

## ABSTRACT

An agent of lasting desistance:  
Toward a restorative justice framework for American criminal justice

Dresden Hasala-Shooks

Director: Dr. Sung Joon Jang, Ph.D.

Criminal punishment practices in the United States have varied greatly in severity and purpose throughout their history. Nonetheless, prison practices have retained their basis in the theories of retribution and deterrence, theories that emphasize an offender's rational choice to commit crime and to be punished legitimately for transgressions. This criminal corrections framework is designed mainly to address and punish criminal behavior. A purely castigatory approach, however, does not sufficiently address criminal identity. Using high recidivism rates as a springboard for the case that the American criminal justice system is not effectively reforming criminals, this thesis investigates desistance from criminal activity as a process that is heavily dependent on an individual criminal's will to change. The strength of this transformational impetus then amalgamates external factors such as accessibility of legitimate work and strength of social bonds and internal factors such as perception and identity as an offender or non-offender.

APPROVED BY DIRECTOR OF HONORS THESIS:

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Dr. Sung Joon Jang, Sociology

APPROVED BY THE HONORS PROGRAM:

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Dr. Andrew Wisely, Director

DATE: \_\_\_\_\_

AN AGENT OF LASTING DESISTANCE:  
TOWARD A RESTORATIVE JUSTICE FRAMEWORK FOR AMERICAN CRIMINAL JUSTICE

A Thesis Submitted to the Faculty of  
Baylor University  
In Partial Fulfillment of the Requirements for the  
Honors Program

By  
Dresden Hasala-Shooks

Waco, Texas

May 2014

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## INTRODUCTION

For an individual to reform his behavior, he must first recognize there is something wrong with himself. Until the individual recognizes this and decides to make a change in his or her behavior, there will be no change. Such a change cannot be forced. Yet, this is precisely what the American criminal justice system seeks to do and has done throughout its history. From its origins in post-colonial lockups and Southern slave plantations, the system that began as a “warehouse of penance” lost much of its legendary cruelty following a decade and a half of systemic Civil Rights litigation by the Warren court.<sup>1</sup> However, the effects of this reversal were not universally positive: the system was made less cruel at the cost of being reduced to a risk-averse form in which prisoners are processed through the system impersonally, their treatment focused on retribution for a wrong committed against society.

That the framework for American criminal justice has largely been based on legal rather than moral principles perhaps foreshadowed its trajectory from the beginning. That said, the American criminal justice system has not always been as severe in nature as it is now. The imprisonment process all but denies criminals the opportunity for reconciliation with victims; on the other side, both victims and society are denied this in equal measure. The criminal’s sentence does not typically end upon release, however. An offender’s criminal record follows her, limiting employment opportunities and hindering her ability

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<sup>1</sup> Robert Perkinson, *Texas Tough: The Rise of America’s Prison Empire* (New York: Metropolitan Books, 2010), 66-67; William J. Stuntz, *The Collapse of American Criminal Justice* (Cambridge, MA: Belknap Press, 2011), 56-57.

to re-integrate into the social fabric of society. The more social distance exists between an individual and the ex-offender, the more likely she will be to stigmatize him.<sup>2</sup> In many cases, criminals are so ostracized from society that the only means of sustenance exist in the form of more crime; this phenomenon is at least partly responsible for why recidivism rates continue to rise, though the phenomenon is significantly more complex than that.

This issue stands in an unusual historical context. In 1972, the nation's incarceration rate was one-fifth what it was in 2000.<sup>3</sup> Since then, a dramatic paradox has been observed wherein U.S. crime rates have declined by some 25% while the prison population has quintupled.<sup>4</sup> Because a vast majority of prisoners cycle back through the system, it stands to be seen the prison system is not effectively deterring them from further crime, nor is it reforming existing patterns of behavior. If the offender-related goals of the prison system are deterrence, incapacitation, and rehabilitation, it is meeting only the second of these, an efficacy rate similar to that of the prison system itself for releasing prisoners who do not cycle through again upon release.<sup>5</sup>

In light of the striking evidence against the efficacy of the American prison system, the question becomes one of why the system in its current form is not meeting its goals of deterrence and rehabilitation. Existing research shows this problem is anything but simple: social factors outside the system mitigate the ease with which a prisoner can

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<sup>2</sup> John Braithwaite, *Crime, shame, and reintegration* (Cambridge, UK: Cambridge University Press, 1989), 87.

<sup>3</sup> Ibid, 5.

<sup>4</sup> James Austin et al., "Unlocking America: Why and How to Reduce America's Prison Population." (The JFA Institute, 2007): 4; William J. Stuntz, *The Collapse of American Criminal Justice* (Cambridge, MA: Belknap Press, 2011), 253.

<sup>5</sup> Michael D. Maltz, *Recidivism*, (Orlando, FL: Academic Press, Inc., 1984): 11.

reintegrate with non-offending society, and the system itself tends to manifest a castigatory approach to treatment focused on punishing the criminal's antisocial behavior while paying comparatively little attention to teaching him pro-social alternatives.<sup>6</sup> At every stage of the sentencing and incarceration process, criminal individuals are cast as society's antagonists, reinforcing a message that their status is as thus. Treatment, then, is tightly governed by regulations that permit little personalization.<sup>7</sup>

This lack of personalization neglects a critical element of the rehabilitative process. In an effort to permit neither discrepancies in access nor abuses to prisoners within the system, treatment programs are standardized, thus limiting the individual attention any one prisoner can receive.<sup>8</sup> But here as well, efforts to constrain negative outcomes limit the system's potential to explore positive alternatives. The effect of this neglect is that the future-centric goals of deterrence and rehabilitation are not pursued until the present goal of retribution is exacted to whatever standards the state has deemed necessary. A general neglect of rehabilitation then translates to an essential reason prisoners exit in great frequency knowing no other real way to behave. Collusion of this factor and others such as social stigmatization and lack of access to legitimate work all

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<sup>6</sup> Ray Paternoster and Shawn Bushway, "Desistance and the "feared self": toward an identity theory of criminal desistance," *The Journal of Criminal Law and Criminology* 99 no. 4 (Fall 2009): 1105; Celeste Davis, Stephen J. Bahr and Carol Ward, "The process of offender reintegration: Perceptions of what helps prisoners re-enter society," *Criminology and Criminal Justice* 13 no. 4 (Sept. 2013): 447; Greg Pogarsky, Alex R. Piquero, and Ray Paternoster, "Modeling Change in Perceptions about Sanction Threats: The Neglected Linkage in Deterrence Theory," *Journal of Quantitative Criminology*, 20 no. 4 (Dec. 2004): 344; Shadd Maruna, "Desistance From Crime and Explanatory Style: A New Direction in the Psychology of Reform," *Journal of Contemporary Criminal Justice* 20 No. 2 (May 2004): 197.

