

Penal abolitionism as direct action.

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What makes a person get arrested? How is someone locked up in a prison? How does a tragic event, a problematic situation become itself, in a blink, a matter that maintains the existence of courts – after passing through the hands of police, experts in humanity and solidarity agents of non profit organizations? What are the itineraries outlined so that an original or destabilized situation, or even a violent situation, may be codified as crime and procedurally conducted for a solution that implies punishment, a penal to be predominantly accomplished, until just a short time ago, inside the prison-building, and that in the last three decades unfolds and amplifies monitoring through a series of programs that put together reclusion and control *outside the prison walls*.

This almost natural modern equation of crime-punishment relation is possible because there is an education since childhood that prepares people to answer, obediently, to the tragic events of existence with punishment and rewards, inside and outside the penal system. Most recently it is amplified, through consensus conducted by media and intellectual's and politicians' speeches, that the only way of combating what is called crime and violence is by the creation of more police headquarters, punishing arrangements and more severe laws, more prisons and various electronic controls. However, it wouldn't be hard to talk to someone and convince him/her that punishing arrangements and controls of behavior are useless in facing a problematic situation. Showing him/her that punishment is unable to put an end to the pain and the damage caused by the event and that it doesn't reach its announced function of general prevention or reduction of incivilities. It would not be difficult because nevertheless the increase of imprisonment since the eighties, as an effect of zero tolerance politics, the old consensus that crime and violence sharply increase doesn't cease. Recent studies from the

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sociologist Loïc Wacquant² reiterate the punishment model failure to the formal control of incivilities, and history has shown that answering social confrontations using more punishment and more prisons constitutes an endless circuit with a positive feedback. However, super imprisonment politics grow as an inevitable answer from governments to poverty, increase of misery and what is called urban violence in global cities like New York, Sao Paulo or Mexico City.

However, the exercise of criticism from the rational argumentation and the evidence of those researches are not enough. An attitude is needed. The confrontation between the political principles of punishment, explicit in Willian Godwin's thoughts and Louk Hulsman's penal abolitionism, make us aware of the dissemination of police conduct by control policy of young people in Brazil that expands itself under the regime of penalization *outside the prison walls*, and are accomplished and managed by non profit organizations financed by multinational companies. The new policies of assistance bring the concept of *polizei*³ to the present day as a control policy of the population by the participation of those who are controlled themselves. In regard to them, will a practice of direct action against punishment – inside and outside the prison building, inside and outside the penal system - , increase the rupture with representations and make room for the criticism and abolitionists attitudes free from the technologies metamorphosis of power?

The paper from 1793, *On political Justice*⁴, of the libertarian Willian Godwin, already pointed out that an education based on punishment and punitive answer to all actions taken as anti social or classified as a crime by the penal law, doesn't produce its annunciated effects, like the protection of the social environment, inhibition of reincidence, prevention of new actions and production of justice. In contrary, Godwin argued, the law in its universality is not able to anticipate the singularity of an event.

² Loïc Wacquant. *Os condenados da cidade: estudo da marginalidade avançada*. Rio de Janeiro: Revan: 2001. & *As prisões da miséria*. Trad. André Telles. Rio de Janeiro: Jorge Zahar, 2001.

³ According to Michel Foucault. “‘*Ommes et Singukatim*’: uma Crítica da Razão Política”. In *Ditos e escritos*, estratégia, poder-saber. Trad. Vera Lúcia Avellar Ribeiro. Manuel B. da Motta (org.). Rio de Janeiro: Editora Forense, vol. IV, 2003, pp. 355-385.

⁴ William Goddwin. *Enquiry Concerning Political Justice and its Influence on Morals and Happiness*. The fourth edition, in two volumes. London: J.Watson, 5 Paul's Alley, Paternoster Row, 1842.

Punishing answers create more pain, multiply acts taken as anti social and produce citizens cowardly obedient: servant waiting for a governmental official's forgiveness.

