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DECRIMINALIZATION OF OFFENCES AGAINST PROPERTY

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The subject of the following remarks will be, on the one hand, the possibilities of restricting the number of instances in which action of a coercive nature is taken by members of a particular part of the Dutch State Organization against private persons said to have committed a crime against property and, on the other hand, some of the reasons why it is desirable in my view that such actions be restricted.

The scope of these remarks will be limited, then, to the situation in the Netherlands.

Now, to start with the possibilities of decreasing the number of instances in which penal action – by which term I mean the so-called punishments as well as actions undertaken with a view to the clearing-up of offences – is taken by members of the Dutch State Organization: it should be clear, I think, that these possibilities depend in part upon the formal structure of that State Organization.

As this structure stand to-day, it may be said in my view – though, for some reason or another, not everybody says so – that all official penal action, undertaken against private persons on account of their allegedly having committed a "crime", in order to be legal has to meet at least the following requirements:
1. that statutory authorization for that action has been given beforehand by the State legislature, and
2. that the action is taken either by the Minister of Justice or by an official – as e.g. a policeman, a public prosecutor or a warden – who, in undertaking that action, is in duty bound to obey the instructions given to him by the Minister of Justice.

This last requirement has some interesting consequences. It allows us to define practically all official penal actions against private persons finding themselves within the official reach of the Dutch State organization – i.e. upon the territory claimed by that organization as pertaining to it – as the actions of a subsystem of the Executive Branch of that State organization.

I propose to call that subsystem the Penal Action System, PAS for short. The main components of that subsystem are: the police, the public prosecutors and some parts of the Ministry of Justice. Head of this system is the Minister of Justice, who bears the ultimate responsibility for all penal actions undertaken against private persons by members of this system – and by 'responsibility' I mean: responsibility vis à vis Parliament.

Now, as we have seen, for any penal action of this system against private persons on account of their allegedly having committed a crime to be legal, statutory authorization for that action must have been given beforehand by the State legislature.

Since 1814, the year in which the Dutch State Organization as it stands to-day came into existence, a great many of such statutory authorizations have been given by the State Legislature. Moreover, a large number of authorizations for penal action to be undertaken against private persons in case of alleged commitment of a misdemeanour have been granted to that same PAS, either by the State Legislature or by regional or local legislators.

In tackling the problem of restricting the number of instances in which official penal action is taken against private persons, one may choose the way of limiting the number of instances in which such action conforms to the official requirements.

If one chooses this way, the structure of the Dutch State Organization offers two main points of application (attack).

In the first place, legislative action is possible with a view to the withdrawal of authorizations for penal action that in the past have been granted to the PAS.

In the second place, due to the centralization which to a degree characterizes the Dutch PAS, at least on paper, administrative action originating from the Ministry of Justice might conceivably result in a decrease of the use, by members of the PAS, of the extant statutory authorizations in all or some of the instances in which offences covered by these authorizations have allegedly been committed.

Before I proceed with some suggestions for such administrative action, I should like to answer an imaginary opponent who tells me that legislative or administrative action of the kind mentioned could only be called rational if there was any evidence that such statutory authorizations for penal action as have in the past been granted have not been the product of rational thinking about e.g. the ends to be served by the granting of these authorizations, or about the probability that actions of the PAS based upon these authorizations would indeed contribute towards the realization of these ends.

To this opponent, if there was one, my answer would be, in the first place, that I gladly agree with him, and in the second place, that there is ample evidence that the decisions which until this day have been taken by the different legislators, including the State legislature, about the granting of such authorizations to the PAS have never been based upon any such rational thinking.

In parliamentary debates about bills containing proposals for such authorizations, any realistic appraisals of the practical possibilities for the PAS to make an effective use of these authorizations have on the whole been conspicuously absent. The question whether the PAS had sufficient manpower and other resources at its disposal for effective action in the cases covered by the proposed authorization, has hardly ever been put – let alone, been answered.