<sup>7</sup> Austin et al., 17.

<sup>8</sup> Ibid; Perkinson, 369; Mark W. Lipsey and Francis T. Cullen, "The Effectiveness of Correctional Rehabilitation: A Review of Systematic Reviews," *Annual Review of Law and Social Science* 3 (2007): 298.

but guarantee a high recidivism rate, this being, in turn, the key indicator of the prison system's ineffectiveness.

The fact the prison system is primarily releasing prisoners who will return to prison is one of the strongest indicators of its dysfunction. Though only some 2.3% of individuals who commit crimes this year<sup>9</sup> will wind up serving time for their crimes in prison, if caught and incarcerated, a vast majority will return to prison upon release.<sup>10</sup> A look into the demographics of *who* is going to prison makes the case even more striking: compared to the demographics of crime commission, the prison entry population is disproportionately poor, male, and black. Poverty, low education, childhood abuse, parenting by a single mother, drug abuse, and affiliation with criminal subcultures are all well-documented social phenomena contributing to prisoner recycling.<sup>11</sup> Because these factors are outside the influential jurisdiction of the prison system itself, however, it stands to be seen that some other factor must be contributing to recidivism rates that have increased long after national crime rates began to fall. Exploration of this other factor will constitute the investigatory theme of this thesis.

The goals of this thesis are twofold. The first is to analyze the strength of the association between the proceduralization of the criminal justice system and the high recidivism rates that have been observed over the last few decades. Thus, chapter one begins by taking a look back to the formation of the American criminal justice system

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<sup>9</sup> This rate, currently just over 2.3%, was computed from the percentage of prison admissions in 2011 against total crime victimization for the same year as listed in the National Crime Victimization Survey. See [www.bjs.gov/content/pub/pdf/p11.pdf](http://www.bjs.gov/content/pub/pdf/p11.pdf) and [www.bjs.gov/content/pub/pdf/cv11.pdf](http://www.bjs.gov/content/pub/pdf/cv11.pdf).

<sup>10</sup> Patrick A. Langan and David J. Levin, "Special Report: Recidivism of Prisoners Released in 1994." (Bureau of Justice Statistics, 2002): 1.

<sup>11</sup> For a particularly good breakdown of this phenomenon, Davis et al., 447.



and its evolution into the twentieth century, focusing on prison structure, sociodemographic makeup of the prison population, and how crime, incarceration, and recidivism rates have changed over time. Chapter two then narrows the definition of recidivism for the purposes of this investigation. With an operational definition of recidivism established, chapter three returns to the American context, looking at current recidivism patterns and what they say about the efficacy of the prison system. These three chapters constitute part one of this thesis.

Part two then focuses on analysis of a potential alternative model of prisoner treatment based on John Braithwaite's theory of reintegrative shaming. Braithwaite's original model is explored in detail in chapter four as a more holistic approach the prison system can use to meet all three of its goals related to the offender. Chapter five addresses a limitation in the model, also proposing a means by which Braithwaite's shaming can be utilized in practice without compromising the prison system's ability to punish antisocial behavior. Chapter six then discusses a series of successful implementations of more holistic rehabilitative programs based on processes similar to reintegrative shaming. These are designed to call the prisoner's own attention to his or her moral self. Chapter seven concludes.

## CHAPTER ONE

### From plantation to processing plant: The procedural revolution and its effects on prison practice

Since the 1980's, the American criminal justice system has become known amidst its international counterparts for its size and its unflinching severity. While notions of severe punishment have changed over the centuries according to society's conception of an acceptable level of state-perpetrated violence against an individual, the legacy of today's American punitive bureaucracy is, strangely enough, one of inadequate scope, ineffective deterrence, and substandard efficacy. The United States incarcerates a higher percentage of its population than any other country. Just under one in a hundred Americans is under the jurisdiction of the largest penal system in the world, a system comprised of over 1,600 facilities, 2.4 million prisoners, and more employees than the nation's two largest private employers combined.<sup>1</sup>

For its immense scope and influence, however, the American criminal justice system is ineffective. Many incarcerated offenders are re-arrested for more severe crimes than those for which they were initially convicted.<sup>2</sup> However, violent crimes such as homicide and rape are rarely prosecuted directly. Because lesser crimes such as drug possession are more easily verified, individuals wanted for murder are often convicted

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<sup>1</sup> Robert Perkinson, *Texas Tough: The Rise of America's Prison Empire* (New York: Metropolitan Books, 2010), 1.

<sup>2</sup> "Recidivism," Bureau of Justice Statistics, accessed Dec. 2, 2012, <http://www.bjs.gov/index.cfm?ty=tp&tid=17>.

and sentenced on the basis of these lesser but more ascertainable crimes.<sup>3</sup> Furthermore, despite provisions of the 5<sup>th</sup> Amendment, trials by jury have become rarer and rarer following the rise of the plea bargain, to the extent some 19 of 20 guilty convictions are now obtained outside the courtroom.<sup>4</sup> The progressive, degenerative malfunction of the American criminal justice system cannot be pinned on a single set of causes. Nonetheless, these factors are all *effects* of the malfunctioning criminal justice system in the United States. Rather, the degeneration that led to the skyrocketing number of prison sentences sustained since the late 1980's, including incarceration rates, draconian prison sentences, and the decline of jury trials, finds its roots in the procedural justice revolution of the 1960's. Its product was an American criminal justice system that punishes too severely and takes too little account of criminal intent.

