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1

The Emergence of the Modern Prison

Introduction

The seventeenth century marked a watershed in the history of punishment across northern Europe. During this period thousands of the poor, the destitute, the vagrant, the insane and the deviant found themselves segregated and confined in special institutions designed to remove them either temporarily or permanently from mainstream society. This period has been described as 'The Great Confinement' (Foucault, 1977). It marked an era in which the main forms of punishment began to shift from public executions, whippings and floggings, as well as the widespread use of forms of public shaming in the pillory or the stocks, to one in which institutions such as bridewells, workhouses, asylums and jails became the preferred response to the management of 'problem populations'.

These developments, until relatively recently, have been poorly documented. Until the 1970s the few available books on the history of imprisonment tended to present the prison as a naturally evolving institution which developed out of the local jails that were widely used in the medieval period. Although these historical accounts provide useful descriptions of the administrative and institutional changes that have occurred, they tend to ignore the specific historical characteristics of the modern prison, and to overlook the wider social context in which it emerged. These 'administrative' or 'traditional' histories lack an analysis of 'passion, power and conflict' (Howe, 1994), and are generally 'long on facts and short on interpretation' (Rothman, 1971). In particular, they fail to examine the differences between medieval jails and fortresses – which were primarily places where prisoners were held while awaiting trial, execution or deportation – and the modern prison – in which the

deprivation of liberty itself for a specified period of time becomes the dominant mode of punishment.

The new histories of incarceration that emerged in the 1970s and 1980s were also generally critical of the earlier Whig histories, which attempted to explain the shift from one type of punishment to another as a product of humanism, involving a shift from barbarism to civilisation. Such explanations, it was argued, failed to recognise that the new forms of incarceration were, by and large, directed at significantly different populations, and that it was not so much a case of less punishment or more benign punishment, but a different *form* of punishment. The crucial question for the new 'revisionist' histories was: 'Why prison?' That is, why it was this particular form of confinement rather than any other type of punishment that came to dominate in the seventeenth and eighteenth centuries. There was also a related question of how this change in the form of punishment was connected to changing social and economic conditions.

The spectacle of suffering

In the introduction to *Discipline and Punish*, Michel Foucault (1977) provides a vivid and gruesome description of the processes by which Robert François Damiens was hanged, drawn and quartered in Paris in 1757 for attempting to take the life of King Louis XV. As a consequence of Damiens's unusual strength and because the horses were not accustomed to drawing, his execution was a long and painful spectacle, involving the severing of his legs at the joints and 'the same was done to the arms, the shoulders, the arm pits and the four limbs; the flesh had to be cut almost to the bone, the horses pulling hard carried off the right arm first and the other afterwards' (Foucault, 1977: 5).

Spectacles of this kind, involving offenders being hanged, drawn and quartered, were relatively rare events in the eighteenth century. Foucault, however, uses this particular case to exemplify how, despite the gruesome nature of these public executions, they were an accepted form of punishment; and how this particular sanction, involving the infliction of severe physical pain and ultimately death, formed an essential part of the formal response to particular types of transgression in this period. The spectacle of suffering was intended to put the crowd in mind of the vastly greater terrors of hell. Culprits were expected to show repentance and to confess their crimes before the assembled crowd. Public confessions were often the route to a quick and relatively painless death.

In England, death by hanging was widely practised throughout the seventeenth and eighteenth centuries. There were eight hanging days in every year. In London, hangings were carried out at Tyburn (now Marble Arch) until 1783, after which time they were conducted at Newgate prison. These events were well attended by local populations and attracted, among others, the vagabond population of London, who were often referred to as the 'London Mob':

On the morning of a hanging day the bells of the churches of London were rung buffeted. The cries of hawkers selling ballads and 'Last Dying Speeches' filled the streets. The last preparations for death in the chapel at Newgate were open to those able to pay the gaoler his fee. The malefactor's chains were struck off in the press yard in front of friends and relations, the curious, the gaping and onlookers at the prison gate. The route of the hanging procession crossed the busiest axis of the town at Smithfield, passed through one of the most heavily populated districts in St. Giles's and St. Andrews, Holborn and followed the most-trafficked road, Tyburn Road, to the gallows. There the assembled people on foot, upon horseback, in coaches, crowding nearby houses, filling the adjoining roads, climbing ladders, sitting on the wall enclosing Hyde Park and standing on its contiguous cow pastures, gathered to witness the hanging. (Linebaugh, 1977: 67)

Public support for hangings, however, began to wane in the eighteenth century, and the 'hanging match', as it was called, increasingly became a focus of disturbances, brawls and riots. As the century progressed, these public executions rested less on spontaneous public support and more on the force of arms. On a number of occasions, individuals were plucked from the jaws of death by members of the crowd. Hangmen were jeered and attacked, and increasingly public hangings became uncertain, precarious events, particularly in cases in which those to be hanged were seen as the victims of injustice or were popular characters. One point of concern was the snatching of bodies by the surgeons, who paid high prices for fresh corpses on which to practise their medical skills (Linebaugh, 1977).

But the fading support for public executions went much deeper than the activities of the surgeons or the saving of particular souls from the scaffold. Among the social elite, public executions were viewed with increased scepticism, and hangings were seen as being more likely to undermine public order than to reinforce social norms. In short, towards the end of

the eighteenth century public forms of punishment lost their legitimacy in England as well as other parts of Europe (Spierenburg, 1984).

Influential writers and social commentators, including Daniel Defoe (1728), Bernard de Mandeville (1725) and Henry Fielding (1751), advocated the removal of hangings from public view. Alongside those calling for the cessation of public hangings were those who advocated the use of imprisonment, particularly in the form of solitary confinement, as a more effective and more appropriate form of punishment.

