

Louk Hulsman, penal abolitionism and surprising routes.

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Just saying that Louk Hulsman is one of the most important writers on penal abolitionism is not enough. To start talking about how important he is we have to begin by a small portion. Hulsman was very aware of the historical possibilities of something apparently impossible: the abolition of the penal system. The creation of the modern Prison has likewise made it a possibility – as shown by Michel Foucault in *Discipline and punish*. In May 1968, young transgressors used to say that only ‘the impossible’ might happen, because ‘the possible’ would only repeat itself. Hulsman was a man of differences, not of repetitions and he put together his abolitionist statement in the challenging decade of the 70’s, in an anti-confinement and anti-asylum atmosphere. But, not only ‘the impossible’ became possible, in the present, in fact, in the brutal strength of the smallest element in the fight: the word. The word abolitionism. This word, abolitionism, as Hulsman said, did not exist in Dutch. Opposite to what happened in the Americas and many countries in Africa, his language did not experience the abolition of slavery. Hulsman took the impossible word and made it his weapon, since he did not ignore that any kind of slavery can not be abolished by a law or any legal procedure. That is probably the origin of his unusual, but frequent, line: ‘It is necessary to abolish the criminal justice itself before anything else’.

Penal Abolitionism

Modern Law, based on the same ground that praises safety in the modern welfare, spreads out that juridical rationality of the Law has a new paradigm – advocated by the basic rights and guarantees and social rights – no longer ruled by the universal and transcendental idea of justice, but balanced by irreducible social interests, so-called collective and diffuse rights.

In the traditional division of Law, concerning sovereignty, there is a continuous line of its evolution. In this view, its internal changes scale up underlying the formation and development of modern and contemporary politics. Classical Law, Modern Law and Contemporary Law are steps on an indispensable substitution to justify its inherent progress.

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It is interesting to challenge this stable equation, from an analytical point of view it is necessary to go through representations of discursive practices and, even further, to go through the way they represent themselves, to understand what the logic of Law builds as its harmonic evolution. The idea is to get away from the comfort of what Philosophy of Law prefers to call “juridical hermeneutic”. From a more comprehensive view Law is connected to an internal subdivision that connects different hierarchical types of knowledge among tiers in its power to extend and apprehend: Constitutional Law, Civil Law, Penal Law, Commercial Law, International Law, Labor Law, Consumer Law, Environmental Law, Family Law, Child and Adolescent Rights, Human Rights. This generation of types of laws inside the Law can be stopped in many ways. To stop this logic a previous question is needed: how come with such a dissemination of social laws and expanded collective laws – that derive from Civil Law – has not the Penal Law become unnecessary inside a more comprehensive Law? This question – that challenges and, at the same time, blocks the supposed stability of the Law – points out to possible developments of a brief analysis.

It is necessary to shake the comfort zone of the Law and laws to intervene in the battle field where the historical knowledge of fights lies. It is imperative to disturb the calm way of things and its conciliatory names in the sovereign links they call their own, concerning its theoretical truth and its sovereign truth.

The question is back: why has the Penal Law not become unnecessary? In order to look into that, we have to question the rise of the Contemporary Law from the medicalization of the control that takes place in the mid twentieth century, simultaneously to the effects of World War II and the birth of somatocracy. This specific way to administrate the power proves the ruling policy effective with the advertisement of safety and its sophisticated links to fight the evil. It expresses something unbearable – which, to the oblivious eye could sound like exclusion mechanism – but on the other hand creates a device to incorporate it. It encourages the essential fear. That might be one of the new arrangements of the social defense in the penal law and social rights discourse as a democratic belonging in Law.

The continuation of the war by other means went on as the policy, and its current effects show that if, at the beginning, the society of control needed to invest first on the medicalization of control, it later became an effective strategy of extended

control with precise parameters obscured on the dispute for the control of security. It is a rearrangement of the policy that engenders the medicalization of control on behalf of the reform of the general moral of prevention, confirming the increase of the Penal Law making universal the trial as the updating of the great court of the world.

