiance of human rights or of the US. The logic of crime and that of war were blurred in these circumstances. As Jacques Derrida observed: labelling a state “rogue” is already calling for some sort of punishment (Derrida, 2005). Further, war used to be considered an instrument of defence of the collectivity as a whole and directed against states, beyond national borders, whereas these military operations were and are instruments to protect individual’s physical integrity (Bigo, 2005). The fact that they are directed against specific states is mainly a strategy to “re-territorialise war” (Galli, 2005). As some scholars have pointed out, these were punitive wars, meant to establish some sort of order in the international sphere (Zolo, 2000; Mann, 2003; Douzinas, 2002; Mandel, 2004). The rationale of both military campaigns against terrorism was one of reaction against tragic harmful events. Armed forces were sent abroad to assert the ability to control and protect national populations from future danger. War was aimed at pursuing, controlling and limiting the behaviour of antagonistic groups and individuals, imposing and enforcing specific norms both within and outside state territory. In this function, it seems that war is no longer only fulfilling the traditional function of defence outside the state, but it is also taking on the role of the criminal justice system.

The practice/institution of punishment
The assumption on which this work rests is that the ways in which punishment was administered, its utility calculated, or its various justifications illustrated have changed according to historical periods and social organizations (Foucault, 1977). Generally punishment consists of infliction of unpleasant situations on people as a response to their infringement of social/legal rules (Easton and Pipe, 2005: 4). The infliction of pain is considered justified by the function it retains in relation to the social group, and in particular in relation to a normative system it seeks to enforce. Punishment aims to restore the violated order according to specific values by means of symbolic moral condemnation for the wrong done, before the whole social group and in a public way. In so doing, the offender is rendered docile and no longer dangerous for the community through the infliction of pain and shame (Easton and Pipe, 2005), which also helps restore community values (Durkheim). This complex process requires five substantive component parts: a breach of rules, aimed at protecting essential values of a community; a subject responsible for an offence; an accepted authority to deliver pain according to accepted rules; moral condemnation; and finally infliction of pain (Lacey, 1988; Hudson, 1996).

These requirements are not only the product of rationale processes, they are the result of specific material practices. Nietzsche highlighted that punishment, rather than being just a simple response to harm or a form of repressive action, is meant to construct the truth about an event. In particular, Nietzsche underlined that the use of violence is functional to the development of a system of norms and to their understanding by the population. In this sense, punishment works as “mnemotechnique”: a way through which norms are inscribed through the pain of the body within individual’s and collective’s memory (Nietzsche, 1995). The ways in which we conceive of responsibility and guilt are the actual results of the application of violence and not their necessary requirements. The sense of responsibility is the effect of the application of pain on the person’s body. Foucault, following in Nietzsche’s footsteps contended that varying of punitive techniques is reflected in different notions of the subject and these mirror a change in the form of power (Foucault, 1977). Therefore, what we perceive to be essential requirements of punishment have been developed and rationalised with the evolution of specific material practices in determined locations.

However, despite the fact that punishment constructs our understanding of norms, guilt, responsibility and subjectivity, it is also structured according to our sensibilities,
mentalities and the culture of the time (Garland, 1990; Spieremburg, 1984). At times, greater emphasis is placed on the principle of formal equality, at other times the focus is on the material conditions of the particular individual involved. In certain societies persons are evaluated on the basis of their context and environment and in others on the basis of their free will. As Spieremburg demonstrated, changes within the criminal justice system are mirroring changes in social relations, notions of freedom and sensibilities. However, punitive techniques are part of a process of social conflict and change, and as such they are the product of struggle, conflict and compromise between specific cultural forms (Spieremburg, 1984). Hence, discourses and social relations shape the forms that punishment takes and vice versa different practices of punishment structure our social relations, sensibilities and discourses differently. It is in this way that we conceive of punishment as a complex institution, both the cause and the symptom of this shaping of social relations; a social and cultural artefact which embodies the social need and cultural meanings of a particular time and specific place.

