

On Special Liberty and the Motivation to Harm

Justin Kotzé

Abstract

Special liberty is a destructive and criminogenic force operating throughout the social structure and is arguably the main source of social harm today. The subject of special liberty feels entitled to risk harm to others in pursuit of their own expressive and/or instrumental interests. Since its inception, the concept of special liberty has been used to make sense of numerous issues. However, little attention has been directed towards clearly delineating the two main forms of self-interest served by its use. Our understanding of *why* special liberty is employed in particular circumstances and conditions is therefore limited. This article makes an original contribution by attempting to formalise an initial delineation of expressive and instrumental self-interest apropos the use of special liberty.

Key Words: Expressive self-interest, harm, instrumental self-interest, motivation, special liberty

Introduction

The concept of special liberty is a crucial analytical tool in the criminological arsenal. It is described as an “anti-ethos that consists of a sense of entitlement felt by an individual who will risk harm to others in order to further [their] own instrumental or expressive interests” (Hall and Winlow, 2015: 91). The subject of special liberty is emboldened, through a kind of culturally rooted subjective permission, to simply act – doing whatever is necessary – to satisfy their own interests regardless of the harm it may cause to others (Kotzé and Lloyd, 2022). This subjective willingness to risk harm to others represents what ultra-realists call the *positive motivation* to harm. Far from being confined to the powerful and economic elite, special liberty represents a broad cultural current operating throughout the social structure (Hall, 2015; Raymen and Smith, 2016), but manifesting differently in different contexts and circumstances. In what perhaps represents a return to the question of motivation in some branches of criminology, the concept of special liberty has been applied to help think through and explain a range of diverse issues, from, for example, fraud (Tudor, 2020), luxury tourism (Smith, 2019),

and the transgression of tourists (Grenier, 2021), to rule violation, crime and harm during the COVID-19 pandemic (Briggs *et al.*, 2021), workplace bullying (Lloyd, 2018a), counterfeiting (Kotzé and Antonopoulos, 2023) and technology-facilitated domestic abuse (Yardley, 2021).

What is missing, however, from much of the scholarship employing the concept of special liberty, is a delineation of the two main forms of self-interest being served. This is an important omission to address, because, whilst it can be argued that all who employ special liberty are exercising an individualised sovereignty (Tudor, 2020), the way in which this positive motivation to harm manifests differs according to the specific interests being served. In other words, there are very likely qualitative variations in the reasons *why* special liberty is employed in particular circumstances and conditions. If this is indeed the case, then there is a need for us to think through and reflect upon the variable employment of special liberty and, of course, the versatility of its application as an analytical tool. Hinde and Fileborn (2023) have recently demonstrated the value in trying to develop more nuanced accounts of conceptual understandings pertaining to complex criminological issues. Indeed, if concepts form the building blocks of theory by acting as analytical tools which help us to make sense of social phenomena (Guarino-Ghezzi and Trevino, 2005), then efforts to enhance their explanatory power are important to the continued development of criminology as a discipline. Particularly in respect of its aim to both understand *and* address the causes of crime and harm. It is in the spirit of this endeavour that this article offers a more nuanced account of special liberty by considering the variability of its application in greater detail than has hitherto been attempted. More specifically, by drawing on published works that utilise the concept of special liberty, the article offers an innovative and novel development to ultra-realist theory by formalising an initial delineation of expressive and instrumental self-interest apropos the use of special liberty. In doing so, it is hoped that we can better understand the reasons *why* this “relatively unstructured sense of ethico-social entitlement” (Raymen and Kuldova, 2021: 252) is, or is not, employed in various contexts and circumstances, and strengthen its analytical efficacy and reach as a useful criminological concept.

Towards this end, the article first briefly introduces the theory of ultra-realism before outlining the positive and negative motivation to harm and the important interplay between them. Consideration is also given to the wider culture of emotivism and the institutionalisation of individualised sovereignty which further contextualises the use of special liberty. Having laid the groundwork, the article then moves on to formalise an initial delineation of expressive and instrumental self-interest by drawing upon examples from the literature. From here, the importance of this delineation is outlined by demonstrating its role in differentiating between

scalar and qualitative variations in special liberty. Of course, not everyone employs this sense of entitlement to advance and/or protect the self and, so, before concluding, the article offers one possible explanation for this truism.

Ultra-Realism and the Question of Motivation

Brisman *et al.*, (2017) position ultra-realism as a new intellectual turn within the gamut of late critical criminologies. It is one of the first new criminological paradigms to emerge in the 21st century and urges the discipline to return to its fundamental question: “why do some individuals and groups risk harm to others as they pursue their instrumental and expressive interests?” (Hall and Winlow, 2017: 401). In answering this crucial question, ultra-realism considers two interlinked motivations; these are the *negative motivation to harm* and the *positive motivation to harm* (Hall and Winlow, 2015). Telford and Lloyd (2020) succinctly define the negative motivation to harm as the unintended, yet harmful, consequences of our social structures, processes, and the impersonal decision making that often emanates from them. These harms are not the product of some kind of mistake, or something ‘gone wrong’ with the system. Rather, the negative motivation to harm reflects the unintended consequences of neoliberalism’s *normal, smooth functioning* and the social fallout that this creates (Lloyd *et al.*, 2023). Žižek (2009) calls this systemic violence. It is the violence inherent in the social conditions created by the smooth functioning of global capitalism; a system which automatically creates an excluded and dispensable social surplus (see also Chomsky, 1999).

