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Pitfalls and strategy of abolition.

Abolitionism in our societies has throughout history been one of the most influential forces for social and cultural change towards the effectuation of social justice. The word abolitionism in order to indicate a broad movement struggle against an apparent unjust institution dates back to the thirties of the nineteenth century, was coined in the United States and concerned of course the abolition of slavery as one of the most shameful institutions in the history of mankind.

The craving for the abolition of inequities and social wrongs is of course much older and is without any question based on the general and innate human hunger for justice and righteousness. Abolition is therefore as old as mankind and like always we can learn from history. The historical message we learn from abolitionism is on the one hand encouraging. It appears that sooner or later all abolitionism has been succesfull and reaches its aims. To give a few examples in European history: the struggle for the abolition of the privileges of the clerus and of the aristocracy has been succesfull on al frontiers by the end of the 18th century. The abolitionist movement against slavery has eventually been victorious, for slavery has been abolished after a struggle of almost a century. The struggle for the abolition of state controlled and stimulated prostitution around the turn of the 19th and 20th century has reached its aims.

Along with successes though, the history of the abolitionist movement has also been, and this time quite dramatically, reason for disappointment and frustration. The privileges of the clerus and the aristocracy in Europe continued to exist century after century and the rulers did not accept the objections and the opposition: protesters used to be crushed as heretics or dangerous rebels. The privileges however disappeared either by revolution or by evolution, when the old institutions could be replaced by either a new state bureaucracy, an

institution sometimes more suffocating than the previous ones, or by a new aristocracy of economic enterprise, in many respects more noxious and humiliating than their predecessors. Slavery has been abolished after a long and bitter struggle, including war, only to be superseded by economic exploitation of a large part of the population. State controlled and stimulated prostitution has been abolished only to be followed by a commercially organized criminal organization of women abuse including harsh exploitation and women slave trade.

How can we ever understand that abolitionist do so easily fall into the traps and pitfalls of social and cultural change ? Are they so foolish, or are the rulers so wicked as to entrap and cheat their dear abolitionists ? Or are the rulers both foolish and wicked ? If we have to believe Barbara Tuchman's "The march of folly", rulers in history have had far more opportunity to be foolish than to be wicked. The results of their foolishness have most certainly been blatant.

Is it possible, for an abolitionist movement, to avoid the pitfalls of social change ? Perhaps we are not far beyond the truth when assuming that the cause for this kind of traps in the struggle for abolition of any kind of social injustice, lies exactly in the fallacies of justificatory argumentation. The excuses for social injustice can so easily be disguised as a blessing or a social and cultural necessity. The clerus e.g. could quite comfortably justify its prerogatives by referring to the defense of the faith and the necessity of vindicating christian morality. And for a long time many people believed it. The aristocracy could so easily claim its privileges by raising the argument of military defense and the need of maintaining the standards of chivalry or gentlemanhood. And for a long time people were enticed into it. Slavery and serfdom could be justified by pointing at the urgency to dominate the working class in a time of very low labor discipline and scarcity of labor force. State controlled prostitution was expected to keep venereal diseases under control for the benefit of both clients and prostitutes. As long as a greater part of the population acquiesced in these kind of arguments, they offered ample opportunity to rulers and privileged in manipulating the whole nation. What happened was that new institutions proceeded into performing the supposed duties of the previous ones and social injustice could quite often just continue and for some time people were

beguiled until they got aware of the social deceit when it was too late.

Perhaps we should not be too harsh in our judgement of abolitionists in former times. It is easier for posterity to condemn previous ages. We usually know more than they did. It is better to learn from them and to see that we are not going to make similar mistakes just being frustrated afterwards when it is too late. We have to be cautious. And that is difficult for it is almost impossible for human beings to step outside their own age and the contemporary way of reasoning or mentality they are used to.

