

2ND EDITION

# PRISONS & PUNISHMENT

THE ESSENTIALS

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# 2.2 THEORISING ABOUT PRISONS AND PUNISHMENT

## Core areas

progress, modernity and civilisation  
social divisions, power and the distribution of punishments

## Running themes

- Governmentality
- Labour market
- Legitimacy
- Less eligibility
- Penal reform
- Power to punish
- Risk
- Social divisions
- Social justice

## Key penologists

**Emile Durkheim (1858–1917)** One of the founding fathers of sociology, Emile Durkheim is one of the most significant writers on the sociology of punishment. A French scholar who worked for many years at the Sorbonne in Paris, his main writings include his PhD thesis *Division of Labour in Society* (1893) and magnum opus *The Elementary Forms of Religious Life* (1912). Durkheim is often wrongly caricatured as a dry, conservative functionalist thinker, but he was, in fact, deeply radical for his time, making important contributions to moral philosophy. He was always a reformist socialist, rather than a revolutionary—but he was an idealist. He did not simply describe the functions of society, but rather wanted to identify what society needed to do to resolve its conflicts and to develop a moral consensus. Durkheim's thought is an attempt to offer advice on how society could, or should, operate, rather than an assessment of how it currently is. Durkheim died, allegedly of a broken heart, not long after hearing that his son had been killed during the Great War.

## 58 PRISONS & PUNISHMENT

**Georg Rusche (1900–50)** Rusche was a key Marxist thinker at the Frankfurt School, Germany, and co-wrote a foundational text of modern penology, *Punishment and Social Structure* (1939). His life was dogged with controversy, condemnation (because of his homosexuality), bouts of depression and financial precariousness. Although he had written a large part of the text of *Punishment and Social Structure*, prior to its publication the manuscript was revised by Otto Kirchheimer. The changes were made when the Frankfurt School relocated to the US after the rise of the Nazi party in Germany. The US had been traditionally hostile to Marxism and it was felt the manuscript needed to be toned down for its new audience. Rusche died alone, in poverty, after poisoning himself with domestic coal gas in October 1950.

**Michel Foucault (1926–84)** Perhaps the most influential thinker in penology over the last thirty years, Michel Foucault lived a notorious personal life, but wrote some brilliant—although very complicated—work on penology. His main book on penology is *Discipline and Punish: The Birth of the Prison* (1977), which continues to be one of the leading works in the field. An inspiration to a whole generation of thinkers, his influence can be divided into two traditions: those who look at disciplinary power, and those who focus on his later work on governmentality. Foucault was a radical penal activist and a staunch critic of the establishment in France, and his work opened up new ways of thinking about penal power. He died of an AIDS-related illness in 1984.

## PROGRESS, MODERNITY AND CIVILISATION

Theories of punishment and prisons are often linked with ideas of ‘civilisation’, ‘morality’ and ‘social progress’. In these theories, punishment is seen as evolutionary and is often tied to the notion of ‘modernity’.

*Modernity is a period in human history that was shaped by the privileging of rationality and reason above emotions. It is tied to the rise of the Enlightenment in the seventeenth century, which privileged secular human knowledge and scientific, neutral and objective analysis above religion and folklore. It is tied productively to mass technological change begun during the Industrial Revolution which, owing to constant reproduction in the age of mass consumerism, is always in a state of becoming (post)modern.*

## ADMINISTRATIVE PENOLOGY

Administrative penology is the official version of prison life. Changes in punishments since the eighteenth century are perceived to have been

progressive and underscored by humanitarian reforms. These reforms are considered to have been motivated by benevolence, altruism and efforts to make the penal system more efficient through the application of scientific principles.