As an example of the negative motivation to harm, the lockdown policies designed to combat the spread of COVID-19 are indicative. Across many countries, lockdown policies were enacted to try and prevent the spread of the pandemic. Consequently, schools sent students home to be home-schooled by parents, some of whom were balancing this while trying to adjust to working from home where possible, whilst others were made redundant as many businesses closed. Unemployment rose, deprivation, homelessness, and mental ill-health increased, and many of the vital services designed to assist were closed, cutting adrift the most disadvantaged as they were left to fend for themselves (Briggs *et al.*, 2021). In the UK, the NHS found itself functionally emaciated from prolonged austerity policies and battled through successive waves of COVID-19 with reduced bed space and intensive care wards, limited PPE, and not enough vital equipment like ventilators, rendering the service unable to respond efficiently to the crisis (Lloyd *et al.*, 2023). Connected to broader currents under neoliberalism, lockdowns produced serious and harmful, but arguably unintended, consequences for many throughout the world

but particularly the most vulnerable. In this way, lockdowns reflect a negative motivation to harm formed in the vacuum created by the ever-increasing gap between the secure and the precarious.

The negative motivation to harm is, however, only part of the story. Sticking with the example of COVID-19 and the lockdowns, it is evident that some individuals demonstrated a willingness to inflict harm on others. Indeed, Lloyd *et al.* (2023) note a 65% increase in calls to the UK's national domestic abuse helpline at the outset of the pandemic. In South Africa, Childline "reported a 400% increase in calls within the first week of its lockdown" (Briggs *et al.*, 2021: 196). Hate crimes also increased during this period, as COVID-19's Chinese origins lead some to target and inflict harm on those wrongly perceived as the cause of the pandemic (*ibid.*). Others risked public safety by breaking lockdown rules to gym (Gibbs, 2021), throw house parties or carry out extra-marital affairs (Lloyd *et al.*, 2023), while others still put vulnerable people at risk by bulk-buying vital supplies (Briggs *et al.*, 2020). These examples demonstrate a subjective willingness to risk harm to others by acting outside of the rules. Through an unstructured sense of entitlement, the safety and well-being of others can be disregarded as the interests of the self are prioritised. This is, of course, the embodiment of special liberty and reflects the positive motivation to harm.

The paper will return to this discussion to reflect on the *types* of interest being served in the examples offered, but for now, let us focus on what this interplay between the negative and positive motivation to harm means and why it is important for us to consider. In the first instance, the example of COVID-19 makes it clear that the negative and positive motivation to harm are linked. If the latter serves as the analytical foreground, then the former constitutes the contextual background and together they form a complex and dynamic picture of both systemic and subjective sources of harm. Billingham and Irwin-Rogers (2022) make a similar observation in their work on youth violence, and both examples demonstrate that the normal, smooth functioning of our socio-economic system can create a range of legal harms that have the *probabilistic* power to stimulate illegal responses in ameliorative and/or hyper-conformist capacities (Kotzé, 2019; Kotzé and Lloyd, 2022). This is not to suggest that the positive motivation to harm is a direct or unmediated expression of the negative motivation to harm. Rather, it is to suggest that the conditions fostered by the latter make it more *likely* that the former will manifest in particular ways, and that these are likely to both reflect the core values of neoliberalism and find the most purchase in the system's disrupted spaces. Put simply, there is a clear connection between structural or ideological conditions and subjective motivations to harm (Lloyd, 2018a).

To explain this connection, ultra-realism draws upon a transcendental materialist interpretation of subjectivity (see Johnston, 2008). This is a complex account of the ontology of the subject which offers a compelling view of how the subject emerges in relation to its sociosymbolic and politico-cultural contexts. Rather than being innately good or bad, the subject is viewed as a non-essential void capable of both good and evil. Informed by contemporary developments in neuroscience, transcendental materialism argues that the human brain is malleable, it is ‘hardwired’ for plasticity (Hall, 2012). This means that the brain is capable of shaping and reshaping itself in relation to worldly experiences and is therefore literally “sculpted by the contents of experience” (Johnston, 2008: 203). As we interact with the social world around us, our neuronal substrates receive experiential feedback, which then modulates changes to both the structure and functionality of the brain (Wakeman, 2018). Human subjectivity arises from a material starting point, but then *transcends* this material origins as the subject interacts with the social world and absorbs the external stimuli of the environment around them making one irreducible to simple materiality (Kotzé, 2021). If the non-essential subject is shaped by experiences of the social and material reality of the world, then the context of that world is important for us to consider. As an example, Lloyd (2018a) suggests that a functioning Symbolic Order – an invisible order that structures our experience of reality – framed around values of love, fairness, respect, and mutuality will generate subjectivities accordingly as, over time, such tenets are hardwired into the brain. The same is true of a Symbolic Order framed around competition, envy, greed, and self-interest.

So far, this may seem very one-directional and somewhat deterministic. However, this process is dialectical and by no means a one-way street. As we act in the world, we can influence, mould, or shape the world too. These changes, in turn, feedback into the human brain and continue to shape our subjectivity (Kotzé and Lloyd, 2022). However, whilst we are free to act and make choices, this agentic power is, at least to some extent, constrained in some ways and channelled in others by the framework of the dominant Symbolic Order. Currently, neoliberal consumer capitalism informs the dominant Symbolic Order and helps shape its social contours and corresponding characteristics - aggressive individualism, competition, opportunity, the pursuit of self-interest, a desire to cultivate feelings of envy in others, and liberal conceptions of freedom. Accordingly, subjectivities are likely to be constituted along these lines. However, as Kotzé and Lloyd (2022: 22, original emphasis) point out, “rather than directly determining subjectivity, the Symbolic Order’s norms, values and dispositions make it more *likely* that subjects will embody corresponding characteristics”. In this context, then, the agentic power mobilised can often be self-serving, even when such actions are ostensibly

considered to be in service of the other (see Kotzé, 2020). Indeed, given the primacy and allure of consumer culture, we are far more committed to *feeling* good than *doing* good, and so many interpassive gestures of commodified charity or resistance are mobilised specifically towards this end (see Kotzé, 2020). For Tudor (2020: 143-144), when it comes to “the ethics of decision-making, late-capitalist subjects come to be characterised by an individualising logic that leads them towards solipsism”.