The standardization of life, according to the modern general prevention, demanded that infraction be turned into crime and that the interpretation of previous behavior of people considered dangerous become the technical and scientific basis to justify acts that had not yet been committed as well as to legitimate the projection of its danger so that they could be punished not for an act that had been committed but for the simple possibility of happening. What had been the defense of life and society in the 19th century became, on the primacy of the image of the criminal and the concept of danger, the defense of humanity in the second half of the 20th century, since Law became available to everybody. Nowadays, even the smallest acts are controlled – justified by the defense of inalienable rights – with the intention of stating a worldwide citizenship while it ends up emphasizing each person's insurmountable limits.

Criminology after war had two lines: one became an important auxiliary branch of the Penal Law, despite its ambition – in mid 19th century, at the beginning of criminology – to be an independent subject, which was never reached; and another one that waved the possibility of its decay and ruin. The abolitionism comes from the second one which developed mainly in the 1970's.

When the abolitionism doubts that arrest and trial are inevitable, it shakes the ideas of stability and centrality, it favored analyses from genealogy and rather than simplify confrontation into start and end it looks into a vision where tension – and only tension – can express what the specialized knowledge can not foresee, respond to or bear.

Is it possible to abolish the penal system? Is the libertarian abolitionism the pest in the Rule of Law?

Hulsman and the abolitionism

On the one hand, the penal abolitionism is not homogeneous; on the other, its differences do not compete to be more truthful and they do not try to reach a high level of homogeneity to rule the others.

“The penal abolitionism works on the field of the tact versatility of the discourse. Libertarian thinkers such as Hulsman are part of it as much as Marxists like Nils

Christie and Thomas Mathiesen. It states the exhaustion of the penal reforms taking to their limits ideas by thinkers such as Beccaria – who drew attention to the inefficiency of imprisonment – up to Foucault – who revealed the complex connection between criminal and police knowledge.”²

Louk Hulsman provokes a pleasant and cheerful curiosity. He used to say that abolitionism “is good for your health”. He went through tensions exasperating them far away from pity that ends up reproducing submission. He lived life and its storms without being too somber. He poured his overwhelming smile into the ones who surrounded him or bumped into him. He sensed the possibilities of the surprise. “ If I move away from my garden whatever keeps sunlight and water from fertilizing the soil, plants that I could never have suspected will start growing.

Hulsman’s abolitionism comes from several territories of actual events of his life, from concrete issues. His responses to such issues guided him towards abolitionism. It was not a goal from an ideal start. Abolitionism weaved itself as it was invented. What Hulsman causes in anyone who gets interested and chooses abolitionism could be something like this: the abolitionism exists and, at the same time, it is always awaiting to be invented in different ways. Hulsman invites to the uneasiness of the abolitionism. Far, really far away, from the utopias that get on so well with pity practices.

“My abolitionism is not utopian. I try a realistic discourse on criminalization, whereas the traditional discourse is utopian referring to heaven and hell. I am more and more convinced that the cultural organization of criminal justice and the cultural organization of scholastic moral theology are the same. (...) It is a shame that there are two faces in the university: one that reproduces the existing order, repetitive, unchangeable and the other one that is critical, not superficial. It is a shame that Law schools go on with scholastic tales of holy books. Not even Theology Schools do that anymore! Law Schools are the worst place at the university, where I worked for over 25 years. It is astonishing how students put up with people pouring contents from holy books! They do that without any research on the source of those books and their meaning nowadays. (...) On my academic abolitionism I do not tell what is going to happen. I agree with what Foucault says on the specific intellectual (...). People have to understand that processes are not natural, there are options to create freedom by thinking and feeling. That is the first question of the abolitionism (...). How to change is the second question. (...) The way it happens varies from person to person (...).”⁴

Hulsman affirms this based on situations that he experienced himself, situations that go through him. He was educated in a region of the Netherlands where Catholicism prevailed, reinforced by the pre-Vatican II atmosphere. The idea that there were some elected ones and others non-elected got even more extreme when he was confined to boarding schools. School was unbearable to him, until he decided to jump over a wall and ran away. He would jump over other walls later on. One of them was of a concentration camp – during World War II – where he was a political prisoner. In an interview to Jacqueline Celis – his intense partner in abolitionist matters – he said that the first escape was essential to the second and he makes a point that the school imprisonment is worse than the imprisonment in a concentration camp.

