

# Preface to Punishment and Penal Discipline

Tony Platt and Paul Takagi (eds.)

**T**HIS ANTHOLOGY ON *PUNISHMENT AND PENAL DISCIPLINE* IS HOPEFULLY THE FIRST IN A SERIES OF STUDIES IN CRIME AND SOCIAL JUSTICE. OF the 16 essays in this book, 13 are reprinted from the journal *Crime and Social Justice*, two come from *Issues in Criminology* (a predecessor to *Crime and Social Justice*; it ceased publication after 10 years in 1975), and the remaining article by Paul Takagi was originally published in *Federal Probation*.

Though most of the articles share a common Marxist perspective, the authors represent a diversity of interests and backgrounds. This is reflected in the topics covered (history of punishment, rise of the penitentiary, sentencing, psychiatry and rehabilitation, the prisoners' movement, etc.) and in the background of the authors (Rusche wrote his pioneering essay in Germany in the 1930s, Jankovic is a Yugoslavian sociologist, Melossi is an Italian Marxist, Russell Hogg is an Australian sociologist studying at the University of Sheffield in England, etc.). With the exception of those who were trained at Berkeley's School of Criminology, the contributors are not so much "criminologists" as intellectuals who are interested in the "penal question."

Since the publication of the first issue of *Crime and Social Justice* in 1974, there has been a steady, growing interest in a Marxist analysis of crime and punishment in the United States. Despite the alarming growth of technocratic and reactionary research by the new "realists" and sociobiologists, we have found also an increasing receptivity, especially among students, prisoners, and younger scholars, to the serious study of Marxism and its application to the field of criminology. The viability of *Crime and Social Justice*, even after the academic repression of its base at the University of California, Berkeley, is testimony to this interest.

This anthology on punishment represents an effort to consolidate what has been accomplished in the last few years and to take stock of our progress and problems. Marxist analysis of punishment, while an important and decisive break with bourgeois criminology, is still very much in its infancy and its immaturity has generated considerable rhetoric, dogmatism, and idealism. The separation of theory from practice and the lack of analytical clarity have produced a great deal of confusion. In addition, "radical criminology" has become an eclectic catchall saturated with moralism and vulnerable to both cooptation and attack. Proclaiming "radicalism" or prematurely and opportunistically rushing into print with definitive textbooks is no substitute for the arduous, time-consuming, and complex development of a Marxist science.

This anthology is by no means a conclusive statement on the "penal question." On the contrary, we see it as a beginning step. All the articles have been carefully selected because we think that they lay an important foundation for the construction of a Marxist analysis of punishment. While some of the articles do not employ a Marxist methodology and some are merely descriptive rather than analytical, we think that as a whole they advance our understanding of the relationship between the political economy and penal policies, of the materialist roots of punishment, and of the class nature of bourgeois justice.

A final note and caution. This is not a textbook and it does not provide a detailed, chronological history of different forms of punishment. We do not see this anthology as a substitute for such a textbook. Rather it should be used as a theoretical tool to interpret and critically evaluate conventional histories of penology. Each section of the book is prefaced by an introduction that refers the reader to the relevant literature and indicates the most significant studies.

## Perspective and Overview

**J**ACOBS (1977) CORRECTLY STATED IN A RECENT ARTICLE THAT THERE is but a handful of macrosociological studies of the prison. Gustave de Beaumont and Alexis de Tocqueville (1964) were among the first to link the American penitentiary system to the culture, social structure, and political system of a nation. But the classic comparative macrosociological study of punishment, which has drawn increasing attention by European and by some American criminologists, is Georg Rusche and Otto Kirchheimer's *Punishment and Social Structure* (1939). The guidelines for their analysis were laid down by Rusche in a research proposal, "Arbeitsmarkt und Strafvollzug" (1933), published originally by the Frankfurt Institute of Social Research. An English translation of the work appeared in print for the first time in *Crime and Social Justice* (1978) and is included in this volume.