The (a)Social Context

Alongside neoliberalism’s crystallisation of individualism and competition at the heart of political economy and culture (Lloyd *et al.*, 2023), liberal-postmodernism has effectively deregulated the subject and institutionalised the notion of individualised sovereignty (Tudor, 2020). What this essentially means is that “nothing exists beyond the immediate freedoms of the subject and no legitimate authority exists that can justifiably curtail those freedoms” (Winlow and Hall, 2013: 156-7). We no longer believe in any adjudicating authority but instead rely on subjective interpretations of what is good and right. Amidst what MacIntyre (2011) calls the culture of emotivism, such interpretations more readily reflect what is good and right *for me* in a given situation, and so these questions are subjectively redefined and positioned inwards. In this context, then, “the right thing to do is that which benefits the individual” (Lloyd, 2018a: 98). Emotivist logic dismisses all evaluative and moral judgments as nothing but expressions of preference, attitude or feeling (MacIntyre, 2011). Without some kind of impersonal criteria against which evaluative judgements can be gauged, conceptions of good and bad, right and wrong, moral and immoral are rendered hopelessly relativistic and so what we are left with are interminable battles of privately defined interests and preferences (Raymen, 2023). There are, therefore, no regimes of truth beyond those privately determined by the sovereign individual.

Liberal-postmodernism’s renunciation of the big Other – the communal network of social institutions, customs and laws to which we at least once acted *as if* we ascribed (Myers, 2003) – has left us without any means by which to judge the goodness of one reality over another (Quinney, 1975). We therefore occupy a social terrain devoid of any shared conception of the human and social good (Raymen, 2023). Instead, individuals vigorously exert the right to autonomously pursue privately defined notions of what is good; that is to say, what I interpret to be *good for me* in the current context. The absence of belief in any adjudicating authority has combined with consumer capitalism’s unrelenting cultivation of short-termism and

competitive individualism to pave the way for harmful subjectivities willing to risk harm or injury to others in pursuit of their own self-interest. Indeed, as McRae (2018: 27) points out, “freedom from responsibility to others has become the dominant trope of our time”. Of course, ethical inhibition has not been entirely dismantled and evacuated from social life, but it has been severely weakened and generally overwhelmed. Indeed, against the backdrop of the culture of emotivism and the cult of the individual, moral decision making is superseded by the special liberty that forms a powerful current flowing through contemporary neoliberal society (Smith and Raymen, 2018).

The close interplay between the negative and the positive motivation to harm means that we cannot restrict our analysis to the subject *of* harm, without also considering the subject *of* harm who is willing *to* harm. Consider, for example, that some homeless people – already existing in “the ultimate state of victimisation” (Fitzpatrick *et al.*, 1993: 366) – will victimise others experiencing homelessness (Lee and Schreck, 2005). Similarly, despite criminology’s occasional reticence to acknowledge the elephant in the room, empirical studies evidence that serious crime is often perpetrated against those who are themselves involved in various forms of crime (Topalli *et al.*, 2002). Social harm literature has also historically been reluctant to try and account for the subjective willingness to harm in favour of drawing attention to what amounts to the negative motivation to harm (Lloyd, 2018a). In large part, this reluctance to close the analytical loop stems from a concern with criminalising the incivilities of the powerless. Such concerns are not without merit, not least because work that tries to return to the question of motivation often sustains trenchant and sometimes unfair critique (see for example, Cooper, 2009). However, it is naïve to assume that any exploration of individual-level harm automatically degenerates into crude accounts of ‘Contrology’ (Ditton, 1979). The underlying contexts that stimulate the positive motivation to harm are undoubtedly important, but we must also consider what drives the subjective willingness to harm without assuming that all positive motivations to harm are created equally. That is to say, we need to start considering what interests are being served by the employment of special liberty and how these interests are mediated by different contexts and circumstances.

Expressive and Instrumental Self-Interest

Embodying the positive motivation to harm, special liberty grants the beholder the subjective permission to act as they wish, without constraint or any sense of ethical or moral obligation to the other. For Lloyd (2020: 679), the subject of special liberty is “emboldened by ideological

adherence to wider cultural tenets and regards itself as free from convention and moral or ethical restrictions”. Imbued with special liberty, the subject rises above the fractured bonds of mutuality and ethical responsibility in order to satisfy their own expressive and/or instrumental self-interest. This much the literature makes clear. What is less clear is what we mean by expressive or instrumental self-interest. Little attention has been directed towards delineating these two forms of self-interest apropos special liberty and this omission is important for two reasons. The first, is that without some clear delineation we may fail to see both scalar *and* qualitative variations in the use of special liberty. The second, is that without more deliberate differentiation between the specific interests being served we may fail to recognise the presence of special liberty in cases where it may be less obvious. What follows here is an initial attempt at delineation accompanied by a series of indicative examples found throughout the literature.

Expressive self-interest can perhaps be described as a hyper-idealised expression or embodiment of neoliberal-postmodernist tenets – greed, ruthless ambition, immediate gratification, competitive individualism, liberal conceptions of freedom, and a concern with status, display and the cultivation of envy in others. In the service of this form of self-interest, special liberty is employed to *advance* the self at the expense of others. If the literature is an indication of how scholars have interpreted special liberty and the interests served by its use, then it seems fair to suggest that the service of expressive self-interest is what often springs to mind when we think of special liberty (see for example, Tudor, 2020; Smith, 2019; Grenier, 2021; McRae, 2018; Yardley, 2021; Miles, 2023). *Instrumental* self-interest, on the other hand, appears less frequently considered. This can perhaps be described as the pragmatic circumvention of rules, laws, and conventional practices and customs. In the service of this form of self-interest, special liberty is employed to *protect* the self at the expense of others. Here, as the paper will go on to demonstrate, chronic insecurities and absences encourage the risk of harm to others in the name of securing one’s economic/material survival. These interests are not mutually exclusive, and one may, of course, oscillate between them. However, as the first example from the literature demonstrates, regardless of the interests being served, special liberty allows the subject to abdicate from any moral responsibility to the other.

