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Themes and concepts in an abolitionist approach to criminal justice

Introduction

In this paper I will talk about themes and concepts in an abolitinist approach to criminal justice. My paper does not adress the general question of punishment. I see punishment as a specific form at human interaction which can be observed in many social practices: family, school, work, sport. In this sense practically every one is familiar with punishment as well in the role of "being punished" as in the role of "punisher". (1)

The images people have about criminal justice are predominantly based upon media presentation of the activities of criminal justice.(2) When they vicariously participate in criminal justice or assess the system as onlookers they do this on the basis of media images. In criminal justice a language of punishment is used and people presuppose that there is congruity between the punishment context they are familiar with on the basis of direct experience and the processes inside criminal justice. This congruity does however not exist.

With respect to what is called professionally inside the system "punishment" (certain judicial decisions and their implementation) a relation "punisher - punished" "is lacking" (3). And it is just in the relation between the "punisher" and the "punished" that the characteristic of "punishment" (as opposed to violence) has to be found. So in criminal justice the activities (and experiences) formally called punishment have no similarity with events which are outside criminal justice considered as punishment. In practice to call those activities punishment is creating an unfounded legitimation. So I do not consider criminal justice as a system that dispenses punishment but as a system that uses the language of punishment in a way which hides the real processes going on and generates support by presenting those processes uncorrectly as similar to processes known and accepted by the public.

The conventional language in the public discourse hides the realities about problematic situations (crime) and criminalisation. So my paper will in the first part principally deal with questions of language. The second part will touch the question: Why abolition. The third part is titled How abolition.

Part I. Language and concepts

A public debate in Cordoba

In October 1996 I had the privilege to participate in a public debate on matters of security in the city of Cordoba (Argentina). This debate was organised by a voluntary organisation called "El Agora" which tries to motivate citizens to express opinions and to develop activities in issues of public concern.(4)

The debate started in small groups of 10 - 15 people. Everyone interested could register for such a group. "El Agora" provided a coordinator for every group. The questions which had to be discussed in the first meeting of groups were: Do you feel sometimes insecure in this city? In which context, under which circumstances? What could be done to diminish those feelings of insecurity? Who could contribute to this, in which way?

In the first round of discussins participants did not speak as experts but rather spoke of their own experience, their own feelings,

their own opinions as citizens. The participants did not try to reach consensus. They were to try to identify themselves with the diversity of experiences, feelings and needs expressed in the group.

In the evening we summarized into a large schema all those opinions and positions voiced in the small groups. In the prefabricated frame of this schema we had naturally made room for remarks focusing on what should be done about offenders, but this section remained practically blank.

People wanted many concrete actions which could be classified in categories of redress and prevention, but the subject - matter which forms the heart of the official debate --punishment of offenders-- was only very marginally represented. And for the concrete actions suggested by the participants in the work groups there was no natural place, there were no words in the lenguage of the official debate. No wonder that the experts who did comment on the outcome of the discussion in the work groups all pointed to the striking difference between both languages.

Academia and the languages about crime, criminal justice and security

For academics who work in the field touched upon by the debate on crime and criminal justice (and who subscribe to critical values embodied in the academic tradition)(5) I see a double task: a) to describe and analyse the processes of criminalization in a way which permits to assess their consequences and their legitimacy: b) to give a hand to people (professionals and others) who try to cope (in the perspective of redress and/or prevention) with problematic situations(6) which are the object of secondary criminalization or claims of primary criminalization.(7)

To fulfill that task a language needs to be constructed. That language cannot be the language in which criminal justice is practiced and legitimated. When the use of that language has to make it possible to asses the legitimacy of criminal justice in the light of certain explicit values we better start to formulate those values. They have to show us where and how to look. So let us start to look at some explicit values.

Values

We have to look for a normative frame around which, in this historical period in (post) modern societies, a large support can be mobilised. The normative frame has to be presented with indicators which can be applied to social systems in which professionals play a prominent role and in which many cases are dealt with on a micro level: like educational systems, the medical system and legal systems. The normative frame presupposes agreement on the secular and non fundamentalist character of the state.(8) The following indicators seem to me to satisfy the requirements I mentioned.(9)

a. Respect for diversity

Basic assumption. The survival of the life depends on respect for and solidarity with diversity. Difference between and within the species is nowadays threatened by our social and technical arrangements. The differences between people living in the same "society" is, in the public discourse, underestimated.

Values. Respect for the differences between individuals (and even within one individual during his life time) and between collectivities. Solidarity with those differences.

b. Professions and authorities have to serve clients.

Values. Professions and authorities are there for people in their diversity. The people are not there for the authorities and the professions. This implies that authorities and professions have to serve the interests of clients in their diversity to be legitimate.

Basic assumption. Authorities and professions are only able to serve the interests of clients in their diversity when those clients have power to orient their activities.

c. Validity of reconstruction.

Basic assumption. The menu is not the meal. The map is not the territory. An event which is the object of a discourse or of any form of decision - making process is always reconstructed. The reconstruction is never identical to the event.

