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Could Penal Abolitionism Work?

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Penal abolitionism is a way of seeing and understanding the world that is grounded in values that challenge all kinds of coercion, repression, and exploitation. But could it ever work?

Penal abolitionists question the ethical and political justifications of prisons and other institutions of state punishments, arguing that not only do they fail to adequately address human conflicts and problematic conduct, they actually make them worse. Penal abolitionism casts doubt on the use of criminal law and the logic of punishment as part of a wider moral objection to the deliberate infliction of pain and the creation of useless and unnecessary human suffering.

Penal abolitionism sees human relationships rooted in cooperation, solidarity, mutual aid and fellowship. Abolitionists argue that as prisons and punishment undermine such a vision, they should only be used as an *absolute last resort*. In other words, penal abolitionists call for the enshrining of a *presumption against punishment*. If we must punish, it must always be with a sadness and regret.

‘Good’ versus ‘bad’ societies

Perhaps unsurprisingly, penal abolitionists also argue that it is essential to promote non-penal ways of responding to harms, wrongs, conflicts and disputes. These interventions should hold perpetrators to account, whether they be states, corporations, members of the power elite or ordinary people. Furthermore, abolitionists call for the fundamental transformation of ‘bad societies’, characterised by gross economic and social inequalities, into ‘good societies’ that adhere to the principles of transformative justice.

Good societies are based on respect for human rights, democratic accountability, healing, repair and the equitable distribution of wealth. But could penal abolitionism actually work? Or is abolitionism overly ‘idealistic’ and unsuitable for modern societies? Can it take sufficient account of the needs of victims? This article considers the ‘what, why and how’ of penal abolitionism before considering a number of criticisms of this perspective and the feasibility of abolitionist alternatives.

What is to be abolished?

Penal abolitionists largely focus on making as strong a case as possible against imprisonment and state punishments. Campaigns to abolish the death penalty in countries such as in the USA remain high on the abolitionist agenda, but in countries where capital punishment has been abolished, such as in the UK and much of Europe, the abolition of imprisonment is often the central focus of penal abolitionist activism.

However, abolitionists have also called for the abolition of more generic forms of domination and exploitation, including white privilege, hetero-normativity, and corporation and patriarchal power. The moral condemnation of social and economic inequalities and the exercise of authoritarian power is also central to the penal abolitionist tradition.

Today, new liberatory social movements, such as those emerging around disability, 'Black Lives Matter', post-colonialism, and transgender rights, continue to influence the content, focus and vision of penal abolitionism (Coyle and Scott, 2021). This making and re-making of penal abolitionism through struggles for liberation 'from below' keeps abolitionism relevant and at the heart of public debate.

For example, following the death at the hands of the police of George Floyd in the USA in May 2020, there have been high profile demands for the defunding of the police service in both the UK and USA and calls for the re-imagining of policing, so that it focuses on peace, safety, protection and recognition of community diversity rather than the maintaining of social divisions through the use of deadly force.

Penal abolitionists are generally in agreement that those acts that are legally classified as crime only partially reflect the harms and wrongdoings that exist in society. What is *defined* as a crime is ultimately shaped by the social organisation of a given society and its inequitable distribution of power and resources.

State categories of criminal harm wilfully fail to incorporate crimes of the powerful, such as by states and corporations. Furthermore, the under-enforcement of laws, such as those around

health and safety in the workplace, results in hundreds of avoidable and premature deaths each year and the criminal law fundamentally fails to support victims of sexual violence and rape.

Why abolish?

The concept of crime, and especially the notion of criminal blame, is considered by penal abolitionists to be a state-imposed legal categorisation that closes down the possibility of finding non-punitive ways of responding to human wrongdoing. ‘Unfortunate’ and ‘inappropriate’ events must still be taken very seriously, of course, but they *should not* be mediated by the criminal law. Taking this position allows for the adoption of non-penal interventions, such as reparation, restitution, reconciliation or redress (de Haan, 1990).

Penal abolitionists argue that the penal rationale (logic of punishment), is in direct opposition with core principles and values in many societies. These include recognition of dignity for everyone; empathy and solidarity for all victims of injustice; the protection of basic human freedoms and liberties; the necessity of voluntary association for the natural development of ‘right relationships’; and the overall promotion of a good society focused on maximizing human wellbeing (Scott, 2018).

All this raises moral questions about the ‘right to punish’ and the alleged justifications for the deliberate infliction of pain. Penal abolitionists argue that punishment itself is an ‘evil’ that results in negative consequences and that there is insufficient evidence to justify state punishments on the grounds of either deterrence, incapacitation or rehabilitation (Scott, 2018). Prisons and punishment then have *no moral defence*.

According to this view there can be no justice through the criminal law and if we must punish, it should always be undertaken with a ‘bad conscience’ (de Haan, 1990). Penal abolitionists, therefore, recognise that, for the safety of themselves or others, some people may at some point need to be deprived of their liberty. However, they also maintain that there are few truly dangerous people in society and that some of those who do present the greatest danger to human wellbeing are largely immune from the reach of criminal law because they are in positions of authority, in a corporation or state.

How to abolish prisons

Penal abolitionists have adopted various different strategies to bring about both penal and social change. These include generating evidence about the harms of state punishment through research; engagement with mass media; public education campaigns; lobbying those in positions of power (governments, corporations, courts, police, prisons and probation senior staff); and marshalling of direct activism in the wider community. Like other social reformers, abolitionists engage with how things are in the present, but this engagement is coupled with a wider vision of a more just society.