*In this 'quintessentially optimistic' world view, the prison is perceived as a sign of progress in both penal administration and the sensibilities of the nation. The emergence of administrative knowledge and practices provided the platform for the birth of the discipline of penology itself.*

But there is a far bleaker vision of this essentially rational and legislative process. It is that the move from feudal punishments based on torture, mutilation and death to modern forms of punishment based on imprisonment is 'not so much progress in humanitarianism as progress in bureaucratized rationalism, necessary to meet the social control needs and legitimacy conditions of modern societies' (Hudson, 2003, p. 91). For the sociologist Max Weber (1864–1920), Enlightenment rationality, while it led to scientific and technological progress, erected an 'iron cage' of mundane, routine efficiency which stifled freedom of expression and human creativity. A consequence of bureaucratized, administrative sophistication is a lack of meaning, impersonality and moral blindness. David Garland has written that

because penal violence is generally sanitized, situational, and of low visibility, the conflict between our civilized sensibilities and the often brutal regimes of punishment is minimized and made tolerable. Modern penalty is thus institutionally ordered and discursively presented in ways which deny the violence which continues to inhere in its practices.

(1990, p. 243)

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Administrative penologies provide excellent descriptions and are often well researched. Good examples are: *English Prisons under Local Government* (Webb and Webb, 1922) and *History of the Criminal Law* (Radzinowicz and Hood, 1986). You should read such accounts, but bear in mind that administrative penologists accept implicitly the claims of those they are investigating.

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TAKING IT FURTHER

## EMILE DURKHEIM

Durkheim believed that society is a moral entity with a reality all of its own. Common beliefs and shared moral sentiments shape what he called the 'conscience collective'. Immersion into the moral boundaries of the conscience collective guides interactions and determines human behaviour. Durkheim was interested in how the social system is protected from those who challenge these wider shared beliefs and values. He argued that some acts that are against the law ('crimes'), and other behaviours that go against the norms of a society ('deviance'), can be signs of progress and a healthy society. This marks him off as a functionalist thinker. Irrespective of whether punishment deters or reforms people, it functions as a source of social stability and cohesion. Indeed, a society without 'crime' and punishment is inconceivable. In such a society the constraints of the conscience collective would be so rigid that no one would oppose them, and that would be unhealthy.

And yet there are 'crimes' that should be denounced, condemned and punished because they are such an outrage to humanity they inflict damage to the conscience collective. The whole of society is the victim of these 'crimes' and all 'healthy' members of society are repulsed and offended by them. For Durkheim, 'crime' highlighted the fragility, insecurities and weakness of society. The barbarity of the response shows how deeply the moral emotions are offended. The weaker the moral order and social integration, the stronger the threat to the social order, and, consequently, the stronger and more extreme the punishment invoked.

*Durkheim argued that punishment reinforces the wider constructions of morality and social cohesion. While punishments cannot create consensus, they can express condemnation, and reinforce the morality and consensus that already exists.*

The form of punishment is linked to the progress society has made. For Durkheim, feudal, primitive, 'mechanical' societies were characterised by repressive laws. They constituted a small number of individuals for whom social solidarity was based on similarity and who had an extremely punitive psychological disposition. Punishments were extremely severe and offenders were executed in the most awful ways

imaginable: stoned; crucified; hanged; hung, drawn and quartered, with parts of their bodies sent throughout the kingdom; hurled from cliffs; crushed beneath the feet of animals. In contrast, advanced, industrial, 'organic' societies are heterogeneous, featuring a specialisation of tasks and recognition of diversity and mutual interdependence. In a more secure society, punishments become less severe and restitutive laws replace those that are repressive.

*For Durkheim, a strong, morally legitimate social order requires very little punishment to reinforce social solidarity.*

Durkheim's theoretical analysis has been commended for providing an account of the evolution of punishment which throws light on its changing cultural meaning and symbolic importance (Smith, 2008). However, Hudson (2003) points to a number of criticisms that can be made of Durkheim's thesis. Durkheim is vague about the historical process in which mechanical societies change into organic societies. There is no intermediary society that features elements of both of these forms of punishment. There is evidence to suggest a contrary historical movement: that we have seen a shift from restitution to repressive forms of punishment in advanced capitalist societies. Durkheim is also wholly positive about punishment. He does not consider punishment as a source of conflict and repression in society, or fully engage with power and inequality, and the manner in which consent is organised is not explained. Punishment in a 'law and order society' is used to create consensus, rather than to reinforce existing morality, and the conception of hegemony may provide a more plausible explanation.

