

THE RETURN OF THE WHEELBARROW MEN;
OR, THE ARRIVAL OF POSTMODERN
PENALITY?

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This paper examines a range of new penal trends and attempts to assess their significance, in the context of the growing debate on modernist and postmodernist penalty. It argues that they can be seen as early indicators of an emerging postmodern penalty, even if its contours may still be unclear and unmarked. The paper then goes on to discuss the empirical and theoretical significance of this contention.

This paper is written as a contribution to a growing debate on the significance of a range of new penal initiatives to be found to a greater or lesser extent across most English based jurisdictions at the present time. While all contributors to this debate are in agreement that we are currently experiencing quite significant penal change, there are considerable differences between them as to its implications (see, for example, Feeley and Simon 1992; Garland 1995, 1996; Sparks 1996; Simon 1995, 1997; Lucken 1998). At the heart of the matter is the issue of whether or not these initiatives, however different in form they might seem and however different the cultural values that seem to inform them may be to much of the penal development that has taken place during the course of this century at least, still operate within the parameters of modernity itself: or whether they go beyond its parameters and thereby signal the arrival of a postmodern penalty. Such distinctions are a matter of far greater import than mere semantics: how it is possible to punish within the one framework will be very different from how it is possible to punish within the other. Furthermore, if it is possible to see the emergence of a postmodern penalty (albeit still in embryonic form) on the empirical basis of the discontinuities from modernity represented in the new penal arrangements, this then raises important theoretical issues about the adequacy of the sociology of modernity to provide an analytical framework in which to situate these current trends (Brodeur 1994). To explore these issues further, the position I want to take in this paper is informed by but ultimately reverses that taken by Garland (1995) in his authoritative contribution to this debate. A detailed analysis of the range of new penal initiatives is provided. I then go on to examine critically the case that can be made for situating them within the modernist framework, before suggesting how and why they may be pointers to the emergence of a postmodern penal world, even if its exact contours are still somewhat vague and ill defined.

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The Demise and Return of the Wheelbarrow Men

What helped to prompt this paper was a passage I came across in Louis Masur's (1989) book *The Rites of Execution* (an account of the decline of public executions in antebellum United States). It contained a reference to a Pennsylvania law of 1786. This provided for punishment by 'continued hard labour, publicly and disgracefully imposed . . . in streets of cities and towns, and upon the highways of the open country' (p. 78). He goes on to describe how 'those criminals sentenced to public labour . . . became known as the [W]heelbarrow [M]en. Ironed and chained, with shaved heads and coarse uniforms lettered to indicate the crime committed, they cleaned and repaired the streets of Philadelphia and the surrounding towns. Their reformation, authorities believed, would come through public humiliation, industry and temperance. Deterrence would be achieved, legislators hoped, by a public display of marked, if not doomed, offenders'. I was doubly intrigued by this account of the Wheelbarrow Men (aside from the fascinating banality of their name). On the one hand, there was the way in which, to borrow from Foucault (1970: xv), it shattered 'all the familiar landmarks' of the way in which we had become accustomed to thinking about punishment and how it was possible to punish in modern society; yet, on the other, there was the way in which it seemed able to speak not just of the distant past but of present trends as well.

Certainly, when set against the expectations of the form and purpose of punishment that have been developed over much of the nineteenth and twentieth centuries, these images from the penalty of the late eighteenth century seem quite unbelievable: these scenes of head shaving and the strange marking of uniforms—all part of a penalty designed to produce feelings of revulsion amongst an onlooking public and shame and humiliation amongst the criminals themselves—seem to belong to a very different penal world from that of the modern era. Such public displays of punishment, of community participation, the sense of chaos and uncertainty associated with its administration¹ and the shame that the Wheelbarrow Men were meant to internalize seem so out of place with the formal direction of penalty over this time. Indeed, in many ways, modern penalty seemed to take a route that was the antithesis of the values represented in the punishment of the Wheelbarrow Men. For the most part, punishment in modern society came to take place 'behind the scenes'; it was meant to produce specific, productive, quantifiable effects on adjudicated offenders (that could be measured by reconviction rates); its administration came to be enveloped by centralized bureaucratic organizations—to the exclusion of the general public. Faith in the scientific knowledge that these organizations brought to bear on penal matters was an indicator of the way in which punishment in the modern world came to be associated with the 'grand narrative' of reform, progress and humanitarianism: 'the study of crime and its control, in unison with all other key disciplines relating to man in society would ultimately provide explanations and solutions. These in their turn would lead to a set of beliefs and progress of action which would then be accepted and scrupulously followed by the world at large' (Radzinowicz 1991: 423).

¹ Masur (1989: 78–9) writes of the fate of the Wheelbarrow Men as follows: 'they begged for aid and plotted to escape. Citizens who felt sorry for the convicts provided them with liquor, tobacco and food. Thomas Jefferson recalled that "exhibited as a public spectacle, with shaved heads and mean clothing, working on the high roads, produced in the criminals such a prostration of character, such an abandonment of self respect, as, instead of reforming, plunged them into the most desperate and hardened depravity of morals and character".'

Behind the curtain that came to be drawn across the modern penal spectrum, separating the penal experts and their work from an uncomprehending public, it was envisaged that appropriate and various tactics of reform, educative and industrial training, and rehabilitation would work on the ‘souls’ of prisoners to bring about their normalization (Foucault 1978). Such ends could not be achieved, it was recognized, by shaming and humiliation through punishment. Indeed, in the moral economy of punishment in the modern world, *shaming as a punishment* of necessity disappeared (cf. Braithwaite 1993): its conditions of existence (visibility, public participation and so on) lay in premodern arrangements. As we look across penal development in modern society, we find considerable attempts (usually successful over time, notwithstanding some ups and downs along the way) being made to reduce any residual shaming components of punishment and at the same to steadily ameliorate the intensity of the suffering that punishment caused: abandonment of stigmatic prison uniforms and hair cropping, for example; eventual abolition of chain gangs, eventual abolition of corporal punishment, and, more recently, prohibitions on court reporting of criminals’ names and so on. With the demise of shaming came the demise of the Wheelbarrow Men. In modern penal arrangements shame would now act as an indicator of disapproval of those supposedly modern societies whose punishments seemed to be overly excessive or in some other way out of line with the values of its penal culture, or which in some way or another expressed penal values that did not fit modernity.² Instead of it being a tactic to be used against individual offenders, it came to be a judgment on the extent of a society’s lack of civility, thereby casting doubts on the place it claimed for itself in modernity.

