1

CONTINUITY AND CONTESTATION IN
PENAL POLITICS

Contents

> History … can help to pierce through the rhetoric that ceaselessly presents the further consolidation of carceral power as a 'reform'. As much as anything else, it is this suffocating vision of the past that legitimizes the abuses of the present and seeks to adjust us to the cruelties of the future (Ignatieff, 1978: 220).

In 1979, in a typically elliptical and tantalising remark, Michel Foucault cautioned against becoming nostalgic about the criminal justice system. For Foucault:

> … twenty years ago, or even a century ago, criminal justice was neither better organised nor more respectful … The transformations that are taking place before our eyes, and which sometimes leave us baffled, ought not to make us nostalgic. It is enough to take them seriously: we need to know where we are heading and to take note of that which we refuse to accept for the future (Foucault, 1988: 159–160).

Foucault's scepticism towards viewing the criminal justice system through the lens of nostalgia provides the starting point for this book. It is concerned with contesting the histories of punishment that have become prominent in criminology with respect to developments in penal policy since the mid-1970s. Central to these histories has been the emphasis on shifts and discontinuities

in the apparatus of punishment, underpinned and legitimated by a political and populist hostility to offenders. Punishment, it is argued, has shifted towards managing the dangers and risks posed by feral collectivities rather than integrating malfunctioning individuals back into the welfare comfort blanket of rehabilitative social democracy. This well-known and influential analysis was developed initially in Malcolm Feeley and Jonathan Simon's seminal article, published in 1992 (Feeley and Simon, 1992), and was further refined by David Garland in 2001 in his influential book *The Culture of Control* (Garland, 2001). However, while this work has contributed significantly to the sociological understanding of contemporary punitive trends through detailing their individual impact and wider social ramifications (Pratt et al., 2005), the analysis developed in this book follows a different theoretical and methodological trajectory. There are four dimensions to this trajectory that I want to explore in this introductory chapter: continuity and discontinuity in penal policy and practices; the role of reform, rehabilitation and social welfare discourses in prison; contestations and challenges to penal power; and finally the question of abolitionism as an organizing, conceptual framework for analysing the social problem of modern penal arrangements.

Continuity and discontinuity

As noted above, the analysis developed by new penologists concerning epochal discontinuity and the forward march of a more retributive, denunciatory and mortifying discourse of punishment, fuelled by the new right's economic, social and cultural ascendancy in Western Europe and North America in the 1970s, has been theoretically significant with respect to recent academic debates around the modern prison. In John Pratt's evocative phrase, neoliberal social arrangements have ushered in the 'return of the wheelbarrow men' (Pratt, 2000). However, as Ian Loader and Richard Sparks have pointed out, the emphasis on shift and discontinuity not only 'frequently betrays a tendency to construct a straw version of the past' through establishing 'some rather unhelpful binary oppositions' but also this explanatory model:

> … run[s] the risk of doing violence to the past, of underplaying its tensions and conflicts, of inadvertently re/producing one-dimensional – implicitly rose-tinted – accounts of both the history and politics of penal modernism, and the reasons for its (apparent) demise (Loader and Sparks, 2004: 14–15)[1].

As they suggest:

> … we need to revisit the terrain … Garland maps with a more quizzical *historical* sensibility. Such a sensibility would be minded to think seriously about the past. It would be actively oriented towards historical investigation and interpretation. It would,

in short, seek to grapple with the contours and conflicts of crime control in the latter half of the twentieth century *in their own terms,* while at the same time remaining attuned to the trajectories of competing practices, ideologies and ideas and the legacy particular signal events and conflicts bequeath to us today (2004: 15, emphasis in the original).

