



Punishment and the Political Technologies of the Body

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INTRODUCTION: REVISITING THE BIRTH OF THE PRISON AND THE REAWAKENING OF THE SOCIAL STUDY OF PUNISHMENT

In important respects the 1970s was the foundational moment for the revival of punishment and society as a distinct and productive intellectual field at the intersection of criminology, sociology, political science and history. We can point to multiple intellectual sources of emergence in the decade. In the UK, and the USA British cultural studies (Cohen, 1973; Hall et al.), radical criminologies (Platt, 1977; Taylor et al., 1973) and historians studying crime and society in 18th-century England (Hay et al., 1975; Thompson, 1976) all rediscovered Durkheim's interest in the relationship between crime and social order (Garland, 1990).

On the continent two books written quite independently helped bring punishment and its forms and methods to the fore of this new interest in criminal justice; *Discipline and Punish: The Birth of the Prison*,¹ written by French philosopher and historian Michel

Foucault (1977) and published in French in 1975, and two years later, the *Prison and the Factory*² written by Italian sociologists Dario Melossi and Massimo Pavarini (1981). Perhaps more than any other contributions, these two books helped to awaken the sociology of punishment from its long 20th-century slumber.

Discipline and Punish and *The Prison and the Factory* shared a focus on the transformations in the form of punishment at the end of the 18th century, 'the birth of the prison' as the Foucault put it, and the 'origins of the penitentiary' as Melossi and Pavarini did. This historical moment was critical for all these themes that were reanimating punishment and society, the problematization of crime rates, the beginnings of a rehabilitative focus to punishment, a moment of profound social and political revolution. These were not the only studies at this time reexamining this phase of penal history, but compared to others historians who focused more on changes in the political and moral ideas associated with punishment at the end of the 18th century (Rothman, 1972; Ignatieff, 1979) the two books shared attention to the

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precise relationship between changing forms of punishment and developments in the available schemas for coordinating and controlling human bodies to produce power or political authority, or as Foucault framed it to 'try and study the metamorphosis of punitive methods on the basis of a political technology of the body in which might be read a common history of power relations and object relations' (1977: 24). Each book examined the early prison and many of the same carceral practices that had preceded it (like the work house), not from the perspective of it is determined by either crime or law, nor even as a function of some generalized features of the social order, but for its capacity to harness effective technologies of power over the body.

This approach was a radical break from the classic works of the sociology of punishment, including both Rusche and Kirchheimer's (1939 [2003]) analysis of punishment with respect to labor markets,³ and Durkheim's 1892 (1997) analysis of punishment with respect to social solidarity. While Rusche and Kirchheimer and Durkheim moved the study of punishment away from an exclusive focus on law and crime, they treated penal practices themselves as mostly a reflection of the social structure in which they were being deployed. Their powerful insights about the work punishment does in society are often accompanied by fairly superficial analyses of how punishment is actually carried out and what it does to those subjected to it. It is *Discipline and Punish* and *The Prison and the Factory* that the 'how' of punishment comes sharply into focus.⁴ Today this focus punishment in relation to technologies of power continues to shape a great deal of work in punishment and society (Shalev, 2009; Garland, 2010; Harcourt, 2011).

In this chapter, I want to extract the analytic approach of studying the changing forms of penal practice in relationship to technologies of power over the human body and its conduct and relations from the specific case of the birth of the prison to which both *Discipline and Punish*, and *The Prison*

and *the Factory*, were dedicated. Both books were primarily concerned with understanding the emergence of the penitentiary in the context of the 18th and 19th centuries, and the emergence of an industrial capitalist economy. Both studies focused readers on the importance of discipline as a specific (if very broad) technology of power that was crucial to the emergence of the penitentiary as the solution to the political problems of traditional forms of outdoor physical punishment that had come under scrutiny at the end of the 18th century. This creates a significant problem for contemporary students coming to the study of punishment in the early 21st century, at a time when resurgent global capitalism has little interest in disciplining a domestic working class (finding it cheaper to search globally for culturally docile ones), and when the disciplinary logic of the prison has largely been superseded by other penal projects, especially in the USA, the exclusionary logic of 'mass incarceration'.

This chapter aims at recovering the productive potential for analyzing punishment as a political technology, by suggesting that Foucault, and Melossi and Pavarini demonstrate an analytic approach that can be useful well beyond the specific historical terms of its application in their celebrated books, and by examining the work of subsequent authors who have pursued this kind of analysis in revisiting the history of the prison, and moving forward in history through two other periods of profound change in punishment in many industrial and post industrial societies.

To speak of a technology of power, or a political technology,⁵ is not to engage in a metaphor. Foucault is not suggesting that the intellectual schemas he extracts from the emerging vision of the prison are can be analogized to machines. Technology comes from the Greek *techne* meaning 'art, skill or craft'; it is, in that sense nothing technological in our common sense of machine operated. It would be a mistake in this context, to conflate penal technologies, like say the electric chair, or the one piece toilet sink

used in many modern cellular prisons, and the political technologies of the body upon which a broad configuration of the power to punish rests. Tools and techniques are part of technology, but it also includes ‘crafts, systems, or methods, for organization in order to solve some problem or serve some purpose’ (Wikipedia). A political technology of the body, then, is a craft, system, or method for organizing bodies to produce specific effects that have a political value or purpose. Punishment is a political technology in this sense, but changes in how punishment is carried out can also be related to the circulation of technologies of power from elsewhere into the penal field.

The focus on punishment and political technologies should not lead us to ignore institutions, specific techniques, or penal actors and their strategies and projects. Any particular penal institution, such as capital punishment, imprisonment or even the fine, has a history of its own and is shaped by a variety of factors. Technologies of power are only part of the ensemble of determining the features of penal institutions over time. They become particularly important, I will argue, when institutions are undergoing profound pressure for change, and activists and reformers are seeking new strategies and projects to address suddenly apparent scandals or flaws in the operation of traditional institutions and practices. In doing so they will often promote a particular technique, for example, isolation or the silent system in the early penitentiaries.

I argue that analyzing change in penal methods through political technologies provides a productive ‘middle range’ framework that can help identify and organize evidence about specific practices and techniques at the micro-level, and probe the relationship between changing penal institutions and practices and developments in political and economic structures of society at the macro-level. Foucault was a great generator of evocative analytic terms, writing variously of technologies, strategies and rationalities,

as well as *dispositifs* the overall ensembles or structures that bring them together to anchor the exercise of power at particular times and places. However, the researcher in punishment and society does not have to adopt this whole framework, to make productive use of the analytic strategy of reading penal change through technologies of power. But rather than working this term into the broader structure of Foucault’s terminology (e.g. bio-power, governmentality, etc.) it is more valuable to see the analytic work that political technologies do in Foucault research, as comparable to what social theorists, such as Pierre Bourdieu (1986), get from their analysis of differential capitals, and sociologists of science, such as Bruno Latour (1987), get from concepts such as ‘black boxing’ or ‘actor/network’.

Both *Discipline and Punishment* and *The Prison and the Factory* gave their central focus to ‘discipline’, a technology of the body which according to Foucault, combined surveillance or monitoring, corrective exercise and examination to constitute control over a group of individuals but in ways that also make them as a larger ensemble, more productive and effective. Both books identified the continuity between the disciplinary colonization of the spaces and procedures of penal justice in the 18th and 19th centuries and contemporary prisons and the broader criminal justice field (as of the 1970s). Many readers ever since have taken the point to be the relationship between prison and discipline, or a disciplinary technology of power, or even, more misleadingly, ‘disciplinary power’. In the first decade after both books were published, many students of punishment and society debated whether the modern correctional field, as it still existed in the early 1980s with many of the institutions of ‘penal-welfarism’ (Garland, 1985) still functioning, for example, parole, probation, juvenile justice, correctional prisons, were best understood as an extension of the disciplinary technologies associated with the rise of the penitentiary, or as developed through

brining in new and distinctive technologies to the field of punishment (Cohen, 1979; Bottoms, 1983; Mathiesen, 1983; Shearing and Stenning, 2003; Garland, 1985). In the intervening decades, penal welfare has itself been transformed by a new wave, especially in the USA, of prison expansion and reshaped by the imperatives of incapacitation, control, and containment (Feeley and Simon, 1992; Garland, 2001a; Wacquant, 2009).

In making sense of penal change I will argue it is most productive to think of the disciplines as just one political technology that has shaped the evolution of punishment. For any period of transformation, for example from the late 18th century to the 1830s in the USA (Meranze, 1996) and parts of Europe, or the 1880s through the 1920s in the UK (Garland, 1985), it makes sense to explore the full range of political technologies available to help rework the methods of punishment, and try to make sense of why certain ones prevail.⁶ For analytic purposes, I argue that it is most productive to think about three historical periods including and following the birth of the prison, in which the array of modern penal techniques have been reworked by the introduction of new technologies of power. Table 3.1, provides a schematic over view of these periods.

These are the birth of the ‘penitentiary’ in the 19th century, the advent of ‘penal-welfarism’ (or ‘the social’) that includes the development of new penal institutions like probation and juvenile justice in the early 20th century, and the development of mass incarceration (Garland, 2001a; Western, 2006) in the late 20th and early 21st centuries. Reality is, of course, too complicated for matrices, whether with two rows or three, especially when we look across the variety of penal cultures in the world today. Even focusing on the advanced industrialized and liberal societies of the West (Europe, North American, parts of Asia and Australia), there is more diversity than can be artfully projected on paper. For present purposes however, the fiction of uniformity can be usefully

adopted for the first two periods. The rise of the penitentiary style prison was widely adopted across the advanced societies by the middle of the 19th century. Likewise, the second wave of transformation, around penal-welfarism, was widely adopted between the end of the 19th century and the middle of the 20th century. In the third period however, there is rather more divergence than can be captured by the metaphor of lagging change over time. The USA, with its mass incarceration and supermax prisons has broken decisively with second period practices, but it is far from clear that this is a road the rest of the advanced countries will follow. The account given here, of the third period, therefore, focuses heavily on the USA, with readers invited to imagine alternative paths in their own societies.

