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THE POLITICAL
ECONOMY OF PUNISHMENT

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THE LANDMARK MARXIST account of the nexus between the economy and social control is Rusche & Kirchheimer's (1939) *Punishment and Social Structure*. Rusche & Kirchheimer's basic assertion is: 'Every system of production tends to discover (and use) punishments which correspond to its productive relationships. During the late Middle Ages, Rusche & Kirchheimer argue, there was no shortage of labour in Europe, at least in the towns. Little value was therefore placed on the human life of the lower classes. In the 16th century, death as the dominant mode of punishment reached its zenith. 'We are told that 72 000 major and minor thieves were hanged during the reign of Henry VIII, and that under Elizabeth vagabonds were strung up in rows, as many as three and four hundred at a time' (Rusche & Kirchheimer, 1939: 19). This when the population of England was only about three million.

Even the most morbid 20th century imagination can hardly picture the horror of 16th century punishment. One reads of strips of flesh being torn off the body with hot pincers while the felon was still alive, limbs being hacked off one after another, nails being driven through the head or eyes, tearing out of tongues, people being buried alive. Rusche & Kirchheimer argue that the shift away from these forms of punishment occurred largely because of the demand for labour with the rise of mercantilism in the late 16th century. Before embarking on this explanation, it should be pointed out that Foucault (1977) has suggested an alternative. His view is that the 'dying a thousand deaths' punishment of the late Middle Ages were not indicative of an attempt to control crime, but rather functioned as a means of publicly demonstrating the awesome power of the monarch. Under feudalism there was no consistently applied justice, most law breaking was tolerated, and often even approved. Moreover, there was not the state apparatus to finance a systematic approach to crime control. Of necessity,

I would like to thank Stanley Johnston and Richard Fox, Peter Grabosky and David Biles and Marjorie Johnson for allowing me to use their hard earned data on New South Wales and Victorian imprisonment rates. I would also like to thank Annette Waters for recalculating many of these imprisonment rates for the purpose of this paper.

therefore, punishment had to be arbitrary, cruel and cheap. Mercantilism, with the new phenomena of population mobility which separated servants from traditional masters, pilfering from employers, urban pickpockets, large urban warehouses which were targets for theft, ushered in the need for a rational crime-control policy. No longer could the ruling class turn a blind eye to most crime. Nor could they hope to enforce horrendous 16th century punishments consistently against every felon caught without wiping out half the lower classes. New modalities of punishment had to be found.

Rusche & Kirchheimer's theory links up with Foucault in the way it emphasises the new importance of preserving the lives of the lower classes. The first manifestation of this was galley slavery. Religious wars and pestilence considerably reduced the populations of some European countries in the early 17th century precisely when there was a rising demand for labour. Criminals became a source of labour. Instead of being hanged, many criminals were used in the army's front line. Some nations sold their convicted criminals to foreign armies. Courts were placed under pressure to step up their supply of criminals for the galleys. A letter to the French public prosecutor in 1676 illustrates this pressure.

Since His Majesty urgently needs more men to strengthen His rowing crews . . . to be delivered at the end of the following month, His Majesty commands me to tell you that He wishes you to take the necessary steps in His name in order to have the criminals judged quickly.

The courts hastened to comply, as the following report of the public prosecutor at Bordeaux reveals:¹

You have frequently done me the honor of writing to me in connection with the supply of prisoners for the galleys and of transmitting to me the express orders of His Majesty relating to the use of such prisoners in the execution of His glorious projects. You will be gratified to learn that this Court has twenty prisoners who will be chained together this morning and sent off.'

The substitution of galley slavery for the deaths and tortures described earlier was not the result of a new humanitarianism but of a new demand for labour. Prisoners unfit for galley slavery, for example those with an arm or leg missing, were still to be put to death according to explicit instructions to the French courts from Louis XIV.

Later, convict labour was found useful as a solution to acute labour shortages in colonies such as America and Australia. During the era of labour shortages, which ended with the industrial revolution in Europe but much later in the colonies, prison industries became highly profitable. These profits were a major incentive for maintaining high imprisonment rates. Rusche & Kirchheimer point out that as labour surpluses developed in 19th century Europe, the comparative advantage of free prison labour dissipated, prison industry became unprofitable, and so fiscal pressure developed for prisons to decrease their populations. It might also be added that as the importance of raw labour power has diminished in favour of skilled labour power, the unskilled workforce of prisons has become less and less economically useful.

Two books have recently appeared which provide Marxist accounts of the function of imprisonment in capitalist societies in the 20th century; both draw heavily on Rusche & Kirchheimer's broader historical analysis of the effect of material conditions on penal ideas and practices. One is Richard Quinney's *Class, State, and Crime: On the Theory and Practice of Criminal Justice*, the other Andrew Scull's *Decarceration: Community Treatment and the Deviant—A Radical view*. Both are Marxist analyses which rely heavily on James O'Connor's *The Fiscal Crisis of the State*; because both books were written at the same time, neither cites the work of the other.