In addition, the theoretical and political orientation of the discontinuity thesis is built on a reductive periodization with respect to developments in modern penal policy.[2] It conceptualizes these developments as a long march which originated in the reforming 1890s, consolidated in the rehabilitative 1950s and 1960s and culminated in the 1970s with the punitive turn alluded to above (Garland, 2001). According to Mark Brown, this account is problematic in that it is based on the supposition that 'there is something distinctly late-modern about the recent rise in penal excess'. For Brown, the theoretical and empirical focus should be on 'the existence of cyclical or recursive trends within penal modernity'. Thus, 'a more satisfactory explanation of recent trends may … be one which emphasizes various tools in the armoury of modern government, tools that are general features of this form of government rather than particular responses to specific events' (Brown, 2002: 415). Similarly, Jewkes and Johnston have pointed out that the punitive policies pursued in the late twentieth century, 'bear remarkable similarities to the conditions of the mid nineteenth century'. These policies included prolonged periods of solitary confinement, military interventions to suppress prisoner demonstrations and the use of photographic surveillance 'to trace repeat offenders, all of which beg the question: just how "new" *is* the "new punitiveness?" ' (Jewkes and Johnston, 2006: 287, emphasis in the original).[3]

A further problem with the discontinuity thesis lies in its tendency to read the social history of the prison as an account from above. As such, it relies on official documents, papers and statements, which construct a narrative account of this history from the perspective of the powerful individuals who were responsible for developing penal policy and ensuring, at least in theory, its implementation. Consequently, accounts from below – prisoners' autobiographies and letters, as well as documents and publications from prisoners' rights organizations – are either missing or marginalized in this narrative. Prisoners' autobiographies, which began to appear in the late 1860s, and which have continued into the twenty-first century, articulate a very different version of penal 'truth' to the reality depicted in official prison documents. As Alyson Brown and Emma Clare have noted, the subjective accounts prisoners concentrate on the deeply embedded rationalities of punishment that govern their everyday lives. Consequently:

… in the context of net–widening penal policy and overcrowded penal institutions of the early twenty-first century it seems appropriate to re-emphasize the extent to which the experience of the prison can be psychologically and physically damaging. *Such an analysis also highlights that through all the changes in policy and practice during*

• 3 •

the nineteenth and twentieth centuries, the experience is one more marked by continuity than change (Brown and Clare, 2005: 50, emphasis added).

These accounts challenge the idea that rehabilitative discourses have *ever* been an institutionalized presence in the everyday, working lives of prison officers or the landing culture that legitimates and sustains their often-regressive ideologies and punitive practices. They indicate that prisons remained invisible places of physical hardship and psychological shredding throughout the twentieth century. It was a system of punishment and pain underpinned by the nonaccountable power of prison officer discretion. Thus, even when the privilege of talking was introduced into the prison system:

> Prisoner autobiographies suggest that the formal, and crucially discretionary, introduction of the privilege to talk had altered little in practice – the use of discretion whether to punish talking continued to be used as a control mechanism whatever the regulations formally stated (2005: 57).

Reform and rehabilitation: rhetoric and reality

For those who managed the criminal justice system in the immediate post-war period – 'the platonic guardians' – there was a deeply held belief in the process of rehabilitation which 'came … to be contingently attached during the mid-twentieth century to what one civil servant called "the project of being civilized …" ' (Loader, 2006: 561 and 565). There are three points to be made about this 'civilizing' project. First, implicit within this project is a vision of a society built on consensual, communitarian integration, which was regulated magically by informal mechanisms of social control that, in turn, were orientated towards the benevolent reintegration of the deviant. However, in post-war Britain, for subordinate groups such as women, newly arrived immigrants, gay men and lesbian women, this sepia-tinted nostalgia bore little relation to the often violent reality of their everyday lives. For victims of domestic violence, for example:

> Those who can remember the 1940s and 1950s will probably be able to recall the moral censure, the embarrassment, the shame and the cultural 'disguising' that often accompanied the issue. During this period, women suffering domestic violence had no one to turn to, except perhaps themselves, nowhere to go, no agencies, no safe havens, few housing, medical and social services, no counselling centres, no publicity or media coverage, not much in the way of legal remedies and very little help from the police who, until recent improvements which have so far had mixed and uneven effects, traditionally regarded a man's home indisputably as his castle (Hague and Wilson, 1996: 7–8).