In the first section, drawing on both *Discipline and Punish* and *The Prison and the Factory*, I will try state more precisely the analytic significance of the move from a sociology of punishment, such as both Durkheim (1997) and Rusche and Kirchheimer (1939 [2003]) performed it, to a study of punishment and political technologies. Since this ‘tool-kit’ gets shaped in the very productivity with which both sets of authors used it to interrogate the already well-established empirical record concerning the emergence of the penitentiary and its relationship to early industrial capitalism in the 19th century, my discussion will focus on their use of this framework.

In the second section, we will examine the emergence of ‘penal-welfarism’ (Garland, 1985) and the emergence of new institutions like parole and probation during the maturing of industrial capitalism in the early 20th century. In the third section, we will explore mass incarceration and related practices of containment and exile contemporary punishment as a ‘containment’ technology of penal exclusion and exile in the context of ‘neo-’ or ‘advanced’ liberal efforts to govern in the context of an increasingly global form of capitalism.

Table 3.1. Technologies of punishment and the political economy of the body

<i>Century</i>	<i>Political economy</i>	<i>Technology of control</i>	<i>Exemplary penal form</i>	<i>Target of penal technology</i>	<i>Nature of the penal subject</i>	<i>Scholarship</i>
18–19th	Emerging industrial capitalism	Discipline and training of the body through exacting labor	Cellular (Panoptic) Prison	'Soul'	Recalcitrant member of the 'dangerous classes' who must be made a 'docile and useful' worker	Foucault (1977); Melossi and Pavarini (1981)
19–20th	Welfare capitalism	Supervision of the body in the community through surveillance, interviews, standardized tests	Probation	'Social network'	Defective adult whose integration into society has been undermined by immigrant status, or biological/psychological defects	Garland (1986); Platt (1972); Rothman (1980); Simon (1993)
20th–21st	Neoliberalism	Containment through confinement or constant monitoring of the position of the body	Supermax prison/ electronic monitoring	'Dangerous class'	'Predator' – high risk offender prone to either repeat or violent crimes	Bottoms (1983); Feeley and Simon (1992, 1994); Garland (2001); Wacquant (2009)

DISCIPLINE: RE-WORKING PUNISHMENT FOR CAPITALIST SOCIETY

In what can be justly thought of as a ‘big bang’ moment for the contemporary field of punishment and society, Foucault’s book, *Discipline and Punish* was published in France in 1975 and over the next two years an English translation appeared in the UK and then the USA to largely rapturous reviews and a broad interdisciplinary audience. Far less noticed at the time (although it quickly became a classic among students of punishment) was Melossi and Pavarini’s, *The Prison and the Factory*, which first appeared in Italian in 1977 and was published in English translation in 1981. It is remarkable in retrospect how close in intellectual discovery and insight these two completely independent research enterprises turned out to be.⁷ Both approached the prison in the context of the larger reworking of power relations under early capitalism. Both saw the penitentiary style prison as a reworking of methods first developed in workhouses, asylums, and other sites for control over the deviant (but not necessarily criminal) populations of early modern Europe.

Technologies of power

In the case of Foucault, it has been tempting to treat his analysis of the birth of the prison as offering a power-based theory of punishment that parallels those of sociologists of punishment working in either a Marxist or Durkheimian approach.⁸ Bringing Melossi and Pavarini back into the picture makes clear that the common innovation they share with Foucault, is with an attention to technologies of power, not as a rival theory of the penal field to Marx or Durkheim, but as an analytic method to the history of penal change, one that attends to the field of forces, both intellectual and material, that penal practices bring to bear on the body of penal subjects, and on the resulting power and truth

effects. This is quite clear from the way each of them relate to the seminal work of Rusche and Kirchheimer (1939 [2003]) whose study published as *Punishment and Social Structure* drew on Frankfurt School Marxism (Jay, 1973) to examine the relationship between changes in the methods of punishment and changes in the demands of capitalist labor markets.⁹

For both Foucault (1977) and Melossi and Pavarini (1981) political economy was a starting point of analysis, but they do not attempt to interpret the logic of penal practices directly through an analysis of political economy. Both took ideas as central objects of inquiry, but they avoided the then standard Marxist recourse to treating ideas as ‘ideology’, that is, as a way to way of producing the consent of the exploited to their exploitation.¹⁰ Instead both enterprises treat ideas as instruments for practical action and administration. Finally, both books treat the emergence of a distinctive penal subject behind the crime and the punishment, ‘the abnormal/normal individual’ (Foucault, 1977: 24) not as the reason for a reconfiguration of punishment but as its effect.

For Rusche and Kirchheimer (1939 [2003]) it is the revaluation of labor power that produces the crisis of scaffold punishments¹¹ at the beginning of the 19th century. With the advent of wage labor, punishments that primarily kill and wound become problematic. The criminal body can now be valued as a laboring body, whether laboring in prison or back in ‘free’ society under some penal status, or as an ex-prisoner, a status that has some commercial value, however low it may fall, that is some value in a capitalist market for labor that is not totally dependent on local hierarchies.¹² But Rusche and Kirchheimer have little to say about why the prison emerges as the key replacement for scaffold punishment in the 19th century, as opposed to other labor oriented punishments that preserve and exploit the labor power of penal subjects. Indeed the variability in the history of punishment seems to speak to this loose coupling. Before beginning his own

account of the system of wounding and killing scaffold punishments, Foucault notes that ‘Rusche and Kirchheimer are right to see it as the effect of a system of production in which labour power, and therefore the human body, has neither the utility nor the commercial value that are conferred on them in an economy of an industrial type’ (1977: 54)

However, it is not an account that can explain why it is the disciplinary prison that emerges as the almost universal solution to the problem of punishing those convicted of serious crimes (or even repeated minor crimes) by the end of the 19th century throughout these societies. Capitalist England, for example, which does seem to revalue the labor power of criminal bodies, and cut its heavy reliance on the scaffold during the industrial take off in the late 18th and early 19th centuries, experiments with a number of penal methods including transportation, before settling into the penitentiary style prison in the middle of the 19th century.

Melossi and Pavarini (1981) as well, develop their account precisely to fill in this ‘gap’ in Marxist historiography of the prison. And both will conclude that it is the facility of prison to serve as a site for deployment of disciplinary techniques, or corrective training combined with harsh demeaning labor that primarily determines its emergence.

There were at least ‘three technologies of power ...’ available to recasting the exercise of the power to punish at the end of the 18th century (Foucault, 1977: 131). One was a technology of physical control and coercion of the body to produce pain, mutilation and humiliation, which remained part of the still predominant practice of punishment upon the scaffold was utilized as well in the closely related practices of judicial torture. The scaffold may have been becoming problematic for reasons of labor markets (Rusche and Kirchheimer, 1939 [2003]) as well as for changing moral sensibilities (Durkheim 1969), but it continued to produce effects of both truth and power in the wide circulation of real and contrived sights and statements on or about the scaffold, transmitted through

broadsheet newspapers as well as in the telling of the sometimes massive audiences drawn to see executions.

A second technology involved deploying bodies in highly staged public acts of useful service, which Foucault described as a ‘school rather than a festival’ (1977: 111), in which citizens would learn the virtue of the law through watching its execution. Some of these practices, such as wheelbarrow men who cleaned public streets in Philadelphia at the end of the 18th century were tried (Meranze, 1996), while others only reached the stage of proposals, many from the great critics of the scaffold including Beccaria, Jefferson and Montesquieu.

The third technology was discipline, the arts of surveillance, exercise and judgment that were quite visible in places like the national militaries that formed in response to the Napoleonic wars at the beginning of the 19th century and had been increasingly used as a punitive relief measure for the disreputable poor. In institutions like the influential Amsterdam *Rasphuis*, where indigent men were set to turning logs of wood into sawdust for the burgeoning paint industry.

The question that both *Discipline and Punish* and *The Prison and the Factory* set out to answer is ‘[h]ow is it, that in the end, it was the third that was adopted’ (Foucault, 1977: 131).¹³

In seeking to answer this very precise research question, both books follow three important methodological strategies.

Treat political economy as the horizon for penal change but as under-determining it

In addition to praising Rusche and Kirchheimer for disavowing a juristic understanding of punishment, Foucault goes further, embracing their effort to correlate the forms of punishment with the ‘systems of production in which they operate’ (1977: 24). Indeed, he notes, ‘we can surely accept the general proposition that, in our societies,¹⁴ the systems of punishment are to be situated

in a certain ‘political economy’ of the body’ (1977: 25). It is unclear whether he means by this fully embrace a Marxist sort of political economy of the sort that Melossi and Pavarini do.¹⁵ For Melossi and Pavarini, much the same gap is at issue.

It needs to be stressed, of course, that a hypothesis restricted largely to the relationship between the labour market and forced labour (in the sense of unfree labour) cannot exhaust the entire thematic of the workhouses. ... The function of workhouses was undoubtedly much more complex than that of being a simple regulator of free labour. To put it a different way, one could say that this last objective taken in its fullest sense means *control of the labour force*, its education and training. ... Workhouses and many other similar organizations respond especially to this need. (1981: 17, original emphasis)

Thus for both books, the study of punishment as a technology of power begins with political economy as a kind of horizon for punishment, establishing its functional imperatives and negative constraints but not specifying its form. ‘Analyze punitive methods not simply as consequences of legislation or as indicators of social structures, but as techniques possessing their own specificity in the more general field of other ways of exercising power’ (Foucault, 1977: 23).

