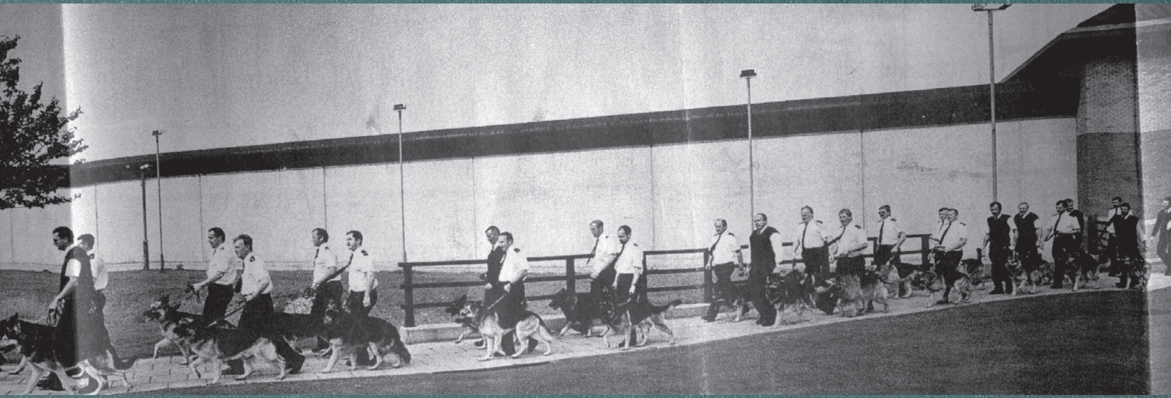
Punishment and Prisons

Power and the Carceral State



Joe Sim

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Steal a little and they throw you in jail;
Steal a lot and they make you king.
— Bob Dylan

I think we have to rescue the past. It's the old much-quoted saying, 'The struggle of people against power is the struggle of memory against forgetting'. We have to rescue the past, and we have to know the 'why' of things, because otherwise you can't combat it.

— Ken Loach

Show me a prison,
Show me a jail,
Show me a prison man,
Whose face is growing pale,
And I'll show you a young man,
With many reasons why,
And there but for fortune,
May go you or I,
— Phil Ochs

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Power and the Carceral State

Joe Sim

SAGE

Los Angeles | London | New Delhi
Singapore | Washington DC

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First published 2009

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SAGE Publications Ltd
1 Oliver's Yard
55 City Road
London EC1Y 1SP

SAGE Publications Inc.
2455 Teller Road
Thousand Oaks, California 91320

SAGE Publications India Pvt Ltd
B 1/I 1 Mohan Cooperative Industrial Area
Mathura Road
New Delhi 110 044

SAGE Publications Asia-Pacific Pte Ltd
33 Pekin Street #02-01
Far East Square
Singapore 048763

Library of Congress Control Number: 200893417

British Library Cataloguing in Publication data

A catalogue record for this book is available from the British Library

ISBN 978-0-7619-6003-4
ISBN 978-0-7619-6004-1 (pbk)

Typeset by CEPHA Imaging Pvt. Ltd., Bangalore, India
Printed in India at Replika Press Pvt Ltd
Printed on paper from sustainable resources

To the memory of Annie and Edward Mullen and John Doogan.

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ACKNOWLEDGEMENTS

In time-honoured fashion, I remain responsible for any errors in this book. At the same time, the following people contributed to the book more than they will ever know or, indeed, might want to know:

Eric Allison, Ove Andersen, Alana Barton, the late Ernie Buck, Tony Bunyan, Pat Carlen, Deborah Coles, Gerry Condon, Mary Corcoran, Karen Corteen, Mike Fitzgerald, Richard Fontenroy, Pete Giu, Paul Gilroy, Barry Goldson, Danielle Griffiths, Stuart Hall, Jeremy Hawthorne, Trevor Hemmings, Barbara Hudson, Jeff Hughes, the staff at INQUEST, Janet Jamieson, Niki Lacey, Barbara and Pieter Lawman, Dave Llewellyn (for the trips on the 'magic, swirling ship'), Bethan Loftus, Dave MacDonald, Gill McIvor, John Moore, Dave Morran, Martyn Nightingale, Teresa, Daniel, Paul and Paul O'Brien, Susan, Grace and James O'Malley, Tina Patel, Simon Pemberton, Hans Pedersen, David Scott, Helen Shaw, Gerry and Karen Sim, Tillie and Joe Sim, David Tyrer, Reece Walters, Tony Ward, Anne-Marie, Ricky, Jamie and Richie Webster, Joe Yates.