## NORBERT ELIAS

In his magnum opus, *The Civilising Process*, first published in 1939, Norbert Elias outlines how Western sensibilities have changed since medieval times. Through close readings of etiquette manuals, fictional works, fine art and various other documents of instruction or description, Elias charts, in fascinating detail, changes in table manners, dress, aesthetic appreciation, attitudes towards bodily functions, sexual behaviour, habits of washing and cleanliness, and the proper way of addressing strangers.

## 62 PRISONS & PUNISHMENT

*For Elias, the civilising process involves a tightening of the controls that are imposed by society upon individuals and an increased level of psychological inhibition. Elias argues that humans gradually internalise fears, anxieties and inhibitions that are imposed upon them by their parents and their social environment, developing a 'superego' that inhibits the expression of instinctual drives in accordance with the demands of cultural life. This transformation of the human psyche implies that the more civilised a society is, the more its inhabitants are repressed.*

Today, a whole range of possible punishments—tortures, maimings, stonings, public whippings—are simply ruled out as unthinkable because they strike us as impossibly cruel and barbaric. According to Garland, 'as with other signs of brutishness, the sight of violence, pain, or physical suffering [became] highly disturbing and distasteful to modern sensibilities' (1990, p. 223). In keeping with the demands of a civilised society, the experience of pain is kept private, ushered behind the prison walls.

Following Elias, Dutch penologist Pieter Spierenburg (1984) concentrates on changing sensitivities to suffering that, in a crucial sense, mediated the link between the emergence of nation states and common nationalities and less conspicuous and more restrained modes of repression. Similarly, the historian VAC Gattrell (1994) argues that a growing revulsion to violence ended public executions in England and Wales and led eventually to the concealing of punishment from public view.

*Many critics have questioned whether there really has been any progress around penal sensibilities, while other critics have taken exception to the argument that civilisation and penal reforms can only be achieved through the psychical repression of a naturally evil human nature.*

Elias is vulnerable to criticism in relation to his pessimistic vision of the social order and his notion that the perceived civilisation of moral acts is merely an example of psychological conditioning and the 'rationalisation' of human conduct. As Pratt (2002) has observed with reference to the re-emergence of visible displays of humiliation such as chain gangs in the southern states of the US, the form and severity of punishment is strongly influenced by cultural belief and economic and political history.

## ZYGMUNT BAUMAN

If society is subject to a civilising process, how might we explain relatively recent events such as the Holocaust? In one of the most acclaimed books of recent times, *Modernity and the Holocaust* (1989), Bauman argues that the systematic extermination of 20 million people in the Nazi Holocaust was not an aberration, but rather a problem that is central to the functioning of modern civilisations. Bauman points out that modernity facilitates a 'gardening state' with big visions aimed at the creation of a new and better society. Alongside great progress, modernity can lead to scientifically and rationally conceived genocide—i.e. genocide with the purpose of creating a better and more civilised society.

*For Bauman, the Holocaust would not have been possible without a civilised, rational, bureaucratic modern society weakening the moral basis of human interaction.*

Bauman argues that, in this instance, obedience to bureaucratic orders and the dehumanisation of 'the other' neutralised any sense of responsibility, leading to the social production of moral indifference. Most 'normal' bureaucrats involved in the Nazi killing machine were doing administrative duties as part of a rationally and bureaucratically ordered chain. They did not see the end results, and relationships were characterised by distance. This distance was both physical, through the division of labour, and psychological, through the depersonalising and devaluing of certain categories of human being. The only escape is to prioritise our moral and unreciprocated responsibilities for others and to create a sense of psychic proximity with all fellow humans.