Today, 2009, it is not difficult to find in the letter or in the speech of any reformer of the penal system, arguments that could be close or confused with Godwin's attacks to the penal regime: "prison doesn't recover anyone, prison only creates more violence and 'crime', delinquent's environment is fed back by the penal system itself" and etc. However, the approximations or the confusion undo themselves when it is noticed that Godwin's target is the penal regime as a policy, an education based on the application of punishment – practice of an authoritarian sociability based on the centralized exercise of authority. In other words: nowadays, an extensive literature of law and/or sociology is engaged in explicating the prison system failure, its inefficiency, abuses and excused interests, but that doesn't attack the penal system as an effect of punishment culture, in contrary, it makes use of the same argumentation to make the punishment regime strong, expand police and controls *outside the prison walls*, as alternatives braced in the critic of the reclusion system.

This exercise of critic is not recent, because it has been inserted into a tradition of penal law students that Foucault⁵ showed remits to reformers from the XVIII century, like Beccaria. Critic that can also be found formulated in a distinct way, in the production of the American sociology of post the second world war, by the Chicago school, since Edwin Sutherland's studies, or even in the present days in the already quoted studies of Loïc Wacquant that registers the expansion of imprisonment and penal policies in a planetary scale. There are striking differences between those authors, but what connects them, in a way, is the conduction of researches that point to a selectivity of the penal system, the limitation of the law application and the prison system failure, but without attacking, up front, the penal system logic and the punishment regime. Those are researches that do not restrict themselves to the penal system analysis, but reiterate the necessity of formal or informal controls or the creation of more public policies that work as reducers of what is called "crimes".

⁵ Michel Foucault. *Vigiar e Punir*. Trad. Raquel Ramalhete. Petrópolis: Vozes, 2002.

Maybe because there is this line, sometimes not clear, between an attack of the penal system, as part of a punishing culture that express beyond this formal system and a critic to prison building, and of the social production of a delinquent environment, it is not uncommon, when we talk on penal abolitionism, that we hear phrases like “All right, I understand and agree but things are not like that” or “It is a beautiful theory but what should we put there instead? Because of those trivial questions it is explicit the limits of criticism that feeds the penal system perpetuation and reformer actions that formulate a criticism of the prison system, improves the expansion of punishing modulations and diversity of controls *outside the prison walls*, and police conducts.

The vital difference is between attacking the punitive practice as a political and sociability principle, in one hand, and in the other hand the production of academic criticism to the effects of penal system operating, reducing the government function.

Louk Hulsman and penal abolitionism.

Louk Hulsman — in his writings, interviews and conferences, is very accurate and delicate in facing this sweet way of obstructing abolitionist practices and proposals, because it is in this comfortable position of criticizing and watched agreeing that punitive practices are reiterated and penal abolition is relegate to an utopia — affirmation that he frontally denies in showing that a society without penal already exists beyond the criminal system’s tentacles⁶. If the penal abolitionist practice that emerged in the seventies is related to the emergency, post war, of a critical criminology that problematizes the application of penal law, and to social movements that defend the human rights, deleting the abuses committed against the prisoners, it is with Hulsman’s penal abolitionism that it can be found a possibility of over passing the exercise of the criticism in the intellectual production and the practice of deletion in the performance of social movements that fight against prisons.

⁶ Louk Hulsman. “Discursos Sediciosos entrevista Louk Hulsman” in *Discursos Sediciosos — crime, direito e sociedade*, nº 5 e 6, ano 3. Rio de Janeiro: Freitas Bastos Editora/Instituto Carioca de Criminologia, 1998, pp. 10-11.