Special thanks to Kristi Ballinger for her technical skills and for reminding me of the Flintstones; and to Tia Ballinger for her radically different interpretation of the meaning of the 'archaeology of knowledge'.

I am particularly indebted to Roy Coleman, Paddy Hillyard, Mick Ryan, Steve Tombs and Dave Whyte for their personal and intellectual support over the years.

During the time it took to write this book, Chris Cain made me (semi) respectable; staff at The Elms and The Priory in Liverpool made me healthy; S.L. Jakubovic made me appreciate Colgate Total; and Ian Davis helped me quite literally to see better.

Julie Callaghan, Rhona McSporran, Sara Newton, Maria Ng, Kate Simmons and Mandy Vere from News from Nowhere bookshop in Liverpool provided an independent and critical space for buying and ordering books. It embodies everything a bookshop should be in challenging the desperate influence of, and shadow cast by, multinational bookstore chains.

Michael Simmonds in Conservative Central Office was extremely helpful in facilitating my access to the Conservative Party's library in Smith Square.

Catherine Fell at the Prison Service College Library provided excellent service and expedited any requests I had for books and articles. The staff in the libraries at Liverpool University and Liverpool John Moores University, especially Joan Shaw, also provided a first class and helpful service.

Thanks to the Research Committee in the School of Social Science, Liverpool John Moores University, for funding some teaching relief between January and May 2004.

Over the years, a number of institutions and organizations invited me to speak to their staff and students. This allowed me to think through some of the ideas in this book in environments which were challenging and critical. In particular, thanks to staff and students at the University of Central Lancashire (and to Keith Soothill for his attendance and comments), the University of Stirling and the University of Lincoln. Thanks also to those who attended lectures I gave to the Howard League for Penal Reform in Scotland and to the Rehabilitation and Research Centre for Torture Victims in Copenhagen for their critical input.

Antonio Gramsci said that football was ‘the open-air kingdom of human loyalty’. The following people shared the great highs (the road to Seville in 2003; Tannadice, 22 May 2008) and the desperate lows (Fir Park, 22 May 2005) following Celtic: Danny Anderson, Brian Crommie, Jim, Bryan and Claire Crossan, Andy Gallagher, Monica Gallagher, Joe Gormley, Paddy Jackson, Ritchie Kelly, Martin Maxwell, Calum MacDougall, Robert McAbe, Alfie and James McAllister, Paul McCartan, Martin McFadden, Fran McStay, Chris Mullen, Tony Quail and Brian Toolan.

Bob Dylan’s music, and different concerts on his ‘never-ending tour’, provided the perfect soundtrack during the seemingly never-ending years that it took to complete this book. John Bohanna’s recordings of many of these concerts, as well as Dylan’s XM Radio shows, helped me to get up in the ‘jingle, jangle mornings’ to keep writing.

Thanks to Gillian Stern and Miranda Nunhofer for supporting the initial proposal to SAGE.

Particular thanks to Caroline Porter at SAGE, who not only exhibited extraordinary patience and good humour in waiting for the finished text, but also made a number of very supportive and insightful comments as the manuscript took shape.

Finally, as ever, Anette Ballinger has been an intellectual and personal inspiration.