The implications for penology of this analysis are immense. The rational, bureaucratic and managerial are privileged above the ethical, and one of the main groups of people most easily defined as 'vermin' or 'weeds' are those we imprison. Christie (1993, 2000) has made this connection as has Bauman himself with reference to economically marginalised populations rendered superfluous and 'criminalised' within neo-liberal market society (Bauman, 2004). For Christie a key problem is privatisation. 'Crime' is exploited by commercial interests that, supported by politicians and the media, promote authoritarian penal strategies and are 'seen as cleaning up, removing unwanted elements from the social system' (1993, p. 111).



## 64 PRISONS & PUNISHMENT

The work of Bauman has been hugely influential. It has been criticised, however, because it is difficult to relate his analysis to other, less technocratic, genocides in the twentieth century, and on the basis that his challenge to modern progress may be politically conservative, because it denies the possibility of a better, all-inclusionary alternative. Further, his analysis critiques modernity itself and so is inconsistent with modernist theorists.

### Common pitfall

*When considering the work of Bauman, Elias and Durkheim, ensure that you are aware of their very different views on human nature.*

## SOCIAL DIVISIONS, POWER AND THE DISTRIBUTION OF PUNISHMENTS

Penologists have also looked at the way in which punishments have been unequally distributed in modern societies among the social divisions of class, 'race' and gender. Problematising the link between 'crime' and the continued existence of the prison, penologists have attempted to uncover the real functions of imprisonment through analysis of political economy, power, patriarchies and the demands of the labour market. These theorists reflect contemporary political traditions such as liberalism, Marxism and feminism.

### LIBERALISM

Liberalism takes the humanitarian visions of penal reformers at face value, but recognises that they had disastrous consequences. This approach is described by Stanley Cohen (1985) as the 'we blew it thesis'. In a prime example of this tradition, American penologist David J Rothman's *The Discovery of the Asylum* (1971) identified the importance of religion, humanitarianism and benevolence in the development of the asylum in the US. Rothman argued that the reformers believed that people could be changed through incarceration, yet, in practice, confinement in total institutions was creating greater harm to, rather than helping, inmates.

*In essence, the liberal penological approach provides us with a pessimistic warning from history that benevolence itself should not be trusted.*

Critics have claimed that liberalism has failed to learn from past mistakes, holding firm to the belief that penal reforms can work, if only the great humanitarian principles could be correctly implemented on the ground.

## MARXISM

Karl Marx (1818–83) wrote little about ‘crime’ or punishment, but his central idea that the character of social institutions reflects the means of economic production has influenced penologists to assess criminal justice in these terms. Traditional Marxist penology analyses the political economy of punishment. It contends that within capitalism one class (the ruling) exploits the other (the ruled). ‘Crime’ therefore is a product of capitalism’s contradictions and inequalities, and its privileging of self-interest and competition. Acts are defined as ‘criminal’ because it is in the interests of the ruling class to so define them. Furthermore, the legal system is used to protect those self-same interests. Perhaps the most important contribution to Marxist penology is *Punishment and Social Structure* (Rusche and Kirchheimer, 1939; 2003). The book is firmly located within a material economic framework and aimed to uncover ‘why certain methods of punishment are adopted or rejected in a given social situation’ (p. 3). Moving beyond the idea that criminal justice is used simply to dominate and repress the lower classes, Rusche and Kirchheimer argued that punishment is an independent social phenomenon that has a complex relationship with ‘crime’. Most importantly, it is linked to changes in the value of labour.

*Punishments are historically specific and correspond to the given mode of economic production. In conjunction with non-penal institutions of the state, punishments perform a hidden role in the regulation of poverty. Shifts in the organisation of the economy, then, have implications for the form that punishments will take (Rusche, 1933).*

## 66 PRISONS & PUNISHMENT

Rusche and Kirchheimer identified three historical epochs:

- **Feudalism in the Middle Ages (13th–15th centuries)** Small parochial societies within which the fine was the main punishment.
- **Mercantilist capitalism (16th–18th centuries)** A society featuring a shortage of labour and the adoption of new reclaiming punishments that were based on hard labour.
- **Industrialisation (18th–20th centuries)** Societies experiencing massive population growth, urbanisation, pauperism and the creation of a ‘relative surplus population’.