In this sense the problem of accountability for the production of crime and harm at global level is particularly challenging. Since the current system of international law has been so many times challenged, can we still refer to it as really reflecting the values and norms of the whole world? However, the violence that war entails implicitly defines norms by way of military capacity, and in doing so it constructs a particular style of authority/power and enables specific forms of subjectivity and social relations. Further, these wars and their rationalities are the product of a specific cultural way of thinking and material conditions while at the same time seeming to structure a future global community through these actions. What are the meanings that this form of penalty is transmitting? What sort of global sphere is this form of penalty shaping? Are these values going to be solid foundations upon which to construct an increasingly dependent world? Before answering these questions I would like to step back and explore the ways in which contemporary penalty has developed. This will show how these are producing divided societies and bring about unwanted effects.

**Trajectories of the punitive system in late modernity**

Contemporary criminological research in the US and the UK has highlighted a major shift in the ways in which penality is conceived and acted upon. Scholars have
highlighted an increase in demand for punitive measures to be taken against criminality and a tendency to focus on whole categories of people rather than on single individuals. This change is believed to be related to the fundamental and structural transformation broadly defined as late modernity. The spread of capitalism, technological advancement, the shrinking of space, changes in the forms of production, growing urbanization, and the demise of the welfare state are all elements that contribute to this shift. It is believed that the sentiment of reform and progress typical of the sixties has left space for intransigent exclusive policies directed against “suitable enemies”, either the blacks and Latinos in the US or immigrants in Europe, who are permanently excluded from our societies (Wacquant, 2002; De Giorgi, 2000; 2006; Melossi, 2000; 2003). Emblematic of this shift is the huge increase in incarceration rates in most countries. It reaches 2 million people in the US, 1.5 in China and almost a million in Russia (Franko Aas, 2007). Many commentators have coined new phrases to illustrate these changes: “massive incarceration”, “society of control”, “actuarialism”, “new punitiveness”, “new authoritarianism” or “post-modern penalty”. The emphasis is on grand intransigence towards deviance.

Scholars suggest that this is the result of the rhetoric of “war on crime” which had been widely used in public debates to call for a new radical approach to crime. According to these analyses public preoccupation with the rise in crime was linked to the civil unrest of the sixties and seventies, manipulated by political commentators through a call for a “war” against crime and deviance in a desperate attempt to re-gain political control (Beckett, 1997; Parenti, 2001). Indeed, the metaphor of war allows extreme measures to be authorised against those who are defined as public enemies. The obvious result of launching wars against crime is the militarization of the police (Kraska, 2001), and a blurring of the distinction between the two system of defence, as well as “scapegoating” (Young, 1999) as a means of exorcising the new social anxieties against “suitable enemies” (Wacquant, 2002).

This new form of penality is believed to have caused a radical shift in paradigm whereby groups and aggregates of people are targeted instead of individuals. It is also focused on the prevention of crime through the notion of risk of delinquency. Categories of people are thus ranked by their likelihood of dangerousness, assessed in relation to a set of characteristics extrapolated by profiling techniques. These classes of population are the underclass, constructed and reproduced through these practices. The aim of the new penalty is not re-integrating such communities, it is to segregate
them in specific locales, as in ghettos or slums, condemning them to a situation of “advanced marginality” and total exclusion (Wacquant, 2002; 2006; 2007; Davis, 2006). These people are the ones that society includes through values diffused by the media and then are “vomited”, as in a process of “bulimia”, making them redundant (Young, 1999). They are defined as beyond integration. They are so different as to represent the monstrous others of our imagination. Instead of directing reformative measures towards them, the practices of late modernity tend to incapacitate them in secluded spaces.

Some criminologists have underscored the strict relationship between these modalities of penalty and the aim of governance (Garland, 1996; 2001; Simon, 2007). In these analyses the inadequacies of the criminal justice system typical of liberal states in governing their populations is made clear and it seems that it has reached a point of rupture or epochal transformation. After years of analyses demonstrating the ineffectiveness of the mechanisms of the criminal justice system, and indeed how they contributed to the reproduction of deviance instead of limiting its impact, it seems that the capacity of our designed system of control has reached breaking point. Contemporary penalty reveals how the system is dysfunctional, basically producing a divided society often on the basis of racial lines. Prison populations have increased in most countries to the point that some states have already devolved the function of managing prisons to private corporations, and new prisons are being built. And yet there is increased need to construct new forms of exclusion that go beyond the strict national borders, such as the temporary camps for migrants or the various Guantanamo around the world, segregating those who are defined as the new threat (Franko Aas, 2007). The criminal justice system demonstrates the limits of the liberal states and the paradigm of defence on which they are based. To what extent does war follow the same logic and rationale of late modern system of penalty? If so, what would the consequences be of utilising war as a form of punishment? What can the discipline of criminology tell us about this? If so, how is this impacting on our understanding of sovereignty and political authority? To try to shed some light on these matters, we will now look at how the concept of punishment can be related to that of war.

