

DON'T TALK TO ME ABOUT MARX ANY MORE! *

Essay prepared for *Punishment & Society* review symposium on Melossi & Pavarini, *The Prison and the Factory*, 40th Anniversary reissue ed. (Palgrave Macmillan, 2018).

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Don't talk to me about Marx any more! I never want to hear anything about that man again. Ask someone whose job it is. Someone paid to do it. Ask the Marxist functionaries. Me, I've had enough of Marx.

Foucault, cited in Eribon (1991: 266)

The occasion of a book's 40th Anniversary reissue spares me the need to offer shaky predictions anticipating how audiences are likely to react. That history already happened. But, oddly enough, one of the remarkable features of Melossi and Pavarini's *The Prison and the Factory* is that it earned its place as a classic in penal history despite a curiously unenthusiastic initial reception. Readers will be pleased to find that Melossi's retrospective essay introducing the new edition sketches some of his reflections and misgivings about the book's legacies. But texts have both an intellectual life of the sort found in that essay, and also a historical one of the sort readers will find here—and, in that more narrowly historical sense, *The Prison and the Factory*'s lukewarm initial reception is particularly noteworthy. Although a quiet pallor gripped Marxist penal history when Rusche and Kirchheimer first published *Punishment and Social Structure* in 1938, its reissue three decades thereafter invigorated intellectual ferment in penal history generally and its Marxist interpretations specifically. What followed was a vibrancy in (especially Marxist) penal history that endured up until the English translation of *The Prison and the Factory* was published in 1981, at which point interest then spontaneously evaporated.

Until recently, the abrupt disappearance of Marxist penal history has been intelligible only by placing *The Prison and the Factory* alongside the then-recent publication of Foucault's *Discipline and Punish* (e.g., Garland 1990: 132–33; Simon 2013). But recently translated lectures assembled as *The Punitive Society* (2015) and delivered when Foucault was still preparing *Discipline and Punish* show that his modifications to then-dominant Marxist penal history were both generative and could comfortably—and, indeed, did profitably—assimilate Marxist theories of penality. Likewise, although *Discipline and Punish* (1975/1978) predated *The Prison and the Factory* (1977/1981), Melossi and Pavarini's theoretical refinements also clarify the shared frontiers between Marxist and Foucauldian penal theory. The inference, therefore, is that if Foucault's intervention resulted in Marxist penal theory falling into disfavor, it was through absorption rather than outright rejection.

The story of *The Prison and the Factory*'s reception is in the first instance, then, a story about *Punishment and Social Structure*'s much earlier reception. In that book, Rusche and Kirchheimer exhaustively showed how convict labor systems were inextricable from the mercantile economies

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that produced them. But it, too, initially fell on muffled ears. Shortly before the manuscript's completion, the Frankfurt School anathematized Rusche following tepid reviews from both Thorsten Sellin and Edwin Sutherland, and, as Horkheimer hinted in the book's 1938 Preface (pp. ix–x), it left to Kirchheimer the task of completing the book in a manner that would befit the Institute's first American publication. This was a tall order for a manuscript that (1) was so strictly Marxist as to be knowingly out-of-step with contemporary American tastes; (2) mused about the capacity of Nazi welfare reforms to suppress punitive impulses, which was directly at odds with the Institute's stated anti-fascist position; and (3) sharply economic at the book's front-end owing to Rusche's original drafting and stridently political in its back-end owing to Kirchheimer's revisions (Melossi 1980). The book's reception thus initially suffered, and it was only upon its reissue that it finally found an audience willing to receive it with an enthusiasm to match its due.

Penal history was poised to flourish at *Punishment and Social Structure*'s second time at bat in 1968. It would continue to do so for almost another decade and a half, with the publication of a raft of penal histories that varied in their Marxian bent but consistently paid homage to Rusche and Kirchheimer's structuralism (e.g., Ignatieff 1978; Linebaugh et al. 1975; Pashukanis 1924/1978; Platt 1969; Thompson 1975). Penal history appearing during this period shared all the trappings of Marxist thought, from the preoccupation with class struggle and domination to its attendant theory of history as the sequence of transitions from one mode of production to the next—from ancient to feudal, from feudal to capitalist, and the aspiration of a final transition from capitalist to communist. Resonances of Rusche and Kirchheimer reverberated through all of those works: although each of them relaxed the strict materialism, coarse determinism, and narrow political-economism that characterized *Punishment and Social Structure*, they extended and developed Rusche and Kirchheimer's proposition that penal techniques arose to train new labor reserves.

But the publication of *Discipline and Punish* drew to an end the heyday in Marxist penal history that Rusche and Kirchheimer's 1968 reissue triggered. For one thing, the existential crisis that structuralism's late-1970s decline posed presented a vacuum that Foucault filled while leaving intact many of those same Marxist trappings that most appealed to critical criminologists (Valverde 2008). Yet Marxism, after all, does not do well as a partial theory. Marx totalized theories of penal history for much of the 1970s, and absorbed theories of deviance and criminality, capital and labor, and class struggle into a general theory of "primitive accumulation." It was this totalization of penal history that inspired Melossi's contention that "When Marxism takes possession of new fields of knowledge, such as criminology, it destroys criminology as such, while it enriches its own basic concepts" (Melossi 1976: 31). But Melossi's caution about Marxist penal history's over-reach seems itself over-stated in retrospect. On the contrary, the predominating currents of Marxist thought evident in contemporary criminological scholarship showed no initial signs of faltering. If anything, this indicated robust enthusiasm for Marxist penal history, not a demand for its reversal.