Rusche and Kirchheimer identified three functions of imprisonment in the industrialised historical epoch:

**1 Controlling the poor** Under capitalism, human value is intimately tied to labour market value (i.e. employability). When labour is abundant and paid work is scarce, imprisonment is based upon control of the relative surplus population (i.e. the unemployed).

**2 Disciplining the poor** In times during which labour demand is high and the offender is seen as a valuable human resource, the prison becomes a mechanism for disciplining labour reserves so that they will submit to the demands of the labour market.

**3 Detering the poor** The morality of the poor is perceived by the ruling classes as susceptible to vice. Imprisonment must act as a deterrent to the poor. Criminals must be symbolically excluded as ‘less eligible’ or less deserving of help than the working poor.

A number of criticisms have been raised against this thesis. It is considered to be historically unreliable. Economic imperatives do not always explain penal practice. Prison populations are not determined necessarily by changes in the demand for labour and not all capitalist economies develop in the same way. Prisons are expensive and therefore not a rational response to labour market economic demands. The analysis also ignores ideological constructions of imprisonment and, in particular, is accused of being gender-blind, because there is no consideration of the different forms that the social control, regulation and punishment of women can take. Nevertheless, ideas centred on the political economy of punishment remain hugely influential, most prominently in relation to the impact over the past two decades of neo-liberal economic policies on

rising rates of poverty, social marginalisation, 'crime' and imprisonment (Di Georgi, 2006; Melossi, 2008; Simon, 2007; Wacquant, 2001, 2009).

## ANTI-SLAVERY

J Thorsten Sellin's *Slavery and the Penal System* (1976) follows in the tradition of Rusche and Kirchheimer (1939) and German legal theorist Gustav Radbruch, in his claim that current legal punishments are derived from slavery.

*Both imprisonment and slavery entail the loss of citizenship, dehumanisation and 'othering', the deprivation of liberty and being forced to undertake manual labour.*

Sellin argues that legal punishments were originally the private domestic punishments of slaves, but that over the centuries they have been made applicable to all offenders. In ancient civilisations such as the Roman Empire, slavery was legitimated and freemen were exempt from punishments. Hard labour in the imperial metal and salt mines (*ad metalla*) or in the chain gangs repairing roads, cleaning sewers and public baths (*opus publicum*) became the primary punishment of the poor.

The incorporation of slave punishments into state punishments was also evident in the Middle Ages in Europe. Slavery was firmly established among the Germanic peoples and manual labour was considered beneath the dignity of freemen. Offences by freemen against persons of property were settled by payment of financial indemnities, often without official intervention. But as property relations developed, the dehumanising labour-orientated slave punishments were thought to be appropriate to impoverished freemen unable to purchase immunity.

*Sellin highlights how only the nobles, the titled and the rich retained their exemptions from physical punishments. Socio-economic and political changes gradually placed a greater premium on labour, and public authorities started to punish offenders through public work for the profit of the state.*

*Opus publicum* (forced public labour) was revived, and was performed both indoors and outdoors in irons. Sellin argues that, by the late sixteenth century, penal slavery was deeply embedded in legal punishments across Europe and its colonies, such as in North America. He places a premium on highlighting how imprisonment is connected to a wider, dehumanised slave condition.

Sellin has been criticised on similar grounds to the Marxist penologists and, specifically, on the basis that his analysis of penal servitude is too broad and geographically disparate.

## NEO-MARXISM

Steven Box, in his book *Recession, Crime and Punishment* (1987) and in a number of articles co-written with Chris Hale in the early 1980s, provides one of the most impressive neo-Marxist analyses of imprisonment. Box and Hale (1982) challenge the orthodox account of the relationship between unemployment, 'crime' and imprisonment. They argue that official crime rates are not necessarily influenced by unemployment and economic hardship, but that the *belief* that unemployment and 'crime' are intimately connected has significant consequences for who is imprisoned.

