

WHY HAS PRISON EMERGED AS A PROMINENT FORM OF PUNISHMENT FOR MOST CRIME AND WHAT ARE ITS FUNCTIONS IN RELATION TO WIDER SOCIETY?

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Abstract

The purpose of this dissertation is to ascertain why prison has emerged as a prominent form of punishment for most crime and to critically discuss the function of modern day prisons in relation to wider society.

Following the Second World War the prison population in England and Wales increased dramatically and continues to rise, even though crime rates have reduced since 1997. As a result 82 of the 142 prisons in England and Wales are overcrowded. Yet we continue to sentence offenders to custody, since May 1997 a total of 1,036 new offences have been introduced which are punishable by imprisonment and the Ministry of Justice anticipate that the number of offenders behind bars will reach 95,800 by 2015. This thesis endeavours to explore why it is prison remains a popular form of punishment.

Those offenders sentenced to imprisonment are often those excluded from society, the poor and deprived, those with drug or alcohol addictions, or those suffering from mental illness. Prison has replaced a health and welfare system that has neglected the needs of those most vulnerable. However the British Crime Survey reports a 32% decline in overall crime since 1997, even though the prison population continues to grow. Thus the rate of imprisonment in England and Wales is not determined by crime rates. This thesis will consider other factors which determine the prison population, including the degree to which prison functions has a means of controlling those excluded and considered superfluous to society.

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Chapter 1: Introduction

'Punishment is the last and least effective instrument in the hands of the legislator for the prevention of crime'.

John Ruskin

The purpose of this dissertation is to critically discuss the function of modern day prisons in wider society. The HM Prison Service (2011) state that 'Her Majesty's Prison Service serves the public by keeping in custody those committed by the courts. Our duty is to look after them with humanity and help them lead law-abiding and useful lives in custody and after release'. Three main objectives are added, which are to hold prisoners securely, reduce the risk of re-offending and to provide safe and well ordered establishments. However, there exists no universal agreement over the rationale of imprisonment (Coyle, 2005). There are currently '139 prisons in England and Wales employing approximately 44,000 staff' (Joyce, 2006, p.358). On average it costs £38,000 a year to send someone to prison (Travis and Sparrow, 2010) and at the end of April 2009 82 of the 142 prisons in England and Wales were overcrowded (Prison Reform Trust, 2010).

Questions have been raised over the purpose of custody ever since imprisonment found itself at the forefront of penal practice some 200 years ago (Flynn, 1998). Four possible explicit functions can be identified, which are punishment, deterrence, rehabilitation and the protection of the public. Imprisonment can be 'used as a punishment in its own right' (Flynn, 1998, p.12). In cases where the offence is so serious that neither a fine nor a community sentence can be justified then the offender will be punished by a term of imprisonment. The deterrence function of prison operates on two levels, individual and general. Individual deterrence occurs when the threat of imprisonment deters an individual from committing an offence, general deterrence assumes that by sentencing an offender to custody others will be deterred from committing the same offence. At numerous stages throughout the history of imprisonment attempts have been made to reform the offender in the hope that any future offending will be prevented. Prison also operates to protect the public, the notion that offenders cannot commit any future crime while they are in prison is known as incapacitation (Coyle, 2005). Crow (2001, p.103) argues 'which of these is accorded the highest priority will vary depending on the prevailing penal philosophy of the time'.

The number of offenders sent to prison has risen dramatically since the end of the Second World War, and continues to grow. Between 1945 and 1965 the prison population had doubled from 15,000 to 30,000 (Flynn, 1998). At the end of 1992 this figure had reached over 40,000 and by 2005 the number of prisoners in England and Wales was a record 77,000. The Ministry of Justice anticipate that the number of offenders behind bars will reach 95,800 by 2015 (Scott and Codd, 2010). Yet the British Crime Survey reports a 32% decline in overall crime since 1997; vehicle thefts and burglary have fallen by over 50% and violent crime by 34% (The Report of the Commission on English Prisons Today, 2009). Speaking in 2007 Jack Straw, the Secretary of State for Justice, agreed 'over the past 10 years crime has fallen by 32%; there are record numbers of police; the chances of being a victim of crime are at their lowest for 26 years; alongside that we have provided 20,000 new prison places and we are building another 9,500' (cited in Ministry of Justice, 2009). The rate of imprisonment in England and Wales is not determined by crime rates. Consequently, Coyle (2005, p.11) argues 'there are other influences at work in respect to the use of imprisonment'.

Ben Crewe (2007, p.123) argues 'imprisonment is the ultimate sanction of most Western societies, and prisons are a potent symbol of the states power to punish and its failure to integrate all its citizens into its system of norms'. Increases in the prison population are a reflection of high rates of 'social exclusion'. Those that are imprisoned are often those 'who are marginalised in their societies' (Coyle, 2005, p.20). Prisoners in England and Wales are 'largely the poor and disadvantaged, those with mental health needs and drug or alcohol addictions (The Report of the Commission on English Prisons Today, 2009, p.11). In 2002, 27% of prisoners were taken into care as a child, compared to just 2% of the general population, and almost half had run away from home as a child. Over 50% of male prisoners have no qualifications and 49% were excluded from school; 80% of prisoners have writing skills at or below the level of an eleven year old. Over two thirds of prisoners were unemployed prior to being sentenced, compared with just 5% of the general population; furthermore 75% of prisoners have no employment to go to upon release. Of those in prison during 2002, 80% possessed mental health problems, almost half had a long standing illness or disability and over 60% were regular drug users prior to being sentenced (Social Exclusion Unit, 2002). The focal point of this dissertation is the incarceration of a socially excluded superfluous population.

Unemployment, homelessness, drug use and poverty are all associated with mental health illness. Those who suffer from mental health problems may find themselves in prison as a consequence of seeking basic human necessities such as shelter or food by breaking the law. This offending behaviour can be construed as a frantic plea for help by someone in desperate need of support (Hudson, 1993, cited in Scott and Codd, 2010). Moreover Westminster council have recently announced plans to 'fine people in the Victoria area, if they lie down or sleep in any public place, deposit bedding, and distribute free food and drink' (Housing Justice, 2011). Imprisonment can be used to enforce court orders such as fines and if offenders fail to pay a fine they will be imprisoned as punishment (Flynn, 1998). Prison has become a substitute for a health and welfare system that has neglected the needs of those most vulnerable, such as those with mental health needs, those with a history of abuse and neglect and those fighting drug and alcohol addiction. Pat Carlen (2006, cited in Cavadino and Dignan, 2007) asserts 'today, prison still fulfils its old age function of catering for the homeless, the mentally ill, the stranger, the non-compliant poor, the abused and the excluded'.