Quinney argues that imprisonment is functional for capitalism in controlling the surplus population created by advanced capitalism; Scull that decarceration (letting people out of prison) is functional for advanced capitalism. The prediction from Quinney's theorising is that as the crises of capitalism deepen, imprisonment of the surplus population will be increasingly resorted to by the state; while Scull concludes that as the fiscal crisis of the state worsens, imprisonment will be increasingly eschewed in favour of community treatment. The purpose of this essay is to attempt a synthesis of these seemingly contradictory formulations, in part by confronting their historical analyses with data on imprisonment rates for New South Wales and Victoria from the mid-19th century to the present.

In the past decade the emphasis in mainstream criminology has shifted away from rehabilitation. The influential review of Lipton, Martinson & Wilks (1975) confirmed the long-standing cynicism of criminologists that rehabilitation rarely works. But the collapse of the rehabilitative ideal has been responded to in different ways by different camps within criminology. For one group, led by conservatives such as James Q. Wilson, it has heralded the need to return to retribution, denunciation, just deserts, deterrence, or some combination of these, as the rationale for the widespread use of imprisonment. For liberal criminologists, however, the bankruptcy of rehabilitation has been construed as justification for deinstitutionalising offenders, not necessarily because community treatment is more effective in terms of crime prevention, but because it is either cheaper, or more humane, or both. The retribution-deterrence and deinstitutionalisation doctrines now distinguish two fairly clearly defined camps within mainstream criminology of the late 1970s and early 1980s. The crucial difference between Quinney and Scull arises from the fact that while Quinney construes retribution-deterrence as *the* mainstream of contemporary criminology, Scull regards deinstitutionalisation as the epitome of mainstream criminology.

Quinney's theory

Quinney uses O'Connor's (1973) arguments to reach the conclusion that as a result of the crises of advanced capitalism a diminishing proportion of the population is involved in producing surplus value for capital accumulation. Concomitantly, an increasing proportion of the labour force is employed by the state in activities to legitimate capitalism and control the surplus population of unwanted labour. As the crises of capitalism worsen, the notion that the social problems generated by capitalism can be solved becomes obsolete.

In the words of James Q. Wilson we must 'learn to live with crime'. Notions of rehabilitation popular during earlier phases of capitalism are jettisoned in favour of retribution-deterrence models.

Quinney sees unemployment as a cause of crime:

Crimes of economic gain increase whenever the jobless seek ways to maintain themselves and their families. Crimes of violence rise when the problems of life are further exacerbated by the loss of life-supporting activity. [p. 58]

Quinney would draw little disagreement from the present author on this question, since there is considerable evidence to support the proposition that the unemployed commit those types of predatory and interpersonal crimes which are the predominant concern of the police, at a higher rate than people who have jobs (Braithwaite 1978, 1979a). But Quinney's theory takes this one step further by arguing that rising unemployment means more crime and therefore a greater need for the state to use imprisonment to control the surplus population. Unfortunately for Quinney, the evidence is not very consistent on the question of whether crime rates go up or down during periods of high unemployment. Elsewhere I have discussed some of the reasons why such time series studies might have produced contradictory results (Braithwaite 1978, 1979a).

Even though Quinney does not produce evidence to show that real crime rates go up during periods of high unemployment, he does provide quite compelling evidence that in the United States between 1960 and 1972, imprisonment rates have risen and fallen in unison with unemployment rates. There is quite a deal of other evidence, not cited by Quinney, consistent with this proposition. Dobbins & Bass (1958) demonstrated a positive correlation of 0.78 between unemployment and imprisonment rates in Louisiana between 1941 and 1954. While the authors interpreted this as showing that real crime rates rise when unemployment increases, the fact remains that the finding is consistent with other theories based on the relationship between unemployment and the punitiveness of the criminal justice system. For the period 1950-1972 in Texas, Vogel (1975) similarly demonstrated a positive unemployment-imprisonment correlation. Greenberg (1977) demonstrated a remarkable 0.92 correlation between unemployment and imprisonment in Canada between 1945 and 1959, and showed that, at best, only a small part of this strong association could be explained by a positive association between unemployment and reported crime rates.

The most directly comparable confirmation of Quinney's finding comes from Grabosky (1979) who for the time period 1930 to 1970 found a strong positive relationship between U.S. unemployment and imprisonment rates. Moreover, Grabosky's correlation coefficients increased as the unemployment rate was lagged, but decreased when the prison population measure was lagged, suggesting a direction of causation running from size of the surplus population to expansion of the control apparatus.

Quinney interprets his findings as indicative of two things: first, a greater need for the state to control crime when unemployment is high,² and second, a heightened need for class domination during crises of capitalism. Since the publication of Quinney's book, the most sophisticated empirical study

to date has appeared suggesting that the latter is the explanation which is more consistent with the evidence. Jankovic (1977) established a positive correlation between unemployment and imprisonment rates in the United States between 1926 and 1974. He also found no correlation between unemployment, and reported crime and arrest rates. The positive relationship between unemployment and imprisonment obtained regardless of the volume of recorded criminal activity. This was established by entering reported crime and arrest rates into multiple regression analyses and thereby controlling for their impact on imprisonment. Jankovic also showed a 0.84 correlation between unemployment and imprisonment in Great Britain between 1963 and 1973.