---

TONY PLATT and PAUL TAKAGI are editors of *Social Justice* (e-mail: SocialJust@aol.com). This "Preface" and "Perspective and Overview" appeared in *Punishment and Penal Discipline: Essays on the Prison and the Prisoners' Movement*. Copyright © 1980, Social Justice/Global Options.

Rusche hypothesized that imprisonment is related to social structural conditions according to the principle of “less eligibility,” which, as formulated by English writers of the 17th and 18th centuries, asserts that prison conditions must always be lower than those of the most poor and demoralized layer of the “free” working class. If this were not the case, the working poor would not be encouraged to remain within the work force.

Rusche warned that the proposition of “less eligibility” is not exactly reproduced in society, and that it is “only a principle of investigation, a guide to approach the subject matter.” Recognizing that “the scarcity or surplus of workers does not unequivocally determine the nature of the labor market,” Rusche noted that political interventions can modify fluctuations of supply and demand, labor unions can protect wages, or the state can provide payment of aid and other welfare services to the needy.

*Punishment and Social Structure*, in examining the hypothesis of “less eligibility” in its historical context, argues that penal institutions — the Bridewell in England, the Rasphuis in Holland, and similar institutions in Germany and Switzerland — emerged when there was a shortage of laborers and the bargaining capacity of the working class was relatively strong. Then it is shown how, at about the time of the late Middle Ages, there was a dramatic worsening of the life conditions of the working class, lowering their standard of living to its barest and most desperate minimum. Punishment, in turn, became more brutal and repressive, and the death penalty invoked for the most trivial offenses. But gradually, beginning in the 18th century, economic conditions of the working class improved and the death penalty was invoked less and less. At the turn of the 19th century, initially in the United States, then also in European countries, improved economic conditions ameliorated prison conditions as well, leading to the exploitation of convict labor in its most generalized and broadest extent in the history of punishment.

Rusche’s hypothesis in *Punishment and Social Structure* worked well when applied to preindustrial societies in which labor could be forced and productive, but it apparently breaks down when applied to punishment systems in the 20th century. This is due, in part, to the fact that Rusche’s thesis, as originally conceptualized in the 1933 article, has not been fully developed. Why *Punishment and Social Structure* deviated from Rusche’s original thesis is not clear. We do know that Rusche wrote chapters two through eight of *Punishment and Social Structure*. The project was then moved from Germany to Columbia University after Hitler came to power and the second author, Otto Kirchheimer, completed the project and apparently modified, not only the organization of the book, but portions of Rusche’s writings. Melossi’s review essay of *Punishment and Social Structure* (1978), a selection included in this volume, indicates that Kirchheimer, rather than pursuing the Rusche thesis in the remaining chapters of the book, “widened” and possibly undermined Rusche’s thesis in his analysis of developments in penal policy under fascist rule. Thus, the “double writing” of the book generated a number of problems.

*Punishment and Social Structure* has been criticized primarily for its economic determinism (Foucault, 1977; Melossi and Pavarini, 1977; Melossi, 1978; Ignatieff, 1978; Hogg, 1979). Melossi and Pavarini (1977) argue that the historical development of the prison and penal discipline cannot be solely explained by the state of the labor market. The social structure and especially changing social organizations, the composition of social classes, and the complex of social control systems need to be analyzed in their relations to the uses of imprisonment. Moreover, the state of the labor market as an explanatory variable for late 19th and 20th centuries’ penal uses and practices is highly questionable. A series of developments, beginning around the middle of the 19th century — the trade union movement, welfare acts, child labor laws, the marginalization of women laborers, urbanization, compulsory education, immigration and migration, race relations, and new agencies of social control — have profoundly affected the fluctuations and conditions of the labor market.