In their work exploring the trade in counterfeit and unapproved aircraft parts, Kotzé and Antonopoulos (2023) demonstrate how the negative motivation to harm – the highly competitive and cost-driven nature of the deregulated airline industry – precipitates a range of interconnected conditions favourable to a thriving Suspected Unapproved Parts market. This forms the backdrop against which the positive motivation to harm is played out, but the way in which this motivation manifests differs considerably. On the supply side, counterfeiters and

parts brokers appear to be motivated by a libertine drive to satisfy expressive self-interest in the form of financial gain. Here, special liberty grants the subjective permission to risk harm to others in service of profit making. Far from cutting against the grain, this represents an unrestrained embodiment of liberal-capitalism's Symbolic Law, an unwritten constitution which enjoins us to put ourselves first, disregard the wellbeing of others and do whatever it takes to generate wealth and status (Kotzé and Lloyd, 2022). On the demand side, the use or failure to identify/report unapproved parts appear to be motivated by an instrumental self-interest to meet deadlines, satisfy contractual obligations, and retain employment in what is a very precarious industry. Here, special liberty grants the subjective permission to risk harm to others in service of keeping one's job (Kotzé and Antonopoulos, 2023). This is more about protecting the self rather than advancing the self and is not necessarily driven by a simple lack of concern for public safety. As Lloyd (2018a: 107) points out, "the unconscious motivation to act within precarious labour markets inevitably moves towards self-preservation". Informed by the dominant culture of emotivism, considerations of public good are therefore turned inwards and subjectively re-worked and redefined to more accurately reflect what is good *for me* in the given situation. The abdication of moral responsibility to the other is evident in both instances here, but for very different reasons which demonstrates qualitative variations in the use of special liberty.

These variations are also evident, although not made explicit, in the work of Briggs *et al.*, (2021) on the COVID-19 pandemic. As mentioned previously, the negative motivation to harm – materialising in the harmful yet largely unintended consequences of lockdown policies – formed the backdrop against which the positive motivation to harm played out. Again, the way in which this motivation manifested differed depending on the specific interests for which special liberty was being employed. In the name of satisfying *expressive* self-interest, some people took advantage of the lockdown and the close, unrelenting, proximity it afforded them to perpetrate domestic abuse. Refuges and similar sources of safe accommodation were either closed or operating at reduced capacity and restrictions on movement made it impossible to seek alternative support from family or friends (Briggs *et al.*, 2021). The drive to control one's intimate partner can, at least in part, be read as an expression of hyper-idealised patriarchal power which combines with liberal-postmodern tenets filtered through a reorganised super-ego that enjoins pleasure and gratification. The way in which the pandemic was handled arguably compounded this further. Not just because of the proximal advantages granted to the abuser, but because the mounting distrust in official authority, cultivated through poor decision-making and various scandals, reinforced emotivist tendencies to invoke 'private laws' – or at least

subjectively defined interpretations of the law. This can also be seen in the breaking of lockdown rules to enjoy house parties or have affairs. Consideration for the safety of others was superseded by a drive to satisfy the injunction to *enjoy now!* Special liberty was therefore employed in service of expressing an unyielding commitment to the values of the dominant sociosymbolic order.

The positive motivation to harm, however, did not manifest in a homogenous way against the backdrop of the negative motivation to harm. Whilst some employed special liberty to *advance* the self, others employed it to *protect* the self. This latter use of special liberty is in service of satisfying *instrumental* self-interest and during the pandemic this manifested in the form of panic-buying vital supplies in bulk. The risk this posed to others, particularly the elderly and vulnerable, was either unacknowledged or downplayed in the minds of the panic-buyers by a strong interest in the preservation of the self. Shattering the myth of solidarity, this “resembled a ‘me-first’ attitude reflective of a neoliberal society focused on the cult of the individual” (Briggs *et al.*, 2021: 318). Although they do not explicitly distinguish between the expressive and instrumental interests served, the work of Briggs *et al.* (2021) – when viewed in relation to the delineation previously outlined here – clearly demonstrates qualitative variations in the use of special liberty. Whilst all who employ special liberty exercise an individualised sovereignty (Tudor, 2020), the way in which this positive motivation to harm manifests differs according to the specific interests being served. Accordingly, by delineating those interests, we can explore with a little more precision the various ways in which the positive motivation to harm plays out against the backdrop of the same negative motivation to harm.

So far, the paper has addressed the first potential issue posed by omitting to delineate expressive and instrumental self-interest; that is, a failure to see both scalar *and* qualitative variations in the use of special liberty. The next example from the literature highlights the second potential issue; failure to recognise the presence of special liberty in cases where it may be less obvious. Grenier (2021) offers an insightful analysis of Costa Rican beach towns as liminal spaces and opens the work with an epigraph from their fieldwork notes. In this account, the author observes a young tourist snorting a line of cocaine off a plastic bottle while standing beside a taxi driver. Two tourist police officers are also present. By performing the tourist identity, it is argued, some tourists employ special liberty to enhance the practice of ‘playful deviance’ such as, in this case, illegal drug consumption. Rather than viewing this as an act of resistance, Grenier (2021: 122) recognises it as “an act of conformity to liberal values in the

late-capitalist context”. In this liminal space, special liberty smooths ascription to the cultural injunction to enjoy hedonistic indulgence by suspending morality-based decision making.

It is not made explicit, but we could perhaps infer that it is expressive self-interest that is being served by the special liberty employed here. Indeed, the tourist expresses their commitment to the core tenets of liberal-postmodern consumer capitalism by advancing the self through pleasurable experiences as they continue along their hedonistic journey irrespective of the impact upon the local community. This inference is crucial, because without it, Greiner (2021) fails to recognise special liberty at play elsewhere in the study. For instance, we are introduced to Ottis, a 32-year-old bar owner whose business is affected by territorial conflicts linked to the local drug market. In a bid to maintain his livelihood and in recognition of the dangers associated with drug dealers, Ottis acts as a broker between his clients and the dealers; ““this is the guy you wanna talk to. These are the price ranges’... ‘...he knows where the forces are standing...”” (Grenier, 2021: 132). In this way, Ottis is *also* employing special liberty. He grants himself the subjective permission to step beyond legal codes and moral boundaries as he pursues his own interest despite the risk of harm his actions pose to others. However, drawing upon the delineation advanced here, we can infer that his use of special liberty is in service of instrumental self-interest to protect the self rather than to advance the self.