Therefore, there is a need to differentiate between two intellectual-historical schisms that reinforced one another yet were nonetheless separate: the first, operating throughout the academy, is structuralism's late-'70s decline at the same time that poststructuralism acquired momentum; the second, pronounced among criminological circles, is the role that Foucault's rising popularity played, if any, in Marxism's demise. With regard to the first schism, Marx and Foucault figure harmoniously, in the shared preoccupation with power's mechanics, and they also figure discordantly, both at once. The discord rings, on one hand, in the anti-Marxist tonalities of Foucault's critiques of foundational categories like class, state, economy, and ideology. On the

other hand, Marxists took exception to Foucault's postmodern, discourse-based abandonment of dismantling systems of oppression wholesale in favor of localized resistances. But the second more pointedly criminological schism holds special lessons for *The Prison and the Factory's* reception.

Thus far, that schism has played out primarily in conversation with *Discipline and Punish* as the theoretical stand-in for Foucauldian penalty. However, with the recently translated publication of Foucault's *Punitive Society* lectures that were delivered in the years before *Discipline and Punish* was finalized, we hear new resonances and dissonances between Marxian and Foucauldian theories of penalty. *The Punitive Society* introduces Foucault's targeted analysis of penalty by reading Marx through, alternately, E.P. Thompson (as in lectures four and six) and Althusser (as in lecture nine). Yet, as Harcourt (2015: 283–289) notes, despite its bent *The Punitive Society* is replete with departures from a derivative Marxist voice to a distinctively Foucauldian one, such as in the shift from a preoccupation with “seditious mobs” to “popular illegalisms”; from “class struggle” to “civil war”; from labor as man's existence to labor as a productive force; and from power as an instrument of class repression to power as constituting the submission to capitalism.

Moreover, the Foucault we read in those transcribed lectures of 1972–73 differs from the Foucault we read in the book of 1975. Among other things, his lectures on the stabilization and generalization of new power forms—the wage-form and the prison-form—and the rise of “disciplinary” power in the history of capitalism presage his transition from an archaeological method to the genealogy that would serve as the methodological spine of *Discipline and Punish* two years later. They also situate his subsequent, more targeted analysis of power in *Discipline and Punish* within a broader project of exposing and understanding the truth effects that shape penalty's contours. But perhaps most of all, *The Punitive Society* foregrounds capitalism's moralization of disciplinary force rather than *Discipline and Punish's* emphasis on discipline's political dimension.

This more complete portrait of Foucault's penal theory, then, set the stage for *The Prison and the Factory*—a book whose central thrust traded Foucault's preoccupation with the moralization of discipline for its capital-extracting “re-educative” dimension. Following Rusche and Kirchheimer, Melossi and Pavarini first hypothesize that labor market features determine internal prison regimes; second, they propose that early prisons and workhouses inculcated values necessary to the cultivation of a disciplined workforce through virtues such as docility and obedience. At the same time, *The Prison and the Factory* also relied on a theory of epochal displacement central to Marxist historiography, which predetermined the transition from the workhouse to the factory, and then from the factory to the prison. At each stage, constituting the docile body served as the structural imperative that propended each transition forward.

The final product thus prominently bore its Marxist heritage all the while that it soft-pedaled those elements of Marxian thought most likely to repel or detract from Foucauldian disciplinary analysis: Melossi and Pavarini relaxed the strict and total determinism that linked labor relations to social and political structures; they eschewed a narrow-minded focus on state power at the expense of other sources of penalty; and they aligned themselves with Foucauldian analytic frames in attending to the production of a servile citizenry through an examination of power relations internal to penalty. In short, *The Prison and the Factory* repackaged earlier, strictly orthodox Marxisms in a fashion that made its absorption into Foucauldian poststructuralism possible. For all that Foucault emblemized throughout the wider academy in the shift from structuralism to poststructuralism, his theory of penalty in particular rejected only those parts of Marxist thought for which *The Prison and the Factory* likewise had little use.

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Melossi and Pavarini's refinements to Marxist penal history espoused in *The Prison and the Factory* may be just as clear today as they were upon the book's first appearance four decades ago. But a full analysis of *The Prison and the Factory*'s reception requires analyzing the congruences and fissures between Marxist and Foucauldian penalties. This, in turn, demands setting *The Prison and the Factory* in conversation with both the Marxisms that forewent it and also the full measure of Foucault's hitherto untapped thoughts on penalty. Only then can we properly make sense of how Melossi and Pavarini helped prepare penal history for its assimilation into the coming poststructuralist groundswell.

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