



Abolition: Assensus and Sanctuary

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Abolition: Assensus and Sanctuary¹

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Abstract

After criticising the persistence and extension of the criminal justice system in Western societies and the failure of its objectives of adaptation and therapy, this text proposes a redefinition of norms from the point of view of abolitionism. It is stated that it is not necessary to create a new system of rules but to apply existing ones by redefining the terms to seek respect for human rights and to promote a system of reparation rather than one of punishment. The alternatives that are proposed to the system of punishment lie in the commitment to the resolution of conflicts by their own protagonists avoiding the use of bureaucratic strategies that co-opt those alternatives by incorporating them into the criminal justice system.

Part I. Major objections to the prevailing system

In order to design effective strategies of abolition and to project workable alternatives of law, we need to agree on what we are opposing.

What we in our western societies understand by a criminal law system is a state-run organisation, possessed of the monopoly to define criminal behaviour, directed towards the prosecution of that behaviour which it has defined: irrespective of the wishes or needs of a possible victim or plaintiff and which has at its disposal, pre-trial and post-trial, the power to keep its prosecutees and convicts in confinement.

Representatives and managers of the criminal law system cherish the pretension that their organisation could protect society from such a dangerous threat as criminality. In fact, the organisation, since it was established in its

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present form about the end of the 18th century, has, in every respect and on all counts, failed to accomplish what it promises. Quite the reverse. For a long time the criminal law organisation has been escalating dangerously. Any enhancement of the punitive power of the organisation has so far lead to more rather than less criminality. A nation that builds more prisons and imposes more repressive punishment, usually provokes criminality.

In order to do the job it has undertaken and to find continuous public support for that, the criminal law organisation must always keep alive a negative stereotype of 'the criminal'. It must maintain its stigmatising power. At best the managers of the system are unable, or unwilling, to prevent the media from feeding the negative stereotype of 'the enemy of society'.

This negative stereotype is a direct result of the system's ideology. Since the 'war against crime' is continually being waged by its managers and their supportive politicians, an 'enemy-image' is constantly being produced. When nations and their rulers prepare for warfare, they begin by invoking a negative image of the enemy: the little yellow man, the American capitalist imperialist, the Soviet communist imperialist etc. By doing so, their people will forget that they are dealing with human beings, and almost anything goes. In a former publication I compared the way the State creates moral panic waves in order to legitimise its expansion with the myth of the Lord of the Flies, *de Vliegengod* (Bianchi, 1967).

The origin of the negative stereotype of the offender is ominous. It stems directly from the mediaeval Inquisition. In the old legal system of Europe there was not even a shadow of public prosecution for wrongful acts committed between free citizens. Such acts were considered to be injuries and causes of conflict, for which damage to body and property had to be repaired, and the extent of the reparation was to be fixed by negotiation. The Inquisition, however, introduced the prosecutor (ecclesiastical at first, then later on, when the state had gradually come to accept this system, a public prosecutor). The Inquisition created the image of the heretic, a subhuman enemy of the Church (later, of the State) for whom there was no salvation or penitence, and against whom the most infernal punishment was permitted because he was going to hell anyway. Sooner or later the evolving European states accepted the heretic definition of social dissidence from the Church (including England), called him a criminal, and gradually grew to ignore the old legal system of the country, by which most crime-conflicts were solved through negotiation. Our present criminal law system – anglo-saxon as well as continental – is still based on the old Inquisition, but in a secular form.

The results of this negative image have been disastrous, and twofold. Because the old negotiation procedures of conflict-regulation fell into disuse, the prosecutee and convict cannot contribute in any regular way, and by their own free will, to the improvement of the situation. Even the most docile convict, who is prepared in the most masochistic way, and without complaint, to endure the punishment that is imposed upon him, cannot contribute to his own social salvation. From then on the stigma he received makes it impossible for him to recover the status he had before he was degraded. The victim does not profit at all from our criminal law either, for the system largely ignores him or her. Even the certainty that the criminal is being punished is not much help in gaining reparation for the harm done.