It is not surprising that penal institutions respond quickly and early to profound changes in political economy. As institutions that are largely bound to fail in their own terms of suppressing crime, and which are likely to come under particular stress and scrutiny during periods of social conflict, penal institutions are always about ‘reform’; either the existing ideals, still in need of proper implementation, or through proclaiming new ideals. When something important changes in the political economy, throwing into question the practicality or relevance of existing assumptions about social stability, the legitimacy of the institutions of punishment are likely to be seen as in crisis and requiring dramatic changes. While the new framework of political economy often comes with a ready critique of existing penal practices, it does not

as readily incorporate a clear direction for change.

Treat penal ideas as technical rather than moral

Both *Discipline and Punish* and *The Prison and the Factory* seek to take the design of the penitentiary seriously as an intellectual rather than simply moral or economic innovation but at the same time avoid privileging the enlightenment narrative that accompanied the emergence of the penitentiary and which casts the prison as product of enlightened reasoning about punishment. The focus on punishment as a technology allows them to foreground intellectual breakthroughs in the design of the form of punishment as shaping both new penal purposes like reform and penitence and the new human sciences that begin to claim a primary role in organizing the power to punish (Foucault, 1977: 23).

It is not to the better established sciences or philosophy that one should look to find the ideas that made confinement in the cellular prison the solution which has dominated our penal imagination now for some three hundred years, but to a murkier terrain of semi-practical knowledges, associated with technical rather than academic expertise.¹⁶ For Foucault the technologies of power are often to be discovered among those minor techniques, uncelebrated by historians compared with the great scientific technologies, contrasting the telescope and lens with the techniques of visibility at work in army camps).

To speak of a ‘technology of power’ does not imply that completely specified template or ‘blue print’ for producing practices.

Of course, this technology is diffuse, rarely formulated in continuous, systematic discourse; it is often made up of bits and pieces; it implements a disparate set of tools or methods. In spite of the coherence of its results, it is generally no more than a multiform instrumentation. Moreover, it cannot be localized in a particular type of institution or state apparatus. (Foucault, 1977: 26)

Foucault’s analysis of Bentham’s *Letters on the Panopticon*, which Foucault drew on

at great length in his examination of the precise mechanisms of disciplinary power may have subverted his own caution, writing that the 'Pantopicon ... is in fact a figure of political technology that may and must be detached from any specific use' (Foucault, 1977: 205). Melossi and Pavarini detect this precisely as the key insight in Foucault's *Discipline and Punish* and the link with their own project.

The great merit of Michel Foucault's recent book is that it places the relationship between *technique* and the *ideology* of control back on its feet, demonstrating how ideology (obedience and discipline) does not come to determine *practical* reason, the morality, but how on the contrary this is produced by specific techniques of control over the body (in military art, school, ateliers, etc.). (1981: 45, original emphasis)

Taking our lead from Melossi and Pavarini, it is crucial to focus the inquiry not on the more grandiose schemes of various penal reformers but on the precise ways in which particular mechanisms exert 'specific techniques of control over the body'.

Follow the body

The shift from scaffold to penitentiary seems to suggest a remarkable letting go of the body which had been the focus of both the scaffold ritual and its instruments. Both *Discipline and Punish* and *The Prison and the Factory*, show that just the opposite occurs, the body of the criminal becomes even more invested by the practices of punishment that now substitute the brief if intense festival of pain with a constant and more or less meticulous control of the body. If the penitentiary and its successors claimed to work on the soul or psyche, this was rather an effect of the deployment of a disciplinary power over the body. Thus in *Discipline and Punish*, Foucault famously pronounces that:¹⁷

The individual is no doubt the fictitious atom of an 'ideological' representation of society; but he is also a reality fabricated by this specific technology of power that I have called 'discipline'. (1977: 194)

The relationship between punishment and political technologies then runs through the body. It is not the technology itself that punishment absorbs, but a way to control bodies. The modern delinquent, the abnormal/normal individual, the docile worker, is itself the long-run effect of a certain technology of power over the body.

History of the Present

Both Foucault in *Discipline and Punish*, and Melossi and Pavarini in *The Prison and the Factory*, expressly brought to the center of their analysis, a concern with the present and the role of penal institutions in it. In this sense both are doing what Foucault called a 'history of the present'.¹⁸ For both, the political turmoil and struggles in the early 1970s within the prisons, factories and universities, provided a grid of intelligibility for revising the standard account of the history of penal reform. The disciplinary logic of the penitentiary and its successors had been hiding in plain sight, disguised only by the Whiggish self-congratulation that saw in the shift from scaffold to reformatory the long overdue recognition of the criminal's humanity. The political struggles of prisoners and students made visible the coercive and bodily technologies of power behind that humanitarianism. As Foucault put it:

What was at issue [in the prison revolts of the 1960s and 1970s] was not whether the prison environment was too harsh or too aseptic, too primitive or too efficient, but its very materiality as an instrument and vector of power; it is this whole technology of power over the body that the technology of the 'soul' – that of the educationalists, psychologists and psychiatrists – fails either to conceal or to compensate, for the simple reason that it is one of its tools. (1977: 30)

In their extended response to Foucault,¹⁹ published as an appendix to the English translation of their book, Melossi and Pavarini criticized Foucault (or at least the reception of *Discipline and Punish* among students of punishment) precisely for straying from the

history of the present into a more general sociological theory of punishment.

In conclusion, without denying the extremely salutary and profound impact which Foucault's perspective has had (also) in relation to the history of the prison institution, it seems to me that the kind of detailed work required in this field is local research unconstrained by 'great visions' of an ideological nature; research which would facilitate an appreciation of local strategies and moves in the game of social control. It is, in fact, probable that such research will induce us to abandon any general hypothesis as to recurrent or fixed relationships between large-scale socio-economic data. Instead, our interest would focus on clearly defined relations valid at specific times and within specific parameters in relation to particular societies, particular periods, particular forms of social control, class composition, and so forth (Melossi and Pavarini, 1981: Appendix p. 195)

The penitentiary

For both *Discipline and Punish* and *The Prison and the Factory*, the empirical focus of their analysis is the emergence of the penitentiary style prison as the dominant mode of sanctioning serious crime, a process that begins at the end of the 18th century and is largely complete in the emerging industrial societies by the middle of the 19th century. Through the 18th century imprisonment remains mostly a place of detention for those awaiting trial, execution or pardon. It rarely figured as a punishment itself. Yet throughout that century, interest had grown in using indoor relief of vagrants and the very, coupled with coercive work exercises, to discourage begging and encourage habits of work. It is the shift of these disciplinary technologies from the space of the workhouse to a space defined as punishment by the middle of the 19th century that both books consider.

Political economy

Foucault situates the crisis of scaffold punishment at the point of emergence of both a capitalist economy - both in terms of wage labor and the rise of valuable commercial commodities - and in the growing democratization of public space and the concomitant increase in the regularity of mass public events. The scaffold punishments were viewed as increasingly problematic in relation to a number of specific issues arising from these transitions.²⁰

Punishment was seen by this new public, especially the rising influence of those involved entrepreneurial capitalism, as needing to become more effective in protecting property from the rising importance of theft and more congruent with a general social demand for the regularity of hard work. The old scaffold punishments were increasingly inapt to respond to property crimes because their very severity encouraged forms of leniency that undermined the deterrent power of the criminal law. The scaffold, with its festival like ambience and its celebration of the excessive and the atrocious, produced an inapt effect, interrupting both production and routine civic order. For many of the same reasons, scaffold punishment was an obstacle to producing a more orderly and businesslike public. Far from being an encouragement to a more controlled society, the rituals of the scaffold encouraged drinking, fighting and encouraged the solidarity of friendship and kinship networks.

As Melossi and Pavarini describe the logic of workhouse labor it is clear that the effect is not just on the penal subject but on the larger milieu of working class life:

The prominence given to order, cleanliness, uniforms, hygiene (except of course when it came to working conditions), the rules against swearing, using slang or obscene language, reading, writing or singing ballads unless allowed by the governors (in a place and time characterized by the struggle for freedom of thought!), the prohibitions on gambling and the use of nicknames, etc. - all of this constituted an attempt both to impose the newly discovered way of life and to smash a

radically counterposed underground popular culture which combined forms of the old peasant way of life with new methods of resistance called forth by capitalism's incessant attacks on the proletariat. (1981: 22)

The triumph of a disciplinary technology of control over the body

For Foucault, the prison emerges as the dominant method of punishing serious crime in modern society, out of the three possible technologies of punishment in part because unlike the scaffold, or the 'punitive city' as a social school model of outdoor expressive punishments that some of the 18th-century reformers favored (Meranze, 1996), the prison did not aggravate these problems and indeed seemed a promising way to diminish them. The prison permits a far more graduated system of sanctions, the better to encourage full enforcement of the criminal laws protecting property. It operates to enforce discipline and self-control on those subjected to its rigors without the need or occasion for unruly publics to gather. Indeed, linked to the parallel network of metropolitan policing, which emerges in the 19th century, the penal system can operate as a continuous and unobtrusive system of control facilitating rather than interrupting the public.

However, this 'fit' of the prison is not based on its theoretical foundations, let alone on whether they turn out to be empirically correct, but instead, for Foucault, on the spread of the throughout society of mechanisms and institutions based on a disciplinary technology of power. This disciplinary network allows the prison to appear as able to exercise the power to punish in light of the political economic challenges facing the power to punish in the 19th century. As Barry Smart aptly put it in a helpful early interpretation:

The self evidence which imprisonment soon assumed as the generalized form of punishment was a consequence not only of the apparent appropriateness of punishing offenders through

the deprivation of their liberty ... but more significantly, it stemmed from the fact that it employed, albeit in a more explicit and intense form, all the disciplinary mechanisms found elsewhere in the social body for transforming individuals. (1983: 74)

Melossi and Pavarini (1981) also identify the spread of disciplinary technologies through a whole set of formally distinct institutions dealing with the poor. The prison is only one institution that finds in disciplinary technology of power over the body, a reliable new platform for reconstructing punishment for an age of industrial capitalism.