The Wheelbarrow Men thus not only help to define premodern penal values: by virtue of their unthinkable presence in penal modernism, their absence from it also tells us about the values that were central to the penalty of this era. And yet, as I indicated above, the Wheelbarrow Men would seem to be more than just antiquarian curiosities. They may also be telling us about the values that are beginning to inform our present. What is my evidence for suggesting this? First, in perhaps the clearest parallel I have come across with the Wheelbarrow Men themselves, I would draw attention to the Northern Territory (Australia) Punitive Work Order introduced to that jurisdiction in 1996. Here, offenders are compelled to wear a ‘protective’ black and orange bib while performing community service type work. But it is also clear that this clothing is meant to do more than simply offer protection from industrial hazards and so on. As the Northern Territory Attorney-General explained the matter, ‘those serving a punitive work order will be clearly obvious to the rest of the community. They will be identifiable as Punitive Work Offenders either by wearing a special uniform or some other label. *It is meant to be a punishment that shames the guilty person*’ (Ministerial Statement on the Criminal Justice System and Victims of Crime, 20 August 1996, emphasis added).

Let us put things into perspective. To draw resonances between sanctions from post-colonial Pennsylvania in the late eighteenth century and those in a rather remote part of Australia in the late twentieth, given the separation of time, continents and cultures, might seem to be a questionable enterprise. But the point is that I am not, of course, saying that the two sanctions *are* directly comparable. What I simply want to do is

² For example, the Southern states in the US with their associations with chain gang prison labour which clung on until the 1960s (see Sellin 1976).

draw attention to the way in which some of the penal qualities associated with that earlier modality of punishing seem to have resurfaced in the new sanction: when judged against the penal framework and the expectations of punishment thereby raised of the last two centuries, they can both seem incongruous for the same reasons. Equally, in any future archaeological excavations of the history of punishment, this Northern Territory Punitive Work Order will no doubt appear as a tiny fragment, one possibility of punishing amongst many in this relatively little known part of Australia. But it is a fragment that needs investigation precisely because it does constitute such a discontinuity from the penalty which to a greater or lesser extent can be found across all modern-based societies. Furthermore, if we broaden our excavation, then we find more fragments of a similar kind. This form of shaming punishment has also crept into the penal spectrum of Western Australia, with parents and children being made to clean up graffiti and vandalism before a public audience (Blagg 1997); the reintroduction of chain gangs in the last couple of years or so in some American states is also reflective of this trend, as are the initiatives that would seem to have strong community support across a range of these jurisdictions: the publication of names, addresses and photographs of known criminals or returning ex-prisoners in local police-community news bulletins, and television commercials; or offenders being compelled to wear t-shirts that indicate their crimes (Garvey 1998); or being forced to post a 'scarlet M' sign in their window to warn others that they are a convicted sex offender (Bai 1997). In all such examples, the deliberate shaming of individual offenders by displaying them to the public makes a return to Western penalty after a break of around some two centuries.³

Shame is not only being used to humiliate at the present time, of course; in one of the most significant criminological interventions for some time, John Braithwaite (1989) has argued how shame can be used as a tactic of reintegration, with various non-modern shaming practices helping to inform his thinking around this matter (see Braithwaite 1996). For me, though, the significance of this intervention lies not so much in whatever its proponents claim on its behalf (see, for example, Braithwaite 1997), but that we should again find reference to, indeed, a preference for, penal forms that had hitherto seemed out of place in the development of modern societies. This would seem to be true of much of the restorative justice movement, of which Braithwaite's tactics of reintegrative shaming have become a prominent component: 'the very people who by virtue of their remoteness have succumbed least to the Western justice model, who have been insulated from Hollywood a little more and for a little longer, the very people who are most backward in Western eyes, are precisely those with the richest cultural resources from which the restorative justice movement can learn' (p. 17). It is as if, then, we no longer look solely to penal experts for the answers when punishing offenders but instead, go past them and cast around for solutions to be found in the non-modern penal spectrum, thereby producing significant changes to the previously existing penal configuration. As one of the leading proponents of restorative justice writes, 'central to restorative justice is recognition of community, rather than criminal justice agencies as the prime site of crime control' (Marshall 1995: 1).

³ The point here of course is that while various forms of public shaming—such as the chain gangs above—may well have persisted in the modern world until well into the twentieth century, this was a decreasing feature of penalty during that time.

The New Punitiveness

Furthermore, a range of other new initiatives, such as the community notification laws, or Megan's Law and its equivalents in the United States, and the English Sex Offenders Act 1997, seem to be producing similar discontinuities from the modernist penal trajectory. In terms of facilitating greater public involvement in punishment, as in the above examples, under these provisions, local communities are to be notified of the presence of returning sex offenders released from prison to their midst: these ex-prisoners have to register with the police who must then notify neighbours, schools, childcare centres and so on (depending on the drafting of the particular law), that there is a known sex offender 'on the loose'. In New Zealand, the 1996 Paedophile and Sex Offender Index has been recently published (Coddington 1996) containing names, addresses, offence and sentence of all New Zealand sex offenders over the previous five years. It is designed, says the author, to fill the absence in that country of any equivalent of Megan's Law: 'this book has been compiled from media reports going back to about 1990, covering those sex offenders who were not granted name suppression' (p. 7). A desire for knowledge of criminality by members of local communities is hardly new, of course; what is new, though, about such measures is the way in which the public are given a direct (rather than vicarious) involvement in the process of punishment: they can actively participate in this process again, rather than simply read about it second hand; they are offered the chance of reading about and looking for *real* monsters in their midst rather than fictional ones or those whose geographical distance dissipates their threat.

Again, another significant shift of emphasis in these new initiatives and trends is the way in which they consist of various aspects of penal development that had hitherto brought shame upon particular jurisdictions where traces of them were to be found in the modern world—particularly brutalizing penal regimes (as in the US boot camps, see Simon 1995), outlandishly high and continually escalating prison populations and punishments directed at the human body.⁴ What has changed though is that such features no longer convey the shame and embarrassment for a modern society that their presence could have invoked some two decades or so ago: instead, they become emblems of political virility, something to be proclaimed rather than be embarrassed about ('Prison Works'—in the sense of keeping would-be criminals off the streets—was the pronouncement of the British Home Secretary in 1995).

