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Crime, Prison, and the Case for Corrections

Every edition of this book has begun with an important truism: it is hard to think of crime without also thinking of prison. To most of us, especially in America, crime means street crime, especially violent street crime. The punishment of choice for such crime is prison, and our image of prison is largely formed by the Big House of Hollywood fame. Hard criminals are meant to serve hard time in hard places like Alcatraz, aptly nicknamed “the Rock.” You do the crime, you do the time – hard time, behind prison walls. The notion that hard time can be constructive time is a lingering hope, based on the plausible notion that this species of adversity might help some folks mature and come to grips with life’s problems in more constructive, or at least less destructive, ways.

For better or worse, prisons are a fact of modern life, as solid and imposing as the walls that surround and contain them. Individual prisons may come and go – and rates of incarceration can vary considerably across jurisdictions and over time – but the institution of the prison endures. Unlike the Wall of Jericho or, a bit more recently, the Berlin Wall, the prison edifice stands firm. Indeed, prisons are a more central feature of our criminal justice system than at any time in history, though in recent years there has been a gradual decline of the rate of incarceration for nonviolent drug offenders, a decline that puts a hopeful – though exceedingly modest – dent in the phenomenon known as mass incarceration, the term of art used by experts to describe our massive and surprisingly resilient penal system.¹ More than ever, however, prison is our punishment of first resort for serious crime, particularly serious violent crime.

The fit between crime and prison, then, would seem to be a good one, at least an easy one to live with for people who do not have to live in prisons. For the

average citizen, who presumes himself or herself a most unlikely candidate for confinement, prisons take on a kind of mythic quality that makes them recurring subjects of popular culture, from songs, books, and movies to cartoons and jokes. One revealing cartoon is a *Far Side* segment featuring two prisoners hanging by their wrists from a dungeon wall. Off in the corner, a third prisoner is tied to a rack. No one struggles; everyone is utterly defeated. On the wall is a plaque that reads, in bold letters, “Congratulations, Bob. Torturer of the Month.”² For us, prison as a setting of punishment – though not torture, which is why the cartoon makes us laugh rather than cry – comes to mind with the same easy facility that earlier generations thought of corporal or capital punishment. Just as errant English children in centuries past were warned that they would “come to a bad end,” meaning the end of the hangman’s rope, or threatened with a “lick” from the vicious “cat” (the cat-o’-nine-tails, a nine-tailed whip), we caution our delinquents about the rigors of life in prison, hoping to scare them straight.

Recent scholarship suggests we may want to rethink whether prisons are settings of punishment or of torture, or some uneasy mix of the two, which would put us on guard, so to say, when we think about specific prisons and prison conditions. In a scathing critique of the American system of punishment, Robert Ferguson³ concludes that our justice system, and most particularly our prison system, is an inferno – a kind of hell. Ferguson’s analysis is insightful and troubling. As we proceed, we will keep in mind the notion that harsh punishment may shade into torture, by which we mean pain gratuitously applied to people in captivity because the authorities are able to do so, because they have the upper hand, because hurting dehumanized groups like criminals feels right and good and is, for the most part, entirely legal.⁴ It is one thing to imagine a subject like the pains of imprisonment, a centerpiece of penal scholarship, in abstract terms. It is quite another to imagine living with and countenancing those pains, and, further, to imagine the warping of character that may result both for those forced to serve time in prison and for those who work in prison, for whom force has become, often unbeknownst to themselves, a central part of their lives.⁵

Prisons have a peculiar salience in American culture, though few of us have visited a prison or even laid eyes on one,⁶ or think about the moral implications of settings that store people under conditions of outright subjugation, as if, in the worst case, they were so much human waste.⁷ Some years back, *The New Yorker* featured a cartoon with a prisoner sitting silently in his neatly maintained cell, reading a magazine, surrounded by posters touting several well-known prisons such as Attica and Stateville, including a pennant for Sing Sing, the original Big House to which offenders were consigned when they were “sent up the river” (the Hudson River) to pay their debt to society by breaking rocks in the prison quarry. It is as if these famous (or infamous) prisons were choice vacation spots or alma maters for the criminal set, the poster announcing a kind of Ivy League travel itinerary to which ambitious offenders might aspire. One thing we find striking is the humorist’s assumption that an educated reading audience will know – by reputation – the various specific prisons that are the subjects of the posters adorning the inmate’s wall. Readers can laugh at this

cartoon, we suspect, because they are outsiders to the prison world and have only a limited sense of what goes on inside the prison, other than the vague notion that prisons punish people who need punishing. That offenders might remember prisons fondly or advertise them proudly suggests a comforting complicity between a guilty criminal and a society that must (perhaps guiltily) impose harsh penal sanctions. There is also, of course, a perverse pride of accomplishment reflected in this cartoon. In some circles, surviving prison – perhaps especially a well-known prison – is a badge of courage and a mark of criminal distinction. If some prisons are hell, some are more hellish than others. Surviving these especially demanding prisons and living to tell about it, even to joke about it, is a sign of considerable strength of character, at least in the circles of those who know enough to appreciate the daunting challenges of prison life.

If few of us have ever visited a prison, even fewer of us spend much time pondering the state of our prisons. As upright citizens, we believe prisons are necessary. Most of us cannot imagine the world without them. We take prisons for granted – no one living today can remember a time before prisons were a staple of criminal justice – and we suppose that, being inevitable, prisons are more or less just. Yet we harbor doubts. When pressed, we may concede that prisons are expensive to build and to operate and that they are, at best, ponderous instruments of public policy. It does not take much imagination to realize that sending offenders to prison is at once to penalize (sometimes traumatize) the prisoners and their loved ones, especially their children, and to impose added financial burdens on society, which must support those left behind when the offender is taken away and, later, absorb ex-prisoners with sharply limited employment prospects.⁸ And though our prisons are awesome to behold – seemingly worth their weight in deterrence – a thoughtful observer cannot help but note that prison sentences, even savage prison sentences, seem unable to bring the crime problem to heel by scaring prisoners straight or by occasioning in many offenders the kind of reflection that changes lives for the better. Yet we persist in building and staffing prisons at exorbitant costs and in stocking them with remarkable alacrity. At last count, American prisons housed well over 2 million inmates. Though, as noted above, there have been modest fluctuations in the rate of incarceration over the last few years,⁹ with small decreases in overall prison populations some years followed by small increases the next, the annual tab for our prison archipelago remains staggeringly high, running to about \$66 billion.¹⁰

This chapter will examine our predilection for using prisons as the punishment of choice with serious crime, especially serious violent crime. Since we have this captive audience of offenders for long periods of time, we also make the case that we should rein in our punitive impulses and use prison time constructively for rehabilitative purposes – to respect the human dignity of prisoners and to promote mature coping. As we shall see, treating prisoners like human beings of inherent worth or dignity is one important way to help them develop and mature. This is the case because human beings, by their very nature, have the capacity to make responsible choices that respect others and connect them to others in ways that promote community.

A decent prison serves as a model of humane behavior in difficult circumstances, setting the stage for offenders to learn basic lessons in living responsibly with others, often under adverse conditions.

To place today's prisons in perspective and to help us develop a realistic agenda for promoting decent prisons, we examine the history of prisons and cull lessons from the many failures of earlier prisons (Chapter 2). In subsequent chapters, we focus on the evolution of prisons as social environments – as places where people live and work. Our aim is to assess prisons over time in terms of their actual or potential decency; that is, the extent to which prison regimes permit or encourage self-determination and constructive social relations among the inmates and their keepers. We begin our assessment of the prison as a social environment by delineating the pains of imprisonment to which prisoners, individually and collectively, must adapt. Building on Sykes' seminal examination of the pains of imprisonment, we expand on his notion of the deprivations of prison life to include those difficulties and even daily violations of self that mark modern imprisonment (Chapter 3). Chapter 4 explores how inmates live in our prisons, including their often immature and largely dysfunctional adaptations to the stresses of life behind bars. Variations in the public and private worlds that evolve in prisons for inmates (Chapters 5 and 6) and staff (Chapters 7 and 8), including public cultures and private ways of living, are examined in turn. The special challenges posed by supermax prisons, a high-tech version of solitary confinement, are examined in Chapter 9. We conclude (Chapter 10) with a reform agenda that spells out the contours of a decent prison in terms of its organizational structure, social environment, and opportunities for rehabilitation.

A Predilection for Prisons

The human preference for imprisoning criminals is of long standing. Confining dangerous people is an old if not venerable practice that, though generally carried out on a small scale, dates back at least to biblical times. Like the death penalty, another ancient practice, prison can be considered a civilized punishment. One only finds prisons in comparatively developed societies, and imprisonment typically represents an instance of restrained (albeit sometimes barely restrained) vengeance. Unlike the death penalty, however, prison can also be a *civilizing* penalty.¹¹ Prisons can reflect Plato's dictum that a person subject to punishment should emerge "a better man, or failing that, less of a wretch."¹² That is, imprisonment is a punishment from which the offender, male or female, can learn something of value: how to deal with pain and loss in mature ways. Prisoners can at once pay their debt to society and learn to cope more responsibly with the many pressures and constraints found in prison and the free world alike.