The total impoverishment of the individual takes place in manufacture and in the factory; but preparation and training is ensured by a string of ancillary institutions from which basic features of modern life have already begun to develop by this time: the nuclear family, school, prison, the hospital and later the barracks and the mental asylum ensure the production, education and reproduction of the workforce for capital. (Melossi and Pavarini, 1981: 23)

Both Foucault and the Melossi and Pavarini saw the target of the disciplinary power to punish as the bodies of recalcitrant members of the lowest classes, displaced from rural areas by the new commercial agriculture. Crowded into towns and cities, most of which did not yet have ways of profitably employing them in labor, the mobile poor became the 'dangerous classes'" greatly feared by the upper classes of early 19th-century Europe and in the USA (Chevalier, 1958; Vogel, 2004.

The soul of punishment

Both books argued that the penitentiary was designed to produce as an effect, a distinctive subjectivity. For Melossi and Pavarini it is the disciplined subject of industrial labor. The prison, they note, like the workshop, is less another place for production than 'a place for teaching the *discipline of production*' (1981: 21, original emphasis). For Foucault (1977) disciplinary practices

produce above all, a delinquent subject, a abnormal/normal individual, whose life course of persistence in crime became the real and permanent concern of the legal system.²¹

Subsequent work would question this continuity between the disciplinary technology at work in the birth of the prison and the more overtly psychological and individualizing regime that is in full flower in the 1970s.²² Garland (1985) argued that Foucault was wrong, at least as to the Victorian penal system, to assume that a significant degree of individualization was associated with the practice of discipline. The disciplined subject of the penitentiary remained a highly abstract and ideological figure in prison discourse and practice of 19th-century prisons. Neither the length of sentence, nor in any significant way the treatment of prisoners was varied based assessment of their psychological condition (except at the very extreme of the insanity defense).

While the very cellular architecture of the prison was arguably a surface ready to be deepened by an individualizing knowledge of the life history of the penal subject, Garland is convincing that this is a later development. In our framework here, it is seen as part of the second phase of penal transformations discussed below.

WELFARE: THE SOCIALIZATION OF PUNISHMENT IN THE ERA OF INDUSTRIAL CAPITALISM

Historians and sociologists have long agreed that the late 19th and early 20th centuries represented a significant reorganization of the legal and organizational fields in which the power to punish operated one almost as dramatic as the one that saw the scaffold replaced by the penitentiary (Schlossman, 1977; Rothman, 1980; Sutton, 1988). Although the prison did not disappear by any means (neither for a long time did the scaffold), it was supplemented and displaced

from the center of penalty by a panoply of new penal institutions including probation, parole, and juvenile justice. All of these share a focus on the offender in his or her social milieu. Rather than isolating the person engaged in criminal conduct in a space of total control, all three bring the power to punish, and now correct, out into the community.

Industrial capitalism and the early welfare state

This reconfiguration of the power to punish began in the last decades of the 19th century in the most developed capitalist countries, and gained momentum throughout the first half of the 20th century, achieving its greatest strength in the first two decades after the Second World War when the relative affluence afforded by mature industrial capitalism gives rise to an unprecedented extension of welfare measures throughout society.

If the political economic imperative behind the crisis of scaffold punishments was the need to create appropriate social conditions for the flourishing of capitalism, including the formation of an industrial working class, or 'proletariat', beginning in the late 18th century, the problem for power at the end of the 19th century is how to integrate that proletariat into the structures of an increasingly consumerist urban society and democratic polity. In Garland's (1985) classic account of the breakdown of Victorian penalty²³ (which was very much anchored in the penitentiary model and its disciplinary technology) at the end of the 19th century, he points to twin imperatives of political economy in the world's most advanced capitalist society of that era. The first is the movement of the leading edge of British capitalism into an era of consolidation (Marxists would say Monopoly capitalism). The second is the democratization of British society, primarily the expansion of the electoral franchise to include those without property (and thus very likely) working-class voters.

For Garland, the argument is not that these very important changes in the distribution of power in the UK (and other advanced industrial countries) produced or projected a new array of penal methods, or demanded on their own the deployment of a new technology of power within the penal field. It is rather that against the background of these changes in political economy, the existing penal practices were becoming politically problematic. The prison, of course, endured, and it remained in many respects at the center of penality even as probation began to account for an equivalent or larger portion of what could now be called the 'correctional population'.²⁴ But the narrative of the prison, the account of how it could provide a meaningful contribution to public order was losing its currency (Simon, 1993; Bright, 1996).

For 19th-century government, prisons, as well as indoor relief for the poor in workhouses, constituted an extraordinarily expensive way to govern the poor. It was a practice premised on an alarming conception of the urban poor as 'dangerous classes', an almost alien like threat, who must be isolated to disciplinary institutions of the most coercive sort (Chevalier, 1958). As Garland's detailed account of the Victorian confinement (not only the prison but the workhouse) suggests, its legitimacy was premised on the moral virtue of treating coercively all those who failed the premises of liberal economic theory. The extension of the franchise to all male citizens regardless of property ownership and the formation of a 'respectable' working class with a claim on government responses to the predictable insecurities of market capitalism, created a growing tension with harshness of Victorian confinement strategies. So while the prison may not have suffered as significant a status decline as scaffold execution did (the latter largely disappearing within a 50-year period), it suffered a two-sided loss of legitimacy (Sparks et al., 1996). A less demonized public image of the lower classes made its necessity less apparent, and its high costs more visible.

Probation and the power of the social

A host of new penal practices emerged to address this growing gap between the current problems of insecurity and the confinement logic of 19th-century penality; including specialized prisons for particular types of offenders and penal measures designed to be implemented in the community including probation, parole and juvenile justice. Of all the new penal techniques that emerged in the late 19th century and become widely spread among jurisdictions in the early decades of the 20th century, probation must be considered the exemplary form. Unlike its close cousin parole, probation does not await the corrective discipline of a prison sentence, but seeks to correct the offender without removing them from the community. Unlike the juvenile court, which shares the same intention to avoid the incarceration of the delinquent, probation takes on the adult convicted of crime without the premise that its subject is not truly a proper offender because of their young age or the responsibility of parents. Probation incorporates a set of elements that will be widely shared by all three including a professional penal agent, the casework method²⁵ (borrowed from the closely related field of social work), and the involvement of positive pro-social forces within the community itself, including clergy, teachers and employers. As Leon Radzinowicz wrote of probation from the middle of the 20th century:

If I were to be asked what was the most significant contribution made by this country to the new penological theory and practice which struck root in the 20th century ... my answer would be probation. (1958: x, quoted in Raynor, 2007: 1062)

But as we asked of the scaffold's replacement by the prison, what makes the new penal mechanisms, probation, juvenile courts, parole, individualization in sentencing and classification, an appropriate answer to the problems of the 19th-century prison, and

does it make sense to speak of this new penal style as drawing on a distinctive technology of power over the body? Garland (1985) does not use that phrase nor ever claim for the common themes among the new penal techniques of the early 20th century the coherence that Foucault (1977) and Melossi and Pavarini (1981) seemed to give to the disciplines, but he does describe four broad programs,²⁶ criminological, social work, social security and eugenics, out of which, and through a heavily political process subject to lots of conjunctural events, a 'penal strategy' emerges, that of 'penal-welfarism',

In reviewing Garland's account of the penal strategy that emerged during this period, we can however discern a technology of power over the body one which was borrowed from domain of charitable work among the poor, and which eventually was professionalized as social work in the early 20th century. Across these reform measures, most not new but an upgrading of existing private initiatives that had existed for some time around the edges of the penal field, into grander public projects (Sutton, 1988), there is a common logic based on individualizing persons convicted of crimes, using the case-work method, and either pursuing a corrective supervision of them in the community designed ameliorate the particular variables encouraging crime in their individual case, or assign them to a custodial institution appropriate to their classified need or risk. All of these practices would seek out and apply corrective methods to the penal subject in their actual social context (rather than in confinement) by not being tied to or down by a punitive legalistic concern with a legal conviction for a very serious criminal offense. They would intervene earlier in the life of delinquent individual but stay the hand of the most punitive consequences where the prospects for correction were good. At the same time, and seamlessly, they sought out those who posed a risk of serious criminality and segregate them as much and as early as necessary to protect the public.

Jacques Donzelot (1979), in his parallel study of social control mechanisms in France at the end of the 19th century describes the new logic of control as that of 'the social'. Like disciplinary practices that are spreading in workhouses, asylums, schools and factories in the late 18th and early 19th centuries, 'welfarism' or the 'social' technologies were drawn from the field of poor relief and helped to constitute a broad new strategy for reconstituting the penal field and addressing the political problems of insecurity and inequality in maturing capitalist societies for which penalty is both a fertile ground and an opportunity for advanced development (because of the power of the legal sanction). As historians of the subject agree, the implementation of this new strategy was deeply reworked by politics and the existing institutional realities²⁷ into which these reform proposals were ultimately introduced (Hagan et al., 1979; Rothman, 1980; Garland, 1985; Sutton, 1988). Yet the same historians concur that they were incredibly successful in winning relatively rapid spread (easier in the UK and most European nations than in fractious nation states such as the USA) and that real redistributions occurred in the hold of institutions on bodies. This is especially true of probation, and its post-confinement sisters, which bring large numbers of people under their jurisdiction, some who would otherwise have been in penitentiaries but many more who would not have been subject to this correctional control but for the reforms.