Some penal abolitionists have called for the repealing of certain laws (around prohibited drugs, for example) whilst others have called for the selective abolition of state punishment for certain categories of people (such as women, children, people with severe mental health problems). Others have focused on particular state institutions, such as calling for the defunding of the police or the ending of prisons as they are currently constituted - institutions that are deliberately made unpleasant or unbearable with the aim of deterring offending, but with little success.

These campaigns are often started by demanding the freezing of funding of a given state institution to prevent its further expansion (e.g. 'defunding the police') followed by calls for 'justice reinvestment' in community-based welfare provision. As the black feminist academic Venezia Michalsen (2019) points out, the term 'prison industrial complex' suggests that mass imprisonment and surveillance exist because they are profitable for the corporations that make billions of dollars from the caging of its most vulnerable populations, including poor black women. Whilst penal abolition is often characterised as trying to 'tear things down', it is actually more concerned with creating the cultural, social and economic conditions in which non-penal interventions can be successfully introduced as a replacement for state punishment.

Can abolitionism work for victims?

Abolitionist ideas certainly stand outside many of the taken for granted assumptions of modern societies with regards to 'crime' and 'punishment', but could they work? The reaction of many people to abolitionist ideas is that they are 'unrealistic' and 'idealistic'. Abolitionism, it is claimed, is unrealistic because it is out of tune with popular punitive views; it is offender rather than victim focused. And it is idealistic because a society without prisons, or with many fewer prisons, would result in widespread chaos and disorder.

These concerns, despite being relatively widespread, are not necessarily supported by the evidence. There have been numerous studies indicating that when members of the public are given the full facts about someone who has broken the criminal law, they are generally more lenient (less punitive) than the courts. Further, when people know an offender personally, they are much less likely to demand punishment (Roberts and Hough, 2002). Imprisonment is seen as being like a sledgehammer to crack a nut

Remarkably, this is often so for victims of the most horrible interpersonal crimes, such as sexual violence, child abuse and rape. Many victims of interpersonal violence know the perpetrator well, if not intimately, and generally they would prefer to know why they were harmed and have reassurances that it is not going to happen again, rather than demand punishments. Abolitionism is rooted in hearing the voices of victims rather than ignoring them, and it provides some of the most vigorous campaigners with regards to the failure of state punishments to repair the damage of sexual violence or hold perpetrators accountable (Scott, 2018).

One further criticism of abolitionism is that, surely, living in a world without prisons would lead to more crime and harm. It is argued that prisons provide an essential deterrent and the more we punish, the more we deter. Yet there is no evidence that prisons perform such a deterrent function (Scott, 2018) and many countries which have lower rates of imprisonment, such as in Scandinavian countries like Norway and Finland, have lower crime rates than those with high levels of imprisonment, such as the USA and England and Wales. Indeed, in a remarkable experiment led by Jerome Miller (1998), all prisons for children were closed in Massachusetts in the late 1960s in favour of community-based alternatives, and yet there was virtually no change in local recorded crime rates.

Making abolition work: abolitionist alternatives

If we did only consider the *deprivation of liberty as an option of absolute last resort*, what would be the abolitionist alternatives? Penal abolitionism is a victim centred approach focused on both people who are victims of crime and social injustice. In fact, they have argued that people who are dealt with through the criminal law are more closely linked to poverty than they are to dangerousness.

Abolitionists maintain we should take seriously the needs of all people with vulnerabilities and/or have experienced traumatic and harmful life experiences. The impact of any given harm should be formally recognised and victim safety/wellbeing should be the top priority. There should be well-resourced and easily accessible interventions safeguarding vulnerable children, refuges for victims of sexual violence, and a focus on compensation/redress for those who have been wronged.

There is no doubt that when a serious harm occurs something must be done in response. There must be some attempt to realign the imbalance that has occurred. But for penal abolitionists any intervention must not produce further harms – to anyone – including the perpetrator. This is partly because it is often the case that perpetrators have previously been victims themselves, for example victims of abuse

Institutions of state punishment, such as the prison, are used as a way to manage social problems that our health, welfare, education and employment systems are not solving (Scott, 2020). Government policies, therefore, should be focused on providing *security and safety for all*. This means building more and better forms of healthcare and education; creating green energy and environmentally sustainable jobs; and deepening local democratic institutions so that everyone has a real voice in society.

Conclusion: Changing the world?

Abolitionists argue that we must promote policies and ideas that can help build pro-social attitudes and bring about a much fairer society. In short, they propose that we should collectively work towards building a society which prioritises human need.

We need community-based interventions aiming to rehabilitate, such as those of restorative justice (a form of mediation between offenders, victims and community members to help foster accountability and restore/replace what was lost or stolen) or therapeutic communities (a form of rehabilitation where people of who have broken the law are helped to overcome their problems in a non-penal residential setting), as central to perpetrator interventions. Those who do harm should be answerable for their actions.

But there should also be rigorous mechanisms of accountability for the serious harms perpetrated by states and corporations, including greater adherence to health and safety codes, and practices and better enforcement of existing regulations. Therefore, far from ignoring serious harms, abolitionism seeks better ways to address them.

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