

Oxford History of the Prison: the Practice of Punishment in Western Society

Review Number:

14

Publish date:

Friday, 1 November, 1996

Editor:

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Date of Publication:

1995

Pages:

489pp.

Publisher:

Oxford University Press

Publisher url:

<http://ukcatalogue.oup.com/product/9780195118148.do?keyword=oxford%20history%20of%20the%20prison&sortb>

Place of Publication:

Oxford

Reviewer:

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"Woman manacled before giving birth" and "Battery hen cells being built for women" are only two of the various horror stories about everyday life in British prisons which have recently hit the headlines. Hardly a week seems to go by without new revelations about dire conditions in prisons both here and across the Atlantic. But such concern about the problems of life behind bars generally has little real impact on sentencing policy. On the contrary, both Britain and the US have experienced a considerable growth in the prison and jail population since the mid-1970s. In the US in early 1992, 455 people were imprisoned per 100,000 of population. Prisons are so accepted today as a fundamental part of criminal justice, that for most people it must be inconceivable how society could ever do without them.

Yet, as is pointed out in the rich and compelling "Oxford History of the Prison", co-edited by Norval Morris and David J. Rothman, the prison emerged barely 200 years ago as the major way of dealing with offenders. The 13 contributors trace the history of punishment and incarceration from ancient times to the present, setting the extraordinary transformation of the ideology and practice of imprisonment into the larger context of social and political change. The book is divided into two parts, the first one offering a straightforward historical narrative, focusing primarily on the prison system of the US and Britain since the 1780s. The chapters of the second part consider in more detail a number of themes, such as local justice, the juvenile reform school and the history of the literature of confinement. What unites most of the essays is the attempt to address the question of how the prison system could have gained such credibility, since the system itself is so strange that in David J. Rothman's words it "can still prompt an inmate to want to meet the man who dreamed it all up, convinced that he must have been born on Mars" (p.128).

In fact, the prison is very much a product of this world and was already known in ancient and medieval times. Yet, in the middle ages the prison population was still largely confined to those awaiting trial or the implementation of their sentence, and to debtors. Other forms of punishment were much more popular, as Pieter Spierenburg points out in his excellent chapter on early modern Europe. Contemporary attitudes were most clearly embodied, according to Spierenburg, in execution on the scaffold, and other forms of corporal punishment such as mutilation, whipping and branding. These and other non-physical public punishments, including symbolic acts of shaming and dishonouring, had a highly ritualistic and theatrical character, partly aimed at the deterrence from crime of the assembled public.

However, the nature of the penal system of Europe had changed greatly by the mid-18th century, with various forms of incarceration gradually replacing the "theatre of horror". From Spierenburg's account there emerge two distinct developments which help explain this shift. Firstly, imprisonment with forced labour and other forms of penal servitude (such as the galleys) grew increasingly popular from the early-16th century onwards, as attitudes towards idleness and poverty changed. The poor were increasingly expected to work, and houses of correction emerged all over northern Europe to ensure that they would do so. Secondly, attitudes to the body of the offender and to public punishment altered, with the judicial elites being more and more reluctant to hand out death sentences or penalties involving mutilation. These factors combined to make imprisonment a well-established element of criminal justice by the end of the early modern period.

But imprisonment was not yet totally dominant as a form of punishment. For example, transportation was still very popular in England, both in the 18th century to the America, and in the following century to Australia. Furthermore, prisons were not yet what we refer to under that name today. As Randall McGowen points out in his account of the English prison, "the contrast between a prison in 1780 and one in 1865 could scarcely have been greater" (p. 79). In the 18th century, the debtors and remand prisoners in the local jails often mingled together with petty offenders who were sent to the workhouse. In the prisons there was little sign of authority, it was noisy and smelly, and some prisoners were gambling while others were drinking beer sold by the jailors. The inmates were also relatively free to mingle with friends and family. All this was to change at the end of the eighteenth century.

In a period which saw the temporary end to transportation and an apparent increase of crime after the American Revolution, the discussion about confinement was renewed. A prison reform movement emerged in England, commonly associated with John Howard and his 1777 book "The State of the Prison in England and Wales". Religiously inspired, the reformers attacked the contemporary disorder in the prison and aimed at methods which would reform the prisoner. Yet, despite the continuation of the debate about the state of prisons in the early 19th century, prisons in England in the 1820s generally still operated on the basis of informality. It was the influence of penal experiments in America that led to the most sustained effort in England to reconstruct the prison in the following decades.