A just measure of pain

Throughout Europe in the seventeenth and eighteenth centuries there were major changes taking place in the nature of social and economic relations. The old feudal order was breaking down, and the predominantly agricultural economy was gradually being replaced by new forms of production and government. During this period, there was an increasing concern with vagrants, rogues and beggars, and particularly with the increased levels of theft, which were seen by some commentators to be a consequence of the instigation of absolute private property and the growing number of goods that had become available (Marx and Engels, 1975).

Bound up with these changes was the introduction of new penal codes. Old laws appeared crude and ineffective and pressure for reform came from both inside and outside the legal profession. The traditional forms of legality were seen to lead to injustices and as being unable to provide adequate protection for the new forms of property (Thompson, 1975). These changes were accompanied by the emergence of the nation-state, which claimed monopoly of the use of coercive force. These developments had two important consequences. First, the right to punish shifted from the vengeance of the sovereign to the defence of society. Second, these new penal codes were characterised by the separation of illegality from the protection of rights and the protection of private property. The aim was to introduce a new penal code in which there would be a clearer codification of penalties and which would lay down new principals for administering punishment. In contrast to the variable and personalised system of penalties which was prevalent prior to the eighteenth century, the new penal system was charged with the task of administering the criminal law in a more rigorous, certain and efficient manner.

A key figure in this process was Cesare Beccaria, whose book *An Essay on Crimes and Punishment* (1764) was translated into a number of European languages and whose writings deeply influenced the formulation of new

penal codes and strategies across Europe. Central to Beccaria's approach is the assumption that crime is a rational activity in which individuals assess the benefits and consequences of their action and that the pains of punishment should be just enough to outweigh the potential advantages of engaging in crime. In this way he sought to maximise the deterrent effects of punishment, while minimising cost and effort. Punishment, he maintained, should be certain and firm, without being unnecessarily brutal or prolonged. In outlining this 'classical' approach Beccaria emphasised that punishment should be applied equally and should be linked to the seriousness of the offence (Roshier, 1989). The major focus should be on the proportionality of punishment, which in turn requires a precise calibration of offences on a scale of seriousness. Among many reformers the objective was to develop a system which was able to dispense punishment equally to all those engaged in illegalities and thereby to provide a just measure of pain.

Crime, in the new order, came to be seen as a transgression not against the sovereign but against society. The offender, having broken the 'social contract', is not to be brutalised or ridiculed, but rather should be allowed to repay society in a way which would regenerate respect for property, liberty and the freedom of others. As formally free and equal citizens, the perpetrators of crimes require a form of punishment which treats them equally, and which deprives them of the one thing they have in common: individual liberty. From this perspective the emphasis is upon the act, and not the motivation or background of the offender. The aim was to promote formal equality, which meant that all offenders should be treated the same, irrespective of personal or social circumstances. Consequently, the rich and the poor, young and old, males and females should receive equal punishment, whatever their substantive differences.

The roots of the prison system lay in mercantilism, and its promotion and elaboration was the task of the Enlightenment. The dual aspiration of Enlightenment thinkers was that prison could perform the function of reforming the individual offender, while simultaneously improving society. It could make the idle poor industrious and thereby turn a social deficit into something productive. Through the application of scientific and rational principles, it should aim to produce useful obedient subjects. These modernising influences found expression in the prison (Morrison, 1996). Imprisonment provided a form of punishment which could be based on precise calculations of time. By removing people from the contaminating influences of the community, the prison promised to provide an environment in which the prisoner could be reformed. At the same time, the deprivation of liberty would serve as a continuous

reminder to others of the consequences of non-conformity. Through the combination of these different forces, imprisonment became widely seen as an obvious and almost irresistible option.

Jails, workhouses and houses of correction

The modern prison did not emerge at the end of the eighteenth century fully formed and functioning. In fact, it was the combination of a number of institutions which had been used for holding captives. The modern prison grew on one side out of the local jails which had been used as places of detention, and on the other from the houses of correction which had emerged from the old bridewells. Thus the term 'prison' is often used generically to cover a number of different institutions (McConville, 1995).

In order to distinguish between previous forms of confinement and the modern prison which arose at the end of the eighteenth century, and which appeared fully formed in England and Wales during the 1840s with the opening of Pentonville, it is necessary to examine briefly the development of the various forms of confinement that were in use between the beginning of the seventeenth century and the end of the eighteenth century.

From as early as 1556, bridewells were established in England in order to suppress idleness and vagrancy, in light of the apparent inefficacy of the traditional remedies for begging and moral offences. By the law of James I passed in 1609 it became obligatory for all English counties to provide bridewells, or 'houses of correction' as they became widely known. The other major institution for dealing with the poor was the workhouse, which was established throughout England in the seventeenth and eighteenth centuries. Workhouses, which operated as a form of surrogate 'household', were often family-run enterprises, providing basic relief and employment for the poor, vagrants and the destitute. They were originally established as institutions designed to deter the poor from making applications for public relief. In the eighteenth century the aim of workhouses became more focused on setting the poor to work. Children tended to predominate among the inmates of workhouses and meagre wages were paid to those who stayed there. There was some overlap between the workhouses and the bridewells, based upon the often arbitrary distinction between the 'deserving' and 'undeserving' poor. Workhouses and bridewells can be seen as providing a complementary approach to the same problem. With the threat of the workhouse or the bridewell hanging over their heads, the local poor

might be driven to work, while vagabonds from elsewhere might be scared away (Innes, 1987).