**Points of encounter between the notion of punishment and that of war**
The rhetoric used by the US President and the UK Prime Minister rests on assonances existing between the features of punitive actions and elements utilised to legitimate current wars. The essential elements of punishment (breach of rules, authority, responsibility, moral condemnation and infliction of pain) in some way converged with the natural connotations of war and their attributed aspects. In the table below I have schematised this convergence. Breaches of rules, emphasised by political leaders in the two military campaigns, were indeed met with pain typical of war. In the case of Afghanistan there was a crime to be responded to, in the case of Iraq, the UN Resolution had not been complied with. In these cases, military action would forcefully signify the wrongfulness of the deeds and would represent an expression of moral condemnation of those under attack by the global community.

Authority was represented by the decision on the part of the US administration to launch military campaigns in response to these problems, represented as the will of the global community. The element of responsibility resonated with the link drawn between Osama bin Laden, Al Qaeda, Mullah Omar and the Taliban Regime for the events of 9/11, in the case of Afghanistan, and in the case of Iraq, with the fact that Saddam Hussein was considered culpable for violating UN Resolutions, for having links with Al Qaeda, and through being defined as a “dangerous” and “murderous tyrant”.

<table>
<thead>
<tr>
<th>PUNISHMENT RELATED CONCEPTS</th>
<th>WAR RELATED MANIFESTATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authority</td>
<td>US and UK</td>
</tr>
<tr>
<td>Responsibility</td>
<td>Osama bin Laden, Mullah Omar/Saddam Hussein</td>
</tr>
<tr>
<td>Moral Condemnation</td>
<td>Express judgement and reprobation</td>
</tr>
<tr>
<td>Pain Delivery</td>
<td>Death, wounding, destruction, forfeiture of property, etc</td>
</tr>
</tbody>
</table>

Table 1: Encounters between the elements of punishment and current wars.

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2 This was possible on the basis that many countries took part in the two different campaigns in various composition. Further, many newspapers showed solidarity and support for the war on terror the day after 9/11 exhibiting claims such as “we are all Americans!” in French, Italian, and other languages.
Even the function of war, evidenced in the language used by both the US President and the UK Prime Minister, was fulfilled by some of the characteristics of current wars. Retribution was implicitly satisfied by wars as a form of response to the harm caused on 9/11. Deterrence was achieved by showing that similar actions would no longer be tolerated, and that war was meant to enforce international rules. The incapacitative function is well replicated by military force as it is self-explanatory that the power to kill utilised could be seen as the best way to eliminate a perceived threat from the social world. And finally the rehabilitative function could be presented as a variation of the notion of regime change. Indeed bringing democracy to Afghans and Iraqis was meant to change the social and cultural conditions in which these people lived. A table below schematises these assonances.

<table>
<thead>
<tr>
<th>FUNCTIONS OF PUNISHMENT</th>
<th>JUSTIFICATIONS OF WAR</th>
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</thead>
<tbody>
<tr>
<td>Retribution</td>
<td>9/11/ international terrorism</td>
</tr>
<tr>
<td>Deterrence</td>
<td>Law enforcement</td>
</tr>
<tr>
<td>Incapacitation</td>
<td>Self-defence/ pre-emption</td>
</tr>
<tr>
<td>Rehabilitation</td>
<td>Regime change</td>
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**Table 2: Encounters between the functions of punishment and the justification of current wars**

This overlapping of functions and elements shows how the two forms in which legitimate violence – punishment and defence - can be delivered by the sovereign are related and show the similarity between what used to be conceived as two different systems of defence. This is the reason why the notion of violence has been widely used to represent these two wars, both in political, academic and journalistic discourses.