More specifically, behind the project lurked a deeply punitive array of policies and practices that were carried out in the name of rehabilitation and reform across

different institutions. They ranged from using drugs such as crystal metham-phetamine through to experimenting with LSD (lysergic acid diethylamide) on women suffering with post natal depression or postrape trauma (Mortimer, 2006) and onto electroconvulsive therapy, leucotomies and outright physical brutality (Sim, 1990).[4]

Second, believing in a project built on civilizing the social detritus is clearly not the same as either seeing this belief being put into practice or indeed having the power to ensure that this belief *is* put into practice. As Frances Fox Piven has pointed out, not only is policy decision-making a complex business but also crucially 'the importance of informal and discretionary processes of implementation' (Piven, 2004: 83) should be considered, and their consequences analysed, if a fully comprehensive analysis of social policy implementation is to be undertaken. Furthermore, as noted above, it was those who staffed penal and other institutions who had the discretion, and therefore, the power to choose, whether or not to mobilize and implement supportive and inclusive policies of rehabilitation and reform. In practice, the majority of prison officers chose not to do so. Instead, they inhabited and supported a landing culture that was (and is) central to maintaining the often-vulpine and mortifying order of their respective institutions (Sim, 2008a).

Lucia Zedner has also indicated that even at the historical moment when the discourse of welfare was at its most intense 'it is questionable whether it dominated practice in the way that [David] Garland suggests … the fine remained the most frequently used penal sanction'. Zedner continues:

> This points to an interesting disjuncture between the promotion of welfarism as a political ideal and a continuing commitment by the courts to classical legalism. The criminal law has always been retributivist in its orientation, resting on the presumption of the responsible subject and geared towards the attribution of culpability. To focus on the prevailing rhetoric of welfarism, as opposed to its law and practice, overlooks the persistent commitment to classical legalism that might partly explain the later "revival" of retributivism (Zedner, 2002: 344–345).

Finally, if the discourse of social welfare was so important to prison regimes up to the 1970s, as official accounts and new penologists claim, why was this discourse not institutionalized in the everyday practices of the prison system? Or to put the question another way, why have those programmes which have had a positive impact on offending behaviour (in other words they have 'worked'), been drastically subverted by the discourses of pain and punishment which underpin and give meaning to the everyday experiences of many of the confined? Raising this question casts serious doubts on Martinson's much cited and hugely influential phrase, 'nothing works' (Martinson, 1974). According to accepted criminological wisdom, for the new right, Martinson's research legitimated their demand for a more retributive penal policy; for liberal and critical prison scholars this research signalled the death of the rehabilitative ideal. However, this misses a

fundamental point. Rehabilitation policies never worked because, in the majority of penal institutions, they were *never* actually put into practice. Those institutions that did work – the Barlinnie Special Unit – or which continue to work – Grendon Underwood – places whose working practices did not, and do not subscribe to the dominant penal discourses, were either closed down or have remained marginal to the 'real' business of the prison system which is the delivery of pain and punishment. I shall return to this point in Chapter 7.

Contesting the power to punish

David Brown has argued that while the accounts, which have emphasized discontinuity and shift, 'have enriched and revitalized penology, reconnecting it with broader social theory …' he has also noted that 'there are tendencies in some of them which result in minimizing the extent of contestation in penal and criminal justice struggles …'(Brown, 2005: 28 and 42). In highlighting the contestability of penal power, Brown is pointing to an important issue, which again is missing in the various analyses that emphasise convulsive, epochal ruptures in the punitive mentality. This has resulted in an 'over-reading [of] the return of cultures and practices of cruelty and the pervasiveness of punitiveness; and in [an] underplaying [of] the resilience of penal welfarism and its social democratic heritage'. (2005: 42). For Brown, welfare ideologies have *not* been obliterated by the punitive turn engendered by the emergence of a new right-led social and penal authoritarianism. Rather, they have retained their place as subjugated discourses within modern penal arrangements.