The Spanish Civil War was another event considered important by Hulsman, among many others, it had a subtle and decisive meaning in his life. It proved that the abolitionist practice is engendered and woven through life experience – during an intermittent route, full of nonsense – and in the bafflement that shakes the cycle of conformity. “Escaping from conformity opens up a universe of freedom”.⁵

The abolitionism gained shape in Hulsman when he became a professor of Penal Law in the university and started his activities as a researcher. At the same time, the experience he had been collecting under skin began to show. It could be noticed in his turnovers, his sudden stops, language dissonance. It was realized when he emphasized the necessity to pay attention to the language of the abolitionism, when he designed strategies out of the penal reasoning.⁶ It meant to challenge the ontological nature of the concept of crime, which for Hulsman is the basis of the criminal politics and of the penal system. Doing so he took the discussion to a field where what matters is to find a solution to what he called “situation-problem”. It is the challenge in the ontological nature of crime that brings up the notion of situation-problem, which allows us to take the outside position that weaves the abolitionist perspective.

“(…) The concepts and the language of the penal systems traps us inside its own territory demanding a lot of mental effort to move away from this gravitation area.(…) It is only from the outside of the *penal dialect* that one is able to break the cycle “delinquency-imprisonment-recidivism” which is presented as invincible in the penal logic.”⁷

These subtle details about language brought to attention by Hulsman happen to be a strong element in the abolitionism, because it allows to fight along with the genealogical practice of tracking down the system where words are used in a

determined reasoning to make it possible to fight and destroy it, providing one is really willing to take other paths different from the ones of the submission syntax.

Hulsman's proposal is not just a simple rhetoric game. It reveals the syntax plot, as part of the entrapment set by the discourse of the reform. Such plot moves within the logic of the penal system to perpetuate itself rearranging its elements and encouraging an endless interchange between the providence of god and the providence of reason.

It can, doubtlessly, be explained by the beginning of penal system during the transition from religious society into civil society. It also owes its origins to the scholastic model – reason why it also contains a lot of medieval cosmology. A definite truth imposed from the top, judges in charge of applying a justice as absolute as serene, suffering imposed as a response to actions considered wrong, needing “purification”. It is a Manichean philosophy that splits people between good and bad, innocent and guilty. That is how the logic of the current penal system in our societies has always been. It is the logic of the Day of Judgment, but now the omnipotent omnipresent God, scholastic avenger, has been replaced by the Penal Code ...”⁸

The idea of situation-problem levels real people around their real problems. . Such problems in the penal reasoning are turned into abstractions to take part in the mediation of the justice system as a regular way of representations of wills.

The affirmation of affected wills brings up, according to Hulsman, different specific solutions with five possible answers to a situation-problem: the punishment (banning); the compensation (exchange, restoration), the treatment (disagrees with confinement); the conciliation (agreement from person to person) and the educational solution. Nevertheless it should be decided with reciprocal agreement among the people who are involved in the situation.

For Hulsman “the general idea is that the punishment according to the seriousness of the act is the cornerstone of the order”. This cornerstone, in its genealogical analyses leads to a bifurcation according to the word seriousness in the logic of the punishing system. The word “seriousness” in the syntax of the submission becomes the power capable of keeping the axis created with the order in the center, as well as it agrees with having different degrees of actions considered crimes. The emergence of the Penal Law according to the Universal Declaration of Human Rights brings together the punishment proportional to the crime committed, matched universality and individuality, clarified, at the same time, the game between the words aggravating and extenuating.

