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Punishment, Welfare, and Delinquency

Perspectives on the Emergence of the Modern State*

Contemporary Anglo-American scholarship on the history of the institutions by which the modern state punishes those who violate its laws falls into a number of opposing camps. On the one hand, revisionist scholars pursue a variety of approaches which emphasize the "darker side" of penal and welfare reform movements. They thematize questions of class and property, strategies of social control, and, more generally, the means by which the ruling elites of early modern and modern American and Britain sought to maintain their pre-eminence in the emerging capitalist industrial state. One thinks here of America's Critical Legal Studies movement, the social historians who have begun to rewrite the history of criminal law and penal institutions in Britain, and, of course, Michel Foucault whose work on the history of early modern institutions like the prison and the asylum has proved seminal in its impact on a number of disciplines. On the other hand, many legal historians and historians of modern institutions have resisted or rejected these revisionist approaches and their attendant theoretical baggage. Such scholars maintain the long historiographical traditions of doctrinal legal history and the history of legal institutions, arguing for a careful exposition of the development, scope, and implementation of law and policy, unencumbered by overarching theoretical or ideological agendas. Victor Bailey's *Delinquency and Citizenship: Reclaiming the Young Offender 1914-1918* and David Garland's *Punishment and Welfare: A History of Penal Strategies* nicely illustrate this methodological antinomy in contemporary legal historical scholarship, for they represent strikingly well executed examples of their respective approaches.

Delinquency and Citizenship is a model of careful historical scholarship. Victor Bailey sets out to chart the relation of the development of penal policy concerning children and young adults to the more general growth of the welfare state in England from 1908-1948. Within this

* VICTOR BAILEY, *Delinquency and Citizenship. Reclaiming the Young Offender 1914-1918*. Oxford: Clarendon 1987. p. VIII, 352.
DAVID GARLAND, *Punishment and Welfare. A History of Penal Strategies*. Aldershot: Gower 1986. p. X, 297.

timeframe, from the Child Act of 1908 through the Criminal Justice Act of 1948, he provides a detailed chronological account of the way in which the major figures and agencies responsible for the articulation of policy championed their views and influenced the development of institutions. More specifically, he seeks to place each of the leading players – Home Office administrators, the Prison Commission, the penal reformers, the staffs of the juvenile court, probations service, and reformatories – in the social, political, and ideological context which informed their respective views of young offenders. In this manner he is able to locate the controversies about the punishment, rehabilitation, education, discipline, and delinquency of young offenders in the specific utterances, goals, and aspirations of the individuals who did most to shape the process by which consensus on these issues emerged. At the same time, this painstaking reconstruction of what the principal actors said and did during the long movement towards reform represents Bailey's response to revisionists. Indeed, he introduces his study as a sort of corrective to those historians who "emphasize the social-control motives of the advocates and reformers of juvenile courts and reformatory institutions". By placing the individual men and women responsible for change within their social and ideological context, he hopes to account for changes in policy without the, on his view, extreme claims that the reformers "invented the pathology of delinquency, and established courts and reformatories as instruments of coercive class control". In other words, by getting close enough to the actual individuals by whose efforts, taken together, policy develops, the historian can understand their real motives and ideologies.

Bailey begins his description of this complex process by sketching the development of the concept of delinquency in the early part of this century. He identifies the tension between competing modes of explanation of the causes of delinquency, emphasizing environmental and material conditions on the one hand, and psychological factors on the other. Building up his portrayal of the way in which the conceptions of delinquency held by leading proponents of reforms were based upon their own experience of practical social work with children, he devotes the first four chapters to showing how their efforts eventually led to the passage of the wide-ranging Children and Young Persons Act of 1933. Detailed consideration of the activities of penal reform groups, penal practitioners, governmental enquiries, and civil servants demonstrates how all of these groups contributed to the reforms and compromises that were incorporated into the new legislation regarding juvenile courts, remand

homes, probation, certified schools, and corporal punishment. Two more chapters detail the defense and implementation of the Act during a period which saw a dramatic rise in juvenile criminality. In these last years before World War II reformers and "reactionaries" competed to set the course for the next round of legislation which would, it was hoped, resolve many of the important compromises that underlay the 1933 statute.

