

Beyond the Traditional Grammar of Punishment: An Introduction



Chiara Magni

(Paris Lodron Universität Salzburg, Salzburg, Austria/Università degli Studi Roma Tre, Rome, Italy;
chiara.magni123@gmail.com)
ORCID: 0009-0008-4399-7716

Anna De Giuli

(Università degli Studi di Milano, Milan, Italy; anna.degiuli@unimi.it)
ORCID: 0000-0003-1074-2895

Giulia Battistoni

(Universität Münster, Münster, Germany/Università degli Studi di Verona, Verona, Italy;
giulia.battistoni.90@gmail.com)
ORCID: 0000-0002-5391-8590

Abstract: While modern criminal law has largely been structured around established notions of individual responsibility, blame, punishment, and reparation, some of the most pressing challenges facing contemporary societies increasingly expose the limits of these categories. This introductory contribution presents the themes and common concerns that animate the essays collected in this thematic issue, namely the growing dissatisfaction with traditional penal paradigms and the search for alternative conceptions of punishment, responsibility, and justice capable of addressing structural injustice, environmental harm, social conflict, and emerging forms of accountability. At the same time, the article introduces the issue's central problem: the tension between individual accountability and the systemic conditions within which wrongdoing and harm take shape. Situating these debates within a broader critical tradition that has questioned the relationship between law, violence, and justice, the contribution examines the opportunities and limits of criminal law as an instrument of social change and explores the extent to which contemporary legal institutions are capable of responding to harms that exceed traditional punitive frameworks.

Keywords: Punishment; criminal law; individual responsibility; collective responsibility; structural injustice; social transformation; restorative justice; transformative justice.

I. The Rationalization of Punishment: Between Legal Justification and Critical Deconstruction

Punishment is among the oldest institutions through which societies have sought to respond to wrongdoing.¹ Yet the history of punishment is also the history of its rationalization,

1 Although the article was jointly conceived, Part I was written by Chiara Magni, Part II by Anna De Giuli, and Part III by Giulia Battistoni.

which aims at circumscribing the field of inquiry to the specifically juridical concept of penalty. Modern legal thought has progressively sought to distinguish punishment from other forms of coercion and violence, narrowing its scope to a specifically juridical framework governed by principles of legality, proportionality, and procedural fairness. Within this model, accountability presupposes a relatively stable architecture: a wrongful act is attributable to an identifiable agent, responsibility is assigned according to established criteria concerning both the objective aspect of the act and the subjective condition of the agent, and an appropriate response is formulated in terms of sanction, compensation, or condemnation by an impartial third party. This framework continues to structure a wide range of contemporary legal institutions.

It may be noted that the long rationalisation process of punitive action coincides:

(1) first and foremost, with the attempt to legitimise the gap between just punishment and legal punishment, an endeavour that has taken different forms over time. Theories seeking to provide a justification for punishment can generally be grouped into three broad categories: (i) retributive theories; (ii) utilitarian theories, traditionally associated with the Enlightenment tradition in criminal law; and (iii) mixed theories. More recently, however, Anglo-American scholarship has challenged the classical foundations of sentencing through the development of “normative justifications” – whether moral (Murphy 2014) or political (Kelly 2018; Caruso 2021). Closely related to this rethinking is the need to conceive punitive practices in a way that also takes into account the structural conditions and inequalities that shape both criminal behaviour and the attribution of responsibility;

(2) secondly, with the gradual transition from “big punishments” to “small disciplines”: the abandonment of exemplary punishments in favour of confinement, ranging from imprisonment to probation, electronic monitoring, and home detention.

Punishment has thus been conceived as a form of *justified* violence. Whether understood through retributive, utilitarian, or mixed theories, it presupposes the legitimacy of inflicting suffering, deprivation, or constraint in the name of a normative order, giving rise to competing accounts of desert, deterrence, rehabilitation, prevention, or social defence. Then, the peculiar link between justice and law is pointed out. It is precisely this presumed connection that has attracted the sustained attention of some of the most influential critical thinkers, who have sought to deconstruct it. Nietzsche, for instance, famously argued that punishment originated in relations of debt and creditorhood rather than in a concern for justice, thereby revealing the historical contingency and violent genealogy of concepts such as guilt, responsibility, and desert:

The equivalence is provided by the fact that in place of an advantage that pays directly for the injury (...) the creditor is granted a kind of pleasure as repayment and compensation – the pleasure of being allowed to vent his power uninhibitedly on someone powerless, the thrill “*de faire le mal pour le plaisir de le faire*,” the enjoyment of violating (...). By means of “punishment” of the debtor the creditor partakes of a *master’s right*: finally he too arrives for once at the elevating feeling of being allowed to despise and abuse a creature as something “beneath him” – or

at least, in case the actual punishing authority, the execution of punishment has already transferred to “the authorities,” he is able to see the creature despised and abused. The compensation therefore consists in a court order and right to practice cruelty (Nietzsche 2014, 253–254).

