McLennan (Rebecca), *The Crisis of Imprisonment. Protest, politics and the making of the American penal state (1776-1941)*

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Maria Kaspersson deals with early modern Sweden, arguing that participation in the criminal justice system and cooperation with the law steadily increased. She further discusses such Scandinavian peculiarities as suicidal murders and the courts' increasing concern that no false confessions were made.

James Sharpe extends the historiography of conflict resolution to an area that this reviewer had read nothing about before: the Isle of Man. Its inhabitants, not called Men but Manxmen, spoke a Gaelic dialect and their legal and administrative institutions were influenced by Norse origins. Sharpe presents a preliminary analysis of the island's legal culture based on two samples of civil litigation. A peculiar feature was the absence of lawyers, although lay legal experts acted as informal lawyers.

Richard McMahon challenges the view, apparently common in Irish historiography, that in the first half of the nineteenth century practically no one wanted to give evidence as a witness in homicide trials. This supposed reluctance would have been due to active discouragement and intimidation by secret societies such as that of the Ribbon. McMahon does find some evidence of killers and their families or associates threatening witnesses in individual cases, but not of a politically motivated and concerted effort or any sustained popular hostility toward witnesses. In this area, too, most people cooperated with the law.

Greg T. Smith's contribution, entitled «Violent crime and the public weal in England, 1700-1900», is largely a rehash of themes already well-explored by scholars such as Peter King, Robert Shoemaker and Martin Wiener. Worse, he does not even define what he means by the public weal.

Carolyn Conley stresses the Calvinist heritage in Scotland, which brought with it an emphasis on the theme of atonement in the criminal justice process. Scottish peculiarities included the distinction between a verdict of not proven and that of not guilty. Conley examines cases of infanticide, child homicide and the murder of intimates.

In spite of his name, Richard Ireland deals with Wales. He focuses on a region that, in contrast with the Isle of Man, I have read a book about, by Russell Davies, but surprisingly Ireland does not refer to it (as far as I can see without a bibliography). He concludes by admitting that he «has dragged together a number of apparently different themes, linked by the almost infinitely elastic term 'popular culture' as related to crime» (p. 252) and that is a fair characterization.

In conclusion, most but not all essays in this volume are valuable contributions to the historiography of crime, in particular violent crime, and its relationship to the law.

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McLennan (Rebecca), *The Crisis of Imprisonment. Protest, politics and the making of the American penal state (1776-1941)*, Cambridge, Cambridge University Press, 2009, 505 pp., ISBN 978 0 521 53783 4.

The concept of «penal state» is familiar to me in the sense as introduced by Loïc Wacquant. He sees it as the successor to the welfare state: a régime that relies on criminalizing the surplus population of the post-industrial economy and keeping

them in prison. Rebecca McLennan, who does not refer to Wacquant, uses the concept in a different sense. It appears to refer either to the penal branch of the administration or to the intertwinement of governing and punishing. The combination of the main title and the period mentioned in the subtitle also raises questions. Was the prison system in crisis for 165 years? That is possible; perhaps crisis is inherent to it. In the last chapter, moreover, I was unable to find what exactly happened in 1941 to mark it off as the closing year for this study. The book's title, then, is badly chosen, but its content has much to offer.

McLennan's book constitutes a history of imprisonment in the USA, mainly the Northern states, with two principal episodes: the development of a system of large-scale prison labor in the nineteenth century and, second, various changes and attempts at reform in the early twentieth. Much of the empirical evidence is from New York, but the author emphasizes that this state served as a model. With a modest time lag, other Northern states usually adopted practices and laws similar to those pioneered by the Empire state. Most readers will be familiar with David Rothman's two volumes covering American imprisonment during roughly the same period, but McLennan significantly goes beyond Rothman. For one thing, to a greater extent than many other studies, hers is a history from below with ample attention for the inmates' experience. Second, she analyzes the various changes in imprisonment as resulting from power struggles in society as a whole, in which aspiring politicians, enthusiastic experts, revolting inmates and angry free workers all played their parts. Within this network of social relations, the law was important too. Indeed, McLennan's point of departure is the Thirteenth Amendment to the American Constitution, which prohibited slavery but explicitly exempted convicts from this prohibition. This will remind many readers of James Q. Whitman's *Harsh Justice*, for whose argument that amendment is equally crucial. McLennan differentiates her thesis from Whitman's by stating that the forced labor system of nineteenth-century prisons constituted a distinct type of servitude not to be confounded with slavery.

Chapter one has an introductory character. It deals with familiar themes, such as the transportation of British convicts to the American colonies and the Walnut Street penitentiary, but also with less familiar ones. The Philadelphia system, for example, was preceded in the late 1780s by a brief experiment of sentencing people to perform work carrying wheelbarrows. It failed because, among other things, the wheelbarrow men were hardly distinguishable from common workers. McLennan's attention for legal matters again proves valuable. She notes that English eighteenth-century jurists argued that Englishmen, including convicts, were free from any form of bondage. Officially, British law required those sentenced to transportation just to leave the country; their sale into servitude in America was a custom introduced by the contractors and upheld by Colonial law. Consequently, penal bondage had American, not British roots. Here some comparison with early modern imprisonment under forced labor would have been useful. The British legal argument (which McLennan herself calls sophistic) partly served to differentiate Englishmen from Continental people, supposed to suffer under tyranny wearing their proverbial wooden shoes. Nevertheless, England too had its houses of correction, although the prison-workhouse system was more successful in the Netherlands, Germany and Scandinavia. The usefulness of a European comparison would have extended to the beginning of chapter two which opens with Auburn. It has long been a truism that, whereas the Auburn system was the preferred one in the USA, the Philadelphia

system conquered Europe, but McLennan presents this as a new insight. As I have argued a long time ago, for Americans the Auburn system was something new whereas for Europeans it simply looked too much like the prison-workhouse that they had known for generations.

