THE INJUSTICE OF CRIMINAL JUSTICE: AN ANALYSIS OF AMERICAN
CORRECTION THROUGH THE PRISM OF HUMAN RIGHTS

BY

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Table of Contents:

Abstract

In this thesis, I analyze the Criminal Justice system in America through the lens of human rights. I argue that our current system which predominantly emphasizes retribution and the removal of criminals from society is a violation of human rights. This argument is divided into three parts. In the first part, I give a brief description of the development of corrections in America. In the second part, I present evidence for the role that extralegal factors play in disproportionate sentencing and even the decision on what is considered "criminal" activity in the first place. In the final section, I present a particular view of human rights founded on social recognition. This view lays out a vision of human dignity that is vulnerable to devastation and humiliation by others that we engage with socially at every moment depending on whether or not they decide to recognize us as human beings. This argument is ultimately aimed at helping us understand the failure of the criminal justice system in the United States and how the social devaluation of those labeled criminal contributes to this process.

Introduction

Keeping our communities safe and minimizing behavior that negatively impacts individuals as well as our society as a whole is a goal that everyone can unite under. In fact, this generic goal has been used to persuade some people to support internment camps for Japanese American citizens after the attack of Pearl Harbor as well as support for going to war in general. Unfortunately, when it comes to the best techniques for bringing about justice domestically in the United States and dealing with criminal behavior we cannot always agree on the most effective and appropriate approach. Within questions of the efficacy of the criminal justice system, a number of factors are important to be discussed; however, this work focuses on the social valuations that the correctional system and our society in general places on criminals. The purpose of this work is to illuminate how American corrections violate the human dignity of individuals who are deemed criminal. I argue that the criminal justice system does harm to individuals and our society by ascribing a social death sentence to those who it pronounces guilty of criminal behavior.

Before detailing the sections of this argument, a disclaimer is in order. I do not deny that our communities should be protected from certain activities that cause harm to individuals and the community at large. At no point in this work do I advocate, condone or support criminal activity. Moreover, I understand that the violation of certain people's rights who pose a threat to themselves and society is necessary to ensure their protection as well as the protection of others. However, the problems discussed throughout this work affect all convicts from nonviolent drug offenders to murderers. It is my goal to critically examine the development of corrections in America, how we determine what

crime is and how to properly respond to it, and how the current response undoes the humanity of those who are punished. Each aspect of this examination is represented in the chapters respectively.

In the first chapter, I begin by discussing the history of corrections in America. Important developments that I discuss include the rise of the first penitentiaries. This discussion would be incomplete without illuminating the influence that Christian groups had on the development and implementation of justice and corrections in early America. I also discuss the work of Beccaria in bringing about the rule of law to protect from cruel and unusual punishment and the principle of innocence until proven guilty within the court of law. I also explore the different models that our correctional system has operated under since its conception. Throughout all of the law reforms or returns to earlier practices, I highlight a history of social control which is a precursor to the emphasis on the social death sentence instituted against convicts discussed in depth in chapter three.

In chapter two, I challenge the rigid conceptions of innocence and guilt usually present within discussions about criminal justice. I start with critically analyzing how one's race has impacted their experience of justice throughout the history of the United States as well as today. This discussion includes the racialized vision of criminality that was distributed by the media and government throughout the conception of the War on Drugs. This dissemination of racial bias with regards to ideological conceptions of criminality affects the criminal justice system at every level. Also, I examine the very way we define what is legal and illegal and which actions are deemed the largest threat to our society and punished as such. I go on to discuss how "white-collar" crimes, or crimes committed by wealthy corporations or individuals are not punished as harshly as crimes

committed by poor people even though the threat posed to our society as a whole by white-collar crimes is more devastating by a large margin. I use statistics and real situations to show how race and class completely change an individuals ability to receive true justice in America.

In the third chapter, I argue that the imprisonment and surveillance characteristic of the American correctional system is a violation of human dignity. I start this argument by explaining my own approach to human rights and dignity. My approach to human rights can be described as a bottom-up approach where the foundation is the nature of human beings in light of our social capacities and the potential for humiliation and devastation. I set this perspective against top-down perspectives of human rights where human dignity is seen as emanating from some higher authority or a noumenal essence of humanity. In other words, My approach to human rights takes on the victim's perspective and states what human beings should never have to suffer instead of the perpetrators perspective stating what actors in the world should never do.

Following this discussion. I explore the concept of social death as discussed by Orlando Patterson in his analysis of slavery. In chapter three, I illuminate similar aspects or slavery and imprisonment to justify the comparison and discover crucial aspects of the American correctional system that are often taken for granted. Finally, I look critically at several common practices within corrections to illustrate how they devastate the human dignity of their victims.

As stated earlier, this argument is not an endorsement of damaging behavior in any form it might take. In fact, this work is an outcry against the damaging behavior that is being done under the guise and authority of the American criminal justice system.

Chapter One:

Historical analysis of the development of correction in America

In this chapter, I explore several topics that provide us with a general framework for understanding and analyzing the correctional system in America. This framework includes a brief history of institutional, philosophical, social, and cultural factors that contributed to the development of corrections in America. What were the first forms of corrections? What was the understood purpose of this action? What role did Christianity play in justifying the means used to punish criminals, and in what ways has it been part of pivotal debates within criminal penology? How did views on torture and state violence change over time? What impact did the pervasive practice of slavery have on the development of the workhouse and penitentiary in the eighteenth and nineteenth century? These are some of the questions I engage to give an historical account of corrections in America. I also discuss the persistent competition of different models of corrections and a few of the contributing factors that were part of these ideologies relating to the legal system. Ultimately, we arrive at the current model of crime control where punishment in the form of incarceration is used to control crime. Finally, I briefly discuss the unifying characteristics of social control that pervades all of the forms of corrections in America's history as a segue into the second chapter.

Methodology

First, it may be helpful to explain exactly what I have in mind when I use the word "corrections". When speaking about corrections, I am referring to any "action

applied to offenders after they have been convicted and implies that the action is

corrective" (Clear, 2013, 8). With this generic definition as a framework, we can identify

the various forms of correction throughout the history of America. In addition to a

working definition of corrections, it is important to discuss my methodological approach

to understanding "church and state" relations. As it turns out, many arguments for justice

and how to go about implementing corrections in America were influenced by sincere

theological convictions of different Christian communities. For this reason, an

examination of the development of corrections in America is incomplete without

considering the theological foundations that the different perspectives had.

A common understanding of institutional arrangements relating to government and state

functions, especially in most liberal democracies, is that church and state are separate

entities or institutions. The First Amendment to the U.S. Constitution states that

"Congress shall make no law respecting an establishment of religion, or prohibiting the

free exercise thereof". Because of this fundamental claim in our Constitution, our

government has commonly been conceptualized as secular or neutral in every possible

way towards religious ideas and endorsement. Moreover, the realm of religion was

deemed a private matter interior to individuals' particular experience. There are a number

of reasons this dualistic understanding of the "secular public sphere" and "private

religion" are unfounded and ultimately not useful. As Judith Butler observes in *The*

Power of Religion in the Public Sphere,

> when we begin as we do by asking about "religion" in "public life" we run the
> risk of simply filling the category of "religion" with a variety of specific religions,
> while the sphere of "public life" somehow remains stable, enclosed, and outside
> of religion (Butler 2011, 71).

Butler's concern here is that the distinction between the cognitive status usually ascribed to religious belief and the way religion actually acts as "a matrix of subject formation, and an embedded framework for valuations" does not capture the full import of the concept of religion (72). Not only are these two dimensions of religion intertwined, Butler also rejects the false characterization of one as "private" and the other "public"; rather, religion traverses and functions complexly in various domains of human and social life. To illustrate Butler's argument about the complex character of religion, I will show in this chapter how Christian theologies and rhetoric intermingle with the articulated purposes and implementation of corrections for the presumed common good of society.

In his book, *The Rise of the Penitentiary*, Adam Hirsch maps some of the important contributions and even foundations that various strains of Christian thought had on the development of corrections within America. Hirsch explains,

> Sin threatened not only the social tranquility of the colony but also divine wrath, for the Puritans conceived that they had a covenant with God to live according to his spiritual commands. The Puritans, then, placed a premium on social control, and they immediately set about establishing a local apparatus of criminal justice. (Hirsch, 1992, 3)

While "secular" arguments for corrections were developed later in history of corrections (and will be discussed), for many individuals and communities at this time, the desire to control crime was part of their larger view of their community, which was deeply informed by their Christian identities. Hirsch adequately recognizes that there was a plethora of different strains of Christian communities within the early American colonies; however, he also attests to the role that ministers and priests played in developing codes

of justice that borrowed from England but also developed their own particular conception and prioritization of moral wrongs.

During the establishment of the young American nation in the late eighteenth century, there was a pivotal change in the ideological landscape surrounding corrections. Some of the punishments or responses to deviant behavior included: fines (which translated to service to work off the debt if the accused did not have the resources to pay the fine); public admonition (confession of sins); corporeal chastisements, and sometimes capital punishment. In order to better understand the shift towards incarceration and away from torture and other brutal punishments for criminal activity it is important to discuss the work of Cesare Beccaria on developing the rule of law.

As studies show, property crime was a major issue for the early American colonies.. It is this reality which provided fertile ground for proponents of criminal justice to propose their theories about what a successful system would look like. This is one of the reasons why early Americans decided to take a chance on the construction of a massive institution to house criminals to protect civilians and rehabilitate the offenders.

As mentioned earlier, American colonies borrowed from theorists in Europe when deliberating the implementation and function of their own criminal justice system. The immense influence that theorists such as Hobbes and Locke had on the development of the juridico-political landscape of America has been discussed by a plethora of authors. However, it was Cesare Beccaria, drawing upon the social contract tradition, who changed the way law and punishment were understood.

Cesare Beccaria and the Rule of Law

Beccaria proposed a number of things in *An Essay on Crimes and Punishments* that are important to discuss due to their impact on the development of corrections not only in America but Europe as well. First, he argues for a system of criminal justice that is solely based on rational principles which include making the severity of crimes proportional to their injury done to society (Beccaria, 1872, 33). More specifically, a rational criminal justice has to pass a utilitarian test, in that the appropriateness of punishment is measured by its deterrent effect on the behavior of others. As Beccaria explains, "It is sufficient that the evil it [punishment] occasions should exceed the good expected from the crime; All severity beyond this is superfluous, and therefore tyrannical" (95) Moreover, forms of punishment such as the death penalty and torture can be deemed unjust due to their disproportionate severity. Ultimately, Beccaria sees the proportionality, inevitability, and timing of punishment as more important than its severity. (29) While this monumental text had a lasting impact on the way corrections were conducted in many places around the world, it is useful for discussions in this chapter as well as chapters to come to look at some of the specifics of Beccaria's argument.