Since the fourteenth century local jails had been used for a number of purposes apart from holding those awaiting trial or transportation. They had been widely used to hold debtors until they were able to pay their debts. In the debtors' prisons, friends and the curious were generally admitted, and in prisons like the Fleet and the Marshalsea in London, members of the family could be accommodated within the institution (Byrne, 1992). These establishments were privately run, and jailers could make a profit from the sale of ale and other goods, or through the provision of services. The experience of confinement was largely conditioned by the ability of prisoners to pay for the available goods and services. Disorder and neglect were the dominant features of the eighteenth-century prison, in which different categories of prisoners mingled together:

On entering the jail one was confronted with the noise and smell of the place. It was seldom easy to distinguish those who belonged to the prison from those who did not. Only the presence of irons differentiated the felons from the visitors or the debtors from their families. The jail appeared to be a particular type of lodging house with a mixed clientele. Some of its inhabitants lived in ease while others suffered in squalor. There was little evidence of authority. Some prisoners gambled while others stood drinking at the prison tap. (McGowan, 1995: 79)

Squalor and corruption, which were both widespread in these eighteenth-century houses of correction, became a cause of concern among prison visitors. A number of prison reformers, including John Howard (1777) and Elizabeth Fry (1827), campaigned to rid the prison of these abuses. Howard, Fry and other evangelically-minded reformers wanted prisons to operate as healthy and efficient institutions. They were opposed to the indiscriminate mixing of inhabitants and placed great emphasis upon the benefits of solitude and isolation in order to remove individuals from the corrupting influence of other prisoners. Confinement, in the eyes of the reformers, should be coupled with a religious purpose. Prisoners, it was felt, should not be able to drink, gamble or spend their time in idleness. Thus, in contrast to the disordered and profligate nature of the eighteenth-century penal institution, penal reformers wanted to introduce the 'well-ordered prison', which would stand as a counterpoint to the disorder from which crime and other social problems sprang. In his survey of prisons in the 1770s, John Howard (1777) estimated that

the prison population was just over 4,000, of which over half of those imprisoned were debtors (59.7 per cent), while felons awaiting trial, execution or transportation made up approximately a quarter (24.3 per cent), and petty offenders made up the rest of the population.

The Prison Act of 1865 formally amalgamated the jail and the house of correction and the resulting institution became known as a prison. Local prisons remained in operation but only served as places of punishment for those sentenced for terms of up to two years. Thus, by the mid nineteenth century, imprisonment had become more centralised and more firmly established as a disciplinary institution. Although confinement in its various forms had become the dominant form of punishment by the eighteenth century, other forms of punishment also prevailed: notably transportation.

Transportation and the hulks

From the early eighteenth century onward, transportation overseas was used for felons, and some 30,000 people were transported to the American colonies between 1718 and 1775. The reported rising tide of crime and overcrowding in prisons overcame the reservations which certain critics had concerning the effects of transportation and made it a relatively attractive option. However, the abrupt interruption of transportation in 1775 caused a crisis in the prison system. This was resolved in 1776 by the use of old vessels which became known as hulks. These were used as places of temporary confinement. Prisoners were set to work during the day clearing the Thames and other seaports, returning to the vessels at night to eat and sleep. This form of punishment was generally viewed with disfavour and there was widespread criticism of the conditions on these vessels.

After the curtailment of transportation to the American colonies following the American Revolution, the focus turned to Australia as an alternative destination. In 1787 the first fleet of eleven ships set sail for Botany Bay. In some of the early voyages the death rates on convict ships were as high as 25 per cent (Hirst, 1995; Hughes, 1987). By the 1840s transportation was abolished to New South Wales, and all transported convicts were sent to Van Diemen's Land (Tasmania). Charges of inefficiency, corruption and the decreased demand for labour made the task of finding work for convict gangs more difficult. These problems were compounded by the discovery of gold in New South Wales and Victoria, which made punishment in exile to these places appear an absurdity, while the rapid rise in prices during the gold rush made the whole process

of transportation and exile more expensive to the British government. In 1852 transportation to Van Diemen's Land was abandoned. In place of transportation the government implemented the Australian 'ticket of leave' scheme, which was a precursor to parole.

Labour, discipline and punishment

In their pioneering work *Punishment and Social Structure* (1939 [2003]), which was first published in 1939, Georg Rusche and Otto Kirchheimer argued that the nature of punishment is determined by the form of productive relations in any period. There are two basic methodological principles which inform the text: (1) 'every system of production tends to discover punishments which correspond to its productive relationships'; and (2) 'punishments as such do not exist, only concrete systems of punishment and specific criminal practices exist'.

For them, the use of transportation, for example, was primarily motivated not so much by the humanitarian impulse to give convicts a fresh start in a new country as by the need to overcome the shortage of free labour in the colonies in a period in which there was a surplus of labour in England. Although decisions to adopt or abandon a particular mode of punishment may be couched in terms of humanism, these decisions, Rusche and Kirchheimer argue, are underpinned by material interests (Weiss, 1987). Therefore, they suggest that one should be careful in simply attributing penal change to the activities of reformers, as historians like David Rothman (1971) tend to do. Instead, there is a need to look behind the rhetoric of reformers and ask why it should be that in any particular period certain arguments should find an attentive audience. At the same time, the manner and speed with which prison reform takes place, Rusche and Kirchheimer argue, is not only a function of the weight of the arguments for change but is also dependent upon wider social conflicts and struggles between classes (Ignatieff, 1981). Rusche and Kirchheimer maintain that prisons are part of a disciplinary network for regulating the poor and for imposing discipline. For these reasons, they argue that conditions in prisons are governed by the principle of 'less eligibility', such that conditions in prisons must be no better than those experienced by the poorest sections of the working classes, otherwise members of the lowest social strata will not be deterred from committing crimes (Melossi and Pavarini, 1981).

But although Rusche and Kirchheimer (1939 [2003]) recognise the role of the prisons in encouraging time and work discipline in industrial capitalism, their explanation of the emergence of the modern prison is

tied more specifically to the system of productive relations. Their basic axiom that 'Every system of production tends to discover punishments which *correspond* to its productive relationships' (emphasis added) clearly expresses their view that it was the changing form of production and associated changes in the organisation of labour which were the main determinants of the prison. A close reading of Rusche and Kirchheimer, however, makes it clear that the *correspondence* between the emergence of industrial capitalism and the prison is far more complex than the disciplining of 'free labour'. They were abundantly aware, as was Marx, that all systems of production are systems of 'social production', and that there is a complex dynamic relation between agency and structure. Along with Marx they would no doubt recognise that 'people make the world but not under conditions of their own choosing'. It is also evident to Rusche and Kirchheimer that the formal equality which operates in the sphere of consumption and distribution in capitalist societies is an essential element in the development of a form of punishment which incorporates the principal of equivalence.