Like most revolutions, the procedural revolution came about in response to a set of conditions it viewed as intolerable and abusive. However, the specific conditions it was responding to tended to vary depending on how far back one looked in history. Prison reform was never far from anyone's lips; Benjamin Rush, the architect of the modern penitentiary, established his confinement-based design as a more humane alternative to gruesome, old-world forms of criminal punishment.<sup>5</sup> The first Pennsylvania penitentiaries had few precedents in the old world and drew audiences from as far away as France, all seeking to understand the logic of a place where the criminal would be

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<sup>3</sup> William J. Stuntz, *The Collapse of American Criminal Justice* (Cambridge, MA: Belknap Press, 2011), 54.

<sup>4</sup> Stuntz, 259.

<sup>5</sup> Robert Perkinson, *Texas Tough: The Rise of America's Prison Empire* (New York: Metropolitan Books, 2010), 66.

denied freedom in hopes of steering him toward repentance.<sup>6</sup> But by the 1840's—precisely the era in which the Southern slave states began building their first penitentiaries, after decades of skepticism and resistance—the broad consensus was that the solitary, silence-based model of the post-revolutionary Northeast was ineffective and inefficient, with a proclivity to abuse and an “absence of any sign that they reformed criminals or prevented crime.”<sup>7</sup>

The first reforms that came from this originated, inadvertently, in the South. In 1848, Texas became the first state to re-write its penal code. The reforms themselves coincided with support for a penitentiary system in the state, but with an important twist. Proponents of the Texas model sought to design a system in which “productive labor” would both “defray the expenses of confinement” and “reform the criminal by habits and industry.”<sup>8</sup> The reformers’ logic was obvious: “If a profit of several thousand dollars can be made on the labor of twenty slaves, why may not a similar profit be made on the labor of twenty convicts?”<sup>9</sup> The penitentiary that emerged from the 1848 Texas penal code reforms was thus a hybrid model. At the centre was a vast complex comprised of solitary nighttime cells and communal daytime work spaces; around this nucleus was a brick wall fifteen feet high and three feet thick.<sup>10</sup> On the outside was a massive cotton plantation.

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid, 70.

<sup>8</sup> Ibid, 74; Larry E. Sullivan, *The Prison Reform Movement: Forlorn Hope* (Twayne Publishers, 1990), 19.

<sup>9</sup> *Telegraph and Texas Register* (Houston, Tex.), Vol. 7, No. 3, Ed. 1, Wednesday, January 5, 1842).

<sup>10</sup> Blake McKelvey, *American Prisons: A History of Good Intentions*, No. 17. (Montclair, NJ: Patterson Smith, 1977): 169.

The original source of labor for the fields, then, were slaves, the textiles the prisons produced being milled by the prisoners within the walls.<sup>11</sup>

The end of the Civil War brought a quick end to the slavery model of prison practice. The economic shock was remarkable: much of the cloth the Confederate army had clothed itself with had come out of the prison plantation at Huntsville, and the prison was one of the only institutions in the state that was *contributing* to the economy as the Confederacy collapsed.<sup>12</sup> With its financial lifeline cut, the former Confederate prison system was transferred to private ownership in 1871 in order to avoid collapse.<sup>13</sup> However, prison structures saw little change, and new forms of what effectively amounted to forced labor were soon implemented as well. Chain gangs for railroad construction were added to the model within a year, followed by sugar plantations in the early 1880's. Dysfunction and cruelty was inbred from the start: from privatization onward, the system rapidly became known for corruption and cruelty, “ghastly” death rates, and warehousing former slaves and their descendants.<sup>14</sup>

The Populist movement of the 1890's ultimately challenged the prison-profit model of the postbellum era. This movement brought South the “adult reformatory” ideas of Zebulon Brockway, his generation's Benjamin Rush.<sup>15</sup> In his own way, Brockway was a pioneer of restorative justice: his “House of Shelter” veered sharply away from

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<sup>11</sup> Perkinson, 78.

<sup>12</sup> Ibid, 80; Andrew L. George: *The Texas Convict: Thrilling and Terrible Experience of a Texas Boy* (Austin, Ben C. Jones & Co., 1893), 129-31.

<sup>13</sup> Perkinson, 92; Joel Williamson, *The Crucible of Race: Black-White Relations in the American South Since Emancipation* (New York: Oxford University Press, 1984).

<sup>14</sup> Perkinson 99-101.

<sup>15</sup> Ibid, 108.

penitentiary conventions of solitude and martial discipline, giving way to a “family life” and education-based model designed to habituate prisoners to the customs of “refined society.”<sup>16</sup> But the Populist reformers who cried wolf in the 1890’s were unable to devise an alternative to the profitable, strict plantation models. Meanwhile, Brockway’s soft institutions were increasingly met with overcrowding, inmate violence, and the ever-present threat of prison riot—and ultimately the “damning volume” on criminal punishment released by the Wickersham Commission in 1931.<sup>17</sup>

Crowding and idleness had characterized American lockups during the Great Depression. As the nation “transitioned from hard times to fighting times,” prisons became productive again.<sup>18</sup> But as the war came to a close and productivity in all economic sectors began to taper off, crime rates began to rise again—more sharply than they had since the turn of the century, in a steep growth pattern that lasted until the 1970’s.<sup>19</sup> Meanwhile, the social turbulence that would come to characterize the 1960’s was taking hold. Under the helm of Richard McGee, California was leading the nation in prison organization; the state that would give rise to the beatniks and the hippies also gave rise to an unprecedented collection effort of prison data, the intent of which being to streamline and systematize prison “strategies of control.”<sup>20</sup> Ultimately, however, the

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<sup>16</sup> Ibid, 109; Texas. (1910). *An act establishing a prison system*. Published by the Board of Prison Commissioners, January 20, 1911. Houston, TX: Standard Printing and Lithographing Company.