Unfortunately, Quinney has put most of his eggs in the wrong basket. His emphasis is placed most emphatically upon the effect of economic crisis on real crime rates without reviewing the evidence for this, and without substantiating the assumption that imprisonment is effective in controlling the crime of the surplus population, or even that the ruling class believes it to be so.

Quinney has offered almost no arguments to support the second, more plausible, string to his bow—that rising imprisonment rates during periods of high unemployment reflect a heightened need for class domination during a crisis. Quinney's only argument here is that imprisonment is somehow a way of getting rid of the surplus population. Not very convincing when one compares the high percentage of the Australian or American population which is unemployed with the less than one-tenth of a per cent who are in prison. Jankovic's unstandardised regression coefficient indicated that an increase of 1000 in the number of unemployed persons corresponded to an increase of 2 in the prison population. What of the other 998?

Quinney's argument about imprisonment as a way of reducing the surplus population also is inadequate for explaining quite different types of data about the connection between economic crisis and the control apparatus. For example, Raper (1933) discovered a correlation of 0.53 between the value of cotton in 9 U.S. cotton states and the number of lynchings between 1901 and 1930. Similarly; Hovland & Sears (1940) compared the per acre value of cotton against the number of lynchings in 14 Southern states between 1882 and 1930. Using different statistical methods, the correlation coefficients range between -0.61 and -0.72.³ Clearly this kind of stepping-up of social control could never be regarded, à la Quinney, as an economic solution to the economic crisis. It might, however, constitute an ideological defence against it.

Surely the argument that Quinney could have put is that, during a period of economic crisis, the hegemony of capitalist ideology fosters a search for alternatives to the failure of the system as an explanation for the crisis. An explanation which makes eminent sense to everyone is to blame the victims of the crisis for the crisis. The clearest illustration in the Australian context is the way that 'dole-bludgers' are spotlighted as the cause of our economic ills whenever a crisis looms (Bright, 1978). Even though, in objective terms, days lost from strikes in Australia has declined since 1974 (Australian

Bureau of Statistics, 1974, 1975, 1976, 1977, 1978), this does not prevent 'militant unionists' (or 'the English disease') being scapegoated for the current crisis. Similarly, married women and migrants, who are the greatest victims of recession, receive a disproportionate share of the blame for it.

Australian prisons are occupied by members of the surplus population—particularly the unemployed, unskilled, and Aborigines—in numbers out of all proportion to their representation in the general population (Braithwaite, 1979b). Biles (1974: 555) has shown that, while in 1968-69 Aborigines constituted 28 per cent of the admissions to South Australian prisons and 43 per cent of the admissions to Western Australian prisons, Aborigines accounted for only 0.5 per cent and 2.2 per cent respectively of the total populations of those states. It is perhaps more than a coincidence that the two jurisdictions with by far the highest imprisonment rates, the Northern Territory and Western Australia, have the largest proportions of Aborigines among their populations (Biles, 1974). The crimes of the unemployed and black are portrayed in the media not as the *result* of a divided society, but as a *cause* of its lack of harmony. Imprisonment is just one of the many institutionalised means of degradation of the underclass in Australian society. This degradation serves the dual ideological function of locating the blame for the country's ills at the very bottom rather than the top of the class structure, and of providing a tangible basis for a sense of status superiority and satisfaction with their life circumstances among the respectable working class.

Just as the correlation between unemployment and imprisonment in the United States probably cannot be explained by real crime rates, so the crime waves reported in the media bear no relationship to actual levels of crime prevailing in the community.⁴ The crime waves of the mass media are manufactured realities. Cohen (1973) with the Mods and Rockers in England and Braithwaite and Barker (1978) with Bodgies and Widgies in Australia have shown how agents of conventional morality such as ministers of religion and conservative politicians exploit moral panics over delinquency by painting it as part of a general social malaise which is placing society under threat. The social malaise does not arise from the economic order, but from the moral decadence of the scapegoat group.

Through a process of free association, statements conveyed that the problem is not just the Mods and Rockers but a whole pattern in which pregnant school-girls, C.N.D. marches, beatniks, long hair, contraceptives in slot machines, purple hearts and smashing up telephone kiosks were all inextricably intertwined. [Cohen, 1973: 53-54]

A fascinating empirical investigation would be one which links economic crisis to media crime-waves and media calls for crackdowns on crime (such as the call for capital punishment enjoying some currency in the present crisis), and which in turn links this to observed imprisonment rates.

