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The Politics of Redress: Crime, Punishment and Penal Abolition by Willem de Haan

Review by: Jim Thomas and Sharon Boehlefeld

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# Rethinking Abolitionism: “What Do We Do with Henry?” Review of de Haan, *The Politics of Redress*

Jim Thomas and Sharon Boehlefeld

Willem de Haan, *The Politics of Redress: Crime, Punishment and Penal Abolition*. Boston: Unwin Hyman, 1990, 206 pp.

There is about the polemics of the prison abolitionists something of the exhilarating character which commonly infects the writing of those who are prepared to follow an argument to its logical conclusion — and beyond (Hawkins, 1976: 5).

Nowhere is it written that kindness is preferable to cruelty (unknown pundit).

**F**EW PEOPLE TAKE PRISON ABOLITIONISTS SERIOUSLY, AND HENRY IS ONE REASON why. Henry is affable, bright, and articulate. He can also be very, very nasty, and he is currently confined in the most maximum section of Illinois' death row. Among his other crimes, he blew away one victim by inserting a shotgun into her vagina and pulling the trigger. He then slit her boyfriend's throat and left him for dead. His death sentence was commuted to life following constitutional challenges to Illinois' death penalty, but he was again sentenced to death after fatally stabbing a fellow prisoner. Confined to death row, he tried to stab yet another prisoner. Because of these and other violent acts, he is considered a danger both to staff and prisoners. Yet suggesting that there is hope even for those considered most hardened, Henry revealed some reflective self-awareness: "I used to think I was a racist. Then I realized that I just didn't like nobody."

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All cultures face the problem of controlling intentionally violent persons who are, by overwhelming consensus, threats to social safety or stability. Methods have varied, but few societies willingly tolerate predators. A question confronting critics of the Western model of justice is: How do we deal with Henry? Those who argue for the abolition of prisons or the reform of criminal-justice procedures are hard pressed for an answer.

In this article, we review current abolitionist thinking and assess its implications for critical criminologists in the U.S. We argue that to see abolitionism as merely an idealist belief that punitive incarceration should be eliminated misses the position's value as a form of social critique. Although our own views of abolitionism remain ambivalent, we suggest that despite flaws and an often piecemeal approach to the problem of crime, the recent literature on abolition has given new impetus to critical criminology. Perhaps, as abolitionists suggest, it is time to confront the goals and future of the carceral.

### **The Meanings of Abolitionism**

Abolitionism is a vague term that cannot be readily collapsed into a coherent, unified philosophy. At least four broadly overlapping distinctions can be made regarding the grounds on which groups oppose incarceration:

1. Ethical, rooted in Western philosophy and theological tradition;
2. Ethical, rooted in non-Western philosophy and theological tradition;
3. Anthropological, based on models of dispute resolution and decentralization; and
4. Sociological, based on the failure of the existing criminal-justice system, including incarceration, to alleviate crime problems.

These distinctions, however, apply more clearly to the arguments themselves than to those who present them. For example, in the United States, abolitionist arguments come from members of the "peace churches," which include Quakers (e.g., National Commission on Crime and Justice, 1991), Mennonites (e.g., Zehr, 1990), Justice Fellowship (Justice Fellowship, 1989; 1991), and Unitarians (e.g., Unitarian Universalist Service Committee, 1982). These groups employ ethics or doctrine to oppose the inhumanity of incarceration. They also draw from anthropology and sociology to develop alternatives to incarceration and to justify a need for such alternatives.

A second abolitionist variant is found in the works of thinkers who challenge the "spirituality" of Western civilization. They suggest that the social system itself must be reorganized before we can establish a "just society," and that state authority and definitions of "crime" are antithetical to social harmony, stability, and justice. Leading proponents include Quinney (1988), Quinney and Pepinsky (1990), and Pepinsky (1988), who write in the tradition

of “peace-making criminology.” Christie (1986) raises similar, fundamental questions regarding the relationship of criminal justice to human existence.