Despite the problems in *Punishment and Social Structure*, the book continues to remain a stimulating and pioneering work, generating some of the best scholarship on punishment in recent years. To the best of our knowledge, the first American scholar to partially employ the thesis developed in *Punishment and Social Structure* is Thorsten Sellin in his case study of the Rasphuis (1944) and in his most recent work, *Slavery and the Penal System* (1976). Shank’s (1978) review essay of Sellin’s important work is included in this anthology. Another selection included in this book is Takagi’s (1975) study of the Walnut Street Jail. Takagi reexamines the existing literature on this early penal facility and reinterprets its transformation from a jail to a state penitentiary as a bourgeois reform to centralize the powers of the state. Hogg (1979), also included in this book, takes *Punishment and Social Structure* as a point of departure to sketch out a theory of the capitalist state. He analyzes the development of the penitentiary system in England as an aspect of the concentration of political power, stemming not only from a new industrial mode of production, but also from political, social, and ideological struggles.

While Hogg seeks to politicize Rusche’s economism, a partial test of Rusche’s thesis is provided in this anthology by Jankovic’s (1977) study of unemployment and the uses of fines, probation, and imprisonment in the United States. Jankovic reports a strong positive correlation between imprisonment and unemployment rates for the period from 1926 to 1974.

In order to avoid a mechanical and dogmatic use of Rusche’s thesis, we think that it must be adapted to contemporary conditions. Takagi and Melossi (1978), noting in an unpublished paper that Rusche’s original thesis contains *implicit*

notions about punishment and social structure, propose that it is necessary to make them explicit and to reformulate the hypothesis of “less eligibility.” The principle of “less eligibility” implies that the standards of living of prisoners and of the lowest stratum of the working class are parallel; variations at one level should appear in the other. The standard of living of the working class is tightly linked to the organization of the capitalist labor market so that when the supply of labor is high, the conditions of the working class and prisoners will deteriorate. Conversely, when there is a scarcity of labor power, the conditions of the working class and of prisoners will improve. Furthermore, when the state of the labor market is favorable and wages are high, there will be a tendency to exploit the labor of prisoners for profit and, once again, the converse will be true when there is an oversupply of workers. Thus, the uses of imprisonment (incarceration rates and the exploitation of convict labor) will fluctuate between two extreme situations:

1. During conditions of labor scarcity and a high standard of living for the working class, imprisonment rates will tend to decline and the conditions within prisons will tend to improve. Under this situation, there will be a tendency to exploit the available convict labor.
2. When unemployment is high and the standard of living for the working class is poor, prisons will tend to be overcrowded and the conditions within prisons worsen. Under this situation, there will be almost no productive work for prisoners.

Rusche’s thesis of “less eligibility” has not yet been fully examined. For example, it would be valuable to examine the variables that mediate the relationship between conditions of the working class and the uses of imprisonment. As Melossi and Pavarini (1977) inquire, how did the series of developments in the late 19th and 20th centuries affect the condition of the working class and especially that of the lowest stratum? The second part of the hypothesis similarly has not been examined. For the post-1945 era, the prison literature suggests that convicts were involved in treatment/rehabilitation programs. That assertion is simply not true. Correctional treatment has never been adopted on a systemwide basis by any prison system in the United States. Convict labor continues to remain the principal assignment in just about all of the prison systems—conservation camps, furniture factories, dairy farms, and so on. Although these work assignments are not directly exploitative of convict labor as in the past, correctional industries are nevertheless a major source of income to defray the cost of the penal system. While the annual reports of correctional industries indicate modest “profits,” though only about 20% of those confined are employed (Mintz, 1976), they fail to take into account the cost of maintaining (housing, feeding, and guarding) prisoners working in kitchens, laundries, farms, maintenance, and offices. By looking at the two major types of convict employment, it is possible to chart the rate of convicts working in prison. In the federal prison system, the average daily industrial employment coincides with the trend in penal population. In other words, during a period of a declining penal population, there is an increase in the number of convicts employed by correctional industries. But even under the best conditions, unemployment and overcrowding are the most serious problems in contemporary prisons. Thus, the extent of idleness (or in the official terminology, “unassigned”), the relationship of bed space to the actual population, the average daily food allotment measured in dollars and cents, and the quality and quantity of disciplinary incidents are all indicators of conditions within prisons.