The next major section of the book devotes itself to the treatment of young adult offenders, and, in particular, to the development of the Borstal system designed to rehabilitate them into useful citizens (Bailey entitles this section of book "Training for Citizenship: The Inter-War Years"). The conclusions Bailey reaches are quite similar to those he sets out regarding younger offenders. Policy was created by administrators and reformers whose insights grew out of voluntary social work among working class youths. These men and women constituted "a group of policy makers who were eager to introduce bold measures of social engineering in the cause of criminal youth. Underlying their policy was a humanitarian desire to help underprivileged working-class lads, a faith in the personal influence of those in charge of reformatory institutions, and a Fabian-like readiness to use administrative as well as legislative modes of attaining their ends" (p. 174). The wealth of documentation which he provides in support of such claims represents his implicit response to the accounts of revisionist historians. A final chapter discusses the impact of the War upon reformatory and penal institutions, and the way in which the sweeping political changes of the immediate post-War era paved the way for the Criminal Justice Act of 1948. Though a great deal of information is compressed into the discussion of the final ten years of Bailey's period, it is clearly the two earlier eras (1908–1933, 1933–38) which dominate the account.

What, in the end, do we stand to learn from this massively researched and lucidly narrated historical narrative? Certainly, we now have a definitive account of the process by which national policy concerning the major institutions involving youthful offenders developed. Indeed, Bailey admirably fulfills his goal of placing key figures, like Paterson and Llewellyn, in a concrete social and ideological context, and, in the process, vividly portrays the complexity of the countervailing and competing forces which influence the formation, articulation, and implementation of policies and their impact upon the institutions which they regulate. On the other hand, the story is told almost exclusively from the perspective of these major figures; the world of those affected by their

crusading spirit remains unexplored. Perhaps those boys forced to work eight hour days shovelling mud during the fiercest North Sea blizzards may not have been reassured, as Bailey apparently is, by the fact that the "saint-like" Llewellyn was right there with them and that such experiences would "brace" them for the rigors of working life.

Indeed, the danger of such a "micro-history" is that one may lose sight of the forest for the trees, and the fact that Bailey provides little in the way of a continuous thread of interpretation and argument occasionally leads the reader to lose her way amongst the details of yet another reform effort in regard to a particular issue. More seriously, it calls into question the ease with which the author, with a few brief sentences, sidesteps the revisionist challenge in the opening pages of the book. As noted above, Bailey both rejects the "conspiracy theories" of some revisionist accounts, and explicitly argues for the humanitarian motives of the reformers. He does, indeed, present overwhelming evidence that these men and women were high-minded and sincere in their belief that their proposals would operate for the good of the "delinquent", but surely such claims do little to answer the critique of modern institutions advanced by Foucault, Donzelot, Garland, and many others.

In fact, Bailey presents a good deal of evidence which seems to support just such theories of "disciplinary strategies". For example, while vigorously rebutting claims that the reformers attempted to inculcate their charges with middle class values, he claims that the Borstal system was characterized more by a "realistic acceptance of the limitations of its young charges". This "realistic acceptance" in fact involves the firm conviction that Borstal inmates (whose two to three year term was for the purpose of vocational training) were not capable of any vocation higher than unskilled labor, "hewers of wood and drawers of water" in the words of Paterson, who seems cast as Bailey's hero of the inter-war years. Should we really accept that questions of class and the maintenance of existing social and economic hierarchies play no role in Paterson's further conclusion that, "it is idle to spend the money of the state in seeking to change them into incompetent tradesmen. For them, labouring work, arduous and continuous, is the best preparation for the life that ensues" (p. 205). Indeed, Paterson specifically saw one of his goals as teaching "the qualities of good citizenship", by which he meant the "willingness to work hard . . . and civic, as opposed to class awareness" (p. 217). In whose interest was it to teach such "civic awareness" to those uneducated boys for whom good citizenship was defined as unquestioning acceptance of a life of toil at menial tasks for a pitiful wage? Nor