Value. In assessing social practices the first aspect to be assessed is the quality of the reconstruction of an event or of a state of affairs. Is the reconstructin "valid" ? Reconstruction of events, which belong (also) to the realm of a life world, are only valid if they are based on the meanings of the main actors in the life world. This criterium follows directly from the values and basic assumptions mentioned under a and b.

Concepts

--Crime

We are inclined to consider "criminal events" as exceptional, events which differ to an important extent from other events which are not defined as criminal. In the conventional view, criminal conduct is considered to be the most important cause of these events. Criminals are --in this view-- a special category of people, and the exceptional nature of criminal conduct, and/or the criminal, justify the special nature of the reaction against it.

People who are involved in "criminal" events, however, do not in themselves appear to form a special category. Those who are officially recorded as "criminal" constitute only a small part of those involved in events that legally permit criminalization. Among them, young men from the most disadvantaged sections of population are heavily over - represented.

Within the concept of criminality a wide range of situations are linked together. Most of these, however, have separate properties and no common denominator: violence within the family, violence in an anonymous context in the streets, breaking into private dwellings, completely divergent ways of receiving goods illegally, different types of conduct in traffic, pollution of the environment, and some forms of political activities. Neither in the motivation of those who are involved in such events, nor in the nature of the consequences, nor in the possibilities of dealing with them (be it in the preventive sense,

or in the sense of the control of the conflict) can any common structure be discovered. All that these events have in common is that the criminal justice system is authorised to take action aginst them. Some of these events cause considerable suffering to those directly involved, quite often affecting both perpetrator and victim. Consider, for example, traffic accidents, and violence within the family. The vast majority of the events which are dealt with by criminal justice however, would not score particularly high on an imaginary scale of personal hardship. Matrimonial difficulties, difficulties between parents and children, serious difficulties at work and housing problems will, as a rule, be experienced as more serious both in degree and duration. If we compare criminal events with other events, there is -- on the level of those directly involved-- nothing intrinsic which distinguishes those "criminal events" from other difficulties or unpleasant situations. Nor, as a rule, are they singled out by those directly involved to be dealt with in any way which differs radically from the way other events are dealt with. It is therefore not surprising that a considerable proportion of the events which would be defined as "serious crime" within the context of the criminal justice system, remain completely outside that system. They are settled within the social context in which they take place (the family, the trade union, the associations, the neighbourhood) in a similar way as other "non / criminal" conflicts are settled. All this means that there in no ontological reality of crime.

--Abolition

I have been talking repeatedly about an abolitionist approach. What do I mean by this ?

It is useful to make an analytical distinction between two types of abolitionist stances. On the one hand we have an abolitionist stance which denies legitimacy to activities developed in the cultural and social organisation of criminal justice. This stance rejects also the images of social life which are formed on the basis of those activities in the different segments of society. In this view criminal justice is not a legitimate answer to problematic situations, but presentes itself the features of a public problem. This implies that these abolitionists have to adress a double task: they have to stop activities in a criminal justice frame. but they also get involved in dealing with problematic criminalisable situations outside criminal justice.

This form of abolitionism has the character of a social movement comparable to historical social movements for the abolition of slavery and of the persecution of witches and heretics and contemporary social movements like those for abolition of racial and gender discrimination.

On the other hand we have an abolitionist stance in which not necessarilly criminal justice, but a way of looking at criminal justice is abolished. This form of abolition focuses on the activities of one of the organisations underlying criminal justice: the university and, more specifically, the departments of criminal law and criminology. Referring to academic values which require academic independence of existing social practices to permit a more objective assessment of those practices in the light of explicit criteria, this form of abolitionism reproaches the dominant lectures of crime and criminal justice to lack the necessary independence. These dominant " lectures"

implicitly support the idea of a "naturality and necessity" of criminal justice.

In this sense abolition is the abolitin of the prevailing academic language about criminal justice and the replacement of this language by another language which permits to submit criminal justice to the critical hypothesis: in other words which enables to test the hypothesis that criminal justice is not "natural" and that its "construction" cannot be legitimated. If that hypothesis is validated, the prevailing language about criminal justice has to be deconstructed and criminal justice will appear as a public problem instead of a solution of public problems. The first type of abolition will thus be legitimated.