Then there is the growth of initiatives which seem to suspend some of the taken-for-granted liberties and rights that we have become used to in modern, democratic societies. Curfews restricting the night time movement of large numbers of young people in particular areas have been introduced, or are planned to be introduced across the United States, New Zealand and Britain (Muncie 1998). There is nothing new of course about restricting the movements of the population or segments of it, during the night especially. Such measures have a long history. They were commonplace during the Middle Ages, especially in cities taken in war, as a means of enforcing control over the local population. But essentially they have come to have associations with non-modern

⁴ Although it is recognized that there can be a plurality of meanings to the development of boot camps and that in their own accounts, boot camp officials write of their work from a variety of penal perspectives (Simon 1995). Equally, it seems to be only in the United States in the English-speaking modern world that we find sanctions targeted again at the human body: the resurgence of the death penalty of course, across most of that country, and now the use of castration as a bargaining ploy in granting parole for sex offenders in California and Florida.

societies, societies where the normal rights of passage and liberties to be found in the West simply do not apply, or have been suspended because of civil emergency or some such matter. Western democracies, almost by definition, are not supposed to have 'states of emergencies', thereby, at least in the past, making such extra-legal powers superfluous: at least until now. In Australia, there are examples of laws targeted at named individuals in the manner of premodern lawmaking practices (see the Victorian Community Protection Act 1990; Hay *et al.* 1976), rather than drafted in terms of their application to the population at large, and which allow for indefinite detention of these named individuals; and laws which allow for offenders to be resentenced—for the same offence—rather than released when their prison term comes to an end (New South Wales Sentencing Act Amendment Act 1998). The United States sexual predator laws allow for additional imprisonment for those so defined when their sentences finish, or confinement in a mental institution for others. In Britain, it has been suggested in the aftermath of the release of one notorious sex criminal that such offenders should be kept in prison indefinitely on completion of their set term. Hitherto taken for granted Western freedoms can now be suspended, it would seem, with little apparent concern. As President Clinton himself said when signing Megan's Law, 'we respect people's rights but today America proclaims there is no greater right than a parent's right to raise a child in safety and love . . . America warns—if you dare to prey on our children, the law will follow you wherever you go, state to state, town to town' (Office of the Press Secretary, The White House, 25 July 1995).

Then there is the abandonment of the principle of proportionate punishments, exemplified by the USA Three Strikes laws but with related initiatives dotted around the penal world. Here it is not so much the immediate crime that one has committed that one is sentenced for but, instead, one's past record, however trivial this might be in some cases. Nonetheless, it can lead to mandatory and indefinite prison terms. Gone, too, is the grand narrative of reform which found expression in a range of initiatives over the course of the last century or so: from the child-saving movement of the late nineteenth century to the alternatives to custody crusade of the 1980s. Even in the 'social control talk' of the latter (Cohen 1985), it was the grand narrative of saving offenders from prison that occluded, perhaps deliberately so, some of the more sinister aspects of the programmes that were then being developed. Now, though, it is as if the current trend is for criminal justice organizations to transform themselves into autopoietic systems, that are both self referential and self serving, while at the same time, slotting into the way in which the system as a whole is operating (see Feeley and Simon 1992): the completion of prescribed tasks becomes the Mission for each of its respective components; and the vision for the future that is regularly found in such documentation amounts to little more than the continued existence of the organization itself, completing its prescribed tasks. Those working in these organizations are also likely to find much of their previous working routine significantly changed. Monitoring offenders by means of electronic surveillance begins to take the place of care through individualized counselling; and computer based actuarial calculation of risk supersedes clinical diagnosis in determining parole applications (*ibid.*).

What, then, are we to make of these developments? Is it the case that the landmarks of penal modernity can be shattered not just by references to punishments in the premodern world, but by those from the present as well? All commentators in this area recognize these new developments as being more than something aberrational, the

outcome perhaps of (temporary) convergences of interests, or the whim of eccentric individuals who have come to power in particular jurisdictions, and who then try to take penal development away from its established and hitherto taken for granted course. Instead, what is so striking is the similarity of and overlap between these new penal projects, despite their differing jurisdictional locations. Thus the renewed emphasis on shame and community involvement in the administration of punishment can range from New Zealand family group conferences to community groups campaigning against the return to them of convicted sex offenders.

It is this commonality that gives them a greater import than seeing them as mere local aberrations would do; nor, when trying to explain them, do they seem to fit the perceived wisdom that dominated much of the Foucault-influenced sociology of punishment scholarship during the 1980s. There, modern penalty was again seen as undergoing a significant transformation—but, I would maintain, a transformation of a different order to that which we are seeing today. It was not at that time the case that the existing penal framework was being abandoned, or beginning to obey a seemingly different set of referents: instead, it was being diversified and extended (Cohen 1985). Those changes involved it leaving behind much of its carceral origins and becoming operationalized within the community. These trends were justified by penal administrators on the grounds that they would save offenders from the costs (in every sense of the word) of imprisonment, thereby continuing the longstanding trend of the amelioration of penal sanctions. In the sociology of punishment these developments were seen by many as constituting new and more intrusive forms of social control underneath a camouflaging rhetoric of benevolence. However, one of the striking characteristics of the new initiatives of the 1990s, aside from the reassertion of the carceral texture of penalty that many of them involve is that there has been something of an abandonment of any pretext of benevolence: for the most part, there no longer seems to be any anxiety on the part of penal authorities to camouflage the debilitating aspects of the punishments they enforce. At the same time, the new sanctions are accompanied by a penal rhetoric that is a marked departure from that to be found in the early 1980s. We no longer need Stan Cohen's glossary of 'social control talk' in front of us to help us understand what is going on. It has all become much clearer. Punishment is unpleasant, the official documentation is now likely to tell us⁵—it is best not to invite it; or, alternatively, the authorities produce sentencing grids and instruction manuals, a simple set of procedures for all to understand (found particularly in relation to electronic surveillance programmes, or the new community notification laws), with what must be done/not done made clear, as are the consequences of not following the procedures and so on.

Overall, what I think has been clearly established thus far is that these changes can be represented as a 'new punitiveness' which has become 'a deep rooted aspect of our culture, embedded in the common-sense of the public, police and judiciary' (Garland 1996: 462): it is new because it seems in some ways to reverse longstanding traditions that had become the hallmark of modern penal culture, it introduces sanctions that seem to

⁵ The Annual Report of the Georgia Department of Corrections (1997) is introduced with the heading 'Tough Issues, Hard Facts'. Inside, the report gives details of its 'tough but fair' prison philosophy. I am aware that care must be taken not to push this point too far. It is also clear that one of the reasons for the resurgence of the death penalty in the United States has been its effective sanitization, made possible by the recourse to lethal injection as the mode of execution rather than the electric chair or the gas chamber.

have their roots in the non-modern world, it significantly reorders the modernist penal configuration, and it obeys a different set of values and cultural expectations from those that had erstwhile provided frames of reference for the development of modern punishment. Against the 'closed off' nature of penal modernity, we find an increase in the public visibility of punishment; against its productive intent, we find an emphasis on its destructive, incapacitatory qualities; against the prominence of penal bureaucracies, we find greater community participation; against the tradition of fixed and certain punishments and the protection of individual rights, we find an increase in uncertainty and arbitrariness, an abandonment of individual rights before community interests; against the grand narrative of reform which imprinted itself on modern punishment we find relativism and fragmentation; and against the normative training of offenders in modern penality, we find a new array of shaming punishments—'reason' thus giving way to emotion. Here, then, on the face of it, would seem to be the possibility of a new penality which, in contrast to that of modern society, begins to demonstrate the various values and referents which scholars in other fields have seen as indicative of postmodernity (see variously, for example, Gellner 1992; Fox 1993; Docker 1994; more generally, Lyotard 1986; Smart 1992); and which Garland (1995) suggested would be expected constituents of postmodern penality.

