A New Look at Victim and Offender: An abolitionist approach

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An abolitionist approach

Thomas Mathiesen and Ole Kristian Hjemdal

Abstract
Since the 1980s prison populations have increased dramatically in most Western countries. Criminology has proposed several approaches to reverse this development, but with only meagre success. Treatment programmes based on individual explanations of crime conducted inside prisons have not been able to overcome the negative effects of the prison-life; programmes conducted outside prisons have often been supplements and add-ons rather than alternatives; and strategies of incapacitation based on an understanding of social and societal risk factors have often shown themselves to be both repressive and ineffective. Mere criticism of the prison system, as ineffective and repressive, along with proposals to reduce the number of prisons and decriminalise drug use are important, but not enough to tear down the prison walls and significantly reduce prison populations.

To effectively reduce the number of prisoners and prisons, an abolitionist approach which more fundamentally transcends the existing boundaries of current criminal policy is necessary. This abolitionist approach may be seen not only as a stance, an attitude of saying ‘no’, but also as an important academic exercise, where you can express and develop your idea of abolition of the penal system, and as a more practical and activist strategy directed at key points in our prison and penal policies and culture. This is the line we advocate for a new criminology.

At the core of this criminology is a new look at the relationship between victim and offender. The point of departure is the understanding that it serves
neither the victim nor the offender much to have the offender reported to the police and possibly imprisoned. What we propose is to make the victim rather than the offender the object of criminal policy and that the efforts of society should shift from adjusting the right punishment to the crime committed by the offender to adjusting the correct help to the needs of the victim. This concentration on help to the victims could conceivably take three general forms: firstly, symbolic rehabilitation and comfort, secondly, material compensation and restoration and thirdly, social support, and if possible, reconciliation. More details will be outlined below concerning these points. The crux of the matter is that a concentration on the victim brings in something which is ‘real’ - it is even to some limited extent relied on in practice today. Yet it is still ‘utopian’ in that it will not be an option on a large or major scale in actual practice instead of prisons for a very long time. In this sense it constitutes ‘a non-penal real utopia’ in relation to present-day prison affairs, and a way to think of prison abolition.

Old News

It is old news in criminology that prison figures are soaring in many countries. The World Prison Population List of 2015 (Walmsley, 2016), states that probably more than 11 million people are now held in penal institutions throughout the world, either as pre-trial detainees/ remand prisoners or having been convicted and sentenced. Since about the year 2000 the world prison population total has grown by almost 20 per cent, which is slightly above the estimated 18 per cent increase in the world’s general population over the same period. There are considerable differences between the continents, and variation within continents. The total prison population in Oceania has increased by almost 60 per cent and that in the Americas by over 40 per cent; in Europe, by contrast, the total prison population has decreased by 21 per cent. The European figure reflects large falls in prison populations in Russia and in central and Eastern Europe. In the Americas, the prison population has increased by 14 per cent in the USA, by over 80 per cent in Central American countries and by 145 per cent in South American countries (ibid).

There are nuances, the Netherlands and Sweden in fact have some empty prisons now, and Norway is renting a whole Dutch prison for inmates from Norway to alleviate the waiting list for those waiting to serve sentences. But despite the nuances, and a slight decrease after 2008 (Allen, 2015), the total increases since 2000 are marked. And the trends go further back, at least until the 1980s. What should we do about it?
Various Approaches

Criminology provides various approaches. One of them may be called *boundary acceptance*. The boundaries of the prison are kept intact. The conditions which are part and parcel of the penal and prison system are accepted as boundaries to be taken for granted. Attempts are made to find and underscore the kinds of criminology that governments are listening to and responding to in penal policy, without the boundaries being crossed or violated. Criticism may occur, but only within these boundaries, literally these walls.

