Punishment involves more than just perpetrators, victims, and representatives of the legal and judicial system. Many other groups are also involved, whether as participants in the process of judging and punishing (including families and kin groups), as audiences to the process of enacting punishment (the mass media and the public), or as those affected by it (especially in cases of group or proxy punishment). The conference is particularly interested in going beyond punishment and related phenomena as such (including retaliation, prevention, and rehabilitation) to consider their societal contexts. The focus is thus on legitimacy, social order, and control, and therein more specifically, populism, neoliberalism, misogyny, nationalism, and racism — to name just a few phenomena — in order to understand how the actors are negotiating society.

Punishment: Negotiating Society

Conference 14–16 February 2018

Organisers: Günther Schlee and Timm Sureau
Venue: Max Planck Institute for Social Anthropology
Advokatenweg 36 | 06114 Halle | www.eth.mpg.de
PROGRAM

General overview:

Tuesday, 13.02.2018
Arrival at Apart Hotel & Informal get-together at Nexus

Wednesday, 14.02.2018
INTRODUCTION
PANEL 1: Influencing opinion sovereignty on penal justice
PANEL 2: The ‘liberal’ democracies’ punitive turn
PANEL 3: Crimmigration
KEYNOTE 1: John Pratt: The end of penal populism; the rise of political populism?

Thursday, 15.02.2018
Visit to memorial site ‘Roter Ochse’
KEYNOTE 2 at memorial site: Mieka Brand Polanco: Anatomy of a Racialized Carceral State
Returning to Max Planck Institute for Social Anthropology
PANEL 4: Politics, police and laws of repression
PANEL 5: Legitimacy and international organisations
PANEL 6: Sovereignty

Friday, 16.02.2018
KEYNOTE 3: Franziska Dübgen: Punishment and Social Ontology. Who is the Subject of Crime?
PANEL 7: Conditioning of punishment: neuronal, evolutionist and social
PANEL 8: Dealing with the internal other
PANEL 9: Penal populism
OPEN DEBATE

Notes: Panels are organised as two or three consecutive presentations of 20 min (each directly followed by questions of understanding up to 5 min) and a panel discussion of 20-30 min for dual panels, and 30-45 min for triple panels. Those discussions are initiated by the questions of the first respondent. Thus each presentation has 20 min presentation and 15 min discussion.

The role of the chair is organising the talk, calling up people, time keeping, and sometimes steering the talk. The role of the first respondent is to prepare the first two-three abstract and combining questions during the discussion that follows the presentation.
Wednesday, 14.02.2018

09:00 - 10:00  Sureau, Timm & Schlee, Günther & Turner, Bertram
Welcome & introductory presentations

10:00 – 10:15  Coffee Break

PANEL 1: Influencing opinion sovereignty on penal justice
10:15 – 12:00  Chair: tba
First Respondent: tba

Earbin, Esther T.
“Lobbying for Punishment”

Moore, Hollis
“The Mass-Mediated Pillory: An ethnographic account of participatory punishment in Northeast Brazil”

Dominik Zając
“Internet as a factor of the extension of ius puniendi in space”

PANEL 2: The ‘liberal’ democracies’ punitive turn
12:00 – 13:10  Chair: tba
First Respondent: tba

Koch, Insa
“Liberal Democracy’s Illiberal Turn: Punishment, Class and Coercion at the Margins”

Price, Joshua
“Psychic Wages of Cruel Punishment”

13:10 – 14.10 Lunch Break

PANEL 3: Crimmigration
14:15 – 16.00  Chair: tba
First Respondent: tba

Korvensyrjä, Aino
“German crimmigration – governing transit states and penal limbos”

Cassidy, Kathryn
“The punitive trap: Punishment and labour market controls for migrants”

Borrelli, Lisa Marie
“The Good, the Bad and the In-Between’ – Crime and the Migrant Subject in Bureaucratic Context”

16.00 – 16.15 Break

KEYNOTE 1: John Pratt: The end of penal populism; the rise of political populism?
16.15 – 17.45 Chair:
First Respondent: Keebet von Benda-Beckmann

19.00 – 20.00 Dinner at Restaurant
20.00 – 21.30 Concluding Discussion
Thursday, 15.02.2018

09:00 – 10:30  ‘Roter Ochse’ memorial Halle
   Visit to the memorial site
10.30 – 10:45  Break

KEYNOTE 2: Mieka Brand Polanco: Anatomy of a Racialized Carceral State
10:45 – 12:15  At the memorial site ‘Roter Ochse’
   Chair: tba
   First Respondent: tba

   Returning to Max Planck Institute for Social Anthropology
12:30 – 13.30  Lunch Break

Again at Max Planck Institute for Social Anthropology
PANEL 4: Politics, police and laws of repression
13.30 – 15:15  Chair: tba
   First Respondent: tba

   Albrecht, Hans-Jörg
   “Criminal Punishment and Social Integration”

   von Benda-Beckmann, Keebet
   „Village Police, punishment, and the negotiation of local society in West Sumatra”

   Sirotti, Raquel R.
   “Criminalizing politics? Political conflicts in the Brazilian Supreme court during the First Republic (1890-1921)”
15.15 – 15.30  Break

PANEL 5: Legitimacy and international organisations
15.30 – 16.40  Chair: tba
   First Respondent: Franziska Dübgen

   Wessel, Sarah
   “Punishment, Legitimation and National Identity: The Case of Egypt”

   Bens, Jonas
   “Punishment and Transitional Justice in Normative Pluralism: Assessing the Legitimacy of Punishment with Affect and Emotion”
16.40 – 16.50  Break

PANEL 6: Sovereignty
16.50 – 18.00  Chair: tba
   First Respondent: tba

   Yonucu, Deniz
   “Turkey’s Anti-Terror Law & Its Sovereign Force”

   Tchermalykh, Nataliya
   “Crimea and punishment: case-studies of legal prosecution and punishment related to Crimea annexation”
19.00 – 20.00  Dinner at Restaurant
20.00 – 21.30  Concluding Discussion
Friday, 16.02.2018

KEYNOTE 3: Franziska Dübgen: Punishment and Social Ontology. Who is the Subject of Crime?
09:00 – 10:30 Chair: tba
First Respondent: tba
10.30 – 10:40 Coffee Break

PANEL 7: Conditioning of punishment: neuronal, evolutionist and social
10:40 – 12:25 Chair: tba
First Respondent: tba

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“Neurolaw and punishment – an anthropological perspective”

Eulenberger, Immo
“The role of punishment for the evolution of cooperation and collective violence in the light of evidence from African pastoralists”

Berger, Carol
“Using Violence to End Violence: Collective Punishment and Social Process in South Sudan’s Intercommunal and Ethnicised Conflicts”
12:30 – 13:30 Lunch Break

PANEL 8: Dealing with the internal other
13:30 – 14:40 Chair: tba
First Respondent: tba

Kalaora, Léa
“The fate of women returning to France from Syria: Policy of repression and processes of subjectivation”

Schwarzenbach, Anina
“Legitimacy and Effectiveness of Strategies to Counter Violent Islamist Extremism: A German - French Case Study”
14:40 – 15:00 Break

PANEL 9: Penal populism
15:00 – 16:10 Chair: tba
First Respondent: John Pratt

Győry, Csaba
“Conceptualising Penal Populism: Is Eastern Europe Different?”