Another paradigmatic author in this respect is Walter Benjamin, who famously challenged the assumption that law and justice are interchangeable concepts, arguing that every legal order remains inseparable from both law-founding (*die rechtsetzende Gewalt*) and law-preserving violence (*die rechtserhaltende Gewalt*). Jacques Derrida, in turn, distinguished law as a historically situated and therefore deconstructible institution from justice as an experience of the impossible. Yet this impossibility does not amount to a negation of justice; rather, it is precisely in its fundamentally unattainable character – which grounds the deconstructive nature of law – that justice is most fully honored and finds its strongest defense (Derrida 1992). For all these authors, the crucial issue is how to make sense of a form of violence that is simultaneously constitutive of law *and* responsible for its preservation. The latter aspect was articulated most clearly by Kant, for whom

Right should not be conceived as made up of two elements namely an obligation in accordance with a law and an authorization of him who by his choice puts another under obligation to coerce him to fulfill it. Instead, one can locate the concept of Right directly in the possibility of connecting universal reciprocal coercion with the freedom of everyone. (...) Right and authorization to use coercion therefore mean one and the same thing (Kant 1991, § E, 57–58).

Yet the claim that violence is also constitutive of law is the truly unsettling one, since it reveals that the legal order cannot be understood solely as a rational mechanism for restraining violence, but must also engage with the fact that violence is inscribed in the very moment of the legal order’s foundation. This appears to compromise any attempt to secure the autonomy and purity of law as a distinct rational sphere. In his recent book *De la violence à l’institution. Philosophie juridique de Hegel*, Jean-François Kervégan (Kervégan 2025) reflects precisely on this issue, showing that Hegel himself was far from ignoring the problem of the relationship between violence and law, including in its constitutive dimension. The German term *Gewalt* itself denotes both violence and legitimate authority – a polysemy that seems to capture its intrinsic ambivalence. Kervégan argues, however, that the Hegelian conception of power, understood as *Macht*, differs fundamentally from violence by virtue of the mediations through which it operates, mediations that allow it to be comprehended within the sphere of rationality. This is reflected precisely in the most familiar juridical regulation of the use of force, namely punitive power: for Hegel, the second coercion [*Zwang*] should not be understood as a form of violence externally imposed by society upon a recalcitrant empirical will, but rather as an internal requirement that the free will conform to its own concept – to the point that punishment is described as a “right posited in the criminal himself” (Hegel 2008, § 100, 102). From this perspective, whereas Benjamin conceives law in terms of the reproduction of founding violence, Kervégan,

following Hegel, emphasises its role in the protection and actualisation of freedom, while nonetheless acknowledging its constitutive impurity. The juridical sphere, though necessary for overcoming the stage of anomic violence, does not naively erase every trace of it. Violence remains, as Kervégan writes, “present at the margins of law, both before and beyond the normative order it institutes” (Kervégan 2025, 49, our trans.). In the Hegelian view, the legal order is indeed anchored in that which radically negates it; yet this does not function as a principle of legitimacy, but rather constitutes an ineliminable moment of its genesis – one that is merely phenomenological rather than foundational.

For Derrida, by contrast, the origin of law is neither legal nor illegal: it belongs to a “mystical” dimension (Derrida 1992, 14) in which the very categories of legitimacy and illegitimacy have not yet been constituted and which exceeds the opposition between founded and unfounded. The origin of law is not, therefore, an anomic act identified as such with respect to a normative horizon, but rather an act that wholly exceeds any preliminary articulation of such dimensions. For this reason, law is, in the Derridean sense, essentially deconstructible: not because it rests merely on contingent or revisable normative layers, but because its ultimate foundation is itself without foundation, exposed to the groundlessness that inhabits every instituting act. Yet such a deconstructible nature does not simply undermine law; rather, it opens the very space in which justice can be conceived as something irreducible to law itself. It is in this sense that deconstruction is not external to justice but coincides with it: “deconstruction is justice” (Derrida 1992, 15), insofar as justice names precisely that excess which prevents law from closing in upon itself as a self-sufficient order.

Beyond possible interpretations, what is certain is that to overlook these aporias would be to disregard the entire critical effort aimed at exposing the limits and blind spots of legal orders – an effort that Derrida rightly attributed to “the articulation between literature and philosophy, law and politico-institutional problems” (Derrida 1992, 8). From this perspective, the contribution of authors within the critical tradition has been, and continues to be, indispensable for revealing the constitutive tensions that inhabit modern legal and punitive institutions. Their enduring value lies precisely in the fact that they leave us with “disparities and disputes at least as much as [they leave us] with agreements, with coincidences or consensus” (Derrida 1992, 9).

This also means that a critical dimension is immanent to law itself, by virtue of the very way in which law is constituted: an immanent critique of law thus implies a fundamentally open conception of the juridical order. This does not merely mean that law is historically conditioned, and therefore subject to change, nor simply that it can never be regarded as a definitive system. The issue is not only one of incompleteness, but rather that law’s claim to validity as a normative order must always be accompanied by an awareness of the possibility of its own deconstruction, grounded in its constitutive “impurity”: this means that its legitimacy can never be taken as fully secured once and for all. It is therefore no coincidence that contemporary critical legal approaches,

especially in the field of punishment, have increasingly moved away from a conception of responsibility centred exclusively on the individual offender and have instead sought to take into account the broader structures of domination, inequality, and injustice that legal institutions may reproduce or reinforce. At the same time, they have progressively embraced a more prospective and future-oriented understanding of justice, one that is not exclusively concerned with the retrospective attribution of responsibility, but also with the transformation of the social conditions that give rise to criminal conduct.