This dissertation aims to discuss the extent to which prison is a repressive form of social control and the product of tension between classes in a capitalist society and whether or not prison is a means of controlling those neglected by and considered redundant to society (Cohen, 1985). Since May 1997 a total of 1036 new offences have been introduced which are punishable by imprisonment and during the twelve years prior to 2007 sixty six new pieces of criminal justice legislation were passed, all containing original penal sanctions. Scott and Codd (2010, p.1) draws our attention to the numerous trivial acts that can result in custody, 'a person in England can be sentenced to imprisonment for smoking in public; for allowing an unlicensed concert to take place in a church hall; if their child fails to attend school...or for failing to obtain a passport for a pet donkey'. The morality of such draconian measures will be discussed in this dissertation.

Chapter 2 provides a brief history of imprisonment in England and Wales. The earliest use of imprisonment dates from the ninth century and prisons in the modern sense did not come into existence until the eighteenth century (Muncie, 1996).

The sociology of imprisonment is discussed in Chapter 3 with particular consideration given to the philosophies of Durkheim, Ignatieff, Foucault, Rusche and Kirchheimer. Emile Durkheim identified punishment as the key to developing moral standards and argues that locking up offenders condemns the offence and reinforces societies values (Garland, 1990). Michael Ignatieff (1978) disputes that prison is merely a response to crime but originated to challenge the social crisis during the eighteenth century. He outlines how prison presented a vision of control and functioned to establish a morality of law and order. Much like Ignatieff, Michael Foucault (1971) considers prison as a form of social and political control for wider society and not just an institution which controls crime and criminal behaviour. Georg Rusche and Otto Kirchheimer (1933, cited in Garland, 1990) claim the history of punishment is simply a history of class relations between the bourgeoisie and proletariat.

Chapter 4 explores further the notion that imprisonment is implemented as a means of controlling social insecurity. Loic Wacquant (2001b) draws our attention to the increasing number of people sentenced to imprisonment as the state relies on penal institutions to contain the disorders produced by a decline in social protection, the imposition of unstable wage work and mass unemployment. He focuses his work on the over-representation of black male prisoners in the United States, arguing how it is the function of the carceral system to control and dominate a population considered superfluous to a deregulated wage-labour market.

Chapter 5 offers a discussion on the function of the modern day prison and a critique of the theories outlined in Chapters 3 and 4. Finally Chapter 6 concludes the dissertation with an analysis of the extent to which prison serves to protect us from crime and the degree to which prison functions as a means of controlling those excluded from society.

Chapter 2: A History of Imprisonment in England and Wales

'The struggle of man against power is the struggle of memory against forgetting'

Milan Kundera

The earliest use of imprisonment was to hold defendants awaiting trial and dates from the ninth century; by the thirteenth century a network of 'county gaols' had been established. They were small, as was their population, and were privately owned by local Lords who profited by charging prisoners for accommodation, food and other services. Prison in medieval England was not regarded as punishment in its own right and its function was to detain rather than punish, those imprisoned faced extremely unhealthy conditions and risked disease and starvation. Incarceration was justified as retribution and enforced as a deterrent, its success was measured by its capacity to simply detain and prevent escapes (Muncie, 1996). Flynn (1998, p.29) highlights that 'until the beginning of the eighteenth century, prisons were used primarily as places to hold suspects awaiting trial, exile or execution, or to enforce the payment of debts'. Prisons in the modern sense came into existence during the eighteenth century and were used alongside other punishments, in particular floggings, executions and transportation.

During the sixteenth and seventeenth centuries the use of imprisonment was in decline. Prior to this period the death penalty had only been used in extreme cases but was now to become the most common form of punishment (Muncie, 1996). Gatrell (1996, p.7) estimates '75,000 people are thought to have been executed in the century 1530-1630'. Execution rates eventually fell towards the end of the 1600s as transportation emerged as a prominent deterrent penalty. Around 190,000 convicts were transported to North America, the West Indies and Australia during the eighteenth and nineteenth centuries (Flynn, 1998). A consequence of the American War of Independence was recognition by Parliament that an alternative to transportation was required and a new penalty of 'hard physical labour' was established following the Penitentiary Act in 1779. One aspect of this form of punishment included convicts dredging navigation channels in the River Thames. This led to old sailing ships, which became known as 'hulks', being moored along the Thames in order to 'house' those convicts working nearby. Those awaiting transportation to Australia were also imprisoned in hulks and by 1828 a total of 4,446 prisoners were detained. However around a third died as conditions were horrendous and it soon became apparent that they were breeding grounds for crime and corruption which led to Parliament abandoning their use in 1857 (Flynn, 1998).

The death penalty became prominent again towards the end of the eighteenth century as the ruling class sought to protect their interests, and as a result was widely used as punishment for 'offences ranging from murder to stealing turnips, writing threatening letters or impersonating an outpatient of Greenwich Hospital' (Hopkins Burke, 2005, p.3). Those who were not sentenced to hard physical labour or transportation were condemned to death in a period which was to become known as the 'Bloody Code'. The fate of those convicted was in the hands of the aristocracy, for it was the upper classes who sat as judges or 'justices of the peace'. Whether a convict was sent to the gallows or faced transportation was at the discretion of the presiding judge. Hopkins Burke (2005, p.3) observes that the administration of criminal justice was chaotic, predominately non-codified, irrational and irregular, and at the whim of individual judgement'.

Progress was reached following the 1832 Reform Act whereby almost 100 independent politicians entered Parliament who were opposed to the current regime and firmly supported the abolishment of the Bloody Code. The Reform Act resulted in the eradication of most capital statutes in 1837 (Gatrell, 1996). By 1868 transportation had also been abandoned and as a result prison found itself at the forefront of penal practice (Flynn, 1998). The use of prison as a primary form of punishment was embodied in the Penitentiary Act 1779 and during this period the institution of imprisonment was regarded as a concern for the county or borough and a matter for local justices (Soothill, 2007).

Muncie (1996, p.164) argues how ‘influenced by the work of Howard, the Penitentiary Act promoted a new view of the purpose of imprisonment’. John Howard was highly critical of conditions within local gaols, describing them as filthy, unhealthy and riddled with corruption. Prisons were run in order to make a profit and convicts were held together regardless of their gender, age or crime (Flynn, 1998). Even so the Penitentiary Act, the first direct involvement into prison administration by Parliament, was not a consequence of discontent, but a result of the American War of Independence in 1776 leaving those sentenced to transportation nowhere to go (Muncie, 1996).

