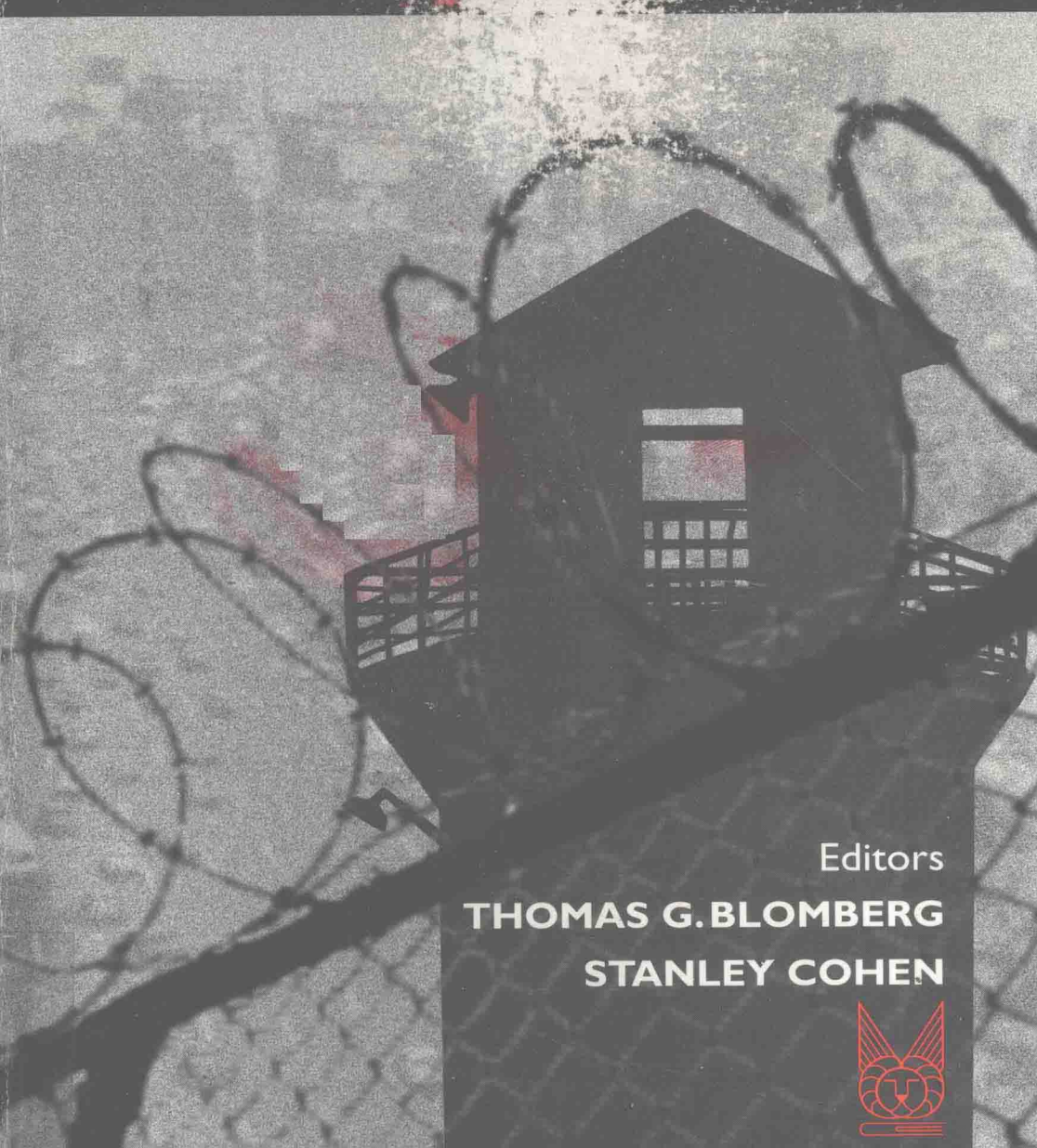


ENLARGED SECOND EDITION

Punishment and Social Control



Editors

THOMAS G. BLOMBERG

STANLEY COHEN



Punishment and Social Control

Enlarged Second Edition

Thomas G. Blomberg and Stanley Cohen
Editors



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About the Editors

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Punishment and Social Control