Even though the failure of the imprisonment had already been detected by the 18th Century reformers, such finding was useful to the mentality that encouraged the idea of imprisonment – a very humane idea, let us not forget that the modern imprisonment is an invention of the Humanism – as to the new old argument that the prison should go on existing, ranging from a clean dignifying prison up to life imprisonment; without giving up the control mechanisms in either way.

The preeminence given to listening and speaking in penal law – exercising its grammar-syntax – prioritizes the “talking about” as the regular procedure rather than rhetoric itself. This exercise demands for artificial calming down the unbearable. It is accomplished on behalf of the representation and confirmed by the seizure of the will. By operating through models, Law and Code and its eternal reforms, it rebuilds in different ways the everlasting necessity of a central spot where Truth must shine. It reproduces domination and submission mechanisms when arranging abstract and general formulas inside its main consistency, the voluntary servility.

Displacements

The interest of the libertarian abolitionism in responses-course,⁹ outside the logic of models, is a refusal of the idea of prison-confinement or asylum-confinement, it is mainly a refusal of confinement practices that perpetuate the court and the prison, inside and outside jails, regardless if they are hygienic or not.

When Hulsman presents models capable of results outside the penal system he also includes the therapeutic model. It is important to analyse to what extent this model can respond to specific situations-problem to broaden freedom. And whether it could end up promoting a ruling process in case the therapeutic model becomes a form of enlarged therapy. In case it happens it is necessary not only to challenge the term therapeutic but to stop the idea of model and go radical into Hulsman’s own ideas and suggest the possibility of abolishing inside the abolitionism. To be libertarian the abolitionism has to be aware of the relations that it establishes with its own language. So using the word model does not sound appropriate as its development may be compromising.

Therefore, the therapeutic model must be analysed not as a goal, but as a means. If we keep pursuing a goal we maintain the circuit around the search for a cure. In order to radicalize the abolitionism it is necessary to constantly invent it. Therefore

the idea of response-course may be suitable to level the knowledge of people involved in objective situations-problem.

“I believe there are many interesting points in Hulsman’s proposition, among them the challenge to question the basis of the Law by punishing. About that he states that the punishment is endless. (...) The issue of the media is not, according to him, just a consequence of what had been said about the right to punish, because the reflexion about the basis for the punishment and the way to react to an infraction must be closely connected. This all sound very exciting and important to me. Although I am not that familiar with his works, I wonder if by doing something similar to what he proposes would we, not intentionally, lead to a separation of social collective reaction from institutional reactions to crime – that could be seen as an accident, and dealt with as such – and to a hyper psychologization of whatever refers to criminal, which could be medically and psychiatrically intervened with therapeutic objectives?”¹⁰

The domain of the so-called therapeutic is one of the most sensitive that the abolitionism has to deal with in order to avoid reproduction – outside the jail – of effects of confinement in more subtle spheres of life. If the abolitionism is not alert it might become similar to the movement of “depsychiatrization” for the psychiatry or of an open-air sedative anti-psychiatry for the asylum routine.

The idea of response-course is intentionally unfinished in two dimensions, considering it is neither the beginning nor the end but the means capable of coming up with other responses; on the other hand it does not contain the definite solution able to be universalized as a exemplary model. The word *model* emptied itself within its own limits. The response-course allows the destruction of the use of exemplary models. It does not matter to listen anymore, listen and repeat. Precise yells matter where they vibrate. Ambiguous yells in overwhelming silence, uncontrollable and unnoticeable colors and movements. Taming is no longer possible.

For the libertarian abolitionism the possible positive answers are realized and composed with libertarian experiences that baffle theories, challenge centralizations, and when passing by the ideal of happiness provides aesthetical experiences able to value lives and works, not concerning what they lack, but on what exceeds and escapes them. The abolitionism is good for you indeed, as Hulsman said. And no subversion is possible without some amount of cruelty. Cruelty as hunger for life suggested by Artaud. The exhibition of fractures must be of interest.

