Penal Abolitionist Movement

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There have been abolitionist movements against slavery, torture, prostitution, capital punishment, and prison. This entry focuses on the latter alone. When the term “abolitionism” is used in relation to criminological issues, it generally dismisses penal definitions and punitive responses to criminalized problems, and proposes their replacement by dispute settlement, redress, and social justice. More generally, it refers to the abolition of state (supported) institutions that are no longer felt to be legitimate. The word “abolitionism” as currently understood in criminology is adopted from the North American anti-prison movement of the early 1970s. Here Quakers, most notably, take up their historical mission from the anti-slavery movement. They see prison as an institution that today fulfills the same social functions as slavery did until the late nineteenth century: disciplining the (mostly black) underclass. This American penal abolitionism is mainly grounded in religious inspiration, and less in considerations of the countereffectiveness of criminal justice, as is the case in Europe (Bianchi and van Swaanning 1986). The European abolitionist social movements of that era were prisoners’ unions and more intellectual radical penal reform movements (van Swaanning 1997). This more academic abolitionism has its roots in symbolic interactionism and social constructionism, with a strongly Foucauldian focus on discipline in a carceral society.

Despite what the literal meaning of the verb “to abolish” suggests, penal abolitionism cannot be conceived in absolute terms. Abolitionists do not argue that the police or courts should be abolished. The point is that crime is not to be set apart from other social problems and that the social exclusion of culprits seldom solves any problem. The penal system itself is seen as a social problem, and “penality” is rejected as a metaphor of justice. Abolitionists question both the ethical caliber of a state that intentionally and systematically inflicts pain upon other people, and the credibility of the penal system, partly because generally accepted goals of general and special prevention cannot be supported with empirical data.

Penal abolitionism knows a negative and a positive momentum. It implies a negative critique of the fundamental shortcomings of the penal system to realize social justice, and aims at the prevention and control of criminalized problems by social means. In this negative phase, depenalization (pushing back the punitive character of reactions) and decriminalization (against the labeling of social problems as crimes) are the central topics. Cohen (1988) characterizes abolitionism’s destructuring moves as: decarceration, diversion (away from the institution), decategorization, delegalization (away from the state), and deprofessionalization (away from the expert). In the positive phase, a distinction is to be made between penal abolitionism as a way of thinking (an alternative way of understanding crime and punishment) and as a way of acting (a radical approach of penal reform). In the first sense, abolitionism is an example of a replacement discourse (Henry and Milovanovic 1996). In the second sense, it moves between Pepinsky and Quinney’s (1991) “peacemaking criminology” and Braithwaite’s (1989) theory of reintegrative shaming. It is more modest than the first, for it is oriented toward mechanisms...
of social control rather than toward rebuilding community spirit in a broader sense, and is embedded in a more radical, dismissive position on the penal system than the latter.

Initially, penal abolitionists pointed their arrows at the prison system. Around 1980, the attention shifted to (the pros and cons of) noncustodial alternatives. Warnings against the net-widening effects of such sanctions were contrasted with their potential value in the attrition of the penal system. In this respect, Mathiesen’s (1974) penal action theory has been quite influential, as it argues that alternatives to prison should remain “unfinished” in order not to be absorbed by a penal rationale. He distinguishes between positive reforms, which ultimately strengthen the penal system, and negative reforms, which are of an abolishing kind.

Other penal abolitionists have focused on the penal procedure. In the early 1990s, Bianchi (1994) concluded that anomie is partly caused by criminal law’s false pretension to reflect consensual opinions on norms and values, and by the fact that decisions are forced upon people without paying attention to the question whether these correspond with their own vision of the problem. In order to overcome such a hegemonic definition of the problem, Bianchi proposes an assensus model: a palaver-like session where the directly involved parties in the dispute themselves define the nature of the problem during the procedure, rather than starting from legal categories and “objective” truth-finding. Assensus is a way between the consensus model of criminal law and the dissensus embedded in conflict models. These two perspectives imply a fight over the representation of the facts instead of a focus on the follow up. With these contentions Bianchi rejects both functionalist and conflict sociology. Instead, he adopts a normative position oriented to informal justice and argues, in quite the same line as Christie (1981), for a model of participatory justice. By accusing the penal system of intentional pain delivery, Christie compares it with torture. Today, we find the rejection of torture self-evident. In the future we may look at prisons in quite the same way.

