A pacifist critique of imprisonment

Edgar, David Kimmett

How to cite:

Use policy

The full-text may be used and/or reproduced, and given to third parties in any format or medium, without prior permission or charge, for personal research or study, educational, or not-for-profit purposes provided that:

- a full bibliographic reference is made to the original source
- a link is made to the metadata record in Durham E-Theses
- the full-text is not changed in any way

The full-text must not be sold in any format or medium without the formal permission of the copyright holders.

Please consult the full Durham E-Theses policy for further details.
A Pacifist Critique of Imprisonment builds upon a primary commitment to human dignity, scepticism about the effects of the use of force and a conviction that people are vitally inter-connected. As an approach to prison reform, pacifism identifies intrinsic threats to human dignity; it can distinguish basic, inherent harms of imprisonment from those that are remediable.

Part One sets a broad frame for the study. The first chapter, History, shows that the earliest reforms were unsystematic attempts to cope with social upheaval, and were based on a profound under-estimate of human wholeness. The second chapter discusses retribution. This defence of punishment is based on an unrealistic, categorical difference between innocence and guilt. Viewed as a theory of justice, retribution is in fact a theory of inequality. The final chapter of Part One discusses the prisoners' experience of confinement. Incarceration is not only a product of society's intentions; rather, the meaning of imprisonment is also determined by the people who endure it.

Part Two applies the above philosophical lessons to more concrete issues. The first chapter discusses ways that the prison environment nurtures violence. The second chapter explores prison sexuality. Dimensions which are intrinsically human cannot be eradicated by penal régimes. Rather, human institutions (like sexuality) take on distorted forms, as this chapter argues. The final chapter compares ethical views of personal responsibility with the passive obedience inculcated by prison discipline. Prison rules do not encourage prisoners to feel a stake in their community; consequently, prison discipline discourages the development of personal responsibility. The ways that prison harms human dignity suggest three principles for reform: greater recognition of the prisoner's views, increased means by which the prisoner can hold the state accountable, and increased contact with the outside.
Homo sum; humani nil a me alienum puto.

I am a human being; nothing human is alien to me.

— Terence
Contents

Volume One

Editorial Note 5
Preface 7

Introduction: Method

Pacifism
  Introduction 17
  Justifications of Pacifism 34
  Methods 44
  Quaker Pacifism 57

Part One: Prisons in Perspective

Pacifism and Imprisonment 68

History
  A Chronology of Reform 70
  Eighteenth Century Prisons 72
  The Climate of Reform 86
  The Philosophy of Reformation 101
  The Prison and Social Control 112
  Conclusion 127

Retribution
  Introduction 131
  Desert, Vengeance, War 144
  Models of Retribution 159
  Non-Retributive Retribution 170

Anthropology
  Human Nature in Penology and Theology 183
  Retribution 186
  Deterrence 200
  Rehabilitation 209
  Social Defence 218
  Conclusion 228

Phenomenology
  A Phenomenology of Prison Space 234
  Punitive Space 239
  Merleau-Ponty: Our Experience of Space 250
  The Prisoners' Experience 264
  The Human Dimension 277

- 3 -
Volume Two

Part Two: The Harms of Imprisonment

Introduction

Prison Violence
Violence in the Prison Setting
Scenes of Inter-Activity
Perspectives on Aggression:
The Aggressive Instinct
Physiological Aspects of Violence
The Psychology of Aggression
Prison Violence
Control and the Politics of Violence
The Quicksand Prison

Sexuality
Introduction
The Social Construction of Sexual Meanings
Sexuality in the Prison Setting
Deviance as a Social Construct
Homosexuality and Gender Roles in Prison
Penal Philosophy and Sexuality
Punitive Celibacy
Sexuality in Penal Philosophy

Moral Responsibility
Introduction
The Meaning of Responsibility
The Enforcement of Prison Discipline
Fairness and Discipline
The Shaping of Selfhood
Equality
Transcendence
Freedom
Selfhood
Prisoners and Responsibility

Postscript
Bibliography
Index
The thesis is not a linear, sustained argument. As an interdisciplinary study of the harms of imprisonment, it might be approached best as a collection of essays, treating discrete facets of the subject. Each chapter, therefore, concludes with a List of References. All citations refer to the particular list for that chapter. Only a few footnotes are citations, where lengthy references within the text would be disruptive. There is an index.

The use of different print requires some explanation. Cross-references are bracketed, in bold print: (Pacifism). Bold print is also used for emphasis: Peace need not imply no conflict.

Italics are used in five ways:
1) the epigrams; 2) book titles; 3) following an author's usage; 4) foreign phrases. Italics are also employed (5) to signal technical usage of a word: Kant bases his case upon reciprocity.

Single quotation marks have two functions that may not be self-evident:
1) to mark an ironic use of a common word: To claim that hanging was 'humanitarian' reflected deterrent thinking. 2) for special terms ('The Bloody Code') or for short phrases used by particular authors: Bentham's 'mill for grinding rogues honest'.
Despite the disproportion of males in prison, the use of gender terms is as balanced as possible; (this has not prevented me from thinking predominantly of male prisoners as I write.) Rather than s/he, 'she' and 'her' are sometimes used instead of 'he' or 'him'. Quotations of American authors replicate their spelling, without (sic) after each instance of different spelling: recognized, behavior.

The copyright of this thesis rests with the author. No quotation from it should be published without his prior written consent and information derived from it should be acknowledged. No part of the thesis has been submitted for a degree in this or any other university. I did all the work myself and, apart from the following, I cannot think of anyone who can dispute that: Ann Loades, my parents John and Dorothy Edgar, my sister and brothers, Dinu, Lou (2), Herb, Mike Dixon, Neville Newhouse, Ronald Preston, David Jenkins; the Daveys, the de la Bat Smits, the Dinsdales, the Drapers, the Hensons, the Joneses; Andre, Bob, and the Lifers at HMP Frankland and at S.C.I. Graterford; Hatfield College, Durham Meeting, Brigflatts Meeting, Upper Dublin Meeting, Philadelphia Yearly Meeting and London Yearly Meeting; all the astounding authors I've read and many others too numerous to mention.
Jesus died at the hands of the state; his death was an execution. This fact places an analysis of the state's system of punishment at the heart of a Christian interpretation of social ethics. Beyond Jesus' reported dialogue with the thief on the cross, or his parabolic identification with the prisoner, Jesus' life with the powerless, and his ministry of forgiveness tie criminal justice to the shaping of a Christian ethos. To take a position on the state's authority to impose punishment is to make a christological statement; to examine ways of defining crime has theological implications, as do methods of responding to the aftermath of offences.

Jesus' actions were defined as crimes meriting capital punishment. The state's response — execution — is not at issue so much as Jesus' manner of responding to evil. The cross offers support for a reconciliation model of justice, founded upon forgiveness and the New Covenant. A retributive model, founded upon the perceived need to atone for wrongdoing with suffering is not supported by the cross in that it is quite clearly an innocent whose death atones for the evil, in marked contrast to the standard retributive claim to punish only the guilty.
There is another interpretation of the 'cross event'. A number of theologians (e.g., Moltmann, Gutierrez) have adopted the principle that the manner of Christ's death requires us to direct searching questions to the use of power in society. To identify Christ with the prisoner, with the poor, is not to exonerate them. Yet, his death signifies the ways that the perspective of the powerless, the challenge to those in authority, is silenced.

The God of Christianity, the God of Judaism, is inextricably linked to justice and truth. The interest of Christian pacifism in reconciling conflict combines with Jesus' recognition of the poor to suggest that those without power, those who are denied a voice, must be heard as a preliminary to establishing truth and peace.

When there is conflict in society it is always the powerful institutions which find it easy to put out a version of the events which — even if it is only based on hearsay — is reported by the mass media as if there was no other truth. Those without power have no such voice.¹

An Inquiry into the Harms of Imprisonment

Dignity is a problematic concept. We might attempt to stipulate aspects of human dignity relevant to imprisonment, by minimum standards of containment. Cell size, diet, exercise, sanitation, privileges, adjudications — each aspect can be couched in terms of some threshold beneath which dignity is debased. Underlying these measures of human dignity are divers combinations of philosophical positions and empirical data. Given the transcendent nature of the person, no single discipline will fully meet these questions of standards. For example, rules to gauge fairness in adjudications may rely upon principles of law; measures of sanitation, in contrast, may be based on medical data; population ceilings (prison capacity ratings) may be based in part upon sociological data, in part upon the ethology of population density and stress.

Not only is it possible, it is simple to demonstrate that prisons do not harm persons. A selection of favourable philosophical premises, grounded in the traditions from which imprisonment emerged, can support incarceration. Such notions include the political convictions of the 18th century that generated our present culture: theories of indi-
vidualism, desert, reason, order. The empirical data can be carefully circumscribed: diet can refer to 'normal' nutritional minimums; cell-size computations can be based upon clearly observable deficits (sensory deprivation 'crack-up' points, etc.) Moreover, it is always possible to restrict the relevance of empirical evidence by citing distinctive conditions.

The claim that prisons harm persons is less a matter of proof than it is of persuasion. It is not a mere 'value judgment'; but we deceive ourselves if we believe that harm to human dignity is a simple, empirically demonstrable fact. The challenge is to describe dignity in sufficient detail, and to understand prison in its fulness (symbolically, philosophically, sociologically, as well as empirically) so that the answer ceases to be a yes-or-no, and begins to point to ways in which human dignity is a) maintained by imprisonment; b) harmed in rectifiable ways by imprisonment (a practical question); and c) intrinsically harmed by imprisonment (a question of fundamentals).

It is clear that this approach is not a predetermined path to the abolition of the prisons. The most that one can hope to establish is that certain aspects of prisons intrinsically harm prisoners. The purpose of the present study is to expose the
intrinsic faults of imprisonment, and to prepare those who work on behalf of prisoners for the inevitable assault upon human dignity inflicted by the prison experience.

**A Pacifist Approach to Prisons**

Peacemaking provides an appropriate framework for our task. First, pacifist principles differ in significant ways from the philosophical foundations of prisons. Second, a full understanding of nonviolence identifies and clarifies the violations of human dignity inherent in the use of force or coercion, whether legitimate or not. Clearly, harm can result from legitimate coercion. Whether incarceration is justified or not, the penal uses of force carry harmful, albeit unintended, consequences.

Pacifism, no less than dignity, is complex. As a method, peacemaking reconciles divergent perspectives. Hence, pacifism requires an approach marked by openness. Conflict and violence are not comprehended by any single academic discipline. An approach to prisons that surveys a number of disciplines is not a
purely logical process; it will not build an argument that moves from premise through evidence to inevitable conclusion. Rather, understanding of the problem — in this case, imprisonment — emerges gradually, as the input from various sources builds up a comprehensive picture. A pacifist approach builds upon collaboration to share the struggle to gain understanding.

The foundation for the open-ended character of pacifist ethics is found within the philosophy of nonviolence itself. Gandhi held that nonviolence included the principle that no human being holds the whole truth; no one is wholly right, or wholly wrong. Thus, resolutions of conflict must be collaborative projects. Formal processes that meet disputes with the premise that one side is totally wrong (e.g., the adversarial system) are flawed in denying this fundamental truth about human beings.

In the discussions that follow, I rely on these disciplines: philosophy, for a theory of punishment, and for a phenomenological perspective on the prison

---

experience; theology and law, for their disparate views of human nature; history, for an idea of the origins of modern penal techniques. I use sociology to analyse particular problems of imprisonment, including prison violence, the sexuality of prisoners and the effects of discipline on personal responsibility.

The way of peace is also clarified by a closer look at Gandhi's central concept, satyagraha. The roots of this word are 'truth' and 'force'. The way of peace assumes that harmony (or shalom in Judaism) is the true nature of human relations. Violence and oppression evince our estrangement from our true selves. Peace is a goal toward which we strive, but it is one that gives meaning to the struggle. It is in this sense eschatological.

Utopias, too, can be forward-looking, but then, the future ideal may be deceptive. Future perspectives are false (Utopian in a pejorative sense) when the efforts toward that goal actually violate the true nature of persons. At its best, pacifism can help to expose the 'bad faith' of Utopias built upon the denial of our true nature.

The history of prison reform reveals two examples of 'bad faith'. First, penal reform built upon the
belief that the emerging human sciences could achieve dramatic reductions in crime. The late 18th century penal reforms manifested a change from a philosophy of deterrence based on terror to a belief that imprisonment would cure criminality. Yet, the philosophical basis of reform was the belief that human beings are purely products of their environment— a flawed anthropology that few today take seriously.

The most consistent thread in two centuries of prison reform is the promise that the ultimate success of the prison was imminent, once the final refinement was in place. Thus, second, pacifism punctures the confidence that progress is automatic, or assured through greater force. The pacifist eschatology, marked by harmony, does not lead us to doubt progress; but a pacifist approach spotlights particular, specious claims made on behalf of imprisonment.

Reform is not progress where it is built upon the certainty that crime is limited to some sort of subspecies, which we shall soon identify. Genuine reform must grow out of the conviction that we humans are inter-connected. It is not reform to shift the right of retaliation from the victim to the state: genuine reform would aim at approaches that focus on resolving the conflicts that underlie crimes.
This means that a pacifist approach will inevitably examine aspects of justice. Peacemaking has special value for relations that are marked by serious disparities in power. Peacemakers may struggle to demonstrate that blacks and whites, or women and men are of equal value. They may work to show how the unequal distribution of resources or benefits is conducive to conflict. In each case the convictions that all persons are of equal value, and that true relations respect this fact, fuel peacemaking efforts.

In contrast, retribution (said to be a theory of justice) is a theory of inequality. A categorical difference between innocents and the guilty is assumed. Further, retribution attempts to justify the retaliatory principle that the guilty must be harmed. A pacifist sense of justice is less likely to be swayed by such rationalisations of the use of force.

Pacifism is most lucid in exposing the harmful effects of force upon persons. If a pacifist approach had nothing else to say about criminal justice, its perspectives on the use of force would require pacifism to address the practice of imprisonment. The modern prison was built, in part, on a faith in the
power of architecture to shape behaviour. Clearly human beings are affected by their environments. Imprisonment rests upon the power of a setting to inscribe habits and meanings upon prisoners.

However we understand human dignity, our concept must include limits on the power of the state to impose patterns of behaviour upon people. As every human body reacts to its setting, the individual exercises an inherent capacity to confer meaning upon that setting. To examine the active role played by one's body in perception is to raise the possibility that imprisonment rests upon a mistake.

The prisons' distorted view of human nature shows itself in those harms to human dignity which are intrinsic to imprisonment. I argue that those harms are social rather than physiological. The damage is less a matter of poor hygiene or bad diet than it is a contamination of relations - between prisoner and prisoner, between prisoner and family and friends, between prisoner and prison staff and between prisoner and society. As a general rule, wherever the prison régime makes the attempt to eradicate a human quality in prisoners - e.g., prisoner's sexuality - that quality is maintained in forms contaminated by the prison régime. But this is the case which I have yet to establish.
INTRODUCTION

METHOD
PACIFISM

Introduction

Much of Christian ethics is conducted in terms of principles, duties, right and wrong. According to this style, pacifism can be seen as a principled opposition to war. Duties of love, laws forbidding killing, are absolutes, regardless of circumstances. Alternatively, Christian ethics devoted to good consequences may see pacifism as a means in the cause of peace. This approach, strategic pacifism, would employ a range of methods to achieve its goals.

In an earlier thesis I espoused an ethic founded upon responsibility and a sensitivity to detailed information about the problem. While I did not consider the place of Christian pacifism, and while the two styles speak quite different languages, ethics of responsibility and of pacifism do resonate. For instance, pacifists stress the inter-connectedness of life, while the ethics of responsibility draw upon the sources of selfhood in social interaction. Dietrich

---

Bonhoeffer explicitly draws the two strands together: "Responsibility differs from violence and exploitation precisely in the fact that it recognizes the other as a responsible agent." (Bonhoeffer, 234)

The point is not to tie this thesis to an earlier one, nor to compare and contrast responsibility and pacifism. But they differ from other forms of Christian ethics in imitating a pattern of life rather than dwelling on transgressions of rules; and in aiming toward actions that fit the setting rather than resorting to any instrument in order to further a set goal.

In discussing pacifism, I shall: 1) describe understandings of peace and of pacifism; 2) trace attempts to justify the ethic of peace; 3) elucidate the methods of peacemaking; and 4) distinguish the pacifism of the Society of Friends from others. I do not attempt to defend pacifism against particular challenges, to distinguish it from Just War theory, nor to trace a history of pacifism through Christian tradition. This is not a thesis about pacifism; it is about prisons. Peacemaking is a way that characterises my approach.

In this sense, peacemaking is only my method. I do not claim to apply pacifist principles to prisons
by deduction; I shall not use some pacifist premise, e.g., 'turn the other cheek', to oppose some specific prison policy. Nor can peace be grafted onto prison policies as a basic purpose of imprisonment. Rather, my aim is to approach prisons critically, from a number of vantage points, with the aid of the peacemaking methods I describe below.

Absolute pacifism requires the abolition of prisons. Logical development of the law of nonresistance rules out coercion, even by the state. Yet, the total rejection of force - even to restrain a murderer in the act of killing more - is not only impracticable but (for good reasons) morally repugnant. Absolute pacifism, then, is a caricature. It may be worthwhile to approach the meaning of pacifism by raising doubts about the extreme forms it can take, as often in the stances assumed by pacifists as through the distortions of it by opponents.

There are two distinct ways to see pacifism as absolutist: 1) Opposition to all killing; a blanket condemnation that makes no distinction between more or less justifiable cases. As such, pacifism is incapable of discriminating between the terrorist's
assassination of a child and a doctor's compassionate act of euthanasia. 2) Opposition to war alone, condoning any sort of violence or conflict short of declared war. It recognises only overt violence, preferring an oppressive status quo to a conflict ridden change toward justice.

Another distortion is the puritanical pacifist. This pacifist is legalistic and self-saving. The rule of nonresistance tolerates no exceptions or gradations, setting a standard that few can meet. Those few can do so only by withdrawing from the tensions and dynamics of society. They are, by definition, narrow-minded, relying on isolated verses to justify their resolution to avoid sin at all costs.

A third form of extremist pacifism is passivism. It is a counsel of fatalism. Recognising that one cannot act without using force, passivists choose not to get involved. They fail to see that humans are fallen, and that force is necessary in a fallen world. Hence, any recommendations from the passivist will be unrealistic and impractical, based on a view of human nature devoid of greed or lust or guilt. The passive pacifist is necessarily politically aloof.

The problem with tempering these extremes is that pacifism loses some of its clarity and power. When
pacifists acknowledge that a given revolution may be more justified than a specific war of aggression, they begin to shade toward Just War theory. A pacifism that opposes situations of covert oppression may apply the brand of violence to any form of injustice, or may lend itself to ideological bias, or both. But pacifism should not be equated with passivism, reduced to legalism or stretched to absolutism.

A broader perspective is required. Pacifists do not restrict their cause to war, but address a theology of statehood, universalism, eschatology; they distinguish between force and violence, overt conflict and oppression. This is not to say that pacifism entails a single view of authority, or sin, or force. Indeed, we can distinguish one pacifist approach from another by the stance taken on a whole spectrum of issues. But a broader perspective frees us to understand the concepts and styles basic to the pacifist approach.

Following this wider vision, we turn to the task of definition. Peace is a quality of relations between persons and between groups. It is often helpful to see peace in terms of opposites. Here, concepts of force, violence, conflict, oppression and
structural violence help to define the ways of nonviolence.

Force can be distinguished from violence in that the latter implies a moral negative. Force is morally neutral, a given fact of being human. Violence is an evil (though it remains an open question whether the evil instrument of violence can be used to accomplish some good). One distinction between force and violence depends upon the legitimacy of those resorting to force. Violence is defined as the illegitimate use of force. The distinction is dubious, however, in that it is weighted toward the status quo. We can rescue it to some extent if we recognise that legitimate authorities can exercise excessive force, and thus commit violence.

A different approach links violence to the effects of force upon persons. Actions that violate persons — either directly or in damage to one's potential — are violent.² Obviously, damage to one's potential must be defined more precisely. Restraint of an aggressive

² Marion McNaughton drew attention to violence as a violation during a workshop on nonviolence, 30 May, 1987.
boy may deny his wishes, may limit his potential (to do harm), but it is not violence. Adam Curle gives as examples of violence the measures by which people are:

oppressed, exploited, cheated, manipulated, by having their minds distorted by propaganda or falsehood, by being derided, humiliated, corrupted, enslaved, terrified.

(Curle, 37)

Shifting the focus from legitimacy to personhood recognises the pacifist’s concern for the individual, and allows for the possibility of violence that is not overt, for ‘structural violence’. 

Structural violence locates the cause of observed harms in injustices. *Structure* refers to hierarchies, policies, laws, practices that maintain social relations. *Violence* alerts us to the harms caused by inequalities in these structures. Evidence of structural violence would include statistical correlations between illiteracy rates in women and infant mortality, or between race and the likelihood of custodial sentences.

---

The World Council of Churches recognises as structural violence practices whereby:

resources and powers are unevenly distributed, concentrated in the hands of a few who do not use them to achieve the possible self-realization of all members, but use parts of them for self-satisfaction for the elite or for purposes of domination, oppression, and control of other societies or of the under-privileged in that same society.

(Cited in Davies, 130-131)

My study of the harms of imprisonment suggests that certain aspects of prisons (discipline, for example) can be instances of structural violence against prisoners.

A simplistic view of peace – as the orderly maintenance of the status quo – sets all conflict in opposition to peace. Structural violence suggests a more dynamic understanding of conflict. To recognise structural violence frees us to see that apparent peace can disguise violence inflicted through injustices, or to see that violence is sometimes social, not physical.

Conflict may be necessary to dislodge the established inequality, but it can be conducted in nonviolence, as in civil disobedience. Yet, even violent disruption may be preferred to an entrenched...
tyranny, if it is the sole means of attaining relations that are less exploitative, less repressive, ultimately, less violent.

Obviously the idea of justifiable revolution is sensitive for pacifists and Just War theorists alike. Two points may clarify the matter (though I cannot pretend that they resolve it). First, the pacifist argues that injustice and structural violence harm those in power, those who inflict it. The liberation of the oppressed is also a liberation of the oppressors. The goal for the pacifist is not for the victim and the oppressor to switch roles, but a transvaluation that achieves right relations, "in which the human rights of all were recognized, including the right to be spared both the humiliation of oppression and the degradation of oppressing." (Curle, 48)

Second, the dilemma assumes that the pacifist will be involved in the conflict, but it does not predetermine the character of that involvement. Again, not all conflicts will be violent. But, more important, the person's involvement in conflict need not be violent. To renounce violence does not commit the pacifist to abandon efforts to change the world.
Peace is not necessarily free of conflict. The struggle for justice may entail conflict. But peaceful relations are marked by respect for individuals, healing and mutual sacrifice, open communication and empowerment to develop one's potential. Where peace is defined as the absence of war, it is often seen as static, in contrast to radical changes brought about by war. But defining peace as harmonious relations requires a dynamic concept. Harmony recognises the richness and goodness of diversity.

Peace in the Judeo-Christian tradition owes much to the concept of Shalom. The popular understanding of the term is the absence of war. But, as John Ferguson states, Shalom is a much more comprehensive vision. "It comes from a root meaning 'wholeness'. It is well-being or harmony for all people in community. It is the proper condition of human beings in relationship with one another." (In Barrett, 19)

Two aspects of this harmony are respect for individuals, and community, based on the inter-

---

4 This paragraph paraphrases the views put forward by John Hamilton at the workshop cited above, n. 2.
connectedness of all human beings. Our solidarity itself confirms the transcendental significance of each person, particularly against violations of personhood. For many pacifists, this inviolability is centred in the relations between the individual and the state. Pacifism upholds the dignity of individuals as it exposes the idols of the state.

I remarked above that peacemaking shifts power to victims of structural violence. I also suggested that gross disparities of power harm both the powerful and the powerless. In the context of individual dignity, pacifism makes clear the need to secure for persons the power to make changes in her life, or to develop his potential.

Without this ability to effect some change or achieve some end, any individual ceases to be human. If the ability is impaired or drastically restricted, then to that extent the person concerned is de-humanized.

(Davies, 124)

Community is the second fundamental of harmony. One of the most unfair distortions of pacifism suggests that it advocates noninvolvement. To the contrary, it is the pacifist who stresses the essential inter-connectedness of all human life. The state, on the other hand, may justify its resort to violence by characterising enemies as alien, inhuman.
Roger Ruston has stated that pacifism during wartime declares:

the common humanity of all who are caught up in it. It refuses to give in to the lie that those on the other side are hateful, children of the devil, a lesser breed, fit only to be wiped out by a people of superior morals.

(Ruston, 6)

John Howard Yoder also denounces the deception at the heart of violent conflict. Moral values are distorted in the interest of the war effort. "For those who are on the wrong side, even their good deeds are deceptive facade; for those who are on our side, even the most evil deeds are excusable." (Yoder, OR, 172) These aspects of pacifism suggest that peace-making may require social order and subordination to law, but pacifism will not condone criminal justice built upon the stigmatisation of offenders.

Undoubtedly, a key aspect of the deceit condemned by Ruston and Yoder is that of projection. Indeed, projection has two important functions. First, it denies human solidarity by painting the other side as fundamentally alien. Second, it lifts the burden of our own short-comings, allowing us to rationalise our evils as necessary to defend us from the enemy.
In short, the perpetrator of violence—not the pacifist—most directly denies our involvement with others. The violent do not engage with their counterparts so much as they rely on force to finish the dispute. In contrast, the pacifist is sensitive to the failings of both parties. Indeed, Paul Oestreicher writes that our sinfulness in relation to God cements us as fallen, yet redeemed.

Peace, then, is a dynamic harmony, marked by open relations that honour both the diversity of persons and their essential connectedness. The balance between individual dignity and communal one-ness implies that pacifism need not be ideologically slanted. While pacifism does not pretend to provide a comprehensive political philosophy, its twin foci of individual integrity and social solidarity incline pacifism toward a political middle ground.

Beyond these general remarks the relationship of particular pacifists to the state may be idiosyncratic. The theoretical aim of the Christian pacifist is shared by all believers: to strike the right balance between obedience to God and to the state; to be subject to those in authority who, in turn, are subject to God's will. In theory, the pacifist resists the state only insofar as the state diverges from God's will. It is not the theory, but
the practice of reaching such a balance that poses the
difficulty.

The rejection of power is not a solution. Christians on the whole believe that power ultimately comes from God. Nor is there much to be gained from condemning authority for failing to attain perfect justice. Such an expectation borders on an idolatrous sense of state-craft. Given that the state must use force in order to approximate justice, the moral challenge is to judge whether specific instances of state force are justified.

For many pacifists, the convenient point at which to draw the line is war. Paul Oestreicher seeks to balance the necessity of state-force in maintaining social order against the pacifist rejection of aggressive state force exemplified by war. He writes:

Coercive action need not be incompatible with genuine concern for the person against whom it is taken. . . . War is inherently different, be it civil or international, guerilla or legitimate, local or global. It demands the destruction of the enemy.

(In Barrett, 57)

Yet, for others, the issues raised by peacemaking in wartime parallel those in other dilemmas. Questions concerning the legitimacy of both the extent and the purposes of state-force apply to domestic
issues as well as international conflict. Truth is distorted when others are characterised as categorically alien, whether they are foreign soldiers or domestic offenders. Thus, many pacifists go beyond opposition to war, to reject as violent any instance of excessive state power.

The present work is one of Christian pacifism in this latter sense, exposing the abuses of state power in the damage done to persons in prison. The violence I identify is not that inflicted by an illegitimate authority, but the violence of excessive use of legitimate power. Pacifism is ideally suited to the task because it upholds the intrinsic value of persons as it exposes the idolatry of state power.

A scathing and thorough critic of the pretensions of state-force is John Howard Yoder. He labels his biblically informed political stance 'revolutionary subordination'. He emphatically rejects the claim that Jesus himself was non-political, or that his ethic was merely personal.

Jesus' revolutionary subordination differs from obedience to the state in two ways. First, both the dominant and subject parties are charged with the duty of subordination. Leadership is a mode of servanthood. The politics of subordination establish recip-
pacifism

Local responsibilities. Second, subordination affirms the moral powers of the socially inferior. The revolutionary subordinate may be called to disobey the state. Yoder illustrates this point with a conscientious objector who, while submitting to punishment, refuses to fight. 5

Roger Ruston believes that eschatology is essential to Christian pacifism. The perfect harmony of the kingdom is eschatological rather than utopian. It is not a didactic fantasy of a hypothetical world of perfectly rational citizens, but an expectation of the life to which God calls us, and whose way is demonstrated in the life of Christ.

In similar manner, Yoder writes that the eschaton is the key to history, and not victories in the field of battle, nor the interpretative methods of a given culture. Furthermore, Yoder contends that it is by recognising the eschatological significance of peace that we can see in it the vocation of all Christians, and not just those few who are called to be pacifists.

5 Yoder acknowledges his debt to C.E.B. Cranfield for the distinction between obedience and subordination. He also stresses, following Cranfield, that for Paul fear should be directed only to God.
'Peace' describes the pacifist's hope, the goal in the light of which he acts, the character of his action, the ultimate divine certainty which lets his position make sense.

(Yoder, OR, 56)

The future orientation of pacifism should not imply that it is unrealistic or other-worldly. "Peace," writes Christopher Rowland, "is above all an eschatological event, though not necessarily for that reason unattainable under God in this world." (In Barrett, 8)
Christian pacifism begins with the life, ministry and work of Christ. It rejects the view that violence is more effective, more powerful than peacemaking. Further, Christian pacifism opposes the idolatry of the state in its claims to absolute allegiance. Each of these amounts to a defence of pacifism. My concern here is to develop the sense of peace outlined briefly above, rather than to build a comprehensive argument for nonviolence.

The Bible is a shifting foundation for a commitment to peace. Images of God as Lord of Hosts, mighty in battle, share space with hopes for social and world peace. At the heart of monotheism, however, is the conviction that Yahweh is not one of many petty national gods, but God alone. Thus, Hebrew writings reveal a well-developed tradition of calling the nation to peace. Despite these elements, however, one cannot discount the militancy of much of the history of Israel, nor can one translate that militancy into spiritual victories.

Turning to the New Testament, however, the burden of argument falls upon those who would defend or
justify violence. The Lambeth Conference of 1978 summarised the ethical force of Jesus' example:

He made evident that self-giving love, obedience to the way of the Cross, is the way to reconciliation in all relationships and conflicts. Therefore the use of violence is ultimately contradictory to the gospel.

(Cited in Barrett, 36)

The writings of pacifists show the normative power of the cross. John Howard Yoder comments that Jesus' choice of the cross instead of the sword reveals the nature of God's relations with humanity. "If this is what God reveals Himself to be doing, this is by the same token a revealed moral imperative for those who would belong to and obey Him." (Yoder, OR, 136-137)

Similarly, Valerie Flessati and Clare Prangley write of identifying with Jesus in their experience of exclusion, powerlessness and guilt. They observe, "Jesus himself identified with outcasts and chose to suffer the fate of the guilty and powerless." (In Barrett, 76)

Finally, John Lampen writes that Jesus would not be caught up in a cycle of hate and violence.

He would not forge the next link in the chain of hurt and revenge. He allowed all those others to crush him with their pain and hate, unresisting, forgiving, trusting that he could take all their evil into himself and so bring it to an end.

(Lampen, 99)
Theologians disagree, however, about the relevance of Jesus' character to current social-ethical dilemmas. J.G. Davies writes, "Jesus did not put himself at the head of a nationalistic freedom movement, employing forcible means to secure liberty, but this has nothing to do with the question of violence or nonviolence." (Davies, 152)

John Howard Yoder, in *The Politics of Jesus*, explicitly counters the view that Christ's example has little bearing on issues of political force. Not only did Jesus' execution demonstrate the threat his politics posed to the status quo, but Jesus directly faces the question of violence — first, in the temptation narrative, then in Gethsemane — and rejects it.

Jesus' nonviolence cannot be equated with apathy or irrelevance. It is social withdrawal only if we assume that violence is the way to change society. This Yoder denies.

The renunciation of coercive force is the prerequisite of a genuinely creative social responsibility and to the exercise of those kinds of social power which are less self-defeating.

(Yoder, OR, 178)

Yoder argues that the basis of historical study is distorted, presuming as it does that force directs social change. He suggests that a peace-based
standard would judge a society not by military victories but by its treatment of the poor, its ecological common sense, etc. For him, genuine power is not a question of armed strength, but determined in the mutual responsibility that nurtures the consent of the ruled.

Violence is a form of pride. A person resorting to violence cannot afford the humility of uncertainty or ambiguity. Bonhoeffer states that violence doesn't recognise the other party's capacity for responsibility. Yoder writes that one side considers itself wholly righteous; the other is assumed to bear all the blame. Violence is typified by an encounter on a dusty street in Dodge City: One saintly hero, and one diabolical villain - the roles to be assigned according to who walks away.

As Yoder observed that the good deeds of enemies are dismissed as deceit, so, in punishing our enemies, do we delude ourselves into self-righteousness. International war and interpersonal violence share this crusading pride. Pacifism is more reviled when pacifists take the prophetic role of exposing self-righteousness. Two aspects of this role are questioning the morality of the cause, and puncturing the state's claim to absolute obedience and allegiance.
It may be that the power of pacifism to specify the harms of justified coercion is its most important function. The force that brings or maintains order also harms people. J.G. Davies sees social order as a trade-off.

Force, which is accepted as legitimate, serves to minimize force that is illegitimate. Of course, we have to recognize the tragic nature of this coercion because it involves treating persons as things.

(Davies, 147)

Davies' caution helps to expose the blithe acceptance of state-force as the solution to social stresses; he reminds us that coercive measures carry costs. But the perceived trade-off poses a rather tame challenge to the state. John Howard Yoder takes the critique of force further, to question the legitimacy of measures that harm people without achieving justice or social tranquillity.

There has been hierarchy and authority and power since human society existed. Its exercise has involved domination, disrespect for human dignity, and real or potential violence ever since sin has existed.

(Yoder, PJ, 203)

The resort to force actually causes problems; moreover, its fruits are limited. Violence — the excessive use of force or use of excessive force —
provides the means to destroy, to kill, to oppress, to entice others into violence. But it does not achieve for society the goals of harmony or stability.

Violence can keep out the enemy but cannot create a wholesome society. It can aggress but not defend; it can revolt but not build. It can eliminate a specific abuse but cannot bring social health.

(Yoder, OR, 173)

Force cannot create or sustain the shared sense of meaning at the heart of social peace. "Rationality is difficult to maintain in what is ultimately an irrational system bound together by force and fear rather than by positive ties of cooperation and community." (Bello, 40)

Of course, those who seek to justify violence do not do so by arguing for the moral superiority of those who 'retaliate first', or who mistreat the vanquished. Violence is proposed as a last resort. It is relied upon in proportion to the need to overcome the evil foe.

---

6 The phrase was suggested by I.R. Dinsdale, of Brigflatts Farm, in a discussion of rugby strategy.
Pacifists have been scathing in criticising these points. Hypothetically, Just War theory may seem to give a minimal basis for international agreements against aggression, or to provide a gauge of justice for a particular instance of fighting. In practice, the framework becomes a method available for nations to justify violence to which they have already committed themselves. Every war is an exceptional case for the state that desires to pursue it. The violence inflicted on the foe rends "the fabric of human solidarity, poisoning the future and introducing a rupture which is the precise opposite of the 'peace' which it is the duty of the state under the lordship of Christ to insure." (Yoder, OR, 72)

In wartime, flaws of state-force are evident: this may suggest why many pacifists find it convenient to draw the line against war. But the sins of war are not limited to killing, nor to the harms inflicted on enemies. The assumption of moral superiority, the conviction that the future of the good depends upon the victor, the belief that God's love is restricted to one race or one people: these aspects of bad faith are present wherever a resort to force is espoused. It is not only the use of force that links imprisonment and warfare.

- 40 -
I have already considered idolatry in terms of pride — the belief that one is righteous, or the belief that force transforms the world. Pride in force marks a disparity between the state and the character of the God the people purport to serve; viz., the God of Shalom — of wholeness and community — not the Lord of Hosts. Here again, a link is made between true transforming power, revealed in Christ’s nonresistant love, and the Christian’s potential to change the world through that same ethic.

Many pacifists who reject warfare as ineffective nonetheless stop short of treating pacifism merely as a tool. ‘Strategic pacifism’ may involve selling nonviolence on the basis of its efficiency; as a sort of ‘moral jiu-jitsu’. For those who take peace as the ultimate goal, pacifism is not to be discarded when it appears to fail. Nor does the pacifist jettison the dedication to global community when circumstances seem to demand unalloyed patriotism. A faithful disciple, following the example of Christ, allying with the outcast, should be prepared for suffering, not

---

7 Richard B. Gregg applies the term to political leverage generated by nonviolent action. Richard B. Gregg: The Power of Nonviolence.
success. This stance, rejecting the criterion of success, helps to show how pacifism can be attacked as absolutist, legalistic, or apathetic.

The opposite problem is accommodation. Using pacifism as a method can retreat so far from a resolute opposition to violence that it becomes indistinguishable from Just War theory. 'Strategic pacifism' deploys nonresistance or force as dictated by circumstances; the have's preach peace to the have-not's out of fear; ethicists distinguish between personal and social ethics, in order to restrict the claims of peace to the personal: these are compromises of pacifism that vitiate its moral integrity.

No plea of necessity or of policy, however urgent or peculiar, can avail to release either individuals or nations from the paramount allegiance which they owe unto Him who hath said, 'Love your enemies'. To carry out such a profession consistently is indeed a life attainment, but it should be the aim of every Christian.

(London Yearly Meeting, Epistle, 1854)

One way to counter the charge of absolutism, to bring together the goal of peace and the ways of peace, is to limit pacifism to the opposition to war. In affirming the role of state-force in keeping order, pacifism would be denying only warfare as excessive.
But to draw the line at open warfare is too crude. It fails to distinguish between more and less justifiable acts of war; it fails to recognise the injustices (structural violence) that nurture war; it fails to oppose other forms of violence, not directly linked to war (e.g., domestic violence, humiliating practices in schools, exploitative labour relations). An overview of peacemaking activities, to which I now turn, may clarify the relevance of pacifism to more mundane instances in which people are violated by the use of force.
Methods

There is no way to peace. Peace is the way.

— A.J. Muste

Justifications of pacifism can sometimes imply that it is simple to balance the means of peacemaking against the ends of peaceful relations. Pacifist methods are attacked as unrealistic by those who hold that force — even violence — is necessary to maintain social cohesion, given human nature. But such logical dilemmas illuminate the difficulties inherent in an abstract approach to pacifism. It is equally difficult to find a single standard methodology within pacifism. While there are shared methods, it is impossible to suppose that peace is produced through a standard, twenty-step process.

A pacifist approach begins from involvement in a conflict. Presence as a first step in a dispute is noteworthy because it helps to illuminate the character of pacifism. 1) The peacemaker is not aloof or apathetic; 2) pacifism is pragmatic, as opposed to standing apart to reach judgments in cool, abstract objectivity; 3) pacifist presence in the midst of the dispute witnesses to the possibility of transforming
the situation without taking sides or participating in combat. Those who enter a conflict to impose order by force may halt fighting, but at the cost of continued, long-term friction or covert violence. The pacifist presence is not a 'force to be reckoned with', but a non-aligned human witness.

Perhaps the clearest contemporary example of the power of mere presence is the group of women at Greenham Common. Flessati and Prangley list three benefits of observing. 1) It makes visible that which was hidden. Visibility can bring moral clarity when: a) violence is veiled or presumes itself to be legitimate; or b) disputants are actually unclear about the other parties' true interests and needs. 2) Presence constitutes a protest against the violence. 3) It awakens the conscience of each militant.

Pacifist presence illuminates the common humanity that unites the foes. In wartime, the pacifist demonstrates a bond with one combatant and with the other, thereby spotlighting the obscenity of the violence. In some sense, being uninformed (innocent) in this

---

* See "Women's Perspective on War and Peace," in Barrett, 75ff.
role is beneficial; the observer's reactions to abuses or brutality show those caught up in the conflict the true nature of their actions. Thus the mere presence of the outsider makes an appeal to conscience.

Ignorance is not, however, an attribute for long. Peacemakers have a duty to become informed about the facts of the conflict. Testimony from both sides — official and informal — can provide clues to the causes of the conflict, the interests in the dispute, and any shared ground. Presence includes the task of listening. This skill is stressed by mediators, negotiators and counsellors.

The peacemaker must sift through the information for distortions, exaggerations, falsehoods. While it is understandable that each side might exaggerate its claims, it is rarely appreciated that each side may listen selectively. The skilled mediator learns to listen for evidence that one side has misinterpreted the other. Adam Curle describes a peace process that seemed intractable. He discovered selective listening on both sides:

Words were filtered through a compound of anger, fear, resentment and preconception that radically changed their meaning. It was to this new meaning that the people we were talking with responded, often angrily and usually irrelevantly.

(Curle, 59)
In analysing dialogue to pinpoint deception and mis-communication, the peacemaker has evidently moved beyond mere presence to active involvement. This role might be termed the analysis of the conflict. Adam Curle's list of degradation, humiliation, exploitation, distortion, etc. identifies some of the more obvious sources of conflict.

Gandhi's satyagraha was aimed at truth. The untruths of a situation distort the picture of the differences, and make resolution more difficult. I have mentioned the distorting influence of projection, in assigning the full burden of guilt to the opponent. Combatants may believe that such distortions as stereotyping and scape-goating are needed to buttress morale. But, to an outsider, the falsehoods create obstacles for the central task of resolution. Thus it is the peacemaker's task not just to seek out the truth but to advertise it.

Adam Curle finds the task of speaking the truth essential, to empower the disadvantaged, to motivate them out of hopelessness and ignorance toward an active struggle for justice. People who do not know that they are being violated, or who feel that nothing can be done, can be drawn out of their fatalism. Their own powers can be activated.
Power is an area of conflict that is particularly susceptible to ambiguity and misunderstanding. While it would be valuable to investigate power at some length, a few hints must suffice in this context. Flessati and Prangley write of their discovery of power in the seeming powerlessness of the Greenham Common women. In part, their power derived from spiritual resources; in part, from their solidarity—decisions taken in common, deliberate sharing of affection and warmth; in part, from their strength as women. A final factor is the sacrifice that claimed their commitment.

Power at Greenham, as in the non-violent Cross, resides in the willingness of some to make substantial sacrifices in order to witness to the truth and to save the rest of creation.

(In Barrett, 80)

Roles such as empowerment, witnessing to the truth, mere human presence together: each prepares the ground for tasks more commonly associated with pacifism. These include mediation, advocacy and working to change the situation.

Adam Curle means by mediation: The effort to improve communication and mutual understanding; the attempt to change the protagonists' distorted perceptions of each other and to create an atmosphere favourable for negotiation." (Curle, "Terminology")
Two essential aspects of his definition are communication between foes, and seeking truth behind distorted perceptions. The mediator who cannot bring about direct contact risks being used as a go-between. Certainly there is value in serving as a bridge between two parties who cannot meet without violence. But each side is likely to view the go-between with a mixture of suspicion, opportunism and disrespect.

Suspicion falls upon anyone who talks to the enemy; noncombatants rarely win full respect; the go-between is seen as a potential tool to manipulate or deceive the opponent. These go-between dilemmas reveal the crucial function of presence as a preliminary to peacemaking. It can build trust through familiarity with both sides and respect through the demonstrated endurance of the noncombatant. It can reduce the temptations to opportunism as combatants recognise the peacemaker's integrity and as she grows in a sophisticated grasp of the conflict.

Linked to mediation is advocacy. It is a sensitive area for peacemakers. Adam Curle defines it as "representation of the interests of any particular disadvantaged group or individuals." (Curle, "Terminology") He distinguishes it from settlements enforced upon disputants by a greater power. Advocacy
is risky because representing the disadvantaged appears to contradict the need for neutrality in mediation. Indeed, in *True Justice*, Adam Curle stresses the need for peacemakers to avoid taking sides.

The dilemma can be partially cleared away by a distinction between interests and positions. Roger Fisher and William Ury show the differences in their handbook for negotiators, *Getting to Yes*. "Your position is something you have decided upon. Your interests are what caused you to so decide." (Fisher & Ury, 42) They point out that taking up a position may impede compromise. A settlement based upon a calculation of power between the two positions nevertheless may preclude certain vital interests. The positions are 'won', but the continuing needs disturb the peace.

For Fisher and Ury interests, not positions, define the conflict. Once interests can be specified, balanced and settled, disputes (and often positions, too) become easier to resolve. It requires more work to attend to interests: positions are as explicit as flags. Interests need to be discovered and analysed. But a grasp of the interests discloses possible compromises that could balance the needs of both sides.
From the perspective of interests, then, one can see that peacemakers can advocate the case of the disadvantaged. It is the interests of the powerless and not their position, that the peacemaker may be called to defend. The position of the powerless might be one of unbending antipathy to those in authority. To represent the powerless by abhorring the authorities is to take on their position. But to voice the needs of the disadvantaged improves communications, breaks down the distortions of positions and exaggerated demands, and allows the peacemaker to distinguish between valid and unreasonable interests.

I do not believe, however, that a focus on interests resolves the dilemma. The role of advocate is simply not a neutral position. Advocates of the powerless may indeed perform impartial functions. But, to advocate effectively, she or he must articulate the needs of the disadvantaged and must expose the injustices that are maintained by policies administered by the authorities. She must distinguish between the justified interests of the disadvantaged and the desires of the powerful to maintain the injustice.

Advocacy strains the traditional impartiality of the peacemaker. But the role invites comparison with
the active work of liberation theology. Here again, the key task is to make known the whole truth, even where that is to oppose the official version of events. Gustavo Gutierrez quotes from Bonhoeffer's *Letters and Papers from Prison*:

We have learned to see the great events of the history of the world from beneath - from the viewpoint of the useless, the suspect, the abused, the powerless, the oppressed, the despised. In a word, from the viewpoint of the suffering.

(Cited in Gutierrez, 203)

The peacemaker cannot indulge in projecting all blame upon those in authority, but she contributes to lasting peace when she reveals the harms inflicted by the abuse of power. Adam Curle describes a way for peacemakers to maintain impartiality while defending the interests of the powerless. Peacemakers must make it known that:

they cannot take sides with one party or the other; that they are on the side of all who are in any way suffering, that they have unconditional sympathy with all who are caught in the trap of war, whether as civilians, soldiers or political leaders; that their only enemy is the belief that human problems can be solved through violence.

(Curle, 93)

These suggestions expand the responsibilities of the peacemaker from mediation alone. Bluntly, the peacemaking advocate represents the disadvantaged, but does so in service to an independent interest: If the oppressor's interest is maintaining order or a balance...
of power; if the oppressed have an interest in liberation; the peacemaker's interest is peace. Expanding peace to ultimate status, to a goal so all-encompassing that it includes method as well, suggests that the peacemaker can hold together impartiality and advocacy.

In some situations, it may be impossible to maintain both impartiality and an effective advocacy on behalf of the powerless. In other dilemmas, the balance might be maintained only through the peacemaker's act of sacrifice. John Lampen stresses the need for sacrifice in working toward reconciliation. He argues that the pain of conflict must be faced, and worked upon, and surmounted. It is easiest, however, to pass it on, thus maintaining a cycle of harm. The peacemaker must be prepared to absorb the hurt, to take it in without unloading it onto others, in order to bring the domino fall to a halt.

Such sacrifice in cases of profound violence or conflict can seem a perversity, a particularly offensive form of masochism. But John Lampen states that the weight of evil sometimes requires such radical sacrifice; the paradigm of self-giving reconciliation is the cross, not the crown, and not the scales of justice.
When we are confronted with hurt to ourselves or others, and the rational ways of mending it are not effective, we are forced to choose between complicity in the universal wrong and an act of sacrifice.

(Lampen, 95-97)

Sacrifice may be demanded of the peacemaker even if one party or both have a serious commitment to peace. But in these cases, the role of the peacemaker is to encourage that common interest in peace. Ideally, the initiatives that lead to an agreement should come from each of the parties involved. In such cooperation, the mediator's role is in the background, as a witness to the resolution. To the extent that the process resembles this ideal, the parties involved will have a stake in the success of the agreement.

Given the improvement of communications, the enlightenment of both parties, a willingness to cooperate in settlements that balance interests, peace becomes a realistic hope. Adam Curle asserts that reconciliation goes beyond a mutually agreed settlement, beyond mutual toleration, beyond workable compromises. Reconciliation creates relations that allow for joint decision-making. It views the establishment of communication and cooperation as basic to the relationship, quite apart from their short-term instrumental values. Adam Curle concedes
that reconciliation is difficult; the more limited goals that bring to an end the overt conflict are more workable. It may prove necessary to build gradually on the basis of approximate justice.\footnote{Approximate justice' is a term used by the Mennonite Central Committee on Justice, U.S.A.}

I am conscious of many shortcomings in this overview of pacifist methods. I have not discussed the role of law in arbitrating between competing claims. I have mentioned very little of the practice of religious peacemaking: the existence of a worshipping community as a redeeming servant, prayer, the uniting of both parties in subservience to God. I have taken as a model a conflict between two groups or individuals and I have neglected the possibility of conflicts between many groups; this last situation would include the role of alliances and the significance of collective security.
Many of these wider situations, however, depend ultimately on the peacemaking dynamics outlined above. The redeeming community of a church must nonetheless sift through the interests of one party and another. Furthermore, the aim is to identify the significance of pacifist practice for the manner in which prisons are operated. Hence, the spheres of law and alliances between groups will be discussed in subsequent chapters. The religious dimensions of peacemaking entail, for me, a distinction between pacifism as a coherent philosophy and as a part of Quaker faith, to which I must now turn.
Quaker Pacifism

It is difficult, if not impossible, to draw a uniquely Quaker pacifism from the foregoing picture. Yet, there is a distinctive Quaker thread in the pacifist tradition. This section draws attention to the ethical significance of pacifism in the Society of Friends, to set it apart from Anglican, Roman Catholic, Calvinist or non-Christian pacifism. Of course, not all Friends are pacifist; clearly there is a variety of views within the Society.

Friends traditionally refer to two documents to describe their opposition to war. The first is the Declaration to Charles II, issued in 1661:

We utterly deny all outward wars and strife and fightings with outward weapons, for any end or under any pretence whatsoever. And this is our testimony to the whole world. The spirit of Christ, by which we are guided, is not changeable, so as once to command us from a thing as evil and again to move unto it; and we do certainly know, and so testify to the world, that the spirit of Christ, which leads us into all Truth, will never move us to fight and war against any man with outward weapons, neither for the kingdom of Christ, nor for the kingdoms of this world.

(Christian Faith & Practice, 614)

The second document is an excerpt from a letter by George Fox. The Commissioners of the Commonwealth had
approached him with the offer of a captaincy in the army. The reasoning behind his refusal explains much of the early Friends' objection to armed force.

I told them I lived in the virtue of that life and power that took away the occasion of all wars and I knew from whence all wars did rise, from the lust, according to James' doctrine . . . I told them I was come into the covenant of peace which was before wars and strifes were.

(Christian Faith & Practice, 613)

A full discussion of the historical context of these statements would supply evidence of a developing Quaker theology; I can do no more than trace hints. Fox' phrase 'peace which was before wars' alludes to the Quaker belief that the New Covenant was present, that those who lived in Christ were in the state of Adam before he fell. The stress on 'outward' weapons alerts us to the tendency of early Quakers to see world events as pale reflections of the truly meaningful, spiritual conflict between Good and Evil. Fox ties war-making to lusts - inordinate desires, a preference for earthly pleasures over the virtues of the kingdom of heaven. Finally, both references reflect the priority given to a living demonstration of identity with the spirit of Christ over doctrinal positions, particular goals or a puritanical morality.

The basic problem for the ethicist is not so much the exegesis or the orthodoxy of this pacifism:
rather, it is the function of the Peace Testimony in Quaker lives. It may be a relic, and obsolete. Were this true, it would mean that the Testimony once met a particular purpose and is no longer relevant, except perhaps for historical value. It may be the second Quaker doctrine, alongside a belief that there is 'that of God in everyone'. It may be a fundamental rule of Quaker morality, binding on all Friends ever since pacifism was established at the centre of the Society in its first generation.

Relic, rule or doctrine, the Testimony does show how Quaker pacifism might be distinguished from other forms. Christopher Hill has argued that the move to pacifism was to some extent a betrayal of the early Quaker fire. He states that there were Friends in the army, or bearing arms, even as late as 1685 (as, of course, other Friends have fought since). Making a commitment to peace was, from Hill's lofty perspective, part of the process of institutionalisation. He remarks that the Peace Testimony itself followed the unsuccessful revolt of the Fifth Monarchists. "It was intended especially to protect Quakers against charges of sedition." (Hill, 241)

Hill is quite right to set early Quaker attitudes within the social upheaval of the civil war. But the mature Quakerism of later years is consistent with the
youthful fervour of its beginnings. In both cases the phrase 'revolutionary subordination' is apt. The leaders in Parliament, the King himself, may have been reassured by the denial of armed rebellion, but they could not have found the principled stance against all armed force comforting. The statement unambiguously rejects the possibility of fighting to defend the crown. The Society of Friends was not a threat to the state, except that their obedience was to Christ, not Charles. Friends were certainly not as anarchic as the Ranters of the period, but the refusal to bear arms was a declaration of principle: it was not mere pragmatic diplomacy.

Throughout the history of the Society, a distinction can be traced between those who oppose all conflict and those who object to the injustice beneath apparent calm. I believe that this distinction rests in fact upon differing functions of the Testimony. Where the Testimony is a rule, overt conflict is to be prevented or avoided at all costs, even where Stoic passivism in the face of injustice creates suffering, and structural violence leads others into fighting.

The distinction does mean that some Friends have been selective in the application of the Peace Testimony to the uses of force.
Friends made a clear distinction between the waging of war by the state against an external enemy and the state's function of law enforcement against the domestic lawbreaker.

(Peter Brock, in Bello, 14)

In contrast, where peace and justice are brought into dynamic tension, where Friends oppose the abusive demands of 'the lust', seeing the status quo as a source of conflict, Quaker pacifism stirs up unrest. It draws Friends into civil disobedience to expose the idolatry and injustice of the state and to work, ultimately, for deeper justice to establish lasting peace.

In either case, whether it functions as a rule or as an image of a way of life, Quaker pacifism is practical, down-to-earth and built upon a broad base. For instance, Quaker opposition to war is not simply based on attitudes to death. Howard Brinton cites another source of the stance against war. "The evil results of war — hatred, brutality, callousness to suffering and deceit — are spiritual and moral rather than material." (Brinton, 164) Likewise, a fundamental commitment to truth urges Friends to react against the distortions inherent in all disputes.

Quaker pacifism, far from being world-denying, presupposes the ties between love for one's neighbour and peace through political and economic relations.
In words that echo the pattern of life approach moreso than the rule of peace, Philadelphia Yearly Meeting wrote:

We must all seriously consider the implications of our employment, our investments, our payments of taxes, and our manner of living as they relate to violence. . . . we must attempt to change those elements which violate that of God in everyone.

(Faith & Practice, Philadelphia, 35)

The balance of pragmatism and Christian virtue is one consistent thread in Quakerism. In the 18th century, John Woolman asked, "May we look upon our treasures, the furniture of our houses, and our garments, and see whether the seeds of war have nourishment in these our possessions." (Cited in Bello, 22)

Many forms of pacifism evince less direct involvement. The Society of Friends traditionally has been reluctant to form distinct communities. It is true that Friends hope that their lives will witness to the Light of Christ, and that others will be encouraged to follow God's light in their own lives. But the idea of a separate community from the wider society is not typical of Friends. Other forms of pacifism hope to practice the ways of peace within their segregated communities, and thus to witness collectively to Christ. Mennonite pacifism, as portrayed by John Howard Yoder, is also a pattern of life, but the point has an other-worldly tint.
It is loving in such a way that, when the kingdom approaches, we find ourselves among those who are 'at home', who 'fit' there, who are not out of place.