Grzyb, Magdalena
“Penal populism: Negotiating feminist agenda – Evidence from Spain and Poland”
16:10 – 16:30 Break

16:30 – 18:00 Open Debate

Chair: Timm Sureau
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PANEL 1: Influencing opinion sovereignty on penal justice

Earbin, Esther T.

Lobbying for Punishment

Max Planck Institute for Foreign and International Criminal Law (Freiburg i. Br.)

Lobbying, in a narrow sense, encompasses any pressure on a government actor to take legislative action; broadly construed, lobbying is political pressure by special interests on government actors to take political action. However it is defined or construed, lobbying is a legitimate part of any democratic system.

In the United States, lobbying is a constitutional right. In Germany, lobbying is not new or rare in the political system, and its role is ever increasing, especially in connection to the European Union. However, in the area of criminal prosecution of infringement under copyright law, there is criticism in both countries that the “copyright lobby”, special interests groups that represent the “copyright industry,” has exerted an excessive amount of influence on the enforcement of copyright laws. At the very basic level, these groups represent the victims of copyright infringement and have a legitimate claim for making sure the law protects their interests. However, this influence intervenes, both directly and indirectly, at every level of the criminal justice system, from legislation to sentencing. This is where the controversy lies.

In criminal copyright law, the notion of lobbying has engendered strong critiques of the legitimacy of the law itself as well as the prosecutorial process in both Germany and the United States. Further, and most importantly, the involvement of U.S. political pressure (motivated by corporate actors) on foreign state actors in regards to criminal copyright defendants has also brought into the spotlight the “long arm of American criminal justice”, where the involvement of corporate actors as victims contributes to harsher punishment, often related to American ideologies, of foreign defendants. The means and methods of punishment are seen as disproportional to the severity of the crime and threatening to fundamental rights in a way that does not further the interests of these groups.

This presentation will provide a general overview of lobbying and what makes it a legitimate part of the criminal justice system in Germany and the United States. However, not all activities associated with lobbying can be seen as legitimate. The research shows how the presence of lobbyists in the system has, in some cases, encouraged or increased punishment for copyright infringement. This presentation aims to show how lobbying activities shape criminal justice policy for good or ill, and possible ways to move forward.
In this paper – based on 18 months of ethnographic research conducted inside and around a penal compound in Northeast Brazil – I address the issue of extralegal televised arrests, a phenomenon that is relatively common throughout Latin America. I approach the televised arrest as a form of punishment (“the mass-mediated pillory”) that is co-authored by a complex array of state and non-state agents, including arrestees as well as their kin and other relations (i.e. employers, pastors, neighbors, etc.).

I draw on fieldwork conducted with Brazilian carceral subjects – those people most directly affected by uneven carceral expansion (i.e. male and female prisoners, ex-prisoners, visitors, and other residents of heavily penalized urban-peripheral neighborhoods). My research participants are avid viewers of local news programs featuring the televised arrest and detention of criminal suspects at the same time as they are among those Brazilians most susceptible to the harms of julgamento midiático (media trial/judgment). Thus, this paper complicates Northern theories of “penal populism” by offering a fine-grained view from the Global South which foregrounds the experiences of the criminalized poor.

My analysis pivots around an account of the televised arrest of a key informant, Leleco, which occurred while I was conducting fieldwork. Leleco’s brief but consequential arrest, and carceral subjects’ diverse responses to it, provide a window onto the interaction of media, justice sector actors, and television audiences (including past and future televised-arrestees). My analysis has implications for the debate about the involvement of publics in the criminal justice system.

As punishment becomes increasingly participatory and public, and as the prison’s pre-eminence as the site of punishment in the modern state is destabilized by the (re-)emergence of the “mass-mediated pillory,” unexpected agentive opportunities arise for research participants to intervene in the field of crime control. Such interventions are possible – thinkable and feasible – because Bahian carceral subjects creatively mobilize injurious televised arrests as actionable narratives (stories that incite action and involve actors in their unfolding). I conclude that televised arrests, equivocal in meaning, are often interpreted by carceral subjects in a manner that provokes immediate pragmatic action and involvement in the ongoing construction of the “criminal justice event.” Importantly this engagement does not necessarily sustain repressive populist measures. Instead, it enables marginalized subjects to govern selves and others in a manner that reduces risk and harm.
From the perspective of criminal law, punishment is the form of institutional condemnation of evil caused by crime. The state exercises the right to punish (\textit{ius puniendi}) for the attainment of socially acceptable goals, defined by “functions of criminal law”. The punishment is intended to satisfy the social sense of justice, to protect social values from further violations or to make it possible to repair the damage. All these functions are aimed at satisfying the needs of society, on behalf of which the law of punishment is exercised - above all: the needs of justice, a sense of security, the need to compensate for harm.

In a traditional sense, these needs reflect the need to protect the interests of a given community (tribe, nation). Such an approach is reflected in the content of the jurisdictional principle, which is based on links binding a given social situation with the state (place, nationality of the perpetrator, etc.).

The unrestricted flow of information that takes place through mass media and the Internet entails a gradual change of optics. A harm caused by a crime, committed even at the other end of the world, will trigger a reflex of compassion or indignation in any corner of the world - as long as the global auditorium gets proper knowledge about it. Because of this knowledge the community living thousands of miles from the place of murder or rape will feel the need to punish the perpetrator. The real character of that need is demonstrated by the content of online comments referring to press materials describing crimes committed abroad.

The above phenomenon involves three important consequences for the shape of the law of punishment, which will be discussed in more detail in the paper:

First, the society of a democratic state, having knowledge about specific social phenomena, can shape its own country's law in such a way that it implements its proper system of values as widely as possible.

Second, the demand to protect legal goods belonging to members of other communities leads to the transformation of their perceptions. The law ceases to protect the life of a German or a Pole, but life as an abstract value. In this approach, criminal law ceases to protect interests, simultaneously embracing universal protection of values.

Thirdly, demands for punishment for crimes committed within other communities contribute to the definition of a common global core of the value system. The demand to punish the murderer, murdering children in the capital of Colombia, expressed by a Polish citizen at an international internet forum, clearly defines his attitude to this type of acts. With the help of the Internet, the global village can more and more fully shape a common system of values that in the distant future may lie at the heart of a unified legal system.

