Champ pénal/Penal field

Vol. XII | 2015 :
Abolitionnisme - Abolitionism
Dossier : Abolitionnisme

The Legacy of Abolitionism

L'héritage abolitionniste

VINCENZO RUGGIERO

Résumés

English Français
Abolitionism is not only a strategy or a set of demands aimed at the reduction (or suppression) of custody, it is also a perspective, a philosophy, an approach. This is exactly what makes it relevant today. Penal abolitionism challenges conventional definitions of crime and the law, while defying official views of the meanings and effects of punishment. This paper sets off with some general observations around imprisonment in Europe. It then examines the main analytical components of abolitionism as expressed by the founders of this school of thought. Finally, a sketch is provided of contemporary contributions which reveal how and to what extent the legacy of abolitionism has been handed down to radical reformers.

L'abolitionnisme n'est pas seulement une stratégie ou un ensemble de demandes visant la réduction ou la suppression de l'incarcération ; c'est aussi une perspective, une philosophie, une approche. C'est cela qui rend l'abolitionnisme encore pertinent aujourd'hui. L'abolitionnisme pénal questionne les définitions conventionnelles du crime et du droit, et brave les points de vue

officiels sur le sens, la signification et les effets de la peine. Cet article propose une série d'observations générales sur l'emprisonnement en Europe, puis un examen des principaux éléments analytiques de l'abolitionnisme, tels qu'avancés par les fondateurs de cette école de pensée. Finalement, il dessine une ébauche des contributions contemporaines qui révèle dans quelle mesure et comment l'héritage abolitionniste a été transmis aux réformateurs radicaux.

Texte intégral

Introduction

1   Abolitionism is not only a strategy or a set of demands aimed at the reduction (or suppression) of custody, it is also a perspective, a philosophy, an approach. This is exactly what makes it relevant today. Penal abolitionism challenges conventional definitions of crime and the law, while defying official views of the meanings and effects of punishment. This paper sets off with some general observations around imprisonment in Europe. It then examines the main analytical components of abolitionism as expressed by the founders of this school of thought in the European context. Finally, a sketch is provided of contemporary contributions that reveal how and to what extent the legacy of abolitionism has been handed down to radical reformers.

I - Houses for the poor

2   It would be an act of honesty to rename prison institutions as houses for the poor. The renaming would describe in a nutshell recent developments in penality and incarceration in several European countries, in those where growing punitive harshness is found, as well as those apparently displaying no visible growing punitiveness. A proviso, however, is necessary: while the old houses for the poor, established during the course of the eighteenth century in England and Wales, hosted working paupers from whom many parishes expected to earn money, those 'housed' in European institutions today are officially regarded, and by many perceived, as largely unprofitable. One similarity, however, remains between the old and the new houses: they are both the result of philosophies regarding 'poor relief' as

a distortion of market freedom. Malthus' complaint that the Poor Laws interfered with the natural laws of supply and demand finds echoes in contemporary advocates of austerity for the disadvantaged and prosperity for those already prospering. It is worth trying to identify the philosophies inspiring these 'houses' and their latent functions.

3   In most European countries there are some uniform modalities in the treatment of migrants, non-nationals, ethnic minorities, young and marginalized people (Ruggiero, Ryan, 2013). The harsher punishments inflicted on these groups are inscribed in a process of penal differentiation which has been occurring for decades in most developed countries. Similar uniformity, however, is found in the lack of penal responses against crimes committed by relatively powerful individuals and groups. Such commonalities need some qualifications.

4   It has become by now a common practice to punish individuals who belong to specific groups because of an actuarial calculus indicating them as more likely to offend and re-offend. What is penalized, in most circumstances, is not their actual illegitimate conduct, but their social condition that is deemed conducive to crime. In contexts in which the labour market offers scarce opportunities to migrants and excluded people in general, penalties may be heavier due to the low expectations relating to their current and future participation in the productive process. In such cases, it is their 'indolence' and lack of participation in consumers' markets that are punished, inactivity being perceived as a pre-requisite for the adoption of unpredictable conducts, and punishment being deemed an appropriate measure for the exclusion of people from an already crowded labour market. This preventative punishment, in brief, is not aimed at preventing crime, but law-abiding behaviour which would come with work. We can assume, by contrast, that in countries where peripheral (hidden) areas of employment are still available, punishment, whether more lenient or otherwise, will take on an 'educational' function, training the punished to accept peripheral, badly paid jobs (Ruggiero, 2010).

5   Trust is a key variable adopted by Mathiesen (2013) to explicate variations in punishment and its intensity. Trusting one's social system means believing that everybody can find a place in it, even those who happen to flout its norms and challenge its values. Punishment, therefore, signals lack of confidence in social arrangements and, conversely, excessive confidence in authorities inflicting it. This excessive confidence in the elite takes the form of leniency for powerful offenders, who paradoxically continue to be trusted even when committing crimes. Trust, however, is also dependent on media power, moral enterprise and anxiety brooding, all elements which end up drawing league tables of dangerousness, designating untrustworthy groups and individuals. In most European counties, anxiety associated with economic, political and 'spiritual' difficulties is translated into fear of the other, and the other, whether actually dangerous or not, is subjected to differentiated penal treatment.