I talk in this paper mainly about the second form of abolition. Abolition as critical hypothesis (Brodeur 1993, p. 100), academic abolition.
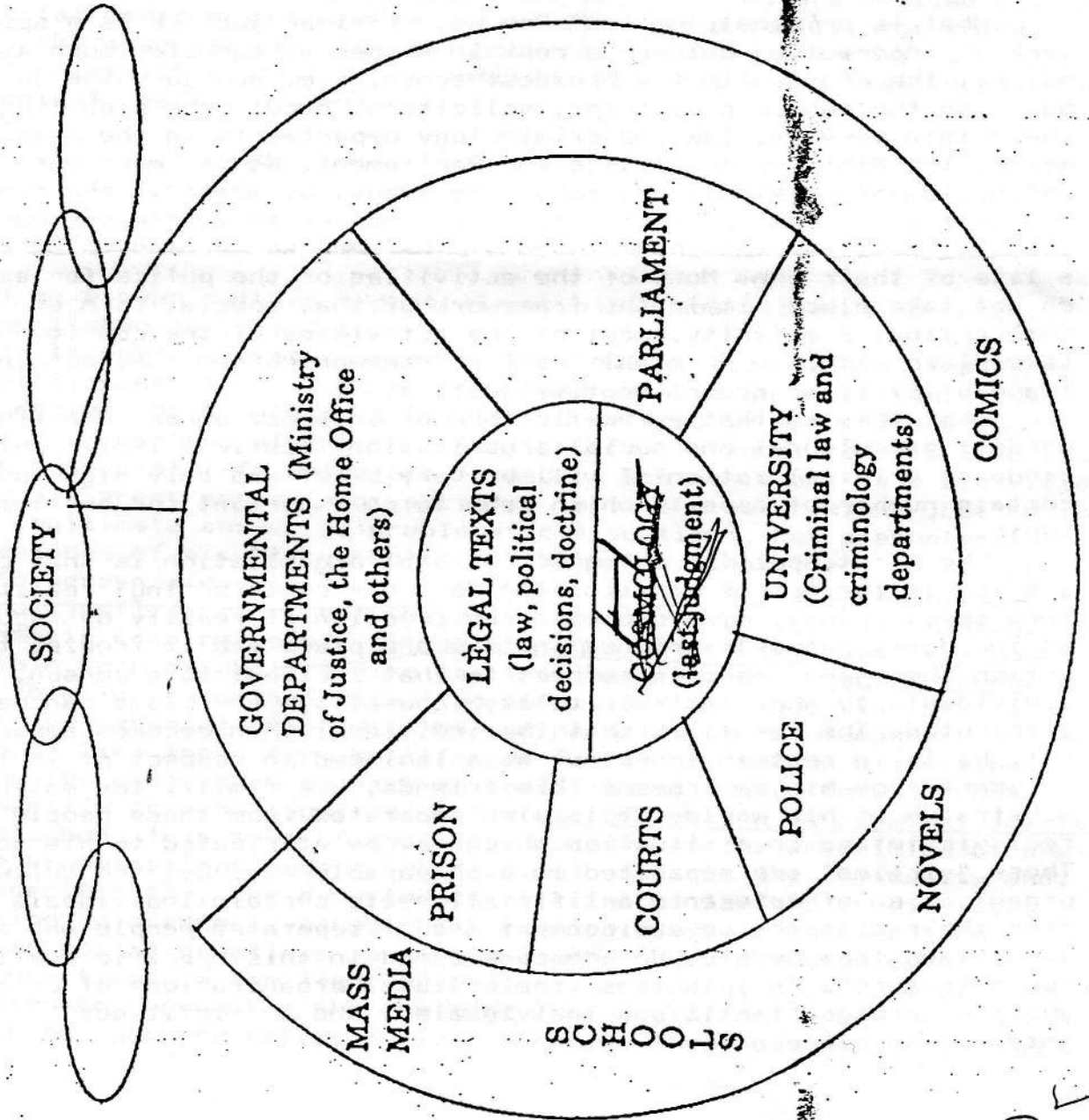

Criminalisation and criminal justice

What is criminal justice? For us, criminal justice is a specific form of interaction between a certain number of agencies such as the police, the courts (in the broadest sence, i.e. not just the judges, but also the public prosecutor, solicitors, etc.), the probation and the prison service, law and criminology departments in the academic world, the Minister of Justice and Parliament. We can make our definition of criminal justice system visual by means of the figure on the next page. None of these organizations are in themselves married to criminal justice, they have (even if they are so married to an extent) a life of their own. Most of the activities of the police for example, do not take place within the framework of that special form of interaction. Similarity, most of the activities of the courts do not take place within a criminal justice framewor: Often they act in the frame of civil or administrative justice.

What then is that especific form of interaction or --in other words-- of cultural and social organization (Gusfield 1981)- which produces criminalization? I will be very brief and only highlight a certain number of aspects which seem to me important for our immediate topic.

The first specific thing of cultural organization is that criminal justice is the act of constructing (or re - constructing) reality in a very specific way. It produces a construction of reality by focusing on an incident, narrowly defined in time and place and it freezes the action there and looks in respect to that incident to a person, as individual, to whom instrumentality (causality) and blame can be attributed. The result is that the individual then becomes separated out. He is in certain important ways isolated in respect of that incident from his enviroment, his friends, his family, the material substratum of his world. He is also separated from those people who feel victimized in a situation which may be attributed to his action. Those "victims" are separated in a comparable way. So, the cultural organization of reference artificially sets certain individuals apart from their distinctive environment and it separates people who feel victimized from people who are considered in this specific setting as "perpetrators". In this sense the cultural organizations of criminal justice creates "fictitious individuals", and a "fictitious" interaction between them.