*'Neo' means 'new', so neo-Marxism simply means 'New Marxism'. For an excellent example of neo-Marxist criminology, see Hall et al. (1978).*

For Box and Hale, in times of recession, the sentence of imprisonment is 'an ideologically motivated response to the perceived threat of crime posed by the swelling population of economically marginalised persons' (1982, p. 363). Judges believe that unemployment will lead to an increase in 'crime' among certain sub-populations of the relative surplus population and consider it to be important to punish the 'sub-proletariat' to send a deterrent message to society. Looking at ideology can help to explain why prison is used when it is clearly not the most rational or cost-effective solution to social problems.

Neo-Marxist approaches are critiqued for being functionalist.

## MODERNIST FEMINISM

Penology has been criticised for being written by men, for men and about men. Male knowledge has been presented as ‘the’ knowledge.

*Until the 1980s, penological studies largely ignored how the punishment of women differed from that of men. In recent years, feminist penologists have highlighted this theoretical blind spot, detailing the ways in which women are regulated differently from men through informal means of social control and how women experience state punishments very differently from men.*

Francis Heidensohn (1985) outlined how women offenders are seen as *doubly* deviant, having broken both legal and gender rules of conduct. Their punishment might be determined by how well they are able to conform to gender expectations and middle-class respectability. Pat Carlen (1983) interviewed women prisoners at Scotland’s Cornton Vale prison and outlined how the pains of imprisonment for women were harsher than those of men. This was due to:

- isolation and being a long distance from home;
- the creation of dependency through imprisonment;
- being treated like children;
- the use of heavy discipline by staff;
- the expectation of excellence in domestic duties;
- denial of their status as either real criminals or real women.

Modernist feminists have argued for a ‘woman-wise’ penology.

## MICHEL FOUCAULT

Michael Foucault’s *Discipline and Punish: The Birth of the Prison* (1977) is one of the most influential books in modern penology. Taking as his backcloth the ‘great transformation’ from capital punishment to the timetabled regimes of the penitentiaries and the ‘technologies of power’ deployed within them, Foucault rejected the liberal argument that the prison was a form of humanitarian progress, claiming instead that prisons

## 70 PRISONS & PUNISHMENT

developed ‘not to punish less; [but] to punish better, to insert the power to punish more deeply into the social body’ (p. 82).

Although he did not reject the ‘top-down’ Marxist approach of penologists such as Rusche and Kirchheimer, Foucault used a different analytical framework in order to understand how power operates ‘bottom up’ as a property of systems. He was interested in how disciplinary power impacted on the human soul (the psyche) at the micro level.

*For Foucault, power is productive, dispersed throughout society and intimately related to the construction of knowledge. Foucault wished to understand how the ‘power/knowledge’ axis could be deployed not to punish individual crimes so much as to observe and render human beings obedient.*

Taking Bentham’s panopticon design and inspection principle as his cue, Foucault argued that the wider application of such ‘technologies of power’ had created a modern ‘carceral society’ of disciplinary control. Hunt and Wickham (1994) explain how, for Foucault, disciplinary power operates on three levels:

- 1 Hierarchical observation** Differentiated positions of power that are rooted in surveillance, categorisation and classification.
- 2 Normalising judgements** Dominant definitions, rules, norms and expected behaviour.
- 3 Micro penalties and rewards** Means of regulation to ensure conformity and obedience.

The prison was not the only means through which disciplinary power operated—other places included the family, the school, the barracks, the workplace and the hospital—but it was at the pinnacle of a ‘carceral’ continuum.