6   This socio-cultural dynamic is questioned by authors who argue that *changing patterns of punishment lie not in social processes but in state and legal processes* (Garland, 2013, 484). The immediate causes of expanding prison populations and increased punitive measures, in this view, are to be found in specific forms of state action. In brief, legal enactments are deemed crucial for variations in penal outcomes. The leniency shown in the past by the Dutch penal system, for example, can be seen as the result of specific acts performed by state agents and of the professional ideology inspiring them (Downes, 1988). Prosecutors and judges held negative views about imprisonment: *an orientation shaped by their law school education, by their ongoing connections to criminological experts, and by the historical memory of internment under the Nazis* (Garland, 2013, 493). The question remains, however, what type of

society the acts performed by state agents are expected to preserve or what type of social characteristics they aim to reproduce. Inequality, in this respect, is a key characteristic of social systems that can be included in the analysis of penal practices. Let us see how.

7   State acts performed in societies displaying a large degree of inequality have to be particularly energetic if that degree of inequality has to be maintained (Piketty, 2014; Rosanvallon, 2014). In other words, if penal measures are tools for the perpetuation of the status quo, more inequality must be turned into harsher penalties. This entails an ideological process whereby growing inequality is met with passive consent or even with inoffensive anger *about so much wealth going to so few* (Starr, 2014, 33). Penality, in such cases, aims at making widening economic disparities acceptable and, at the same time, reshaping the very idea of social justice, so that success is highly rewarded and failure heavily penalized. Penality, in brief, has to prevent the dispossessed from thinking of their situation in a collective way, while averting the type of 'reformism of fear' generated by dissent, when governments realize that change is necessary in order to avoid unmanageable conflict. Penal variations, in this sense, are determined less by different socio-economic arrangements (Cavadino, Dignan, 2006) than by degrees of inequality.

8   Further attention should be given to the function of punishment when the targets are mainly marginalized, excluded groups. The process of incarceration, with its arbitrariness and differential punitiveness, reproduces the illegal choice presumably embraced by prisoners, thus creating an intelligible cultural continuity between the realm of crime and that of punishment. Prisons, in brief, perpetuate the cognitive structure of offenders prior to imprisonment, who are then more likely to re-offend after being released (Hockey, 2012). Moreover, penal action against vulnerable groups does not generate integration or social stability, let alone produce law-abiding citizens. Mass incarceration of the poor causes yet more marginalization, exclusion, community disorganization, it produces criminogenic effects (De Giorgi, 2013), destabilizing and tearing apart the very social fabric that it purports to mend.

9   The founding fathers of abolitionism in Europe, to whom I will now turn, provide an original contribution to this debate.

II - Real utopia

10   Abolitionism fights against the *curious mechanism of circular elimination* identified by Foucault during his visit to Attica, where he noted that society excludes certain specific types of its members, and by sending them to prison, it breaks them up, crushes them, physically eliminates them.

> The prison eliminates them by "freeing" them and sending them back to society; the state in which they come out insures that society will eliminate them once again, sending them to prison. Attica is a machine for elimination, a form of prodigious stomach, a kidney that consumes, destroys, breaks up and then rejects, and that consumes in order to eliminate what it has already eliminated. (Simon, 1991, 27)

11   Similarly, observing the American prison system, de Tocqueville (1956) noted that offenders released from custody remained among humans, but they lost their rights to humanity; people fled them as impure, and even those who

believed in their innocence abandoned them. Once released, they could go in peace, with their live generously left to them, but a life worse than death. This strategy of elimination seems to continue its course in contemporary Europe.

12   Against this strategy, the primary challenge for penal abolitionists is *to construct a political language and theoretical discourse that disarticulates crime from punishment* (Davis, 2008, 3). However, such strategy is accompanied by alternative conceptualizations of crime, critical analyses of law, and radical thinking around the very nature, function and philosophy of punishment.

13   According to one of the most representative figures of this multifaceted school of thought, abolitionism is a manifestation of the general human urge to do away with and to struggle against those phenomena or institutions of a social, political or religious nature that at a given time are considered to be unjust, wrong or unfair (Bianchi, 1991, 9). The general human urge in the definition provided by Bianchi is the same urge that gave strength to the ancestors of contemporary abolitionists, namely the women and men who fought against slavery, and later the campaigners who battled, and continue to do so, for the abolition of the death penalty. Accounts of the contemporary abolitionist movement reiterate this point, arguing that prisons are rooted and perpetuate the brutal racial history of the plantations and slavery (Oparah, 2013).

14   Abolitionism, I would submit, is grounded in a variety of social philosophies which are primarily concerned with discussing processes of social development that can be viewed as pathological or as *misdevelopments* (Honneth, 2007). Among these philosophies are those expressing the view that societies should support a rich plurality of activities, each valuable in its own right: the emphasis is on difference and diversity, on self-governed, non-hierarchical communities (Steinert, 2014).

15   There is nothing utopian in attempts to redress 'remediable injustices': abolitionists do not pursue perfect justice, rather, they aim at enhancing justice. Their focus on social interactions rather than institutions, on precise settings in which people live rather than official norms and extraneous professionals, locates them in a specific political and philosophical tradition. According to a distinction suggested by Amartya Sen (2009), there are contractarian approaches and comparative approaches to the idea of justice. The former establish general, universal, principles of justice and are concerned with setting up 'just institutions'. For such institutions to function, total compliance of people's behaviour is required. The latter assess the different ways in which people lead their lives, actually behave and interact. A contractarian approach is described by Sen as *transcendental institutionalism*, in that it searches for the ideal institutions capable of forging a perfectly just society. By contrast, a comparative approach is led by the search for social arrangements that satisfy people in their concrete collective life.