The contributions gathered in this issue take shape within such a broader horizon of inquiry, from which arises the awareness that some of the most pressing challenges facing contemporary societies expose the limits of the traditional juridical grammar through which justice has long been conceived. This grammar is structured around a consolidated set of concepts – individual responsibility, fault, imputation, punishment, compensation, and reparation – which play a central role within legal systems. However, when these categories are confronted with phenomena such as structural discrimination, historical injustice, mass violence, and other forms of systemic harm, their insufficiency becomes increasingly evident in capturing the complexity of ongoing processes and the role that law is called upon to play. This tension has generated a growing body of scholarship aimed at rethinking the relationship between responsibility, punishment, and social transformation. Rather than asking exclusively who is to blame for a past wrong, these approaches increasingly inquire into the conditions that enable injustice to persist, the forms of accountability appropriate to structural harms, and the institutional mechanisms capable of fostering social change. The focus shifts, at least in part, from the retrospective logic of desert to prospective concerns with prevention, transformation, repair, and collective responsibility.

One area of inquiry concerns the philosophical foundations of punishment, which have been increasingly revisited in light of the inadequacy of exclusively retributive frameworks for addressing contexts marked by structural violence and enduring inequalities. Indeed, the prison system itself has become the object of increasingly intense debate, driven by longstanding concerns over prisoners' rights and extending the biopolitical critique that highlights the intrinsic link between punishment and power. In light of often alarming prison conditions and the phenomenon of mass incarceration – particularly in the United States – the legitimacy of imprisonment as the default response to crime has been progressively challenged. This crisis concerns not only the effectiveness of punishment, but more fundamentally its normative justification, opening a theoretical space in which abolitionist perspectives (Davis 2003; Coyle & Scott 2021; Ricordeau 2026) and alternative paradigms have emerged. Since the 1990s restorative justice has developed as a response to the limits of retributive criminal law (Zehr 2002; Van Ness & Johnstone 2013). It reorients the response to wrongdoing away from punishment and toward the repair of harm through the active involvement of victims, offenders, and communities, emphasizing dialogue, accountability, and reparation. Its diffusion has been remarkable,

both in theoretical scholarship and in practical implementation. A particularly significant example in this regard is Italy, where the Cartabia Reform introduced a comprehensive regulatory framework for restorative justice, marking one of the most ambitious attempts to integrate restorative practices into the criminal justice system (Legislative Decree No. 150 of 10 October 2022, implementing Law No. 134 of 27 September 2021).

Alternative conceptions of responsibility are also explored that move beyond individualistic models and emphasize collective or political forms of accountability, as exemplified by debates in environmental justice and transitional justice, within a perspective according to which legal institutions are capable not only of sanctioning wrongdoing but also of shaping social meanings and promoting cultural change. This broader understanding of responsibility raises further questions concerning the actors and mechanisms through which normative change can be pursued. On the one hand, legal institutions may seek to influence collective understandings and social practices through the expressive dimensions of law. On the other hand, processes of accountability may emerge outside formal institutions, through social practices that enforce shared values and regulate public behaviour within communities. The contributions situated within this broader line of inquiry examine both the transformative ambitions of criminal law and the role of informal social sanctions in shaping norms, expectations, and practices of accountability. Within this framework, transformative justice has emerged as an approach developed primarily within grassroots traditions to address harm without relying on punitive state institutions. Rather than focusing on formal legal procedures, it seeks to respond to violence and harmful conduct through community-based practices oriented toward structural change, with particular attention to the social and cultural conditions that make harm possible and to the long-term transformation of those conditions (Evans 2018; Pelsinger 2025).

Taken together, these debates suggest that the most pressing challenges facing contemporary legal and political thought cannot be reduced to the identification of individual wrongdoers or the retrospective allocation of responsibility. Rather, they call attention to the institutional processes through which harms are generated, sustained, and normalized, inviting a re-examination of the relationship between individual conduct, collective practices, and the broader frameworks within which injustice takes shape. These broader concerns become particularly salient when harms are rooted in enduring relations of domination and affect individuals as members of socially disadvantaged groups. In such cases, the tension between individual accountability and structural injustice emerges with particular clarity, raising questions about whether criminal law can adequately respond to harms whose origins lie in systemic social conditions rather than in isolated acts of wrongdoing. Gender-based violence and femicide provide a paradigmatic illustration of these difficulties.

II. Addressing Structural Injustice: Symbolic Functions and Structural Limits of Criminal Law

Within anti-discrimination literature, a so-called “structural turn” has been gaining ground for quite some time (Bagenstos 2006; Burns 2008). Recently, Shreya Atrey has conceptualized the structural turn as follows:

(...) in contrast with the liberal view which sees the harm of inequality/discrimination as something inflicted by and against individuals or collectivities through specific acts or omissions. The structural view places individual victims and perpetrators within the broader dimensions of the social, economic, legal, political, psychic and cultural contexts in which they exist and the power relations within them (Atrey 2025, 154).