It should be added that there is common agreement about the conditions of existence of this new punitiveness. It is bound up with the social, political and economic changes taking place across Western society from the mid-1970s. What they represent for Garland (1995: 466) is 'the eclipse of the solidarity project: in its place we are witnessing the emergence of a more divisive, exclusionary project of punishment and police'. Similarly, Sparks (1996) writes of 'the increasing polarization of national wealth', a growing tolerance of inequality coupled with an increased sense of anxiety at the presence of those who might threaten the new found freedoms that these broader changes have brought with them: we thus begin to find an abandonment of liberal penal provisions and a general questioning by public and politicians alike about the seemingly excessive lenience of the criminal justice system (everything and everybody from caution-happy police to unworldly judges). Elsewhere, and from a different theoretical tradition, Mennell (1990) has referred to the 'structural unravelling' of this period: that is to say, the social bonds and expected threshold of the conditions of existence brought about by decades of commitment, to a greater or lesser extent, to the political rationalities of welfarism, are seen as being undercut and fragmented—at such times, penal and social possibilities emerge which, until recently, would have seemed quite 'unthinkable'. Not only have these forces of change brought about a new punitiveness but new crimes begin to appear that speak to the same concerns, such as 'stalking' and 'home invasion'.⁶ They seem to exemplify the way in which individual security and well-being is seen as under threat and thereby is in need of new forms of protection and new forms of punishment which can address such matters, in ways in which the previously existing legal and penal framework was unable to do. But to what extent though, does the new punitiveness and its effects leave us still within modernity, or take us into a postmodern penal arena?

⁶ This is the term by which burglary of a dwelling house in Tasmania is popularly known as the Tasmanian Criminal Code was amended by Act No. 3/1997 to make 'burglary of a place ordinarily used for human habitation' aggravated burglary and punishable by 21 years' imprisonment. The 'upgrading' of burglary in this way seems indicative of the sense of concern that the term 'home invasion' conveys: one may not be safe from intrusion at home, but when one goes out, 'stalkers' may be lying in wait for us.

The Continuity of Penal Modernism?

David Garland (1995) has produced an eloquent and forceful insistence that penalty, notwithstanding some of the changes noted above, still remains within its modernist parameters. His argument is that, overall, the effects of the new punitiveness represent a continuation of trends within modernity, or rather an intensification of already existing forces—hence his use of the phrase, in the manner of Giddens (1990), ‘high modernity’ to locate them. This means that their ‘proper analytical location’ should be set ‘within the long term processes of modernization’. For Garland, certain purportedly post-modern characteristics of the new punitiveness are actually typical of modernist trends rather than distinct from them: they exemplify modernity rather than provide discontinuities with it. This means that electronic surveillance, for example, rather than constituting a significant break from the penal parameters of modernism simply continues the modernist trend of harnessing technology to the administration of punishment, in the name of efficiency and scientific progress. By the same token, the transformation in the working routines of the criminal justice professionals implementing them is in itself nothing new: while their intervention with offenders has been premised on aspects of ‘care’ (or ‘advising, assisting and befriending’, the credo of the English probation service) for a good part of the modern period, the supervisory (and controlling) nature of their task has been articulated in a number of different ways; what we may now be witnessing are more overt forms of surveillance and control: but forms of surveillance and control that have always been a feature of the work of such criminal justice professionals rather than something that is dramatically new to them. At the same time, the apparent suspension of individual rights to be found in such measures as the United States sexual predator laws has clear antecedents in the sexual psychopath laws of the immediate prewar and post second world war periods found in that country and in similar legislation in other modern societies (Pratt 1997). Both sets of laws represent the continuous penal dilemma of modern societies of how to govern their ‘dangerous’ offenders: those who repeatedly commit crimes judged to be of a serious (although non-capital) nature but who at the same time are not legally classifiable as insane. They constitute an essentially modernist dilemma in so far as the extent to which they could be punished and controlled was significantly restricted by the penal boundaries that fitted the values of modernity. Its only solution, which we see being played out again today, was the introduction of the indeterminate prison sentence or some form of post-prison confinement in a mental institution, on the grounds of their adjudged mental condition, even if such offenders were not regarded as legally insane. Precisely because these forms of punishment existed, as it were, at the far limits of modern penalty, they were regarded as exceptional sentences for exceptional and dangerous criminals (see Radzinowicz and Hood 1986).

It is also possible to locate the claimed postmodernist trend towards actuarialism (see Feeley and Simon 1992) within penal modernism. This practice emerged as a penal possibility around the end of the nineteenth century: it was a characteristic of the Eugenics movement which was itself influential on both criminological discourse and penal policy at that time (see Goring 1913; Garland 1985). If, however, it is only recently that it has begun to assume a more prominent part in the calculation of offender risk then this is in part because it is a form of expertise that is largely dependent for its success on sophisticated statistical techniques and computer technology (Pratt 1995). The

recent arrival of these knowledges and skills has allowed it—in places—to replace one form of expertise (clinical diagnosis) with another (actuarial prediction), in the manner of a long-established pattern of development in modern society: but essentially it continues the modernist emphasis on expertise to make appropriate judgments on offenders—and the modernist faith in harnessing technology towards this goal. Actuarialism thus becomes an exemplar of penal modernism rather than an indicator of postmodern penalty.

The same could be said for managerialism. This form of managerial practice now becoming prevalent in the criminal justice system (where we find the language of inputs, throughputs and outputs, of targets and visions) has been long established in other sectors of society. Penalty as it were is simply catching up with these developments in other areas and modernizing itself, rather than jettisoning modernity. Indeed, it could be argued that the increasing economic scrutiny of its agencies and organizations on a value for money basis leads inevitably to the abandonment of vague dreams and grand narratives. Instead a much narrower projection of what the punishment of offenders can achieve comes into existence: a redrawing of objectives, certainly, but nothing more dramatic than this, as penal officials are made more accountable for their spending of public money, like officials in a whole range of other sectors in modern society, with the value it places on democratic accountability. But aside from this, the apparent collapse of grand narrative, or more particularly, the narratives associated with the welfare period, is not itself new but is another enduring feature of modernity: both at the level of meta-narrative, for example, with the penological *weltanschauung* shunting to one side less eligibility around the end of the nineteenth century and steadily attuning itself to welfare thinking; and at the micro level of social and penal organization: reform through educative measures and training in self-discipline gives way to medico-psychiatric treatment and so on during the course of the twentieth. Furthermore, as if a familiar modernist trend is already repeating itself, no sooner did the grand narrative of treatment and rehabilitation collapse in the light of Martinson's (1974) claim that 'nothing works', and its subsequent popularization as a truism in some penological circles, than 'just deserts', proclaimed principally by Andrew von Hirsch became the new way forward and began to shape penal policy (see, for example, von Hirsch 1976; Wasik and von Hirsch 1990). As such, argues Garland (1995: 33), 'the leading alternative to penal modernism is actually an Enlightenment liberalism which is also committed to making punishment useful but is unwilling to abandon individual rights or the rule of law in pursuit of utilitarian goals.'