> When people across the world agitate for more global justice – and I emphasise here the comparative word "more" –
> they are not clamouring for some kind of "minimal humanitarianism". Nor are they agitating for a "perfectly just"
> world society, but merely for the elimination of some outrageously unjust arrangements to enhance global justice.
> (ibid., 26)

16   Comparison entails information, which in turn presupposes proximity to the actors involved in the process of forging ideas of justice. Abolitionists propend for this type of approach.

17   Some forms of human suffering may be unavoidable, and perhaps cannot be remedied in some particular place or at

some particular time. Correspondingly, however, there are forms of suffering that are needless at particular times and places. According to Gouldner (1975), it is the sociologist's job to give special attention to the latter. Penal suffering is avoidable, particularly if its ineffectiveness can be proven, and the prisoners' standpoint deserves to be heard not because they have any special virtue and not because they alone live in a world of suffering.

> A sociology of the underdog is justified because, and to the extent that, his suffering is less likely to be known and because – by the very reason of his being underdog – the extent and character of his suffering are likely to contain much that is avoidable. (ibid,, 37)

18   A key abolitionist contribution, to which I now pass, pertains to the concept of crime.

III - Problematic events

19   Are crimes exceptional events? Louk Hulsman's reply to this rhetorical question takes the form of an excursus into the criminal justice system as a 'special' set of procedures addressed to a 'not so special' category of individuals. We are accustomed, he argues, to regard the criminal justice system as a rational apparatus specifically devised to respond to crime and to control or neutralize its effects. We often interpret crimes as exceptional events, *events which differ to an important extent from other events which are not defined as criminal* (Hulsman, 1986, 63). In conventional perceptions, criminal conduct is at odds with the average conduct in that it deviates from the type of interactions supposedly established by the majority. Such deviation, statistically exceptional, is thus deemed to trigger the special responses offered by official institutions: special events justify the special nature of the reaction against them.

20   According to abolitionist analysis, conducts classified as criminal are only a small proportion of a variety of similar conducts which escape criminalization. On the one hand, therefore, only certain types of events are selected as specific, undeniable, self-evident, representatives of what we understand as crime. On the other hand, the events selected are brought together in a discreet category, as if they constituted a homogenous group of conducts. *Within the concept of criminality a broad range of situations are linked together. Most of these, however, have separate properties and no common denominator* (*ibid.*, 65). What do violence within the family and street violence have in common? Do shoplifting, drug selling and armed robbery belong to the same rubric of behaviour? What makes dangerous driving similar to fencing? And political violence to pollution? Neither the motivation of those involved nor the techniques required, let alone the consequences of those specific conducts, display a precise set of common components. If we are led to analyze them by referring such conducts to a common logical and moral framework it is because the framework we adopt is inspired by the criminal justice system: *All these events have in common is that the criminal justice system is authorized to take action against them* (*ibid.*, 65).

21   This is not denying that human interactions may cause considerable degrees of suffering to those involved: abolitionism would only question why some types of suffering mobilise the intervention of institutional agencies while others do not. Moreover, in an imaginary scale of personal hardship, the distress caused by some interactions of a criminal nature would not score particularly high when compared to those of a quotidian, apparently prosaic, nature.

Matrimonial difficulties, difficulties between parents and children, serious difficulties at work and housing problems will, as a rule, be experienced as more serious (*ibid.*, 66). In brief, there is nothing that intrinsically distinguishes, for those directly involved, criminal events from a variety of other unpleasant events. Most episodes causing hardship are normally dealt with informally by the individuals affected, at times with the mediatory participation of people or groups belonging to the community in which such episodes occur. Many events and policies that generate serious harm (wars, failures in the care system) do not elicit responses from the criminal justice system, while those involved in problematic situations mostly attempt to find solutions within the context in which they arise: the family, the group of friends or neighbours, the work place. All this means, Hulsman concludes, *that there is no "ontological reality" of crime* (*ibid.*, 66). Some examples may provide support to this conclusion.

22 A murder occurs in a town inhabited by some 300,000 people, and the alleged murderer is a university lecturer. A few days earlier, the lecturer had delivered a public speech and no one in the audience noticed anything unusual in the speech and in the speaker. The event is incomprehensible and the investigators feel the necessity to entrust a team of psychiatrists with the explanation of the mystery. Let us now imagine another murder occurring two hundred years before in a small town.

> If we had lived in that small town at that time, we would probably have found it ridiculous to call in an expert of the mind to explain why the killer had killed. Ridiculous because we all knew why he killed. After all, we would not have been surprised, and we would have agreed among friends that this was exactly what we all might have expected all along. (Nils Christie, personal communication)

23 The difference between the experience and perception of the two murders resides in the nature and amount of information the residents share about one another. So many people live in a middle-sized modern town that it is impossible to know them all. In addition, life is organized in ways that only allow us to hold a superficial or segmented knowledge of other beings. We have a narrow basis for predicting behaviour outside the specific group to which we belong.