All this allow to put forward the thesis that the appearance of the Internet will significantly modify in the longer term the perception of the limits of the \textit{ius puniendi}. 
PANEL 2: The ‘liberal’ democracies’ punitive turn

Insa Koch

Liberal Democracy’s Illiberal Turn: Punishment, Class and Coercion at the Margins

Law and Anthropology, London School of Economics

At the wake of the 21st century, commentators have rushed to explain what many see as a worrying paradox: the illiberal turn that state policies and practices in liberal democracy have taken. From tougher criminal justice policies to ever shrinking public welfare to an anti-immigrant rhetoric adopted by those who sponsored the official ‘leave’ campaign in the lead up to the EU referendum, scholars have commented on both the punitive and the populist aspect of these developments. Within criminal justice and punishment debates, various explanations have been advanced to make sense of ‘populist punitiveness’ or ‘punitive populism’. These have ranged from cultural accounts that locate the harshening of ‘law and order’ policies in the conditions of late modernity to those who have seen it as an outcome of neoliberalism to yet others who identify the role played by institutional and political-economic factors.

Drawing upon long-term ethnographic fieldwork on a marginalized public housing estate in England, this book offers an alternative perspective. Rather than starting from the question of ‘why’ democracy has taken an illiberal turn, it moves to the ‘how’ and the ‘what’: what democracy means to some of its most marginalized citizens in the first place and how these citizens engage the state. In so doing, the book uncovers a history of class coercion in British state liberalism that unfolds over a longer durée and across a range of different areas of state-citizen relations than commonly acknowledged in narratives of the punitive turn. But top-down state governance is only half of the story. Citizens also appropriate officials, institutions and authorities on their own terms, by withdrawing, personalizing and by-passing the state’s own claims to authority altogether. In so doing, they question liberal democracy’s narrative to be the harbinger of progress and freedom.

The book offers ethnographically grounded answers to larger questions about how citizens come to engage with, and even show support for, illiberal practices and policies in a liberal democracy. This constitutes, in part, a methodological inquiry that brings political and legal anthropology to bear on criminology and criminal justice, and furthers a nascent interdisciplinary endeavour. This innovative methodology in turn generates new and, crucially, more nuanced insights into the material reality of relations between working class citizens and the state, one which dispenses with both the romanticization of past patterns of engagement, and the centring of the state as the principal actor defining the forms and the terms of the relationship. Ultimately, Personalizing the State demonstrates that how we make sense of the punitive paradox—the illiberal turn that liberal democracy has taken—hinges on how we want to view democratic citizenship itself; and that for those at the margins, liberal democracy has perhaps always been an ill-conceived good.
Criminologist Jonathan Simon has observed in the United States a trend toward penalties that are painful, vengeful, and destructive. He identifies this as a popular desire to inflict cruel punishment (Simon, 2001).

Three contemporary cases at a county jail in New York offer a window to a collective affective and psychological investment in incarceration, and in particular popular desire for humiliation and even torture, as well as a willingness to allow law enforcement to engage in psychological manipulation of vulnerable subjects. In all three cases, prosecutors charged mentally ill people with violent crimes. These cases reflect how, despite recent reforms, scant evidence suggests any deep shift in the web of agencies that pipe people, especially the mentally ill, into prison, or a shift in the cruel and humiliating practices these institutions embody.

If this essay were simply to rehearse the cases of mentally ill people put in prison or jail, this would lead to unremarkable conclusions: liberal reforms do not go far enough; it is harmful, counterproductive, and immoral to incarcerate the mentally ill; other institutions, as well as jails and prisons themselves, fail the mentally ill and their families and often lead them to further criminal involvement. These observations are not particularly controversial, and they are based on arguments and evidence that have been presented many times. They may be self-evident.

Instead, this essay is something between a field report and a cautionary tale of the cruel tendencies already embedded within the American version of liberal democracy. On one reading, all three instances show how institutional failure anticipated tragedy. The tragedy is only heightened because it was avoidable. It could have been avoided if educational, mental health, and criminal justice institutions had worked the way they should.

But arguing that the suffering could have been avoided discards the possibility that the suffering performs a crucial social function or serves a social need.

William James thought few of us would accept a world where “…millions [are] kept permanently happy on the one simple condition that a certain lost soul on the far-off edge of things should lead a life of lonely torture” (1891, 333; also see Povinelli 2011, 1-45). But what if this is the bargain that we have implicitly accepted? What if there was a psychic or social wage to be gained by inflicting suffering?

My knowledge of all three cases comes from participating in community-based ethnographic research and advocacy against prisons and jails. I have been part of a campaign to seek justice (posthumously) for Salladin Barton, a mentally ill man who died in solitary confinement in the Broome County Jail in 2015. Abdulsalam al-Zahrani, a student I knew at my university, was convicted of murdering one of my colleagues in 2009. After his conviction, I visited him in Attica. I have also visited Robert Simpson, serving time for conspiring to murder a family in 2008.
To analyse the criminalisation of migration, or crimmigration (Stumpf 2006), in Germany I focus on the institution of Duldung („toleration“) and the model of deportation camps that is currently applied in the German state of Bavaria. The temporary suspension of deportation by an administrative act (Duldung) creates a legal limbo in which the affected individuals are subjected to various sanctions, both criminal and administrative. The deportation or transit camp is a spatio-temporal model partly corresponding to this legal instrument.

I relate the discursive criminalization reproduced in the German political and media sphere – moral panics – which has shaped recent legal change on the federal level to the (local) practice of a „crimmigration law“ concerning „crimes of migration“ and administrative penalisations. As much of the recent crimmigration literature has pointed out, the „crime“ that the so-called crimmigration law seeks to penalise with various instruments seems to be the mere presence of third country nationals on European/ German territory (Aas / Bosworth 2013; Mennel/Mokre 2015). The penalisation of this „crime“ takes many forms and is acted through many institutions and actors.

In which ways do these punitive practices (Aas 2013) stretch the conventional definition of „punishment“ as it was understood in the framework of national criminal justice systems of the nation state? How can we understand the punitiveness of these practices – as well as the punitive discourse of moral crimmigration panics shaping law-making – from a critical race perspective? My analysis takes into account the double dynamics of externalisation/internalisation of contemporary European borders, understood within a (post)colonial genealogy (Rigo 2007; Grovogui 1996).
Practices of ostracism and exclusion enforced by ‘Fortress Europe’ onto the bodies of the migrant subject, manifest and are enacted through European and national laws. The arrival of migrant subjects on the shores of the Mediterranean has fueled a new wave of restrictive laws and policies against the ‘immigrant other’ (Furman et al. 2016), but has also shown that “law cannot be stripped from moral dimensions” (Baudouin 2006). However, reasons behind those laws and their moral entanglements have been often neglected (Lambek 2010; Maynard-Moody and Musheno 2003), especially regarding the intersection of migration and criminal law.