In a writing from 1997, “Themes and concepts in an abolitionist approach to criminal justice,”⁷, Louk Hulsman shows the results of a public conversation held in the city of Cordoba, in Argentina, divided in three movements: a) the penal system language b) why to abolish the penal system?; c) how to abolish? He recovers some formularizations from his book written with Bernat de Celis, making them concrete problems to present people. Hulsman, once again, is careful in not offering solutions but in bringing up questions around holed concepts for the criminal justice language. He problematizes the use of punishing language by criminal justice’s operators and clients, highlighting the fact that the same events when confronted outside of this register are solved in different ways, dispensing the punitive solution. He shows that there isn’t an ontology of crime and that an abolitionist attitude begins by refusing to deal with an event – that can be read as an accident or a fatality or even as the result of a series of convergent factors – as a crime, according to the penal law definition. In this way, he proposes to confront those events, like many people already do without even realizing, as a problem situation to be solved by people that are directly involved.

Hulsman is worried about the creation of a parted language from the punishing rank of criminal justice and points to the possibility of a penal abolitionist movement that acts in an academic field where it is produced, reiterated and justified in the knowledge of criminal justice. In this way, an abolitionist works in researches and productions that show up the limits and distortions of criminal justice besides historicizing and problematizing the use of concepts that in spite of being taken as reality “data” are nothing more than the reflex of a hard and paralyzed mentality in the punishment language. He points to a penal abolitionism close to directly involved people of a problem situation and that calls for action as a social movement in favor of the possibility that each person has, in his work or living environment, of living separate from punishing solutions to himself and likely to interfere in concrete situations, pushing authorities and institutions not to take from people the liberty of acting towards a problem-situation and, at last, intercepting punishing answers. A sensible alteration that ruins the punishing

⁷ Louk Hulsman. “Temas e conceitos numa abordagem abolicionista penal da justiça criminal” In *Revista Verve*. São Paulo: Nu-Sol, 2003, vol. 3, pp. 190-219.

language and leads to the break of the representation of wishes in the institutions that makes up the criminal justice.

The introduction of the problem situation notion, stands back from the definitions that establish a criminal or criminalized behavior; it is not conducted for solutions, but for an interest in bringing up questions around an event, that in the criminal justice scope would be fit in the law for the establishment of a victim and a criminal susceptible to punishment. In this way, the outcome of a problem situation looks for conciliation between the wishes and interests of the ones directly involved in an event. It happens without the necessity of finding an aggressor and a victim – whose wishes are always kidnapped by the criminal justice – because; the notion is not substitutive of what the law defines as crime. This outcome directed to conciliation can make use of, according to each specific case, a punishing model, since it is consensual, among others like the conciliatory, compensatory, therapeutic and educational models.

The penal abolitionism proposed by Hulsman is interested in the problematization of solutions that emerge from criminal justice as a refuse of the universality of law and an attitude that subverts the punishing language and the logic of representation in criminal justice. Related to the notion of problem situation he highlights: “In our discourse we are not concerned by the fact that the legal text (implicitly or explicitly) defines a situation as problematic; we are interested in concrete opinions of those involved in the problem. This implies naturally that we are not interested in the opinions of public prosecutors and police officers who refer solely to the law. The law is for us not unproblematic. The law is part of the state of affairs we have to assess in the light of our explicit values.”⁸.

Hulsman’s penal abolitionism attacks the juridical rubbish, makes explicit the selectivity of the penal system, is alert to violence and tortures practiced in prisons and to the punishing culture effects; it stands apart from a reforming solution when affirming an attitude towards punishing solutions as direct action⁹ in the present and in any space where it is possible to intercept punishing practices and representation of wishes. Do not

⁸ Idem, 217.

⁹ Direct action is a practice embraced by anarchists and should not be confused with violent action, although its usage by the libertarians includes anarchy terrorists actions. Direct action talks about the refuse of representation in function of education to free life. Cf. Edson Passetti & Acácio Augusto. *Anarquismos e educação*. Belo Horizonte: Autêntica, 2008. Sobre a ação anarcoterrorista: Jean Maitron. *Ravachol e os anarquistas*. Lisboa: Antígona, 1981.

neglect the importance of studies and researches that show the constancies, regularities and instability of penal system, but adds tension to the discussion that starts inside the penal system to problematize it, obstructing the criticism effect towards reforms that renews and expands penal controls, as I invite you to notice with me, analyzing some reforms that happened in Brazil, in the treatment of young people who are taken as teenage violators.

