

COMMENTARY

The Economic Field and the End of Mass Incarceration

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PUNISHMENT, SPECIFICALLY IN THE FORM OF IMPRISONMENT, HAS FASCINATED philosophers, social theorists, and jurists, all striving to determine its functions and legitimacy. In Kant (1797), citizens who commit crime lose their dignity, and as a consequence rulers have the right to punish and inflict pain upon them. Crime makes an individual a *servus in sensu stricto*, the property of the state. Whereas for Kant the sovereign should be encouraged to exercise the right to punish, in Hegel (1896) it is offenders who have a right to be punished, in that they are thus honored as rational beings. Any attempt to change and rehabilitate them would be patronizing, retribution being the only respectful form of dealing with their acts. Retribution returns under the guise of vengeance and passion, which characterize punishment in Durkheim's (1924) analysis: in his view, we inflict various degrees of suffering and hardship on offenders not because we may benefit in a material sense from it, but to mark the moral strength of a message we intend to convey. Crime is functional and useful in that it reinforces the solidarity among law-abiding individuals, whereas punishment is not for offenders but is a means for boosting the common moral code, the *conscience collective*.

Penal reformers may reject retribution and embrace consequentialism, positing that human practices are just when they yield actual or expected outcomes. From this perspective, punishment as a human action is expected to produce good and reduce evil, and as in classical utilitarianism it is aimed at increasing happiness while diminishing grief. The most obvious social good, for our purposes, is the prevention of criminal activity and the reduction of the actual harm caused by it. These may result from the deterrent or rehabilitative function of punishment, from general prevention addressed to all, or from the individual preventative measures aimed at containing recidivism.

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Radical reformers, however, mainly adopt two approaches that can be broadly distinguished as follows: one emphasizes the institutional function of imprisonment, whereas the latter stresses its material function. The first is embedded in the notion of retribution and, in its extreme manifestations, addresses imprisonment as a means for the destruction of bodies. The second looks at prison as a regulatory tool and mainly focuses on the productive use of bodies. Of course, analyses adopting a mixed approach are numerous, but for the sake of clarity the two positions will be kept theoretically and empirically separate (Ruggiero 2010). Founding theorists of the respective approaches are Michel Foucault (1977) on the one hand, and Rusche and Kirchheimer (1939) on the other. This commentary takes as a starting point the work of Rusche and Kirchheimer and tries to update their analysis through the concept of economic field, a useful notion for understanding the material function of the prison institution in advanced societies. In the second part, the analysis proposed is brought to bear on the debate around mass incarceration and its alleged end.

Punishment and Social Structure

According to Rusche and Kirchheimer, both individual and general deterrence pertain to the material sphere of society and are addressed to the classes that are the potential clientele of the prison system. The treatment of offenders, in other words, is analyzed against the background of the productive process and the labor market. Punishment is not eternal or immutable; in fact, “punishment as such does not exist; only concrete systems of punishment and specific criminal practices exist” (Rusche & Kirchheimer 1939, 5). In Rusche and Kirchheimer’s view, changing practices in penal systems cannot be explained only in terms of changing needs within the war on crime: “Every system of production tends to discover punishments which correspond to its productive relationships” (ibid.). It is self-evident, they argue, that enslavement as a form of punishment is impossible without a slave economy, prison labor is impossible without manufacture or industry, and monetary fines are impossible without a money economy. Therefore, during depressions and in periods of labor surplus, there is a lowering of salaries and a correspondent deterioration of prison conditions. Ideally, this surplus labor should be destroyed, as should other commodities whose availability on the market is excessive. Consequently, the prison population, which is a sector of the surplus labor force, can also be destroyed. Prison conditions become more severe because they must be less eligible than the

worst possible condition outside (Melossi 1989). Conversely, in periods when the commodity labor is scarce, its reproduction becomes of crucial importance for the productive process, and as a consequence prison conditions will improve. Even offenders, in such circumstances, will be persuaded to become productive.