One variety of boundary acceptance is based on *individual explanations* of deviance and crime. The hope is that genetics, biology, psychology, various pedagogical approaches like cognitive skills programmes, anger management programmes, cognitive behavioural therapies and the like are called in, which may improve things on the individual level. Strategies of individual incapacitation, in which risk assessments based on a variety of techniques have a prominent place, have likewise gained prominence. A wide range of studies in the ‘What Works’ (Martinson, 1974) tradition, a treatment-orientation which has supplanted the ‘Nothing Works’ thinking from the 1960s and 1970s, have re-kindled hope (Lipsey, 1995). Alternatives such as community sentences, conflict resolution boards and electronic surveillance in the home are being tried in some countries.

The trouble with the various trends and studies based on an individual understanding of crime is that their effectiveness in terms of recidivism is to a very considerable extent scant (Mathiesen, 2007). Under rigorous controls, various carefully designed measures based for example on psychological and pedagogical preconditions may work to some extent, but such rigorous controls and carefully designed measures are rarely present in our prisons. Our closed prisons are to a large extent boisterous and unruly places where drugs are taken in large quantities.

Furthermore, alternatives such as community sentences and conflict resolution boards tend to become add-ons to the prison system rather than true alternatives to it. In the eleventh hour parliaments will vote in such a manner that the measures will be opened not primarily as alternatives to unconditional sentences, but rather as alternatives to conditional sentences or even more lenient control efforts. This is a story which goes far back into the history of ‘alternatives’. As Stanley Cohen (1985) has pointed out so eloquently, the total control system seems to swell rather than shrink, at least in many places. To be
sure, important exceptions exist (McMahon, 1992), but this is a general trend. It might be added that reliance on the fiscal crisis, arguing that it is too expensive to build or maintain prisons (which has recently become a line of thinking in the US state of California), appears likely to be only a short term method which will melt away when the economy changes. It is not based on an intrinsic wish to decrease prison figures.

A second variety of boundary acceptance is based on social or societal explanations of crime and delinquency. Reference is made to collective morality (which presumably is waning), class conflict and status discords, demography, ethnicity (often combined with class), geography and culture and so on – as well as their practical applications in terms of strategies of collective incapacitation – where whole groups or categories are targeted. As in the case of boundary acceptance of the individual variety, the intentions may partly be humanistic and critical of important societal dimensions (class and ethnicity are cases in point), but it is difficult to see the practical results, and measures are often strongly repressive and quite ineffective. In Norway, two related examples come to mind: A so-called ‘VIC project’, in which ‘Very Important Criminals’ are closely monitored and taken off the streets when apprehended; and a ‘broken windows project’ imported from New York, which is another variety of the same. In New York as well as in Norway the ‘broken windows’ approach is one of many examples of repressive measures which do not yield desired results. Demographic factors and other factors are at work. The crime rate has gone down in cities and towns also where a ‘broken windows’ approach is not applied.3

A third and final variety of boundary acceptance, where the prison as such is not attacked, but rather accepted, should also be mentioned. We are thinking here of various critical approaches to the existing prison system, which keep the boundaries up and the prison as a solution intact. Arguments like; the prison does not work as a preventive measure, the costs of control are greater than the gains, crime is a cultural construction which remains uninfluenced by prison, the number of prisons should be reduced, there should be more open prisons and fewer closed ones, certain behaviour patterns which currently are criminalized (the use of softer drugs) should be decriminalized, and the like are fair enough as criticisms, but do not tear down the walls. Generally speaking, criticisms and proposals like these are well meaning, they may be mustered by

3 A Norwegian version of the criticism of the ‘broken windows’ strategy is discussed in Elisabeth Myhre Lie: ‘Lov og orden i New York’ (‘Law and Order in New York’), Aftenposten 23 September 2009. Lie works at the Norwegian Police University College in Oslo.
enthusiasts with good intentions. We cannot shrug them off like many of us did in the 1970s. Reforms may be important to prisoners, and they may also have some positive long-term functions. But, by keeping boundaries up, the authorities may easily ward them off as methods to significantly reduce prison populations.

**Abolitionism**

If the goal is to reduce the number of prisoners and prisons effectively, a much bolder attack on the prison which can transcend system boundaries is in order. It must follow a line of thinking which is as broad as possible, essentially demanding a sea of change in Western criminal policy, which in its current form is at a dead end. This is the crux of an *abolitionist* approach to criminal and penal policy.