As David J. Rothman argues in his chapter on the US prison system, the 1820s and 30s in the States were characterised by widespread fears about the supposed disintegration of society and the family. It was in this context that reformers discovered the prison as a place to teach order and discipline to the offenders, who were perceived as a fundamental threat to the stability of society. The basic idea was to hold prisoners in solitude in order to shield them from the supposed contaminating influence of other convicts. Being left in completely silence with only the company of one's conscience and the Bible was to bring about the spiritual renewal of the offender. Also, a strict diet of work and military discipline would help to turn them into law-abiding citizens. Prison building flourished until the 1840s, aimed at transforming the prison from a physically and morally filthy place of confinement into a clean and rationally functioning reform-machine. The optimistic belief in the new prison based on uniformity and impersonality was widespread. One prison chaplain insisted: "Could we all be put on prison fare, for the space of two or three generations, the world would ultimately be the better for it" (p. 118).

The interesting theoretical issue concerning the emergence of the prison is how the authors interpret the development away from the brutal sanctions against the body to imprisonment. It was long maintained in the

literature on punishment that this shift ought to be seen as a logical step in the ever-continuing progress of humanity. This consensus was attacked most forcefully by Michel Foucault in his 1975 "Discipline and Punish", where he described the prison as part of a larger attempt by bourgeois society to discipline and dominate, and to punish the slightest deviation from what it prescribed as normative behaviour. Foucault's ideas crop up a number of times in one way or another in the "Oxford History of the Prison", as do the theories of other writers on the history of punishment like Norbert Elias, Georg Rusche and Otto Kirchheimer. As the book is directed at readers without any prior in-depth knowledge of the subject, it is regrettable that the editors did not choose to include a chapter on the different methodological approaches to punishment.

The general thrust of the articles in the "Oxford History of the Prison" is to describe the emergence of the prison neither as a glorious humanitarian effort, nor as a totalitarian project aimed at social or class control. Rather, they point to the contradiction between what the reformers intended and the cruel system of isolation and de-personalisation which was ultimately created. So had the life of inmates improved by the 19th century? No clear answer emerges. To be sure, prisons were cleaner places, and the cruel spectacle of public corporal punishments had largely ended. But while in earlier times only a fraction of offenders had been ritually punished, now an ever increasing number were sent to prison, for longer stretches of time. However, as Lucia Zedner points out in her insightful chapter on women and the prison, the 19th century reform movement was definitely welcomed by the small number of female prisoners. Women were finally separated from male prisoners, which put an end to their constant exploitation. For example, the governors of the London Bridewell had in previous centuries run their prison as a lucrative brothel, forcing female inmates into providing sexual services - an "unorthodox form of prison employment" (p. 329).

The following chapters also show that while simplistic doctrines about the development of punishment may offer easy explanations, they often have little historical validity. For once, it is a fallacy to assume that "punishment of the body" was more or less overnight replaced by "punishment of the soul". Corporal punishments continued as a disciplinary measure inside the prison walls well into the 20th century. The last whipping in Delaware's prisons took place in 1954, and in England flogging as punishment was abolished as late as 1967. Furthermore, as emerges from Sean McConville's account of the English prison system from the mid-19th to the mid-20th century, hard labour in Victorian prisons was very much directed at the body.

Administrators believed that the mere denial of freedom was not punishment enough and thought up various ways of intensifying the pains of imprisonment. Their industriousness made the hand crank and the treadwheel common features in prisons of the second half of the 19th century. The latter was an especially cruel device, constructed of a series of steps on a huge wheel which was to be turned around by the prisoner's climbing motion. Not only was the work physically exhausting, but it was also mentally gruelling for the prisoners as it produced absolutely nothing. The only justification of this, in McConville's words "scarcely veiled torture" (p.147), was to punish the prisoners. A medical and scientific committee was set up in the 1860s to determine the amount of labour that could be expected from the prisoners, and after rational deliberation the experts concluded that prisoners sentenced to hard labour were to ascend 8,640 feet per day.

The impact of the medical profession on the prison, the medicalisation of crime and punishment, gathered increasing momentum in the following decades, and in the 20th century eugenic justifications were invoked to incarcerate those who were supposed to present a risk to the future health of the nation. On the whole, this aspect is slightly neglected in Morris and Rothman's volume. The belief that the supposedly objective methods of criminal-biology or psychiatry were the key to solving all problems associated with criminality was widespread. These disciplines seemed to provide a way of scientifically determining who was destined to offend again, and thus to be locked away for ever.

Psychiatry and psychology also had an impact on life in American prisons, as Edgardo Rotman shows in his chapter on the US penal system in the 19th and 20th century. However, attempts to fully implement the therapeutic model of the prison failed time and again because of over-crowding and under-funding. A prison report of 1965 concluded that "life in many institutions is at best barren and futile, at worst unspeakably brutal and degrading" (p. 193).