The other destructive result of this negative image is the reality that most adaptation, probation and therapy programmes have failed. Why should society take back into its midst a person who was depicted as the *enemy* of society? And most forensic psychiatry failed because it was imposed upon an unwilling 'patient' who, with good reason, did not believe that therapy would help him to be reintegrated into society, since the stigma of 'being sick' makes the original criminal stigma even worse, and is even more difficult to wipe out. The 'criminal' stigma is always a social life sentence, for any convict.

Adaptation and therapy programmes have even strengthened the destructive power of the criminal law system. That is why abolitionists do not favour the so-called 'medical model' either.

The rules of our present criminal law system are very much at variance with our general legal system. The latter is built upon the idea that the set of rules it comprises is meant for the settlement of disputes, regulation of conflicts, and the construction of society – in short, the realisation of peace and justice. The criminal law system, however, is rather *destructive* to society. Its rules differ so much from the legal system that it is even ignored by authors of general introductions to the philosophy or theory of law. They do not know what to do with criminal law and where to place it. Criminal law has its own basic philosophy, entirely outside the legal system. Criminal law is like war, and this phenomenon is not treated in our legal philosophy either. That is the reason why all attempts to 'humanise' the criminal law system have failed so far: you cannot 'humanise' a war, can you? Abolitionists do not favour the humanisation of the criminal law system as a goal in itself, but as a way of recalling the legal system to deal with wrongful acts, the rule of law, and the cancelling of a derailment of the general legal system.

In fact, the present criminal law system denies human rights. When, during the American and French revolutions, human rights were being defined, not because there were no human rights before, but because they were in greater jeopardy then than ever before. Our present criminal law system was then definitely introduced, and these rights were declared to be inalienable, except for those being prosecuted. They received very little from this cornucopia of human righteousness, except the right not to be cruelly punished 'unnecessarily'. Mere indictment is sufficient to deprive anyone who is prosecuted of his human dignity. He no longer has freedom of the press, no privacy for his mail, no freedom to group together or meet, no freedom for sexual and human contact. He is even deprived of the pursuit of happiness; in this case, to try to repair the harm he has done, and thereby be accepted as an honest citizen.

Our present system of criminal law prosecutes mainly those who are already the underprivileged and deprived categories of our population: racial minorities, young people, the socially weak and defenceless – and until recently (though the moral panic on AIDS may revive fears) sexual deviants. For several centuries the managers of the system had been clearly showing a constant preference to prosecute the weaker, so the question may be asked, have the rulers of our societies ever been interested in real crime-control? One gets the impression that they prosecuted the weak in order to legitimate their own conduct. Rulers will never prosecute their own class associates, or at least, it is very exceptional.

In the present structures of criminal procedures the 'criminal', or perpetrator of crime is treated as an *object* of prosecution. Being an object is a total denial of his human dignity. Human beings should never be made into objects, since it is a basic human right to be a subject and bearer of rights. At our trials the culprit has to defend himself, not so much against his victim, as against the whole of society, which in the Netherlands is represented by an all-powerful public prosecutor. Such a charge is too much for any human being. The defendant is, moreover, deprived of his natural surroundings and he is not allowed to bring in for his defence his friends and relatives. They may be witnesses, but not an intimate support group. Very few people have learned to defend themselves in such important matters without the immediate help of their kin. Only people with higher education have learned to speak up for themselves, and as a result they are less likely to be the object of prosecution because they generally have the means, and the socio-linguistic and verbal skill, of defence.

The term *trial* in the English language is living evidence of the obscure and sad origin of criminal law. *Trial* means that people had to be *tried* on the purity

of their souls (if they ever could), and the term goes back to the days of the Inquisition and ordeal.