In periods of economic boom, therefore, “criminals capable of reform” are reeducated “with the utmost diligence” (Rusche & Kirchheimer 1968, 144). Guilty or not, the greatest possible number of them must be given back to society as productive forces: “The reformation of convicts is thus regarded as a good investment, and not merely as a charitable whim” (*ibid.*). The determination of guilt and the imposition of the sentence become separate, as “the first is entrusted to a qualified judge, the second to a social physician” (*ibid.*). Solitary confinement is no longer a major point of discussion, as strict separation at night is “accompanied by organized labor in the daytime, made necessary by the requirements of production” (*ibid.*, 154). The need to use offenders productively, in certain circumstances, goes as far as prompting the mobilization of medical evidence certifying that thieves are, in fact, kleptomaniacs.

The rediscovery of Rusche and Kirchheimer’s work triggered the emergence of analyses focused on the political economy of punishment. In his work on immigrants in European prisons, Wacquant (1999) locates minorities at the intersection of three systems of forces that, together, make them the foremost targets of penal intervention. These forces are the growth of flexible, precarious work; the dismantling of welfare provision; and “the crisis of the ghetto as instrument of control and confinement of a stigmatized population” (*ibid.*, 215). Prisons, in sum, are seen as instruments for the management of poverty and the regulation of the lower segments of the labor market. The so-called punitive turn has also been associated with “economies of excess” (Hallsworth 2000), the increasing feeling of insecurity among some privileged groups (Costelloe et al. 2009, Davis 1998), and the mass imprisonment of whole groups of the population (Garland 2001). Cultural interpretations of mass imprisonment have been advanced, along with studies connecting welfare and punishment. Scholars have also used the concept of bureaucratic field, with the argument that the circulation of personnel across different institutional areas explains the converging dominant ideas around crime and punishment (Wacquant 2009). On the other hand, research on migrants and custody has continued with the work of, among others, Calavita (2003), De Giorgi (2010), Melossi (2003), and Rivera Beiras (2005).

The End of Mass Incarceration?

Scholarship in the tradition of the political economy of punishment has continued its analyses around the role of penal systems in governing social marginality and reproducing existing structures of inequality (Cheliotis 2015, Simon 2014, Wacquant 2009), but it has also explored other areas, including racial discrimination and other forms of social oppression (De Giorgi 2015c). Examples of intersectionality are therefore found in the literature, with research incorporating race, class, and gender and examining how the justice system embodies, perpetuates, and transforms existing social injustices (Potter 2015).

Despite the constant need in capitalist societies to perpetuate disadvantage and reproduce armies of disenfranchised individuals and groups, incarceration rates have recently shown some decline, spurring a number of possible explanations. Some scholars, for example, have connected recent pleas for non-punitive reforms with the injunction of financial austerity in all areas of public spending (Aviram 2014). Advocated by progressive observers and activists, reform becomes thus inspired by concerns around costs and tangible monetary considerations. Critics, however, maintain that “such technocratic and market-friendly approaches to the penal crisis” may make penal policies less expensive, but not less punitive (De Giorgi 2015a, 196). A less expensive treatment of offenders, moreover, may result in fewer services to them, forcing prisoners and their families to foot the bill of their own incarceration.

Reform based on the costs of imprisonment neglects the fact that a “waste” of finances is perfectly justified if needed to maintain the polarized distribution of resources at the current levels. Waste is a good investment if it sustains a penal system that defends privilege, and it cannot be measured with a conventional rational calculus. The costs of penal systems, in other words, should be measured against the degree of income differences they are supposed to maintain or exacerbate. Where wealth polarization is high and the costs of reproducing it are equally high, rational argumentations of a mathematical or monetary nature will not be heeded. Penal costs, therefore, are those required not for the prevention or punishment of crime but for the reproduction of social injustice (Ruggiero 2013a).

The concept of transcarceration may provide another critical perspective for the analysis of the current (alleged) decarceration process. Inmates may just be dumped into their communities of origin, where they will find a variety of other institutions “confining, treating, punishing, and disciplining”

them (De Giorgi 2015b, 21). In those communities, they will also find the very conditions that led them to illegal activity in the first place.