While the nation state is presumed to be accountable for the welfare of its citizens, it partly refuses to take on responsibility for ‘outsiders’ residing on the same national, territorial space (Gupta 2012; Chauvin and Garcés-Mascareñas 2012). While Chauvin and Garcés-Mascareñas (2012) argue that especially « undocumented migrants can make themselves ‘less illegal’ [...] by avoiding crime », recent shifts to target especially criminal migrants (see Leerkes et al. 2012) underline the differentiation within the broader group of ‘migrants’ in more or less deserving. Thus, by categorizing between deserving or less prioritised cases (Vasanyi et al. 2012) and ‘criminals’ a clear construction of bad and good is created. Simultaneously public discourse on moral values is reflected in the exclusion and creation of boundaries from the moral community (Morris 1996). Thus, moral discourse shapes policies and legal frameworks and vice versa. At the same time suffering is brought onto the ostracised subject without much concern, as these subjects are beyond the community (see also Gupta 2012; Arendt 1968). Hence, structural violence embedded in the state apparatus shapes the lives of the excluded, such as criminal migrants, by moralising their presence and actions.

This article aims to explore how moral views reflected in political and public discourse, but also within agencies enforcing migration policies affect, shape and eventually change policies. As a starting point for further research, it tries to conceptualise and theoretically discuss moral implications in the migration regime. First insights of previously collected field observations will enrich the theoretical contribution. The particular focus will be placed on the proliferation of criminal law intersecting migration law asking two questions: How is criminal law applied onto the migrant body versus the citizen? How and to what extent does moral discourse on ‘the good and the bad’ shape this proliferation of law, creating structural inequalities and violence for the migrant subject?
In this paper I argue that the transitional controls placed upon access to the UK labour market for Romanian and Bulgarian nationals from 2007 to 2014 should be understood not only as a form of everyday bordering (Yuval-Davis et al, 2017), but also as leading migrants into a ‘punitive trap’. I argue that such punitive labour market controls form part of a wider regime of using labour as a site of inclusion and exclusion, in which some (e.g. prisoners, the unemployed) may find themselves forced to labour in order to ‘reintegrate’ them into social norms, which deem productive labour to be part of wider citizenship duties, whilst others (e.g. asylum seekers and other migrants) are denied the right to labour completely or to labour on an equal footing with citizens and other migrants. Here I explore specifically how this use of labour as a site of exclusion was negotiated and understood by Romanian migrant workers in South London with whom I carried out ethnographic research from 2009 to 2013. I suggest that the ‘punitive trap’ arose from their exclusion from the labour market as they were forced into bogus self-employment and became dependent on employment agency owners to access paid work. Being bogusly self-employed and unfamiliar with local regulations, they found it difficult to avoid other potential punishments and fines from UK authorities for minor infringements such as failing to submit tax returns. However, the ‘hyper-precarity’ (Lewis et al, 2015) of their position meant that they were not only open to further potential state-sponsored punishment, but were punished by a range of other actors. Agency owners, landlords and those offering support services, such as so-called ‘accountants’ and ‘lawyers’, would often also informally punish certain migrants for not complying to their demands to work long hours or pay excessive costs by withdrawing access to employment, accommodation and the other help and support they needed. In this way, many Romanian migrant workers found themselves trapped in low-paid (and even unpaid), precarious employment and poor living conditions, which they were unable to escape because of the multi-scalar and multi-agentic punishments to which they could potentially be subjected.
From its emergence in the English speaking Western democracies in the 1990s, penal populism has spread much further afield and, as it has done so, it has radically reshaped and reorganized many aspects of penal policy in modern society. In general terms, this has brought about a shift from the emphasis given to protecting the rights of individuals from excessive use of the state’s power to punish to, instead, using those powers, often in the form of innovative measures previously thought to have no legitimate place in the modern world, to protect the public from those individuals thought to put them at risk. Its more specific characteristics have included prioritizing ‘commonsense’ over expert knowledge, empowering victims at the expense of offenders/defendants, and undermining the authority of establishment elites and their role in penal development.

This paper has three purposes. First, it explains how penal populism has come to have such an impact. It argues that it became a useful means of absorbing the anxieties and anger of those who found themselves left behind in the post 1980s economic restructuring of many modern societies. For these outsider individuals, organizations and protest groups, crime and punishment issues came to symbolize the way in which governments were favouring the unworthy and the undeserving at the expense of these more worthy citizens. When governments, from both the Left and Right of the political spectrum, then allied themselves with these populist forces and incorporated their concerns in their crime control policies, this became a way of appeasing and mollifying their anger. Governments able to win their political support and legitimacy by giving way to them on punishment could then continue with their broader programmes of restructuring.

Second, though, the paper argues that penal populism is now giving way to a still more virulent and extensive political populism. This has been caused by the 2008 global fiscal crisis and, at the same time, the emergence of a new kind of victimhood – the threat to national identity itself – brought about by the mass movement of peoples across the globe. The extent of the new fears, anxieties and uncertainties related to these matters has meant that penal populism can no longer perform its shock absorber role. Instead, populist forces have broken out of the penal cage in which governments had carefully corralled and cultivated them and now rage across the political arena, as reflected most vividly by the Brexit decision in the UK and the election of Trump in the USA. What is needed, it is claimed, is not simply new penal measures but a wider programme of governance that will rid an individual society of corruption and inefficiency and, by reasserting authority and nationhood, magically return it to its former greatness. Those who put this vision at risk then become ‘enemies of the people.’ As this has happened, fears of paedophiles and sexual predators, at the centre of penal populism’s attention, are now conflated with fears of difference, of otherness – qualities found in strangers, foreigners, immigrants, asylum seekers, refugees and so on; fears and suspicions periodically fuelled by terrorist outrages that then give further justification to such concerns – and demands for still more expansive and amorphous penal measures to control and prevent such threats.