Part II. The aims of an abolitionist perspective

Our first aim is that criminal law should be brought back into our general legal system, back under the rule of law. The criminal law system barely deserves the beautiful name of justice, since it is a derailment of our legal system. We must learn all over again to apply the rules of a normal legal system, which for centuries, in the best of our western traditions, were used for the settlement of disputes and the regulation of conflicts between – if possible – *equal* parties. The main problems of our strategy have to be defined in legal terms. It has been the deficiency of penal reform so far, that the legal system of civil and administrative law has been neglected, whereas attention has been paid exclusively to the problems of social disorganisation, prison reform, psychological stress and psychiatric therapy. As long as the present system is kept intact, all reform will be co-opted by it, and reform will eventually strengthen it, as is so vividly described by Thomas Mathiesen in his theory of positive and negative reforms (1974).

Crime in abolitionist thought has to be defined in terms of *tort*. Indeed, we do not have to devise an entirely new system of rules. We already have one, waiting to be applied and adapted. Lawyers and jurists are the allies of abolitionists, since they are capable, and hopefully willing, to develop new concepts of tort which would be suitable for the regulation of crime conflicts, and rules for the settlement of disputes arising from what we used to call 'crime'. The skills of psychologists, psychiatrists and social workers must be adapted and rewritten for conflict-regulation, whereby personality problems would become secondary, if even that. The new system would no longer be called criminal law but *reparative law*.

If a new system of rules were being tried out, we would have an excellent opportunity to 'clean up' the stereotype of the 'delinquent'. He would no longer be the suitable enemy of society (if the managers of the criminal law system and their political friends do not place him in that role); he would no longer be a 'sick' person (if he is no longer made sick by degradation and incarceration, or labelled as sick by a psychiatry that went astray); no longer deviant (if not labelled as such by control-agencies). In the abolitionist perspective a 'criminal', or a 'delinquent', is a person who has committed a liability-creating act, as a result of which he is in a difficult, and not always enviable, but certainly not

hopeless, position in which he has to participate in a discussion on the harm he has done, and how it can be *repaired*. He is thus no longer an evil-minded man or woman, but simply a debtor, a liable person whose human duty is to take responsibility for his or her acts, and to assume the duty of repair.

To the abolitionist movement the main concepts of the system of reparative law no longer stem from guilt and culpability. We want to replace them largely by concepts like debt, liability and responsibility. We do not deny, of course, that ethical concepts like guilt and culpability exist and are of great importance, but we doubt if they can be defined or used in criminal law proceedings, or even applied in legal proceedings. They can most certainly *not* be used in the 'trial' proceedings as we have them now. A trial, and any other criminal procedure, is based on a false premise of *consensus*. When, during a trial, a verdict or sentence is pronounced and a person convicted, such proceedings are based on the pretence that there is consensus on the interpretation of norms and values. This is done quite undemocratically, however, because the convict's peer and social groups have no real influence on the definition process. Those countries that have jury trials are not very much better off. What is purported to be consensus, is just power exerted by one group over another. It smacks of class justice. Some radical criminologists are therefore in favour of a *dissensus* model instead of the traditional consensus model. The disadvantage of the dissensus model is, however, that it can really only be used in political trials, or those criminal proceedings which have a political character. The dissensus model is in fact a civil war in statu nascendi, and will turn into a consensus model whenever one of the parties has beaten the other. For abolitionist procedures an *assensus* model is preferable. In using such a model we admit that the last word on good and evil, on guilt and culpability, can never be pronounced without violence. It is better therefore to discuss these problems of ethics and morality without imposing our own views on the other person. In many publications I have tried to outline such a model (Bianchi, 1979, 1980, 1985).

In our culture the assensus model is very common (e.g. western parliament), and in other cultures it is common in cases of harmful acts and injury. We should consider such a model for the resolution of criminalised conflicts as well. But it comprises a new set of rules, and we must first practice its use in order to master the process eventually. Once these rules are mastered, we will discover that guilt and culpability are so interwoven in our social and cultural system, that we can never blame just one person, as we still do in our criminal law system. Dostoyevsky argued that each of us is guilty towards all and we have to share

responsibility. That is why a liable person has a human right to help to shoulder his responsibility. This should be a legal right as well!