(Yoder, OR, 40)

Biblically orthodox and morally admirable as these sentiments are, the separation they imply is foreign to Friends. Underlying the faith in *that of God in everyone* is the conviction that the Light of Christ dwells in all people.

Yoder is perfectly consistent in developing a dogmatic basis for Christian pacifism. He terms the view that all humanity is one a theological proclamation. He argues that Christians love others because Christ did, and that that is a sufficient reason. Yet, his pacifism draws him to a more distanced critique of society than many Quakers would feel able to share. In fact, Yoder himself declares the fideism at the heart of his thesis.

To insist that we must be committed to Jesus plus social responsibility, or Jesus plus the defense of Western liberty, or Jesus plus 'the revolution', is to create a new sectarianism which by its commitment to a second value standard renders it unable to converse further.

(Yoder, OR, 146)

The pacifism of Friends is founded upon a conviction that does not endorse the dogmatism of
 pacifism

Yoder's stand. The Friends' recognition of the light in everyone requires dialogue with those who hold radically differing standards. There are two important aspects of this faith: 1) it is pragmatically optimistic; 2) it requires an openness to the insights of others.

Quaker involvement in social problems is a testimony that God's love is poured out for the whole world, and not for an elected minority.

They did not share the pessimistic Weltenschauung of those reared in the Anabaptist tradition, the conviction that the godly would always constitute a small remnant on this earth.

(Brock, cited in Bello, 14)

The hope is manifested in the presumption that there is good in everyone, good which can be encouraged and empowered. "The acknowledgement of the good in others promotes the expression of the good." (Curle, 56) I do not mean that Friends have a single view about original sin, or that all Quakers draw the same distinction between 'that of God in everyone' and 'humanity is divine'. But the optimism does mean that Friends expect to find the good in others.

Second, where my conviction contradicts yours, I am bound by my faith in the ubiquity of the Light to allow that your view may be the true one.
In appealing to this Light in [another], we also appeal to the same Light in ourselves and as a result we may find that [s/he] is right while we are wrong. We cannot honestly set out to change [others] . . . without being willing to be changed ourselves.

(Brinton, 162)

Quaker hope and trust in others does not result in a rigid legalism under pacifist principles. Howard Brinton writes:

Pacifism is not a doctrine which can be practiced with absolute consistency by one who is an integral part of society. The Quakers have not generally retreated from society in order to be consistent pacifists. They believe that God does not require more than is possible for human beings living a normal life. Inward peace and the sense of freedom from guilt is not the result of a complete success in an undertaking. It comes rather from living up to what appears to be the divine requirement, however small or large that requirement is.

(Brinton, 165)

A commitment to pessimism, e.g., the assumption that humanity is depraved, is no more realistic than optimism. It can be impractical to expect the worst from others. In struggling to meet the dilemmas of peace and justice constructively, Friends take the view that it is better to be practical and hopeful than practical and cynical. Friends are convinced that the power of God working through people sows peace in the midst of occasions of war. In maintaining this conviction, Friends can be hopeful in the
face of suffering and patient where efforts have apparently failed.

Quaker pacifism has changed through different eras in history. Hopes for peace are expressed in different ways when they respond to civil war (as in the seventeenth century) or to the threat of nuclear war. But one consistent theme in Quaker writings is the faith that our true future is one of peace. In its vision of future harmony, pacifism provides a standard against which contemporary struggles can be judged. A Friend, writing in 1806, eloquently described the Quaker faith in the eschatology of peace.

The tumultuous course of violence is easily marked by the world. When its sudden and impetuous movements have been accomplished, it ceases. . . . The world then proclaims peace, while the latent cause of war subsists as before. It is not so with the peace of the gospel. Those changes, in the moral and intellectual state of mankind, which prepare the way for this, have proceeded for ages, like the growth of solid timber, slowly, silently, irresistibly . . .


(I am grateful to Peter Hughes for helpful comments on a draft of this chapter.)
List of References

  John Ferguson, "The Biblical Basis of Pacifism"
  Valerie Flessati and Clare Prangley, "Women's Perspective on War and Peace"
  Paul Oestreicher, "Peace and Justice"


Brinton, Howard: Friends for 300 Years, London: George Allen & Unwin, Ltd., 1953


PART ONE:

PRISONS IN PERSPECTIVE
There is a temptation to use peacemaking to generate specific proposals for changing prisons. But whatever the attractions of a linear deduction of urgent reforms, it would betray the open-ended methods of pacifism. A wide, inter-disciplinary survey of imprisonment is a necessary preliminary to any reforms.

To anticipate my case, then, my focus is the harm caused by prisons to prisoners. The way of peace illuminates the inherent dignity of human beings. I believe that prisons consistently violate that dignity. I must first trace the notions in penal philosophy that undermine human dignity before sketching their consequences in specific areas.

Part One, Prisons in Perspective, is rather abstract, and surveys key issues in imprisonment. The first chapter narrates the origins of the modern prison. I argue that the idea of a revolution in penal practice is an exaggeration, that the changes were piece-meal reforms. I do not attempt to apply the Quaker commitment to peace directly to this history. Nonetheless, the chapter builds on the Quaker eschatology of peace with which Pacifism ended. I argue that the promise of a crime-free future was false, based on a divisive and reductivist notion of human beings.
The second chapter explores the philosophy of punishment, and specifically, retribution. Reduced to retaliation by the state, the theory has little to commend it. But retributive thought, in a positive light, witnesses to wounds to which society must respond in the aftermath of criminal offences.

The third chapter contrasts images of human nature in penal theory and theology. Pacifist thought is less significant in this context than broad-based Christian convictions about human beings. Here again, I argue that Christian perspectives reveal the reductivism at the heart of the philosophy of punishment.

In the final chapter, I study the assumptions beneath 'punitive space'. I subject the idea that space can be made punitive to a phenomenological analysis. I find in the philosophy of Maurice Merleau-Ponty an understanding of knowledge that supports a pacifist dedication to human dignity.

Part Two, The Harms of Prisons, is the more concrete. I examine prison violence, in light of studies of aggression. I explore the deprivation of sexual access and discuss its effects upon prisoners. Finally, I analyse the failure of prison discipline to instil personal responsibility in prisoners.
HISTORY

A Chronology of Reform

1730 Sollom Emlyn pleads for reform of English criminal law, arguing that the death penalty does not admit a gradation to parallel the range of gravity in crimes.

1764 Cesare de Beccaria publishes *Traite des delits et des peines*, the most influential text in 18th century penal reform.

1767 English translation of Beccaria's work appears.

1769 New penal code instituted in Russia, applying Beccaria's views to Russian law. Death penalty is limited to murder, attempted murder, and acts dangerous to the state.


1773 The Walnut Street Jail constructed in Philadelphia.

1774 Alexander Popham introduces two bills to Parliament: 1) authorises payment of fees for persons who are detained after acquittal; 2) authorises justices to take responsibility for health conditions in prisons.

1775 Jonas Hanway advocates hard labour with total segregation.

1776 Hulks on the Thames accept prisoners for hard labour.

1777 John Howard's *The State of the Prisons* first published.

1778 Howard, Blackstone and Eden draft the Hard Labour Bill, including: salaried gaolers, secure and sanitary buildings, preventative régimes, and systematic, independent inspections.

1779 The Hard Labour Bill passes in attenuated form as the Penitentiary Act.

Horsham County Gaol opens, using many of Howard's recommendations. Felons are confined separately at night.
1785 Madan publishes *Thoughts on Executive Justice*, arguing that the use of pardons vitiates the power of capital sanctions against crime.

1786 Pennsylvania General Assembly passes Reform of Criminal Law, substituting hard labour, publicly imposed, for most capital statutes.

1788 Philadelphia Society for Alleviating the Miseries of Public Prisons addresses first Memorial to Pennsylvania General Assembly, advocating punishment out of the public eye, separation of hardened offenders from youths (and men from women), and prohibition of hard liquors in prison.

1789 Pillory abolished in France.

1790 Imprisonment at hard labour becomes norm as punishment for most offences in Pennsylvania. Remaining capital statutes (except for murder) are repealed over next nine years.

1791 New penal code in France. Uniformity of executions replaces aggravated forms.

1792 Guillotine first used.

1794 Jeremy Bentham granted contract to build *The Panopticon*.

1798 Outbreak of jail fever (typhus) in Walnut Street Jail.

1803 Lord Ellenborough's Act creates ten new capital statutes in England.

1808 Samuel Romilly gains passage of an act which repeals capital statute against pick-pocketing.

1810 Romilly moves for repeal of three more statutes. (One bill passes the house of Commons, but it dies in the House of Lords.)

Holford Committee appointed to investigate the prisons to discover if they can be made suitable for hard labour.

1811 Romilly brings five more statutes forward for repeal. All five pass both Houses. Transportation is substituted as penalty, with an option to imprison an offender for not less than seven years.

1812 New capital statutes are passed in Parliament.

1816 Millbank Penitentiary receives forty women. Other prisoners follow as cells become ready.
Eighteenth Century Prisons

Electronic tagging, privatised prisons and an uncontrollable population indicate both crisis and transition in the prison system. There is great evidence, however, that crisis and transition are endemic to the institution of the prison. What sort of crisis lasts for two centuries?

I begin this chapter with a survey of the problems in the prisons of the 18th century. In the second section, I examine the social and legal changes within which reform of the prisons took shape. I do not see the prison emerging from the informed decisions of the authorities, so much as from a series of ad hoc reactions to social pressures. The third and fourth sections are intended to draw out the philosophical and ideological foundations of modern imprisonment.

1 18th century is abbreviated throughout, except in titles and the above heading.
A broad sketch of the pre-reform prison reveals three basic types: County and borough gaols were places of detention, where people waited for trial, or, having been sentenced, awaited their punishment. A second type was the debtors' prison, either a separate prison (e.g., the King's Bench, London) or an area set apart from the gaol. The third type, the workhouse or Bridewell, had been intended to 'correct' juveniles, petty offenders, and 'the idle'. These houses of correction often resulted from the vision and energy of a single person - John Bell, to name one. Each, including the original Bridewell, showed a familiar pattern of confident enthusiasm, giving way to misuse and lax discipline, deterioration of the project and its eventual demise.

A detailed picture of the 18th century prison is gained from the observations of John Howard. He took a principled stand as sheriff of Bedford, and his commitment led him to a life as a monitor of prisons throughout the world.

---

The descriptions of pre-reform prisons are gleaned from a number of sources, including: Howard, Ignatieff, McConville and Radzinowicz.
Howard found that the prisons of England and Wales were over-crowded and dangerous. The shortest section in his opus, *The State of the Prisons* is the census. Howard counted 4084 prisoners, of whom 59.7 per cent were debtors, and 24.3 per cent, felons. The prisoners, however, were not the cause of the over-crowding. Howard estimated that for each prisoner there were two dependants (the figure is conservative, because he did not include parents of those confined). This brings the estimate to 12,252 people in prison. We must also add to this figure the wives who brought their husbands meals each day as well as friends who entered the prison at night to have a pint at the bar. Neither of these groups slept within the walls; nor did the debtors who had paid the fees for the privilege of lodging outside the walls.

A simple parallel between the population pressures of prisons then and now would miss important points. For instance, the census reveals that the 18th century prison was not primarily a place of punishment.\(^3\)

---

\(^3\) There is some disagreement on this point, as Sean McConville argues that prisons were places of punishment. But Michael Ignatieff reports that the rate of dispositions to imprisonment in the years 1770-1774 (just before reform) was a mere 2.3 per cent (Ignatieff, 81). My judgment in favour of Ignatieff's view is based upon factors discussed below.
Prison and punishment are so linked in the modern mind that the suggestion may seem ludicrous. It is true that the use of prisons for punishment pre-dates the 18th century reforms, going back at least to the thirteenth century. In Howard's time, though, the concept was at a low ebb. Popular culture recognised as punishment: hanging, whipping, flogging, branding, the pillory, and a favourite recourse of judges, transportation.

The prison was for those who awaited their trials or, after conviction, the punishment itself. And this was true of the confined felons only. The majority of those sent to prison were not criminals; they were debtors. For them, prison was intended to be a place of duress.

The startling fact is that the vast majority of the prison population had not been sent to prison in any legal sense; they were the dependants of prisoners. There was far more commerce between the 18th century prison and the wider society than is thinkable by today's practices. From full conjugal rights to the serving of alcohol at the gaol pub, the contrasts abound. These contrasts will require further analysis below.
Sean McConville evokes the scene that would have greeted John Howard in one brief phrase: "An unregulated, frequently packed, assemblage of unwashed, verminous, often starving and diseased prisoners in ill-ventilated and badly sewered rooms." (McConville, 50) Gaols did not exhibit the cell-block wings seen today in Pentonville, but were disordered and damp enclosures of small yards, dilapidated buildings and rookeries.

Howard was not exaggerating the disastrous conditions when he wrote that a prison needs food, water and air. The prisoners' diet was nourishing only on paper. In practice, it was inadequate. The idle, the petty offender and juveniles were to be sent to Bridewells for a term of hard labour. The money earned from work theoretically paid for upkeep. But prisoners were not allowed to work, on the grounds that they could pass tools on to felons. The insensitive response of magistrates to this abuse was, "'Let them work or starve!'" (Howard, 8)

Likewise, debtors and their dependants were reduced to begging for food. The laws governing imprisonment for debt called for creditors to pay the maintenance costs of the debtor. These laws were largely ignored. A final threat to prisoners' diets
came from the gaolers, many of whom skimped on the provision of bread.

Howard recommended that prisons be sited near rivers or streams. He found cases in which the daily ration of water was less than three pints (no doubt a factor in the observed lack of washing). A water supply would serve three purposes: drinking, bathing, and to keep the sewers flowing. McConville comments that the predominant feature of the 18th century prison was its smell. Indeed, businesses near Newgate appealed for relief from rates, claiming that the prison's stench drove customers away.

The lack of ventilation was lethal. Howard's demand for fresh air was not cosmetic, but founded on medical knowledge. Dr. James Lind, of the naval hospital in Portsmouth, estimated that over 2000 lives were lost to typhus in the cramped ships that transported the army to the Colonies during the war. (Cited by Howard in *The State of the Prisons.*) It was during this time that men, having awaited their trials in the gaols, could be sentenced to service in the army. When the hulks were set up on the Thames in 1775, one in four prisoners died; the mortality rate within the prisons could not have been much better.
The epidemic of typhus in the prisons was common knowledge. Michael Ignatieff reports on the phenomenon of the Black Assizes. In 1750, in London, 'the putrid streams from the bail dock' infected the court, killing judge, jury, the lawyers and many spectators. Howard himself cites another Black Assize, in Oxford: over three hundred died after prisoners contaminated a courtroom.

It would be untrue to say that John Howard risked his life by going where no one had dared to go before — after all, people called felons had been going into the dark, dank, lice-infested holes for centuries. But Howard's willingness to inspect the prisons and his detailed descriptions of the conditions were singularly responsible for the changes that followed.

The abuses and corruption of the staff in the gaols were well-known, but ignored. The chief abuse was the system of fees. Howard cited one such fee as the impetus for his work: prisoners who had been acquitted were sometimes returned to prison if they owed the keeper any fees for their pre-trial confinement. Keepers also collected fees for providing better quarters, for transporting felons, and for other incidental services. The 18th century prison was decidedly private.
Howard argued that the keepers' salaries ought to be paid by the county. A bill calling for keepers' salaries had been proposed by Alexander Popham, M.P., in 1773 — the year Howard assumed his duties as sheriff, but the bill was defeated. Gaolers were not the only authorities who augmented their income with fees. The justices of the peace, whose interests were guarded by Parliament, likewise enjoyed the benefits of an unregulated system of fees.

The prisons were conspicuously under-staffed. It was not mandatory for the gaoler to live on the premises, and some refused to accompany Howard on his tours. Turnkeys, often paid out of the gaolers' budgets, were too few in number, and disinclined anyway, to make any attempt to regulate behaviour within the walls.

Chaplains saw their duty as ministering to the condemned before executions and performing Sunday services, which few prisoners attended. One might wonder about the stature of the prison chaplain in that Howard finds it necessary to stipulate that chaplains should profess Christian belief!

Medical care was unusual. Though doctors did visit the larger prisons, Howard thought it right to recommend a salaried doctor for each prison in the
country. For the larger prisons, he called for three medical personnel: surgeon, physician and apothecary.

The lack of purpose (meaningful work) and the lack of staff supervision fostered a lively and brutal prison culture. The ethos included: 1) gaming, including gambling, and boxing to settle disputes; 2) mock trials, a burlesque that may have provided accused persons with the only legal aid they would ever receive; 3) garnishing – the custom of distributing the possessions of inductee prisoners; 4) begging, a very common necessity in view of the keepers' negligence; and 5) the ritual destruction of the gaol, to be enjoyed the night before felons were removed for transportation.4

*The State of the Prisons* is comprised of detailed descriptions of prisons in England and Wales, and of prisons in Europe, as well as John Howard's specific recommendations for prison administration. Neither his recommendations nor his criticisms were novel –

---

4 These activities are described in detail in Ignatieff, pages 41 ff.
Henry Fielding had proposed many of the same elements as early as 1750. The determinative factor was the impressive assemblage of facts and details, which gave scientific backing to his ideas in an age when science was revered without reservation.

Some points specific to John Howard are appropriate: He received the rare honour of a vote of thanks from the House of Commons after his appearance in 1774. A statue of the philanthropist was erected in St. Paul's . . . and he was a Nonconformist. He referred to himself as philosophically naive, a 'plodder'. John Howard never ran a prison. Finally, as the premier authority in a time of prison reform, we are indebted to his particular sense of order — and disorder — for the prison regimen that has developed in the U.S. and England.

One of his views, axiomatic today, was that prisons are 'seminaries of vice' (the phrase comes from Henry Fielding). Howard had observed males and females, petty offenders and capital cases, children and hardened criminals, all thrown in together. He sketches a frightful scene of young children sitting in rapt attention as hardened villains recite their heinous adventures.
Howard, who abstained from alcohol, laid particular emphasis on the evils of intoxication. (He was closely related to the Whitbreads). But he argued that the chief flaw of the prisons was the lack of regulation and segregation. Debtors, the 'idle' and most petty offenders were meant to be subjected to productive labour, but the keepers argued that the prisoners could pass tools on to the felons, who could use them to escape.

Segregation would serve two purposes. It would provide those mandated to work or to learn skills with the chance to do so; and it would aid security by foiling escape attempts. It was not necessary that the segregated felons be subjected to long periods of isolation.

Perhaps no recommendation of John Howard was to have as great an effect as this:

I wish to have so many small rooms or cabins in this [the felons'] ward that each criminal may sleep alone. If it be difficult to prevent their being together in the day-time, they should by all means be separated at night. Solitude and silence are favourable to reflection; and may possibly lead them to repentance.

(Howard, 43)

Like many visionaries, Howard could not foresee ways in which his suggestions would be twisted by...
authorities with more extreme views. If nights of solitude could be edifying, then perhaps a month of unbroken isolation, or no - six months, nine, eighteen - there seemed no limit. But of course there was. Despite disturbing reports from the American originators of the solitary system, Pentonville opened in 1842 to a system of complete segregation. The rate of those removed due to insanity was four times that of previous prison régimes in Britain. 

Michael Ignatieff comments that Howard would have denied paternity of such a system. In fact, he did. In a letter cited by Jeremy Bentham, Howard stresses that solitary confinement was to be used for short periods only, to break the prisoner. He found monstrous the idea of enforced solitude, both total and continuous. 

---

5 Ignatieff cites a figure of 5 - 15 men per year. Walter Moberly follows Sydney Webb and Beatrice Webb in estimating the number at twenty times the previous rate. I have found no explanation for the discrepancies.

6 4 Bentham, pages 71-72, n. Bentham quotes Howard: It should . . . be considered by those who are ready to commit for a long time petty offenders to absolute solitude, that such a state is more than human nature can bear, without the hazard of distraction or despair." Cf. John Howard, Account of the Lazerettes, page 169.
It is unfair and harsh to blame the transformation of the prisons on one man. First, his recommendations were drawn from observations of well-established practices. Second, there was a collaborative effort at reform (and this was international). Third, the underlying philosophical strides had nothing to do with Howard.

The disordered and vicious prisons we have surveyed above must be off-set by the better examples of the period, the raw materials from which Howard took inspiration. In the Rasphuis of Holland, Howard found quietness, order, cleanliness, uniforms. From the Maison de Force at Ghent, Howard took the need for silence and solitude; he also found architecture that suited the prisons' functions. Ghent, incidentally, had been modelled upon San Michel prison for juveniles at the Vatican; under Clement XII, the prison applied a strict monastic rule to adolescents.

The State of the Prisons does not dispute the government's right to punish. Rather, Howard criticised the filth, disorder and corruption within the prisons. Howard was a strict low-church Calvinist who would have appreciated more discipline. Indeed, he found the Germans extravagant for giving the condemned a choice of meals before their execution. He writes that simple bread and water would be more proper.
One biographer comments that the prison reformer's ideas on human nature come close to zoology:

Howard might be accused of regarding prisoners almost as animals, who had no conception of a future and only needed clean, dry housing and adequate food to reach acquiescence in their confinement.

(D.L. Howard, cited in McConville, 92)

Ultimately, this judgment is too harsh. Howard's belief in the universality of sin led him to see the prisoner as representative of his own spiritual state. Deeply convinced of his own unrighteousness, Howard knew that no one was beyond the reach of God's mercy. He denied, in the strongest terms, images of offenders that severed the common bonds of humanity.

Debtors and felons, as well as hostile foreigners, are men, and by men they ought to be treated as men.

(Howard, 23)
Two dimensions of 18th century society shed light on the reformation of prisons. These are the socio-legal environment and the philosophical presuppositions of the age. I shall argue that the basic shift in penology, following materialism, makes punishment symbolic of the offence. An execution may symbolise the state's power to punish, but the reformers believed that the penalty should reflect the offence itself.

The legal setting helps to demonstrate the slow, piece-meal quality of reforms begun, as they were, as ad hoc solutions to practical pressures. The 18th century reforms can be seen as a form of crisis intervention. The roles of social crises and an evolving law code will be the focus of this section. If Howard's account of the prisons shows the need for reform, then this overview of 18th century law and government suggests that prison reform was a small part of a broader change.
In 1771, William Eden opposed imprisonment on two counts: its inability to deter (because it is hidden), and its harmful effects on prisoners (its inability to reform them). Seven years later, Eden collaborated with John Howard and William Blackstone to propose the 'Hard-Labour Bill', which called for the government to build a national system of prisons.

In 1781, Jonas Hanway published a pamphlet opposing hanging and transportation. He considered the latter expensive, reckoning the loss of potential labour at £1.5 million from 1749-1772. Hanway was a fervent advocate of solitary confinement to hard labour - the length of sentence to depend on the religious conversion of the confined.

Calls for penal reform meshed well with two broad trends in late 18th century culture. The first was an evolving dialectic between government and the ruled - between more centralised rule on one hand and a vocal and critical citizenry on the other; the second was the emergence of science-inspired optimism. (This included tangible progress in education, medicine, engineering, agriculture, etc.)

The character of 18th century, laissez-faire government can be approached through a description of
"Government has no other end but the preservation of property." (John Locke, cited in Hay, 18) Douglas Hay argues that Locke distorted natural law to free property from all restraints, whether political or moral. Hay charges Locke with the view "that the unfettered accumulation of money, goods, and land was sanctioned by Nature, and, implicitly, by God." (Hay, 18)

The corollary of the idea that property is sanctified through labour is the condemnation of idleness. If wealth was the divinely established blessing, then poverty was the punishment visited upon the idle. In terms of the civil contract, this implied that those who refused to work were parasitic, draining the resources of the state. Idleness, identified as a character flaw, was attacked by government through legislation, and by the judiciary through their powers to punish.

The labourer was trapped in a system that sanctified wealth, even as wages were kept low. The belief

---

7 The overview of 18th century law is drawn primarily from Radzinowicz; also Hay, Linebaugh and Thompson; and Marshall.
history

was widespread that the labourers were so degenerate that they would work only if it were necessary for survival. Arthur Young wrote, "Everyone but an idiot knows that the lower class must be kept poor or they will never be industrious." (Cited in Marshall, 180)

Labourers also suffered from the vagaries of the market. When weather conditions made it impossible to distribute stocks, the work force would be sacked or given shorter working hours. The insecurity of work, combined with high costs of food brought on by low grain harvests, created a volatile spirit in the working people. Riots, some of them severe, were a constant concern of legislators and judges.

Law was used by the authorities to maintain social order. Douglas Hay describes the response to a food riot in Warwick in 1756. Justice Willes made known his intention to hang all rioters brought before him until peace was restored. After sentencing four men to death, he allowed that he would apply for a royal pardon for two of them if the rioting ceased. The others, alleged leaders, would be hanged as examples.

The reach of law was extended during the 18th century in two senses. 1) There was an expansion of the range of actions covered by law. 2) The powers of
the judiciary to punish were enlarged through a gradation of penalties. These points can be established by exploring the increase in capital statutes and the role of judicial discretion.

It was perhaps inevitable that the vast majority of capital offences established during the period involved property. The number of offences punishable by hanging rose from about 50 in 1688, to 160 in 1760, to over 225 by 1810. After 1810, the complexities of interpretation make a precise count impossible.

Hay argues that capital sanctions arose out of specific threats to property. For example, in 1753, the act of stealing ship-wrecked goods was made a capital offence. Merchants, traders and insurers had pressed for such a measure, arguing that the law was too gentle. In 1764, the English Linen Company convinced Parliament to pass a law prescribing hanging

---

These figures are cited by Radzinowicz. Cf. Ignatieff. E.P. Thompson, in *Whigs and Hunters*, provides an illuminating discussion of the 'Waltham Black Act', from which one can draw at least 200 discrete acts punishable by hanging.
for the theft of linens. Likewise, an act passed in 1769 responded to a wave of food riots by making the destruction of mills a capital offence.

The rise in capital sanctions also reflects a penal philosophy steeped in irony. Many of those who pressed for capital sanctions appealed to the humanitarian bases of capital punishment. The point of the pamphlet, Hanging Not Punishment Enough, was that the purpose of punishment was not retributive, but to deter others. The author, who chose anonymity, defended the severity of his (her?) proposals. The purpose was, "not that Man's blood should be shed, but that it should not." (Cited in McConville, 60)

William Paley brought the deterrence argument to greater sophistication by stating in 1785, "... crimes are not by any government punished in proportion to their guilt, nor in all cases ought to be so, but in proportion to the difficulty and necessity of preventing them." (2 Paley, page 2; Book VI, Chapter ix.)

Hay assumes that the ruling class jealously guarded their property through brutal intimidation because he underestimates the significance of the doctrine of deterrence. The government did expand the
number of offences, to reduce the threats to property. But the ready resort to capital statutes demonstrates trust in the deterrent power of hanging, in which the punishment represented the state's powers. It was a faith which was soon to be undermined.

Hand in hand with the broader reach of law was an intensification of the power to punish. More severe sanctions gave judges the power of life and death. The judiciary's power to punish an offender was extended to its absolute. This discretion over greater severity must be seen in the context of a more general valorization of the judiciary.

From the moment the judges arrived in town for the assizes until the sessions ended, their presence was attended with pomp and spectacle. There was powerful imagery in the scarlet robes, as well as in the black cap, worn to pronounce the sentence of death (or, white gloves, a sign of a session without an execution.) Both the court and the gallows were imbued with quasi-religious ritual.

The administration of law was a theatre, which inspired heightened emotions and which was permeated with the aura of sanctity. Three elements of this ritual can be isolated: divine justice, which held
the power of life and death; the immutable rule of law, under which both judge and accused were subjects; and the holy mystery of mercy.

It seems illogical that the rate of actual hangings should have fallen throughout the 18th century. Given the disparity between the severity of the code and its lenient application, there was a puzzling lack of conflict between the judiciary and the legislature. But it is odd only if one assumes that retribution was primary. The apparent disparity must be set in the context of an economy of punishment based upon deterrent presuppositions.

The expansion of judicial power to the point of discretion over life and death marks an attempt to maintain a rigid social order through force and intimidation. While the Church steadily lost its power to frighten the laity with images of hell, the

---

* Hay estimates that only 50 per cent of those sentenced to hang in the 18th century were executed. Patrick Colquhoun set the figure of pardons or commutations as high as four-fifths of those sentenced to death. (Cited in Radzinowicz, 134) Ignatieff's figures show that the drop was interrupted briefly by a slight increase in actual hangings after 1776, when transportation to the American Colonies was disrupted.
judiciary claimed authority with its own sanctions; this fire and brimstone was as tangible as a hangman's noose.

The judges held the power over life and death. But the courts' legitimacy in the eyes of the people depended upon the justices' obeisance to the rule of law. In practice, of course, a veneer of conformity to the demands of the law could aid or doom an accused. Douglas Hay remarks on the number of cases that were dismissed for some trivial error; and there were numerous cases in which the judge 'regretfully' yielded to his duty and pronounced the sentence of death.

The sanctity of the law was seen by some to be threatened by its severity. Because of the cruelty of the sanctions, prosecutors declined to bring cases, juries refused to convict, pardons became common. The gentry could decide whether to bring a case to court or settle the issue themselves. Further, through their links to the justices of the peace, they could largely tailor the punishment to fit the offence.

In retrospect, the contradictions seem obvious: the legislature continued to order hanging; the justices habitually undermined the law with clemency.
Leon Radzinowicz takes this view, arguing that Parliament intended its penal code to be strictly applied.

But an alternative view is more likely. In the face of rising social unrest, the authorities (both the legislature and the judiciary) sought more power, more intense controls over the populace. Yet, the application of that power depended upon the consent of the ruled (especially in view of the social unrest). Therefore, the humanity and restraint of the authorities (acting in service to the omnipotent law) functioned to maintain legitimacy. In short, the vicious code and the gentle, reluctant practice were complementary.

The pardon had many functions in 18th century law. Co-ordinated with the rule of law the pardon could demonstrate the humane concern of the king. Legal mercy could be effective in appeasing angry mobs, as we have seen in Justice Willes' handling of the Warwick food riot. The pardon could have didactic force, when the news of mercy was staged at precisely the most dramatic moment, at the gallows. Pardons could disguise the inadequacies of policing, as a judge might rule 'mercifully' in cases that ought to have been dismissed outright. Pardons could be used as contracts, to exact obligations from the convicted.
In view of the scope of these functions, the pardon was clearly a reasoned and deliberate complement to the 'Bloody Code'. If legislators felt their aims were vitiated by the judiciary, they did not show their frustration. Indeed, the men in Parliament were only too willing to use their position to exploit the possibility of clemency. Then, too, the 'humanitarian' arguments for capital statutes demonstrate a penal philosophy of deterrence that included mercy: the purpose was not to take vengeance, but to increase respect for law and authority. In this sense, clemency is also a sign of the judges' power.

Perhaps most significant, the authority of government was fragile. Without an efficient police force, social control was dependent upon the commoners' willingness to be ruled. In Principles of Moral and Political Philosophy, William Paley wrote:

Let civil governors learn hence to respect their subjects; let them be admonished, that the physical strength lies in the governed; that this strength wants only to be felt and roused, to lay prostrate the most ancient and confirmed dominion; that general opinion therefore ought always to be treated with deference, and managed with delicacy and circumspection.

(1 Paley, page 363; Book IV, chapter ii)

Adjustments to the power to punish must be seen in light of a more general crisis of authority. Immediately before the reform period, the criticism of
government reached its zenith. The loss of the war against the American colonies had profound effects upon the government, confirming the need for reform. The War combined with social upheavals, such as the Gordon Riots of 1780, to encourage attacks upon administrative inefficiency, sinecure positions, laissez-faire government, as well as the inflated powers of the judiciary. But, paradoxically, a more responsive and efficient government was also allowed to enlarge its scope.

Without the changes that began to make both government as a whole and individual government officials more accountable, more responsible, honest, and accessible, it is highly unlikely that Parliament would gradually have come to grant more powers to government and accept its expanding role in society.

(Baker, 218)

A key issue for government during this period was the power to punish. The question of the government's power was crystallised in the exercise of capital punishment. The accounts of public hangings illustrate the delicate balance of power between the state and the people. The public's role was full of risk for the authorities. The crowd could demonstrate their civic condemnation of the crimes, as they did at the hanging of Jonathan Wild, whom they pelted with stones. But they could also side with the condemned, sometimes to the point of assaulting the hangman. The gallows were a stage for the power relations between
king and people, and the 'theatre' could be usurped by the ruled.

It was a ribald, reckless, brutal mob, violently combative, fighting and struggling for foremost places, fiercely aggressive, distinctly abusive. Spectators often had their limbs broken, their teeth knocked out, sometimes they were crushed to death.

(A contemporary, cited in Radzinowicz, 176)

The presence of the public served several functions: 1) They were to be the passive audience, treated to a display of justice and power. Hangings symbolised the power of the state over the condemned, but also over the public at large. 2) But the public had an active role in vindicating the sentence — and this duty was not always accepted. In 1749, in the aftermath of the 'Penlez Riots', a force of 300 armed soldiers was required to assure an orderly execution. 3) The public also served as witnesses. Ignatieff reports that early calls for private hangings were ignored. The public presence was needed, it was said, to ensure that the right person was hanged. The point may have been justified, but it does not reflect well on the level of corruption in criminal justice.

It was not until 1783 that the processions from Newgate to the gallows at Tyburn were stopped. Even then, the hangings at Newgate were open to the public. But if the end of the processions was a minor change,
it heralded a deeper shift in penology. Henceforth, the arguments of the reformers would carry more weight.

I have spoken of 18th century law in terms of theatre, of religious ritual and of justice. Clearly, the public hanging was a theatrical event, but a more accurate image is that of a battlefield. The violence of the state (or the monarch) was arrayed against the unruliness of the people. The gallows were the setting for the conflict between the will of the state, expressed in law, and the rebellion of the offender (the crime).

A simplistic view characterises pre-reform punishment as barbaric; the reformer, as a champion of humanity. From this perspective, the pre-reform authorities were stupid as well as vindictive, killing or whipping those whom they could not understand. The reformers intelligently saw the potential for reform in criminals, and sought to develop the rehabilitative potential of prisons.

Such a thoroughly misleading contrast distorts the reforms. First, it seriously neglects a shift in penology, from deterrence to rehabilitation. Pre-reform authorities lacked the enlightenment of the reformers; they could not see how simple it might be
to rehabilitate an offender. Lacking the faith in the miraculous power of the human sciences, they could only hope that potential offenders might be prevented by shows of punitive ferocity.

Hence, second, the caricature of pre-reform justice leads us to misunderstand clemency. We imagine that it was an aberration in a period of brutality, ignoring its vital role in maintaining the fragile legitimacy of law. The movement to moderate punishment was but part of a wider shift: to infil­trate the social body with a ubiquitous discipline. To take one example: the pre-reform authority laboured without benefit of an organised police force.

Third, we are mistaken if we believe that the conflict-ridden nature of criminal justice before reform gave way to some radically new function. We may view criminal justice as coerced normalisation, through the punishment of deviance. We may prefer a social contract view, wherein imprisonment is the cost of transgressing the terms of civil society. But the symbolic weight of the gallows, the dramatic fight between order and resistance, cannot have disappeared without trace.
Gentle Punishment:
The Philosophy of Reformation

Punishment, Its End. With respect to the Progress of Society, we may conceive three Epochs: distinguishable in idea, though running into one another in fact. The first, which is past, in which every man actuated by the vindictive principle, inflicted the arbitrary punishment for a received offense, more or less intense according to the greater or less violence of his passion. The second, which is present, in which the Idea of a Public being formed and established . . . taking the rod of vengeance out of the hand of the Individual, uses it according to settled rules still governed however in great measure by the same principle. The third, which is to come, in which all traces of the vindictive principle being entirely obliterated, Prevention shall be the sole end and object of a Penal Legislation.

(Jeremy Bentham, cited in Radzinowicz, 381, n. 99)

If there is a flaw in Bentham's argument, then it is one of prophecy rather than historical accuracy. Subsequent developments demonstrate that it is harder to eradicate vengeance from penal philosophy than Bentham thought.

The basis of the reformation was not a new view of the purpose of punishment. The reformers - Hanway, Bentham, Eden, Romilly, Howard - did not eschew the deterrence argument. Instead they opposed, from various directions, the method of severity. Further, doubts that the severity of the code was working were combined with positive recommendations for change.
The true objective of the reform movement . . . was not so much to establish a new right to punish based on more equitable principles, as to set up a new 'economy' of the power to punish, to assure its better distribution . . . according to modalities that render it more regular, more effective, more constant and more detailed in its effects; in short, which increase its effects while diminishing its economic cost.

(Foucault, 80-81)

Leon Radzinowicz comments that the lack of any scientific understanding of criminality militated against gradations of punishment, and favoured the simplistic cruelty of intimidation. Yet, dissatisfaction with the 'Bloody Code' had been expressed long before the reform period. 'A student of politics' had written:

As moral actions are infinitely variable, on account of the difference of persons, age, and education, in order to adapt penalties to every offense, there ought to be in every well-govern'd state, an harmonised proportion regulated by distributive justice.

(Cited in Radzinowicz, 32-33)

In 1771, William Eden published his Principles of Penal Law. Eden held that, while deterrence is a part of punishment, the effectiveness of the various methods must be evaluated. He criticised banishment (transportation) because its deterrence value was extremely limited. Those punished were out of the public eye, and, for some, the chance at starting a new life in another land could constitute an
inducement to crime. Imprisonment, too, was flawed. "It sinks useful subjects into burthens on the community, and has always a bad effect on their morals: nor can it communicate the benefit of example, being in its nature secluded from the eye of the people." (Cited in Radzinowicz, 312)

Eden preferred flogging to hanging, and the pillory to whipping. He suggested that forced labour had much to commend it. His most original proposal was to exchange serious offenders for Christians held as slaves by alien nations. Alternatively, offenders could be used on dangerous expeditions.

In his suggestions as well as his philosophy, Eden's work recalls the argument of Cesare de Beccaria. Beccaria's classic Essay on Crimes and Punishments was written in 1764, and published in English in 1767. Like John Howard, Beccaria's views served to sum up the convictions of his age.

Beccaria advocated moderation in punishment on the grounds that it was more effective. The preventative goal of punishment positively required restraint. All that was required of the penalty was that it should exceed in pain the anticipated pleasure held out by the offence. At this point, according to Beccaria,
the punishment was most efficient; anything further is superfluous and tyrannical.

Beccaria promised that moderation worked, if applied under three principles: 1) the punishment must be certain (thus, he opposed clemency); 2) the punishment must be prompt; 3) it must somehow conform to the offence (acts of violence should be punished corporally, thefts, by forced labour to exact restitution). Beccaria adamantly opposed capital punishment. He conceded that the social contract may have obliged the citizen to submit to punishment, "but who ever wished to leave to other men the option of killing him?" (Cited in Radzinowicz, 285)

Beccaria marks an important turning point: his ideas reverse the intuitive desire to strengthen deterrence with greater violence, but (as we shall see) the reformers go far beyond his penology. His great achievement was to convince his audience that punishment can represent the offence itself. If the punishment must symbolise the ruler, then it must become more brutal to show more power. If, however, the offender comes to associate the punishment with the offence, so that it seems the crime has caused the pain of punishment, then offenders will be deterred by moderate penalties.
Beccaria's ideas were favourably received by several monarchs. Empress Catherine of Russia put his ideas into law as early as 1769. His Essay enjoyed spectacular success, earning him worldwide acclaim. Its popularity implies that the punishment of criminals was of great concern, and that society was open to reforms. But it also suggests that Beccaria's ideas matched broader philosophical trends.

A key shift in thought was the development of the 'human sciences'. An emerging view of human nature informed education, medicine and industry, as well as law. In particular, assumptions about criminal nature fuelled the drive for penal reform. At the heart of the philosophy was the view that criminals could be reformed through science. I shall refer to the philosophical convictions about criminal nature as a criminal anthropology.

In Britain, the chief exponent of the new anthropology was David Hartley. A consistent materialist, Hartley posited a physical basis for conscious processes. He argued that sensations entered the body, were processed by a complicated mechanism, and resulted in action.

Hartley advocated (some say founded) associationist psychology. Crudely, this linked
responses directly to stimuli, as thunder follows lightning. More important for criminal law, as lightning leads one to expect thunder, so the delinquent could be taught to associate penalties with the offences being considered.

Under associationist principles, Beccaria's second and third principles are crucial (Punishment must be certain; and it must be prompt). Beccaria wrote that the more closely these are followed:

the stronger and more lasting in the human mind is the association of these ideas, crime and punishment, so that insensibly, they come to be considered, the one the cause and the other as its necessary and inevitable consequence. It is a proved fact that the association of ideas is the cement of the whole fabric of the human intellect.

(Cited in Radzinowicz, 282-283)

Indeed, Beccaria consistently applied the lessons of materialism which he had gained from Claude-Adrien Helvetius and Offray de la Mettray. Helvetius believed that all our abilities are acquired. In De L'esprit (1758), he argued that human beings are perfectible. Any one can be put right, simply by a careful manipulation of experience, particularly by the control of pleasure and pain. As behaviour is linked to environment, the task for the human scientist is to unravel these links and manipulate the defective humans accordingly. When Beccaria opposed
capital punishment by arguing that "human minds harden, adjusting themselves like fluids, to the level of the objects around them," he was applying Helvetius' mechanical anthropology directly to criminal justice.

A vital connection for these materialists linked physical ill-health and social deviance. John Howard certainly made these connections explicit. While cleanliness was advocated as a response to typhus, it was also clearly intended to alter behaviour. Howard quoted Sir John Pringle:

> It is well-known how much cleanliness conduces to health; but it is not so obvious how much it also tends to good order and other virtues. [Captain Cook] was persuaded — that such men as he could induce to be more cleanly than they were disposed to be of themselves, became at the same time more sober, more orderly, and more attentive to their duty.

(Howard, 59, n.)

The idea that order could be imposed on the prisoners had intuitive appeal for the emerging middle class. Their own efforts to organise the labour force in 'manufactories' had taught them that discipline of

---

---

10 Cited in Radzinowicz, 281.
others was no less effective than self-discipline. Increasingly influential industrialists eagerly grasped the genius of the reformatory ideal in penal philosophy.

The factory régime was thought to have produced "industry, decorous behaviour, attendance on public worship and general good conduct"; Josiah Wedgewood boasted that his discipline had "made machines of men as cannot err." (Cited in Ignatieff, pages 62, 68) Such links between an imposed regimen and dispositions free from criminal intent may strike us as simplistic, but for such newly successful people, they were self-evident.

One of the most articulate advocates of a materialist penology was Jeremy Bentham. Bentham followed Hartley's adherence to the springs of pain and pleasure, but he developed the concept to incredible lengths. His 'hedonic calculus' measured pain and pleasure by thirty-two aspects: age (broken into five stages), sex, health, strength, intellect, occupation, etc.

Bentham shared with Beccaria the belief that the goal of punishment is prevention. But he argued that the selection of an appropriate punishment depends upon his hedonic calculus. Otherwise, of course, the
infliction of pain will not reform the sufferer. Obviously, one cannot claim to compute the balance of pain and pleasure exactly. But Bentham argued that these subjective factors must be considered in any legislation if it is to serve the purposes of prevention. Here he stands in stark contrast to Beccaria; the latter had argued that punishments must be inflexibly applied.

Bentham also suggested an economy of punishment, measuring it according to its human costs as well as financial ones. He was emphatic in his view that punishment is an evil; hence it is crucial that it be used with maximum efficiency (i.e., that the harm of punishment to the offenders, their families, and society be minimised). "It has been too frequently forgotten, that the delinquent is a member of the community, as well as any other individual." (Cited in Radzinowicz, 382)

This image of Bentham's moderation must be balanced by his ready resort to pain inflicted for reformative purposes. He advocated a whipping machine that would mete out strokes with exactly uniform force, a diet that maintained recalcitrant prisoners on the border of starvation and a dungeon to achieve sensory deprivation. In his relentless logic and detail he clearly takes us beyond the simple elegance
of the materialists. Nonetheless, he is representative of the age of reform in his optimism, in his confidence that the subtle manipulation of pain would permanently alter behaviour.

It would be reckless to claim that materialist determinism was solely responsible for the rise of prisons. In the work of William Godwin, for instance, the determinist thrust was turned on its head. Godwin argued that it is no more just to punish an assassin than it would be to punish the knife: both are mechanically propelled into action. Then, too, the inspiration behind many industrialists — as for John Howard — was their Nonconformist faith.

Nonetheless, from the materialists came the authority of science, bolstered by an optimism resulting from its proven successes in other fields. In France, Offray de la Mettray proclaimed that, in the near future, questions of guilt would be left to the doctors.

In America, Benjamin Rush proudly advertised his hope that science would soon find the cure for crime. Rush wrote of prisons as "the most speedy and effec­tual methods of restoring the vicious part of mankind to virtue and happiness." And he continued, "I have
no more doubt of every crime having its cure in moral and physical influence." (Cited in Foucault, 128)

All that the 'scientists' required was a laboratory, free from the nagging variables of public life. The prison was destined to become a Utopian micro-cosm, a controlled world in which the order sought by the middle and upper classes was to be achieved by the infallible work of the experts. And their methods were nice.

Materialist psychology implied that a regimen applied to the body by the external force of authority would first become a habit and then gradually be transformed into a moral preference.

(Ignatieff, 67)

The practices of the doctor-wardens would exert a gentle discipline upon the chaotic and obscene practices of the prisoners. If prisoners were dirty and smelly, the experts would force them to bathe. If they were lazy, the doctors would force industry upon them. If they exhibited anti-social behaviours, the prison would implant orderly, if not quite noble, habits. And the unassailable logic of associationist psychology guaranteed that the controlled environment, the measured stimuli of pleasures and pains, would achieve cures.
The Prison and Social Control

*There are cords of love as well as fetters of iron*
— John Brewster, 1792, cited by Ignatieff

*My Hand is Severe but my Intention Benevolent*
from the Rasphuis, Amsterdam, cited by Ignatieff

In the sections above, we have reviewed the conditions in 18th century prisons; we have explored the stresses upon government in the years before reform; and we have examined the changes in penal philosophy. These perspectives have shed light on the process through which the modern prison evolved. In this section, I present the first years of reform in the light of politics, power and punishment. The aim is to discover how prisons fitted into evolving patterns of social control.

Michael Ignatieff describes *A Just Measure of Pain* as a study of "the moral boundaries of social authority in a society undergoing capitalist transformation." (Ignatieff, xiii.) The social setting for reform featured a delicate balance between brutality and mercy in criminal justice. The harsh style was viewed with scepticism by those who preferred a penal philosophy based on moderation, following Beccaria.
In 1778, Beccaria's new economy of punishment was presented to Parliament in the form of a bill drafted by Eden, Howard, and William Blackstone, the "Hard-Labour Bill". The outbreak of hostilities with America had temporarily ended the practice of transportation. Parliament had moved swiftly in response, authorising the re-fitting of old ships to confine prisoners. These were the notorious hulks. The prisoners were to be put to hard labour on the Thames. (This 'temporary measure' was still in use in 1827.)

The end of transportation brought a slight rise in the number of hangings, but the increased use of imprisonment was much more dramatic. As early as 1776, a firm step toward primary reliance upon prisons had been taken. There was no doubt that transportation would return, but it was never again to hold the predominant position it had enjoyed before the War.

The objectives of the Hard Labour Bill were ambitious. The authors proposed a national system of nineteen houses of labour. The Bill was comprised of sixty-eight sections: It outlined nineteen districts throughout England; provided for national funding; set out the administrative structure; defined tasks for prisoners; described the style of architecture; set the terms of confinement; specified diet and clothing.
Here, the intention of restricting prisoner contact with the outside was emphatically stated.

The Bill was passed by Parliament the following year. The authors changed the title to the Penitentiary Act, making explicit the connection between imprisonment and correction. Science promised that the offender was reclaimable through the measured application of pleasures and pain. Howard was convinced that prisoners subjected to labour in solitude might repent of their ways. Such promises were necessary to persuade a legislature devoted to deterrence through absolute power, brutality of punishment, and intimidation.

The Penitentiary Act, in its final form, showed the reluctance of Parliament to undertake responsibility for punishment. It barely retained Howard's four major points: the segregation of prisoners, confined in healthy, secure rooms, under a salaried gaoler, with an independent external inspectorate. Rather than nineteen prisons, there were two (one for men, one for women).

Neither prison was constructed. When the Act lapsed in 1784 it was not renewed. Nonetheless, however fruitless the Act, it did constitute a significant step forward. The government had pledged
history

itself to a national prison. It had recognised imprisonment as a valid option in the face of confusion over practicable penalties. And the form of imprisonment envisaged was corrective.

The acceptance of imprisonment was by no means widespread. Prisons fitted awkwardly – if at all – into the prevailing philosophy:

(i) Associationist psychology demanded that the punishment conform to the offence. If the penalty was to be seen as the effect, caused by the offence itself, then the punishment would need to mirror the crime. Imprisonment was simply too monolithic. (Eden had himself denied the deterrent potential of prisons.)

(ii) It was also costly. The public was bound to wonder about a punishment that cost money.

(iii) There was no precedent of a prison entirely for the confinement of felons.

(iv) One of the nagging problems of transportation was that many of those who had been banished returned to England. Imprisonment would worsen the problem, since, apart from a high mortality rate, prisoners would return to society.

Finally, (v) the preferred style of deterrence through brutality opposed incarceration in clean, orderly cells. Bad as prisons were, conditions were not markedly worse than many areas of London.
Howard and his collaborators did not need to prove that their regimen would be humane. Quite the contrary, they were pressed to demonstrate that conditions of cleanliness and order would not debase the deterrent power of prisons completely. Howard had joined rehabilitation and pain in *The State of the Prisons*:

> If to [humane treatment] be joined such regulations in preventing all dissipation and riotous amusement . . . [imprisonment] will not fail to be sufficiently irksome and disagreeable, especially to the idle and profligate.

(Cited in Ignatieff, 94)

Despite the failure of the Penitentiary Act, it did help to popularise Howard's ideas. Local authorities moved to apply his policies in their own jurisdictions. If, in 1791, there were still no national penitentiaries, there were a number of county prisons that boasted Howardian discipline.

The first, the Horsham County Gaol was completed in 1779. A project of the Duke of Richmond, the prison included separate confinement at night, cleanliness of prisoners and buildings, and salaried staff, including gaoler, chaplain, doctor and independent inspectors. Of Howard's four requirements, Horsham omitted only labour. Hard labour was the predominant feature of the House of Correction at
Petworth (1782). In addition, complete separation of prisoners was enforced.

George Onesiphorus Paul, the driving force behind Gloucester Penitentiary, was a fervent disciple and an articulate advocate of Howard's ideas. He confessed to Parliament in 1810 that he found his inspiration in the Penitentiary Act of 1779. Yet, in order to practice Howard's policies in Gloucester, Paul had to sell imprisonment to the county authorities. He argued that a better diet, healthier conditions, enforced baths, and the privilege of labour did not coddle prisoners. He introduced measures (e.g., the shaving of prisoners' heads upon induction) that combined medical and punitive functions.

Paul deliberately isolated the prisoner from family and friends. Next of kin were allowed to visit once every six months. He defended the provision of an adequate diet as one means of severing the prisoners' links with the outside. Ironically, then, prisoners were isolated from their families initially

---

11 The story of G.O. Paul is told in Foucault, Ignatieff and McConville.
for reformative aims — the isolation was a medical/moral quarantine, not a punitive deprivation.

Paul clearly saw the potential of prisons in reformative terms. Further, he saw the provision of labour as a part of the rehabilitative process. The Penitentiary Act stipulated hard labour as a punishment for felons. Previous houses of correction had been limited to petty offenders and juveniles. But Paul set out to use labour to reform felons. He elected to reward good behaviour with the privilege of work, and to punish infractions with its withdrawal. His success might be gauged from prison discipline at Gloucester. In the first nineteen years, only three prisoners were subjected to whipping.

Yet success brought its own costs. Paul so convincingly proclaimed the benefits of imprisonment that the penitentiary was quickly over-used. Judges went beyond the plan of sending felons to Paul, and began to sentence minors and petty offenders. Landowners, who might otherwise have acted independently, chose to bring cases to court. Thus, even in the first years at Gloucester, we find a measure of the swing in the public mood toward imprisonment.

Gloucester prefigured the fate of other new prisons in the period of transition. Apart from
Petworth, Wymondham (an older house of correction) was re-modelled in 1785, Salford was built in 1787, and Preston, in 1792. In addition, the Walnut Street Jail, in Philadelphia, was re-designed with Gloucester as one of its models. Each of these prisons exhibit the pains of transition: initial uncertainty on the part of the public, strong advocacy from reformers followed by over-subscription, resources failing to meet demands, and a failure to maintain the policies of separation and industry.¹²

Each, like Gloucester, required and nurtured growth in the administrative powers of county government. Paul's battles with the authorities are instructive, not least because he needed to convince them of the advantages of their taking on fiscal responsibility for imprisonment. A chief attraction was that prisons offered the authorities an unmatched level of control over the convict.

¹² Ignatiefiff comments that Paul's discipline 'lay in ruins' by 1820. This evokes parallels with the Bridewells which had been launched with great hopes, sustained by the determination of one person, and which collapsed into disuse and disorder after the founder's departure.
This control was made possible by the isolation of the prisoner. More important, however, the emerging penal anthropology promised techniques that would cure the offender. The prison promised to deliver reclaimed subjects. These techniques are analysed in intricate detail by Michel Foucault.

The new function of the prison would be the transformation of the criminal into a respectful worker. The method controlled the prisoner's environment, daily schedule and activities; and it co-ordinated the techniques applied to each sphere. Each technique can be described in greater depth.

There were two aspects to the control of environment. First, *enclosure*, which set the prison apart from the community, in service to its unique function. In architecture, this meant a high wall. In practice, enclosure produced a penal quarantine: the prisoner was protected from social contagion, and (more important) the state was enabled to practice punishment without the intrusion of outsiders.

The second facet of this technique was the *partitioning* of the prison. Space was dedicated to certain functions: cells for sleeping, shops for work. Irrelevant parts of the pre-reform prison (e.g., the pub) were eliminated. Partitioning allowed
for better classification: first, men from women and hardened felons from juveniles, then the total seclusion of each 'infectious' offender from all others.

The regimen included strict control of time. The duration of the sentence - the control of a set portion of the offender's life - was an embellishment of a power already provided to justices. But the prison sentence gradually provided a broad range of available penalties. As in schools, the prisoner could pass onto the next stage at a time determined by his/her own progress. More important, the prisoners' day was regulated: hours of rising, of eating, of working were rigidly enforced.

The activities of the prisoner were closely observed and directed. Activity now had a didactic purpose, as opposed to the chaos that ruled the pre-reform prison. The scheduled day applied the hope that enforced labour would lead to habits of industry. Like a factory, the prison could distribute the human resources according to the requirements of production. Foucault comments, "Is it surprising that prisons resemble factories, schools, barracks, hospitals, all of which resemble prisons?" (Foucault, 228)
Although Foucault's thesis is focused upon France, an entire chapter is devoted to the architecture of one Englishman.

Morsels reformed — health preserved — industry invigorated — instruction diffused — public burthens lightened . . . all by a simple idea in Architecture!

(4 Bentham, page 39)

The Panopticon is the apotheosis of the prison.

The maximum number of prisoners can be surveilled by the minimum number of staff. The springs of pain and pleasure can be modulated with utmost precision. The prison pays for itself — indeed, it guarantees a profit. Security can be achieved with 'lightness', without the monstrous walls of the prison. Its flexibility extends to non-penal uses: hospital, factory, school, asylum, barracks. The Panopticon is a perfect laboratory for human science. Bentham called it his 'mill for grinding rogues honest'.