There are several particular aspects of Beccaria's argument that are important for the reflections made in this chapter as well as the argument that is developed in chapters two and three. The first proposition worth considering is Beccaria's argument that "the punishment of a nobleman should in no way differ from that of the lowest member of society" (79). This argument was supplemented by his discussion of the way some individuals were able to use their money or political power to avoid punishments usually

incurred by breaking the law. In chapter two I unpack how economic class has had an impact on the application of "justice" often resulting in unequal punishment for similar offenses as well as inadequate representation or protection under the rule of law. However, for now, it is important to put this principle of equal punishment in conversation with other sections of Beccaria's own argument.

In a section dedicated to robbery, Beccaria argued that its proper punishment should be a fine that outweighs the perceived benefit to the guilty offender. However, Beccaria himself recognizes the problem with this proposal due to the fact that it is often individuals in destitute and desperate financial circumstances that are driven to this theft in the first place (81). In response to this issue, he states:

> the most proper punishment will be that kind of slavery, which makes the society, for a time, absolute master of the person and labour (sic) of the criminal, in order to oblige him to repair, the unjust despotism he usurped over the property of another, and his violation of the social compact (81).

As the old adage goes, "hindsight is 20/20", and in hindsight, the coexistence of statements calling for equal punishment regardless of class as well as slavery as the only proper punishment for people too poor to pay pecuniary fines is ironic and hypocritical. However, Beccaria predicts that the reader will question his reinforcement of slavery as punishment when he calls for the abolition of other forms of severe punishment such as torture and the death penalty. He recognizes that some will argue that perpetual slavery is just as cruel as death. However, he responds

> if all the miserable moments in the life of a slave were collected into one point, it would be a more cruel punishment than any other; but these are scattered through his whole life, whilst the pain of death exerts all its force in a moment. There is also another advantage in the punishment of slavery, which is, that it is more terrible to the spectator than to the sufferer himself; for the spectator considers the

sum of all his wretched moments, whilst the sufferer, by the misery of the present, is prevented from thinking of the future (102).

There are a number of things that could have contributed to Beccaria's conceptualization of this calculation. However, later in this chapter, I discuss how the common practice of slavery in the 18th and 19th century influenced the development of corrections in America. Moreover, in chapter two I explore how slavery can be equated to social death for those who fall victim to it regardless of the circumstances and justifications for its implementation. At the end of the chapter, I discuss different motivations for this reformation of corrections such as more systematic and effective social control as opposed to viewing Beccaria's work as purely a humanitarian revolution. In his book, *Torture and Dignity: An Essay on Moral Injury*, J.M. Bernstein discusses the pivotal work of Beccaria in a way that is illuminating and relevant to this present discussion.

Bernstein begins his analysis of Beccaria's thesis by shedding light on the function that public exhibits of torture served for social cohesion.

> What the tortured body spectacularly demonstrates is the power of the sovereign, by which I mean the authority, validity, and legitimacy of the sovereign's laws, as well as the force of those laws. Sovereign power was an expression of the unity of the people with the sovereign and hence the unity of the people with themselves (Bernstein, 2015, 28).

However, Bernstein goes on to discuss the vast imbalance and severity of torture not only as a means of punishment but eliciting confessions to crimes for which evidence could not be produced. This led to the ultimate demise of the sovereign monarch model of torture punishment. Bernstein explains that this is due to the fact that the arbitrary force applied by the state was seen as the greater threat to society; therefore, "torture became an occasion of solidarity with the victim rather than with the sovereign" (29).

One prominent shift related to interpretations of the body that contributed to a new mass negative perspective on torture and pain.

> Pain thus undergoes a double movement: on the one hand, pain becomes more emphatically and unconditionally what happens to the body of the sufferer, belonging solely to him or her undergoing it. On the other hand, precisely because pain now portends the destruction of an individual without any broader significance, without any redeeming features, then pain becomes communicable in a new way: to see the other as another like oneself is to see that their suffering should not be (30).

Instead of being a demonstration of the legitimacy of state power as well as the unity of the people with the sovereign, pain came to be seen as something to be stopped and avoided when possible. One of the contextual factors that Bernstein argues contributed to or even allowed for this process to take place is the social and cultural process of individuation that was taking place during the late eighteenth century. He explains, "not only were individuals becoming more relatively independent as economic and social units, but bodily pains came to be primarily regarded as sources of individual destruction; these two movements together- the active and passive modes of individuation- lead to individual will or agency becoming sources of dignity or right" (32).

In summation, Bernstein argues that Beccaria traced the emergence of the rule of law to the rejection of state brutality and violence. "Beccaria's thesis was that the very idea that the rule of law is constituted by the absolute incommensurability between the force of law and the kind of force represented by state violence to the human body" (36). However, another important part of Bernstein's analysis is why and how this foundational shift in juridico-political thought was forgotten over time. He argues that the fulfillment of what Beccaria wanted to accomplish could only come about through its removal from the memory of the people involved, "its forgetting was the sign of its

establishment" (70). In other words, this paradigmatic shift in the interpreted value and integrity of bodies and their experience of pain was so fundamental to social life that it became invisible. This idea is explored in more detail in chapter three, but now I will return to Hirsch to discuss various sanction ideologies.

Penological Deliberation and Implementation

Hirsch notes that there are several tensions that theorists, priests, and governmental officials had to wrestle with when implementing and adjusting corrections in America. Officials wanted to make sure that the punishment faced by offenders was enough to deter other offenders as well as recurring offenses. Also, punishment needed to be economic and effective at either rehabituating or rehabilitating the offender depending on the particular strain of sanction ideology. The final tension was securing funding for the projects themselves. While these were the tensions facing the emergent system of American corrections, these problems are still wrestled with by the correctional system today.

The major ideologies that people drew from when making arguments about criminal punishment stemmed from three major schools of thought that were around before the development of the colonies in America. Hirsch refers to the first of these schools of thought as proponents of the workhouse or advocates for the rehabituation of the offenders. Advocates of this perspective believed that all criminal behavior and ills of society stemmed from idleness. (Hirsch, 1992, 13-15) The next school of thought that Hirsch referred to were the advocates for rehabilitation. This group of religious individuals saw the primary root of criminal behavior as their fundamental disconnect from God. Therefore, this group advocated for solitude so that the criminal could be

alone with their guilty conscience. They believed that this would leave the prisoner with an opportunity to encounter God in a state of repentance (18-19). The final group that Hirsch discusses is the rationalist school of thought. This group advocated for a "secular" approach to corrections which balanced the punishment of crimes in a way that allowed for potential offenders to utilize their natural rationality to realize that criminal offenses are not useful when the inevitability of the punishment is brought into their calculations. Hirsch also notes Beccaria's contribution to this group by explaining that "Cesare Beccaria postulated that the certainty of punishment contributed far more to the inhibition of crime. Punishment should always be proportional to the magnitude of the offense" (21). While Jeremy Bentham, one of Beccaria's fans, argued that the social environment of individuals was the reason for their criminality. For these reasons, incarceration was important for rational rehabilitation because it removed criminals from their corrupting environment to administer corrective therapy (22).

Hirsch also makes an important distinction when discussing the full scope of the function of jails. He explains,

> Massachusetts jails performed some services beyond the scope of the legal system. It was standard procedure to house prisoners of war as well as political prisoners. In all such cases, the purpose of incarceration was segregative. It prevented persons from causing political or moral harm to the community rather than punishing them for doing so (7).

Furthermore, the community was removed from the process of punishment and justice in this segregative way. Hirsch explains that due to the shift away from public displays of psychological and physical degradation, the community's involvement was no longer seen as useful (46). Ironically, positive community involvement in the rehabilitation and reentry of convicts has been a main proponent of one of the more recent correction

models in America (see Models of Corrections in America). Hirsch explains that, "by the turn of the (eighteenth) century, eight of the sixteen American states had instituted some sort of program for criminal incarceration. One by one, American codes of law were rewritten to prescribe prison sentences as the predominant means of punishing crime" (11). Now we turn to an important social structure in historical America that existed when the first penitentiaries were being developed: slavery.

Slavery and the Penitentiary

Because slavery was not abolished until 1865, it was a prominent social practice during the development of the first jails and penitentiaries. What's more, due to the pervasiveness of workhouse and rehabilitation ideologies for the penitentiary, the master and slave dynamic was all too easily adopted within the prison walls. Hirsch explains that it is always easier to oppress someone when you believe they are deserving of the treatment (72). To say that guards or masters saw the inmates or slaves as less than equal is an understatement. "By the 1820s, anatomical explanations for crime began to appear, culminating in the 1870s in Lombrosianism" (73). This logic (which emerged with extreme proximity to the abolition of slavery) reduced characteristics of criminality to anthropological types; therefore, the factors that contributed to deviant behavior were understood as predominantly hereditary and inherent or predestined. As you can imagine, this ideology was heavily influenced by racism and classism. Both slaves and inmates fell victim to this misinformed yet pervasive ideology. This form of thinking diminished the desire to rehabilitate individuals to the point of reentering society.

Recalling that one of the main tensions the penitentiary faced since its inception is funding, it is not hard to understand why institutions structured around the workhouse

ideology would have been drawn to an arrangement that is strikingly similar to slavery. With contractors looking for legal mechanisms for cheap labor and penitentiaries looking for a secured source of funding a deal seemed inevitable. Although inmates did not suffer the indignity of public sale on the auction block, public advertisements inviting bids for their services appeared in Massachusetts newspapers (74). Interestingly, the negotiators of these contracts would often charge as much as the market would bear; however, these funds would not be intended for the inmates. Moreover, the condescending vision that most guards took towards the inmates led to a number of instances where overseers would appropriate what little money the inmates would make for themselves as well as negotiating higher prices with contractors in hopes of keeping the surplus for themselves (74).

While there are some differences between the penitentiary and slavery, the differences were eclipsed by the stark commonality of a human being held captive and forced to work against his will without enjoying the proceeds of his labor. This shared feature of the two institutions was utilized by a number of social critics for polemically different reasons. Some used the similarity to call for the morality of slavery while others used it as sufficient reason to deem the workhouse penitentiaries also unconstitutional. However, some people who were explicitly anti-slavery stood at the forefront of movements to build more penitentiaries that utilized the workhouse method (81). Ironically, many of the arguments used to defend the slavery-like nature of the penitentiary were reminiscent of other rhetoric during the time period. For instance, some advocates of the penitentiary invoked the Lombrosian logic to argue that criminals were inherently doomed to a life of idleness and criminality; therefore, the penitentiary was

doing them and the rest of society a favor by forcing them into these habituations of industriousness. These arguments almost read verbatim proslavery arguments during the Civil War era.

We are left with a question: How were advocates able to denounce slavery and support penitentiary workhouse without sensing the irony and hypocrisy in their arguments? Hirsch argues that

> Northern advocates might distinguish the two institutions on the basis of ends: the penitentiary preserved individuals and society from the evils of crime. It was rather their preferred means of accomplishing crime control (and, by the same token, prosperity), by uplifting criminals, that permitted advocates of the penitentiary to capture indisputably the intellectual high ground (106).