Yet the prison has been a source of mostly gratuitous and destructive pain, offering not so much a lesson in civilization as an exercise in abuse and neglect. Most prisons have been anything but civilized, and their effects have been considerably

less than civilizing. On the whole, this is not surprising. Confinement is, in essence, a way to expel criminals from the community, to get them out of sight. It is thus little more than a sophisticated version of banishment, which is “society’s most primitive form of self-defense.”¹³ For prisons to be civilizing institutions, there must be a conscious effort to make them decent, humane settings of confinement, followed by public policies that allow offenders to reenter society after they have served time with a reasonable chance of success. As we shall see in the closing chapter of this book, there are many collateral consequences of imprisonment that limit choices and opportunities available to ex-prisoners as they struggle to put prison behind them and move forward with their lives.¹⁴

Prisons affect more citizens than one might at first suppose. Some of us – inmates past and present – comprise prison’s reluctant alumni. Certain groups, notably poor African Americans and others of color, have borne an especially heavy burden, suffering incarceration rates that are remarkably high. Still, most Americans, perhaps all of us, pay for prisons in one way or another: with tax dollars spent to cover direct prison costs that now, as noted earlier, run into the billions on an annual basis; with loved ones lost to confinement, some permanently, most for varying periods of time, but all changed by prison, irrevocably; with the violation of our humane values, the silent casualties of the brutal excesses of some prisons and the excessive use of prisons with less serious offenders, who can be readily managed in the community. It is common to think of prisons as necessary evils that must be stoically endured, but that is only partially true. Prisons are necessary but they need not be evil, and they can be used selectively; for example, only with violent offenders or repetitive property offenders who pose a danger to the community. We can and must use prisons in just and color-blind ways, and we can and must make our prisons decent, humane institutions of social control.

In symbol and in practice, prisons will always be a central feature of crime control in modern societies. Whether we imprison too many criminals or too few, serving sentences too long or too short, under conditions too harsh or too lax, prisons will be with us. To be sure, there was a brief moment in time, on the optimistic wave of the 1960s, that we imagined an America without prisons; that moment lasted for a few short years before giving way to the birth of the drug war and, with that war, our current regime of mass incarceration. If history is a guide, we will continue to use prisons with much the same array of offenders we do today and have done for centuries (though the rates at which we confine different sorts of offenders can and do vary, sometimes substantially; we hope to see a continuing decline of nonviolent drug offenders sent to prison in the coming years). In the main, prisons house a motley crew of impulsive, inadequate, pathetic but often noxiously intrusive characters who tend to be drawn disproportionately from socially vulnerable groups, notably the poor and especially poor people of color. Their crimes, often fueled by drugs or alcohol or both, run the gamut from lesser property crimes like larceny, drunk driving, and handling stolen property to the more serious and threatening property crimes such as burglary and robbery, to the unambiguously violent crimes of rape and homicide.

Today's prisons, even as we begin to reach a seeming truce in our War on Drugs, hold a large and growing population of drug offenders. Contrary to impressions left by the media, these are not, with rare exceptions, mafia kingpins or Colombian drug lords but small-time runners, dealers, and addicted users.¹⁵ A disproportionate number of them are young black men, and many, including a fair number of first offenders, face long mandatory minimum sentences "that are comparable to the sentences for homicide."¹⁶ Some of these drug offenders, similar to offenders generally, lead impoverished and disorganized lives, eking out a precarious existence on the fringes of conventional society.¹⁷ Many others, however, are more fully integrated into the larger society. As many as two-thirds have a high-school education; others have maintained reasonably stable employment histories. These are not, generally speaking, the down-and-out element of society but people with some social attachments and hence some prospects for a decent life.¹⁸ For the most part, their crimes are neither violent nor predatory in any meaningful sense of those terms; they are small fish passed off to an angry and frightened public as big catches in a largely futile and highly selective War on Drugs.¹⁹ It is, in our view, both unjust and unwise – and perhaps racist as well – to imprison such offenders at all, let alone for long sentences, when suitable community options abound.²⁰ Accordingly, it is our hope that the current move to reduce the sentences of drug-related offenses continues and, indeed, accelerates. Prisons are, essentially, a collection of cages, best suited to contain and constrain those who pose an immediate physical danger: violent offenders and repeat predatory property offenders, each of whom poses an immediate threat to others.

Prison America

Prisons are a booming industry and indeed are filled in record numbers in comparison to thirty or so years ago, despite recent small variations in population size. As of 2013, federal and state prison populations totaled 1 574 700.²¹ (Note that this and subsequent figures do not include jail inmates or inmates in juvenile correctional facilities.) The 2013 population figures represent a phenomenal fourfold increase from 1980, when the prison population, then considered large, stood at 329 821. Another measure of the remarkable growth in the use of prison over the last three decades is found in incarceration rates. As of 2013, the overall rate of incarceration in the United States was 478 sentenced inmates per 100 000 residents, a dramatic increase since 1980, when the rate was 139 per 100 000.²² If one moves back to 1970, before the advent of the drug war, the incarceration rate was a mere 97 per 100 000, a rate almost five times lower than the rate today.²³

Overall incarceration rates help us track dominant trends, yet they mask important variations in the use of incarceration. One source of variation is by region. Incarceration rates per 100 000 are substantially higher in Southern states like Alabama (650) and the West (583 in Arizona) than in the Midwest (247 in Nebraska) and the Northeast (333 in Connecticut).²⁴ Incarceration rates also vary greatly by gender and race. Rates of confinement are much greater for men than for women. For men, figures from 2013 reveal a confinement rate of 904 per 100 000; for women, the

comparable rate was 65 per 100 000. The male incarceration rate is thus about 14 times higher than the female rate, though rates of confinement for women are growing at a higher pace than that for men.²⁵ (Note that the female prisoner population has actually more than doubled in number since 1990, from 44 065 to 104 134 in 2013.²⁶) Overall, men account for 93% of the total prison population, while women comprise only about 7%.

Incarceration rate differences by race are lower than they were at their high point in the mid-1990s but remain extraordinarily high.²⁷ Dramatic differences hold for men and women and for prisoners of different age groups. For black males, the 2013 incarceration rate was 2805 per 100 000, which represents almost a 50% increase from the 1899 per 100 000 rate in 1980; this rate is almost 2.5 times the incarceration rate of Hispanic males (1134 per 100 000), and fully six times the incarceration rate of white males (466 per 100 000).²⁸ The absolute figures are lower for women, but the same racial disparities prevail. Thus, the incarceration rate for black women is 113 per 100 000; for Hispanic women, 66 per 100 000; and for white women, the rate is 51 per 100 000.²⁹ Looking at the intersection of race and age, we see some especially disturbing trends. The difference in the incarceration rate between black and white males is most stark for black men ages 18–19, who are more than nine times more likely to be in prison than white males of the same age.³⁰

The composition of contemporary prisons differs markedly from the prisons of 1980. Stated simply, our prisons hold more drug offenders and more black and brown offenders. Drug offenders made up about 7.5% of our state and federal prisoners in 1980; by 2012 that figure had nearly tripled, rising to 20.5%. Federal prisons hold relatively more drug offenders than state prisons: in 1980, drug offenders made up 25% of federal prisoners (viz. 6% of state prisoners); in 2012, drug offenders made up a remarkable 51% of federal prisoners (viz. 16% of state prisoners). The growing prevalence of drug offenders in our prisons produces the ironic result that persons convicted of serious offenses of violence – murder, sexual assault, robbery, and aggravated assault – represent a substantially reduced percentage of our state and federal prison populations, dropping from 57% in 1980 to 47.8% in 2012. It is astonishing to note that, in 2013, violent offenders made up a mere 7% of our nation's federal prisons, down from 34% in 1980.³¹

Incarceration rates in America for offenders generally – and for black offenders in particular – are quite high by international standards and, indeed, may be the highest in the world.³² These figures are for prisons only and do not include people in other settings of punitive confinement or in the community but still under control of the correctional system. Others held in confinement in 2012 include 13 360 in territorial prisons, 744 500 in local jails, 1434 in military facilities, and 2146 in jails on Indian reservations.³³

Incarcerating men and women of color

Today's prisons hold a large and growing number of minorities, particularly poor blacks, a group whose situation we will consider at some length given our troubled

racial history, beginning with the brutal institution of slavery.³⁴ Statistics on the overrepresentation of African Americans in our prisons have recently reached startling proportions, but blacks have been overrepresented in prisons since the end of slavery following the Civil War. It is ironic that many Americans view prison as a “black problem” because they suppose crime is a “black problem.” We may well have it backward. African Americans have had and continue to have a “prison problem,” starting with the unjust incarceration that was slavery. Discriminatory uses of incarceration – beginning with slavery, which we might think of as the original incarceration of African Americans – have contributed to high rates of poverty and of serious crime, which in turn have produced high rates of imprisonment.

In America, it is a sad if not shameful fact that poverty and minority status often go hand in hand. Poverty, in turn, tends to breed garden-variety street crime, since this sort of crime is a common adaptation to blocked opportunities for assimilation into American society and achievement of the American Dream of material success.³⁵ The connection among poverty, minority status, and street crime unites virtually all immigrant groups in American history. African Americans form a unique group, however, because they did not choose to come to America but rather were captured and enslaved and, hence, were for centuries given no opportunity whatsoever for participation in American society.