Prison medical care provides a paradigmatic example of this contradictory and conflictual process in the sense that while prisoners have historically and contemporaneously been subjected to the full punitive gaze of a medical profession that has treated them as less eligible subjects in need of control and restraint, *some* medical staff have resisted the dominant punitive discourse and attempted to implement policies and practices which provided support and empathy for the confined, even in the mid-1990s, when the punitive turn, theoretically, was at its most intense in England and Wales (Sim, 2002).[5] Thus, the survival of welfare ideologies, and their restraining impact on the prison's 'punitive obsession' (Playfair, 1971) should be considered if the complexity of contemporary penal arrangements are to be fully understood. Lucia Zedner has made a similar point with respect to the ongoing, reforming role of groups such as probation officers, who, in the 1980s and 1990s, continued to work towards the goal of rehabilitation, 'albeit in a markedly less benign political environment' (Zedner, 2002: 346).

Furthermore, the punitive power of the prison has also been contested by the interventions and hegemonic impact of radical prisoners' rights organizations in England and Wales, which emerged in the early 1970s and which have continued

to campaign and organize into the twenty-first century. These groups – *The National Prisoners' Movement (PROP), Radical Alternatives to Prison (RAP), Women in Prison (WIP), INQUEST* and most recently *No More Prison* – have provided a focal point for resisting the encroachment of penal power into the lives of the confined while impacting hegemonically on traditional, liberal prison reform groups by pulling them onto a more critical and radical terrain (Sim, 1994a). In the case of *INQUEST*, the organization's challenge to the negative ideological construction of those who have died in the custody of the state, *as well as* the policy changes it has helped to instigate, provides a paradigmatic example of hegemonic contestability in action. The challenges posed by these groups, and their capacity for exploiting the contradictions and contingencies in the operationalization of state power, are a recurring theme in this book, for they raise significant theoretical and political questions, not only about how current penal arrangements can be radically transformed but also about the limitations of state power, despite the intensification in its authoritarian tendencies over the last three decades.

Developing an abolitionist position[6]

The final strand that underpins this book is the use of an abolitionist perspective in order to frame and develop its central arguments. In particular, the book illustrates not only how theories and concepts articulated by different writers in the abolitionist tradition can help to explain the role of the modern prison more analytically, but also how abolitionism can offer radical policy solutions, which both critique and transcend what currently passes for penal policy in England and Wales. What are the distinguishing features of this position? There are three of them that I want to highlight here.

First, there is the issue (or rather the problem) of liberal reform and the role played by liberal prison reform groups in buttressing the ideological and material power of penal institutions. As Foucault has pointedly made clear, since its emergence at the end of the eighteenth century, the modern prison has not only been tirelessly critiqued but also has been subjected to endless reforms which have attempted to alleviate the failure of the institution to achieve its stated, overt goals of crime prevention, individual and collective deterrence and the reform or rehabilitation of the offender. Despite these critiques, the institution has always been offered as the solution to its own problems: '... word for word, from one century to the other, the same fundamental propositions are repeated ... So successful has the prison been that, after a century and a half of "failures", the prison still exists, producing the same results *and there is the greatest reluctance to dispense with it*' (Foucault, 1979: 270 and 277, emphasis added).

Therefore, in analysing developments in penal policy since 1974, this book challenges much of the accepted liberal (and indeed criminological) wisdom that there are distinct differences between those at the centre of penal policy making,

for example, between 'liberal' Home Secretaries such as William Whitelaw and 'reactionary' populists such as Michael Howard. From an abolitionist perspective, both stand on the same ideological terrain in that they support the continuing presence of the prison as a bulwark against the criminality and disorderly behaviour of the powerless. The gap between these individuals, and between the Conservative and (Old and New) Labour parties more generally, is miniscule, their political position on prisons being dominated by what Freud called 'the narcissism of minor differences' (cited in Gray, 2005: 36).

Thus, the liberal obsession with *which* individuals hold *what* positions within the government and the state, and the concomitant need to continually lobby these individuals and their officials in order to generate changes in the system inevitably leads to omitting detailed consideration of broader structural config-urations which transcend the ideologies and idiosyncrasies of individuals and whichever office they hold. Central to these structural configurations is the material role of the modern prison, as a *state* institution in the reproduction of an unequal and unjust social order divided along the social divisions of class, gender, 'race', age and sexuality.

