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An Open Media Book

SEVEN STORIES PRESS
New York

Abolitionist Alternatives

“Forget about reform; it’s time to talk about abolishing jails and prisons in American society . . . Still—abolition? Where do you put the prisoners? The ‘criminals’? What’s the alternative? First, having no alternative at all would create less crime than the present criminal training centers do. Second, the only full alternative is building the kind of society that does not need prisons: A decent redistribution of power and income so as to put out the hidden fire of burning envy that now flames up in crimes of property—both burglary by the poor and embezzlement by the affluent. And a decent sense of community that can support, reintegrate and truly rehabilitate those who suddenly become filled with fury or despair, and that can face them not as objects—‘criminals’—but as people who have committed illegal acts, as have almost all of us.”

—Arthur Waskow, Institute for Policy Studies¹²⁹

If jails and prisons are to be abolished, then what will replace them? This is the puzzling question that often interrupts further consideration of the prospects for abolition. Why should it be so difficult to imagine alternatives to our current system of incarceration? There are a number of reasons why we tend to balk at the idea that it may be possible to eventually create an entirely different—and perhaps more egalitarian—system of justice. First of all, we think of the

current system, with its exaggerated dependence on imprisonment, as an unconditional standard and thus have great difficulty envisioning any other way of dealing with the more than two million people who are currently being held in the country's jails, prisons, youth facilities, and immigration detention centers. Ironically, even the anti-death penalty campaign tends to rely on the assumption that life imprisonment is the most rational alternative to capital punishment. As important as it may be to abolish the death penalty, we should be conscious of the way the contemporary campaign against capital punishment has a propensity to recapitulate the very historical patterns that led to the emergence of the prison as the dominant form of punishment. The death penalty has coexisted with the prison, though imprisonment was supposed to serve as an alternative to corporal and capital punishment. This is a major dichotomy. A critical engagement with this dichotomy would involve taking seriously the possibility of linking the goal of death penalty abolitionism with strategies for prison abolition.

It is true that if we focus myopically on the existing system—and perhaps this is the problem that leads to the assumption that imprisonment is the only alternative to death—it is very hard to imagine a structurally similar system capable of handling such a vast population of lawbreakers. If, however, we shift our attention from the prison, perceived as an isolated institution, to the set of relationships that comprise the prison industrial complex, it may be easier to think about alternatives. In other words, a more complicated framework may yield more options than if we simply attempt to discover a single substitute for the prison system. The first step, then, would be to let go of the desire to discover one single alternative system of punishment that would occupy the same footprint as the prison system.

Since the 1980s, the prison system has become increasingly ensconced in the economic, political and ideological life of the United States and the transnational trafficking in U.S. commodities, culture, and ideas. Thus, the prison industrial complex is much more than the sum of all the jails and prisons in this country. It is a set of symbiotic relationships among correctional communities, transnational corporations, media conglomerates, guards' unions, and legislative and court agendas. If it is true that the contemporary meaning of punishment is fashioned through these relationships, then the most effective abolitionist strategies will contest these relationships and propose alternatives that pull them apart. What, then, would it mean to imagine a system in which punishment is not allowed to become the source of corporate profit? How can we imagine a society in which race and class are not primary determinants of punishment? Or one in which punishment itself is no longer the central concern in the making of justice?

An abolitionist approach that seeks to answer questions such as these would require us to imagine a constellation of alternative strategies and institutions, with the ultimate aim of removing the prison from the social and ideological landscapes of our society. In other words, we would not be looking for prisonlike substitutes for the prison, such as house arrest safeguarded by electronic surveillance bracelets. Rather, positing decarceration as our overarching strategy, we would try to envision a continuum of alternatives to imprisonment—demilitarization of schools, revitalization of education at all levels, a health system that provides free physical and mental care to all, and a justice system based on reparation and reconciliation rather than retribution and vengeance.