The police expansion as a reformist practice: Brazilian policy of control for young people

In the history of Brazil's republic, the penalty policy of young people follows, throughout the last one hundred years, the principle of selectiveness that puts their targets, poor, black, subversive, homeless, drug users and residents of slums (favela) young people located in the large cities suburb's. During the still recent Military Dictatorship (1964-1985), the young that the law perceived as *under* 18 years old, absent of penal responsibilities, were classified as dangerous by the biopsychosocials devices, for being *minors in an irregular situation*: for not being part of a well structured family, not having *regular* life conditions and the expected conduct before the law and authorities. They were labeled by the National Policy of the Minor Welfare, inside the National Policy of Security by the Escola Superior de Guerra (Superior School of War), as a matter of national security, by 1964, during the first years of the dictatorial government. The hunt for *dangerous* young people, in Brazil, nevertheless, received its juristic statute 15 years later, with the *Minor Code* of 1979, when it had already been settled the austere institutions of reclusion to young people perceived as *minors in an irregular situation* by the name of FUNABEM (National Foundation of the Welfare of Children) and it's state correlatives, the FEBEM (State Foundation of the Welfare of Children)¹⁰.

¹⁰ Edson Passetti. *Política Nacional do Bem-Estar do Menor*. São Paulo: PUC-SP, 1982. dissertação de mestrado. & "O Menor no Brasil republicando" In Mary Del Priore (org) *História das crianças no Brasil*. São Paulo: Contexto, 1991, pp. 146-175

The so-called *democratic openness* (period of transition from *authoritarianism* to *democracy*, conventionally defined by authorities, politicians, journalists and intellectuals) will carry out the institutionalization of a constitutional and representative democracy of liberal outlines, in 1988, used to the civil society communion devices, under the influence of the social movements and the plurality of political parties. Regarding the treatment of children and young, this *democratic openness*, will settle its political-legal status in 1990, with the ECA (Statute of the Child and Adolescent) promulgation. What were dealt with by the military dictatorship were the *minors in an irregular situation* shall be defined as *children and adolescents at risk* or, more recently, as *social vulnerability*. The definition of hazard by the establishment biopsychosocial devices, of the National Policy for the Welfare of Children, starts to interfuse with the increasing participation of civil society in this life of children and young selectively included in welfare policies for what is judged to be at risk. The so-called *crime* is called as an *infraction* by the Statute of the Child and Adolescent and the penalty to this is euphemistically called a *social-education measure*, that goes from verbal warning by the Special Judge Court of Childhood and Family to incarceration for what is called *social-educational measure of confinement*, recommended as a last resource to the court application. However, studies show that this “last resource” is actually the judges favorite, overcrowding the austere institutions towards adolescents in Brazil¹¹. On the Statute of the Child and Adolescent script, between the warning and the social educational measure of confinement, is the *social-educational measure amid open*, known as Assisted Freedom (AF) and Provision of Service to the Community (PSC).

The predilection for the extent of admission kept being criticized by social movements in defense of human rights and by associations, in general - mothers, devoted to protection of children and adolescents selectively picked up by the so-called illegal acts. The conditions under which young people are admitted in many Brazilian states are the worst possible and imaginable. It is common, at these austere institutions, the violation of the primordial rights expressed in the federal constitution or in international

¹¹ Cf. Salete Oliveira. *Inventário de desvios (Os direitos dos adolescentes entre a penalização e a liberdade)*. São Paulo: PUC-SP, 1996, dissertação de mestrado.