Four other selections included in this anthology, although not analytical, provide information on conditions within prison and variations in penal discipline. Miller (1974) addresses the forms and extent of convict labor in the 19th century, while Wald (1976) and Begel (1976) expose deteriorating prison conditions and describe prisoners’ resistance under monopoly capitalism. Martin (1976) instructs us on the dangers and contradictions of liberal penal reform. While it is clear from previous studies that the decline in penal conditions is related to the growth of unemployment and the reserve army of labor, future research should also investigate its relationship to the more general attack on the working class (in the form of speedups and taylorization, cutbacks in social services, the middle-class tax revolt, etc.), as well as to the more specific problems of management generated by the prisoners’ movement. It is probably not accidental that the current increase of violence in prisons occurs at a time when spontaneous workers’ walkouts and organized labor strikes have reached an all-time high since World War II.

Radical studies of punishment are clearly in a state of transition. Much has been accomplished, but there is a great deal to be done. From previous studies we can learn how to clear away the clutter that surrounds the field of “penology”; we have the tools to dissect and expose the bourgeois foundations of most conventional theory; and we are now equipped to examine the mechanisms that conceal from immediate view the social relations and class structures through which *value* emerges in capitalist society. That is what Rusche pioneered and what Melossi (1976) elaborates in this anthology. As Melossi points out, our task is not to build a “Marxist theory of deviance or punishment,” but rather to broaden the hegemony of Marxism and its unique scientific theory over the whole array of topics subsumed under the “social sciences.” From this perspective, the problems of punishment and penal discipline must be understood in the contexts of capital accumulation, the organization and regulation of the labor market, and class struggle. Only then does it become possible, as the Schwendingers’ (1980) contribution to this anthology indicates, to articulate programmatic demands and strategies with respect to improving penal conditions and prisoners’ rights.

It is crucial during this transitional phase in the development of a Marxist analysis of punishment to recognize and critically assess any *radical* works that misdirect us from the important tasks at hand. Two such studies, by Foucault (1977) and Ignatieff (1978), on the origins and development of the penitentiary system, one in France and the other in England in the 18th and 19th centuries, provide rich descriptive data for comparative analysis, but do not generate the kind of revolution in scientific thought about the uses of punishment that is evident in the work of Rusche and his followers.

Foucault's latest book, *Discipline and Punish* (1977), credits Rusche and Kirchheimer on a number of reference points in tracing the reduction in penal severity since the turn of the 18th century. Foucault is interested in examining why public punishment that once maimed, flogged, or executed the offender — all of which were designed to punish the body — have been replaced by a more “private” system of punishment that acts “in the depth of the heart.” Employing the historical method, he pinpoints the transformation in the system of punishment to the opening of Mettray in 1840, a new juvenile prison. Mettray, according to Foucault, focused upon “training,” conducted by the new technicians of behavior. Their task was to produce docile and compliant “bodies” by continuous supervision, directed work and play, and permanent observation. The purpose of this new penal regimen was to obtain both knowledge and power over individuals who resisted normalization.

*Discipline and Punish*, as a historical work, informs us that the new supervision of normality was encased in medicine and psychiatry, thus legitimating it with a “scientificity.” That Mettray incorporated “science” as early as 1840 raises serious problems with the conventional penological assertion that individualized punishment began with the work of Dr. Wey at Elmira Reformatory. Foucault notes that the judiciary gave this form of punishment a legal justification, as well as the techniques for the supervision of “norms” that have continued to develop right up to the present day. What Foucault calls “the arrangement of power knowledge over individuals” proliferated since the founding of Mettray, increasing in quantity and scope whereby “the technicians of indiscipline” are today found in the schools, prisons, orphanages, social welfare, and everywhere in society. Foucault makes the important point that the whole penal operation has taken on extra-judicial elements that have become entangled with the practice of the power to punish. Foucault's point is vividly demonstrated in Speiglmann (1977) and Pfohl's (1979) papers, included in this volume, on prison psychiatry and drugs.