Enlarged second edition

NEW LINES IN CRIMINOLOGY
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In Memoriam

Sheldon L. Messinger

1925–2003

Sheldon L. Messinger passed away on March 6, 2003, following a remarkable career in which he had a major influence upon the disciplines of sociology and criminology and the lives of many colleagues, students, and others who knew him. Better known within his academic communities than in the public world, Shelly was the sociologist's sociologist, the criminologist's criminologist. And rather than make statements about his values or devise theories about his work, he simply transferred to those whom he studied, the same kindness, respect and humanity shown towards his friends, colleagues, and students.

Shelly Messinger was born in Chicago in 1925 and went to Hyde Park High School. He was an undergraduate at the University of Chicago and UCLA, and then completed his Master's and Ph.D. in sociology from UCLA. He began his long affiliation with the University of California at Berkeley in 1961, when he joined Philip Selznick in founding the Center for the Study of Law and Society. His subsequent positions at Berkeley included Professor and Dean of the School of Criminology (during its turbulent years), Professor of Law, and Chair of the Jurisprudence and Social Policy program. At the time of his retirement in 1991, he was the Elizabeth Josselyn Boalt Professor of Law.

From the beginning of his long academic career Shelly was an inspiring and ever-helpful colleague and teacher. You could never doubt that his interest in your work was genuine; he would praise what you had done, but knew exactly how to challenge you to go further. He was famous for his written comments on manuscripts (however crude their stage of drafting). Meticulous, long and carefully organized, these responses were more like reviews than "comments." Shelly's invariable introduction would be: "I think what you are trying to say is" He would proceed gently to refine the way you had formulated the problem, to remind you about the empirical evidence you so obviously lacked and to spot the missing links with broader theoretical arguments and social issues. This help went far beyond the norms of academic review. Moreover, his normal, unselfish contributions were visible only in the hundreds of unnoticed footnotes and acknowledgments thanking Shelly for his help. And this help was uniquely empowering.

In criminology, the name of Messinger is invariably associated with the classic 1960 paper he wrote with Gresham Sykes, "The Inmate Social System." Shelly's early research interests and publications covered a range of topics besides inmate social life, including the transformation of social movements, dramaturgical aspects of social life, civil justice and the poor, and family normalization of schizophrenia. His later research was focused upon the sociology and history of parole, the context of parole decisions and the control of coercive justice institutions. Throughout this work, he retained his sense of macro- and critical theory but always stayed with the empirically concrete. In the seventies and eighties, Shelly was in a recognizably unique position in the emerging new discourse of punishment, law, crime, and social control. He seemed equally at home in the mainstream criminology world; in the "law in action" and "law and society" movements; and in the new sociology of deviance (associated with such friends of his as Howard Becker, Erving Goffman, and John Kitsuse). His easy combination of Chicago and West Coast intellectual styles, alongside his gentle (but permanent) irony, virtually personified what his friend David Matza termed the "central irony" of the "neo-Chicagoan" idea of labeling theory.

