Notes on the early history of prisons

By Chris Wright

Reading *The Prison and the Factory: Origins of the Penitentiary System* (1977), a Marxist study by Dario Melossi and Massimo Pavarini.

"This book seeks to establish the connection between the rise of the capitalist mode of production and the origins of the modern prison." It deals with northern Europe and Italy between the mid-1500s and the mid-1800s, and with the U.S. from the colonial period to the late 1800s.

It's too pithy to summarize, but I'll jot down a few things. Forty pages in is this statement: "In the proposals advanced by Jeremy Bentham, a major representative of the ascendant English bourgeoisie [in the first half of the 1800s], prison has reached its intermediate stage: the productivist and rehabilitative aims of its earlier days—aims which were revived during the Enlightenment—began to be overtaken by pure control and deterrence." Think of the Panopticon, solitary confinement, etc. Presumably Bentham's "intermediacy" is reflected in the fact that he is still attached to the notion of using prisons largely for productive work, not only for deterrence and control.

On the frontispiece of the volume in which the Panopticon was originally described appears this:

> "PANOPTICON" or, the inspection-house: containing the idea of a new principle of construction applicable to any sort of establishment, in which persons of any description are to be kept under inspection [i.e., view]; and in particular to penitentiary-houses, prisons, houses of industry, work-houses, poor-houses, manufactories, mad-houses, lazarettos, hospitals and schools.

Dario Melossi elaborates: "One cannot sufficiently emphasize the interchangeability of the[se] various segregated institutions recently created by bourgeois society when Bentham wrote these pages. Over and above their specific functions, one overall aim united them: control over a rising proletariat. The bourgeois state assigns to all of them a directing role in the various moments of the formation, production and reproduction of the factory proletariat: for society they are

essential elements of social control, the aim of which is to secure for capital a workforce which by virtue of its moral attitude, physical health, intellectual capacity, orderliness, discipline, obedience, etc., will readily adapt to the whole regime of factory life and produce the maximum possible amount of surplus labour." A few paragraphs later he provides a concise summary of Marx's theory of surplus-value, after reading which it is hard to understand how anyone could reject the doctrine.[1]

An important theme running through the chapters on Europe is that the centuries-long expulsion of the peasantry from the land created at various times a large surplus population that couldn't find productive employment (and, in addition, often resisted the discipline of the wage-labor system). Vagabonds, beggars, thieves, prostitutes, starving families....society *teeming* with economically superfluous people.[2] A legal crackdown ensued to deal with all these unfortunates, and eventually workhouses, houses of correction, prisons, etc. popped up to help neutralize the threat they posed to "law and order" [and to take advantage of their labor power]. (Forced and encouraged emigration to the New World was another strategy.) A similar thing has been happening in the U.S. in recent decades, of course—except that this time it's the *decline*, not the rise, of industry that has caused it.

The two chapters on the U.S. briefly describe the different forms of prison labor in the nineteenth century. Here are the final two paragraphs of the first chapter:

> Protests and agitation in the labour movement against penitentiary production continued right up to 1930, even if the question of competition between the two could be considered as effectively resolved by the end of the century. The official figures around the end of the nineteenth century and the beginning of the twentieth century are significant in this respect. In 1885, for example, 26 percent of all prisoners employed in productive work were under the leasing system [by which they were leased out to a private contractor]; in 1895, 19 percent; in 1905, 9 percent; in 1914, 4 percent; by 1923, one could consider the

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[1] [As I've written elsewhere: "This controversial theory of surplus-value is really nothing but common sense, like most of Marxism. If a worker's wages were equivalent to all the value he produces in the form of a product that goes on the market, the capitalist couldn't make any profit. He obtains a surplus value over and above what he pays for workers and equipment."]

[2] Well, not always *superfluous*. Only in some parts of the continent, such as Italy.

> system as having been completely done away with. We can see the same thing occurring in relation to the contract system: in 1885, 40 percent of prisoners worked for private contractors [*inside* the prison, not out]; in 1923, this was down to 12 percent. There were other, even more important changes: in 1885, 75 percent of prisoners were employed in productive labour, whilst in 1923, the so-called productive prison population amounted to 61 percent. This last factor must then be related to the following: the public account system together with the state-use and public-works systems [according to which private companies did *not* hire prisoners] employed just 26 percent of prison labour in 1885, whilst by 1923 the percentage had risen to 81 percent.
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> Clearly the private exploitation of convict labour became obsolete as against the increasingly massive adoption of those systems of convict labour which did not compete with free labour. On the one hand, the basic reason can be traced back to the difficulties encountered by private capital when it came to industrializing the penitentiary productive process in forms that would still be competitive with technological innovations in the outside world. On the other hand, it was also located in the growing strength of the union organizations in the economic and political life of the United States. [Many businesses, too, opposed convict labor on the grounds that it gave their competitors an unfair advantage.] Thus at the beginning of the new century, the penitentiary ceased to be a "productive concern"; in fact budgets once again began to show growing deficits.