The context that Greiner (2021) provides is important here and certainly demonstrates that the global flows of harm production are not uniform. Job opportunities in Costa Rica are limited and largely restricted to the tourism industry and associated businesses. Participation in the nighttime economy is therefore “a way to make ends meet” (ibid.: 131), and so the maintenance of one’s employment in this sector is a matter of survival. The chronic insecurities and instability of the labour market in this region arguably form a large part of the negative motivation to harm, and this forms the background against which the positive motivation to harm is played out in this instance. Agency is crucial but not omnipotent, and there are clearly forces at play that can influence “ostensibly law-abiding individuals towards harmful social practices” (Raymen and Smith, 2016: 392). In an increasingly post social world (Winlow and Hall, 2013), it is perhaps easy to see why the right thing to do is so often interpreted as that which is right for the individual despite the harm risked to others; and this is especially true for those who live their lives with their backs against the wall (Tudor, 2020). What this example demonstrates is that by delineating between the specific interests being served, we can identify the use of special liberty by both the tourist *and* the bar owner, but for very different reasons.

It is also possible to employ special liberty in pursuit of satisfying both expressive *and* instrumental self-interest and, of course, depending on the circumstances, one may oscillate between these. Lloyd's (2018a, 2020) research on workplace bullying is illustrative here. In the accounts he offers, there are examples of individuals protecting their own self-interest – which we could read as *instrumental* – or taking advantage of the organisational culture to abuse co-workers – which we could interpret as *expressive* self-interest. Both, however, are on display in the example of management abuse. On the one hand, special liberty is employed to serve instrumental self-interest as negative behaviours are justified on the basis of protecting the self against conditions of precarity. In this way, orchestrating the firing of colleagues or 'persuading' them to leave can be read as an act of self-preservation as the manager's position is more secure in the absence of competition. This must be understood within the context of a deindustrialised and radically restructured labour market, where "retail is subject to the vicissitudes of the market and leaves its employees in precarious circumstances" (Lloyd, 2020: 674). On the other hand, expressive self-interest is served by using special liberty in the same way. Moving beyond attempts to protect the self, managers can advance the self by maximising opportunities to demonstrate their indispensable position and enhance their market share. Embodying the ideological tenets that drive consumer capitalism, ruthless tactics are employed to drive sales, exceed targets and secure promotions; with equal value placed on the symbolic capital associated with asserting one's dominance over others and the status that comes with successfully doing so.

This example demonstrates that expressive and instrumental self-interest are not necessarily mutually exclusive and that the same action or, indeed, inaction, can satisfy both forms of self-interest. What is present in all cases of special liberty, however, is the underlying influence of the culture of emotivism and "the absence of any sense of ethical obligation or moral duty to the other" (Lloyd, 2018b: 258).

A Variable Special Liberty

The frequent exercise of special liberty is becoming increasingly problematic. So much so, that it could arguably be considered as *the* source of social harm in contemporary society (Raymen and Smith, 2019). This assertion resonates with ultra-realism's contention that harm is not a simple product of widening social inequality. Rather, social inequality is a product of the subjective willingness of "individuals and groups to perpetrate multiple harms as they out-compete, dispossess and politically disempower others" (Hall and Winlow, 2018: 49). This also

suggests that whilst the negative motivation to harm often forms the backdrop against which the positive motivation to harm manifests in different ways, the socio-structural dynamics of the former cannot be divorced from the agentic power that produces and reproduces them (Raymen and Kuldova, 2021). It is not that we do not know that many of our everyday practices and processes of accumulation contribute to worsening social and environmental conditions – the very context of the negative motivation to harm. On the contrary, we do know, but choose to repress this inconvenient knowledge so that we can go about the everyday and simply act *as if* we do not know. This practice of fetishistic disavowal is intimately connected to the positive motivation to harm. If special liberty grants the subject licence to do whatever it takes to succeed and/or survive, then fetishistic disavowal removes any lingering concerns lurking in the periphery of moral consciousness as to the ethics of one's actions. Moreover, should what is repressed return, the culture of emotivism enables the subjective reworking of moral decision-making so that questions of public good are redefined to reflect personal good.

This is a broad cultural current, and special liberty operates throughout the social structure. For Hall (2015: 134, original emphasis), “the ruthless businessman, the neighbourhood bully and the serial killer all operate with *scalar* rather than *qualitative* variations of special liberty”. Yet, if this is the case, how, then, are we to reconcile this with the claim that special liberty operates in *different* forms throughout the social structure (Hall, 2012); or the assertion forwarded here that not all positive motivations to harm are created equally? The answer lies in the delineation of self-interest. By drawing upon the framework advanced here, it could be argued that Hall (2015) identifies only scalar variations in the examples he cites precisely because they are all examples of special liberty employed to satisfy *expressive* self-interest. Whilst the scale of the harm inflicted varies, in each case the subject grants the self an imagined state of exception that validates doing whatever it takes “to gratify the desires that connect drives to external objects” (Hall, 2015: 134). Whether it be for greed, ruthless ambition, enjoyment, or the quest for status there is a drive to advance the self at the expense of others in a way that expresses an over-identification with, and unyielding commitment to, the tenets of neoliberal-postmodern consumer capitalism.

Accordingly, it is only by delineating between expressive and instrumental self-interest that we may identify both scalar *and* qualitative variations in special liberty. Without such distinction, we risk assuming that all positive motivations to harm are created equally and that there is no difference between the tourist's use of special liberty and that of the bar owner; or indeed between the corporate fraudster and the panic-buyer. Moreover, it is precisely by delineating between the specific interests served that the purpose of special liberty is made

clear. Rather than carving out short-cuts to pursue the dream of special liberty as an end in itself (Hall, 2012), special liberty is mobilised *to* carve out short-cuts to success in the sociosymbolic competition and/or survival in the fractured and hyper-competitive marketplace.