In the next section I will follow the social constructivist perspective, and show what the meanings and representations of the use of war as punishment are likely to be with reference to the above schematised associations. This reading will give us the chance to pose some important questions for a possible understanding of a form of punishment in the international sphere. The idea behind it is that the practice of war and its being conceived as a response to responsibility for wrongdoing is likely to change our understanding of these elements, practices and of the institutions that
underlie it, and these modifications can be dangerous way of trying to design a form of global justice.

**Refracting effects: constructing norms, authority, responsibility**

As we have seen, these two wars were constructed as response to breaches of rules. In the case of Afghanistan, it was 9/11 which was conceived of as crime against humanity, in the case of Iraq, it was the defiance of UN Resolution. Thus, they depicted the idea that shared rules had been broken. This element presents us with the problem of the very existence of shared norms within the international community. In the case of state-based punishment, it is assumed that the rules being enforced are those of the criminal law and that these refer to fundamental values and interests shared by the majority of the population within a given territory (Lacey, 1988). In the international sphere the existence of such a body of rules is more contested. Can we really say that there is one effective system of international law? Or due to the frequent challenges to this system, should we argue that none exists? This would reinforce the idea that there is no shared notion of the “common good” in the global community (Huysmans, 2006).

Further, the problem of authority emerges. The US, UK and their allies appeared to be taking on the function of a global authority. However, they do not have the legitimacy to do so. The legitimacy is based precisely on the need to restore security at a time of great danger and their authority is constructed around this fear of harm and their military power. Thus, it is this association of the two notions of war and punishment which produces authority and establishes it, rather than being an element of it. However, the two different coalitions sought to exercise power in the global sphere as if they were the ultimate authority, thus making evident the centrality of the problem and the need for authority. But before calling for a global sovereign we should evaluate whether there can in fact be a sovereign at global level. Paraphrasing Huysmans (2006), is it possible to reduce the “radical plurality” of the globe to just one form of authority?

Importantly, this association transforms our notion of responsibility in relation to a specific event. War as an instrument to punish implies an idea of culpability

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In this sense, very interesting is a piece by Alan Norrie (1984) which shows how the Leviathan is built on fear and not on rational agreement as it is believed.
based on group identity. Establishing a country as “rogue” or, some people as “terrorists” tends to criminalise whole groups of people on the basis of their belonging to a specific territory, originating in a particular geographical location, or belonging to a specific creed. The dangerousness, or perceived dangerousness, is established on the basis of proximity to the figure of the criminal/terrorist. In doing so, war erodes the standard concept of responsibility from one of a proven culpability in the planning or carrying out of massacres or crimes towards one of mere dangerousness or proximity to the dangerous, either real or regarded as such by the authority. It crystallizes an idea of responsibility that can be presumed a priori on the basis of someone’s identity (whether this is considered in relation to a state of belonging or to ascribing to a specific religion or to a network of people). This is exemplified by the logic followed in many incarceration and rendition flights as practices of the current war on terror. It also resonates with techniques typical of the new penology in which there is a tendency to focus on groups instead of individuals and presumes specific dangerous behaviour from sets of characteristics that can be traced from one’s identity. It should be made clear that this is not to deny that specific crimes may be the result of collectively shared ideas or ideologies belonging to specific groups, it is rather to point out the complexity of such cases. It is not only the notion of responsibility for a shared idea that appears problematic (how do you stop an idea?), but it is also the problem of its evaluation (is it cultural? Is it the obvious outcome of material conditions? Or is it criminal?), and of its adjudication (who is going to be responsible for it?).

In relation to the element of moral condemnation, which evidences the fact that punishment is essentially a form of communication, similar issues arise. How is it possible to convey a single shared message (i.e. that something is wrong in itself rather than is wrong because specific groups of people practice it instead of others?) And what about the procedures for the condemnation of the production of harm: is it possible to find common ones (need to use retributive/incapacitative violence vs. need to be civilised)? Further, what can be conceived as adequate punitive mechanisms to deter crimes of such a vast scale and in cases when even death would not be enough for those who are ready to commit suicide?

Finally, the element of the infliction of pain. How can a scale of painful consequences be determined at the global level given that living conditions vary so greatly? Further, is pain the adequate mechanism to communicate that something is
wrong and deter future crimes? Or is it not rather creating more reasons to drift into deviance?