The volume of essays that we edited, *Punishment and Social Control* (1995), was meant to celebrate Shelly's retirement as well as reflect his research and theoretical interests. All the contributors—old colleagues and students from different cohorts and traditions—were delighted to participate in this project. We received the same enthusiastic response to this enlarged second edition, which Shelly did not live to see. A living tribute, alas, has turned into a memorial. If Shelly treated sociology as no different from other parts of his life, so—even after his retirement—he treated parts of his life as if they were opportunities to do sociology. After the devastating fires of 1992 in Berkeley and Oakland, Shelly initiated an "action research" project to investigate and improve the methods of insurance compensation for the victims. When he discovered how little was known about the rare form of leukemia he had developed, he organized a sophisticated e-mail survey to collect basic epidemiological data. A few days after Shelly's death, his younger son, Eli, wrote (to one of Shelly's London friends, the criminologist Malcolm Davies) ". . . a personal note I think you'll enjoy: One of the last conversations he and I had while he was in the hospital began with his observation 'This is an unusual life.' When I asked him what he meant, he talked briefly about the life of one living in the hospital—being ill, dealing with doctors and nurses, etc. Obviously he was applying his sociological powers of observation to the very end."

We are saddened by Shelly's passing, but grateful for the years of his friendship and support.

Thomas G. Blomberg
Stanley Cohen

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Introduction

The first edition of this book was published in 1995 to mark the retirement of Sheldon L. Messinger from the Center for the Study of Law and Society at the University of California, Berkeley. The scope and orientation of this Enlarged Second Edition remain the same, but we have excluded all personal tributes and references to Messinger's own contribution to the study of punishment and social control.¹ In recognition of the continued growth and diversity of interest in this field, seven completely new chapters have been added² and seven of the original chapters have been updated and revised.

Virtually all these additions and revisions reflect (and reflect on) two notable changes over these years. The first, paradoxically, is a declining use of the broader concept of social control, in favor of a more exclusive focus on punishment. Some reasons for this concentration lie in the second change: not a mere numerical rise in rates of imprisonment, but the emergence (notably in the United States) of the distinctive phenomenon of mass imprisonment (Garland 2001a, 2001b).

The "mass imprisonment thesis" is directly addressed by several papers; in this Introduction we pay more attention to the origins and fate of the concept of social control.

ORIGINS

While "crime," "law," and "punishment" are subjects that have everyday meanings not very far from their academic representations; "social control" is one of those terms that appear in the sociological discourse without any corresponding everyday usage. This concept has a rather mixed lineage.

Political

The oldest branch goes back to the tradition of classic political and social theory associated with the emergence of the liberal democratic state.

Here the *political* problem was how a government could achieve a degree of control over its citizens that did not infringe on their rights and liberties. The *conceptual* problem was how to understand the social space that was created between the individual and the state. In both political and conceptual terms, the problem of social control was part of a broader discourse about individual freedom, regulation, citizenship, and the social order.

This connotation of the term “social control” all but disappeared within the public discourse of Western democratic societies. When it did reappear, the meaning was always pejorative—as in standard futuristic and dystopian imagery (such as *1984* and *Brave New World*) about overcontrolled societies. Or else it was used to characterize real totalitarian regimes as in, “Saddam Hussein controls the Iraqi population through fear.” Punishment and fear of punishment were the means toward total control.

The utopia of Skinner’s behaviorist psychology, *Walden Two*—published in 1948 and now virtually forgotten—promised a synchronized, but “non-punitive” society, a world where people would naturally behave well, but *without* punishment. This is obviously opposed to the “pure” punishment of retributive and just deserts theories. Less obviously, Skinnerian operant conditioning is also quite different from the version of behaviorism found in utilitarian theories, notably deterrence. As Kleck shows (Chapter 13), the doctrine of general deterrence depends on a “limited rationality”: informed by something like the pleasure-pain principle and attuned to the risks of punishment. Operant reinforcement, on the other hand, is the proper arrangement of environmental contingencies and conditioning. In this respect it resembles today’s “managerial criminology” and “new penology”: preemptive, preventive and depoliticized.

The component parts of this package—situational crime prevention, environmental criminology, risk analysis, surveillance etc.—have been well documented. There is, however, much controversy (see Chapters 1–3, by Sparks, Garland, and Simon and Feeley) about whether these models have indeed become dominant and their supposed relationship with more traditional moralistic and punitive methods. Their political success lies precisely in their claim to be nonpolitical, that is, technological solutions to problems (insecurity, victimization, fear of crime) that are beyond political dissent.