Third, the paper argues that if penal populism is indeed now giving way to political populism, it also means that, in carrying out its new roles and hunting down its targets (sometimes before they have even committed a crime – at risk of doing so can be sufficient), punishment in modern society moves still further away from the boundaries of what had previously been permissible and into new, uncharted territory.
When he was 15 years old, Bryant was handed a 170-year sentence (with all but 11 suspended) for robbery and “breaking and entering”. For the next decade Bryant grew up in prison while his mother, twin brother, and sister—facing their own battles with poverty—did their best to sustain him physically and emotionally. Since he was released two years ago, Bryant has struggled to find employment, eat regularly, keep a roof over his head, and pay down the court fees remaining from his conviction. Bryant’s story is neither remarkable nor unique. He is one of millions of young black men who are the face—and body—of the American criminal justice system. This ethnographic account bears witness to the everyday experiences of one young black man living through the Age of Mass Incarceration—but it is also a systematic study of a carceral state that firmly opposes racism even while it fills its prisons with black and brown bodies. From the manner in which prosecutors encourage the jury to imagine the child standing trial, to the social and financial burdens Bryant’s family faces, to the myriad punitive measures that organize his life post-release, to the chronic health conditions that incarceration has engraved on his body, it is the very mundaneness of Bryant’s experiences that reveals the anatomy of the racial carceral state. I dissect the common-sense-ness of a system that renders Bryant and his counterparts dangerous criminals, while ensuring that the systematic subjugation of young black men, ravaging of poor communities of color, or relegating entire swaths of the population to a permanent underclass remain topics for cultural outcry, but not crimes.
PANEL 4: Politics, police and laws of repression

Hans-Jörg Albrecht
Criminal Punishment and Social Integration

Max Planck Institute for Foreign and International Criminal Law (Freiburg i. Br.)

It was Emile Durkheim who argued that the primary purpose of criminal punishment is not to serve as an effective instrument of crime control (prevention/deterrence) nor as a tool in search of justice and craving for convincing justification through normative theory and doctrine. But, Durkheim understood criminal punishment as a moral and social institution through which social solidarity (and social integration) is generated. In fact, basic Durkheimian assumptions on the place and role of criminal punishment in modern societies today provide – as Garland pointed out recently – for a foundation of what is called an emerging research field and “punishment und society scholarship.” Penal sanctions not only have a unique potential of inflicting pain and establishing/exerting/demonstrating power (and monopolizing effectively (at least in Europe) the use of force in responding to norm violations). Penal sanctions operate as powerful symbols and are therefore of particular value for policy makers and policy-making. This particular value certainly is due to what Durkheim has addressed as a solidarity enforcing function of criminal punishment. Criminal punishment conveys messages about norms, values and identity to offenders, victims as well as the general public and fosters (hostile) solidarity (which carries in particular a risk of stigma and exclusion). These messages are important because they respond to basic feelings of fear and anger/hate and, moreover, these messages themselves may fuel these basic feelings of fear and anger. Criminal punishment may do both, channelling and controlling anger and accommodating fear on the one hand and provoking fear and anger on the other hand. Not least, punishment may be assessed to be a major source of human rights violations and at the same time may be lobbied for as a most effective way of protecting human rights. Normative theories of criminal punishment have adopted Durkheim’s social integration assumption through emphasizing affirmative functions of criminal law (positive Generalprävention). However, comparative approaches to criminal punishment and penal sanctions reveal significant variation. It is in particular the death penalty, the use of imprisonment (and long prison sentences) and the stance on stigmatizing (exclusionary/degrading) components of punishment which contribute today to an increase in variation and deepening of differences. Then, while some countries experience rapid changes in punishment practices, others exhibit patterns of long term stability. It is difficult to assume that functions of social integration/solidarity request such variation.
Keebet von Benda-Beckmann

Village Police, punishment, and the negotiation of local society in West Sumatra

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In the wake of the reforms after the fall of the Suharto regime, Indonesia embarked on a large scale decentralization policy. The effect of this policy was that new ways were negotiated in which the state relates to society. West Sumatra was among the first to put this policy in effect and organized far going changes at the lowest level of autonomy, that is, local government. In connection with this, various new village institutions were established. Amongst these and probably most problematic, was the village police. Villages differed in the way these village police institutions were established. In some villages the village police are seen as a moderate substitution for the police that are seen as corrupt, distant, and disproportionally harsh in their punishment. Other village police forces are led by persons who served as thugs in Java under the Suharto regime that illegally punished opponents of the regime. They returned to West Sumatra and now punish those who infringe on village property. Elsewhere the village police act as enforcers of local customary law, called adat. The paper discusses how these institutions combine traditional forms of mediation with forms of punishment that often resemble retaliation. It then looks into the extent to which they differ in the degree of using force and the reasons for punishment. This is followed by an analysis of how these village police institutions can be understood: as village institutions under local government, as adat institutions under adat government, as vigilante groups that operate in relative autonomy, or as unofficial extensions of the military. In a final section the question is raised how the village police, with its various combination of negotiation and punishment, may contribute to the renegotiation of local level Indonesian society since the Reforms.
“Criminalization” and “political conflicts” might be amongst the expressions that better describe the daily life of many individuals who lived in Brazil during the First Republic. Encompassing the years in-between 1889 and 1930, the republican political order replaced the previous constitutional monarchy and brought with itself a whole institutional apparatus aimed at controlling those whom its leaders perceived as outsiders, as different – and therefore as "enemies" of the new regime.

Through the lens of historiography, the regular resource to the state of emergency (and the countless exile and arrest that followed), the creation of laws that led to the expulsion or mass deportation of foreigners and the harsh police repression of the workers’ movements tend to appear as the most characteristic elements of the legal responses to a specific part of these "deviant behaviors": political dissent. Departing from a broader theoretical framework, this perception helps to reinforce a specific interpretation. That is the one that over the First Republic, under a liberal and democratic façade, there was the advent of different categories of citizenship or, as suggested by Mario Sbriccoli, of “two levels of legality”.

While political and economical elites had access to the classical guarantees of modern criminal law (namely safeness and predictability), these undesired people had to face the juridical limbo of exception. Outside "Law", they would be excluded from the judiciary's discretion to become the preferred target of police officers, chiefs of police and ministers of justice.

The main hypothesis I intend to develop in this paper – which is part of a broader research, developed for my doctoral thesis – is that the dichotomy rule versus exception, or criminal law versus administrative and police measures, doesn't resist to a more empirical analysis through criminal procedures. I claim that the usages and interpretations of codified criminal law that can be tracked in the records of first instance criminal procedures, habeas corpus writs and appeals contradict the idea that “ordinary” criminal law constituted a zone of legality and protection, in opposition to a space of insecurity and contingency represented by administrative and police measures.

More specifically, what I suggest is that ordinary criminal law did not remain isolated from the repression of political conflicts, nor were exclusively applied to a group of individuals. On the contrary, they functioned as compatible instruments to an excluding and exceptional juridical system as the one consolidated in Brazil during the First Republic.