It is embarrassing to present the essence of this astounding solution in a single paragraph. The Panopticon is an annular (doughnut-shaped), multi-story building, with cells arranged round the perimeter, and an inspection tower at the core. Each cell is open to the view of the inspector in the 'lodge' or tower, without those in the cells being
able to see the inspector. Further sophistication provides lamps (for night-time inspection) and tubes which allow the inspector to listen to any cell.

In 1792, Bentham offered to supervise 1000 prisoners. In 1794, he was granted a contract by an Act of Parliament. By 1799, he had assembled a work force and had selected a site. All that was needed was £1000 to buy out a single remaining land-holder. The money was never found. The architectural principle of surveillance was influential (for instance, in the 'first penitentiary', Cherry Hill, in Philadelphia). But a close rendering of the Panopticon was delayed until 1925 when Stateville, Illinois, was constructed.

Although Bentham's plan was not realised in his lifetime, it exemplified the spirit of the penal reformers. From the prisoners' perspective, the new style prison was constricting, time weighed upon them, enforced segregation was a burden. But for the 'inspector' - with whom the emergent middle class identified - the prison promised social control through perfect surveillance, through the measured manipulation of pleasure and pain, through hygiene and order.

Perhaps most attractive, the Panopticon was a laboratory, designed to further knowledge of human
behaviour. The precedent for this aspect of the penal régime was established at the Walnut Street Prison, in Philadelphia. The reformers in Pennsylvania set out to classify each inductee according to a mass of data: reports on the offence, notes on behaviour, summaries of examinations, etc. Vital information was co-ordinated with architecture that partitioned the population to expose each prisoner to manipulation.

The degree of control offered by the new model of punishment was unthinkable in pre-reform prisons. It was also irresistible to governments anxious about social order.

The penitentiary . . . was more than a functional response to a specific institutional crisis. It exerted a hold on men's imaginations because it represented in microcosm the hierarchical, obedient, and godly social order, which they felt was coming apart around them.

(Ignatief, 81)

It is hardly surprising that the penitentiary grew in popularity during the last decade of the 1700s. Increasingly, the vocal and dangerous radical was confined in the penitentiary, rather than the pre-reform gaols. Not only did the new generation prisons provide better security, but inside, the radical could be disarmed through classification, segregation and specially designed treatment.
Beneath the myth of prison reform, Ignatieff and Foucault perceive a sinister exchange. Foucault writes of a "double movement by which, during this period, crimes seemed to lose their violence, while punishments, reciprocally, lost some of their intensity, but at the cost of greater intervention." (Foucault, 75)

Ignatieff sees broader ramifications in terms of political philosophy:

In contrast to a paternalist conception of order that allowed only a constricted political right, but tolerated a wider range of customary, popular liberties, liberalism extended formal political rights while sharply reducing public tolerance for popular disorder. (Ignatieff, 212)

The reforms were not, however, as deliberate and reasoned as Ignatieff sometimes implies. Heather Tomlinson writes that to locate the changes in a general strategy of social control "is to endow them with a unity of form and conception that would not have been recognised by [the reformers'] contemporaries." (Tomlinson, 75)

The prison offered a tolerable compromise between the demands of deterrence and of legitimacy. The power to punish was enhanced in two ways: being hidden, the punishment could be more terrifying in its mystery, but it was also less vulnerable to the
disapproval of a capricious public. Here again, the symbolic effects illuminate the nature of criminal justice. John Haviland, the architect for Cherry Hill in Philadelphia, was praised for capturing both the terror of imprisonment and the power of the state in a veritable fortress. Nineteenth century prisons in Britain present the same twin image of eeriness and might.

The latter marks the resurgence of justice as a form of combat. John Locke argued that offenders had, in effect, declared war on the state. At Tyburn, the violence of the state triumphed over the violence of the lawbreaker. In the nineteenth century, the war would be conducted with greater subtlety. Foucault comments that his survey of the period of reform evokes 'the distant roar of battle', that prisons function as the setting for combat over self-hood, and that this battle was diffused throughout society.

The scaffold, where the body of the tortured criminal had been exposed to the ritually manifested force of the sovereign, the punitive theatre in which the representation of punishment was permanently available to the social body, was replaced by a great enclosed, complex and hierarchized structure that was integrated into the very body of the state apparatus. . . . The high wall . . . the meticulously sealed wall, uncrossable in either direction, closed in upon the now mysterious work of punishment, will become near at hand, sometimes even at the very centre of the cities of the nineteenth century, at once material and symbolic, of the power to punish.

(Foucault, 115-116)
Conclusion

In 1810, at the suggestion of Samuel Romilly, Parliament appointed a committee, led by George Holford, to investigate the suitability of prisons for sentences of hard labour. The Committee considered régimes such as Paul’s at Gloucester and that proposed by Bentham. Reverend John Becher’s proposal stipulated associated work. The views of the 'old guard' were also taken into consideration.

Competition was strong among the various new schemes. The pre-reform prison was philosophically, if not yet in fact, dead. The Committee's recommendations led to the first national penitentiary, at Millbank. From this point, locating the end of the genesis of the modern prison becomes more arbitrary. Foucault marks it in January, 1840; Ignatieff carries on till Pentonville, in 1842.

The end of the period is ambiguous precisely because, after the reformation, reforms carried on (and on). The penal archipelago continues to respond (albeit in a more callous, reluctant and self-assured manner) to social needs as they arise. The prison
still holds out the promise of working, once the methods of incarceration are refined.

Nineteenth century attempts to exploit fully the new functions of prisons should not be taken as reforms of a new social institution (the penitentiary). In the first place, the changes we have reviewed were far too slow and fragmented to be revolutionary. Second, any genealogy of the prison exhibits an untidy ancestry: régimes at Pentonville or Cherry Hill were modelled on Gloucester or Walnut Street; and these in turn drew heavily upon the examples of Bridewells and the Rasphuis.

I am not suggesting that there has been no progress, that the dispersal system is no different from Newgate. I am arguing that the tortuous emergence of the prison precludes any 'first modern prison', or a golden age when prisons were performing as they should. The real achievement of the reformers was to persuade the public (as well as government) that prisons would serve purposes of rehabilitation and deterrence equally well.

The movement that began with Howard established among a sceptical, middle class public the ideal that prisons ought to reform, without ever having to convince them that penitentiaries actually did so.

(Ignatieff, 209)
Prison reform, then, is not the result of external forces on a traditional and structured social institution. Rather, reform is intrinsic to the practice of imprisonment.

The movement for reforming the prisons, for controlling their functioning, is not a recent phenomenon. It does not even seem to have originated in a recognition of failure. Prison 'reform' is virtually contemporary with the prison itself: it constitutes, as it were, its program. From the outset, the prison was caught up in a series of accompanying mechanisms, whose purpose was apparently to correct it, but which seem to form part of its very functioning, so closely have they been bound up with its existence throughout its long history.

(Foucault, 234)

(Colin Barham commented helpfully upon this chapter. I am grateful for his help.)
List of References


Howard, John: The State of the Prisons, London: (1st Ed.) 1777


Takagi, Paul, "The Walnut Street Jail: A Penal Reform to Centralize the Powers of the State," in Federal Probation, December, 1975, No. 5

Thompson, E.P.: Whigs and Hunters, London: Allen's Lane, 1975

Introduction

There are four major theories in the defence of punishment. Three of the four concede that punishment is an evil. These approaches refer to benefits of punishment in order to justify it. For deterrence theorists, the evil of punishment is justified because it prevents further offences. For rehabilitation advocates, punishment is harm, but it is part of a process through which the person is brought back to conformity. For social defence theorists, punishment is to be avoided, but the incapacitation of people who harm society cannot be achieved without some harm being committed against the offender. (The deprivation of liberty, while not necessarily punitive, does inflict a harm upon the prisoner).

In each case, it is acknowledged that punishment is a harm (at least in the short-term). Each theory explains or justifies the harm done in a markedly different way. In practice, deterrent concepts fade into social defence ones or rehabilitation ideals
retribution

butress arguments for deterrence. But the underlying differences are real.

Retribution, too, seeks to defend punishment. Retribution does not concede, however, that punishment is an evil. It is not founded upon a category of agreed benefits. Retribution means the return of harm to one who has committed some wrong. For most advocates of retribution, punishment is self-justifying: there is no need to appeal to beneficial consequences or higher principles in order to defend punishment. Retribution, therefore, is a justification of punishment that must itself be defended.

In my approach to the philosophy of punishment, I focus upon retribution. The other theories will enter the discussion only peripherally. They will also receive some attention in subsequent chapters, (especially Penal Anthropology).

I focus upon retribution for two reasons: First, other theories are in some disrepute at the moment: rehabilitation, for example, has been dethroned as the raison d'être of prisons since the late 60s. Retribution is perhaps the most popular justification of imprisonment at this time. (I say perhaps, not because it may be that social defence or deterrence
actually commands more assent, but because the defence of imprisonment at present is not based on any consistent philosophy. However, the current advocacy of imprisonment is more like retribution than it is like the others."

The pacifist approach provides the second reason for my concentration upon retribution. Pacifism and retribution are more clearly opposed than, say, pacifism and rehabilitation. Indeed, I shall argue that the defence of punishment through retribution consistently parallels Just War theory. Here, a theme briefly exposed in History becomes more pronounced: criminal justice is a form of conflict.

Retribution builds from the premise that the powers of the state include punishment (include the right to harm those who can be defined as offenders). Further, retribution makes clear the bounds of ethical behaviour toward the internal enemies of society.

Two principles are common to retributive theories:

A) The guilty ought to be punished; the innocent ought not to be punished.

B) Punishment is to be imposed in proportion to the gravity of the offence.
Further, punishment is not an effect of nature, but is performed by an authority empowered to inflict it.

There are difficulties in finding a universally agreed definition of punishment, even in retributive terms. In a survey of advocates of retribution, one might find three or four distinct styles of approach. Though one shades into another, I believe that there is a clear progression of stages, from a narrow to a broad focus. The most narrow might be called act-consequence; the second is analytical; the third, rules-retribution; I use broad retribution to refer to the final form.

Act-consequence retribution justifies punishment as the inevitable consequence of the wrongful act. In general, the act-consequence tradition views punishment as automatic and mechanical. The harm incurred through punishment (e.g., the pain of confinement) is thought to follow wrongdoing as naturally as a broken ankle from a misguided jump from a roof.

Some may argue that the punitive reflex is natural, or divinely ordained. Bishop Butler, for example, argued that society provides rewards and punishments just as nature does. Others may take the
view that punishment is the effect, and the wrong is the cause.

Finally, act-consequence thinking holds that wrongdoing is personally reflexive: to wrong you is to harm myself. To choose to commit wrong is to pollute one’s moral integrity. As two pints of beer may reduce one’s resistance to the third, so each discrete decision inclines one in a morally significant path, either for righteousness or evil. We might refer to this as the existentialist component, since the argument is based on our supposed power to author our very selves by the decisions we make.

Act-consequence thinking presents punishment as automatic, or binds those in authority by an inescapable duty to punish, as though those who punish bear no responsibility for the harm they inflict. Arguments for punishment that appeal solely to desert, that view the products of punishment as superfluous, also reflect act-consequence theory.

There are two problems with the act-consequence approach: 1) If there is a boomerang effect of wrongdoing, if in causing harm, harmful effects rebound upon us, then there is no sense in which the process
has an end. 2) The parallels with nature are stretched, such that it would appear that nature already applies ample negative effects to wrongful deeds. Our own punishment would seem to be superfluous. Indeed, the argument tends to omit the role of punisher, as though the punishment simply happens.

The latter weakness draws from those who would justify punishment a slightly broader perspective. The analytic style captures the retributive spirit in definitions of punishment. Although it is made clear that someone does the punishing, the duty to punish is unavoidable. It is intrinsic to the concept of rules that breaches will be punished. In Britain, the analytic approach is typified by J.D. Mabbott, whose 1939 article "Punishment" inspired a resurgence of interest in retribution.

The analytic approach leads directly to a third style of retribution, based upon the performance of rules in maintaining a framework of meaning for

---

1 Retribution as a 'boomerang' was introduced to me by Tadeusz Grygier, in conversation.
actions. To see actions as right or wrong by reference to rules is typical of the deontological mode of ethics. Here, the arguments for punishment are couched in terms of rights, duties, laws and punishment for transgressions. To combine the analytical with the deontological, we might say that any society needs rules; rules logically entail sanctions against wrongdoing.

A rule-retributive approach to punishment obliges authorities in society to inflict harm on wrongdoers in order to vindicate the rules. Whether a society is repressive or liberal, there will be acts that lie outside the limits of acceptable behaviour. Rules mark such a behavioural boundary. Punishments, then, are thought to defend the boundary by applying negative consequences to those who offend.

The rule-retributive approach makes it clear that punishment is a deliberate action (not a reflex, as in the act-consequence school). Further, it raises the concrete objective of denouncing certain acts (which I shall consider below). Finally, rule-retribution puts forward the claim that a just system of laws should have the effect of rewarding the good, and making the evil suffer. However, from this sketch, rules-retribution does not appear to confront the problem of unjust rules, or wrongful punishment.
A broader approach includes an understanding of justice that goes beyond rules. The focus is upon the harm done more than the law-breaking itself. A key factor is reciprocity. Society provides us with certain benefits, in exchange for which we ought to obey the laws. We have a duty to participate as responsible citizens, but further, we ought not to harm others. Any offence (it is argued) creates an imbalance in the community. The 'ripples' include physical effects, implications for law, and personal consequences – psychological, economic, moral, etc.

Like the first school, broad retributivists see that criminal justice focuses upon acts and their consequences. Like the second, they see that laws (rules, too) require social manifestations in order to hold their meaning. Beyond these points, however, broad retribution draws attention to harms that must be redressed, to tensions between law and morality, to the effectiveness of punishments.

Here punishment is justified primarily by appeal to reciprocity: insofar as society has been fair to the innocent and guilty alike, its response to the offender must be punitive. Punishment is justified because society has been fair to the offender and because the offender has been unfair to society. But
this means that retributive justice slides into distributive justice. If, hypothetically, a society were markedly unjust in its distribution of benefits, and if this contributed to an increase in criminal behaviour, then that society would not be just in responding with more punishment.

Talk of benefits and distributive justice seems to have diverted us from retribution. In general, advocates of retribution see punishment as self-justifying, or as an inevitable result of the offenders' wrongdoings. Few would go so far as to say that punishment should not do any one any good.\(^2\) However, justifications of punishment that are founded upon its benefits are utilitarian in nature. The consistent advocate of retribution supports punishment, not because it 'works', but because justice would seem to demand recompense.

It is here that the central, distinguishing aim of retribution becomes manifest. The utilitarian is

\(^2\) Ernest van den Haag quotes a judge who states that retribution is "... the doctrine of legal revenge, or punishment merely for the sake of punishment." (van den Haag, 10)
interested in results for society. Rehabilitation is intended to change the offender. But the goal of retribution is justice. At the simplest level, this means returning blow for blow. At the level of rules, it means the maintenance of a system of laws to define boundaries of acceptable behaviour by harming those who would transgress them. At the broadest level, this entails a comparative approach to justice, including distributive, civil and criminal aspects; it encompasses the harms done to victims, to society at large and to the offender.

These different retributive approaches are more like concentric circles than distinct types. As I have hinted, the rule-retributive approach will encompass the act-consequence style, and broad retribution includes insights from each of the narrower ones. No philosopher stands completely within any one style, particularly those who advocate broad retribution.

Immanuel Kant, for example, opposed the tendency to defend punishment by its utility, arguing that the only justification for punishment is desert or guilt. He implies that the harm of punishment is actually self-inflicted. But Kant does not limit himself to an act-consequence perspective. He draws a distinction
between the natural punishments of wrongdoing (e.g., the existential component I spoke of) and juridical punishment.

Punishment is a physical evil which, though it be not connected with moral evil as a natural consequence, ought to be connected with it as a consequence by the principles of a moral legislation.

(Kant, cited in Moberly, 218)

Kant sets his theory of punishment within social contract theory. Punishment is seen as a duty to one's descendants. The society punishes wrongdoing, "so that the bloodguilt thereof will not be fixed on the people because they failed to insist on carrying out the punishment" (Cited in Murphy, 82)

A significant difference between the approaches is their setting in time. Act-consequence is purely retrospective, attending to the action in the past which merits punishment. The 'consequence' of pain follows the offence, but there is no concern for the consequence of the punishment. Justification stops with the harm due the offender. Rule-retribution includes the past, but adds a present concern for the maintenance of the authority of law. This synchronous perspective measures the offence by reference to present law.
Broad retribution seems to me to concentrate upon a future sense of justice. Again, it encompasses the past harm as well as the present codes against which one has offended. But the language of broad retribution is of an equilibrium which the offence has disturbed, and of the harmony that punishment might help to restore.

These differences have direct bearing on the justification of punishment. Arguments that defend punishment within the narrow time span of an act of wrongdoing and a reflexive penalty ignore the effects of punishment (e.g., in maintaining standards of behaviour). Rule-retributive argument, which may include a limit on the duration of punishments, does not aim toward a future justice. Rather, the intent is to defend the status quo.

According to broad retribution, punishment is part of a process. An offence disturbs a relatively settled situation. It is met with punishment, which serves as an expiation. Out of the series of wrongful act, punishment and expiation emerges reconciliation or the restoration of justice.
A fuller understanding of retribution can be gained through an exploration of various arguments that have been offered in its defence. I shall concentrate upon the concept of desert. In a subsequent section, I shall examine other aspects of the case for retribution, with special reference to the underlying experiences of crime to which they refer. In a final section, I hope to draw out the implications of retribution for a distinctive response to offences.
Punishment can be seen as a method of correction or guidance; as a mark of standards (to gauge one's performance); as sanctions or signs marking a behavioural boundary; as a framework for force or coercion; ... a means of maintaining domination; a means of exclusion; a rationalisation of vengeance. The moral continuum should be obvious: few would deny the desirability of correction; few would espouse the need for revenge.

Given this range of meaning, moral questions surrounding the practice of punishment become nonsensical. The temptation is to slip into relativism: punishment is correction or the maintenance of standards (laudable functions) according to the punishing authority. Punishment is oppression and retaliation through the eyes of the person(s) being punished.

Beneath the apparent relativism, though, are logical problems that require attention. There is clearly a contradiction, and not just a tension, between the retrospective mechanism of act-consequence
punishment, and the broad retributive interest in expiation and reconciliation. Indeed, from the act-consequence perspective, to justify a punishment by its power of reconciliation would not be properly retributive at all. Stripped of wider benefits, though, punishment is difficult to separate from revenge. Given the broad retribution objective of a renewed equilibrium, of justice as a ‘clean slate’, punishment seems much like correction or cure.

If punishment can be as laudable as correction and as deplorable as revenge; if retribution can be a means to achieve reconciliation or a mechanism that returns suffering for wrongdoing, then both terms have been debased, and should be discarded. I believe that the concept of retribution can be clarified, but this requires a rigorous attention to the centre of the concept that strips away all hybrids and glosses.

Retribution is the return of harm for wrongdoing. Thus, the keystone of the theory is the concept of desert. Retribution can be justified only if we can demonstrate that wrongdoers deserve to suffer as a result of their offence. We cannot support the concept of desert if we cannot prove that it differs from vengeance.
'Vengeance', like 'saint', is a morally textured term. The word carries negative moral force. When we try to make clear what vengeance is — in order to distinguish retribution from vengeance — we find aspects shared with punishment. For instance, both vengeance and punishment are responses to some previous wrong. Likewise, vengeance and punishment both harm persons.

It might be argued that vengeance harms arbitrarily; that, for example, a survivor might kill the sibling of her brother's murderer if circumstances preclude her reaching the guilty person. But punishment is nowhere so focused that it spares all but the guilty. In theory, perhaps, punishment could be applied to one person alone, but (since this is impossible in life) this aspect of the theory is irrelevant. In the practice of punishment, harm is widespread.

* From this we might draw a criterion by which to evaluate punishments: those penalties are most just that focus the harm on the offender; the more widespread the harm of the penalty, the more crude and unjust, the form of punishment.
This fact casts doubt upon a second claim based on the arbitrary nature of vengeance, i.e., that vengeance exacts a penalty based on passion. Punishment, it is argued, is measured with reference to the gravity of the original harm. 'Montero's Aim' refers to the fact that people do pursue retaliation. Thus, it is argued, punishment is inflicted by some authority in order to deny the victim any right to private retribution.

There are two points that require analysis here. The first is that punishment is measured, proportionate to the offence whereas vengeance is arbitrary, based on the person's feelings. (This arbitrariness can vary from the victim who desires no redress to one who kills out of some petty grievance.) The second point is that there is a morally decisive difference between so-called private retaliation and public- or civic-administered punishment.

The first claim, then, is that punishment is measured and vengeance is not. In practice, however, the effects of punishment are not so controllable. We cannot ensure that the harm of punishment affects only the guilty party. We cannot even calibrate the harm to the one person (assuming it were possible to find one solely guilty party whose pains of punishment will not affect others.) Subjective factors — age,
sexuality, gender, occupation, education, etc. (to
borrow from Jeremy Bentham's 'hedonic calculus', to
the opposite effect) — these and other variables
determining the extent of harm eliminate any claim to
proportionality in punishment.

Thus, the key difference between vengeance and
punishment is evidently that the latter is inflicted
by an authority.\(^4\) We might note in passing that the
act-consequence style is ruled out, as we must appeal
to a theory of state-craft or authority to distinguish
punishment from vengeance. Broader retributive
thought — either rule-retribution or broad retribution
— is needed in order to establish punishment on moral
grounds.

Even so, however, it is difficult to prove that
desert, as a part of a wider scheme, is not a
retaliatory concept. Despite differences between the
demands of personal ethics and state-craft, it is
inconsistent to claim that one individual is wrong for

\(^4\) Justifying force by the fact that it is the state that
inflicts it is one clear parallel to Just War theory,
which I shall explore below.
harming another, yet the state is obligated to inflict harm upon persons. Hence, that harm must be justified by the way in which it adheres to a full political theory.

Rules retribution is the style of retributive punishment most appropriate to an abstract theory of statehood. From this perspective, any legal system requires a concept of desert to maintain a consistent theory of government. Law violators are punished, not because of harm done, but simply because they have broken the law (whether or not that law is just).

One perspective, drawn from a theory of civil government, holds that offenders earn punishment by acting in a way that infringes others' rights. Thus, to attack the rights of another person constitutes the surrender of the right not to be punished.

This seemingly sensible relation is nowhere consistently practiced. A judge who violates a defendant's right to a fair trial is not thereby

---

5 My discussion of defences of desert through the place of punishment in theories of civil government is drawn in part from: Richard W. Burgh, "Do the Guilty Deserve Punishment?"
retribution
deprived of that right. If one can violate another's rights without surrendering rights, then the abuse of another's rights is not sufficient to establish desert.

Perhaps what is meant is that each citizen has a right to gain the benefits of living in a just society. By acting unjustly, the offender creates an imbalance in satisfactions. But this line of argument, based on distribution of benefits, leads too easily to the opposite conclusion. A glance at the disproportionate representation of the poor, the unemployed, racial minorities, the under-educated in the prison population demonstrates that those being punished have received a less-than-average share of society's benefits. The composition of the prison population demonstrates that justice itself is a benefit of society that is unequally distributed.

Given our societies as they are, the general principle that individuals ought to be equal in satisfactions would direct us in at least a great many cases to the conclusion that we ought not to punish offenders.

(Honderich, 26)

Denunciation theory suggests that punishment is the result of the offenders' choices. In choosing to break the rules, offenders have surrendered their right not to be punished. H.L.A. Hart writes:
Consider the law . . . as a choosing system, in which individuals can find out, in general terms at least, the costs they have to pay if they act in certain ways.

(Cited in Burgh, 199)

Richard Burgh makes two points in rebuttal. First, Hart has not established that a wrong choice entails the loss of the right not to be punished. Certainly, no one would choose (rationally) to be punished. Burgh argues (second) that justice requires that the offender would have had equal opportunity to choose the laws to which s/he must be obedient. "In the world of practical politics," Burgh declares, "such a choice is impossible." (Burgh, 201)

One of the keystones in theories of civil government that supports desert is the need for self-restraint. In breaking the laws, offenders have usurped a liberty beyond any material gains of the offence. Responsible citizens (in theory) allow restrictions on their liberty voluntarily, through self-restraint. The offender has chosen not to exercise self-restraint.

To restore equilibrium, it would seem just for the authority to deprive offenders of their liberty. Jeffrie G. Murphy presents a Kant-inspired argument along these lines. Richard Burgh argues against it.
Ultimately, I think that Burgh's rebuttal falls short, and that Murphy himself provides a cogent counter-argument.

Jeffrie Murphy places Kant's defence of punishment within a more general theory of social obligation. Central to civil society is the attitude of reciprocity. Law maintains social order by minimising the advantages to be gained by renouncing self-restraint. Further, the offender receives the full benefits of the civil government insofar as others restrain themselves; therefore, offenders have no cause for complaint if sanctions are applied against their own wrongdoing. For Murphy, the state's authority to punish is established by reciprocity in a society toward which offenders have been unfair.

Burgh highlights a weakness of the argument from self-restraint. If the reason we deserve punishment is that we have chosen to forego self-restraint, then the severity of punishment must be linked to one's inclination to commit an offence. The penalty must be proportioned to the inclination to commit a particular offence, and not to the gravity of harm. Otherwise, punishment is arbitrary because it is based on something other than desert; otherwise, the state does not punish the renunciation of self-restraint.
Burgh points out that the inclination to underestimate one's earnings is far greater than the inclination to murder. Citizens who declare their earnings honestly exercise great self-restraint. The self-restraint required to prevent citizens from committing murder is relatively low. Thus, to base desert upon self-restraint may show one way in which offenders deserve punishment, but it does so at too high a price. Tax evasion would need to be punished more severely than murder.

Burgh's argument might eliminate the basis of desert, but his attack is incomplete. Though retribution according to inclination creates monstrous implications for proportionality, it still allows a dichotomy between the innocent and guilty. The claim that the innocent exercise perfect self-control is suspect, and must be explored critically.

Jeffrie Murphy supplies such an argument. He directs searching (and concrete) questions to the self-restraint of 'law-abiding citizens'. Here, too, he follows Kant. While, in his Rechtslehre, Kant was adamant in support of retribution, his stringency is moderated by humility in Religion Within the Limits of Reason Alone.
[Persons] may even picture themselves as meritorious, feeling themselves guilty of no such offences as they see others burdened with; nor do they even inquire whether good luck should not have the credit, [or if] they would not have practiced similar vices, had not inability, temperament, training, and circumstance of time and place which serve to tempt one (matters which are not imputable), kept them out of the way of those vices.

(Cited in Murphy, 88)

Kant's point is not so much that no one deserves punishment but that no one is sufficiently righteous that they hold the right to punish. Murphy's analysis of reciprocity suggests that an ideally just society has the moral right to inflict punishment. In such a society, the burdens of self-restraint would be distributed equally. The perfect self-restraint of each citizen would justify punishment but there would be no one to punish.

There are deeper problems with the concept of desert. At this point, however, it is clear that the concept has failed to find compelling support in a theory of statehood. Neither from an act-consequence approach nor from rules-retribution can we draw a convincing distinction between retribution based on desert and vengeance.

The language of desert closely parallels a very different ethical argument. John Locke compared
felons to enemy invaders, and saw law-breaking as a declaration of war. Given these presuppositions, his theory of government predictably provides for capital punishment.

Theories of punishment based on desert describe the conditions under which we are justified in harming the internal enemies of society. Just War theory outlines the criteria to be met in defence of decisions to kill the external enemies. The similarities between the two help to illustrate pacifist reservations about retributive punishment.

Both theories set out a framework to bring order to the harm inflicted. That is, Just War theory, like retributive penal theory, strives to minimise the damage that might be seen as arbitrary. Harm is justified by imposing restrictions upon the uses of harm. But subsequent links are the more profound.

In both cases, the authority must control the harm. Where punishment is meted out by a private party it is characterised as lynching, mob rule, vengeance. Where armed force is used by groups denied sovereignty, it is revolution or terrorism. But where the state takes control — where presidents or princes declare war, where judges pass sentence — the harm is thereby assumed to be legitimate.
A fundamental element of retribution is proportion, where justified harm is gauged by the gravity of the offence. In war, the harm must be measured against the potential gains in order to win support. Each theory attempts to set a limit to the degree of suffering one party can inflict before its action is deemed wrong. In each case, we complacently quantify the harm: the numbers killed in battle, the years served in prison. In each case, we bracket off as irrelevant those harms that detract from our theories: the unintended lessons of violence, the injustices maintained by the state that cause war and crime, our projection of evil onto others, our lack of attention to other, less harmful approaches.

A final parallel concerns the psychology underlying our justification of punishment. We punish and we go to war, 'only as a last resort'. As an argument from expediency, this point hardly serves to establish war or punishment as morally valid; indeed, it acknowledges that they are evils. But beneath the argument from necessity is a more subtle implication.

'Last resort' does not refer to two equal parties who have given equal attention to the resolution of a dispute. Rather, the phrase implies that the
punishing authority or the warring nation has done all that is possible to achieve justice without resort to force. In this light, the argument from 'last resort' predetermines the blame: it is the enemy (or offender) whose lack of response to the state's efforts causes the state to go to war (or punish).

It is true that punishment is a sign of failure. A sentence is imposed after other means have been tried. War may be undertaken after negotiation and posturing have failed to bring results. But the underlying assumption of 'last resort' language is that the blame for the failure rests with the other party (enemy or offender).

Here again, desert is the lynch-pin of justifications of state-violence. In the case of war, attempted justifications rule out the wilful destruction of civilians. Those who kill justly must recognise a categorical difference between the enemy and one's allies, but also between combatant and civilian enemies.

Punishment is judged by its targets, too, and it is considered legitimate if those subjected to punishment have offended.
Offenders, like our enemies in war, are envisioned as being categorically different from us . . . Images of both war and crime involve a process of 'abstracting' . . . the 'enemy'.

(Gross, Knopp & Zehr, 7)

Taken together, 'last resort' and desert imply that the state has nobly restrained itself from punishing an unrepentant offender. It is not meant to signify that the person's needs are greater than society is prepared to meet, or that the state places a higher priority on punitive responses than on healing or nurturing ones. There is a reason for this stress upon the righteousness of the state in the face of the offender's guilt, but it fails to justify punishment:

Before human beings can bring themselves to participate in, or approve of, destructive actions against others, it is first necessary for them to lose sight . . . of the very humanity of the people who will suffer as a consequence.

(Gabriel Marcel, cited in Mackey, 46)

In these ways, the symbolic weight of retribution draws attention to the conflicts inherent in criminal justice. Retributive theory also relies upon less bellicose models. Notions of satisfaction, placation or annulment can unearth common goals of justice, even between retribution and pacifism.
Models of Retribution

In "Varieties of Retribution," John Cottingham usefully analyses arguments favouring punishment along retributive lines. He spotlights a common flaw. Philosophers use 'retribution' to refer to disparate concepts. Cottingham lists nine different meanings:

- Repayment
- Desert
- Penalty
- Minimalism
- Satisfaction
- Fair Play
- Placation
- Annulment
- Denunciation

I shall restrict my comments to the major ones: repayment, desert, satisfaction, annulment and denunciation.

A repayment model is suggested by such commonplace statements as 'the debt owed society' or 'paying the price for doing wrong'. Repayment is clearly not meant literally, since society maintains the offender during imprisonment. Repayment retribution assumes both that a wrongful act creates a debt, and that the debt can be cleared by suffering harm. But the

---

Allusion to contracts can be deceptive. To say that 'he did wrong and is going to pay for it' suggests some fair bargain, like the purchase of goods. Yet the implication, that 'he' shall suffer because he did wrong, resembles retaliation more than commercial exchange.

Desert, then, does not mean that an offender is obligated to make good the wrong; rather, it suggests that wrongdoing earns punishment just as goodness merits rewards. One could hardly be said to deserve harm simply because one had a debt to repay.

Satisfaction is a key model for retributive views. It is held that punishment brings satisfaction to the victim(s) of an offence. The claim for satisfaction can be, and is, extended to society, so that the state comes to claim satisfaction. Society can be the beneficiary, exacting satisfaction from the offender; but society can also lay claim to the rights of the victim, denying any victim the right to private satisfaction. (This is Montero's Aim.) Cottingham rightly observes that the latter aim is in fact utilitarian, since punishment is justified by its uses against private vengeance and the pain unrestrained retaliation might cause.
The theory of retribution propounded by G. W. F. Hegel concerns the annulment of the wrong. The offence creates a negative, which society must negate. The relation of annulment to retribution is uncertain. Cottingham argues that annulment is less retributive than it is a form of restitution, since it acts to restore the original authority of the law. It is fair to add that Hegel and his followers would reject Cottingham's point, defending the retributive aspects of annulment.

Finally, Cottingham considers denunciation. Society responds to wrongdoing with punishment in order to denounce the act effectively. "The ultimate justification of any punishment is not that it is a deterrent, but that it is the emphatic denunciation by the community of a crime." (Lord Denning, cited by Cottingham, 245) Here again, a model is introduced which is not really retributive. The point justifies denunciation, the maintenance of social standards. The fact that such standards are essential does not serve to justify the return of harm for harm.

Few of the models cited are retributive in the narrow sense of justifying retribution. Clearly, the most powerful tools for advocates of retribution are the images of repayment and desert. These, however, are not developed ethical theories; they are
metaphorical. Considered as such, the image of repayment may capture the essence of retribution, but it cannot provide the required ethical support.

I have followed John Cottingham's discussion at length, in part because he surveys the wide range of retributive argument. His analysis is most helpful, though, because he illuminates the logical force of retributive images as models.

A model cannot prove an ethical point, but it has two strengths in ethical discourse. First, the model can awaken an intuitive insight into values, pointing to agreed ideals. Second, any model is built upon inter-subjective experience. (Jesus as shepherd relies upon the perceived role of real shepherds; God's omnipotence rests its meaning upon our understanding of human powers.\(^7\))

Each model seeks to evoke our assent, or to reveal something of ethical value. The models of retribution

\(^7\) For a more involved discussion of the use of models in this sense, see D.K. Edgar, *The Moral Theology of Ian Ramsey*, (M.A. Thesis, Durham, 1980), especially "Qualified Models".
begin with the familiar, concrete world of everyday experience, and provide a moral directive. In drawing attention to the functions of models I suggest that advocates of retribution make valuable points about the harms caused by offences. These can be discerned through an analysis of the models used.

The notion of repayment has already been criticised for being paradoxical, since society pays for incarceration. While the immediate reference of repayment would seem to be contracts, the specific currency, harm, significantly alters the model. Repayment does not justify punishment by linking it to the benefits we receive from society, or by the assumptions of some sort of contract (whereby I promise to submit to punishment if I break the law).

Repayment evokes two distinct images of exchange. The first is one of expiation, wherein offenders annul a wrong or compensate a loss through suffering the penalty. The second, where the currency is clearly harm, is straightforwardly the language of retaliation. This is repayment in kind. When the retributive argument takes the first form, obligating the offender to 'make good', the goal is restoration, and it does little to justify retributive harms. In the latter case, the argument clearly is retributive, but
the link between retribution and retaliation is damaging.

It is possible, however, that the advocate of retribution has been drawn to the punitive stance in the interest of compensating a loss, i.e. of restoring a balance. If this is the case, then one might hope that language of repayment as expiation may draw out the advantages of a restorative approach. Restitution, for example, provides some sense of repayment for harm done, but it does so in a non-retributive style. (I shall explore this link in a final section, below.)

A second key model is that of satisfaction. For Cottingham, satisfaction is comprised of the victim’s satisfaction at the offender’s suffering and the state’s authority to control satisfaction by eliminating private revenge. Cottingham’s analysis, however, prejudices our view of satisfaction in two ways. First, there is certainly a vengeful tone in the right of a victim to ‘get even’. Second, Cottingham neglects the possibility that society would desire its own satisfaction. Certainly the relation of the state to satisfaction is more complex.

Act-consequence retribution would restrict the effects upon the offender to harm. While this may
satisfy a victim, it is simple retaliation. But to approach the model sympathetically we must recognise legitimate needs of victims. Among these are the hope that the harm does not recur, a need for compensation, a desire to make some sense of the event, and certainly the need to suffer no further in connection with the offence (i.e., to suffer neither from the offender nor from the state).

The satisfaction model focuses upon the victims' subjective states. Criminal justice through the past two centuries has favoured satisfactions due the state at the expense of victims. Moreover, in shaping punishment to the demands of Montero's Aim, the state's influence has been to confine satisfaction to its punitive, retaliatory sense and to weaken its broader, restorative significance.

Perhaps the most potent of the retributive models is annulment. For Hegel, retribution re-establishes the authority that had been attacked by the offence. Annulment is linked to denunciation, as the latter expresses society's rejection of the wrongful act. Finally, annulment is basic to the 'boundary' model, whereby punishments establish and maintain the limits of acceptable behaviour.

-165-
The point of the boundary model challenges those who would do without punishment. It is difficult to conceive of ways to draw boundaries of acceptable behaviour without recourse to negative consequences for transgressions. Here again, there is a moral scale: the mere existence of rules carries latent coercion (yet rules may be sufficient to ensure acceptable behaviour); disapproval alerts some potential offenders that they are nearing the boundaries; when disapproval is ineffective, punishment comes into play. Without negative support for rules, it is argued, people will not be deterred, and anarchy will result.

Perhaps these models are intended to demonstrate that punishments describe the behavioural boundary. If so, then the purpose is educative and the justification would rest upon rehabilitation theory. On the other hand, if the offender's pain is used to admonish others, then the model is part of deterrence.

The specific category may seem trivial, but my point is that these aims might be met without retribution. Further, the deterrent aim, using an offender's pain as an example for others, fails to treat the offender as an end (a principle espoused by retribution theory). Finally, deterrence theory acknowledges that punishment is an evil; hence,
Retribution would minimise our use of punishments to vindicate boundaries. Retribution, in contrast, sets punishment in a positive light, and may tempt us to expand our use of punishment in order to gain social order.

Models are multi-faceted. Retributive argument, on the whole, attends to the beneficial symbolic force of punishment. Yet, punishment carries unintended, harmful associations. Annulment-denunciation models focus on the benefit of vindicating the authority of law. In doing so, however, they ignore the mixed messages of punishment.

The tacit approbation given to violence as expressed by the punishments meted out by the courts . . . [serve], for the criminal minority, to validate violence on their part. Thus there is a circularity in the pattern of violence, with judicial violence being a part of the cause of the violence it seeks to contain.

(QSRE Report, 6, L.)

To characterise boundary-setting as basically deterrent is misleading. As I have stated, a deterrence-based approach would minimise the use of punishment; a retributive plan would expand punishment to maintain social order. But there is a more basic point, and this finds the core of each argument.

Deterrence depends upon an identification between the citizen and the person being punished.
Retribution, with its insistence upon guilt, emphasises the categorical difference between offender and citizen. Clearly, at the scaffold we are to identify with the power of the state (for retribution to have legitimacy); we are to identify with the fate of the convict (for deterrence to work).

The psychological complexity of identification should not deflect us from a clear implication of retribution. Retribution promulgates the view that limits are maintained not just by force, but by actual harm. In so doing, it legitimates harm. If we (communally, as a society) feel vindicated in returning harm for harm, then we are more likely to practice retribution privately. At the very least, the view that crossing a boundary subjects one to a loss of status would exacerbate social divisions by establishing a sense of us and them.

There are conflicts between the models of retribution. The satisfaction due a victim may constitute an injustice according to the annulment model, or by fair play. Conflict between the models refers to the conflicting interests after an offence; it should not be taken as mere inconsistency in the argument for retribution. It does suggest, though, that the resolution of hardships raised by offences is never so simple as the retributive reflex of harm for harm.
We have seen that models of retribution disclose aspects of the aftermath of offences that require attention. For instance, actions encourage imitation, whether those acts be law-breaking, or retribution by the state. Models such as repayment or satisfaction cover a broad range of experience, while others are limited. One can see the point of many of the models without being led to embrace a retributive approach to punishment.

The survey of models provides another lesson. We have seen that models of retribution contain two sides, and that these are not necessarily complementary. In satisfaction, for instance, there are retaliatory goals of returning harm for harm, and there are restorative goals of assuring the victim of compensation and future security. In annulment, the goal of dividing trespassers from the innocent actually threatens social cohesion, while the denunciation of wrongful acts, defending the integrity of the boundaries, is essential to a healthy community.

In order to explore these tensions in retribution, I shall introduce a model of responding to offences that may include retributive elements, but which resolutely minimises these in service to the higher goal of restoration.
Non-Retributive Retribution

I have taken three separate approaches to explore the concept of retribution. In the first section, I described different styles of argument. The narrow act-consequence approach concentrates upon the offence itself and marks the agent out for punishment on the sole criterion of guilt. The rules-retributive school is broader. Advocates include those who claim that punishment is implied in the existence of rules; other rule-retributive thinkers take care to locate punishment within a theory of law (boundaries). The third approach – which I have labelled broad retribution – is clearly open to mixing benefits of retribution with rehabilitation or deterrence. This approach is also open to defending punishment by appeal to a combination of benefits.

In the second section, I studied the central concept of desert in depth. Setting the concept within a theory of civil government has not established the moral validity of desert, where desert means that the state has the right to inflict harm on one who has done wrong. More important, however, the
establishment of desert in a theory of government was crucial to marking a distinction between desert and simple vengeance.

Problems in securing this distinction illuminate an ambivalence within the idea of retribution. Retributive argument is most lucid when it is most like vengeance. What I have called broad retribution exhibits a determination to resolve the conflicts that surround offences, and hence wins wide moral support. For these thinkers retribution seems to have merely instrumental value in the cause of justice. Broad retribution also conflicts with the more characteristic aspects of retribution (e.g., it may actually oppose the practice of punishment by an unjust state.)

In view of the confusion, I have suggested that retribution is usefully restricted to its sense of harm for harm. This has the effect of equating retribution with (or limiting it to) the theory's more vindictive aspects. It also raises the possibility that it is more accurate to see broad retribution as a transitional theory, between retributive justice (based on retaliation) and restorative justice (based on resolutions of conflict).
This, however, is not the end of retribution. The retaliatory elements in the theory mean that punishment cannot be defended by retribution alone. But this failure should not obscure the value of retributive thought for shaping our response to law-breaking behaviour. The models of retribution have contributed to our understanding of the aftermath of offences by symbolising the wounds that need to be healed. The benefits that retributive theory holds for restorative justice become clear when we demonstrate the transitional character of the former approach.

One way of marking a change of models is to find the vestiges of the old in the assumptions of the new. J.P. Day has compared restitution and retribution. He outlines Hegel's argument, according to which two conditions justify punishment: A) It must right a wrong, annul a bad precedent; B) It may also serve to undo damage done by an offender.

---

Day draws our attention to the second function. He argues that any restitution to the victim by the offender, exacted by some authority, is retributive. In Day's view, restitution deprives the offender of some good, and to deprive someone of a good is to inflict harm.

Restitution has the benefit of relating the 'coinage' directly to the victim of the offence. It is clearly tied to a broad (i.e., non-vindictive) understanding of satisfaction. Yet Day's analysis of restitution is significant precisely because he develops it within the model of annulment. Day argues that the infliction of punishment refers not merely to a past event but to a desired future as well. The aim is to restore a balance of justice through retribution. Day argues that only the full interaction of offence-punishment-annulment merits serious consideration as a retributive position.

Restitution, which meets the harm done, can be self-initiated by offenders or imposed upon them. When the offender is made to compensate a victim by some authority, then, Day argues, the situation necessarily includes retribution. Day defines retributive punishment as an interaction wherein the legal authority requires an offender to give back a good (or equivalent) which s/he has taken from a victim.
Day argues that the deprivation of a good is retributive, is a harm inflicted upon an offender. The procedure is not a reflexive mechanism of harm, however, for the punitive action is complex. 1) There is restitution; the authority makes the offender make good the harm done to the victim; and 2) the authority thereby gives the offender a harm since (1) requires a deprivation of some good from the offender.

Day's point is not that by compensating the victim restitution fulfils the demand that the offender be harmed. Nor is he saying that offenders have caused the harm inflicted upon them by the state. The point of Day's thesis is that (2) is required in order to achieve (1), and that (1) is the annulment of the offence. That is, to annul the harm is the point, and the offender must be punished (must be deprived of goods) in order to undo the harm.

Day goes further to claim that the annulment (1) is just only if the benefit to the victim outweighs the deprivation of the offender. In other words, justice demands that the good in the restitution outweighs the harm of the retribution.

Day adds three derivative duties required of the state: 1. The state must make the offender provide restitution to the value (taken) or to its equivalent.
Day cites civil law as an example to follow in cases of physical injury or other harms that are difficult to quantify; ii. The state has the duty to make up any deficiency in the offender's repayment; iii. The state must induce the offender to discharge the moral obligations incurred toward the victim(s). The duties of the state are correlated to the rights of victims.

Day has succeeded in bringing together retributive and restitutive elements. Further, as he himself states, he has made clear that punishment is ultimately justified by its facility for undoing a harm. Day has also focused our attention upon the persons harmed by offences. His thesis has the remarkable attribute of bringing the justification of punishment back to the legitimate claims of victims.

There are harsh realities that undermine Day's case. For instance, restitutive settlements can be impractical where the offender is unemployed. When jobs are scarce, providing offenders with jobs so that they can pay restitution sounds a bit like rewarding the guilty. Then, too, Day's scheme seems to depend excessively upon the victim's subjective state. The emotional trauma of a loss of £50 may be greater for a wealthy victim than a poor one, despite the fact that the material loss would be greater for the latter victim.
More basic criticisms would come from the rules-retribution school. In Hegel's view, punishment functions primarily to right the wrong, and meeting the harm is secondary. Day certainly reverses the priorities. In Day's scheme, laws are made to help people interact; people are not made to serve laws.

Hegel's annulment is intended to preserve the authority of the state (with residual benefits for persons). Day's thesis goes to the heart of offences, as harm between persons, and is intended to resolve conflicts by meeting the harms to persons. Day makes the victim(s) the proper focus of a just response, and he does so in a way that honours the offender's capacity to participate in our positive response to the harms.

A second criticism is more complex. It is claimed that retribution treats the offender as responsible by making wrongdoers accountable for their actions. While Day's arrangement does require that offenders amend the harm, it does not require them to admit their guilt. According to the advocate of retribution, restitution must then fail to reach to the heart of personal responsibility.

As we have seen, the logic of retribution does not address the offender's ability to repair the damage.
done: retributive punishment is retrospective, and understands accountability in terms of liability to punishment. Within this rather limited understanding of responsibility, one can see that restitution fails to inflict the right kind of pain on offenders. The pain inflicted in restitution is to undo the wrong; the point of the harm in retribution is to hurt the offender. Here again, however, the retributive 'gain' is indistinguishable from vengeance.

The restitutive response to offences, as described by J.P. Day, does include elements which are clearly retributive. For instance, the harm that follows an offence falls upon the offender. There is proportionality, in that the compensation is determined according to the degree of harm inflicted upon the victim(s). Yet, as Day makes explicit, the objective of the response is restorative. He makes it clear that harm to the offender is just, but only to the extent required to meet the harms of the offence itself. In short, Day has stripped retribution of its retaliatory dimensions.

* I shall explore the complex area of personal responsibility in depth below, *Moral Responsibility*; cf. *Anthropology.*
Such a form of 'retribution' will not satisfy rules-retribution advocates, for whom harm to the offender is primary. If, however, the ultimate goal of criminal justice is a resolution of the conflict at the heart of the offence, Day's restitution is far preferable to the more retaliatory forms of retribution.

Here again, the term 'retribution' has become ambiguous. To remove the vengeful tints does not satisfy those advocates of retribution who place emphasis on the need to harm offenders. However, it is just that aspect, retaliation, that discredits retribution. Those dimensions of what I have called 'broad retribution' clearly accord with the restitutive response.

There is a model for responding to offences that focuses on the benefits of restitution, focuses on the victims' needs and holds offenders responsible for making good the harm done. Restorative justice acknowledges that we can do no better than to approximate justice, and argues that the response to any offence should be one of healing and attention to the needs of both parties involved. The goal of
restorative justice is to bring harmony, a resolution, out of the discord. The offence itself is symbolic of that discord, but it is also a product of it, and a cause of its continuance.

The concept of restorative justice, clearly drawn from a peacemaking approach, is that harm does cause harm (as the act-consequence school argues), but that further harm cannot put an end to the cycle. It is difficult to imagine some form of harm that would reverse the cycle. The advocate of retribution has defended punishment as automatic, a response that follows from the offenders' wrongdoing. But there is no sense in which the retributive response can claim to stop the 'boomerang' of harm.

There are at least two ways in which retribution furthers the harm: the damage is both symbolic and material. First, as I have argued above, in symbolising the propriety of inflicting harm on wrongdoers, the state invites the identification, and hence the imitation, of citizens. It may be argued — as does Walter Moberly — that the point is to mirror the harm to the offenders to teach them sensitivity to the pain they cause. But it is not only prisoners who get the message wrong, and learn unintended lessons. The institution of punishment teaches: that force
determines who's right, that people whose behaviour differs from 'ours' should be excluded, that justice is the return of harm for harm.

It is the second category which is the theme of this thesis. Retribution suffers from its retrospective stance. To the extent that the theory does look forward, it is incapable of recognising the long-term harms of punishment. The abstract quality of the argument makes it possible to believe that an offender might be helped by suffering harm or less likely to re-offend out of fear of further punishment. (These are, of course, rehabilitation and deterrence in retributive-hybrid form.) In strictly retributive terms, however, arguments for punishment look forward only as far as the satisfaction of the victim (more, the state) through the suffering of the offender.

In a pacifist light, retributive harm does not bring restoration. Indeed, retribution inflicts harm without regard to the broad consequences (to those connected with the 'guilty') and certainly without thought of the long-term harm to those who are subjected to punishment. In this sense, retributive punishment, particularly in the form of incarceration, increases the momentum of human suffering.
A more balanced assessment of the harmful effects of imprisonment is needed. Given our current enthusiasm for inflicting harm upon wrongdoers - i.e., through imprisonment - it is sensible to look more closely at the harm prisons inflict. In setting out to assess the damage of imprisonment (clearly a depressing task) I seek to illuminate the human cost of punishment by imprisonment. Given the distinctions between retaliatory retribution and restorative justice, it may be possible to draw broad retribution devotees toward the latter. A display of the future costs of incarceration may encourage others, still wedded to retribution, to consider less damaging forms of punishment. At the worst, exploring the harms of prison in greater depth will prepare us for the threat to our future posed by our retributive enthusiasm.

(I am grateful for helpful comments on this chapter by David Galbraith, Frank Whidby and Frank Dowrick).
List of References


Cottingham, John, "Varieties of Retribution," The Philosophical Quarterly, vol. 29, 1979, 238-246


Gross, Robert, Fay Honey Knopp, and Howard Zehr, "Crime is a Peace Issue," Friends Journal, March 1, 1982, 5-9


Zehr, Howard, Retributive Justice, Restorative Justice, Elkhart, IN (USA): Mennonite Central Committee U.S. Office of Criminal Justice, September, 1985
Anthropology

Human Nature in Penology and Theology

Nothing is so decisive for the style of a legal era as the idea of man by which it is guided.
—Gustav Radbruch

This chapter examines four theories of punishment as they reflect core assumptions about human nature. Retribution, rehabilitation, deterrence, and social defence each build upon a distinctive anthropology. I use anthropology to refer to philosophical convictions about human nature. In this context these convictions distinguish penal theories from other disciplines, and, indeed, one theory of punishment from the other. To illustrate the field of study: medicine typically refers to humans as organisms; political theory views humans as citizens, i.e., as rational and free, or alienated, etc. In the sections that follow, I identify key anthropological assumptions of penology, and analyse them in light of Christian beliefs about human nature.

Theological anthropology is comprehensive, including conflicting views of human nature. Broadly speaking, though, theological images are based on our
relationships to God and to others. Penal theory tends to rely upon more straightforward metaphors. Persons may be guilty or innocent, rehabilitated or a recidivist (repeat offender). To complicate matters, theological discourse makes free use of legal labels to describe the divine-human relations. We are said to be guilty of sin, or justified by faith.

Theology, though, relies upon other anthropological metaphors. We are spirit and flesh; we walk in light or in darkness (i.e., we discern revelation or not). In addition to these poles of experience, theology employs a host of other metaphors. We might be lost sheep, soldiers in the lamb's war, salt of the earth, temples of the spirit, sowers of the seed. Beyond these uses of images in theological discourse, however, is the conviction that what we are is unresolved, transcending any conclusive definition.

In contrast, penology and legal theories have the advantage of precision. Criminal justice is highly specialised, and consequently the core anthropological metaphors are abstract, distilling specific qualities of persons. By its nature, law screens out aspects of human experience. The impartiality of the judiciary requires that law excludes aspects like rugged good looks or a sophisticated taste for wine.
My purpose is not to provide a theology of law, nor to introduce an exhaustive analysis of human nature in jurisprudence. I am concerned to build on my discussion of retribution (above) by subjecting theories of punishment to the images of human beings used in theology.

Retribution advocates the punishment of the guilty. Deterrence theories draw attention to the springs of human motivation. Punishments intended to reform or rehabilitate offenders presuppose that human behaviour can be altered or cured. Social defence theories may tend toward a macro-social view, and stress more sociological images of selfhood. I shall offer a brief sketch of predominant images in each, and examine these core assumptions in light of theological principles.

One could find theological themes that support each penal theory's anthropology. I rely, as far as possible, upon relatively uncontroversial theological images.
Retribution

If only there were evil people somewhere insidiously committing evil deeds, and it were necessary only to separate them from the rest of us and destroy them. But the line dividing good and evil cuts through the heart of every human being. And who is willing to destroy a piece of his own heart?

— Alexander Solzhenitsyn

In my previous discussion of retribution, I suggested that the theory bases its distinction between punishment and vengeance upon the concept of desert. In the context of a theory of punishment, I argued that the root of retribution is the duty to harm those who have done wrong. There are retributive points which are fruitful in restoring wholeness after an offence. But these are not sufficient to establish a defence of punishment on retributive grounds alone.

This section argues that the distinction between innocence and guilt is too weak to support the defence of punishment. When an offender is convicted the loss of many rights follows inevitably. Where imprisonment is imposed, the offender loses not just liberty, but free association, sexual access, equal job opportunity, freedom of speech (through prison censorship) and in many cases the right to natural justice (or due process).
Criminal law draws a putative distinction between actions for which one is accountable, and one's status. It is not the purpose of criminal law to divide persons into two categories, innocent and guilty. At issue is whether the accused has acted culpably or not. The court, in theory, determines if I have broken the law, and imposes a fitting punishment if I am convicted.

In criminal justice practice, however, there is a profound disparity between the status of citizen and prisoner, depriving an offender of many of the civil rights that maintain her dignity. In prison, the subtle distinction between actions on one hand, and one's status on the other — between a guilty act and a guilty person — is destroyed.

I have argued above that the concept of desert is far from secure in theories of civil government, and that it does not justify a distinction between retribution and vengeance. This section argues that punishment maintains a false view of human nature in that it establishes a categorical difference between the guilty and the innocent. I shall explore the loss of human dignity under punishment in three spheres: A) Actions, B) The human agent, and C) The social aspects of responsibility.
A) Desert is founded upon a very specialised sense of activity. The legal significance of an act is determined selectively, by a process that discards profound aspects of human activity. A 'crime' is an artificial construct, distilled from interaction by an abstract code of law. Theological images can be used to illuminate the limitations of the legal perspective on human action.

In common experience, any action is subject to a wide range of interpretations. Actions can be tragic or comic, moral/immoral, novel/habitual, beautiful/ugly. 'Illegal' or 'criminal' are labels for activity, yet it is the nature of human activity that no single description can be complete. Here again, the specific discipline or theory conditions the anthropological images.

Criminal justice is by no means unique in bracketing off facets of activity. Medicine, for example, may view an act as healthy or unhealthy, without regard for its comic or ritualistic potential. The analogy is misleading, though, because of a difference in the logic of 'crime' and 'disease'.