An abolitionist, whether a scientist, a teacher or a person practising his/her trade, is not a person who is preoccupied with what we would call system justification. He/she is not a person who is preoccupied with refining the existing. His/her wish is to get rid of the existing, like some people, close to two thousand years ago, got rid of (the remnants of) the Roman Empire, or like others, more recently, in many countries got rid of slavery and the death penalty. To be sure, many forces operated in the direction of these major historical examples of abolitions. Also, in quite a few places slavery and the death penalty are not abolished. In addition, you do find examples of their return under new names. Nevertheless, in many places they may be seen as major, more or less full scale abolitions.

More concretely, and having worked with the issues involved in abolitionism in the realm of penal and prison policy for roughly 40 years, we have over time delineated several different lines of abolitionist thinking. Here we will briefly mention three of them.

*Firstly, abolitionism may be seen as a stance.* It is the attitude of saying ‘no’. This does not mean that the ‘no’ will be answered affirmatively in practice. A ‘no’ to prisons will not occur in our time. But as a *stance* it is viable and important. This does not mean that we have not been preoccupied with concrete abolitions. In the Norwegian context, we have been strongly engaged in getting forced labour for alcoholic vagrants abolished (it was in fact abolished in 1970), likewise the borstal, or youth prison, abolished (they were in fact abolished in 1975). We have done this through our work in the Norwegian prison movement (KROM – the Norwegian Association for Penal Reform,
established in 1968 and still going strong). But we have (also in the context of KROM) been preoccupied with fostering and developing an abolitionist stance (in Norwegian holdning, and in German the much better word Stellung); a constant and deeply critical attitude to prisons and penal systems as inhumane solutions.

Many forces, at the workplace as well as in the private sphere, operate in the direction of softening the abolitionist stance, and you therefore have to be on constant alert to maintain and develop it.4

Secondly, **abolitionism may be seen as an important academic exercise.** While maintaining and advocating an abolitionist stance to penal and prison matters in the external world, the abolitionists who are engaged academically have the academic site as a concrete work place. In the academic world, in contrast to life outside which is full of compromises, pressures, pitfalls and loud noise, it is possible to think in a clear and principled way. The main point with abolitionism as an academic exercise is that the context provides an opportunity to think and loudly express new ideas, think and loudly express what may be imagined although it is not yet anywhere near practical policy. It was possible for example for Louk Hulsman to ponder deep questions such as what will it take to have not only prisons, but also penal policy as a whole, abolished? Is it possible to develop a new language supplanting the criminal justice language, and to have criminal law supplanted by civil law? Is it possible to create a civil rather than penal frame of reference in society?

The pressures within the academy to follow the mainstream and remain within a criminal law and penal frame of reference are very strong indeed. Producing research grants, getting tenure as well as a whole range of other social pressures are at work in favour of the mainstream. But in the Western world the academy is one of the few places where basic views outside the mainstream may be upheld and loudly voiced.5

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5 The present brief statement about abolitionism as an academic exercise is inspired by, but partly different from, Louk Hulsman’s conception of ‘academic abolition’. Hulsman takes academic abolition to mean i.a. the development or reconstruction of a different language with which to talk about ‘problematic situations’; see his ‘Themes and Concepts in an Abolitionist Approach to Criminal Justice’, Dordrecht 22 September 1997, http://www.loukhulsman.org/Publication/
Abolition as a stance and academic abolitionism are two forms of abolitionism at a time where the actual abolition of prisons lies in the future, out of our reach. Both are viable and important. But there is also another possibility, a third form of abolitionism, which is as viable and important as the others. It brings in a third dimension, where a retreat to the safe haven of the academy or a mere dimension of a staunch no is combined with ‘expeditions’ and actions favouring basic change in the outside world, notably at key points in our prison and penal policies and culture. This third form of abolitionism crosses boundaries with stamina and resolve, brings in deep and prolonged interaction with those who are subject to the so-called criminal justice system – the prisoners, and is up to a point practical. But it consciously leaves aside many of the practical technicalities and compromises which all too quickly make system boundaries arise once again. It is an art.  