Rather, the decisions of the different Dutch legislators about the granting of authorizations for penal action have been – and, in a large measure, continue to be – the products of the official ideology of the Dutch State Organization: an ideology in which, in my opinion, strong emotions are intermingled with thick layers of muddled thinking, especially about the relations between the state organization and its human environment within the official state boundaries.

By the way, these relations, in my opinion, while being among the most interesting, have at the same time until now been among the most neglected subjects of social inquiry. There seems to be about as much in the ideology of the social sciences as there is in the official ideology of the State Organization(s) that resists a scientific study of these relations.

Part of the ideology of the State Organization is the principle that the PAS ought to take penal action in all cases in which, based on a statutory authorization, it is entitled to such action. Thus, the official view implies that the police ought to clear up all crimes that become known to them. Now, as ought implies can, the question whether the PAS, and the police in particular, are in fact able to do what is demanded of them, and, if not, according which criteria they should decide in which cases to act and in which cases to refrain from action, has hardly ever been the subject of any serious public discussion.

As might be expected, among the main victims of this ideology and of the decisions of the legislature resulting from it, we find the police. Year after year, they have been confronted with an ever-increasing number of statutes containing authorizations for penal action that, in the official ideology, signified as many obligations to act. As a consequence, the police has since long been faced with a gigantic overburdening, of which the official crime figures and the percentages of the cases which have been cleared up, flattered though they probably are, clearly bear witness; an overburdening which probably accounts for much of the frustration which seems to afflict quite some members of the police.

Thus, we have arrived at one answer to the question, why it is desirable the number of cases in which penal action may be legally undertaken by the members of the PAS should be restricted. Now is there any reason why special attention should be given to the possibility of restricting the number of penal actions in the case of crimes against property? I think there are several reasons why these crimes deserve such special attention.

In the first place, crimes against property make up by far the largest part of the crimes that become known to the police. Thus, in 1970, according to the official statistics, about 260.000 crimes became known to the police. Among these, there were about 188.000 crimes against property, which thus accounted for nearly 72% of all crimes known to the police. Furthermore, of these crimes against property not even 30% were cleared up. From these figures, it should be clear that much of the overburdening of the PAS, and especially of the police, is a result of the large number of crimes against property with which the police are faced.

A second reason why it is desirable that efforts at 'depenalization' should be concentrated upon crimes against property is the following. Legal provisions containing authorizations for penal actions against people who have committed crimes against property are among the oldest of the country. For more than 7 centuries, members of the Dutch PAS and of its predecessors have now been hitting people, burning them with red-hot irons, mutilating them, locking them up, strangling them and subjecting them to other treatments deemed salutary and wholesome, all on account of those people having committed crimes against property. By now, there is a growing awareness of the dubious character that these legal provisions and official actions have had from the beginning.

It seems clear that the intention behind these provisions and treatments was to protect the 'haves' against the 'have-nots'. And until this day, by far the most actions undertaken by the PAS in the case of crimes against property are actions against people occupying weak economic positions.

Some of the people occupying such weak economic positions have been officially recognized as 'weak groups', and nowadays nearly everybody agrees that the relative position of these groups has to be improved, if necessary by means of intervention of the State Organization.

Some other weak groups have as yet hardly been recognized as 'weak'; thus, of the group of young people of between 12 and 20 years of age, which in 1968 made up 21%

of the Dutch population of between 12 and 79 years of age, the financial needs have found up to now hardly more official recognition than e.g. their sexual needs. Persons from this age group find themselves relatively very often the object of penal actions of the PAS, and more particularly of penal actions on account of their allegedly having committed a crime against property, as appears from the following figures.