As a consequence of the increasing use of local gaols magistrates resolved to expanding existing prisons and in some cases new institutions were built. Convicts were divided between a jail consisting of those awaiting trial, a penitentiary house and a house of correction for those convicted of minor crimes. Solitary confinement became a fundamental aspect of life for convicts and was considered essential for prisoners to reflect on their ill-discipline and thus establish a guilty conscience. The utilitarian philosopher Jeremy Bentham supported the notion of a national penitentiary and in 1791 published *Panopticon or Inspection House*, in which he designed his notion of the ideal prison, which he named the Panopticon (Ignatieff, 1978). Bentham considered criminals not as evil but lacking in self-discipline and argued that capital punishment should be abolished. He considered punishment as a way of creating fear, which in turn would inhibit unruly behaviour; thus for Bentham the Panopticon should be situated in close proximity to cities as a grave reminder of the consequence of criminal behaviour (Hopkins Burke, 2005).

Bentham’s idea of the Panopticon was eventually abandoned following the Holford Committee in 1810, nevertheless Ignatieff (1978, p.112) considers ‘the rejection of the Panopticon a major event in the history of imprisonment’. Bentham’s notion that prisons should be left for private entrepreneurs to profit from exploiting prisoners for labour was discarded and the Committee considered the management of prisons as the role of the state. Nevertheless the architectural design of the Panopticon, in particular the notion of continuous surveillance, had an enormous influence on the building of future penitentiaries, including the construction of the first national penitentiary at Millbank in London two years after the rejection of Bentham’s proposals (Ignatieff, 1978).

Opening in 1816 Millbank was the first ever prison institution to be paid for by central government and the first to attempt the reformation of prisoners through rigorous religious instruction and solitary confinement (Flynn, 1998). One year later the Prison Discipline Society was formed which advocated criminal law and prison reform. Ignatieff (1978, p.167-168) highlights how the society ‘lead the campaign for new jail acts, setting out standards for the treatment of prisoners and establishing uniform criteria for discipline’. The result was the Gaols Act 1823 which enforced magistrates to file annual reports on their prisons to the Home Secretary. This proved to be the first example of a set of guidelines setting out how

prisons should be managed and the Prisons Act 1835 established the prison inspectorate and by 1850 the building of twenty new penitentiaries had been authorised (Flynn, 1998).

Pentonville opened in 1842 holding 520 prisoners who were all kept in solitary confinement and forced to attend chapel. Regarded as a success over the next six years 54 new prisons were built. The Prisons Act 1877 relocated the control of prison administration to the Secretary of State. Responsibility for the management of prisons was taken away from local justices of the peace and given to the Home Secretary. Soothill (2007, p.39) highlights how 'with this Act, about 800 years of local control over prisons had come to an end'.

The years prior to the turn of the twentieth century witnessed a gradual transformation in prison rhetoric whereby the focus altered from the reformation of prisoners to deterrence and repression. For prisoners contact with fellow inmates was forbidden and they were forced to work, eat and sleep in their cells. Prison labour was harsh and endeavoured to enforce discipline and compliance rather than teach any practical skills. The appointment of Sir Edmund Du Cane as the first chairman of the Prison Commission, established in the Prisons Act 1877, gave emphasis to the decline in reformation as the principle penal rationale. Du Cane was 'a firm believer in punishment over reformation' (Flynn, 1998, p.31) and ensured that prison life was characterised by 'hard labour, hard board and hard fare' (ibid). However Du Cane's repressive prison system soon came under attack from reformers as well as the national press; indeed 'the first occasion on which a newspaper played a major part in destroying public confidence in the prison system of the country' (Radzinowicz and Hood, 1986, p.573). In addition was a concern that not only were prisons failing to reduce crime but were merely acting as universities for criminals. The average prison sentence in 1890 was 28 days; the average recidivism rate for those convicted of theft was 78%. This, strict conditions and hard labour led to outcry which resulted in the Gladstone Committee, set up in 1895 (Muncie, 1996).

The Gladstone Committee proved a cornerstone in the history of penal policy in England and Wales. Three days following the publication of the report Du Cane retired. The outcome, the Prisons Act 1898, introduced the categorisation of prisoners according to sex, age and individual needs (Flynn, 1998). Hard labour was formally abolished, as was separation and silence (Soothill, 2007). Moreover educational and medical facilities were improved, as was dietary conditions and aftercare services were introduced (Muncie, 1996). The notion of reform was underlined by the establishment of Borstals in 1901, the first institution tasked with the training and treatment of young offenders. Borstals sought to encourage trust and responsibility in young offenders by combining education and training and by 1922 the Borstal operated for all offenders aged between 16 and 21. By 1930 Borstals had become widely accepted as an appropriate punishment for young offenders (Sharpe, 1990).

Following the Second World War there was a dramatic rise in recorded crime which resulted in a continual increase in the number of offenders sentenced to prison. To confront the latest problem of overcrowding 17 new institutions were built between 1945 and 1952 (Soothill, 2007). The ethos of the prison system during this period was to limit the rate of recidivism by treating persistent offenders effectively. The Prison Commission, established following the Prisons Act 1877, was abolished in 1963 and complete control of the prison system was assigned to the Home Office. Since the establishment of prisons they have been increasingly centralised by the state. Flynn (1998, p.35) explains around this time 'support for training and treatment programmes was gradually replaced by a growing emphasis on containment and the need for tighter managerial efficiency'. Three high profile escapes during the 1960s highlighted a crisis of containment, and resulted in the Mountbatten Inquiry. Published in

1966 the Mountbatten Report led to the categorisation of prisoners into 4 groups, A, B, C and D, according to the risk they posed. Those deemed to pose the highest risk, category A prisoners, were to be held in top security prisons whilst those at the bottom of the spectrum, category D prisoners, were to be held in open prisons. Scott (2007, p.53) highlights how 'prison life from this time on became increasingly characterised by a profound intensification and vigorous enforcement of the priorities of discipline, surveillance and control', a key theme from the outset of the incarceration.

Industrial unrest intensified during the 1970s as prisoners protested against a more severe and rigorous confinement. In 1979 Margaret Thatcher was appointed Prime Minister and proclaimed the biggest prison building programme of the twentieth century. Expenditure on prison building, repairs and development also increased severely, as did prison staff and pay (Sim, 2009). Eruptions of disorder and riots within prison walls were to remain a regular occurrence throughout the 1980s and 1990 was witness to the most extreme riot seen in the history of our penal system. Prisoners took control of HMP Strangeways in Manchester for 25 days causing tens of millions of pounds worth of damage. The riot spread to 20 other prisons across the country. The inquiry into the disturbances, led by Lord Justice Woolf and Sir Steven Tumin, drew attention to the ongoing problems within our prisons, including overcrowding, poor conditions, bad management and a sense of injustice among inmates. The government had published a White Paper in 1990 stating that 'prison can be an expensive way of making bad people worse. The prospects of reforming offenders are usually much better if they stay in the community' (cited in Flynn, 1998, p.41). This added together with the findings of Lord Justice Woolf culminated in the Criminal Justice Act 1991.