Despite similarities and interrelations, important dissonances and diffractions are produced when punishment is played out at international level through war. These are related basically to the fact that while punishment has been constructed as a practice to control individuals, war has always been a collective practice directed against states or groups. Studies demonstrated that humans tend to follow what the majority of people think is right and to adjust to the environment into which they are inserted (see Milgram’s, or Zimbardo’s experiments). The notion of individual responsibility at the basis of the adjudication of punishment would need to be re-thought and developed for the international context, as would any possible form of international justice (Norrie, 2007). The idea that there are specific dangerous ideas and ideologies that enable the commission of human rights violation is also partly disproved by sociological and criminological investigations. Ideas and cultures are the ways people adopt and respond to structural conditions of inequality and power (Cohen, 2004). They are ways to negotiate social positions. Their criminalization is mainly a response that powerfully manipulates public perceptions and consensus around specific conflicts. So one should ask: can there be a form of punishment in the international sphere if the living conditions vary so greatly? How can a message that something is wrong be conveyed justly? How can it be conceived in a way that truly respects different ways of social organizations? And, obviously, who is to establish what is wrong and how? The problem of international justice more than ever raises the classical critical question “whose justice and whose rules?” It seems that to state that there are “universal rules/values” common to all humans is a way to deny that those who commit such tragedies are indeed “humans” as the others who are suffering from these events and that there is not a special category of people who can easily be defined as “natural criminal” as often mainstream narrative and rhetoric portray. This is not to claim that there should not be an attempt to control and limit harmful behaviour, rather it is to question whether it would be appropriate to simply transpose our system of thinking about deviance to a global level. In the next section, we will describe, using criminological theory, the effects of punitive action in the international sphere.

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4 See in this sense Amnesty International’s slogan: Protect the human!.
Labelling rogue states: criminalising communities and the construction of identity and social relations

Criminologists such as Lemert, Becker and Sutherland have stressed the fact that crimes are not ontological reality, but rather the product of the reaction to these specific acts and their labelling as crimes. Criminality and deviance do not pertain to determined behaviours, rather they are dependent on the reaction to specific acts believed to be dangerous or challenging to specific social arrangements. However, these scholars have also pointed out that the reactive process eventually leads to the very acceptance by the subject of the status of criminal. The subject is likely to finally accept and internalise the image that the others have of her/him and structure their subjectivity around this representation (Mead, 1918). The study of deviance has stressed how not only is what is criminal is defined differently by different societies, but also how this is essentially constructed by social processes and can shape the individual’s perception of him/herself, crystallizing in true identity and eventually amplifying deviance. Although most of these studies concentrated on individual’s reaction to the process of labelling, there has also been some consideration of group dynamics, most notably perhaps the work of Stanley Cohen on the case of the Mods and the Rockers in Britain. In this study, Cohen shows how media processes of demonization and construction of deviance of the group’s activities in Brighton resulted in amplification of deviance and reinforcement of the stereotype (Cohen, 2004[1972]). What appears clear is that the individuals and groups are likely to perceive themselves as outsiders to a specific society.

According to these studies then, social practices are particularly important because they become powerful signifier to normatively define people as outsiders. The war on terror has so far labelled as dangerous radical Muslims and has targeted specific countries. In doing so it has stressed that terrorism had its origin in Islam and religious identity, or that people coming from determined countries and regions of the world are potentially dangerous. These practices and discourses are criminalising whole sections of the global population on the basis of the territory of origin or of religious belief. Instead of producing normalization, these practices are likely to stimulate a process of internalisation of this identity and the image of deviance. As a result, people who are defined as dangerous through practices and discourse may adopt the
straightjacket of nationality, or origin, or religion and become the very danger their ascribed image suggests. In doing so, war is also partly following the rationality of the new penology by which sets of populations are identified on the basis of the risk that they pose and are segregated in places of “advanced marginality” or incapacitated for being beyond integration. If this is partly re-establishing the link between some territory and their populations, as Agamben claims, it is also potentially creating a stigma of territory or religion that can convey a sense of their being inferior/outsiders. Targeting specific territories and communities is likely to brand some people as dangerous and deviants; this defines them as outsiders in the global community on the basis of the territory inhabited or the religion practiced, ultimately amplifying these forms of identification and their ostracism from the so called West and the US leadership.