Convictions for crimes (Dutch Penal Code) in 1968 (CBS)

a. Number of persons of 12-79 years
old sentenced for crimes : 29.879

b. Number of persons of 12-20 years
old sentenced for crimes : 10.565 (= 35.3% of a)

c. Number of persons of 12-79 years
old sentenced for crimes against property : 18.457

d. Number of persons of 12-20 years
old sentenced for crimes against property : 7.345 (= 39.8% of c)

Total number of persons of 12-20 years old as a proportion of total Dutch population of 12-79 years old: 21 %.

The actions undertaken by members of the PAS in cases of crimes against property may to a degree be viewed as the actions of relatively poor soldiers fighting a war to protect the older and richer generation against a new generation of the young (relatively) poor.
Other ways should be devised to tackle the problem of the young poor than the way of fighting them. And the same goes for the ways of the PAS of handling other categories of people said to have committed crimes against property.

This is the more so, as penal action as it has been practised now for many ages in the Netherlands, has proved to be so conspicuously ineffective in realizing the goals that were put forward to justify it. If anything, such actions seem to have contributed toward the same things which the people undertaking those actions said (and perhaps thought) they were fighting, as may be witnessed e.g. by the large numbers of "recidivists" in this area.

Thus, I have come to the conclusion that
a) the number of instances in which according to the "laws" of the Dutch State Organization penal action may be taken by the PAS in cases of "crimes against property" should be restricted, and
b) other ways of handling the problem connected with such "crimes" should be devised.

When trying to solve the problems posed by this conclusion, one may, in view of the Dutch State organization, choose between different ways.

Thus, with regard to any and all of these "crimes", legislative action may result in the withdrawal of the legal authorization of all or some of the actions of a coercive nature for which such authorization has in the past been granted to the PAS.

On the other hand, keeping the law constant, administrative action may limit or exclude some or all such actions of the PAS for which authorization has in the past been given by the legislator with regard to any of these "crimes".

In the following, a number of suggestions involving in the main administrative action of the kind mentioned, or of other kinds, are put forward.

Administrative action with a view to decreasing the number of instances in which a crime against property is committed.

With a view to making some crimes against property unnecessary, and some of those crimes harder to commit, the following steps may be taken:

a. implementation of such "white bikes plans" and "white cars plan" as have in the past been developed by e.g. "Provo";
b. steps toward the fundamental improvement of the social and economic position of those people who have in the past been subjected to such actions of the PAS as e.g. imprisonment;
c. steps toward the improvement of the position of people between 12 and 29 years of age, in its financial as well as in some other aspects;
d. steps to increase the readiness of the population at large to put at the disposal of the State Organization the means necessary for the implementation of the steps mentioned under b. and c.;
e. steps to increase the readiness of the population at large to take greater care of such possessions as they like to keep; many people seem to be hardly aware of the fact that there are many other people who would like to have a part of what they possess;
f. steps to prevent the presence of large sums of money or of valuables in places where they may be taken away without much trouble, as e.g.

   f(1) formulation of official requirements with regard to the transport or storage of sums of money or valuables in excess of a certain amount or value (see under h);
g. steps to make it hard to obtain large sums of money by means of false cheques, as e.g.

   g(1) formulation of official requirements with regard to cheque forms (see under i).

Administrative action with a view to restricting or excluding actions of a coercive nature of the PAS in certain (categories of) instances of crimes against property.

h. ending all activities of a coercive nature of the PAS in case of theft of sums of money or valuables in excess of a certain amount or value, in so far as such theft has been committed during a transport or in a place of storage which did not conform to the official requirement formulated in accordance with suggestion f(1);
i. ending all activities of a coercive nature of the PAS in instances in which sums of money have been obtained by means of false cheques, if the cheque forms used did not conform to the official requirements formulated in accordance with suggestion g(1);
j. provision of public funds for the indemnification, in some cases, of people who have been the victim of crimes against property;
k. founding of an organization able to give some kinds of help to those who have perpetrated, or who have been the victim of, a crime against property;
l. ending all activities of a coercive nature of the PAS in cases of theft of cars or bicycles.