<sup>17</sup> Perkinson, 197; George Wickersham et al., “Report on Penal Institutions, Probation, and Parole,” Washington, D.C.: National Commission on Law Observance and Enforcement, 1931, 170.

<sup>18</sup> Perkinson, 218; Harry Lee, “Prison Flag Shows Men Aiding in War,” *Atlanta Constitution*, October 3, 1943, 10B.

<sup>19</sup> James Austin et al., “Unlocking America: Why and How to Reduce America’s Prison Population.” (The JFA Institute, 2007): 4, Figure 1.

<sup>20</sup> Perkinson 221-23.

wave of criminal processing reform that took hold in the 1960's was not legislative in root but rather judicial.

Earl Warren began his prison reform revolution alongside McGee while governor of California in the 1940's, seeking to make the nation's criminal justice system less politicized. But in addition to the massive windfall of human rights legislation for which he is best known, Warren's legacy came inadvertently to include ushering in the "harsh politics" of crime characteristic of the late twentieth century. The intentions of the activist Warren court behind such decisions as *Mapp v. Ohio*, *Gideon v. Wainwright*, and *Miranda v. Arizona* were consistent with patterns of human rights litigation in the 1960's; in a sense, the goal was to return "fighting chances" to the defendants against whom the criminal justice system was still stacked. The Warren reforms sought to do this by making criminals aware of Constitutional rights that had largely been overlooked in practice.<sup>21</sup> Nonetheless, these were brought to the forefront of American criminal justice practitioners in such a way as to create a complicated series of hoops through which legal officers, investigators, and prosecutors needed to jump in order to verify an individual's criminality, thus creating a shift in focus from the effects of crime to the conduct of the officer.

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<sup>21</sup> The seizure standards that emanated from *Mapp* had the effect of diverting significant police focus from the obtaining of incriminating evidence to a preoccupation with how the evidence was obtained. *Gideon* and *Douglas* ensured that defence lawyers would be available to do the enforcing of the stringent search and seizure standards brought about by *Mapp*. Finally and most importantly, *Miranda*'s provisional access to defence counsel at any point during the interrogation process allows apprehended individuals to bring a defence attorney into the interrogation room if they choose, the purpose of whom is understood to be to keep the defendant from self-incrimination. However, this advantage benefits only those who ask for it, a demographic that tends to be wealthier, whiter, and in possession of better-quality counsel than much of the prison population. For more, see Stuntz, 220.

A key problem with this shift in priorities has to do with its timing. The Warren reforms were initiated in the 1960's, curtailing imprisonment during a wave of rising crime rates.<sup>22</sup> Moreover, though the Warren reforms were crafted out of a desire for fairer criminal justice practices, their historical context makes it difficult to ignore the racial undertones some scholars believe play into the problem of recidivist crime in its current form.<sup>23</sup> In 1964, the stronghold of the Republican party was in the segregated South; one construction of this collusion that bears significant weight is that as the Civil Rights movement ended the social acceptability of racism, Republicans turned to crime, conceived as a largely racial and class-based issue in their Southern strongholds, as a more acceptable alternative.<sup>24</sup> The concurrent systematization of crime reporting in the 1960's, the wartime migration of millions of low-income workers to industrial cities in the wartime era, and the coming-of-age of the Baby Boomers, then the most crime-prone demographic, in an era of unmatched social upheaval, contributed to higher crime rates on which politicians maximized to further their missions of crafting anti-crime legislation.<sup>25</sup>

The political reaction to the rising crime rates of the 1960's was strangely bipartisan, albeit not cooperative. The "partisan bidding war" over crime control that

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<sup>22</sup> Stuntz, 252; Ramsey Clark, *Crime in America: Observations on Its Nature, Causes, Prevention and Control*, 2<sup>nd</sup> ed. (New York: Pocket Books, 1971); James Austin et al., "Unlocking America: Why and How to Reduce America's Prison Population." (The JFA Institute, 2007): 6.

<sup>23</sup> Charis E. Kubrin, Gregory D. Squires, and Eric A. Stewart, "Neighborhoods, Race, and Recidivism: The Community Reoffending Nexus and its Implications for African Americans," *SAGE Race Relations Abstracts* 32 (2007): 10-11.

<sup>24</sup> Stuntz 237; Perkinson, 291-93; Thomas E. Cronin, Tania Z. Cronin, and Michael E. Milakovich, *U.S. v. Crime in the Streets* (Bloomington, IN: Indiana University Press, 1981): 35.

<sup>25</sup> This coincided with a dramatic increase in drug use among juveniles, a social factor that also lead to the instigation of the subsequent decade's drug wars. For more, see Perkinson, 291-92.



lasted until the mid-1990's contributed to a substantial increase in funding of state and federal prisons.<sup>26</sup> When coupled with a dramatic uptick in Supreme-Court crafted procedural rights and the subsequent rise of rules governing waiver of those rights through such agreements as plea bargains, the cost of imprisonment was made dramatically less expensive for the local officials in charge of the bulk of the nation's imprisonment.<sup>27</sup> The final piece in the proceduralization conundrum was the advent of various forms of mandatory sentencing that streamlined the courtroom process through broad yet specific guidelines that leave no room for jury acquittals.<sup>28</sup> In collusion with the rise of the plea bargain, mandatory sentencing then made the imprisonment process more efficient than ever, conceiving of criminal activity as no more than a box in the sentencing guidelines. Meanwhile, the standard of greater focus on the officer's conduct than the criminal's depersonalized the treatment process even further. When rising incarceration rates were presented to the public, the myth of effective imprisonment was solidified in the public conscience—thus legitimating the political push for an even tougher crackdown on crime.<sup>29</sup>

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<sup>26</sup> The Kennedy administration was the first to tackle crime as a federal issue rather than a municipal one, but it was not until the 1964 campaign that it became one in the national public eye. As the Republican party began to lose political ground in the Civil Rights era, two of its most prominent figures, Barry Goldwater and George Wallace, embarked on a mission of one-upmanship to posit their party tougher on crime than the incumbent Democrats. For Wallace, this mission had racial undertones: having built his political platform hereto on segregation, he turned to crime, conceived as a largely racial and class-based issue in his native Alabama, as a more acceptable alternative. See Stuntz (253).