The ideas of punishment and punitive response to liability acts must wither away entirely. The very thought that one grown up human being should ever have a right, or duty, to punish another grown up human being, is a gross moral indecency, and the phenomenon cannot stand up to any ethical test. The punitive response should be replaced by a call for responsibility and for repair, and punishment should be replaced by reconciliation. Punishment is destructive to society because it is violent: reconciliation serves society, and is a lesson in humanity.

The institution of prison and imprisonment has to be abolished as a retributive form of punishment. No trace should be left of this dark side of human history. In our constitutions amendments, articles, or paragraphs should be inserted to read: "imprisonment, in whatever form, is not tolerated in this country and nation". We can use terms that were applied when servitude and slavery were constitutionally abolished.

We must discuss answers to a number of problems, which may not be so difficult in themselves, but for which people will continue to demand an answer, and rightly so. The *first* question is: what are we going to do with the persons who create an *immediate danger* to our bodies and our lives? It is true that there are very dangerous people who are never prosecuted. Although presidents who are playing war-games in the Pacific, in Central America and in Libya, or who are helping to terrorise European airports, are a much greater danger to people's safety than any 'ordinary criminal' whatsoever, we do not lock *them* up. We let them do their dangerous deeds in the political, military and economic spheres. But that is not an answer to the question. I agree that we have the right, and the duty, to protect ourselves and others against danger. But at the same time I wonder if the number of dangerous people would be so great if the criminal law system no longer degraded its prosecutees, mutilating them by incarceration and mental injury; if the state no longer provoked criminality by its bad example of punitive violence; and if the media no longer whipped up public opinion against 'criminals'. Perhaps, if we improve our legal system, the number of dangerous people will be so small that, even in a large country like the United States, two or three small places of quarantine will be sufficient, and certainly not the huge store of hundreds of thousands of human beings which that country has today. The person taken into quarantine, however, would legally enjoy all medical and social help, and his treatment would be controlled by strict rules in order to avoid the abuse which could readily creep in. Any such person

in quarantine would have the legal right of a trustee, a non-professional person from outside, of his own choice. Any extension of his stay would have to be controlled, not by an institutional board, but by the court. No extension could be imposed without plentiful legal aid for lawyers. A government depute would have to report to parliament or the state council, annually, on any of the people in quarantine.

The *second* question that arises is: what are we going to do when a person refuses, and *continues to refuse, to negotiate* about the injury he has caused, or in which he has participated? In that case he should be invited to negotiate, not seven times, but seventy times seven. If his refusal is due to the unreasonable demands of the other party the case can be brought before court. If only the defendant is to be blamed for negotiations not taking place, he may be kept in custody for debts, but again under the strictest rules, lest his case be abused. The defendant must be released as soon as he or she is willing to reopen negotiations. The defendant in custody has every right to be accompanied by, or to receive, whomsoever he wishes. Such custody must be under the permanent control of a public representative. But again, in the abolitionist movement, we feel sure that if the state no longer set a bad example of violence by the repression of criminality (which is unsuccessful anyway), and if we were all able to develop sets of rules which would allow people to do justice to others and to themselves, hopefully the number of conscientious refusers would remain very small indeed.

The present system of criminal law has a very authoritarian character and is entirely devoid of democracy. Far too much power is in the hands of the prosecutor and the judge. There simply cannot be a 'fair trial', quite apart from the fact that the word trial as such must be abolished, if too much power is in the hands of one party. The abolitionist perspective wishes to bring the conflict back to the community wherever possible. This implies that we want negotiations on conflict to take place out of court as much as possible. Thus, the *third* question that arises is: are there any tasks left for *judges*? The help of a judge would only be invoked if the disputing parties were unable to come to a settlement by themselves. From the sociology of law we have learned that this is the practice already in civil and administrative cases; so why not in criminal cases? The role of the judge, therefore, would be far more that of a *mediator*, insisting that parties comply with his mediation. The judge would no longer be a person who, godlike or father-like, pronounces verdicts on morality, when one person, or party, is found guilty.