As unions got more powerful, the private exploitation of prison labor declined; as unions have gotten less powerful in the last thirty or forty years, prison labor has increased and some prisons themselves have been privatized.

Now reading Rusche and Kirchheimer's Marxist classic *Punishment and Social Structure* (1939), a more informative, interesting, readable, scholarly, and reliable book than Foucault's *Discipline and Punish*, which I just read. They note that epochs of "entirely different systems of punishment" can be distinguished. "Penance and fines were the preferred methods of punishment in the early Middle Ages. They were gradually replaced during the later Middle Ages by a harsh

system of corporal and capital punishment which, in its turn, gave way to imprisonment about the seventeenth century."

Why were things less harsh in the early Middle Ages? In part because there just wasn't much need or possibility for a system of state punishment. The law of feud and penance essentially regulated relations between equals. Even in the thirteenth and fourteenth centuries, systems of punishment didn't change much. "The relations between the warrior-landlords and their serfs were of a traditional character, tantamount to a precisely determined legal relationship. These conditions tended to prevent social tension and to provide that cohesion which was characteristic of the period. Criminal law played an unimportant role as a means of preserving the social hierarchy. Tradition, a well-balanced system of social dependence, and the religious acknowledgement of the established order of things were sufficient and efficient safeguards." Moreover, the violation of property rights "did not count much in this society of landowners." It wasn't so much theft as offenses against decency, religion, or accepted morality that could pose a problem. But if that happened, usually "a solemn gathering of free men would be held to pronounce judgment and make the culprit pay *Wergeld* or do penance so that the vengeance of the injured parties should not develop into blood feud and anarchy." This is reminiscent of customs in some tribal societies--which isn't surprising, since the practice grew out of the traditions of earlier Germanic tribes. The basic point is that there wasn't a strong central power, so private arbitration was necessary.

With the beginnings of the nation-state and early capitalism, things got more savage, as usual. Central authorities sought to strengthen their power by extending their judicial rights, which they also realized could be a fruitful source of income. Confiscations and fines brought in a lot of revenue (as they do today).

Meanwhile, as you know, a surplus population was growing in various parts of Europe due to enclosures, the exhaustion of the soil, and other causes. Thus: pauperized masses, roving bands, etc. Corporal and capital punishment became very common (although wealthier criminals had the option of paying fines instead, like today). All kinds of elaborate tortures were devised. "The whole system of punishment in the later Middle Ages makes it quite clear that there was no shortage of labor, at least in the towns. As the price paid for labor decreased, the value set on human life became smaller and smaller."

Things started to change around the seventeenth century, as wars of religion and other disturbances interrupted the growth of population. Labor grew scarcer and more expensive; corporal and capital punishment, therefore, was less frequently applied, since criminals could be used as labor power. They were often sent to the military, for instance. There were still plenty of beggars and vagabonds, people who either couldn't or wouldn't work, but now they were sent to houses of correction where the men often did hard labor and the women made textiles.

"The roots of the prison system lay in mercantilism [in its attitude toward labor], and its promotion and elaboration were the task of the Enlightenment."

By the second half of the eighteenth century and especially the first half of the nineteenth, the old conditions that had given rise, in the mercantilist period, to the "productivist" and "rehabilitative" system of punishment were disappearing. The population was growing dramatically and there was no longer a scarcity of labor power. "What the ruling classes had been seeking for over a century was now an accomplished fact—relative overpopulation." To make matters worse for the working class, machinery was introduced and the Industrial Revolution occurred, raising unemployment even more. Houses of correction, therefore, ceased to serve their former productivist, educative, rehabilitative purposes—because there was no economic need for those—and conditions inside them deteriorated. There was overcrowding and all manner of horrors. In the nineteenth century the ruling classes were tempted to return to the pre-mercantilist methods of punishment, favoring corporal and capital punishment again, but the upshot was simply that conditions in prisons were allowed and encouraged to become atrocious. In light of the fact that prisons, far from making profit (as houses of correction had in former days), didn't even pay for themselves anymore—since the advent of machinery had destroyed the value of work by hand, as in prisons (and in any case workers and employers fought vigorously against convict labor)—they became purely a means of deterrence and control. The idea was to make conditions so bad that the poor would refrain from stealing just so as not to be imprisoned.

In England and France, the problem of overcrowding was also addressed by deporting criminals to colonies.

The early U.S. had a scarcity of labor, so the Quaker system of solitary confinement didn't last long. It made more sense to use prisoners as cheap labor power; therefore, the Auburn

system became popular, whereby they worked together (in silence) during the day and were confined in solitary cells at night.

Conditions improved in most of Western Europe in the late nineteenth century, as overpopulation and unemployment diminished, prosperity spread, and reformers advocated for more humane policies. “The new policy favored by reformers was to keep as many delinquents as possible out of jail by a more extensive use of fines, by a probation policy, and, above all, by seeking to ameliorate the social conditions responsible for crime.” Conditions in prisons improved too, and the length and severity of prison sentences declined. But then the World War happened, and then depression and fascism, and things went downhill. The book ends at this point, just before World War II.