The Act sought to end overcrowding by encouraging judges to pass community sentences as well as introducing mechanisms for the early release of prisoners on parole. The Act was also the first to establish an agenda for contracting out the management of prisoners to the private sector (Flynn, 1998). Consequently following the implementation of the Act in September 1992 the prison population fell from 45,835 to 40,606 within three months (Cavadino and Dignan, 2007). Nevertheless the years that followed were subject to an extraordinary reversal of prison policy endorsed by the appointment of Michael Howard as Home Secretary in May 1993. Speaking in October 1993 Howard proclaimed 'prison works. This may mean that more people will go to prison. I do not flinch from that. We shall no longer judge the success of our system of justice by a fall in the prison population' (cited in Cavadino and Dignan, 2007). He made no mention of rehabilitation and stressed prison incapacitated and deterred offenders from further criminal behaviour (Flynn, 1998). Consequently by 1997 the population of inmates had reached 61,114, 51% higher than 5 years previous (Cavadino and Dignan, 2007). For Flynn (1998, p.18) 'the shift in policy which took place under Michael Howard was only the latest of many changes in the way that crime has been tackled over the years. Throughout the century, claims and counter claims concerning the overall purpose of imprisonment have resulted in major disagreements about how prisons should be run and what they are for. The consequence is that consensus on the purpose of imprisonment has never been reached in England and Wales'.

Chapter 3: The Sociology of Imprisonment

'Steal a little and they throw you in jail; steal a lot and they make you king'

Bob Dylan

The role of punishment in modern society is an extremely complex and intricate process and justifications for which are to a large extent ambiguous. Duff and Garland (1994, p.2) explain 'punishment requires justification because it is morally problematic. It is morally problematic because it involves doing things to people that seem morally wrong. It is usually wrong to lock people up'. This chapter endeavours to explore philosophical as well as theoretical justifications for the use of prison.

Emile Durkheim (1893) considers punishment as fundamental to society which encapsulates and reinforces its values. Social solidarity is deemed essential for harmony to occur; society can only function if a set of shared values and beliefs are in existence. At the time of Durkheim's writings many social conservatives feared industrialisation and the inevitable rise of individualism as well as the demise of a universal religious faith, as this would result in a conflict of individual interests and bring an end to social solidarity and a shared ideology. Durkheim however insisted that it was necessary for a shared ideology to reflect the current conditions of society and that industrialisation had promoted novel values such as freedom, compassion and reason. Additional moral developments would be necessary for the new conditions of society to manifest in the shared system of principles. Durkheim identified punishment as the key to developing any such moral developments (Garland, 1990).

Crimes are not universal and originate as societies 'progress'; no crime is predetermined and only becomes so because it opposes the 'conscience collective'. Durkheim (1893, cited in

Giddens, 1972, p.123-124) writes ‘we must not say that an action shocks the conscience collective because it is criminal, but rather that it is criminal because it shocks the conscience collective. We do not condemn it because it is a crime, but it is a crime because we condemn it’. It is for this reason that punishment is demanded. Thus Durkheim considers punishment to be motivated by vengeance and draws attention to an increasing desire to ensure that punishment fits the crime (Garland, 1990). Punishment achieves a natural solidarity, an unintentional reinforcement of shared beliefs and relations which give way to a shared ideology. Thus for Durkheim crime plays an important role in society by introducing new beliefs and in turn allowing progress. He argues that a certain rate of crime is healthy for society to function as it helps to create social cohesion (Valier, 2002).

The idea that the more a society develops the more lenient their penal strategies become is accepted. Garland (1990, p.36) explains how Durkheim considers ‘the intensity of punishment has tended to become less, as societies have become more advanced and, at the same time, deprivation of liberty by imprisonment has emerged as the preferred form of punishment’. Durkheim also highlights how a fall in penal austerity has gone hand in hand with a rising dependence upon the prison, thus viewing the prison has a lenient form of punishment. He describes how industrialisation and the rise of individualism have led to an increase in social mobility, necessitating places of confinement for offenders waiting trial. At the same time material conditions, such as fortresses, city walls and gates, as well as the development of military forces, arose and provided the architectural and managerial conditions required for incarceration. Durkheim argues that as other punishments were fading away the prison eventually became a form of punishment within itself (Garland, 1990).

Michael Ignatieff (1983) draws our attention to philanthropic and religious reformers, as well as Jeremy Bentham, who strived to convince politicians that punishments of the body, such as torture and hangings, often carried out in public, were inhumane and barbaric, and that a new form of punishment of imprisonment and hard labour could be equally punitive but humane and even reformative. Even so by drawing upon the work of David Rothman’s *The Discovery of the Asylum* (1971) and Michael Foucault’s *Discipline and Punish* (1978) as well as his own, Ignatieff explains that the motive for reform was not simply a revolt against brutality but a reflection of class power and ambitious attempts at changing the offenders character. Nevertheless this does not explain the increasing use of imprisonment during the eighteenth century. Ignatieff draws our attention to the discontinuation of transportation in 1776 but highlights how reformers advocated penalties such as hard labour and public fines as opposed to imprisonment.

Cohen (1985, p.23) explains ‘Ignatieff’s history rejects ‘economic determinism’ and ‘Marxist functionalism’. Nonetheless his work does focus around class conflict; as a consequence of capitalist social relations, the expansion of city populations and a rise in crime, reformers feared for social order. Thus prison was not merely a response to crime but also the social crisis during the eighteenth century (Garland, 1990). Religious reformers, as well as others advocating change, such as progressive employers, magistrates and politicians held their own motives for reform. Firstly was a fear of social disorder; second was their political self interest. In addition there were the religious beliefs of reformers as well as their sense of guilt; members of the capitalist classes accepted they were in some way responsible for the rise in criminal behaviour. Ignatieff (1978) outlines how the prison presented a vision of control and functioned to establish the morality of law and order. Furthermore Ignatieff (1983, p.89) explains ‘there cannot be much doubt that the new strategy of mass

imprisonment...in the 1830s, 1840s and 1850s must be seen as a 'response' to the crisis of public order'.