There are, however, some important signals of a return to the political. The techniques of surveillance, covert tricks, and invisible deceptions described by Marx (Chapter 8) and Staples (Chapter 9) raise traditional liberal concerns about privacy and the protection of negative liberties (that is, freedom from unnecessary state intervention). Debates about civil society and “governance,” both in the West and in post-Communist societies, have revived earlier political interests. And one of the most influential ideas in modern criminology, Braithwaite’s neo-Durkheimian theory of

reintegrative shaming, is seen by its advocates as allied to communitarian visions and as belonging to the political ideal of "republicanism."

Anthropological

Another quite different lineage goes back to the twentieth-century academic institutionalization of sociology in the United States. Here, the political dimension gives way to a concern with the *universal* social processes by which societies were integrated and social conformity induced. Integration, in functionalist theory, was explained in terms of the interdependency between different social institutions. Conformity was explained at the family or cultural level ("informal social control") and in terms of the Freudian metapsychology of internalization, socialization, and conscience formation. The superego was the "policemen in the head." This tradition is "anthropological" in the sense of looking for universal forms and patterns.

Social control was very much a central concept in the sociology of the Chicago School, but social control and its breakdown (social disorganization) were not macropolitical issues; they were to be observed in the more immediate settings of city, neighborhood, slum, peer group, and gang. The process of learning is a matter of cultural transmission; the content of what is learned depends on the social ecology of the community.

Despite such differences between schools of sociology, the assumption—still to be found in some introductory sociology textbooks—was that the "informal" and universal processes of inducing conformity normally worked. Only when they "failed" through some breakdown, disintegration, or pathology (whether at societal or community levels) were the "formal" methods of social control—the police, criminal law, and justice system—brought into play. These formal methods themselves were the proprietary subject matter of disciplines such as criminology that were intellectually marginalized precisely because they were not concerned with the normal.

"Anthropological" thinking (in the vernacular, nonacademic sense) allows for a typology of social control practices: formal versus informal, state versus market, coercive versus voluntary, public versus private, etc. There should also be measures of social control that are more refined than statistical normality versus abnormality, thus allowing for comparisons within one society over time or across different societies.

All this is only a prelude to interesting matters. Consider, for example, Carlen's (Chapter 4) question about how the informal ("antisocial") social control of women "preempts and buttresses" women's relatively infrequent criminalization and imprisonment.

Sociology of Crime, Deviance, and Control

The original conceptual source of this volume seldom addressed either political and anthropological interests. In the 1960s, social movements calling for decriminalization (especially of “crimes without victims,” such as homosexuality, gambling, and recreational drug use) did indeed appeal to the political ideals of protecting privacy and individual rights against an overreaching state. But this impetus was not followed through. The concept of social control was grounded in the new sociology of deviance of the same period—often called “labeling theory.” It derived from the symbolic interactionist and ethnographic strands of the Chicago school (and hence labeled by David Matza as “neo-Chicagoan”). Its contribution was to place the microsociology of social control—the construction of deviance, deviant identities, and stigma—onto the sociological agenda. It concentrated on the paradoxical and ironical relationships between deviance and social control (many illustrated in Marx’s Chapter 7 on undercover policing). The most intriguing irony of all was the causal reversal: not that deviance leads to social control, but that social control creates deviance.

These ideas have lost their original fascination. But for a while they opened up the restricted domains of criminology and the criminal justice system to the resonant subjects of the wider 1960s culture: drugs, sexuality, madness, political protest, and a celebration of cultural diversity. This gave rise to facile dichotomies—control and repression on the one hand, diversity, freedom, and tolerance on the other. It also left behind a distinctive vision of ideal social control (Cohen 1985): informal, decentralized, inclusive, and nonstigmatic—lying somewhere outside the tentacles of the organized state systems of law, criminal justice, imprisonment, and punishment. In a more conventional sense, it left behind the pragmatic definition of social control as the repertoire of institutional responses to deviance.