Turning now to the movement for the abolition of prisons the situation warrants ample occasion for being cautious. There is not only sufficient evidence to commend a comparison to other abolitionist movements, but the case of prison abolition demands even extra circumspection. According to conventional interpretation of history prisons have not only been intentionally instituted, but there has even been an abolitionist movement in favour of prison construction. Almost two centuries ago the item of imprisonment was part of an abolitionist movement, to say the abolition of harsh and cruel corporal punishment as usual still by the end of the 18th century. It is indeed difficult to believe our eyes when reading how European philanthropists, benefactors and civil servants travelled to the young United States in order to make study of the new prison system, which they greatly admired for its assumed humanity as compared to corporal punishment and the barbaric practice of whipping and mutilation. The gentle eyes of the new middle class it is said, did no longer accept the confrontation with visible cruelty and preferred the indoor cruelty of imprisonment, which was believed to be a blessing. European governments made haste in copying the American example. Such has been the stereotyped history concerning the origin of prisons so far. Recent research and theory on the history of prisons has drastically changed this picture. The great confinement, as Michel Foucault called it, did already begin long before the movement for the radical change of criminal law, so typical for the period of the Enlightenment. The craving of rulers to police and discipline their peoples did already commence by the end of the 17th century. Far more people than we have ever thought before had already been incarcerated in

local jails in England or in the so-called general hospitals in France during the whole 18th century. Far from being an intended new institution, the great confinement can be considered a fundamental by-product of the great economic and cultural current that ended up in the industrial take-off and the capitalist mode of production. We are not pretending there would never have been prisons without capitalist production modes, but the great confinement was one of the constituting factors.

The enthusiasm of philanthropists, benefactors for the modern prisons system lasted only very short. We know from Rothman that the great disappointment came already after one generation. None of the expected and intended benefits of the imprisonment could or had been reached. The inmates were not converted into god-fearing and pious fellowmen, not into respectable fellow citizens, they did not receive any social skills in the social structure of a system that defied all standards of social companionship. They were hardly educated towards useful members of an industrial society. The contrary is true: the mere construction and type of building used for imprisonment produced an annual output of miserables and destitutes, criminalized and stigmatized, with just few exceptions no longer fit for normal civil life. And so it has been ever since.

Too late the abolitionists of the harsh corporal punishment discovered to their dismay what had happened. But in the mean time the authorities had acquired the taste for it and until the present day prisonconstruction has continued, with saddening obstinacy. It took abolitionists almost three generations to recover their senses and to take new heart of grace in new abolitionist initiatives. It was towards the end of the 19th century that a novel occasion presented itself. To day we call it the medical model. It has been offered as a just discovered scientific opportunity. Psychiatry and psychology were rapidly developping and seemed to present possibilities of an alternative not only to imprisonment but to punishment. Any kind of psychotherapy developped by the new augurs of the human mind seemed to furnish an opportunity to help criminals in staying out of prison. First the new movement developped dead slow and was met by lots of opposition from authorities and magistrates in charge of criminal policy, but gradually, particularly after World War II, it developped

into a broad movement, a crusade almost, for the scientific approach to the problem of criminality based on the human sciences. Hecatombs of money were spent in the construction of clinics for criminal psychopaths and the maintenance of staff. Great was the enthusiasm of the promoters of the medical model. Some went even so far as to dream of turning prisons into therapeutic communities. It seemed as if the millenium of criminal therapy was to arrive, whereby prisons were turned into treatment institutions thereby being made redundant. The last scion on the tree of the medical model appeared to be bio-social-forensic medicine. Effective treatment of offenders created an appearance of making prisons an obsolete institution. We are not even speaking here of the alternative of electronic devices built in the body of criminals, allowing 24 hours observation of their daily conduct and all their dealings.

It was in the early seventies that abolitionists came again to their senses. Or should we call the advocates of the medical and treatment model abolitionists? Perhaps not !

In spite of all the efforts to introduce and develop the medical model, in many countries the number of inmates had not decreased and even increased, taken the increase of the population into consideration. And the application of the medical model had been gnawing at the rights of the prisoners, bad and hardly existing as they were. In the old days, before the medical model, a prison sentence was a prison sentence and the inmate knew exactly his fate. In many countries though, the enthusiasm for the prison as a therapeutic community had produced the indeterminate sentence, making it possible that a delinquent when behaving badly in prison, could run the possibility of a stay in prison much longer than the seriousness of his crime should allow. Prison behavior became more a decisive factor for assessing the length of the stay in prison than the seriousness of the crime.