This involves a shift in perspective in understanding discriminatory phenomena and in providing an institutional response to counter them. It should be noted that not all structural harms coincide with structural injustices (Young 2011; Wolff 2024). For example, several cases of harmful pollution produce a structural harm that affects the collectivity, without falling into the category of structural injustice. Indeed, structural injustice concerns social structures whose functioning leads to the creation of harms against individuals belonging to social groups, which are deemed an injustice insofar as they are linked to dynamics of domination² or generate severe vulnerability (Wolff 2024).

The recognition of certain discriminatory dynamics as systemic has raised demands for such conducts to find a specific criminal typification.³ The objective is to bring to the fore the disvalue produced by phenomena of structural injustice that hinder substantial equality. In particular, their legal translation can give rise either to autonomous offenses, such as femicide, or to the introduction of specific aggravating circumstances that take into account forms of discrimination based on gender, race, and sexual orientation, among others. Such configurations are traced back and grouped together by some authors through the use of the expression “anti-discriminatory criminal law” (Pelissero 2024a; Perin 2024; Londoño Martínez 2025). In this way, criminal law focuses on those forms of wrongfulness that are linked to membership in a social group. However, if the punitive intervention is isolated from other public policies, the risk is that of slipping into penal populism, exhausting itself in a purely symbolic use of the sanction that leaves the matrix of the problem intact.

This section reflects precisely on the introduction of such offenses into criminal law. In particular, the core of the problem lies in the discrepancy that arises between countering

² Note that in the definition proposed by Iris Marion Young the element of domination is central. For Young, a structural injustice “exists when social processes put large groups of persons under systematic threat of domination or deprivation of the means to develop and exercise their capacities, at the same time that these processes enable others to dominate or to have a wide range of opportunities for developing and exercising capacities available to them” (Young 2011, 52).

³ On the limits of retributive punishment for structural harms and the proposal of a “transformative sanction” based on Iris Marion Young’s Social Connection Model, see (Guljar 2026) in this thematic issue.

a phenomenon of structural discrimination that has deep and widespread roots and an instrument that acts after the harm has been committed by a single individual. In other words, criminal law intervenes on the symptom – the manifestation by an individual of a conduct that falls within a structural injustice – but not on the matrix of the problem – the social structure that allows its maintenance. From this observation, three questions follow: is criminal law suitable for a harm stemming from a structural injustice? Can attention to the structural dimension of the harm be understood and driven forward by institutions? Is the penal instrument sufficient to produce effects that go beyond the single punishable episode? The following analysis addresses these questions, contextualizing them through the case study of the crime of femicide, recently introduced into the Italian legal system by Law 181/2025, which entered into force on December 17, 2025.

From a first perspective, the question of adequacy does not merely revolve around whether such conducts call for punishment. Indeed, the disvalue of those conducts that perpetuate a structural injustice lies in their conflict with the core prerequisites of a democratic and egalitarian society, as well as in the negation of equal human dignity.⁴ Such reasons often constitute the foundation of the penal relevance that the legislature recognizes in similar offenses. In this sense, the infliction of punishment finds its foundation also in requirements of negative general prevention (intimidating-deterrent) and positive general prevention (cultural orientation) (Marinucci, Dolcini, & Gatta 2023). In this thematic issue, Jorge Fernández Mejías (Mejías 2026) takes up the promotional function of law as defined by Norberto Bobbio (Bobbio 1969), in order to investigate the conditions that render legitimate the recourse to criminal law as a driver of social change. In this section, instead, I intend to investigate whether punishment can in some way be an adequate tool to respond to a phenomenon of structural injustice. In other words, whether punishment can have some type of impact on the matrix of the structural problem.

Indeed, as previously noted, structural injustices are not mere wrongful actions of an individual agent. In fact, every (discriminatory) action of an individual concurs, together with that of other agents and institutions that are part of a specific social structure, to the maintenance of the objectives and interests defined and accepted within that structure. There is, therefore, a sharing of values and social norms within that community that makes the maintenance of those injustices possible. In other words, injustice also passes through interpretative codes and social meanings that qualify a specific behavior as legitimate or acceptable. It is evident that this is a complex phenomenon, precisely

4 The European Court of Human Rights has also ruled in these terms on a case concerning hate speech. “The present case is characterised, in particular, by the fact that the applicant was punished for statements classified by the domestic courts as ‘hate speech’. Having regard to the relevant international instruments (see paragraphs 22-24 above) and to its own case-law, the Court would emphasise, in particular, that tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance), provided that any ‘formalities’, ‘conditions’, ‘restrictions’ or ‘penalties’ imposed are proportionate to the legitimate aim pursued” (European Court of Human Rights 2003, *Gündüz v. Turkey*, n. 35071/97, 4 December).

because it is widespread at a social level: not only due to the subjects who take part in it, but also due to the distinct manifest or implicit ways in which one contributes to the maintenance of a specific belief system. If the objective is to eliminate these phenomena at their roots, it is necessary to diversify counter-strategies, precisely to impact the matrix of the problem. In this sense, criminal law can be a locus of safeguard and an instrument of social influence, but it can in no way be considered a self-sufficient means to trigger social transformation. In this respect, providing a tout-court answer to the question of the adequacy of criminal law in tackling structural injustice is simplistic and partial. The variables that affect this answer necessarily have to do, among others, with the social and legal context, and the presence (or absence) of a solid and structured intervention program for an effective social transformation. Added to this is the fact that even the repeal of legislative provisions linked to forms of structural discrimination – demanded by those who support an extreme liberal position – is anything but free from criticism: both because of the obligations assumed at the international level, and because of the message it conveys regarding the disvalue of certain discriminatory conducts (Pelissero 2024b).