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SOCIETY

GOVERNMENTAL DEPARTMENTS (Ministry of Justice, the Home Office and others)

PARLIAMENT

LEGAL TEXTS (law, political decisions, doctrine)

CRIMINOLOGY (text, judgment)

UNIVERSITY (Criminal law and criminology departments)

COMICS

NOVELS

POLICE

COURTS

PRISON

MASS MEDIA

SCHOOLS

Another feature of the cultural organization of criminal justice is its focus on "blame allocation". There is a strong tendency within criminal justice to assemble events and behaviours dealt with and sanctins applied in a consistent and coherent pattern around a hierarchy of "gravity".(10) This hierarchy of gravity is mainly built on experience of a limited range of events within the actual (or considered) competence of the system. In this pyramid practically no comparison is made with events and behaviour outside that range. Grading takes place to a large extent in a separate universe determined by the structure of criminal justice itself. Consistency of the scale within the system necessarily leads to inconsistencies with the scales of those directly concerned outside the system, in so far as values and perceptions in society are not uniform. The "program" for blame allocation typical for criminal justice is a true copy of the doctrine of "the last judgement" and " purgatory" developed in certain varieties of western Christian theology. It is marked also by features of "centrality" and "totalitarianism", specific for those doctrines. Naturally, those origins --this "old" rationality-- is hidden behind new words: "God" is replaced by the "Law" and the "consensus of the people", by "we"

I come now to the special features of the social organization of criminal justice. I will mention two: the first feature of the social organization of criminal justice is the very weak position which "victims" --and by victims I mean the person or persons who feel troubled by an event or a sequence of events-- have in its frame of reference.(11)

We would argue that the activities of professions and bureaucracies can be only useful to clients when they are guided by an active participation of all the people in whose behalf they are working. In a criminal justice frame of reference, there is --in principe-- no room for such an active participation and guidance. When the police is working within a criminal justice frame they tend not to be directed any more by the wishes and desires of the complainant, but by the requirements of the legal procedure which they are preparing. The complainant --the person who asked for action from the police-- becomes instead of a guide for their activities a "witness". A witness is mainly a "tool" to bring legal proceedings to a successful end. In a comparable way the frame of court proceedings precludes --Or makes it anyway specially difficult-- that the victim expresses freely his view on the situation or enters in an interaction with the person who is standing as a supposed offender before the court. Also in that situation he is firstly a "witness", even in those legal systems in which a special position has been created for victims. The evaluation studies which have up till now been done into the results of changes in legal procedures which tend to reinforce the position of victims within a criminal justice frame have up till now shown a very disappointing result (Fattah 1997)

A second feature of social organization of criminal justice is its extreme division of labour oriented on a centralized criminal law (written law or common law). This makes it very difficult for the functionaries to gear their activities to the problems as experienced by those directly involved. And it makes it extremely difficult for them to assume personal responsability for their activities in this respect. One of the main characteristics of criminal justice is that it preaches in its discourse "personal responsability" for "offenders" and that is suppresses "personal responsability" for the persons which work in its frame of reference.

The real social and cultural organization of the activities of an organization may be _more_ or _less_ in the key of criminal justice. This permits to assess in which way the "behaviour" of practices develops.

To resume, criminal justice consists on the one hand of the activities of certain agencies in so far as they are the fruit of the earlier described social and cultural organization and on the other hand of the reception and legitimation of those activities in the different segments of "society". Abolition addresses both areas: the activities of the organizations and their reception in "society".

Crime policy

"Crime policy" is often understood as a "policy with respect to crime and criminals". The existance of "crime and criminals" is generally considered as a "given", as a natural social fact, not a process of (selective) definition, the responsability and the object of policy. It would be a fundamental error in our debate to define "crime policy" in such a limited way. One of the necessary conditions for a useful discussion on crime policy is to problematise the notions of "crime and criminals". The degree to which "events and situations" should be subjected to criminalization will be one of the main issues in our debate.

"Crime policy" is, on the one hand, part of a wider social policy, but, on the other hand, must retain a certain autonomy with respect to this wider field. A useful approach in this respect is to consider "crime policy" as a "policy with respect to criminal justice systems"

Such a policy with respect to "criminal justice systems" would be multi - focused: 1) it would address itself to the development of the organizations which form the material base of the system (police, courts, prisons, etc.) and the systems of reference they use; 2) it would address itself to the question as to which type of events could be dealt with by the system, under which conditions and in which manner (under this category the "gate - keeping" function of crime policy would require particular attention); 3) it would voice recommendations about social reorganization in other areas of society with respect to problematic situations which have become the object of a crime policy debate. (12)

After these observations about different key concepts in the language of and about criminal justice we cannot yet conclude about these language issues before we have examined the question of the why of abolition . Let us therefore turn to that question.

Part II. Why abolition

Before trying to answer the question "Why abolition", it is necessary to give some information about developments of our knowledge in the field of what in criminology is called the dark figure. Originally criminologists worked -to get an idea about the frequency and nature of crime- with "statistical data" about the activities of criminal courts.

When it was discovered that many criminalisable events denounced to the police did never end up in courts (for many reasons, one of them being that no perpetrators were found), criminologists started to work

more with **police statistics** instead of **court statistics**. The
difference between reported crime (in police statistics) and court
statistics was defined as dark figure. Some decennio ago a new
perspective on the dark figure started to develop, when self report
inquiries and victim inquiries (13) were introduced. Later followed by
observation techniques. _Now we know that effective criminalization is a_
rare and exceptional event.