PREFACE

In the first decade of the new millennium, the production of criminology books and the pursuit of criminological knowledge have become fetishised commodities to be bought and sold in the marketplace of higher education. In the UK, the rabid and often unscrupulous search by universities for funding in response to the seemingly endless problems with resourcing their activities, the demand that knowledge be relevant to 'what works' in social policy terms and the rampant, psychologically withering managerialism embedded across higher education institutions, have increasingly compromised the role of academics as social and moral critics. What counts as knowledge (and its political converse, what does *not* count as knowledge) and, crucially, the uses to which knowledge is put (or indeed not put) have become the objects of a hybridized, often state-inspired system of surveillance and regulation to which many of the new breed of university managers have given their overt, and often brutal, support. At the same time, the academic producers of this knowledge have increasingly subjected themselves to a self-surveilling, self-censoring gaze in response to the iron grip of commodification that has swept through higher education (and other) public service institutions. Capitalist modernity has meant subsuming the social and the human to the dictates of a higher education, free market ideology that valorises conformity, individualism and objectification.

In making this point, it is not my intention to construct a reductive, conspiratorial position where *every* decision made, and *every* action taken by state servants and university managers, is determined by the invisible workings of a ruthless, capitalist political economy. As theorists such as Bob Jessop and Stuart Hall have long recognized, the state is a much more contingent and contradictory set of institutions than early Marxist writers argued. At the same time, it would be naïve to think about the relationship between criminological knowledge, universities and the state without considering the question of power and thus the material, political and ideological processes which have shaped and governed (and continue to shape and govern) criminology's development and application. It is also not my intention to present an idealistic vision of a previous era in which every publication in criminology, and every action undertaken by criminologists, were mobilized to challenge the state or the powerful. Indeed, historically, criminology as a discipline, as is now being increasingly recognized, has been yoked to the state with respect to the restricted ideological definitions of crime within which the majority of its practitioners have operated, which, in turn, have underpinned the reformist policies that they have pursued (Hillyard and Tombs, 2004). Additionally, state servants have often used criminological research to inform their often philistine policies and practices.

It is also clear that the regulation of research and individual self-censorship have long preceded the rise of neoliberal managerialism as a governing discourse in criminology. My point is that these processes have been intensified and compounded in the last three decades as the politics and practices of neoliberalism have become consolidated in the hearts and minds of the governing class in the UK, of whatever political persuasion. They have also been intensified by intellectually and spiritually corrosive developments such as the Research Assessment Exercise (RAE), which have become so institutionalized in higher education that for younger scholars in particular, it often appears less career-threatening to challenge the scientific claim that the earth revolves around the sun than to confront the often vapid claims made by defenders of the exercise that this is an objective test of academic worth, esteem and scholarship.

At the same time, as with any social process, the current bleak situation is contradictory. The fact that this book has been produced at all indicates that however unrelenting neoliberal policies might be, there are spaces and gaps that nurture and sustain critical, academic work. Indeed, one of the great paradoxes of the last three decades has been the rich and stimulating research that has been produced by critical thinkers and scholars, from a range of diverse backgrounds and persuasions, who have challenged the theoretical and methodological supremacy of administrative and conventional criminology.

This book is designed to contribute to that critical tradition and follows Foucault's observation that books should be seen as 'instrument[s] ... in a real struggle' (Foucault, cited in de Folter, 1987: 44) It seeks to chart the continuities in penal policy, and the role and place of the prison as an arena of often unrelenting punishment and pain, from the mid-1970s to the first decade of the new millennium in a land that has had to contend with the psychological immiseration and social detritus generated by the brutal exigencies of neoliberalism. The book also suggests that the 'real struggle' around prisons should be conducted from an abolitionist perspective if the institution's nefarious influence on the confined, on those staff trying to provide humane and decent care and on the debates around law and order more generally, is to be contested, undermined and replaced by an alternative vision of penality that both heals the individual offender and protects the wider society.