Also, like Pashukanis, Rusche and Kirchheimer recognised that the commodification of time was an essential component in the development of the modern prison:

Deprivation of freedom for a period stipulated in the court sentence is the specific form in which modern, that is to say, bourgeois capitalist, criminal law embodies the principal of equivalent recompense. This form is unconsciously yet deeply linked with the conception of man in the abstract and abstract human labour measurable in time. (Pashukanis, 1978: 180–1)

Thus for Rusche and Kirchheimer the emergence of the modern prison was seen to be 'overdetermined', in that it was the product of a number of overlapping and mutually reinforcing determinations. But they were also aware that political movements too could influence the use of imprisonment. The development of Fascism throughout Europe in the 1930s, which affected both these authors personally, had a number of direct effects on the nature of law, the administration of sanctions and the direction of penal reform. In Germany new laws were passed or were interpreted within a racist framework, while judicial independence diminished and 'special courts' were introduced. There was a return to capital punishment and prison conditions deteriorated rapidly.

Although *Punishment and Social Structure* has been highly influential in changing the way in which the history of imprisonment has been conceived, it has been criticised by some commentators for being too

economistic and reductionist, despite the fact that it offers a number of different levels of social and political analysis. Other commentators have criticised it for not being economistic enough (Garland, 1990; Howe, 1994; Melossi, 1978; Weiss, 1987; Zimring and Hawkins, 1991a). Strangely, a number of critics who accuse Rusche and Kirchheimer of reductionism themselves engage in reductionist analysis, usually in the form of sociological or political reductionism, or alternatively offer an unmitigated eclecticism with no identifiable determinants or causal process. In fact, the majority of critics demonstrate a consistent failure to address what has been called 'the problem of determinations', which raises the question of the relationship between the economic, political, social and cultural 'levels' and the (relative) autonomy of each (Barrett, 1991). Needless to say, as members of the renowned Frankfurt School, Rusche and Kirchheimer would have been only too aware of the problems of reductionism and economism, since these issues were central to the work of the School in the 1930s (Jay, 1973).

The two key terms in Rusche and Kirchheimer's analysis which have been the basis of much discussion and confusion are 'determines' and 'corresponds'. The term 'determines' may be used in a hard or a soft form (Williams, 1980). In the soft form it means 'setting limits on' or 'exerting pressure'. It is in this way that it is used by Rusche and Kirchheimer. The term 'corresponds' expresses the ways in which these pressures are exerted in different social formations, recognising that there may be variations in the 'fit' between the dominant forms of social production and the forms of state, law and systems of punishment. At the same time, as Rusche and Kirchheimer themselves note, to say that a form of punishment 'corresponds' to the system of productive relations is itself a tautology. However, they use the term 'correspond' to signify that there is a definite relationship which is of a causal rather than contingent nature.

One writer who clearly recognises the significance of Rusche and Kirchheimer's work is Michel Foucault. Although Foucault (1977) addresses a different problematic from that covered by Rusche and Kirchheimer, he recognises the need to analyse 'concrete systems of punishment', and acknowledges that the writings of Rusche and Kirchheimer 'provide a number of essential reference points' (1977: 24). In fact, it is arguably the case that Foucault's account of *The Birth of the Prison* is underpinned by the same type of materialist analysis as is presented by Rusche and Kirchheimer (see Smart, 1983). Like Rusche and Kirchheimer, Foucault emphasises that the role of the emerging forms of punishment in the eighteenth and nineteenth centuries was not necessarily more humanitarian than previous forms of public torture and humiliation.

Indeed, the aim was not to punish less, but to punish better. Punishment was required to be more universal and to penetrate more deeply into the social body if it was to create a docile and responsive workforce.

The new forms of disciplinary punishment which were developed in the prison were not simply repressive, but were also designed to be positive and productive. In Foucault's account, prisons produced new techniques for controlling individuals through systems of surveillance, classification and examination. The forms of discipline implemented in the prison were the embodiment of new modalities of power. Whereas sovereign power, which had been dominant in the Middle Ages, promoted public forms of punishment aimed at the body, the emerging forms of juridical power in the eighteenth century were aimed primarily at the soul. These new power relations found expression in a number of different institutions, often involving similar techniques for managing individuals and groups. Is it any wonder, Foucault asks, that prisons resemble factories, schools, barracks, hospitals, which all in turn resemble prisons?

Foucault is particularly interested in the ways in which power is crystallised in institutions such as the prison, and in how such institutions, once established, generate their own knowledges, discourses, practices and effects. He outlines the ways in which the prison created a new institutional space in which offenders could be studied and analysed. It was within this space that the 'delinquent' was born and accredited with a biography and a personality which was held to exist outside and beyond the commission of a specific act. Thus it was not, Foucault maintains, the scientific study of crime that created the possibility of the prison. On the contrary, it was the invention of the prison that created the possibility for the scientific study of crime. The enduring legacy of the prison, whatever its failures and limitations as a site of reform or deterrence, is that it gave birth to a new form of scientific knowledge – criminology.

It is through the analysis of power that Foucault aims to explode the self-evident character of the prison, and explain its apparent naturalness and how we have come almost unthinkingly to associate prison and punishment in contemporary society. The task of enquiry, Foucault maintains, is to explain the 'obvious', the taken-for-granted aspects, and to reveal the underlying processes and assumptions upon which the modern prison rests. His work has been highly influential in relation not only to how we think about imprisonment but also to more general contemporary debates on punishment, social control and power (Dreyfus and Rabinow, 1982; Garland, 1990; McNay, 1992).