The role of the *prosecutor* poses the *fourth* question. It has to be redefined. He would no longer be a prosecutor, except in those cases where he would be allowed to make a public complaint, because there is no identifiable victim. In such cases a process of negotiation would be impossible otherwise. His new task, however, would be of an equalising nature. As a public representative he would see to it that neither defendant nor plaintiff abuses the situation. If any of the parties is weaker he would stand by. The new name for his role would be that of *praetor*, a word in Roman law for the man who enabled legal action, and observed that it ran smoothly.

Fifthly, what about the *police*? In the old days, in western society, when we still had at our disposal an infra-judiciary, negotiative system of conflict solution, we could dispense with the police. As a matter of fact, there were hardly any police before 1800. However, there were still old rules and customs for tracking down thieves and culprits; there were sanctuaries and asylums for outlaws; the church often offered aid in conflict regulations; and the communities were much smaller and knew people face-to-face. Our present criminal law system has only gradually crept into our society, and has become more and more anonymous.

Nowadays, social conflicts are on a larger scale and more intricate. We could not do without the police to trace those who have committed wrongful acts, and should be invited to settle the disputes. The population is too large, although more face to face relationships in district neighbourhood life are growing up again, and most conflicts are between more than two people. Therefore, a simple convocation of the disputing parties is not always possible, but still, in a great many cases it *is*. As long as the police do not set a bad example of violence and counter-violence (the police must be less violent than criminals, not more); so long as they are not racially biased; nor partial in class or generation conflict; nor allow themselves to be politically abused; but accept gratefully all kinds of parliamentary control and take citizen's wishes seriously in their activities and power; and do not allow the organisation to be more military than at present: then the police would be very welcome to help the citizens to build up a better system of injury control, and to help the citizens – who will have to play an active role themselves as well – to settle their disputes.

Part III. Some guidelines for alternatives

The abolitionist movement firmly believes that at the present time we must have confidence that people have come of age sufficiently to settle their disputes by themselves, and that they are not in need of any bureaucratic

organisation to take their conflict out of their hands. People were able to settle their disputes themselves in the past in our own culture, and they are still able to do so in other cultures.

Therefore, we should avoid falling into the trap of bureaucracy by abolishing the existing one and handing it over to another professional bureaucracy of any kind. Professional solutions have to be very restricted in number. Servo-mechanisms have to be built into any new system we devise, such as community control and non-professional activity, in order to prevent any new professionalism from arising.

Any abolitionist movement has to be very careful not to co-opt the power of an old system which is very strong and efficient. We have seen this happen in attempts to bring 'diversion' solutions into the old system, or rather, halfway into it. This type of conflict solution whereby, in some cases, with the agreement of the public prosecutor, no court action will be taken so long as the parties come together to settle their disputes, e.g. by reparation, have in fact strengthened the system, because it provided the public prosecutor with the opportunity to extend his power into those areas which he had previously left unnoticed. It by no means diminished his power. He just made neighbourhood centres work for him, in order to take minor cases off his hands.

An abolitionist should not offer the authority in power an elaborate blueprint of the alternatives, because that also relieves citizens of the possibility of building up a system according to their own real needs and feelings of justice. And a blueprint is also the safest way to create a new bureaucracy of professionals, (see: Mathiesen's *The Politics of Abolition*).

What follows is, therefore, not a blueprint, nor an elaborate and entirely considered system, but a few proposals whereby some answers to some questions are considered, and some new (or rather old) institutions are offered for consideration. In order to give clarity to the intricacy of the problems, we will separate the conflicts into four types.