It is my contention that, with deprivation remaining the same, we need to find other explanations for the alleged crisis of mass incarceration. I suggest that, rather than saving money, reform aims to incorporate a monetary logic into the logic of punishment and the rehabilitation of offenders. In this sense, mass incarceration has not failed but succeeded, as it has effectively “educated” the poor into accepting the “natural” laws of economics. I will elaborate on this argument using the concept of economic field.

The Economic Field

The concept of economic field refers to the logic guiding labor markets and their shortages or redundancies, but it also incorporates other crucial notions. The economic field is connoted by abstract rules that agents observe, following a script and obeying to a sense of practice established and judged within their own context. The final determination of the correctness of an action is based not on whether individuals rigorously followed a rule, but rather on whether their actions are interpreted as appropriate by others: “Agents act within a fluid context of structure, marked by group expectations, norms of acceptable practice, sanctions, and relations of power” (King 2005, 222). In prison, sanctions and relations of power forge the inmates into adaptable productive agents who are prepared to respond to the flexible necessities of the economy. Rusche and Kirchheimer appear to overlook this “educational” process, as they describe inmates as a purely passive workforce that is used or destroyed according to the requirements of the economic cycle. What the concept of economic field alludes to, instead, is the ideological process whereby actors challenge rules, use them for their purposes, or internalize them.

The economic field refers to the structure of social relations in which an individual is located (Bourdieu & Wacquant 1992, King 2005). This structure is independent of the individuals who occupy the field, as it preexists them and determines the conflicts arising in it. Imprisoned actors, in other words, are immersed in rules and principles that they are expected to reproduce while reproducing the institution holding them. They may choose to subvert those rules and principles, but their rehabilitation will be deemed complete only when they comply, bowing to the hegemonic culture imposed on them.

The educational process alluded to here entails a change in the habitus of inmates—that is, a change in their dispositions, comprised of lasting patterns

of thought, perception, and behavior (Bourdieu 1980, 1990). Punishment, therefore, particularly in the context of imprisonment, acts as an educational setting in which judgments of social fitness are made; it is a system of cultural exclusion whose ideal outcome is the production of a coerced homo oeconomicus. In brief, prison remodels the habitus of the inmates making them fit for the social conditions they will experience once released.

Against classical rational theory, Bourdieu (2000) sees actors in the economic field as the product of their social experiences and the outcome of largely unconscious processes that structure their taste, strategies, and orientations. This field is formed of constraining frames for individual and collective action and is structured by the unequal distribution of symbolic, cultural, and social assets. Domination is a central characteristic of the economic field, and in prison such domination compels the acceptance of economic laws as part of an autonomous game, devoid of ethical rules or political concerns. Prisoners who through offending have allegedly violated those laws undergo a form of treatment that ought to guide them toward embracing them.

An Invisible Curriculum

The homo oeconomicus forged in prison is required to learn the “universal” principles that guide behavior in the marketplace and that make economics a religion. There is a hidden curriculum in the learning process conveyed by incarceration, an element of *Bildung* based on classic and contemporary economic doctrines. The catechism and eternal truths conveyed by economics translate perfectly into disciplinary philosophies incorporated in punishment. Let us see some examples.

In Adam Smith, justice is violated when individuals are injured as individuals, as members of a family, or as members and citizens of a state. Violations may undermine our natural rights, for example the right of *liberi commercii*, namely the right to exchange goods and services with those who are willing to deal with us. Those who hamper such a right violate what Smith terms *iura perfecta*, “rights that we have a title to demand and, if refused, to compel another to perform” (Smith 1762–63, 8). *Iura imperfecta*, conversely, pertain to expectations, to duties that might be performed by others for our benefit, but which we have no entitlement to nor can we compel others to perform: “Thus, a man of bright parts or remarkable learning is deserving of praise, but we have no power to compel any one to give it him” (ibid., 9). Similarly, inactive individuals such as beggars may be the objects of our charity and may

be assumed to have a right to demand it, but we are not compelled to share our wealth with them. Moreover, inactive people, included the unemployed, are regarded as unable to develop feelings of cooperation and solidarity due to their lack of involvement in the economy. Following Smith, therefore, we may assert that imprisoned individuals must not expect any support, which would fall under the rubric of *iura imperfecta*, until they join the ranks of the employed. Only then will their anti-social behavior be tempered by the economic dynamic itself, which performs a crucial educational function by making that behavior counterproductive and transforming selfishness into its opposite: that is to say, regard and consideration for others.