<sup>27</sup> Stuntz, 253; 257.

<sup>28</sup> Ibid, 257.

<sup>29</sup> Ibid, 236-241; James Austin et al., "Unlocking America: Why and How to Reduce America's Prison Population." (The JFA Institute, 2007): 19.

The notion of criminal punishment as a moral or social imperative enjoyed little currency before the 1980's.<sup>30</sup> As the Warren reforms made policing more expensive and more difficult, it became increasingly the case that the criminal subgroups most affected were those most cheaply caught and convicted, particularly drug and property offenders. "Assembly line adjudication" beginning in the late 1970's made it possible for a relatively small number of legal and law enforcement personnel to process more than double the amount of criminals they had at the beginning of the decade.<sup>31</sup> A wave of drug litigation in the 1980's made drug enforcement easy, drug crimes then serving as proxies for the violent offenses politicians and judges alike were truly after.<sup>32</sup> These were concentrated in poor city neighborhoods that still bear the heaviest imprisonment burden of the overall population.<sup>33</sup> Rising imprisonment, intended as an assault on violence in urban neighborhoods, made sense until the early 1990's. Why it continued to rise even after crime began to fall precipitously is a question that remains to be answered.

The synthesis of this historical analysis presents a pattern that is anything but surprising. Tracing the nature of punishment in various regions from the Independence era forward results in a menagerie of practices strongly tied to the preferences of prison reformers. The practices that result from this are matters of policy, the conclusion thus being that what is most at stake is not necessarily the interests of those subject to crime-control policy but of those who make it. That the most recent shift toward humane treatment of prisoners still remains in place represents a significant human rights victory.

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<sup>30</sup> Stuntz, 56.

<sup>31</sup> Ibid, 57.

<sup>32</sup> Stuntz, 273.

<sup>33</sup> Kubrin et al., 10.

Nonetheless, this victory came with the side effect of depersonalizing prisoner relationships with correctional officers. That is, while beatings and individual harassment by officers have been banned, positive forms of individual attention such as rehabilitation plans have been systematized with the effect of transforming prisoners from individuals to be rehabilitated into numbers to be processed.<sup>34</sup> This depersonalization of prisoner treatment foresaw a rise in recidivism as the prison system transformed from a correctional institution into a “holding pen” for criminal individuals.<sup>35</sup> This rise stands as a clear indicator of the failure of the American criminal justice system to fulfill its purpose as an institution designed to transform offenders into non-offenders.<sup>36</sup> The less the prison system considers the correctional element of criminal punishment and rehabilitation, the less likely a prisoner will emerge from the system a non-offender.

As Perkinson notes, imprisonment rates have risen most aggressively amidst groups traditionally thought of as most redeemable: low-level substance abusers, women, and juveniles.<sup>37</sup> While external social factors affecting released prisoners have largely been accounted for, it remains the case that the prison system itself is not accomplishing its prisoner-related goals. Many criminals avoid prison time by plea bargains and probation, and a vast majority of individuals who receive prison time wind up back in prison upon release.<sup>38</sup> Correctional procedures are largely punitive, which derives from

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<sup>34</sup> Perkinson, 369.

<sup>35</sup> Ibid, 358.

<sup>36</sup> Michael D. Maltz, *Recidivism*, (Orlando, FL: Academic Press, Inc., 1984): 8.

<sup>37</sup> Ibid, 21.

<sup>38</sup> Likewise, prosecutors facing increased case loads have incentives to develop faster, more uniform processing methods to streamline the process. For more, see Stuntz, 57.

societal predispositions toward seeking retribution from offenders as opposed to reconciliation with them. Because they are based in the case law, they are difficult to revise due to the requirement of a corresponding case reaching the Supreme Court. This retributive orientation has created a justice system whose products have little conceptualization of how to behave in society following their exit from a corrections system that essentially lacks the ability to reform itself.<sup>39</sup>

After three decades of nearly continuous rises, national crime rates began to decline in the mid 1990's. However, it would be another decade before national incarceration rates would follow suit. Throughout the period following the procedural revolution, increases in incarceration became more and more disproportionate to increases in crime rates. By the time national crime rates began to fall around 1994, the aggregate incarceration rate was four times what it had been two decades previous, though the crime rate had risen only by a modest three and a half percent since 1973.<sup>40</sup> Presumable causes of this discrepancy are the effects of mandatory sentencing requirements and recidivist crime aggravating the otherwise shrinking prison entry population, possibilities which will be explored at length in chapter three. Before these can be discussed, however, this investigation turns to a discussion of recidivism as a primary indicator of prison system ineffectiveness.

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<sup>39</sup> Stuntz, 227.

<sup>40</sup> Gallup via BJS; see <http://www.gallup.com/poll/150464/americans-believe-crime-worsening.aspx>

## CHAPTER TWO

### An operational definition of recidivism

Recidivism has long remained one of the most widely used indicators of prison system effectiveness. Plainly speaking, an individual is said to be recidivist when he or she has spent time in prison or under correctional supervision, is released, then re-offends following release. Operationally, recidivism is typically conceived as reoffense within a given time period, often three to five years. If criminality is conceived as the tendency of an individual to commit criminal acts, the use of recidivism as a primary indicator of prison system effectiveness is based on the logic that if the prison system were effective, the individuals it released would not re-offend. As it stands, however, more than two-thirds of released criminals re-offend within three years following their release.<sup>1</sup> In order to discuss this issue, however, it is important to understand how recidivism is currently conceptualized and measured.

Recidivism is best conceptualized in light of the broader goals of the correctional system. In his seminal study on recidivism, Michael Maltz conceives of correctional goals as pertaining to one of three groups: those relating to offenders, those relating to society, and those relating to the correctional institution. In his words, “Goals related to...offenders are concerned with reducing the number of crimes they commit.”<sup>2</sup> Goals pertaining to society pertain to the prevention of further crime, the forestalling of

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<sup>1</sup> Patrick A. Langan and David J. Levin, “Special Report: Recidivism of Prisoners Released in 1994.” (Bureau of Justice Statistics, 2002): 1.