1. *Minor cases of injury*, such as petty theft, minor robbery, insult, quarrel and row. These are the typical cases where *neighbourhood centres* offer the best solution. The citizens who claim to be victims, and want to be plaintiffs, may settle the dispute with the defendant. Often the offenders are not detected (just like in the existing system), or are too young. If the offenders do not get punished, but simply have to repair damage and restore or return what was stolen, if they no longer have to be deterred by punishment, there is good reason to expect that this petty criminality will gradually diminish. It should

be remembered how provocative the power of punishment is, certainly for young people, more so than a deterrent. Moreover, restoration of damage is a lesson in good citizenship. The word 'crime' should gradually disappear from our language. We should not forget that the stigmatising power of language may be very harmful for good citizenship, that also implies an immediate, preventive interference at the very moment a crime is being committed.

2. *Slightly more serious cases of injury*, such as burglary and housebreaking, not too serious violence, petty fraud, swindling, arson without causing death, scuffles, scrapes and that sort of thing. Here the neighbourhood is of great importance as well. We should not forget that most harmful acts do not stand by themselves, but are committed between people who usually know each other quite well, or between groups and in neighbourhoods. There should be boards of citizens who bring the parties together. The San Francisco *Community Board* Programme is a good example of this. We should no longer consider any party as an individual who has to defend himself of herself all alone. He should be allowed to take his intimate groups with him, because conflicts might be discussed more easily and negotiated upon in a familiar setting. In the negotiation discussions (*palavers*) in the neighbourhood centres, the other side of the conflict has to be party to the considerations. The other elements of the conflict will not lead to a diminution of the actors' guilt (as is now the case), since, in those discussions, it is not guilt that is under consideration but the best way of finding a solution to the conflict.

Sometimes the conflict may have difficult judicial aspects, so often lawyers and jurists will have to take part in the discussions. Here *civil law alternatives* play an important role. If the conflicting parties of defendant and plaintiff require it, (although it may very often be very difficult to distinguish the one from the other), a social worker may help. But usually groups are quite capable of handling their own affairs, and feel no need to be labelled as helpless.

3. The third category are the *serious cases*, where murder or manslaughter is involved, very serious violence, rape, arson with a fatal result, and killing with political aims. These injuries are very serious, and people get very emotional about them. On the one hand an abolitionist will argue that people's emotions are whipped up by

the media too often, and that politicians abuse the feelings aroused by such injuries for their own end. Nonetheless, abolitionists agree that emotions are justified and have to be respected. They are human, and they will never disappear, and they do not need to. But emotions should not prevent attempts to bring conflict towards some kind of regulation. For long-term imprisonment does not bring the victim back to life either (to say nothing of the death penalty), and the humiliated or mutilated victim does not get his or her health back as result of this sort of punishment. And the so-called 'satisfaction', which the victim or his next of kin might receive from the certainty that the 'criminal' is suffering, is far more destructive to the soul of the victim than any attempt by the actor to do some possible good, to show the slightest sign of repentance, or to try to improve the situation of his victim. The argument that severe punishment would deter criminals has been so often shown by scientific research to be entirely unjustified, in all cases of any seriousness, that it needs no further consideration in any abolitionist article, were it not that politicians still abuse that argument so often for improper purposes.

Penitence and reconciliation are, and always have been, the best way to improve a difficult situation. It is the sole and proper way for actor and victim (and their kin) to overcome the regrettable event.

However, emotions are still there, and if they do not have an outlet, or if they are not controlled and appeased, they may lead to an outburst, to lynching or to destructive and violent self-help by the people involved. Lynching takes place more often in racial repression than in cases of 'ordinary crime', and happens more often in Hollywood movies than in reality. In the old days in Europe we had a system of blood-vengeance. Historical research has found the evidence, however, that active blood vengeance did not occur frequently. People were far too scared of the escalatory effects of the system. There were no public prosecutors, so people had the opportunity to do justice to themselves, but they needed some kind of sting for unwilling parties: that was the threat of blood-vengeance, which was usually sufficient to bring parties to the palaver hall. We should not forget that even in cases of very serious and heinous acts, there is often much more at stake than just that act and this has to be considered also in *palavers* and negotiations. Such circumstances

and aspects have a better chance of being discussed there than during trials.