The enslavement of African Americans, long forgotten by many in white America, has had lasting consequences for the black community. One legacy of slavery – and of a host of subsequent racist institutions and practices – is that poverty has been, *for centuries*, much more common among blacks than among whites.³⁶ Black poverty has also been much more ecologically concentrated than white poverty, due to residential segregation and limited job opportunities.³⁷ Black ghettos in turn have typically been more deteriorated and disorganized than poor white neighborhoods.³⁸ Another legacy of slavery – and, again, of a host of subsequent racist institutions and practices – is that the experience of lawlessness and injustice at the hands of formal authorities has been, *for centuries*, much more common among blacks than among whites.³⁹ Many blacks have thus lived on the margins of the larger society, outside the mainstream economy and outside the law, effectively confined first on plantations, later in rural shanty towns, and today in urban ghettos, in each instance in settings marked by profound – and profoundly alienating – social isolation.⁴⁰ Various characterized today as “truly disadvantaged” and comprising a hard-core “underclass,”⁴¹ many African Americans in times past and some even today see “little reason to respect the law or to look down upon those who were punished and sent to jail,”⁴² and much reason to view and treat authorities of the justice system with contempt.⁴³ This combination of isolation and alienation is captured in the recent contention by Michelle Alexander that prisons today are part of a social control system that is so discriminatory that it represents “a new Jim Crow,”⁴⁴ which is, to say, a system in which race rather than behavior drives how one is treated by the law.⁴⁵

It is, then, fair to say that no other group in American history has faced such conditions of continuing deprivation and injustice, often under the authority of law – including laws that explicitly allowed slavery and, later, racial segregation.⁴⁶ It is also

fair to say that no other group in American history has lived for so long under what can only be called criminogenic conditions. The predictable result is a high rate of street crime together with a high rate of incarceration of black men and women. High rates of imprisonment, in turn, promote more social isolation and more crime, leading to yet more incarceration.⁴⁷

The statistics on race and imprisonment reveal a compelling pattern of racial bias. Yet these numbers tell only a part of the story of crime and prison in the lives of African Americans. It is tragically the case that American prisons, in times past, have often confined poor people for whom simply *being* an African American was either their *only* crime or the real reason that their crimes were punished with incarceration rather than a lesser sanction.⁴⁸ We see what may well be vestigial manifestations of racist uses of prisons in today's massive and continuing War on Drugs.⁴⁹

No escaping prison

Prisons are, then, notably flawed institutions, and they can be put to flagrantly unjust purposes, including social control and racial oppression.⁵⁰ But there is no escaping them. Prisons have an important role to play in the punishment of crime. On balance, prisons are better than the competing alternatives available to control predatory criminals. Many prisoners are violent or repeat offenders, and those who are violent repeat offenders make up a sizable minority. Society must be protected from the predations of these criminals. Incarceration, from which escape is rare, virtually guarantees such protection for the term of the sentence imposed by the court. No viable alternative sanction has a comparable track record of success at this basic mission of social protection.⁵¹

Our sensibilities lead us to conclude that locking up predatory criminals is better than torturing or, except in extreme cases, killing them. That some of our prisons may inflict what amounts to torture is but a clarion call to reform: we cannot countenance such regimes, however much they may appeal to our baser desires or slip easily from our awareness.⁵² Our common sense, backed by research, leads us to conclude that locking up predators is better than releasing them directly to community supervision, even intensive community supervision, where the opportunities to prey on innocent citizens are rife and, for many, seemingly irresistible.⁵³ The societal consensus with respect to predatory criminals is this: prison comes first, then community sanctions; protect society, punish the offender, then take measured risks in the community, backed by the threat of further incarceration.

If there is no escaping prison, there is also no escaping the fact that we must reform our prisons if they are to be institutions of just punishment. One area of reform, beyond the scope of this book, is sentencing reform. There is no doubt that we rely too readily and too heavily on prisons, particularly with less serious offenders who could be safely handled in the community. The disproportionate effect of the prison on the black community and others of color, historically and today, fairly cries out for a sentencing policy that explicitly aims to break the cycle of incarceration that

has made the prison a rite of passage in the ghetto, comparable to high school for earlier generations of Americans. The disabling collateral consequences of confinement, which make it especially difficult for ex-offenders to find housing and work, are a formidable obstacle to rehabilitation that must be reduced, if not eliminated entirely, to allow offenders a realistic shot at successful return to civilian life.⁵⁴

More germane to this book is the sad fact that many of our prisons are fundamentally indecent, inhumane institutions that traffic in abuse or neglect, amounting, more often than we might like to imagine, to regimes that are a form of torture.⁵⁵ Perhaps the most obvious and serious problem is violence, which may be perpetrated by prison inmates or prison staff, and which can range from physical assault to rape, including psychological victimizations that are themselves a source of trauma. Violence, even psychological violence, is relatively plain to see and easy to abhor. A less obvious problem is human warehousing. Many prisons today are repositories for human beings, offering few opportunities for work, education, training, or remedial programs. Little can be found in these institutions to lift the human spirit or mend broken lives. Most prisoners spin out empty days – killing time napping in their cells, walking the yard with their buddies, exercising, or, most commonly, slouching semi-comatose before incessantly blaring televisions, which have become the babysitter of choice in many of our prisons.⁵⁶

Warehouse prisons, with or without occasional creature comforts like television, are empty enterprises. Mostly, they squander human potential. Prisons too often become human warehouses because prisons hold people who do not count for much in our eyes – poor people and especially poor people of color, notably African Americans. Poverty is itself something of a stigma in America. We think of poverty as a personal failing, and we think of the poor as a morally impaired and undeserving lot. When poor people turn to crime, they are doubly stigmatized. We are apt to think of poor and especially poor black offenders in stereotypical terms, as if they were all inveterate, remorseless, predatory career criminals, a class of modern urban monsters stalking our streets. These hard-core offenders, we suppose, are a breed apart. Their behavior is inexplicable to us; we imagine that human beings simply do not behave this way. We find them unforgivable – because forgiveness implies a shared humanity, and we do not acknowledge a shared humanity with criminals. One might look at criminals and say, with humility, “There but for the grace of God go I,” as explicitly stated by President Obama when he visited a federal prison in the summer of 2015, but few of us do.⁵⁷ We do not imagine that we could ever be in the shoes of criminals. For most people, criminals are alien; it is Us versus Them, Good versus Bad.⁵⁸ We, the good citizens, are innocent of crime, pure of motive; they, the bad criminals, are guilty of crime, moved by malevolence. In a curious tautology, we assume that crime is what criminals do because they are and always will be criminals. Once captured and confined, criminals are easily discounted and just as easily forgotten. Few of us lose sleep at night worrying about the plight of our nation’s convicts.

Many of us seem unreceptive to the simple and yet profoundly humanistic notion that the vast majority of criminals are ordinary and unremarkable people in difficult circumstances. Shouldering the burden of poverty and often of racism as well,

people who turn to crime are not cheerful sadists but rather imperfect human beings who have struggled with hard lives, made bad choices, done stupid, even mean and occasionally violent things, but still care about their lives and their loved ones and hope to one day make something of themselves. Now it is true that a minority of criminals are frighteningly and persistently violent, and some are no doubt sadistic. Their crimes are monstrous even if they are not monsters. Harsh lives help form these ugly predilections, but we are not inclined to view the development of criminals in human terms or to try to understand the forces that shape and ultimately warp their lives. That sort of thinking implicates society in the genesis of crime. It is easier – comforting, even – to believe in monsters, for whom (or for which) no one is responsible.⁵⁹

Yet the evidence clearly indicates that the large bulk of poor offenders are far from any vision of the malevolent hard-core criminal. Rather, they are disorganized, bumbling, somewhat pathetic characters. Immaturity rather than malevolence is the guiding theme of their lives and their crimes. Many of their crimes are serious – badly managed lives can back people into desperate situations, where impulsive violence can result, at great cost to innocent victims – but mostly the crimes of these offenders are small time, sporadic, spur of the moment misadventures that land them behind bars time and again. There is little success at crime and, for the vast majority, little commitment to crime as a way of life. Naively, touchingly, most offenders still hope to turn things around. That is how they enter prison – chastened but hopeful. They soon discover that penal institutions too often have little or nothing to offer them.⁶⁰

It is instructive to note that our animus against street criminals does not extend to white-collar offenders. We often try to understand and even forgive the criminal behavior of these offenders, who are people like us. We are apt to give weight to the pressures and constraints under which white-collar criminals act, for example, and to write laws that impose comparatively mild sentences for these crimes. We understand, and we can empathize, if not sympathize. Regrettably, there is much truth to the cynical notion, perhaps best revealed in the recent near-collapse of the financial system, that the best way to rob a bank is to own one.⁶¹ As a general matter, the chances of apprehension for white-collar crime are low; if caught, the chances a white-collar offender today will be sent to prison at all, let alone for a lengthy term, are even lower than in years past.⁶² (Penal institutions reserved for white-collar offenders are, moreover, much more accommodating than those reserved for street criminals.) Yet neither empathy nor tolerance nor lenient sentences are extended to run-of-the-mill street criminals. Their crimes come in for long sentences, often with substantial mandatory minimum terms – meaning that, no matter what the personal circumstances or situational pressures, these offenders go to prison for a long time, if not a lifetime.