This is the line we advocate for a new criminology, as a non-penal real utopia, to counterbalance the very strong tendency in the discipline towards boundary acceptance of one or more of the kinds indicated earlier in this article. ‘Real utopia’ refers to a situation where an idea is presented which may in principle be carried out in practice, but which is utopian in the sense that it for various reasons will not become a major reaction for a very long time. A transfer from punishment of the offender to various escalations of aid to the offender is such a ‘real utopia’. It is an idea which may be carried out in principle (and which is carried out to some extent in practice), but which for various reasons will not become a major option for a very long time.

An example is in order.

Victim and Offender

The relationship between victim and offender strikes at the core of criminal policy. Though victimless crime certainly abounds, the relationship is key. Turn the key, and another criminal policy may emerge.

The victim has received increasing attention over the past couple of decades. The plight of the victim, or of his or her relatives, is often compared with the situation of the offender. In public debate it is frequently said that while the

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6 New debates and conflicts over abolition may occur when academics and prisoners become engaged in a common social movement. However, it is our experience, after 40 years of work in KROM (see above) that many such conflicts may be solved in a long term perspective.

offender receives large doses of help and support, the victim receives next to nothing. This, it is maintained, is out of balance and an unjust arrangement. Presumably, the tables should be turned: The victim should receive much more support of various kinds and the offender less, so that the relationship between victim and offender is brought into balance.

We propose a different way of looking at the relationship between victim and offender. We have in mind victims of offenders who today serve time in prison, or of offenders who would have served time in prison if they had been caught. Our analysis is meant as a sketch, an idea which needs further development, and is in line with an abolitionist way of thinking.

Our point of departure is that it serves the victim little to have the offender reported to the police and possibly imprisoned. Firstly, the victim largely receives little or nothing from it. An exception would be the minimum pleasure of naked revenge on the part of the victim. Though such a sentiment is understandable, we do not accept it as a legitimate function of imprisonment. Secondly, revenge is an ‘open’ feeling: as a sentiment, it is never fully satisfied and legal punishment of the perpetrators does not reduce the victims’ feelings of revenge (Orth, 2014); stiffer sentences usually lead to further demands for revenge, and so on in an unending circle. Thirdly, our present system is of rather marginal importance to most victims. Few victims (in Norway, 15-20 per cent) report cases of violence to the police, and when property crimes are reported the main reason is to release the insurance rather than having the offender sentenced. The main reason for not reporting violence is that victims do not think it will be of any help (which by the way is quite correct as the chances of being exposed to further violent episodes is not influenced by reporting to the police (Hjemdal, 2002)). Also in cases where crimes against the person are in fact reported, sentencing does not usually follow. For example, over 80 per cent of all reported rapes charges are dropped for various reasons. To use the victim as an argument for a more repressive policy misses the target completely, not only because it does not help the victim to have the offender imprisoned, but also because the large majority of victims are out of reach of present-day criminal policy.

On the side of the prisoner, and again contrary to popular opinion, it serves the offender little to be imprisoned. The pains of imprisonment are sharp, often as knives, and prisons are not service institutions but disciplinary control systems. Those who are imprisoned systematically constitute one of the most poverty-stricken strata in society, and remain so after serving a prison sentence. Imprisonment, then, is a solution for neither victim nor offender.
'Victimology' has, through the past couple of decades, become an important research area. Nevertheless, criminal policy does not cease to focus on the offender. The offender is the object of criminal policy. He or she is to blame, and he or she is to be punished.

We take the position that a radical change should take place in the very focus of criminal policy. The position may be seen as a concrete implementation of an abolitionist approach, as non-penal real utopia (Scott, 2013). Our proposal is to move the focus of attention in criminal policy completely away from the offender, and over to the victim.

Traditionally, the offender and the victim are seen in relation to each other. They are two sides of the same coin. What we propose, is to untie the relationship between the two. We propose to use Ockham’s razor on the tie, and make the victim rather than the offender the object of criminal policy.