But emotions remain, and very often, immediately after a serious violent act, public reactions can be so violent that the actor needs some protection in order to survive for the later negotiations – not only him but his intimate group too, if he has one. In the old days, *Sanctuary* served as a place of refuge where the perpetrator of a serious offence could go and live for a while in safety until negotiations could begin. Sanctuaries were in use in England and France until the 17th century. In the Netherlands and many other European countries they were available in a secular form until the end of the 18th century, when they were abolished to make room for our modern criminal law system. The sanctuaries were often churches, and the church often helped the parties to become reconciled. In England, and many other countries, the kings often granted to abbey churches the privilege of sanctuary, so convinced were they of its wholesome effect. We should reintroduce sanctuaries in our societies: places of refuge, having the right of immunity, outside state control, where actors of violent acts have the right of asylum whilst awaiting negotiations, either within the place of sanctuary or in a *civil court*. That would be much better than a trial, perhaps once again there is a role for the churches here? In America revival of the *Sanctuary Movement* was initiated by the churches, that wanted to offer sanctuary to refugees from Central America. In addition, universities interest in the reintroduction of sanctuaries is growing (i.e. Stastny and Tyrnauer, Universities of Vermont and Montreal). In Geneva, Switzerland, the World Alliance of Reformed Churches too has set out plans for a conference on sanctuary. But why only the churches? We need secular places of refuge as well! I tried to outline some basic conditions for the establishment of sanctuaries for communal offenders in my latest book *Justice as Sanctuary (Gerechtigheid als Vrijplaats, [1994] 1985)*.

4. Those cases where *no individual victim* can be found i.e. transgressions of order. These comprise such divergent acts as traffic offences, drunk-driving, offences against licensing acts, trading in contraband, economic offences, environmental offences – and, in my view also, the preparation of a war. If these offences are just the abuse of a received licence (like drunk-driving),

administrative measures will suffice. Imprisonment is ridiculous. If a person continuously, and in spite of receiving a warning, abuses his licence he is bound to lose it. It is not such a problem. Such administrative measures seem to have more deterrent effect than imprisonment. If actors, with or without violence, claim a political excuse for their activity, they would be better to argue their case before a *political body* – like parliament – other than before a judicial body, like the court.

Although the abolitionists are in favour of handling disputes out of court wherever possible, we would still need a judiciary. For if it ever happens that negotiations get out of hand, and one of the parties is in danger of being victimised, he should have the right of appeal to a court. That too is justice.

Part IV. Action and research

The existing criminal law system is powerful. It is being backed by very powerful political and economic interests, and it is constantly being whipped up by the media, who have commercial interests. For the time being we have to put up with the idea that a system, which took several centuries to become what it is now, will not disappear overnight, and that it will take several decades for it to be abolished and replaced by a more just, justified, and efficient system of reparation and reconciliation.

The new system has to be borne by the people, and they have to relearn what has been lost through the activity of the criminal law bureaucracy: how to cope with problems in their own community; they have to be re-skilled, as Raymond Shonholtz puts it.

For the coming decades we have to live with the reality that two different systems will operate side by side: a *two-system-system*. It may look odd, but for the abolitionist movement this oddness may turn out to be a benefit. Let us learn from what happened in Italy in the mid-seventies. There a group of psychiatrists, inspired by the ideas of one of them, Franco Basaglia, argued that the immense storehouse of psychiatric institutions made the patient sick instead of making him well. It is freedom that cures, they said, and our patients have to be brought back into their communities, because such communities have immense resources for healing their own deviants. All right, said the Italian government, which had been irritated for a long time by this sort of progressive thinking. And a bill was passed through parliament closing many large

institutions and suspending their subsidies. The result was disastrous. The patients were simply sent back to the communities, but the latter had long since forgotten how to cope with these problems. They had to relearn what they had not been used to for more than a hundred years. The Italian government laughed up its sleeve when psychiatrists began again to beg for subsidies and the reopening of the institutions. This ill-intended generosity on the part of the government meant a serious setback for progressive psychiatry in the country. Such a thing must not happen to the abolitionist movement of criminal law.