The ideology of law is often used quite explicitly to bolster the ideology of order. Richard Nixon demonstrated how in his eulogy at J. Edgar Hoover's funeral:

The trend of permissiveness in this country, a trend with Edgar Hoover

fought against all his life, a trend which has dangerously eroded our national heritage as a law-abiding people, is now being reversed. The American people today are tired of disorder, disruption and disrespect for the law. America wants to come back to the law as a way of life. [New York Times, 1972: 15]

Nixon's Vice-President, Spiro Agnew, was another advocate of law and order:

When I talk about troublemakers, I'm talking about muggers and criminals in the street, assassins of political leaders, draft evaders and flag burners, campus militants, hecklers and demonstrators against candidates for public office and looters and burners of cities. [The Wisdom of Spiro T. Agnew, 1969: 40]

The ideological purpose of lumping muggers together with demonstrators is transparent. We could say of American society that in the course of world history there have been few societies with such an emphasis on law and order yet so much law violation. This is because the function of the ideological emphasis on law and order is not so much to prevent law-breaking as to foster commitment to the existing societal order. Fervent law-and-order campaigns are most likely to surface during a period of crisis—perhaps an economic crisis, perhaps a legitimisation crisis.

The ideology of legality also performs a much deeper function for the social order. At its enactment a legislative decision seems arbitrary and political. The function of law is to haul political decisions up into the transcendental realm, to transform what was arbitrary into what is legal (and therefore proper and natural). If it can only be shown that an act is legal, then it need not be questioned. Hence so much of the debate over the sacking of the Whitlam government concerned its legality. For the conservative mind a demonstration that Sir John Kerr's action was legal is all that is required. Whether or not the sacking was morally or politically right seems an inappropriate question. The Governor-General, after all, is above the realm of politics; he acts only in the realm of law. Law is just and eternal, whereas politics is cynical and arbitrary. To the extent, therefore, that the economic order can be viewed as legal it becomes more natural, immutable and just. Hence, to the extent that the economic order is viewed as legal, the ideology supportive of that order will emphasise the sanctity of law. That is why, for example, the debate over the legality of Ian Smith's regime in Rhodesia during the period when his party had complete and effective political control of the country had far greater significance than that of a lawyer's quibble.

The handing over of power to resolve societal conflicts into the hands of the legal system takes power to act away from those who are victims of conflict and gives it over to politically neutral professionals who act on their behalf. Law takes the sting of politics out of conflict. The last thing the ruling class wants, of course, is for the people to become politicised. A key case in point is the handing over of industrial disputes to the legal apparatus of arbitration. The workers, no longer required to struggle on their own behalf, are represented by a professional in the niceties of industrial law.

Getting angry and fostering solidarity with one's workmates become irrelevant to success at this mode of conflict.

Bankowski & Mungham (1976) have explained how the substitution of professionalised law for struggle by people on their own behalf renders the masses politically impotent to change the social order. The way that professionalised law neutralises the effectivity of the common person is likened to the way that religion can emasculate man:

Thus, they mirror Feuerbach's (1841) characterization of religion as something that emasculates man. Man creates an entity and transfers his powers to it. Therefore things that I can do I can no longer do because I have given my power up to a non-existent god. I pray to the god for victory and success etc. instead of acting and achieving. I abdicate to him my powers. Thus I accept the idea of someone above me who has control over my life because he has powers that I have not. The same thing happens in the law. We allot our powers to the controllers who determine the content of the just law (if they are good men) and we do this because we assume that we do not have their talents and capabilities. We give them our power and they control us. We, and they, accept implicitly and without question the truth of Cicero's aphorism: 'We are slaves of the law, in order that we might be free'. [Bankowski & Mungham, 1976: 18]

There are consequently a good number of reasons for the ruling class to want to dramatically affirm both law and order and the hegemony of legalism during periods of economic crisis. Politicians like Joh Bjelke-Petersen probably only have a fuzzy understanding of why they scream for law and order whenever they or the system they defend are in trouble. But they know it usually works. One would have thought that this was an obvious kind of explanation for Quinney to have explored.

Scull's theory

Scull's historical analysis is not only about criminals; it is concerned with the mentally ill, the aged, and other institutionalised groups who he collectively refers to as the indigent. Scull points out that, going back many centuries, the extended family played the central role in caring for the indigent, but with urbanisation and the gradual disintegration of the extended family, family-based care became less workable. During the feudal era the nobleman would often play an important role in caring for and controlling his serfs. But the 'proletarianisation' of labour and the detachment of the lower orders from the means of providing for even a bare minimum of their subsistence put severe strains on feudal-familial systems of relief and controls. As Marx & Engels (1968: 37-38) pointed out, the rise of the market system 'has pitilessly torn asunder the motley feudal ties that bound man to his "natural superiors", and has left no other nexus between man and man than naked self interest, than callous cash payment'. Henceforth, relationships between rich and poor were transformed into a purely market relationship between employer and proletarian.

Until well into the 18th century in England and the United States, villages and towns and the local church regularly took care of their own problem

citizens. The village idiot benefited from a community-based treatment programme. Since each case typically was dealt with individually at a town, village or church meeting, there was no need to draw categorial distinctions between the mad and the bad, the able-bodied and non-able-bodied poor.