agreements and treaties directed by the Universal Declaration of Human Rights such as torture, beating, spoiled food, unsanitary hygiene and shelter conditions, sexual violence etc. Those are stories that feed the news and reports produced by committees linked to associations of professionals such as psychologists, social workers and lawyers in terms of reform¹². However, in large cities like Sao Paulo, the result of these reports works as a justification for building more austere institutions for admission of the young, which are built and equipped with the latest computer informational technologies to ensure the control of internal and, at the same time, the respect for the citizen's *future* rights. The so-called pigsties live side by side to the advanced architectures of control, based on models similar to the North American *supermax*, where torture is continuing and young people remain confined in the name of order and democracy. There is no law that can address the inevitable existence of prisons, clean and rotten, for young people in democratic or dictatorial government. In a very short period of time, a little more than 15 years, the impact of criticism and complaints made by social movements, journalists, intellectuals and professionals in the system of care for children and adolescents, pointing to abuses of authority and violation of rights, found an accommodation suitable to metamorphoses of contemporary technologies of power, producing an extension of controls *outside the prison walls*, for *adolescent offenders*. Right away, those metamorphoses indicate a bet in social educative measures in open spaces as redactor of confinement. However, the belief in open space measure didn't come along with an attention to the authoritarian sociability in the young and kid's education and a refuse of punishing practices of penal logic that feeds the treatment addressed to young and kids in Brazil. Irremediably, the *alternative* is instituted: the increase of open air measures, without the reduction of confining measures. A parted to an abolitionist problematization, as Hulsman's proposal that echoes in a pioneer research in 1993 about forcene young in Brazil¹³, the reformers criticism works for the expansion of young penalization. Right away, the *dangerous* ones elected by the

¹² Cf. Comissão Nacional de Direitos Humanos e de Diretos da Criança e do Adolescente da Ordem dos Advogados do Brasil (OAB) e do Conselho Federal de Psicologia (CFP). *Diretos Humanos: um retrato das unidades de internação de adolescentes em conflito com a lei*. Brasília: OAB/CFP, 2008. Relatório que mostra o resultado de visitas realizadas às unidades de internação nos 22 estados brasileiros mais o Distrito Federal em 15 de março de 2006.

¹³ Edson Passetti. *Violentados: crianças adolescentes e justiça*. São Paulo: Imaginário, 1999, 2º edição.

dictatorship, and because of that confined in austere institutions, started to be controlled in open spaces before their exponential treats are explicit. Such control is accomplished by georeferenced electronic resources of areas at risk mapping, civil society organizations and the direct participation of young and local community in the management of public policies addressed to them, disclosing the suburbia of big cities like Sao Paulo's open-air surveillance ¹⁴.

Today, 2009, the policy of management and application of social educative measures in open spaces, specially the AF, is made by non profit organizations financed by multinational companies that bring to the present, extend and make elastic the punishing controls addressed to the young in Brazil. Recently I did a piece of research around a plan that evaluates a social educative measure application in open spaces called *Projeto Pró-menino, da Fundação Telefônica*¹⁵, that finances non profit organizations in satellite cities of Sao Paulo metropolitan area. When I analyzed the plan's methods, applications, procedures and questionnaires I found some couplings that expand the confinement in modalities and modulations of young imprisonment flows defined as control society by Giles Deleuze¹⁶. I came across the production of a contemporary policy as a police practice accomplished by *teenager's* participation who were the same applicators of the questionnaires prepared by non profit organizations simultaneity to the Assisted Freedom (AF) measure execution. Those are police practices expanded and taken as the set of social policies that aim for the improvement of life conditions of individuals that compose the population, and the conduction of citizens, acting along with non profit organizations, counting with companies' investments, carrying through those contemporary ways of taking care of the population, lives conditions and conduction of the set of citizens. Thus, the term public policy is brought up to date as synonym of police and as practice that is not restricted to the government action. The reality address us to the differentiation established by von Justi, and analyzed by Michel Foucault, of the terms *Politik* (from German, politics), as repressive function of Reason of State against

¹⁴ According to Edson Passetti's notion especially in: *Anarchisms and society of control*. Sao Paulo: Cortez, 2003.