In other words, the slavery-like penitentiary was simply a means to the end of a society with more protection and less crime or so they reasoned. This state of dual-consciousness is written into our constitution in the thirteenth amendment. All slavery is deemed illegal unless it is inflicted upon someone who was rightly convicted of a crime. This comparison and history between the practice of slavery in America and the rise of the penitentiary is important for the discussion explored in chapter two. Now that we have uncovered some of the important factors that contributed to the structure and practice of the penitentiary, let's discuss the metamorphosis it has undergone in more recent history.

Models of Corrections in America

During early seventeenth century, corporal punishment and even death were used as punishment as a means of social control based on religious principles. However, in 1682 Pennsylvania adopted "The Great Law". (Clear, Cole and Reisig 2013, 44) Structured around humane Quaker principles, this perspective favored the workhouse ideology discussed throughout sections above and only utilized capital punishment in response to

premeditated murders. This code was replaced by the Anglican code in 1718. Under this code there were 13 capital offenses and "whipping, branding, mutilation, and other corporal punishments were prescribed for offenses" (44). Clear explains, "In keeping with Calvinist doctrine of predestination, little thought was given to reforming offenders; such people were considered naturally depraved" (45). Interestingly, we have seen how the competitions for corrections in America is not adequately described as simply political, or social but also spiritual.

Between 1790 and 1830, "the rural population in America had more than doubled and the urban population had more than tripled" (45). For this reason, "responsibility for the poor, insane, and criminal became the province of the state and its institutions" (45). During the revolution, ideas of the enlightenment had an impact on the further development of correctional philosophy. As discussed earlier, Beccaria and Bentham were some of the proponents of this rationalist approach to corrections that saw an opportunity for rehabilitation and attributed deviancy to corruption from environmental factors. In the late eighteenth century, several states adopted incarceration with hard labor as an alternative to the more traditional practices.

The first penitentiary appeared in 1790, "when part of Philadelphia's Walnut Street Jail was converted to allow separate confinement" (45). Clear explains,

> The penitentiary differed markedly from the prison, house of corrections, and jail. It was conceived of as a place where criminal offenders could be isolated from the bad influences of society and one from another so that, while engaged in productive labor, they could reflect on their past misdeeds, repent, and be reformed. As the word "penitentiary" indicates, reformers hoped that while offenders were being punished, they would become penitent, see the error of their ways, and wish to place themselves on the right path (45).

As with the other developments discussed thus far, the penitentiary had clear connections to the religious affiliations of the people involved with its inception and implementation. This movement towards reformation was a pivotal paradigm shift for how corrections were understood in America.

There were two institutional systems that represented similar yet different methods of implementing the penitentiary. These were the Pennsylvania System (Separate confinement) and the New York System (Congregate system). Both shared the goal of "redemption of the offender through well-ordered routine of the prison" (48) however; the institutions differed in their methodology. The Pennsylvania system implemented isolation throughout every aspect of the prisoners lives, including meals and labor, while the New York (Auburn) system allowed for criminals to work and eat together under a strict rule of silence. The Pennsylvania system also favored activities of contemplation and penance including prayer and scripture reading while the Auburn system emphasized strict discipline and the importance of inmate obedience. In other words, the Auburn system did not shy away from brutal and degrading physical punishments in order to break down the criminals before they were rehabituated into a way of discipline. The Pennsylvania advocates argued against these mechanisms and said that the exploitation of prisoners labor "failed to promote work ethic and only embittered them" (48). The New York model was certainly more in tune with the rise of the industrial age. In many ways, "Auburn served as a forerunner of the industrial prison that would dominate until the rise of organized labor in the twentieth century" (49) This structure was eventually deemed to be the most effective and was adopted by most

penitentiaries in the northeast and even the Pennsylvania model was forced to shift to this model in late nineteenth century.

In relation to the thoughts discussed in the section comparing slavery and the penitentiary, the South faced unique issues during their adoption of the penitentiary. Clear explains that after the Civil War, "southern legislatures passed "Black Codes" designed to control newly freed African Americans by making it "a crime to have a gun, be out after a certain hour, or utter 'offensive language' in the presence of a white women." (50). Due to the devastation faced by the south after the war and depression, rebuilding their societies and economies were also on the 'to do' list even while convict populations increased. This led to "the development of the lease system and penal farms" (50).Unfortunately, the contractors who were responsible for feeding and clothing the inmates in exchange for their free labor had less interest in their ownership than they would have slaves, so prison contracted laborers were sometimes victims to even more severe abuse and exploitation (51).

Clear notes that there is a recurring cycle by which innovations and aspirations to reform correctional systems in America is followed by less than ideal practice and diminishment of discipline (52). With this being said, there were a number of different reformations that took place within America. During 1865 "the New York Prison Association commissioned Enoch Cobb Wines and Theodore Dwight to undertake a nationwide survey of prisons" (52). After visiting the prisons, they published a report in 1867 outlining the inadequacies of the institution and lamenting the loss of the prioritization of inmate reformation. In England, Alexander Maconochie had developed the mark system which allowed inmates to "reduce their term and gain release by

16

reducing marks", that were assigned based on seriousness of their crime, "through labor good behavior and educational achievement" (52)[IS8] . This shift was paradigmatic for the changes made by the National Prison Association who gathered in 1870 and advocated for "a new design for penology: that prison operations should stem from a philosophy of inmate change, with the reformation rewarded by release" (53) This system was meant to leave the opportunity of reconciliation in the hands of the inmates. However, as will be discussed in the closing of this chapter, a distinction can be made between the idealistic philosophy of corrections during times of reformation and what they actually accomplish and look like in their practical implementation. The rhetoric of leaving redemption "in the hands of the offender" is a mechanism for distracting from the systematic control and oppression that is accomplished through corrections. It is through this lens that we can view the reformations that took place through the 20th century

At the close of the reformation age [IS9] in the early 1900s came the rise of the progressives. During the early twentieth century, the progressives were optimistic individuals who believed they could "apply the findings of science to social problems, including penology, in ways that would benefit all" (54). The progressives believed that approaching each convict individually was the only way to effectively rehabilitate them. A key component of this approach was the philosophy of the "positivist school" which describes human behavior as a result of "biological, economic, psychological, and social factors" (55). Using this approach, progressives aimed to assess criminals, understand their behavior, and apply the necessary remedies in order to change the individual's behavior. Their two main strategies were to: "(1) improve conditions in social environments that seemed to be breeding grounds for crime and (2) rehabilitate individual

offenders" (56). In the 1920s, this movement solidified aspects of corrections such as probation, indeterminate sentencing, parole, and juvenile courts. (56)

The paradigmatic shift of the progressives eventually gave way to the medical model of corrections. This approach started being implemented in the 1930s and it proposed that "criminal behavior is caused by social, psychological, or biological deficiencies that require treatment (56). While this approach was popularized and ultimately incorporated into most correctional institutions by the 1950s, the practical applications of this theory fell short. By the 1970s, the value of the treatment approach, was questioned[IS10] by critics, even though the rhetoric reflected a commitment to rehabilitation. Further examination shows that even in the 1950s "only 5 percent of state correctional budgets were allocated for rehabilitation (57). This, coupled with the persistent remnants of traditional approaches to punishment that overshadowed the lofty innovations of the medical model, may have contributed to its failure. Also, the fact that the prisoners were still isolated from the rest of society certainly communicated a message to them which was probably internalized in many cases. This problem of the exclusion of the community leads into the next model development in corrections.

The Civil Rights movement during the 1960s and 70s had an impact on corrections. An aspect of the movement's influence was the development of the community correction model where reintegration of the criminal into the community was understood as the goal of criminal justice. (58) A major historical impetus for this approach was the "inmate riot and hostage taking [IS11] at New York State's Attica Correctional Facility" (58) on September 9th of 1971 that resulted in 128 injuries and the death of 29 inmates and 10 hostages. Many people believed this event showed just how

counterproductive the current correctional systems were. This led to advocacy for community oriented probation and parole programs that allowed for convicts to reintegrate into society and denouncing the efficacy of prisons as part of the hindrances facing inmates. Unfortunately, the reintegration idea only prevailed for about a decade. Proponents of this approach argued that the failure of the model was due to improper or insufficient testing of the approach. However, the shift away from this model gave way to our current punitive model of corrections.

In the late 1960s crime rates became a major concern leading many in the policy arena to reiterate their criticism of the effectiveness of rehabilitation programs. In the 1970s and 80s, legislators, judges and officials responded to the historic crime rates by emphasizing the crime control model of corrections. This model assumes that "criminal behavior can be controlled by more use of incarceration and other forms of strict supervision" (59). For this reason, this shift led to mandatory minimum sentencing, less opportunities for parole, and overall "tough" policies on criminal behavior. While the methods of the correctional system have varied over the years, there is a common history of social control.

A History of Control

Another scholar who has discussed the prison system and corrections is Michel Foucault. In *Discipline and Punish*, Foucault conducts a genealogy of the development of the prison system. While the historical accuracy of this text can reasonably be called into question, it is interesting to map the theoretical conclusion Foucault draws about the evolution of social control as it relates to prison. Foucault argues that the shift away from brutal forms of torture to strict surveillance and enforced habits of discipline and

structure were a means to, "increase its [the law's] effects while diminishing its economic cost and its political cost." (Foucault, 1977, 81). This analysis introduces a counterpoint to Bernstein's analysis of Beccaria's revolutionary thoughts as being solely motivated by humanitarian concerns. Foucault provides a more explicit explanation of why there was such a push within the rationalist reformers school of thought to make the proportionality of punishment and crime a given association within the minds of all citizens.

Foucault teases apart the structural design of the Panopticon by Jeremy Bentham to reveal something interesting about how it relates to the ideological structures they wanted to inhabit in the minds of every citizen. The panopticon was a prison where all inmates were situated in a circular fashion in an open area with an all-seeing structure in the center of the circle. This structure allowed for the overseers to see all of the prisoners at any given time of the day or night; however, the prisoners were unable to see inside the watchtower. For this reason, the prisoners would be forced to act as though they were being watched every waking hour of their existence (195-197). In other words, they internalized the controlling gaze of the overseer. How does this relate to Beccaria's argument for the rational and inevitable association between punishment and criminal behavior? As Bernstein explains in his discussion of the forgetting of Beccaria's work, this shift became so essential or pervasive that its constructed nature became taken for granted as simply the way things are. To put this internalization of law in another way, the community became the enforcers of this rule of associations. Whether the enforcement came from socially relevant others engaged with the individual or the 'conscience' of the individual, the outcome of social control is the same. By laying out an essential list of behaviors and lifestyles that are normal and permitted this association

simultaneously creates the interpretation of the criminal or abnormal. Moreover, the intense structured routine of prison was meant to produce an embodied individual conformed to the industrious lifestyle imposed as normal. (167)

With this idea, we can begin to think of another function of the prison system- to create and sustain the distinction between lawful citizens and delinquency or criminality. Moreover, the futility of the prison system to accomplish its spoken goal of reformation of inmates and reducing criminal activity can exist simultaneously with its success in maintaining the status quo interpretation for what constitutes a criminal and what behavior is deserving of punishment.