¹ From my PhD dissertation, *Plano Beveridge e abolicionismo penal*. São Paulo, PEPG/PUC-SP, 2002, with punctual changes; presented in the public session *Louk Hulsman, um instaurador. Conversação sobre abolicionismo penal e a vida de um pensador libertário*, with Edson Passetti, Vera Malaguti and Nilo Batista, carried out by Nu-Sol no Pátio do Museu da Cultura da PUC/SP, on March 5th, 2009.

² Edson Passetti. “Sociedade de controle e abolição da punição” in *São Paulo em perspectiva*. São Paulo, Revista da Fundação Seade, 1999, v. 13/ nº 3, p. 61.

³ Louk Hulsman. *Penas perdidas: o sistema penal em questão*. Translated by Maria Lúcia Karam. Niterói, Luam, 1993, p. 186.

⁴ 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.

⁵ Idem, pp. 22-23.

⁶ Louk Hulsman and Jacqueline Bernart De Celis. “La apuesta por una teoría de abolición del sistema penal”, translated by Julia Varela, in Christian Ferrer (Org.) *El lenguaje libertário*. Montevideo, Norman Comunidad, 1993.

⁷ Idem, pp. 189-190.

⁸ Ibidem, pp. 187.

⁹ The idea of response-course came from Nu-Sol (Núcleo de Sociabilidade Libertária do PEPGCS/PUC-SP) seminars. In such seminars we have discussed the abolitionism in order to take ourselves, members of Nu-Sol, to shaking event. We carry out our analyses in several ways. In one of those discussions – when I was in charge of looking into the therapeutic model – I suggested the term response-course rather than the idea of model, regardless if it is therapeutic or any other model. Our usual behaviour in Nu-Sol – going radical – made it possible for me to come up with such a proposal. This way we could refreshen one of its sources. There were many sources, I would like to draw attention to two of them: Artaud’s works and Dr. Nise da Silveira’s video *Emoções de Lidar* directed by Edson Passetti. Dr. Nise da Silveira’s outrage can not be satisfied. It spreads out to challenge the psychoanalytical eavesdropping – which, we obviously know, is not limited to the medical or therapist’s office – and turns to the exploration of senses, multiple and tense sensibilities. She disposes the social accepted jails of occupational therapy. She aims all her nerves and muscles, short-sighted eyes, frenetic hands into an intense effort to establish new touches of life, not from what is ready and comfortable, but from what is detached and unfinished calling for other kinds of bonds of affection. Clay, cats, dogs, ahsma, wood, poisoning, mandalas, velvet softness. Here I scream her line: EUREKA! She got it. One of her fundamental discoveries emerges from complicate embroidering: emotions of dealing. This encounter-discovery was made possible by Luis Carlos, a crazy man, the expression “emotion of dealing” is his. A baffling displacement for a new language of potencies that subvert the expected order of *patient* and well-behaved words. The notion *emotion of dealing* comes up to collaborate with yells, uncontrolled moves and tiny breaths from Artaud’s theatre of cruelty and Foucault’s genealogical analytical strategy. Friendly partnerships for the abolitionism.

¹⁰ Michel Foucault. “A qué llamamos castigar?” in *La vida de los hombres infames: ensayos sobre desviación y dominación*. Translated by Julia Varela and Fernando Álvarez Uría. Madri, La Piqueta, 1990, p. 225.

¹¹ It is worth to draw attention to the tense discussion that Foucault establishes on the reformist psychoanalyses as a tool of depsychiatrization although it does not touch the central position of power and the sovereign place of dictating the truth over others. Such analysis, entitled “Psychiatry and Anti-Psychiatry” is part of Foucault’s lectures for *Collège de France*, in 1973 and 1974. Related articles are also available under the label *abolicionismo libertário* on <http://www.nu-sol.org/verbetes/index.php?id=58>.

English translation by Andrea Luri Abe