Garland, writing after *Discipline and Punishment* and *The Prison and the Factory* had powerfully asserted the historical importance of discipline and its continued relevance in the present (the 1970s and 1980s), was confronted with the question of whether the transformations in the penal field at the start of the 20th century should be seen as an extension of the disciplinary technology of power that operated in the penitentiary. In *Discipline and Punish*, Foucault drew a direct line between the rise of the penitentiary and the 20th-century practices that remained seemingly strong in the early 1970s

and suggests that they have been steadily extended into society:

The frontiers between confinement, judicial punishment and institutions of discipline, which were already blurred in the classical age, ended to disappear and to constitute a great carceral continuum that diffused penitentiary techniques into the most innocent disciplines, transmitting disciplinary norms into the very heart of the penal system and placing over the slightest illegality, the smallest irregularity, deviation, or anomaly, the threat of delinquency. (1977: 297)

Garland (1985: 31) argued that Foucault overemphasized the continuity between the disciplines of the penitentiary, and the full blown rehabilitative correctional institutions operating in the 1970s.²⁸

In particular the work of Michel Foucault (1977) has argued, with great influence, that the [modern] form of penalty was constructed a whole century earlier with the development of the modern prison and its 'disciplinary' forms. He insists that the functions of disciplinary reform and normalization were not 'added on' at a later date, but were from the outset an essential aspect of the prison. In his analysis, the prison is from the start a technique of transformation and not a punishment; directed at the criminal's nature and not his act ... I have begun to demonstrate that, at least for the British case, Foucault's thesis is incorrect. (1985: 31)

Others, including Mathiessen (1983) and Cohen (1979) argued that 20th-century measures represented continued innovation within a disciplinary technology of control; a blurring of its hard lines and a dispersal of it throughout society.²⁹

Today this debate seems less central because of the developments we take up in the next section. Moreover, in arguing about whether the new institutions reflected an extension of discipline, we may be investing too much in the analytic power of our own terms.³⁰ To the extent that Foucault clearly missed (and was not looking for) the penal turn of the early 20th century our analysis today benefits greatly from Garland's work bringing out the distinctive features of penal-welfarism. Disciplinary technology is about corrective training of the body. It operates

from fixed positions in closed institutions to produce complete surveillance and internalized obedience in the prisoner. If it distinguishes among individuals, it is only along a linear grid around the normal, which it seeks to return to, and not the '*extended grid of non-equivalent and diverse dispositions*' which Garland described (1983, 28: original emphasis).

If institutions like probation do apply methods that have their origins in the disciplinary technologies of control over the body, like surveillance, corrective training, and moments of close examination of its subjects, they also and crucially leverage this disciplinary control through activating a broader grid of relationships surrounding the subject in a way that the penitentiary very explicitly chooses not to.³¹ It aims at social integration. If it operates on the body, it is the body in the natural setting of social life rather than in the artificial and abstract space of the disciplinary institution. These new methods drew on a social technology of power over the bodies of the poor that had been developed by charity workers, one based on wielding the normative power social relationships, and none more important than the relationship between the professionalized agent of control and the subject embedded in social life.³²

In short, Foucault was right about the significance of the disciplinary technology of power in the birth of the prison, but wrong to have assumed that there was no important interruption between that transformation and the 'modern' penal system that prisoners in the 1970s were rebelling against. Most importantly, without fully appreciating the distinctive features of the early 20th-century penal institutions that Garland traces in *Punishment and Welfare*, Foucault misunderstood the nature of those contemporary grievances which were, even as he described them in *Discipline and Punish*, less about the disciplinary nature of the prison, and more about its social and psychological dimensions.

Drawing on Foucault's later work, some have suggested that these early 20th-century

innovations might be associated with the 'bio-political' technologies of power, ones that like insurance, regulation, and welfare tend to operate on larger groups or whole populations (Foucault, 1978; Smart, 1983; Bottoms, 1983: 194–5). Some of the new penal techniques introduced at the turn of the 20th century are clearly linked to these technologies of control over the body aimed at the problematic of the population, for example the eugenic effects of segregating recidivists. Anxieties about the population as a direct subject of power, so evident in these programs, associated with immigration in the USA and the imperial project in Europe, clearly defined some of the problems that penal techniques had to help solve (or at least not make worst). At the same time bio-political technologies do not seem to influence the form or practice of most of the techniques pushed by reformers.

A more helpful parallel may to be an altogether different kind of social technology that Foucault identified with religion, education, and generally pastoral institutions, that is, the care of the subject as a self.

[T]echnologies of the self, which permit individuals to effect by their own means or with the help of others a certain number of operations on their own bodies and souls, thoughts, conduct, a way of being, so as to transform themselves in order to attain a certain state of happiness, purity, wisdom, perfection, or immortality. (Foucault, 1988: 18)

While disciplinary technologies of power involve small groups or individuals exercising power over larger assemblies through the use of architectures of confinement and methods of surveillance, and bio-political technologies of power involve small groups or individuals exercising power over whole segments of the population through actuarial and financial methods, probation (and most of the other early 20th century penal mechanisms) involve power being exercised from one individual to another through their ongoing relationship. The relationship between penal subject and probation officer

is not a panoptic one, and least of all a form of population management, it is an ultimately a dialogic and ethical relationship, or as Mike Nellis puts it, 'incentive-based, trust-based and threat-based means of gaining compliance' (2009: 108).³³

Social networks and the defective adult

If the target of the penitentiary technique is the soul of the prisoner isolated in the cellular structure of the prison, the target of probation is the offender as part of a social network that has facilitated their delinquency and which, with the proper interventions of the penal agent, became a source for correction. The new penal subject had far greater depth and variation than the largely uniform individual acted upon by disciplinary prisons which in Bentham's memorable phrase worked to 'grind rogues honest' (Bentham, 1791, quoted in Garland, 1985: 17). The new science of criminology had projected a range of character defects in individuals that led to deviance, delinquency and ultimately crime including alcoholism, biological degeneration and feeble mindedness. The emerging practice and science of social work saw bad parenting and unorganized communities as causing or enhancing these kinds of character defects. All of the new techniques of penal power shared a premise that effective crime control required legal authority to be refined around such specificities by detailed case knowledge and methods of social diagnosis (Richmond, 1919).

At the center of all of these is the probation agent, who combines the social worker's methods of casework, interviewing and life history construction, with the police officers legal authority (in part) and with the court's power to punish in the form of incarceration. It is true that the probation agent is in some respects in the position of the hierarchical examiner who looms so large in the disciplinary logic of panopticism (Foucault, 1977). In its strongest sites, and against some of its

weakest targets, the penal-welfarist system must have felt very coercive indeed (Simon, 1998). Yet there is little panoptic in the actual ability of probation agents to see what the penal subject is up to. To the extent they can make credible their threat of catching the subject in criminal (or better yet, pre-criminal) conduct, it is primarily because of the social institutions in which the penal subject is already embedded, the family, the school, and work (Simon, 1993; Maruna, 1997). The probation agent, in the early 20th century (and for much of it) is as much a conduit from civil society into state legal authority as he is a bridgehead of state power inside the community.

PRECAUTION: PUNISHMENT AS WASTE MANAGEMENT IN NEOLIBERALISM

Talk of penal institutions as technologies of punishment cannot help but understate the variability of reform. Both *Discipline and Punish* and *The Prison and the Factory* treated the spread of the penitentiary model as a global event, although the cases they drew on were less than representative, a problem that has afflicted almost all study of penal change ever since. But the penitentiary, and the disciplinary technology of power was at work in the penitentiary style prisons was to a large extent a global phenomenon that followed efforts to modernize penal practices from the end of the 18th century in Europe and North America through the 20th century (as it spreads to Latin America, Asia and Africa). The insights both books generated by treating the disciplinary features of the penitentiary as a generic logic, were well worth the loss of greater attention to national and subnational variations.³⁴ Likewise the social technology of power, manifest in reforms that began in England and the United States at the end of the 19th century, continues even today to shape

penal reform programs today (as in the post-Communist transition in Europe). But if it is, on balance, productive to treat the penitentiary and penal-welfarism as general waves of change, the pace and direction of penal reform since 1980 is far harder to determine; either because it is still in its early stages, or because there will not be as common a path as in the past.³⁵

The USA, one of the leaders in deploying both disciplinary and social technologies of power for earlier waves of reform, is very much at the forefront of creating what is arguably a new pattern of penal practices and objectives that largely abandons penal-welfarism in favor of containment and control (Deleuze, 1992; Feeley and Simon, 1992; Garland, 2001a), exclusion (Young, 1999), warehousing (Irwin, 2004) and waste management (Simon, 1993; Lynch, 1998). As with earlier waves of reform, we see both new institutions including the super-max prison (Shalev, 2009), spatial exclusion or banishment (Davis, 1990, 1998; Beckett and Herbert, 2008) and electronic monitoring (Jones, 2000; Nellis, 2009); and the reorienting of older institutions, including mass incarceration prisons (Garland, 2001b; Gottschalk, 2006; Western, 2006; Gilmore, 2007; Simon, 2007) and managerialism in parole and probation into practices of risk management (Cohen, 1985; Bottoms, 1995; Simon, 1993).

While the prison remains at the center of the power to punish, mass incarceration represents a fundamentally different use of the prison than the disciplinary penitentiary or the welfarist correctional institution; and in many respects marks a more substantial break with the past than any change since the rise of the penitentiary. Scholars of punishment and society have pointed to a number of distinguishing features of incarceration in the era of mass incarceration. The scale of incarceration, having remained relatively stable in most countries, including the USA, since the late 19th century, has dramatically surged up in the USA, by a factor of more

than five (Zimring and Hawkins, 1993; Garland, 2001b; Western, 2006). Like capital punishment on the scaffold, imprisonment was historically an individualized penalty rather than an automatic sentence for the conviction of a crime (accept for the most serious), and prison sentences themselves were individualized further by the widespread application of parole release. Under mass incarceration imprisonment has been mandated far more generically to whole groups or categories (Bottoms, 1983; Mathiesen, 1983; Cohen, 1985; Feeley and Simon, 1992). The penitentiary and its successors placed great emphasis on their internal design and procedures to effectuate beneficial change in prisoners (although often more in design than in delivery). The prisons of mass incarceration are devoted exclusively to the incapacitative premise of secure containment (Zimring and Hawkins, 1997), and the practice of pure custody, or warehousing (Simon, 2000; Wacquant, 2009).