In effect, the thrust of Garland's (1995) argument is that we are witnessing one of the periodic refigurings of punishment that have taken place within the modernist framework rather than the formation of an entirely different, postmodern penal order: new organizations are brought on to the scene—located particularly in the private sector at the present time—as the utility of existing organizations, particularly those in the public sector, begin to fade: in just the same way, it could be argued, that the range of voluntary organizations (for example the English Church Missionary Society) that had a prominent role in the administration of punishment in the late nineteenth century were superseded by those sponsored and organized by the state (for example, the probation service). Such a refiguring will in itself and of necessity lead to some significant change in the organizing principles, working practices, modalities of punishing and so on that are available but these will not in themselves necessarily represent some venture outside the

modernist penal parameters: thus, various forms of community-based supervision of offenders have been in existence for over a century now, even though these have been organized in different ways and so on.

Accordingly, it is as if what is happening now has a fairly familiar ring to it: a periodic refiguring which reflects the dynamic tension that exists between ‘the two contrasting visions at work in contemporary criminal justice—the passionate, morally-toned desire to punish and the administrative, rationalistic, normalizing concern to manage. These visions clash in many important respects, but both are deeply embedded within the social practice of punishing’ (Garland 1990: 180). Here, as it were, is the playing out of modern punishment’s own dynamic tension between the Pleasure Principle, with its emotive desire for vengeance and the Reality Principle, with its carefully regulated rationally driven calculus of suffering. If, for much of the modern period, the sentiments of the former had been held in check, they now seem to be gaining the upper hand. But at the same time, this duality is itself a creation of modernity—the interplay between these two forces can *only* exist within it. That is to say, the moves toward the bureaucratization of punishment and its administration under the auspices of penal professionals of one kind or another ‘took off’ with the onset of modernity: its attempts to rationalize and objectify punishment have since always had an uneasy coexistence with the non-reflexive public sentiments it shunted to one side in the modernist penal configuration: now all that is happening is that these two forces are being repositioned within it—thereby raising the possibility for some of the new punishments now emerging.

Overall, then, Garland (1995: 30) is thus able to claim that ‘[today] is not an era in which new institutions and practices are being legislated into existence. It is not in that sense comparable with the late 18th century or with the period between the 1890s and the First World War. If the apparatus of penalty is changing, it is in objectives and orientation, not in its material forms.’

The Case for Postmodernism

While I think there is considerable validity to these arguments, it is also possible to provide an interpretation of the new initiatives (and thereby a critique of the above position), that does locate them as postmodernist. The various features of the new punitiveness set out above represent discontinuities from, rather than exemplifications of, modernity and can also be seen as displaying characteristics that we would associate with postmodernist themes. On this basis, it could be argued that the shift away from a centralized, progressive penal policy, which all those involved in it to a greater or lesser extent had been prepared to follow for around a century now, that is manifested in the new managerialism is in itself an indicator of a refiguring of penalty which goes beyond the boundaries of modernity. The bureaucrats and the penal professionals have been shifted to a fringe role in this new penal framework: instead, what seems to have taken place is some sort of implicit convergence of interests between government and people: penal policy increasingly bears the imprint of ‘the popularization of crime politics’ (Bottoms 1995; Simon 1997). As such, new initiatives are justified not by any reference to the criteria of experts, but on the grounds that ‘this is what people want’; incapacitation will ensure community safety; the chain gangs will give a sense of reassurance to anxious

onlookers (see, for example, Crist 1996). We find a growing emphasis on the 'signs and symbols' of punishment, as the modernist curtain that had been drawn across it is pulled further and further back.

Such developments would seem to be indicative of what Simon and Feeley (1995: 168) have referred to as a 'general crisis of governmental power': the old penal configuration, framed on an alliance between governments and their bureaucratic experts with the latter leading the former for much of this period was seen increasingly from the 1970s as simply not sufficient to tackle crime problems. What we have, then, is not a continuity of the penal figuration of modernity whereby more and more direction and control of policy was subsumed under the auspices of penal bureaucrats with governments, for the most part, being increasingly prepared to take their lead from research findings, while public opinion was to fade more and more into the background: a check against excessive liberalism perhaps, but in reality little more than this. Within the new figuration, a different set of relationships begin to take shape whereby politicians and public sentiment seem much more closely in tune, with the penal experts now on the outside, reflecting a suspicion of rather than faith in bureaucratic management. Now the experts are ensconced within their own 'system' within bigger systems and reluctant to venture beyond it. Here, they can maintain a neutral poise. They no longer have any pretence of changing the world, or even perhaps changing penalty: instead, they are free to float, as it were, in whatever direction the new punitiveness is able to push them. Equally, the arguments of logic and rationality, of placing faith in the powers of penal experts and their reformative inclinations rather than giving rein to populist punitive sentiments are beginning to lose much of their force. In the new punitive climate, the penal experts themselves have had their therapeutic gloss and reformative prognoses significantly tarnished: it is as if practices that had seemed out of place in modern society can now be revived not because of any functional qualities they may possess in terms of preventing recidivism, but because they evoke a sense of the past, when the institutions and traditional authority structures of modernity were unchallenged, as against now when 'the sense of loss associated with the relative certainties of postwar politics and economics grows' (Simon 1995: 37). Similarly, new practices (which seem to take their referent from the non-modern world) may be introduced on the basis that they do not bear the restraints of modernism and as a result of pushing past the boundaries that it had set, are better able to respond to the public sentiments that are gaining increasing significance in the determination of crime and punishment issues.

Furthermore, the growing emphasis on actuarialism can be seen as constituting a discontinuity from rather than a continuity of modernist trends: that is to say, the emphasis on Freudian-derived clinical diagnosis and analysis that formed the basis of risk assessment for a good part of this century begins to fragment in the early 1970s—the power and knowledge of such experts comes under increasing scrutiny and challenge. At various sites in the penal field, clinical diagnosis begins to give way to actuarial prediction. But this new means of classifying offenders at the same time lends itself to a way of ordering and assessing criminality that goes beyond the boundaries of penal modernity: a shift away from making judgments on individual cases, and into a new realm where the kind of group which one is judged to belong to becomes the determinant of the penalty that is to be imposed. At the same time risk rather than crime comes to play a crucial role in this judgment: it is not so much the gravity of the particular offence that will determine the penalty to be imposed, but the risk that one is thought to pose to the

security of the community. As Simon and Feeley (1995: 163) put the matter, ‘the language of rights gave way to the language of administration. The quest for individually focussed justice [is] superseded by a concern with the management of risk-segregated populations.’ In such ways, actuarialism fits the newly emerging framework of criminal justice where many of the taken for granted rights and procedures of modernity are being removed. In their place we see a different set of values and considerations that order penalty: individual rights give way to more broad-based community concerns. As a response, we see the emergence of extra-penal powers infiltrating our punishment arrangements. This new criminal justice framework can thus involve such features as curfews at one end of its spectrum (to remove troublesome, but not necessarily criminal populations from the streets), and indefinite detention at the other even after the completion of their jail term (for those still thought to pose a risk). The modernist limits that prohibited such ventures seem to have been removed.