The medical model since a decade is rapidly declining. It has in most countries not decreased the number of inmates. But now again authorities have plentiful arguments to intensify the application of prison sentences. Prisons are being built everywhere. Even in the Netherlands, since many decades enjoying a world wide forable reputation for mild repression and reluctant application of

imprisonment, the Minister of Justice announced a few weeks ago, as if he wanted to deride this congress of prison abolitionists, his plans to construct new prisons and he has good chance to guide his proposals through parliament and to acquire the necessary financial resources for this unfortunate projects.

Meanwhile, if prison abolitionists would not watch out, a new opportunity presents itself to fool them. The medical model and the general increase of prosperity has made prisons far more expensive than they used to be several generations ago. Social norms do apparently no longer allow to care for the inmates in a standard too far below the general material level of the lowest income group in society. Prisons may become a part of the financial crisis of the state. It is ominous that in the United States the privatisation of prisons is developing, allowing far lower budgets for prisons than so far. It may be that in the culture of the United States commercialisation of social institutions has a more profound tradition than in Europe, but can we really be sure that European authorities would not in the near future gloat on the American example like they did almost two hundred years ago?

There is another example that might lure abolitionists into disillusion and frustration. Authorities have seemingly been listening to criticism on the medical model and perhaps even the critical criminologists. They are even considering alternative penal sanctions. One of the modern crises in penal policy is the sanction of community service. It all began more than a decade ago. The first heart braking precedents presented themselves. Benevolent magistrates being unwilling to impose prison sentence on juvenile delinquents preferred to sentence them instead to some kind of good work of charity, a work of good will to perform to the community. The media reported about it: juveniles having vandalized a fire alarm box, were sentenced to clean up a fire brigade station. The sentence has a double significance: it is punishment because the young guys lose their free weekend, and at the same time they receive useful information about the excellent job done by the fire brigade. In the Netherlands I know even of a magistrate having sentenced young hooligans after having violently attacked homosexuals, to clean up the office of a gay liberation movement. They may learn how homosexuals may not be so bad after

all. Or the example of drunker drivers, doing a cleaning job in old people's homes. At this moment we can extend the number of examples almost without any limit.

I leave for a moment aside the argument that this kind of sanctions seems at first sight highly advantageous, compared to prison sentences. But the therapeutic value may be corrupted from the start, because it remain sentences being imposed. Any good work of charity has a high value in itself only if being performed out of free will. Enforcement may spoil it from the very beginning.

We might also leave aside for this moment the argument that these kinds of imposed community work sanctions have so far by no means decreased the application of prisons sentences. On the contrary: they have widened the impact of penal policy on society for most sentences to community work have been in those cases where in the last decades the prosecution used to be suspended. Quite a few attorneyes have been in favor of community work sentences because they felt uneasy about suspended prosecution and this type of sentences allowed to continue penitentiary policy on the necessary level.

To the prison abolitionist though, another argument is of far greater importance. Again a pitfall lies in wait and may lure the unwary and unsuspecting abolitionist into desillusion. One of the reaons put forward in favor of prisons was not only the growing dislike of cruel corporal punishment on the market place, but also the increasing aversion towards forced labor. One has to read the emotional commentaries produced by Alexis de Tocqueville after his return from America in 1832. He compared forced labor to the modern prison, branded the former as humiliating, indecent and unworthy of a human being. The prisons he thought valuable for the treatment of offenders, because the criminals were spared public humiliation during the punishment.

The gas pipes in quite a few European and American cities have been laid by criminal doing community work. Greater parts of Siberia have been cleared by criminals in community work. The battle of Lepanto in 1573 where the Europeans saved their culture against the Turkish naval superiority, could not have been won without the many criminals doing community work as rowers on the gallies. Those were the great days of imposed community work. But the abolitionists at the end of

the 18th century were not impressed and they proposed prisons instead. Should we go back, is abolitionism a movement in retrograde ? A few steps further in the direction of imposed community work and we are back where we were.