Of course, not all subjects within neoliberal-postmodern consumer capitalism take the imperatives towards individualism, competition, and status to their harmful extremes (Lloyd, 2018a). Nor does everyone employ the use of special liberty to carve out short-cuts to success or secure their financial or material position. If special liberty is a broad cultural current flowing within the wider channels of the culture of emotivism, then why do some individuals refuse to risk harm to others in pursuit of, or even despite, their own self-interest? Before venturing a possible answer to this important question, it is worth reiterating a key point. Social science is concerned with trying to make sense of phenomena that exist in an open system. We cannot, therefore, “predict that a causal power that we know conceptually exists will exert its influence at any given time” (Kotzé and Lloyd, 2022: 12). What we can say, is that there are probabilistic causal tendencies. Accordingly, it can be argued that the more fully absorbed the subject is in a Symbolic Order that cultivates competitive individualism, envy, narcissism, immediate gratification, and an unwavering sense of entitlement, the more *likely* it is that they will risk harm to others in pursuit of their own self-interest (*ibid.*).

The answer to the question, therefore, may lie in the degree to which one is assimilated into the *dominant* sociosymbolic order, and the extent to which one ascribes to its attendant values and injunctions (Kotzé, 2019). If it can be argued that those who employ special liberty to satisfy expressive self-interest embody an uncompromising adherence to the Symbolic Law of liberal-capitalism, then it may stand to reason that those who do not act in this way may be less assimilated into the sociosymbolic order and therefore less well-attuned to the injunctions to advance the self at the expense of others. The same may be true for those who choose not to employ special liberty in service of instrumental self-interest. In fact, those who do employ it in this way are arguably only partially assimilated (Kotzé, 2019), as special liberty in this case functions as a mechanism of last resort, in a bid to protect the self, rather than as a first resort to advance the self. Accordingly, the use of special liberty – and the specific interests served by it – are, to some extent, predicated on the internalisation of neoliberalism’s core values and injunctions and the extent to which it is employed is gradationed by the degree of assimilation into the dominant sociosymbolic order. It is precisely because of this that we may see the vestigial presence of humanitarian and personalist impulses which eschew special liberty. Their contradictory logics are rooted in their unassimilated position relevant to the dominant sociosymbolic order. In a similar way to which “the subversive core of Christianity involves

doing what is explicitly allowed according to the public face of the Law, but prohibited at the level of unwritten rules” (Wood, 2012: 162), these impulses arguably subvert the Symbolic Law of capitalism – the unwritten injunction to put ourselves first and disregard the wellbeing of others. However, although palpable, the presence of these contradictory logics is to some extent marginalised by a neoliberal orthodoxy which fosters a general apathy towards ethical duty and moral obligation to the other (Whitehead, 2018). Therefore, whilst humanitarian and personalist impulses have not been eradicated, they have been severely attenuated and become increasingly difficult to cultivate (Whitehead, 2017).

Distinguishing between the interests served by special liberty may also offer further clarity on the role of fetishistic disavowal. It has already been established that not everyone experiences disavowal in the same way or to the same degree (see Kotzé, 2019). Whilst it may facilitate the suspension of moral decision-making apropos the culture of emotivism for those who employ special liberty to satisfy instrumental self-interest, it is possibly less important for those who pursue expressive self-interest. This is because the Symbolic Law of capitalism sanctions the right to freely express one’s drives and desires, particularly in the realm of wealth creation and the pursuit of hedonistic pleasure. There is no need to disavow that which we are enjoined to pursue or enjoy. Accordingly, there is no need to repress uncomfortable or inconvenient knowledge. Those who employ special liberty in the pursuit of expressive self-interest are granted the subjective license to act with impunity, without ever acknowledging the harms they inflict on others (Winlow, 2014).

Conclusion

Special liberty is arguably one of capitalism’s most destructive and criminogenic forces (Winlow, 2014). As a broad cultural current, this destructive force operates throughout the social structure but manifests differently in different contexts and circumstances. Following Hall’s (2012) initial conceptualisation, the concept of special liberty has been used to help make sense of a range of social issues and phenomena. Whilst the application of the concept has expanded at pace, what has been slower to develop is the theoretical refinements that enable the analytical efficacy of its wider application. Indeed, despite the centrality of self-interest in accounts of special liberty, little attention has been directed towards clearly delineating the two main forms of self-interest served by its use. This omission precipitates two potential issues. The first, is that without some clear delineation we may fail to see both scalar *and* qualitative variations in the use of special liberty. The second, is that without more deliberate

differentiation between the specific interests being served we may fail to recognise the presence of special liberty in cases where it may be less obvious. If left unresolved, both of these issues limit the analytical efficacy and applicability of special liberty as a conceptual tool and curb our understanding of *how* and *why* the positive motivation to harm manifests in various ways.

Accordingly, building on the work of Kotzé and Antonopoulos (2023), this article makes an original contribution by attempting to formalise an initial delineation of expressive and instrumental self-interest apropos the use of special liberty. Applying this framework to examples drawn from the literature serves as a useful testing ground and has demonstrated that clear interconnections exist between the positive and negative motivation to harm. It is also clear that the negative motivation to harm often forms the contextual backdrop against which the positive motivation to harm plays out. This observation is supported by other works that have analysed the interrelationship between systemic and subjective sources of harm (see for example, Billingham and Irwin-Rogers, 2022). However, not all positive motivations to harm are created equally and so, as this article has evidenced, special liberty may be employed in various ways depending on the specific interests being served. This qualitative variation in special liberty may be influenced by the degree to which the subject is assimilated into the dominant sociosymbolic order and the extent to which it adheres to its fundamental drives and injunctions.