If the strictly repressive and individualizing efficacy of the penal sanction is unable to dismantle structures of oppression, a part of the response to structural injustices nevertheless lies in the expressive-epistemic function of law, that is, in the capacity of legal language to name the structural harm. In this sense, Catharine A. MacKinnon observed that “you can’t change a reality you can’t name” (MacKinnon 2007, 89). The use of certain terms within the language of the law contributes to the epistemic recognition of phenomena of structural discrimination. This aspect was highlighted by those who supported the legislative reform that led to the integration of the crime of femicide into the Italian legal system (Di Nicola Travaglini 2025; Boiano 2025). In this regard, Ilaria Boiano observes:

Refusing to legally recognise violence for what it is – an exercise of patriarchal power, fuelled by sexist hatred – means leaving the legal sphere open as a context for legitimising it, whilst overlooking the fact that the attempt to address it in legal terms has made it possible to reshuffle the cards on the table of social relations and legal practice (Boiano 2025, 16, our trans.).

This leads directly into the domain of the symbolic functions that this type of legislative intervention can have. Indeed, the introduction of an autonomous crime of femicide performs a signalling function, in which the legislature gives attention and prominence to a serious and widespread phenomenon, also in relation to the situation of social alarm linked to it (Ferraro 2026). However, the core issue remains the real capacity for social influence, in order to attack the very root of the phenomenon.

Offenses linked to structural injustices, in fact, present extra-legal concepts that render them indeterminate. This determines a problem in terms of institutional translation, raising the doubt as to whether adjudicating bodies are effectively capable of

understanding the normative text and applying it to concrete cases. In this perspective, however, one could hypothesize that even symbolic criminal law might fall within an interactive legislation process – a theoretical approach used especially in health law and bio-law. This model, indeed, “builds on broad processes of interaction among a great number of societal actors at all stages of the norm-making and implementing processes” (Van der Burg 2015, 7). Within the paradigm of interaction falls the communicative approach to legislation, in which several further functions are recognized in addition to the traditional ones (protective and instrumental). Specifically, Francesco Ferraro (Ferraro 2026) identifies the following functions: cognitive,⁵ rhetorical,⁶ constitutive,⁷ expressive⁸ and reactive.⁹ Through these functions, the introduction of extra-legal concepts into the language of the law ceases to be merely a factor of indeterminacy and allows for the identification of a common vocabulary among the subjects belonging to an interpretive community, thus delineating the limits of the interpretative framework in the legal field. In this sense, the impact on the matrix of the structural injustice problem would be achieved through the influence of social meanings:

[Law] can alter the social norms that provide interpretative codes (that is, determine which meanings to attribute) and, through these changes, it can alter the social norms that govern behaviour. This chain of symbolic changes can lead, and often does lead, to social and behavioural changes: by changing the way people think – their mindset – one also changes the way they act (Ferraro 2026, 213, our trans.).

This potential cultural change that can be conveyed through criminal law must, however, be measured against current social understanding and the modalities through which it is possible to intervene. In this sense, the use of aggravating circumstances can be a more effective and balanced tool to generate an understanding of certain extra-legal concepts by the community of experts. This is due to the fact that the aggravating circumstance rests on an already consolidated base offense, reducing the impact of interpretative uncertainties on the level of the sanction. On the contrary, the provision, instead, of autonomous crimes, such as the case of femicide, can increase applicative complexity, thus undermining its effectiveness. Although it is still too early to evaluate it, this problem is already emerging in some recent measures in Italy (Gatta 2026). The

5 “Communicative legislation provides a vocabulary – a set of terms – that shapes how interpreters – legal and political actors – perceive social reality” (Ferraro 2026, 104, our trans.).

6 “Communicative legislation provides rhetorical arguments and *topoi* that are subsequently used in public debates (legal, political and ethical)” (Ferraro 2026, 104, our trans.).

7 “Communicative legislation constitutes an ‘interpretive community’, that is to say, it fosters the formation of a group of official and unofficial interpreters: legal and political actors, as well as ordinary citizens, who are involved in matters relating to the application of the law” (Ferraro 2026, 104, our trans.).

8 “It is one of the most significant functions of communicative legislation, consisting of ‘giving voice’ to the values that society considers most important” (Ferraro 2026, 104, our trans.).