A third view exists among those who draw upon anthropological or socialist models to suggest alternate sanctioning and dispute resolution. They attack state-sponsored punishment and propose models of decentralized justice or informal mediation techniques as alternatives. This group suggests emulating systems or institutions used by other societies to replace prisons and other forms of state response to social offenses.

A fourth group — including Mathiesen (1986, 1980, 1974a, 1974b) among others (e.g., de Folter, 1986; Knopp, 1976; Mitford, 1974; Scheerer, 1986; Sommer, 1976; Steinert, 1986; see also back issues of *Crime and Social Justice* and the collection of essays on transcarceration in Lowman, Menzies, and Palys, 1987) — employs sociological studies or social criticism to critique imprisonment and criminal-justice procedures.

Although not unified in their opposition to prisons, these groups share several broad goals. First, they recognize the disproportionate weight that minorities bear in incarceration rates. Second, they argue that minimally restrictive alternatives to imprisonment should be used to assure public safety. Finally, they argue for a restructuring of criminal law that includes decriminalization of some offenses, reclassification of behaviors not amenable to deterrence (such as drug abuse), and substitution of non-criminal responses for acts that are not a direct threat to public safety. These disparate bits of the abolitionist mosaic do not form a consistent pattern of theoretical or conceptual logic, but they nonetheless create an image of one potential solution to the prison problem.

### **The Progenitor of Contemporary Abolitionism: Thomas Mathiesen**

The intellectual exemplar for most abolitionist thinking is Thomas Mathiesen, who for nearly a quarter century has articulated thoughtful and powerful arguments against prisons. In *The Politics of Abolition*, perhaps his most influential work, Mathiesen analyzes the activities of various Scandinavian abolitionist/reform groups. Although he is self-consciously vague about his ultimate abolitionist goals and gives compelling reasons for this vagueness, he is explicitly clear in his support for “non-reformist reforms.” The term, borrowed from Gorz (1968), refers to implementing changes that are not merely cosmetic, but possess the potential for structural transformation:

A reformist reform is one that subordinates its objectives to the criteria of rationality and practicability of a given system and policy. Reformism rejects those objectives and demands — however deep the

need for them — which are incompatible with the preservation of the system.

On the other hand, a not necessarily reformist reform is one that is conceived not in terms of what is possible within the framework of a given system and administration, but in view of what should be made possible in terms of human needs and demands.... A non-reformist reform is determined not in terms of what can be, but what should be (*Ibid.*: 7–8).

Accordingly, Mathiesen emphasizes a dialectical relationship between political action and social change. His spatial metaphors (e.g., “insiders/outside,” “upwards/sideways”) suggest ways to transform parts of a (prison) system while working toward eventual abolition.

Mathiesen (1986: 88–93) lists eight arguments that collectively “constitute a forceful basis for advocating a policy of a permanent international ban on prison building”:

1. Imprisonment does not prevent those incarcerated from committing subsequent crimes. We do not need “more of the same.”
2. Prison effectiveness in deterring crime is uncertain and less significant than other social factors that might achieve the same result.
3. Prison overcrowding should be addressed by confining fewer prisoners, and not by building more prisons.
4. Prisons possess an irreversible character, such that if they exist, they will be used. The danger lies in maintaining a population to utilize their existence.
5. Prison expansion is driven by a political ethos that fosters expansion, taking on a momentum that is difficult to stop.
6. Prisons are inhumane.
7. Cultural values embedded in the conception of prisons reflect a social ethos of violence and degradation. When prisons are expanded, so too are negative cultural values symbolizing acceptable strategies for resolving interpersonal conflict.
8. Prisons are not cost effective.