In the field of criminalization based on "reactive policing"
(there are persons who feel unjustly treated in an event and in
practice the police acts then only after a complaint has been lodged)
the main reason why criminalisable events are not criminalised is that
victims do not denounce the event to the police. But there are many
other reasons. Perhaps the police had no time to deal with a denounced
event; or they did not find a perpetrator, or they dealt with it in a
problem oriented, non - criminalising way. Perhap the court had no time
to deal with the event or; there were procedural obstacles.

In the field of crimnalization based on "pro active policing"
(like offences in the field of illegal drugs and traffic safety) it is
difficult for the police to know about events: this and the limited
police resources to process known events administratively, are the main
reasons that "effective criminalization" (bringing a case to a criminal
court or applying another formal sanction) is such a rare event.

The large majority of criminalizable events ("serious" and "minor"
ones) belongs thus to the dark figure. All those events are thus dealt
with outside criminal justice. I say intentionally "dealt with",
because we should not commit the error to think that what is not in
acto is not in mundo. That we do not know how something is "dealt with"
does not mean it is not "dealt with". Everything in life is in some
way dealt with by those directly involved.

Elswhere (Hulsman 1991) I gave detailed examples of different ways
in which criminalisable events are dealt with outside criminal justice
and how research in this field in my opinion should be done. I limit
myself here to a few general remarks.

Nearly all events problematic to someone (a person, an
organization, a movement) may be approached in a legal process in one
way or another (criminal justice, civil justice or administrative
justice), but very few of them are, as the dark numbers in criminal
justice as well as other forms of justice show. Most of the
alternatives to criminal justice are of a predominantly non - legal
nature. These alternatives are generally not "inventions" of people
involved in crime policy or legal policy in general, but are applied
daily by those involved directly or indirectly in problematics events.
Non - legal approaches are "statical" and also "normatively" (in the
normativity of the people involved) the rule; "legalisation" is a rare
exception. This has always been so, is so now and will probably be so
in the future. This reality is obscured when we take as starting point
the "normativity" implied in the traditional criminal justice debate.
Because only there we find a normativity in which criminal justice is
the rule and is often (unconciously) supposed to be --contrary to all
scientific knowledge-- also a statical fact.

The exceptionality of effective criminalization (14) of
criminalisable events and the fact that they are as a rule dealt with
in differents ways about which we lack informatin has in many respects
relevance for the assesssment of the legitimacy of criminal justice.

The negative aspects of criminal justice (for the perpetrators and
those close to them, for the person who suffered a wrong in the
criminalizable event, for the functionaries in the agencies and for the

public at large) have been extensively developed else where (Hulsman, Bernat de Celis 1993). One aspect I want however to develop here more in detail.

The fact that criminalisation of criminalisable events is statistically and normatively exceptional puts a new point about the legitimacy of criminal justice on the agenda. The frame of reference of criminal justice is not a normal way of interaction between citizens and professionals. Many of the activities professionals develop within criminal justice are at odds with the requirements of the conventions on human rights. Those conventions contain exceptions with respect to those requirements for a criminal justice approach, but only if such an exception is "necessary in democratic society" (15) Who could claim that "an exception is necessary" when one knows that criminalization is a rare exception and that one has practically no idea how those events are dealt with outside criminal justice. (16)

As a conclusion we can summarise our criticisms of the criminal justice system as follows: Our deepest reproach to criminal justice is that it tends to give an unrealistic construction of what happened and therefore also to give an unrealistic and ineffective answer. It tends further to exclude the formal organizations such as the police and courts from dealing in a creative way with those events and learning from them. Criminal justice seems at odds with all the three values we mentioned above.

"Criminalization" is unjust insofar as by its very structure it denies the existing varieties in social life and the differents "meanings" thus generated, and because it is unable to perceive them and cope with them. It is also unjust --on its own terms-- because it cannot deal equally with perpetrators and victims: mosto of them do not even appear inside criminal justice (dark figure); as a rule they are dealt with elsewhere in a way which is not even known inside criminal justice.

Part III. How abolition.

How do we abolish criminal justice?

Academic abolition

Let us first take a closer look at the academic form of abolition. Some of the conceptual and language issues have been already discussed in Part I. We have to come back to them now after we have digested the information offered in Part II.

One cannot work with the definitions of reality produced by criminal justice. According to the values defined above those images of reality are invalid and not reliable. This implies that academics have to reconstruct the events themselves independent of the criminal justice system and in conformity with the mentioned earlier values.

Thus we have in the first place to go to those directly involved in the event and ask them what happened, in which way they felt or feel wronged about it, to whom or to which "state of affairs" do they ascribe responsabilities for the event, what do they want to do about it and/or what do they want to be done by others.

This "new" form of reconstruction has naturally to respect the dynamics of the development of events for those directly involved and

their environment. In this way it will also provide an insight into the variety of ways according to which criminalizable events are dealt with. Thus we will get an idea how those varieties relate to the earlier mentioned values (17). New images about fields and areas of problematic situations will become available and on the basis of those new images those directly involved and public organization may both develop new policies.