But with the transition from subsistence to a market economy in the 18th and 19th centuries, the parochial provision of relief for the able-bodied interfered with labour mobility. Labour had to be forced to go where the jobs were, especially given that 'every labourer . . . abhorred the factory, where he felt degraded and tortured' (Polanyi, 1944: 164-165). The new market system had to deal with the problem of stagnant pools of under-employed labour being supported in local communities where there were no factories.

While the non-able-bodied indigent—the aged, infirm and children—still had to be cared for, the new ideology was to withhold community support for the able-bodied poor. 'The Sluggard shall be clothed in Rags. He that will not work shall not eat.' (Bellers, in Scull 1977: 28).

The 19th-century proletarian family, working long hours, subject to cyclical unemployment and cut off from the subsistence available on the land could no longer afford to take care of its deviant family members. There was no choice but to let them be institutionalised. Community-based treatment of the mad and bad was out of the question under the political economy of early capitalism. Treatment in the community would have meant payment to them of some sort of welfare benefit so that they might eat. This would have opened up the possibility of the deviant or his family receiving more income than some of the unemployed or working proletariat. It would have posed a threat to the hegemony of fear of hunger as the means of securing cheap labour and labour mobility. As a practical political matter, the ruling class had to do something to take care of the deviant, but something which provided minimum interference to the dictates of the market. The answer was squalid overcrowded workhouses for the deviant, that no person with any alternative would freely choose.

Why then, under advanced capitalism, is there a movement towards evacuating the asylums and the prisons to return their occupants to the community? The traditional explanations about greater community tolerance, concern for inmates rights, scientific demonstration that institutions do more harm than good, are all wrong, says Scull. Following the arguments of O'Connor, Scull points out that the reality of modern capitalism is no longer one of forcing an abundant mass of unskilled labour to work. Raw labour power has been replaced by skilled, technical, labour power. The goodwill, health, safety, education and feeling of security of the labour force have become important assets to the capitalist. Employers must 'invest in human capital'. Taylorism has been replaced by the human relations movement in industrial administration. The threat of starvation has been replaced by the welfare state, naked compulsion by hegemony.

Given that fear of starvation is no longer the dominant means of securing cooperation from the working class, and given that welfare benefits are now widely available in the community, it is no longer true that supporting de-

viant in the community would pose a threat to either the system of incentives or the prevailing ideology. The principal reason for the incarceration of deviants under early capitalism has evaporated under late capitalism. Furthermore, under contemporary economic conditions the cost of paying the deviant the most generous of welfare benefits to survive in the community is far cheaper than the cost of institutionalisation. It is the latter argument which wins the day in favour of community treatment because of the fiscal crisis of the state (O'Connor again). Because of the necessity of modern capitalist states to maintain social harmony by increasing expenditure on social services, to foster capital accumulation by expanding aid to private industry and provision of economic infrastructure (e.g. roads, education, research and development), and to socialise capitalism's losses (e.g. British Leyland), contemporary capitalist states are experiencing fiscal crises which can only be handled by budget cutbacks wherever feasible. And so the state decides that it can no longer afford the opportunity cost of keeping criminals and the mentally ill in institutions rather than the community.

Scull convincingly reminds us that the decarceration movement cannot be directly attributed to the ideas of Goffman and other late 20th-century gurus. He shows that the ideological protagonists for decarceration in the 19th century were if anything, more vocal and of higher status in the society than their 20th-century counterparts, and the former had more compelling grounds for argument—chaining, flogging, and the more widespread use of painful forms of treatment. The 19th-century advocates of decarceration were not heard, however, because the economic preconditions for decarceration were not yet ripe.

Imprisonment in Australia: decarceration or rising imprisonment in response to crisis?

This section of the essay seeks only to compare historical trends in imprisonment rates for New South Wales and Victoria from the mid-19th-century to date with the predictions of the theories of Quinney and Scull about such trends in capitalist societies. What will be achieved is confirmation or disconfirmation of certain corollaries of the theories, but not tests of the theories themselves. Most crucially, for example, while the predictions of the theories about changes across time in imprisonment rates will be tested, there will be no analysis of whether these trends are due to variations in the punitiveness of the criminal justice system or to fluctuations in real crime rates.

In both New South Wales (Fig. 1) and Victoria (Fig. 2) the imprisonment trends are at least consistent with a rise in imprisonment rates until just past the middle of the 19th-century, as would be expected on the basis of Scull's (and Rusche & Kirchheimer's) interpretation of the rise of capitalism and the rise of incarceration. While both trends are consistent with this picture, because one data set begins in the 1840s and the other in the 1870s we obtain only a highly truncated view of this part of the theory.