For Michael Foucault prison is a form of social and political control for the wider society and not just an institution which controls crime and criminal behaviour. He highlights how the eighteenth century witnessed an increase in incarceration; a period referred to as 'The Great Confinement' (Foucault, 1971). Drawing upon the work of Foucault, Muncie (1991, p.177-178) describes how 'the reform of prisoners, education of children, confinement of the insane and supervision of industrial workers all form part of an emerging 'carceral society'. Foucault rejects Durkheim's account and regards prison as simply an institution of power and regulation thrust upon a population and argues how punishment shifted its target from the body to the mind, intending not to take vengeance on the criminal act but to alter the behaviour of the offender. He suggests that prison became concerned with the offender's personality, seeking to understand the reasons behind the criminal act so as to intervene and put an end to any further disobedience. A consequence of such intervention was the proliferation of experts, such as social workers, psychiatrists, and criminologists into the legal process (Foucault, 1977).

When offering an answer as to why prison emerged as a modern form of punishment, Foucault draws our attention to how public executions in France increasingly resulted in rebellious scenes whereby authorities were ridiculed and the condemned offender was converted into a martyr. Towards the turn of the eighteenth century more and more onlookers began to revolt against what they deemed as an unjust attack on 'one of their own' (Garland, 1990). David Phillips (1983, p.64) outlines 'it was the problem of coping with the new urban masses, seen, in the wake of the French and Industrial Revolutions, that fuelled the vigorous debate on the dangerous and criminal classes and the best strategies for maintaining law and order'. He adds that the growth of towns and cities following the Industrial Revolution resulted in previous methods of maintaining law and order becoming redundant. Along with the school, the workhouse and the factory, the prison symbolises the efforts by the state to embed a novel kind of discipline and order into a newly industrialised society.

Much like Ignatieff, Foucault considers the motive for reform to be not a revolt against brutality but an outcome of a change in criminal behaviour, which had become more property orientated and professionalised. The growth of warehouses, factories and workshops, resulted in an increasing risk of theft. Added to this was the expansion of a capitalist economy resulting in the middle classes becoming less tolerant of working class delinquents. Tax and rent avoidance was common, as well as property theft and as a result a more meticulous and uniform system of justice was called for, which would serve to deter the criminality of the working class in a novel and efficient approach. Punishment was modified to combat crime in modern society (Garland, 1990).

Foucault describes how reformers advocated a less barbaric response to criminals and called for the punishment to reflect the offence, thus the sentence would symbolise the law and not political power. He adds that reformers wished for the penalty to be publicly displayed, setting an example for everyone to see. This would mean an assorted array of appropriate public punishments would be required. However this did not occur, what did was the increasing use of imprisonment, which became the model punishment for most offences. Foucault outlines how the emergence of the modern prison did not reflect the wishes of those advocating reform (Foucault, 1977).

Foucault draws attention to the realisation that the body could become a target of power, and improved and controlled without the use of violence. He highlights institutions such as the military, hospitals, schools and workhouses, and how from the sixteenth century onwards, techniques were introduced to control the body. Drawing upon an example of the army, it was the introduction of ranks and files which brought order to a mass of individuals, so each could be inspected in turn; this was soon implemented in schools and workhouses. This meant that bodies could be trained into useful 'machines' and trained to carry out tasks. This procedure requires an assessment of the individual in order to ascertain their behaviour and movements, examination arrangements and surveillance are essential for acquiring such knowledge. In addition by implementing exercises and regime individuals are encouraged to become more self-controlled. The Panopticon, designed by Jeremy Bentham, is regarded by Foucault to exemplify the desire for such knowledge and power (Garland, 1990).

The function of the prison offered new information concerning the criminal that was previously unobtainable. The observation and assessment of prisoners led to the study of individual offenders, to identify what separated them from non-offenders and for what reason they engaged in criminal behaviour. (Garland, 1990, p.148) explains that 'in this sense, the prison led to the discovery of the delinquent'. Thus for Foucault the prison did not discover the criminal but merely created them. Offenders were so categorised and dejected whilst in prison, it was inevitable that upon release they would re-offend, thus turn to a life of crime. By creating the criminal the prison is successful in dividing the working classes, separating crime and politics, and by intensifying the fear of prison, the influence and power of the police is maintained. Furthermore the prison ensures that the career criminal is known to the police allowing for their continued management and surveillance, for this reason the working classes are encouraged to elude the criminal ranks to avoid the threat of prison. Garland (1990, p.150) concludes that 'on this account then, the prison does not control the criminal so much as control the working class by creating the criminal, and, for Foucault, this is the unspoken rationale for its persistence'.

As advocates of Marxism, Georg Rusche and Otto Kirchheimer reject the link between crime and punishment, and highlight the successive alterations in the mode of production which occurred simultaneously with changes to the infliction of punishment. In their discussion on the emergence of prison they discard any notion of a pursuit for a more humanitarian approach, but suggest a mere concern for a more productive labour force (Valier, 2002). Our attention is drawn to transportation, they argue that such a sentence was not a result of a more benign method of punishment, offering criminals a fresh start, but simply a means of solving the shortage of free labour in the colonies during a time when there was an excess of labour in England (Mathews, 1990).

The motive for reform was not humanity but economics, Muncie (1991, p.174) explains that 'they argue that the shift from corporal and capital punishment to systems of incarceration was rendered necessary by the underlying aim of capitalism to socialise production and create a submissive and regulated workforce'. The modern prison was intended to instil discipline and control, thus ensuring the criminal eligible for the marketplace. In the main however the focus of their work was to identify why it was that certain modes of punishments were employed above others through the course of history. They argue that penal policy is simply an additional means of controlling the poor. Georg Rusche (1933, cited in Garland, 1990, p.91) disputes that 'the criminal law and the daily work of the criminal courts are directed almost exclusively against those people whose class background, poverty, neglected education, or demoralisation drove them to crime'. He adds that the history of punishment is a history of class relations between the bourgeoisie and proletariat. Writing some years later

Stanley Cohen was of the same opinion of Rusche and Kirchheimer and considers prison as a repressive form of social control and the product of tension between classes in a capitalist society. Whilst protecting and endorsing the interests of the bourgeoisie, the political and economical suppression of the working class is preserved. Cohen questions the motive for reform and suggests society, including the reformers themselves, were under the false impression that the changes which occurred were rational, benevolent and progressive (Cohen, 1985).

Chapter 4: Loic Wacquant and the Mass Imprisonment of African Americans

'It is only after slavery and prison that the sweetest appreciation of freedom can come'

Malcolm X

Loic Wacquant draws our attention to the extraordinarily high prison populations, witnessed in advanced societies at the turn of the twenty first century and argues how imprisonment can be implemented as a means of controlling social insecurity. Wacquant (2001a, p.404) explains how 'we observe a spectacular rise in the number of people being put behind bars as the state relies increasingly on the police and penal institutions to contain the disorders produced by mass unemployment, the imposition of precarious wage work and the shrinking of social protection'. He adds how, in America, prison has replaced black ghettos as a mechanism for the domination and suppression of a worthless population. This is outlined in his work *Deadly Symbiosis*.