IV - Substantial law

24 Moving on to the abolitionist analysis of the law, it is necessary to start from a general, conventional premise. Juridical equality may be described as everybody's right to mobilize state institutions for the protection and safeguard of their wellbeing. In this perspective, it is, therefore, the right to mutual coercion. Disrespect for the liberty of others amounts to the denial of their freedom. The state intervenes to deny that denial and restore the initial situation. Coercion is therefore presented as legitimate in that it denies an act which has denied the freedom of others. Abolitionists would retort that such arguments might only be suitable for societies in which equal access to the law is complemented with equal access to resources. Their critique of the law and the criminal justice system is addressed to the iniquitous societies in which we live, while critical responses are also provided to other key assumptions, namely that the law addresses individual rather than collective actors, and that liability and non-liability can be scientifically

assessed.

25   Institutional intervention into problematic situations aims to obliterate an ethics of shared responsibility for conduct while affirming an ethics of individual responsibility. In this way institutions can establish their monopoly over the power to punish or pardon, namely their right to destroy or 'repair' the individual responsible. The weakening of any networks contesting this right, be they neighbourhood, religious, political or cultural aggregations of people claiming their own right to deal with problematic situations and responsibility, is crucial for that monopoly to be accomplished. When the official power to punish or pardon solidifies, penal sanctions as chief characteristics of the criminal law emerge.

26   The abolitionist stance, here, echoes some aspects of conflict theory, although some central tenets of this theory are developed in an original manner. Where conflict theorists seem to limit themselves to the critique of the criminal justice system as an expression of antagonistic values and interests operating from above, abolitionists re-appropriate the very notion of 'conflict' and turn it into a critical tool to be utilized from below. Nils Christie (1977, 1), for instance, remarks that conflicts are hijacked by the criminal justice system and that criminology lends a helpful hand in the process: *conflicts have been taken away from the parties directly involved and thereby have either disappeared or become other people's property.*

27   The act whereby conflicts are hijacked by professionals entails a specific construction of reality hinging on an incident, narrowly defined in time and space, whereby the individual is separated from the context in which the action takes place (Christie, 1998). According to the abolitionist critique of legal professionalism, those who act, in this way, are isolated from the very incident involving them, from the environment in which it occurs, from their *friends, family, and the material substratum of their life world* (Hulsman, 1991, 23). Also, they become separated from those people who, in that specific situation, feel victimized by certain acts. Hulsman focuses on the culture and the organizational make up that extrude people from their social context and artificially sets them against one another: *In this sense the cultural organization of criminal justice creates "fictitious individuals", and a "fictitious" interaction between them* (*ibid.*). The core function of such an organization is the apportioning of blame, whereby events are assembled and sanctions catalogued on the basis of seriousness and gravity respectively. A hierarchy is, therefore, postulated and patterns of acts and institutional responses to them are artificially established. Events, in their turn, are chosen among a limited range of conducts and interactions, namely those which the criminal justice organization feels more comfortable in explaining and evaluating. *No comparison is made with events and behaviours outside that range.* Patterns and hierarchies are drawn in a universe which is far removed from the context in which events took place, so that what appears to be consistent within the criminal justice profession is experienced as inconsistent by those who constitute the objects of that profession. Hulsman remarks, in this respect, that *values and perceptions in society are not uniform* (*ibid.*).

28   If classical conflict theory would mainly examine structures and agencies, while omitting to look in any detail into their specific social composition, abolitionism devotes particular attention to such composition, particularly to the increasing separate specialization characterizing it. In brief, it is argued that each institutional agency develops its own criteria for action, its own ideology and culture that may lead it to collide with other agencies. Agencies are bureaucracies pursuing internal goals, such as expand, attenuate internal problems, monitor the wellbeing of their

members, and ultimately ensure their own survival. *The process of bureaucratization and professionalization within the criminal justice system makes it a soulless machinery* (Hulsman, Bernat de Celis, 1982, 56-57).

V - Limits to pain

29   Among the most critical traits characterizing abolitionist theories and practices are those concerned with the nature, function and philosophy of punishment. The infliction of a penalty might be justified if it contributed to the maximization of happiness rather than the maximization of pain, hence the need for any utilitarian theorizing on punishment to consider its social consequences. Those who defend institutional coercion in the form of punishment may advocate rehabilitative treatment, may value its general or individual deterrent effect or its function of incapacitation aimed at prolific offenders. Abolitionists argue against such philosophies and their practical outcomes. In Mathiesen's (1990) view, for example, prison has no defence, not even when, in a moderate version of penal retribution, offences are said to possess a 'punishment value' that can be translated into a specific amount of 'time'. Mathiesen argues that time is only measurable subjectively, and that the perception of its entity depends on one's proximity to those serving a prison sentence.

30   The history of punishment may be interpreted as an evolutionary process leading to distinct stages characterized by increasing leniency. Some commentators may describe the development occurring as one bringing a gradual decrease in pain, a progressive shift from brutality to sweetness. Of course, there is difference between gruesome public executions and incarceration, between suffocating reclusion and custody in a single room, with cold and hot water and a TV set. But does this indicate an objective reduction of the pain caused by imprisonment?