This marshaling of ideas should not be understood apart from the relationship of slavery and the penitentiary in the US that was discussed earlier. As will be discussed in the next chapter, criminality has been a way for politicians and legislators to maintain racial oppression without explicitly addressing race at all.

This argument should not be taken as ignoring the danger that some individuals pose to others and themselves when they engage in violent or homicidal behavior. Instead, this analysis encourages us to take a deeper look at the constellations of meanings that have come to be associated with criminality and what they do accomplish even if it isn't crime control. As discussed in the next chapter, drug offenses, which have predominantly contributed to the influx of inmates in the American Prison system, have not always been as strictly punished as they are today. I hope to convince the reader that political, economic, and social factors are more important than claims of higher crime rates when uncovering the root causes of mass incarceration in America.

To wrap up, the history of corrections in America has been influenced by a variety of factors including penal codes from England, developments in penological thought leading to the rule of law, and the widespread practice of slavery at its inception. The models of corrections in America have varied throughout the years. Criminality has gone from being a state that was deemed to be predestined to an individual to a state that is influenced by a variety of social, economic, psychological, and biological factors. While there have been moments that greatly emphasized different forms of rehabilitation and community involvement, our current model is predicated on getting tough on crime and using incarceration as a means to simply control crime no matter the economic and humanitarian costs. Ultimately, this history is united by a common thread of social control and systematic disempowerment of racial and poverty-stricken communities. It is to this I now turn.

Chapter Two

Ineffective Protection and Effective Disempowerment: The Realities of Crime

Control

In the last chapter, I uncovered how the system of law in America is a result of historical factors that contributed to the conception and development of criminal justice in the United States. I studied the different developments throughout history that affected the implementation and practice of corrections. In this chapter, I continue this strain of research and argue that laws and corrections in the United States disproportionately target and victimize poor minority groups while favoring the rich and powerful. Moreover, using the work of several authors, I argue that recidivism, or the recurrent cycle of incarceration by repeat offenders, and the persistence of a poor criminal class is not an accident but a product of social control and maintenance of the status quo to perpetuate inequality between classes. Ultimately, this chapter is a response to the argument that human rights can be taken away if people are found guilty of criminal activity. Throughout this chapter, I pose a challenge to viewing corrections in America as a blind system equally distributing justice as our society needs it.

If justice and safety for the community are truly the goals of our criminal justice system there are a few characteristics that should logically follow from this premise. First, crimes would be understood and judged as the actions that pose the greatest danger and cost to society. Second, these crimes would be punished or treated proportionally to the damage incurred by the victim or society regardless of the identity of the perpetrator or the victim. Third, the punishment or treatment imposed on convicts should result in their rehabilitation or, at the very least, a deterrence from future offenses. Unfortunately,

as Paul Leighton and Jeffrey Reiman explain in *The Rich Get Richer and the Poor Get Prison*, none of these characteristics are fulfilled by the criminal justice system in the United States. (Leighton & Reiman, 2014)

Before we get into the sections that illuminate my reasons for supporting expounding upon this claim, it will be useful to respond to its possible misunderstandings or misconstrual of my argument. To some, this argument may sound like an *ad hominem* accusation of conspiracy theory that paints all rich people as conspirators who conspire to construct and perpetuate an unjust criminal justice system. This is not my argument. The construction and maintenance of an unjust system do not even require continuous conscious intent from everyone. The only thing necessary is misinformation and the ideological pull of traditional modes of thinking about and responding to criminality. Still, others may see this argument as my own complicity [IS2] in the damaging behavior that sometimes does take place within poor communities. However, my argument does not condone or support any form of crime or activity that generates harm for victims and the community at large. Instead, I simply interrogate the factors that contributed to the construction of the definition of criminal behavior as well as the preferential treatment that well-to-do offenders receive within the criminal justice system. The purpose of the sections that follow is to show how the criminal justice system is set up to fail and produce significant numbers a high rate of imprisonment and recidivism in the United States. In other words, these unmatched rates of incarceration should not be solely understood as a result of higher crime rates but should be understood as the result of a system that is failing. It is also worth noting at this point that there are legal reasons that the criminal justice system has for punishing people differently for the same crimes. The

24

main reason for this is criminal history. Individuals with a history of crimes will usually receive harsher sentencing. This is especially true in states that utilize the "three-strike law" where criminals receive life sentences when they commit a particular type of crime three times. The particular crime that the three-strike law applies to differs from state to state. However, the next sections will examine extralegal factors such as race and class that create disproportionate sentencing and treatment in the court of law even when analyzed against people whose situation only diverges on the prospect of race and class. First, let's look at how the experience of "justice" has been and is different for African Americans in the US.

The Color of Crime

One scholar who has contributed to our understanding of the problem of mass incarceration in the US is Michelle Alexander. In her book, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness,* Alexander argues that incarceration maintains its power of social control in the way that it masquerades massive imprisonment as the only way to keep our communities safe and fight crime. She also explains how preconceived racialized visions of criminality make it so that this massive imprisonment disproportionately affects poor people of color. In the remainder of this section, I unpack a few of the crucial aspects of Alexander's analysis that reveal why and how the criminal justice system is so ineffective at rehabilitating criminals and preventing crime. While the author recognizes the damage incurred by inmates and their families when they have to go to prison, she also spends a lot of time talking about the social and political stigma that follows them long after they are finished serving their time. Due to

the importance of the Jim Crow era to her argument, it will be useful to state a brief explanation of the characteristics of this period in American history.

The Jim Crow Era refers to the late 19th and early 20th century in America's history where state laws enforced segregation between whites and people of color. These laws affected everything from restaurants and bathrooms to the ability to vote. Regardless of which sphere of African American's lives each individual law was meant to control, they all had the common interest of keeping them disempowered and subjugated in the wake of the abolishment of slavery in 1865. When explaining some of the similarities between racial laws and segregation during the age of Jim Crow and the social stigma of convicts, Alexander explains that "the "whites only" signs may be gone, but new signs have gone up- notices placed in job applications, rental agreements, loan applications, forms for welfare benefits, school applications, and petitions for licenses, informing the general public that "felons" are not wanted here" (Alexander, 2012, 141). Using her analysis, we can better understand the uneven distribution of "justice" within America experienced by the African American community.

Alexander examines American history to illuminate the emergence of the persistent racial tension and division that have been around for a majority of the nation's existence. I use her description to further the argument that the criminal justice system subjugates people of color and of lower economic status. She explains how the portion of the population that was wealthy, white land and slave owners represented a small percentage of people. Furthermore, the original difference between poor whites and slaves was relatively minuscule. However, there were some revolutionary efforts involving poor whites uniting with African American slaves in order to try and overthrow

the wealthy owners. This led to the introduction of small privileges for poor whites to set them apart from slave populations. While there was still a large chasm between the experience of wealthy and poor whites, the racial privileges were enough to discourage future alliances between the classes (24-25). Alexander shows that this political tactic of dividing similarly oppressed groups in order to prevent their cooperation [IS4] which was originally used for social control continues to this day.

To tie this perspective of social control in America's earlier history into more recent occurrences, Alexander provides some political context to the War on Drugs to explain how mass incarceration came to replace the old racial subjugation of the Jim Crow laws. She explains that the progress that came about during the Civil Rights movement including the abolishment of Jim Crow Laws in America had a number of effects on the political landscape. While this movement did not eliminate the racial biases that every individual held, it was able to remove the previous state laws that enforced segregation of African Americans from whites. Furthermore, while the African American community still faced problems, this opened up new opportunities for work and political participation for many. An important aspect of this process is the fact that poor working-class whites were forced to compete for jobs and status against African Americans in a way that they were not used to due to the previous segregation and separation institutionally supported by law (34). Interestingly, the upper-class whites who advocated for some of these changes were insulated from this reality. Unfortunately, this struggle between poor working-class whites and African Americans led the poor whites to feel betrayed or forgotten by the Democratic Party and the work of the Civil Rights movement. This breeding ground for racial animosity was identified by conservatives

who subsumed images of Civil Rights protests and riots that are political in nature as "criminal behavior" (41). This imagery was used by both Nixon and Reagan in their presidential campaigns where they guaranteed to get tough on crime. This rhetoric successfully converted a majority of working-class white Americans. (44-47) In a similar vein to the way that the proletariat class of early America pitted the lower class against each other using the division of race, politicians were able to accomplish the same goal by masquerading this rhetoric as getting tough on crime instead of in racial terms even though the portrayal of criminality was clearly communicated in racial terms.

Eventually, crack cocaine became a problem in poverty-stricken neighborhoods and conservatives partnered with media outlets to demonize the substance as the sole cause of the rise in criminal activities in the 1970s (ignoring the sudden unemployment that faced African American men during this time period). With conservatives searching for rhetoric that is not explicitly racist yet accomplishes the same subjugation of African Americans as previous social structures, the "War on Drugs" was born. During this time, there was a dramatic increase in the amount of resources allocated to building and maintaining prisons and law enforcement while there was a significant reduction in the amount of resources allocated to treatment and rehabilitation programs for people battling substance abuse. This political tactic to legally disenfranchise people and justify it under the guise of criminal justice persists today (50-57).

At first glance, the comparison of incarceration and corrections in America to the subjugation experienced by the African American community during the Jim Crow era may seem unwarranted and over exaggerated. However, upon further examination, it becomes clear that a lot of the methods for segregation and disempowerment are

maintained and even reinforced under the legitimization of the criminal justice system. For instance, Alexander explains that incarcerations and corrections are one part of a "closed circuit of perpetual marginality" (95) that poor black and brown (and sometimes white) people find themselves in. This closed circuit describes the intensification of poverty that is often times already part of an offenders' life before they are convicted. This intensification process is something that otherwise goes unnoticed because of its pervasiveness in our lives. When we apply for jobs, governmental benefits, housing, or even organizations we are often asked to provide our criminal background or history. Unfortunately, simply being labeled a felon is enough for these basic human needs and rights to be taken away for many individuals caught within the system. Alexander explains, "Once a person is labeled a felon, he or she is ushered into a parallel universe in which discrimination, stigma, and exclusion are perfectly legal, and privileges of citizenship such as voting and jury service are off-limits" (94).

However, it may be argued that the guilt of offenders is all that is needed to justify the suspension of their human rights. In other words, offenders should forfeit their rights for having betrayed the law. First off, one problem with this argument is that it assumes that the laws we use to define criminal behavior are just. Moreover, it assumes that the only way to deal with criminal behavior regardless of the vast spectrum that exists between nonviolent drug offenses and multiple accounts of murder is to suspend the rights of citizens. In the final section of this paper, I explain the complications that arise when we apply a one-size-fits-all punitive approach to all criminal activity. For now, it is important to explore the ways in which people of color are disproportionately affected by the war on drugs.