For abolitionists, the prison is involved in the complex process of defending and reproducing these social divisions. Like the other coercive arms of the state – the police, courts and the military – it is concerned with what has been called 'the materialization of order' (Mitchell, cited in Coleman and Sim, 2005: 103). The fact that abolitionists recognize the complex interrelationship between the prison, the state and the wider social order, clearly distinguishes their position from liberal reformists, whose theoretical, political and policy emphasis is focussed on the plurality of power relationships, the progressive nature of benevolent reform and the magnanimity of the majority of state servants whose everyday work with prisoners is, it is wrongly contended, besmirched by the recalcitrant activities of a few, maladjusted prison officers.

Furthermore, taking an abolitionist position does not mean conceptualizing the state in instrumental terms. As Bob Jessop has noted, the state is not: 'a unified, unitary, coherent ensemble or agency … the state does not exercise power: its powers … are activated through the agency of definite political forces in specific conjunctures. It is not the state, which acts: it is always specific sets of politicians and state officials located in specific parts of the state system. It is they who activate specific powers and state capacities inscribed in particular institutions and agencies' (Jessop, 1990: 366–367). Jessop's model of state power captures the essence of abolitionist thinking with respect to recognizing that the state's sphere of action, and its influence, is often contingent, contradictory and unpredictable. I shall return to this point in Chapter 8.

Second, for abolitionists, the prison is a place of soul-crunching punishment and pain for the economically and politically powerless, many of whom are confined in the acrid stagnation of local prisons. This has specific relevance for thinking about the sociology of punishment, the continuities between different

● 8 ●

historical epochs with respect to what groups and which behaviour has *always* been punished and the central role of the prison in the delivery and distribution of that punishment, a point I return to throughout this book, particularly with respect to the construction of prisoners as less eligible subjects who *deserve* punishment. Allied to this is the modern prison's ideological role in the assertion and reassertion of the dominant discourses around crime, what Thomas Mathiesen called 'the diverting function of imprisonment' (Mathiesen, 1974: 77). As different chapters indicate, since the mid-1970s (and indeed long before that time period), politicians and policy makers have focussed on the disorderly and depraved world of sub-groups of the poor and powerless whose depredations, it is argued, need to be controlled through criminal justice interventions, one of which is the prison. For those who have ruthlessly (and, in many ways, hopelessly) governed the society in the last three decades, the iconic and symbolic status of the prison is paramount. It is an institution which retains a deeply embedded ideological presence in the interpellated, individual subjectivity and collective consciousness of the governing class and a professional elite who, as Hywel Williams has argued, utilize and tolerate 'methods … to enforce both discipline and distance behind prison walls which involves complacency and cruelty – complacency about the consequences of imprisonment and a cruelly class-based understanding of what makes a criminal' (Williams, 2006: 154).

Conversely, the massive and systemic social harms and collective depredations engendered by the activities of the powerful – individuals, organizations, institutions and states – have remained, and still remain, virtually ignored, not only within the world view of liberal reform groups but also within mainstream criminology and, not surprisingly, within the state itself. Therefore, while a powerful figure will occasionally be imprisoned, and while there are limitations placed on the corrosive activities of the powerful by criminal and civil law, and even by the often-insipid interventions of state servants, these interventions are socially and politically constrained, often to the point of invisibility. As Steven Box argued over twenty years ago: 'not only does the state with the help and reinforcement of its control agencies, criminologists, and the media conceptualize a particular and partial ideological version of serious crime and who commits it, but it does so by concealing and hence mystifying its own propensity for violence and serious crimes on a much larger scale' (Box, 1983: 14). Paddy Hillyard and Steve Tombs have developed this argument further:

> Many events and incidents which cause serious harm are either not part of the criminal law or, if they could be dealt with by it, are either ignored or handled without resort to it … corporate crime, domestic violence and sexual assault and police crimes [are] all largely marginal to dominant legal, policy enforcement, and indeed academic agendas, yet at the same time [they create] widespread harm, not least among already disadvantaged and powerless peoples. There is little doubt, then, that the undue attention given to events, which are defined as crimes, distracts attention away from

more serious harm. But it is not simply that a focus on crime *deflects* attention from other more socially pressing harms – in many respects it positively *excludes* them (Hillyard and Tombs, 2004: 13, emphasis in the original).