The creation of new institutions that lay claim to the

space now occupied by the prison can eventually start to crowd out the prison so that it would inhabit increasingly smaller areas of our social and psychic landscape. Schools can therefore be seen as the most powerful alternative to jails and prisons. Unless the current structures of violence are eliminated from schools in impoverished communities of color—including the presence of armed security guards and police—and unless schools become places that encourage the joy of learning, these schools will remain the major conduits to prisons. The alternative would be to transform schools into vehicles for decarceration. Within the health care system, it is important to emphasize the current scarcity of institutions available to poor people who suffer severe mental and emotional illnesses. There are currently more people with mental and emotional disorders in jails and prisons than in mental institutions. This call for new facilities designed to assist poor people should not be taken as an appeal to reinstitute the old system of mental institutions, which were—and in many cases still are—as repressive as the prisons. It is simply to suggest that the racial and class disparities in care available to the affluent and the deprived need to be eradicated, thus creating another vehicle for decarceration.

To reiterate, rather than try to imagine one single alternative to the existing system of incarceration, we might envision an array of alternatives that will require radical transformations of many aspects of our society. Alternatives that fail to address racism, male dominance, homophobia, class bias, and other structures of domination will not, in the final analysis, lead to decarceration and will not advance the goal of abolition.

It is within this context that it makes sense to consider the decriminalization of drug use as a significant component of a larger strategy to simultaneously oppose structures of

racism within the criminal justice system and further the abolitionist agenda of decarceration. Thus, with respect to the project of challenging the role played by the so-called War on Drugs in bringing huge numbers of people of color into the prison system, proposals to decriminalize drug use should be linked to the development of a constellation of free, community-based programs accessible to all people who wish to tackle their drug problems. This is not to suggest that all people who use drugs—or that only people who use illicit drugs—need such help. However, anyone, regardless of economic status, who wishes to conquer drug addiction should be able to enter treatment programs.

Such institutions are, indeed, available to affluent communities. The most well known program is the Betty Ford Center, which, according to its Web site, “accepts patients dependent on alcohol and other mood altering chemicals. Treatment services are open to all men and women eighteen years of age and older regardless of race, creed, sex, national origin, religion or sources of payment for care.”¹³⁰ However, the cost for the first six days is \$1,175 per day, and after that \$525 per day.¹³¹ If a person requires thirty days of treatment, the cost would amount to \$19,000, almost twice the annual salary of a person working a minimum-wage job.

Poor people deserve to have access to effective, voluntary drug treatment programs. Like the Betty Ford program, their operation should not be under the auspices of the criminal justice system. As at the Ford Center, family members also should be permitted to participate. But unlike the Betty Ford program, they should be free of charge. For such programs to count as “abolitionist alternatives,” they would not be linked—unlike existing programs, to which individuals are “sentenced”—to imprisonment as a last resort.

The campaign to decriminalize drug use—from marijuana-

na to heroin—is international in scope and has led countries such as the Netherlands to revise their laws, legalizing personal use of such drugs as marijuana and hashish. The Netherlands also has a history of legalized sex work, another area in which there has been extensive campaigning for decriminalization. In the cases of drugs and sex work, decriminalization would simply require repeal of all those laws that penalize individuals who use drugs and who work in the sex industry. The decriminalization of alcohol use serves as a historical example. In both these cases, decriminalization would advance the abolitionist strategy of decarceration—that is, the consistent reduction in the numbers of people who are sent to prison—with the ultimate aim of dismantling the prison system as the dominant mode of punishment. A further challenge for abolitionists is to identify other behaviors that might be appropriately decriminalized as preliminary steps toward abolition.

One obvious and very urgent aspect of the work of decriminalization is associated with the defense of immigrants' rights. The growing numbers of immigrants—especially since the attacks on September 11, 2001—who are incarcerated in immigrant detention centers, as well as in jails and prisons, can be halted by dismantling the processes that punish people for their failure to enter this country without documents. Current campaigns that call for the decriminalization of undocumented immigrants are making important contributions to the overall struggle against the prison industrial complex and are challenging the expansive reach of racism and male dominance. When women from countries in the southern region are imprisoned because they have entered this country to escape sexual violence, instead of being granted refugee status, this reinforces the generalized tendency to punish people who are persecuted in

their intimate lives as a direct consequence of pandemics of violence that continue to be legitimized by ideological and legal structures.