> I just do not know. Each form would have to be evaluated according to its own time, by those receiving the pain, in the framework of their usual life and other people's life, and in the light of what they saw as their sins. I do not see how a scale could be established. (Christie, 1982, 9)

31   Law texts establish when punishments have to be inflicted, while judges decide how long they should last; neither examines their effects on bodies and minds, the suffering produced, how it feels. The belief in slow progressive humanisation is linked to the lack of this type of information (Hulsman, 1986).

32   Criticizing the humanization thesis, Hulsman notes that the overall amount of punishment does not tend to decline, as the number of convicted people per 100,000 of population shows a strong cyclic movement. The trend of convictions, in many countries in the industrialized world, has in fact for some time moved upwards. Hulsman finds the assessment of the qualitative aspects of punishment more difficult. It is true that the application of the death penalty has been greatly reduced in recent centuries and that it has been abolished in many countries. The same can be said, he adds, of many forms of corporal punishment. It may also be true that some progress has been made in improving the regime in prison systems. He, nevertheless, suggests caution when judging qualitative amelioration and humanization. The amount of suffering incorporated in legal penalties cannot be measured on a scale of absolute values. *To a large extent it consists of the difference between the normal living situation of people and that which is created by the intervention*

of the criminal justice system. Hulsman is alluding to the concept of less-eligibility whereby the conditions in prison must be worse than the worst social condition of people in liberty. Because the prison system *has always drawn its clientele mainly from the most disadvantaged sections of the population*, conditions in prison will reflect the lowest standard of living experienced by this social sector. Now, as *the living standards of those same sections have in Europe improved considerably in recent years*, one may presume that prison conditions have improved accordingly, but the reality is that *improvement inside prisons during the last 30 years do not appear to have kept pace*. The conclusion is that *if this supposition is correct, then the degree of suffering from the penal sanction has in a sense increased* (*ibid.*, 64-65).

33   The 'evolution' of pain, moreover, is alleged to have rendered physical punishment obsolete, which is far from reality. Prison still entails forms of corporal affliction: it degrades the body, it deprives of air and light, it imposes humiliating sanitary conditions, it causes diseases, it produces sterile suffering.

> Not all suffering is bad; some is beneficial, in that it makes our consciousness develop while opening up new existential paths, making us better humans and getting us closer to the others. Imprisonment is a type of suffering that does not create anything, that does not generate any meaning. (Hulsman, Bernat de Celis, 1982, 59)

34   There are, finally, problems caused by institutional intervention per se: custodial and non-custodial measures alike erect obstacles to the development of social solidarity and respect for differences that manifest themselves in "lived life"... Rather than alternatives to custody we should devise alternative approaches by which information is collected about the needs of those involved in problematic situations (ibid.).

VI - Beyond criminal justice

35   Objections raised against abolitionism are quite obvious. Its representatives may be labeled as mawkish dreamers, quixotic activists who experience serial defeats because they are out of touch with the social reality we live in. Prosaic critics may argue that abolitionism must weigh the practical achievements of its ideas and temper its stance with an appropriate dose of 'realism'. A response to such objections can be found in the *vocabulary of culture and society* compiled by Raymond Williams (1976), who stresses that the word 'realism' advocates the concrete against the abstract, materialism versus idealism. Realism, however, implies, on the one hand, the impatience of one sense of practical and, on the other, a tone of calculation typical of politicians and businessmen. Realism today, for example, would require that Kant be ignored and exclusive time be devoted to the study of Hayek. Returning to the initial lines of this paper, it has to be reiterated that abolitionism is a perspective, a philosophy, an approach, and it is its teachings that have been transmitted to contemporary reformers.

36   Radical penal reformers today reiterate some of the concepts presented above. Prisons thrive, it is remarked, thanks to the persistence of some of the deep structures of slavery. They cannot be eliminated unless new institutions and resources are made available to those communities that provide, in large part, the human beings that make up the prison population (Davis, 2005). Faced with the punishment of the excluded typifying criminal justice systems in most

countries, incarceration is seen as a means to control certain identifiable groups of people rather than a rational response to crime (Scott, 2013a). This central abolitionist argument implies that no straightforward relationship exists between crime and imprisonment, and that the criminal label has to be deconstructed in its social and institutional components. We have seen how Hulsman (1986), in a similar vein, denies that criminal definitions possess an ontological reality. The concept of crime changes in time and space, and is determined by the person it is attached to: selective policing and unequal application of the law designate what conducts are to be deemed criminal.

37   Replicating the point elegantly made by Mathiesen (1990) that prisons have no defence, the presumed functions of incarceration are critiqued. Deterrence, for example, is regarded as one improbable such function, as *most people who refrain from problematic conducts do so for reasons unconnected to the penal law* (*ibid.*, 12). Social conditions, reputation, moral choice and social commitment have a far stronger deterrent efficacy. Moreover, wrongdoing is not the outcome of rational choice, as most individuals do not base their choices on rational calculus of costs and benefits. Recidivism, on the other hand, shows how justifications of punishment revolving on its deterrent effect are blatantly implausible.