I finally finished writing the text at a time of intensive media coverage of the 40th anniversary of the 'year of the barricades' – 1968. That year was also hugely significant for criminology with the formation of the radical National Deviancy Conference (NDC), which sought to provide a forum for a more critically engaged, politically interventionist criminology. It is therefore fitting to close this preface with a quote from Stan Cohen's Introduction to the first collection of papers, published by the NDC in 1971 under the title, *Images of Deviance*. In his usual perceptive and prescient manner, Cohen noted that, 'Sociologists are increasingly becoming traders in definitions: they hawk their versions of reality around to whoever will buy them. There is a responsibility to make such definitions not only intelligible, consistent and aesthetically satisfactory, *but also human*' (Cohen, 1971: 24, emphasis added). Forty years on, Cohen's words remain utterly relevant to a world that is still devoid of the human and the humane. According to some, usually politicians, it is a world which has changed beyond recognition, even redemption. However, as this book illustrates, with respect to the prison, the justifications mobilized to defend its continuing existence, and the population the institution incapacitates for often-brutal interventions, it is a world that has hardly changed at all.

Joe Sim
Liverpool
June 2008

1

CONTINUITY AND CONTESTATION IN PENAL POLITICS

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

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

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

Foucault’s scepticism towards viewing the criminal justice system through the lens of nostalgia provides the starting point for this book. It is concerned with contesting the histories of punishment that have become prominent in criminology with respect to developments in penal policy since the mid-1970s. Central to these histories has been the emphasis on shifts and discontinuities in the apparatus of punishment, underpinned and legitimated by a political and populist hostility to offenders. Punishment, it is argued, has shifted towards managing the dangers and risks posed by feral collectivities rather than integrating malfunctioning individuals back into the welfare comfort blanket of rehabilitative social democracy. This well-known and influential analysis was developed initially in Malcolm Feeley and Jonathan Simon's seminal article, published in 1992 (Feeley and Simon, 1992), and was further refined by David Garland in 2001 in his influential book *The Culture of Control* (Garland, 2001). However, while this work has contributed significantly to the sociological understanding of contemporary punitive trends through detailing their individual impact and wider social ramifications (Pratt et al., 2005), the analysis developed in this book follows a different theoretical and methodological trajectory. There are four dimensions to this trajectory that I want to explore in this introductory chapter: continuity and discontinuity in penal policy and practices; the role of reform, rehabilitation and social welfare discourses in prison; contestations and challenges to penal power; and finally the question of abolitionism as an organizing, conceptual framework for analysing the social problem of modern penal arrangements.

Continuity and discontinuity

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

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

As they suggest:

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

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

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

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

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

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

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

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

Reform and rehabilitation: rhetoric and reality

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

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

More specifically, behind the project lurked a deeply punitive array of policies and practices that were carried out in the name of rehabilitation and reform across different institutions. They ranged from using drugs such as crystal methamphetamine through to experimenting with LSD (lysergic acid diethylamide) on women suffering with post natal depression or postrape trauma (Mortimer, 2006) and onto electroconvulsive therapy, leucotomies and outright physical brutality (Sim, 1990).[4]

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

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

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

Finally, if the discourse of social welfare was so important to prison regimes up to the 1970s, as official accounts and new penologists claim, why was this discourse not institutionalized in the everyday practices of the prison system? Or to put the question another way, why have those programmes which have had a positive impact on offending behaviour (in other words they have 'worked'), been drastically subverted by the discourses of pain and punishment which underpin and give meaning to the everyday experiences of many of the confined? Raising this question casts serious doubts on Martinson's much cited and hugely influential phrase, 'nothing works' (Martinson, 1974). According to accepted criminological wisdom, for the new right, Martinson's research legitimated their demand for a more retributive penal policy; for liberal and critical prison scholars this research signalled the death of the rehabilitative ideal. However, this misses a fundamental point. Rehabilitation policies never worked because, in the majority of penal institutions, they were *never* actually put into practice. Those institutions that did work – the Barlinnie Special Unit – or which continue to work – Grendon Underwood – places whose working practices did not, and do not subscribe to the dominant retributive penal discourses, were either closed down or have remained marginal to the 'real' business of the prison system which is the delivery of pain and punishment. I shall return to this point in Chapter 7.

Contesting the power to punish

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

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

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