The development of (counter)criteria for penal intervention is another theme abolitionists deal with. As absolute criteria against penalization, Hulsman mentioned in the early 1970s the tendencies to (i) impose moral convictions and to (ii) use criminal law as a stick behind the door for social work interventions. He also rejects penal intervention (iii) when the frequency of the act implies that it cannot be controlled because the system’s capacity will be exceeded, or (iv) when it does not contribute to any form of welfare, dispute settlement, or redress. According to Hulsman, we do not need to wait for radical political reform or structural analyses in order to start with decriminalization: coercion needs legitimation, giving up on coercion does not. This pragmatic, political approach makes Hulsman’s perspective an interesting challenge for those “intellectual skeptics” who advocated radical penal reform but were paralyzed by all the structural configurations it implies, which leads them to the idea that nothing works.

According to Hulsman, the main change lies in a transformation from a top-down vision of reform within the limits of penal rationale to an approach from below, in which the language from the “life-world” is adopted. Hulsman rejects the idea that crime would consist of any ontological element. It is just a label selectively applied to some problems, whereas crimes are not fundamentally different from noncriminalized social problems. Real solutions are blocked as soon as you call a problem a crime. Crime is an inadequate social construction. Next to Berger and Luckmann’s social constructionism, Hulsman is also notably inspired by Gusfield’s ideas on the culture of social problems and Galtung’s distinction between blue (liberal-capitalist), red (socialist), and green (postmaterial environmentalist) developments in society. Hulsman places his penal abolitionism in this latter strand. He focuses on the organic and small-scale, life-world level of society (van Swaanningen 2010).
It is often argued that penal abolitionism would be a postmodern perspective of criminology. In respect to its rejection of the grand narrative of law and its replacement discourse of smaller narratives of dispute settlement in the life-world, abolitionism is indeed postmodern avant la lettre. Some of these postmodern tendencies are, however, confusing and problematic. Even if we accept that crime is no category that reflects an ontological reality, it remains a historical and sociological reality. As long as social problems are criminalized, “crime” remains a social construction that deserves a specific research attention. Yet the inclusion of smaller narratives rightly adjusts the dominance of critical criminology’s macro-sociological focus.

Abolitionist ideas on dispute settlement are based on weaker empirical ground than the critique of the penal system. A lot of trust seems to be put in people’s communicative capacities, through which conflicts can be settled in a rational way. Penal abolitionists stress the importance of a human input in legal procedures, and challenge the dominant focus on technical legality, which excludes nonexperts from the process which should be oriented to the settlement of social problems. In order to do justice to this inclusive, participatory character, people must be able to tell their own story, be listened to, have a say in the way of settlement, be able to question the universality of norms, before any formal element becomes actually relevant. It seems, however, realistic to assume that people will not always come to an agreement and that someone will probably have to overrule an endless palaver. This raises as a minimum the yet unanswered questions of who is going to do this, according to which standards, and how a solution can be advanced without coercion.

In today’s academic debate, penal abolitionism is mainly discussed as one of the many critical criminologies of the twenty-first century. This does not mean, however, that it has become insignificant. Many of its visions have been adopted by and integrated into other criminological perspectives. Now popular perspectives, such as constitutive criminology (Henry and Milovanovic 1996) or restorative justice (Braithwaite 1989) are grounded in abolitionist thought. Penal abolitionism’s major merit is that it offers a fundamentally different vision of crime and justice (cf. Ruggiero 2010). Its epistemology provides a useful basis for creative empirical research into penal and social control.

SEE ALSO: Anti-slavery Movement; Science and Expert Activism in Environmental Conflicts; Social Control.

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ABSTRACT
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KEYWORDS
abolitionism; criminal justice; deviation and social control; social control; sociology of crime