The differences in the logic of medicine and law are worth exploring, particularly since advocates of
punishment often assume that retaliation is 'natural'. Indeed, much retributive discourse treats criminal actions as though their meaning can be captured in biological images. The act of offending is said to 'leave a mark on one's character'. Walter Moberly recites, "'Sow an act and reap a habit, sow a habit and reap a character, sow a character and reap a destiny.'" (Moberly, 181)

These images do resonate with an intuitive hope that evil must necessarily result in damage to oneself. But the logic upon which such direct parallels are based is weak, and must be exposed. Human agency, responsibility, morality, are not organic processes. John Howard could speak confidently of exposure to moral contagion, but such language in fact undermines human agency.

Actions are healthy or unhealthy, whether or not medicine recognises them as such. What makes an act a crime is that some authority has declared illegal a category of behaviour and has crystallised it in an abstracted pattern. In Britain, there are over 7000 actions that are 'crimes', in contrast to fewer than 500 in the last century. (Speller, 21) Crimes are multiplying, not through some sort of epidemic that might be met with vaccines or potions, but as a result
of human stipulations. In this sense, crimes are not 'the same as' germs, or pollution, or a lack of hygiene.

Unlike the genesis of a disease, the definition of a category of activity as a crime results directly from human deliberations and decision. There are parallels in the way law and medicine use images of human beings, but the images retain their meaning only if the differences in logic are observed.

In contrast to the legal framework for actions, theological images form a comprehensive understanding of activity. Indeed, the New Testament is explicit about the ways in which legalism distorts human relations by measuring actions against a code. A chief distortion may be the self-righteousness of those who maintain the letter of the law. The same self-righteousness is condemned when it serves as an obstacle for our love for the offender. (Vide the woman taken in adultery).

I have drawn attention to the ways that legal codes systematically exclude meanings that fill any action - comical, aesthetic, spiritual. Law sometimes excludes even moral considerations. In court, the adversarial process pits one account of an event
against another. The competing stories are directed to the single question of guilt, and 'victory' is total.

B) Retributive anthropology also distorts activity in its view of the human agent. Here, however, the advocate of retribution explicitly defends the human image employed. Retribution, it is claimed, treats the offender as responsible. Hence there is a concern to establish that the accused was culpably aware of what she or he was doing. In this sense, desert might be seen in a limiting, preventative role.

Advocates of retribution proudly inquire, if desert is rejected, on what (fair) basis can one ever punish another? An arbitrary imposition of custody is repugnant. Hence, the retributive case would seem to maintain justice with the vital distinction between the guilty and the innocent.

The concept of desert, whatever its faults, would seem to stress our freedom of self-determination, our power to act on the basis of individual choice. Raymond Plant writes (of Kant's penal theory):

-191-
Desert implies agency and responsibility. One can only make claims to deserve anything on the basis of things for which one can claim at least some degree of responsibility. Thus to entrench desert as a necessary condition of punishment ... is to place at the very centre of [the] theory of punishment a very strong commitment to human responsibility.

(In Bottoms & Preston, 63)

If the point is to establish the inviolable dignity of human beings, we must question the assumption that harming offenders serves the purpose. Here again, desert is founded upon a distinction that secures the dignity of some by demeaning others. The conviction that humanity is one denies retributive punishment its major justification.

Desert divides human beings into two categories: innocents and the guilty. I have argued (Retribution) that desert rests upon an idealised understanding of self-restraint on the part of the 'law-abiding majority'. The label 'criminal' — unevenly applied to certain law-breakers — is matched by a paradigm of common sense, moderation and consideration. The legal fiction of the innocent citizen is a clear instance of the power of projection to whitewash one's faults by stigmatising others. A.P. Herbert traces the paradigm of legal purity in his parable of "The Reasonable Man".
The Reasonable Man is always thinking of others; ... He is one who invariably looks where he is going ... who records upon the counterfoils of cheques such ample details as are desirable; ... who never from one year's end to another makes an excessive demand upon his wife ... who in the way of business looks only for that narrow margin of profit which twelve men such as himself would reckon to be 'fair' ... who uses nothing except in moderation, and even while he flogs his child is meditating only on the golden mean. 2

I am not suggesting that no one is this innocent, and thus that none holds the right to punish. Rather, A.P. Herbert implies that such consistent conscientiousness is foreign to human experience. Perhaps the ideal upon which law is written is man, free and rational; or economic man, dialectically propelled into class warfare. Whatever the anthropological base, it is a distillation, and at variance with human experience in its fulness. (I shall examine other distortions inherent in the labelling of criminals below.)

The Christian holds that men are always imperfect: that though their aspirations may be infinite, their achievements are always limited. The Kantian ideal of the entirely autonomous man is only an ideal.

(J.R. Lucas, in Ramsey, 128)

Again, it is appropriate that law does not concern itself with the whole person. Strict attention to the action in light of the legal code provides some degree of impartiality. But the need for a specialised focus should not obscure the distortions inherent in law, both in images of human activity and human agents. The basis of legal guilt (essential to retribution) is necessarily a limited image.

C) A third sense in which retributive anthropology distorts human nature is in the assumption of the isolated agent. In criminal cases, the defendant is most often pictured as a solitary agent; law assumes a thoroughly individualistic sense of one's intentions and deliberations. Regardless of the functions of this selective view of human choice, it is a distortion because it denies shared responsibility.

Rev. Virginia Mackey has written, "The concept of desert violates the concern for community and interdependence spelled out in Judaism, Christianity, and Islam." (Mackey, 46) The more social understandings of our relations with God tend to be neglected by an individualistic theology. But the biblical witness to a corporate life under God is undeniable.

-194-
The prophetic tradition routinely castigates Israel for its communal guilt. God is portrayed as punishing Israel for its disobedience. The notion that a nation (or a people) can be blameless is, according to the Judeo-Christian tradition, idolatrous blasphemy. This insight into guilt held in common does fade in post-Pauline thought, as personal culpability begins to take precedence.

The themes of social evil are never completely lost. In Ritschl, the kingdom of God is off-set by a kingdom of sin. More recently, Jürgen Moltmann has written of social cycles of evil, including poverty, racism, pollution. David Jenkins writes of the 'social solidarity of sin'. Finally, as cited above (in Pacifism), Paul Oestreicher believes that sinfulness unites the oppressed and the oppressors. The extent to which persons are socialised into sinfulness may be seen as a modern conception of original sin.

---


4 David Jenkins, *The Contradiction of Christianity*, chapter v.
In “Shared Guilt,” Herbert Morris pinpoints the significance of these trends for our discussion. He writes of the callousness and injustice of a society that refuses to provide decent housing, education, family support. We fail to provide services that might prevent potential wrongdoers from criminal behaviour.

His point is not that our communal guilt invalidates individual guilt because none of us is innocent. (This would be an abstract, rhetorical approach to the basis of desert in 'self-restraint'.) Rather, Morris' point is that we, too, have contributed materially to the offences of others. We have a communal share in any decision to commit wrong, in the sorts of harm for which we prefer to hold individuals culpable.

Theologians would rarely deny that a person can be responsible for acting wrongly. Retribution is united with Christian theology in seeking to maintain personal responsibility for the harm caused by one's

---

actions. However, individual sins are not used—even in extremist dichotomies drawn between the reprobate and the elect—to divide one class of human being from another. Rather, it is God's free grace that liberates people from the punishment we (all) deserve. Markus Barth states flatly, "There is no personal justification by God without justification of fellow-man by God." (Barth, 243)

Again, my point is not that there are no true innocents who possess the right to inflict punishment, since 'all have sinned and fallen short'. The natural retort is that most people have not committed rape, or robbed a shop at gun-point. The advocate of individual desert may press further to show that, despite the high proportions of poor people in prison, the majority of people in poverty lead law-abiding lives.

But this does not meet the point. My argument is here built upon theological insights into personal identity and individual agency. Our social solidarity in sin is itself a causal factor in any crime. The effect of this insight into communal guilt upon our image of individual responsibility is that it becomes human rather than legal/abstract. The construct of the atomistic agent is a distortion of our true humanity. The theological person is a unity of self-in-community in relationship with God.
A theological sense of the Kingdom as a community in a state of *Shalom* exposes the ideological bias of law. One does not need to establish a biblical concern for the poor, or Jesus' political message to make this point. Insofar as retribution is based on reciprocity in a just state, the disproportionate numbers of the poor in prisons lay bare the partiality of legal codes. Vivien Stern writes:

>'Crime' is itself a socio-political concept, which reflects and is the product of the structure of social values and attitudes in a society.

(Stern, 24)

This point can be expanded by a reconsideration of Herbert's 'Reasonable Man'. His behaviour may be an ideal type, a paradigm of obedience to the letter of the law. But his other attributes are revealing. He is a businessman, engaged in setting margins of profit. Married, with a child, he has a bank account, uses public transport, and enjoys golf. He is male. The paradigm at the heart of legal codes is actually a small, unrepresentative sample of the citizenry.

The fact that an ideological preference is inherent in a legal system is not intended to advance an antinomian view of gospel, nor to demand a new relation for church and state. Retribution and Christian theology share the view that order is

-198-
indispensable for human society. Further, both see the function of law as a boundary, alerting transgressors that they risk setting themselves apart by their activities. Here are roots that link retribution with Jesus' ministry and Christian tradition.

But alongside these shared goals, a theological anthropology reveals striking distortions in legal images of persons. To review the points made above:

A) Criminal justice greatly restricts the understanding of activity. This distorts human responsibility by its disregard for human wholeness. The limitations in images of human activity are carried over to penal responses: the range of informal, ordinary expiations is vast, yet a term of incarceration is monolithic (and returns very little to victims of offences.)

B) The image of two categories of human — innocent and guilty — is mistaken; further, such distinctions are not necessary in order to draw unambiguous distinctions between right and wrong actions. C) Where reciprocity is used to justify the return of harm for harm, it misses the point of community: distributive justice is a precondition of just punishment.
Deterrence

He that is down need fear no fall.
— John Bunyan

Deterrence cannot be observed. The theory depends upon the conviction that people will not act in certain ways, and hence it is a moot question whether a particular measure does deter potential offenders. This is not to prejudge the ethical questions, but to establish the premise that empirical data will not resolve the debate.

Public confidence that imprisonment will deter offenders can be ascribed largely to the losses incurred by a prison sentence. Reasonable persons will not risk loss of their homes or jobs, or being severed from spouses and children. They will not endanger their good standing in the community, nor ruin the credit upon which their finances depend. They also fear the mystery of prisons. Finally, without any accurate measure of the deprivation, the loss of freedom is perceived to be onerous.

The prison population can be profiled only in crude terms, but a brief sketch by Vivien Stern:

establishes the point. In 1985, over 25 per cent of sentenced prisoners were under twenty-one. A (1972) study in the Southeast found that large numbers of prisoners were homeless, had previous convictions, 'no families and friends'; two-thirds had unstable work histories; Another study\(^7\) found that over 80 per cent of the prisoners interviewed reported work-related anxieties. Two-thirds of this sample were unmarried or separated.

This profile leads to the uncontroversial conclusion that families, jobs, respected standing in society, homes and prosperity (as well as age) effectively deter people from the sort of offences for which they would receive custody. It also suggests that incarceration is inefficient at preventing property offences, since prisons merely aggregate people who literally have less to lose.

In *Retribution*, I argued that a basic difference between retribution and deterrence relates to the

intended audience. Retribution depends upon the citizen's identification with the state, but deterrence theory expects one to identify with the punishee. Günther Kaiser points to flaws in deterrent reasoning. He argues that our inclination is to identify with those we admire more than with the ignoble. One identifies with the victorious, not the loser; with success and power, not impoverished social misfits.

Kaiser suggests that:

a potential murderer will not identify personally with a criminal who is executed, but will instead identify the criminal with someone who has greatly offended him, someone he hates or fears. (UN, 12)

Hence, "the example executions provide may inspire a potential murderer to kill the person who so greatly offended him." (Loc. cit.)

Issues raised by social justice (offenders having less to lose) and mistaken identification (with the state) demonstrate that deterrence is far more complex than its advocates suggest. Deprivations within society contribute causally to crime – the criminogenic powers of illiteracy, racism, unemployment, even youth, are well-established. Further, the symbolic threat of punishment may
encourage offences by making legitimate the act of harming those who are defined as enemies.

Perhaps the prospect of imprisonment does inspire fear in citizens. But clearly, prison cannot be expected to deter those who have been to prison. Their sentences have already stripped away most of the effective deterrents (e.g., in disrupting families), the shock value of the unknown has been cashed in, and the released prisoner is less equipped to meet life's challenges.

A further criticism relates directly to the anthropology at the heart of deterrence. The theory concedes that punishment is an evil, yet that the harm is outweighed by the benefits in some unknown reduction of potential offences. I have argued that effective deterrents can be identified clearly by taking a mirror image of the prison population. If family, work, prosperity are the best deterrents, then society makes a moral choice in devoting resources to negative sanctions rather than positive inducements.

A theory of deterrence, in which the primary force for stability and harmony is fear of punishment, implies a pessimistic view of humans in society.

(Speller, 89)

Of course, Christian perspectives are not immune from imbalances, slighting either human goodness or
evil. However, Christian anthropology takes seriously a unity of being human, of goodness and evil in personhood, where both good and evil are transcendent, or infinite. Deterrence theory, however, is reductivist, and trivialises human powers.

Some broad strokes applied to deterrence anthropology may reveal its distortions. It is common practice to draw a distinction between general and individual deterrence, i.e., between using the punishee to deter others and deterring the offender personally. I should like to introduce a distinction in approach, between those deterrents intended to induce fear (intimidation) and those that appeal to reason.

Intimidation is based upon conditioning. Hence the punishment must be certain and prompt. Only thus, it is argued, will the connection between crime and punishment be impressed upon the audience. Given an indubitable association of crime and punishment, potential offenders would be paralysed through fear.

Obviously, to assume that one might be taught to feel the pains of punishment whenever one anticipates committing a crime ignores the uncertainty of detection and conviction. But the underlying flaw is an image of human action as mere stimulus-response twitches of an organism.
The theory disregards the role of interpretation. People assign meanings to their fears. They may see a threat as an obstacle, a check against recklessness, or as an added element in the challenge, making it more attractive. Deterrence based upon intimidation neglects our powers of interpretation, and its practice reflects this simplistic anthropology.

The second form of deterrence argument appeals to the spirit of reason and morality. Moderation in punishment was achieved by convincing those in authority that punishment depends in part upon its legitimacy. Reasonable people, it is argued, will conform to the rules if the pain of breaking them just exceeds the anticipated joys of offending. In this sense punishment is dedicated to the didactic function of setting the boundary. The deterrent appeal to reason ignores transcendent evil, which enables a person to choose wrongdoing with logical consistency.

I have drawn attention to these two images underlying deterrence: the biological organism, subject to laws of conditioning, and the rational being, wisely choosing the logical route to the maximisation of pleasure. These correspond to perspectives explored by Reinhold Neibuhr as naturalist and idealist thought:
The naturalist . . . fails to appreciate to what degree the human spirit breaks and remakes the harmonies and unities of nature. The idealist, identifying freedom with reason and failing to appreciate that freedom rises above reason, imagines that the freedom of man is secure, in the mind’s impetus toward coherence and synthesis. Neither naturalism nor idealism can understand that man is free enough to violate both the necessities of nature and the logical systems of reason.

(Reinhold Niebuhr, 124)

In grasping the transcendent power of human freedom, Christians dispute the claim that the urge to break the law can be controlled with increasingly brutal sanctions. In the first place, as I have argued, actions must be interpreted, and this means that the resort to more force may do no more than undermine the state’s legitimacy. Secondly, the ambiguity of the symbol leaves open the possibility of mistaken identification, and may enhance the attraction of certain offences, e.g., citizens may decide to use physical violence as a tool of private deterrence.

Rational deterrence exhibits an idealised understanding of persons, without sin. In taking sin seriously, Christians view with suspicion theories that use as their premise images of humans as free, rational, and creative. Paul sets the tone for an appreciation of the subjective dominance of sin. “I
do not do the good that I want, but the evil I do not want is what I do." (Romans, VII, 19)

Sin is as irrational as it is pervasive (though not all that is irrational is sin). David Jenkins has written of sin as:

the nonsensical power which takes people over and to which people contribute; whereby they go against that which is best and hopeful and human.

(Cited in Priestland, 73)

The failure of deterrence based on intimidation is its reduction of the human spirit, not least because low rates of detection and apprehension may make the risk of imprisonment logically worthwhile. Rational deterrence — presupposing that people will choose wisely — distorts human nature in its blithe disregard for sin.

Were the two views of human nature complementary, deterrence might be a powerful argument for imprisonment, at least in the hope of reducing crime. But wherever criminal behaviour persists, deterrence theory unravels in its own inconsistencies. Conditioning deterrence argues that the penalty must be made more harsh to excite the fears in people. Rational calculation argues that the severity of the
penalty decreases respect for law, and must be reduced.

A final contradiction in the effectiveness of imprisonment to deter crime concerns a hybrid of retribution and deterrence. While prisons manifestly fail to deter recidivists, the prisoner may be said to serve as an example to others. The potential losses that do deter—family, jobs, status—are beyond most prisoners, yet the experience of incarceration is a painful one. Thus, those who are not deterred (because they have little to lose) are harmed to serve as a warning to those who are deterred by jobs, families etc. This is a clear instance of using some people as means for others' ends. It could lead, of course, to more harsh punishments inflicted upon some people because others have not been deterred. The rationalisation of greater harm to prisoners to deter others is the retributive principle that categorically divides the innocent from the guilty.
Rehabilitation

*If prisoners need rehabilitation, it is from the treatment they are subjected to in prison.*

— Bob Canney, Florida prisoner

Retribution harms people who have done wrong. Deterrence harms offenders to prevent people from breaking the law. Social defence aims to reduce crime and protect society. In each case, the benefits to offenders (if there be any) are incidental: the aim is to benefit society.

Rehabilitation is intended to change offenders — not because they have broken laws, and not to deter others, but because offenders would seem to need help if they are to conform to the demands of society. To a large degree, the endurance and growth of prisons is due to what David Rothman calls 'the allure of reform'. Anthony Bottoms parallels Rothman's point:

Penal decision-makers are still operating in a way that takes major account of treatment considerations. . . . Thus, people have been sent to borstals in large numbers in the belief that the training offered in borstal will help 'to cut off the supply of adult recidivists'.

(Bottoms & Preston, 9)
Rehabilitation theory witnesses to the humane aim of enabling prisoners to stay out of trouble upon release. Offenders are perceived not as culpable, but as defective. Criminality is defined as a condition to be cured. Here, however, rehabilitation theory splits into two distinct approaches.

Traditional arguments (I shall refer to as reform) see the deficiency in the offender's environment. Hence, remedies of education, religion and job training are applied to prisoners. The more recent approach (the medical model) makes criminality a matter of scientific investigation. In response, rehabilitation alters behaviour that results from 'antecedent causal circumstances'.

The medical model holds that a crime is merely a symptom of an illness. The 'disease' can be treated with behaviour modification, drug therapy and intensive alteration of the personality. At the very least, these methods diagnose and predict the course of such 'illness'. Middle terms between reform (e.g.

---

Raymond Plant characterises rehabilitation in this way in "Justice, Punishment and the State," in Bottoms & Preston.
through education) and cure (through treatment) include early release as an incentive, or training in social skills to meet deficiencies in the offender's personality.

Efforts toward rehabilitation have been attacked as ineffective. For instance, Leslie Wilkins writes:

It is extremely doubtful whether any variants of present methods of treatment/punishment of offenders makes any difference to the reconviction rate.

(Hastings Center Report, 39)

Rehabilitation has also been called manifestly unjust, because the offender's release may depend upon the therapist's discretion. Nonetheless, in the sense of a hope that imprisonment will help or alter the prisoner, rehabilitation persists in providing prisons with legitimacy.

At first glance, it would seem that the human images at the heart of rehabilitation fall into two categories, viz., offenders as products of poor environment (reform approach), and offenders as defec-

---

* Cf. AFSC, Chapter iii., and Mitford, Chapter iv.
tives (the medical model). In unravelling these two basic images, a third appears, and it is this human image upon which the theory hangs.

The subject of rehabilitative techniques is malleable, plastic. Through a sculpted environment and/or an intensive assault on the self, the delinquent is changed, ideally into a responsible citizen. Rehabilitation advocates reject the ubiquity of sin, assuming that legally pure subjects can be created through social intervention. This battle to reshape the delinquent is fought on two fronts, with significant differences between the two approaches.

The most prominent distinction is moral. What I have called the reform approach views the offender as wicked. The punishment is the instrument by which society shows the offender his/her wickedness. Reform is the offender's capacity to learn the lessons taught by punishment. Imprisonment is essentially edifying.

Conversely, the medical model strives to maintain the ideal of value-free science, in that moral assessments of an offender's behaviour are irrelevant. They would provide unnecessary confusion for those working to eliminate the dysfunctional behaviour.
There is a further distinction in the respect for personhood. Punishment may be viewed as a lesson in justice, requiring the voluntary engagement of the punishee. In a broader view, education and training programmes appeal to prisoners' desires to develop useful life-skills. The voluntary character of the prisoner's involvement does not mean that the prison surrenders control; early release may hang upon attendance in school or good performance in the workshops. But it is assumed that the prisoner must collaborate in any reform that occurs.

The medical model features a range of methods, from social skills instruction to rigorous behaviourist techniques. Psychological intervention has a humane side, in the work of trained staff who diagnose and treat problems that lock the prisoner into dysfunctional behaviour. Considerably less humane are the uses of psychiatry to serve the demands of security. In such cases, the medical model is a coercive tool whose rehabilitative intent is morally suspect. The prisoner constitutes a problem to be solved. Rehabilitative intervention, in this case, functions to break the prisoner's will.
Jessica Mitford quotes a prison psychologist:

'We'd assume that a felony was clear evidence that the criminal had somehow acquired full-blown social neurosis and needed to be cured, not punished. . . . We'd probably have to re-structure his entire personality.'

(Cited in Mitford, 137)

In its crusade to imprint a new personality upon the delinquent, rehabilitation justifies, and indeed requires, an unprecedented intrusion by those in authority. According to David Rothman, the advent of the medical model obliterated the boundaries of personal sovereignty.

Officials had to know the most intimate details of the offender's life. . . . His fate now hinged not on what he had done, but upon his motivation, his attitudes, and his psychological state. There was nothing private left to the individual; the state had a right and a need to know everything.

(Rothman, Hastings Center Report, 20)

Leslie Wilkins draws attention to a decreasing respect for personhood in rehabilitative technique. "Where there is more evidence of the effectiveness of behaviour modification techniques, the methods seem to be more intrusive and more damaging to our moral belief in the autonomy of the individual." (Hastings Center Report, 46)
Alongside differences in moral values and the prisoner's role, the two rehabilitative approaches hold points in common. A key element shared by reform and the medical model concerns the interpretation of the offenders' needs. Whether the method adheres to conventional morals (as in reform methods) or aspires toward value-free status, the views of offenders themselves are slighted. Raymond Plant states:

Granted that the therapist is going to operate with some sociological or psychological model of human behaviour, . . . this model is likely to determine in the end what are seen to be the needs, or better the 'real' needs or desires of the client or offender.

(In Bottoms & Preston, 61)

It is this interpretative role that reveals the third dominant view of human beings within rehabilitation theory. Where there is compulsion, some one compels. When a prisoner is the subject of observation, there is an observer. If crime is to be cured, a 'doctor' must diagnose its causes and prescribe reliable cures. It is this profile, of the omniscient observer, whose comprehensive knowledge of the causes of crime enable 'him' to turn the offender from dysfunctional patterns of behaviour, that is most dubious in the light of Christian anthropology.
Thus Ronald Preston wrote of rehabilitation in its decline as "an idol which had pretensions to knowledge which it could not sustain, which led to a coercive form of reformation hidden under the guise of concern for the person." (In Bottoms & Preston, 113)

To question the omniscient observer image strikes at the heart of the post-Enlightenment penal enterprise. The central human image of rehabilitation is not the defective criminal, needing reform, but that champion of decency, guided by the light of science, who will isolate criminals, diagnose their ills, provide the required treatment, and relieve society of the nuisance of delinquency. David Jenkins writes:

Our society has become trapped in a false set of expectations about our inevitable progress, guaranteed improvement and expanding possibilities. These expectations have been built up by an amalgam of beliefs about liberal humanism, scientific progress and the political reorganisation of society.

(Jenkins, in Bottoms & Preston, 205)

Theology punctures the inflated claims that imprisonment can cure crime, and in doing so, theological criticisms restore to humans our proper dignity. The limitations of reform anthropology and the consequent failure of rehabilitation bear witness to a strength in human beings.
As Ronald Preston and other contributors to *The Coming Penal Crisis* demonstrate, the theologian may feel some dismay at the demise of rehabilitation. Certainly, rehabilitative practices are systematically discriminatory, unjust, their underlying profile(s) of humanity, questionable. Yet, in intent, rehabilitation is directed to helping the prisoner and to reducing recidivism.

Curing crime may be illusory, but rehabilitative theory recognised society's moral obligation to provide care along with custody, and to make imprisonment a positive, or at least constructive, experience. It legitimated a system rife with abuses, but did so in a way that supported the humane and caring dimensions of imprisonment. Its decline may foreshadow a return to blaming former prisoners if they recidivate, in a state that 'washes its hands' of responsibility for maintaining humane conditions in its prisons.10

---

10 Thus, a Home Office study of American 'New Generation' prisons explains that rehabilitation has been discredited, and replaced by the duty of providing secure custody. "In this approach," the study continues, "recidivism is not seen as a failure on the part of the prison system." The Home Office: *New Directions in Prison Design*, 68.
Social Defence

The ultimate expression of law is not order—it's prison. We have hundreds upon hundreds of prisons, and thousands upon thousands of laws, yet there is no social order, no social peace.

— George Jackson

The reduction of criminal behaviour through social sciences, and the protection of society from dangerous individuals may lead to contradictory practices. Yet, they can be drawn from the same penal theory. A judge may impose custody without a trial (by denying bail) and use prison to protect society. Conversely, a penal theorist may claim, "there is ample evidence that the fact of imprisonment is a heavy contributor to post-release criminal activity." (Nagel, 149) The latter may call for a moratorium on prison construction, but both judge and penologist are relying upon the theory of social defence.

The striking ambivalence is understandable. At the heart of social defence theory is the goal of minimising the harm done to society by criminal activity. There is widespread approval of the goal—rare is the author who advocates an increase in violent crime. Inevitably, too, the question of the
most effective methods – not strictly an empirical matter – leads to diversity in approach. Here again, two types are distinguishable, each with its own anthropological issues. In this case, however, there are not two competing theoretical styles, but a scientific hypothesis on one hand, and trends in policy based on social defence on the other.

The theory combines a scientific approach to criminality with a focus upon harm to society. The social defence advocates' rejection of the morally tinged term 'punishment' in favour of 'measures' or 'provisions' reveals roots in positivism. Guilt and wickedness are generally thought to be obscure ideas, and frequently seen to obstruct the defence of society. As Marc Ancel, an advocate of social defence, states its case, social defence measures are:

- designed to 'neutralize' the offender, either by his removal or segregation, or by applying remedial or educational methods.

(In Gerber & McAnany, 138)

Despite the suspicious reference to 'neutralising' offenders, Ancel insists that social defence does not necessarily mean more reliance upon incarceration. Indeed, he writes, "'Empty the prisons' could well be adopted as a rallying cry by the partisans of social defence." (In Gerber & McAnany, 134)
Following the ideal of better living through criminology, social defence theory takes seriously the data that indicate that prisons fail to reduce crime. Studies show that the release of all prisoners (in the U.S.) would result in an increase of less than 10 per cent in the rate of crime.\textsuperscript{11} Conversely, a quadrupled prison capacity would result in a mere 10 per cent reduction in the crime rate.\textsuperscript{12}

There are at least four reasons for the poor performance of prisons in reducing crime: (1) Only a small minority of offenders are confined (less than 5 per cent). (2) Criminality is not limited to a finite, constant population: old offenders desist, younger ones begin. Young adults whose behaviour has not been spotless become increasingly marginalised until they begin to appear on accounts of criminal activity. (3) Many offences are committed by groups – for one act of vandalism, one may need to hold eight young offenders in custody. (4) Techniques are poor for predicting which prisoners pose little threat to society and which are risky.

\textsuperscript{11} Edna McConnell Clark Foundation, \textit{Overcrowded Time}, 15.

\textsuperscript{12} \textit{Ibid.}, 17. The authors include the explanation which follows.
The faith that prisons help to protect society is based upon misunderstandings about prisons. In the first place, criminal activity is not limited to a closed population ('criminals') or to a minority. Second, of those offenders who are incarcerated, very few are locked away forever. Indeed, almost all are released eventually.

The size of any prison system is limited. The prison is not a dust-bin, or warehouse, but a revolving door. In order to confine one offender, another prisoner must be released. If prison capacities are expanded, there is certainly a brief period during which more offenders can be confined, but the original equilibrium returns at a slightly higher rate; that is, the proportion of people passing through the revolving door increases. Once again, however, to confine an offender requires the release of another.

Clearly, following the revolving door image, a justification of prisons based on social defence is ultimately a rehabilitative argument. The offender coming out must be improved by the experience; if not, the trade-off (one offender going in for a prisoner coming out) will be to the disadvantage of society. If imprisonment helps the prisoner, then the time
spent confined will decrease the probability of recidivism. If imprisonment harms the prisoner, then the expansion of prison places will result in increases in crime, increased harm to society. The aims of social defence will be frustrated by the institution of the prison.

We have seen that rehabilitation is open to serious doubts, and this must cast doubt on the justification of prisons from a social defence position.

Those who desire to defend imprisonment from a social defence posture may take a different course. It might be argued that prisons constitute a means of sifting those who are fairly safe from those who pose a clear danger to society. Prisons, then, serve society by quarantine — incapacitating the truly dangerous. This is probably the most popular justification of prisons. The existence of high-risk offenders allows advocates of imprisonment to ridicule abolitionists. The latter group, it is said, would set loose men who are certain to kill or maim again.

James Wilson illuminates the distinction between those who would apply science to cure criminals (rehabilitation) and the quarantine approach:
It is strange that we should persist in the view that we can find and alleviate the 'causes' of crime. ... Wicked people exist. Nothing avails except to set them apart from innocent people.

(Quoted in Bottoms & Preston, 13)

Clearly, Wilson's point is retributive, in his conviction that the divide between innocence and guilt is total and unambiguous. Those forms of social defence considered above are rehabilitative; the suggestion that prisons defend society is based upon the conviction that prisoners will emerge better equipped to cope.

There would seem to be little in social defence that is unique, little evidence that the perspective deserves to be treated as a distinct penal theory. Indeed, the views expressed above concentrate flaws of each of the traditional penal theories. Like retribution, social defence rests upon an untenable distinction between good citizens and wicked criminals. Like deterrence, the profile of social harm is flagrantly class-biased and degrading to human dignity. Like rehabilitation, social defence suffers from an inflated confidence in our capacity to diagnose 'wickedness' or 'criminal tendencies'. These flaws can be combined in practice, as the experts predict dangerousness based on unexamined distinctions between safe risks and the dangerous few.
I have argued above (*Retribution*) that the image of a solitary agent is incomplete. In social defence theory, the stigmatisation of individuals is exalted to scientific status. Anthony Bottoms has expressed concern at the tendency to divide prisoners on the basis of evaluations of risk. A steep rise in remand committals is but one example of this trend, which Bottoms labels 'bifurcation'.

Bifurcation captures key themes of present-day discussions that set policy in response to crime. Talk about the causes of criminal behaviour focuses on society: deprivations, lack of care, decline of values. When the question of possible solutions arises, however, the discussion turns to remedies applied to prisoners.

Long conditioned to the belief that problems of criminality lie mainly with the individual, society has fastened its attention on 'dangerous individuals' largely ignoring the *learned* nature of behavior.

(PREAP, 129)

---

The illusion of the isolated culprit helps to explain the unenviable record of those who predict the degree of risk posed by prisoners. A second key factor is class-bias (equally evident in key images of deterrence.) In *The Politics of Abolition*, Thomas Mathiesen argues that the very concept of dangerousness is ideologically tinged. Many actions that are harmful to people are condoned; e.g., policies that generate pollution, or unsafe working conditions, or harmful products. Yet the pains of punishment fall hardest upon the poor.

Theodore Sarbin comments:

The construct, criminal, is not used to classify the performers of all legally defined delicts (offences against the law), only those whose position in the social structure qualifies them for membership in the dangerous classes.

(Cited in AFSC, 78)

Recalling Ronald Preston's case against the pretensions of rehabilitative practitioners, others argue that social defence falters through our inability to predict accurately the risk posed by persons.

The obvious difficulty with . . . pinpoint prediction is hedged by social defence advocates, who claim great powers of accuracy for 'science'. But . . . there are huge gaps in our knowledge of the human personality which none of the social or medical sciences has begun to fill.

(Gerber & McAnany, 129-130)
Leslie Wilkins points to another division within social defence theory. Danger is most often viewed in terms of violence. Risk to property is not generally thought to justify custody on a pre-emptive basis. Yet, predictions based on property offenders' profiles are over four times as accurate as those concerning violent offenders. (The prediction that a given property offender will or will not re-offend is four times more likely to be confirmed than a corresponding prediction involving a violent offender.) Wilkins comments, "The violent offender is more like everybody else (in terms of personality tests and case history) than is the non-violent property offender." (In Hastings Center Report, 47)

Wilkins advises social defence theorists to look to circumstances and social settings rather than to individuals to reduce violence. Following Hans Toch, he recommends that the 'triggers' or 'gambits' that escalate into violence be identified and pre-empted.\textsuperscript{14}

\textsuperscript{14} Dangerousness is analysed in greater detail below (Prison Violence.)
The suggestion accords well with recommendations of PREAP (The Prison Research Education Action Project).

PREAP makes three points:

1) that information about the poor performance of risk prediction be widely shared.

2) that penal practitioners distinguish between the illusory search for profiles of violence prone actors and the more practical disclosure of violence-inducing structures — making the actual harm done more central to the measure of risk.

3) that the concept of special prisons for dangerous people be rejected — prisons make people dangerous; they are violence-prone behaviour settings.

(PREAP, page 133)

Theology does not offer a human profile that suggests that people pose no threat to one another. But, in the wake of Martin Buber, theology does recognise the extent to which actions and meanings are determined in the context of relationship. (This may reveal why a large proportion of various violent offences occur between people who know each other.)

Equally important, however, theology maintains a faith in human freedom, especially in the freedom to change.

If we value the dignity, autonomy and diversity of the individual, then the exception is of more importance than the statistical average. . . . The essential cruelty of any penal system is that it treats people as nonpersons, as unchanging objects.

(AFSC, 82)
In my analysis of penal theory I have found much to criticise. Theological anthropology casts doubt on the retributive principle of inflicting harm upon the guilty. The problem lies not so much in doubts about responsibility for one’s actions as in the categorical divide between the innocent and the guilty. A commitment to the dignity of each individual before God condemns the use of some persons to deter others. Hopes of preventing people from committing offences by intimidation seem doomed in light of theological images of pervasive sin and human powers of interpretation (transcendence). These same images lead us to question the desirability of rehabilitation (though here again I am led to doubt the power of the manipulator, more than the potential for good in offenders). I have argued that the weaknesses in anthropology of retributive, deterrent and rehabilitative penal theory are magnified in much of social defence thought.

As my approach has been quick to find fault, it might be assumed that pacifism is negative in its prospects for criminal justice. The thought that retribution, or deterrence, or rehabilitation exhibit
mistaken images of persons, and will inevitably create problems in our response to crime, may suggest that people are simply natural criminals, and we must learn to accept the harm that offenders inflict. The image of a citizenry suffering the evil of offenders without responding recalls the passive extremes of pacifism, which can be world-denying and unrealistic.

My purpose in this chapter has not been to sketch ways to respond to crime consonant with Christian anthropology, but rather, to examine penal theories (that is, justifications of punishment) to study their assumptions about human nature. I have criticised the anthropological assumptions of such theories, especially where they offend human dignity. Thus, there is an implied argument for our fundamental unity at the heart of my attack on retribution. Central to my doubts about deterrence is the faith that the human will is not to be manipulated or cowed by force.

Theological anthropology maintains full respect for human nature by holding contradictory elements in tension. In Christian theology, human beings can be free and subject to determinism; good and evil; spirit and flesh. Perhaps it is impracticable to construct institutions upon views of human nature that include our intrinsic tensions. But theological anthropology
anthropology

insists that we are both creatures and made in the image of God; that is, that such paradoxes describe the deepest truths about being human.

It is through maintaining and enduring the tragic contradictions of life, and not by resolving them, that the human spirit is tuned to its highest pitch.

(Cupitt, 151)

Don Cupitt's summation of Kierkegaard's anthropology accurately conveys this strength in the Christian understanding of human nature.

Theories of punishment work by building upon simplistic resolutions of these paradoxes. One group is guilty (evil); the other is innocent (good). Human beings are free (according to theories of civil liberty based on mutual self-restraint) or determined (according to deterrence based on intimidation). One group of people are healthy and whole, the other group are the defectives, totally in need of rehabilitation.

Pacifist convictions that human beings are interconnected are offended by the division of humanity into distinct categories, upon which the various defences of punishment depend. But, more broadly, Christian anthropology is bound to find theories of human nature degrading when they depend upon deliberate neglect of the basic tensions of our being.
Theological convictions about human nature have helped to analyse common justifications of punishment in view of their underlying anthropology. Where retribution fractures community, I have argued for the acceptance of an offender as one of us, and indeed that we, too, are offenders. Where rehabilitation invites our identification with the experts, I have asked us to scale down our complacency about our power to change others. Where social defence either subjects offenders to the powers of science or banishes them as wicked, I have argued that our behaviour settings engender violence and harm, perhaps none more effectively than the prime institution of punishment.

The police seek in every human being a murderer; the wise man and the philosopher seek in every murderer a human being. We Christians seek God in every person . . . even in murderers. And each of us will find what he seeks: the police will find their murderer; the philosophers will find their human beings; and we, we shall find God in every person.

(Virgil Georghiu, cited in Atherton, 53)
List of References


A. E. Bottoms, "An Introduction to 'The Coming Crisis'
David E. Jenkins, "Possible Theological Responses to Apparent Criminological Confusion"
Raymond Plant, "Justice, Punishment and the State"
Ronald H. Preston, "Social Theology and Penal Theory and Practice"


Hulsman, Louk, "Critical Criminology and the Concept of Crime," address to the International Conference on Prison Abolition, Amsterdam, (unpublished) 1985

Institute of Society, Ethics and the Life Sciences, The Hastings Center Report, {Hastings Center Report} Vol.5, Number 1, February, 1975; including:

David J. Rothman, "Behavior Modifications in Total Institutions"
Leslie T. Wilkins, "Putting 'Treatment' on Trial"


Priestland, Gerald: Priestland's Progress, London: BBC, 1982


Art. 17. The prisoners' day will begin at six in the morning in winter and at five in the summer. They will work for nine hours a day throughout the year. Two hours a day will be devoted to instruction. Work and the day will end at nine o'clock in winter and at eight in summer.

Art. 18. Rising At the first drum roll, the prisoners must rise and dress in silence, as the supervisor opens the cell doors. At the second drum roll, they must be dressed and make their beds. At the third, they must proceed to the chapel for morning prayer. There is a five minute interval between each drum roll.

Rules for the House of Young Prisoners, Paris, 1838

(Cited in Foucault, 6)

The weekday routine of a typical prisoner:

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>7:45 a.m.</td>
<td>Cell unlocked; prisoners 'slop out'</td>
</tr>
<tr>
<td>8:00-8:40 a.m.</td>
<td>Breakfast (eaten locked in cell.)</td>
</tr>
<tr>
<td>8:40-11:50 a.m.</td>
<td>Work, education, etc. (During this period some prisoners take ½ hour's exercise.)</td>
</tr>
<tr>
<td>12:00-1:45 p.m.</td>
<td>Lunch (eaten locked in cell.)</td>
</tr>
<tr>
<td>1:45-4:30 p.m.</td>
<td>Work, education, etc. (½ hour's exercise.)</td>
</tr>
<tr>
<td>4:30-6:00 p.m.</td>
<td>Tea (eaten in cell.)</td>
</tr>
<tr>
<td>6:00-8:00 p.m.</td>
<td>Inmates unlocked and free to associate on the wings. Evening classes and gym sessions take place and on certain evenings in the week prisoners may take exercise outside.</td>
</tr>
</tbody>
</table>

(Schedule reported at H.M.P Gartree, 1984 CRC, 74)
It would be naive to suggest – as perhaps these quotations do – that the more things change in prisons the more they remain the same. Clearly, different penal theories, manifested in different emphases in practice, have enjoyed priority in two centuries of incarceration. Then, too, technology brings changes, making an impact on penal theory through penal practices. Finally, practices fail, to some extent, to realise the aims of theory. For example, an administrator may find that the chief obstacle to some form of rehabilitation is financial; equally, an administrator needs to balance a legislature's calls for punitive régimes against difficulties in maintaining control over the prisoners.

Imprisonment is a milder form of punishment than many of its predecessors. The Enlightenment view of human nature counselled an attitude toward the human core that closely resembled respect. That core was not to be savaged by torture. Rather, a programme of measures was developed that was intended to provide greater control over the subject's future behaviour.
In my examination of penal anthropology, each theory of punishment was seen to exhibit a distinctive view of human nature. In this chapter, I step back from differences between retribution and deterrence or rehabilitation. I have argued against the categorical distinction between the innocent and the guilty in retribution. In prison practice, that divide is intensified. Philosophers may debate fine points between penal theories, but in prison the images break down to two: the keeper and the kept. It is basic to coercion that the claim to truth of one side be vindicated, and that the views of the other side be dismissed.

The argument that follows explores the two sides of caging people. I compare the idea of controlling a person's space to the caged person's interpretation of the experience. My analysis takes us beyond questions of the perception of space to doubts about the concept, 'the deprivation of liberty'. On one hand, the sculpting of space is intentional; penal theory uses space not only to confine, but to achieve an impact upon the prisoner. On the other hand, the prisoner is not a blank tablet being inscribed, but has the power to interpret a personal experience of being caged.
In *Discipline and Punish*, Michel Foucault elucidates a rationale beneath penal practices in all their diversity.

What one is trying to restore in [the] technique of correction is not so much the juridical subject, who is caught up in the interests of the social pact, but the obedient subject, the individual subjected to habits, rules, orders, an authority that is exercised continually around him and upon him, and which he must allow to function automatically in him.

(Foucault, 128-129)

Foucault's exhaustive study of the methodology of control within prisons includes the ordering of activities in time (as in the schedules with which I began this chapter). One could equally examine principles of surveillance (seeing without being observed), or the control of discourse (through the rule of silence or censorship of mail). Each of these spheres would be a fitting setting for an analysis of the control of one group (prisoners) by another (their keepers). I follow Foucault in focusing upon the control of space.

In the first section I present Foucault's understanding of the role of sculpted space in the prison enterprise. His description captures the ideal of control over the prisoner. Obviously, the purposes of this control may differ (whether rehabilitative or
simply to incapacitate). In the second section, I present a view of perception which counters the assumptions of sculpted space. The phenomenology of Maurice Merleau-Ponty illuminates the power of the individual to confer meaning on her/his own experience. More to the point, Merleau-Ponty's view of perception is anchored in the notion of embodied knowledge; i.e., he believes that the body has a crucial role, not only in perception, but in habits, skills, and familiarity with our immediate environment. (Hence our embodied knowledge helps us to understand a prisoner's experience of a cell.)
Punitive Space

Michel Foucault devotes great attention to the role of the human body in penal practices. He argues that key social institutions—schools, hospitals, barracks, monasteries—developed a sense of the human body as a tool or machine. The body became 'use-able', in a curious inversion. Rather than applying the physical properties of the body to mechanical engineering, the experience of building machines led to working the human body like a machine. Training was calculated to manipulate bodies in pursuit of maximum efficiency. Training techniques included calisthenics in the army, routines of cleaning in hospitals, exercises by rote in schools.

Corporal punishment attacked the body; the new punishment used the body to reach the person. The change of focus fuelled hopes for reforming criminals, but the techniques of manipulating the body can be used for many purposes (retributive and deterrent as well as rehabilitative.) Punishment was made more efficient by enabling those in authority to obtain holds upon the body at distinct points. The body was no longer an example for others, ritualistically
mutilated, but rather, a machine that could be evaluated and utilised. The new philosophy of punishment saw the body as a collection of cogs, gears, levers to be exploited. The new penology was built upon the image of the malleable body.

A key technique in the control of prisoners' bodies is the sculpting of space. This technique serves to distribute the prisoners throughout a prison facility, but it goes further to provide opportunities of control over the prisoner's mind. For Foucault, the art of distribution, of manipulating the space in which the prisoner is confined, is essential to the methodology of controlling, directing and exploiting the human forces within prisons.

In rough terms, the control of space requires a principle of enclosure. A space is marked off for a purpose, and all other activities are banned. Clearly, the technique pre-dated prisons. But, for penal practice, the technique was revolutionary. Gradually, human traffic in and out of prisons was regulated; prisons were restricted to a punitive function. Debtors and their families could be excluded. Staff would be hired to prevent contact between prisoners and society. The prison pubs were shut. Enclosure made prisons a laboratory of human
behaviour and ensured that the prisoner was incapacitated from preying on other citizens.

Obviously, simple enclosure is insufficient to establish patterns of discipline. Thus, the enclosure is partitioned, according to discrete functions of space. The enclosure brought a group of people together – as prisoners. Partitioning re-divided them, in service to the needs of the institution. John Howard recommended separate confinement for each felon. The sexes are separated; old felons are kept from young delinquents.

Partitioning means that each body can be assigned to its own space, thus increasing the potential of the authority to control that space. Random movement within the enclosure is eliminated. Communication between prisoners is ordered. Absences and the performance of tasks are open to observation and documentation.

The technique leads to a finely honed skill of matching a space to its intended functions. Useful space became determinative of the administration of large groups of people in a number of settings. In school, functional architecture met the needs of particular groups of students. Hospitals could distri-
bute patients with respect to the nature of specific ills. Industry divided a factory enclosure according to the tasks relevant to each stage of production.

A final benefit of this 'spatial technique' is that the human units are inter-changeable. Each body can be inserted into a partitioned space without having to alter the space to suit an individual personality. It is the space that defines the occupant.

In the ideal of prison space the prisoner is the object of all purposive activity. The prison is engineered to favour a basic technique of control, namely surveillance. Foucault points to a profound inversion in criminal justice: the theatrical ceremonies of capital punishment concentrated the attention of the mob upon the few villains; in modern penology, the new economy stipulates that one or two inspectors should observe and discipline a mass of offenders.

Surveillance is enhanced through a subtle sculpting of space. Each prisoner must know that she is subject to observation at any time without having any way to verify or evade the surveillance. Bentham's Panopticon is seen by Foucault as an ideal of penal discipline for this reason, though it is fair to add that practice has rarely achieved truly unilateral vision.
Allied to the ideal of the ubiquitous eye is the complete control of the prisoner's activities. Each prisoner can be defined, not only by a cell space, but by assigned tasks. Three aspects of controlled activity are the structuring of time, of movement, and the alignment of bodies with tools or products.

The essence of controlling activity is the power to link bodies to objects that define them. Posture, gesture, physical stance are sculpted to make the performance of tasks more efficient, but a key by-product is the docile nature produced in the worker. Foucault cites a military ordinance:

'Bring the weapon forward. In three stages. Raise the rifle with the right hand, bringing it close to the body so as to hold it perpendicular with the right knee, the end of the barrel at eye level, grasping it by striking it with the right hand . . .'

(Foucault, 153)

There are two series to this discipline: that of the object (the rifle) and that of the body. Each body part is correlated to its object-partner. The hand/the barrel; arm/stock; knee/hammer. Metaphorically, we might say that the body is connected to the object that defines it by a thread. Human behaviour is directed by a subtle adjustment of that thread.
It would be easy, at this point, to describe a modern prison in ways that demonstrate the accuracy of Foucault's case. There is the broad enclosure of the perimeter wall. There are functional partitions: cells, dining areas, administration block, segregation wing. Human units are distributed; and they are inter-changeable. A number fills a cell. Prisoners are taught a correct way to keep their cells; the approved footwear and clothing have been worn by others. Foucault is not to be faulted for his powers of description.

It is essential, though, to grasp his intent. He argues that there is a deliberate policy applying techniques of control throughout the web of penal practices. And, he argues that this method of producing a population of manipulable delinquents actually works.

Foucault writes of early nineteenth century prisons. His thesis for penal history is that the modern prison could not have emerged without the prior evolution of a penal anthropology based on the vulnerability of human nature to control and manipulation. Nor could prisons have developed without the penal technology to order its operations. I would argue that policies and practices of
imprisonment are founded upon an identifiable web of post-Enlightenment convictions about human beings.

This penal anthropology — the foundation not only of rehabilitation, but prison practice in general — includes three aspects:

1) a view of knowledge that presupposes a passive role on the part of the knower;

2) atomism, that splinters experience into categories, e.g., thought/feeling, human/animal, freedom/determinism;

3) reductivism, assuming that the most meaningful dimensions of life are those which are easiest to measure, observe, quantify.

The influence of materialism is particularly strong in the last two traits.

A number of aspects gained from Foucault's disciplines of control can be identified as forms of reductivism, atomism or passive epistemology. Indeed, we might say generally that the practice of punishment makes little sense apart from a passive punishee. But that is to anticipate.

These characteristics are used in a general criticism of critical thought in: Jerry H. Gill, On Knowing God.
The functional partitioning of space presumes that space can be sculpted to serve discrete functions. There is a notion of pre-packaged experience, obvious in the earliest prison designs: a workshop here, sleeping quarters there. Multi-purpose space allows disorder, unpredictability, and reduced efficiency. Ambiguity in architecture also means that the behaviour of prisoners is more difficult to control.

Prisons, schools, hospitals, factories, homes exhibit features of purposive partitioning. Yet, there is a range of rigidity, from the fairly informal spaces of the home, through the task-oriented offices and schoolrooms, to the highly structured space of the maximum security prison. To define the purpose of a space precisely it is necessary to deny personhood to some degree — obvious enough on the shop floor. Personhood is attacked by denying spontaneity, but also by the splintering effects of distribution. This fragments personhood by linking only some aspects to the functional space.

Atomism features in many aspects of prisons, especially in the various means of tying prisoners to significant objects. The monotonous tasks prisoners are assigned are examples, as are character-less uniforms, bland bed-linens and food trays, prison issue tooth powder. Earlier, in discussing partitioning, Foucault
stated that the function of the space determined the functions of the person-occupant. In matching a prisoner with some significant object, the function of that object determines the function of the body.

Inter-changeability requires a deeper reduction of personhood. Certain spheres of experience are bracketed off as irrelevant to the unit's purpose. This tendency is common to social institutions. The soldier's love life, a nurse's interest in recent German cinema, a student's political activities—these are dismissed as irrelevant.

In prison, the relevant aspects of the individual's life are the offence, and the security rating. One prisoner is a murderer, another, a burglar, a third, a sex offender. Other aspects of the prisoner's life may have great personal significance — education, sexuality, family ties, religious faith. But these are subsumed under the requirements of security. However important they may be to an offender, these dimensions will be ignored to the extent that they seem to disrupt the smooth running of the prison. They are lopped off, bracketed out, presumably without undue damage to one's dignity.

Reduced, in this sense, to a mechanism, prisoners find that opportunities for personal expression are
drastically restricted. The disciplines spelled out by Foucault are performed upon the prisoner. True, the techniques may be applied in pursuit of reformative goals. The prisoner is supposed to emerge docile, innocuous. But passivity is basic to other functions of prisons as well.

The 'Just Deserts' school of retribution rejects any suggestion that an offender might take an active role in the aftermath of an offence. Likewise, there are obvious links between passivity and the aims of deterrence. And beneath these general points is a daily routine in which the passive role of the prisoner is continuously impressed upon each one. Prisoners are routinely required to adopt passive attitudes. For example, they are frequently told (especially during induction) — to speak only when spoken to. Whole blocks of the prisoner's life are decided upon without any opportunity for her/him to contribute to the decision-making process.

My concern in this chapter, however, is not the explicit interactions between prisoner and keeper. Rather, the focus is here upon the messages intended by the imposed physical experience of imprisonment. Inherent in the practices of incarceration is an unmitigated assault on personal privacy. The prison
regimen, a discipline for the body, helps to impress upon the prisoner the claim that the viewpoint of the keeper is objective; the prisoner's own perspectives on reality are defective.

The brick walls around the courtyard reached as high as the catwalk, and they were closed over the top by a heavy wire grid resting on steel beams and crossbeams, so that you never saw the sky unimpeded, but always blocked off in small squares.

(Breytenbach, 139)

I came to know the cage well. . . . It had a large cage front which cut the cell in half and it had the effect of making one feel very small.

(Boyle, SF, 218)

E-Wing was regarded for many years as a place in which inmates were 'broken'.

(Cohen & Taylor, 12)

The success or failure of penal practices built upon the techniques of moulding the prisoners' bodies is a moot question. The variable factors are exceedingly numerous; the goals are vague; the extent to which basic principles are practicable is open to question. In order to explore the penal technique in further depth the underlying assumptions about the body must be contrasted to an alternative view. This is provided by Maurice Merleau-Ponty.
Merleau-Ponty: Our Experience of Space

*My true life is in the unspoken words of my body*

— Ezra Pound

The view that the prisoner can be inscribed upon continues to permeate the prisons despite two centuries of reform. The key anthropological image is that of the malleable body. I have argued that this image is characterised by atomism, reductivism, and an expectation of passivity on the part of the prisoner.

The section to follow takes us far from imprisonment and the assumptions of penal techniques. I have suggested that the idea of a penal technology — whatever practical forms it may take — depends upon the image of the malleable body. If I am to counter this view and provide an alternative paradigm of the body's role in knowing, it is inevitable that the discussion will become quite abstract and complicated. However, it is my view that Merleau-Ponty's epistemology is truer to human experience than is the malleable body image upon which imprisonment depends.
In his major work, *Phenomenology of Perception*, Merleau-Ponty examines images of the human body. His concern is chiefly to illuminate the shortcomings of empiricist and rationalist understandings of knowledge. For example, in associationist psychology, the body is segmented, and frequently reduced to a mechanism. One could assume that persons come to inhabit their bodies gradually, integrating bits of information picked up accidentally about various body parts in isolation.

Merleau-Ponty's rendering of the body image is much more fluid and outward-looking. He utterly rejects the view that my own body is (for me) simply one object among all others. Rather, he argues that my body is constitutive of my whole world. My body determines my posture toward the entire world of sensory information. In short, one's body is a basic agent of learning and knowledge.

This body image obviously counters the assumption that the body is a passive receptor, that stimuli are the sole means of shaping my perceptions. The active quality of human knowing contrasts starkly with the passivity inherent in the image of the malleable body. Yet, Merleau-Ponty is sensitive to the fact that my body is in some sense an object. As Jerry Gill
writes, "the obvious but nonetheless amazing fact is that our bodies are both us and part of the world." (Gill, 71)

Again, while the malleable body image can splinter experience because it treats body parts as receptors of stimuli, Merleau-Ponty's image of the body requires a unity of experience. My one body is my sole means of encountering my sole world. Obviously, the concept of perception is central to Merleau-Ponty's view of knowledge.

Perception, in this sense, refers to an awareness that underlies all cognitive (explicit) knowledge. Our experience hits us first at the level of perception; we bring in a web, an integration of our sensations. The bright blue of the sky, the smells of the marketplace, the chatter of the crowd do not strike us in discrete bits, but as one perceptual experience. It is crucial to note that for Merleau-Ponty perception is primary, before explicit knowledge, before abstractions are developed from concrete experience, and beneath any distinctions between subjective and objective knowing. (This will have implications when we return to the experience of prisons.)
My body actively grasps experience, shaping it and determining its meaning. A complete view of knowledge demands both directions: there is input, but there is also a necessary element of active engagement in all knowledge. My perception is a force that grasps an object, frames it in a setting, shapes it and directs it according to my own purposes. Perceiving is an activity; not a mechanical process.