Both Conservative and New Labour governments have had everything to say about the crimes of the powerless and the punishment that powerless individuals should receive. In contrast, they have had very little to say about crimes of the powerful and what should be done about them, despite the huge social costs that their depredations inflict. In 2002, the annual cost of crime was £35 billion. Embezzlement accounted for 40 per cent of this figure. Recorded white collar crime increased by 500 per cent during the year, while there was a 7 per cent drop in burglary and robbery. Additionally, despite the fierce political assertions that law and order needed to prevail against the encroachment of the depraved, deprived and dangerous, judges were not extending this rhetoric towards middle class offenders. Those with jobs and reputations, it was argued, had more to lose than those with little economic or political status (Riddell, 2003).

In terms of the tax system, in the 20 years up to May 1996, a period which covered both Labour and Conservative administrations, 'the accountants Deloitte & Touche … calculated that taxes out of which the Crown had been swindled … totalled £2 trillion, or £2,000 billion at current [1998] prices. This colossal figure counts in tax evasion only, and takes no account of tax avoidance, practised on a huge scale by corporations' (Elliott and Atkinson, 1998: 99).[7] In the three months up to March 2007, '67 new types of tax avoidance scheme were notified under "disclosure" rules introduced three years ago, most of them pushed by the big accountancy and law firms' (*Private Eye*, 14–27 September 2007).[8]

By the end of 2005, corporate fraud and corruption was costing UK businesses 6 per cent of their annual revenue: 'put in terms of the UK's GDP, that is equivalent to undetected and unreported fraud costing businesses over £72 billion every year' (de Reya, 2005: 1).[9] The figures concerning money laundering were equally compelling. Of the $1trillion laundered through Western banks and companies in 2001:

Approximately half of that sum is generated by violent criminal activity, such as organized trafficking in drugs, weapons, or people. The other half is illegal flight capital – tax-evading money derived from kickbacks, bribes, falsified invoices, and sham transactions by overseas nationals who place that money into outside secure accounts, mostly in U.S. institutions. Whether the individual behind these ill-gotten gains is a murderous "godfather," a corrupt government official, or a tax-evading but respectable executive, it's important to understand that they all use the same process to launder their money (Harvard Business School, 2001: no page number).

At the same time, individuals and institutions in Britain accounted for over £300 billion of the $2,500 billion laundered internationally each year (Sikka, 2006: 32).

Additionally, middle class crime was (and remains) widespread. The middle class not only engaged in a range of serious illegalities but they also refused to recognize the rule of law, and indeed, were often contemptuous of the law and its application:

> Citizens discuss justifications and techniques for committing crimes of everyday life with considerable ease in pubs, with friends and with neighbours. This creates a moral climate that encourages such types of behaviour right in the centre of society … ongoing encouragement of entrepreneurial comportment and pursuit of self-interest has its price in terms of market anomie, which shows itself in the centre of society, not at its margins. The 'law-abiding majority', which politicians like to address, is a chimera. The crimes of everyday life that they commit are perhaps less worrying than the contempt for laws and rules and the accompanying cynical attitudes that are spreading among those who think of themselves as respectable citizens (Karstedt and Farrall, 2007: 7–8).