¹⁵ This research's results were published in Fonte, Instituto. *Vozes e olhares: uma geração nas cidades em conflito*. São Paulo: Fundação Telefônica, 2008.

¹⁶ Gilles Deleuze. *Conversações*. Trad. Peter Pál Pelbart. São Paulo: Editora 34, 2000.

its internal and external enemies, and *Polizei* (from German, police), as a positive task of government and civil society to favor the healthy and to guide the conduct of those who don't compose the population, guaranteeing the morality and obedience of citizens¹⁷.

From the reformers critic that attacked the young's life conditions confined in austere institutions, requiring respect for the kids and the young's universal rights, it emerged as a policy of attendance that answers, along to what is called civil society, the democratic yearnings after Military Dictatorship in Brazil, where each young person, who was taken as dangerous before, acts as police of him/herself and of his/her fellow in the suburbia while *borderless concentration camp* precisely in name of democratic collorary from conservative times: which is needed to participate, to improve! To improve what, the young lives or devices against them?

Direct action.

Hulsman, in more than one paper, alerted to the fact that penal abolitionism starts, before anything else, in each one: it is a way of life. Retaking this affirmation is a way of reminding the society's reformers, even the revolutionaries, that politics start in each one. An abolitionist policy is a personal attitude that happens in the present, as an open invitation to other interested in strengthened liberties, without waiting for the future redemption or a favorable political situation. In Hulsman's word: "We are able to abolish criminal justice in ourselves, to use another language so that we can perceive and mobile other resources to deal with problematic situations. When we use another language, we teach that language to others. We invite them in that way to abolish criminal justice also."¹⁸

Affirming that politics start in yourself, doesn't imply to differ what could be a good policy and a bad policy, a good abolitionism or a sterile abolitionism.

The *borderless concentration camp* policies also starts in each one, in each young person that turned into a teenager by the juridical-politic classification and technical knowledge of reformers, acts as police of himself and of others. The currentness of Hulsman's libertarian penal abolitionism affirms that an abolitionist attitude goes beyond

¹⁷ Ao Michel Foucault. *Op. Cit.*, 2003.

¹⁸ Louk Hulsman. *Op. Cit.*, 2003, p. 213.

static position of the resistant, academic criticism or action through deletion. It pushes us to a political attitude that, as Passetti points out, happens as libertarian ethic and esthetic.

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Like the anarchists, Hulsman is worried about the language; he uses the words as a way of supporting the action, the possibilities for people to do themselves, obstructing the action of reformers, representatives, police and judges. Hulsman's penal abolitionism taken as a direct action towards a problem situation, becomes libertarian and stands back from possible captures that reiterate punishing practices like it happens with the super new alternatives inside the penal law, which use similar practices to the conciliatory model, in new proposes as the restorative justice, like a way of expanding *borderless concentration camp* and the formation of police-citizens, leaving untouched the punishing logic that remakes itself in each movement of reform.

As the anarchists did to stand back from the labor fights codification inside the parties and syndicates of category, after the Paris Comune massacre (1871), the currentness of penal abolitionism is in the attention and intervention as direct action towards a problem-situation standing back and attacking the infinity of repetitive papers and petitions, profitable projects of reforms and well intentioned agents of non profit organizations. Stands back from civic compassion practiced by companies in the nowadays configuration of new liberalism of capital and voluntary servitude of good citizens that although miserable, rather survive as a police to the authority on duty than face the tragic battle of life standing back from the easy answers given by the punishment logic.

English tradution by Anamaria de Aguiar e Salles

¹⁹ Edson Passetti. "Sociedade autoritária e abolição do castigo" In Op. cit., 2003, pp. 125-164.