Aiming to understand these potential uses of ordinary criminal law in a specific context, I started by analyzing 15 habeas corpus writs (which are part of a broader sample, with approximately 45 procedures) judged by the Justices of the Brazilian Supreme Court in-between 1890 and 1921. Based on that, here I will try to systematize some exemplary cases. I will describe 3 situations that clarify some patterns crossing the vast majority of the records. The first of these patterns is the resort to crimes generally defined as “common crimes” to prosecute and punish people involved in political conflicts. The second is that notions like political crime, political criminality and political prisoner played an import role in the course of these legal procedures in a variety of ways. Rather than tight legal or doctrinal categories, they seem to assume floating meanings, which can be altered and disputed according to the interests of the individuals who apply them.
PANEL 5: Legitimacy and international organisations

Sarah Wessel
Punishment, Legitimation and National Identity: The Case of Egypt

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The year 2014 in Egypt marks an important liminal period, in which the military reclaimed and manifested its political power after popular mass uprisings in January 25 2011 had resulted in the ouster of long-term authoritarian president Husni Mubarak. In 2014, Egypt witnessed an exorbitant number of legal cases, mass imprisonments, and death penalties often based on charges that the accused had conspired with foreign groups. Drawing from a comprehensive qualitative-empirical data collection, gained in a long-term field study 2010-2014, including interview data from 125 individuals from various socio-economic backgrounds as well as data from public media and political speeches, I will analyze three different cases and forms of punishment in Egypt in the year 2014 that involve international individuals and actors or are based on legal indictments in reference to international governments and groups. My aim is twofold: On the one hand I am interested in how legal cases serve as an important source for the military to legitimize its claim to rule and which role the representations of international actors and groups play in the dynamics of legitimation. On the other hand I am interested in the societal effects of these representations.

First, I explore the legal indictments against the former president Muhammad Mursi, who had been imprisoned by the state security forces after mass uprisings mid of 2013 and was, among other things, charged for conspiring with foreign groups and leaking state secrets to other countries to illustrate how the state established international actors as a threat. Second, I present a series of imprisonments against employees of International Governmental Organizations as an example for how state actors established the notion to oppose the as such framed international threat. Third, I explore the case of how a „mob“ collectively punished an international team of journalists as indicator for the societal effects of the representations of the international actors as a threat. I argue that the continuous representations of external actors and interventions as a threat and – in an essentialist way – to the Egyptian nation played an important role to legitimize the expansion of political influence and rule by the military, on the one hand. On the other hand, I argue, it served to recreate a public fiction of national unity that was based on the exclusion of any group and individual in opposition to the military.
Punishment by means of criminal justice measures is an integral part of many transitional justice projects. Regarding Africa, many anthropologists have criticized the criminal justice component of transitional justice, the main argument being that criminal proceedings with their emphasis on individual responsibility obscure the structural root causes of violence (e.g. Mahmood Mamdani, Kamari Clarke). As punishment and criminal proceedings have gained a bad reputation, critical transitional justice research focuses on alternatives which purportedly account better for the social-relational causes of violence: (religious) values of forgiveness — be they realized in truth and reconciliation commissions and/or in amnesty laws — or traditional legal systems which appear to focus more on collective (mostly kinship-based) instead of individual criminal responsibility. But these alternatives have their own pitfalls as not least ethnographic investigations have shown. This paper shifts the focus and asks: what are the conditions under which actors see punishment as a legitimate or illegitimate response to past violence?

This paper is based on courtroom ethnography in the International Criminal Court (ICC) in The Hague and ethnographic fieldwork in Northern Uganda around the ongoing war crimes case against Dominic Ongwen of the Lord’s Resistance Army (LRA). All of the above mentioned normative logics and systems are present in the case: international criminal proceedings before the ICC, national criminal proceedings in Uganda, traditional Acholi legal measures, an amnesty law, strong discourses on forgiveness put forth by Christian and Muslim clerics. These normative systems differ in their emphasis on individual punishment. Ten years after the end of the armed conflict different actor groups assess the legitimacy of punishment for Dominic Ongwen (a former child soldier who later in life became an LRA commander) differently. But the picture is fluid: all possible variants of which normative order and hence which degree of punishment is seen as legitimate are present in Northern Uganda.

To explore the question how people navigate this normative pluralism and assess the legitimacy of punishment, one can gain much from investigating the role affect and emotion. When asked, why they find certain legal measures legitimate or not, people tend to illustrate their assessment with the narration of biographical and historical stories in which affective and emotional tropes are encoded. The repertoire from which people derive these narratives are multi-scaled: they can be rooted in very personal biographical stories on the micro-level, in institutionalized discourse on the meso-level (e.g. church, political group, clan), in media-distributed local and national discourses (e.g. the north-south divide in Uganda, the political regimes in East Africa) or in global, historically grounded macro-discourses (e.g. colonialism, the holocaust). By analyzing these emotional and affective narratives one can contribute to rethinking socio-legal concepts such as perceived legitimacy, forum shopping, legal consciousness and perceptions of justice to approach the question how people assess if (individual or collective) punishment is a legitimate response to past violence.
According to research conducted by the Associated Press in 66 countries, which accounts for 70 percent of the world’s population, Turkey alone accounted for a third of all terrorist convictions, with a total of 12,897 in 2011. While in 2005 there were 273 “terror” convicts in Turkey’s prisons that number reached 12,897 after the amendments made to the anti-terror law in 2006. In 2016, after the failed coup attempt, that figure has risen to 18173 “terror” suspects. Until the coup attempt, the main targets of the law were pro-Kurdish and leftist activists. After that alleged coup organizers and their sympathizers have also began to be targeted by the law.

The paper I would like to present draws on courtroom observations and over three years ethnographic study in the stigmatized working-class neighborhood of Istanbul, which are known to be the shelters of radical leftist and pro-Kurdish organizations. Currently, several hundreds of youth from these neighborhoods are detained and/or tried as terrorist suspects. Approaching the law both as a sovereign force and a technique of governance, the paper has two aims. First, it illustrate the ways in which Turkey’s anti-terror law, selectively targets politically active and most respected local figures within the stigmatized and marginalized Kurdish and Alevi communities, effectively intervenes in local politics and space, “polices” (à la Rancière) the communities and leads to the reconfiguration of political space at the local level. Second, the paper elaborates on the relationship between law and sovereignty and/or legal violence and sovereign violence and demonstrates how the seeming suspension of the law grants the state a god-like force. Focusing on the effects of this force, the paper argues that anti-terror, by provoking the feelings of fear, anxiety, anger and deep injustice, not only punishes the accused but their entire social circles.
Crimea and punishment: case-studies of legal prosecution and punishment related to Crimea annexation

Department of Anthropology and Sociology at the Graduate Institute, Geneva

My presentation will look at the transformation of the legal landscape of the post-annexation Crimea, a newly acquired Russian federative subject and, simultaneously, an autonomous republic, virtually still belonging to Ukraine. However yet undescribed in the domain of socio-legal studies and legal anthropology, Crimea, as a subject of disputed sovereignty, is particularly charged with new political and legal meanings. In my presentation I will bring up for discussion several preparatory arguments and present a range of illustrative criminal cases, introducing new aspects of punishment in the context of state-to-state transition.