In the act of perceiving, I — or my body: at this level of perception, the two are the same — determine the input in two ways.

1) I bring to that object my unique past. In seeing a red shirt I do not see a textbook standard colour, nor do I perceive a specific length of light waves. The red I see is composed of the reds of my past experience: apples, military uniforms, paint, blood, roses, jelly-beans.

2) My body also controls my focus: I choose to see distant objects, or near ones; I focus on the warmth of a breeze or its smells; on the general chatter or the voice of my companion. And, significantly, I act as a chef in bringing these elements together in a continuous and unique recipe of sensation.
There is but one point that brings together the disparate input of the present and includes a personal past, viz., my body. An observer can examine the rock I am looking at, or taste the pizza I smell, but my body commands a privilege of perspective.

Here again, my body is not merely one object amongst others. My body is the anchor of my knowledge, both in terms of space (its setting) and sensation. The body frames the space in which my knowing is set, and gives it meaning. I shall follow Merleau-Ponty, and refer to space as it is shaped by my privilege of perspective as spatiality. He provides a vivid image of his claim that the body is constitutive of my knowledge:

Bodily space can be distinguished from external space . . . because it is the darkness needed in the theatre to show up the performance. [It is] . . . the zone of not-being in front of which precise beings, figures, and points can come to light.

(Merleau-Ponty, PP, 100-101)

In shaping my perceptions of my environment, I am not focusing upon my body. Rather, I rely upon my body for framing the world I experience. Hence, my body image has a constitutive role in my experience of space, as well as of objects.
We situate ourselves with respect to things and space in all activities, such that our whole body is involved. My whole body stirs the sauce in the pan, or leans upon a desk-top, or lights my pipe. In terms of knowledge, my body is the background against which meanings are illuminated. It is the darkness in the theatre, indispensable to the drama on stage.

Spatiality can be explored further by following Merleau-Ponty's rendering of depth. Using other images of the body, depth is awkward to explain, and it is commonly reduced to 'breadth viewed from the side'. The rationalist might argue that depth must be synthesised (intellectually) from the multiplicity of data available to the perceiving subject.

Both empiricist and rationalist images tend to begin from 'objective' space; the question is how the subject receives the data concerning spatial reality. As such, this is not so much an account of human perception as an abstracted, ubiquitous perspective. Merleau-Ponty calls this approach to depth 'God's spatiality'.

"Depth is . . . the most existential of dimensions, because it is not impressed upon the object itself, it quite clearly belongs to the perspective
and not to things." (Merleau-Ponty, *PP*, 256)

Problems in discussing depth reveal a view of knowledge that denies our embodiment.

We do not infer depth from the properties of objects. What we see is depth itself. A car driving away is not getting smaller; a man two hundred yards distant is not smaller than at ten feet. They are (as they appear to me) farther away. They are not 'objectively' farther, because depth is a function of our being knowing and embodied creatures. Depth reveals that the perception of space requires a privilege of perspective.

In using depth to understand spatiality, Merleau-Ponty makes clear that my knowledge of space is based on my body's posture toward the world. In a revealing footnote about aesthetic space, he points out that the spatiality of an oil painting is not defined strictly by the space it occupies on the wall. The painting defines its own spatiality. In like manner, space can be defined on a stage with a minimum of props or spatial buoys. Perhaps the starkest image of all, though, is the space which is defined by the dancer. Here the capacity of the human body to constitute spatiality is unmistakably revealed.

-256-
Talk of space as an existential dimension, or talk of a privilege of perspective may lead to the impression that Merleau-Ponty is a champion of subjective knowledge. He is not. It is important to distinguish between the constitutive role of the body and the personal preferences signified by 'subjectivity'.

In the first place, Merleau-Ponty stresses that objects can inscribe themselves upon us, that we are receptive to the input provided by things in our world. Second, he is speaking of physical awareness, of a familiarity that precedes explicit knowledge. My privilege of perspective is not an excuse for egoism, but is forced upon me by being a body.

Perception is always in the mode of the impersonal 'One'. It is not a personal act enabling me to give a fresh significance to my life. The person who, in sensory exploration, gives a past to the present and directs it towards a future, is not myself as an autonomous subject, but myself in so far as I have a body and am able to look.

(Merleau-Ponty, PP, 240)

My discussion to this point should make clear that Merleau-Ponty's phenomenology counters traditional assumptions about what prisons can do to or for prisoners. I have stressed the 'wholistic', activist thrusts of his thought to mark the contrast between the two views of experience. At the very least, Merleau-Ponty counsels a respect for prisoners'
capacity to define the meanings of the spaces in which they are confined.

I do not wish to present an imbalanced view of his phenomenology. I have acknowledged that experience is two-way, that objects can inscribe themselves upon me. Constitutive of knowledge the body may be, but it is also true that one's body is a thing in the world.

The limitations entailed by my physical finitude might be called implantation, in the sense that I respond most immediately to the environment in which I find myself. I may daydream about a concert hall or lakeside bench while I skim a tedious essay in the library or while I sit with two others in our cell. But at the level of perception, my body interacts with my immediate setting.

Merleau-Ponty writes, "We have said that space is existential; we might just as well have said that existence is spatial." (Merleau-Ponty, *PP*, 293) Imagining myself at Lords might make a cricket match very real to me, but my body's implantation in the library calls me back to an engaged attitude toward the room, my seat, the whispering behind me. Imagination in this sense differs from the level of perception. The imagination is more cognitive, more explicit.
"Our body and our perception always summon us to take as the centre of the world that environment with which they present us." (Merleau-Ponty, _PP_, 285) We may gradually come to ignore the noise of our factory workplace, or grow accustomed to the warmth of our surgery or greenhouse. Typically, the intensity of the impressions these sensations make is diminished as we become implanted in the setting. Our power to screen out certain sensations, and focus upon others indicates that even in the relatively passive role of being implanted there is an active element.

Implantation illustrates the ways my environment inscribes itself upon me. It recalls the passive sense of learning. The term 'behaviour-setting' is sometimes used of settings that are conducive to certain behaviours. Yet, the body plays an active part, and I shall refer to this role as embodiment.

There are two distinguishable aspects to the active role of the body in response to a setting. The first is the relation between knowledge and acting; we learn by doing. The second aspect is the way in which a body extends itself through objects in order to gain mediated knowledge. I shall consider each in turn.
Merleau-Ponty alludes to Husserl to claim that the basis of knowledge is not 'I think', but 'I can'. "We experience a perception and its horizon 'in action' rather than by 'posing' them or explicitly 'knowing' them." (Merleau-Ponty, PLS, 196) We learn (and show our knowledge of) the dimensions of a room — e.g., the distance from the refrigerator to the oven in our kitchen — in activity within the room. In a similar manner, I do not deduce the functions of my comb each time I use it, but demonstrate an embodied knowledge of it in the activity of shaping my hair.

Purposive activity is linked to the embodied knowledge of objects. The painter's hands come to know the qualities of each brush; the blind person's palm tells her what is at the tip of her cane; my body realises familiarity with a particular motorbike in the act of riding it. Here again, knowledge in action, as opposed to abstract knowledge, is the foundation of our relations with the world.

Here I must draw out a profound difference between Merleau-Ponty and Foucault. In the latter's rendering of penal disciplines, the prisoner was manipulated by imposing discipline on bodies, using spaces and things as levers, handles. In Merleau-Ponty, the subject-body is the manipulator, the source of the meaning-bestowing activity. The object does not impose
meaning on the subject. Rather, the person applies things to purposive activity.

The key to my body's grasp of my kitchen, and to my body's knowledge of my motorbike is intentionality. This is a difficult concept, since Merleau-Ponty is talking about non-cognitive attitudes, postures, motions. My explicit purpose may be to find the quickest route through London. But I depend upon my body's familiarity with my motorbike to perform the clutch-work, the braking, the steering etc. These movements — while not explicit — require 'intentions' on the part of my body.

Embodied familiarity means that I do not need to be thinking of my kitchen's dimensions in order to move through it. The purpose of my activity may be the preparation of a meal. Yet, without making deliberate decisions, my body directs me through the kitchen — from oven to drawer, from refrigerator to cupboard.

---

2 Equally, I can presume embodied familiarity where it is not yet achieved, sometimes with disastrous results. Such a miscalculation once resulted in a parting of the ways between my motorbike and its rider.
As this intentionality is not a conscious decision, it may be helpful to imagine us without it. Such a person would cross a room without wanting to move, watching her own body perform. Her body's actions would be events that happened to her. Conversely, intentionality allows us to appropriate things, and to define their significance by the use to which we put them.

This extension of the body is basic to the formation of habits. There is an embodied anchor to habit, as it is dependent upon a familiarity borne out of long contact between one body and one object, be it typewriter, guitar, hat, walking stick or motorbike.

To get used to a hat, a car, or a stick is to be transplanted into them, or conversely, to incorporate them into the bulk of our own body. Habit expresses our power of dilating our being in the world, of changing our existence by appropriating fresh instruments.

(Merleau-Ponty, PP, 143)

Merleau-Ponty expands upon the embodied character of habit in a brief example of an organist confronting an unfamiliar instrument. She does not prepare by reading pamphlets on the qualities and temperamental natures of the organ in question. Rather, she learns the new one by playing it.
Here again, it is important to balance the setting (the 'implantation' at the new organ) against the active role of the subject (in embodiment). The organist may need to allow for unusually springy pedals or a swell with insufficient volume. Cooking in a new kitchen may require one to adapt to an oven door that opens the wrong way. My body senses that the new front wheel on my motorbike makes the steering heavier, and adapts my riding habits accordingly.

Despite the fact that we can identify specific points in habitual behaviour that may pose problems, Merleau-Ponty sees the development of habit as a process of integration: one body engaging with one world. In coming to terms with a new setting, we situate ourselves by re-aligning our whole body image to meet the new implantation. Habit, then, is our power to respond to situations of a particular form with a matching embodied solution.
The Prisoners' Experience

The foregoing extended discussion of Merleau-Ponty's philosophy provides a sharp contrast to the malleable body image of penal theory. In applying his unusual view of perception to imprisonment, I shall trace the prisoners' experience of prison through three points: A) Implantation, in terms of Foucault's thesis that prison space is sculpted to impose discipline on the prisoner; B) Embodiment, in terms of the prisoners' power to ascribe meaning to the space(s) they inhabit; and C) Habits, as lessons to take away from prison, or as embodied solutions to specific settings.

In general, implantation in a setting gives us a sense of being there, of our bodies' active engagement with the environment. Personal experience is contingent upon the determinative factors of one's surroundings.

The question for the penal enterprise is whether a setting can be sculpted to ensure that one's environment will have desired effects upon behaviour. Again, although this seems to assume a rehabilitative philosophy, retribution, too, requires a sense of
implantation. In describing the prison environment as punitive, it certainly assumes that the prisoner will regard it as such. Likewise, deterrent theory includes in its aim of intimidation the power of architecture to inspire fear. Finally, social defence, where prisons are intended to incapacitate the offender, clearly aims to impose patterns of behaviour upon the prisoner through the design of the prison setting. Indeed, in terms of a capacity to commit harm, the prison's function of incapacitation can be said to typify the goals of penal implantation.

Thus, in different ways, each penal function of imprisonment presumes that implantation can be manipulated; that meanings can be imposed through one's setting; that prison space can create total contingency in convicted human beings. In short, the keepers (i.e., society) wish to control the behaviour of prisoners, but also to establish a keeper's sense of reality as the exclusive truth.

In their classic study of long-term confinement, Stan Cohen and Laurie Taylor distilled the prisoners' deepest concerns. These included friendship, identity and deterioration. The standard literature on sensory deprivation, sociological conflict, and contingency is cited, but these issues do not appear to impinge as deeply upon the prisoners' lives.
Despite their disclaimer, contingency underlies much of Cohen and Taylor's analysis. The prisoners were susceptible to feelings of powerlessness due to the prison officers' control of lighting, heat, diet, activities, etc. Merleau-Ponty, in discussing implantation, commented that the falling of night provokes feelings of contingency. On the prison wing, the abrupt 'lights-out', when the switch is pulled by the keepers, ties physical contingency to an ideological message of control and dependency.

Foucault's depiction of the prison enterprise describes the prisoners' contingency in the intricate detail of the penal techniques and disciplines. In the time-table, the distribution of prisoners throughout a prison, in régimes of planned activities, the prison enterprise sets out to sculpt a particular behaviour setting; in other words, to establish socially designed implantation.

Merleau-Ponty's philosophy requires a paradoxical response to this penal enterprise. On one hand, embodiment indicates that human activity resists manipulation; on the other hand, the power of implantation to limit or restrict one's growth seems beyond doubt. The prisoner defines the space within which she is confined, yet the experience can prove to be damaging.
I am not arguing that a prison experience can have no effect upon a prisoner's conscious reflections on his past, or upon his/her chances for rehabilitation, her role in society. I am saying that the prisoners' experience of imprisonment necessarily generates a radically different sense of reality from that which the prison is designed to inculcate.

1) From a passive perspective (implantation) the prisoner is implanted as a prisoner, and the behaviour-setting encourages prisoner-responses rather than those more typical of the keeper.

2) From the active embodiment view, the prisoners' privilege of perspective allows them to assign meanings to the prison experience that resist alternative (keepers') interpretations.

I am arguing, then, that Merleau-Ponty describes an inviolable core in the human individual (whether or not we wish to ascribe to individuals a soul, personhood, an inner light, or even selfhood.) At the level of perception, the prisoners exercise a sovereignty over meaning. This does not imply that prisoners need be stubborn or rebellious in imposing their meaning upon their cell (this, again, is cognitive, not perceptual). Rather, the experience of inhabiting a prison as prisoner nurtures a sense of truth at variance with that impressed upon one by the keeper.
Breyten Breytenbach captures with remarkable clarity the fine balance between the power of the system to destroy and debilitate on one hand, and the prisoners' personal powers to confer meaning on the other. He describes the deterioration attendant upon extended solitary confinement:

You watch yourself changing, giving in to certain things, becoming paranoid, staring at the wall, living with an ear to the door and yet cringing at the slightest noise.

(Breytenbach, 130)

As for changes in personality, you cannot gauge the damage because, in solitary, you have nothing against which to measure. "... and this damage is permanent even though you learn to live with it, however well camouflaged." (Loc. cit.)

But Breytenbach also witnesses to the prisoners' awesome power to draw every speck of significance from their spartan setting:

You grow rich with the richness of the very poor. A blanket really is a blanket and though it is grey it has a million colours in it. A bird, when it comes to nest at night... really does make a very wide range of comments and it has a rich relationship with its mate.

(Breytenbach, 130-131)

The prison writings of Jean Genet demonstrate the extremes to which the prisoner defines the prison experience. In The Miracle of the Rose, shackles become garlands of roses, and his prison-issue cap, a halo.
Jimmy Boyle likewise testifies to the prisoners' power to bestow meaning. After a fight with prison officers he is thrown into a punishment cell (yet again). His experience of space defined by his keepers as punitive is revealing. "Being in this bare cell, with the roughcast walls, was almost like seeing an old friend." (Boyle, 181-182)

To be clear, I must recall the distinction between a person's conscious, deliberate interpretations and the sense of reality generated by an embodied perception of the setting. Obviously, to see caps as halos or the punishment block as an old friend demands a sensitivity to symbolism. I would argue, though, that these conscious metaphors are propelled by a tacit privilege of perspective. The prisoners' experience is both that of embodied sovereignty over meaning, i.e., the power to see roughcast walls as friendly, and implantation, trapping the person in a prisoner's perspective of the setting.

The disparity between the person's perspective before incarceration and as prisoner can give rise to longings that might otherwise seem irrational. For instance, the walls deny a prisoner freedom of movement — an obvious deprivation — but the walls also take the experience of distance. Both Jimmy Boyle and
Breyten Breytenbach (cited above) write of their longing for a sight of the moon. Jean Genet writes:

The windows are forbidden us . . . And sometimes we commit an offence so as to be sent to the hole where at night we can see through the skylight . . . a patch of starry sky and, even more rarely, a piece of moon.

(Genet, 75)

Genet commits an infraction on the slim chance that, confined in the punishment cell, he can catch a glimpse of the moon. The logic of his behaviour is certainly complex. However, Merleau-Ponty's concepts supply revealing clues. In the first place, the 'inviolable core' to which I referred implies that Genet is free to interpret confinement to 'the hole' as a benefit, and further, that the gain of an unusual experience (seeing the moon, seeing distance) can spur on his otherwise senseless action.

More important, because depth belongs to the perspective (i.e., to the perceiving body's privileged position) his sensation of depth brings home to Genet his power to constitute spatiality. Not only can he focus upon near or far objects, not only is the breadth of perspective wider, but implicit in the greater range is an increased freedom of movement. If these interpretations of Merleau-Ponty are accurate, then a lack of depth impresses the prisoner not only with limited movement, but also with the limitations
on his/her potential to constitute a frame of space. (This recalls Breytenbach's concern that his view of the sky was always blocked off.)

Finally, I would argue that the crucial attraction of the sight may in fact be its association for the prisoner with the privileged perspective which he is categorically denied, viz., that of his keeper or (less polemically) that of his former, free self. The roots of Genet's action may lie in an attempt to recapture the feeling of self-determination. It is this sort of behaviour that Erving Goffman labels a 'removal activity'; its power lies in its capacity to transport the prisoner vicariously out of the prison. 

The tension I have drawn from Merleau-Ponty, between the prisoners' power to label the setting and the keepers' attempt to impose significance must be complicated further by a second-level tension inherent in imprisonment. I have said that the red shirt I see is composed of reds I have previously experienced. I have also written of implantation in a library

---

recalling me from daydreams of lakeside benches or a match at Lords. These examples help to explain the prisoners' relationship with the outside world.

Stan Cohen and Laurie Taylor write of adaptive strategies to cope with the deprivation of social contact. For the majority of prisoners, the outside world presents a tantalising mixture of occasional contact (which raises hopes), and the return to the closed world of the prison. The outside seeps in through television, visits, comments by prison officers, books, other prisoners. Merleau-Ponty describes the pain in terms of his own philosophy:

Our body and our perception always summon us to take as the centre of the world that environment with which they present us. But this environment is not necessarily that of our own life. I can be 'somewhere else' while staying here, and if I am kept away from what I love, I feel out of touch with real life.

(Merleau-Ponty, PP, 286)

It is certain that the prisoners' perceptual environment differs from that of persons in society. Our embodied patterns - suited to catching the bus, shopping for food, another late night at the pub - are poorly suited to the prisoners' setting. Yet, inevitably, the outsider's embodied knowledge impinges on the prisoners' experience. Just as I might make the cricket match intensely real as I sit in the library, so the outside environment lives on in the embodied
phenomenology

knowledge of prisoners. With or without television, various sensations can reawaken that world.

Sometimes, especially in the evening, a noise from the street may reach the prisoner in his cell. An automobile sounds its horn. The bell of a trolley car rings out in the distance. Instantaneously, the image of the illuminated streets and of that trolley car appears in your mind's eye. You see the conductor taking the steering bar into his wool-gloved hands. You see everything. You breathe in the smell of asphalt and gasoline. And then everything vanishes.

(Victor Serge, 41)

The prisoners' implantation in the prison returns him to the régimes aimed at the malleable body. The enclosure serves the purpose of isolating the prisoner from a personal past. In Foucault's rendering of penal techniques, the docile body of the prisoner is susceptible to sculpting by the keepers. It is assumed by rehabilitative justifications of prisons that good habits can be instilled, that virtue can be fabricated through architecture.

Judges make the same assumption when they sentence someone to incarceration in the hope that the experience may instil discipline. The notorious Prison Rule One states:

The purpose of training and treatment of convicted prisoners shall be to encourage and assist them to lead a good and useful life.

(Cited in Plotnikoff, 26)
Foucault's discussion of the alignment of the soldier's body with the parts of a weapon makes clear that Foucault takes seriously the role of the body in instilling habits of industry. Indeed, he argues that the prisoner's body is the lever used to make adjustments in the personality.

Here is an empiricist's understanding of the body, as segments which serve distinct functions, as receptors of stimuli. To press this body image to absurdity, the malleable body would seem to assume that the prisoner feels pain in the punishment cell, curiosity in the education wing, rests content in one's own cell, is hungry in the dining hall.

If we are to apply Merleau-Ponty's alternative body image, we must recognise that habits meet the needs of particular persons (i.e., bodies) in their unique settings and that they perceive these settings as wholes. At the level of embodied perception (the foundation of habit) the prisoner does not experience a smell, a view, a coolness. He experiences the sole world of the prison. The prison is not perceived as a place of punishment - this would be an explicit interpretation - or of reform or of authority and obedience. Rather, the prison experience is a unity of smells, sights, sounds, spaces.
You are buried to what you know as normal life outside: the rhythms of day and night, of the seasons of the year . . . butterflies and croissants . . . the million little things which weave the cloth your life consists of. This death world is filled with sounds you never imagined, steel on steel, fear and rage; with the pervasive smells of not very clean men (with no joy) cooped up in a restricted area, of evacuation and badly cooked food, of clothes worn for too long by too many bodies . . .

(Breytenbach, 125)

It is against this whole setting that a prisoner moulds habits. For Merleau-Ponty, a habit is neither a mental solution to a problem, nor is it a patterning of instinctive responses. Habit is instead a readjustment of the body image in relation to a particular problem in a particular setting. If this is a more accurate understanding of habits, then we should expect the prisoner — after leaving behind the prison environment — to leave behind the habits required by that setting.

The prison world is not totally different from the wider society. Hence, the transition to life outside is a complicated process of shedding some habits quickly, retaining others for long periods — all of which depends upon the settings to which the prisoner is released. For example, a number of newly released people have waited for me to open doors for them,
e.g., at a post office or rail station. One can assume that the habitual behaviour of waiting for an officer to open a gate or door is not long retained.

It remains unclear why some habits are retained and others are easily shed. There is no necessary link between the retention of behaviour patterns and the extent to which the habits are deemed desirable by penal theories. Merleau-Ponty provides a clue, but it does not fully answer the problem.

The subject does not weld together individual movements and individual stimuli but acquires the power to respond with a certain type of solution to situations of a general form.

(Merleau-Ponty, PP, 142)

Cohen and Taylor write of a prisoner's habits of self-protection in prison, erecting a screen or barrier. This is not easy to remove after release, inappropriate as it may be to the outside society. From a subjective view, the outside society may be threatening - as a 'general form' - though the specific sources of threat will differ from those in prison. The person's wall or barrier will be maintained by the sense of danger. Where the artificiality of the prison environment differs most from the lifestyles and settings available to the prisoner upon release, the imposed habits of industry are quickly relinquished.
In speaking of the principle of enclosure I implied that the prison space serves the functions of imprisonment like hospitals organise the sick, like schools provide for students, like the factories distribute the energy of labourers. But there is a crucial difference. As David Canter remarks in a recent article, medical practices can be performed outside of the hospital (in first aid, for instance); equally, books, television, discussions can educate, quite apart from school buildings. The prison enclosure, however, is intrinsic to the practices of imprisonment. Canter adds that to use the term imprisonment for any activity outside of prisons is metaphorical.

I have said that the meanings of spaces can be flexible or relatively rigid. Flexible spaces tend to

---

be more informal and less structured. Prisons, like barracks, monasteries, etc., distribute human forces and bracket out irrelevant activities. Structure is not harmful in itself, but must be seen as an instrument that serves a variety of aims. In the factory, rigid structure may de-personalise workers, yet this makes possible high efficiency and productivity.

In the practice of imprisonment, enclosure is devoted to incapacitation, to marking the divide between the innocent and the guilty, to disciplines that control behaviour, to punishment, and perhaps to rehabilitation. As I have said, the space is dedicated to the structured implantation of prisoners' passivity. To say that the rigidly defined enclosure is intrinsic to imprisonment is to say that the prison is materially and symbolically coercive.

Coercion may not involve harm to one's physiology. Rather, it attacks one's freedom. In discussing Foucault's disciplines, I have tried to illuminate the means by which the prison enterprise systematically attacks freedom. In expounding Merleau-Ponty's phenomenology - including 'privilege of perspective', 'embodied intentionality' and habits - I have sketched a sense of freedom that is truly inalienable. The sole method of punishment that can eliminate a person's powers of embodiment is execution.
Harm to prisoners is not a purely empirical matter. We can check thousands of prisoners' fingers for chipped nails, and find that they are actually better off than the social norm. We can compile masses of data on health, sensory performance, motor skills, to demonstrate that the prisoner is no worse off following lengthy incarceration. In short, we can convince ourselves that prisons do not harm by rigorously ignoring the dimensions of human experience where the harm is most obvious.

If we accept Merleau-Ponty's body image, human experience cannot be summed up as the result of stimuli making their impact upon a blank tablet, nor is knowledge an abstract game played by a ghost in the machine. To be human is to be embodied, incarnate. Hence, the 'penal disciplines' performed upon the body are an attack upon the human being, upon the person. (This, of course, is Foucault's thesis.)

I have argued that these punitive techniques offend human dignity in their reductivism, atomism, and in an assumption of prisoners' passivity. (In passing, the empiricist approach to the harms of prisons which demands quantifiable evidence as the sole proof is itself reductivist, and atomistic. A great deal of harm is to relations between individuals, or to wholeness rather than to any single segment of a person.)
Imprisonment is reductivist in régimes that induce physical routines and distribute prisoners' bodies throughout the prison, and in penal theories claiming that discipline will transform the prisoners' attitudes and behaviour. It is also reductivist in determining the distribution of prisoners on the basis of the offence and the security rating. Indeed, criminal justice is reductivist in labelling some people guilty (thus permeated with guilt), and others innocent.

It is atomistic in methods that segment one aspect of the prisoners' lives from other aspects; e.g., in choosing the destination of a 'ghosted' prisoner without including the prisoner in the decision, or without due regard for a 'wholistic' grasp of the prisoner's own needs.

The allocation of inmates is an entirely administrative procedure . . . The preferences of the inmate and the location of his family are normally taken into account, but these factors are liable to be outweighed by other considerations when a transfer is effected in the interests of maintaining good order.

(Home Office, 5)

---

The anthropological core of imprisonment, however, is the passivity of the prisoner. From a rehabilitation view, the prisoner is the passive recipient of the cure. In retribution, the prisoner is subjected to punishment. In social defence, the goal is the incapacitation of the prisoner.

Passivity is presupposed in the disciplines intended to inscribe upon the prisoner the lessons of rehabilitation, or the pains of retribution, or the docility at the heart of social defence. Further, passivity is expected of the prisoner in response to such coercive shaping. This is not to say that prison régimes anticipate no resistance from prisoners. Rather, eventual passivity is the goal of the penal disciplines.

Hopes for passivity are realised in retribution when the prisoner simply ‘does his bird’, ‘takes his punishment’, becomes the object of punishment. Passivity is achieved in social defence when the prisoner is incapable of inflicting harm upon others. Rehabilitation seems to offer the most for prisoner activity, yet passivity is hoped for in the sense of an acceptance of the keeper’s view; in the sense of a ‘proper’ channeling of the prisoners’ post-release expectations; or in labelling oneself defective and in wilful submission to treatment.
I have argued — following Merleau-Ponty — that this passivity, this malleable body, is alien to human experience. I have argued that we cannot evade our privilege of perspective; and the perspective of a penitent or rehabilitated prisoner will remain (literally and physically) a prisoner's perspective.

Where the hopes for passivity — i.e. for the success of penal theories — are frustrated, it is likely that a two-fold response should obtain. On one hand, goals which seem to require a more activist image of prisoners will be discarded, and a minimalist notion of penal aims will be declared. Second, efforts to impose passivity will increase; coercive measures will become more intense. The allure of imprisonment is based on the myth of the malleable body, the assumption being that just one turn more on the screw of coercion will curtail the disruptive influences of individuality, spontaneity, resistance, freedom.

These broad strokes against penal theory are bound to face counter-evidence. There will be prison administrators who earnestly work to encourage the prisoners' relations with families. There will be prison officers who are led by their faith in particular prisoners to encourage the active potential within the personality. These should not be surprising, however, if my argument is valid.
Prison practice must work with human — not hypothetical — prisoners. Hence the prison régime may reflect awareness of a prisoner's active role in giving meaning to the experience, as well as the prisoner's privilege of perspective. (This is confirmed, too, in the occasional confession by administrators that prisoners have a share in 'running the institution'.)

At its best, then, prison practice acknowledges the equality of keeper and kept, and the mutual control required to maintain order. Michael Jenkins, at one time governor of HMP Long Lartin, has written that dependence upon control is weak precisely because measures of control must be intensified constantly. "In an open régime 'fairness' has much more meaning than power and its reciprocal quality is a better contributor to control." (In Bottoms & Light, 265)

I have examined the thesis of Michel Foucault, though, because I am convinced that his general picture of the principles of imprisonment is accurate. His interpretation of penal theory, and its foundation in the image of the malleable body, are not just representative, but exemplary.

A more philosophical criticism of my argument would defend the truth-claims of empiricist renderings
of the human body against Merleau-Ponty's views. A case could be presented that I have denied that the body can be subject to causality. I have not denied empiricism, however, so much as I have opposed its abuses, e.g., reductivism. (I shall rely upon empiricist methods in the chapter to follow, Prison Violence.)

In this context, however, it is the character of imprisonment, not empiricism, that is the problem. I have argued that medicine, education, law, etc. depend upon different images of human beings. Medicine must bracket out my sense of humour or another's political opinions if it is to treat our bodies successfully. Medicine and imprisonment both focus upon the body as object.

The key difference is not that I submit voluntarily to an operation upon my body, yet I am forced into prison. Rather, the difference is that medicine treats my body as an organism, which it is. Imprisonment uses to my body to treat my will or self-determination (or freedom) as an object to be shaped, which I am not.

Where hopes for imposed rehabilitation have been discarded, the commitment to sculpturing the prisoner's will takes the form of retribution and
control — where the goals are passivity and incapacitation. Again, Foucault argues that it works. I follow Merleau-Ponty to argue that such attacks are futile so long as prisoners are embodied persons.

I have given great attention to the philosophy of Maurice Merleau-Ponty, because it seems to me a far more reliable guide to human nature. It is my hope that his perspective will shift our anthropological axis as we attempt to identify the harms of imprisonment, from purely physiological ones to harms inflicted upon persons; from merely quantifiable harms to the ways in which prison practices damage the dignity and integrity of each prisoner.

(I am grateful to Phil Mullen, of the Committee for Criminal Justice, Philadelphia Yearly Meeting, for his comments on an earlier draft of this chapter. As many of his remarks were critical, it will be obvious that he is not to blame for the views I express.)


Breytenbach, Breyten: The True Confessions of an Albino Terrorist, London: Faber and Faber, 1984


Fitzgerald, Mike, and Joe Sim: British Prisons, Oxford: Basil Blackwell, 1982


Genet, Jean: Miracle of the Rose, Harmondsworth: Penguin, 1975


A Pacifist Critique of Imprisonment

Volume II

David Kimmett Edgar
Ph.D. Theology
University of Durham
June, 1989
## Contents

**Volume Two**

**Part Two: The Harms of Imprisonment**

**Introduction** 3

**Prison Violence**
- Violence in the Prison Setting 7
- Scenes of Inter-Activity 10
- Perspectives on Aggression:
  - The Aggressive Instinct 18
  - Physiological Aspects of Violence 26
  - The Psychology of Aggression 32
- Prison Violence 41
  - Control and the Politics of Violence 46
  - The Quicksand Prison 52

**Sexuality**
- Introduction 60
- The Social Construction of Sexual Meanings 66
- Sexuality in the Prison Setting 71
- Deviance as a Social Construct 83
- Homosexuality and Gender Roles in Prison 92
- Penal Philosophy and Sexuality 103
  - Punitive Celibacy 106
  - Sexuality in Penal Philosophy 110

**Moral Responsibility**
- Introduction 119
- The Meaning of Responsibility 123
- The Enforcement of Prison Discipline 135
- Fairness and Discipline 146
- The Shaping of Selfhood
  - Equality 158
  - Transcendence 162
  - Freedom 164
  - Selfhood 168
- Prisoners and Responsibility 172

**Postscript** 189

**Bibliography** 202

**Index** 216
PART TWO:

THE HARMS OF IMPRISONMENT
The Harms of Imprisonment

Whereas no man should break the law
the law must not break man either.

— Kenny van Niekerk (Cited in Breytenbach)

Imprisonment, as a whole, is too large a subject for a thesis. One approach (obviously not the one taken here) would first define the field of study precisely; it would begin by excluding very significant aspects of imprisonment. In contrast, Part One has forced an open perspective. The discussions of prison history, the philosophy of retribution and the underlying views of human nature have raised questions about the purposes of prisons, and the presuppositions upon which imprisonment is based. My discussions of desert, Beccarian materialism, or sinfulness may appear to have been digressions from basic concerns about prisons; especially in view of my neglect of down-to-earth aspects - soaring remand populations, education and vocational training opportunities, issues of race or gender bias.

I believe, though, that Part One has clarified the prisons' failure to respect the dignity of prisoners. Each of the foregoing chapters explored an aspect of that failure from a fresh perspective. The different approaches in Part One were unified by their value in advocating the interests of the prisoner.
History demonstrated that the origins of the modern prison owed much to social crises and to dubious assumptions about human nature. The chapter showed that the birth of prisons did not resolve the conflict between authority and disorder, but merely shifted its setting out of public view. Finally, the chapter highlighted basic flaws of imprisonment, which undermine the hopes placed in prison reforms; there is little evidence that prisons might benefit society once penal techniques are refined.

Retribution showed that the retributive defence of punishment depends on a categorical divide between offenders and innocent people. The discussion separated the vindictive elements of punishment from more noble objectives. I argued against the retributive defence of punishment as pain that the guilty deserve. I suggested that retributive models can help when we wish to restore wholeness after a crime; i.e., when our interests are in fact restorative. Finally, I suggested that the harm society inflicts upon offenders harms society itself — that retribution is in practice self-defeating.

In Phenomenology, I explored the notion that prison space might be shaped to ensure intended changes in the prisoners' behaviour. I cited Michel Foucault's analysis of penal philosophy, according to
which the prison régime imprints certain habits (of body and mind) upon the prisoner. Phenomenology was not really an exposition of a typical prisoner's experience of incarceration, but a critique of the epistemology at the heart of imprisonment.

Phenomenology provides the fulcrum upon which the entire thesis turns. The whole of Part One encouraged doubts about the anthropological assumptions of imprisonment. I questioned the disparity in status between innocent citizen and guilty prisoner, and disputed the materialist view that pleasure and pain offer a sufficient explanation of human motivation.

Phenomenology, however, establishes a more basic case; namely, that we cannot understand imprisonment unless we consider the prisoner's perspective. Phenomenology argues that the prisoner holds sovereignty over interpretation — just as we do — that the prisoner bestows meaning upon the experience. Finally, the chapter demonstrates that dignity — conceived, in this case, as the inviolability of the person — is not only a moral conviction, but a basic attribute of human beings.

The manner in which this thesis advocates a prisoner's interests is crucial. Within a framework that recognises only two sides — keeper and kept — to
criticise the keeper is to exonerate the kept. If, for example, I suggest that the prison experience nurtures combative reactions, one might infer that prison — not prisoners — is to blame for violence between prisoners. It might be assumed that I view prisoners as universally harmless.

These assumptions are not justified: the shared responsibility discussed in Retribution demonstrates that my arguments cannot be construed as excuses for the actions of prisoners. Rather, I dispute the claim implicit in the expansion of prisons that, on the whole, incarceration is beneficial for society. Current penal philosophy concedes that prisons do not rehabilitate: I argue that the harms of imprisonment are of a kind and degree that inevitably contaminate society at large.

In Part Two, I explore three spheres of damage to human dignity: prison violence, sexuality and moral responsibility. The significant harms of prison are not physical, but emotional and social. They concern relationships moreso than isolated individuals; quality of life more than measurable effects upon human organisms. While I restrict my research to these three spheres, the approach could easily apply to many other areas of prison life. The three clearly manifest the prison's assault upon human wholeness.
PRISON VIOLENCE

Here is how it is: You are both alone in his cell. You've slipped out a knife (eight-to-ten inch blade, doubled-edged). You're holding it beside your leg so he can't see it. The enemy is smiling and chattering away about something. You see his eyes: green-blue, liquid. He thinks you're his fool; he trusts you. You see the spot. It's a target between the second and third button on his shirt. As you calmly talk and smile, you move your left foot to the side to step across his right-side body length. A light pivot toward him with your right shoulder and the world turns upside down: you have sunk the knife to its hilt into the middle of his chest. Slowly he begins to struggle for his life. As he sinks, you will have to kill him fast or get caught. He will say 'Why?' or 'No!' Nothing else. You can feel his life trembling through the knife in your hand. It almost overcomes you, the gentleness of the feeling at the center of the coarse act of murder.

(Jack Henry Abbott)

Violence in the Prison Setting

In the late 1960s, the Philadelphia Sheriff's Department realised that it had a problem. Every day a number of sheriff's vans would appear at the local prison to transport prisoners to the city centre courtrooms. Each van — windowless, with no compartments — packed 40-50 prisoners inside. Each day a number of prisoners would be beaten severely and/or raped or otherwise sexually assaulted.
A member of the committee raised to investigate the problem declared:

The design of the van did not cause the violence that this incident represents. The design did enable that violence to happen.

(William Nagel, in Cohen, Cole & Bailey, 106)

In *Phenomenology*, I questioned the extent to which a prison administration can determine the prisoner's perceptions of the prison environment. Clearly, however, environment does have an impact upon the behaviour of the persons within it. In the terminology of *Phenomenology*, the prisoners' behaviour is conditioned by their implantation in a setting marked by force.

Robert Barker has coined the term, 'behaviour-setting' to label this link between the characteristics of settings and the rituals of behaviour that occur within them. Edith Elisabeth Flynn has applied Barker's work to illuminate the 'ecology' of prison violence. She notes that themes of homosexuality, race, politics, gang warfare and hustling (illicit dealings with contraband) predominate in explanations of prison violence; situational and environmental factors are neglected. She writes of situational grievances, referring to frustrations indigenous to prisons.
Prisons are skewed and unnatural microcosms in which inmates are forced to adjust to a highly artificial existence characterized by batch living, movement in blocks, unceasing surveillance, lack of privacy, monotony, enforced idleness, coercion, regimentation, and imposed activities.

(E.E. Flynn, in Cohen, Cole & Bailey, 116)

In attending to aspects of prison life such as monotony or movement in blocks, we leave behind the pre-cognitive phenomenology of Merleau-Ponty. My approach in this chapter draws upon empirical studies to explore the problem of prison violence.

I shall first build upon our understanding of the perception of space to learn more of the ways environment shapes our behaviour. This section will focus on the insights of ‘proxemics’, a science of the uses of space in interpersonal relations. In the sections to follow, I explore three diverse perspectives on aggression: ethology, physiology and psychology. While these add to our knowledge of human violence, none should be considered to be comprehensive. In the final section, I return to the question of prison violence, following others' recommendations for designing safe habitats.
Scenes of Interactivity

The anthropologist Edward T. Hall has pioneered the study of the influence of culture in the use of and experience of space. His chief concern in 'proxemics' is to show the ways that we sift experience through culturally conditioned screens. He opposes the claim of some empiricists that, given the same stimuli, any two people will enjoy the same experience. "Experience as it is perceived through one set of culturally patterned sensory screens is quite different from experience perceived through another." (Hall, 2)

Hall's focus in The Hidden Dimension is the effects of our 'cultural screens' upon interpersonal activities. He points out that we depend upon hearing, smell and touch, as well as sight, to apprehend other persons. For example, human beings in close quarters send and receive signals by temperature and smell. Hall lists the blush of embarrassment, anger, sexual arousal as warm signs; nervousness and fear as cool ones.

Hall's views on the sense of smell are revealing for prison settings. He states that smells are more closely tied to memory and emotion than are other
senses. However extreme it may seem to read another person's emotions by their smell, Hall insists that this approach is common in many non-Western cultures.

Hall opposes the more traditional interpretations of perception, by which "a stable, uniform 'reality' is recorded on a passive visual receptor." (Hall, 29) To a large degree, perception is a skill which can be developed or which can deteriorate. Thus, Jimmy Boyle writes:

One thing I noticed about myself both in the extremity of the cages and . . . in the unit, was that my senses were 'heightened'. I could actually smell people, especially the leather from their boots or shoes, from a good distance away.

(Boyle, 231)

Hall builds upon his conviction that the use of senses is culturally conditioned. The major focus of proxemics is the way people use space in interpersonal relations. Hall cites work by H. Hediger in ethology, linking animals' behaviour to distances. Hediger coined the phrase 'critical distance' to define the range at which a given animal will flee or attack. Both the length and the preference for flight or attack depend upon the species. A lion tamer works in part by knowing the lions' critical distance for attack, stepping just outside the zone to halt the lions' advance.
When Hall applies this knowledge of animal behavior to humans, he is nonetheless sensitive to the uniqueness of human society. He sets out four zones of situational distancing. These are 1) public space; 2) social space; 3) personal space; and 4) intimacy. (Hall himself begins from the intimate, working outward.)

Public distance does not require any interaction between one person and another. Hall writes, "At twelve feet an alert subject can take evasive or defensive action if threatened." (Hall, 123) At the extremes of this zone, the body loses its three-dimensional quality; it seems flat. A number of people can be taken in at a glance, thus inhibiting one-to-one interaction. At public distance, emotive signals are lost if they are not exaggerated, as actors do in the theatre.

Social distance ranges from four to twelve feet. Informal situations occur in this zone, such as greeting another pedestrian. At this distance, conversation is difficult, and requires eye contact. Where two are emotionally close, a mutual retreat to social distance can provide an emotional buffer. The physical distance allows for a relaxation of personal intimacy.
Hall defines personal distance as a range which brings one into relation with a limited number of others, from one-and-a-half feet to four feet. One-to-one relations often occur in this zone, particularly commerce and polite conversation. Obviously there can be more than one other person within this range, but the subject is obliged to recognise another person (eventually) at this range. That is to say, personal distance itself creates situations in which human beings must relate to one another.

At intimate distance, body heat and smell are easily sensed, and one may even feel the other's breath. In most northern European countries, intimate distance is reserved for people who are to some degree emotionally tied. (Other cultures may consider the intimate range proper for various activities, such as commerce.) Situations in which intimacy is forced (e.g., in crowded lifts, bus queues, etc.) often strain relations between strangers. Intimate distance is more intense, for both senses and emotions, in that the subject is powerfully impressed with the full range of 'signals' from the other.

Hall believes that the human equivalent of a flight or fight reaction occurs at twelve feet (i.e. within social distance). However, it must not be assumed that human beings are as tied as animals to
violence

'critical distance'. Humans exhibit cultural variability, a flexibility of zone definition, and a wider range of behavioural options. In coming upon an acquaintance, there is a range at which an exchange of greetings is appropriate. (Motorcyclists greet each other, but not, as a rule, at only twelve feet.)

Hall found that limits on one's freedom of movement were irritating. Within a relatively small room such as an office, Hall's respondents were alert to their need to move arms and legs freely. Thus, one can sense an invasion of one's personal zone in terms of warmth, sound, or sight, but also in terms of one's own freedom of movement (another cause of discomfort in crowded lifts). Hall writes:

Most of the data used to establish criteria for crowding are inappropriate because they are too extreme. Lacking definitive measures, those who study crowding repeatedly fall back on incidents in which the crowding has been so extreme as to result in insanity or death. . . . The skin itself is a very unsatisfactory boundary or measuring point for crowding.

(Hall, 61)

The pains of proximity are most apparent in the crowded local prisons. As I have stated, the personal zone is potentially uncomfortable for strangers in Western cultures. Fairly strong emotions can be triggered by particular smells (and, indeed, emotions can project certain smells).
In the previous chapter I discussed ways in which a body becomes familiar with a room. This process can be particularly disrupted by the presence of another human body. Further, one may feel more crowded in higher temperatures, or — despite greater total space — in situations where one's own space is limited. Rod Caird captures the experience of the local prisoner:

July 1970 was hot; in cell 3/35 in A-Wing of the Scrubs it was even hotter. A window which opens about a foot and a few holes in the door at the other end of the cell hardly provide a large enough flow of air to keep three men cool; we used to sit around in the cell in our underpants, pouring with sweat. For practical purposes, only one person can move around the cell at a time; the other two have to stay sitting on their beds. The cell is hot, the air is heavy, the mood sticky and tense.

(Caird, 26-27)

This sort of lower limit of human critical space necessarily creates more frequent and more intensive stress situations. Lee Bowker estimates that for every reported incident of prison violence there are at least six 'near-misses'. "Prison life is a continuing series of close calls in which violence is narrowly avoided." (Bowker, in The Prison Journal, 29)

I shall examine more direct effects of crowding on the health of prisoners below. In this context, however, it must be said that attempts to link crowding to prison violence have not gained univocal
agreement. A number of commentators have argued that population density is not necessarily harmful to humans. Results have differed from one experiment to another, depending upon the sex of subjects, the tediousness of assigned tasks, and such environmental factors as noise levels, temperatures, etc.

Edwin I. Megargee has studied links between crowding and the rate of disciplinary reports at a prison for young males. (It should be added that a disciplinary report does not necessarily involve prison violence.) Surprising as it may seem, there was not a significant correlation between the raw numbers of prisoners and reports of disruptive behaviour. Megargee found the most significant factor in an increase of infractions was a decrease in the space per prisoner.

His findings are interesting, in that most of the disruptions in English prisons over the past twenty years have occurred in less-crowded prisons. However,

---

such disruptions have involved mass behaviour patterns, and not the day-to-day infractions of individuals. Megargee adds that his study was influenced by the disorienting factors of moving prisoners from one wing to another, which broke off ties of friendship, disrupted established hierarchies, etc. These factors may also affect disruptive behaviour.

Megargee's study supports the view that pressures on the personal space of prisoners foster disruptive behaviour. Edward Hall's proxemics explain the personal stresses connected with limited space. Yet stress and the influence of a behaviour setting do not fully explain violent behaviour. Other roots of violence include hereditary, psychological and social factors.

The sections to follow approach violence from three disciplines: ethology, human bio-chemistry and psychology. Here again, my objective is to survey a range of disciplines in order to build a more complete picture than is possible through any single method. The alternative, where violence is concerned, is to condemn it without further consideration, thereby declining to explore its internal logic. In a final section, I try to extend the scientific evidence with insights into the significance violence holds for those who use it.
Perspectives on Aggression

The Aggressive Instinct

Diverse as interpersonal prison violence may be, aggression certainly plays a role. Human aggression can be approached from various perspectives. I shall depart from the views of many pacifists by assuming that aggression has a place in human character; I shall not attempt to argue that it is unnatural, or inherently wicked; I shall not defend a theory that human beings are angelic. I shall speak of aggression as an instinct (from an evolutionary perspective) or as a drive (from the psychological view).

Perhaps the best-known study of the role of aggression in evolution is Konrad Lorenz' On Aggression. He begins by defining aggression as "the fighting instinct . . . which is directed against members of the same species." (Lorenz, ix.) Aggression is not predation — the latter refers to attacks upon another species. The predator attacks with behaviour markedly different from aggressive attacks. Lorenz' persistent theme is that aggression is a basic tool of survival. He outlines its functions within the framework of evolutionary laws.
Lorenz claims that aggression fulfils several evolutionary roles, in different ways, depending upon the species in question and the specific situations in which aggression is employed. He favours examples drawn from the ethology of ducks, geese and fish. The chief function of aggression in these species would seem to be the efficient distribution of territory. One of the lesser functions of aggression, according to Lorenz, is formation of bonds (here again, his key examples are drawn from the bonding behaviour of water fowl.) Lorenz comments, "We do not know of a single animal which is capable of personal friendship and which lacks aggression." (Lorenz, 127)

Lorenz enthusiastically describes a multiplicity of instincts that motivate human behaviour. He follows Sigmund Freud in his view that instincts must have outlets. He explicitly chides parents who would attempt to raise non-aggressive children. Instead, Lorenz prescribes a course of deflection, consuming aggressive energy in displacement activities (like sport).

Lorenz adds that each instinct has its inhibitory mechanism. Hunger is inhibited as we ingest food. In like manner, Lorenz argues, animals inhibit their aggression, minimising the damage that would otherwise
result. These inhibitors include: pre-fight rituals, threats, displays of power, etc.; symbolic battles in place of actual lethal combat; physiological inhibitors that minimise the damage (as cats withdraw claws to slap kittens).

Lorenz applies his ethological analysis of aggression directly to human society. He holds that we, no less than wolves or geese, are products of evolution. Like the wolf, human beings have developed enormous capacities for inflicting damage. Lorenz claims that our capacities for harm have outstripped the powers of our evolved inhibitory mechanisms.

In graphic terms, we might say that our inhibitory mechanisms were developed to cope with unarmed physical attacks by human beings upon one another. These inhibitions cannot suffice to prevent or mitigate our uses of the knife or gun, or to dampen our aggressive instincts even after killing thousands of people at the touch of a button.

A crucial flaw in Lorenz' case is his inability to distinguish between the logic of biology on one hand, and culture on the other. Lorenz ignores the fact that:

the causes of human conflict are not the same as those which operate in animal society. . . . Thus
for him war is merely aggression gone astray. The role of culture has been to upset a biological balance; it has a negative but no real adaptive function.

(Aland, 130)

Whatever the nature of the bond between two greylag geese, or their competition for territory, their behaviour is tightly patterned. This marks a fundamental difference between their behaviour and that of two 'mates' in a pub brawl. Lorenz pretends that the weight of symbolic factors (such as the flag that soldiers can kill and die for) can be reduced to expressions of aggressive instincts. He writes:

There is the alarming escalation of aggressive actions, ranging from cocks fighting in the barnyard, to dogs biting each other, boys thrashing each other, young men throwing beer mugs at each other's heads, and so on up to... wars and atomic bombs.

(Lorenz, 22)

Lorenz' firm espousal of the innate dimensions of human behaviour served as a necessary corrective to the extremes of the social sciences. The latter seemed to assume that human culture utterly replaced biological evolution, such that we are born as blank tablets. Further, Lorenz demonstrated that aggression can have positive functions. His glaring neglect of culture, not to mention human freedom, should not lead us to ignore these helpful points.
His views have been qualified (or clarified) by Mary Midgley. She, too, describes benefits of aggression, illustrating her case with ways children use aggression to learn to respect each other's personal zones. She, too, believes that shows of aggression can lead to strong bonds. Like Lorenz, she sees that human beings are led by a plethora of instinctive motivations. Unlike, Lorenz, however, Mary Midgley understands that human activity is uniquely related to such motives. Her insights into the logic of human instincts is instructive for our view of aggression.

The popular view of instincts is blunt: birds build nests at the right time, bees find pollen, cats kill mice - all by instinct. As Mary Midgley shows, 'instinct' is related to two divergent elements of behaviour: a) an inclination or innate motivation; and b) information needed to bring the motive to fruition. Hence, instinct must be clarified (and in two ways), before the term can be used with any precision.

First, instincts do not function as on-off switches. Even strictly coded behaviour tends to originate from the crossing of a threshold. The on-off interpretation is simple and clear, but mistaken.
Thresholds vary according to external as well as internal factors. Where a trigger stimulus is present, other factors may prevent the threshold from activating the instinctive behaviour. As for internal effects, a clear example is age: instincts arise at different phases of an animal's life.

Second, one must distinguish between closed and open instincts. The former reflects a traditional view, a rigorously deterministic mechanism, by which the instinct automatically sets the behaviour in motion. A closed instinct would be unaffected by external circumstances (other than the trigger stimulus), and it clearly gives the animal no flexibility as to the fulfilment of the motive.

The concept of an open instinct is less a set behaviour pattern than it is an inclination. Where an instinct is said to be open, the animals still hold options as to the means of attainment. Further, instincts do not appear in isolation. Curiosity, fear, altruism, aggression, hunger, (to name just a few) are open instincts which set a highly variable framework for living.

Mary Midgley's concept of open instincts shows that aggression can be used appropriately or not, moderately or in excess, for valid goals or oppressive
ones. Indeed, she deliberately ignores the empirical principle of value impartiality, and applies her view of aggression as an open instinct to human wickedness.

She, too, denies attempts to portray human beings as angels, forced by some cosmic prankster into violent behaviour. Yet she draws a clear distinction between positive uses of aggression — matching its evolutionary benefits — and abuses of the instinct, which are wicked. Indeed, she argues that while too much aggression can be wicked, too little can be maladaptive.

There are not . . . any non-aggressive human societies. Opposition is an essential element in human life: aggression is part of the emotional equipment for making it work. Societies which keep it within reasonable bounds (unlike our own) are doing something much harder, and more interesting than merely never feeling it.

(Midgley, 92)

The variability introduced by Midgley's insights into aggression alters our understanding of the role of the instinct in prison violence. First, we can distinguish between aggression, the instinct, and violence, the behaviour. Aggression may provide an open-ended incentive to maintain one's own space against intrusion (a motivation that might be met through negotiation, bluff, arbitration, appeasement, etc. — not only with violence).
Second, following the distinction between the instinct and the behaviour, we can draw a key inference from Midgley's view of the variety of motivating elements in our activity. We must acknowledge the potential in persons to act violently on the impulse of incentives other than aggression. That is to say, given the multiplicity of open-ended instincts in humans, we may decide upon a course of violent action out of greed, fear, even curiosity, rather than aggression.
Physiological Aspects of Violent Behaviour

In the first section, I examined the ways that people use space to condition personal interaction. In the second section, I examined ethological aspects of aggression, according to which it is seen as an open instinct with specifiable advantages for survival. In this section, I focus on a physiology of violence: i.e., upon the bio-chemical mechanisms that activate aggression.

Kenneth Moyer has written of the physiological dimensions of human aggression. He acknowledges that the activation of aggression combines external factors (in the situation), psychological aspects, instinctive reactions, as well as physiological 'causes'. He, too, believes that aggression is activated by a threshold of stimuli, as opposed to an on-off switch. He stresses the need to see aggression as open-ended.

Aggression is not a unitary construct. There are a number of different kinds of aggressive behavior. The basic premise of this model is that there are, in the brains of animals and humans, neural systems that when fired in the presence of a relevant target, result in aggressive or destructive behavior toward that target.

(Moyer, in Jeffery, 21)

Moyer notes that aggression takes instrumental or expressive forms. The former ties the aggression to
goals and will dissipate with their achievement; here again, one need not be motivated by aggression in order to behave in ways normally associated with aggression. Expressive aggression, however, may be activated with vague or nonexistent goals, aside from venting anger. Moyer turns to discuss the physiological bases of aggression in the brain, in heredity and in body chemistry.

Moyer reports that stimulation of the hypothalamus (part of the limbic system of the brain) can induce violent attacks in a variety of animals (including humans). Likewise, stimulation of the amygdala has produced fear or aggression, depending upon external circumstances. Moyer notes that stimulation of the organs was insufficient in most cases: typically, the aggression was activated only when the subject was in the presence of a suitable target (e.g., a monkey would direct his violence toward another male, but never toward the female in the cage.)

Regarding heredity, Moyer cites research that demonstrates the power to alter aggression thresholds by selective breeding. In 1970, he and Blandler produced strains of especially aggressive mice. Thus it would seem that thresholds for aggression are, at least in part, an inherited trait.
The relation of body chemistry to aggression has been known — if crudely — for centuries. Animals have been castrated, not only to make them infertile, but also to pacify them. Sharply reducing the testosterone in the bloodstream curtails aggressive behaviour. Scientists have linked the release of endocrinal proteins to aggressive activity. ACTH (adrenocorticotropic hormone) is linked to both fear and aggression, and is a significant factor in stressful environments.

High levels of ACTH require high amounts of blood sugar; in turn, demands on blood sugar can lead to hypoglycemia. Henry E. Kelly relates hypoglycemia directly to acts of violence. He reports that the brain consumes up to 25 per cent of the body's sugar. Hormonal imbalances, such as those caused by stress, bring about rapid rises and falls in blood sugar levels. Kelly argues that where less blood sugar is available, the brain's aggression inhibitors are weakened.