This must also be viewed within the context of the contemporary institutionalisation of individualised sovereignty which the culture of emotivism has given the longest of leashes. Devoid of any adjudicating authority, notions of public good are turned inwards and privately reworked, redefined and reinterpreted as *what is good for me*. That is to say, what is good, right, moral, and just is that which benefits the individual (Lloyd, 2018a). This primary logic of the self underpins the two dominant forms of self-interest for which special liberty is often employed to satisfy. Of course, not everyone prioritises the self or employs special liberty to carve out short-cuts to success and/or security. It is precisely because of this truism that closer attention needs to be paid to the reasons *why* special liberty is employed in certain contexts and circumstances. By delineating the specific interests served we can better understand the ways in which the positive motivation to harm manifests in relation to various negative motivations to harm. This not only allows us to differentiate between scalar and qualitative variations in special liberty, but identify its presence in cases where it may be less obvious.

Taken together, this original conceptual development helps to extend the analytical reach and depth of special liberty as a theoretical tool capable of making sense of a broad range of illegal and legal harms, and will, therefore, act as a primary point of reference for future

research in this field. Indeed, in its refined form, the concept of special liberty could easily be applied to analyses of property crimes, street harassment, hate crime, violence, organised crime, domestic abuse and sexual violence, ecological harm, and consumer driven harms to name but a few. Whilst the current article has focussed on studies employing special liberty as a conceptual tool, further advances could be made by exploring its analytical potential in studies which have *not* employed it. For example, there are certainly traces of special liberty at work in the everyday practices of *some* Frontex officers who López (2023) identifies as engaging in processes of ‘operational de-humanitarisation’. These traces perhaps indicate that what helps to “sustain a social order that *systematically* produces harm and subjects without rights” (López, 2023: 14, original emphasis), is the subjective willingness to risk harm to others in pursuit of instrumental and/or expressive self-interest. Yet, it is arguably in the delineation of the interests served that the reasons *why* special liberty is employed are brought more sharply into focus.

Acknowledgements

I would like to thank the participants of the 2023 BSC Critical Criminology Conference for lending a supportive ear as I attempted to tease out some of the ideas presented in this article. I am also indebted to the kind and scholarly collegiality of Professors Anthony Lloyd, Simon Winlow, and Steve Hall, who took the time to read and comment on the first draft of this article.

References

- Billingham, L. and Irwin-Rogers, K. (2022) *Against Youth Violence: A Social Harm Perspective*. Bristol: Bristol University Press.
- Briggs, D., Ellis, A., Lloyd, A., and Telford, L. (2020) 'New Hope or Old Futures in Disguise? Neoliberalism, the Covid-19 Pandemic and the Possibility for Social Change', *International Journal of Sociology and Social Policy*, 40 (9/10), pp. 831-848.
- Briggs, D., Telford, L., Lloyd, A., Ellis, A., and Kotzé, J. (2021) *Lockdown: Social Harm in the Covid-19 Era*. Cham: Palgrave Macmillan.
- Brisman, A., Carrabine, E., and South, N. (eds) (2017) *The Routledge Companion to Criminological Theory and Concepts*. London: Routledge.
- Chomsky, N. (1999) *Profit Over People: Neoliberalism and Global Order*. New York: Seven Stories Press.
- Cooper, C. (2009) 'Review of Criminal Identities and Consumer Culture', *Social Policy and Administration*, 43 (5), pp. 528-532.
- Ditton, J. (1979) *Controlology*. London: Macmillan.
- Fitzpatrick, K.M., La Gory, M.E., and Ritchey, F.J. (1993) 'Criminal Victimization among the Homeless', *Justice Quarterly*, 10 (3), pp. 353-368.
- Gibbs, N. (2021) "No One's Going to Buy Steroids for a Home Workout", *Journal of Contemporary Crime, Harm, Ethics*, 1 (1), pp. 45-62.
- Grenier, C.M. (2021) 'Costa Rican Beach Towns as Liminal Spaces: Tourism, Transgressions and the Night-Time Economy', *International Journal of the Sociology of Leisure*, 4 (2), pp. 119-136.
- Guarino-Ghezzi, S. and Trevino, A.J. (2005) 'Introduction: A Multidisciplined Approach to Crime'. In Guarino-Ghezzi, S. and Trevino, A.J. (eds) *Understanding Crime: A Multidisciplinary Approach*, pp. 1-21. Anderson Publishing.
- Hall, S. (2012) *Theorizing Crime and Deviance: A New Perspective*. London: Sage.
- Hall, S. (2015) 'What is Criminology About? The Study of Harm, Special Liberty and Pseudo-Pacification in Late-Capitalism's Libidinal Economy'. In Crewe, D. and Lippens, R. (eds) *What is Criminology About? Philosophical Reflections*, pp. 122-140. London: Routledge.
- Hall, S. and Winlow, S. (2015) *Revitalizing Criminological Theory: Towards a New Ultra-Realism*. London: Routledge.
- Hall, S. and Winlow, S. (2017) 'Ultra-Realism'. In Brisman, A., Carrabine, E., and South, N. (eds) *The Routledge Companion to Criminological Theory and Concepts*, pp. 401- 405. London: Routledge.
- Hall, S. and Winlow, S. (2018) 'Ultra-Realism'. In DeKeseredy, W.S. and Dragiewicz, M. (eds) *Routledge Handbook of Critical Criminology*, 2nd Edition, pp. 43-56. London: Routledge.