*It is not important that imprisonment is a failure in terms of recidivism. To justify wider disciplinary controls, Foucault argues, the prison deliberately invents delinquents. In this sense, a state of permanent conflict exists to meet the needs of a crime control industry and to legitimate wider disciplinary controls. Certain illegalities are isolated and made manageable, while offenders are retrained and turned into disciplined, docile and productive human beings.*

Foucault has been criticised for overgeneralising disciplinary punishments used against juveniles to those used against adults and for providing only a partial analysis of punishments that requires synthesis with one or more of the earlier modernist 'total theories'. His theory that punishment operates through norms and techniques of rationality negates any consideration of wider cultural meanings, judgements and understandings punishment has for people. He has also been criticised on the bases that, like the Marxists, his analysis is functionalist and masculinist, and his conception of power simply a restatement of the basic sociological concept of socialisation.

## GOVERNMENTALITY

In recent years, some penologists have looked to develop the later writings of Foucault on penal governance. These are often referred to as 'governmentality' theorists, of which Malcolm Feeley and Jonathon Simon (1994) are good examples. An important theme of this work is that within (post)modernity, macro economic and social transformations (e.g. global competition for scarce raw materials, the demise of full employment and the withdrawal of welfare protection) have caused society to become increasingly preoccupied with fear and uncertainty. Risk today is incalculable, unpredictable and irreversible: 'a systematic way of dealing with hazards and insecurities induced and introduced by modernization itself' (Beck, 1992, p. 21). Science does not solve social problems, it causes new ones: pollution, war, global warming, famine, disease. The result is a mistrust of 'experts'. The name of the game simply is to avoid catastrophe.

'Crime' today has become a normal fact of life, an inevitable outcome of social inequality inherent in the neoliberal economic system. No longer justified as a means of 'disciplining' or 'normalising' people, prisons are used to manage the effects of social insecurity, precarious wage labour and unruly populations (Feeley and Simon, 1992). Non-legal factors, 'race', unemployment and homelessness are the primary 'risks' (Hudson, 2003). The key aim is to punish the poor (Wacquant, 2009).

The 'new penology' thesis (Feeley and Simon, 1992) has been criticised for overplaying the level of insecurity in (post)modern society. Life has always been a risky business. Furthermore, throughout history prison has been used to hold disproportionate numbers of poor and marginalised people. And efforts to transform offenders have not withered and died. Punishment and welfare have always coexisted, and reducing reoffending remains a key purpose of prisons and punishment.



'Critical Race Theory' (CRT) explores power disparities within legal and criminal justice systems which in effect are discriminatory. For example, Angela Y Davis (2003, p. 29) has traced the historical antecedents of the over-representation of poor African American people in US jails today to new systems of incarceration implemented after the abolition of slavery, and the use of black prison labour as a source of profit by private entrepreneurs to the convict lease system and debt peonage introduced after the American Civil War. CRT seeks to challenge the perceived neutrality of such practices by advocating new arrest, prosecution, jury and sentencing procedures (Delgado and Stefancic, 2001).

**"Durkheim attempts to make clear the symbolic importance of punishment. What is the justification for this view?"**

Weigh up the different theoretical perspectives on punishment. Is punishment strictly rational as Foucault contends, or is it invested with wider social and cultural meaning as Durkheim argues? If so, what are these meanings, and to what extent are they given expression in the way punishment is justified and delivered today?

**"What has been the contribution of feminist studies to our understanding of the role of imprisonment?"**

When answering this question, it is important that you identify the main feminist writers on imprisonment, Pat Carlen in particular. Highlight how they locate the historical and contemporary punishment of women within wider forms of social control and regulation, and how the needs and pains of women offenders and prisoners have been neglected. Demonstrate knowledge of alternative masculinist penologies, but do not lose your focus on feminist epistemology (i.e. knowledge).