9 “Thanks to its ‘open’ nature, communicative legislation creates forums for discussion and new decision-making structures, where the general public and officials interact to adapt the law to social needs” (Ferraro 2026, 105, our trans.).

arguments adduced to deny the crime of femicide reproduce discriminatory beliefs that highlight a lack of understanding of the phenomenon of femicide as a structural injustice. In this way, the structural dimension of the harm remains foreign to the legal culture of the courts: the lack of understanding of the phenomenon blocks its practical application, making it a merely formal intervention that provides only an apparent protection. After all, the proposal of the Italian legislature is an example of symbolic criminal law, not oriented towards achieving the declared purpose of countering gender-based violence. It is an “alibi” legislation (Ferraro 2026, 33) that manipulates public perception because the legislature, although apparently providing a response to a structural injustice through the punitive instrument *par excellence*, in fact does not invest sufficient resources in prevention and cultural education. A similar problem had occurred in the past also in the area of hate speech. Barbara Giovanna Bello (Bello 2019), in fact, highlighted several reasons that make protection through the criminal instrument complex, identifying them in the difficulty of socially understanding the disvalue of certain verbal aggressions, in their negative impact on the health of the recipients, and in the epistemic uncertainty linked to their identification. In other words, there can be no structural impact if legislation is not outcome-oriented with respect to the modification of the belief system. This endeavor requires, in fact, a diversified, comprehensive response supported by adequate economic resources.

In conclusion, it has emerged that the penal instrument cannot be the only tool providing a response to a structural injustice; otherwise, it functions as a mere legislative alibi aimed at promoting a distorted perception regarding the commitments undertaken to counter a phenomenon that has a structural matrix. The use of this type of symbolic legislation is inevitably linked to purposes of social consensus. However, this type of response, although it still performs a signaling function, is insufficient to respond to a structural injustice. Instead, the use of the language of criminal law, together with other strategies that act more effectively on the matrix of social injustices – the discriminatory social culture and all those mechanisms that allow its maintenance – can be useful precisely due to the functions performed by a communicative legislation that impacts, among other things, the creation of the interpretative framework within which the recognition of that phenomenon is situated.

III. Overview of the Contributions

Despite their different theoretical premises and objects of inquiry, the seven contributions collected in this issue share a common concern: they interrogate the meaning, justification, and functions of punishment in a context marked by growing dissatisfaction with traditional penal paradigms. Retribution, individual blame, proportionality, and imprisonment increasingly appear inadequate for addressing structural injustice, environmental harm, social conflict, and emerging forms of

responsibility. The contributions therefore question the limits of punitivism and explore alternative or complementary responses to wrongdoing and harm, including restorative, transformative, preventive, and prospective forms of justice, as well as new conceptions of responsibility extending beyond individual fault. The first four contributions develop conceptual frameworks for rethinking punishment, responsibility, and justice. The final three examine how such questions arise in concrete legal and social contexts, including environmental harm, social punishment, and affirmative consent legislation. In what follows, the main lines of argument and the principal contributions of each article will be briefly presented.

Marina Beraha's contribution *Utilitarianism and Prison Abolition: A Normative Perspective* mobilizes utilitarianism in an original way by drawing on Bentham's penal thought not to justify imprisonment, as utilitarian theory has traditionally done, but to support its abolition. If deterrence is regarded as the principal justification of punishment and harsher sanctions are assumed to produce greater preventive effects, this logic conflicts with the utilitarian principle of frugality, which requires minimizing suffering. Through a novel reading of Bentham, the paper shows that his primary concern is crime prevention through indirect legislation and the removal of the social causes of offending. Integrating this account with contemporary debates on punishment, incarceration and restorative justice, it argues that a genuinely utilitarian approach should prioritize harm reduction through social restructuring and restorative responses rather than deterrence-centred imprisonment.

María Fernanda Miranda González's article *Beyond Retribution: Walter Benjamin and the Case for Prospective Justice* extends the critique of traditional punitive paradigms by challenging an even more fundamental assumption of modern penal thought, namely that justice is necessarily grounded in retribution and proportional punishment. The author argues that this paradigm, grounded in a logic of debt and repayment, continually postpones justice to the future and is therefore unable to realize it in the present. As an alternative, she proposes a notion of "prospective justice" inspired by Walter Benjamin's Jewish-messianic conception of time. Rather than focusing on punishment, prospective justice seeks to address the social and institutional structures that produce injustice, emphasizing human dignity, collective agency, and the possibility of realizing justice in the present through the interruption of existing relations of domination.

Idoia Quintana Domínguez's article *Punishing and Forgiving: Contributions of Deconstruction to Contemporary Debates on Justice* pursues a related attempt to rethink the meaning of justice beyond inherited punitive categories, approaching this task through Derrida's reflections on forgiveness and its complex entanglement with punishment. Derrida's account of forgiving the unforgivable locates forgiveness beyond logics of proportionality, reciprocity and calculation, while maintaining it as an "impossible" experience that resists institutionalisation and measurable outcomes. Yet the boundary between punishment and forgiveness is neither external nor rigid. This makes forgiveness

a critical lens through which to interrogate punitive, restorative and transitional justice, as both a possible opening beyond punishment and a means for managing harm and normalising conflict.