As Scheerer (1986: 9) reminds us, a body of abolitionist literature does not automatically make a theory. Despite the occasional compelling and articulate abolitionist works of the past two decades, only recently has there been a serious attempt to move beyond Mathiesen and integrate diverse perspectives into a comprehensive theory of practice. Willem de Haan, in recognizing abolitionism as a “sensitizing” concept and in combining competing ideas, attempts

to develop a synthetic position by which critical thinkers can more firmly ground opposition to prisons.

### De Haan on Abolition

The core of de Haan's argument in *The Politics of Redress* is that abolitionism can enlarge the theoretical scope for assessing and developing social responses to social offenses. His work is simultaneously ambitious, flawed, provocative, and important. He grapples with abolitionist questions and suggests an inchoate critical framework by which to reassess the tenets of abolitionism, build upon its strengths, and modify its weaknesses. The failure of critical criminologists to take abolition seriously provides the entry for de Haan's formulation of the concept of "redress," which he sees as a more just response to crime and punishment.

De Haan begins with the (correct) premise that few critical criminologists have logically concluded that prisons should be abolished. Although somewhat oversimplified, his argument is as follows: the criminal-justice systems of Western democracies are unjust; critical scholars, while developing a variety of sophisticated theories, have failed to address successfully how society should respond to social offenses; punishment is wrong and "redress" is better; further, we can begin developing an ethically informed theoretical justification for abolition by borrowing from Habermas' concept of "communicative ethics."

Rather than view behaviors as "criminal," de Haan (1990: 158) argues that we should instead reconceptualize them as "undesirable events," which would direct criminological discourse away from legally defined offenses and prescribed punitive measures and toward problem solving. It is not clear how some forms of redress would avoid being simply punishment by another name whenever both cause suffering, but for the purposes of his argument this is of minor significance.

Although the bulk of de Haan's data comes from the Netherlands, he draws liberally from other countries to raise his discussion to the level of an international critique. He pulls together literature unavailable to most U.S. scholars, whose insularity and ethnocentrism constrain them to their own experience and English-speaking sources.

The most provocative, although underdeveloped, set of ideas introduced by de Haan proposes "communication ethics" as the basis of a theory and practice of abolitionist values. Drawing especially from Habermas' theory of communicative action (e.g., Habermas, 1979; 1984), de Haan suggests that we can construct a rationalist ethical theory based on universal consensus.<sup>1</sup>

### A Habermasian Framework for Abolitionism?

For Habermas (1975: 87), individual morality is sanctioned only through the inner authority of conscience, and even when in conflict with the polity, such principles are embedded in a claim to universality. Habermas rejects a Kantian formalistic ethics in favor of “communicative ethics,” “which guarantees the generality of admissible norms and the autonomy of acting subjects solely through the discursive redeemability of the validity claims with which norms appear” (*Ibid.*: 89). For Habermas, only communicative ethics are universal and guarantee consensual “will formation” by the polity in shaping and validating social values through rational critique.

Habermas’ rationalist liberalism, which guides his theory of communication, is founded on the premise that consensus is possible within a social system and culture based on free and unconstrained dialogue between communicants. In such an “ideal speech community,” reason prevails, norms reflect the needs of the society rather than the imposition of ideological and repressive conceptual machinery, and the principles of the Enlightenment can be advanced. Communicative rationality integrates segmented spheres of the life world such that claims to “truth” and “ethics” become discursively solvable.

Moving from communicative action to abolition and redress, however, requires a leap of faith to claim that something embedded in Enlightenment principles would logically lead to the conclusion that prisons must be abolished. In this sense, an *a priori* assumption of consequence seems philosophically idealistic, even Platonic, in that an outcome is preordained because of the belief that rational people would necessarily accept the idealized value of “reducing suffering” when sanctioning undesirable behavior.

Such a synthesis is impressive, though difficult, and to achieve it de Haan minimizes the problems in Habermas’ communication theory, including concepts such as “universal pragmatics,” “consensual validation,” or “communication competence.” He is also vague on how one moves from a culture based on values that emphasize punitive discourse and an ethics of retribution to one based on a partially articulated ethics of “justice” and redress. However, often the value of a work lies not in the clarity with which an issue is advanced, but in the very fact that the idea is advanced at all. De Haan’s analysis provides considerable material for thought and debate as scholars confront its problems and potential.