Foucault's study reminds us of a lesson that we keep forgetting, namely, that punishment is inextricably linked to the sentencing process. He demonstrates how the courts have introduced a whole set of assessments in which the assertion of guilt has turned into a strange scientific-judicial complex. These assessments have been sadly neglected in contemporary studies of sentencing and Jankovic's (1978) study, included in this anthology, takes a preliminary step toward building a body of knowledge in this important area of criminological inquiry.

*Discipline and Punish* is also a phenomenological investigation into the *essence* of contemporary society. In this task, Foucault, while accepting the body as a force of production invested with labor power, examines how the political instruments have come to be organized to make it both a productive and a subjected body. He seizes the findings on the new regimen founded at Mettray to expose what he calls “the carceral archipelago” that is omnipresent in modern society. Foucault deplores the mechanisms of discipline, modeled on the carceral apparatus, which have proliferated in modern industrial society.

Foucault's phenomenology provides a powerful and appealing interpretation of the dynamics of contemporary repression. For him, the expression of capitalist domination is to be found in the world of petty bourgeois officialdom — the teacher-judge, the doctor-judge, the educator-judge, the social worker-judge, etc. But this appreciation of the uses of privileged power and knowledge over working people and of the emergence of “judges” of human behavior needs to be anchored in the context of class relations. While the production, elaboration, and execution of technical knowledge are not simple processes, and the petty bourgeoisie indeed plays a crucial role here, the key issue remains, how did the ideology of punishment in the mid-19th century correspond with the economic and political interests of the ruling class? It is not particularly enlightening to learn from Foucault that petty bourgeois officials can act like tyrants or that “scientificity” is used to mask domination. Foucault disconnects the petty bourgeoisie from their life force, the bourgeoisie, abstracts ideology from productive and class relations, and elevates a social-psychological model of “domination” over a class analysis of exploitation. In this sense at least, *Discipline and Punish* has much in common with Erving Goffman's *Asylums* (1961).

Ignatieff (1978) examines the emergence and development of the penitentiary (Pentonville Prison) and its system of penal discipline, which began as a humane and reasonable regimen, but became, in time, brutal and repressive. While he recognizes that Rusche's thesis accounts for some of the variations in the uses of imprisonment, he argues that beginning around the turn of the 19th century, the “ebb and flow of punishment” in part depended on “fluctuations in cultural estimations of the proper social distance between ‘normality’ and ‘deviance.’” Rather than applying Rusche's thesis, Ignatieff instead narrowly focuses on the relationship between penal policy, crime rates, growing jail populations, and the fiscal crisis. Like Foucault, he emphasizes the culture of punishment and exaggerates the primacy of such penal reformers as Elizabeth Fry and John Howard as a motive force in the emergence of the penitentiary.

Ignatieff's discussion of the bourgeois ideology that legitimated the penitentiary is highly informative, but it is treated in a non-materialist fashion. He seems to liquidate the fact that the mode of production is the fundamental device that coordinates and regulates society, while superstructural elements (penal reforms, ideology, the state, etc.) are important but essentially subservient modifiers of that fundamental process. Because of his idealist perspective, Ignatieff concludes his book on a sad and contemplative note, wondering what John Howard would have made of Pentonville Prison if he had lived to see it. His appreciation of the regimen of punishment and the role of petty bourgeois reformers would have been a scientific contribution if it had been grounded in a class analysis of the social relations of production.