This is a pattern that has not emerged everywhere across the advanced economies of the world. Indeed, the styles and approaches of contemporary punishment have been usefully described as ‘volatile and contradictory’ (O’Malley, 1999). Large parts of Europe retain relatively stable prison populations (Tonry, 2007) and even in places where the prison population has grown, as for instance, in the Netherlands and in the Nordic countries, the emphasis remains distinctly welfarist. In North America, Canada has stayed largely welfarist (Meyer and O’Malley, 2005). Even in the USA, some states have retained a more substantial institutional commitment to rehabilitative programming in prisons, and virtually all states have retained the forms of welfare penalty, probation, juvenile courts and parole.

Following the insights of both Foucault, and Melossi and Pavarinia, we must first look to political economy to establish the horizon in which this variation plays out.

Neoliberalism

The USA is quite clearly the country that has most embraced the containment approach to punishment,³⁶ while the UK (but primarily England and Wales) has experienced one of the most significant rises in incarceration in Europe (Garland, 2001b; Newburn, 2007), as have the much smaller Northern Irish and Scottish prison systems as well as that of the Republic of Ireland (O’Donnell et al., 2004). This has led some punishment and society scholars to look to the strong turn toward a neoliberal political economy by the USA, the UK and other English-speaking countries to account for their concentration in the top ranks of imprisonment growth, while the more social democratic and corporatist countries of continental Europe have thus far resisted it (Cavadino and Dignan, 2006; Western, 2006; Wacquant, 2009).

While one can question the coherence or uniformity of ‘neoliberalism’ as a new political and economic order,³⁷ it is plausible that something like the classical pattern of political economic transformation, followed by increasing doubt about the existing penal practices and institutions has happened in much of the industrialized world. As political leadership has moved away from an expansive welfare state promising more insurance of one form or another, to more people (Baker and Simon, 2002), and toward a greater emphasis on deregulated markets and greater individual responsibility for social and economic security, the logic of penal-welfarism, has almost everywhere come into question. The weakening of government commitment to expanding insurance and welfare made the very premise of penal-welfarism, that the community has greater resources of producing correctional change than the state can produce in prisons, unsustainable (Beckett, 1997; Garland, 2001a; Wacquant, 2009). The formation of an underclass and a new kind of economically isolated poverty inside the USA (Wilson, 1987; Simon, 1993; Wacquant, 2009) (and to some

extent Europe as well) denuded the social networks to which welfarism promised to reintegrate those engaged in crime or delinquent conduct. The extreme reliance of the middle class (and the whole consumer economy in the USA) on property ownership, in the form of owning their home created a form of unspreadable risk that made Americans both more vulnerable and more spatially conscious of crime risk and less committed to public property of all sorts (schools, city centers, parks, transportation) made welfarist forms of penalty, especially probation and parole (but also juvenile court sanctions) seem a direct danger (Davis, 1990; Simon, 2010). Increased democratization made other forms of social control, ranging from mental hospitals to aggressively policed downtowns, less politically tolerable while encouraging harsh punishments as a 'market-based' solution to crime (Harcourt, 2005, 2010).

While it is easy to see how penal-welfarism loses legitimacy in the face of a broader move away from welfarist solutions to social problems and calls for more market disciplines (especially on the poor and the middle classes), it is more difficult to explain the resulting penal institutions as direct response to these same imperatives. The growth of the 'penal state' and its high fiscal costs is rather a direct contradiction of the premise that the state needs to shrink and become less coercively present in society. It can be argued that the rhetoric of smaller government is just that, and it disguises a shift from welfare to penal styles of government (Western and Beckett, 1999; Wacquant, 2009), or that prison is a way to channel investment toward preferred segments of society, while disinvesting others (Harcourt, 2010), but while such results may be consistent with the transformation of political economy they would have been difficult to predict from it.

An alternative approach is to view the transformation of political economy as undermining the legitimacy of penal-welfarism and promoting the need for radical reforms.

Successful new institutions and practices, or reorientations of old ones, must fit the resulting critique of welfarism, but their specific forms depend on available technologies for reworking the control of bodies.

Technologies of risk management

Can we describe a new political technology or set of technologies, at work in the various elements of the new penology, for example, mass incarceration, spatial exclusion and electronic monitoring? All of these depend in one way or another on a sorting of penal bodies spatially in relation to the risk they pose and a great deal of recent scholarship in punishment and society has attended closely to the relationship between contemporary penal changes and technologies of risk (Feeley and Simon, 1992, 1994; O'Malley, 2010).

One risk technology, long drawn on by various governmental institutions is actuarial calculation and prediction. Certain aspects of contemporary penal practices seem to implement this actuarialism. Feeley and Simon (1992) placed these techniques at the heart of what they called the 'new penology'. In this respect, penology seemed to track the path of other fields, including civil justice (Simon, 1987), fire management (O'Malley, 2010: 3) and modern medicine once the very ideal type of social technology.

Like social insurance for work accidents, which assumes that casualties are inevitable but seeks to reduce their number and severity the new penology seems to assume that criminality is largely unchangeable and instead seeks to reduce the number and severity of crimes. The target of the new penology shifts from the discipline of individual bodies, to the control of whole categories of presumptively high-risk individuals through incapacitative custody. In place of social technologies for rehabilitating and reintegrating prisoners, contemporary penal institutions focus on achieving aggregate effects, measured through process outputs

that can be objectified and tracked easily, what Bottoms (1995) called managerialism. This suggested, that Foucault's bio-political technologies of power, which seemed only marginally influential on the formation of penal-welfarism, might be reaching dominance.

Yet there is a great deal about the new penal culture of containment and control that does not correspond closely to actuarial technologies of risk assessment. Mass incarceration is not, in the end, predictively oriented, but indeed embraces generalized rather than selective incapacitation (Zimring and Hawkins, 1997). Also, at its core, insurance is a form of risk spreading and risk sharing, but in combination with spatial exclusion and electronic monitoring, mass incarceration is aimed at concentrating that operates to keep the most troubled individuals cycling between periods of incarceration in which human capital is degenerating and periods of freedom in which former prisoners are largely isolated from the economy in communities with already high concentrations of unemployment, drugs, and illegal activity.

Thus in addition to the application of actuarial technologies, the shift to containment and control embodies a second kind of risk based technology, one that can be described as a precautionary technology (Ewald, 2002; Simon, 2001). Instead of being borrowed from the practices of spreading the routine risks of industrializing society, this precautionary technology of power has its origins in the experience of catastrophic risks like that posed by highly toxic wastes, weapons of mass destruction, or deadly epidemic diseases. If actuarialism is about spreading risk, precautionary technologies aim to containing it to specific locations. The prison has become a place to contain subjects who pose a risk of crime. With rare exceptions (e.g. Virginia), sentencing to prison in the USA is not selective in terms of risk nor actuarial in the lengths of time it holds on to bodies. Rather, actuarialism in the prisons of mass incarceration often follows the commitment to containment, as risk prediction is used to set

custody levels, which is the dominant form of differentiation in new penal order. Beyond the prison, electronic monitoring operates to track the body of penal subjects in real-time, not to establish process of self-discipline, but enforce zones of exclusion, a practice aptly described as the 'banopticon' (Nellis, 2009: 113).

As with disciplinary and welfarist practices, we can find aspects of precautionary technology across many institutions remote and near to the penal field. Industrial risk management from the end of the 19th century, especially the design of machinery and procedures to avoid accidents and injuries directly is one arena in which a prudential tinkering with both humans and machines to reduce damage done by inevitable errors took shape. In the 20th century this kind of craft became even more important in the design of plants producing or using highly toxic chemicals either as primary objective or waste (Perrow, 1984). The shaping of private property, especially mass private property (Shearing and Stenning, 1984, 2003), as well as gated communities (Simon, 2007), toward 'situational crime prevention' (Von Hirsch et al., 2000) and other forms of 'target hardening' (Farrington et al., 1993) aim to allow individual citizens to increase their security from crime risk through personal consumption choices (Gould et al., 2010). Schools have introduced harsher discipline, more control agents and readier recourse to drug testing and in school detentions in the name of keeping students safer (Kupchik and Ellis, 2007; Hirschfield, 2008). Work places engage in various kinds of screening designed to exclude higher risk employees or even customers (Simon, 2007). The precautionary logic, always part of the penal field, has come to foreground in the era of mass incarceration. Increasingly it reflects not confidence that penal sanctions alone can create greater individual security from crime, but that containment is what the penal system can do to support these other ways in which citizens have been mobilized to protect themselves from victimization (Garland, 2001a; Simon, 2007).

Two penal practices stand out as exemplifying the penal appropriation of precautionary technology, the supermax prison (Shalev, 2009), and the most robust forms of electronic monitoring, such as satellite tracking (Jones, 2000; Nellis, 2009). Supermax prisons build on the practice of solitary confinement, which emerged as a part of the practice of disciplinary penitentiaries and continued to be used as a more select sanction in the prisons of penal-welfarism. The supermax prison moves from solitary confinement as an individualized and episodic technique to a generalized and routine technique with whole prisons designed to keep their entire population in solitary confinement. Likewise, many prisoners are there not as a sanction for a particular disciplinary violation but based on a prediction (sometimes but not generally actuarial prediction) that they pose a risk to guards or other inmates. The supermax does more than place the prisoner in solitary confinement, rather it creates a highly technical and computer managed form of custody in which all contact with other human beings is minimized and subjected to monitoring. The penal subject of the supermax is viewed as a form of unchangeable and extreme risk, like that posed by committed terrorist, or a predatory serial killer.