Foucault's work, however, like that of many of his predecessors, has been criticised for not examining the application of discipline and

punishment to women. The masculinist bias of many of the 'histories' of imprisonment, it has been argued, fails to consider the specific role of women's prisons. A consideration of 'herstory', it has been suggested, could potentially throw some new light on, or even force a rethinking of, the role and development of imprisonment.

Women's imprisonment

An examination of the development of the confinement and imprisonment of women raises a number of questions for historians. Even a cursory review of the subject reveals that there are major differences in the pace and processes of development of women's prisons. There are also noticeable differences in the organisation and functioning of women's prisons, and the types of offences for which women were incarcerated. More generally, the history of women's confinement raises issues about the relationship between the labour market and imprisonment, and also the value of 'social contract' theories, since women did not become fully enfranchised citizens until the twentieth century.

Women prisoners have been counted and discounted. However, women have a long history of confinement, as Sherrill Cohen points out:

From the sixteenth century onwards more and more women were subject to some form of institutionalisation in poorhouses, bridewells and asylums. In earlier periods women had been confined to convents and Magdalene homes and consequently the ideology of the institutional segregation of women either as a form of punishment or as a sanctuary was well established by the seventeenth century. (Cohen, 1992: 17)

Women made up a considerable percentage of the population of bridewells. In fact, in London during the seventeenth and eighteenth centuries the number of women confined in bridewells was often greater than the number of men. Although bridewells were used mostly for vagabonds and thieves, they were also used for offences against public morals and disturbing the peace, with the result that prostitution and other forms of sexual immorality were favoured targets. By the beginning of the eighteenth century, women could be confined to bridewells for a range of moral offences, including 'bearing bastard children', 'lewdness', or 'failure to maintain their families':

Surviving 'calenders' of commitments from the Westminster bridewell show men and women being committed at a rate of forty to fifty

a month, women being committed as frequently as men. Most commitments seem to have arisen from street offences. Common grounds for commitment include 'idle and disorderly' or 'lewd, idle and disorderly' behaviour, 'nightwalking' and 'pilfering'. Some of the chattier entries reveal to us people taken by the watch in the middle of the night from a suspected bawdy house; taken endeavouring to break open a goldsmiths' show glass; giving great abuse to Their Majesties' people; threatening to burn houses; keeping a disorderly house and disturbing the neighbours; pilfering linen from a poor washerwoman's room and pilfering a bunch of sausages. (Innes, 1987: 84–5)

In many bridewells work was irregular, menial and yielded little profit. The work available often involved such tasks as the crushing of hemp or flax, which were the preliminary stages in the manufacture of textiles. The available bridewell records indicate that women were more productive in this work and this may be part of the reason why the 'Master' of the bridewells might have been more willing to refer women to these institutions. A further reason why women might have been welcomed into certain bridewells is that there were reports of these institutions becoming highly profitable brothels (Zedner, 1995). Within these mixed institutions there were numerous examples of women being encouraged or coerced to provide sexual services. It was the visibility of this 'immorality' and 'lewdness' which evangelical reformers found so distasteful and which motivated them to campaign for separate prisons for women. Separate prisons, it was argued, could reduce exploitation, improve morals and be tailored to gender-specific needs.

In Britain, the Jail Act of 1823 required that women be held separately from men, that they be supervised only by women, and that men were only to be allowed to visit the female part of the prison if they were accompanied by a female officer. In the nineteenth century a limited number of prisons were established specifically for women, but in most cases women were in segregated wards or wings of men's prisons.

There were, however, separate institutions for women in existence in the seventeenth and eighteenth century, in the form of Magdalen houses for 'repentant' prostitutes. In these institutions, which sprang up across Europe in this period, the emphasis was upon penitence and religious instruction. Work was designed to be educational, reformatory and 'cleansing'. And consequently the principal tasks tended to include textile manufacture, handicrafts and domestic service, as well as cleaning and laundering. In this way these 'fallen women' could be reformed and returned to their 'proper' female role.

For many reformers, separate prison establishments was seen as a more effective way of controlling women. It was widely felt in the nineteenth century that women required different treatment from men, while it was the case that a system of silence and separation was thought to be particularly suitable for women, since they were held to be more impressionable and needed more protection from contaminating influences than men. The role of labour, however, was felt to be less important for women. They were not subjected to the treadmill and were excused from some of the more onerous tasks. However, they had to endure regimes of greater tedium, and were subjected to more intrusive forms of surveillance (Dobash *et al.*, 1986).

As women were placed in adapted buildings or the wings of the men's prisons, the influence of architecture was less evident and a greater emphasis was placed upon personal influences. That is, while the emphasis in men's prisons was on impersonal disciplinary techniques of reform, women's prisons were regulated primarily through interpersonal relations and the power of religion, as well as through forms of 'medicalisation'.

Towards the end of the nineteenth century women were often given short sentences for trivial offences such as theft, drunkenness and disorderly conduct. Prostitutes still filled the prisons (but a significant percentage were confined in hospitals for the treatment of syphilis and other sexually transmitted diseases) and there was a growing number of habitual offenders who were regularly recycled through the prison system. By 1872 there were three women's prisons – Millbank, Fulham and Woking – which between them had just under 1,400 places. But in the last two decades of the century the number of women imprisoned began to decrease at a faster rate than the male population (Zedner, 1991). This declining rate of imprisonment continued throughout the twentieth century. The reasons for this seem to be a combination of a number of factors, including the increasingly widespread view which surfaced in the last decades of the nineteenth century that prisons are not suitable places for the vast majority of female offenders. There was also a change in the perceived nature of female criminality in this period, as well as the development of a number of alternatives to custody which were designed to divert certain types of women away from custodial institutions.