was Paterson alone in such harboring such views. Instead, they were entirely characteristic of the movement which Bailey portrays. Llewellyn, for example, in his North Sea Camp ordained that there was more to life there than the pick and shovel: "The marsh work in all weathers was joined to an educational scheme of 'good citizenship' . . . Moral training provided a set of minimum standards of right living (including frugality, industry, and resolution) for the lads to aspire to" (p. 236). In the end, the reader is perhaps left with the conviction that though the high-mindedness, dedication, and integrity of such reformers may not be in doubt, they certainly seem to have been unaware of the larger social, economic, and political context of which their ideology and their efforts to instill industrial discipline and values were a part. Contemporary radical critics of the treatment of the working classes were not so ignorant, however, and it is curious that Bailey, in his extremely detailed account omits all mention of such perspectives. Of course their views, like those of the delinquents, had no weight in the formulation of governmental policy, but isn't that just the point?

If *Delinquency and Citizenship* opposes, but avoids a real *Auseinandersetzung* with, revisionist historians and social theorists, David Garland's *Punishment and Welfare* strikes out in just the opposite course. Garland's book is explicitly revisionist in its goals, for it sets out to retell the story of the emergence of modern penalty from the set of institutions and practices developed in the nineteenth century. Unlike Bailey's study, however, the scope of the book extends far beyond providing a more complete chronological narrative of certain events. As might be surmised from its subtitle, *A History of Penal Strategies*, *Punishment and Welfare* also aims at making a fundamental contribution to our theoretical understanding of the way in which institutions, and particularly penal and welfare institutions, develop and operate within the political, social, and discursive framework of the modern state. Further, the use of the word "strategies" in the subtitle suggests a particular kind of theoretical orientation, namely, that associated with the work of Michel Foucault, and, more particularly, with his influential and controversial *Surveiller et Punir*.

In fact, *Punishment and Welfare* does seem to operate under the general theoretical aegis of Foucault. Indeed, its working vocabulary of "politico-discursive struggles", "knowledge/power", "strategies without a strategist", "resistances, manoeuvres, and representations", "delinquency and discipline" appear instantly familiar to the students of Foucault's various accounts of the development of modern institutions. For this

reason, it seems a little odd that Garland takes considerable pains to distance himself from Foucault in several ways. First, he tries at a number of points either to distinguish his views on a particular issues, or to explain why a particular term or observation of Foucault's is inappropriate. Next, and more importantly, he represents Foucault as one of the main objects of his revisionist account. He does this by arguing that whereas Foucault located the development of a „disciplinary“ penalty at the birth of the prison as a modern institution, this process in fact began much later. Indeed, one of the central arguments of the book is that the Victorian penal system did not exhibit the characteristics of modern penalty, and that, consequently, a major shift occurred in conceptualizations and institutions of punishment in the period 1895–1914. It is appropriate to discuss this argument in more detail before returning to the question of Garland's relation to Foucault. In the course of this excursus, it will become apparent how different the path is by which Garland arrives at his account of the same period of parliamentary reform of the penal system as was discussed by Bailey.

The first two chapters of *Punishment and Welfare* describe Garland's conception of a Victorian system of penalty. He lucidly and persuasively argues that 19th century British thought about punishment was informed by the same social psychological ideology that underlay classical economic liberalism: the criminal was a rational, free, and responsible agent, an individual in absolute control of his destiny. Illegality, like poverty, was thus the effect of individual choice. The appropriate societal response to such criminality was retribution to restore the social contract and deterrence to dissuade others from calculating that such a transaction might be beneficial. The actual institutions of punishment also reflected this ideology by treating all prisoners uniformly regardless of the circumstances of their crime, and confining them in silence in solitary cells so that they might have an opportunity to reflect and their innate reason might prevail. Finally, and perhaps most significantly, on such a view punishment is a strictly *legal* event, an enforcement of the social contract against a citizen who is a legal subject with rights and duties, but who must be made to pay the proper price for violating this basic agreement.