How have successive governments responded to crimes committed by the powerful? In 2001, the UK was the only member of the *Organisation for Economic Cooperation and Development (OECD)*, which had failed to pass legislation making it illegal to bribe officials of a foreign country.[10] This offence was created under the *Antiterrorism, Crime and Security Act* of 2001. By March 2007, no prosecutions had taken place. In contrast to the legislation that targeted and focussed on crimes of the powerless, the introduction to the government's consultation paper, published in 2005, indicated that 'change in the law represented a positive step forward – our aim always was to change attitudes and behaviour, not fill the courts' (cited in Pallister, 2007: 38). This theme is developed in subsequent chapters through an exploration of the 'anti-statist strategy' (Hall, 1988: 152) pursued by both Conservative and New Labour governments since the mid-1970s with respect to the powerful and their activities.

The third dimension in abolitionist thought highlighted here concerns the issue of resistance and contestation. Critics have long accused abolitionists of being idealistic utopians with respect to crime and punishment. For Roger Matthews, abolitionists have adopted an 'anarcho-communist position' and have been 'preoccupied with abolishing or minimizing state intervention rather than attempting to make it more effective, responsive and accountable' (Matthews, cited in Sim, 1994a: 265). However, since the 1970s, and contrary to Matthews' argument, abolitionists *have* been deeply involved in activist interventions across the penal spectrum, which attempted to make the prison 'more effective, responsive and accountable'. These interventions can be seen in the various successful campaigns in which abolitionists have been directly involved or which have been underpinned by an abolitionist theoretical position and political strategy. They have included: the closure of the secretly established, mind-wrecking Control Units in the mid 1970s; the abolition of the prison medical service in the early 1990s; and the ongoing legal changes instigated to support

the families of those who have died in state custody, primarily instigated by *INQUEST*, with the support of many of those who had been involved in the first British abolitionist group, *Radical Alternatives to Prison* (Ryan, 1996). The theoretical starting point, and political finishing point, for these campaigns were (and remain) quite distinct from more liberal, reformist strategies in these areas, with the concomitant danger of state incorporation that taking a liberal position entails. Therefore, central to this book's argument is an understanding of abolitionism as a hegemonic force, which is generated by, and responds to, the 'contingent, fundamentally open-ended' nature of politics (Hall, 1988: 169). Abolitionist praxis can be seen as part of the struggle to develop a radical discourse around law, order, crime and punishment; in Gramscian terms, as an attempt to replace 'common sense' with 'good sense' (1988: 142 and 169). It is also a praxis, which has impacted hegemonically on more traditional penal reform groups, leading them onto a more critical terrain with respect to penal policy. These themes are explored more fully in Chapter 7.

This chapter began with a quotation from Foucault and concludes with another taken from an interview that was published in June 1984, the month of his death. Here Foucault talked about the role of the Groupe d'Information sur les Prisons (GIP), the radical prisoners' rights group formed in France in 1971. He argued that the GIP was a ' "problematizing" venture, an effort to make problematic, to call into question, presumptions, practices, rules, institutions, and habits that had lain undisturbed for many decades. This effort targeted the prison itself, but through it, also penal justice, the law, and punishment in general' (Foucault, 1984/2002: 394). Over two decades later, Foucault's words remain entirely and poignantly relevant to thinking about prisons in the early twenty-first century. By 'problematizing' contemporary structures of punishment, scholars and activists conversely can make them unproblematic for the confined and thereby make a difference both with respect to the political complacency that surrounds them and the individual pain and collective misery that inhabits them.

Notes

1 Thanks to Mick Ryan for pointing out this reference to me. George Rigakos and Richard Hadden have also argued that while there might be evidence of an emerging 'new times', which includes the rise of the service sector, significant changes in the means of communication and in the processing of information 'and even the continued refinement of risk technology …' there are significant areas within the capitalist economic system which, in their view, shows signs of 'far more continuity than change …' (Rigakos and Hadden, 2001: 79–80).
2 In political science, similar critiques have been made, particularly with respect to the methodological problems surrounding reductive comparisons between different historical epochs. See Mackie and Marsh (1995).

3   Roger Matthews has also argued that the key terms in this debate such as '"punitiveness" and "populism" remain largely undefined'. Additionally, 'since the deployment of punitive sanctions has historically been an endemic feature of the criminal justice system we are faced with the question of "what is new?"' (Matthews, 2005: 175).