An abolitionist movement has to develop a strategy where pitfalls can be avoided. That is perhaps one of the most difficult aspects of the whole programme. It is difficult, we have already remarked it, to step outside one's own cultural period. The hermeneutic circle, as the sociologists call it, prevents us quite often to make the right analysis of our own time. Old objectionable institutions present themselves in disguise and the uncautious abolitionist might not be aware of it.

As we remarked before, a cultural disguise is usually presented by means of a fallacy in reasoning with regard to social change. All social institutions need a justification and always is one at hand if need be. It appears to me that the main argument generally put forward to justify imprisonment and the deprivation of liberty, is the need to protect the citizens against crime. A locked up criminal is not dangerous at any rate for the time being. We have to take this argument seriously, not only because there were some truth in it. We all know this protection to be likewise a fallacy because it protects us only for the time being indeed. The ex convict might under circumstances, be less adapted to good citizen life than before. There is a better reason however to take the argument seriously. If the abolitionist would not do it, the authorities and the administrators of justice will most certainly do so and use it for the manipulation of public opinions and fears, most graciously helped by the media.

A strategy of abolition has to take these two major arguments into account: how to avoid pitfalls and how to sell abolition to a public. Whose fears are being manipulated ?

We can now proceed to give a short and very much abridged and we are sure by far not complete summary of possible strategies, with special regard to both the argumentations just mentioned.

It is not out of patriotism that I begin with the so-called Dutch model. It is not the Dutch who named it so but the Americans. The Dutch were not even aware they were applying a particular model. By the Dutch model we understand a sharp reduction of the incarceration



rate. It is true that the Netherlands belong to those happy nations in the western industrial world blessed with a relatively very low incarceration rate. But as I said the Dutch administrators of justice were hardly aware of applying a model of criminal policy. They have never decreased the number of inmates, they just have not allowed the incarceration rate to increase. In 1900 there were about 4.000 prisoners and so there were around 1970. The population though trippled in those years, but the incarceration rate dit not. Was it policy ? I guess not, for in all those years not any new prison has been constructed. Why not ?

Perhaps simply because they did not want to spend the money on this sort of waste of public resources. If one reads all the official reports on incarceration in all those decades, there is one leit motiv, one basso continuo: we have to cut down penitentiary expenses. So if there were no sufficient cell blocs available what else could they do but imposing such low sentences as to keep the number of inmates at equal level. They never considered to store away more than one inmate in one cell; either out of human friendliness or out of worry for the sexual and moral well being of the inmates.

What has caused the so-called Dutch model? There is a nice story, cherished by the Dutch ministry of justice. Whenever foreign penologists pay a visit to the country (and this happens quite often for the penological love of travelling is unsurpassed), and when they are shown round at such occasions the story is usually being told how the Dutch enjoy such a low incarceration rate from the memorable circumstance that so many honorable citizens had been incarcerated during the German occupation who, being shocked by these experiences, would have decided to do something about it. Unfortunately the story belongs to Dutch post war mythology and there is no historical evidence for it, whatsoever. The members of the royal commission who influenced the incarceration policy in the fifties, have not been former concentration camp detainees. Their proposals were directed to more intensive application of the medical model: use privation of liberty for treatment, they said, if not it is waste of time.

The so called Dutch model may have to do with a deep structure of Dutch culture, quite well fixed in the national character. The Dutch

simply dislike extremes, for better and for worse. A Dutch magistrate would argue: why should I sentence to 10 years, if one year would do. But if he has to make a present, he might argue: Why spend 100 guilders if 10 would do as well ?. I can assure you: if the Dutch will be enforced to deploy cruise missiles, the government will argue: why deploy 48 missiles, if 12 would do as well ?. Discussions in parliament have already gone in that direction.

It is true, the Minister of Justice is planning new prison contructions: but it will never be that many as in any other country. But all this is the reason why the so called Dutch model cannot be copied elsewhere. They would have to assume the Dutch national character likewise, and that remains difficult. Do not forget: the national character has its disadvantages as well.