Prisons house a virtual nation of convicts. It is a nation most of us wish to forget, comprised primarily of poor men and, especially, poor young men of color. A case can be made that we use prison too freely and in ways that are essentially racist. Whatever the size of our prisons and independent of the types of offenders they contain, it is unconscionable for society to relegate prisoners to a human junk

heap, to sentence them to endure pain without any redeeming social benefit or purpose. People punished in this futile and demeaning way will leave prison no better, and sometimes much worse, than when they went in. Instead, prison policy must be fashioned to promote mature adjustment to the inevitable pains of confinement. The goal is citizen building, first in decent prisons, later in the free world. This is an altogether appropriate correctional endeavor. For prisons must promote the virtues of citizenship even as they confine and punish our most wayward citizens. They must be instruments of punishment that are in fact both civilized and civilizing.

The goals of prison punishment

The claim made earlier in this book, that prisons have been around for centuries, may surprise some readers. The fact is, however, that confining people who harm or threaten us is an old practice because it is a natural thing to do, perhaps even as natural as striking out and physically hurting our enemies and then banishing them from our midst. Better, it is natural to hurt our enemies physically and then lock them up for good measure – to keep them under control and hence subject to further injury, including execution or banishment. As a system of punitive control, prison beats hands down the competing alternatives of execution and banishment. There is, after all, a limit to the number of executions a society can carry out; no peacetime regime in human history has had sufficient appetite for blood to execute all or even most of its offenders. Banishment, though simple and appealing in principle as a means to rid society of undesirables, is apt to be seen as too easy or too unreliable. The banished person is set free in a new world, a fate that is not always or obviously a punishment. The plain fact is that many offenders have welcomed this sanction and the freedom it confers.⁶³ An added difficulty with banishment is that one must have a place to which prisoners can be exiled, and the availability of such settings is never assured. With prison, at least, there is the assurance of punitive restraints and control of the deviant for the time and purpose set by the relevant authorities.

There has been much speculation and discussion about mass incarceration, which is to say, the massive penal edifice we have built over the past several decades.⁶⁴ The thinking is that we as a society have taken a “punitive turn” that makes prisons, and harsh prisons at that, the order of the day.⁶⁵ Though many critics discuss at length the expansion of prisons in the United States, there still remain four legitimate punishment goals of prison that help us understand the uses (and overuses) of prison in modern societies: retribution, deterrence, incapacitation, and rehabilitation.⁶⁶ Retribution is considered the oldest justification of punishment, focusing on what the offender deserves, independent of whether just deserts are useful for the person or the society. The other three goals of punishment – incapacitation, deterrence, and rehabilitation – are considered “utilitarian,” meaning they are assessed in terms of their utility – their usefulness – in promoting the greater good for society.

Prisons can serve each of these punishment goals. By their very nature, prisons incapacitate offenders; when confined, offenders are contained and constrained in

their actions. Since prisons are depriving, they offer what we might call punitive incapacitation. The deprivations of imprisonment, starting with the basic loss of liberty that is the core of the prison experience, are seen as deserved, or what is often called the just deserts or proper retribution for criminal acts. The impetus for mass incarceration today is surely a desire for incapacitation laced with a desire to inflict pain on offenders; we want criminals held captive, we want them to suffer, and we want them chastened and thus more likely to leave us alone for fear of further punishment. We also like to think that deserved suffering is an impetus for constructive change – the modern term is correction or rehabilitation – but corrections is a goal that is low on the priority list of the public, if not indeed of most students of penology (the technical term for the study of prisons). We will consider each of the goals of punishment in turn, starting at the beginning, with retribution.

Retribution

Discussions of retribution often begin with its oldest reference in the Bible – “an eye for an eye” – and end with the neoclassical views of “just deserts” and its corollary, a society’s “right to punishment.”⁶⁷ Robinson has delineated three competing conceptions of modern retribution or desert: vengeful, deontological, and empirical.⁶⁸ The first, vengeful desert, is the simple quest for revenge and “urges punishing an offender in a way that mirrors the harm and suffering he has caused, typically identified as *lex talionis*”⁶⁹ or retaliation. Though its roots can be traced back to readings in the Bible, to the Code of Hammurabi 600 years later, and to Roman law,⁷⁰ one could easily find a newspaper article or editorial on any given day that argues for the need for revenge against a modern-day street criminal or the need for justice for some victim. In contrast to vengeful desert, deontological and empirical deserts focus on the “blameworthiness of the offender,” including the extent of the harm caused, the enormity or moral evil wrought by the crime, and potential justifications and mitigating circumstances that reduce the criminal’s culpability in a given case.⁷¹

Deontological desert is based on universal ethical precepts and moral values, and thus “transcends the particular people and situation at hand and embodies a set of principles derived from fundamental values, principles of right and good, and thus will produce justice without regard to the political, social, or other peculiarities of the situation at hand.”⁷² This view of punishment is more akin to that of the German philosopher Immanuel Kant, who believed that a person who commits a crime should be punished because he deserves the punishment on moral grounds and society has an unfettered right to punishment. Thus, punishment of criminals is a moral duty where an offender “pays” for their crime and social balance is restored. Since punishment is a moral duty, it should exclude all other justifications for punishment either for the criminal themselves (rehabilitation) or even for society (deterrence and incapacitation).

Empirical desert, unlike deontological desert, is not calculated on moral grounds but is based on the “community’s intuitions of justice.” Thus, over time, society in general, and courts in particular, develop a “going rate” for different crimes; for

example, 15 years to life incarceration for second-degree murder. While the advocates of vengeful desert are concerned that the offender suffer in equal measure as the victim, the aim of deontological and empirical deserts is to ensure “that the offender is given that amount of punishment that puts him in his proper ordinal rank among all cases of differing degrees of blame worthiness”⁷³ and requires that more serious offenders receive more punitive harm.

Deterrence

Deterrence is a utilitarian goal of punishment that focuses on the prevention of future crime by convincing offenders that committing crime is not worth the risk of punishment.⁷⁴ Deterrence theory is often traced back to the writings of Cesare Beccaria and Jeremy Bentham. Beccaria believed that humans are rational, hedonistic, and possess free will and would thus choose not to commit crime if they knew the punishment in store for them. Bentham created the notion of the “hedonistic calculus” that future crime would be deterred through the promise of pain and believed that punishment must be certain, swift, and proportional to the crime committed; otherwise, people would view the punishment as unjust. Though the roots of deterrence date back to the 1700s, like retribution, it is still a popular theory and one that underlies all recent legislation, such as mandatory sentencing and three-strikes legislation. Contemporary deterrence theories such as rational choice similarly posit that people make choices based on the expected benefits of an action versus the expected losses they might suffer if they are caught and receive a punishment. Most contemporary discussion of deterrence distinguishes general from specific deterrence. General deterrence focuses on preventing crime among members of the general public, who, on observing the punishment of others, will conclude that the costs of crime outweigh the benefits. Specific deterrence targets the decisions and future behavior of offenders who have already been convicted, trying to determine what type or length of punishment will prevent them specifically from committing crime in the future.

There are at least three common critiques of deterrence theory.⁷⁵ First, deterrence theory assumes that people think before they choose to commit a crime. However, there are various categories of people (mentally ill, young, substance addicted) and circumstances (perceived dangerousness of the situation, inebriation, heat-of-the-moment crimes of passion) that preclude careful calculation. Second, the low probability of getting caught should be part of the decision-making process. Finally, measuring the deterrent effect of any potential or given punishment is difficult for researchers, and each methodology (crime rates, scenario proposals, and self-report data) has its potential shortcomings and failures. There is not much evidence that specific deterrence works, given that upwards of two-thirds of all offenders reoffend after they are released from incarceration. Though it is probable that the threat of prison does deter some would-be offenders and even some who have been incarcerated, it also makes others embittered and hence more committed to crime as a way of life.⁷⁶ The lion’s share of any change in crime rates – whether an increase or a decrease – is less a product of penal policy than of economic, demographic, or

even technological changes that alter routine activities of prospective offenders in ways that make high-volume crimes (such as car theft or burglary) more difficult to commit.⁷⁷

Incapacitation

Incapacitation is the simplest of all punishment goals, which may explain why prisons are so good at achieving this end – physically preventing offenders from committing further crime in the community. Like deterrence, it is future oriented and purportedly benefits society at large. While, in times past, banishment and death were the most popular forms of incapacitation, incarceration is currently the most popular means of incapacitating an offender. The implementation of three-strikes laws in various states exemplifies the theory of incapacitation by removing the most dangerous offenders from society for long stretches of time, if not for their lifetimes.

As a practical matter, the bottom line for prisons today is incapacitation, the simple holding of prisoners for the duration of their sentences. A bigger system, from this vantage point, is a better system. A big system that runs smoothly is the best system of all. Incapacitation is, to be sure, a modest goal, even a negative goal. We hold prisoners because we believe they will offend if we let them out of our sight. We run our prisons as though we expect prisoners to fail. We expect them to behave badly in prison unless monitored constantly and punished harshly. We expect them to return to crime upon release, so we impose restrictive parole policies and send them back to prison (where we imagine they belong) for even minor transgressions of regulations.