First, it will be helpful to dispel the misconception that increased convictions for

drug use are directly caused and connected to proportionate surges in drug abuse. The

political tactic of declaring a war on drugs described above involve the supplying of

financial rewards by the city government for police departments that would focus their

efforts on making drug convictions. Alexander explains,

> Generally, the financial incentives offered to local law enforcement to pump up
> their drug arrests have not been well publicized, leading the average person to
> conclude reasonably (but mistakenly) that when their local police departments
> report that drug arrests have doubled or tripled in a short period of time, the
> arrests reflect a surge in illegal drug activity, rather than an infusion of money and
> an intensified enforcement effort (77).

However, this intensification of policing was not evenly distributed among all

demographics of the populations. Police officers are human beings whose sense of

criminality was largely informed by the partnership of political leaders and media outlets

that were discussed above. With this being said, officers were sent to poor black

neighborhoods because it was seen as the biggest problem. It is important to note the

vulnerability that poor individuals have within the court of law. The disparity of the

experience of justice by individuals who have resources and those who don't is so great

that questions of innocence and guilt become nearly inconsequential. Alexander explains,

> Full-blown trials of guilt or innocence rarely occur; many people never even meet
> with an attorney; witnesses are routinely paid and coerced by the government.;
> police regularly stop and search people for no reason whatsoever; penalties for
> many crimes are so severe that innocent people plead guilty, accepting plea
> bargains to avoid harsh mandatory sentences; and children, even as young as
> fourteen, are sent to adult prisons. (59)

Even though well-to-do offenders are not often the ones targeted by police officers, when

they are they have the resources to afford adequate representation. However, officers

over-police poor neighborhoods because the community does not have the power to fight

against their authority the way people living in rich suburbs do. I am not arguing that

anyone who is rich is above the law; I am simply stating that people who are living at or

below the poverty line cannot afford legal representation. Alexander quotes a former

prosecutor, who stated, "It's a lot easier to go out to the hood so to speak and pick

somebody than to put your resources in an undercover (operation in a) community where

there are potentially politically powerful people" (124).

Of course, there have been groups like the NAACP who were aware of and fought

against the racial discrimination that we are discussing, but the court case of *MccKlesky*

v. Kemp changed the ability of people to argue in court that racial bias played any role in

criminal justice at all. This court case was based on MccKlesky's charge for killing a

white officer during an armed robbery. In the state of Georgia, he was sentenced to the

death penalty. The NAACP got involved, and using statistical evidence showed that

"defendants charged with killing white victims were eleven times more likely to receive

the death penalty than defendants charged with killing black victims" (110) The research

provided was so thorough that "the real issue at hand was whether- and to what extent-

the Supreme Court would tolerate racial bias in the criminal justice system as a whole.

The court's answer was that racial bias would be tolerated - virtually to any degree- so

long as no one admitted it" (109). With this important legal moment in history, we can

begin to see the monstrous system that disproportionately puts poor people of color into

the correction system of America. Alexander explains,

> The first step is to grant law enforcement officials extraordinary discretion
> regarding whom to stop, search, and arrest, and charge for drug offenses, thus
> ensuring that conscious and unconscious racial beliefs and stereotypes will be
> given free rein. Then the damning step: close the courthouse doors to all claims

by defendants and private litigants that the criminal justice system operates in a racially discriminatory fashion (103).

In light of these conclusions, it is helpful to remember the statement made using the work of Foucault at the transition from the last chapter into this one. The history of corrections in America is also one of the various mechanisms aimed toward social control. Along with Alexander and other authors explored in this chapter, I argue that this social control is beyond the necessary restrictions to ensure the safety of all citizens. Instead, this social control is one that perpetuates racial and class disparities. Alexander explains how this recognition should change the way we view the failing system of corrections in America in this way: "Saying mass incarceration is an abysmal failure makes sense, but if mass incarceration is understood as a system of social control- specifically, racial control- then the system is a fantastic success" (237).

While an account of the problematic nature of our criminal justice system would be incomplete without discussing racism, there is another factor that affects the experience of justice that is worth exploring. Now, I examine how our correctional system deals with poverty and how this undermines the justice of the system.

The price of mercy:

"The word villain is derived from the Latin *villanus*, which means farm servant. The term villain was used in feudal England to refer to a serf who farmed the land of a great lord and who was wholly subject to that lord. In this respect, our present criminal justice system is heir to a long tradition of associating crime with the lower class" (Reiman and Leighton 2010, 185). Leighton and Reiman deliver some convincing arguments to prove their thesis which is adequately represented by the title. Throughout

the book, the authors are "supporting the thesis that the criminal justice system is aimed at maintaining a large visible population of poor criminals" (xi). This thesis parallels my argument presented in the introduction of this chapter: that the experience of justice in the United States is vastly different depending on your economic well-being. This is a radical claim; however, throughout the rest of this chapter, I use key criticisms and statistics to convince the reader of the bias against the poor within the criminal justice system. Highlighting the racial and class disparities within the criminal justice system is an essential step before being able to adequately address what human rights are violated and how within corrections in America in the next chapter.

First, I would like to unmask a part of the criminal justice system that often goes unexamined: the creation of criminal and deviant behavior. At first glance, this statement may be confused with the literal generation of deviant behavior through influence or inciting certain actions; however, what I am referring to is the decision to deem certain activities and behavior "criminal" through legislation. It is not easy to go outside of the pervasive institution of law to call into question the efficacy of the labels that have been and are continuously recreated. Leighton and Reiman stated this thought experiment clearly in this way:

> The acts we label as crime, the acts we think of as crime, and the actors and actions we treat as criminal- are created: It is a reality shaped by decisions as to what will be called crime and who will be treated as criminal (59).

However, the fact that what we deem criminal activity is in fact created does not mean that everything that falls within that created category is arbitrary. In fact, many of the activities deemed criminal do pose a threat to the safety and well-being of society. However, as the authors argue, there are a number of other activities that pose a relatively

greater threat to our safety and financial well-being than the criminal activity of the poor.

For instance, "There is reason to believe that at least somewhere between 12,000 and

16,000 people a year still die from unnecessary surgeries" (86). The sad part is that this

statistic only examines healthcare deaths relating to negligent surgeries. It does not

consider the vast amount of work related deaths that take place where employers

knowingly subject their employees to life-threatening work conditions, or the amount of

auto-related deaths that come about due to faulty designs which may or may not have

come to the attention of the companies when they were in a position to recall the vehicles

and prevent deaths but waited due to the cost-risk benefit calculations conducted by

actuaries. When we consider what types of actions are the most financially harmful for

our society, white-collar crime ranks the highest by a long shot. As Leighton and Reiman

explain, "Total cost of white-collar crime in 2007 was about $486 billion. This is 27

times the $17.6 billion that the FBI states is the total amount stolen in all property crimes

reported in the UCR for 2007" (124). Given the ideas presented at the opening of this

chapter about true justice minimizing the activities that are most detrimental to our

society, why is it that these activities conducted in higher-class spheres are not treated as

criminal?

One response to this issue will be that we do in fact punish people who are

convicted of white-collar crime. Unfortunately, the situation usually plays out like this

one depicted by Leighton and Reiman:

> A poor guy who steals less than $200 worth of goods to support his drug
> addiction ends up in jail for life, and a rich guy who masterminds the financial
> ruin of thousands of Enron employees and investors ultimately gets sentenced to
> six years and may get a year off the sentence for participating in the prison's
> substance abuse program because of his dependence on anti-anxiety medication
> (152).

Anyone who argues that the situation depicted above is anecdotal and says nothing about the overall institution of criminal justice, I direct you to the Uniform Crime Reporting (UCR) website for the FBI. On the page dedicated to providing comparative statistics for crime rates during 2017 as well as other years, there is a disclaimer that states: "What you won't find on this page: Statistics about embezzlement, confidence games, forgery, check fraud, etc." (FBI, 2018 https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/larceny-theft). Unsurprisingly, the UCR organization does not seem too concerned with communicating statistics about white-collar crime to the general public. More importantly, there is no way to know the number of white-collar crimes that go unnoticed due to bribery or the imbalance between policing of poor crimes and white-collar crimes.

We have certainly made progress throughout history on these issues. Due to labor unions, increased (although not entirely) availability of legal representation for more of the population and increased rigor within the medical sciences we can mitigate these issues better than in the past. However, just because we have improved does not diminish the fact that there is a stark disparity between the way these different activities are prosecuted as well as the type of representation the people who commit white collar crimes are able to afford. Even if we pretended that legislation was even-handed with how they defined and punished crime, the availability of *good* legal representation is not equally available to the poor. A useful way to think about the deficiency with regards to equal representation by lawyers within the court of law is to compare it to police protection. "Today we regard it as every citizen's right to have police protection, and we

would find it outrageous if police protection were allocated to citizens on a fee-for-service basis. This is precisely where we stand with respect to the legal protection provided by lawyers" (214). Some may argue that police protection and legal protection provided by lawyers should not be provided in the same universal way due to the probable or possible guilt of someone who finds themselves in a courtroom; however, this argument completely undermines the right to due process and the principle of innocence until proven guilty that our legal framework is supposedly founded upon. More importantly, throughout the first section of this chapter, we discussed the reasons that there is a strong bias by everyone, including police, towards understanding criminal behavior and criminality in racial terms. Leighton and Reiman had this to say about the true intentions and accomplishments of the criminal justice system: "The point is that people who are equally or more dangerous, equally or more criminal, are not there; that the criminal justice system works systematically not to punish and confine the dangerous and the criminal, but to punish and confine the poor who are dangerous and criminal" (155). Given that this disparity has been present since the beginning of our justice system and persists to this very day, why haven't we decided to change it?

One argument that proponents of the current system voice is that the tactics have in fact lead to a decrease in crime rates related to drug abuse and distribution as well as other crimes across the board. While this is true, correlation does not equal causation. Leighton and Reiman explain the fallacy in this way:

> The enormous growth in our prison population over the last decade, coupled with questionable police tactics, may have contributed in some measure to the decline, but most of the decline can be attributed to factors beyond the criminal justice system: the reduction in unemployment, the stabilization of the drug trade, and the decline in the popularity of crack cocaine (19).