In conclusion, the task before us, as Rusche and Kirchheimer noted many years ago in their introduction to *Punishment and Social Structure*, is to "strip from the social institutions of punishment its ideological veils and juristic appearance and to describe its real relationships." This task is crucial not only for criminology, but also for the development of Marxism because the study of punishment and penal discipline necessarily requires an appreciation of the laws of social development. Correspondingly, we think that the student of and researcher on punishment must be equipped with the basic tools of the Marxist method; otherwise the field is filled with many traps for unwary idealists and moralists. This anthology is a modest effort to summarize the strengths and weaknesses of the *radical* analysis of punishment and to lay the groundwork for future *Marxist* research.

## REFERENCES

- Begel, Debby  
1976 "An Interview with Willie Tate." *Crime and Social Justice* 6.
- de Beaumont, G. and A. de Tocqueville  
1964 *On the Penitentiary System in the United States and Its Application to France*. Carbondale: Southern Illinois University Press.
- Foucault, Michel  
1977 *Discipline and Punish*. New York: Pantheon Books.
- Goffman, Erving  
1961 *Asylums*. New York: Anchor Books.
- Hogg, Russell  
1979 "Imprisonment and Society Under Early British Capitalism." *Crime and Social Justice* 12.
- Ignatieff, Michael  
1978 *A Just Measure of Pain: The Penitentiary System in the Industrial Revolution, 1750-1850*. New York: Pantheon Books.
- Jacobs, James B.  
1977 "Macrosociology and Imprisonment," in David F. Greenberg (ed.), *Corrections and Punishment*. Beverly Hills: Sage Publications.
- Jankovic, Ivan  
1977 "Labor Market and Imprisonment." *Crime and Social Justice* 8.  
1978 "Social Class and Criminal Sentencing." *Crime and Social Justice* 10.
- Martin, Bob  
1976 "The Massachusetts Correctional System: Treatment as an Ideology for Control." *Crime and Social Justice* 6.
- Melossi, Dario  
1976 "The Penal Question in Capital." *Crime and Social Justice* 5.  
1978 "Georg Rusche and Otto Kirchheimer: Punishment and Social Structure." *Crime and Social Justice* 9.
- Melossi, Dario and Massimo Pavarini  
1977 *Cacere e Fabbrica*. Bologna: Il Mulino (English translation in progress).
- Miller, Martin B.  
1974 "At Hard Labor: Rediscovering the 19th Century Prison." *Issues in Criminology* 9 (Spring).
- Mintz, Robert  
1975 "Federal Prison Industry — 'The Green Monster.'" *Crime and Social Justice* 6.
- Rusche, Georg  
1978 "Labor Market and Penal Sanction: Thoughts on the Sociology of Criminal Justice." *Crime and Social Justice* 10.
- Rusche, Georg and Otto Kirchheimer  
1939 *Punishment and Social Structure*. New York: Columbia University Press.
- Schwendinger, Herman and Julia Schwendinger  
1980 "The New Idealism and Penal Living Standards." *Crime and Social Justice* 13.
- Sellin, Thorsten J.  
1944 *Pioneering in Penology*. Philadelphia: Pennsylvania Press.  
1976 *Slavery and the Penal System*. New York: Elsevier.
- Shank, Gregory  
1978 "J. Thorsten Sellin: *Pioneering in Criminology and Slavery and the Penal System*." *Crime and Social Justice* 10.
- Speigman, Richard  
1977 "Prison Psychiatrists and Drugs: A Case Study." *Crime and Social Justice* 7.
- Takagi, Paul  
1975 "The Walnut Street Jail: A Penal Reform to Centralize the Powers of the State." *Federal Probation* (December).
- Takagi, Paul and Dario Melossi  
1978 "The Rusche and Kirchheimer Thesis in the Study of the Uses of Prisons in the United States from 1850-1970's." (An unpublished research proposal.)
- Wald, Karen  
1976 "The San Quentin Six Case: Perspective and Analysis." *Crime and Social Justice* 6.