38   Rehabilitation is not spared by critics, who argue that prison devalues individuals who are already deemed valueless in society and in the economy, with the result that if those incarcerated were previously unemployed, after a period in detention, they become unemployable. The 'criminal record effect' is a burden and a stigma in the labour market and in society at large, making rehabilitation an empty concept. On the other hand, the poor and excluded, being already stigmatized, will not develop a sense respect for criminal laws and practices which further stigmatize them. Radical reformers, in brief, pose the crucial question: why continue the fight against prisons? Because these descendants of slavery that take the form of carceral spaces generate crimes and criminals, making our lives less safe, and because they waste resources that could be usefully utilized for social prevention: education, health care, housing, jobs (Oparah, 2013).

39   Campaigns are advocated which expose the close relationship between the state, penal machinery and corporate profit-making: this is indicated as a key determinant of prison expansion, which in turn makes the recourse to non-custodial measures unviable. *Making visible the business of imprisonment should encourage us to interrogate the assumption in much prison studies literature: that the only significant layers involved in penal policy are state actors* (*ibid.*, 279). Prisons increase fear, as they produce dangerous 'others', unredeemable ghosts who populate our imagination with social nightmares. Such nightmares, in their turn, provide support to increasingly harsher legislations which aim less at 'criminals' than at the population at large. In this sense, prisons undermine democracy, discourage dissent and instill growing doses of fear in communities.

40   Other proposals revolve around the clarification of the concept of safety (Meiners, 2013). Disconnecting this concept from the notion of crime, safety should be given its original meaning, associated with material and spiritual wellbeing, trust in the future, satisfaction at work and freedom from fear. Simultaneously, campaigns are encouraged and promoted stressing the link between inequality and reliance on the criminal justice system, while an escape from the 'punitive trap' would require that the issue of law and order be expunged from official political manifestos. De-politicizing crime would come in the form of *a crime and punishment armistice between the main political parties* (Scott, 2013a, 316).

41   A related issue addressed by contemporary reformers pertains to the costs of punishment in situations of budgetary pressure (Lacey, 2008; McBride, 2013). The financial crash, for instance, is said to teach us about the costs of unregulated excess, and simultaneously to give us an opportunity to think anew about excessive punishment. Penal moderation is therefore advocated as a supplement to financial moderation and reform (Loader, 2010). In this perspective, penal reform is associated with current pressures to reduce penal expenditure: balancing budgets means being tough on crime and tough on criminal justice spending (McBride, 2013).

42   Limiting the power of the media is also deemed part of an abolitionist praxis, accompanied by efforts to provide realistic images of offences and their causes. In this respect, we are told, information or counter-information campaigns should focus on generating alternative understandings of prisons, their official and latent function along with their hidden and visible effects on communities. Such campaigns are to give visibility and propagate the views of prisoners themselves, spreading direct experience and knowledge from below, creating empathy and support. Radical reformers, in this way, propound the extension of their activity into the arena of contentious politics, by creating alternative public spaces, revitalizing collective debate and participation and, ultimately, engaging with grass root organizations. *The mobilization of grass roots activists and abolitionist social movements is necessary for any sustained radical transformation of current penal and social realities* (*ibid.*, 322).

43   In response to possible critics who may regard such a reform programme as utopian, the argument is put forward that, together with long-term strategies, energies should be spent for the concrete, immediate solution of problems in prison. Urgent issues require fast and practicable interventions, and responses need to address the daily humanitarian crises experienced by prisoners. Therefore, concrete action is called for which combines *the ethical imperative to promote immediate help with a political desire for radical transformations of the social and penal systems* (Scott, 2013b, 90). Here, Mathiesen's (1974) notion of the 'unfinished' comes immediately to mind, namely that the reformist elements has to be kept and developed alongside the long-term goal. Abolition, in other words, progresses when the challenge against some aspects of the penal order leads to the discovery of new grounds in which novel challenges can be launched.

44   In a summary of concrete measures incorporating an abolitionist strategy, the following programme is laid down: opening up prison institutions, establishing communication channels with prisoners and getting them out of their invisibility. A key aspect is the elaboration of an alternative concept of human security, based on the provision of basic needs such as food, clothing, shelter, education and health care. *By redefining and broadening our understanding of security, anti-prison organizers successfully channel the desire for safety – a common barrier to imagining a world without prisons – into support for an abolitionist vision* (Oparah, 2013, 287). The initiative known as Justice Reinvestment can be included among such measures, as it attempts to reduce imprisonment rates by reallocating funds from correctional budgets to finance education, housing, healthcare and jobs in communities with high levels of criminalization to which released prisoners return. Providing support and solidarity to neighbourhoods with high levels of imprisonment is seen as a key strategy, and *Justice Reinvestment is widely credited with being a major catalyst behind the leveling off or reduction in prison populations in a number of states* (Brown, 2013, 35).

45   At the analytical level, on the other hand, it is deemed urgent to link several areas of research together, including urban sociology and economic analysis, the anthropology and the political science of ethnicity, and criminology and

social work. A rethinking of neoliberalism as a transnational political project is advocated, so that this veritable revolution from above is not merely described as the empire of the market, but also seen as a set of policies based on workfare and, at the same time on 'prisonfare', all guided by the principle of individual responsibility (Wacquant, 2013). Finally, the 'unfamiliar' concept of 'hope' has been raised, namely a feeling that improvement is possible, as is the development of social consciousness and the practice of social solidarity (Currie, 2013; Brown, 2013).