It is alright for criminal law to continue in those communities which are not yet well prepared to cope with their conflicts, and for the criminal law system to be available for those perpetrators of harmful acts who prefer to go on being called 'criminal' in the criminal law system, rather than being free citizens who declare themselves liable and responsible for their acts, and who want to make amends for the harm they have done. It seems to some people that the dull passivity of imprisonment is to be preferred to taking on responsibility.

A risk that may occur, is that the authorities may offer subsidies for building up 'self-help' programmes in communities. There is a mortal danger in subsidies. They are quite often the most effective instrument for a bureaucracy to control the activities of its citizens (although this statement is not true of all subsidies). But subsidies lead in many cases irrevocably to professionalisation, and professionals usually tend to create a new bureaucracy. Thus, the system would have co-opted the abolition proposals, and neutralised them.

There is another risk; forewarned is forearmed. This is the so-called 'cave-in model'. Penal reformers have often fallen into that trap in the last eighty years or so, as I will describe in my article *Pitfalls and strategies of abolition* (Bianchi, 1986). Authorities will often argue: "Yes, abolitionists, we think you are right. We do indeed have an inefficient and unnecessarily cruel system of crime control, and we should see to it that the smallest possible number of people are affected by it. In particular, let us prevent young people from falling victim to it: let us, for a start save the children." Then everyone will be happy, for we all seem to agree that children should be saved rather than adults. Several times in the last century it was like that with penal reform. The effects of this are, however, dysfunctional for abolition. For, what the authorities really have in mind, is to save their prosecutors' power for what they call "the war against hard core criminality", and it is they who define what that is. After a while, it turns out that they are prosecuting just as many people as before, because their prosecutory man-power has remained the same – or may even have increased. In the end, it turns out that just as many young people are being prosecuted as

before, or even more, and they are not saved anyway. Most sweet promises by a criminal law bureaucracy to adopt an abolitionist policy, are the treacherous songs of the Pied Piper.

The abolitionist movement should remain aware that, as long as the criminal law bureaucracy has the monopoly of crime definition, and certainly if it remains the only authority to define hard core criminality, its power will just grow if we allow it a cave-in model. The abolitionist movement should devise its strategy for saving both violent offenders and nonviolent young delinquents. Sanctuaries for serious actors are needed as much, if not more, than centres for young people, if we really want an abolitionist movement to be effective in the end.

Some people will wonder whether or not an abolitionist can still do any good within the system *without* strengthening it. Yes and no. I should like to give one illustrative example. A few years ago, in the Netherlands some people were active in obtaining permission for inmates to have television sets in their cells. The prisons' administration were in favour of that, because it kept the inmates quiet, and away from any rebellious thinking. In this way, it strengthened the system. But better information from the outside world will also keep them aware of their rights as citizens, make them critical of their situation, and fit to contest it. There is no doubt that the most powerful and effective action the abolitionist movement can achieve in its struggle against the prison institution, is the total abolition of any restriction of human rights imposed on inmates, both on remand and after conviction. Imagine the prison authorities being obliged to grant inmates the right of free association, and not only inside their own institution or prison, but all prisoners in any one state or nation: a sort of national council of prison inmates. That would be very threatening to the system, and a lot of exertion would be needed to obtain that constitutional right. I think we must just start with perhaps less 'way-out' initiatives in order to achieve the abolition of punitive laws and measures.

Many statements in this article are still in need of continued research. The abolitionist movement should try to get as many allies among criminological researchers, and among progressive social movements too. Criminology has predominantly been a *repressive* science. What we need in this field is a science directed towards *emancipation*, anticipating the coming changes in society.

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