The obvious conceptual tool to start this new way of looking at reality is to replace "criminal or criminalizable <u>behaviour</u>" as a corner stone of our professional language by the concept of "problematic situation". The introduction of the concept of "problematic situation" is a strategy to formulate questions. The first question is: who thinks this (still vaguely formulated) situation is problematic? When we get an answer to this first question, we have to make a distinction between those who answered. In principle we are not interested in the answers of not directly involved professionals"(18)

For those we can consider as more or less directly involved (19) we have than a second range of questions of the type mentioned in the third alinea of this part (what happened? What does one want? etc.) If the wronged persons have ascribed the event to a perpetrator and that perpetrator has become known, his answers to the positions of the wronged person become also part of our reconstruction.

By acting in this way we liberate the diversity of people who feel troubled or wronged (20). And we also free the diversity of those who are asked to intervene in problematic situations (professionals and non - professionals). These interventions may focus on redress and/or prevention. They can be adressed to situations on a micro, meso and macro level (21)

To assess the legitimacy of criminal justice and to give a hand to professionals trying to cope which problematic situations referred to in criminalization debates it is necessary to describe and analyse how problematic criminalizables situations are dealt with outside criminal justice (inside the dark figure). To do that we have to be able to trace them back "as such" even when they have a different shape and different dynamics than they would have had when they would have been criminalised. There are a number of concepts which can help us to do that.

When we look around us and in ourselves we see that people have very different starting points from where they initiate their construction of events which look at the undifferentiated surface in the beginning very much alike.

In the first place it strikes that things which seems dangerous and bad to some do not provoke such feelings and thoughts in others. In the decriminalisation report of the Council of Europe (1980) we called it: <u>differences in the symbolic environment of an event</u>. The degree of tolerance of defferences in lifestyle also has a bearing on this aspect. It is clear that such differences have an important impact on the "lecture" <u>of an event</u>.

Some people construct troublesome events which happen to them as "acts of God" eventually as a deserved pnishment of themselves. How strong this way of construction of events still is, everybody who will travel in the Islamic world will discover: "Ins Allah". It also stays alive in communities which seem at the surface not to belong to an explicit religion.

A third way of constructing a troublesome event is to construct it

as an accident. One does not attribute it to anyone or anything and looks only at it as a fact of live under a perspective of "restoration" in the immediate, and risk prevention in the future. This is a way of constructing events which is very often used in types of cases in which "racism" or "religious strive" is implied. As an answer to violence in which your house is burned down and your child killed you become still more active to built a society without "apartheid".

It is only in the broad category of the fifth way of constructing events -a social control approach- that a responsible actor, a "perpetrator" enters the scene. Even in that case the "punishment model" is only one of the ways to construct a responsability of the actor. Next to it we have other models of holding him responsible like the educationel, compensatory, therapeutical and conciliatory. (Hulsman and Bernard de Celis 1993, p. 96 - 101)

To summarise: In the new lenguage which would replace the conventional language on "crime and criminal justice" the focus will be:

- On situations instead of behaviour.
- On the problematic nature instead of the illegal criminal nature.
- On the person/instance to whom something is problematic (victim) instead of perpetrator. The perpetrator only enters the picture when the victim defines the event in a way which makes him relevant.
- On the question what can be done about it by whom under the perspective or the future (less problems or less problematic) and the past (reordering) instead of gravity and blame allocation to the perpetrator.

This language is the language we see now regularly used by those working in the field of urban safety.

Abolition as social movement

The development of criminalization in Europe and N. America shows us a very bleak picture. There are however at the same time also positive developments in the sense of "crime policies" which want to avoid criminalisation and are victim oriented. These developments we find e.g. in the field of urban safety. In France this orientation found its origin in the creation of "Conseils de prevention" on the local level. Here Gilbert Bonnemaison, a mayor and member of the French Parliament, created a context in which new forces were mobilised to face and to deal with problematic situations (which could be defined as "crime") in new ways. Different forms of "partenariat" develop in the public sphere on the local level; many local organizations (public and private, volunteers and professionals) were involved. These developments are not restricted to France but they sprang up like mushrooms in many European countries. The concepts and other tools used in these actÄvities are very close to the approaches we find in the abolitionist literature and they are a rich source for the development of abolitionist thinking and research.

In the European Union a "European Forum for Urban Safety" was created (22). It provides a context in which many forms of cooperation between cities in different countries take place and the results of different forms of experimentation are exchanged. It could very well be that these forms of cooperation, very close to the direct involved in

the problem fields, provides a "nursery" for new practices and new systems of reference for the organizations which are at the basis of criminal justice and in this way lead to the disappearance of the cultural and social organization which I define as the core of criminal justice.

The contributions we can make to the abolition of criminal justice differ according to our position in live. If we belong to one of the organizations which form the material base of criminal justice, we have other possibilities than those who do not belong to those professions.

Most of the "professionals" working in these organizations (police, courts, legislatives services) have chances to influence the existing practices in an abolitionist way (23). Often an abolitionist perspective is the only perspective which permits to be really satisfied with what one is doing in such organisations. An abolitionist perspective is good for your health.