This idea is fundamentally different from the more traditional notion of restorative justice. At the core of restorative justice is the understanding of crime as a conflict relationship between a victim and an offender. In restorative justice the role of the criminal justice system is to prepare the parties for solving the conflict between themselves. The main objective of restorative justice is to repair the damage and restore the relationship between the parties. Our notion presupposes a much stronger role on the part of the State, in which – to repeat – the State moves the very focus away from the offender and over to the victim. But conflict resolution may come in as one of the many ways of providing a new social dignity on the part of the victim (and offender). We return to this later.

Our notion means that the efforts of society should not consist of adjusting the right punishment to the crime committed by the offender, but that the efforts of society should rather consist of adjusting the correct help to the victim. The measures taken by society should not be escalated, in the form of pain or punishment, relative to the guilt and damage done by the offender, but the measures taken by society should be escalated, in the form of help, relative to the situation and damage done to the victim. In short: rather than operating with a scale of punishment related to the offence, we should operate with a scale of help related to the harm experienced by the victimised person.

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8 Ockham’s razor can be popularly stated as ‘when you have two competing theories that make exactly the same predictions, the simpler one is the better’. The principle is attributed to 14th-century English logician and Franciscan friar, William of Ockham.

9 In this sense it is different from the model of restitution proposed by Randy Barnett in 1977.
It is a foreign thought, and we should therefore acquaint ourselves with it. Once again, the heart of the matter is to adjust the efforts of society as help to the victim rather than punishment of the offender. The crux of the matter is to escalate the measures of society as help relative to the situation and damage on the part of the victim rather than escalating them as punishments relative to the offender’s guilt and damage done.

The heart of the matter, then, is a brand new criminal policy, a criminal policy which also would decrease anxiety in society, something which traditional criminal policy does not do. As Box and Hale have suggested, law makers and courts may be seen as ‘anxiety barometers’, as institutions which, through their decisions, reflect the anxiety of society (Box et al, 1982; Box and Hale, 1985). But they do nothing to the anxiety. The policy which we propose would do something with the anxiety by the shifting of attention mentioned above.

Such concentration on help to the victim could conceivably take three general forms:

Firstly, the symbolic form. Symbolic rehabilitation is important in a number of cases. Institutionalized sympathy, rituals expressing sorrow, stronger forms of rehabilitating honour through personal and public conversations and forms of being together, adequate resources for treatment in a wide sense of the word where this is wanted. And peace and quiet, no interference, where that is wanted.

Secondly, the material form. Life insurance in the real sense of the word is important. Here this means that all members of society automatically, from birth on, are economically insured against crime, and that the insurance is released in very simple ways, without complicated and degrading efforts on the part of the victim. It is fantastic that our advanced social democratic state has not already instituted this, but has left it to private initiative. A general life insurance from birth onwards would among other things have wiped out the class differences which exist today as far as insurance goes. The poverty of imprisoned offenders usually makes it impossible for offenders to compensate damages, at least when the damages are more than trivial. It would have to be a state insurance. A low insurance tax for all citizens from birth onwards would make it possible for the State to pay damages, at least in cases where the damages are above a certain level.

Today’s state compensation to victims of violent crimes is only a beginning. Over and above economic insurance and standard compensation, concrete support for rehabilitation of material structures which have been damaged, similar support for rehabilitation of the human situations which have been
damaged, would be important. You can say that it is not always easy to rehabilitate, even when it is in the material sense. But within today’s system *nothing* is rehabilitated or rebuilt, and much can after all be done in this respect.

Thirdly, *the social form*. This is the place where a new contact between victim and offender could be relevant. It presupposes an active interest on the part of both parties.