The well-ordered prison

The limits of transportation and the growing concerns about crime and disorder at the end of the eighteenth century encouraged the development of new and more effective forms of punishment. The mounting critiques

of the existing penal institutions, with all their abuses and inadequacies, persuaded the authorities that a well-ordered, disciplined, clean and properly managed form of confinement was required. These new and refurbished prisons were developed in the first half of the nineteenth century. They introduced new codes of discipline, more bureaucratic forms of organisation and management and changes in prison design.

Prisoners were to be differentiated and new systems of classification were introduced. The aim was to develop a system based on solitary confinement, silence, religious instruction and labour discipline. The 'moral architecture' of the prison was to express and incorporate these aims, while improving order, health and conditions. The ultimate aim was to turn incorrigible prisoners into model citizens. Prisons would be a mechanism, as Bentham put it, 'for grinding rogues honest'. Through specially designed institutions it would be possible, reformers believed, to produce a rationally organised space which would foster the development of reason and the self-regulation of inmates. Importantly, these redesigned prisons had to deal with what was perceived as the contagious nature of crime. The threat of contagion was dealt with by separating the young from the old, men from women and the vulnerable from the predatory. In contrast to the eighteenth-century penal institutions in which prisoners were allowed to congregate freely, the new nineteenth-century prisons were built with separate cells of a uniform size. Rules of silence were imposed upon prisoners, and in some prisons inmates were made to wear masks, to ensure that they would not be recognised either in the prison or when they left.

The design and layout of the new nineteenth-century prisons was a hotly contested issue. The central debate among reformers concerned the degree and type of segregation that should be imposed and there was considerable discussion in the 1820s in America and Europe about the merits of segregating prisoners. While many of those engaged in this debate agreed upon the fundamental principles of individual containment and separation, the central issue was whether or not prisoners should remain totally isolated or be allowed to work together during the day. This debate crystallised around the competing systems in the Auburn and Pennsylvania prisons in America.

The Auburn State Prison in New York, which was established in 1823, adopted a regime in which prisoners were to sleep alone in their cells at night and labour together in the workshop during the day. In the Pennsylvania prison, which was built in 1829, the prisoners were kept totally separate, in order to reduce the possibility of 'contamination'. Left in total solitude and divorced from evil influences, the prisoners would

have the opportunity to reflect on the error of their ways and to examine their consciences. Inmates remained in solitary cells for eating, sleeping and working. 'They saw and spoke only to carefully selected visitors and read only morally uplifting literature – the Bible' (Rothman, 1971: 85). It was felt that this strategy, if rigorously pursued, would allow the prisoner to be cured of vice and idleness through a combination of hard labour and contemplation.

After a prolonged debate and much soul-searching the Auburn system won out. Advocates of the Auburn system argued that total isolation was unnatural and that it bred insanity. The case in favour of the Auburn system was enhanced by the fact that it cost less to run and potentially brought greater returns from convict labour. Consequently, the Auburn system came to be widely adopted both in America and in most of Europe.

Underlying these debates was the shared premise that incarceration was the proper response to criminal behaviour and that there should operate a silent system with a minimal diet and strict discipline. Prisons became more militaristic in style and although they contained a considerable percentage of vagrants, poachers, petty thieves and public drunkards, a strict regime of prison discipline was vigorously enforced. Alongside the introduction of military practices and military personnel, there was a growing presence of other professionals in the form of medical doctors and psychiatrists, who were introduced to diagnose, treat and cure offenders. Crime, like madness, was seen by many medical professionals as arising from a lack of self-control, and as a deviation from the path of reason. According to one influential medical practitioner, writing in 1806, 'criminal habits and aberrations of reason are always accompanied by certain organic peculiarities manifested in the external form of the body, or in the features of the physiognomy' (Cabanis, quoted in Ignatieff, 1978: 68). It was a short step from this assertion to the measuring of skull shapes and sizes, which is often associated with the founding father of criminology, Cesare Lombroso, and the development of the science of phrenology.

This vision of the criminal as a pathological subject stood in stark contrast to the classicist conception of the rational citizen choosing between good and evil, maximising pleasure and avoiding pain. The apparent contradiction between free will and determinism, and between the utilitarianism and reformatory theory, was overcome in the neo-classicist doctrines through a reformulation of the relation between guilt and punishment. Thus:

Reformative theory presented punishment to offenders as being in their own interests while utilitarian theory cast it as an impartial act of social necessity. In rejecting retributive theory, the reformers sought to take the anger out of punishment. As it was legitimised by the prisoner, punishment was no longer to be in Bentham's words 'an act of wrath and vengeance' but an act of calculation, disciplined by consideration of the social good and the offenders needs. (Ignatieff, 1978: 75)

In many respects these new ideas of prison design and the stress on silence and solitude were realised in the construction of Pentonville Prison in London in 1842. Pentonville itself quickly became a model for prison architecture and discipline, not only in England but also across Europe. The prison held 520 prisoners in separate cells. Four wings radiated out from a central point from which each cell door could be observed. Both the prisoners and the guards were forbidden to talk and the thick walls and individual cells ensured that other forms of communication between prisoners would be kept to a minimum.

Between the 1830s and 1870s the average daily prison population in England climbed steadily, partly as a result of the decline in the use of transportation. Also between 1848 and 1863, prison was transformed from an institution which was used mainly for summary offences and petty felonies into the predominant form of punishment for all major crimes, except murder.

According to the prison rules, 'Every prisoner shall be required to engage in useful work for not more than ten hours a day, of which so far as it is practicable, at least eight hours shall be spent in associated or other work outside the cells.' The principal forms of work available were sewing mailbags, rag-stripping, mat-making, tailoring, cleaning and basket-making (Morris and Morris, 1963). The commitment to work discipline was evident in those prisons where productive and useful labour was not available. In these prisons the treadmill was widely used. Its attraction to the prison authorities was that it provided a form of exercise that could be used by the uneducated, while the pace and resistance of the wheel could be controlled.