Published in 2001 *Deadly Symbiosis* seeks to explain the over-representation of black male prisoners which has led to mass imprisonment in the United States. Attention is drawn to a sequence of four 'peculiar institutions' which have sought to suppress African Americans throughout the previous 400 years. Wacquant first discusses slavery as a means of suppression, followed by the Jim Crow laws and subsequent regime. Next he argues the emergence of the urban black ghetto as a means of controlling African Americans before disputing how it is now the function of the carceral system to control and dominate a superfluous population. For Wacquant the ghetto and the prison have almost become interchangeable, for their functions, structures and cultures are not dissimilar. Both consist of young black males considered superfluous to a deregulated wage-labour market. Furthermore economic and political forces have resulted in the ghetto functioning more like the prison, while the prison has come to operate more like the ghetto (Wacquant, 2001b).

The number of imprisoned black males in the United States has escalated at a rate never witnessed before. African Americans, together with Latin Americans, now comprise nearly 70% of the US prison population. Wacquant refers to the 'War on Drugs' launched by Ronald Reagan, as the catalyst for the ever increasing rates of imprisonment, as well as the mounting disparity between white and black inmates. Some parts of the US have witnessed the imprisonment of black males at a rate ten times higher than those of European origin. A study by Mauer (1997) is cited, which established how in the District of Columbia, during 1994, blacks were thirty five times more likely to be incarcerated than whites (ibid).

Wacquant argues that slavery, the Jim Crow regime witnessed in the South, and the emergence of urban ghettos in Northern industrial cities, did not only accomplish the recruitment, management and attainment of labour from African Americans, but also ensured their exclusion from society so the nearby 'white neighbourhoods' were not 'infected' by a 'lesser' and 'worthless' race. Nevertheless each 'peculiar institution' would eventually face black resistance and external conflict giving way to the successor regime. During the years 1619-1865 it was slavery which confined and inhibited the life chances of Americans from African descent. By 1808 four million slaves made up North America's labour force and Wacquant (ibid, p.100) adds 'the increase in life expectancy, the growth of the tobacco trade, the need to encourage further voluntary immigration and the relative powerlessness of African captives compared to European migrants and native Americans combined to make slaves the preferred source of labour'.

Slavery was abolished in 1865; the liberation of African Americans nevertheless threatened their suppressors in two ways. Initially, an expensive and copious workforce no longer existed, furthermore the acquirement of political and universal rights by the black community had the potential to bring to an end their suffering and oppression. However numerous bills were passed to ensure those formerly held captive would remain powerless. Wacquant (ibid, p.100-101) outlines how 'the Jim Crow regime of racial segregation was born which would hold African Americans in its brutal grip for nearly a century in the Southern states and beyond'. Their opportunities for wealth were rigorously impeded, they were forbidden to attend churches and schools along with whites and their education was far inferior to that of their white counterparts. Furthermore they were denied the vote through an array of obstructions ranging from literacy tests, residency requirements and 'grandfather clauses'. Most essential to Wacquant's thesis was the management of blacks into separate neighbourhoods, as well as the segregation of public facilities, such as transportation, movie houses, parks and beaches.

The Jim Crow regime, witnessed in the South, meant millions of blacks escaped the Southern states of America as soon as the opportunity arose. The journey to Northern cities, such as Chicago, Detroit, Philadelphia and New York promised freedom and opportunity. Although their life chances and conditions improved, their desires for racial equality and economic security were still nullified. This time the mechanism used for their containment was the urban ghetto. Wacquant (ibid, p.102) illustrates how 'patterns of ethno-racial discrimination and segregation that had hitherto been inconsistent and informal hardened in housing, schools, and public accommodations, such as parks, playgrounds and beaches'. Jobs were restricted to low-paid, low-skilled, and often physical or servant work and any attempts at settling outside the ghetto resulted in blacks suffering assaults while their homes were attacked by 'neighbourhood improvement societies'. They had little option but to take sanctuary and protection from white rule inside their isolated ghetto.

It is the isolation, closure, separation and control, that the ghetto subjects African Americans to, that gives way for Wacquant's comparison with the prison. He disputes 'this kinship explains why, when the ghetto was rendered inoperative in the sixties by economic restructuring that made African American labour expendable and mass protests that finally won blacks the vote, the carceral institution offered itself as a substitute apparatus for enforcing the shifting colour line and containing the segments of the African American community devoid of economic utility and political pull' (ibid, p.103). Attention is drawn to the dramatic fall in manufacturing establishments and demand for production workers in Chicago during the 1970s, consequently the requirement for black labour was in decline and 'for the first time in American history, the African American was no longer needed in the economic system' (ibid, p.105). As a result the ghetto now functions to simply control a superfluous population. By the 1980s the ghetto had changed dramatically, redundant stores and abandoned buildings were plentiful and the institutions now set up are state organisations, offering degrading welfare programmes, rundown housing and inadequate health and education bodies, characteristic of third world countries.

Furthermore, and most crucially, law enforcement agencies are now operating more and more within ghettos. Wacquant highlights how widespread crime became customary to the Chicago ghetto and how 'resort to violence is the prevalent means of upholding respect, regulating encounters and controlling territory' (ibid, p.107). He refers to the 'prisonisation' of public housing when comparing the ghetto and prison as homeless shelters, retirement homes and hostels, all replicate and appear like incarceration establishments. Furthermore residents of the ghetto are subjected to security patrols, identification checks, random searches, curfews

and resident counts; all procedures recognisable in prison administration. The Chicago Housing Authority has even resorted to establishing its own police force. Wacquant (ibid, p.108) draws our attention to the observation of an elderly resident in the District of Columbia, 'it's as though the children here are being prepared for incarceration, so when they put them in a real lock-down situation, they'll be used to being hemmed in'. Moreover public schools do not operate to educate, but to ensure security and control, and resemble many prison institutions.

Jerome Miller (1997, p.2) highlights how 'meanwhile, federal, state and local funding of the justice system literally exploded in the 1980s'. The police budget increased by 460% and the money provided to the courts increased even further. By 1990 the apprehension and imprisonment of offenders was costing the United States \$75 billion per annum, and by the middle of the decade the crime control industry was spending over \$200 billion every year. He adds (ibid, p.2) how 'the white majority embraced the draconian measures with enthusiasm, particularly as it became clear that they were falling heaviest on minorities in general and on African American males in particular'.