The supermax brings together in a single setting many of the specific techniques and tactics that figure in precautionary technology more broadly. It utilizes architecture and technical building materials to achieve a high level of physical isolation, not just between the prison and the outside, but throughout the prison. It refrains from disciplining the body of the prisoner, focusing instead on turning the cell into a place of complete containment and sustainability making assaults on staff or other prisoners physically unlikely. Through the use of video-cameras and computers, the supermax constitutes a panoptic gaze over the prisoners, but for the purpose of documenting control to address both managerial and even human rights objectives, rather than normalization.

As a fixture in a vastly extended array of prisons, the supermax has functioned as a point of concentration for techniques that are working on a lesser basis throughout. As a place to remove those prisoners who are deemed a threat to the order of the less securitized warehousing prisons, the supermax provides for the larger prison system a way to control their enlarged populations in the absence of any meaningful internal prison programming.

Electronic monitoring, including its most advanced and comprehensive form, satellite tracking, operates in many respects at the other end of the spectrum of risk. It is designed to enforce spatialized exclusion on those deemed low enough risk to be out in public either on pre-trial release, or as part of a sentence of parole following imprisonment, or on probation as an alternative to imprisonment. While is often offered as an enhancement or aid to probation, as a technology it operates in very different ways than probation as the anchor practice for penal-welfarism. In terms that echo and reverse David Garland's (1985) account of the shift from Victorian penalty (individuation) to penal-welfarism (individualizing), Mike Nellis points out:

[Electronic monitoring] *individuates* - in the sense of focusing on the movements of a single, embodied human entity - but it does not *individualise* - in the sense of seeking to know a person's inner mental life or to understand (with a view to changing) behavior, as probation officers seek to do. (2009: 106, original emphasis)

While traditional probation sought to change behavior through 'the periodic co-presence of supervisor and supervisee ...; it was via their structured personal encounters (and sometimes through the relationship which grew between them) that an impact on behaviour was effected', electronic monitoring seeks to extend the spatial and temporal range of control well beyond what human controls or social relations could sustain, indeed range replaces relationships

(Nellis, 2009: 108–9). Instead of creating a matrix of surveillance and influence, electronic monitoring enforces a risk based set of spatial exclusions. At the same time electronic monitoring is valued as a managerial tool that can document the performance up to standards of control agents, and protect the human rights interests of the penal subject from the abuses of confinement or the degradation possible in other risk management tools, such as public notification (Nellis, 2009: 122). Finally, electronic monitoring operates in a systemic relationship to prison, dependent on the demand to extend containment beyond the limits of the prison.

Even as a rough sketch of recent years this does not account for much of what is going on in Europe, in Russia (Piacentini, 2004), or in China, for example, where punishment remains generally tied to penal welfare or disciplinary technologies and where the relative scale of punishment in society and as a portion of governmental power more broadly remains closer to the norms of the 20th century. In characterizing the leading technology of power for shaping the penal field in our time as containment, I am placing the American (and to a much lesser degree the UK) model at the forefront. The logic of penal change in the USA has been driven in large part not by the fact that crime control as a broader strategy (including policing and adjudication as well as punishing) has in the USA become itself a more important technology of power for government (Scheingold, 1992; Beckett, 1999; Garland, 2001a; Gottschalk, 2006; Simon, 2007; Wacquant, 2009). Thus while in the early 20th century, probation agents might use the common or public school as a governing framework in which its power over the penal subject could be more effectively distributed and exercised, today schools in the USA incorporate police and probation officers as working part of their internal discipline (Simon, 2007; Hirschfield, 2008).

High risk groups: monsters and predators

Although precautionary practices, like other penal applications typically acts on the bodies of people caught up in the criminal justice system, its effects lie not in the soul or the penal subject, or in their social relations, but on spatial zones. Placing some penal subjects in secured confinement, and others in an electronic prison of electronic monitoring, is intended to keep them out of certain neighborhoods and locked into others. The result is to maintain a risk hierarchy of spaces from desirable safe suburbs, whose own gates and control devices are enhanced by keeping the most determined threats out of circulation altogether, to the dangerous inner city neighborhoods which lacking the ‘ghettos’ original wall and locked gate, now sports electronic and legal zones designed to keep penal subjects inside (Davis, 1998).

The penal subject is defined as a source of risk, at the extreme a relentless monster or predator who is driven to rape, kill or destroy. The model for this came not from science, but from the nightmare factories of Hollywood, which quickly turned the alarming serial killers of the USA in the 1970s and 1980s into a ubiquitous threat to American homes. The monster is not a defective person in the sense of someone who has diverged from the social institutions and relations that would bring him or her into conformity with law, but rather someone created by aberration, who cannot be changed and may not be discerned in advance. Violent crime, especially gun crime, and above all murder, marks a penal subject as a monster and the tendency of US law is to seek lifetime incapacitation without the possibility of parole (Dolovich, 2011). But even property or public order crimes, and especially drug crimes, may indicate that the person convicted has the aberration that will make them a predator, which creates an enduring pressure to lengthen sentences for non-violent

crime and to return prisoners to incarceration for even technical violations of their release conditions.

Whether, to what degree, and how, this precautionary penalty so clear in America might become predominant in Europe and other places is a subject of considerable debate (di Giorgi, 2006; Jones and Newburn, 2006; Wacquant, 2009). Supermax-style prisons are comparatively rare outside the USA (whether because of the cost or because of human rights objections), while electronic monitoring has been more fully embraced in the UK than in the USA. Fear of serial killers and other penal 'monsters' is readily apparent in Europe, even while this fear is to some extent balanced by checks on penal populism overall. In Europe there are significant competitors to containment for any possible recasting of the power to punish. Human rights is clearly an important source for the development of European penal techniques in way that it has not in the USA (Van Zyl Smit and Snacken, 2009). In addition to preventing the predictable tilt toward degrading prisoners that the containment strategy has involved (Whitman, 2003), human rights discourse has reached well into practice and research of both national and European-wide correctional administrations. Indeed human rights, with its well developed tool box of investigatory and accountability techniques, represents its own kind of technology with broad application to the penal field. Likewise, the well noted importance of 'managerialism' in European penalty represents the application of another kind of technology, with its origins in business administration, to the penal field.

LOOKING BEYOND THE WASTELAND

The aim of this chapter was to outline some of the significant analytic methods of Foucault's (1977) and Melossi and Pavarini's (1981) books on the emergence of the penitentiary style prison, with its disciplinary

technology of power, and to suggest how they have been and might be applied to other phases of penal evolution. These works, which share a great deal in common, helped to revitalize punishment and society as an academic field within sociology, criminology and political science. There has been a great deal of criticism of the failings of this approach, especially Foucault's use of it. In the remaining part of this chapter I will suggest why it should remain in the tool kits of contemporary students of punishment and society, regardless of what theories guide them.

To study penal change by examining the way new technologies of power play out in the reformation of penal institutions is not to assume that punishment is only, or even primarily about the production of political power or social control. Punishment in any society serves many functions; to assuage the victims and onlookers of certain crimes, especially violent crime, to validate social authority, to incapacitate or control some people and to intimidate others. It is carried out by complicated organizations that have their own histories, values, and structures. Because Foucault and Melossi and Pavarini operated in a largely Marxist intellectual context,³⁸ they emphasized the role of punishment in enforcing class hegemony in modern society, but the tool kit is not limited to extending a Marxist political economy. Whatever else punishment does beyond social control, it does so dependent on the fit between penal practices and extended networks of acting on things. If punishments are to satisfy victims and community members that they are seriously capable of holding the convicted accountable for their crimes, they cannot be a singular or aberrational practice that has no resonance in the larger world (that is one problem with capital punishment is that it has so little company in the social world as a way we deal with other people). The disciplines, and in the 20th century, the family of techniques, knowledges and strategies that some have called 'welfarism' (Garland, 1985) or 'the social' (Donzelot, 1979),

were becoming familiar ways of organizing social action before they were launched successfully in the penal field. Today a precautionary approach to reformulating penalty been successful in large part because it builds on a precautionary logic widely dispersed societies experiencing the late modern concern with catastrophic risks (Ewald, 2002).

It does not follow from this that penal practices are best explained as ways of exercising power over people as individuals, or as whole classes. Indeed, the empirical study of penal practices in all three eras leads to the conclusion that punishment rarely works as planned. Disciplinary rituals end up angering and degrading those subjected to them, but regularly fail to produce an internalized commitment to self-discipline (other than that involved in behaving strategically to subvert discipline).³⁹ Social welfare agents tracking criminal involvement, after the fact, often with the result of cycling the subject back through the penal system it was supposed to move him beyond (Simon, 1993). It is only the strong social confidence in a technology of power that can account for the tolerance that societies have for penal failure, one that disappears very quickly indeed when that confidence wanes (Allen, 1981).

By the same token contemporary precautionary punishments, such as the mass incarceration practiced in the USA and to some degree in the UK, has quite mixed implications for the reduction of crime (Clear, 2007; Zimring, 2007). Its endurance will have much more to do with the broader social acceptance of precautionary power in broader society. As with earlier waves of penal change, the breakdown of this acceptance will be driven in large part by changes in political economy, which will raise new problems about the costs of precautionary punishment. Indeed the global economic crisis of 2008, which has continued to depress economic life in the USA and large parts of Europe, has accelerated growing criticism of mass incarceration, although it is far from clear how this will play out (Gottschalk, 2010). However, the actual shape of reformed

penal institutions is likely to depend not just on the problematization of precautionary technology, but also on the new technologies of power over the body that reformers are able to draw into the penal field.