On Garland's view, this system of thought, though acknowledged to be based upon necessary fictions, remained in full force until about 1890, when it began to come under increasing pressure from a number of sides. Chapters 3 through 5 describe how several different kinds of political and intellectual responses to the social crises at the end of the 19th

century provided the confluence of forces from which emerged a distinctly modern set of penal strategies. More specifically, Chapter 3 offers a brilliant analysis of the development of criminology and its ever growing impact upon the politics of penal reform. He convincingly demonstrates that this criminological project, with its reorientation of punishment towards the treatment of a pathological state which becomes an object of social, psychological, and medical knowledge, exerted, and still exerts, a powerful influence over our thinking about criminality and punishment. Chapter 4 briefly takes up the social work program, and the way that this new approach to public relief, based upon the identification, investigation, classification, and regulation of „cases“, replaced earlier patterns of private charity. Finally, Chapter 5 describes the impact of the social security and eugenics movements upon contemporary attempts at social reform. Whereas the social work movement emphasized the „moral“ question of *individual* character, eugenics and the advocates of social security focussed upon the quality of the *national* character and the racial health of the nation, thus linking social reform with the questions of national industrial efficiency and imperial survival.

Having discussed these individual movements, Chapter 6 and 7 analyze the way in which they shaped the process by which British government and society responded to the need for social reform. Like Bailey, Garland carefully distinguishes the different forces at work in the parliamentary process. Unlike Bailey, however, he employs a theoretical model which necessarily casts such processes in a different light. For, as the book's subtitle implies, the emphasis here is upon uncovering the way in which national *strategies* towards crime and punishment emerged, and with them, the new penalty. It is precisely such talk of „strategies“ of social control and class hegemony which Bailey rejects, but which is central to Garland's argument. Following Foucault, he insists that the identification of strategies need not imply the existence of a strategist, but rather that the „Resistances, Manoeuvres, and Representations“ (the title of Chapter 6) of many individuals and agencies together produce a strategy which none of them consciously intended (pp. 161 2). It is striking that, having distinguished his enterprise from Foucault's, Garland here (and particularly in Chapter 8, „Penal Strategies in a Welfare State“) adopts, without detailed theoretical argument, one of the most problematic notions of *Surveiller et Punir* and *L'Histoire de la Sexualité* vol. 1.

These new penal strategies represent, according to Garland, a radical shift from the Victorian model. Whereas the Victorian system punished a responsible offender according to a determinate legal structure, the new system introduced other considerations and discourses which shifted attention away from individual guilt and responsibility for a specific illegal act, and towards „knowledge“ about a person's „character“, „condition“, and „mode of life“ which might reveal the pathological conditions which produce dangerous or anti-social behaviour. Accordingly, sentencing becomes less a matter of justice, and more a question of administration and diagnosis. Simultaneously, the prison, the central institution of Victorian penalty, becomes but one part of a large grid of institutions designed to identify, study, classify, and normalize deviant individuals.

Garland's analysis here is masterful in delineating the lineages of modern penalty and the many contradictions which it embodies. His conclusions, however, seem largely cast in the mold of *Surveiller et Punir*. While one might or might not accept Garland's dismissal of Foucault's historical claims about the *moment* when the new penal mentality emerged, Garland's account of the *nature* of that regime owes a fundamental debt to Foucault's pathbreaking, if flawed, efforts. However often Garland may seek to deny this intellectual debt, for example by rejecting terms like „bio-politics“, and „anatomo-discipline“ (p. 114), his whole enterprise is Foucauldian in its theoretical articulation, mode of argument, conclusions, and weakness. For example, Garland argues that penalty and regulation of the poor, far from reducing the size of these „problem populations“, operated to reproduce and expand them (p. 53). This, of course, is one of the central theses of *Surveiller et Punir*, articulated through Foucault's central notion of „delinquency“. Unfortunately, Garland does not go much farther than Foucault in spelling out the exact nature of such claims.

Such observations, however, are mere quibbles in the face of the overall achievement of the book. Garland has done a great service to lawyers, criminologists, historians, sociologists, and all others interested in the emergence of the modern state, by providing a compelling account of the way in which modern „scientific“ penalty came to be what it is. No other treatment of the subject draws together as many different stands of argument, or provides such a highly differentiated and nuanced analysis of the way in which such important shifts in policy and thought occur.