It is not only the ghetto that has altered but also the prison system, which as Wacquant (2001b, p.109) argues 'gave way to a race-divided and violence-ridden warehouse, geared solely to neutralizing social rejects by sequestering them physically from society'. Our attention is drawn to the racial division witnessed in many American penitentiaries today; the life of a prisoner, including the probability of becoming a victim of violence, is predetermined by their ethnicity, much like within the ghetto. Furthermore street gangs are now prominent within the carceral system and control any illicit economy giving way to an unbalanced and violent prison, in which hostility and disorder is witnessed in the same way as the ghetto. The notion of rehabilitation is far from any US penal thought and the sole purpose of the carceral system is to remove offenders from society, this 'makes the mission of today's prisons identical to that of the classical ghetto, whose *raison d'être* was precisely to quarantine a polluting group from the urban body' (ibid, p.112). The prison has become the ghetto, law and order, and right and wrong are not present; central to the prisoner's mindset is survival and there is no place for reform or rehabilitation.

The prison is associated with the ghetto even further as offenders are subjected to additional penalties beyond their release, the average length a prisoner spends on parole has gradually increased over the previous 20 years and at the same time probation services have increasingly concentrated on security and control, at the expense of housing assistance, occupational training and addiction treatment. Over half of all offenders fail to complete their parole and this group makes up a third of all prisoners. Moreover the records of offenders are made available by authorities in many states across Northern America so potential employers and landlords can readily access the records of ex-offenders on the internet, giving way for further discrimination.

The resemblance between the ghetto and prison is outlined further in that an overwhelming majority of prisoners originate from black discriminated neighbourhoods; during the 1980s three out of every four prison inmates in New York lived in one of only seven black and Latino neighbourhoods throughout New York City. These inmates are housed in institutions controlled by officers who are disproportionately white. Thus for Wacquant the prison is very much a means of controlling a superfluous population. Moreover prisoners are prohibited from entering further education, in an attempt to split the divide between criminals and 'law abiding citizens' further still, even though educational programmes have proven to reduce recidivism. Ex-prisoners are also denied public aid, such as Medicaid, public housing and

other forms of assistance. This oppression outside of prison walls has led Wacquant (ibid, p.121) to conclude that ‘lower class African Americans now dwell, not in a society with prisons as their white compatriots do, but in *the first genuine prison society* of history’.

Chapter 5: Discussion

'Law grinds the poor and rich men rule the law'

Oliver Goldsmith

Durkheim's thesis is often rejected when analysing punishment in modern society as much of his work is drawn from ancient or small scale civilisations. He considers punishment to be 'propelled by irrational, emotive forces which sweep up society's members in a passion of moral outrage' (Garland, 1990, p.26). He writes that actions only become criminal because they oppose the 'conscience collective' and result in ceremonial rituals, often marked with religious overtones, against the offender in order to restore moral order and introduce new beliefs.

Even so emotive acts of revenge no longer constitute punishment and have been replaced by a rational criminal justice system; today the public is not immediately responsible for the administration and supervision of punishment. Durkheim identifies this but remains adamant that public outrage and resentment still provide the motivation for punishment which is merely controlled by the state. He fails to acknowledge that punishments inflicted by central government are not always met with agreement by members of society; indeed many social commentators, including Wacquant, have argued for the abolishment of prisons (Sim, 2009). In 2007 former frontbench Liberal Democrat MP Mark Oaten suggested abolishing all prisons (BBC News, 2007). He argues they are ineffective and should be replaced with drug rehabilitation units, education and training centres along with mental health units.

Furthermore at the time of Durkheim's writings Parliament only represented a tiny minority of the general population as only 3% were entitled to vote. Parliament was elected by the aristocracy who made laws to benefit themselves (Crime and Punishment, 2007). Nevertheless Durkheim argues that a certain rate of crime is healthy for society to function; this cannot be ignored as criminal behaviour creates employment. If criminal behaviour was eradicated then 44,000 prison officers (Joyce, 2006), 141,000 police officers (Home Office, 2011) and 20,000 probation officers (National Offender Management Service, 2005) would find themselves unemployed, along with magistrates, judges, social workers, lawyers, criminologists and alike. However, this results in the predicament of what to do with those who transgress from the law.

Those who broke the law towards the end of the eighteenth century were subjected to torture and often sentenced to death. As the ruling classes sought to protect their interests' trivial crimes such as 'stealing turnips, writing threatening letters or impersonating an outpatient of Greenwich Hospital' (Hopkins Burke, 2005, p.3) were punished by the death penalty. Today similar trivial acts, such as smoking in public or failing to obtain a passport for a pet donkey (Scott and Codd, 2010) can result in a term of imprisonment. Michael Ignatieff (1983) argues the transformation from capital punishment to imprisonment was not simply a revolt against brutality but a reflection of class power and attempts at changing the offender's character; and overall a response to social disorder. The prison was valued as 'reformers succeeded in presenting it as a response, not merely to crime, but to a whole social crisis of the period, and as part of a larger strategy for political, social and legal reform' (Garland, 1990, p.126).

In 1789 the French Revolution began, which had a significant influence on British politics as leading politicians were 'fearful that revolution would spread to Britain' (BBC History,

2011). In addition the Industrial Revolution was gaining momentum and as a result towns and cities were expanding, as was warehouses, factories and workshops (Philips, 1983). Consequently crime rates were increasing and a new strategy for maintaining law and order was essential. Public executions in France increasingly resulted in rebellious scenes and the condemned offender was often viewed as a martyr, furthermore onlookers began to revolt against what they deemed as an unjust attack on one of their own. As a result imprisonment became the model punishment for most offences (Foucault, 1977) and in 1816 the first prison institution to be paid for by central government opened at Millbank (Flynn, 1998).

Foucault (1977) suggests that as a result of imprisonment punishments altered their target from the body to the mind in an attempt to amend the criminal's behaviour and put an end to any future disobedience; this epitomises the power of the state over the criminal. Even so the reformation of prisoners can only be construed as progression in an attempt to prevent criminal behaviour. Speaking in 2010 Justice Secretary Kenneth Clarke declared 'just locking people up without actively seeking to change them is what you would expect of Victorian England' (cited in Travis and Sparrow, 2010). Foucault adds that the prison does not merely control the criminal but control the working class by creating the criminal and that this is 'the unspoken rationale for its persistence' (Garland, 1990, p.150). He offers little evidence for such an assumption but this could be compared with the notion of general deterrence. By punishing an offender with a term of imprisonment others will be deterred from committing the same offence (Coyle, 2005).