Today’s conflict resolution boards could be one model. Generally crime, at least of the traditional kind, may be viewed as a communicative act, a side-tracked attempt to say something. When we consider it important that what is being said is in fact said in a manner which is acceptable, further communication may be facilitated, and arrangements for that purpose should be established. But at times, or often, such communication is not desired by one or both parties, or impossible to arrange for other reasons. Obviously you cannot establish communication of this kind as long as the offence remains undetected or not cleared up. Nevertheless the social form is far from being exhausted as a way of thinking. For those who have been exposed to street violence, the establishment of networks of a protective and rehabilitative kind, especially in the sense of reducing anxiety, would be important. For those who have been subjected to violence in the private sphere, today’s crisis centres for battered women and men could provide a model. As violence in the private sphere is being uncovered, we understand how important the establishment and further development of protective centres would be, and how important it would be to give those who are employed there all the resources they need for running the centres. For battered women and men and for those who have been exposed to more subtle but threatening victimisation, it would be important (as supplements to the protective centres) to develop roles for persons who could be called in and act as go-betweens. Roles of this kind are almost totally lacking in our society today.

These are just suggestions – a whole host of social measures as well as symbolic and material methods may be envisaged. But what about the cost? We have mentioned a life insurance against criminal damages for all citizens from birth, which would imply a small insurance tax on everyone. The insurance would be a non-profit matter, so the tax would be low. But it would require an administrative bureaucracy (a danger would be that this bureaucracy could grow large; this would have to be prevented), and the many other arrangements which would be relevant and necessary would be costly. Who would pay, over and above the insurance tax?
Keep clearly in mind our point of departure: the crux of the matter is to escalate the measures of society as help relative to the situation and damage on the part of the victim, rather than escalating them as punishments relative to the offender’s guilt and damage done. In other words, the point is the development of a new kind of justice. This would lead to a drastic reduction of the prison population, which is part and parcel of the abolitionist approach. In turn this would involve a similarly dramatic reduction of costs in the construction and maintenance of prisons. We do not consider it as our task here to present a detailed budget, just to present the idea. The money saved would certainly cover the expenses of help to victims. Also of the utmost importance: it would help cover a large part of the expenses which would have to be geared towards help to the offender. To repeat, we know the offenders who are imprisoned are regularly extremely poor. They lack education, housing, jobs, in large numbers they are drug addicts, alcoholics and the like. Saved money would have to be divided between the ranks of victims and the ranks of offender. There would be money enough through saved prison expenses.

We hear the cry: What of protection of society? What of incapacitation of the offender, collective and selective? What of the deterrence of the offender and also of others who are not yet inside the walls? These are important questions. Our answers to them are given in detail in Thomas Mathiesen’s book *Prison on Trial* (2006). A large collection of data, a whole library of empirical studies, suggests that the prison is a failure in terms of all the standard justifications of imprisonment.

Perhaps there is a lower threshold or floor in terms of imprisonment which we cannot go below without doing some harm to society. In Britain, the US and many other countries we are very far indeed from that floor today. It is time to change our priorities, carving out a basically new criminal policy in our societies.

We have just presented an idea to such a change. It would have to be carved out in practice. This would be a long-drawn process, with pitfalls and struggles. From the start it would involve a mode of thinking which is critical but also constructive rather than just concentrating on the difficulties. Perhaps above all, it would involve a basic change in the cultural climate of our society.

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10 Also out in Norwegian, Swedish, Danish, German, Italian, Spanish, and Taiwan mandarin, and has recently also been published in mainland mandarin.
Conclusions

Quite a few years ago, the French sociologist Pierre Bourdieu coined the term *doxa* to refer to that which is taken for granted, that which is not questioned because it is common knowledge to everyone in the tribe (Bourdieu and Nice, 1977). Doxa has hegemony. If debates do occur doxa (and they often do in the Western world), they are frequently orthodox: while frequently sensational in terms of media coverage, the coverage often takes for granted and therefore neglects the basic issues involved. Ethnomethodologists touched on such hidden dimensions of societal communication long before Bourdieu, without using his terminology. At times, however, debates become heterodox, touching on deep issues. Struggles may then occur for example over critical issues in criminal policy. Heterodox opinions are often relegated to marginal journals and newspapers outside the mainstream. But sometimes they become threatening to basic dimensions of a doxa. They become real battles. Such struggles may make the world better, but also worse – there are historical examples of both. It is our hope that our new look at the victim and offender makes (some) people think outside of standardised patterns, outside of doxa, to make the world better. It would also help open up for a new and exciting science of criminology, which thinks outside the box, and which is not restricted by boundaries.

References