Arif Guljar's article *Reimagining Justice Beyond Blame: Defending Iris Marion Young's Social Connection Model* defends Iris Marion Young's Social Connection Model (SCM) as a framework for addressing responsibility for structural injustice and resolving the "punishment dilemma": the liability model is conceptually ill-suited to systemic harms, yet impunity is morally unacceptable. Reconstructing the SCM's features and parameters, the article argues that responsibility for structural injustice derives from social position and participation in interconnected processes rather than from blame or direct causation. Drawing on Virginia Mantouvalou, Serena Parekh and Young's critique of resentment, it develops the idea of transformative sanction, understood as punitive or quasi-punitive measures aimed at forward-looking structural disruption rather than backward-looking desert. The article concludes that transformative sanction offers a third path between retribution and impunity by orienting accountability toward institutional and structural transformation.

Giulia Battistoni's article *Preventing, Repairing, Punishing: The EU Environmental Crime Directive as A Hybrid Response to Environmental Harm* brings these questions into the environmental domain, where diffuse and cumulative forms of harm challenge traditional models of responsibility and punishment. The temporal and diffuse character of environmental harm often obscures causation, the attribution of responsibility, the justification of punishment and even the definition of harm itself. These challenges reveal the need for clearer normative frameworks. Against this background, the article examines contemporary debates on environmental responsibility and punishment and analyses Directive (EU) 2024/1203. It argues that the Directive introduces a hybrid response to environmental harm, combining individual, corporate, and institutional responsibility, retributive and preventive rationales of punishment, and retributive, restorative, and transformative approaches to justice.

Natalia Witosza's article *From Celebrities to Ordinary Citizens: Limits of the Legitimacy of Social Punishment* examines whether social punishment practices should apply differently to celebrities and non-celebrities. Adopting the method of reflective equilibrium, it argues that the legitimacy of social punishment depends on the wrongdoer's social status and, more specifically, on the degree of epistemic power they possess. The paper distinguishes between celebrities, quasi-celebrities and non-celebrities, maintaining that social punishment is generally justified only for celebrities and, in qualified cases, for quasi-celebrities. Because it can reduce epistemic power and mitigate its harmful effects, social punishment is often more appropriate for public figures. By contrast, non-celebrities and most quasi-celebrities should be subject only to private punishment, which poses fewer risks of disproportionate harm and better supports social reintegration.

Jorge Fernández Mejías' article *Can Criminal Law Drive Social Change? The Promotional Function and the Affirmative Consent Debate* brings the discussion to one of the most contested functions of criminal law: its capacity to contribute to social and cultural transformation. Using the Spanish affirmative consent model as a case study, it distinguishes between protecting negative sexual autonomy – the right not to be subjected to non-consensual sexual conduct – and promoting positive autonomy. Drawing on Bobbio's distinction between the conservative and promotional functions of law, the article analyses affirmative consent from three perspectives: declaratory, conditioned promotional and normative framing. Through these lenses, the article demonstrates that the promotional justification of affirmative consent fails to meet their respective requirements, meaning it cannot legitimately be deployed to entrench a specific communicative model. The article concludes that criminal law should play only a subsidiary, consolidating role in cultural transformation, leaving broader promotional aims to social and educational policy.

Taken together, the contributions collected in this issue provide an original and theoretically diverse exploration of how punishment and justice can be reimagined today, challenging entrenched dichotomies between punishment and impunity, individual and collective responsibility, and retribution and social transformation.

References

- Atrey S. 2025. "Equality Law: A Structural Turn," *German Law Journal* 26(2):153–169.
<https://doi.org/10.1017/glj.2025.1>
- Bagenstos S. R. 2006. *The Structural Turn and the Limits of Antidiscrimination Law* 94(1):1–47. <https://doi.org/10.15779/Z38HB00>
- Bello B. G. 2019. "Riflessioni critiche sulla legislazione penale italiana contro il discorso d'odio nel sistema multilivello: la prospettiva del paradigma del Social Working of Law," *Ragion Pratica* 2. <https://doi.org/10.1415/95164>
- Benjamin W. 2021. *Toward the Critique of Violence. A Critical Edition*, Stanford: Stanford University Press.
- Bobbio N. 1969. "The Promotion of Action in the Modern State," in G. Hughes (Ed.), *Law, Reason and Justice. Essays in Legal Philosophy* (pp. 189–215). New York: New York University Press.
- Boiano I. 2025. "Nominare la violenza maschile contro le donne: diritto penale e giustizia tra conflitto simbolico e responsabilità politica", *Giustizia Insieme*, April 4:1–18.