After this, McLennan gets to the core of her study. She describes in detail how the prison labor régime evolved in the USA, beginning in the Jacksonian era until its apogee in the Gilded Age. As in early modern Europe, discipline depended on the ready use of physical punishment. The importance of honor constituted another similarity with early modern times. In nineteenth-century America free workers, who felt threatened by the spread of prison labor, complained that it would degrade them to the level of dishonorable criminals. There were also differences with early modern Europe, such as the Auburn rule of silence and the separation of inmates at night. The principal difference lay in the economic role of prison labor. In Europe, profitable prisons, usually exploited by a private entrepreneur, existed only in Prussia for a brief spell in the late-eighteenth century. In the USA, the contract system under which inmates worked for or were even leased to private parties, became ever more common. This was big business, in contrast to the non-productive work that inmates sometimes performed in Europe at the time. Some prisons literally became factories, where free workers labored during the daytime along with prisoners. In Brooklyn in 1880, for example, two hundred young women entered the prison workshop of the Bay State Shoe Company each morning and left it in the evening. For the inmates, the contract system totally determined their lives. The key relationship, McLennan observes, was no longer that between convicted felon and imprisoning state but between convict laborer and private contractor.

It was primarily the determined and repeated protests of free laborers that finally put an end to the contract system. Beginning in New York in the 1890s, practically all Northern and Western states abolished it. This did not mean the end of prison labor per se. Most often it meant that less work was done, restricted to the fabrication of goods for state use, such as uniforms. A period of uncertainty about the best prison régime followed, in which various Progressive reformers attempted to realize their plans. The central character, again in New York, was Thomas Mott Osborne, a well-known representative of the industrial elite. In 1913, at the occasion of his nomination as chair of the State Prison Reform Commission, he had himself incarcerated for a week in Auburn under the name of Tom Brown. The Bertillon clerk, thinking he was measuring the body shape of a common convict, noted the strange tattoos on his arm, not recognizing them as Harvard marks. Osborne subsequently promoted a number of reforms at Auburn. After his chairmanship, he became warden at Sing Sing, where he introduced similar reforms. In fact, the early twentieth century witnessed the introduction of a set of alleviations in prison life that dated from before Osborne's career. Around 1900 inmates acquired the right to write letters and prison libraries were set up. The *Star of Hope*, a convict newspaper, first appeared in 1899. Among other things, it published letters from prisoners, signed with their number though rather than with their name. Reforms in the 1910s included the introduction of films and sports. The Progressives disapproved, on the other hand, of sexual activities among prisoners, about which they wrote with an eye on understanding and hence eradicating them. Ironically, Osborne's downfall came about when his opponents accused him of sodomy with several inmates. Although he was cleared of that charge, his reputation had suffered and never quite recovered.

McLennan rejects theoretical perspectives such as that of Foucault. Instead she presents a careful sociological-historical analysis in which the entangled relationship between all social groups involved is the central element. It is a pity that she has not enriched this analysis by using the theoretical perspective of Norbert Elias. In particular, the story of the reforms of the first two decades of the twentieth century – which McLennan briefly extends until the beginning of the Second World War – would have lent itself to such a perspective. Based on Elias' notion of changing sources and relations of power, Herman Franke has analyzed the gradual improvements in the lot of inmates calling this process the emancipation of prisoners. As with all social processes, this emancipation was not unilinear; it had and has its drawbacks. In McLennan's story the 1920s, when conservatives in New York succeeded in having a 'four strikes and you're out' law adopted, represented such a drawback. It quickly caused prisons to become overcrowded, with an accompanying deterioration of prison conditions.

A consideration of Elias' theory would have made this an even better book. But it already is a very clever study.

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Johnston (Helen), *Punishment and control in historical perspective*, Palgrave, Macmillan, 2008, 269 pp., ISBN 9 780230 549333.

It is tempting to compare this collection to the book by Rebecca McLennan that I also reviewed for CHS. On agreeableness of length the Johnston volume, with 240 pages of text, wins, because the other book has twice as many. For the rest, the advantages of a single-authored study over the average edited collection are obvious. This is the more so, since the very first chapter in the volume under review has Sing Sing for its subject, so that it is made superfluous by McLennan's study. As if the author, Michael Fiddler, wanted to underline this, he finds inspiration in the completely outdated works by Rusche/ Kirchheimer and Melossi/ Pavarini. All other contributions refer to England, which, as well as the focus on the nineteenth and early twentieth centuries, should have been acknowledged in the volume's title. Anette Ballinger examines the case of a woman who shot her husband in 1945 and got away with a nine day sentence. The killer successfully posed as the «more sinned against than sinning» type, despite much evidence to the contrary. Instead of explaining why judge, jury and even prosecutor so eagerly wanted to believe this, Ballinger chides them for doing so, because they helped one woman at the expense of upholding a stereotype detrimental to all women. Tony Ward mixes a discussion of historical cases related to the insanity defense with comments on Foucault's views. The editor contributes with an article on prison officers as a category relatively neglected up to now. She shows that even by the mid-nineteenth century there was little social distance between them and the inmates, so that the prisons of that time fitted only imperfectly into Goffman's model of the total institution. Moreover, prison officers suffered under extremely long working hours. It is good to hear, from Jamie Bennett, that my sort-of-countrymen once imprisoned Winston Churchill (during the Boer War), even though he was a hero for Dutchmen that lived through