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NOTES

1 I will refer throughout to first English translation dates but for the present discussion it is helpful to note the actual dates. Discipline and Punish is a translation by Alan Sheridan of *Surveiller et punir: Naissance de la Prison*, Editions Galimard 1975.

2 A translation by Helen Gyntis of *Carcere e fabbrica: Alle origini del sistema penitenziario*, 1977.

3 Both books were indebted to Rusche and Kirchheimer's *Punishment & Social Structure* (1939), which might have reignited the field, had it not been published in the midst of the Second World War and further hidden by the Cold War which cast its Marxist authors into semi-invisibility in the liberal West.

4 This was missed by many of the other important sites of revitalization of the social study of crime and its control in the 1970s, which focused more on ideas, identities, and ideologies.

5 Foucault used the term political technology and technology of power interchangeably. For example, he describes the soul as an effect of a 'certain technology of power over the body,' associated with punishment through imprisonment (Foucault, 1977: 29).

6 This is very much Foucault's strategy in *Discipline and Punish* where he discusses not one, but three quite distinct technologies of power.

7 Melossi and Pavarini read Foucault's book in French in 1976 after they had largely completed their manuscript, but managed to add some references to it in their original book and a longer response in the English translation in 1981.

8 Which is essentially how Garland (1990) treats it in his influential *Punishment and Modern Society*.

9 *Punishment and Social Structure* was first published in English in 1939, after being heavily edited by Kirchheimer to tone down its Marxism for US readers (Melossi, 2003). The book was republished in

1968, which brought it the attention of a new generation of sociologists of punishment like Melossi and Pavarini. A new edition was published in 2003.

10 This is perhaps the most important difference with a third remarkably similar book that was published at nearly the same time (Ignatieff 1979). Michael Ignatieff's analysis of the rise of the prison, discussed discipline and penal reform, but treated it much more as a problem of ideology.

11 The elaborate execution rituals of the scaffold, as described by Foucault, and others, was far from typical, but it exemplified a whole style of punishment which emphasized the public and degrading treatment of the body, including branding, mutilation, or exposure (Spierenburg, 1984).

12 The status of being outlawed and subject to the severe punishments due 'felons' at English and colonial American common law and the equivalent in continental 18th-century procedure generally did not befall people whom the local community including its hierarchy viewed as somebody who should remain a member of the community (Simon, 1993).

13 Neither Foucault nor Melossi and Pavarini were breaking entirely new ground in focusing on disciplinary practices as an important technology in 19th-century developments. Max Weber (1978) had discussed disciplinary techniques as had historian E.P. Thompson (1967).

14 By which I take him to mean European and North American societies from the at least the late 18th century right through to those same societies (as well as many others shaped by European colonialism).

15 Melossi and Pavarini are quick to recognize the parallel between Foucault's insights and their own while returning to what they conceive as a more adequate but still Marxist political economy. 'However, what is presented to us as the 'political economy of the body [in Foucault] is "political economy" *tout court*; it is already locked in the concept of labour-power' (1981: 41, original emphasis).

16 This is consistent with his later discussion of the importance of the 'specific intellectual', for example, Robert Oppenheimer rather than Albert Einstein. See Foucault, 1984.

17 And somewhat more mysteriously, '[The soul is] the present correlative of a certain technology of power over the body' (1977: 29).

18 Of course both Durkheim and Rusche and Kirchheimer had presentist concerns that were hardly hidden, militarism and French anti-semitism/nationalist racism for Durkheim and National Socialism and fascism for Rusche and Kirchheimer, but neither placed it near the center of their analytic method.

19 Melossi and Pavarini became aware of Foucault's work as they were completing the Italian first edition of their book and included only a few complementary references. Two years later, for the publication of their book in English, they provided a

more developed and critical response. Although my account here has tended to emphasize the similarities between the two projects, but there as the following quote suggests there were also important divergences.

20 The problematics of the scaffold as a technology of power was quite independently the focus of a group of historians lead by the late E.P. Thompson who were studying the role of criminal law and punishment in the consolidation of the Whig regime during the 18th century, see Thompson (1975) and Hay et al. (1975). Thompson and his students were also working to revitalize the Marxist approach to studying the history of punishment and develop a research strategy that is remarkably similar to the punishment as political technology approach. There seems to have been little direct influence between historians around Thompson and either Foucault or Melossi and Pavarini. Because the latter focused on the scaffold regime and not the birth of the prison as such, this chapter does not treat them at any further length, but their contributions ought to be seen as part of this moment in which the history of punishment was 'lit up', as it were, through attention to punishment as a technology of power.

21 Indeed, it was this interiorizing project that Foucault believed to be undergoing a crisis in the 1970s, around the problem of prisoners' rights.

22 It is not surprising then, that a good deal of attention since (especially to Foucault's book) has gone into trying to decide how far to extend the disciplinary concept to explain 20th-century changes in penalty (Bottoms, 1983; Cohen, 1985; Mathiessen, 1983; Feeley and Simon, 1992).

23 Penalty is a term introduced by Garland (1985) to describe the totality of institutions, practices and discourses that surround the power to punish.

24 Of course one should not take the endurance of a particular institution to suggest that its social meaning and role are the same (Bottoms, 1983).

25 As John Sutton (1988) points out, this term originally meant simply 'work on a case' before it was blown up into a technique during the rise of social work as an academic and policy field (Richmond, 1906; Garland, 1985). This is a good example of Foucault's (1977) admonition to look at those discourses at the margins of official respectability for the ideas that pull together a set of practices into a technology of power including the earlier and more practical meanings behind terms that have been propelled to the higher stratospheres of prestige precisely by the success of this pulling together process. Tom Baker's (1996) analysis of 'genealogy of moral hazard', a concept we will discuss in the next section is another good example of a piece of knowledge production that gravitates from a construct of based on the categories of insurance underwriters

toward formal theoretical coherence as it rockets up in prestige within the social sciences and as a policy driving term.

26 By programs Garland means distinct schemes of social action, each with distinctive discursive and technical resources as well as organizational bases and social bases of support (1985: 74).

27 It is important to recognize that existing institutions, especially the prison, and the disciplinary technology of power over the body, remained embedded in the penal field and an important source of conflict and resistance to the construction of new institutions based on welfarist or social technology.

28 But surely Garland overemphasizes the differences between Foucault's analysis and his. To be sure, Foucault seemed to view the elaboration of individualizing penal techniques associated with the turn of the 20th century as immanent within the disciplinary penitentiary, and while this misses the distinctive technologies of power at work in the latter period, it is not altogether inconsistent with Garland's own analysis to see continuities between the two (in the role of reform for instance). The panoptic prison and the penitentiary clearly and unambiguously see themselves as 'techniques of transformation' even if that objective was played down in favor of retribution and deterrence during the Victorian era in Britain. Nor does Foucault assume that the penitentiary technique is already informed by a positivist criminological knowledge of offenders, indeed he seems to suggest that it is the disciplinary prison that gives rise to criminological knowledge, a position quite consistent with the story Garland tells in *Punishment and Welfare*. And indeed, Garland sees political and ideological forces as constraining the potentially individuating logic of the disciplinary prison (1985: 32).

29 As Foucault himself had suggested at the end of *Discipline and Punish*.

30 My own account of the penal reforms of the late 19th and early 20th centuries also fails to distinguish the distinctive technologies of power at work in penal mechanisms like probation and parole. See Simon (1993: 44–5), discussing disciplinary nature of parole. There I suggest that new techniques, emphasizing therapeutic interventions, emerged only after the Second World War (see Simon, 1993: 68). While it may be true that much of the real work of parole remained oriented toward linking released prisoners to the work force, at least in California, this still ignores the distinctive technologies of power at work in the larger society at the turn of the 20th century that made the promotion of reforms like parole and probation viable.

31 Michael Meranze (1996) shows how the reformers in Philadelphia at the time of the emergence of the influential Cherry Hill penitentiary, worried that alternative penal forms, like compulsory

work in the public service, was dangerous and undermined the potential to reform.

32 The parole or probation officer, and their style of relating to individuals on their 'caseload' has ever since been a central preoccupation of criminological research (Simon, 1993; Lynch, 1998; Nellis, 2009).

33 Alison Liebling suggests that this relational model also shaped the logic of control inside prisons, a strategy she argues may be coming to an end under conditions to parallel some of what we describe in the next section.

34 Of course attending to variations with those insights in mind is perhaps the best use of them (Bright, 1996; Meranze, 1996).

35 Perhaps because the basic political economy is diverging (more on that shortly).

36 Even within the USA there is a considerable variation at the state level, which control the largest portion of prisoners. While imprisonment rates have grown significantly since the mid-1970s almost everywhere (with a national average of 500 percent), some states have kept growth to far more modest reaches and retained a more welfarist emphasis in punishment, while others have grown dramatically and embraced containment in a totalizing way (Lynch, 2009; Simon, forthcoming).

37 This movement, sometimes described as 'neoliberalism' (Harvey, 2007) or 'advanced liberalism' (Rose, 1999) includes a lot of different changes in governance including less risk spreading and thus more economic risk for the middle classes, less security of any kind for the working poor and those without employment at all, less regulation of consumer markets (and thus more risk to everyone).

38 Foucault is more often thought of as a critic of French Marxism, but he is quite clear in *Discipline and Punish* itself that he is building on the insights of Rusche and Kirchheimer's unabashedly Marxist approach and that he views the formation of capitalism as the primary horizon in which the disciplinary technology of power was being worked into reformulated penal practices in the 19th century.

39 Jimmy Boyle's (1977) memoir of his multiple incarcerations in youth and adult prisons during the 1960s captures both the total failure of disciplinary punishment and its tremendous endurance historically.

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