Also outside those professions we are not powerless. Criminal justice does not exist only in the formal institutions. The activities exercised in the key of the social and cultural organization of criminal justice, the language used, the images created are so familiar to nearly everybody of us that they are part of our perceptions, our attitudes and our behaviour. Also in this respect the field of "crime and criminals" is very similar to others field where issues of "peace and war", "racial issues" and "gender issues" are debated. I hope that my very detailed description of some of the alternatives in (Hulsman, Bernat de Celis 1993) and (Hulsman 1991) will help to understand how this lenguage and these images of criminal justice influence us and constrain us.

In this sense then criminal justice exists in nearly everybody of us like "gender prejudice" and in some areas of the world "racial prejudice" exists in nearly every one. Abolition is thus in the first place abolition of criminal justice in oneself: changing perceptions, attitudes and behaviour. Such a change brings about a change of lenguage and on the other hand a change of language may be a powerfull vehicle to bring about change in perceptions and attitudes. Changing ones language is something everybody is able to do: to a certain degree for non – professionals, it may be even easier than for professionals.

We are able to abolish criminal justice in ourselves, to use another language so that we can perceive and mobilise other resources to deal with problematic situations. When we use another language, we teach that language to others. We invite them in that way to abolish criminal justice also.

Dordrecht, 22/9/97   Louk Hulsman.

Notes

(1) In the social contexts I have become more or less familiar with in many parts of the world, the punishment mode of interaction was reserved for relatively simple problematic situations of minor importance. More complicated or important issues were always dealt with in other ways.

(2) That is even true for people who are as professionals working in the organizations which form the material base of the system. The division of labour within the system makes it nearly impossible for functionaries to have direct experience of the different activities which form together the proces of criminalisation.

(3) "Complete" punishment presupposes agreement between punisher and punished: A "punisher" who wants to punish and a punished person who accepts the activity of the punisher as punishment. It is possible that somebody experiences a decision of another person as punishment although the supposed punisher had no intention to punish. Take someone who gets in his job another function he experiences as a degradation and who wrongly supposes that this change of function was meant as punishment.

It is also possible that somebody wants to punish but that the "punished" does not recognise his authority to do so and experiences this activity as illegitimate violence.

Inside a criminal justice proces events of "real" punishment can take place when relations of authority between involved persons are established. So I observed in a documentary film how an older policeman in a criminal investigation created a real relation with a younger accused and punished him in the proces of investigation. He reproached him his behaviour in an authority relation and this reproach was accepted as such. Punishment is according to me best defined as reproach in an authority relation. This reproach can be combined with or expressed in pain - infliction but this pain - infliction does not seem a necessary element of punishing.

(4) Claudia Laub, an argentine sociologist who worked for a long time in the Ministry of Social Affairs in the province Córdoba, Argentina, plays a central role in this organization. She is also associated with the activities of the European Forum for Urban Security. It was in the context of the activities of the Forum that I met her for the first time. Participation in the Forum activities was very fruitfull for me to get a better understanding of the issues discussed in this essay.

(5) I refer here in the first place to the academic critical value embodied in the expression: "It ain't necessarily so": an emancipatory critical value. A very important part of the academic production refers to values which are not emancipatory at all.

(6) I will explain later in more details that the fact that aspects of a situation may trigger processes of criminalization (primary or secondary) does not imply al all that the situation is problematic. Organisations like police, courts, the executive, and parliament involve themselves in the first place in criminalizing activities because it is seen as their interest to do so or do harmfull to them not to do it; the same is, to a large degree, true for the individual

actors within theses organizations. In view of the prevailing language in the criminal justice debate (and in the political debate in general) it is easy for the individual actors to neutralise "their own responsibility" for the consequences.

(7) I say "to give a hand to people..." and not "to develop models to cope..." because I subscribe to the way in which Foucault (1985) defines the role of the academic in these issues. According to him, the academic should not strive to play the role of the intellectual - prophet who tells the people what they have to do, and prescribes for them frames of thought, objectives and means (which he develops in his head, working in this study surrounded by his tools - the traditional way in which many criminal law academics have worked). Instead, the role of the academic is to show 1) how institutions really function, and 2) what are the real consequences of their functioning in the different segments of society. In addition, he has to uncover 3) the systems of thougt which underlie these institutions and their practices. He has to show the historical context of these systems, the constraints they exercise on us, and the fact that they have become so familiar that they are part of our perceptions, our attitudes and our behaviour. Lastly, 4) he has to work together with those involved and with practioners to modify the institutions and their practices and to develop other forms of thought.

It is not possible to be faithful to this model of functioning and to develop speculatively models of alternatives.

(8) I mean agreement on the fact that state structures ought to be secular and non fundamentalist. Everybody will be aware of the fact that this requirement is, in many areas, not satisfied at all. Many Sate practices still follow the model of totalitariam and authoritarian religions.

(9) I mentiom them here in "stenographic" form as I presented them earlier in Hulsman, 1996. They were more developed in Faugeron and Hulsman, 1996.