Rehabilitation

The goal of rehabilitation is to restore convicted offenders to a constructive place in society through some form of training or therapy that changes their inclination to commit crime.⁷⁸ It is a future-oriented utilitarian goal, but one that focuses its outcome on bettering offenders rather than holding or frightening or discouraging them in order to control their behavior. Whereas retribution, deterrence, and incapacitation are rooted in the ideals of the classical school of criminology and its view of offenders as rational, rehabilitation is rooted in the positivist scientific perspective. The key notion is that causal factors of criminal behavior can be traced to biological, psychological, contextual, or social factors that shape the character of offenders over the course of their lives.

Prisons today are typically called correctional institutions, which implies that the rehabilitation of prisoners is their main agenda. The label is misleading. (See Chapter 2 for a discussion of the history of prison rehabilitation.) Although many Americans endorse the idea that prisons should rehabilitate offenders, at least in the abstract, we as a society do not put much money behind this laudable goal. (There is a parallel here with health care for the uninsured. We are for it in principle but will not pay for it in practice.) Nor do we hold people accountable for failure to run

prisons that correct offenders. Wardens are not fired when treatment programs falter or when conditions of confinement deteriorate. Wardens are fired because of escapes and because of scandals that point to lapses in security that might plausibly promote escapes, defeating the primary role of prisons as settings of incapacitation. We put our money and our trust in security: *e pluribus unum carceris* – out of many (inmates), one prison (regime). Our money purchases massive buildings surrounded by imposing walls of concrete or concertina wire; prison officers, sometimes dressed like soldiers and increasingly trained following a military model of organization and deportment; and technology deployed in service of surveillance and control. More money is spent on control technology, such as cameras and stun belts, than on correctional programs or treatment personnel. Programs require relationships, particularly relationships of trust, which take time and care. Technology offers a quick fix: cameras that allow us to watch prisoners without having to interact with them or enter their world; stun belts that permit us to threaten or use painful electric shocks to gain control over prisoners through raw fear, without having to establish the respect on which authority is built. Imprisonment is thus a punishment that can reasonably be expected to hurt, deter, and incapacitate offenders, as well as to hold them for other punishments and, unevenly but encouragingly, to rehabilitate them.

A Case for Decent Prisons

Critics of the prison contend that a decent prison is an oxymoron, a contradiction in terms. For them, prisons are inherently corrupt and unregenerate institutions. Of course, some prisons are miserable, brutal places that traffic in violence on a daily basis; others feature neglect, offering leisure time pursuits as a substitute for productive activity. Many prisons prove stubbornly resistant to reform. But prisons are not inherently good or bad. Prisons are human institutions, and as such they are as good or bad as we make them. Decent prisons are possible because they are simply prisons that are adequate for human habitation. As human institutions, prisons can be arranged to support human life – to allow inmates to *live as human beings* during the course of their confinement. In decent prisons, inmates are not treated like so many objects or animals to be stored or caged, neglected or abused. A limited human life unfolds behind the walls of decent prisons, but it is a human life all the same. If a society can be judged by the quality of its prisons, as Fyodor Dostoyevsky maintained, a civilized society must strive to house its criminals in decent prisons. It stands to reason that civilized prisons are likely to prove civilizing as well, to the benefit of us all.

Dostoyevsky had an important point. A civilized society is one in which citizens treat one another decently – with civility and courtesy – because civilized people know that other human beings are people like themselves, possessed of dignity and worth. To treat other people like people may be the hallmark of civilization. The more people we treat as fellow human beings – women as well as men, rich as well as poor, minority as well as majority races and cultures, conformist as well as

nonconformist – the more civilized we are. Appreciating the range and diversity of humanity is important, because it is easy to be civilized with people like ourselves, who share our values and way of life. Those people make us feel good about ourselves, and it is natural to reciprocate and make them feel welcome when among us. Criminals are a different matter: they do not affirm our values; they test them. They do not make us feel welcome; they threaten and frighten us. Crime is a provocation to anger, even rage, and an invitation to abuse criminals in the name of revenge. Yet, whatever criminals do – and criminals do some terrible things – they remain human beings, however miserable or flawed. Crime is a human failing. The criminal, at large and in the prison cell, is ever and always a human being and must be treated as such. Prisons, then, pose difficult tests of our values because the conditions of our prisons are a measure of our capacity to recognize and respect the humanity of offenders, people we fear and, as a consequence of that fear and the shame that comes in its wake, often come to hate as well.⁷⁹

Other critics question whether offenders deserve decent treatment in a world in which some free and innocent people suffer indecent conditions on a daily basis without resorting to crime at the expense of fellow citizens.⁸⁰ This is called the less eligibility principle. Criminals, the undeserving, are said to deserve less than any noncriminal member of society. Stated in general terms, this principle is deceptively appealing. Why should any criminal live better than any law-abiding citizen? Must not virtue have its rewards, crime its punishment? Yet, in practice, the principle of less eligibility leads us to endorse the untenable proposition that a society can take full and complete control over prisoners, and hence be responsible for them, and then can, perhaps even should, purposely subject those prisoners to brutal and unjust conditions merely because brutality and injustice exist in the free world. The proposition fails because citizens and prisoners cannot be directly compared in this way. Free citizens have control over their own lives and are, as a result, responsible for them. Society, through its agent the prison, assumes control over the lives of prisoners and hence becomes responsible for the quality of life in prison.⁸¹ To run indecent prisons for the sake of some abstract notion of equity is barbaric and, if you will, an injustice to criminals and the larger society to which they will one day return, further inured to violence.⁸²

Decent prisons and mature coping

Decent prisons are possible and defensible. Given the current focus on “evidence-based” criminological policy, it is clear that the evidence to date at once indicts our prisons as failures and points to ways to improve these institutions. We know, from research and theory, the essential elements of decent prisons. Beginning modestly, we can say that decent prisons must house offenders under humane conditions.⁸³ Many people define humaneness to mean comfort and, hence, to infer that a humane prison is a materially plush and comfortable one. Nothing could be further from the truth. Such a prison would be as indecent as a prison marred by violence or neglect.

Prisoners do not have a right to an easy or comfortable time behind bars. Nor do they have a right to a life of penal leisure, even under physically barren or otherwise uninviting conditions. Prisoners must serve hard time. This is both just, since criminals deserve to suffer for the harms they have done to others, and inevitable, since prisons are inherently painful.

But hard time can also be constructive time: prisoners can learn something worthwhile during their confinement. Here, we believe, is where research shows us how to achieve decent prisons, prisons that can be expected, in turn, to produce decent inmates. The most valuable lessons that prisoners can learn are those that enable them to cope maturely with the rigors of daily living, which for prisoners amounts to coping with the pains of imprisonment. *Mature coping*, as defined in earlier editions of this book dating back to 1987, means: (1) dealing directly with one's problems, using the resources legitimately at one's disposal; (2) refusing to employ deceit or violence other than in self-defense; and (3) building mutual and supportive relationships with others. Inmates who cope maturely come to grips with problems in prison living, and they do so without violating the rights of others to be safe in their person and in their property. More generally, they treat others, staff and inmates alike, as fellow human beings who are possessed of dignity and worth. These inmates are the solid citizens of the prison community.

It goes without saying that mature coping comes hard for the offenders who fill our prisons. Most criminals cope immaturely with life's problems, which is in large measure why they find themselves in prison. Many deny problems rather than deal with them directly. When they confront problems – often because those problems are looking them squarely in the face – they do so impulsively, with little thought or reflection. Their thinking, moreover, often is distorted and self-defeating. Many see themselves exclusively as pawns of life and victims of injustice, with little or no appreciation for the poor choices they have made and the injustices they have inflicted on others. For them, life is a Darwinian struggle. They live by the preemptive strike, turning the Golden Rule on its head. Their motto: do unto others before they do unto you. Ultimately, their view is that might makes right – because it works, at least in the short run.

With the exception of the falsely confined, all prisoners were outlaws in the free world. Some of them remain outlaws behind bars. Most inmates, it is true, bemoan the primitive dangers of the prison yard; they prefer to live more civilly in relatively sheltered environments we call niches,⁸⁴ squirreling themselves away in their cells or spending most of their time in one form of recreation or another. Their goal, however, is merely to avoid the more unruly members of the community of criminals who populate prison. They do not cope with their problems; they avoid them. Nor do they build constructive ties to others. They simply want to do their own time in prison as safely and comfortably as possible. We can only suppose that upon release they will take up once again the disorganized and essentially purposeless lives that led them to crime and ultimately to prison.

Prisoners must cope maturely with the demands of prison life; if they do not, the prison experience will simply add to their catalog of failure and defeat. Mature

coping, in fact, does more than prevent one's prison life from becoming yet another series of personal setbacks. Mature coping is at the core of what we mean by correction or rehabilitation and, thus, creates the possibility of a more constructive life after release from prison.⁸⁵ It is reassuring to note that research on adaptation to imprisonment supports the notion that, "with time and experience, there is a tendency among inmates to adopt coping strategies that contain the seeds of 'mature coping.'"⁸⁶ The contexts in which these maturing tendencies emerge and might be nurtured will be examined later in this book.