One of the major problems in providing useful work for prisoners was that many prisoners were unskilled and the period of time which the average prisoner spent in prison was relatively short by current standards. Nearly two-thirds of those sentenced by magistrates in the 1860s were given terms of a month or less, while in the higher courts over half were sentenced for six months or less. Approximately 20 per cent of those convicted were sentenced to the harshest penalty, penal servitude

(McGowan, 1995). There was a growing disparity between the aspirations and ideals of reformers and the reality of prison experience. Increasingly, towards the end of the nineteenth century, critics were claiming that prisons were failing in relation to the twin objectives of reforming and punishing offenders.

The demise of the prison?

The possibility of prisons achieving the objective of turning unruly offenders into law-abiding citizens was always somewhat utopian. Even if the nineteenth-century prisons had not suffered from overcrowding, corruption and cruelty, the degree of individual transformation which could be expected in short periods of confinement was always likely to be limited. The objective of designing out malicious influences within the prison was undermined by the fact that the prisoners found ways to communicate and there were obvious limitations to the enforcement of rules of silence in shared cells. The cells themselves were small, and confinement in these restricted spaces for long periods of time was increasingly seen as being detrimental to the physical and psychological well-being of inmates. Reports of brutality were widespread, although there was evidence of greater professionalism and accountability among prison staff. Many prisons were dirty and the food was poor. There were breakdowns of security and control, with repeated escapes and riots. In the word of the Gladstone Committee in 1895, the evidence of the operation of the prison system was that it had demonstrably failed, and that 'a sweeping indictment had been laid against the whole of the prison administration'.

Prison, it appeared, had little apparent effect on criminal behaviour: recidivism was rampant and there was a reported increase in violent crime. The emerging Eugenics movement raised concerns about whether imprisonment was the proper response for the 'feeble-minded' and the 'degenerate'. On another level, various radical reformers pointed to the fact that very few prisoners were drawn from the middle and upper classes, and that prison appeared as a form of punishment which was reserved almost exclusively for the poor and the destitute. The claim of the doctors and the psychiatrists that they could 'cure' offenders were also seen as being largely exaggerated.

Given these limitations, the question which historians have asked is: why did the prison persist into the twentieth century? Was it the case, as David Rothman (1980) has suggested, that good intentions went wrong and the ideals of 'conscience' were undermined by 'convenience'? Or was

it that prisons were performing other less visible functions? As Michael Ignatieff (1978) has argued, the prison had to offer something to justify the enormous expense. The persistent support for the penitentiary, he suggests, 'is inexplicable so long as we assume that its appeal rested on its functional capacity to control crime'. Rather, support for the prison rested on its role as part of 'a larger strategy of political, social and legal reform designed to re-establish order on a new foundation'.

Michel Foucault (1977), in contrast, argues that it was the general deterrent effect of recycling the same offenders through the penal system which became the main rationale of incarceration. Thus for him recidivism was not so much a failure as a method of producing what he calls an 'enclosed illegality' of petty criminals who can be held up to the 'respectable' poor as an example of the dangers of nonconformity, and also a vehicle for gathering information and engaging in the surveillance of certain populations. Foucault asks:

Can we not see here a consequence rather than a contradiction? If so, one would be forced to suppose that the prison, and no doubt punishment in general, is not intended to eliminate offences, but rather to distinguish them, to distribute them, to use them; that it is not so much that they render docile those who are liable to transgress the law, but that they tend to assimilate the transgression of the laws in a general tactics of subjection. Penalty would therefore appear to be a way of handling illegalities, of laying down the limits of tolerance, of giving free rein to some, of putting pressure on others, of excluding a particular section, of making another useful, of neutralising certain individuals and profiting from others. In short, penalty does not simply 'check' illegalities; it 'differentiates' them, it provides them with a general 'economy'. And, if one can speak of justice, it is not only because the law itself or the way of applying it serves the interests of a class, it is also because the differential administration of illegalities through the mediation of penalty forms part of those mechanisms of domination. Legal punishments are to be resituated in an overall strategy of illegalities. The 'failure' of the prison is to be understood on this basis. (Foucault, 1977: 272)

Although the prison persists, it is clear, as Rusche and Kirchheimer (1939 [2003]) point out, that throughout Europe and North America the use of imprisonment decreased from the end of the nineteenth century until the beginning of the Second World War. The decline of the prison population, they suggest, is bound up with the changing nature of productive relations

involving new forms of manufacture: namely Fordism and Taylorism. In this form of production-line manufacture the discipline of the worker is contained *within* the production process itself (Lea, 1979; Melossi, 1979). Moreover, the shift in this period towards 'welfare capitalism' produced other regulatory mechanisms, with the consequence that the prison shifted from being a punishment of first resort to a backup sanction serving as a punishment of last resort.

The welfare sanction

Towards the end of the nineteenth century a new modality of punishment emerged, in which the dominant forms of segregative control were supplanted by new forms of regulation centred around social integration and inclusion. For whole sections of the population, particularly the young and the vulnerable, forms of welfare intervention arose which aimed to deal with 'social problems' and 'problem populations' within the family and the 'community'. Intervention hinged on the perceived needs of certain individuals and involved a shift of emphasis from legal control to normalisation (Garland, 1985).

If it were the case that the nineteenth-century prison had been concerned with disciplining labour and regulating production, the emerging forms of welfare intervention appeared to be more concerned with the process of reproduction and the quality of labour power. The family became a central focus of intervention, and the establishment of a range of new agencies and institutions, particularly social work, probation, the borstal and the juvenile reformatory, signified the emergence of a new welfare complex.