The hypoglycemic may suffer from temporary diminished responsibility because his brain could not function rationally, presenting alternatives among which he could actually choose.

(Kelly, in Jeffery, 94)
Moyer and Kelly explain how bio-chemical changes can occur, and how those changes can prepare the body for aggressive activity. The intensity of sensory signals in small, crowded settings reinforce these effects. Prisons compound these physiological aspects with their punitive rationale. C.R. Jeffery writes that punishment produces:

a high level of epinephrine in the brain, in interaction with the pituitary and adrenal glands, as well as with the autonomic nervous system. . . . Such stress and tension is basic to the so-called psychosomatic diseases such as ulcers, heart disease, high blood pressure, and so forth. Anxiety also interferes with learning new responses.

(Jeffery, 108)

It is essential that we temper the confident claims of socio-chemistry with more humble remarks. Of all the factors underlying violence, body chemistry may be the most difficult to alter. A number of scientists (including Linus Pauling) have defended bio-chemical individuality. That is, my body's bio-chemical composition and functioning is as unique as my fingerprints. Hence, a specific hormonal recipe to halt aggression is not so much a distant possibility as it is logically unattainable.

Moyer himself concedes that physiological intervention to prevent violence is limited in its potential. It may be possible to reduce a subject's
expressive violence by providing some form of artificial inhibitor. But no single drug serves the sole purpose of repressing aggression. More important, Moyer emphasises that these sorts of intervention will probably have no effect in inhibiting instrumental violence: one can engage in violence without the common affective motivations.

The input of biochemistry helpfully traces direct links between prison crowding and aggression, and between crowding and adverse effects upon health. A classic study linking population density to ill-health was carried out by John Christian. Christian performed physiological studies on a herd of Sika deer during a rapid rise in population on an island. When, in 1958-1959, there was an abrupt rise in mortality, Christian sought the cause of the deaths.

He found that the food supply was adequate. However, the adrenal glands of the deer who died under population density were considerably enlarged. Christian concluded that the deer were otherwise

---

normal, and that the deaths were due to 'prolonged adrenocortical hyperactivity'.

It is obvious that such findings should not be projected into the prison environment without qualification. Human beings (e.g., prisoners) are not subject to population pressures in the same way as deer. For instance, as Edward Hall points out, cultural conditioning may lead one group to regard a given level of population as more dense than another group. Likewise, culture enables human beings to adapt to changes in population, unlike Sika deer. Yet, there is evidence that population density in prisons has adverse effects on prisoners' health.

David Canter cites the findings of an unpublished study of 1400 prisoners in the Texas prison system:

1. High degrees of sustained crowding have a variety of negative psychological and physiological effects including increased illness complaint rates, higher death and suicide rates, and higher disciplinary infraction rates.

2. Large institutions produce much more severe negative psychological and physiological effects than small institutions, as expressed in higher death, suicide, and psychiatric commitment rates.

The Psychology of Aggression

The insights of Sigmund Freud are a helpful starting point for a psychological approach to our subject. He linked aggression to Thanatos, a destructive drive, or 'death-wish'.

Besides the instinct to preserve living substance and to join it into ever larger units, there must exist another, contrary instinct seeking to dissolve those units and to bring them back to their primaeval, inorganic state.

(Freud, 65-66)

In Lorenz' view, it will be recalled, the key to an analysis of aggression is its positive benefits in human evolution. For Freud, the purposes of aggression are purely destructive. If we accept the functions of aggression in service to Thanatos, the aggressor will not be satisfied with a successful defence of territory, nor with mere dominance over an opponent. Freud's view of aggression is 'hydraulic', in the sense that the drive must find an outlet.

(Lorenz, too, sought to deflect aggression, rather than seeking ways to reduce its potency.)

According to Freud, 'civilization' regulates the flow of aggression. In the pursuit of order, civilization enlists the individual's super-ego. It frustrates the narcissistic self by denying the ego's
animalistic urges. Punishment joins with self-punishment to reduce or inhibit pure destructiveness.

Freud's theory differs significantly from that espoused by Lorenz. The latter declared that aggression is not the problem, since it has evolutionary advantages. Rather, for Lorenz, culture has produced super-human powers of destruction that overwhelm our natural, human inhibitory mechanisms. Lorenz argues that once aggression is triggered, the violence goes beyond any instrumental value because our powers are vastly increased.

Freud likewise located the problem in the relation between the self's aggressive motivation and civilization. But he believed that the way to curb aggression was to enlist social order on the side of life. Civilization is the regulatory mechanism to inhibit aggression.

Freud's basic sketch can be informed by appeal to other psychologists. Leonard Berkowitz argues that

---

My discussion of Berkowitz, Bandura and Aronson is drawn from Aronson, pages 141 and following. It provides a necessarily limited survey of the topic.
the activation of aggression in humans is largely learned. Civilization might be said to direct or canalise the drive, conditioning the individual's sense of appropriate aggression. Berkowitz' view complements Mary Midgley's point that aggression ought to be seen as an open instinct. Their perspective counters the more fatalistic image of instincts, as forces that dictate precise behavioural patterns.

Albert Bandura demonstrated our capacity to create novel expressions of aggression. In his experiment, children who witnessed an adult's violence not only modelled their behaviour on the adult, but they invented their own forms of aggressive activity. Bandura's subjects did not learn specific patterns of behaviour. Rather, the 'lesson' was to activate aggression. The children demonstrated a capacity to generalise aggressive behaviour from one instance.

Berkowitz took the last point a step further. He found that the subjects did not need to witness violence in order to activate their own aggression. His subjects were stimulated to aggression merely by the presence of an object that symbolised aggression. Berkowitz noted significant differences in subjects' behaviour when a gun was present in the room.
These experiments begin to explore situational or environmental factors in the activation of aggression. Elliot Aronson draws attention to the role of frustration in eliciting aggression. Two groups of children were shown toys to play with, and one group was denied access for some time. Predictably, the frustrated group demonstrated far more aggressive play when they were allowed to use the toys. Aronson adds that frustration has subjective dimensions. I may become frustrated easily, or, conversely, may not understand that I am being unfairly deprived.

The insights of these more recent researchers mark a departure from the deterministic qualities of Freud or Lorenz. Aggression may well provide benefits for species survival, but in human society, we learn how to activate our aggression. It may be, as Freud suggests, that human aggression can be purely destructive, serving no instrumental purpose. But that should not preclude our trying to understand the conditions that nurture such expressive aggression.

In the 1960s, Hans Toch headed a comprehensive study of violence. The aim was not to understand prison violence, per se, but to construct a profile of the 'violent man'. Toch and his researchers developed a typology of ten different personalities – not just one. They drew their portraits from biographies of
violence

prisoners and police officers, with records of physically aggressive incidents. Obviously the ten types include overlapping attributes, but in each case Toch attempts to show how these people contrive to create violent interactions with other people.

Toch's violent characters included those who saw their roles as enforcing norms, or who relied upon violence to maintain self-esteem. Others depended upon violence due to their limited communication skills. These types tended to weigh the external factors heavily (e.g., peer pressure) in their reliance upon violent behaviour.

A second group of personality types are more introspective. These persons "see themselves (and their own needs) as being the only fact of social relevance." (Toch, 136) The roles assumed by the introspective aggressors included bullying, exploitation (with violence used to enforce the domination), and 'catharting' (where violence is used to vent frustration and anger).

Toch's types suggest that some sort of logic can be traced through most instances of violence, and particularly, through prison violence. For instance, in society, the law can be used to enforce debts; inside, an illicit economy requires extra-legal
sanctions, and hence violence is an occasional by-product (or, indeed, a perpetual undercurrent).

The image of the truly diabolical, motiveless eruption of lethal violence is not supported by Toch's findings. Rather, his study concludes that violence occurs as a culmination of interactions between persons, in situations that are incrementally more violence-prone.

We have tried to suggest . . . that the violent incident is cumulatively created by persons involved in it. As each sequence progresses, it takes on violence-prone connotations, and it displays reactions to match. We have seen that violence-prone connotations do not spring out of the incidents themselves, but pre-exist in the shape of unconscious assumptions.

(Toch, 131)

Ethology shed light on some functions of prison violence: the establishment of hierarchies, the defence of territory, even in some sense of bond-formation. Physiological input likewise illuminated prison violence, through rises in adrenalin in response to prison pressures, prisoners feeling under stress, and physiological preparations for violence.

The physiological interpretations are superseded, however, to the extent that they depend upon the distinction between expressive and instrumental violence (one can use the latter without being com-
violence

violence

pelled by bio-chemical stimulants). Toch's profiles combine expressive and instrumental aggression.

The expressive-instrumental distinction is fruitful, but its point is lost if we ignore its limitations. We can distinguish analytically between the expressive violence of a disturbance that follows a change in privileges on one hand, and the instrumental attack intended to gain self-esteem on the other. In persons, taken as individuals, however, these distinctions between motives and goals, between styles of violent activity, between internal and external promptings, break down.

Perhaps the clearest example is exploitation. The threat (or use) of violence can be a means to maintain an exploitative relationship (as I have mentioned above). Yet, in some relationships the goal may be violence itself, and exploitation serves as a means to that end. A number of Toch's subjects used violent situations as a proving ground, and were prepared to increase their exploitation of others in order to instigate a violent response.

Lee Bowker states a further implication of the distinction. He sees merely expressive violence as 'nonrational', with a 'high degree of instability'. This point is questionable. Aside from the likelihood
that 'nonrational', and 'instability' are tautological with reference to violence, Bowker's point implies that motivations toward violence are intrinsically mysterious. There may be parallels here to Freud's view of aggression as diabolical (and pointless) destructiveness. More important, I think, to label behaviour 'nonrational' relieves us of the responsibility to locate environmental factors that foster violence.

Edwin Megargee gave greater weight to the settings that give rise to violence. (Cited in Blackburn) He hypothesised that violence results when the instigation overwhelms the person's inhibitions against it. He deduced that people who have used violence could be under-controlled (with low thresholds of aggression) or over-controlled (in which case an extreme instigation prompted profound violence).

Ronald Blackburn found Megargee's profiles accurate in a sample of violent offenders. However, Blackburn casts doubts on the hope that profiles of dangerous personalities can prevent violence.

Some of these profile patterns are also prominent in non-violent offenders. These patterns are not, therefore, unique to violent offenders, and it seems likely that they are also not confined to offenders.

(Blackburn, 267)
Implicit in Megargee's hypothesis is the circular logic of strictly empirical approaches to violence. Problems of over-control or under-control describe people who have been violent in part because these dynamics are the antecedent causes of any violence. Hence, it is not surprising that the psychological profiles fit most people. In the absence of a fuller understanding of the factors that give rise to violence, it is a mere truism to state that violence results when instigations overwhelm the subject's inhibitions.

It is here that Toch's own analysis is limited. His types imply, but do not examine, a sociological dimension. It may be that violent persons carry 'unconscious assumptions' that serve as catalysts of violence. But these assumptions can be traced to social milieux in which violence is acceptable as a component of interaction.
Prison Violence

We have been looking at violence as something related to the characteristics of the inmates themselves, without taking into consideration the interaction between the inmates and the environment in which they live.

(William Nagel, in Cohen, Cole and Bailey, 57)

I begin this final section with an examination of building design, and end with what might be called a politics of prison violence. The prison constitutes a behaviour setting, and a number of authors have specified ways to reduce incidents of violence through attention to building design. I should add, however, that the evidence holds out little hope of solving violence through architecture. Indeed, I shall argue that a philosophical understanding of violence as contested force is needed to approach the phenomenon of prison violence.

Edith Elisabeth Flynn follows innumerable studies in recommending a population ceiling of 300 prisoners per prison. Prisons of 1500-2500 people (more common in the U.S.) are clearly implicated as violence-prone settings. Flynn also recommends the establishment of certified safe areas - not limited to segregation blocks for administrative custody. She advocates
purposive activity as a means of encouraging cooperation while providing staff with optimal surveillance potential. Finally, she argues that each prison administration should determine the high risk zones peculiar to that prison, and clearly identify them as such.

Flynn's suggestions begin from the socio-psychological frustrations of prison life, and she attempts to meet the problem of violence on that level. Randy Atlas provides an architectural approach to violence in an article informed by proxemics. He studied a variety of prisons, comparing prisoners' opinions about high risk areas with reports of assaults.

The prime site for assaults, particularly armed assaults, was the housing area. Whether dorms, six-man cells, or two-man cells, or single cells, housing was the biggest contributor. Support spaces such as showers, baths, and dayrooms had the next largest number of assaults. Circulation areas such as corridors, stairwells, and lobbies had 7 percent - 30 percent of the incidents. The outside areas had fewer incidents of violence than expected. . . . The dining room, without fail, seemed to invite more assaults than would be expected.


The most surprising aspect of these data is that some of the most dangerous areas are those most open to surveillance. Indeed, 20 per cent of all assaults occurred under direct observation. I suggest, following Hall, that the rate of incidents was low on the
outside, and high in living areas, in part because of
the reduced critical space (for flight or fight). The
high proportion of attacks in baths and shower areas
provides further support for this view.

Randy Atlas provides a different explanation.
Assaults that imply planning — e.g., armed or
multiple-attacker assaults — did tend to occur in less
supervised areas. Atlas theorises that the
spontaneity of most prison assaults accounts for the
high proportion of assaults under surveillance.
However, the unexpected level of attacks under
observation prompted Atlas to remark, "It was as if
the inmates' actions were almost a dare for official

The term 'spontaneity' seems to slight Toch's
claim that violence marks the culmination of increas-
ingly aggressive interactions. However, in char-
acterising prison violence as spontaneous, Atlas means
simply that the incidents were not planned attacks.

Analyses of prison architecture as a behaviour-
setting provide an incomplete explanation of the role
of prisons in generating violence. A deeper under-
standing of the prison ethos is required. Albert
Cohen raises three sociological elements that contrib-
ute to prison violence (in Cohen, Cole & Bailey):
1) Age - a high proportion of prisoners are in an aggressive-prone age range;

2) A violence-prone code of values, comprised of:
   a) machismo - demanding physical defence of one's reputation;
   b) private justice - a distrust of authority (clearly an attribute of prisoner culture) with its corresponding reliance upon personal retaliation; and
   c) hierarchies based upon physical prowess.

3) The importation of external conflicts into the prison.

Albert Cohen's points again enlarge the scope of our study of prison violence. The aggression-prone age of prisoners recalls Mary Midgley's insights into instinct (which takes hold at varying stages in the subject's life) without reducing the aggressive person to the level of geese. The violence-prone ethos is not 'nonrational': professional sports, too, establish hierarchies based on physical prowess. A tendency toward private justice in prisoners is sufficiently rational as to be a self-evident result of legal marginalisation. (I discuss the extra-legal nature of prison violence below.)

Albert Cohen's perspective neglects the inherent stresses of the prison setting: 'batch living',
punitive deprivations, assaults on privacy, and prison discipline maintain a high level of frustration. One prisoner wrote:

There is no real way in prison to work out one's frustrations and anger. . . . The better part of these emotions must be swallowed whole. The phenomenon strikes us as being one of the primary destructive aspects of prison in terms of warping and embittering inmates' personalities.

(Cited by Keve, The Prison Journal, 48)

Prison violence likewise involves the frictions of relations between confined persons. Daniel Lockwood argues that a significant dimension of prison violence is the atmosphere of sexual harassment.

Sexual harassment, that is, sexual approaches perceived as offensive by their targets, leads to fights, social isolation, racism, fear, anxiety, and crisis.

(Lockwood, The Prison Journal, 76)

More generally, Lockwood remarks that feelings of potential vulnerability give rise to defensive postures, including distrust, fear, and psychological preparations for violent self-defence.

My point is not that prison violence is to be condoned; nor that all human beings are equally prone to inappropriate aggression. But interpretations of violence that rest all blame upon the 'predator' are biased. They disguise the role of the prison setting in encouraging violence.
A friend told me how to survive a term in a state penitentiary: immediately procure two knives. The back-up is essential, since, if one weapon is confiscated, you may not live to obtain two more. Prisons are violent places. That violence concerns two aspects of prison practice: 1) control and 2) the personalities of dangerous, violence-prone prisoners. Each dimension will be considered in depth.

Control and the Politics of Violence

There is profound unity, even between prisoners and staff, that prisons ought to be made as safe as possible. Given this common interest in making prisons safe habitats, there is a disappointing rift over the means. The British prison presupposes intensive staff involvement. Numbers of officers are far less important, though, than the style of interaction.

The question of control involves cooperation and consent as much as it does imposed order. Critics of recent prison policy charge that the balance between consent and coercion has shifted to a reliance upon the latter. For instance, Mike Fitzgerald flatly states, "The primacy of security over staff-prisoner
relations is the key feature of the British prison system."

A central factor in control is the power to determine the course of events. Violence is also about power. Its logic is perfectly clear to someone who interprets human relations in terms of dominance and submission. It is 'nonrational' where rationality refers to relations based on reciprocity, negotiation, dialogue and conciliation.

In his analysis of violence, David Riches concentrates upon the meaning(s) ascribed to violence, and the strategies in which it features. The ready availability of violence, its political dimensions, and the clarity of aggression mean that resort to violence can be quite attractive.

---

4 Mike Fitzgerald, "The Telephone Rings: Long-term Imprisonment" in Bottoms & Light, 146. I am aware of the distinction between security (containment within the perimeter, protection of the public) and control (internal order). However, it is part of Fitzgerald's case that the Prison Service itself confuses the two. He argues that a central issue for control is the administrative-staff relations. This subject clearly takes us beyond my present focus.

The capacity for physical violence is ours by virtue of being human. This is not to say that we are naturally violent, but that our bodies alone — fists, nails, feet — can be weapons. "The performance of violence . . . requires relatively little by way of specialized equipment or esoteric knowledge." (Riches, 11)

Central to any violent act is an ambiguity concerning its legitimacy. The contestable nature of violence, together with its roots in power, form a politics of violence. I am not referring violence to ideologies, or to civil politics. Rather, the political dimension refers to the role violence plays in determining the outcome of disputes between people (power) and the intrinsic need to justify such extreme measures (legitimacy).

For John McVicar, the prisoner's capacity for violence was a major criterion in deciding disputes as well as in forming the prisoner hierarchy. While popularity or common sense were useful attributes in working through differences between prisoners, aggression seemed to McVicar to be the decisive factor.

What mattered in prison, as far as respect and influence were concerned, was how violent a con was or could be. I knew that his potential for violence was the most influential power resource a con could wield in interaction with both other cons and warders.

(McVicar, in Cohen & Taylor, 224)
McVicar argues that 'might' is decisive in part because prison aggregates people who have rejected law as a means of resolving disputes. Most people rely upon government (through the courts, for example) to settle volatile differences. The extra-legal world of prisoners replaces the institution of regulated force — i.e., law enforcement — by unregulated force or physical prowess.

McVicar's points need clarification. His insistence on the primacy of violence should not be taken to mean that all prisoners settle differences through might. Rather, in prison, aggressive prisoners tend to dominate others, using actual or threatened violence instrumentally. But this is obvious: not all prisoners are aggressive. The point is that the political dimension of physical violence becomes key — differences are settled through aggression.

Many prisoners use other strategies to cope with imprisonment. An approach to prison life based primarily in terms of might is one — but only one — of a wide range of possible methods of doing time. Further, as Toch implies, the wide range of aggressive roles means that no single function (such as getting one's own way) explains violence in prison.
The question of legitimacy is an essential component of the use of force, but it is far from straightforward. McVicar suggests that a prisoner who is prepared to use violence is accorded respect on that basis alone. Conversely, violence ordinarily requires explanation, by appeal to the desirability of the ends, or limitations of the available means.

In *Retribution* I argued that a basic difference between the force used by government and private retaliation is the claim of the state to legitimacy. Whether the prisoner sees the force used by the state as legitimate or not, the existence of the prison implies that force is a legitimate method of resolving disputes. And, crucially, the more force employed by the custodians, the more the use of force is validated.

The prison must clearly distinguish between proper and improper use of force in order to impress upon prisoners the difference (if any) between state-force and personal force, between state-retribution and personal retaliation. Given that the prison demonstrates that the use of force can be legitimate, and given the inherent contestability of force, the prison cannot depend upon force to draw the distinction between justified force and violence. This, too, seems obvious. However, it is just this
point that reveals contradictions in prison policy evoked by the problem of prison violence.

In terms of their own behaviour, prisoners are particularly susceptible to sanctions against any resort to force. Authorities take major decisions about the prisoners' lives, giving substantial attention to any reports of violence. Such decisions include job allocation, the prisoner's eligibility for early release, as well as the style of régime under which he will serve his sentence.

Mike Maguire, Frances Pinter and Catherine Collis investigated the factors that are weighed in evaluations of a prisoner's relative risk. One aspect has obvious links to the question of legitimacy:

*Comprehensibility* of the offender's behaviour was sometimes a key element. Thus while staff could empathise to some extent with a man in an extreme situation pushed into an explosion of anger or passion . . . they were often ill-at-ease with a prisoner whose behaviour appeared alien and were much less confident of predicting his future actions.

(Maguire, Pinter and Collis, 261)

The prison's function of penalising force it deems illegitimate links questions of control with attempts to define violence as a product of an explosive personality.
The Quicksand Prison

In 1982, the Chaplain General's Office appointed a Working Party on Régimes for Dangerously Disruptive Prisoners. The Working Party studied the problem of creating a régime for the dangerous prisoner. They described their target group as, "a handful of men who appear to suffer from a flaw of personality, reflected in unpredictable and excessively violent and aggressive conduct." (Working Party, page 1) They add that they find dangerous prisoners "a virtually self-defining group". (Ibid., 2) The Working Party's major recommendation is that the dangerous few prisoners be identified and a régime be designed especially for them.

Paul Keve writes of the tendency in prison policy to react to disruptive prisoners with harsh consequences or tighter controls.

With such curtailment of freedom, certain prisoners react with those forms of rebellion that are needed for support of their own satisfying self-images. . . . Necessarily, official response from the custodians is to impose still more repression . . . which further promotes the prisoner's hostility. And so we sustain the correctional quicksand.

(Keve, The Prison Journal, 48)
The implication seems clear: disruptive prisoners pose a threat to the well-being of all who live and work in the prisons. Beneath the question of legitimate force lies the practical need to control the behaviour of such prisoners. More philosophically, the violent prisoner who cannot understand that the state's use of force is objectively right and just is dangerous — for that reason alone — and must be contained in order to assure the smooth running of the prisons. Obviously, being incapable of recognising his wrongdoing, such a prisoner will grow more recalcitrant, and probably encourage others by his example of rebellion. This is the dilemma of the custodians: their only option is to impose greater severity.

I find this description of the problem misleading and ominous. It ignores the question of legitimacy. The contestability of the prison's use of force shows how the punishment of violent prisoners can lead to wider support for them. It ignores the inherent contradictions in using force to condemn the use of force. More important, it assumes — the very opposite of Keve's case — that the problem lies entirely with the violent prisoner. It labels the prisoner's violence mysterious, evading the duty to examine its causes.
An alternative view of violence in prisons begins with the recognition that the social setting encourages violence. Such a premise leads to the hypothesis that isolation of a few will induce other prisoners to take their place as disruptive or violent prisoners.

Roy King has attacked the tendency to address prison disruption by identifying problem prisoners. He writes that such an approach ignores the environmental factors that will continue to create problems. Moreover, he claims that the identification of dangerous prisoners contributes to the problem:

It is likely that among those who get defined as troublemakers there are some who are made into troublemakers as a result of the way they are dealt with in prison.

(Cited in Boyle, Duff and others, 17-18)

A dramatic case in point is provided by Robert A. Burt. A client, 'John Doe', labelled a 'criminal sexual psychopath', was given an unusual offer. Doe could choose to remain in prison, or submit to experimental psychosurgery to cure his uncontrollable violence.

Burt argued that the prisoner's consent was forced, and therefore not genuinely voluntary. Obviously, Doe's consent was forced, given the
violence

alternative of a return to prison. But Burt's insights are significant, because he pinpoints a more important sense in which Doe's consent was invalid.

Bluntly, his point is that Doe's acceptance of the surgery reflects society's condemnation of Doe himself. Burt suggests that labelling someone disruptive or violent contributes to that person's tendency toward violence. His argument is not that a person who accepts the label 'criminal' resolves to act like a criminal, but that such labelling is a violation of the person deemed dangerous.

Total rejection or abhorrence is incorporated into the disruptive person's self-image, such that the prisoner abhors himself. His own aggressiveness—norm-enforcing, catharting, etc.—is boosted by our violation of him. If it is true that his burden is society's fear and rage, directed toward him, it is not surprising that the dangerous prisoner seems overwhelmed by his own capacity for violence.

In Retribution, I opposed the principle, at the heart of punishment, that the guilty person was categorically different from the innocent. Burt argues that it is Doe's guilt that allows us to consider the profound intrusion of psychosurgery in his case.
Erik Erikson writes that this sort of stigmatising approach upholds the pretence that some particular group of people is a different species. Where ideologies of pseudo-species are practiced, the subjected group tends to adopt their oppressors’ image as part of their own self-understanding.

A species which has come under the dominance of another is apt to incorporate the derisive opinion of the dominant ‘species’ into its own self-estimation, that is, it permits itself to become infantilized, storing up within and against itself a rage which it dare not vent against the oppressor.

(Erikson, cited in Burt, Hastings Center Report, page 33)

In History, I suggested that the symbolic weight of the scaffold as a battleground has not disappeared without trace. The violence that the monarch inflicted upon the criminal is the violation of the offender we inflict upon the prisoner. Retributive punishment justifies the return of harm, and imprisonment constitutes the harm we choose to inflict.

In theory, retribution acknowledges that harm has effects. Yet, in our penal enthusiasm, we are reluctant to admit that the prisoner is deeply harmed by imprisonment. Instead, we equate the evidence of that harm – the person’s violent tendencies – with some ‘deep psychological flaw’ in the prisoner we have
damaged. We compound that hypocrisy by citing the damage as a justification for further harm.

Nothing I have written justifies the violence that occurs in prison. I have not condoned the violent behaviour of prisoners by illuminating the causal factors that lie within the prison system itself. My objective in this chapter has been to establish that prison violence is itself one of the harms of imprisonment, which society inflicts upon the offender.
List of References


Boyle, Jimmy, Alistair Duff, Sebastian Horsley, Ken Murray, Phil Scraton, Joe Sim, Jo McDonald and Paula Skidmore: The Roof Comes Off, Edinburgh: Gateway Exchange, [1987]


Edith Elisabeth Flynn, "The Ecology of Prison Violence"
Kenneth Moyer, "Biological Substrates of Violence"
William G. Nagel, "Prison Architecture and Prison Violence"
E.I. Megargee, "Population Density and Disruptive Behavior in a Prison Setting"


Jeffery, C. J.: Biology and Crime,
London: Sage Publications, 1979; including:

Kenneth Moyer, "What is the Potential for Biological Violence Control?"

Lorenz, Konrad: On Aggression,
New York: Harcourt, Brace, 1966


Midgley, Mary: Wickedness,

Prison Journal, Vol. LXIII, Spring-Summer, 1983; including:

Randy Atlas, "Crime Sites Selection for Assaults in Four Florida Prisons," 59-72
Paul Keve, "The Quicksand Prison," 47-58
Daniel Lockwood, "Issues in Prison Sexual Violence," 73-79


Introduction

It is almost sixty years since Reo Fortune set out, in the footsteps of Bronislaw Malinowski, to study the Dobu. The behaviour he found shocked Western values. To begin, adolescent females welcomed a different young male to their beds each night. Worse, the adult culture seemed over-run with adultery. Marriages were extremely unstable: an older informant had been married eight times, and a 'young male' had already had three wives.

Fortunately for their sake, the children saw their mother's nearest male relative as their father — despite the fact that the Dobu were well aware of the male's role in procreation. Divorce was simple: the male walked out of the woman's village, and did not return.

Reo Fortune was no amateur. He recognised the difficulties in describing the sexuality of the Dobu.

---

in terms based in Western culture. He scrupulously referred to 'marital groupings' (over Professor Malinowski's vehement objections to jargon terms when 'family' would do!) To use 'marriage' or 'adultery' to describe the Dobu sexuality would press our own discourse too far. When each person enjoys several marriages over a lifetime, and these are interspersed liberally with fairly random couplings, Western terms lose their descriptive power, let alone any normative significance.

There are forms of sexuality that are stranger than the Dobu. But a world in which the biological father has little interest in maintaining the marital bond, because he has his own (sister's) children to look after, should alert us to the fact that sexuality is not biologically pre-determined. It is not just that the nuclear family is not the natural setting for the enculturation of children and the economic cooperation of woman and man — the structure of sexuality is not natural at all.

A wide cross-cultural perspective on sexuality provides a useful caveat for an approach to sexuality within the prison community. But entering that culture is still more complex than journeying to a distant society: prison culture is both alien and tied to the wider society. We should expect prison
sexuality to exhibit its own logic — drawn from the demands and perspectives of the unique setting — and yet to reflect the sexuality of the Western post-industrial world. ²

I am not suggesting a retreat into cultural or moral relativity. It is not the case that adultery is accepted in one culture and vilified in another. Rather, it is more accurate to say that sexual behaviour takes on divergent meanings, and that these meanings must first be clarified before any ethical approach is possible. In order to examine sexuality, we must not only set aside the bias inherent in our social world, we must also find an appropriate theoretical framework.

The dominant understanding of sexuality during this century has been the legacy of Freud. The images of sexuality presuppose a powerful force within

² 'Western industrialised society' is probably, in this context, far too broad. Most of the work cited in this chapter is based on studies of the American prison setting.
each individual; it is the wellspring of human energy; it is the ruling motivation, determining economic relations, art, language, religion. The sexual force becomes both the source of pathology, and the fundamental interpretative device for its cure.

*Drive theory* has influenced Western interpretations of sexuality in a number of ways. It has generated a whole theory of repression: for where there is a powerful force, it is logical to assume that counter-force is required. The existence of the drive also means that people with little sexual outlet must sublimate their sex needs, or are extremely repressed. Similarly, those people who enjoy a high output must find their energy level sapped — as, for example, is believed by athletes who abstain before competition.

Drive theory, on the whole, tends to assume that the nuclear family is objectively the natural mode of sexuality, against which all else is deficient. Where deviance does arise, the theory encourages a clinical approach, siting the problem within the individual, as a pathological behaviour that can be realigned with normality. Finally, the drive theory focuses upon coitus; while this does not preclude aspects of sexuality such as nonphysical intimacy and gender role
sexuality

expectations, the framework is largely determined by the dynamics of sexual intercourse. 3

Symbolic interactionism, in contrast, presupposes a role for society in creating and refining the meanings of conduct. Interactionism argues that the phenomena of human society have a different logic than brute biological facts. It is necessary to clarify the significance which behaviour has for both the agent and the society at large in order to understand it. Thinking beings act, not on the basis of brute stimuli, but in terms of the meanings attributed to their actions — by society, by individuals and by the agents themselves.

In this chapter I use an interactionist approach to investigate the meanings which the prison culture shapes regarding sexual conduct. Thus, the types of sexual conduct and their frequency are less my concern

3 A different theoretical approach would follow the work of Kinsey in 'sexual bookkeeping', quantifying the sexuality of prisons through data on the frequency and types of sexual conduct within the prisons. This approach is partly ruled out by a lack of such information. But it, too, has a tendency to presume that sexual conduct has a clear, objective significance.
than the role played by the prison in shaping a structure of sexuality.

The focus of the final section is the relationship between penal philosophy and prisoner sexuality. This in itself is difficult to define. While the prison world has very clear rules regarding sexual conduct—most institutions prohibit it—there is not a stated philosophy of prisoner sexuality, and it is reckless to infer one from the prevailing policies.

Before turning to the questions of punishment, I first describe the interactionist approach as applied to sexuality. Interactionism will help to explain sexuality within the prison. It illuminates the social context of a distinct prison sexuality—meanings relating to sexuality which are conditioned by the prison environment.

To explain the functions that sex has for prisoners, I investigate three major topics: the first is deviance, and the ways in which conduct labelled deviant emerges in an individual. The second is sexual relations between same sex prisoners—I contrast these to homosexuality on the outside. Third is the issue of gender role expectations. I examine masculinity as an image of roles that bind prisoners to unattainable standards. Finally, I consider
possible implications of penal philosophy for its attempts to impose asexuality upon prisoners.

The Social Construction of Sexual Meanings

The interactionist approach is not a simple contradiction of the drive theory. 'Drive', after all, is an image; it ties sexuality to other drives — most often, to hunger. A better understanding begins by altering the image, and hence the obvious parallels. One commentator suggests that we are sexual, in much the same way that we are intelligent beings.4

Two immediate benefits of this model are: A) It lacks the male bias of drive, in which the male is assumed to be driven; the female, assumed to be the object of the force. Seeing us as sexual beings shifts the centre of sexuality from individuals to relations between them. B) This broadened view also

4 In discussion, with Prof. Dorothy Martin, University of Pennsylvania School of Social Work.
inclines away from a view of sexuality that is derived from coitus — sexuality is no longer bound to determine the meaning of conduct in terms of the assumed objective of heterosexual intercourse.

Interactionists warn against the presumption that sex is 'natural'. Human beings do not exist as human without culture; hence, there is no natural wo/man who is being repressed by society, authoritarian or otherwise. The two foremost scholars in the field, John Gagnon and William Simon, strongly object to the notion that the meaning of sex can be reduced to — or even be based upon — the biology of reproduction:

Sex is represented as something so natural that it can barely be linked to the human experience, which is by definition unnatural in the sense that it derives its real meaning from an emotional content that is not located in or produced by the biological functions. The most typical imagery is that of the noble sperm heroically swimming upstream to fulfill its destiny by meeting and fertilizing the egg. The sexual act is described in ways that either misrepresent or totally obscure the sources of pleasure and meaning in sex.

(Gagnon & Simon, HS, 122)

Gagnon and Simon downplay the importance of sex in people's lives. They argue that sex is really quite tame when it is relieved of the mystique and exaggerations of drive images. Indeed, much of that power is due not to some natural instinct, but to the belief that sex is a potent force.
A drawback of interactionism is that it can overestimate the ways the social setting conditions sexuality. It implies that sexuality is so plastic that settings might create complete asexuality. The premise that sexuality is an essential dimension of our lives counters such an extreme form of interactionism.

From an interactionist approach, drive theory is itself an object of study, as a potent symbol of sexual experience. Whatever its strengths and weaknesses as a theory of sexuality, the drive model has woven its themes into our understanding of sexuality.

It is the possibility of transgression and normative violation that gives sex a status beyond gourmet cooking – it is the possibility of believing that one is controlling a powerful drive that allows a sense of virtue to arise from conformity and the observation of norms, and a sense of sin to arise from their violation.

(Gagnon & Simon, HS, 108)

It is in part a result of the exaggerations of drive theory that the social ramifications of sexual deprivation can outweigh any physiological impact. Further, drive theory has introduced a strained tension within sexuality itself.

A combination of meanings which simultaneously encourage sexuality . . . and prohibit it . . . lodges the sexual experience in a contradiction which may generate guilt and anxiety, and bestow an exaggerated importance on sexuality.

(Ken Plummer, cited in Brake, 232)
The tension intrinsic to Western sexuality reveals itself in gender roles (as I discuss below) and in interpretations of sexual conduct. Individuals assign meanings to their sexual experience, based in part upon the socially imposed categories of conduct, and partly upon the subject's interpretations of internal sensations and emotions. The categories of conduct appear as objective facts, taking on a specious absolute status.

From a reproductive emphasis heterosexuality is natural and all else is deficient. But in human society, even the choice of sexual objects is a social construct. In other words, not only are we controlled by social limits to our urges, but our desires are themselves shaped by the power of social discourse. "Our sexuality always already embraces some form of regulation because we cannot know/experience sexuality apart from the discourses within which it is constructed." 5

---

5 Carol Smart, review of Susan Edwards: Female Sexuality and the Law, Contemporary Crises, 5, (1982), 195-204.
From this predominantly interactionist perspective we can put forward a tentative framework for sexuality inside prisons. Our subject will not be the physiological effects of a powerful drive that is repressed by the prison régimes. Our approach will not be based on the view that sexuality is confined to orgasms, or to physical intimacy between prisoners and others. Rather, I discuss sexuality as a sphere of meanings that includes: gender, and gender roles; affective as well as physical relations between people; the process of defining sexual conduct in the alien environment of the prison; and the purposes sexual conduct serves for prisoners. In exploring this topic, I do not wish to present a false impression of uniformity in the prisoner population. My goal is not a comprehensive typology of prisoner sexuality, but a more general characterisation of the effects of the prison setting on sexuality.
Sexuality in the Prison Setting

The broader perspective on sexuality I have outlined informs our exploration into the sexual dimensions of imprisonment. A more narrow interpretation could confine our study to overtly sexual contact between prisoners. In contrast, the interactionist stance alerts us to a rich tapestry of gender roles, an economy of sex, as well as the ubiquitous undercurrent of domination and submission. Here again, the approach illuminates the ways that physiological harms are outweighed by socio-cultural ones.

Perhaps the most important effect of the wide approach is to free us from defining the sexual conduct inside prisons as a sub-set of homosexuality. Instead, our premise is that the prison setting inevitably generates a unique structure for sexual conduct. Bluntly stated, a community which is deliberately restricted to one sex lacks the mixed sex foundation against which homosexual conduct defines its meaning. Yet, prisoners enter the single sex community with a commitment to many sexual norms of the outside society.
The first point to be made about prisoner sexuality is that the deprivation of sexual access is not the most profound.

The sudden elimination of heterosexuality is part of the whole deprivation procedure, but it is rarely the most critical. Loss of most bodily pleasures, the capacity to direct one's own movements, the choice of work, the kinds of clothing, the times available for cleanliness, the hours of sleep, the size of income — all of these things besides sexual enjoyment — are denied the prisoner. These losses are important social psychological elements, first in identity stripping and second in identity creation.

(Gagnon & Simon, HS, 237)

Accurate as their assessment is, Gagnon's and Simon's point must be clarified. The deprivation of which they write is more narrowly focused on physical sexual relations than the perspective taken here. For instance, I shall argue that a major tool in the identity stripping to which Gagnon and Simon refer is the emasculation of male prisoners. Another deprivation with distinctly socio-sexual dimensions is that of family life.

Erving Goffman believes that enforced group living marks the sharpest contrast to family life in Western societies. Effects upon individual prisoners vary. Group living may deprive the single woman of her privacy and autonomy, and take from the mother the responsibility for her dependants.
These deprivations — and the eccentric stresses of group life — are not 'sexual' except insofar as they involve gender roles. Yet, gender roles provide a primary constituent of identity formation. Stated in more concrete terms, imprisonment deprives both men and women of their parenting role, but the roles of father and mother differ. The difference in deprivation is one of gender role, and this is a dimension of sexuality.

Gagnon and Simon discuss the functions social roles play in determining the meanings of sexual experience. They comment that coitus means achievement for young males and a form of social service for young women. I am not clear what they mean by 'social service', but the gender distinction they make is revealed in prison sexual conduct. Male prisoners tend to use physical sex as a means of achievement, whereas female prisoners often turn to sex as a means of bonding, at times to the extent of forming 'family units' within the prison.6

6 The formation of 'families' was reported by both Rose Giallombardo at Alderson (U.S.A.) and James G. Fox. The latter found that a majority of the women at Bedford Hills (NY) were active participants in kinship units of approximately five to eight members. See Fox, op. cit., cf. Rose Giallombardo, Society of Women, New York: John Wiley, 1966.
Gagnon and Simon support their view that deprivations other than sexual access are more significant. They write, "Our first major sense of the [prison] experience is actually how little sexual activity of any sort occurs within the prison." (Gagnon & Simon, *HS*, 242)\(^7\) They ascribe most of the sexual activity that does occur to social functions. Sexual relations are used less for sexual release than to create "a community of need-satisfying relationships that the prison fails to provide in any other form." (Gagnon & Simon, *HS*, 258)

It may be worthwhile to examine in some depth their claim that prisons exhibit low frequencies of sex relations. Two explanations for the low rate are offered by Gagnon and Simon, the second more complicated than the first.

The first builds upon the interactionist principle that the context has a crucial role in defining a

---

\(^7\) Gagnon and Simon cite data from the Institute for Sex Research: Rates of sexual activity varied from 10 to 20 per cent of the prisoners' rates outside. For some males the institution rate nears zero. (*HS*, 242, note.)
situation as sexual. They cite a number of anecdotes that may or may not be sexual, depending on cues not provided by the physical encounter between human beings: A boy watches a football match. Two men kiss each other. A doctor examines her patient's ear. If the boy is aroused by virile athletes; if the two men are warmly greeting each other (in another culture); if the 'patient' is the doctor's boyfriend, and she is blowing into his ear . . . the broader context, including potentiating cues, determines whether the situation is sexual or not.

Gagnon and Simon argue that the rate of sexual activity within prisons is low because of the absence of potentiating cues. "The man in prison finds himself without the appropriate stimuli which suggest opportunities for sexual activity or situations that are appropriate." (Gagnon & Simon, HS, 243)

'Potentiating cue' should not be taken to mean 'women'. Any sexual activity depends upon far more than the meeting of two or more persons; heterosexual relations do not result whenever a female meets a male (whether he is aroused or not). Thus, 'potentiating cue' refers to the social setting in its power to define an interaction as a sexual one. Nor is pornography a typical potentiating cue. It may lead to the sexual arousal of a given male — whether
prisoner or not - yet this hardly means that he will inevitably view his next encounter with a woman as an appropriate occasion for sexual intercourse.

The second interpretation of the low frequency of sex activity links the rates to the select population subjected to incarceration. Gagnon and Simon declare that the typical prison population does not begin with the same view of sexuality as middle- and working-class groups outside. Citing a trend observed in Kinsey's data, they argue that the male populations of prisons are more likely to use sex merely for homosocial validation - in short, to impress other men with their sexual prowess - and not for expressive or bonding purposes.

Gresham Sykes gives support to their interpretation, arguing that males use sexual intercourse as a prime measure of masculinity. With heterosexual conquests ruled out, other gauges of manhood are used, "... and the display of 'toughness' ... now becomes the major route to manhood." (Sykes, 98) I shall examine this hypothesis in greater depth when I turn to the problems of masculinity.

I am not convinced by Gagnon's and Simon's claim that the rate of sex activity is low. It is not consistent with their own view that human sexuality is
plastic, that an individual's sexual conduct variable, depending on the social context. Moreover, our broadened understanding of sexuality implies that definitions limited to overt physical relations are misleading. Finally, sexuality (at least Western sexuality) is permeated with moral significance, hence evidence is open to question. These factors cast doubt upon 'authoritative' claims about the frequency of sex activity.

An obsession for the empirical data may lead us to slight other, equally important aspects of prison sexuality, most notably the ways in which sexuality bestows meaning on behaviour in prison, and the purposes that sexual conduct has for prisoners. This again requires a broad view of sexuality, since we must be prepared to seek objectives that are not derived from sexual release. Likewise, we must be prepared to view certain kinds of interaction as sexual, whether or not they lead to overt sex activity.

The general theme for a functional approach to prison sexuality is provided by Erving Goffman. In Asylums he describes the inmates' adaptations to total institutions like the prison. Primary adjustments include all kinds of conduct that are considered legitimate by the institution. Secondary adjustments,
defences against the indignities of inmate status, subvert the prescribed manner of living. Goffman distinguishes between secondary adjustments that are disruptive and those, more habitual ones, that are contained.

Secondary adjustments are by no means limited to sexual ones. They may include territoriality, in claiming a particular seat in front of the television; job perks, e.g., working in the kitchen, or jobs that give one access to the outside; fraternisation itself may be a form of secondary adjustment: a bond is found in the shared sense of being victimised by injustices.

As an adjustment to prison life, sexuality is almost inevitably secondary (illicit) — the single exception being prisons that set prescriptive rules for sexual relations. For the most part, adjustments based in sexuality are contained, though sexuality is as volatile in prison as it is outside. Of the four functions I mention, the first three tend to be contained; the last tends toward a disruptive — though no less widespread — influence. The key functions of prison sexual activity might be termed: A. fraternisation, B. economic gain, C. removal activities, and D. aggression-domination.
A) Fraternity: In a social climate marked by suspicion, anger, fear, boredom, etc., sexual contacts provide bonds not unlike those that are formed in other extreme settings, e.g., in battle. Second, the fraternity or bonding in sexual conduct directly attacks the prison's tendencies to prevent unity among prisoners. Hence, third, same-sex contact, in contrast to masturbation, is expressive and social.

B) Currency: The willingness to engage in sexual relations with other prisoners can secure benefits though, as in any exchange, there is the vital question of who is setting the terms.

"The thin, hand-rolled cigarette will buy anything— even a fellow prisoner's body." (A. Heckstall-Smith, cited in Goffman, n., page 271) The logic of bartering enables us to reverse the terms—the offer of one's body can purchase almost anything, including drugs. Where the prison work pay is so meagre, a prison-style prostitution may have attractions. However, a more common exchange involves a pronounced element of coercion, as weaker prisoners trade sex for protection.
C) Removal activity: This secondary adjustment comprises those adaptations that allow the inmates to feel as though they were outside the institution. They range from rule-bending alterations in uniforms to near-obsessional involvement in weight training or education. Sexual conduct is particularly suited as a 'removal activity' because it serves much the same function in society. Gagnon and Simon remark upon the tendency of sex to isolate participants from the rest of their lives. They describe the:

severe sense of discontinuity between experiencing the self in nonsexual circumstances and in sexual circumstances. It is awkward at both the transition from the conventional to the sexual identity and from the sexual to the conventional, language-filled identities.

(Gagnon & Simon, HS, 105-106)

It is this sharp discontinuity that enhances the role of sexual relations as a removal activity.

The removal functions served by sexual activities depend for their meaning upon the specific interpretations made by the actors involved. For one, it may be that the successful intimidation of another prisoner into sexual favours demonstrates a potency that the prison has not weakened. For another, the mutual caring and support deny that coldness and distrust which prisons by their nature maintain. For still others, the relations may be no more significant than
a transient physical pleasure, augmented by its illicit status.

Jean Genet records the elaborate measures that a prisoner may employ merely to trade glances with another prisoner. Is this sexual?

The two have formed an affective bond, not merely against the prison, but against the identities which the prison setting — perhaps unintentionally — imposes upon them. They recognise in each other an attitude toward them as unique personalities, free of the stamp 'prisoner'. When the importance of this rebellion against the mould 'prisoner' is recognised, the apparently trivial tugs-of-war between prisoner and prison take on meaning. It is in this sense that sexual relations — however mild — constitute a profound removal activity for prisoners.

D) Aggression: The final form I shall consider has as much to do with imported ideas of sexuality as it does with the prison setting. Sexual harassment is almost certainly more common than physical sexual relations. Daniel Lockwood writes that though few prisoners are victims of sexual attack, as much as a third may be subject to harassing sexual overtures. Lockwood disputes the popular opinion that the prison
sex aggressor is ordinarily successful. Nonetheless, the harassing activity can bring the aggressor benefits, in intimidating other prisoners. Male aggressors can be said to interpret their threatening activity as validation of their perception of masculinity.

The foregoing overview of prison sexuality reveals the breadth of functions, interpretations, roles and phenomena that the topic involves. Greater detail is needed, and this can be gained from further exploration of key components of prison sexuality. These are deviance, homosexuality and gender roles.
The classification 'deviant' is not restricted to sexuality. The concept of deviance, and the emergence of deviant conduct in individuals, has been the subject of much work in sociology as well as psychology. The symbolic interactionist approach proves to be most fruitful for our purposes, both in terms of sexuality and with special relevance to prisons. Interactionists study the labelling process to discover why certain acts are stigmatised in some societies, but not in others. Peter Berger has written:

Cross-cultural comparisons of sexual conduct bring home to us powerfully the near-infinite flexibility that men (sic) are capable of in organizing their lives in this area. What is normality and maturity in one culture is pathology and regression in another.

(In Plummer, 43)

The above discussion of symbolic interactionism has suggested that a part of any culture's structure of sexuality is an assumed objective standard of normality. The classification 'deviant' assumes that this standard is absolute and sharply defined, and that it is possible to classify conduct which — as a category — departs from normality as deficient. Any such conduct is also presumed to aspire toward the
absolute standard. Thus homosexual conduct is considered more normal in long-term stable relationships or is otherwise doubly stigmatised as homosexual and promiscuous.

There is a basic tension in the concept of deviance as a principle of sexuality. We recognise the vast range of conduct which human beings practice in sexual relations. But societies universally set parameters - whether flexible or rigid - outside of which the conduct is assumed to be defective. Again, the categories are presumed to be objective facts. But cultural variability teaches that the absolute objectivity is an illusion: deviance, too, is a matter of socially generated categories.

Ken Plummer follows an interactionist method in his study of the emergence of homosexuality. Plummer concentrates upon the ways in which groups define certain conduct as deviant. He claims that the quasi-objective status of deviancy categories is due to the broad, cross-institutional support for the labels.

Laws, morality, language, even arts imply that some modes of sexual expression are normal (e.g., the family); others are unusual or problematic (the label 'spinster' carries such an implication); and still others are deviant. Insofar as the prison is a 'total
institution', it, too, will have a distinctive ethos, with some sexual norms enjoying quasi-objective status. However, prisons cannot maintain total isolation from the outside, and hence prison sexuality will always exhibit the dialectic between the two worlds.

Gagnon and Simon identify three types of deviance. There is conduct deemed deviant which is practiced by the vast majority of people — their term is 'normal deviance'. They argue that the designation 'normal' is applied because the behaviour in some way legitimates or ties into conduct which society supports. Generally private in nature, these acts do not challenge the presumed norms of sexual conduct. They cite masturbation and pre-marital coitus as examples.

The second type is not tolerated in the same way, but is nonetheless institutionalised in pockets which are themselves tolerated. Pornographic businesses may be restricted to certain areas, homosexual communities may be formed, but the conduct is vulnerable to sanctions — sometimes severe — in the wider society.

The third type is either too radical an attack on institutions of sexuality, or practiced by too low a minority to benefit from the established zones of the
second type. Here, Gagnon and Simon come closest to employing a clinical perspective. The conduct is not the product of a social setting but results from "a causal nexus . . . [which] appears to exist in the family and personality structure of the individual." (Gagnon & Simon, SD, 7)

These distinctions, while helpful, cannot be applied to prison standards without qualification. They are helpful in describing much of the labelling that does occur in prison. For example, masturbation might easily be seen as an example of 'normal deviance', as an adjustment that receives little censure either from prison rules or the prisoner community's own norms. Similarly, there are pockets within prisons - certainly larger ones - in which deviant conduct (e.g., prostitution) is established.

But the uniqueness of the prison environment conditions these principles in ways that are not always predictable. For example, the tolerance of masturbation is greatly dependent upon the setting. In society, it can be assumed that when masturbation is referred to as 'normal deviance', the conduct occurs in private. Indeed, in Kinsey's work, the key question concerning deviance was the frequency of the behaviour.
In prison, the rate is far less important than the setting: the parameters of deviance are determined primarily by whether the scene is the single-cell dispersal prison or the overcrowded local prison where the behaviour is almost inevitably public.

Plummer clarifies the effects of social settings on definitions of deviance. He points out that the response of others is a key to the identification of deviance. Some acts are situationally deviant if they evoke stigmatising responses from other people.

It is in this sense that homosexual conduct may be deviant in one setting and not in another. Put in other terms, coitus between a married couple is deviant if the act is performed in the market square. "All that is required for situational deviance to occur is the presence of two factors: norm violation and stigmatizing responses." (Plummer, 72)

---

* Law defines prison space as entirely public; this implies that all same-sexual activities in prison are illegal because they are public. See further Punishment and Sexuality, below.
Conversely, settings can define certain actions as normal, while they are labelled deviant in other settings. The power of the prisoner community to arm the prisoner against the social stigma of deviant (criminal) is well-established. Similarly, gay communities provide settings in which the social deviance of homosexual conduct becomes the situational norm. Plummer himself argues that the prison community constitutes a prime example of a setting in which the stigma against homosexuality is neutralised.

Undoubtedly the major trait of the prison setting that neutralises the stigma of homosexuality is the absence of the opposite sex. R. Cloward and Lloyd Ohlin have examined 'differential opportunity structures' in the community (cited in Plummer, 57). They follow Freud in seeing that people committed to deviant identities often gravitate to occupations that provide maximum opportunity for their conduct. But the concept of differential opportunity structures can be used in another sense.

Human sexuality is adaptable; people can modify their sexual conduct to fit the opportunity structures available in a particular setting. This is not to say that people who work with one group or other inevi-
tably grow to see them as sexual objects. Rather, I suggest that settings of institutionalised deprivation engender a greater flexibility in target choice than that found in settings of open opportunity.

My discussion of prison sexuality and deviance thus far has examined: secondary adjustments, subverting discipline; minimal opportunity structures, altering the range of possible sexual objects; single-sex prisoner communities, neutralising the stigma of deviance. These concepts clarify difficulties facing a prisoner in interpreting conduct as deviant or not.

The subjective response to prison sexuality takes us from the social definition of deviance to the emergence of deviant sexual identities within individuals. Again, such behaviour is not objectively unnatural or evil. The range of meanings that can be ascribed to sexual conduct makes such a claim untenable.

Plummer approaches the questions of sexual identity and of deviance categories as matters of negotiation and interpretation. "Deviance does not arrive unannounced. Rather, it has to be identified, interpreted, and subsequently fashioned and structured." (Plummer, 73) Plummer cites a number of needed
principles to explain how persons can develop into a full identification with conduct deemed deviant.

The problem of identifying deviance is complicated by the fact that our understanding of sexual conduct is drawn from both sexual and nonsexual contexts. For example, M.H. Kuhn argued that sexual motives are in part derived from the broader social roles played by the partners (cited in Plummer, 29). Similarly, Gagnon and Simon write that the individual must match his/her subjective experience against the categories made available by society. “The very experience of the body . . . must be translated through meanings that are drawn from nonsexual domains.” (Gagnon & Simon, HS, 73)

Taken together, these interactionist claims show that nonsexual elements play a key role in both labelling someone deviant and in that person's self-image. The point is starkly illustrated in prisons. Plummer shows that prison does not neutralise same-sex relations evenly. The determinative factor is not the participation in same-sexual conduct, but the broader social role of each party and the manner of their involvement. The prison ethos does not stigmatise the sexual aggressor as it does the counterparts, nor does it sanction all aggressors evenly.
The prison is both a part of society and an alien environment. Prison sexuality, with its unique functions of sex, and the problems of defining sexual deviance, displays the profound clash of norms and values between the two worlds.

Confronted with the moral conflicts active within prison culture, the prisoner's sense of identity is confused. That confusion is exacerbated by stresses upon one's gender roles in prison. The unique, debased character of the roles of masculinity within prisons distinguishes sexual activity within prison from homosexuality. I turn next to consider pressures upon masculinity, and same-sex relations in prisons.
Interpretations of sexual activity within prisons cannot be isolated from considerations of gender role. In my examination of sexual relations in male prisons, I focus first upon the concept of masculinity, and upon the prison's pressures upon masculine self-labelling.

In his landmark study of the New Jersey State Prison, Gresham Sykes stated, "If the inmate . . . is rejected and impoverished by the facts of his imprisonment, he is also figuratively castrated by his involuntary celibacy." (Sykes, 70) Like most spectacular statements, Sykes' claim must face critical examination. His words imply that the deprivation of sexual access to women strips the prisoner of his manhood.

Sykes buttresses his claim with two, distinct arguments: 1) He draws out the implications of living up to the expectations of manhood in a world without women; and 2) he describes the adaptations prisoners use to offset the deprivation of sexual access to women.
The former needs to be developed further to discover the stresses on masculinity and to hone in on the threats to masculine self-images that permeate prisons. The latter claim (that the cause of the 'castration' is the lack of heterosexual activity) may illuminate the sex activity that does occur in prison.