As for the contention that ‘the critique of penal modernism has not made it possible to think and act in ways which are postmodernist’ (Garland 1995: 31), then my feeling is that Garland’s own position is in the process of being overtaken by events—as the full extent and significance in the transformation of cultural values brought about by the forces of change since the 1970s begins to take effect. However fragmented these individual penal developments may be, it would seem clear that their pragmatic emphasis on risk management which overrides individual rights and the emphasis on control and security at the expense of the grand narrative of reform and progress would seem to represent ways of thinking and acting that are thereby postmodern.

Others would be the spread of shaming punishments, and the increasing public visibility of punishment—‘privileging the expressive over the instrumental’ (Garland 1995: 25). The increasing importance of signs and symbols of punishment also seem to presume a greater community participation in punishment (this is their audience); as does the erosion of state authority: indeed, in most jurisdictions, the state no longer makes any pretence that it and its agencies have ‘all the answers’ (Garland 1996). As a result, it is as if we are reaching beyond modernity itself and selecting out practices and tactics that were employed in premodern or non-modern carnivals of punishment: the possibility of effectively destroying the offender, for example, (whether this be by death, or castration, or semi-permanent imprisonment for the most trivial of crimes); or, in a reversal of the modernist trajectory which had steadily seen imprisonment come to be regarded as too awesome a sanction for wide-ranging groups of offenders, the barriers that had hitherto helped to shift the prison from the forefront of legal punishment to the back begin to be broken down.

Again, if we can see continuities with modernist practices in the new initiatives—the replay of dangerousness at the present time for example—this in itself does not rule out the possibility that these same initiatives may also be moving us into the postmodern penal realm: provisions for the dangerous, hitherto always on the perimeters of the penal framework, now seem to be moving towards a more central position, as dangerousness itself is broadened out to include new groups of social undesirables. I think at issue here is the model of penal change on which much of Garland’s argument is based: as if modernity, postmodernity and, for that matter, premodernity were all discrete and exclusive modalities of social organization with no overflow effect. It may well be that the new managerialism, for example, represents a form of management that has long been taken for granted elsewhere, as Garland (1995: 32) suggests: but by the same token this,

for me, does not rule it out as also being an indicator of an emergent postmodern penalty: if it has antecedents that lie in the modern penal arena, it can also take on a different purpose, assume a different significance and reflect the different set of values and considerations of the postmodern era: managerialism becomes a way of placing the organization in a self-preservative neutral position so that it can go along with new trends inspired by popular punitiveness, rather than projecting the way forward on the path to reform.

What I am saying, then, is that a particular set of developments may well be rooted in the old, as well as being a harbinger of the new. Thus the penal changes that took place in the late eighteenth century (the shift from corporeal to carceral punishments) did not take place overnight. In contrast to the impression that could be gained from reading Foucault (1978), Spierenburg (1984) has illustrated how this transition can be seen as having antecedents that go back at least a century: punishments on the human body *gradually* decline in intensity and fade from public view and are *gradually* replaced by the prison as the most predominant form of punishment. Even then, the two modalities of punishing have a coexistence with each other that lasts for at least several decades into the nineteenth century. In much the same way, it could be argued that while the subsequent developments around the end of the nineteenth century reflected a further significant shift most of these again had origins which predated them: probation, for example, which was legislated for in 1887 but which also had earlier origins in the work of the police court missionaries, and, again, the separate juvenile court system: the importance of dealing with juveniles in separate institutions from adults begins in the mid nineteenth century: the practice of adjudicating on their crimes through processes which separate them from adult offenders begins in the 1870s (see Pratt 1986). The point is, then, that the penal world and its history is made up of overlapping and overflowing, rather than discrete, categories: penal arrangements in one form of social organization can well spill over into another.

Garland is not to be faulted of course for the range of empirical developments which have taken place since his paper *Penal Modernism and Postmodernism* was written (rather than published) in 1993.⁷ What this matter indicates, though, is the sheer pace of change at the moment, as if the proliferation of new penal forms increases with the realization that the boundaries of how it is possible to punish have changed. At the same time the new initiatives of the 1990s must be read and understood in a qualified way: of course they do not dramatically replace the pre-existing penal field. That remains very much intact, although there are significant and undeniable changes taking place within it—the explicit surveillance aspects of much of the work now done by criminal justice social work agencies, and the orientation towards risk management of populations rather than providing for the care of individuals are two such changes. Other than this, though, writers such as Feeley and Simon (1992) are not making any claims that the penal arena is being dramatically and *immediately* redrawn when they argue the postmodernism case: ‘changes in techniques, objects and discourse represent *the beginning* of a marked break with the past’ (p. 450, emphasis added). The essential point is that we have not yet seen a completed historical change: this may only now be beginning to take shape. In this

⁷ As far as I am aware, one of the first presentations of the arguments in Garland’s (1995) paper were in a paper of the same name at the 9th Annual Australian and New Zealand Society of Criminology Conference, University of Sydney, September 1993.

model, then, for some time in the future, the old may well have a significant coexistence with the new, although at the same time we are likely to find that the new continues to accelerate in importance while the old penal traditions and practices of modernity begin to diminish. New initiatives appearing on the scene are likely to have the penalty of postmodernity as their referent rather than the old, and it is also likely that we shall see more and more initiatives being introduced and tested as it were, as the boundaries of penal possibilities come to be redrawn.⁸

The Implications of Postmodernism

If there has been substance to my argument so far—that these new initiatives are representative of a postmodernist penal framework—let us now try to assess their sociological significance. With this new array of penal possibilities, the parameters of the modern will have been irredeemably breached: there can be no ‘turning the clock back’ to things as they were. Instead, new boundaries, criteria and possibilities emerge. Certainly, for the time being at least, the main contours of the penal landscape remain very familiar to us: above all, the murky figure of the prison is still there, of course, hovering in the background of Western society but with a new value placed upon it as well. It becomes a symbol of reassurance rather than shame to an anxious public, and, with the injection of the private sector to its administration, it begins to turn itself into a high quality product (and also begins to make its own claims about ‘quality control’, see Sandery and McCarthy 1996) rather than appear as a running sore that drains away so much public expenditure and human energy: in which case it may well be that the prison can assume a more prominent place in the mainstream of everyday life again. As I have written elsewhere, ‘when prisons are able to proclaim their “excellence in corrections and project management”, they need no longer be hidden away in the dark recesses of modernity’ (Pratt 1997: 188).