(10) The basic idea is that punishment according to gravity is the cornestone of order. Related to this is the idea that especially serious offenders may not escapes punishment: "This is so serious that it cannot go unpunished". In practice, events with really disastrous consequences like the ethnic cleansing in Yugoslavia and Africa go nearly always practicaly without punishment. In addition it is my experience that people I meet (in Holland and else where in the world) use the punishment model of social control for small and not so important transgressions of rules. When things become important people have resort to very different forms of social regulation: rewards, conciliation, negociation. This is not only true in family matters but in general (work amd business relation, etc.)

(11) In other legal processes (civil/administrative), the wronged person is clearly the client and he has the power (over the professionals) to orient the procedure. If he is not satisfied he can stop the proceedings. The party called in court also becomes a client and he also has power. In criminal justice this is different. This aspect has been more elaborated in Faugeron and Hulsman, 1996.

(12) For a concrete application of such an approach to crime policy,

see, the 15th Criminological Research Conference of th Council of Europe (1984), especially the adopted recommendations and conclusions of the conference. Council of Europe: "Sexual Behaviour and attitudes and Their Implications for Criminal Law" (Strasbourg, 1984)

(13) In self report inquiries one asks a sample of people how often they committed in a specific period crimminalisable acts and how often this was followed by a criminal justice intervention. In the victim inquiries questions are asked about the frequency and nature of trouble which was the conse quence of a criminalisable act. In several countries: USA, Holland, etc. victim inquires take place regularly and lead to separate statistics. These statistics form then, the primary base of data (in combination with police and court statistics) for criminologists.

(14) Nevertheless the negative impact of criminalization on certain segments of the population is much bigger than is in generally thought. Even in a country like Holland (that had a relatively low prison population) a statistical study showed in the sixties that 1 in 10 of the males who died in a certain period had been as least once in prison. In certain American cities more than half of the black male population between 18 and 45 years is in prison, parole or probation.

(15) These are the words used in the European Convention on Humain Rights.

(16) Very interesting in this respect is Hanak, Stehr Steinert (1989) because it allows also to make a comparison between criminalizable and non - criminalizable problematic situations. Often, people involved in criminal justice debates get so "possesssed" by the myths and images which underly this debate, that they are not aware of the fact that absence of a criminal justice reaction to a criminalizable event does not at all means that such an event is not dealt with (quid non est in actu non est in mundo). If there is a directly involved person for whom a criminalizable event is problematic that person will always deal in someway with such an event and may mobilize professional and non - professional help to do so.

(17) A concrete example: in Faugeron and Hulsman (1996) we mention a study about a Dutch practice in which women use civil law to react against violent (and criminalizable) behaviour by men against them. The study shows how in this practice the three basic values mentioned in this article are respected to a very large degree by the involved professionals and how this contributes to a high degree to the satisfaction of the women concerned. In addition, this procedure has the big advantage not to imply derogations on fundamental human rights (as mentioned earlier) with respect to the men.

(18) To avoid any misunderstanding with this proposition two remarks: 1) We talk about the use of a concept "problematic situation" in the context of a debate about crime and criminal justice; in other words in a context in which human rights are at stake because the power of constraint of the state is implied. In other contexts, opinions of experts about the problematic character of a state of affairs do not necessarily have to be discarded when they are not representing concrete clients. 2) Let us illustrate the meaning of the proposition

with an example. In our discourse we are not concerned by the fact that the legal text (explicitly or implicitly) defines a situation as problematic; we are interested in concrete opinions of those involved in the problem. This implies naturally that we are not interested in the opinions of public prosecutors and police officers who refer solely to the law. The law is for us not unproblematic. The law is part of the state of affairs we have to assess in the light of our explicit values.

(19) The distinction between those who are directly involved and those who are not is quite clear in the central area of the concept but at the periphery it may be quite controversial. The distinction is also not uniform for the different practices in which the concept has to be applied (socio - medical, legal, public administration, journalism and other media specialities). The researcher has to be aware of those differences in the construction of the necessary indicators. As I see it the notion of "the directly involved" cannot be restricted in legal practices to individual natural persons: Corporations and other "collectivities" may also be directly involved. In civil case - law a lot of material, interesting for constructing, boundaries between those directly involved and those who are not, can be found.

(20) Liberating their diversity is also a legal obligation in the perspective of human rights: the equality of people before the law has to be based on the recognition of their diversity. Without emancipation of the people feeling wronged and victimized, social integration remains an illusion.

(21) The liberation of wronged persons and of those who are asked to intervene in problematic situations is already put in practice in some local policies to promote urban security. Information about those practices can be found in the publications of the European Forum for Urban Security, 38, Rue Liancourt, 75014, Paris, France.

(22) See about the forum the publication (in French and English) Security and Democracy. Analytical college on Urban safety. Forum Europeen pour la securité urbaine, 1994. Forum Europeen, 38 Rue Liancourt, 75014 Paris, Tel: 33 - 143278311

(23) Zaffaroni 1989, is a good example in a double way: What you can achieve in an abolicionist direction in the University and how lawyers can contribute in an abolitionist way in the courts.

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