> As criminologists we have become adept at telling stories of gloom and doom in the form of unrelenting critique. And of course in the penal field we have much to be miserable about... these rolling narratives of critique that concentrate on depredation, injustice, greed, inhumanity, oppression, incivility and crime have tended to feed into an imaginary which is dulled to the possibilities of things being other, of resistance, of dreams, of hope. (Brown, 2013, 28)

Conclusion

46   The legacy of abolitionism, as handed over from the founding fathers in Europe to contemporary reformers, is vivid and includes a compendium of the main radical ideas that took shape in past decades around the nature and definition of crime, the differential use of the law and the failure of prisons to reduce crime.

47   In abolitionist analysis, the designation of what constitutes crime, the intervention of the law and the infliction of penalties take place in institutional settings that are distant from the situations addressed. Within such settings, punishment is the outcome of a cognitive process whereby the institutions make sense of events and claim that their response is based on the knowledge of such events. Abolitionists, instead, claim that knowledge is mainly achieved within precise contexts in which problematic situations arise, and it is for those involved to 'repair' such situations through the development of restorative collective capabilities. An analysis of the current situation of prisons in Europe, as presented above, may benefit from the suggestions made by the father founders of abolitionism, as well as by contemporary radical reformers.

48   True, among the founding fathers, some would publically state that criminology centres should be shut down rather than open (Ruggiero, 2010), while others would emphasize that abolitionism entails a radical critique of criminology and its very existence as a specialized field of study. Criminology, in the abolitionist tradition, is treated as knowledge for the inquisitor, the policeman, the state attorney and the prison administrator. *Criminology is the "scientific" side of policing and punishment: it is police – and prison – science* (Steinert, 2014, 35).

49   Contemporary reformers, however, have certainly inherited the notion that humanitarian, contingent intervention to alleviate the conditions in prison have to be linked with strategic views leading to radical reduction of imprisonment and, ultimately, abolition. Therefore, the concept of the 'unfinished', coined by Mathiesen, appears to have currency in contemporary reformist debate. There is a difference, on the other hand, between the old conceptualization and its contemporary advocacy: in Mathiesen the contingent improvements in prison conditions are the result of struggles in which prisoners themselves and their outside organizations engage, while today such improvements are presented either as the outcome of external humanitarian efforts or as generous concessions by the authorities. We have seen reform campaigners basing their arguments on the necessity to reduce penal expenditure or, in other words, arguing for

penal moderation as a desirable complement to financial moderation. Such reformers appear to neglect that the elite to which they address their demands embrace a system of waste, where wealth is squandered, dilapidated and the elite itself is prone to destroy what it creates. This practice, as Bataille (1967) would remark, is a characteristic of ruling groups disingenuously displaying a lack of interest in their riches while reproducing the conditions to acquire growing quantities of them. 'Waste' is a good investment if it sustains a penal system that defends privileges, and cannot be measured with the conventional rational calculus applied in common mathematical operations. The 'costs' of penal systems, as argued above, have to be measured through the degree of income differences they are supposed to maintain or exacerbate.

50   Finally, contemporary reformers calling for involvement in grass root conflict raise a controversial issue that deserves some attention. The founding fathers of abolitionism inhabited social contexts where conflict was widespread and where they had the advantage to quickly identify those engaged in contentious action and form alliances with them. Today, with social conflict being more tenuous and highly dispersed, involvement in contentious politics may take the form of nothing more than 'public' criminology. This, as suggested elsewhere, can turn into a criminology 'begging' powerful authorities to be nice to prisoners although the latter have never invested criminologists with the task of representing them. There is something esoteric and elitist in public criminology, in that experts working in academia seem to seek the help of experts working in adjacent areas and, while soliciting their benevolence, try to improve the lives of others, namely non-expert actors (Ruggiero, 2012). We should remind ourselves that grass roots action, social movements and all forms of contentious politics require a number of essential elements. Among these are: political opportunities, mobilizing structures, interpretative analytical frames and an established repertoire of action. When contention is 'transgressive', as the one generated by abolitionism certainly is, *at least some parties to the conflict are newly self-identified political actors, and/or at least some parties employ innovative collective action* (McAdam, Tarrow, Tilly, 2001, 9). Action qualifies as innovative if it incorporates claims, selects objects of claims, includes collective self-representations, and/or adopts means that are either unprecedented or forbidden. In the past decades, forbidden means were indeed used by sectors of social movements. Today, if action, in order to be transgressive and abolitionist, has to adopt forbidden means, do criminologists pursuing penal abolition have to turn into 'criminal' criminologists?

Bibliographie

Bataille G. (1967), *La part maudite*, Paris, Éditions de Minuit.

Bianchi H. (1991), Abolitionism in the Past, Present and Future, *in* Lasocik Z., Platek, M., Rzeplinska I. (Eds), *Abolitionism in History: On Another Way of Thinking*, Warsaw: Institute of Social Prevention and Resocialisation, University of Warsaw, 22-38.

Brown D. (2013), Mapping the Conditions of Penal Hope, *International Journal of Crime, Justice and Social Democracy*, 2, 27-42.

Cavadino M., Dignan J. (2006), *Penal Systems: A Comparative Approach*, London, Sage.

Christie N. (1977),'Conflicts as Property, *The British Journal of Criminology*, 17, 1-15.