This general principle should be examined alongside Smith's more specific views around unemployment. The jobless, in his formulation, should wait for the employment opportunities created by the emergence of new productive activities or the recovery of old ones; only then, once in the labor market, the solidarity and respect for others produced by their involvement in the economy will turn their "private selfishness into public altruism" (*ibid.*, 3). However, the reality in contemporary advanced societies is that job opportunities for the marginalized who constitute the clientele of the prison system are mainly found in the parallel economy and its hidden sectors. Therefore, following Smith's doctrine, we can suggest that the economic field operating in prison institutions trains individuals to accept the flexible and underpaid jobs available to them in the parallel economy.

The invisible curriculum adopted by prison institutions contains other elements derived from economic doctrines. Think of Marshall's (1890) marginalist analysis, in which he develops a conceptual apparatus around wages and work conditions. He considers the case of people being out of work for some time: would they accept lower wages for a new job or not? Here, Marshall introduces the concept of the marginal *disutility* of labor: "As with every increase in the amount of a commodity its marginal utility falls... so the marginal disutility of labor generally increases with every increase in its amount" (Marshall 1890, 117). Like other commodities, labor can come in alternative forms, and according to the principle of substitution, new machineries can replace workers. Labor can also become cheaper, particularly when contingent social circumstances make it widely available. It is true, as Smith (1776, 93) indicates, that where wages are high workers are more "active, diligent and expeditious." However, alert businessmen will always seek the most profitable application of their resources, making use of each agent of production up to the point where its marginal utility is inferior to the utility of other agents.

In this respect, Marshall (1890) invites us to suppose the case of a farmer who is uncertain whether to employ an extra shepherd or not. He will, Marshall suggests, if the potential employee is the *marginal* shepherd, namely the extra unit of labor whose productivity is matched by the salary received. In Marshall's words, the marginal application of an extra unit of labor is viable when "the net product of an additional man would more than cover his wages" (ibid., 427). This additional man can be called a *marginal man*, because his employment is marginal. In brief, "the wages of every class of labor tend to be equal to the net product due to the additional labor of the marginal laborer of that class" (ibid., 429).

Marginal workers constitute a serious contemporary concern and typify sectors of economies across the world. According to Marshall, wages are determined by the expectations of the last remaining person prepared to accept them. Such person is identified by Marshall as one who holds "slender means" and low education and possesses a particular "weakness in distinctly realizing the future"; this person's children will be "imperfectly fed and clothed," housed in a way that promotes "neither physical no moral health," and they will "have few opportunities of getting a broader view of life" or an insight "into the nature of the higher work of business, of science or of art"; finally, these persons "meet hard and exhausting toil early on the way, and for the greater part keep to it all their lives.... They go to the grave carrying with them undeveloped abilities and faculties" (Marshall 1890, 467–69). However, responsibility for these conditions is not laid at the door of employers, who choose these workers for their low cost, but at the door of well-paid laborers who request yet better pay. These Marshallian principles implicitly inform the educational content of incarceration and shape the expectations of those released from custody.

Neoliberal doctrines are included in this custodial invisible curriculum, particularly the idea whereby rules of conduct develop not because they permit the achievement of a known purpose but because the groups practicing them are successful in competing with others and defeating them. Employers paying poor wages are among these successful groups, and the rules of the victors will become part of the natural, spontaneous order connoting the "Great Society" (Hayek 1973). In brief, social arrangements are the outcome of previous actions guiding individuals and groups in their struggle for survival and evolution, and as such they are not subject to moral evaluation. Even when such arrangements are unequal, change will result not from forces acting outside of society but from endogenous factors that will spontaneously rectify the apparent injustice. In sum, spontaneous order

(i.e., the market) cannot be replaced by organization (i.e., state intervention). As in the liberalist tradition as a whole, the thaumaturgic force amending injustice and benefiting all will spontaneously evolve from the pursuit of self-interest (Ruggiero 2013b).