First, I will describe and analyze the general framework of this transition and will demonstrate how the newly crafted legal tool of automatic (Russian) citizenship for Crimean citizen is used in court as one of the punitive instruments for political dissent. This instrument is targeting mainly two socio-political groups: (A) the anti-annexation activists (self-description: pro-Ukrainian activists), claiming their Ukrainian citizenship and (B) politically active Crimean Tatars (autochthonous, predominantly muslim population, collectively articulating their loyalty to the Ukrainian state).

I will compare those two cases, and will suggest a contextual combination of two terms—coercive citizenship and, especially, punitive citizenship—to arch them theoretically.

Second, I will describe the particularities of the legal complex (Halliday, Karpik, 2007) in newly established Russian courts in Crimea and analyze the judicial mechanisms they are ensuring. On the other hand, I will not only focus on Russian institutions, but also mention the legal responses from the Ukrainian side. By comparing the two agendas, I will show how in the context of state-to-state transition, courts become political actors on their own, producing mutually exclusive legal meanings. In order to describe the complex relationship between the two sets of legal institutions, I will use the term of overlapping legal realities, term which I will unpack and propose for collective discussion.

Lastly, I will put a spotlight on the constitutive role of a rising group of agents—the Russian politically motivated attorneys—and to show how they are trying to utilize and subvert the Russian trials over Crimean activists as sources of hegemonic narrative and to articulate, in the limits of their professional capability (and legal immunity), a form of “liberal” political agenda within the space of the Russian court.

During my presentation, I will show the fragments of Askold Kurov’s documentary Protsess (rus.: the Trial) for illustrative purposes and with the authorization of the author.


The Trial: The State of Russia vs Oleg Sentsov, Digital Copy, directed by Askold Kurov, 2017
The criminal subject as imagined in neoliberalism makes its decisions independently based on rational choice and according to its interests. Accordingly, punishment can function as a deterrent if it outweighs the profit made through a crime. The responsibilization of the subject, however, disregards the social factors determining what counts as a crime and who is being criminalized for which reasons. The utilitarian and preventive turn in punishment theory reveals a colonization of legal thought by the sphere of economics. Contrariwise, drawing on Ubuntu theory from the African context, I argue for taking the social ontology of interconnectedness as a foundation for theorizing justice. This shift promises to reconnect matters of overall social justice to norm stabilization and to take into consideration power relations when conceptualizing crime and subjectivity.
For centuries the concept of legal punishment remained stratified in terms of the causal relationship between the unlawful deed and the penalty imposed, the socio-psychological functions of punishment and the roles of the victim and the perpetrator. However, this traditional network of dependencies is challenged by the vivid emergence of the field of neurolaw, concerned with application of neuroscientific methods and discoveries in the legal system. Perhaps most prominent display of neurolaw is the budding practice of using methods of neuroimaging as evidence in criminal law proceedings, a practice which has the potential to upend the traditionally conceived notion of punishment. Study shows that American courts are more and more willing to admit neuroimaging techniques as evidence, especially in capital cases.

What is most troubling about these developments is the scarcity of theoretical discourse around the issue. The introduction of neuroscientific methods into the legal system is not just, as it might seem, simply another form of evidence. In this presentation, I argue that the current situation enforces a reconceptualization of the traditional notion of punishment and related phenomena. The failure to create a theoretical framework creates danger of misunderstanding and misuse of neurolegal techniques, which carries a grave risk for the legal system.

During the presentation I plan to discuss three groups of questions:

1. Redefinition of traditional notions, roles and functions: Does neurolaw lead to a reductionist equivalence of the malformations/malfunctions of the brain with the crime? Does it mean bypassing the indeterministic concepts of will and guilt? How does the concept of punishment change with the potential redefinition of crime? What happens to the traditional functions of punishment, especially the retributive function? Are the notions of perpetrator and victim still viable?

2. The universal model of the brain: Neurolaw’s norms of punishment lie in the definition of abnormality – who is to decide what the normal brain looks like besides the obvious pathologies? Should we construct the legal definition of a model brain? How and by whom should this be done?

3. (In)equal access: Which inequalities may arise after the widespread adaptation of neurolegal methods? Should evidence neuroimaging be funded by the state, or left in the hands of private companies? If one legal system recognizes neurolegal methods, and another doesn’t, is justice the same in these systems? If a system refuses to recognize neurolaw whatsoever, does it mean that it chooses a “different notion of justice” (if such a thing exists)?

Contrary to the instincts of many hands-on-oriented legal practitioners, these problems can be productively addressed by anthropology and neuroanthropology (a field concerned with the relationship between mind and culture). Attempting to answer the above questions from this perspective will form a final, partially postulative part of the presentation. Such an approach is based on the model of the hermeneutic circle: the new findings will be interpreted in the broad context of the discipline and the influence of this inclusion on the general state of art will be analyzed.
Immo Eulenberger

The role of punishment for the evolution of cooperation and collective violence in the light of evidence from African pastoralists

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Are intra-social punishment practices at the roots of the violent conflicts between groups that have been recorded throughout history and that seem to persist in spite of all efforts to end them? While this question is of central concern in evolutionary anthropology and research, it is nearly absent from debates among social anthropologists, even though both disciplines work on explanations for a large range of related questions and sometimes even study the same populations to answer them.

This paper focuses on such a case: the evidence Ateker pastoralists in borderlands of Kenya, Ethiopia, South Sudan and Uganda provide for interrelated explanations of organised collective violence and high-cost cooperation, dialectics of conflict and integration, the economic enigma of altruistic behaviour and the role of punishment for individual choices and collective practices. Based on cross-cultural comparison and discussing i.e. ‘cultural group selection’ theories, it argues that punishment is central if opportunity costs are included; that altruistic practices make economic sense if the interrelation of uncertainty, reciprocity, group formation and security is appropriately considered; and that, while evolved biological traits form a strong framework for human behaviour, socio-cultural differences of resource use and organisation are responsible for dramatic differences in aggressiveness between societies and sub-societies, cultures and sub-cultures, though culture is ultimately more of a tool than a determinant.
In large parts of the open plains and swamps of Nilotic-speaking South Sudan, heavily armed cattle-herding communities compete for access to grazing and water. The dry season or autumn sees an increase in violent clashes as communities move into high-demand areas, where grass and water are plentiful. In response, the state uses indiscriminate campaigns of violence against communities implicated in the clashes. The military is deployed, weapons are seized, property looted, women and girls are raped and cattle taken.

In my paper I will interrogate the use of violence as social process among the pastoral Dinka people of Greater Bahr el Ghazal Region. Several sections of the Dinka, each section identified with a particular area, are at war over land rights and in revenge for past killings and the theft of cattle. The predominant logic among state authorities, who are themselves Dinka, is that the cattle keepers need to be punished, to be disciplined through the use of violence.