Within the United States, the “battered women’s syndrome” legal defense reflects an attempt to argue that a woman who kills an abusive spouse should not be convicted of murder. This defense has been abundantly criticized, both by detractors and proponents of feminism; the former do not want to recognize the pervasiveness and dangers of intimate violence against women and the latter challenge the idea that the legitimacy of this defense resides in the assertion that those who kill their batterers are not responsible for their actions. The point feminist movements attempt to make—regardless of their specific positions on battered women’s syndrome—is that violence against women is a pervasive and complicated social problem that cannot be solved by imprisoning women who fight back against their abusers. Thus, a vast range of alternative strategies of minimizing violence against women—within intimate relationships and within relationships to the state—should be the focus of our concern.

The alternatives toward which I have gestured thus far—and this is only a small selection of examples, which can also include job and living wage programs, alternatives to the disestablished welfare program, community-based recreation, and many more—are associated both directly and indirectly with the existing system of criminal justice. But, however mediated their relation might be to the current system of jails and prisons, these alternatives are attempting to reverse the impact of the prison industrial complex on our world. As they contest racism and other networks of social domination, their implementation will certainly advance the abolitionist agenda of decarceration.

Creating agendas of decarceration and broadly casting the net of alternatives helps us to do the ideological work of pulling apart the conceptual link between crime and punishment. This more nuanced understanding of the social role of the punishment system requires us to give up our usual way of thinking about punishment as an inevitable consequence of crime. We would recognize that “punishment” does not follow from “crime” in the neat and logical sequence offered by discourses that insist on the justice of imprisonment, but rather punishment—primarily through imprisonment (and sometimes death)—is linked to the agendas of politicians, the profit drive of corporations, and media representations of crime. Imprisonment is associated with the racialization of those most likely to be punished. It is associated with their class and, as we have seen, gender structures the punishment system as well. If we insist that abolitionist alternatives trouble these relationships, that they strive to disarticulate crime and punishment, race and punishment, class and punishment, and gender and punishment, then our focus must not rest only on the prison system as an isolated institution but must also be directed at all the social relations that support the permanence of the prison.

An attempt to create a new conceptual terrain for imagining alternatives to imprisonment involves the ideological work of questioning why “criminals” have been constituted as a class and, indeed, a class of human beings undeserving of the civil and human rights accorded to others. Radical criminologists have long pointed out that the category “law-breakers” is far greater than the category of individuals who are deemed criminals since, many point out, almost all of us have broken the law at one time or another. Even President Bill Clinton admitted that he had smoked marijuana at one time, insisting, though, that he did not inhale. However,

acknowledged disparities in the intensity of police surveillance—as indicated by the present-day currency of the term “racial profiling” which ought to cover far more territory than “driving while black or brown”—account in part for racial and class-based disparities in arrest and imprisonment rates. Thus, if we are willing to take seriously the consequences of a racist and class-biased justice system, we will reach the conclusion that enormous numbers of people are in prison simply because they are, for example, black, Chicano, Vietnamese, Native American or poor, regardless of their ethnic background. They are sent to prison, not so much because of the crimes they may have indeed committed, but largely because their communities have been criminalized. Thus, programs for decriminalization will not only have to address specific activities that have been criminalized—such as drug use and sex work—but also criminalized populations and communities.