Dealing with problems and achieving autonomy

Mature coping means, first, dealing with problems: meeting problems head-on, using all resources legitimately at one's disposal. This aspect of mature coping involves "assertiveness," a sense of "personal efficacy," and an "internal locus of control" with respect to one's immediate environment.⁸⁷ It is certainly true that "persons who expect to exert control" – who are confident enough to behave assertively and believe that self-directed efforts will pay off – "can find ways to do so even when opportunities for control are severely limited."⁸⁸ They follow the sage advice of Pulitzer Prize winning African American poet Gwendolyn Brooks: "When handed a lemon, make lemonade."⁸⁹

Autonomy is, in general, a profoundly rewarding experience. "Both people and animals are happier, healthier, more active, solve problems better, and feel less stress when they are given choice and control."⁹⁰ There is some specific evidence that prisoners with a sense of control over their lives adjust better to prison and to life on the outside. Such persons are more goal directed in their adjustment, more involved in prison programs, experience less conflict with authorities and other inmates, and violate fewer prison rules; they experience less emotional distress and fewer symptoms of physical illness in their daily prison lives.⁹¹ There is preliminary evidence suggesting that these prisoners may recidivate – return to crime on release – at lower levels than other inmates.⁹² This finding is important, because the issue is not exclusively what works in the matter of adjustment but what facilitates adjustment within the constraints of legitimate society. Some predators, we know, "assert" themselves in service of internally orchestrated adjustment goals and skillfully elude the authorities, but they do not cope maturely.

Security without deception or violence

The second characteristic of mature coping is addressing problems without resorting to deception or violence, except when necessary for self-defense. Deception and violence are primitive behaviors; each is a basic moral violation recognized by all human beings.⁹³ Except when engaged in to prevent immediate physical harm – itself a primitive self-defense situation⁹⁴ – deception and violence are reprehensible violations of the integrity of other human beings. Regrettably, deception and violence flourish in dangerous and unstable environments, where there is a chronic absence

of trust in others, and the preemptive strike – hurting someone first and asking questions later – masquerades under the mantle of practical wisdom. In prisons and on slum streets, deception and violence are a regular feature of daily life and adjustment and, indeed, are seen as normal, even desirable behaviors.

Deception in one's dealings with others is, of course, a possibility in any social circumstance. It is apparently the case that the prospect of deception, which greatly complicates human social interaction, has been an important force in the evolution of the human psyche. The human psyche must be attuned not only to peoples' words and deeds but also to the thoughts behind those words and deeds: to the thoughts people have about how others think as interactions unfold.⁹⁵ To be sure, deception, unlike violence, can be harmless when nothing of consequence is at stake – as when one passes along false compliments meant to put someone at ease. But, as a general rule, deception of others is a destructive force because it impedes cooperation and undermines solidarity. It is therefore of crucial significance that deception is a central feature of prison culture.⁹⁶ Indeed, Empey reminds us, "deception is the name of the game" in prison; "[a]mong officials as well as among inmates, it will be the most skillful manipulator who most often gets what he wants."⁹⁷ Victor Hassine⁹⁸ maintained that, for prisoners, deception is essential in one's dealings with authorities; he claimed that an inmate must "play the opposites" – ask for the opposite of what he really wants. An ethic of deception reigns in women's prisons as well, particularly in the dealings of women inmates with male staff.⁹⁹ "The danger here," noted Owen, "is getting manipulated. The men who try to game you will give up. Women will continue over a much longer time; they are more patient, will work on you a little bit at a time."¹⁰⁰

Caring for self and others: self-actualization through human relationships

The third characteristic of mature coping is making an effort to empathize with and assist others in need, to act as though we are indeed members of a human community who can work together to create a more secure and gratifying existence. The point is that one can achieve autonomy and security – that is, control of one's life – through relatedness to others. "Deep individual connections to others and the experience of benevolent persons and institutions result in feelings of safety and trust."¹⁰¹ With trust in ourselves and in the world, "both individuals and groups can acquire confidence in their ability to gain security and fulfill essential motives through connection and cooperation."¹⁰²

One such essential motive is control. Trust, in other words, can replace power as a mode of problem solving. Generally, power strategies operate destructively; power expresses itself in manipulation, deception, and violence, which in turn spawn division and dissension. Trust allows people to feel secure enough to relate to others openly and honestly and to cooperate with them in the resolution of difficulties. Ultimately, such cooperative relations hold out the prospect of self-actualization. As Staub makes clear, self-actualization can occur "in relationship to other people, as

part of a community.”¹⁰³ Self-actualization, then, need not be a solitary feat. Indeed, Staub maintains, “The full evolution of the self, the full use of the human potential, *requires* relationships and the development of deep connections and community.”¹⁰⁴ Prison poet Henry Johnson makes a similar point: “To live unloved, makes us cold; cruel; remote.”¹⁰⁵ We need to think of ourselves – of our selves, if you will – as persons-in-a-social-context, never fully alone, never fully submerged in the group, loved, ideally, but not suffocated by others. In the balancing of self and relations to others is to be found the most harmonious route to personal development.

Relatedness is not some idealistic panacea. At issue here is neither romantic love nor pure altruism. The notion of a selfless community of human beings is hopelessly romantic, particularly for people who have led hard lives. Nor is calculated relationship, in which one aims to establish a debt, sufficient to engender community. Rather, what is needed is “altruistic egotism,” in which the objective is to help others with the selfish *and* selfless motive of “*deserving* their help in return.”¹⁰⁶ That help can be quite unsentimental in places like prisons. As Dwayne Betts observed, reflecting on the kind of help that mattered to his survival, “I was learning what kindness meant when you didn’t have anything. Kindness was Isaac teaching me how to make a knife and telling me what to be wary of.”¹⁰⁷ In prison and in hard-scrabble environments like urban ghettos, those who deserve and receive support feel well loved and secure.

Relationships are always possible in any human environment, even in extreme settings like death camps.¹⁰⁸ We come into this world with an innate capacity to develop a conscience and hence to establish responsible social relationships.¹⁰⁹ This capacity may, for genetic reasons, be less pronounced in some of us than in others.¹¹⁰ But it is present in some degree in all of us, and can be promoted or retarded by environmental forces. Warm, supportive environments promote the development of conscience. Such environments feature affection, responsiveness to feelings and concerns, the use of reasoning to resolve conflicts, inculcation of moral standards, and, above all, an explicit concern for helping others in need. Morality, in other words, is learned by precept, example, and action – by doing good.¹¹¹ Doing good, in turn, makes us feel good about ourselves and others. Forgoing the pleasures of the moment for a future good – which generally means taking into account the welfare of others – is part and parcel of what it means to have a conscience. Were it not for guilt and anxiety, the hallmarks of conscience, we would all live selfishly in the present.¹¹²

General dynamics of adjustment

There is and always has been a general similarity between the adjustment problems posed in prison and those in the outside world; for there is an important sense in which prison life and life in general are related. Prison problems are essentially exaggerated – though sometimes greatly exaggerated – versions of problems experienced in normal life. None of us is free from strain in our personal and family lives or in our jobs or careers. We all struggle with deprivations and constraints and loss, forging

limited lives from the interplay of rewards and punishment in the world around us, whether that world is the prison world or the free world.¹¹³ It is also true that all of us, confined and free, must cope with time: “time transcends the conventional social order. Prisoners can be snatched from that order but not from time. Time imprisons us all. When the prisoner returns to society after serving his time, in an important sense he’s never been away.”¹¹⁴ Certainly the correspondence between general life problems and prison problems is especially salient for the lower class men and women who make up the vast bulk of our prison populations. Indeed, we know that many of these people come from urban slums that are, in some respects at least, as harsh and depriving as the prisons they wind up in. “Doing time” in one ghetto or another is a familiar if uncongenial experience in their lives.

Thus, it can plausibly be argued that inmates who learn to cope maturely with the stresses posed by confinement are learning to cope maturely with the stresses of life.¹¹⁵ Moreover, while immature coping typically complicates problems (even the most proficient predators must contemplate the army of enemies they are cultivating), mature coping enables us to solve problems or at least make them more manageable. These successes in coping are apt to build self-confidence and encourage more ambitious behavior, such as taking on new challenges, learning new skills, and generally engaging the world rather than running from opportunities or exploding when pressure mounts.¹¹⁶ At this juncture, prisoners are no longer embroiled full time in a dog-eat-dog fight for survival or trapped in a cycle of personal failure and defeat. They are thus more likely to sample traditional correctional programs in an effort to remedy personal deficiencies. More generally, they are ready to tackle the hard job of rebuilding their lives.