Hayek (1944, 151–52) advocates submission to the impersonal forces of the market, an act of faith to be conducted with “a religious spirit of humility.” Although he rejects the “exaggerated respect for the crude teachings of the early economists,” and although it is “rationally difficult to comprehend the necessity of submitting to forces whose operation we cannot follow in detail” (ibid.), in his view trust in the market has made possible the growth of a society that otherwise would not have developed. In sum, the respect we owe to economic doctrines is akin to the humble awe inspired by religion. In this way, neoliberalism associates freedom with incessant growth, it rejects state intervention in the economy as dysfunctional and despotic, and it advocates vagueness and mutability of norms and laws in conformity with the needs of those operating in the market (Ruggiero 2013b).

Carceral Social Zones

When such education delivered in custody is successful, we should expect a very different outcome from the one described by Rusche and Kirchheimer. This is because the material function of imprisonment has drastically changed. We can still employ the term “material” because it conjures up a notion of productivity, but this should not be assimilated to the notion of the workhouse nor with that of “prison as factory” of early capitalism (Melossi & Pavarini 1977). Prisoners’ work and exploitation mainly take place beyond the prison walls, notably in those social areas where marginalized activities and precarious jobs intermingle with overtly illegal endeavors. We could term these areas “carceral social zones” and suggest that they are the object of a variety of forms of control and punishment, including, when softer methods prove ineffective, the threat of physical and mental destruction. In such areas, the deterrent role of punishment is directed not only at repeat or unmanageable offenders but also at the excluded population in general.

Carceral social zones host a mixture of official and illegal activities and witness a constant flow of commodities and services whose nature may be legal or otherwise. In such areas, “crime as work” means that poorly paid jobs, unregistered jobs, underemployment, and criminal activity proper are not part of an exclusive occupational choice. Here people “commute” from one activity to the other, and in doing so expose themselves to the institutional as

well as the material aspects of punishment. To remark that those inhabiting these areas are met with increasing punitive measures is to provide a partial picture of the relationship between punishment and the material condition of those punished; in other words, the concept of repression is insufficient, as it leaves out the educational content of state intervention.

Rusche and Kirchheimer's model does hardly apply to the carceral social zones, in that such zones do not display the conventional traits of labor markets. Even if we adopted a "long cycle" or "long wave" view of economic development and incarceration, the problems would persist, because in the carceral social zones unemployment, semi-employment, underemployment, and illegal work coexist, at times within the same person. On the other hand, however, it is important to note that in these areas the educational or material functions of punishment do not cease to be exercised. The marginalized, the unemployed, the occasional workers, the petty criminals, and all the others whose lifestyle and economic activity straddle legality and illegality are trained to remain and survive in their areas of exclusion, just like their counterparts in the past centuries were trained to the discipline of industrialism. Prison discipline aims at lowering the prisoners' social expectations, an aspect that leads us back to the concept of rehabilitation. Prisoners are deemed rehabilitated when they accept to remain in the specific sector of the labor force and in the carceral zone assigned to them.

In the end, the slowing down of the process of mass incarceration is connected to the successful educational role played by custody. Even conflict and violence within prison institutions act as exercises in individualism, pure expressions of private interest; drug use in custody, on the other hand, intensifies consumerism and determines the internalization of the market logic, of its competitiveness. Ultimately, the educated offenders will have accepted their role and reduced their expectations, a process that limits them to the poor prospects offered by precarious and irregular occupations. The costs of mass imprisonment, in this sense, are compensated by the costs saved by the employers who will offer such irregular occupations.

Conclusion

There is a punitive aspect in economic failure, particularly in contexts in which success is intensely lauded and rewarded. Economic failure that turns into crime is doubly punished, in that it signals an unwillingness to interiorize the logic of exchange, costs, benefits, available assets, and unequal distribution. Prison institutions are charged with imparting on the inmates

an invisible curriculum inspired by neoliberal economic doctrines. In this light, I surmise that the end (or decline) of mass incarceration may well be due to the temporary success of custody in the production of what I called the coerced homo oeconomicus.

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