### The Critique of de Haan

A strength of de Haan’s work is that it raises more questions than it answers. One leaves his work asking: Is there, or should there be, a distinction between scientific and philosophical argument? If there is a distinction, is it possible to refute a philosophical stance in the same way as a scientific theory

can be refuted? Do the answers to these questions have a direct bearing on policy decisions of criminal-justice practitioners, who tend to be influenced by social and fiscal pressures? Is liberal moral philosophy (of which, we believe, Rawls and Habermas are proponents) really so impoverished as to offer no building blocks on which to ground abolitionism? De Haan would answer yes to each of these questions, but the problem of implementation remains.

Unfortunately, de Haan never provides a clear definition of abolitionism. Do we tear down all prisons, or do we simply use confinement in extreme cases? He seems to argue for the former while leaving open the possibility of the latter. On the one hand, he argues that we need to make the case “more stringently why punishment can never be justified, not only under the present circumstances, but, indeed, never ever” (de Haan, 1990: 127). On the other hand, he argues that the basis for this claim can be derived from “discourse ethics,” a position that hardly allows such a conclusion to be imposed prior to consensual validation of universal norms.

Neither does he give a coherent rationale for preferring abolition to continued incarceration that others such as Mathiesen have attempted. We are not told how sanctions differ from punishment, or what redress means as a practical strategy in dealing with criminal, rather than civil, offenses. De Haan critiques the transferability thesis, which holds that models of dispute resolution from other cultures can be modified and introduced into Western culture. His ambivalence about the thesis is reflected in his apparent suspicion of socialist legality, which some scholars of Cuba and China have suggested as an alternative for Western societies. Using Cuba as an example, however, he develops a perspective — rather than an alternative — for engaging in ideological struggles over criminal justice (*Ibid.*: 149).

There are other nagging problems that remain unaddressed. What happens when we decarcerate? There is, for example, evidence that deinstitutionalizing the mentally ill, a position supported by the Left and cynically exploited during the Reagan era, created more, rather than less, suffering. Further, as Teplin (1990) argued in her study of Cook County (Ill.) jail, the prevalence of severely mentally disordered inmates increased following deinstitutionalization. Although the analogy is not perfect, it challenges the claim that deinstitutionalizing the criminal-justice system without creating alternate structures would, in fact, lead to less suffering. Would decarceration lead to an increase in capital punishment for the most violent offenders such that abolishing prisons would be a pyrrhic victory?

Reading the *Politics of Redress* evokes images of the light brigade charging into the valley of death in a noble, but futile battle. De Haan faces a prodigious and unenviable task, and the ambitiousness of the task and his willingness to attempt it alone are enough to inspire our admiration. He confronts the readers with several ways to reframe abolitionist thinking and his work is in-



valuable as a way of launching a new critique on the repressive ethos of punishment as we enter the 21st century.

### Why Bother with Abolitionism?

We need fewer prisons. Of the primary functions of prison — incapacitation, punishment, deterrence, stigmatization, and rehabilitation — only incapacitation cannot be served by alternate methods. Walker's (1980) critique of the justifications for imposing penalties identifies problems with these functions, suggesting that even if all were effective, they might be incompatible.

Prisons fail to rehabilitate not because of the general intransigence of inmates, but because the structure and lack of programs, particularly in maximum-security institutions, subvert the rehabilitative ideal. The literature on deterrence remains mixed on the statistical relationship between sanctions and offense. Punishment may make us feel better, but it has no tangible effect on criminal behavior, and the debilitating conditions of prison may actually increase crime by releasing persons even less equipped to deal with their society than they were when they entered.