- Burns T. R. 2008. "Towards a Theory of Structural Discrimination: Cultural, Institutional and Interactional Mechanisms of the 'European Dilemma,'" in G. Delanty, R. Wodak & P. Jones (Ed.), *Identity, Belonging and Migration* (pp. 152–172). Liverpool: Liverpool University Press. <https://doi.org/10.5949/liverpool/9781846311185.003.0009>
- Caruso D. G. 2021. *Rejecting Retributivism: Free Will, Punishment, and Criminal Justice*. Cambridge: Cambridge University Press. <https://doi.org/10.1017/9781108689304>
- Coyle M. J. & Scott D. 2021. *The Routledge International Handbook of Penal Abolition*. New York – London: Routledge. <https://doi.org/10.4324/9780429425035>
- Davis A. Y. 2003. *Are Prisons Obsolete?* New York: Seven Stories Press.
- Derrida J. 1992. "Force of Law: The 'Mystical Foundation of Authority,'" in D. Corner, M. Rosenfeld, & D. G. Carlson (Eds.), *Deconstruction and the Possibility of Justice* (pp. 3–67). New York-London: Routledge. <https://doi.org/10.4324/9781315539744>.
- Di Nicola Travaglini P. 2025. "Risposte alle principali obiezioni sull'introduzione del delitto di femminicidio (e delle aggravanti per i delitti di violenza contro le donne)", Roma, October 21.
- European Court of Human Rights (ECtHR) 2003. *Gündüz v. Turkey*, n. 35071/97, 4 December. URL: <https://hudoc.echr.coe.int/eng?i=001-61522>.
- Evans M. 2018. *Transformative Justice. Remediating Human Rights Violations Beyond Transition*. New York – London: Routledge. <https://doi.org/10.4324/9781351239462>
- Fernández Mejías J. 2026. "Can Criminal Law Drive Social Change? The Promotional Function and the Affirmative Consent Debate," *Ethics in Progress* 17(1).
- Ferraro F. 2026. *Le funzioni simboliche del diritto. Lineamenti di una teoria analitica*. Torino: G. Giappichelli Editore.
- Gatta G. L. 2026. "Femminicidio o omicidio se il marito tenta di uccidere la moglie dopo aver scoperto che si prostituisce? Note a margine del caso di ventimiglia", *Sistema Penale* 1:195–199.
- Guljar A. 2026. "Reimagining Justice Beyond Blame: Defending Iris Marion Young's Social Connection Model," *Ethics in Progress* 17(1).
- Hegel G. W. F. 2008. *Outlines of the Philosophy of Right*. Oxford-New York: Oxford University Press.
- Kant I. 1991. *The Metaphysics of Moral*. Cambridge: Cambridge University Press.
- Kelly E. 2018. *The Limits of Blame. Rethinking Punishment and Responsibility*. Cambridge, London: Harvard University Press. <https://doi.org/10.4159/9780674989436>
- Kervégan J.-F. 2025. *De la violence à l'institution. Philosophie juridique de Hegel*. Paris: Vrin.

- Londoño Martínez F. 2025. “¿Derecho Penal Anti Discriminación? Una crítica, a propósito de ‘motivi aggravanti e circostanze discriminatorie’ (Andrea Perin, Torino, 2024). De Paso, Notas sobre la Atenuante Pasional y el Principio de Subsidiariedad”, *Política Criminal* 20(39):438–454. <https://doi.org/10.4067/s0718-33992025000100438>
- MacKinnon C. A. 2007. *Women’s Lives, Men’s Laws*. Cambridge, Massachusetts: Harvard University Press.
- Marinucci G., E. Dolcini, & G. L. Gatta. 2023. *Manuale di diritto penale: Parte generale*. Milano: Giuffrè Francis Lefebvre.
- Murphy J. G. 2014. *Punishment and the Moral Emotions: Essays in Law, Morality, and Religion*. Oxford – New York: Oxford University Press. <https://doi.org/10.1093/acprof:osobl/9780199764396.001.0001>.
- Nietzsche F. 2014. “On the Genealogy of Morality. A Polemic,” in F. Nietzsche, *Beyond Good and Evil/On the Genealogy of Morality* (pp. 207–349). Stanford: Stanford University Press.
- Pelissero M. (Ed.) 2024a. “Focus ‘Diritto Penale Antidiscriminatorio. Una indagine, partendo dalla giurisprudenza’”, *GENIUS*, October 4. URL: <https://www.geniusreview.eu/2024/focus-diritto-penale-antidiscriminatorio/>
- Pelissero M. 2024b. “Importanza, ragionevolezza e limiti del diritto penale antidiscriminatorio tra presente o (possibile) futuro”, *GENIUS*, October 4:1–4.
- Pelsinger C. 2025. “Beyond Punishment: Towards a Framework of Transformative Accountability,” *Punishment & Society* 27(4):785–804. <https://doi.org/10.1177/14624745251319345>
- Perin A. 2024. *Motivi aggravanti e circostanze discriminatorie. Legittimità e limiti della sanzione penale dell’offesa alla pari dignità*. Torino: G. Giappichelli Editore.
- Ricordeau G. 2026. *Tant qu’il y aura des prisons*. Lyon: Le passager clandestin.
- Van der Burg W. 2015. “The Emerging Interactionist Paradigm and the Ideals of Democracy and Rule of Law,” SSRN Scholarly Paper No. 2589808. Social Science Research Network, April 4. <https://doi.org/10.2139/ssrn.2589808>
- Van Ness D. & Johnstone G. 2013. *Handbook of Restorative Justice*. London – Oxford – New York: Taylor & Francis. <https://doi.org/10.4324/9781843926191>
- Wolff J. 2024. “Structural Harm, Structural Injustice, Structural Repair,” in J. Browne & M. McKeown (Eds.), *What Is Structural Injustice?* (pp. 12–30). Oxford – New York: Oxford University Press. <https://doi.org/10.1093/oso/9780198892878.003.0002>
- Young I. M. 2011. *Responsibility for Justice*. Oxford – New York: Oxford University Press.
- Zehr H. 2002. *The Little Book of Restorative Justice*. Intercourse: Good Books.