However an overwhelming number of prisoners originate from working class backgrounds (Social Exclusion Unit, 2002) even though white collar crime has been increasingly exposed. Such crimes can drastically reduce government resources and even result in death through negligence. Tombs (1999, p.77) argues the number of unlawful workplace deaths 'vastly outweighs the number of recorded homicides'. During 1994-95 as many as 1316 deaths occurred through the course of employment. Even so Croall (2001, p.1) states 'although these activities are subject to criminal law and criminal justice, they are not regarded as crime in the same way as burglary, robbery or assault, and they are less likely to promote calls for tougher policing and punishment'. In 1998 only 4,100 offenders out of 19,600 who were convicted of fraud were sentenced to custody. Furthermore of men aged 21 and over only 57% convicted of fraud were imprisoned, compared to 79% convicted of burglary and 92% convicted of robbery.

For Foucault prison is a form of social and political control for wider society and not just criminals. The notion of political prisoners is not often associated with a democracy such as the UK. However following 9/11 and the 7/7 bombings in London draconian laws were passed for fear of social security and the consequences for some were extreme. A vast array of legislation was passed and in 2004 terror suspects were detained in HMP Belmarsh for 3 years without the right to trial (Crime and Punishment, 2007). Furthermore under counter-terrorism laws the police have the power to detain terror suspects for 28 days without charge (Travis, 2011). Waugh (2001) highlights how 'internment without trial has been used before, for example against Northern Ireland terrorist suspects in the 1970s and German citizens during the Second World War'. When national security is placed under threat the law offers a fine balance between protecting people and providing them with freedom. Crime and Punishment (2007) disputes 'we all want laws to protect us but if we take our eye off the ball they can all too easily be used to control us'.

Rusche and Kirchheimer argue a desire for economic gain and a 'submissive and regulated workforce' (Muncie, 1996, p.174) was the reasoning behind the expansion of prison. This may have been accurate during the Industrial Revolution but they offer no explanation for high prison population rates during times of economic downturn. However Loic Wacquant (2001b) draws attention to the disorders produced by mass unemployment and the imposition of precarious wage work which has led to a spectacular rise in the number of people being put behind bars. Rusche, Kirchheimer and Wacquant noted however that those behind bars are often those who are socially excluded and 'whose class background, poverty, neglected education, or demoralisation drove them to crime' (Rusche, 1933, cited in Garland, 1990, p.91).

Prisoners in England and Wales are often those considered superfluous to society and are 'largely the poor and disadvantaged, those with mental health needs and drug or alcohol addictions' (The Report of the Commission on English Prisons Today, 2009, p.11). This dissertation does not advocate the abolishment of prison and accepts a proportion of offenders are a danger to society and should therefore be incarcerated; offences such as murder, rape and violence should result in imprisonment. In 2009 however these offenders only accounted for 32,290 prisoners out of a total of 81,831. Robbery, burglary and theft accounted for 24,163 prisoners (Ministry of Justice, 2010). Such acquisitive crime is often committed in order to fund drug addiction. Philip Bean (2002) estimates 'a male drug user is likely to commit 80-100 serious property offences per year'. Moreover evidence indicates high levels of drug use are associated with high levels of crime. Poverty, unemployment and social exclusion are all associated with drug use (Drugscope, 2010). Drug offenders themselves accounted for 12,615 inmates (Ministry of Justice, 2010). A large proportion of these prisoners will re-offend upon release; 'fifty eight percent of all adults, 78% of all young offenders under the age of 21, and 88% of all children aged 15-18 reoffend within 2 years of release' (Ramsbotham, 2005, p.70).

In 1997 the New Labour government introduced a variety of social and economic policies to address the problems highlighted by the Social Exclusion Unit. Attempts were made to tackle social factors perceived to contribute to crime, such as reducing unemployment, truancy, exclusion, income inequality and improving literacy levels of children in care. The new government also aimed to abolish child poverty within 20 years. Joyce (2006, p.454) outlines how 'Labour's approach to social exclusion further reflected the belief that children who were exposed to multiple risks were more likely to offend'. Nonetheless the disparity between the rich and poor, urban decline and social disadvantages including child poverty were not improved and Labour failed to achieve its targets; the gap between the rich and poor actually increased (Joyce, 2006). Furthermore the Labour government introduced over 3,000 new criminal offences whilst in power, many increasing the authority of the state and police (Crime and Punishment, 2007). Consequently prison population rates continued to rise at record levels and the Ministry of Justice anticipate that the number of offenders behind bars will reach 95,800 by 2015 (Scott and Codd, 2010).

Chapter 6: Conclusion

'Jails and prisons are the complement of schools; so many less as you have of the latter, so many more must you have of the former'

Horace Mann

Although the earliest use of imprisonment dates back to the ninth century prisons in the modern sense became the prominent form of punishment around 200 years ago. Prior to this transportation was in regular use, however as a result of the American War of Independence in 1776 offenders had nowhere to be sent and Parliament began to search for alternative punishments. The notion that imprisonment could be used as a key punishment was embodied in the Penitentiary Act 1779. Nevertheless following the colonisation of Australia in 1788 a further one hundred a sixty thousand convicts were sentenced to transportation. Rusche and Kirchheimer argue that transportation was a means of solving the shortage of free labour in the colonies during a time when there was excess labour in England. However by the nineteenth century the Industrial Revolution was well underway and as a result transportation had been abandoned. By this time the government had gained control of prisons and the reformation of offenders proved a focal point. Thus during this period the primary intention of imprisonment was to create a submissive and regulated workforce.

Along with transportation the death penalty was a common form of punishment as the ruling class sought to protect their interests. Shortly before the nineteenth century offenders were put to death for trivial crimes such as writing a threatening letter or stealing turnips. During the 'Bloody Code' over 10,000 offenders were sentenced to death. However the French Revolution had begun where public executions increasingly resulted in rebellious scenes that resulted in the condemned offender being converted into a martyr. Moreover onlookers began to revolt against an unjust attack on 'one of their own'. Parliament was fearful that revolution would spread to Britain and a novel form of punishment was desired. Moreover the expansion of cities and the growth in warehouses and factories as a result of the Industrial Revolution meant that crime rates were rising. Thus it was a result of the crisis over public order in the wake of the French and Industrial Revolutions that prisons became the prominent form of punishment.

Agreement on the function of imprisonment has never been reached in England and Wales and there exists no universal agreement over the rationale of imprisonment. Even so four explicit functions have been identified, which include the protection of the public, rehabilitation, deterrence and as a punishment in its own right. Today, the notion of rehabilitation has found prominence once again in our prison system. There are also prisoners who are ineligible for parole in order to protect the public. Moreover prison also operates as a deterrent; thus these explicit functions can operate together. However this dissertation has shown that the rate of imprisonment is not determined by crime rates; therefore other factors seem to influence the rate of imprisonment in England and Wales.

Rusche and Kirchheimer draw attention to economic gain and a submissive and regulated workforce as the rationale for imprisonment; this may be the case during the Industrial Revolution but this notion is rejected during times of economic downturn.

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