**Blurring of borders: constructing global sovereignty or the proliferation of borders?**

The impact of these practices on the notion of sovereignty and political authority is difficult to predict. What can be stated is that there are contradictory tendencies. We have seen that wars are currently directed outside states but for the protection of individual’s physical integrity and the rationale of creating order. I have suggested that states are no longer the exclusive authority within a fixed territory. Indeed, some military actions can target organizations within other states’ territories, and foreign and international police forces can act more or less freely in other states. Interference is allowed within borders by different authorities and police forces. Borders are no longer sealed and people living within a territorial state often originate in different regions/states. Thus, it seems that the notion of sovereignty is unsustainable in light of these current developments.

On the other hand, this phenomenon by which the traditional distinction between internal and external mechanisms of defence has been blurred has prompted numerous scholars to call for a global sovereign, some sort of political authority at global level. This, it is believed, will finally solve problems of crime and accountability in the international sphere. Against this view, Rob Walker stresses that this would not be possible because the ways in which subjectivities are shaped are inextricably linked to the existence of the state and the structure of order on which it is based (Walker
Walker argues that the form of belonging upon which the state is built is necessarily constituted on specific notions of space/territory and time in relation to other states and territories. Thus, it will not be possible to re-articulate current forms of subjectivity and authority at a global/imperial level. According to him, we need to re-think the ways through which we organise political life in an entirely new modality.

Through the analysis of war as punishment, contradictory tendencies have been highlighted. On the one hand the current exhibition of power is an attempt to control people and re-constitute their relations with and subordination to a specific state authority (see also Agamben, 1998; 2005). On the other, the US’s display of violence and power is branding entire populations as deviant and potential terrorists. In so doing, it is likely to produce the very terrorist/criminal it is trying to exorcise. Further, military global campaigns conducted in different territories at the hands of different agencies are defining borders and structuring relations in contradictory and overlapping ways. The selection of people on the basis of their belonging to a territory or their religion is inevitably interpreted differently by those in power. The Northern Alliance searched for foreigners on Afghan soil, and President Musharraf does not attempt to identify sympathizers of terrorism in certain areas of his constituency. Put another way, a religious fundamentalist will be identified by different criteria in Pakistan or Egypt from in Italy or Spain. Further, the characteristic of religious identity overlaps and contradicts that of nationality, signalled as possible indicators of danger. Therefore, instead of the production of new form of global order defining the borders of inclusion and exclusion, these differences are potentially giving life to an even larger plurality of sources of power and identification. The dividing lines that define the included and the excluded, along which these wars operate, are inevitably furthering the crisis of the system of sovereignty and enabling new understandings of political authority. If war is currently being used to solve the problem of order in the international sphere, this is potentially destroying the very system upon which that order is meant to rest.

Conclusion:

Understanding war as punishment has been useful to underline how the two systems of internal and external defence are implicated one into the other. The aim of
this paper was to demonstrate the need to engage in a dialogue between disciplines to try to re-think the ways in which a possible global sphere should be constituted. At the moment, punitive military practices are primarily creating more disorder than they are solving and are determining a hierarchical order in which the outsiders are determined on the basis of the territory they inhabit or the religion they identify with. It has signalled the impact that punitive practices have in shaping a political community. Thus, I hope that political theorists will take advantage of the study of the effects of punitive practices in determining future imaginative ways of sharing space and time together. The many questions and doubts left open in this middle of the argument should form a starting point from which this future dialogue could be launched. They are necessary questions we should address if we are to construct any form of global justice. What I hope I have demonstrated is that war is an inadequate mechanism to establish justice. Although military campaigns can satisfy some of the expressive and symbolic functions of punishment, they are likely to produce more problems than they can actually solve. What appears clear is that the current system of order, national and international, which used to be based on the notion and practice of sovereignty, is under great stress and this is further aggravated by the global war on terror. Instead of pushing for a re-articulation of the state based model at global level we may need to think differently about ways of living together without drawing borders. More politics and dialogue is needed to open up different cultural landscapes, otherwise we are left with nothing but some words of Leonard Cohen’s song: everybody knows that the boat is leaking, ….and every body knows that it’s me or you…..

References