Sociologists of deviance and crime began to apply this notion of social control at three levels. First, the micro-, interpersonal, or face-to-face level: how stigmatic meanings, identities, and roles were constructed and negotiated. Second, the organizational level: how formal bureaucracies and professions (the police, courts, corrections, welfare and treatment agencies) went about their business of deviance-processing. Third, the macro- or historical level: how particular deviant categories (such as drug abuse) or laws (such as prohibition) or institutions (such as the juvenile court) were established in the first place.

Whatever conceptual or substantive unity held all this together—in truth, not very much—was breaking up at the beginning of the 1970s. The dominant frame was now the state’s power to criminalize. The heavy-weight subjects of law, punishment, and criminal justice came to dominate social policy and academic study. Other forms of social control were misleadingly referred to (with either romantic envy or else lack of interest) as

"alternatives." At the same time, the legal gaze widened to include sociological studies, sociology of law, critical legal studies, and "law and society." A distinctive policy-driven agenda emerged around such issues as the critique of imprisonment, skepticism about rehabilitation, the search for "alternatives," the emergence of the "back to justice" model, and the implementation of determinate sentencing reforms.

In the meantime, the residues of labeling theory still influenced the more amorphous areas of deviance and social problems. The theory of social problems as claims-making (Spector and Kitsuse 1977) led today's influential "social constructionist" model of social problems (Holstein and Miller 1993).

The British version of the original deviance-control paradigm had, from the outset, taken on a committed political character missing in the United States. By focusing on the political origins and enforcement of the criminal law, it also returned to a more state-centered view of social control and restored some connections with classical European social theory. All this required a rather delicate balancing act between immediate public demands for the criminal justice system to "do something," and the long-term agenda of critical theory.

By the end of the 1970s, this literature had become enriched by contributions from outside its original theoretical sources. Most notably there was the first wave of "revisionist" histories about the origins of the asylum or total institution: prisons, mental hospitals, and juvenile correctional institutions. The historical accounts by Rothman (on the early-nineteenth-century American penitentiary), Ignatieff (on the equivalent developments in England), and—more complicatedly—Foucault, all opened the theoretical landscape well beyond this apparently specialized subject matter.

Research on the historical roots of the prison in the early nineteenth century should have signaled a return to the original wider meaning of the concept of social control. The early "discoverers of the asylum," in Rothman's influential account, were Durkheimians before Durkheim. The cause of deviance, they thought, was an anomic normlessness; the solution was for the state to compensate for this breakdown of traditional control; the penitentiary not only had to segregate deviants (from outside and within the walls) but also had to stand as a model or microcosm of what a well-ordered society should look like. Much of this quite explicit *causal* thinking is lost by an exaggerated use of the prison as a *metaphor* for social control. While Blomberg (Chapter 19) questions the use of control metaphors such as net-widening, Wacquant (Chapter 21) uses the ghetto and Christie (2000) the gulag to depict the human geography of mass imprisonment.

By this time, Foucault had become the dominating presence. His work became (as he wanted it to be) a series of open texts that allowed quite different readings and directions. Versions of radical, feminist, and critical

theory began to find resonant message in his gnomic writings about power, discipline, and control; social constructionists adapted concepts such as “normalization,” “power/knowledge,” “regimes of truth;” subjects such as mental illness, the self, the body, and sexuality reappeared at the center of the theoretical stage.