At the same time, it seems that this will inevitably be accompanied by an increasing growth in the prison population: this is exemplified by what is now happening in the United States. What we may be seeing then, in the manner of Christie (1993), are ‘the stirrings of a new kind of gulag system and the threat of postmodern concentration camps’ (Simon 1997: 34). To maintain the freedoms and standard of living that Western society now provides for its subjects, to maintain its avowed commitment to rewarding the productive members of the community, to maintain, as part of the 1990s political equation, its determination to devolve responsibility for the management of large aspects of everyday life on to ordinary citizens, it has increasingly to shore up these arrangements by resorting to postmodern penal arrangements. Modern penalty itself is no longer seen as sufficient to control crime or adequately assure a vociferous public with

⁸ Proposals affecting the penalty of women are a good example of this process at work. Women prisoners are not to work in chain gangs—the governor of the Alabama prison which was the first to bring back chain gangs for male inmates was sacked when he tried to do the same for women inmates—but on the other hand it is now much more likely that in the United States, in the aftermath of two recent executions, that women convicted of capital crimes will be put to death. In Britain, the newspaper headline ‘Fury over women prisoners in chains’ (*Weekly Telegraph*, 10 January 1996), would seem to indicate that there are clear limits as to what kind of conditions women prisoners at least have a right to expect: this does not include being held in chains, particularly when being taken to hospital to give birth, as here, with the prisoner in question being ‘shackled’ to warders.

its punishment prospectus. The boundaries that it set for the limits of punishment now have to be breached in a variety of ways. Hitherto, the assumed ethical and moral superiority of the modern, democratic West over the totalitarian Eastern bloc or other such non-modern social formations where it seemed that punishment knew no limits, had found expression in the seeming humanity and leniency of the penal system of the former. Now, in a quite dramatic reversal, the growth of imprisonment levels in the United States especially to world leader dimensions (along with the suspension of various taken-for-granted juridical and penal rights) overturns those values and beliefs. The new sensitivities and economies of punishment make such trends tolerable and permissible, while regarding individual rights and liberties as dispensable; or at least, do not regard their dispensability as unthinkable.

What we also see in those new forms of punishment that raise the possibility of a return of the Wheelbarrow Men and their penal accoutrements is a repositioning of the relationship between shame and punishment. Shame in the modernist sense of this term in penality—at those supposedly civilized Western societies who overpunish their offenders and who are thus seen as departing from established standards and penal values—is in retreat; in its place, shame in the postmodern sense of the term in penality—a tactic of punishment directed again at the individual offender—gains a sturdy foothold. Shaming can thus once again come about through their public humiliation or it can come about through those initiatives which bear the imprint of restorative and indigenous justice practices: John Braithwaite's reintegrative shaming, in effect. However, the conditions of existence of the one dimension of shaming are the same as the other—dissatisfaction with modernist penality and its seeming inadequacies and inappropriateness. The subsequent translation of these sentiments into the different varieties of shaming are then likely to reflect more localized histories, politics and related issues.⁹ By the same token, this increased public involvement that is made possible by shaming practices of various kinds, is also manifested in the growth of vigilantism which some commentators have begun to draw attention to (see Johnston 1996). What we have lost is the sense of certainty about where the boundaries of punishment now lie, and the sense that we are following, long term at least, an irreversible path of reform, amelioration and progress. In its place, a penal relativism opens up the possibilities for much more localized practices, that go off from one another at diverse tangents—while at the same time indicating the privileging of public sentiment rather than bureaucratic rationalism as an important driving force of punishment.

Alongside the increased public involvement in punishment, we find a corresponding decline in the prominence of the penal expert. As a result, a great many of the assumptions that have dominated modernist penal thought and acted as the audits and safeguards of penal development are likely to be swept away: for example, the assumption that recidivism rates provide some sort of scientific test of the effectiveness of a given penal sanction; or that the objectives of a given penal sanction are actually able to

⁹ In countries such as New Zealand and Canada and, indeed, in parts of the United States, 'treaty-making' between colonizers and colonized during the nineteenth century gave indigenous peoples formally inscribed rights: if it has only been in very recent times that these have been recognized to any significant extent in the criminal justice process and elsewhere in such societies, the presence of these treaty-based rights perhaps allows indigenous justice practices to make greater headway in such societies than those without a history of colonization in the modern period.

reduce reconvictions: as if the recitation of reconviction rates, in the manner of a cross being shown to Dracula, is enough to fend off penal overtures that depart from such standards (see, for example, Cavadino and Dignan 1992). What we are now seeing, though, is a different set of forces beginning to organize the penal framework: the test of penal effectiveness is becoming associated with a sanction's potential to incapacitate or shame: issues relating to reconviction consequences lie dormant or are picked up again later on in the progression of a 'criminal career'—but now 'Three Strikes' or some equivalent is the solution to such problems. Instead of trying to devise new sanctions that will achieve better results in reconviction terms, as if a sanction can be validated or invalidated by this test, reconvictions are simply taken as a sign of a particular individual's irredeemability, leading then to their possible disappearance in one of the 'Western style gulags' that the new penal laws allow for.

On this basis, the new penal configuration would seem to make problematic many of the assumptions underpinning the critical sociology of punishment which in many ways had a grand narrative of its own: one which reflected the 'dark side' of modernity. That is to say, the seeming humanity and rationality of punishment in the modern world camouflaged a more intrusive and extensive modality of social control, based around tactics of discipline and surveillance: and at the forefront of such deceptions were the penal experts and the penal bureaucracies. And yet now, it may be that there is no longer that much to 'unmask' in this fashion. If the framework of penalty and the values that ordered this, which allowed us to 'think' of it in such Foucaultian terms has changed, this necessitates a similar change in our sociological frames of reference: one which allows us to take more note of those sentiments and sensitivities manifested in the new trends, and those new social forces driving punishment, rather than the subtleties of power and domination that have been given such theoretical prioritization in recent times; a greater concentration, perhaps, on the semiotics of punishment than the hidden functions thought to lie behind its bureaucratic administration—a sociology of signs rather than discipline; a sociology that captures some of the new themes of this penalty—shaming, exclusion and incapacitation—rather than the commitment to normalization that had hitherto underscored its development.