Overall, there is a fairly consistent and dramatic decline in imprisonment

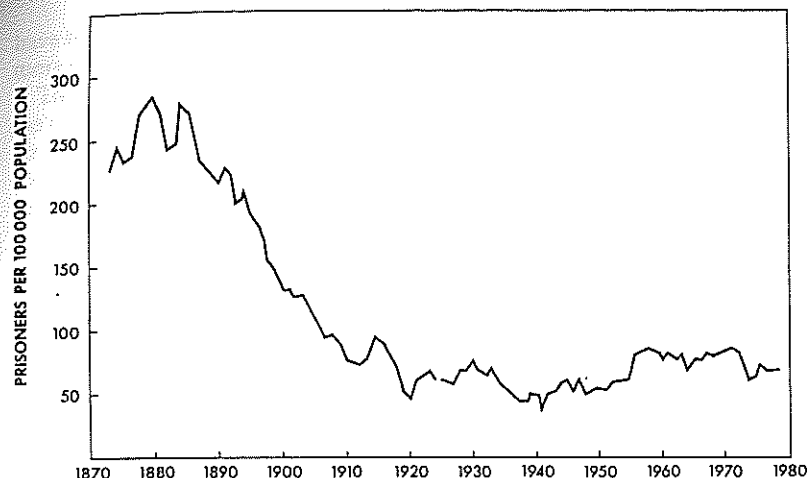


Fig. 1. New South Wales: Imprisonment rate per 100 000 population, 1874-1977. This figure is an updating of Fig. 2.13 in Grabosky (1976). Up to 1960 the data are based on prisoners in custody at end of year. From 1960 the data are based on annual daily averages.

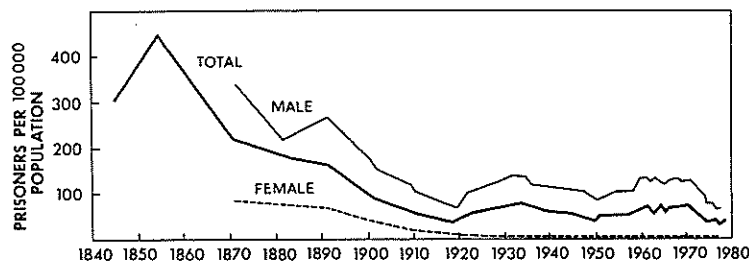


Fig. 2. Victoria: Imprisonment rate per 100 000 population, 1840-1978. This figure is an updating of a figure in Johnston & Fox (1965). Up to 1960 the data are based on 5 year moving averages. From 1960 the data are based on annual daily averages.

rates,⁵ beginning in the 1880s in New South Wales and the late 1850s in Victoria, which continues exactly until 1920 in both states. Since 1920, in both states the gross picture has been one of stability in imprisonment rates rather than one of a consistent upwards or downwards trend. While imprisonment rates today in Victoria are only one-tenth of the peak rate in the 19th-century, and in New South Wales less than one-fifth of the 19th-century peak,⁶ almost all of this decline occurred prior to 1920. The troubling thing for Scull's theory is, therefore, that the decline preceded most of the reforms of the welfare state and the fiscal crisis of the state. Perhaps Scull is wrong in assuming that the penal critics of the 19th-century were not listened to. Ideas sometimes do have an influence on human history before the economic preconditions for those ideas have completely ripened. Certainly

it was quite early in the history of criminology that the prison was recognised by many as an experiment that had failed (Healy, 1915; Hodder, 1920; Smith, 1921; Gordon, 1922).

Rather than jettison material conditions in favour of the centrality of ideas in shaping human history, we should remember Rusche & Kirchheimer's (more compelling) arguments about the economics of imprisonment. It may be that the decline in imprisonment rates between the late 19th and early 20th centuries corresponds with the demise of serious labour shortages in Australia and the concomitant destruction of the profitability of prison industry. The historical work to enable a confirmation or disconfirmation of this interpretation remains to be done.

To be fair to Scull, what we must realise is that Australian criminologists and penologists are some 10 years behind their contemporaries in other advanced capitalist countries such as the United States and Sweden. Deinstitutionalisation, which has been quite the rage in the United States since soon after the spate of publications attacking incarceration appeared in the late 1950s and early 1960s (the most influential example being Goffman's *Asylums* in 1961), has only been a catch-cry in Australia in the 1970s. Imprisonment rates for the whole of Australia have dropped by 10.8 per cent during the 1970s (from 1969 to the latest figures available—December 1978).⁷ There has been, in fact, an upturn since 1974, when the rate had dropped to 25.6 per cent below the 1969 rate.

The latter upturn is certainly consistent with Quinney's prediction that rising unemployment will be associated with increased use of imprisonment. What we may have seen in Australia in the 1970s is in part a tug-of-war between the effects on imprisonment of the deinstitutionalisation movement and the effects of mounting economic crisis. Indeed, the conclusion which should follow from a consideration of the trends in Figures 1 and 2 is that there need not necessarily be a contradiction between the predictions of Quinney and Scull. The person who concludes that the two theories are inconsistent (because while Quinney says that imprisonment is functional for capitalism, Scull says that decarceration is functional for capitalism) is trapped by the scientific limitations of his particular mode of discourse. If we shift to a mathematical or diagrammatic mode of discourse by thinking about Figures 1 and 2, it becomes clear that it is quite possible for there to be embedded within an overall historical decline in rates of imprisonment, periodic jumps in imprisonment rates corresponding to economic crises. The downward trend might continue once the crisis is past.