Central to this thesis is the notion that healthy self-esteem mediates coping behavior in any environment and must be enhanced if mature behavior is to occur.¹¹⁷ (Healthy self-esteem features a positive sense of one’s worth that is realistic and stable, as distinct from the exaggerated, groundless, and unstable self-regard that characterizes narcissists.) The psychological sequence underlying this adaptive process has been identified by Toch and can be paraphrased as follows:¹¹⁸

- Mature problem-solving efforts are likely to succeed, and this builds healthy self-esteem and encourages more mature behavior.
- A history of successful mature coping efforts produces a confident, resilient person who can learn from occasional failures rather than be demoralized or even traumatized by them; in short, success breeds success and makes failure manageable.
- Immature behavior generally produces failure, which, in turn, lowers self-esteem and further inhibits effective problem solving.
- A history of failure produces chronically low self-esteem, with the result that the person spends more time nursing or denying hurt feelings and less time attending to the environment in realistic ways; stated differently, failure breeds failure and, eventually, crippling self-doubt and other deficits that give rise to impulsive, short-sighted behavior.

Paradoxically, when self-doubt becomes too painful to bear, it may lead to compensatory delusions of entitlement by way of what psychiatrists call “reaction reformation,” itself a form of denial. The result is a combustible form of narcissism in which an inflated sense of one’s worth makes the person a walking time-bomb: “When reality intrudes, as it inevitably will, they treat the bad news as a personal affront, and its bearer, who is endangering their fragile reputation, as a malicious slanderer.”¹¹⁹ Retaliatory violence readily follows.

Stress management and personal reform are linked in direct if sometimes complicated ways. This connection forms the core of the correctional agenda; for stress, more than any other aspect of the prison experience, defines the quality of life and adjustment behind bars. As Toch and Johnson have noted:

Stress is an important feature of prison life, and indeed may be the central feature of prison life as it is experienced by the prisoners themselves. Stress can contaminate programs, undermine adjustment efforts, and leave a residue of bitterness and resentment among inmates. It can make the prison a destructive and debilitating institution; to ignore stress is to relegate prisons to the business of warehousing spoiled (and spoiling) human resources. Stress must be controlled if prisons are to become environments in which the work of corrections, in any sense of the word, can take place.¹²⁰

Ultimately, the prison itself must deal competently, meaning *maturely*, with stress. Prisons must be “resilient environments, settings orchestrated by line and managerial staff to meet the adjustment needs of prisoners.”¹²¹ The premise is that “even environments of stress such as prisons can become settings for survival and milieus for personal growth.”¹²² Even maximum-security prisons, in other words, can promote mature adjustment, and they must do just that if they are to play a viable role in the correctional process.

Decent prisons as a human right

Prisoners, all prisoners, retain a right to conditions of confinement that show consideration and respect for their humanity. Prisoners are in varying degrees responsible for their crimes, and they deserve to suffer for the harms they have done to others. This means that, first and foremost, offenders must be treated as persons who deserve to suffer the deprivation of freedom inherent in imprisonment, as well as the loss or attenuation of many of the comforts and privileges that attach to freedom in our society. Our modern understanding of this arrangement is that offenders are sent to prison as punishment – loss of freedom – not for any additional punishment that might be given out behind bars. Earlier prisons were settings of punishment, notably corporal punishment, which was meted out with some regularity. Modern prisons, in contrast, are meant to be settings of deprivation, not added punishment.

A decent prison, then, has a bare-bones, severe quality to it. The regime is one that is short on amenities but long, so far as is possible, on autonomy. For an

austere regime need not and, indeed, should not entail the elimination of choice. The hallmark of personhood is self-determination, which brings with it the capacity for personal growth and, potentially, self-actualization.¹²³ Note that self-determination requires that a person deal directly with problems, the first element of mature coping. No just punishment – and hence no decent prison – can abrogate the prisoner’s capacity for self-determination. Persons have the moral right to make choices that influence their lives and the moral obligation to bear responsibility for the consequences of those choices. In a sense, prisoners have chosen the punishment of prison as a consequence of their crimes, but prison need not and should not be a human wasteland. To the maximum extent feasible, prisons must promote autonomy even as they limit freedom. Certainly prisoners are not free to leave the prison or even free to move about within the prison at will. They are not free to exploit or abuse others or to commit crimes behind bars. But prisoners should be free to make some choices within the prison world – with respect to housing, programs, scheduling, recreation, and relationships – that have meaningful implications for the quality and character of the lives they will lead behind bars and, ultimately, upon release.

Self-determination develops best and operates most effectively in a secure, stable environment. In a stable world, people can plan and direct their lives in accordance with their choices, producing more or less anticipated consequences for which they can be readily held accountable. In an insecure and unstable world, unpredictable contingencies tend to shape existence. Essentially random events, or events over which one has no reasonable control, overshadow individual choice. Hence, one’s choices bear little relationship to the consequences one suffers or to the larger contours of one’s life. In such a world, impulsive, present-centered behavior comes to dominate individual adjustment; social relations become less stable and planning less likely to bear fruit. A sense of irresponsibility reigns, which can produce resignation or, as in the case of criminals, license. The world is unfair, says the criminal, so I will do anything I can to get what I want. I am an innocent victim, so I am entitled to victimize others in turn. Life is hard, so I will be harder, more unfeeling, more brutal.

Decent prisons must offer an alternative to the predatory world of the street criminal. They must be secure institutions, settings in which individuals are safe from the predations of others and hence free, if they so choose, to live without resort to deception or violence in their dealings with others. Free, in other words, to deal with one another in a mature fashion. Free, if they wish, to arrange their lives in accordance with choices made upon reflection and not under duress. In such a world, prisoners can learn to anticipate and accept the consequences of personal choices.

Human beings are, by nature, social animals. As Allman has succinctly observed, “The key to understanding our evolutionary success, as well as the unique combination of everyday behaviors that set us apart from every other living thing today, is our unique talents as social beings.”¹²⁴ All human environments have a social component to them. We are reared in families, live in communities, and work and play in groups. Even when we are alone, our minds are populated by thoughts of others and by experiences drawn from the world of people. Though we enter and leave

the world alone, most of us – and perhaps at some level, all of us – are possessed of an appetite, a genuine hunger, for relations with others. We must cope with life. For most people most of the time, that means we must cope with other human beings. Our choices often are about how (and not whether) we will relate to others, even if, as with criminals, those choices often feature destructive relations with others.

A decent prison, then, must feature a secure social world in which offenders have open to them the opportunity to develop constructive interpersonal relations with one another, with staff, and with people from the free world.¹²⁵ Stated differently, the social world of a decent prison is built on mature social relations. Such relations are the bedrock upon which our “moral sense” is built.¹²⁶ Our basic notions of right and wrong, in other words, are premised on our capacity to feel for and relate to other human beings, to take their interests seriously and, moreover, to take the needs and concerns of others into account when we fashion our own lives. The goal in a decent prison is for the prisoners to adapt to life behind bars in healthy and responsible ways, and from such adaptations to develop a mature coping strategy for life in the free world as well. Note that supermax prisons are inherently indecent – unless they are used sparingly and as bridges back to more normal prison environments. On their own, supermax prisons offer nothing but solitary captivity and profound insecurity, which cannot prepare a person for a life of responsible freedom in the company of others.¹²⁷ It is challenging enough for regular prisons to operate in decent, constructive ways. Supermax prisons are a full-scale retreat from decent prisons as we see them, and serve best as a reminder of how wrong things can go when we lose sight of the human relations essential to humane confinement.

Notes

- 1 See generally Clear and Frost (2013).
- 2 My colleagues promptly altered my copy of the cartoon, replacing Bob with Rob, which is what my friends call me. Who said academics were a humorless lot?
- 3 Ferguson (2014).
- 4 See Johnson (1986: 181–205; 1998: chapter 8).
- 5 See generally Conover (2000).
- 6 By contrast, visits to punishment museums and prisons that serve as museums, such as Alcatraz, are quite common, but this “penal tourism” puts the observer in the status of “bystanders who gaze at the spectacle of pain and suffering” in a detached way, far removed from the experience of actual prison life (Welch, 2015: 1). See also Brown (2009).
- 7 Johnson (2010: 10).
- 8 Hagan and Dinovitz (1999).
- 9 Clear and Frost (2013).
- 10 Costs for 2008 reported by Bureau of Justice Statistics (2012).
- 11 We are indebted to our colleague Jeffrey H. Reiman, the William Fraser McDowell Professor of Philosophy at American University, for the notion that punishment should be both civilized and civilizing.