The important characteristics of the shift towards the 'welfare sanction', in which welfare interventions were always conditional on compliance, was that they marked a shift away from the act to the offender. The aim of sanctions was not so much to address guilt but to identify needs and inadequacies (Garland, 1981). Sanctions therefore needed to be flexible, personalised and, where appropriate, continuous. The emphasis upon continuity can be critical, since repairing the perceived damage to the individuals requires not their removal from the locality, but working with families in the community in order to improve the process of socialisation and thereby to produce less-damaged subjects.

Social work is a key element in this process. The new forms of state-sponsored social work replaced the Victorian emphasis on personal charity and philanthropy to meet the needs of the poor. Instead professional social workers could deal with 'cases', and if necessary the whole family,

since deviancy in one member might signify the breakdown or malfunctioning of the family as a whole. As part of the development of these normalising strategies, newly-developed agencies such as probation were able to provide more continuous forms of supervision and surveillance, either as an alternative to custody or as part of a post-release strategy. The Probation Act 1907 encouraged the development of non-custodial penalties, while the establishment of a separate system of juvenile justice in 1908 directed the newly-formed juvenile court to take account of the child's welfare in making disposals. From the outset the remit of the juvenile court extended beyond criminal offences, and was to include cases where children were deemed to be 'in need of care and protection'. Juvenile reformatories and borstals were designed both for punishment for wayward juveniles and as 'child-saving' institutions providing education and training. Sentences in relation to these institutions tended to be indeterminate; release was decided not only by the judge but also by the Prison Commissioners, and was dependent upon an individual's progress and reformation. The development of various interventions and the availability of alternatives to custody, as well as the removal of certain categories of offenders from prisons, meant that the 'welfare sanction' had a significant impact upon the composition of the prison population and the role which the prison was deemed to serve.

Conclusion

This brief overview of the emergence of the modern prison has been necessarily schematic and selective. The histories which emerged during the 1970s and 1980s have moved us a long way forward from the administrative and technical accounts that were previously available. They have also encouraged us to think more critically about the assumed humanitarian impulses which were once widely assumed to lie behind the development of the prison. However reassuring we might find such accounts, they do not square very well with the evidence. By the same token, 'revisionist' histories have forced us to rethink the claim that prisons arose as a direct response to the growth of crime and disorder. The critical questions which the revisionist historians raise are: why did punishment come to take the specific form of imprisonment in a certain period and what were the social determinants which produced and shaped this response in different countries? Similar questions arise in relation to the emergence of the 'welfare sanction' at the end of the nineteenth century. The relative decrease in the use of imprisonment in many Western countries during the first half of the twentieth century raises

the question of the factors which affect the scale of imprisonment, as does the subsequent increase in the use of imprisonment in recent years.

In attempting to explain these historical changes, we are drawn ineluctably into the central debates over structure and agency, and by implication into questions about the sources and exercise of power. Few historians, with one or two notable exceptions, believe that these developments are either simply a reflection of the 'needs of capitalism', or are purely the product of the campaigns of well-meaning reformers.

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|------|--|
| 1556 | The first Bridewell opened in the City of London. |
| 1717 | The Transportation Act provided for transportation to the American Colonies. |
| 1776 | The hulks were introduced. |
| 1779 | The Penitentiary Act included proposals for improved diet and paid labour in prisons. |
| 1783 | Public hangings moved from Tyburn to Newgate Prison. |
| 1787 | The first fleet of convicts set out for Botany Bay. |
| 1823 | The Gaol Act imposed new systems of classification involving the separation of male and female prisoners. |
| 1835 | The Penal Servitude Act was passed under which women were to be governed by the same rules and regulations as applied to male prisoners. |
| 1838 | A separate juvenile prison was established in Parkhurst. |
| 1840 | Transportation to New South Wales ended. |
| 1842 | Pentonville Prison in London opened. |
| 1853 | A separate wing for women prisoners was established at Brixton. |
| 1857 | The last prison hulk taken out of service. |
| 1861 | The Whipping Act abolished whipping for virtually all offences. |
| 1863 | The Carnavon Committee was appointed to re-examine discipline in local jails. |
| 1865 | The Prison Act formally amalgamated the jail and the house of correction. |
| 1867 | Transportation ended. |
| 1868 | Public ceremonies of execution ceased. |
| 1877 | The Prison Act transferred control of local jails to central government. |
| 1895 | The Gladstone Committee on Prisons reported. |
| 1898 | The Prison Act introduced new categories of imprisonment based on the characteristics of the offender. |
| 1901 | A borstal scheme was established in Rochester Prison. |
| 1907 | The Probation Officers' Act created the professional probation officer. |
| 1908 | The Children's Act created a separate system of juvenile justice. |

Figure 1.1 Some key dates in the history of imprisonment in England and Wales

However, even if we avoid the twin excesses of functionalism and voluntarism, there are a number of unanswered questions and contested issues which require serious consideration. Michael Ignatieff (1981), in a critique of revisionist histories in which he includes the work of David Rothman and Michel Foucault as well as his own, argues that these authors incorporated three major misconceptions in their work: 'that the state controls a monopoly over punitive regulation of behaviour, that the state's moral authority and practical power are the major sources of social order, and that all social relations can be described in terms of power and subordination'. Ignatieff is particularly critical of those forms of overly conspiratorial class analysis which see the prison as a response to class fear or as a form of punishment imposed by the ruling class on the poor. Instead, he argues that though the development of the prison may have important class dimensions, the conspiratorial view presents ruling-class views as being too unified, while paying little attention to the genuine support for incarceration among sections of the working class. Also, such accounts tend to play down how the prison relates to other forms of regulation, both formal and informal. Consequently he has called for a substantial reassessment of these revisionist histories and the ways in which they deal with the critical issues of the state, power and class. Other historians have also accused the revisionists of an endemic masculinist bias, and of underestimating the significance of race in the development of imprisonment. Nevertheless, revisionist histories have provided some important conceptual tools for uncovering the conditions which made the emergence of the modern prison possible, and have identified some of the critical processes which shaped its development. These processes, however, require further investigation.

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