Social phenomenon are increasingly complex to the point that statistics can be mobilized against the unsuspecting citizens, who have neither the time nor training to interrogate the statistics and relationships that are being presented to them, for political and economic ends. Equally important is the fact that "If people believe that the most drastic of society's weapons are wielded by the criminal justice system in reaction to the greatest dangers to society, they will believe the reverse as well: that those actions that call forth the most drastic of society's weapons must be those that pose the gravest danger to society" (64). As is explored in the next chapter, it is more convenient to trust others than to have to constantly check and assess every intention and data point of information we receive from peers and people of authority. Unfortunately, as Leighton and Reiman explain, this leads to the community uncritically accepting the rhetoric that is deployed against them from proponents of the criminal justice system and political officials. As discussed in the first chapter, historical inertia is one of the factors that contribute to lasting social institutions that are ineffective and in fact, inherently flawed; however, there is still more the criminal justice system does accomplish even if it is not true justice. Leighton and Reiman explain "in its failure, the criminal justice system succeeds in providing some of the cement necessary to hold American society together" (44). In all of its glory, capitalism does have some downfalls. The immense and potentially ever-widening gap between the rich and the poor is one of them. However, I do not wish to pursue an argument about economic policies (I do not have the expertise). Instead, I point the reader's attention to the fact that those who are in power to change the system are not directly affected by the failure of this system while those who are subjected to it have little or no political and economic power. Whether it is intended or not, the failure of the

criminal justice system and its particular bias against the poor has the benefit of maintaining the status quo. Poor people who enter the prison system come out with fewer resources and damaged psyches and a plethora of more hindrances to face as they try and often times fail to reintegrate to society. Unfortunately, "Prisons seem to do everything but give inmates the skills they will need to make it on the outside. Prison inmates are denied autonomy and privacy and are subject to indignities and acts of violence as regular features of their confinement, all of which is heightened by overcrowding" (31). Even though the majority of prisoners and convicts are the ones most in need of support and community they are subjected to stigma, isolation, and humiliation. In the next chapter, I discuss the nature of this humiliation in more depth.

Throughout this chapter, I explored how the criminal justice system in America has been and is more vested with politics and bias than many of us would like to admit. Racial discrimination against the African American community by law enforcement has been around since the beginning of the nation; however, the political tactic of framing the discrimination as getting tough on crime and a war on drugs has simply given the system a new mask devoid of explicitly racial terminology. Moreover, the experience of justice is radically different for people depending on their economic class. This disparity begins at the point of legislation deciding what is deemed criminal behavior all the way to the amount of time served for similar crimes. In the end, a justice system truly dedicated to the physical, financial and overall safety of its citizens will inevitably entail legislative changes as well as changes within our approach to corrections. In the next chapter, I explore how some of our corrective practices fundamentally violate individuals' human rights.

Chapter Three

Humiliation, Devastation, and Alienation: Conviction as a Social Death Sentence

In the first chapter, I discussed the historical development of corrections in America. In that discussion, I argued that our conception and implementation of justice have been influenced by a number of different factors including religion, slavery (which includes race), economics, and politics. In the second chapter, I critically examined the institution of corrections and the way that it disproportionately punishes colored and poor individuals. Up to this point, I have challenged the reader to see the ways in which corrections in America operate as a tool for social control; however, an analysis that renders corrections in America as simply a tool of social control is incomplete and misses the insidious ideology that allows for the persistence of this failing system.

In this chapter, I examine the practices of corrections in America from jails and prisons to the surveillance of parolees by parole officers to argue that they are a fundamental violation of human rights. This argument can be divided into three parts. First, I briefly discuss varying definitions of human dignity and the particular foundation I use to ground the human right of social recognition. This ethic of recognition as the foundation for human dignity is presented in J.M. Bernstein's book *Torture and Dignity: An Essay on Moral Injury* (2015). Second, I utilize the work of Orlando Patterson in *Slavery and Social Death (*1987*)* to provide a more useful vision of the social degradation that was an inherent characteristic of the process of enslavement. Finally, I connect this analysis to the situation that inmates all over America face institutionally, and socially during their sentence and upon their release using the work of Joshua Price in *Prison and Social Death* (2015)*.* To begin, I contrast two conceptions of human dignity to show why

human dignity as a social achievement is the most appropriate for an analysis of corrections.

Approaches to Human Rights: Mutual Vulnerability or Inalienable Rights:

Before discussing my approach to human rights it is important to make a clarification. There are certain types of criminal behavior and psychological illnesses that merit a violation of human rights, not only for the protection of others but also for the protection of the individual themselves. However, I argue that to treat everyone who is labeled a criminal in this way is to cause more problems in their lives and our communities than to work towards making things better. Throughout the history of human rights discourse, there have been a plethora of different foundations argued as their justification. I do not attempt to explore the ever-expanding work surrounding this scholarship. However, in order to explain why I find the particular approach I use the most appropriate for this analysis, I contrast two different conceptions of human dignity. The first approach locates human dignity within humans' capacity for morality and grounds their humanity in a duty to themselves and others. To briefly explore this approach, I examine the work of Michael Rosen in *Dignity: It's History and Meaning* (2012). The other approach builds its conception of human dignity from the experiences of humiliation and devastation. In this way, human dignity is not some inviolable right or an idealistic duty we have to one another but a constant human achievement that is perpetually vulnerable to devastation. In order to explore this approach, I examine the work of J.M. Bernstein where he uses the case studies of torture and rape to outline the bodily centered nature of this morality. In this comparison, I argue that the ethics of recognition proposed by authors like Bernstein is better equipped to take inventory of the

devastating injury that is incurred by the social identities of those who are subjected to prison and the social stigma of conviction implemented by the correctional system in America.

For his analysis, Rosen utilizes the philosophy of Immanuel Kant to construct a vision of human dignity located within our capacity for morality. Kant's vision of the intrinsic value within humanity starts and ends with our ability to act and think morally. Moreover, it is morality itself that is seen as having "intrinsic, unconditional and incomparable" value (Rosen, 2012, 30). Humans are attributed with this same value only insofar as they are capable of morality. This moral law creates a binding duty upon humanity which requires us to be respected by others and that we respect ourselves and others. In this way, humans are "autonomous" not in a way that produces arbitrary freedom but in a way that recognizes the binding moral duty shared by all of humanity.

Rosen even considers how we should treat corpses to see just how far this morally binding duty applies. He is interested in considering how we should act even when there is no one else left to consciously benefit from our respectful actions. Rosen ultimately argues that this moral law is binding even unto the last human being on earth. He summarizes the Kantian foundation this way:

> To summarize: the basic starting point of Kant's vision of morality is that we carry within ourselves something of "unconditional, incomparable" value- "personhood" or the "dignity of humanity." Although this value must be treated as an "end" and not as a means, it cannot be increased by human action or function as a goal to be realized by us. Since it is not identified within our "animal life," nor is it something that we have to protect from physical destruction- on the contrary, it may require us to sacrifice our lives. So the dignity of humanity can act as a guide for our behavior only less directly: it requires that we behave in ways that "honor" and "respect" humanity in our person (153).

With this synopsis, the foundation of Rosen's view of human dignity becomes clearer as a duty to respect humanity not only in others but ourselves as well. In the end, Rosen argues that we do not have to accept the Platonism or the noumenal realm as explained in Kant's argument to adopt his priority given to binding moral duty as the foundation of human dignity. However, it relays a vision of human dignity that does not account for the utter vulnerability that we all carry with us throughout day-to-day life. Moreover, it does not account for the contingencies that our ability to rationalize rests on. In other words, our ability to think clearly or "rationally" is undermined when under threat or experience of physical harm, when starved of food or water, when isolated from social interactions, when our sleep cycles are consistently disrupted, and so on. Ultimately, this analysis of dignity founded in morality as some entity apart from human interactions fundamentally undermines the bodily experiences of every human being. In order to state this objection more clearly, I turn to the work of Bernstein.

As I stated in the first chapter, Bernstein was interested in the way that the work of Beccaria mixed with a number of other cultural and social changes to bring about a new value interpretation of bodily pain in the 1800s. Instead of torture being used as an expression of sovereign rule and the unity of the people under that rule pain, became most significant as an experience of the body of the sufferer. Moreover, the sufferer became an identity with whom the crowd could empathize and fight to eradicate this experience. This should not be separated from the lack of justification or evidence needed before an individual was tortured as part of deciding their guilt. In other words, the outrage was not simply about the torture imposed on bodies but the lack of justification for the torture. This distinction is pivotal for understanding my use of authors who have

contributed to the discourse around ethics of recognition and social death. This work is far from the first to examine the monstrous conditions and practices within criminal justice, prisons, and other correctional practices. Furthermore, there were certainly writers before Beccaria who critiqued institutions of justice to little or no avail. The reason I approach corrections in America using theories of social death is because I am convinced that the conditions of jails, prisons, and the lives of ex-convicts will not improve without addressing the system of interpretations that values convicts as less than human after their guilt has been (more or less accurately) confirmed in the court of law. First, I discuss how Bernstein defines humans in light of their social vulnerability.

One question that is foundational for Bernstein's argument is "what is the nature of the human such that it can suffer the harms of humiliation and devastation?" (Bernstein, 2015, 176) Bernstein then demonstrates six essential elements that provide groundwork for understanding the possibility of devastation. First, humans are living embodied beings whose relationship to their body is vulnerable to dispossession. Second, human beings are capable of social interaction, cultural adoption, rational thought and other things beyond just necessary maintenance for survival. Third, these mechanisms beyond mere survival are an essential part of the individual perception of self and worth as intrinsic value. Fourth, human beings are self-interpreting beings who focus on the essentialized identities they create socially- these identities are simultaneously concrete within our imaginations yet vulnerable at every moment as we socially engage and interact with others. Fifth, this self-identity is dependent on others and their decision to acknowledge and sustain this status. Sixth, trust in the world is an invisible (so long as it is functioning) yet essential aspect of the process that maintains one's standing in the

world. Loss of standing or status also constitutes a loss of trust in the world. (pp. 176-177) In this way, Bernstein begins his argument for a conception of humans as embodied beings whose entire identity and status are vulnerable to destruction and devastation at any given moment.

Stated differently, human beings are active in a cyclical process of interpreting others and interpreting themselves based on interactions with other interpreting humans. Bernstein also explains that being human means "being something that things can be something for"(184). We are constantly engaged in a process where we examine the world and attribute value or meaning to it based on our past and present experiences. These interpretations stay the same so long as our interactions with the thing or person in consideration remains consistent. However, the interesting part is that humans who use this mechanism can also be the object of it in a reflexive way. Furthermore, the considerations that affect this self-interpretive process come from everyone with whom we interact. With this explanation, the mutual vulnerability of social existence becomes clear. To interact with someone in a way that attributes to them authority as a socially relevant interpreter is the prerequisite for social recognition.