Compared to the worst excesses of the 19th century, life inside has today improved in some ways. Ventilation and sanitation have changed the prison infrastructure, recreational options like sports, libraries and TV's have grown and prisoners have at last acquired some legal status. Yet, order and discipline is still prioritised over individual treatment. Riots, gangs and HIV are pressing problems, and so is over-crowding in institutions often purpose-built to suit the ideals of 19th century punishment: less than one quarter of English prisons in use in the late 1970s were built in the 20th century. As emerges from an account of a prisoner of his experience in an US institution in the 1990s (cited in Norval Morris chapter on the contemporary prison), arguably the worst problem of life behind bars today is its purposelessness - its dullness, monotony and utter boredom.

The contradictory history of the prison, torn between its over-optimistic rhetoric and often grim reality is set out with great skill by the various authors of the present volume. Its readability is enhanced not only by the high standard of writing, but also by many illustrations - photos, drawings, paintings - which offer a more graphic insight into life in prison. While most chapters include endnotes for suggested further reading, it would have been useful especially for academic readers had the authors also included footnotes.

The major problem with the "Oxford History of the Prison" is its all too narrow geographic conception. While the subtitle of the book promises an exploration of "the practice of punishment in Western society", this is all too often equated simply with "the practice of punishment in Anglo- American society". This reduction leaves many interesting areas of the modern penal system either unexplored or dealt with only superficially. For example, Patricia O'Brien has less than 30 pages (of more than 450) to deal with the European prison system in the 19th and 20th century. She devotes only 10 lines to the experience of imprisonment in Nazi Germany - even though she states herself that the concentration camps represent the most extreme use among all European nations of the deprivation of liberty as a form of punishment. The editor's explanation of this omission is not persuasive. Morris and Rothman argue that "the genocidal practices that went on within the camps did not take their inspiration from the conduct of criminal punishment" (Introduction, p. xiv). However, concentration camps were clearly influenced by experiences drawn from criminal punishment. Also, by the time the genocide began in the death camps of Eastern Europe, gigantic prison and labour camps within Germany had already been in operation for a full 8 years. But even if one chooses to neglect the camps, how did the prisons proper in fascist Italy and Germany compare with their counterparts in democratic societies, and what does this tell us about the nature of the prison?

The half-hearted description of modern European punishment is also evident in O'Brien's treatment of imprisonment in the Weimar Republic. Relying on only one outdated source, she describes this period as a mere preface to the Third Reich: Weimar, she argues, relied on the increasing use of the death penalty and the increased severity of punishment. In fact, the Weimar period saw the first sustained effort at a reform of the prison system in Germany, with the introduction of independent supervisory bodies, holidays from prison and experiments with limited forms of prisoner self-rule. One leading reformer, Max Grönhut, declared in 1931: "Until recently, the educational premise was the hazardous enterprise of a few theoreticians. Today, it seems to be universally accepted, and the judicial administrations are obviously competing with one another to modernise the prison service". Similarly, the numbers of executions in Prussia dropped from 172 between 1900-1910, to only 47 executions between 1920 and 1930. As the late German historian Detlev Peukert has pointed out, Weimar has its own complex history and should be judged on its own terms, not merely as a prologue to the Third Reich.

The focus on the English speaking world is all the more regrettable, as in most European countries the

importance of the prison declined after the Second World War, in marked contrast to the US and Britain. Questions about what one might learn from this experience remain unanswered. Overall, the structure of the book would have been more convincing had the editors consistently stuck either to a wider western perspective throughout the book, or to the Anglo-American experience only. The inconsistency of their application of the term 'western society' is apparent once more in Aryeh Neier's chapter on the history of the political prison. After being offered little or no information in the entire book on imprisonment in Hitler's Germany or Stalin's Soviet Union, the reader is confronted here with accounts of the prison system in China, El Salvador and Indonesia.

Surveying the last 200 years of the history of the prison, one might well ask why the constant failure of the prison to live up to its claims has had no impact on its continuing longevity. The history of the prison emerges as a succession of phases of over-exaggerated optimism in the power of the prison to change human behaviour, swiftly followed by failure in the realm of reality. One explanation for the survival of the prison might be that it has been successfully presented as the embodiment of a variety of contradictory justifications for punishment: it can be seen as incapacitating, retributive and as educative; either as harsh punishment or as benevolent reform, whichever suits the public mood best.

No research has been able to demonstrate a positive link between a higher rate of imprisonment and a reduction of the crime rate. In fact, as Norval Morris points, "the less effective the prisons are in reducing crime, the higher the demand for more imprisonment" (p. 257). The view persists that increased severity of punishment will lead to less crime. In this context, the prison has also become a weapon in politics. As Morris observes, being "tough on crime" today is a precondition for election to public office, and imprisonment remains the preferred way of demonstrating this resolve in the never ending but constantly proclaimed "war on crime". It emerges from this book that as long as this naive belief in the powers of the prison is not put into perspective by its history of failed promises, the rallying cry of politicians in Britain and the US will continue to be "prison works" - irrespective of which party they belong to.

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