Fortunately for this analysis, the economic crises of Australian history are fairly clearly defined. The first crisis within the time span of the data set was the crash of the early 1890s which reached its peak with the bankruptcy of numerous banks and building societies in 1892. The most we could say about the association between the early 1890s recession and imprisonment in New South Wales would be that the downward trend in rates for that period was halted during the recession. For Victoria, however, the period showed a marked jump in incarceration, particularly for males. This might

have been predicted by supporters of Quinney since the recession was much more severe in Victoria than in New South Wales.⁸

The next great crash of 1929-33 was associated with clear increments in the imprisonment rates of both New South Wales and Victoria. In Victoria, for which sex-specific rates are available, it can be seen that the depression had no impact on the female imprisonment rates. The only other period, apart from the early 1890s, early 1930s, and current recessions, which might qualify for consideration as an economic crisis was the credit squeeze of 1961. This caused only a ripple of unemployment compared to the other three crises, and it can be seen from Figures 1 and 2 that the 1961 credit squeeze was associated with only the tiniest of upward movements in imprisonment rates.

The Victorian data in Figure 2 shows that even though the absolute decline in female imprisonment has been less than for males (since females have always had a much lower rate), the relative decline has been many times greater. The 1977-78 female imprisonment rate in Victoria of 1.8 per 100 000 is less than one-twentieth of both the peak 1871 female rate of 87 per 100 000 and the 1977-78 male rate of 79 per 100 000. Quinney does not seem to have given any thought to the female criminal. He does point out (p. 134) that women are one of the groups which are hit hardest during periods of high unemployment. Presumably this would lead him to predict that their imprisonment rates would jump even more than those of males during economic crises. Clearly in Victoria they do not. The obvious explanation for the fact that female imprisonment rates have not increased during the crises of Australian capitalism is that women, particularly in the 1890s and 1930s, were not fully integrated into the capitalist market in labour, but were largely participants in a separate (domestic) market.

Quinney is correct in pointing out that prison is a place for capitalism's surplus population. Just as corporate criminals are rarely sent to prison because they are regarded as having an important economic role to play, so women are rarely sent to prison in part because they are regarded as having an important role to fulfill in the economy (rearing children).⁹ It is because Aborigines are seen as having no economic role that they find their way into jail. The role of women in keeping the family together surely becomes all the more crucial during a period of crisis when the breadwinner might be unemployed. This line of argument would therefore lead to the prediction that women would be even less likely to be incarcerated during economic crises.

Conclusion

What has been illustrated in this essay is that there is no necessary incompatibility between the theories of Quinney and Scull on the place of imprisonment in capitalist societies. Crudely, within the broader framework of a shift towards decarceration since the latter part of the 19th-century, there have also tended to be jumps in the male imprisonment rate at the times of the major crises of Australian capitalism.

The long-term decline in imprisonment in Australia between the mid-19th-century and 1920 is exactly the opposite to the situation in the United States where imprisonment rates have dramatically and fairly consistently increased between the mid-19th-century and the present (Calahan, 1979). But it may be the United States which is the historical exception. Rusche & Kirchheimer's (1939) work shows a pattern up to 1920 similar to the Australian picture in France, Germany, and Belgium. Italy, however, shows something of a rise in the use of imprisonment in the first 33 years of the 20th-century (Rusche & Kirchheimer, 1939: 150-151). Perhaps this had something to do with Mussolini's ideological dependence on a fervent law and order campaign.

The reasons for the United States being different from Australia and other industrialised societies in so decisively resisting the economic rationality of decarceration are not so easy to pin down. While American mental hospitalisation rates are declining (consistent with Scull's thesis), imprisonment rates have increased to the point where the United States has the highest rate of any developed capitalist country. But then the United States probably has the highest serious crime rate of any developed capitalist society, certainly one that is several times higher than Australia's. The objective seriousness of the crime problem in the United States, combined with the political reality mentioned earlier that 'there have been few societies with such an [ideological] emphasis on law and order' produces extraordinary public opinion pressure on politicians and the judiciary to be seen to be doing something about the crime problem. Moreover, the United States is wealthy enough to be able to afford the economic irrationality of resisting pressures for decarceration. Being uniquely subject to public concern that criminals should be kept off the streets, and being uniquely able to afford fiscal extravagances may have pushed the United States on a different course from other capitalist countries.

It would be remiss of any author to conclude an essay on decarceration without having considered the rights or wrongs of it. Quinney is clearly opposed to imprisonment since it represents a form of class domination. Scull, in contrast, sees decarceration as undesirable. For the sake of maintaining consistency with his analysis that decarceration is in the interests of capitalism, Scull feels obliged to argue that decarceration is therefore bad. Marx was prepared to concede that capitalism can often lead society in a direction which represents an improvement on what existed before, so why cannot Scull? Impressive and creative as Scull's historical analysis is, his arguments about the evils of decarceration are feeble, and limited to the first two and last two pages of the book. The following quote summarises all of Scull's arguments about the undesirability of decarceration:

... they [the decarcerated criminals] find themselves released on 'probation, 'supervised' by men coping with caseloads of one and two hundred persons. This allows the probation officer to give each case an average of ten or fifteen minutes' attention per week.