Academic work continued in theoretical and historical directions: the continued attempt to explain changes in state-organized systems of social control: ideologies, master patterns, strategies, tactics, alliances. Various systems of punishment, treatment, welfare, and rehabilitation became the subjects of a new style of sociological enquiry best exemplified by Garland’s (1985) study of the emerging juvenile justice system in late-nineteenth-century Britain. The three requirements for an ideal study of social control were becoming clearer:

1. A historical explanation of correctional change (whether conventionally historical or more like either of Foucault’s “archeology” or “genealogy”).
2. Close familiarity with the actual strategies deployed by correctional agencies as they go about their business of segregating, housing, controlling, classifying, and disposing of deviant populations.
3. The element that unfortunately became more and more marginal: a sense of the subjective experience of those people who become the objects of control.

Policy interests, at the same time, were driven by the continued escalation of crime rates and the continued looming presence of the prison. Here came yet another round in the historical quest for “alternatives.” And yet again as the critique of imprisonment became more obvious and the implementation of alternatives more frenzied, so the prison came even more to dominate the punitive landscape. Strategies such as diversion, community corrections, and intermediate punishment were implemented (Blomberg, Chapter 20) analyzes a typical set of examples) without lowering the rates of either crime or imprisonment. This led to the net-widening critique: that alternatives were really becoming supplements, the system was increasing its reach. Particular attention was paid to newsworthy innovations such as tagging, electronic monitoring, or house arrest, rather than the traditional noncustodial alternatives within the old system, such as probation and parole.

This is the point—at the beginning of the 1990s—when most stories in this volume start. From a distance these stories are similar; at close glance, we see that the same themes—spiraling rates of imprisonment, public punitiveness, the managerial ethos—are woven together rather differently. Christie’s disturbing thesis about the apparently infinite expansion of the American crime control industry was originally published in 1993 and

becomes more plausible with each updated edition (Christie 2000). This invokes as causes populist punitiveness, financial entrepreneurship, and amoral bureaucratic inertia. This mixture is rather different from Feeley and Simon's "new penology" (Feeley and Simon 1992) as updated in Chapter 3. Echoes of both these versions appear in Garland's original 1995 account (Chapter 2) of the oscillations within modernist penality and his further elaboration of the "culture of control" (Garland 2001b).

In his guide to trends and literature in the sociology of punishment, Sparks (Chapter 1) warns us that punishment "is pervaded by history, porous to culture, buffeted by the contingencies of politics and economy." Punishment and social control, far from being residual or marginal, are exemplary sites for observing such grand trends as managerialism, the proclaimed end of history, actuarial prediction, neoliberal rationality, privatization, and the rolling back of welfare states. The correctional system is not driven by its surface utilitarian justification ("what works") but by those wider social trends it also mimics so well. In the United States especially, the political signifiers of crime control are self-evident: public talk about fear and insecurity; new laws; the populist symbiosis between resentment and punitiveness; massive budgetary allocations; and electoral politics. If only in this sense, the social control literature has begun to register its original political lineage.

There may also be a more subtle return to the more generic ("anthropological") meaning of social control; this comes from two directions.

First, as the European abolitionists have always said in their visionary style, the punitive/criminal law model must be seen as only one form of social control. The misleading notion of "alternatives" to punishment implies that punishment through the criminal law is the normal method of social control. In fact, it is this mode of social control that is really the "alternative." This point is self-evident in anthropological typologies of the social control repertoire (Black 1991; Horwitz 1990). These place the punitive criminal law model alongside other forms of control such as therapy, mediation, restitution, compensation, tolerance, and avoidance. Most importantly, these are lists not only of "how to control deviance" but also "how to deal with conflict."

A second direction comes from feminism—both in the wider sense of understanding gender as a form of social control and in the narrower sense of uncovering the gender-base of decision-making within the formal social control system. Both senses are covered by Pat Carlen (Chapter 4), who shows how concerns that seem specific to feminism raise broader issues about inclusive and exclusive forms of control. For example, institutions for the treatment of such problems as anorexia and eating disorders are sensitive to wider social processes—in this case, not just the control over the (female) body, but the commodification of "social control" as a property to be bought and sold (Ewick 1993).