There are a number of different ways to dispossess a human of their body. The instances that Bernstein examines are torture and rape. Already, this discussion has inevitably summoned within the reader's imagination visions of physical violence and violation directly imposed against someone; however, there are a number of ways to torture someone psychologically, emotionally, socially that aren't given as much attention. While conceptions of human rights as a duty one has to other human beings to respect their inviolable dignity is helpful in certain contexts, it fails to take into account

the basic structure of human psychology and sociality that allow for the disintegration of one's trust in the world and fundamentally, their humanity. It is these (sometimes not so) subtle forms of denial or non-recognition that will be useful for examining the situation faced by so many who go through the corrections system in America. For Bernstein, dignity is not merely an inherent inviolable essence within all humans but is a constant social achievement that is perpetually vulnerable to being undermined. I utilize this approach to defining human dignity to avoid metaphysical arguments about the nature of humans and instead focus on the atrocious violations of human rights that the existence of torture, rape, and prisons force us to confront. Now that I have explained my methodological approach to human rights, I begin my analysis by applying the theory of social death to an institution that has been pivotal in the development of America in general especially the prison system, slavery.

The Moral Injury of Slavery

Orlando Patterson expanded the discourse on slavery by explaining it as essentially a process of social death. Due to the prominent place of slavery in the history of America as well as its relationship with the development of corrections addressed earlier, it will be helpful to understand some key concepts from his work. Patterson challenges scholars who chose to define slavery as simply the act of owning a person as an object and property. While he recognizes the validity of this observation he argues that this analysis is superficial and misses the deeper psychological and social processes that allowed for the existence and eerie persistence of the practice of slavery in a multitude of places and time periods. For Patterson, enslavement can be better described as a systematic experience of social death for the victims. To clarify, the distinction between

enslavement as social death as opposed to simply objectification and ownership, Patterson examines a pivotal moment in Rome's legal history for the institution of slavery.

Patterson explains that during 1st century Rome, the institution of slavery was widely practiced and contributed to the economic and political power of the society. Interestingly, Patterson also observes that the relative inclusivity of the Roman Empire allowed for the widespread practice of manumitting slaves (Patterson, 1987, 30). This particular combination of a society clearly dependent on slave labor and the relative openness with which people became freed or recognized as legitimate citizens presented the Romans with serious need to settle the status of slaves in order to avoid confusion and to maintain the status quo surrounding the important economic benefits afforded them by the widespread practice of slavery. This led to the creation of a legal claim to absolute ownership by the Roman legal system. Patterson referred to this as the creation of legal fiction due to the way that it undermined the structure of legal claims to ownership up to that point. From the perspective of comparative law, claims of ownership had always been expressed through relationships between people; however, during this pivotal moment in legal history, the Romans emphasized the power of ownership of people over things in a rigid way. Patterson explains, "And this fiction fitted perfectly to its purpose, to define one of the most rapidly expanding sources of wealth, namely slaves. The three constituents of the new legal paradigm- Persona, res, and dominum- modeled directly the three constituent elements of the master-slave- relationship- master-slave-and enslavement" (31).

Patterson helps us understand complications within the correctional system of America through his discussion of the alienation experienced by victims of slavery. Patterson explains how this process of alienation is a multidimensional uprooting of the individual from their previous status and existence as a human being. Patterson uses the terminology of "'natal alienation,' because it goes directly to the heart of what is critical in the slave's forced alienation, the loss of ties of birth in both ascending and descending generations." (7) This loss of birth ties refers to more than just the breaking down of familial relationship and sovereign control over these relationships, but cultural violence in the form of forced assimilation within their master's world. Patterson explains the process in this way:

> The first phase of enslavement is a violent uprooting of the slave from their social environment. They are desocialized and depersonalized. The next phase is introducing the slave into their master's environment in which they do not constitute a socially relevant being. (38)

Patterson makes clear that this process of disenfranchisement was accomplished through psychological, social, and cultural means. He explains that the constituent elements of enslavement included: "the symbolic rejection by his past and his former kinsmen, a change of name, and the imposition of some visible mark of servitude; and finally, the assumption of a new status in the household or economic organization of the master." (52) These descriptions allow us to see how the victims of slavery are physically alienated from their families and also from the tradition and culture that constituted their previous identity. Furthermore, this experience of natal alienation constitutes a social death of the victim. Those who experience this alienation no longer have claims of legitimacy of any sort. Any definition of slavery as simply the ownership of people as property only delays these distinctions that illuminate the mechanisms that masters used

to perpetuate slavery. Ordinary characteristics of human existence such as one's name, one's ability to mediate their own relationships with others, or simply being able to freely communicate in one's own native tongue and live according to their culture were all things that were stripped away through the moral injury imposed upon victims of slavery by their masters. We can connect Patterson's analysis with the principles illuminated in Bernstein's work on human dignity.

As discussed earlier, Bernstein starts from the experience of torture and rape victims to provide a framework for an ethics of recognition that is rendered all too visible during moments of humiliation and devastation that he characterizes as moral injuries. With regards to the experience of slaves, the humiliation and devastation are manifested within every moment or action where the slave's very existence is mediated through their master. Patterson explains in detail that slaves are constantly under threat or realized punishment of not having food or water, being separated from their nuclear and extended family, and even losing claims to their own identity. In this way, the slave masters fundamentally undermine the authority of the slaves as human beings capable of entering the cyclical process of relational interpretation that constitutes social life. In other words, the masters are not only dispossessing the slaves of their physical bodies by torturing them or controlling their eating, and sleeping schedules, but they are also dispossessing the slaves of their social existence by uprooting them from their previous identities. As discussed earlier, slaves experienced their world through their masters. For this reason, the ethics of recognition proposed by scholars like Bernstein is fundamentally undermined by the existence of an institution like slavery.

As discussed earlier, the Roman judicial system developed a new conception of absolute ownership. This new system developed out of a particular paradox in which their society, while relatively inclusive, was dependent on the institution of slavery despite the common practice of slavery manumission. In a similar vein, the division of families, the renaming and marks of servitude, and the social death imposed upon slaves was no coincidence. Slave masters knew that these constitutive elements of enslavement were necessary in order to maintain control and prevent uprisings and revolts. The existence of slavery is one of the troubling aspects of our history that validates the fundamental vulnerability that Bernstein argues is inextricable from human social existence. Now that we have discussed slavery and social death, we can further apply these analyses to the correctional system in America.

Humiliation, and Alienation as Punishment

At first glance, the comparison between slavery and prison may seem over exaggerated or simply not warranted. However, when one takes into consideration that the non-human status of the slave left them entirely dependent on the master for the conditions of their existence, the persistence of a plethora of bad conditions in prisons as well as the lives of ex-convicts makes much more sense. The overwhelming majority of Americans do not express outrage at the experiences of convicts because they are viewed as something less than human once they are sentenced. Conversations about human dignity as an inviolable essence within all human beings become useless when you recognize the way that metaphors of retributive and punitive justice have been marshalled to the point that guilty criminals are seen as deserving of civil, social, and sometimes physical death. Slavery originally came about as an alternative to physical death. The

victims were allowed to keep their physical existence; however, their social, psychological, and economic freedom was ripped from them sometimes to never be returned. The same way that slaves could not make effective claims to better their situation or free themselves, convicts in America today can make no claims to change the institutionalization of social death within the criminal justice system. In light of this thorough understanding of the social devastation and death experienced by those who are imprisoned it becomes easier to see similarities between physical death and the social death imposed by enslavement or imprisonment.

Joshua Price illuminates some of the problems with corrections in America by looking at the institutional experience of prisoners and ex-convicts through the lens of social death. Anonymous interviews with people who are currently serving or have served time in New York prisons or other prisons throughout America are an important source of research for his scholarship. He explains that "the interviews reveal three basic qualities: generalized humiliation, institutional violence, and natal alienation. Together these yield the peculiar contours of social death." (Price, 2015, 6) In the following paragraphs, I unpack the pervasiveness of these qualities in the experiences of individuals within the correctional system of America. This discussion will focus on the institutional realities of prison, jail, parole, and life after a sentence has been served. This focus on the institutional experience is intentional so as to bring the reader's attention to how these tactics of humiliation and alienation are applied to anyone who becomes labeled a criminal. In the previous chapter, I complexified questions of the innocence or guilt of someone who is convicted by illuminating the impact that factors such as race and class have on one's experience of justice in America. This section is dedicated to illuminating

the institutional injustices imposed against any convict who enters a prison, jail, serves parole, or tries to reform themselves. I begin by discussing the institutional humiliation of prison.

Price explains that "humiliation in prison is not merely pervasive, it is organized, institutional, routine, and largely legal, though illegal forms of humiliation are also ubiquitous and perhaps inescapable" (42). One aspect of the humiliation experienced by inmates in prison is physical dispossession of their bodies through violation. Some critics may argue that anyone who finds themselves guilty of a crime is deserving of some form of shame; however, humiliation is much different from shame. Unfortunately, instances of humiliation are often confused as moments of shame that is beneficial and necessary for the reform or retribution of the criminal. As Price explains, humiliation "is an exercise in domination." (41) While shame is a critical part of taking responsibility for one's actions and reflecting on one's decisions, humiliation is an experience that is forced upon someone by a person in a position of greater power.

One example that Price uses reveals the devastating experience faced by prisoners that cannot be captured in theoretical talk. In one case, a lady who suffered from HIV was not receiving her proper medication. She complained only to be ignored or locked away in the medical unit where she did not receive proper care. When reflecting on these experiences with Dr. Price, she stated that she was not sure how much more she could take. The guards treated this statement as a suicide threat. They tore off her head covering (she is a practicing Muslim), stripped her down and threw her naked into a suicide watch room (40). This experience is not unique to the interviewee. In fact, everyone who enters a prison, regardless of their gender, is subjected to a strip search which includes cavity

51

searches. These searches are conducted to ensure that no inmates smuggle contraband inside the prison or jail. Every inmate is searched in this way regardless of questions of consent. Through this common, initiative prison "ritual," prisoners are systematically dispossessed of their claims of authority to their own bodies. It is in these moments that inmates lose trust in the world due to the powerlessness that they feel over their own experience. Even their own relationship with their body is mediated through their masters (guards). Unfortunately, these institutional violations are not the only forms of humiliation that need to be considered within the experience of convicts.

Price's research also revealed how vulnerable the power structures of prisons are to inmate exploitation by the guards. Female prisoners, in particular, are subjected to other forms of more hidden sexual assault by officers who exploit their power and virtual impunity (46). From voyeuristic uses of surveillance systems to inappropriate "pat searches" and even demanding sex from inmates, prisons are a breeding ground of sexual exploitation and humiliation (47-48). While these practices fail to recognize the inmates as human beings and actively destroy their dignity, other inmates who do not fall into normative gender identities are literally not recognized by the prison institution.