Excluded from the more desirable neighborhoods by zoning practices and organized community opposition, the decarcerated deviants are in any case impelled by economics—the need for cheap housing and to be close to a welfare office—to cluster in the ghettos and the decaying core of the inner city.

As for the criminal, he is also attracted by the tokenism of police operations in these areas and by the willingness of the wider (white) society to leave ghetto residents to fend for themselves. Decarceration thus forms yet one more burden heaped on the backs of those who are most obviously the victims of our society's inequities. And it places the deviant in those communities least able to care for or cope with him.

In the circumstances, moral panics are an ever-present possibility. Aroused by stories of released mental patients who 'urinate or defecate in public, expose themselves to women and children, ride up and down in automatic elevators, become helplessly drunk and shout obscenities . . .' and by the knowledge that burglars and muggers are being left to walk the streets, inhabitants of black and inner city areas may well resort, in time, to vigilante action. There is, after all, a strong subterranean tradition of such activity in America. And should this happen, who is to guard the ex-inmate against his neighbour? It may well turn out that the protection an institution offers the community from the *deviant* and the protection it offers the deviant from the *community* are of equal importance.

He should have been at Bathurst. Most crims, I suspect, would rather cope with the vigilantes than the screws.

NOTES

- 1 Quoted by Rusche & Kirchheimer (1939: 55).
- 2 Rusche & Kirchheimer (1939) also argued for this hypothesis.
- 3 Mintz (1946) has criticised the Hovland & Sears (1940) study on methodological grounds. Re-analysing the data for three sub-periods Mintz found lower correlations of between -0.28 and -0.34.
- 4 See Cohen's (1973) case study of the Mods and Rockers, Windschuttle's (1978) work on hooliganism, and Braithwaite & Barker (1978) on Bodgies and Widgies. Davis (1952) has shown systematically how in Colorado there was no correlation between the number of column-inches devoted to crime in the press and the number of crimes actually committed. See also Antunes & Hurley (1977).
- 5 This decline occurs long after the termination of the transportation of convicts to these states, and therefore cannot be explained by it.
- 6 Imprisonment rates possibly attained a higher peak in Victoria because of the extreme social dislocation of the 1850s gold rush in that state.
- 7 These figures are extracted from Biles (1977) and the monthly publication of the Australian Institute of Criminology, *Australian Prison Trends*, compiled by David Biles.
- 8 *Australian Encyclopaedia* (1963: 336) had this to say about the effects of the 1890s depression in Victoria compared with New South Wales:
The crisis was most severe in Victoria, where speculation had been the greatest; not only the financial losses but also the ensuing distress and depression were there the worst. Heavy unemployment in Melbourne caused emigration to country districts and to other colonies, and for the first time since the gold-rushes the population of Victoria was exceeded by that of New South Wales, whose recovery and subsequent progress in the 1890s was very marked.
- 9 For an opposing view on the latter hypothesis see Scutt (1979).

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9

AUSTRALIAN-BASED INVESTMENT IN S.E. ASIA AND THE PACIFIC

ERNST UTRECHT

To sum up, what is free trade under the present condition of society? It is freedom of capital. When you have overthrown the few national barriers which still restrict the progress of capital, you will merely have given it complete freedom of action . . . Do not allow yourselves to be deluded by the abstract word freedom. Whose freedom? It is not the freedom of one individual in relation to another, but the freedom of capital to crush the worker . . . To call cosmopolitan exploitation universal brotherhood is an idea that could only be engendered in the brain of the bourgeoisie. All the destructive phenomena which unlimited competition gives rise to within one country are reproduced in more gigantic proportions on the world market.

Karl Marx, 'On the Question of Free Trade', public speech delivered before the Democratic Association of Brussels, 9 January 1848, reproduced in *The Poverty of Philosophy* (Moscow, 1973).

CONTINUOUS EXPANSION IS a major element in the nature of capitalist enterprise. When, towards the end of the 1960s, conditions in Australia's manufacturing sector became unfavourable for the further expansion of industrial operations or new investments, Australian-based companies, seeking cheap labour, easier access to raw materials and, in some cases, also easier access to the world market, started to establish subsidiaries or enter into joint-ventures in developing countries. Australian-based companies can be found in Thailand, Malaysia, Singapore, Indonesia, the Philippines, Hong Kong, Papua New Guinea and Fiji [as well as New Zealand which is not considered in detail here]. Australia has become a 'spring-board' for many a giant transnational enterprise to penetrate into the developing countries which are her neighbours in Asia and the Pacific. As Wheelwright noted:¹

being on the receiving end of British, American and Japanese imperialism, at the same time Australia acts in imperial or sub-imperial fashion in Southeast Asia and the Pacific.