Finally, it should be stressed here that in raising the possibility of characterizing some current penal initiatives as postmodernist, this is not a definitive assertion, since, as I have indicated, if this should be the case, then it is still only in embryonic form. At the same time, I have used this classification in a bid to capture the distinctiveness of the new punitiveness. As such, with a view to furthering our understanding of the full implications of such change, I do think it possible to make out the postmodernist case here; by corollary, to continue to locate the new punitiveness within modernity is perhaps to understate its full force and potential. Whether or not the arguments, contentions and possibilities set out here prove to be correct, it remains the case, of course, that punishment not only reflects societal values, it also tells us about those values (Feeley and Simon 1992). Certainly, the new penal initiatives are giving us a number of messages and indicators about the kind of society we are now living in. Not only is there no way of going back to the world of just a couple of decades ago, when these new developments, like the Wheelbarrow Men two centuries earlier, would have been 'unthinkable' as penal possibilities, but the full consequences of what the move away from that world without the Wheelbarrow Men has brought about are only now beginning to become evident.

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REFERENCES

- BAI, M. (1997), 'A Report from the Front in the War on Predators', *Newsweek*, 129/20: 67.
- BLAGG, H. (1997), 'A Just Measure of Shame', *British Journal of Criminology*, 37: 481–501.
- BOTTOMS, A. E. (1995), 'The Politics and Philosophy of Sentencing', in C. Clarkson and R. Morgan, eds., *The Politics of Sentencing*. Oxford: Clarendon Press.
- BRAITHWAITE, J. (1989), *Crime, Shame and Reintegration*. Cambridge: Cambridge University Press.
- (1993), 'Shame and Modernity', *British Journal of Criminology*, 33/1: 1–18.
- (1996), *Restorative Justice and a Better Future*. Halifax: Dalhousie University, Dorothy J. Killam Memorial Lecture.
- (1997), 'Conferencing and Plurality', *British Journal of Criminology*, 37: 502–6.
- BRODEUR, J.-P., (1994), 'Penal Saturation', paper presented at American Society of Criminology Annual Conference.
- CAVADINO, M. and DIGNAN, J. (1992), *The Penal System: An Introduction*. London: Sage.
- CHRISTIE, N. (1993), *Crime Control as Industry*. London: Routledge.
- CODDINGTON, D. (1996), *The 1996 Paedophile and Sex Offender Index*. Auckland: Mount View Trust.
- COHEN, S. (1985), *Visions of Social Control*. London: Polity Press.
- CRIST, C. (1996), 'Chain Gangs are Right for Florida', *Corrections Today*, 58: 178.
- DOCKER, J. (1994), *Postmodernism and Popular Culture*. Cambridge: Cambridge University Press.
- FEELEY, M. and SIMON, J. (1992), 'The New Penology: Notes on the Emerging Strategy of Corrections and its Implications', *Criminology*, 30: 449–74.
- FOUCAULT, M. (1970), *The Order of Things*. London: Tavistock.
- (1978), *Discipline and Punish*. London: Allen Lane.
- FOX, N. (1993), *Postmodernism, Sociology and Health*. Milton Keynes: Open University Press.
- GARLAND, D. (1985), *Punishment and Welfare*. Aldershot: Gower.
- (1990), *Punishment and Modern Society*. Oxford: Oxford University Press.
- (1995), 'Penal Modernism and Postmodernism', in T. Blomberg and S. Cohen, eds., *Punishment and Social Control: Essays in Honour of Sheldon Messinger*. New York: Aldine De Gruyter.
- (1996), 'The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society', *British Journal of Criminology*, 36/4: 445–471.
- GARVEY, S. (1998), 'Can Shaming Punishments Educate?', *University of Chicago Law Review*, 65: 733–94.
- GELLNER, E. (1992), *Postmodernism, Reason and Religion*. London: Routledge.
- GEORGIA DEPARTMENT OF CORRECTIONS (1997), *Annual Report*. Atlanta: Department of Corrections.
- GIDDENS, A. (1990), *The Consequences of Modernity*. London: Polity Press.
- GORING, C. (1913), *The English Convict*. London: Prison Commission.
- HAY, D. *et al* (1976), *Albion's Fatal Tree*. London: Harmondsworth.
- JOHNSTON, L. (1996), 'What is Vigilantism?', *British Journal of Criminology*, 36/2: 220–36.
- LUCKEN, K. (1998), 'Contemporary Penal Trends: Modern or Postmodern?', *British Journal of Criminology*, 38/1: 106–23.
- LYOTARD, J.-F. (1986), *The Postmodern Condition: A Report on Knowledge*. Manchester: Manchester University Press.
- MARSHALL, T. (1995), *The Search for Restorative Justice*, unpublished paper.
- MARTINSON, R. (1974), 'What Works—Questions and Answers about Prison Reform', *The Public Interest*, 35: 22–54.
- MASUR, L. (1989), *Rites of Execution*. Oxford: Oxford University Press.

- MENNELL, S. (1990), 'Decivilizing Process: Theoretical Significance and Some Lines of Research', *International Sociology*, 5: 205–33.
- MUNCIE, J. (1999), 'Institutionalised Intolerance: Youth Justice and the 1998 Crime and Disorder Act', *Critical Social Policy*, 19: 147–75.
- PRATT, J. (1986), 'Diversion from the Juvenile Court', *British Journal of Criminology*, 28: 211–34.
- (1995), 'Dangerousness, Risk and Technologies of Power', *Australian and New Zealand Journal of Criminology*, 28: 3–32.
- (1997), *Governing the Dangerous*. Sydney: Federation Press.
- RADZINOWICZ, L. (1991), 'Penal Regressions', *Cambridge Law Journal*, 50: 422–44.
- RADZINOWICZ, L. and HOOD, R. (1986), *A History of English Criminal Law*, vol. 5. London: Macmillan.
- SANDERY, A. and MCCARTHY, M. (1996), 'Change in Corrections: The Quality Audit', paper presented at the Australian and New Zealand Society of Criminology Annual Conference.
- SELLIN, T. (1976), *Slavery and the Penal System*. New York: Elsevier.
- SIMON, J. (1995), 'They Died with Their Boots on: The Boot Camp and the Limits of Modern Penalty', *Social Justice*, 22: 25–48.
- (1997), 'Megan's Law: Governing through Crime in a Democratic Society', unpublished paper.
- SIMON, J. and FEELEY, M. (1995), 'True Crime: The New Penology and Public Discourse on Crime', in T. Blomberg and S. Cohen, eds., *Punishment and Social Control: Essays in Honour of Sheldon Messinger*. New York: Aldine De Gruyter.
- SMART, B. (1992), *Postmodernism*. London: Routledge.
- SPARKS, R. (1996), 'Penal "Austerity": The Doctrine of Less Eligibility Reborn', in R. Matthews and P. Francis, eds., *Prisons 2000*. New York: St Martin's Press.
- SPIERENBURG, P. (1984), *The Spectacle of Suffering*. Cambridge: Cambridge University Press.
- VON HIRSCH, A. (1976), *Doing Justice*. New York: Hill and Wang.
- WASIK, M. and VON HIRSCH, A. (1990), 'Statutory Sentencing Principles: The 1990 White Paper', *Modern Law Review*, 53: 508–17.