Sykes argues that an exclusively male setting leads inevitably to anxieties in the individual about his own manhood. Here again, an interactive stance is helpful. The male prisoner's problem is not simply that he has no female population against which to compare himself; nor is it merely that those women who provide the feed-back role of significant others are isolated from him. The problem for his masculinity partakes of both deprivations.

The inmate is shut off from the world of women which by its very polarity gives the male world much of its meaning. Like most men, the inmate must search for his identity... in the picture of himself which he finds reflected in the eyes of others; and since a significant half of his audience is denied him, the inmate's self image is in danger of becoming half complete, fractured.

(Sykes, 72)

A primary tension in the male role relates to domination. The male attraction to dominance, sometimes to the point of aggression, subjects him to domination. Mark Gerzon, citing a study from the 1950s, "The Authoritarian Personality", describes the
dominating male. "On the one hand, he tends toward 'passive submission to authority'; on the other, he adopts the 'idea of aggressive and rugged masculinity'." (Gerzon, 63)

This tension, played out in the domination of prisoners by officers, intensifies the belligerence of the male image in society at large. Weapons to dominate others include aggression and, indeed, violence. In the exaggerated masculinity of prisons, aggressiveness is a positive attribute; uncertainty is a weakness and sign of effeminacy. The prison culture tends to value abrupt, aggressive traits.

Gerzon voices a concern that these values of power and inflexibility are increasingly dangerous. Writing of 'hard-driving, tough-talking' heterosexuals, he argues, "Their manhood seems to be the problem. Their desire to dominate is so desperate that the desire dominates them." (Gerzon, 106)

Prisons are not the only notoriously single sex institutions. Mark Gerzon explores the ways the military plays upon the contradictions in masculinity in order to produce soldiers. Gerzon charges that a chief motivating tool of the military is gender uncertainty. Young men are assaulted with the challenge to prove that they aren't 'sissies' (i.e.,
sisters) or effeminate. Military training identifies character with manhood, and builds the contrast to the presumed timidness of femininity to such a pitch that the fear of being seen as un-masculine surmounts the fear of being wounded or killed in battle.

Though military training might be an extreme case, it highlights the development of masculinity in society at large. "Boys, trying to be masculine but not knowing quite what masculinity requires, come to define masculinity as the opposite of what they can observe, feminine. In addition, they come to regard feminine characteristics as deplorable." (Davidson & Gordon, 20)

The gender pressures in male prisons are clearly not limited to the prisoners. The aggressive milieu, the painful contradiction between being dominant and dominated, the distorted values of a male-only world: these themes are as relevant to the prison officer's situation as to the prisoners.9 Indeed, the

---
9 Robert J. Wicks discusses a range of pressures upon prison staff in Guard!, Houston TX: Gulf Publishing Co, 1980. My focus upon the harms prisons inflict on prisoners precludes treatment of the effects of high stress on the relationships of prison officers.
male-to-male interactions that Sykes alludes to involve prison officers as deeply as they do prisoners.

Prison officers, though, are able to leave the prison. Further, there is no suggestion that they are deliberately deprived of sexual access. A third difference recalls us to the problems faced by the prisoner. Erving Goffman draws attention to the echelon structure of total institutions. In his analysis, echelon differs from hierarchy chiefly in terms of accountability. The member of a hierarchy is subject to the ranks above, and holds authority over those below. There is stratification among prisoners; however, any prisoner is subject to any uniformed staff member. Continuously forced to acknowledge his subjugation, the prisoner finds that issues of dominance and submission are of primary significance in his understanding of manhood. Thus, the lack of sexual access to women is probably less determinative than the more immediate problems of domination and subjection.

Analytically, it might be possible to contrast the self-determination necessary for human dignity against the kind of arrogant wilfulness more typical of idealised rugged masculinity. But the prisoners to
which I refer are male: it is not surprising that masculinity, however defined, should form part of their self-image. Second, the preponderance of males in the environment implies that masculinity would be highly valued. A third factor is the very friction of the prison environment, in which an aggressive, unbending approach has pronounced advantages (at least in the short-term). For these reasons and others, issues that might otherwise be seen through conflict theory or as questions of basic human rights, are framed as threats to manhood.

In the wider society, it is not only the presence of women that helps to define one's masculinity: our industrialised culture ties masculinity to work, paternity, athleticism. Not only employment per se but the type of job and the course of a man's career are used as indicators of his status as a man.

The prisoner community's view of employment largely reflects negative experience. A significant proportion are chronically unemployed persons, those who have had sporadic jobs in unskilled work, and those with unsatisfying working-class careers. It is ironic, perhaps, that the one career in which a prisoner might have experienced the positive reinforcements of enhanced manhood is his criminal one.
Prison work was at one time heavily tinged with punitive significance, as offenders were sentenced to hard labour. The work that is available, often underscoring the prisoners' subjugation, cannot provide reinforcement for a male prisoner's sense of manhood. Certainly the 'wages' preclude the possibility of a prisoner's providing help for a family. Indeed, the sole sense in which prison work might reward a kind of masculine role is the production of lethal weapons.

Alongside dominance and employment as props of masculinity is sex itself. Whilst to a great extent sexuality provides benefits for the male role in intimacy and mutual support, there is also a gain in homosocial status – in one's stature in the eyes of other men. Sex, in fact, may be performed with the primary objective of assuring one's status in his peer group, and this attitude can be imported into the prison.

Mark Gerzon states:

The easiest way to prove oneself a man today is to make it with a girl. . . . We are not, like our primitive forebears, joining together with a woman as adults. We are coming together in order to become adults, if not in society's eyes, then in our own.

(Gerzon, 175)

I have cited claims that manhood is measured in terms of character, career success and sexual potency.
I have argued further that in prison, the social setting tends: 1) to emphasise or reward the aggressive traits of character, 2) to purvey negative experiences of work, and 3) to stress the power of sexual activity to achieve stature in one's (male) peer group. Given the low rewards for manhood in their work experience, and the tension evident in the character values based on domination, one might claim that deprivation of sex is a more profound loss for prisoners than it might be for those with established props to manhood in character or career.

I would argue, to the contrary, that the props of manhood are more plastic than the counter-argument assumes. If, for example, a man loses his job, he might maintain his sense of worth by giving more time to his children. Likewise, a hapless suitor might transform the pains of his rejection into renewed commitment to his work.

In the prison environment, however, the transfer to alternative props of masculinity is ominous. Denied affirmation in sexual activity and subjected to the drudgery of make-do work, the prisoner's resources for maintaining a sense of manhood are increasingly concentrated in show-downs of domination and aggression.
This discussion sets the scene for an examination of Sykes' other point; viz., that the loss of sexual access to women helps to explain the forms of sex activity that are found in male prisons. Sykes sums up the data on sexual relations in prisons. It is important to note that he was writing in 1958, and that the evidence for his case is drawn entirely from the American prison experience.

First, a fairly large proportion of prisoners engage in homosexual behavior during their period of confinement. Second, their sexual deviance is rare or sporadic rather than chronic. And third . . . much of the homosexuality which does occur in prison is not part of a life pattern existing before and after the confinement; rather, it is a response to the particular rigors of imprisonment.

(Sykes, n., 72)

Sykes' claim that a large proportion of prisoners engage in sex during imprisonment seems to conflict with Gagnon's and Simon's point that the rate of sex activity is low, but there is no necessary contradiction. Clearly the rate of overt sex activity could be low, while most prisoners engage in sex at some time. Here again, difficulties in definition and the moral intensity of sexuality should make us wary of authoritative claims about the frequency of overt sex.
Sykes focuses his attention on the roles of sexual relations in prison, especially that of 'wolf', or sexual aggressor. He argues that aggression — far from evoking the censure of other prisoners — is a way of securing one's masculinity. He believes that the stigma of deviance is neutralised by the wolf's affective state: other prisoners must see his act as merely physical release. There can be no suggestion that he would actually choose homosexuality, or that he holds any affection for the other. "His perversion is a form of rape and his victim happens to be a man rather than a woman due to the force of circumstances." (Sykes, 97)

Here, Sykes' vivid language overstates his case. For example, Gagnon and Simon report that the role of aggressor is not confined to those who are exclusively heterosexual outside, but that men who engage in homosexuality by preference can also take the wolf's role. A second point concerns the stigmatising effects of the sexual relations. Sykes holds that the aggressor gains in masculine status through zero-affect sexual release. It is just as likely, though, that the 'wolf' is not stigmatised by others because he is aggressive in nature. (The point makes sense if we recall that the measure of deviance is often nonsexual social roles rather than sexual preference.)
Aggression is bound up with sexuality in prison, but not in the way that Sykes implies. Daniel Lockwood tempers talk of prison rape with evidence that sexual harassment is a far more pervasive problem. "Sexual approaches perceived as offensive," he writes, "should be seen as the most important basis of the problem of prison sexual violence." (Lockwood, 73) Lockwood suggests that violence is used as a defence by prisoners when potential aggressors try to impose female roles upon them.

Sykes quite rightly comments that the coerced partner loses masculine status because of his passivity. Passive submission — interpreted as weakness — is identified as a feminine trait. Thus, in Lockwood’s interpretation of prison sexuality, the aggressor attempts to force ‘weaker’ prisoners into the gender roles that he associates with women: in short, the passive object of a dominating aggressor intent upon sexual conquest. In this sense prison sexual activity provides a range of surrogate heterosexual relations — especially when relationships are viewed in terms of dominance and predation.
Penal Philosophy and Sexuality

A brief review of the foregoing sections will help to frame the context for a discussion of prison philosophy and policies regarding sexuality. I have followed an interactionist approach in preference to the more popular 'drive theory'. The latter method tends to ignore or underestimate the wide variability inherent in human sexuality. Further, drive theory centres sexuality upon heterosexual coitus; and this stresses the pleasure of sex in intercourse over the equally important functions of sexuality in setting the roles appropriate to each gender, and in shaping relations - not just between husband and wife or females and males, but all social relations.

The interactionist approach is sensitive to the broader meanings of sexuality, as they are determined in social interaction. It is a difficult method, because it renders problematic the sexual dimension of all relations - not just the overtly erotic ones. In its broader scope, it comprehends nuances of gender roles, the qualities of relations between people, as well as the parameters of deviance. Hence, the interactionist method illuminates the structure of sexuality within the prison setting.
sexuality

In the overview of prison sexuality I introduced the concept of secondary adjustments as contained or disruptive ways of coping with the demands of prison life. Sexuality can serve to offset the coldness and suspicion of the prison environment. It can be used as currency in the prisoner economy. Perhaps the greatest attraction of sexuality within prisons is its power to create a world apart from that which is bounded by the walls: sexuality constitutes a 'removal activity'. Finally (and the most disruptive of the functions) sexuality can be used to demonstrate or establish one's power in a setting that strips people of self-determination.

The search for overt sexual relations, perhaps inspired by drive theory, actually distorts the sexuality within prisons. It ignores the insights to be gained from the broader dimensions of sexuality, and focuses upon a small sample of conduct. If we ignore the assaults upon masculine self-esteem, then the sexual relations that occur in prison will appear perverse. If we fail to consider that a minimal opportunity structure will create a distinct sense of appropriate sexual targets, then we are likely to equate prison sexuality to any other form of homosexuality.
In part, the deprivations or frustrations of prison life today might be viewed as punishments which the free community deliberately inflicts on the offender for violating the law; in part, they might be seen as the unplanned (or, as some would argue, the unavoidable) concomitants of confining large groups of criminals for prolonged periods.

(Sykes, 64)

The deprivation of sexual access imposed by prison is seen by many as a part of the punishment; others would claim that this loss is one of the unintended concomitants of incarceration. In a sense, it doesn’t matter: whether the deprivation is seen as punitive or unavoidable, the prisoner is deprived of far more than heterosexual coitus. With enviable efficiency, the prison deprives its charges of marriages; it strips away values based upon trust and mutual caring, it destroys that balanced confidence in filling a gender role that enables wo/men both to achieve and to cooperate with others in doing so.10

---

10 R.J. Sapsford stated in a 1977 report, based on a sample of sixty life sentence prisoners:
At reception all men ... had a close contact with some one outside, and nearly half had a wife or girlfriend. By the end of the first year, however, only 20% were in better than tenuous contact with wife or girlfriend, and none of the ten men who had served more than eleven years had been in any such contact since their seventh year." Quoted in Alan Duce, An Outline of Issues Raised by Long Term Imprisonment, (unpublished), British Council of Churches Penal Policy Group, 1984. Cf. Sapsford, 1978, page 136.
We have seen glimpses of the distorted sexuality that results from a punitively single sex society. There are two perspectives from which one can judge the role of prison philosophy in creating prison sexuality. The first, inspired by the drive theory, sets the deprivation of sexual access among the aspects of punishment; the second approach builds upon the hypothesis that prison policies toward sexuality are primarily shaped by the attitudes of the wider society.

**Punitive Celibacy**

Mike Brake writes, "We connect with our animality through eroticism, which offers us an escape from the iron cage of rationality." (Brake, 14) Undoubtedly, sex is a freedom. The variability of forms of expression, the choice of sex partners, the ways that having sex transports us out of the worlds of language and reason — these demonstrate the power of sex to free us. Brake does not suggest that eroticism controls us, but that we can use it in order to escape from the mechanising influence of rationality. Sex, therefore,
is not only subject to controls, but capable of confirming our sense of power and self-determination.

The dual role of sex in personal liberation and self-determination is replicated on the social scale. Sexuality is a contested property. On one hand, the sex drive is seen as the source of creative energy, the force that advances social progress. On the other hand, obviously, this force must be organised, restrained, directed at particular ends. Social power is most awesome in its control of sex, given the presupposed scope of sexual energy.

I have argued that imprisonment affects prisoners' sexuality in many ways, not just in the denial of heterosexual activity. Meaghan Morris draws important links between the control of the body and one's sexuality. Morris argues (following Foucault) that domination includes the power to define the subject's body by its functions for the authority above it. The bodies of the subjected group are controlled in order to conform the subject to the requirements of the particular institution, whether medical, legal, educational, or punitive. (Compare Phenomenology, above) "Hence," writes Morris, "so much reluctance to recognize the body and the sex of other classes - precisely those being exploited." (Morris, in Brake, 270)
In prison, personal belongings are freely handled by staff (during induction, cell searches, etc.). More important, one's body space is invaded in ways which are rare outside: strip searches (including anal inspection) the more common pat-downs, and the ubiquitous surveillance. Erving Goffman points out that while these are less dramatic violations of the body than rape, they are violations nonetheless. As violations of the body, these intrusions, in the interest of control, contaminate the prisoner's sexuality.

Something of the pointed ambivalence of prisons regarding the sexuality of prisoners emerges from the drive-repression approach. Imposed, punitive celibacy is a demonstration of society's power to control the prisoner. Surrendering this power, through the provision of conjugal visits, for example, would transfer power to the prisoner. To prove the prison's power to control prisoners must be seen as both sex-crazed and celibate. The former supports the assumption that the sex drive is overwhelming; the latter shows that the prison régime has mastered that anarchic drive.

There is a parallel in prison history to the current attempt to treat prisoners as asexual. When
it opened, Pentonville followed Eastern Penitentiary (U.S.A.) in imposing a silent system, intended to eliminate the diffusion of criminality. If today, we consider that nineteenth century society was ignorant in presupposing that prisoners could be made mute, then it is remarkable that we do not recognise the same folly in the assumption that sexuality can be denied for the duration of a prison sentence.

Drive imagery implies that one's sexuality can be switched on or off like a light-bulb. Similarly, prison practice, with its prohibitions against overt sex activity, presupposes a drive which can be denied (just as hunger can be denied by fasting). The interactionist account might be faulted for making it appear that sexuality is merely a product of a social behaviour setting. (Were that the case, one could imagine a de-sexed environment where sex was not so much denied as non-existent.) If, though, sexuality is intrinsic to being human (like intelligence) then our sexual being is indispensable, essential to wholeness and dignity.

In our handling of the prisoners' sexuality we do exert control, but the results do not benefit us. Ken Plummer proposed that we might expect an increase in pathology where the individual has no support system
and is subject to overt prescriptions against his conduct. Looking more particularly at prisons, Gagnon and Simon state that "any attempt to become more coercive . . . in order to reduce homosexual contacts may result not in a decrease in activity, but perhaps in an increase." (Gagnon & Simon, HS, 259)

The drive theory of sexuality promises a potent tool for social control. In practice, the control of that drive has been overly punitive, and society manifests the harm in destroyed homes and in the distorted views of sexual relations amongst prisoners as they return. The drive theory itself, upon which the treatment of prisoners' sexuality would seem to be based, distorts our view of sexuality. But even on its own terms, the prison's continued mismanagement of the sexuality of prisoners fails to find reasoned justification.

**Sexuality in Penal Philosophy and in Society**

I have argued that sexuality is closely linked to prison violence. Hence it is clear that sexuality
sexuality represents a delicate issue for prison administrators. However, I have not taken the view that the deprivation of sexual access to women causes inter-prisoner violence; that, in other words, people fight because they are overwhelmed by sexual frustration. Rather, my argument has been that the structure of sexuality within the punitively celibate world of prisons results in sex-related violence. The prison fosters a violent sexuality through its character of distrust and personal isolation from others; through its pervasive assaults on the gender status of prisoners; through its norms of domination and aggression.

If we allow that the deprivation of sexual access may be unintended or unavoidable, our perspective of those in authority changes. We do not need to assign blame or to question the philosophy behind their decisions. Indeed, it is possible to suggest that a philosophical basis is no longer relevant.

In the decision to incarcerate, we, as society, take responsibility for offenders; our obligations take the same form as our control of children. Thus, there are fruitful parallels between our handling of the prisoners' sexuality and of that of children. The difference — and it is a key one — is that we deliberately work to develop a sexuality in our
children. The effects upon the prisoners' sexuality, however, can be assumed to be unintended.

Gagnon and Simon write that the duty of guiding a child's sexuality entails a prior step of facing up to our own. We shall no doubt pass onto the child our guilt as well as our sense of pleasure. But the key point is that the expression of sexuality to another involves the act of presenting our own sexuality—making it public.

Prisons are public. Not only does the media have access to report on the life of the prison as news, but the constant surveillance of prisoners means that their lives lack the privacy which we take for granted. This carries two implications for prisoner sexuality.

First, our survey of prisoner sexuality shows that the prison setting conditions sex in undesired ways. Masturbation provides an example. The meaning of this sexual activity is conditioned by the setting. Single cells approximate the privacy of the wider society, in contrast to the local gaols, where masturbation is necessarily a public act.
Similarly, surveillance tends to debase shows of affection in visiting rooms, unlike the public character of kissing in a bus queue or park. The prison setting imposes profound stresses upon couples, and it would pollute their relations even if conjugal visits were provided. The public character of prisons reveals the extent to which the prison contaminates sexuality.

The second implication of the public character of prison sex is the way it reflects upon us. The prison system that provides for sexual relations publicises its society's own sexuality. Our own sexuality is revealed in the actual conduct of the prisoners, or, in the framework which we design to accommodate them.

This is something which we are not particularly eager to publicise. In concrete terms, to allow unmarried couples to enjoy conjugal visits publicises the fact that sex occurs outside of marriage. (We do not wish to advertise this fact.) To deny such couples conjugal rights because they are unmarried is to pretend that sex does not occur outside of marriage. (And we do not want to show that we are hypocritical.)
Gagnon and Simon make a similar point about the sexuality of children. While it appeared that Freud shocked society by discovering the child's sexuality, the real shock was "an assault upon public anti-sexuality and asexuality of adults." (Gagnon & Simon, HS, 111) Following this logic, I suggest that we maintain the fallacy of asexual prisoners in order to maintain our own public asexuality. The imposed celibacy is in this sense a mode of censorship.

The dilemma seems unresolvable. If we are to become open about prisoners' sexuality, then we must honestly face up to our own. If we continue to hide these needs, we maintain a hypocrisy that inflicts great harm on prisoners' wholeness as well as upon our own sexuality. As we pretend that prisoners have no sexuality, we create environments in which that sexuality becomes centred upon dominance and violence.

Sexuality will inevitably comprise part of the prison environment because sexuality is part of being human. We cannot deliberately deny a group of people their sexuality, forcing them into a de-sexed existence, without cost. In previous generations, the cost was social; prisoners on release bore a distorted, alien sense of sexuality, as I have sketched above.
Today, the risk of AIDS carries a more lethal cost. AIDS makes clear the extent to which any prison department must balance the health of prisoners against its own requirements of control.

At one extreme, sexual behaviour can be prohibited; every detected instance can be rigorously punished. At the other, safe sex can be promoted through the provision of condoms by the Prison Medical Service, by greater use of 'High Street' agency advice, by freer associations between prisoners, by the increased use of home leave and by the provision of conjugal visits.

Dr. John Kilgour, Director of the Prison Medical Services, has stated:

We must ensure in the prison system . . . that we reflect the attitudes, the ethics and the standards of care of the community at large in the face of the threat presented by the AIDS virus.

(Kilgour, 17)

In the wider community, the approach to the disease has been fairly consistent. The isolation of high risk groups has not been pursued by the wider society. Instead, the medical response to the disease has been to identify high risk behaviour. Education and the desired changes of behaviour may involve
reductions in the number of sexual partners, but safe sex practices also play a significant role.

In prisons, a policy of punishing sex activity is likely to increase the transmission of the disease in two ways. First, the punitive atmosphere increases the pressure on the prisoner, making it more likely that s/he will turn to another prisoner, either for affection and caring or to dominate and assault. Second, a punitive approach ensures that the prisoners hide the behaviour. Unreported or hidden sex activity poses perhaps the greatest risk of transmission, especially in light of the difficulties in detecting the virus through screening.

Prisons are also high risk settings because the comparatively closed population makes it more likely that sexually active prisoners will have repeated encounters with partners who are infectious. (Higher rates of contact with a virus vastly increase the odds of infection.) Where all sexual behaviour is forbidden, all forms are equally liable to transmit the virus. Where consensual relations are permitted, those at least can be made more safe. (Obviously, assaultive sex is very unlikely to be protected sex.)
We do not have the choice of eliminating prisoners' sexuality. Nor, apparently is there much hope of an enlightened administration establishing full conjugal rights for each prisoner. Yet, given the risks, AIDS could bring prison staff and prisoners together in a combined effort. To do so, however, would require that the prison service recognise the sexuality of the prisoners, make freely available to all prisoners the current 'High Street' information about the disease, and encourage those who will participate in sexual relations to do so safely.

(I am grateful to Tim Bond for his reflections on this chapter.)


Davidson, Laurie, and Laura Kramer Gordon: The Sociology of Gender, Chicago: Rand McNally, 1979


Smart, Carol, review of Susan Edwards, Female Sexuality and the Law, Contemporary Crises, 6, (1982)


Introduction

The theory of retribution holds that punishment treats the offender as a responsible person. It is paradoxical—if not contradictory—to claim that in harming persons we treat them as responsible. But retributivists argue that the alternative is to excuse the offence, thus denying offenders their right to expiate their crimes through the endurance of punitive pain. One cannot escape the feeling that the dichotomy is forced, artificial. Yet the advocate of punishment insists that to refrain from punishing the offender is to condone wickedness.

Punishment might be said to treat the offender as responsible in two ways. The first, and most basic, requires of any offender some suffering or endurance of harm to atone for the offence. Perhaps the offender must suffer to buttress a rule, by serving as an example of the cost of transgression. (I have examined such arguments in Retribution.)

A second approach, a synthesis of retribution and reform, presupposes that an offence is a step toward the moral deterioration of the offender. Punishment constitutes an abrupt check, giving offenders the
opportunity to reconsider their choices. Punishment, thus, both marks a boundary of acceptable behaviour (denunciation), and shocks the offender into an attitude of obedience (reform). The offender's responsibility combines the accountability of the first rationale with the offender's power to re-interpret choices in light of the state's definition of right and wrong.

Imprisonment is meant to treat the offender as responsible in ways that build on both explanations. By enduring the pain of punishment, offenders expiate the offence, enabling them to return to the community in harmonious relations. Imprisonment also makes forgiveness possible by bringing the offender to repentance, and by seeing that justice is done.

Both senses of responsibility — the power to choose one's future for good or evil and the duty to undo the wrong by enduring pain — can be seen to have roots in Christian theology. I would argue, however, that retribution distorts the concept of responsibility (selecting one or two aspects of it), it insults human dignity and community, and whitewashes retaliation. To hold a person responsible is not wilfully to damage the wrongdoer. Rather (as I have suggested in Retribution) true responsibility points to the wrongdoer's duty to make amends.
My focus in this chapter is the relation between personal responsibility and prison discipline. In the section that follows, I sketch the meaning of responsibility, drawing upon H. Richard Niebuhr. I argue that responsibility is a comprehensive concept, and is misrepresented when it is segmented. Responsibility includes duty, but also self-initiative; it includes accountability, but to persons rather than rules.

In the third section, I examine prison discipline in terms of the relations between staff and prisoners, especially the imbalances of power between the two groups. The disparity in power conditions the prisoners' interpretations of their own actions. Not only are their actions defined in terms of loss and gain in status, but, more broadly, prisoners' acts are subject to rules set by the 'keepers' (staff and administration). Consequently, all activity inside prison is conditioned by the marked imbalance of power.

The fourth section is devoted to prison justice, including adjudications by the governor and the Board of Visitors. A central issue is the question of fairness in prison discipline. I examine claims by prisoners that prison justice is fundamentally unfair, and tie those claims to our understanding of personal responsibility.
The final two sections (five and six) demonstrate in greater detail the harmful effects prison discipline has on the development of a sense of personal responsibility. I follow Jean-Paul Sartre's argument that imprisonment inflicts a deeper penalty than the loss of the power of choice; that incarceration deprives prisoners of: a) their equal status as human; b) the capacity to transcend their actions and interpret them; and c) the freedom to transform themselves along the lines of a fresh sense of direction.

I conclude with an analysis of the well-ordered prison community in light of the harms done to personal responsibility by prison discipline. I use prison discipline to refer to the operations of prisons intended to control the behaviour of prisoners — including regimentation, rules, surveillance, relations with staff, transfers, etc. I take prison rules to mean all rules within the prison system, including the many Standing Orders that prisoners are not allowed to see. Still, I shall have occasion to refer to prison rules that pertain especially to offences against discipline (for which prisoners can be charged and punished). I use prison justice to refer to the adjudicatory processes that formally provide sanctions against indiscipline.
The Meaning of Responsibility

Responsibility can be distinguished from deontological ethics, built upon rules, duties, etc., and from teleological ethics, that cite ideals to be fulfilled. The former tends to begin with principles or laws, and to discriminate between right and wrong action upon these bases. The latter focuses upon the consequences of our actions, and judges the morality of an action in terms of its good or evil effects.

On the face of it, responsibility may not seem much of an improvement. Jean-Paul Sartre's sense of responsibility — as consciousness of being the incontestable author of an event — is thoroughly egocentric. In popular usage, responsibility is often incorporated into the legal approach, reduced to guilt. To apply the concept of personal responsibility to prison discipline, we need to be explicit about its meanings.

---

1 Jean-Paul Sartre, *Being and Nothingness*, page 707.
Responsibility is used to denote obligation, as when a parent assumes responsibility for her children. In the plural, however, responsibilities imply a sense of specific duties. Within a legal context, it refers to both guilt and the capacity to decide for oneself. Capacity includes a nuance of initiative, as when an employee is promoted because she is responsible. Ethically, this case is noteworthy, since the person acts without waiting for the right or good thing to be clarified (it is not a case of obedience, but of creativity).

There is an element of personal backing in taking responsibility, or in owning up to something. Standing by my assertions, owning up to my actions, is a form of accountability. Taking responsibility includes a healthy sense of personal identity, linking the consequences of my actions to my own decisions.

This overview of responsibility can be summarised by pointing to basic meanings of the concept: capacity, appropriation, deputyship, and accountability. One could choose other terms to describe the four aspects of responsibility: trustworthiness, initiative and reliability, undertaking a duty for (something) and answerable to (someone).
These four anchors disclose a method of responsible ethics. The uniquely human capacity for responsibility differentiates moral actions from other behaviour. A responsible act differs from the reaction of an organism to stimuli, as it does from the mechanical effect of physical causes. A response is based upon my interpretations of the actions of some Other in particular, and, more generally, of the situation as I encounter it. Whilst my response includes organic reactions as well as physical causes, it is not limited to these.

I interpret the situation facing me by reference to two types of information:

1) The evidence of past experience of such encounters. This includes generalisations about human behaviour, derived empirically, and personal experiences.

2) I also interpret particular clues in my counterpart. I smile upon seeing him. He frowns. I frown in response. He sees my expression and laughs.

---

Peter Berger and Thomas Luckmann make this point, pages 19-46, illuminating it with the example that follows.
at me. Together we smile. In interpreting the actions of an Other, a person "identifies, compares, analyzes, and relates events so that they come ... not as brute actions, but as understood and as having meaning." (H. R. Neubuh, 61)

Of course, we could make the general point that all such actions will either be pleasing or painful, good or bad for me, contribute to my survival or threaten it. There is no benefit in doing so, however, since reducing all interaction to threat or benefit debases the role of the intellect in reading the complex intentions of the Other. To reduce all activity to threat or benefit narrows the frame for our responses, and biases us toward a defensive stance. We are inclined to react out of fear (or trust) and therefore, to ignore a plethora of significant motives that underlie our actions. Still, because interpretations are based on past experience, this aspect of responsibility tends toward caution and conservatism.

Laws of human behaviour inform my interpretation, but my response cannot be limited to their input. The freedom of my counterpart is fundamental to our responsible interaction. There must be a distancing respect between my self and the Other's self. That is to say, if my reply to someone's action is to be
responsible and not mechanistic or determined, I must see her action as issuing from a person: not an organism or thing. The Other provides both the origin and the limitation of my own responsibility.  

The Other's impact upon my responsibility may be illuminated by turning to a second aspect of responsible ethics, namely accountability. Any action finds its place in a dialogue of interaction in which my response will inform the Other's next move. Mutual accountability or reciprocity provides constancy, tying each response to precedents and objectives. I expect to be held accountable insofar as I anticipate certain kinds of responses to my action. I hold the Other accountable in my reaction(s) to her actions. "No action taken as an atomic unit is responsible." (H.R. Niebuhr, 64)  

In accountability I recognise that my action will have consequences. In a sense, my act negates all other possibilities. I have made this happen, and not

---

that, or that, or that. As such, all activity is irreversible; I cannot simply withdraw a promise as a means of nullifying an obligation. While there will be physical effects of any action, the key for responsibility is my expectation that my action will condition the actions of Others toward me.

Hence, the concept of accountability is necessarily mutual and reciprocal. I believe that my action will be respected by my counterpart as the action of her Other. My act may resonate with hers, and we can further the direction we (together) have authored. Or I can re-direct the interaction, making possible a fresh path.

We must include a further sense of accountability. I mentioned the function of accountability as a constant. Accountability gives interaction its future tense. The time period of any specific action may be very limited. I may act as though I may never see my counterpart again (if, for example, he happens to sit across from me on the train). And yet, clearly, my sense of future will condition my response. The task I envision may be specific and short-term (getting to Birmingham); or it might be immense, a life-calling (as it would be were I engaged to the man opposite). In this context, we need not distinguish between minimal goals and life-projects. The essential point
is that each responsible action is affected by some such time framework.

Thus far I have spoken of one Other, as though human interactions were a series of dialogues. This traditional setting of the issues is distorting, however, without the dimension of social solidarity. In previous chapters I stressed the social construction of selfhood. Ethical systems, however, are often constructed upon the model of the isolated agent. The subject, while not quite solipsistic, is certainly isolated and atomistic. The agent is set against the rest of the world — people, objects, events. Responsibility, however, builds upon the foundations of selfhood in social forces.

George Herbert Mead argued that the self is generated in social interaction. The self is peculiar in its capacity to stand in relation to itself; i.e., to be subject and object reflexively. But this is only possible via a manufactured dialogue. In Mead's view, the counterparts of the self in these dialogues are the significant others in one's life. Mead goes further to illuminate a fundamental triad essential to encounters between persons. Interactions occur between selves and significant others in the context of the Generalised Other. In the light of the
anonymous third person, we see our own acts, discourse and roles.

Similarly, Martin Buber saw the self as constituted in an I-Thou relation, together encompassed under a transcendent Thou. There are profound differences between the Generalised Other of Mead and the transcendent Thou of Martin Buber, but both set responsible relations within a broader context that gives the dyad its meaning. Mead's Generalised Other, in particular, is a constancy, a regularity that I perceive through the actions of individual selves upon me. These constancies are essential to a sense of accountability, and to giving meaning to my actions. The self responds to others who as Thou's are members of a group in whose interactions constancies are present in such a way that the self can interpret present and anticipate future actions upon it.

(H. R. Neebuhr, 78)

My interpretations draw meaning from the constancy I observe, both in myself and in my counterparts. These constancies become laws of human behaviour; i.e., 'objective' facts about human beings. This sense of law is a law of nature moreso than a reference to civil law codes. The social web of shared interpretations and behavioural constancies contributes much to the significance of my actions.
The social construction of selfhood extends or distributes responsibility, and it does so in two ways.

First is the bestowal of meaning. My role - as father, labourer, male, thief - is culture-specific. Society has a share in creating it, helps to define my actions and their consequences, and hence shares in giving the roles and activities their meanings. To take a loaded example: a society that outlaws heterosexual love - as in George Orwell's *1984* - shares in the responsibility for the so-called criminality of widespread sexual activity. The social origins of meaning cast doubt on Sartre's claim of the totally autonomous self. Further, socially validated roles such as motherhood demand that one can act on behalf of, and be responsible for others (deputyship).

This points to the second extension of responsibility. Bonhoeffer mentions that others form the origin and limits of my responsibility. The Other's respect for my freedom allows me to exercise responsibility. My constancy of behaviour exposes me to the manipulations of others. We can draw an analytical distinction between the distancing respect that enables me to determine events on one hand, and the Other's power to determine my choices on the other. In social interaction, however, the two roles
Shakespeare's Iago demonstrates the power of one person to shape the purposes and actions of another. Iago plays a part in directing Othello's actions. We can sketch a useful continuum of Iago's responsibility. At a minimum, he awakens Othello's jealousy. At the most, Iago is responsible for Othello's tragic downfall. It is possible (analytically) to locate a point at which the responsibility can be distributed between the two (to say nothing of the social framework). We can say that Iago's responsibility ends here, and Othello is responsible for all the rest. These judgments, however, are arbitrary. The course of events is determined neither by Iago nor Othello, but by both — and others — in a world whose meanings are socially stipulated.

Nevertheless, this bestowal of meaning and the opportunities for others to manipulate me should not lead us to dismiss the self entirely. Both the social self and the I of the I-Thou assume that there is a self; there is an I. Though there are personal and physical influences that determine my choices, and though their meaning is described in a social framework, I make choices based upon my act of
interpretation. I am a self who chooses in activity. Despite its grounding in social solidarity, responsibility demands that we acknowledge our authorship of our acts (appropriation).

I spoke of the task of interpretation in response to the actions of the Other, and in terms of the eye of the Generalised Other. In appropriation, I interpret my own action and take a position about it. Earlier, tying interpretation to past experience, I mentioned the caution inherent in the task. Yet, in personal responsibility, I can re-interpret my past, recasting its meaning, and re-directing my life-project. This interpretative process is metanoia, as it radically shifts my sense of calling and identity.

An ethic of responsibility includes, but is not determined by judgments of right and wrong, objectives which are good or evil. In situ, in the midst of relations that require ethical judgment, responsibility calls for a quality of action that Neibuhr describes as the 'fitting' response. Such a quality encompasses my capacity to pursue a given course, the meanings applied to my actions (through my own and others' interpretations), my obligations to the Other or Others, and my reasonable expectation of future actions by those Others.
Where responsibility is reduced to guilt, accountability, or simple desert, aspects such as personal capacity, or reciprocal interpretations are devalued. My general argument in this chapter, however, is not merely that punishment slights these other aspects of responsibility; but that responsibility is a comprehensive, integrated quality of social relations. This quality - as a whole - is distorted by punishment in the prison setting, and it is in this sense that imprisonment impedes the development of responsibility in prisoners.
The Enforcement of Prison Discipline

Nothing is more rare in any man than an act of his own.

— Ralph Waldo Emerson

The Prior Committee, formed by the Home Office to study the prison disciplinary system, published its findings in 1985. Vivien Stern, a member of the Committee, reports that they specified three aspects essential to control: 1) staff-prisoner relations; 2) a meaningful programme of activities; 3) the perceived fairness of the system. Prison discipline benefits when a régime brings meaning to the prisoner's day, but discipline itself is directly tied to (1) and (3) above. Hence, staff-prisoner relations, and fairness illuminate the character of prison discipline. (The following is not a full study of the relations between staff and prisoners. My concern here is the impact of the staff's enforcement of prison rules upon the prisoner's personal responsibility.)

Two prison rules set the theme for a study of personal responsibility in prison. Rule 2, like Rule 1, was at one time intended to frame a philosophy of
imprisonment, to set the tone for policy. Rule 47 concerns prison discipline, and is the major means by which prisoners can be charged with disciplinary offences. In this section, my focus is Rule 47, and the impact of the Rule on relations between prison officers and prisoners. In the next section, I study the question of fairness in the adjudication of offences against discipline. These two sections will prepare the ground for reflections on prison discipline and personal responsibility.

2. (1) Order and discipline shall be maintained with firmness, but with no more restriction than is required for safe custody and well ordered community life.
   (2) In the control of prisoners, officers shall seek to influence them through their own example and leadership, and to enlist their willing cooperation.
   (3) At all times the treatment of prisoners shall be such as to encourage their self-respect and a sense of personal responsibility, but a prisoner shall not be employed in any disciplinary capacity.

   (Cited in Plotnikoff, 26)

47. A prisoner shall be guilty of an offence against discipline if he:
   (1) mutinies or incites another prisoner to mutiny;
   (2) does gross personal violence to an officer;
   (3) does gross personal violence to any person not being an officer;
   (4) commits any assault;
   (5) escapes from prison or from legal custody;
   (6) absents himself without permission from any place where he is required to be, whether within or outside prison;
   (7) has in his cell or room or in his possession any unauthorised article, or attempts to obtain such an article;
(8) delivers to or receives from any person any unauthorised article;
(9) sells or delivers to any person, without permission, anything he is allowed to have only for his own use;
(10) takes improperly or is in unauthorised possession of any article belonging to another person or to a prison;
(11) wilfully damages or disfigures any part of the prison or any property not his own;
(12) makes any false and malicious allegation against an officer;
(13) treats with disrespect an officer or any person visiting a prison;
(14) uses any abusive, insolent, threatening or other improper language;
(15) is indecent in language, act or gesture;
(16) repeatedly makes groundless complaints;
(17) is idle, careless or negligent at work, or, being required to work, refuses to do so;
(18) disobeys any lawful order or refuses or neglects to conform to any rule or regulation of the prison;
(19) attempts to do any of the foregoing things;
(20) in any way offends against good order and discipline;
(21) does not return to prison when he should have returned after being temporarily released from prison under Rule 6 of these Rules, or does not comply with any condition under which he was so released;

(Cited in Plotnikoff, 82)

Rule 47 exemplifies the quasi-legal structure under which a prisoner lives. It represents a vast and complex code that regulates the behaviour of prisoners as well as the conditions of their confinement. While Rule 47 details disciplinary offences, other rules regulate visits and mail, the release of information, protective or preventative segregation (Rule 43), work, diet, exercise, hygiene,
responsibility

education — in short, prison rules govern every aspect of the prisoners' lives. I focus upon Rule 47 because it constitutes the formal framework for holding prisoners accountable for their actions.

In my discussion of responsible ethics, I described the role of interaction in shaping the agent's responsibility. Unfortunately, H. Richard Niebuhr's analysis is weak on the contaminating influence of power disparities, which mark the interaction of persons as they respond to each other. Erving Goffman sheds light on staff-prisoner relations by drawing attention to the echelon power structure, whereby any inmate is subject to the discretion and sanctioning power of any staff member. Interactions within prisons are profoundly conditioned by the opposed roles of staff and prisoner.

Stan Cohen and Laurie Taylor remark upon the quality of us and them in the perspectives of prisoners with whom they worked. In the words of one of their prisoner-correspondents:

Much of the interaction between staff and inmates revolves around the assertion of authority and the attempts by cons to negate or offset its impact on their lives. This is the centre of gravity of prison life.

(Cited in Cohen & Taylor, 226)
Similarly, James Peck has written:

The hacks of course hold all the aces in dealing with any prisoner because they can always write him up for inevitable punishment.

(Cited in Goffman, n. 40, page 159)

A quick scan over the articles in Rule 47 demonstrates the prisoners' case. 47(20), for example, illustrates the vast range of the prison officers' discretion: a prisoner may be punished, according to Rule 47(20) if s/he "in any way offends against good order and discipline." (in Plotnikoff, 82)

Rule 47 establishes the imbalance between prisoners and prison officers on a number of points. It is an offence, according to article (12), to make a false and malicious allegation against an officer. There is no corresponding protection for prisoners in the rules. Further, given the powers of discretion

---

Nigel Walker, in his contribution to Bottoms & Light, follows Rule 44 to argue: "Unlawful or unnecessary exercise of authority' by an officer is a disciplinary offence" (Bottoms & Light, 196-197). Rule 44, however, relates to the illegitimate use of force; it prohibits officers from acting 'deliberately in a manner calculated to provoke a prisoner'. There is no explicit reference to false charges against a prisoner.
enjoyed by prison officers, article (12) will obviously inhibit genuine complaints as well as specious or malicious ones.

Rule 47(6) prohibits the prisoner from absenting himself from a place where he is required to be without permission. Confinement is the central purpose of prisons, and the rule does help staff to ensure against escapes. But the intrusion into the prisoner’s behaviour is damaging. Erving Goffman comments that this sort of obligation:

not only puts the individual in a submissive or suppliant role ‘unnatural’ for an adult but also opens up his line of action to interceptions by staff.

(Goffman, 41)

Perhaps the greatest effect of the power imbalance upon discipline under the rules is hidden. The ultimate discretion is the prison officer’s choice to enforce a given rule or not. The officer may choose to overlook an infraction. In practice, an offence is not punished unless the prison officer decides to enforce the article in question.

Discipline refers to many ways that the prison officer exercises control over prisoners. Prison officers escort prisoners from one part of the prison
to another; they observe prisoners constantly; they give orders; a prison officer reads (and censors) letters to and from loved ones.

Despite these roles, the prison officer's power can be overstated. Gresham Sykes states that the prison officer must depend upon prisoners to maintain order. He rightly points out that coercion — whether physical or psychological — is limited as a means of motivation. Instead, the keepers rely upon a system of rewards and punishments to enlist the prisoners' aid in maintaining order.

The custodians . . . far from being converted into brutal tyrants, are under strong pressure to compromise with their captives, for it is a paradox that they can insure their dominance only by allowing it to be corrupted.

(Sykes, 58)

The provision of rewards and punishments may include early release through parole, or loss of remission. But the prison officer does not have the power to award extra remission or directly to deny parole. Sykes stresses the officer's power to overlook minor offences in trade for compliance with more serious offences. Donald Sansford explains (with reference to a Borstal in New Zealand):

Officers rely heavily upon punishments of various sorts to maintain the behaviour they want in preference to reinforcers. . . . [The] officer on
the spot is left with very little room to do much on his own initiative except give verbal approval . . . because of his low position in the hierarchy of command.

(Cited in Wicks, 61)

To some extent, the compromise of power must be qualified. Sykes writes of Trenton State Prison, in the U.S., where staff-prisoner ratios are often as low as 1 to 200. In British prisons, a much higher proportion of staff may reduce the individual officer's need to rely on a prisoner's cooperation. Yet, because the British prison officer possesses limited power to reward prisoners, it would be hasty to dismiss Sykes' point as irrelevant to Britain.

A prison governor has written that beneath the strict code is a tacit understanding that prisoners, prison officers and administration compromise to maintain stability.

The prime function of this unwritten contract is to get people sensibly through their sentences. From the staff point of view this reduces hassle, stress and injury; for the management it avoids hostility from staff and inmates and keeps costs within bounds; for prisoners it allows men to 'do their bird'. There is a momentum towards 'balancing the boat' or 'steering into a skid' to counteract the fear on all sides of things going out of control. It allows the majority to live in peace.

(Michael Jenkins, in Bottoms & Light, 270)
Michael Jenkins' views provide two fruitful insights for our discussion of prisoner-staff relations. First, not all products of informality are harmful or undesirable. Depending upon its nature, stability can be very much in the prisoners' interests. One of the informal compromises which stabilise the prison is the staff's recognition of the prisoners' contribution to order. Prison Service policy may be one of total control; but, at this informal level, the interest of most prisoners in tranquillity is acknowledged and built upon.

The second implication of Jenkins' comments tempers the trust placed in rules and procedures to maintain human dignity and freedom. A legal code can as easily gird an oppressive system as liberate the oppressed. More practically, the ethics of responsibility help us to recognise the limitations of rules in shaping human activities: human agents are free to invent novel responses.

Formal limits, however, may be the best defence against the inevitable abuses generated by the power imbalance. The prisoners' dignity is most directly denied in the range of informal punishments available to the staff. These can include: cell re-assignment, sometimes from a single cell to a shared one; sudden
cuts in options for training or education; job demotions, reducing the already meagre pay. In addition to formal charges under Rule 47, the administration is empowered to impose segregation under Rule 43 - for 'good order and discipline'. Because Rule 43 can be enforced without adjudication, Rod Morgan includes it in a list of informal sanctions.

Morgan and Richardson stress that the tendency to rely upon informal punishment harms the prisoner.

Displacement of formal by informal disciplinary controls clearly constitutes a backward step for prisoners' rights and, by implication, subverts the process of judicial review. It means that hard-fought-for special rights and due process procedures are effectively evaded. The informal system is for the most part covert and lacking in safeguards. Applied repeatedly to long-term prisoners, the informal controls can involve extremes of segregation and dependency.

(Morgan & Richardson, in Bottoms & Light, 174-175)

The problem with informal disciplinary measures is not simply that they lack judicial guarantees of fairness. The deeper problem is that the rule structure institutionalises a gross disparity in power between prison officers and prisoners.

Two points arise from this imbalance. First, it is false: the hierarchy it creates is artificial. Prison practice depends upon compromises of this abso-
lute power, including the decision to overlook certain minor infractions. Second, the power imbalance nurtures the conviction that prison discipline is arbitrary and unfair. As H. Richard Niebuhr argues, personal responsibility collapses without reciprocal accountability. In the absence of more potent safeguards, the keepers are immune from the claims of accountability to prisoners, and the sense that the prisoner is at the mercy of the staff is inevitable.

Alfred Hassler, a conscientious objector, writes that the way he was treated in prison continuously fed his sense of indignation. He did not feel innocent or wrongly incarcerated, yet his experience of prison was marked by a sense of unfairness.

What indignation I feel toward prison practices is not the indignation of the persecuted innocent or the martyr, but of the guilty who feels his punishment to go beyond his deserts and inflicted by those who are not themselves free of guilt. This latter point is one that all inmates feel strongly.

(Cited in Goffman, 57-58)
In an open régime 'fairness' has much more meaning than power and its reciprocal quality is a better contributor to control.

— Michael Jenkins, HMP Long Lartin

Fairness can serve as a criterion of imprisonment in three key areas: 1) the convicted prisoner's desert of her/his particular sentence; 2) the balance of rights and duties between prison officers and prisoners (the subject of the preceding section); and 3) the formal adjudicatory and disciplinary procedures, which I refer to as prison justice.

In the first section, I cited H. Richard N. Buhr's point that the self finds its origins in interaction with Significant Others. As both parties interpret the actions of the Other, in light of the Generalised Other, the meaning of those actions is defined. Prison rules and their enforcement contribute to the process of bestowing meaning upon one's actions. In this way, the rules help to define the selfhood of the prisoner.
An example might clarify my point. Complaining to one's spouse about a callous officer may evince health in a marriage. The ability to share personal grievances would have survived the separation of imprisonment. If the grievance is overheard on a visit, the accusation may lead to informal repercussions (more likely, it will be ignored). If, however, the grievance is expressed in a letter home, then it may be held by the censor, following Standing Order 5B1 (regulating the censorship of prisoners' letters). Indeed, the prisoner may face disciplinary sanctions for her/his contravention of Rule 47(12) (making false charges against an officer).

The detail of my example should not detract from the point. An action which in one sense manifests intimacy between wife and husband (self as a faithful spouse), can also be defined as a cause of future discomforts (through informal sanctions), or labels the prisoner a rule-breaker, deserving of punishment.

The self arises not merely out of its possessor's interactions with significant others, but also out of the arrangements that are evolved in an organization for its members. (E.g., in prison, for prisoners)

(Goffman, 148)

Erving Goffman identifies the tendency of total institutions to intrude into significant relationships...
responsibility as a contamination. The structure of prison justice can be said to contaminate the prisoner's act by forcing its meaning; i.e., by determining the meaning of the act with reference to the lower status of the prisoner. To develop this point, I shall sketch the formal structure of prison justice. I then examine two sources of complaint: a) the biases inherent in the adjudicatory system; b) the uncertainty of punishment through the withholding of vital information from the prisoner.

Prison justice can be divided into three levels. At the first, the governor deals in summary fashion with the charges. Approximately 95 per cent of all disciplinary cases are heard by the governor—Graham Zellick estimates the number at 60,000 per year throughout the English Prison Service. The second level involves the prison Board of Visitors. The basic differences between governor's adjudications and those of the Board concern the gravity of the offence and the severity of the penalties available. (The Board hears more serious cases and is empowered to

---

punish the offender much more severely.) In the third case, the prisoner is charged with a criminal offence, and the case is handed over to the outside courts. (Here, of course, prisoners can be punished with additional prison sentences.) The chief punishments used by the governor and the Board are cellular confinement, loss of privileges, and loss of remission (that is, the prisoner forfeits a portion of the systematic reduction of the prison sentence.)

In recent studies of the disciplinary process, the view of prisoners has been consistent. Vivien Stern cites the report of the Prior Committee:

Inmates clearly believed that the adjudicatory system was heavily biased against them and that the inclination of both governors and Board members was to believe staff, rather than them.

(Stern, 116)

There is ample evidence in support of the prisoners' suspicion. For example, two studies of Board of Visitors adjudications6 (one covering four

---

6 See: Susan Iles and others, and David Smith and others, below, List of References.
prisons during 1978-1979, the other, during the first six months of 1982) found that in most of the cases brought before the Board, the prisoner was found guilty. At the four prisons studied in 1978-1979, 95 per cent of cases resulted in findings of guilt; in the 1982 study, only 4 per cent of cases were dismissed or resulted in acquittal.

A preponderance of convictions does not in itself mean that the adjudicatory system is unfair. More serious is the prisoners' charge that the Board of Visitors is biased by its close ties with the prison system. A key problem of justice is the conflict of interest in the Board's role. The chair of one Board of Visitors may have been too candid in explaining the care given to decisions by the Board:

If we're convinced that the prisoner is not guilty, we find the prisoner not guilty. If it's a bit of a toss-up or we're fairly convinced he did it but there isn't necessarily a legal proof, possibly hearsay . . . we, as likely as not, for the good of the establishment, would support the officer.

(Cited in Fitzgerald & Sim, 81)

Joyce Plotnikoff examines deeper issues of justice, including the very status of adjudications. The Board is empowered to hear cases involving gross personal harm or possession of illegal drugs - i.e., cases concerned with actions deemed crimes outside. (Data from the 1982 study show that approximately 40
per cent of cases before the Board might have been prosecuted as criminal offences. Also, the Board can punish a prisoner with the forfeiture of up to 180 days, in effect sentencing the prisoner to an additional six months of prison.

Despite these powers, the Board is not formally restricted in the same way as a court. In 1978, the Court of Appeal established the principle that Board of Visitors' decisions are subject to review by the courts. Yet, as Joyce Plotnikoff describes, other rights automatically held by defendants in criminal court are subject to the Board's discretion, granted to prisoners only by permission of those who serve as his/her judges. Prisoners may find themselves without the right to legal representation or even legal advice concerning the case.  

---

7 I am not competent to discuss the issues of jurisprudence involved, but one objection to the court's involvement in prison justice deserves mention. The claim was advanced that outside review undermines the governor's authority and introduces anarchy. I shall consider the links between coercion, control and responsibility below. Yet, the view that social order is maintained by protecting authority from claims of natural justice denies the mutual accountability between prisoners and keepers. In its unilateral sense of justice, this attempt to immunise prison discipline from review inhibits the growth of a sense of responsibility in prisoners and staff alike.
In H. Richard N·buhr's understanding of responsibility, the sense of being accountable to others is founded upon a reasonable chance of predicting the Other's response. It was in this context that N·buhr spoke of laws in terms of constancy in human behaviour rather than a legal code. Still, even within the more restrictive field of jurisprudence, the predictability of justice is crucial.

Personal responsibility and justice come together in three points: responsibility in the sense of capacity to choose the course of one's action; accountability, in the sense of owning up to one's actions; and foreknowledge, in the power to predict the social consequences of one's action. H.L.A. Hart defines criminal responsibility as follows:

[The person] at the time of his crime [should] have had the capacity to understand what he is required by law to do or not to do, to deliberate and to decide what to do, and to control his conduct in the light of such decisions.

(Hart, 218)

At present, prisoners are not entitled to receive a copy of the prison rules on reception. Somewhat absurdly, in place of the rules, the prisoners are given, in the form of a booklet, a summary of information thought by the Home Office to be necessary for prisoners. Although the information varies from one prison to another, many booklets fail to mention
censorship of letters, and are sketchy on procedures of prison discipline.  

Audrey Peckham wrote of her frustration in attempting to live within the rules.  

The thing I found hardest in the early days was the uncertainty of never knowing what innocent act could result in . . . punishment. I was suddenly returned to my small childhood, being shouted at by furious adults for some transgression which I did not even know was a transgression.  

(Peckham, pages 173-174)  

Prison rules that establish wide discretion for enforcement also contribute to perceived unfairness through the uncertainty of punishment. Rule 47(20) is notorious in this regard. The prisoner can be charged with an offence if he "in any way offends against good order and discipline". A significant number of cases are involved. To say that this rule in particular contributes to uncertainty is neither trivial nor a selective reading of the facts. The Prior Committee heard that, in 1984, 29 per cent of all proved offences were charged under Rule 47(20) (Cited in Peckham, pages 173-174)
This figure does not include the instances of segregation under Rule 43 (also 'for good order and discipline') which is for many an informal punishment.

I have discussed Rule 47(20) above in terms of discretion and the power imbalance between staff and prisoners. Here, my focus is the personal responsibility of the prisoner. It is clear that punishment under such uncertainty might be perceived as unfair or arbitrary. It is difficult to imagine how such a rule could contribute to a prisoner's developing sense of personal accountability, or how its enforcement could contribute to long-term order.

In *Justice in Prison* (1983) JUSTICE argued that Rule 47(20) should be abolished:

A provision of this kind is manifestly inconsistent with the principle that a person ought not to be punished for an act not known to be punishable at the time of its commission.

(Cited in Plotnikoff, 87)

A number of critics have charged that uncertainty is deliberately fostered by the Prison Service. Information of all sorts (not simply relating to discipline) is withheld from prisoners. David Leigh argues that secrecy is maintained:
to preserve power to manipulate the flow of information. As far as the prisoners themselves are concerned the principle is that they should have little information about their circumstances and the authorities should have an all-seeing eye.

Here again, the power imbalance is crucial. Given the discretion of the officers, the prisoner may not have known in advance that she would be charged for her action. Given the legal issues in the adjudicatory procedures, the prisoner may not have understood the process through which she was punished. Given the limits on her ability to call witnesses or cross-examine, she may feel that she has not been judged fairly. Taken together, the process of prison justice does not seem to nurture a sense of responsibility in prisoners:

1) The arbitrariness inherent in rules which, through discretion, lodge great power in her keepers, make it unlikely that a prisoner should feel responsible for the fact that her action has made her liable to prison justice.