4   In Canada, prisoners were also used 'in a number of … experiments, including clinical trials for pharmaceutical companies' (Osborne, 2006: 284). Thanks to Kathy Kendall for pointing out this reference to me. It is also worth remembering the brutal, physical methods mobilized by the British state in their 'colonies' during this time. See, for example, Anderson (2005) and Elkins (2005) on the use of punishment in Kenya and Hillyard (1987) for an analysis of the British state's coercive strategies in Northern Ireland.

5   Steven Hutchinson also cautions against seeing 'the current state of affairs as completely new, and as catastrophically different from "modern" rehabilitation. Rather, punishment and reform can be seen as always braiding together variously in modern liberal penality. Marked punitiveness during rehabilitation's heyday, as well as the recent emergence of important (transformed) correctional projects demonstrates this characteristic braiding. Even if there seems to be an overall expansion of punitivenss and a retraction of correctionalism in some jurisdictions, it is important not to confuse jurisdictional trends with global (or western) ones, or to ignore counter-currents to what is (mis)perceived as an unstoppable wave of control' (Hutchinson, 2006: 459–460).

6   This section draws on arguments developed elsewhere in Sim (1994a, 2004a, 2006a) and in Ryan and Sim (2007). As I have argued elsewhere, it is important to recognize that abolitionism 'is not a homogenous theoretical and political movement but varies across cultures'. Thus, there are a number of distinct differences between the abolitionist movement in England and Wales and the abolitionist movement in Europe. In particular, British abolitionists have 'advocated engaging in more interventionist work to develop a "criminology from below"' (Sim, 2006a: 3).

7   In March 2005, the Tax Justice Network estimated that globally 'there was an annual tax loss of approximately $255 billion resulting from wealthy individuals holding their assets offshore'. The Network's research suggested that. 'approximately US$11.5 trillion of assets are held offshore by high-net-worth individuals; the annual income that these assets might earn amounts to US$860 billion annually [and that] the tax not paid as a result of these funds being held offshore might exceed US$255 billion each year' (Tax Justice Network, 2005: 2 and 1). *The Observer* called this document 'the most authoritative study of the wealth held in offshore accounts ever conducted'. The newspaper quoted a member of the Network who argued that, 'This is one of the defining crises of our times. One of the most fundamental changes in our society in recent years is how money and the rich have become more mobile. This has resulted in the wealthy becoming less inclined to associate with normal society and feeling no obligation to pay taxes' (*The Observer*, 27 March 2005). The common view that tax evasion is a 'victimless' crime has been challenged in a report by Christian Aid, which noted that the 'illegal trade-related tax evasion will be responsible for *5.6 million deaths* of young children in the developing world between 2000 and 2015. That is almost 1,000 a day. Half are already dead' (Christian Aid, 2008: 2, emphasis in the original).

[AU: Not in refs.]

8   In taking this position, it is important to recognize that abolitionists, at least in the UK, have not condoned conventional criminal activity or underestimated its

impact on the powerless. The sterile debate around crime, which dominated critical criminology in the 1980s was based on a 'straw man' version of the work of both critical criminologists and abolitionists (Sim et al., 1987). The key point here is recognizing the indisputable sociological fact that the prison remains the big house for the poor and the powerless no matter what illegal activities the powerful may or may not engage in.

9   Given New Labour's obsession with evaluation studies, and the management of risk with respect to the crimes of the powerless, the comments made Gary Miller, a partner in Mischon de Reya, provide an ironic comment on this obsession: 'Corporate Britain is failing to accurately evaluate and effectively manage the risk of fraud' (cited in *The Observer*, 20 November 2005).

10 In terms of violence more generally, Wayne Morrison, has pointed out that in the twentieth century the number of people killed by state-sponsored massacres or 'other forms of deliberate death' was between 167 and 175 million. This figure excluded '*military personnel and civilian casualties of war …*' Importantly, '… the vast majority of the people who caused the deaths of the 167–175 million persons … were not subjected to criminal justice processes or penalty …' (Morrison, 2005: 294, emphasis in the original).

AU: Not in refs.