Christie N. (1982), *Limits to Pain*, Oxford, Martin Robertson.

Christie N. (1998), Between Civility and State, *in* Ruggiero V., South N., Taylor I. (Eds), *The New European Criminology: Crime and Social Order in Europe*, London: Routledge, 119-124.

Currie E. (2013), Consciousness, Solidarity and Hope as Prevention and rehabilitation, *International Journal of Crime and Justice*, 2, 3-11.

Davis A.Y. (2005), *Abolition Democracy,* New York, Seven Stories Press.

Davis A.Y. (2008), History Is a Weapon. The Challenge of Prison Abolition: A Conversation between Angela Y. Davis and Dylan Rodriguez [http://www.historyasweapon.com/defcon/davisinterview.html].

De Giorgi A. (2013), Crime Up? Decarcerate! [http://www.socialjusticejournal.org] (accessed 5 December 2013).

de Tocqueville A. (1956), *Democracy in America*, New York, Mentor Books.

Downes D. (1988), *Contrasts in Tolerance*, Oxford, Oxford University Press.

Garland D. (2013), Penality and the Penal State, *Criminology*, 51, 475-517.

Gouldner A.W. (1975), *For Sociology: Renewal and Critique in Sociology Today*, Harmondsworth, Penguin.

Hockey D. (2012), Analytical Reflections on Time in Custody, *The Howard Journal of Criminal Justice*, 51, 1, 67-78.

Honneth A. (2007), *Disrespect: The Normative Foundations of Critical Theory*, Cambridge, Polity.

Hulsman L., Bernat de Celis J. (1982), *Peines perdues : le système pénal en question*, Paris, Le Centurion.

Hulsman L. (1986), Critical Criminology and the Concept of Crime, *Contemporary Crises*, 10, 1, 63-80.

Hulsman L. (1991), Alternatives to Criminal Justice: Decriminalization and Depenalization, *in* Lasocik Z., Platek M., Rzeplinska I. (Eds), *Abolitionism in History: On Another Way of Thinking*, Warsaw, Institute of Social Prevention and Resocialization, 47-62.

Lacey N. (2008), *The Prisoners' Dilemma: Political Economy and Punishment in Contemporary Democracies*, Cambridge, Cambridge University Press.

Loader I. (2010), For Penal Moderation. Notes towards a Public Philosophy of Punishment, *Theoretical Criminology*, 14, 349-367.

Mathiesen T. (1974), *The Politics of Abolition: Essays in Political Action Theory*, London, Martin Robertson.

Mathiesen T. (1990), *Prison on Trial*, London, Sage.

Mathiesen T. (2013), On Stemming the Tide', *in* Scott D. (ed.), *Why Prisons?,* Cambridge, Cambridge University Press, xv-xxii.

McAdam D., Tarrow S., Tilly C. (2001), *Dynamics of Contention*, Cambridge, Cambridge University Press.

McBride K. (2013), Why Prisons? Incarceration and the Great Recession, *in* Scott D. (ed.), *Why Prisons?,* Cambridge, Cambridge University Press, 213-232.

Meiners E. (2013), Schooling the Carceral State: Challenging the School-to-Prison Pipeline, *in* Scott D. (ed.), *Why Prisons?,* Cambridge, Cambridge University Press, 261-277.

Oparah J.C. (2013), Why no Prisons?, *in* Scott D. (ed.), *Why Prisons?,* Cambridge, Cambridge University Press, 278-300.

Piketty T. (2014), *Capital in the Twenty-First Century*, Harvard, Harvard University Press.

Rosanvallon P. (2014), *The Society of Equals*, Harvard, Harvard University Press.

Ruggiero V. (2010), *Penal Abolitionism*, Oxford, Oxford University Press.

Ruggiero V. (2012), 'How Public is Public Criminology?', *Crime, Media, Culture*, 8, 2, 151-160.

Ruggiero V., Ryan M. (Eds) (2013), *Punishment in Europe,* London: Palgrave/Macmillan.

Scott D. (2013a), *Why Prisons?,* Cambridge, Cambridge University Press.

Scott D. (2013b), Visualising and Abolitionist real Utopia: Principles, Policy and Praxis, *in* Malloch M., Munro B. (Eds), *Crime, Critique and Utopia*, London, Palgrave/Macmillan, 90-113.

Sen A. (2009), *The Idea of Justice*, London, Allen Lane.

Simon J.K. (1991), Michel Foucault on Attica: An Interview, *Social Justice*, 18, 3, 23-37.

Starr P. (2014), A Different Road to a Fair Society, *New York Review of Books,* 22 May, 33-36.

Steinert H. (2014), Marxian Theory and Abolitionism: Introduction to a Discussion, *in* Moore J.M., Rolston B., Scott D., Tomlinson M. (Eds), *Beyond Criminal Justice*, Weston-Super-Mare, The European Group for the Study of Deviance and Social Control, 25-50.

Wacquant L. (2013), Marginality, Ethnicity and Penality in the Neoliberal City: An Analytic Cartography, *unpublished paper.*

Williams R. (1976), *Keywords: A Vocabulary of Culture and Society*, London, Fontana.

Pour citer cet article

Auteur

Vincenzo Ruggiero
Middlesex University, London. Contact : v.ruggiero@mdx.ac.ukro

Droits d'auteur