<sup>2</sup> Michael D. Maltz, *Recidivism*, (Orlando, FL: Academic Press, Inc., 1984): 8.

vengeance and prevention of vigilantism, the moral education of society as to acceptable versus unacceptable behavior, and the development of punishments proportional to their associated crimes.<sup>3</sup> Goals related to the institution, then, have to do with basic provisions for inmates, safety of inmates and staff, and prevention of escapes.<sup>4</sup> Each of the three categories is then broken down into sub-goals. Because recidivism is a measure of the correctional system's effectiveness at treating the offender, in this thesis only the goals related directly to the offender are considered.

Goals related to the reformation of the offender are threefold and include deterrence, incapacitation, and rehabilitation. Deterrence is the reduction in offender criminal activity as a direct consequence of fear of punishment.<sup>5</sup> As discussed in the previous section, deterrence is heavily rational in its assumptions, holding that if it is found to be effective, its effectiveness would be a result of the criminal having calculated the costs of criminal activity to be higher than the potential benefits gleaned.<sup>6</sup> Incapacitation, then, restricts the offender's ability to commit crimes during the duration of his punishment.<sup>7</sup> Most pertinent to this discussion, however, is the idea of rehabilitation. Rehabilitation, like the medical origins of the word suggest, contains certain implications about offenders that incarcerated individuals have problems that (a)

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<sup>3</sup> Ibid, 13.

<sup>4</sup> Ibid, 17.

<sup>5</sup> Ibid, 11; also see Irving Piliavin, Rosemary Gartner, Craig Thornton, and Ross L. Matsueda. "Crime, Deterrence, and Rational Choice." *American Sociological Review* 51, no. 1 (Feb., 1986): 102 and Greg Pogarsky, Alex R. Piquero, and Ray Paternoster, "Modeling Change in Perceptions about Sanction Threats: The Neglected Linkage in Deterrence Theory," *Journal of Quantitative Criminology*, 20 no. 4 (Dec. 2004): 343-44.

<sup>6</sup> Matthew Haist, "Deterrence in a sea of 'just desserts': Are utilitarian goals achievable in a world of 'limiting retributivism'?", *The Journal of Criminal Law and Criminology* 99 no. 3 (Summer 2009): 804.

<sup>7</sup> Maltz, 11.

directly cause their criminal behavior and (b) can be corrected through appropriate treatment, thus diminishing criminality.<sup>8</sup> Maltz argues that while this construct may be effective, it is “a heavy burden” to place on correctional institutions that may not have the means to carry out rehabilitative treatment universally and effectively. Though his argument followed the Procedural Revolution by over two decades, the two seem to have held this assumption in common.

However, the use of recidivism as a primary indicator of the reformation of the offender in the first place is problematic. Recidivism is a measure of the frequency at which a criminal individual commits further offenses following his or her release from prison. Thus, recidivism, as it is currently measured, is able to account for only two of the three indicators of successful reformation of offenders. Recidivism is able to demonstrate that the criminal individual was not successfully deterred from further crime following his or her jaunt in prison; likewise, when it is measured as a rate of reincarceration in addition to reoffense, it provides some insight into the effectiveness of incapacitation. However, no measures of recidivism have thus far been able to indicate levels of offender rehabilitation. In order to understand this shortcoming, a discussion of the measures of recidivism currently utilized is necessary.

Criminologists interested in recidivism trends have long noted the complexity of its measurement. Recommission of crime is as complex a phenomenon as crime itself; moreover, where to begin considering actions as “recidivist” has served as a perennial challenge. For example, is reoffense following release sufficient grounds to constitute an individual as recidivist, or does that individual have to be rearrested? Is rearrest

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<sup>8</sup> Ibid, 8.

sufficient, or would prison re-entry be a better consideration? Criminologists have not come to a consensus on this matter, and thus recidivism is frequently measured as an aggregation of such rates as those at which released criminals reoffend, are rearrested, and re-enter correctional jurisdiction. Additional questions pertain to considerations of whether parole violations constitute recidivism and detection of crimes that may have been committed with no subsequent arrest.<sup>9</sup>

Further methodological problems are introduced in light of the fact that recidivism is an outcome measure that lacks a standard definition and suffers from poor data quality.<sup>10</sup> These methodological issues constitute the focus of the remaining evaluations of recidivism measurement in this chapter. Each of these issues exaggerates the effects of the other: for example, the fact that criminologists have not thus far come to a consensus as to its definition is partly to do with the varying amounts of information available to researchers, as the restrictiveness of particular operational definitions of recidivism generates discrepancies in the recidivism rates reported.<sup>11</sup> Interestingly, however, much of the recent literature on recidivism reports the same findings: that no matter the variations in its definition, recidivism is on the rise and has been as such for the last three decades.<sup>12</sup> This rise in recidivism has occurred in tandem with overall reductions in crime rates that have been observed across almost all types of crime since

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<sup>9</sup> “Measuring Recidivism,” National Institute of Justice, last modified February 20, 2008, accessed October 26, 2013, <http://www.nij.gov/topics/corrections/recidivism/measuring.htm>.

<sup>10</sup> Maltz, 21.