---

2) The hearing is authoritarian in the discretionary powers of the Board or, more often, the governor, and in the restrictions that inhibit the prisoner’s conduct of her defence (calling witnesses, cross-examination, etc.) While the outcome affects the prisoner greatly, through loss of remission, or cellular confinement, the prisoner is unlikely to view the process as one in which she held responsibility as a participant. More likely, the process will encourage her to see herself as its victim.

3) To the extent that (1) and (2) describe prison justice, the prisoner is unlikely to develop a sense of genuine accountability, that is, to link her punishment to her actions, or to see those actions as threats to, or disruptions of, social order and a sense of community. Further, the penalties encourage the view that her accountability (the punishment) is tied to rules, and not persons. Where cellular confinement or administrative transfer is used, the punishments clearly inhibit any sense that she is accountable to a person she has harmed or a community she has disrupted.

The 1983 JUSTICE report, Justice in Prison, summarises the tense relations between fairness and prison justice:
The standards of open and impartial justice required by the rule of law are specially needed by prisoners because of their vulnerability, in the closed world in which they live, to abuse of power, humiliation and degradation. . . . [Our] system fails to provide satisfactory procedures. That failure increases the tensions of prison life. It creates an atmosphere of greater uncertainty, arbitrariness, unfairness and resentment. Condemned for infringing the law, the prisoner finds himself in a society ruled not by law, but by arbitrary power.

(JUSTICE, cited in Stern, 129)
The Shaping of Selfhood
by Prison Discipline

In *Saint Genet*, Jean-Paul Sartre explores the claim that imprisonment debases personhood. Sartre traces three dimensions of selfhood which are violated in prisoners: equality, transcendence and freedom. Each of these is a fitting subject for volumes of philosophy. I hope to confine my study of them to their relevance to the foregoing discussions of responsibility and prison rules.

Equality —

Equality is a complex and paradoxical concept. Questions about equality pertain to legal practice, and to political structure, but beneath these is the assumption of a basic quality, intrinsic to moral personality. In law, a principle of equality dictates that like cases must be treated alike. In political philosophy, equality is a principle for a just distribution of rights. Such equality, in law or politics, is not natural; if it were, societies would not need to strive toward it. Different capacities,
attitudes, personalities, etc. hinder equality in this sense. Yet, oddly, these inequalities apply only to fragments of persons, never the whole personality.10

The moral personality forms a significant link between equality and responsibility. John Rawls defines the moral personality by two attributes: 1) a capacity to know what is good for oneself; and 2) a sense of justice. Clearly, the capacity for 'moral personality' is not expected to be equal in all persons; what is equal is the respect owed to persons who possess a minimal level of the moral personality. "Provided the minimum for moral personality is satisfied, a person is owed all the guarantees of justice." (Rawls, 507)

The prisoner is assumed to fall below the minimum for moral personality; hence, the structure of prison rules is not required to grant equal respect to prisoners. Prison rules limit the prisoner's range of

---

10 See Georg Simmel, "How is Society Possible?" in Maurice Natanson: *Philosophy of the Social Sciences*, see also John Rawls: *A Theory of Justice.*
actions, but they also formally establish the prisoner's inequality. Given a structure that denies the capacity of prisoners to determine their own good and to maintain a sense of justice, their capacity for responsibility inevitably suffers.

In my discussion of staff-prisoner relations I focused upon the power imbalance between the two groups. I drew attention to the effects of this imbalance upon the interpretative aspect of responsibility. The prisoner's capacity to interpret his/her own behaviour, and that of the staff, is unsettled by a code of rules that defines and maintains the prisoner's lower status.

Erving Goffman explicitly ties the distortion of responsibility to the power imbalance between the keeper and the kept. Goffman writes:

The inmate's life is penetrated by constant sanctioning interaction from above. . . . Each specification robs the individual of an opportunity to balance his needs and objectives in a personally efficient way and opens up his line of action to sanctions. The autonomy of the act itself is violated.

(Goffman, 38)

Prison discipline violates autonomy by segregating one act from the whole stream of the prisoner's activity, and by defining that action with reference
to an abstract code. Moreover, the echelon structure disrupts the prisoner's ability to respond to others simply as persons; certain others have the power to subject the prisoner to punishments, both formal and informal.

I stated above that the disparity in power between staff and prisoner is false. As Gresham Sykes' study indicated, staff power is not wholly determinative of the staff-prisoner relationship. The uses of informal means of control and the necessary compromises of power outline a level at which responsibility is inevitably reciprocal.

The basic equality of the moral personality (at the level of human dignity, for example) shows how relationships based on dominance and subjugation distort the humanity of both parties. Responsibility entails mutual obligation marked by a balanced capacity to determine the direction of the interaction. It is in this sense that the echelon structure is a deceit. In denying the basis of morality in reciprocity between equals, prison discipline generates the perception of unfairness and hinders the sense of social unity essential to harmony.
Transcendence –

By transcendence, Sartre means the self-distancing reflection by which persons are able to examine their own actions and to judge them. We negate a prisoner's power of transcendence by ignoring the prisoner's version of events. An adjudicatory procedure that fails to provide prisoners with assurance that their version of events has been given equal weight is not only unfair; such bias convinces prisoners that though they can be punished, they are not genuinely accountable to the prison community, since they are not considered participants in it. The threat of punishment, attached (somewhat arbitrarily) to actions, subjects prisoners to a constant coercion. This stress is aggravated by the echelon structure which, far from ensuring order, unsettles the prisoner, who must examine her actions from the (capricious) perspective imposed by the keeper.

Taking responsibility, owning up to my own action (appropriation), means that I am able to reflect upon an act and interpret it (i.e., to bestow a meaning upon my own act). Further, I must be able to recognise the parallel between my interpretation of what I did and how I feel about that action; in short, to describe, but also to judge my own act. Finally, I
need to be able to predict, with reasonable accuracy, the response of others to my act.

Erving Goffman used the term *contamination* to describe the ways that staff intrude into the inmates' relations with Significant Others. In *Prison Violence*, a case was presented of an offender who sought brain surgery, primarily because he had adopted his keepers' definition of him as dangerous. This is an extreme example of a pervasive contamination in which the keepers claim the right to define the action of the kept. In terms of transcendence the intrusion is between the self and her own action.

Total institutions disrupt or defile precisely those actions that in civil society have the role of attesting to the actor . . . that he has some command over his world, that he is a person with 'adult' self-determination, autonomy, and freedom of action.

(Goffman, 43)

In Sartre's words, the prisoner must "affirm the object he is to others over the subject he is to himself" (Quoted in Fine, 413). Prisoners are led to mistrust their own interpretative skills, as the judgment that determines their future is imposed from above. In this way, imprisonment encourages heteronomy, an attitude that surrenders to others one's own capacity to judge right from wrong. The adjudicatory process distorts the prisoner's action by
limiting its meaning to the interpretation imposed by the keepers. Hence, prison justice makes it difficult for prisoners to recognise their own actions. If prisoners fail to own up to their actions, then this is partly due to the alienating procedures of prison justice.

Freedom —

Sartre writes of our existential freedom, a basic quality of being human, and not of the civil liberties conditionally granted to citizens. To discuss Sartre's point meaningfully, we must confine the term to the context of prison discipline and the ways that imprisonment fixes the prisoner in a particular role.

The regimentation of prisoners, which directly counters individuality, denies freedom, but it is not my specific concern here, nor is the fact that stigma inhibits development in prisoners after release. My focus is the way prisoners are fixed in one role by prison discipline.
The community, in depicting Genet as essentially a thief, for all time past and future, as displaying this character in all aspects of his life, denies Genet's freedom.

(Sartre, cited in Fine, 411)

In the wider society, the citizen's roles with respect to law are few. We may be law-abiding citizen (ideally); we may be law-enforcing judge or police officer; or we may be law-creating legislators. Prisoners are neither legislators nor (formally) enforcers. Their role with respect to the law parallels that of the citizen.

The difference between prisoners and citizens is not that the latter has greater say in the rules (laws) which they are called upon to obey. Rather, the primary difference is the degree of intrusion maintained by those rules. Legal codes allow citizens a considerable latitude. In prison, however, the sense of social order is more fragile. Behaviour which would be tolerated in society is defined as an offence inside. Joyce Plotnikoff quotes from the Manual on the Conduct of Adjudications, issued to Boards of Visitors:

A breach of the Prison Rules will often fall far short of conduct which would constitute a breach of the criminal law outside prison. . . . such a breach may often approximate more closely to what, outside, might be regarded as no more than anti-social behaviour.

(Plotnikoff, 83)
In interactions marked by personal responsibility I bestow meaning on the actions of some Other. In discussing responsibility, I remarked that all interpretations of the Other's action can be reduced to the threat-benefit dichotomy. In general, such simplification is unnecessary, since it degrades our interpretative creativity and flexibility. We can take pleasure in the unpredictable nature of the Other's response, accepting it without taking a defensive stance. In extreme settings (war, for example) we narrow the range of latitude granted to our fellow human's possible responses. It is safest to rely upon suspicion in meeting a stranger. Each encounter is potentially a threat.

Prison control fits such reductivism precisely. Actions deemed to be threats are prohibited or punished informally; benefits are defined by reference to the objectives set by the prison system. The prisoners' own desires are subject to the negation of transcendence: prisoners enjoy very little opportunity to define their own benefits. The rule structure locks the keepers into a mechanistic reaction to the prisoner. Prison practice reacts to perceived threats by meting out punishment, it rewards (with far less attention) the few actions deemed beneficial, and (officially) ignores a whole world of
interpersonal behaviour, the dimensions of symbolic expression, of loyalty, of faith, of sorrow or humour.

For the prisoner, the keepers' obsession for control contaminates these other dimensions of human life. In the sphere of good order and discipline, the rules and adjudicatory procedures fix the prisoner in the role of a potential threat. Where control is the dominant interest, no aspect of the subject's life can be left to chance.

The Rules . . . regulate or authorise restriction of nearly every element of human existence - the very antithesis of self-respect and personal responsibility.

(Marin, cited in Plotnikoff, 28)

To be sure, the prisoner community collaborates in maintaining the mores of distrust and threat. For Erving Goffman, inmate mutinies are a defensive strategy against the total institution's assault on the self. For Stan Cohen and Laurie Taylor, fighting the system is a way of adapting to, or coping with, the pressures of prison life. Confined in the mechanism of threat/benefit, both keeper and kept shape an environment marred by sharply defined allegiances, mutual distrust, defensive attitudes, the authority of force and the deep commitment to counter-force.
The last-mentioned, termed 'fighting back' by Cohen and Taylor, would seem to enable the prisoner to demonstrate to himself that he has not been broken by the system. He may depend upon rebellion to convince himself that coercive control has not deprived him of his will-power. One of Cohen and Taylor's correspondents directly links his rule-breaking behaviour to the excitement of transforming the tedious prison régime. In so doing, he proves to himself:

that life is not solely an authoritarian controlled existence of ennui, that one can break out of this, one can 'live' and not just exist, perhaps it entails living dangerously, perhaps leading finally to self-destruction but it does offer choice -- the choice of existing the existence of non-events or living the life of events, good or bad, which are at least one's own creation.

(Cited in Cohen & Taylor, 135)

Selfhood --

As the above quotation implies, a stress on authority and control invites counter-force. Prison discipline may well have a restraining effect on a proportion of prisoners, but there is a mixed message at the core of the method. The intrusive nature of the rules, their authoritarian enforcement, the
punitive consequences of misbehaviour — these suggest to prisoners that self-control is beyond their grasp.

According to Erving Goffman, the discipline of total institutions has an impact not only on the inmates' interpretations of their own actions, but also on their self-image. Whether or not sanctions such as cellular confinement have lost their sting for consistently punished prisoners, the self image hardens.

First, the stigma of prisoner — with the loss of equality, transcendence and freedom — means that some prisoners feel they have nothing to lose. Second, certain punishments increase the prisoner's stature with other prisoners (and some staff). Third, and most damaging to personal responsibility, the prisoner learns to treat her/his reputation with diffidence:

Having one's past mistakes and present progress under constant moral review seems to make for a special adaptation consisting of a less than moral attitude to ego ideals. One's shortcomings and successes become too central and fluctuating an issue in life to allow the usual commitment of concern for other persons' views of them. It is not very practicable to sustain claims about oneself. The inmate tends to learn that degradations and reconstructions of the self need not be given too much weight, at the same time learning that staff and inmates are ready to view an inflation or deflation of a self with some indifference.

(Goffman, 164-165)
Stan Cohen and Laurie Taylor reject the view that prison discipline creates a distinct kind of selfhood, that the prisoner is passive, forced to play the role of prisoner at every moment. Yet, paradoxically, they explain a number of typical roles of resistance to the mould 'prisoner'. (One might argue that to divide resistance behaviour into five styles indicates something of the prison's power to shape prisoners.) Their discussion is helpful in illuminating the anti-authority values of a sub-culture with little to lose. They also remind us that prisoners are varied, and do not spend every hour in the role of prisoner.

There are two ways to meet the seeming division between Cohen and Taylor, who stress the prisoner's powers of resistance, and Goffman (as well as Foucault) who emphasises the institution's power to control. The first explanation builds upon the individuality of prisoners. The second arises from the privilege of perspective I advanced in Phenomenology, above.

From the first perspective, one prisoner may be susceptible to the manipulations of the institution, while another may not. More accurately, prisoners can grow in their powers of self-determination, in self-confidence, in active responsibility (i.e., in activating their capacity for responsibility).
Prison rules formally ignore the developmental aspects of personal responsibility. Only through discretion or informal sanctions can the difference between one prisoner and another be recognised. Otherwise, infraction of a rule is straightforward, regardless of age or capacity, and punishable.

Moral responsibility, so far from existing in a fully fledged sense in every man (with the exception of a few carefully defined categories) is in fact something into which we grow, as a result of our life experiences, and the way in which we are treated by others and encouraged to see ourselves.

(Adrian Speller, 86, quoting from Prisons and Prisoners in England Today 1978)

A second explanation of the paradox between the keepers' control and the independence of the kept is possible. Prison moulds a delinquent role even as it fosters the strength of resistance in prisoners. This conclusion is consistent with the view I espoused above (in Phenomenology) that there is an inviolable core of persons which penal techniques cannot overwhelm. Prison discipline can distort one's sense of responsibility, but the moral personality is an inalienable aspect of human nature. As such, it finds its origins and limits in reciprocal relations with others. We grow into responsibility and community allegiance as we develop a sense of self; i.e., by learning to interpret the ways our actions are judged by others.
Prisoners and Responsibility

The foregoing sections prepare us to reconsider the prison environment as it shapes personal responsibility in general, and accountability to a community in particular. The central issues in this context are the encouragement of responsibility in individual prisoners (built upon a personal stake in harmonious relations); the maintenance of control (order imposed from above); and a sense of community (through fairness and reciprocal respect).

One way to summarise the chapter to this point would apply H. Richard Nièbuhr's demonstration that responsibility rests upon personal freedom. The prisoner, facing the power of the prison officer, the intrusion of prison rules, and the biases of prison justice, is sentenced to a powerless existence, in which the loss of responsibility is inevitable. Bluntly, despite hopes that a prison term might force an offender to develop some self-control, the prison system's coercive authority maintains prisoners in passivity, thus destroying any growing capacity to direct their own lives. Such a conclusion, however, is incomplete.
The extent of the compromises needed to maintain control, the prisoners' ability to perceive the unfairness of prison justice, the manifold styles of resistance to the mould 'prisoner' — all demonstrate that the above summary ignores the basic (i.e., inalienable) freedom of prisoners. Responsibility is not only a capacity toward which we strive, but also a quality of all human interaction.

Hence, the prison is marked by a reciprocity, belied by official policies of control and imposed order. Where the prisoners' capacity for responsibility is respected, the exercise of that power encourages growth, genuine accountability and a sense of self-determination. The possibility that prisoners will exploit the tolerance, and that violence and/or disruptive behaviour may increase must be conceded. Where control is built upon coercion, however, and the prisoners' personal responsibility is attacked, a perverse reciprocity is likely, marked by polarisation, defensive reactions, brutal control and self-righteous rebellions.

There is a paradox at the heart of the issue: prison policies of control — the discretion lodged with staff, the governor's punitive measures — deny the basic human responsibility of prisoners. But
because responsibility is basic, prison cannot destroy that responsibility. Indeed, insofar as responsibility is intrinsic to human interaction, 'control' of prisoners (patterns of behaviour imposed from above) is impracticable.

Paul Keve has written:

We are basically and deeply wrong when we set up a 'correctional' institution that simply cannot be operated unless it reverses normal human psychology, punishing the prisoner for acts of insistent individualism and rewarding him for . . . [what] in the prison context may in fact be a tragic surrender of self pride.

(Keve, 44)

Keve's statement neatly captures the complexity of prison control and personal responsibility. On one hand, the prisoner's individualism is punished; the prisoner's capacity to determine her own benefits and to perceive injustice is attacked. Her powers of personal responsibility suffer. On the other hand, personal responsibility cannot be destroyed; it is part of 'normal human psychology'.

Prison policy, of course, is rarely explicit about the tendency to attack insistent individualism, to break wilful prisoners, or to discourage personal responsibility. Prison Rule 2, for example, states that the treatment of prisoners must be such as 'to
encourage their self-respect and a sense of personal responsibility'. In a 1984 document, the Control Review Committee (CRC) wrote:

> It is . . . essential that the whole system which bears on the prisoner should be structured in a way which encourages him to co-operate rather than the reverse and which makes a clear connection between the prisoner's behaviour and the course of his prison career. We doubt if the present system passes this test.

(CRC, paragraph 22)

The CRC states that coercion is a limited tool of control. Prisoners, it concedes, are given the wrong signals, and decisions taken about their lives often seem arbitrary and capricious. The Committee acknowledges that the system of incentives for prisoners must be expanded, so that they can see personal benefits in cooperation. The need to involve prisoners in planning their 'careers' is recognised. Perhaps most important, control is considered in the context of the whole prison system: educational and vocational resources, staff training, architecture, allocation of prisoners. Control is not restricted (as I have had to do here) to supervision, prison rules and adjudication.

The CRC Report implies that a well ordered community, achieved through hierarchy and the rigour of prison rules, is compatible with the development of
a prisoner's capacity for responsibility. At the heart of their position is the primacy of control imposed upon prisoners from above. They assert the need: 'for staff to be in control at all times' (¶16); for 'a clear framework of rules that are applied firmly and fairly' (¶13); and for direct connections between behaviour and consequences.

At issue is not only the undue reliance upon control 'from the top', but also the various interpretations of the concept 'responsibility'. Responsibility is fundamentally reciprocal: to maintain my freedom I must acknowledge and respect the freedom of others. A report by the Chaplain's Working Group spoke of maintaining the humanity of disruptive prisoners in highly controlled settings:

An important aspect of keeping 'human life really human' is the practical recognition that responsibility and accountability for one's decisions are of the very essence of the moral stature of men and women.

(Chaplaincy Working Party Report, chapter v.)

Building upon this principle, the Working Group requires a reciprocity of responsibility, such that the keeper is held accountable to the kept, balancing the prisoner's burden to respect the prison officer. Yet the Chaplaincy's Report does not acknowledge the debilitating role played by the disciplinary
structure, or the effects of the power imbalance in destroying the prisoners' fragile sense of personal responsibility. It does not discuss ways in which prisoners' personal needs are sacrificed to the objectives of the Prison Service.

In both the CRC Report and the Chaplaincy's Report, responsibility is reduced to accountability. Prison justice is seen in terms of fair enforcement of rules; the prisoners' responsibility, in terms which are clearly retributive: incentives for good behaviour, 'disincentives' for disruptive behaviour. Underlying both documents is a double standard of responsibility: power and control must rest with the staff; blame for disruptive action rests with those identified as dangerous prisoners.

In contrast, I have argued for a comprehensive sense of personal responsibility, comprised of:

A) A capacity to decide upon a course of action to which one is committed (appropriation);
B) Based on one's understanding of the Other's actions (interpretation);
C) In expectation of further patterns of interaction (accountability);
D) Where selfhood is conditioned by the social setting.
From this perspective, the prisoner is accountable to other persons - not to rules. Objectives are determined by the prison community in daily interaction - not imposed from above. The capacity for responsibility is nurtured by respect and flexibility, allowing the prisoner to exercise self-determination - responsibility is not encouraged by reacting to 'misbehaviour' with punitive sanctions.

Critics point out that, despite the CRC's thoughtful words about open régimes, the Prison Service fails to recognise that human dignity lies at the heart of good order. Vivien Stern comments that prisons must reverse their tendency to begin from the priority of control, and base their policies instead upon the need to maintain human dignity.

Starting from such a premise - to preserve prisoners' individuality, humanity and dignity - almost every aspect of daily life in most prisons could be examined and found wanting.

(Stern, 230-231)

I have argued that the rigid stratification of prisons, the intrusive nature of the Rules, the secretive and authoritarian enforcement of prison policies deny self-respect and personal responsibility. I have argued that the uncertainty of punishment, the arbitrary nature of informal sanctions
and the unilateral 'justice' of formal hearings inevitably distort the concept of accountability. I have not asserted that prison governors are wicked tyrants or that prison officers routinely resort to physical brutality. Rather, my point has been that prison coercion, in its denials of the prisoners' equality, transcendence and freedom, is intrinsically degrading, and inevitably distorts the prisoner's capacity for personal responsibility.

The CRC is able to pretend that control and personal responsibility are compatible by reducing the latter to liability to punishment (i.e., by reducing responsibility to retribution). In stressing firmly applied rules and staff supervision, the CRC — like the Prison Service in general — slights the dimensions of interpretation, appropriation and social solidarity. The requirements for these cannot be met piece-meal: responsibility, as I have stressed, is a comprehensive quality, intrinsically personal and reciprocal.

In this context, the social dimension of responsibility is decisive. From a fairly secure position, we may assume that the Generalised Other represents socially agreed standards, a public ethos of widely shared norms. Yet our perspective reflects fairly
healthy, supportive experiences of socialisation. We who trust our social institutions do so, in part, because our social institutions support us.

Our perspective on the Generalised Other is not shared by those who are — by definition — socially marginalised. Where socialisation raises conflicts in selfhood, the Generalised Other is restrictive; when coercive means are utilised, where conformity is won through force, the Generalised Other is oppressive. It is here that one may find an alternative identity in resistance, one that provides support and affirmation.

Hence, the coercive means basic to prison practice confirm many prisoners in the mores of the alternative identity. Attempts to impose conformity through punishment, or to establish the state's interpretations as objective truth, validate the prisoners' suspicions that force determines what is right, and that their views are systematically excluded. It is not surprising that prisoners, too, should come to see responsibility merely in terms of liability to punishment; that they should fail to develop self-determination, or a sense of obligation to society.
Prison discipline and control deny a sense of responsibility to community—hence, the capacity for morality—in three ways. First, responsibility reduced to retribution implies that one is accountable to rules, and not to persons. The common punishment of cellular confinement (or the transfer, more often an informal sanction) reduces the chances that the prisoner might connect the punishment to harm s/he has done to the community.

Second, the power wielded by staff and administration, that defines the prisoner’s act as punishable, encourages in prisoners a heteronomous, force-based morality. Excluded from the processes of determining objectives (benefits) or justice (fairness), the prisoner learns that an act is wrong because the dominant party defines it as wrong. The prisoner connects the punishment to the enforcer—the keepers—rather than to fellow prisoners or the prison community; that is, rather than the actual victims.

The third way that prison discipline discourages responsibility to the prison community concerns the discretion of the prison officer. Offences are not punished unless staff members choose to enforce the rule. Inevitably, the mores of prison communities include the notion of ‘getting away with’ infractions.
Whilst informal compromises might be essential to the maintenance of order, irregular enforcement teaches that actions are wrong only if they are punished. This lesson is underscored by the deliberate and systematic denial of the prisoner's interpretative powers. Prisoners must yield to their keepers' sense of the boundaries of acceptable behaviour; hence, acts which do not result in punishment are judged acceptable.

Prison justice actually unhinges a personal basis of morality. Rather than a sense of duty or responsibility to one's community, prison discipline develops a sense that things are wrong simply because they are punished; that one cannot trust one's own judgment but must find an outside authority to determine the morality of one's act; that the state's version of events - according to which I am in the wrong - is the true account, since the state has the power to enforce its (peculiar) sense of right and wrong.

The arbitrariness of the application of prison justice teaches that it is just luck if you are punished or not. More important, it teaches that it is just luck if x or y is good (i.e., tolerated), or bad (i.e., punished). Here is the source of moral nihilism in totalitarian rule: Since punishment is
based in power rather than in a reciprocity of respect for one's sense of right and wrong; and since power is applied unevenly (to compensate for the risks of rebellion, or to humanise an otherwise mechanistic rule, or to gain trade-offs in return), right and wrong, good and evil are likewise arbitrary.

Such is the damage inflicted upon prisoners by 'good order and discipline'. This chapter has identified and discussed aspects of prison control which directly attack personal responsibility. It is less clear if prisons can operate in a way that encourages — or even recognises — the prisoner's personal responsibility. I have argued that responsibility is a basic quality of human relations, and that a crucial aspect of responsibility is reciprocity. If this is plausible, then it is also likely that increased attempts to assert discipline through force will be met with more determined counter-force.

An attempt to maintain order through respect for prisoners seems to be the more difficult and risk-laden course. There are prisoners who, as John McVicar described (above, *Prison Violence*) judge others merely by force. Others match Hans Toch's descriptions, determined to escalate disputes into violent confrontations. Still other prisoners eagerly
exploit fellow prisoners. The thriving underlife\textsuperscript{12} of prison provides persuasive reasons for rigid surveillance and controls.

Nevertheless, because 'respect for prisoners', honouring the dignity of the prisoner, encouraging genuine responsibility, builds upon the reciprocity common to all interaction, it is the more realistic approach. Despite its risks, the recognition of the prisoners' equality, transcendence and freedom is likely to lead to the most stable and constructive social order.

I shall conclude with three general points about prison régimes built upon human dignity. First, the recognition of the prisoner's transcendence requires listening to prisoners' perspectives. Mike Fitzgerald has written, in response to the CRC Report:

Staff-prisoner relationships involve negotiations, and for negotiations to take place each side must be able to speak, and to have its accounts heard and granted meaning by the other.

(Fitzgerald, in Bottoms & Light, 154)

\textsuperscript{12} The term 'underlife' is used by Erving Goffman, Op. cit, to describe the adaptive strategies of the inmate sub-culture within the total institution.
Second, greater equality between staff and prisoner, and hearings under natural justice, introduce the prisoner to the sense of fair conditions and of genuinely fair proceedings. In this way, the rules under which s/he lives are not so much a symbol and means of her oppression, but a means of ordering the community. Such rules would have social order as their goal rather than to maintain the prisoners' inferior position, and rather than to control the situation from above at all costs. Hence, the rules might genuinely attract the prisoners' assent.

Andrew Young, referring to the CRC Report, wrote:

We should not only think of control as the imposition of coercion. . . . the most effective form of control is that which facilitates the voluntary and rational recognition of rules. The most stable forms of order are those in which individuals feel an obligation to rules, not ones in which conformity to rules is imposed by pressures external to them.

(Young, in Bottoms & Light, 111)

Finally, respect for the personal responsibility of the prisoner — however under-developed the respect or the responsibility might be — builds upon the participatory status of the prisoner, to give the entire prison community a voice in setting its objectives. True benefits for prisoners are not the base bribes of privileged job assignments or freedom
to exploit weaker prisoners under the blind eye of a particular officer. True benefits involve the right of prisoners to determine their own ends. A clear signal to prisoners that their dignity is respected is the willingness of the keepers to share in the development of objectives. It is this step that enables the prisoner to fill a role of responsibility, compromise and perhaps even of allegiance.

John Rawls has written:

The recognition that we and those for whom we care are the beneficiaries of an established and enduring just institution tends to engender in us the corresponding sense of justice. We develop a desire to apply and to act upon the principles of justice once we realize how social arrangements answering to them have promoted our good and that of those with whom we are affiliated. In due course we come to appreciate the ideal of just cooperation.

(Rawls, 473-474)
List of References


Sartre, Jean-Paul: *Being and Nothingness*, New York: Pocket Books, 1966


Wicks, Robert J.: *Guard!*, Houston TX: Gulf Publishing Co., 1980

POSTSCRIPT

Review

The prison is a basic social institution. Its roots pervade society so deeply that even a single-minded focus on the insulated world of the prison must raise profound themes of our culture; e.g., good-evil, freedom-determinism, justice. The intended functions of prisons are no less complex. Imprisonment serves to punish or rehabilitate; to symbolise boundaries of behaviour; to represent and supplant personal vengeance; to establish formal means of responding to social disorder and conflict. This complexity rules out a simple ethical approach: I cannot argue that my analysis entails a blanket condemnation of prisons, nor that pacifist principles logically require specific reforms.

My study has provided a critique of prisons, however, in clarifying fundamental questions about them, and in identifying significant flaws. In closing, I shall review the major points of Part One and Part Two. These points will raise issues that are more explicitly theological. Finally, I offer three principles for responding to the harms I have identified.
Prisons in Perspective analysed the theoretical foundations of imprisonment. Using diverse approaches, each chapter identified and questioned established penological assumptions.

History demonstrated the ambiguities in the early prisons, many of which continue to afflict imprisonment. Prisons were never defined with any precision. Reformers' claims combined deterrence through punitive deprivations with rehabilitation through intrusive measures. As a symbol, the prison cannot mirror the offence, nor can we restrict its symbolic reference to the state's power.

History also indicated that imprisonment is closely linked to conflict in society (a theme that surfaced in later chapters). In History, I showed that prisons assumed the roles of quelling disorder and dissolving conflict by means of quarantine or banishment; in short, by hiding the conflict rather than by resolving it. As an approach to crime, prisons are inherently divisive, and this was clear in the earliest examples.

A final theme of History was that the prison gained a hold on the public through Utopian claims that they would reduce social unrest and criminality.
I argued that these claims were built upon faith in the emerging human sciences. My critique of materialism implied that the promises of prison reform were false, built upon mistaken assumptions about human nature (a second recurring theme). If contemporary penologists are persuaded that prisons are not effective in rehabilitation, then perhaps we may make the parallel point that prisons are not reformable.

Retribution disclosed a continuum of justice, from the retaliatory harm for harm, through the boundary-setting functions of denunciation, to the aim to restore wholeness after an offence. I conceded that retributive models can reveal the harms that need our attention. But as a theory of punishment, justifying harm to wrongdoers, retribution fails because the harm of punishment is immeasurable: penal harm cannot be meted out proportionately and, more to the point, the cycle of harm has no clear end. In Retribution, I first suggested that the punishment of wrongdoers is socially dysfunctional; the pains of confinement harm society.

Anthropology showed the failures of penal theory to recognise the humanity of prisoners. Each theory was shown to rely upon a simplistic understanding of human nature. Retribution is persuasive only if we
accept its categorical divide between innocent and guilty human beings. Rehabilitation reflects excessive faith in the powers of the human sciences to 'cure defectives' on one hand, and a reductivist view of human beings as profoundly malleable on the other. Deterrence, too, reduces human motivation to a simplistic level. Humans are either above sin, and wholly rational, or mere organisms, controlled by the impact of stimuli. In terms of social defence, society must be defended from potential predators, 'the dangerous few'. In each case, penal anthropology is reductivist, dissolving the complex tensions within human nature. (I shall discuss this tendency below.)

Phenomenology showed that prison régimes restrict the prisoners' bodies to the objectives of imprisonment. At the same time, paradoxically, the body's privilege of perspective establishes the prisoner's capacity for independent interpretation. Phenomenology also suggested that the failure of penal theory to acknowledge the prisoners' perspective renders penal practice a perpetually futile enterprise.

The Harms of Imprisonment demonstrated that the prison, according to the balance of evidence, is far more likely to corrupt than reform the prisoner. In Personal Responsibility, I showed that prison
discipline contaminates the prisoners' relations with others and, specifically, damages their capacity to make decisions and own up to their actions. In *Sexuality*, I showed that the punitively celibate world of prisons debases sexuality, inclining sexual conduct towards aggressive or exploitative purposes. In *Prison Violence*, I linked the violent behaviour of prisoners to society's abhorrence of them.

*The Millstone*

We submit that the basic evils of imprisonment are that it denies autonomy, degrades dignity, impairs or destroys self-reliance, inculcates authoritarian values, minimizes the likelihood of beneficial interaction with one's peers, fractures family ties, destroys the family's economic stability, and prejudices the prisoner's future prospects for any improvement in his economic and social status. It does all these things whether or not the buildings are antiseptic or dirty, the aroma that of fresh bread or stale urine, the sleeping accommodation a plank or an inner spring mattress . . .

(AFSC, page 33)

Stumbling blocks are sure to come; but woe to him by whom they come! It would be better for him if a millstone were hung around his neck and he were cast into the sea, than that he should cause one of these little ones to stumble.

*(Luke 17: 1, 2)*

-193-
The biblical symbol of the millstone captures a central concern of my argument. While aspects of my analysis reflect convictions unique to pacifism, a broad range of theological opinion will find the corrupting influence of imprisonment disquieting. On practical grounds alone, the profound harms inflicted upon offenders by prisons reveal that imprisonment harms society.

Phenomenology followed Michel Foucault's argument that the penal enterprise limits the freedom of the prisoner. In Moral Responsibility, I described the means by which prisons violate the prisoners' autonomy. The work of Maurice Merleau-Ponty, by contrast, explored a level at which we are intrinsically free. In this light, prisons are founded upon an inherently futile mission. Imprisonment is not a deprivation of freedom, but a contamination of it.

The attempt to make what is morally evil more or less impossible by coercion is not only . . . quite utopian in this world, but must in the concrete degenerate into a morally wrong attempt to eradicate the scope for freedom itself.

(Rahner, 248-249)

From a theological perspective, it is clear that prisons are socially divisive. I have discussed the simplistic manner of classifying human beings in
penology. Prisons are inevitably divisive and reductivist, since the institution of punishment entails two opposed roles of punisher and punishee. This sharp dichotomy shows itself in the exaggerated importance given to the role of banishment, isolating one world from the other. The contemporary form of this distortion is the obsessive concern of authorities for control over other worthy requirements of prison life.

Another interpretation, however, builds upon the contradictions within each opposing pair. Imprisonment can be characterised as both utopian and pessimistic. In view of the harmful effects of prisons, each decision to incarcerate an offender is a pessimistic judgment, and each commitment to build a new prison is utopian. To give priority to retributive punishment is pessimistic in that other responses to wrongdoing are likely to bring greater benefits.

On a deeper level, pessimism colours the presuppositions about the nature of offenders. To characterise prisoners as malleable is pessimistic in denying the prisoners' powers of transcendence. To stigmatise an individual as dangerous is pessimistic in reducing that person to the monolithic status of a threat.

Faith in prisons is utopian in its confidence that control over prisoners' actions can be achieved. The
current ethos is less optimistic than that of rehabilitation, which showed some faith in both the therapist and the prisoners. But central to hopes for imprisonment built on social defence theory is the faith that we can predict who among us will pose a risk. Retribution, treated as pessimistic because of its advocacy of punishment, is equally utopian in characterising the majority of people (or, indeed, anyone) as innocents. Further, it promulgates the view that punishment brings the conflict to an end. Because retribution ignores the harmful consequences of punishment, the resolution it promises is specious.

From its Enlightenment beginnings, the prison experimented in ameliorating the ills of society through coercion and through intrusions based in human sciences. In practice, imprisonment reveals many idealistic excesses. Prisons counter evil by condemning a small section of the populace to banishment, thereby trivialising the pervasive nature of human evil. The prison marks an attempt to create a setting of total control, or a laboratory of human sciences, free from the variables of the wider society. The prison's function of preventing or veiling the stresses and conflicts in society is likewise utopian. A true interest in resolving conflicts would give priority to restoring wholeness, and seek the sources of conflicts.
The specific nature of this idealism sets imprisonment against a Christian social ethic. Words written with reference to policies of nuclear deterrence apply equally to the prison enterprise:

The characteristically human excellences lie in working with, not against, limits — in living in the body, aware of its mortality and fragility. To work with a vision of transcending all limits is to seek not to be human . . . and the search for a technologically impregnable social structure is in danger of this aspiration not to be human.

(Rowan Williams, pages 6-7)

If there is irony in a pacifist charge that prisons are idealistic, then this reveals how easily the case can be turned on its head. Prisons, it might be argued, represent a realistic assessment of the limitations of social life. One who sees that the use of force is inevitable, and who understands that no social institution can be made perfect, will also accept the necessity of prisons.

To respond theologically to this point, I must make explicit an implication of Rowan Williams' statement, and then counter it. To oppose the hope of transcending limits suggests that one opposes progress. In this sense, human progress is a rebellion against God, insofar as it assumes some sort of salvation independent of God.
This logic could be extended to claim that we play God in judging others, in condemning them to punishment. Our attempts to rehabilitate people through behaviour modification would also appear to usurp God's role; it, too, would seem to evince a search for a 'technologically impregnable' society.

My approach has taken a different course. I have argued that peace provides criteria for true progress. Peace encompasses harmony, allowing diversity to prosper; solidarity, recognising and building upon our inter-connections; engagement, entering directly into conflicts to discover the underlying tensions.

Prisons mark an attempt to veil the stresses of industrial society. Prisons deny, in the strongest terms, our inter-connections. In curtailing the freedom and transcendence of prisoners, prisons are inherently degrading. The penal vision of progress - ever-increasing control over the confined - assaults and trivialises the soul. The regimentation and stigma of imprisonment deny equality, sow divisions and destroy harmony. Thus, in light of Christian pacifism, prisons entail an anthropology that is theologically untenable. Pacifism does not oppose progress, but it denies the future vision upon which penal objectives are based, a future that offends hopes for peace.
Principle Recommendations

After such a catalogue of flaws, there seems to be no hope of redemption. In Pacifism, I characterised Quaker pacifism as practical and hopeful as opposed to practical and cynical. I stressed the Christian pacifist conviction that all people are inter-connected. I cited a Friend's belief that God does not require more than is humanly possible. This sense of a finite duty empowers me to affirm suggested reforms that are both thoroughly un-original and somewhat facile in light of the profound harm identified in Part Two.

1) Decisions made through reasoned negotiations based upon mutually beneficial principles are ethically preferable to the enforcement of oppression through coercive force. We should welcome those reforms that give prisoners formal instruments to hold society accountable for the conditions we impose upon them. These include the code of minimum standards advocated by NACRO and others; increasing scope for the enforcement of human rights in prisons (e.g., through the European Standard Minimum Rules for the Treatment of Prisoners); and the application of natural justice to prison discipline advocated by the Prison Reform Trust, the Howard League for Penal Reform and others.
2) Robert Stroud held that the most powerful force for rehabilitation was the prisoner's own powers of creativity. The prison's attacks on selfhood might rule out rehabilitation. But Stroud's point is more broadly applicable to prison dilemmas. The creativity of prisoners can be respected through the establishment of formal means of listening appreciatively to their perspective (e.g., prisoner councils), the relaxation of censorship (where it is still practiced), and through increases in resources for artistic expression (painting, music, sculpture, etc.)

3) Harmony does not consist in complete uniformity, nor in the isolation of different groups, one from the other. Harmony respects inter-connectedness. The categorical divide between the innocent and the guilty, made concrete by the prison walls, denies our links and thereby destroys harmony. The insularity of the prison encourages stereotyping (deception), veils prison practices (inhibiting the impact of morality) and produces a distorted, alien social setting. For these reasons, the prisons urgently need to increase contact between prisoners and the public.

The twist is that the prison that practiced (1), (2), and (3) would no longer be a prison.
List of References


Morgan, Rod, and Richardson, G., "Civil Liberties, the Law and the Long-Term Prisoner," in Bottoms and Light, *op. cit.*


Williams, Rowan, *Star Wars: Safeguard or Threat*, Evesham: Clergy Against Nuclear Arms (CANA), 1987
BIBLIOGRAPHY

AND

INDEX
Abbott, Jack Henry: *The Belly of the Beast*,

AFSC (American Friends Service Committee):
*Struggle for Justice*,
New York: Hill and Wang, 1971

Aland, Alexander: *The Human Imperative*,
London: Columbia University Press, 1972


Aronson, Elliot: *The Social Animal*,
San Francisco: W.H. Freeman and Co., 1972

Atherton, Richard: *Summons to Serve*,
London: Geoffrey Chapman, 1987


Edinburgh: William Tait, 1843


---------, *Letters and Papers from Prison*,
New York: Macmillan, 1970


---------, and R.H. Preston: *The Coming Penal Crisis*,

*The Prison Journal*,
Vol. LXIII, No. 1, Spring-Summer, 1983


---------, Alistair Duff, Sebastian Horsley, Ken Murray, Phil Scraton, Joe Sim, Jo McDonald, Paula Skidmore: *The Roof Comes Off*,

Brake, Mike, ed.: *Human Sexual Relations*,

Breytenbach, Breyten: *The True Confessions of an Albino Terrorist*, London: Faber and Faber, 1984

Brinton, Howard: *Friends for 300 Years*,
London: George Allen & Unwin, Ltd., 1953
Bibliography

British Journal of Criminology:
Vol. 18, No. 2, April, 1978
Vol. 20, No. 2, April, 1980
Vol. 24, No. 3, July, 1984
Vol. 26, No. 3, July, 1986

Buber, Martin: I and Thou,
New York: Charles Scribners' Sons, 1958


Caird, Rod: A Good and Useful Life,
London: Hart-Davis, MacGibbon, 1974


Creed, John M., and John Boys Smith: Religious Thought in the Eighteenth Century,
Cambridge: Cambridge University Press, 1934

Cupitt, Don: Sea of Faith,
London: BBC, 1985


Davidson, Laurie, and Laura Kramer Gordon: The Sociology of Gender, Chicago: Rand McNally, 1979


—205—
Fitzgerald, Mike, and Joe Sim: *British Prisons*,


Fortune, R.F.: *Sorcerers of Dobu*,
London: George Routledge and Sons, 1932

Foucault, Michel: *Discipline and Punish*,

———
*The History of Sexuality, Vol. I*,


Freud, Sigmund: *Civilization and Its Discontents*,
James Strachey, ed.,
New York: W. W. Norton and Company, 1961

Gagnon, John H., and William Simon:
*Sexual Deviance*,

———
eds.: *The Social Sources of Human Sexuality*,
Chicago: Aldine Publishing Co., 1973 (HS)

Geddis, Thomas E.: *Birdman of Alcatraz*,
London: Victor Gollanz, Ltd., 1985


Gross, Robert, Fay Honey Knopp, and Howard Zehr, "Crime is a Peace Issue," Friends Journal, March 1, 1982


Home Office: *New Directions in Prison Design*,
London: HMSO, 1985

Honderich, Ted: *Punishment: The Supposed Justifications*,


Hulsman, Louk, "Critical Criminology and the Concept of Crime,"
(unpublished) address to the International Conference on Prison Abolition,
Amsterdam, 1985


Ignatieff, Michael: *A Just Measure of Pain*,
London: Macmillan, 1978

Iles, Susan, Adrienne Connors, Chris May, and Joy Mott,
*Punishment Practice by Prison Boards of Visitors*,
Research and Planning Unit Paper 26,
London: Home Office, 1984

Jackson, George: *Soledad Brother*,

Jeffery, C.J., ed.: *Biology and Crime*,

Jenkins, David: *The Contradiction of Christianity*,


——— *The God of Freedom and the Freedom of God*,
The Hibbert Lecture, 1985,
London: The Hibbert Trust, 1985

Keve, Paul: *Prison Life and Human Worth*, Minneapolis (U.S.A.): University of Minnesota Press, 1974


———, A Review of Submissions to the Home Office Departmental Committee on the Prison Disciplinary System October, 1985

———, Prison Discipline, April, 1986

———, Life Sentence Prisoners, February, 1987


Priestland, Gerald: Priestland's Progress, London: BBC, 1982


Prison Journal:


(also Oxford: Oxford University Press, 1986)


Sartre, Jean-Paul: *Being and Nothingness*, New York: Pocket Books, 1966


Smart, Carol, review of Susan Edwards, *Female Sexuality and the Law*, *Contemporary Crises*, 6, 1982
Smith, David, Claire Austin, and John Ditchfield, Board of Visitor Adjudications, Research Unit Paper 3, London: Home Office, 1981


Takagi, Paul, "The Walnut Street Jail: A Penal Reform to Centralize the Powers of the State," Federal Probation, December, 1975, No. 5

Thompson, E.P.: Whigs and Hunters, London: Allen's Lane, 1975


Wicks, Robert J.: Guard!, Houston TX: Gulf Publishing Co., 1980

Williams, Rowan, Star Wars: Safeguard or Threat, Evesham: Clergy Against Nuclear Arms (CANA), 1987


Zehr, Howard, Retributive Justice, Restorative Justice, Elkhardt, IN (USA): Mennonite Central Committee
U.S. Office of Criminal Justice, September, 1985


bibliography
### Index

#### Selected Names*

<table>
<thead>
<tr>
<th>Name</th>
<th>Pages and Volume(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beccaria, C. de</td>
<td>70, 103-109, 112, 113, II 3</td>
</tr>
<tr>
<td>Berger, P.</td>
<td>II 83, 125, 126, 203</td>
</tr>
<tr>
<td>Blackstone, W.</td>
<td>70, 87, 113</td>
</tr>
<tr>
<td>Bonhoeffer, D.</td>
<td>18, 37, 52, II 127n, 131, 203</td>
</tr>
<tr>
<td>Bowker, L.</td>
<td>II 18, 38, 39, 203</td>
</tr>
<tr>
<td>Boyle, J.</td>
<td>249, 269, 270, II 203</td>
</tr>
<tr>
<td>Breytenbach, B.</td>
<td>249, 268, 270, 271, 275, II 203</td>
</tr>
<tr>
<td>Buber, M.</td>
<td>227, II 127n, 130, 204</td>
</tr>
<tr>
<td>Burgh, R.</td>
<td>149-153, II 204</td>
</tr>
<tr>
<td>Cohen, S.</td>
<td>249, 265, 266, 272, 276, II 138, 167, 168, 170, 204</td>
</tr>
<tr>
<td>Cottingham, J.</td>
<td>159-162, 164, II 204</td>
</tr>
<tr>
<td>Curle, A.</td>
<td>23, 25, 46, 55, 64, II 205</td>
</tr>
<tr>
<td>Davies, J.G.</td>
<td>24, 27, 36, 38, II 205</td>
</tr>
<tr>
<td>Day, J.P.</td>
<td>172-178, II 205</td>
</tr>
<tr>
<td>Eden, W.</td>
<td>70, 87, 101-103, 113, 115</td>
</tr>
<tr>
<td>Fitzgerald, M.</td>
<td>II 46, 47, 184, 206</td>
</tr>
<tr>
<td>Flessati, V.</td>
<td>35, 45, 48, II 206</td>
</tr>
<tr>
<td>Flynn, E.E.</td>
<td>II 8, 9, 41, 42, 206</td>
</tr>
<tr>
<td>Freud, S.</td>
<td>II 19, 32, 33, 35, 39, 62, 63, 88, 114, 206</td>
</tr>
<tr>
<td>Gagnon, J.</td>
<td>67, 68, 72-76, 80, 85, 86, 90, 100, 101, 110, 112, 114, 206</td>
</tr>
<tr>
<td>Gandhi, M.</td>
<td>12, 13, 47</td>
</tr>
<tr>
<td>Genet, J.</td>
<td>268, 270, 271, II 81, 206</td>
</tr>
<tr>
<td>Gerzon, M.</td>
<td>II 93-95, 98, 207</td>
</tr>
<tr>
<td>Gill, J.H.</td>
<td>245, 251, 252, II 207</td>
</tr>
<tr>
<td>Hall, E.T.</td>
<td>II 10-14, 17, 30n, 31, 207</td>
</tr>
<tr>
<td>Hanway, J.</td>
<td>70, 87, 101</td>
</tr>
<tr>
<td>Hartley, D.</td>
<td>105, 106, 108</td>
</tr>
<tr>
<td>Hay, D.</td>
<td>88-91, 93n, 94, II 207</td>
</tr>
<tr>
<td>Hegel, G.W.F.</td>
<td>161, 165, 172, 176</td>
</tr>
<tr>
<td>Herbert, A.P.</td>
<td>162, 163, 198</td>
</tr>
</tbody>
</table>

* Names, or authors of works referred to, in text no less than three times (excluding mere citations). Numbers in italics denote bibliographic details; n refers to footnote on page cited. II signifies Volume II.

-216-
Howard, J. 70, 73-85, 87, 101, 103, 107, 113, 114, 116, 117, 189, 241, II 208

Ignatieff, M. 73n, 74n, 78, 80n, 83, 90n, 93n, 98, 111, 112, 116, 117n, 119n, 124, 125, 127, 128, II 208

Jenkins, D. 6, 195, 207, 216, II 208

Jenkins, M. 283, II 142, 143, 146

Jesus, 7, 8, 31, 34, 35, 36, 41, 42, 57, 62, 162, 198, 199

Kant, I. 140, 141, 152-154, 191, 192

Keve, P. II 45, 52, 53, 174, 209

Lampen, J. 35, 53, 54, II 209

Locke, J. 88, 126, 154, 155

Lockwood, D. II 45, 81, 102, 209

Lorenz, K. II 18-21, 22, 32, 33, 35, 209

McConville, S. 73n, 74n, 76, 77, 117n, II 209

McVicar, J. II 48, 49, 50, 183

Megargee, E. II 16, 17, 39, 40, II 210

Merleau-Ponty, M. 69, 238, 249, 250-263, 264, 266, 267, 270, 272, 274-279, 282, 284, 285, II 194, 210

Midgley, M. II 22-25, 34, 44, II 210

Moberly, W. 83n, 179, 189, II 210

Moyer, K. II 26-29, 211

Murphy, J.G. 151-154, II 211

Nagel, W. 218, II 8, 41, 211

Nagbuhr, H.R. II 121, 124-134, 138, 145, 146, 152, 172, 211

Oestreich, P. 29, 30, 195, II 212

Paul, G.O. 117-119, 127

Plant, R. 191, 192, 210, 215, II 212

Plotnikoff, J. II 150, 151, 165 212

Plummer, K. II 68, 84, 87-90, 109 II 212

Prangley, C. 35, 45, 48, 206

Preston, R.H. 6, 216, 217, 225, II 203

Radzinowicz, L. 73n, 88n, 93n, 95, 102, 107n, II 213

Sartre, J-P II 122, 123, 131, 158-165, 213

Simon, W. 67, 68, 72-76, 80, 85, 86, 90, 100, 101, 110, 112, 114, 206

Stern V. 198, 200, 201, II 135, 149, 178, 214

Sykes, G. II 76, 92, 93, 96, 100, 101, 102, 105, 141, 142, 161, 214

Taylor, L. 249, 265, 266, 272, 276 II 138, 167, 168, 170, 204

Toch, H. 226, II 35-38, 40, 43, 49, 183, 214

Wilkins, L. 211, 214, 226, II 215

Yoder, J.H. 28, 31-33, 35-40, 62-64, II 215

-217-
<table>
<thead>
<tr>
<th>Subjects</th>
<th>index</th>
</tr>
</thead>
<tbody>
<tr>
<td>abolition</td>
<td>conflict</td>
</tr>
<tr>
<td>10, 19</td>
<td>189</td>
</tr>
<tr>
<td>accountability</td>
<td>108, 113, 115</td>
</tr>
<tr>
<td>97, cf. restitution, 173, responsibility, 192</td>
<td>121, 124, 127, 128, 134, 145, 152, 154, 156, 172, 176-180</td>
</tr>
<tr>
<td>adjudications</td>
<td>control</td>
</tr>
<tr>
<td>9, 121, 122, 148-150, 156, 163, 164</td>
<td>of prisoners, 79, 80, 107, 118</td>
</tr>
<tr>
<td>advocacy</td>
<td>120-122, 124, 239-243, 245, 47n, 51, 52, 115, 140-145, 162, 166-168, 173, 179, 196</td>
</tr>
<tr>
<td>8, 49-53</td>
<td>social control</td>
</tr>
<tr>
<td>5, 6</td>
<td>95, 96, 107, 108, 124-126</td>
</tr>
<tr>
<td>aggression</td>
<td>196</td>
</tr>
<tr>
<td>21-23, 40</td>
<td>crime</td>
</tr>
<tr>
<td>18-40, 45, 47, 52, 55, 81, 82, 93-95, 99-102, 111, 193</td>
<td>90, 91, 138, 139, 188-190, 207, 209, 210, 216-225</td>
</tr>
<tr>
<td>annulment</td>
<td>149, 150</td>
</tr>
<tr>
<td>159, 161, 165, 167-169, 172-175</td>
<td>dangerousness</td>
</tr>
<tr>
<td>atomism</td>
<td>222-227</td>
</tr>
<tr>
<td>245-247, 251, 252, 279, 280</td>
<td>127</td>
</tr>
<tr>
<td>127</td>
<td>deprivations</td>
</tr>
<tr>
<td>bridewells,</td>
<td>9, 10, 186, 200, 236, 265, 266, 14, 45, 72, 99, 105, 106, 108, 109, 111, 114</td>
</tr>
<tr>
<td>73, 76, 119n, 128</td>
<td>desert</td>
</tr>
<tr>
<td>categorisation</td>
<td>10, 144-154, 159, 160, 188, 189, 191, 192, 194</td>
</tr>
<tr>
<td>121, 124, 247 (cf. bifurcation, 224)</td>
<td>3, 4</td>
</tr>
<tr>
<td>51, 54</td>
<td>deterrence</td>
</tr>
<tr>
<td>coercion</td>
<td>14, 87, 91, 96, 99-104, 107, 109, 115, 116, 125, 128, 131, 132, 166, 167, 180, 183, 185, 200-208, 228, 229, 231, 248, 265, 192</td>
</tr>
<tr>
<td>19, 30, 36, 38, 144, 216, 236, 266, 278, 282, 46-50, 102, 141, 172, 175, 179, 180, 196</td>
<td></td>
</tr>
</tbody>
</table>

* Bold print signifies Volume II.
discipline

epistemology
16, 105, 106, 245, 250-263, 4, 5, 10, 29

exile, banishment
75, 87, 93n, 102, 113, 115, 120, 222-224, 200

hanging, (capital punishment)
7, 70, 71, 75, 79, 86, 89-95, 97-100, 103, 104, 113, 155, 202, 242, 278

harm of imprisonment
10, 31, 40, 68, 249, 268, 278, 279, 6, 56, 57, 99, 100, 110, 154-157, 160, 180-183, 193, 194

human nature
68, 105-108, 183-231, 236, 244, 267, 5, 18, 20, 21, 67, 130, 191, 195-198

individualism, individuality
10, 27, 29, 194, 196, 197, 224, 225, 257, 282, 29, 89, 132, 133, 170, 174

materialism
86, 105-111, 245, 279, 280, 3

mediation
48-52, 54, 56

overcrowding
9, 74, 76, 118, 14-16, 30, 31

power
8, 14, 27, 30, 31, 38, 48, 50-52, 112, 283, 47-50, 140-145, 155, 157, 161, 177, 181-183

prison officers
79, 80, 240, 282, 42, 48, 94-96, 121, 135-142, 145, 160, 161, 166, 167

prisoners
composition 6, 74-76, 200, 201 41

culture, life-style
80, 272, 15, 44, 48, 49, 65, 71, 77-82, 88, 92, 97-102, 111, 116, 138, 142, 167, 173, 180, 184

defense to (cf. harms of imprisonment)
16, 77, 180, 186, 200, 203, 249, 279, 92, 93, 95, 96, 105, 144, 147, 148, 166, 167, 172, 193, 194

perspective of
123, 179, 249, 266-275, 138, 143, 149, 150, 156, 160-164, 167-171, 182-184, 199

treatment of (cf., rehabilitation, régimes)

reciprocity
138, 152-154, 198, 199, 127, 128, 145, 161, 173, 176, 179, 183

reductivism
69, 204, 207, 230, 245, 279, 280, 284, 134, 192, 195