The international community, in a bid to lessen the recurrent cycle of clashes, has relied on a contradictory mix of public campaigns that encourage the adoption of "peace" and support for state-led disarmament campaigns. Thus the humanitarian community, in its embrace of disarmament, effectively sanctions the state's use of punitive and violent measures to reduce the number of weapons within the pastoralist communities.

I will argue that the use of violence among the Dinka pastoralists is an integral part of social process. The expression of force is central to the making of men and the making of women, as well as a means of reaffirming the hierarchy of authority, as recognised by the community.
The return to France from Syria of men, women and children is a matter of major concern to the government. Current legal policy is strictly repressive on security grounds. Men and women returning from Syria are almost always placed in detention pending trial and face long prison terms. It is a policy of “incapacitation” in the strict sense. Viewed as terrorists by prison staffs, who call them “les terro,” they are held under special rules that differentiate them from other detainees.

If the men coming back from Syria know that their return to France means imprisonment, this was not – until very recently – the case for women. The vast majority hoped to escape detention. Upon arrival on French soil, however, these women are arrested, separated from their children and placed in police custody for 92 hours. Almost all are then jailed.

A doctoral student in psychology, I have been conducting clinical research in a French women’s prison since early November. The research consists of clinical interviews with women returnees from Syria.

I would like to use this research as a basis for thinking about the strict imprisonment of women returnees from Syria. What does this treatment tell us about France’s current penitentiary system? How can clinical research, via the stories it elicits, illuminate the mechanisms of the prison system and its psychological effects on the imprisoned?

Clinical psychologists, with their unique training as listeners and observers, are well placed to evaluate the corporal and psychological effects of detention. I would thus like to propose a paper along the following lines:

1. A brief historical review of the fate of women who joined Islamic State, observed from three angles: political, judicial and social.

2. Via one or two clinical cases, an analysis of the psychological effects of France’s policy of repression on women returning from Syria. More broadly, what are the processes of subjectivation involved?

3. Analysis of the interviews to see what light they may shed on France’s prison system and, more broadly, on relations between government, prisons and society as a whole.
Nowadays, the so-called "home-grown" terrorism poses a high security threat and is a top issue on the political agenda of various European countries.

The Islamist radicalization of juveniles and young adults is one source of this – one may argue – "new" form of terrorism that challenges Europe's societies.

Whilst the phenomenon of Islamist radicalization and its causes increasingly gained scholarly attention, little systematic knowledge on the policy and preventive measures implemented to counter it exists.

Germany and France are among the countries in Europe with sizeable Muslim population and therefore, they are particularly exposed to the threat posed by the Islamist radicalization.

Yet, in their endeavour to tackle violent Islamist extremism, the two countries apply different strategies.

For Germany and France respectively, the presentation discusses political and legal regimes to counter terror and prevent radicalization, sheds light on prevention and de-radicalization programs and reflects on the debate about role of Islam in society.

The presentation ends with a critical assessment of the legitimacy and effectiveness of contemporary strategies implemented to fight the threat of Islamist radicalization and to deter and punish terrorist acts.
Despite the enduring popularity and omnipresence of the term, there is surprisingly few focused conceptual and theoretical work on penal populism. This can most likely be attributed to the fact that many authors simply viewed it as a commonsensical term with a clear and obvious meaning: the pursuance of policies that are or are perceived to be popular with the electorate, as opposed to what “works”, as per empirical evidence. Moreover, most of such works concentrate on the US, the UK, Australia and New Zealand. This is why this usage as a catch-all term for a generalized explanation of the punitivity was rightly criticized as too simplistic to be analytically useful: neither is the punitive turn of criminal policy a general condition of late modernity in every developed country, nor are politicians purportedly pursuing popular policies the main factor behind punitivity.

This does not mean, however, that the concept of penal populism, as Michael Tonry puts it, is nothing more than “reification in academic’s minds of other academics’ ideas”.

As I will argue, penal populism remains a useful analytical concept for describing shifts in criminal policy in the past few decades. In this paper, I will revisit and - building on previous criminological scholarship and contemporary theoretical approaches in political science to populism - refine the concept of penal populism. In doing so, I will follow Pratt’s and Lacey’s insight that rather than giving in to generalising statements about late modernity, the key to the comprehension of penal populism as a social phenomenon lies in understanding the complex interplay between various institutional and organisational factors that shape criminal policy-making in any given country. As I will argue, previous concepts of penal populism were too narrowly focused on criminal policy. Using Hungary as an example, I will describe the emergence of penal populism in Eastern Europe as a part of a broader populist realignment of the political system and restructuring of the state.
Penal populism became a way of doing criminal justice across western countries. On one hand the politics in different countries are susceptible to penal populist discourse to different extent. On the other, in each country where penal populism arose one can observe that it embraced different agendas. A very interesting aspect of the development of negotiating the social context of punishment is incorporating the feminist agenda within the penal populist discourse.

It is particularly interesting to observe how penal populism intersects with feminism when it comes to the field of gender-based violence, both anti-rape claims and domestic abuse reforms. There is a quite vast scholarship, particularly in the US, explaining, how feminist activism turned to state power to demand more protection and more criminalization. It would seem a contradictory and illogical such an alliance given that feminism originally was critical movement that contested legal system, and criminal law and criminal justice system in particular, as tools that tend to perpetuate patriarchal domination and women’s social oppression. And paradoxically, feminism turned into a voice calling for increasing criminal repression, reinforcing criminal law as a means of enforcing certain collective interests of discriminated groups, especially in the field of violence against women. However, not in every country where penal populist phenomenon emerged, it has been used successfully to pursue feminist demands.

In my presentation, I would like to analyse the development of the feminist penal populist discourse in two European countries - Spain and Poland, identifying the commonalities and providing with possible explanations for divergences. The problem of intersections between punitive power and feminism is quite well theorized in the US context (where the concept of so-called carceral feminism was coined), however it is problematic to apply its insights in the European context of specific countries.

Tracing the development of penal populism in terms of embracing violence against women postulates in Spain and Poland is warranted since these two countries share some important commonalities such as catholic tradition and authoritarian past. What is more, both countries turned out be susceptible to penal populism. Nevertheless, penal populist agenda developed in assorted directions. Spain encompassed feminist postulates, while Poland did not.

The paper is not aimed at identifying root causes of penal populism in each country or provide comprehensive media content analysis of each case, but rather to seek to answer a general question, why in some countries where penal populism discourse has emerged in political and public sphere, the feminist demands were likely to be addressed, and in others not and what did it mean for the feminist movement itself.

It would be interesting to reflect on specific context of each society. Clearly, I will focus on Poland, its negotiation and legitimation of social order and control and social and ideological context of punishment. It shall help us understand how populism, neoliberalism, misogyny, nationalism and religion – influence the context of punishment.