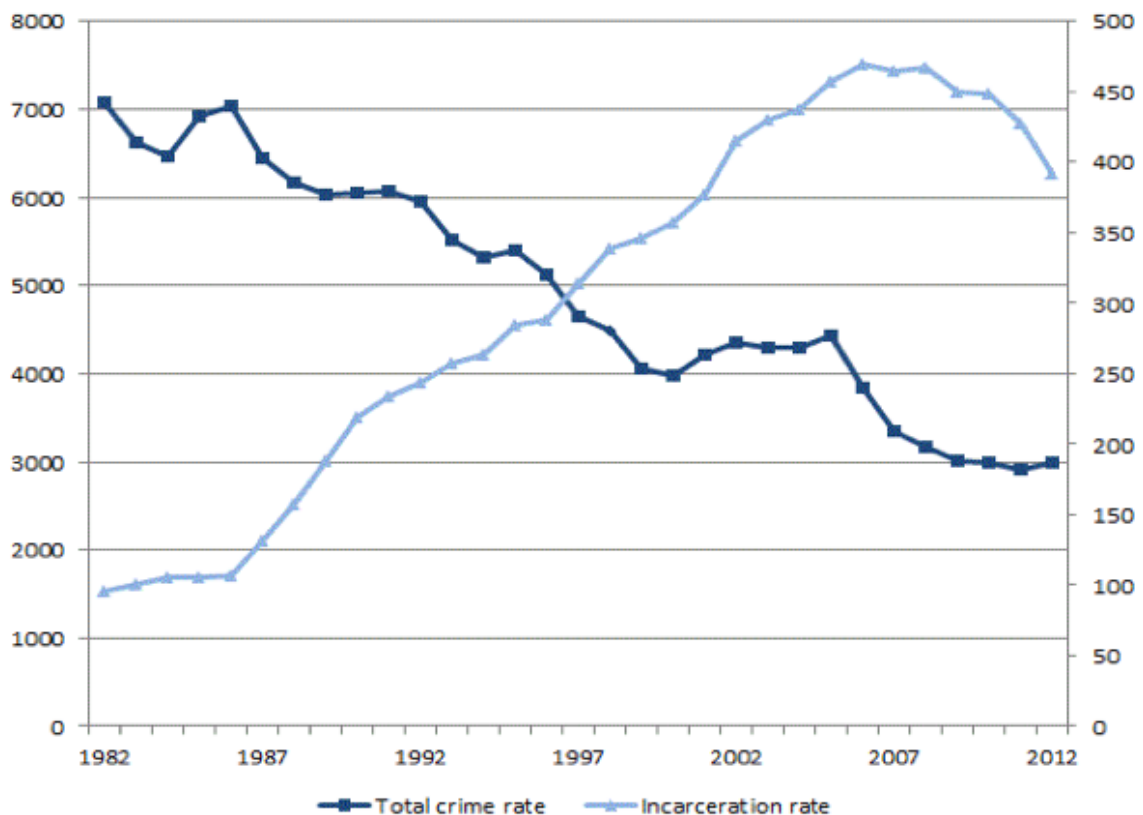
<sup>11</sup> Daniel P. Mears and Jeremy Travis, “Youth development and reentry,” *Youth Violence and Juvenile Justice*, 2 no. 1 (Jan. 2004): 4.

<sup>12</sup> See Langan and Levin (2002) and Beck and Shipley (1989).



the 1980's.<sup>13</sup> Still, both recidivism and incarceration rates have been steadily rising for as long as crime rates have been falling. Whether the one contributes to the other creates a chicken-and-egg problem when the frequency at which criminals re-offend following release from prison is considered.

FIGURE I: CRIME RATES VS. INCARCERATION RATES, 1982-2012<sup>14</sup> (RATE PER 100,000)



SOURCE: COLORADO DEPARTMENT OF CRIMINAL JUSTICE

The nominal definition of recidivism is the recommission of crime following release from the correctional system. As discussed earlier in this chapter, however, its

<sup>13</sup> Jennifer Truman, Lynn Langton, and Michael Planty, "Criminal Victimization, 2012." (Bureau of Justice Statistics, 2013); Beck and Shipley, 3.

<sup>14</sup> This figure illustrates the crime rates vs. incarceration rates for the state of Colorado; however, the rates for Colorado are among the most nationally representative, according to a 2013 Pew report. For more, see <http://www.pewstates.org/research/data-visualizations/states-cut-both-crime-and-imprisonment-85899528171>.

operational definition is not as simple to ascertain. In the current literature, recidivism is conceived to be a composite variable and is influenced by a multitude of factors. It is typically measured as a comparison between the rates of rearrest, reconviction, resentencing, and return of released prisoners to prison with or without a new sentence.<sup>15</sup> The measures of the occurrence rates of these subvariables is analyzed within a given time period, often three or five years. Though recidivism is almost always conceived as a composite variable, however, its composition varies from study to study and is heavily dependent on researcher discretion.<sup>16</sup> In fact, Maltz identifies as many as eight common operational definitions of recidivism that range from rate of rearrest and reconviction at the most restrictive to rate of reoffense, whether or not the individual was returned to custody, at the least restrictive.<sup>17</sup> The restrictiveness of the definition has significant repercussions in the calculation of overall recidivism rates: one study of recidivism among juveniles reports recidivism rates twice as high when measured solely by rearrest rates as opposed to solely reincarceration rates, 66% versus 33%.<sup>18</sup> Thus, understanding a researcher's chosen conceptualization is tantamount to understanding the significance of his or her findings.

Poor data quality results in part, though not entirely, from variations between definitions of recidivism. Due to the spectrum of restrictiveness along which researchers can operationalize the variable, studies of recidivism are difficult to compare with one

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<sup>15</sup> Patrick A. Langan and David J. Levin, "Special Report: Recidivism of Prisoners Released in 1994." (Bureau of Justice Statistics, 2002): 1.

<sup>16</sup> Edward J. Latessa and Alexander Holsinger, "The Importance of Evaluating Correctional Programs: Assessing Outcome and Equality," *Corrections Management Quarterly*, 2 no. 4 (1998): 23.

<sup>17</sup> For further discussion of these eight conceptualizations, see Maltz, 65.

<sup>18</sup> Mears and Travis, 4.

another because few researchers operationalize the variable the same way.<sup>19</sup> This has resulted in a nationwide push to standardize its definition during the last decade.<sup>20</sup>

However, as mentioned earlier, definition is only part of the problem, and high recidivism rates have been observed almost unilaterally since 1980. An additional problem is posed in the very fact that recidivism, or criminal re-offense following release from the criminal justice system, is measured at its least restrictive level by rearrest rates. Reoffense and rearrest are not synonymous terms; many crimes that are committed are never detected, let alone lead to an arrest.