- Hindes, S. and Fileborn, B. (2023) ‘Why did he do it? Because he’s a fucking bloke’: Victim Insights into the Perpetration of Street Harassment’, *The British Journal of Criminology*, 63 (3), pp. 668-686.
- Johnston, A. (2008) *Žižek’s Ontology: A Transcendental Materialist Theory of Subjectivity*. Evanston: Northwestern University Press.
- Kotzé, J. (2019) *The Myth of the ‘Crime Decline’: Exploring Change and Continuity in Crime and Harm*. London: Routledge.
- Kotzé, J. (2020) ‘The Commodification of Abstinence’. In Hall, S., Kuldova, T. and Horsley, M. (eds) *Crime, Harm and Consumerism*, pp. 54-69. London: Routledge.
- Kotzé, J. (2021) ‘On Researching Harm: An Ultra-Realist Perspective’. In Davies, P., Leighton, P. and Wyatt, T. (eds) *The Palgrave Handbook of Social Harm*, pp. 117-138. Cham: Palgrave Macmillan.
- Kotzé, J. and Lloyd, A. (2022) *Making Sense of Ultra-Realism: Contemporary Criminological Theory Through the Lens of Popular Culture*. Bingley: Emerald Publishing.
- Kotzé, J. and Antonopoulos, G.A. (2023) ‘Con Air: Exploring the Trade in Counterfeit and Unapproved Aircraft Parts’, *The British Journal of Criminology*, 63 (5), pp. 1293-1308.
- Lee, B.A. and Schreck, C.J. (2005) ‘Danger on the Streets: Marginality and Victimization among Homeless People’, *American Behavioral Scientist*, 48 (8), pp. 1055-1081.
- López, C.B. (2023) ‘Border Policing at Sea: Tactics, Routines, and the Law in a Frontex Patrol Boat’, *The British Journal of Criminology*, 63 (1), pp. 1-17.
- Lloyd, A. (2018a) *The Harms of Work: An Ultra-Realist Account of the Service Economy*. Bristol: Bristol University Press.
- Lloyd, A. (2018b) ‘Serving Up Harm: Systemic Violence, Transitions to Adulthood and the Service Economy’. In Boukli, A. and Kotzé, J. (eds) *Zemiology: Reconnecting Crime and Social Harm*, pp. 245-264. Cham: Palgrave Macmillan.
- Lloyd, A. (2020) ‘Harm at Work: Bullying and Special Liberty in the Retail Sector’, *Critical Criminology*, 28 (4), pp. 669-683.
- Lloyd, A., Briggs, D., Ellis, A. and Telford, L. (2023) ‘Critical Reflections on the COVID-19 Pandemic from the NHS Frontline’, *Sociological Research Online*, Online First: <https://doi.org/10.1177/13607804231156293>
- MacIntyre, A. (2011) *After Virtue: A Study in Moral Theory*. London: Bloomsbury.
- McRae, L. (2018) *Terror, Leisure and Consumption: Spaces for Harm in a Post-Crash Era*. Bingley: Emerald Publishing.
- Miles, L. (2023) ‘Understanding Violence on British University Campuses Through the Lens of the Deviant Leisure Perspective’, *Journal of Consumer Culture*, Online First: <https://doi.org/10.1177/14695405231186471>
- Myers, T. (2003) *Slavoj Žižek*. London: Routledge.
- Quinney, R. (1975) ‘Crime Control in Capitalist Society: A Critical Philosophy of Legal Order’. In Taylor, I., Walton, P., and Young, J. (eds) *Critical Criminology*, pp. 181-202. London: Routledge and Kegan Paul Ltd.

- Raymen, T. (2023) *The Enigma of Social Harm: The Problem of Liberalism*. London: Routledge.
- Raymen, T. and Kuldova, T. (2021) 'Clarifying Ultra-Realism: A Response to Wood et al.' *Continental Thought and Theory: A Journal of Intellectual Freedom*, 3 (2), pp. 242-263.
- Raymen, T. and Smith, O. (2016) 'What's Deviance Got to Do With It? Black Friday Sales, Violence and Hyper-conformity', *The British Journal of Criminology*, 56 (2), pp. 389-405.
- Raymen, T. and Smith, O. (2019) 'The Deviant Leisure Perspective: A Theoretical Introduction'. In Raymen, T. and Smith, O. (eds) *Deviant Leisure: Criminological Perspectives on Leisure and Harm*, pp. 17-44. Cham: Palgrave Macmillan.
- Smith, O. (2019) 'Luxury, Tourism and Harm: A Deviant Leisure Perspective'. In Raymen, T. and Smith, O. (eds) *Deviant Leisure: Criminological Perspectives on Leisure and Harm*, pp. 305-323. Cham: Palgrave Macmillan.
- Smith, O. and Raymen, T. (2018) 'Deviant Leisure: A Criminological Perspective', *Theoretical Criminology*, 22 (1), pp. 63-82.
- Telford, L. and Lloyd, A. (2020) 'From "Infant Hercules" to "Ghost Town": Industrial Collapse and Social Harm in Teesside', *Critical Criminology*, 28, pp. 595-611.
- Topalli, V., Wright, R. and Fornango, R. (2002) 'Drug Dealers, Robbery and Retaliation: Vulnerability, Deterrence and the Contagion of Violence', *British Journal of Criminology*, 42 (2), pp. 337-351.
- Tudor, K. (2020) 'Toxic Sovereignty: Understanding Fraud as the Expression of Special Liberty Within Late Capitalism'. In Hall, S., Kuldova, T. and Horsley, M. (eds) *Crime, Harm and Consumerism*, pp. 140-155. London: Routledge.
- Wakeman, S. (2018) 'The One Who Knocks and the One Who Waits: Gendered Violence in Breaking Bad', *Crime, Media, Culture*, 14 (2), pp. 213-228.
- Whitehead, P. (2017) *Transforming Probation: Social Theories and the Criminal Justice System*. Bristol: Policy Press.
- Whitehead, P. (2018) *Demonising the Other: The Criminalisation of Morality*. Bristol: Policy Press.
- Winlow, S. (2014) 'Some Thoughts on Steve Hall's *Theorizing Crime and Deviance: A New Perspective*', *Journal of Theoretical and Philosophical Criminology*, 6 (2), pp. 168-177.
- Winlow, S. and Hall, S. (2013) *Rethinking Social Exclusion: The End of the Social?* London: Sage.
- Wood, K. (2012) *Žižek: A Reader's Guide*. Chichester: Wiley-Blackwell.
- Yardley, E. (2021) 'Technology-Facilitated Domestic Abuse in Political Economy', *Violence Against Women*, 27 (10), pp. 1479-1498.
- Žižek, S. (2009) *Violence: Six Sideways Reflections*. London: Profile Books.