As Price explains, "our prison is organized on a binary model: there are prisons for men and prisons for women" (49). The commonplace nature of this system of categorization hides the violence, exploitation, and particular humiliation that is faced by individuals whose identities are not recognized by this binary system. Women who were born with male genitalia who are placed in male prisons are at a higher risk of sexual assault and rape not only from guards but other inmates as well (50-51). This paper is not meant to be an exhaustive account of sexual misconduct and the bodily humiliation that

inmates of all gender identities face; however, I simply use these examples to show how the labeling of someone as a criminal allows for the disintegration of their otherwise protected human rights. Price uses the work of Kim Shayo Buchanan (2007), a legal scholar, to explain that "an edifice of near-insurmountable constitutional, statutory and common-law obstacles to prisoners litigation immunizes correctional authorities against enforcement of constitutional protections, criminal and civil laws, and prison policies intended to stop sexual abuse by prisoners." (48) It has been my goal throughout these chapters to show that legal policies and criminal justice practices are not concrete entities that inform human behavior but are in fact a reflection of our own value system and interpretations that are constantly maintained and recreated. In other words, the institutional humiliation imposed on criminals is not just "how things are." Instead, they are a result of the way we devalue and dehumanize anyone who is deemed a criminal. The experience of institutional violence is directly related to this ideology that allows for the humiliation of prisoners and other convicts.

Price also discusses the process of "breaking people" that is found in interrogations and "negotiations" for inmates to become informants for the guards about other offenders. Looking at prisons through the lens of social death allows us to realize that this is not a negotiation. It is a fundamental dispossession of the individual's will and an effort to reduce them to the will of the master (prosecutors, parole officers, correctional officers, etc.). Moreover, this is a pointed effort to destabilize any form of community and identity that the inmates attempt to construct among themselves furthering the institutional alienation that is characteristic of jail and prison.

There is a delicate balance between using prudence to determine someone's guilt and psychological abuse. However, our court of law is founded on the principle of innocence until proven guilty. As discussed in chapter one, Beccaria criticized the use of torture as a means of determining someone's guilt. While the particular torture that Beccaria was responding to is different from the psychological manipulation we are considering here, the same principles apply. Some may argue that once someone's guilt regarding a particular crime is confirmed, they no longer deserve due process in other criminal matters. This is the particular sentiment I wish to shed light on. All it takes is the labeling of someone as a criminal for a large portion of the population to deem an individual as undeserving of basic human rights. Similar to this psychological alienation is the institutional practice of natal alienation in the penal system.

Previously, we discussed how female and transgender inmates are more susceptible to sexual assault in prisons. However, they also experience alienation from their family in a much more serious way. This is not to say that individuals and families are not also harmed by the absence of sons, fathers, and grandfathers. But the experience is much more physically jarring for females. First, it is important to discuss what natal alienation in this particular context of jails and prisons. Natal alienation provides a paradigm for describing how jails and prisons offer substandard and indifferent prenatal care. This might include the shackling of pregnant women and the separation of mothers (and fathers) from their children (Price, 23). Some may argue that certain criminals would do more harm than good in a parental role. However, the validity of anecdotal situations like this does not justify this institutional practice. Although an individual might be labeled a criminal, this does not necessarily mean they shouldn't be able to

maintain their familial relationships. In the same way that slave masters undermined the relational identities of slaves by separating families, the criminal justice system undermined the relational identities of convicts by being the mediators of their relationships. Furthermore, families of inmates often do not have the power to stop the mistreatments experienced by their family members in the correctional system.

Throughout all of these examples, the common thread that allows for their existence and persistence is the social death sentence that accompanies judgments of guilt within the American correctional system. As soon as someone is labeled a "convict," their social identity is fundamentally changed. In chapter one, I gave a brief history of the development of corrections in America in order to show that the legal system is a product of human creation instead of a static, universal truth. In the second chapter, I asked the reader to challenge their perceptions of guilt and innocence by uncovering the impact that factors such as race and class have on the experience of justice in America. In this chapter, I have analyzed corrections through the lens of human rights based on an ethic of recognition to uncover the institutional injustice within the system. I have argued that the condition of prisoners and convicts throughout America cannot improve until a sentence of guilt is no longer necessarily a social death sentence. Now that I have introduced this fundamental ethic of recognition, I conclude by highlighting the common thread throughout this entire work.

<u>Conclusion</u>

Throughout this work, I have argued that the American Correctional system fundamentally violates the dignity of convicts and their families. The ideological pull of rhetoric founded upon building safer communities and protecting our loved ones is undeniable. However, by uncovering the history of corrections in America and exploring some disparities between the experience of justice depending on ones' race and class, I hope to have shown that it is a strategic maneuver by the politically and economically powerful to maintain social control. A system that leaves inmates more desperate and damaged than when they entered does not create safer communities. It creates and maintains a class of subaltern who has lost their identities as a socially relevant human being.

The history of corrections in America is important for realizing that the system of law and justice is not a static entity but one that has undergone change throughout the years. From being an institution for isolation, spiritual reflection and penitence, to the community workhouse and plantation models, prisons and penitentiaries have been influenced by a variety of social and economic factors. Also, the work of thinkers such as Beccaria has also influenced the implementation of justice. The important thing to remember is that Beccaria's work was able to assist in the abolition of torture or "cruel and unusual punishment". However, as I have discussed throughout this work, what is considered cruel and unusual can be greatly influenced by how one views the accused, and especially the guilty.

Equally important is the fact that certain activities that are sometimes more damaging than those that are deemed criminal are not labeled as such due to the fact that

they are committed by people of higher economic and thereby social standing. Moreover, one's ability to receive mercy or a more reasonable sentence is almost always directly proportionate to the amount of money they are able to spend on legal representation.

The criminal justice system should be dedicated to fighting against the institutional circumstances that have proven to contribute to criminal behavior time and time again. In fact, one could argue that the social death sentence imposed on convicts has taken place long before someone enters a prison. The way that our country has attempted to forget its history of slavery and the Jim Crow era is a form of mass misrecognition in and of itself. For this reason, a reformation of the criminal justice system might be compared to putting a measly band aid on a huge wound that is infected and has been festering far too long. An ethic of social recognition requires that recognize each other not as discrete individuals without a political, economic, and social history, but that we realize how the deeds both good and bad in history contribute to our lived experiences today. This doesn't necessarily mean that everyone should be held responsible for the deeds of their ancestors. Due to the plurality of most of our ethnic identities, this would be an impossible and useless task. Instead, it means not viewing someone's situation whether poor or rich as always simply a reflection of their character or decisions.

In the final analysis, it should be clear that this social devastation outlined within our prison system is nothing new. From the systematic disempowerment and subjugation that is characteristic of slavery, to the unimaginable brutality and massacres that take place with institutional support that we call war, supporting social ideologies that pave the way for the social death of a group of people is the only way that all of the atrocities

of human history were able to take place. If there is anything to learn from this it is that we are our own worst enemy and no one or nothing is going to save us from ourselves. With that being said, we have no choice but to use this great power that allows for these horrendous things to happen in a responsible way or suffer the consequences. Ultimately, things will continue to get worse instead of better as long as our correctional system strips convicts of their social dignity and takes a retributive approach to justice. There are a plethora of works exploring the restorative approach to justice and this perspective seems more in line with an ethic of recognition. If the discussion in chapter one has taught us anything it is that a restorative approach to justice will not be feasible until we begin to view convicts as human beings with dignity.

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Curriculum Vitae

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Career Focus

A post master's student who has completed coursework in Religious Studies with a focus in Religion and Public Engagement. Interested in continuing to doctoral studies in which I will focus on family psychology and childhood development.

Education

Wake Forest University, Winston-Salem, NC, August 2019
Master of Arts in Religious Studies
GPA: 3.7

Wingate University, Wingate, NC, May 2017
Bachelor of Arts in Religious Studies, Minor in Mathematics
GPA: 3.35

Research Interests
- Psychological studies into the impact of incarceration of familial relations and childhood development
- The problem of Mass Incarceration in America particularly as it relates to the racialized "War on Drugs"
- How to amend the current correctional model to encourage community involvement in prevention and rehabilitation of offenders

Research Experience

Independent Study, Wingate, NC, Fall 2016
Research Advisor: Dr. Catherine Wright
- Researched Christian theological responses to suffering in the world
- Learned about personal and communal forms of suffering
- Utilized a plethora of authors and theologians to formulate my own engagement with the presence of suffering in the world
- Contributed to course materials and pedagogical approaches to the course section that was later developed

Public Engagement, W'Engage, Wingate, NC, Fall 2016

Advisor: Catherine Wright

Mentored on immersion trip to the Rachel Carson Reserve, Trinity Retreat Center Sea to Sound program, working with NOAA scientists, community activists, local park rangers, and NC aquarium staff to help our sophomores to 'learn, reflect, and act' with respect to Ecojustice

Religion and Public Engagement internship, Trail of Tears Seminar, Winston Salem, NC, Summer 2018- Fall 2018

Advisor: Ulrike Wiethaus

Critically examined memorialization of the Cherokee Removal at historically relevant sites. Contributed to a database used to create an application that provided counter-narratives to different sites along the Trail. Graphed the relevant GPS coordinates using Microsoft Office and Google maps for the sites along the trail. Worked with Director of Moravian Archives at Old Salem to construct multimedia story-telling that engages with the role that Christianity played in the oppression and exploitation of Native Americans.

Religion and Pubic Engagement Internship, Food Justice at Mt. Moriah Outreach Center. Kernersville, NC, Fall 2018- Present

Interviewed recipients as well as volunteers at the food bank in order to construct a video illuminating the reasons why the congregation is dedicated to food justice. Helped out with work in the community garden as well as with food distribution at the food bank. Established on-going relations with Wake Forest University service project directors and local community gardens.

Other Experience

Bike Share Team Manager (2016-2017)
Wingate University – Wingate, NC
Advisor: Cameron Jackson
- Built relationships of trust and teamwork with coworkers and supervisor
- Led the team of students responsible for informing students and providing this amenity to the student body
- Trained other student workers in maintenance on bikes and the rental software program
- Led weekly meetings with team to assess the program, provide vision for moving forward, and encourage teamwork through understanding, consistency, and positivity

Teaching Assistant, Department of Religious Studies, Wingate University, Spring 2017
Teaching Advisor: Dr. Christy Cobb
- Taught 60 students in Global Perspectives in Biblical Scripture
- Led lectures occasionally in absence of professor
- Assisted in designing and facilitating group activities to help students understand different perspectives
- Led study sessions for students prior to research papers and exams

University Service

Executive member, Bulldogs Into Going Green, Wingate University, Fall 2016 – Summer 2017

- Assisted and presented in meetings aimed at bringing ecological awareness to the faculty and student body
- Worked on service projects such as building community garden on campus
- Researched campus waste statistics to assist in proposal for renewed recycling program

Computer Skills

Microsoft Word, Microsoft Excel, Microsoft PowerPoint, Windows Moviemaker

Professional Memberships

Member of Theta Alpha Kappa national honor society for Religious Studies, Summer 2017 - Present
Member of Phi Sigma Tau international honor society for Philosophy students, Summer 2017 – Present

Selected Honors, Awards, and Fellowships

Master's Student Full Tuition Scholarship, Wake Forest University, 2017-2019
De La Torre Scholarship, Wake Forest University, 2018
Who's Who among American Universities and Colleges, Wingate University, 2017

References

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