Even the incapacitation justification seems only marginally convincing. Although annual statistics may vary slightly, a general trend over the past decade is clear. Less than 40% of victimization offenses are reported to police (*Bureau of Justice Statistics Bulletin*, 1988: 2), and only about 20% of known crimes are cleared by arrest (*CJS Sourcebook*, 1989: 449). The *CJS Sourcebook* shows that of those arrested, about 80% are prosecuted, three-quarters of those prosecuted are convicted, and about 70% of all felony convictions result in a prison or jail sentence. Consequently, only three persons are incarcerated (in prisons or jails) for every 100 crimes committed.<sup>2</sup>

Austin (1986) and Irwin and Austin (1987) argue that shorter, rather than longer, sentences may not only *not* lead to more crime, but also may save money. For example, in Illinois, during a temporary early release program from 1980 to 1983, the crime rate declined while the policy was in effect and the state saved almost \$50 million. In short, most offenders are not "incapacitated" and remain on the streets. Incapacitating a few at high cost seems to have little (if any) positive effect on the crime rate. Abolitionists must adduce further evidence to strengthen these claims, in order to challenge the ideological justification for prisons as a response to serious social offenses.

### Taking Abolition Seriously

Abolitionists carry a stigma. They are perceived to be unrealistic, naïve, and impractical dreamers who believe that if we think nice thoughts, then social menaces will disappear. This perception, although perhaps sometimes justified, is generally unfair.

Utilitarian philosophy may inform justice procedures, but the ideological foundation of contract, rights, fairness, and autonomy derives from 17th- and 18th-century philosophers from Locke to Kant in particular. Rawls' (1971) attempt to develop a neo-Kantian theory of justice as fairness is consistent with both Habermas' conception of communicative ethics and abolitionists' commitment to Enlightenment principles. The most significant difference is that abolitionists, as Hawkins (1976: 5) observes, arrive at their conclusion without worrying about either establishing their premises or the mundane practical problems the conclusion entails. It is time for a "realist neo-abolitionism" that builds on the core ideas of such thinkers as Mathiesen and de Haan. Such a neo-abolitionism would move beyond rhetoric to developing theoretical and empirical insights. It would substitute strident calls to "tear down the walls" with realistic proposals recognizing the need to protect society from the worst predators while offering alternatives for other offenders.

Abolitionist thinking offers critical criminologists several sensitizing themes. First, it directly confronts the cynicism and anomie of postmodernists with an insistence on expanding the limits of Enlightenment ideals. The notion of progress, a commitment to universalistic values, and the belief that social action may improve social existence provide an antidote to the postmodernists' neo-nihilism. If abolitionists were to confront their own premises more self-consciously, they could articulate a formidable theoretical system.

Second, a strong cadre of abolitionists would make even more visible the simple truth that prisons don't work — either as punishment or as means of ensuring the safety and stability of the commonweal. Too many leftists complain about disproportional incarceration rates that send the poor and the deprived to prison. This is noble. The complaint, however, implies that if incarceration rates were fair, then the carceral would be acceptable. Abolitionists do not complain that the poor are in prison, while also arguing that we should imprison the Savings and Loan offenders, the Contragate participants, or our most disliked category of offenders (e.g., rapists, drunk drivers). The abolitionist goal is not to make prisons more just, but to eliminate them entirely. This would require the Left to seriously consider precisely what it would do with social offenders, and although it risks further expanding the schisms between various leftist groups, it would bring the sub-rosa philosophical disputes into the open where they could be assessed and debated.<sup>3</sup>

Third, abolitionist thinking, especially as formulated by de Haan in his contention that a communicative ethics provides a theoretical grounding, can potentially reshape the terrain of discourse of critical criminology. It is nice to be nice, but why? An ethically informed theoretical foundation that guides research and policy would sharpen critical thinking and move it beyond the current dilemma of choosing between reformist liberalism and strident polemics, both of which have place, but neither of which seems eminently satisfying.