- 12 Plato did in fact support the death penalty but for reasons that are irrelevant today. He saw crime as a kind of disease that contaminated and tortured its host; the serious and incurable criminal would be released from his earthly bondage by execution, a punishment that was presumed to make him less of a wretch. Philippe Aries (1982) tells us that other notions of death prevalent before the twentieth century, particularly those associated with a forgiving God and a congenial afterlife, made a foreseen death a tame and desirable arrangement. Here, too, execution might be conceived of as a blessing of sorts, allowing the criminal to come to terms with their Maker. In our secular age, at least in the Western world, where people are neither believed possessed by criminal demons of one sort or another nor the confident beneficiaries of a guaranteed afterlife, the benefits of death cannot be invoked to defend the death penalty (Johnson, 1998: 234–239). For more on Plato's views on punishment, see Mackenzie (1981).
- 13 Sherman and Hawkins (1981: 55).
- 14 See generally Heinlein (2013).
- 15 Tonry (1995).
- 16 Blumstein (1994: 399).
- 17 Austin and Irwin (2001).
- 18 Lynch and Sabol (1994).
- 19 Reiman (1997).
- 20 Clear and Braga (1994); Tonry (1995). See generally Morris and Tonry (1990).
- 21 Carson (2014).
- 22 Beck and Bonczar (1994: 1); Gilliard and Beck (1994: 1); Carson (2014: 6).
- 23 Cahalan (1986: 32).
- 24 Carson (2014: 7).
- 25 Carson (2014: 6).
- 26 Carson (2014: 4).
- 27 Gottschalk (2015).
- 28 It is notable that since 2009 the incarceration rate for black males has dropped from 3119 per 100 000 to 2805 in 2013. See Carson (2014: 9) and West and Sabol (2010).
- 29 Although the disparity is still present, in recent years this trend has showed signs of reversing. In 2000, the incarceration rate for black females was 205 per 100 000, and the incarceration rate for white females was 34 per 100 000. In 2013, the incarceration rate for black females dropped to 113 per 100 000, while the incarceration rate for white females increased to 51 per 100 000. See Carson (2014) and West and Sabol (2010).
- 30 Carson (2014: 8).
- 31 Carson (2014).
- 32 Lynch (1993); Mauer (1999).
- 33 Glaze and Herberman (2013).
- 34 Other minorities, notably Hispanics and American Indians, are overrepresented in our prisons, but the biases at work in the case of African Americans are arguably more profound, affect more people, and are of longer duration.
- 35 Messner and Rosenfeld (1997).
- 36 Mandle (1978, 1992); Barak, Leighton, and Flavin (2010: 71–85).
- 37 Massey and Denton (1993).
- 38 Wilson (1987); Sampson and Wilson (1995).
- 39 Sellin (1928, 1935); Wolfgang and Cohen (1970); Hagan and Peterson (1995).
- 40 Sampson and Wilson (1995); Mann (1995).

- 41 Wilson (1987).
- 42 Oshinsky (1996: 131–132).
- 43 Hagan and Peterson (1995).
- 44 Alexander (2010).
- 45 Wacquant (2008). See generally Alexander (2010).
- 46 Litwack (1998).
- 47 Sabol and Lynch (1998); Wacquant (2008).
- 48 Oshinsky (1996).
- 49 Tonry (1995); Mauer (1999).
- 50 For a fuller discussion of this problem, see Johnson (2000).
- 51 Garland (1990).
- 52 Ferguson (2014).
- 53 Petersilia and Turner (1990, 1993).
- 54 Travis (2002).
- 55 One of the hallmarks of torture is systematic degradation. As Ferguson (2014: 149–150) has shown, “The judiciary has repeatedly failed to respond to situations that would seem to have crossed the line into unacceptable degradation. Prisoners have been denied relief when ‘placed in cells with human waste and subjected to the screams of psychiatric patients; or forced to sleep for two months, despite repeated complaints, on a concrete floor in a cramped cell with a mentally ill HIV-positive prisoner who urinated on him; or had urine thrown at her by a guard which splashed on her face and shirt.”
- 56 Johnson (2005).
- 57 This quote has been attributed to a number of saints, including Saint Paul.
- 58 See, for example, Chiappetta and Johnson (2015).
- 59 For a thoughtful discussion of these matters, see Simon (2014).
- 60 Austin and Irwin (2001).
- 61 Reiman and Leighton (2014).
- 62 Taibbi (2014).
- 63 Stern (1987: 10).
- 64 Clear (1994); Tonry (1995); Garland (2001); Pratt, Brown, Brown, Hallsworth, and Morrison (2005); Frost (2006); Shichor (2006); Clear and Frost (2013).
- 65 See especially Simon (2014).
- 66 Shichor (2006).
- 67 Shichor (2006).
- 68 Robinson (2008).
- 69 Robinson (2008: 147).
- 70 Shichor (2006).
- 71 Robinson (2008).
- 72 Robinson (2008: 148).
- 73 Robinson (2008: 151).
- 74 Shichor (2006).
- 75 Shichor (2006).
- 76 A meta-analysis of 50 recidivism studies by Gendreau and Goggin (2000: 24) indicates that “recidivism rates were higher among offenders sent to prison when compared to those sentenced to probation/parole, and higher among inmates who served longer versus shorter prison sentences.”

- 77 Van Dijk, Tseloni and Farrell (2012).
- 78 Shichor (2006).
- 79 For a discussion of these matters in relation to the justice of capital punishment, see Johnson (2014).
- 80 Logan and Gaes (1993).
- 81 In the compelling words of Chief Justice Burger (Ferguson, 2014: 219): “When a sheriff or a marshal takes a man from the courthouse in a prison van and transports him to confinement for two or three or ten years, this is our act. We have tolled the bell for him. And whether we like it or not, we have made him our collective responsibility. We are free to do something about him; he is not.”
- 82 Conrad (1988).
- 83 See generally Johnson and Toch (1988), Liebling (2011), and Toch (1977).
- 84 Toch (1977).
- 85 Johnson and Toch (1988: 19–20); Toch (1988: 36–39).
- 86 Leban, Cardwell, Copes, and Brezina (2015: 15). In their insightful study of how prisoners learned to deal with “interpersonal affronts,” which could easily lead to violence if handled badly, Leban *et al.* (2015: 15) found that, over time, “prisoners learned to: (1) find the most effective strategies for responding to strain based on available options, preferences, and the success or failure of previous coping strategies; (2) preemptively cope with these strains; and (3) alter the amount of significance they attached to these events or situations (allowing them to more easily interpret or redefine these situations).”
- 87 For assertiveness, see Howard and Scott (1965); for personal efficacy, see White (1959) and Bandura (1977); and for internal locus of control, see Rotter (1966).
- 88 Goodstein, Mackenzie, and Shotland (1984: 352); MacKenzie, Goodstein, and Blouin (1987: 65). In some situations, in normal life as well as in prison, opportunities for control are entirely absent. Problems cannot be met directly because they are out of one’s control. Examples include patients facing life-or-death surgery or advanced terminal illness. In both instances, patients can only await their fate. Given their objective and complete helplessness, “[d]istorted perceptions of reality through denial and rationalization” can be quite effective as strategies of adjustment (Porporino and Zamble, 1984: 411).
- 89 Cited in McCall (1995: 177). See also Brooks (1994).
- 90 Toch and Adams (1989: 272).
- 91 Goodstein and Wright (1989: 24–45); Wooldredge (1999: 244–245). Osgood, Gruber, Archer, and Newcomb (1985: 76), reporting on a study “conducted at four correctional institutions for adolescents in a large Midwestern state” housing “males between the ages of 13 and 18,” emphasized the value of autonomy in the constructive adjustment of the young offenders. Findings revealed that reduced autonomy among inmates led to increased support for the inmate subculture, much as Sykes (1958) has suggested; these boys stood in more or less unified opposition to the staff and the programs offered, and generally made trouble for the institution. In contrast, enhanced autonomy led to increased support for institutional goals. Of particular note, young offenders granted autonomy felt more secure and were more willing to participate in rehabilitation programs. Overall, enhanced autonomy produced “a more orderly and humane setting” (Osgood *et al.*, 1985: 87).

- 92 Zamble (1990: 143).
- 93 See generally Pinker (2011).
- 94 Some people will take exception to our use of the term primitive in this way, but substantial anthropological evidence bears this out. Violent death rates were much higher in pre-modern societies. Civilization, whatever its discontents, brings reduced rates of physical violence. See Keeley (1995) and Pinker (2011).
- 95 Deception requires what Allman (1994) has termed “a theory of mind about others” so that one can try to manipulate what others are thinking and hence deceive them. “The human ability to develop a theory of mind about others appears to be a specialized feature of the brain that operates independently of other mental activities typically associated with intelligence” (Allman, 1994: 67).
- 96 Clemmer (1940).
- 97 Empey (1982: 25).
- 98 Hassine (2011).
- 99 George (2015).
- 100 Owen (1998: 170).
- 101 Staub (1989: 265).
- 102 Staub (1989: 265).
- 103 Staub (1989: 269).
- 104 Staub (1989: 269) [emphasis added].
- 105 Bruchac (1984: 149).
- 106 Selye (1975: 72) [emphasis added].
- 107 Betts (2009: 185).
- 108 Des Pres (1977).
- 109 Hoffman (1981); Nettler (1984).
- 110 Wilson and Herrnstein (1985).
- 111 Staub (1989: 280).
- 112 Allman (1994: 97–99).
- 113 Gates (1991: 68).
- 114 Wideman (1984: 36).
- 115 Toch (1988: 37).
- 116 Toch (1988: 37).
- 117 Scotland (1975: 3).
- 118 Toch (1988: 37–38).
- 119 Pinker (2011).
- 120 Johnson and Toch (1988: 20).
- 121 Johnson and Toch (1988: 20).
- 122 Toch (1975: 326).
- 123 Maslow (1966).
- 124 Allman (1994: 20).
- 125 People from the outside world would include those who enter the prison as volunteers, usually associated with community programs, as well as visitors and others from the outside world with whom inmates come in contact over their terms.
- 126 Wilson (1993); Pinker (2011); Bloom (2013); Johnson (2014).
- 127 For a definitive look on the supermax prison in its many egregious manifestations, see Shalev (2009) and Richards (2015).

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