Another but this time very benevolent and favorable aspect of the Dutch model has always been its relatively mild regiem that has always prevailed in its prison system. However, since the so-called humanization of an in itself rejectable system is most certainly not of the highest priority at a congres of prison-abolition (anti-militarists do not discuss a human war either), we will pass this topic in silence. However, the reduction of the incarceration rate until it is almost fading, poses a new problem. Imagine our strategy would be an ever decreasing incarceration rate, sooner or later the problem arises what to do with the fears of the population, justifiable fears for violence and agression, that can so easily and readily be aroused and manipulated ? It creates the problem of the remnant group. We can work hard on alternatives for small and medium criminality, but the greater is the problem of the so-called remnant group, that category of criminal creating an immediate danger to their immediate surroundings and in fact all of us. This problem is priority number one together with the alternatives. We cannot overlook the problem as some abolitionist might do when speaking of radical non-intervention. It is true that we run more rist in being killed by a motor-car than by a criminal act, but this argument does not convince the public and it never will.

The other day when discussing this problem with some Dutch officials they argued: in the Dutch model we have already come down on the remnant group: in fact it are only the dangerous people who are

being incarcerated in this country. According to my opinion this is besides the apparent truth: the remnant and really dangerous group of criminals are only those whose conflicts cannot be met by any other measure but incarceration. The drug problem e.g. cannot be solved by penitentiary measures and as long as another policy is possible,

the actors do not belong to the remnant group. It is true, the identity of the remnant group has also to do with the level of culture and decency of criminal policy. But imagine all the money being spent on incarceration. If only a fraction of it would be added to the improvement of preventive measure we would come much further in reducing the remnant group. But still we will have replaced the main problems of prison abolition: who is going to assess the need for incarceration and what public institutions is to see that it would not be abused for political policy ?

The most and also gratifying task for the abolitionist however is and remains the study and promotion of legal and social alternatives to the punitive system. As long as the general policy towards criminality maintains its punitive character, it will remain retaliatory instead of reconciliatory and we remain in the vicious circle. There are not so many possibilities in retaliation and vindiction: they will be either of the type of corporal or of mental punishment and our humans imagination will always return to the same set of punitive measures without a possibility to get out of it.

The most tempting and promising alternative that offers itself at the present moment, being satisfactory both from a legal as from a socio-cultural point seems to be the promotion of dispute settlement, of regulation and management of conflict. The conflict in the case of criminality is complex: both society as a whole as the individual victim are concerned with it. The alternative is so promising because it can apply to timehonoured and legally quite well accepted structures of negotiation. People still have all their skills in dispute settlement, responsive law is far more common in our legal system. Unfortunately they only have been deskilled as far as criminality is concerned. They have to be reskilled as Raymond Shonholtz calls it, but that may take at least one generation. But it is never too late to begin.

The alternative of dispute settlement, is so promising because we know that both in former periods of our own culture and in cultures other than our own, dispute settlement responsive and reconciliatory legal system have has been a common institution. We do also know that the privileged categories of our culture have far better possibilities than the underprivileged to settle their disputes in a non penitentiary or punitive way. The problem is however not only to prepare these structures of dispute settlement for the categories of the population as well, but also to convince both the underprivileged and the politicians of the importance of initiative in that direction. The underprivileged, and research has show, suffer quite badly from false consciousness: they have been educated in such ways as to believe that the punitive attitude is the best criminal policy.

And the main problem for the modern abolitionist is to translate his abolitionist message into political terms. We have done our utmost to induce politicians, members of parliament, to come to this congress in order to improve their information about abolitionist perspectives. Quite often they are not unwilling to do some thing about it, but they are simply lacking information and make themselves like wax in the hands of unwilling administrators of justice. The situation is critical at the moment: profit can be made out of prison construction and prison management. And concerning the non parliamentary democratic countries: political money can made out of incarceration. A government can make people believe they are tough and macho if they increase the incarceration rate. We are in the middle of the third wave of prison abolition: it is a lively time for abolitionist. But never before in history have the chances be better than they are now: for the legal and social sciences can work on our behalf and they are willing to do so.