The theories discussed above continue to be relevant to penologists writing today. Table 2.1 lists a number of recent books and their connections to the penological traditions discussed above:

**Table 2.1 Recent publications relating to penological traditions**

<i>Contemporary penologists</i>	<i>Theoretical tradition</i>
Centre for Social Justice (2009) <i>Locked Up Potential</i>	Administrative penology
Philip Smith (2008) <i>Punishment and Culture</i>	Durkheimian
John Pratt (2002) <i>Punishment and Civilisation</i>	Eliasian
Nils Christie (2000) <i>Crime Control as Industry</i>	Baumanian
David Ramsbotham (2003) <i>Prisongate</i>	Liberalism
Jeffrey Reiman (2007) <i>The Rich Get Richer and the Poor Get Prison</i>	Marxist
Loic Wacquant (2009) <i>Punishing the Poor</i>	Anti-slavery/anti-racism
Christian Parenti (1999) <i>Lockdown America</i>	Neo-Marxist
Kelly Hannah-Moffat (2001) <i>Punishment in Disguise</i>	Feminist
Joe Sim (1990) <i>Medical Power in Prisons</i>	Foucauldian/neo-Marxist
Jonathan Simon (2007) <i>Governing through Crime</i>	Foucault/governmentality

## BIBLIOGRAPHY

It is always worth reading the foundational texts, but for critical reviews of the work of Durkheim, Weber, Elias, Foucault and Rusche and Kirchheimer see:

- **CAVADINO, M, DIGNAN, J and MAIR, G (2013)** *The Penal System: An Introduction*, 5th edn, London: Sage.
- **GARLAND, D (1990)** *Punishment and Modern Society: A Study in Social Theory*, Oxford: Oxford University Press.
- **GARLAND, D and YOUNG, P (eds) (1983)** *The Power to Punish: Contemporary Penalty and Social Analysis*, Oxford: Heinemann Education.
- **HUDSON, BA (2003)** *Understanding Justice*, 2nd edn, Milton Keynes: Open University Press.
- **MELLOSSI, D (ed.) (1999)** *The Sociology of Punishment*, Aldershot: Ashgate.
- **SMITH, P (2008)** *Punishment and Culture*, Chicago, IL: University of Chicago Press.
- **WACQUANT, L (2009)** *Punishing the Poor: The Neoliberal Government of Social Insecurity*, Durham: Duke University Press.

## 74 PRISONS & PUNISHMENT

For developmental perspectives on Foucault's 'discipline' thesis in particular see:

- **COHEN, S (1985)** *Visions of Social Control: Crime Punishment and Classification*, Cambridge: Polity Press.
- **MELOSSI, D and PAVARIANI, M (1981)** *The Prison and the Factory: Origins of the Penitentiary System*, London: MacMillan.

A concise presentation of Bauman's own perspective on punishment and prisons can be found in:

- **BAUMAN, Z (2000)** 'Social issues of Law and Order', in D Garland and R Sparks (eds), *Criminology and Social Theory*, Oxford: Oxford University Press.

Feminist perspectives on 'crime', criminal justice and imprisonment are:

- **CARLEN, P (1983)** *Women's Imprisonment: A Study in Social Control*, London: Routledge.
- **CARLEN, P and WORRALL, A (2004)** *Analysing Women's Imprisonment*, Cullompton: Willan.
- **HEIDENSOHN, F (ed.) (2006)** *Gender and Justice*, Cullompton: Willan.

Key works on governmentality are:

- **FEELEY, M and SIMON, J (1992)** 'The New Penology: Notes on the Emerging Strategy of Corrections and its Implications', *Criminology*, 30, pp. 449–74.
- **GARLAND, D (2001)** *The Culture of Control: Crime and Social Order in Contemporary Society*, Oxford: Oxford University Press.
- **O'MALLEY, P (1999)** 'Governmentality and the Risk Society', *Economy and Society*, 28: 138–48.

Recent works which synthesise insights around 'race', class, gender include:

- **DAVIS, AY (2003)** *Are Prisons Obsolete?* New York: Seven Stories Press.
- **DAVIS, AY (2005)** *Abolition Democracy*, New York: Seven Stories Press.
- **DAVIS, AY (2012)** *The Meaning of Freedom and Other Difficult Dialogues*, San Francisco, CA: City Light Books.
- **OPARAH, J (2013)** 'Why No Prisons?', in D Scott (ed.), *Why Prison?* Cambridge: Cambridge University Press.