Finally, a coherent abolitionist position, as de Haan implies, may integrate a variety of diverse intellectual traditions including neo-Kantians (e.g., Rawls), critical theorists (e.g., Habermas), Marxists, and many others. The goal for neo-abolitionists is to reclaim the ethical high ground and engage more aggressively in debating the existence of prisons:

Improvements seem to be achievable only if enough people can be persuaded to adopt moral positions which are both simple and extreme: the assertion of inalienable rights, the disowning of deterrence, the abandonment of treatment, the denial of dangerousness. What is disquieting is not merely the reduction of penology to a political level, in which rhetoric takes the place of reasoning. It is the very real possibility that the whole subject will be discredited both amongst practitioners — by which I mean sentencers, administrators, and those whose job it is to handle offenders — and also in the eyes of research workers and moral philosophers who, if not disillusioned, would make genuine contributions (Walker, 1980: 189).

### Conclusion

The basis of abolitionism lies in Enlightenment principles and an explicit humanism that, while noble, cannot be uncritically accepted in light of post-modernist critiques that challenge the notion of progress, emancipation, and universalistic norms and values. The Kantian basis of the implied categorical imperative in which abolitionism would be recognized by all “right-thinking” folk, once they looked at the problem reasonably, rests on the assumption that the goals of official policies necessarily reflect the commonweal. How does one deal with the argument that rejects all rational arguments and falls back on punitive revenge as its own justification?

Those who look to other cultures or other times for models of dispute resolution have much to contribute. However, there is too little caution, especially among leftists who idealize socialist models of justice, about romanticizing decentralization. As Mika (1987) has argued, the “myth of community” creates fuzzy views of solidarity, and “neighborhoods” might be as much an ideological fiction as a consensual conceptual reality. In addition, in socialist and other models of justice, many offenses relegated to informal or decentralized systems are minor. The prison systems of socialist countries are hardly an ideal model to implement, and societies with some forms of mediation also rely on harsher corporal or capital punishment (often draconian by Enlightenment standards) for serious offenses.

We come full circle: If we abolish prisons, what do we do with Henry? Our answer is that for now, it doesn’t matter. We side with Mathiesen and others

who argue that for the nonce we face three tasks. First, we must reform prisons, the justice system, social-control procedures, and society along the lines of Enlightenment principles that emphasize ethical, spiritual, and material rejuvenation so as to eliminate unnecessary forms of social domination. Second, we must reclaim the ethical and practical high ground and move beyond liberal reform by clearly articulating a theoretical and practical justification — building on the works of Mathiesen, de Haan, and others — for abolishing prisons as a *primary* mechanism of punishment. Finally, we must remind ourselves that struggle is as long as history, and that the outcomes of our resistance to unjust forms of social control are rarely immediately visible. Instead of moving toward the center, it is time abolitionists aggressively move toward the cutting edge by going beyond rhetoric and staking out firmer theoretical ground.

## NOTES

1. The discussion here derives from Habermas, not de Haan, because de Haan limits his discussion to the kernel, rather than to a complete outline, of Habermas' position.

2. These figures are illustrative and far from precise. Some offenders commit multiple offenses, which skews the incarceration rate slightly upwards. However, many crimes included in the prosecution, conviction, and incarceration figures, such as drug offenses, are "victimless" and generally are not reported or known to police. This makes it appear as though we are locking "criminals" up by conflating crimes that are reported by victims (either officially or in victimization surveys) with victimless crimes that are not. Substance-abuse offenses are the overwhelming cause for the increase of both federal and state prison and jail populations. One can quibble over classification and calculation, but the point remains that few serious offenders are in prison.

3. The debates with feminists who argue for harsh sentences for crimes of violence against women are especially contentious. However, we must not retreat from applying the same standards to these as to all other offenses by asking not how we punish, but rather how we are to respond.

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## LEFT CURVE no. 15

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