It is against the backdrop of these more broadly conceived abolitionist alternatives that it makes sense to take up the question of radical transformations within the existing justice system. Thus, aside from minimizing, through various strategies, the kinds of behaviors that will bring people into contact with the police and justice systems, there is the question of how to treat those who assault the rights and bodies of others. Many organizations and individuals both in the United States and other countries offer alternative modes of making justice. In limited instances, some governments have attempted to implement alternatives that range from conflict resolution to restorative or reparative justice. Such scholars as Herman Bianchi have suggested that crime needs to be defined in terms of tort and, instead of criminal law, should be reparative law. In his words, “[The lawbreaker] is thus no longer an evil-minded man or woman, but simply a debtor, a

liable person whose human duty is to take responsibility for his or her acts, and to assume the duty of repair.”¹³²

There is a growing body of literature on reshaping systems of justice around strategies of reparation, rather than retribution, as well as a growing body of experiential evidence of the advantages of these approaches to justice and of the democratic possibilities they promise. Instead of rehearsing the numerous debates that have emerged over the last decades—including the most persistent question, “What will happen to the murderers and rapists?”—I will conclude with a story of one of the most dramatic successes of these experiments in reconciliation. I refer to the case of Amy Biehl, the white Fulbright scholar from Newport Beach, California, who was killed by young South African men in Guguletu, a black township in Capetown, South Africa.

In 1993, when South Africa was on the cusp of its transition, Amy Biehl was devoting a significant amount of her time as a foreign student to the work of rebuilding South Africa. Nelson Mandela had been freed in 1990, but had not yet been elected president. On August 25, Biehl was driving several black friends to their home in Guguletu when a crowd shouting antiwhite slogans confronted her, and some of them stoned and stabbed her to death. Four of the men participating in the attack were convicted of her murder and sentenced to eighteen years in prison. In 1997, Linda and Peter Biehl—Amy’s mother and father—decided to support the amnesty petition the men presented to the Truth and Reconciliation Commission. The four apologized to the Biehls and were released in July 1998. Two of them—Easy Nofemela and Ntobeko Peni—later met with the Biehls, who, despite much pressure to the contrary, agreed to see them.¹³³ According to Nofemela, he wanted to say more about his own sorrow for killing their daughter than what

had been possible during Truth and Reconciliation hearings. “I know you lost a person you love,” he says he told them during that meeting. “I want you to forgive me and take me as your child.”¹³⁴

The Biehls, who had established the Amy Biehl Foundation in the aftermath of their daughter’s death, asked Nofemela and Peni to work at the Guguletu branch of the foundation. Nofemela became an instructor in an after-school sports program and Peni an administrator. In June 2002, they accompanied Linda Biehl to New York, where they all spoke before the American Family Therapy Academy on reconciliation and restorative justice. In a *Boston Globe* interview, Linda Biehl, when asked how she now feels about the men who killed her daughter, said, “I have a lot of love for them.” After Peter Biehl died in 2002, she bought two plots of land for them in memory of her husband so that Nofemela and Peni can build their own homes.¹³⁵ A few days after the September 11 attacks, the Biehls had been asked to speak at a synagogue in their community. According to Peter Biehl, “We tried to explain that sometimes it pays to shut up and listen to what other people have to say, to ask: ‘Why do these terrible things happen?’ instead of simply reacting.”¹³⁶

- 135 Ibid.
- 136 Gavin Du Venage, "Our Daughter's Killers Are Now Our Friends," *The Straits Times* (Singapore), 2 December 2 2001.

- 129 Arthur Waskow, resident, Institute for Policy Studies, *Saturday Review*, 8 January 1972, quoted in Fay Honey Knopp, et al., *Instead of Prisons: A Handbook for Abolitionists* (Syracuse, N.Y.: Prison Research Education Action Project, 1976), 15–16.
- 130 www.bettyfordcenter.org/programs/programs/index.html
- 131 www.bettyfordcenter.org/programs/programs/prices.html
- 132 Herman Bianchi, "Abolition: Assensus and Sanctuary," in *Abolitionism: Toward a Non-Repressive Approach to Crime*, eds. Herman Bianchi and René Swaaningen (Amsterdam: Free University Press, 1986), 117.
- 133 Anthropologist Nancy Schepper-Hughes described this astonishing turn of events in a talk she delivered at UC Berkeley on September 24, 2001, entitled "Un-Doing: The Politics of the Impossible in the New South Africa."
- 134 Bella English, "Why Do They Forgive Us," *Boston Globe*, 23 April 2003.