One final problem relevant to the definition of recidivism is that no conceptualization of recidivism thus far encountered is able to account satisfactorily for rehabilitation. Rearrest cannot speak to it: an individual's rearrest simply means he or she committed a crime and was caught for it. Thus, while constituting a critical component of recidivism, rearrest is limited to a measurement the ability of law enforcement officials to (a) detect that a crime was committed and (b) apprehend the individual believed to have committed the crime. In fact, rearrest is only a weak indicator of a criminal's behavioral reformation, insofar as it relates to an individual having committed some crime following release.<sup>21</sup> Reoffense, or the lack thereof, may be a better measurement of rehabilitation—an individual whose behavior had truly been reformed would presumably not commit further crimes—but this cannot be verified due to the inherent difficulty in detecting all

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<sup>19</sup> "Defining and Measuring Recidivism." (Council of Juvenile Correctional Administrators, Nov. 2009): 3.

<sup>20</sup> Ibid, 5.

<sup>21</sup> Tamara Rice Lave, "Inevitable recidivism—The origin and centrality of an urban legend," *International Journal of Law and Psychiatry* 34 (2011): 190-191.

crimes that are committed.<sup>22</sup> Nondetection of crime, then, introduces an obvious challenge in ascertaining which of these crimes, detected or otherwise, are committed by recidivists. For these reasons, reoffense is typically not used to measure recidivism.

The discrepancy between current measures of recidivism and the system's goal of rehabilitation offers grounds on which to challenge for the inclusion of rehabilitation alongside traditional measures such as rearrest. For this to be resolved, some additional measure of recidivism should be conceived in order to measure rehabilitation of the offender, at least as a factor influencing his or her tendency to recidivate. One such indicator proposed by Celeste Davis, Stephen Barh, and Carol Ward is that of reintegration. Their reasoning is as follows: rehabilitation, as the very word would suggest, is the ability of an offender to develop new, non-criminal behavior patterns.<sup>23</sup> When considered as an indicator of prison system effectiveness, the implication is that rehabilitation considers the capability of the prison system itself to foster these new abilities in the criminal individuals. The best way to test them, then, would presumably be to put the criminal back into society and watch his or her ability to reintegrate into the community of non-offenders.

Reintegration is, like recidivism, a complex variable. Davis et al. conceive of reintegration as a measurement of the ability of the offender to transition from incarceration to the community of non-offenders, to adjust to life outside prison, and to maintain a crime-free lifestyle.<sup>24</sup> These authors found it to be mediated by substance

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<sup>22</sup> Maltz, 21.

<sup>23</sup> Celeste Davis, Stephen J. Bahr and Carol Ward, "The process of offender reintegration: Perceptions of what helps prisoners re-enter society," *Criminology and Criminal Justice* 13 no. 4 (Sept. 2013): 447.

<sup>24</sup> *Ibid*, 448.

abuse, employment, family support, types of friends, motivation to change, and age: as might be expected, substance abuse was negatively correlated with successful offender transition, the other variables positively correlated therewith.<sup>25</sup> However, it is important to note that this study did not generate suggestions for measurement of reintegration, simply confirmed that reintegration is a key component of successful offender reformation—which, as I will argue in chapter six, is itself a necessary condition of low recidivism. The development of measures of reintegration is left open to future research.

The correctional system has other goals than just reductions in recidivism rates. The very idea of deterrence, in fact, is not directed solely at criminals but at *would-be* criminals as well—in other words, at society at large. Sanctions imposed on criminals are meant to deter would-be criminals from committing crimes. This pre-emption of criminality in the larger population is known as “general deterrence,” meant to “make [the public] aware of the horrors of official sanctions in order to put them off committing crimes.”<sup>26</sup> Specific deterrence, that designed to deter the individual from future criminal activity, is the more pertinent to this discussion. With the Procedural Revolution of the 1960’s-80’s serving as the capstone of the shifting away from corporal punishment in the United States, incapacitation via imprisonment has been utilized since then with the goal of serving as a severe enough punishment to dissuade those who suffer it from committing future crimes. Rising recidivism rates suggest, however, that although

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<sup>25</sup> Ibid, 450.

<sup>26</sup> John J. Dilulio, “Deterrence Theory,” in *Encyclopedia of Prisons and Correctional Institutions*, ed. Mary Bosworth (Oxford, U.K.: Oxford University Press, 2005): 233.

imprisonment has become more and more preferred as a method of punishment, it is not meeting its goal of raising specific deterrence in criminal offenders.

The transition of the prison system from a correctional institution into a holding pen for criminal offenders, as argued in chapter one, has had a variety of consequences. Recidivism is high; around two-thirds of released prisoners are reincarcerated, ensuring that the individual makeup of the prison system tends not to dramatically fluctuate.<sup>27</sup> High recidivism ensures that certain populations remain consistently the more frequent charges of the criminal justice system than others. The prison system is composed overwhelmingly of low-income individuals, a majority of whom are minorities, and fairly low circulation of prisoners on account of high recidivism prevents this from changing. This tendency also parallels divisions of household income along racial and class lines, this in turn representing the principle reason an overwhelming majority of Americans do not know anyone in prison and consider incarceration a social anomaly despite the presence of over 2.4 million prisoners in the system's charge.<sup>28</sup>

Finally, the nature of recidivist crimes must be considered. Early offenses tend to be less severe than later offenses in a criminal's career. While consideration must be made of the fact skills, criminal or otherwise, are sharpened with repeated use, the sheer influence of the concentration of prisoners in the system must not be ignored. Increases in lenity of punishment from within the prison system both fail to prevent internal insurrection and fail to establish the prison system itself as a significant enough deterrent to dissuade potential recidivists from re-offending. If the only alternative considered is

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<sup>27</sup> Langin and Levin, 1.

<sup>28</sup> Robert Perkinson, *Texas Tough: The Rise of America's Prison Empire* (New York: Metropolitan Books, 2010), 2.

simply to revert to inhumane forms of punishment, however, the problem of prison system malfunction remains a point of moot contention. In order to begin assessing this dilemma, the discussion turns, now, to analysis of recidivism per the current measures.

## CHAPTER THREE

### Recidivism in the American Criminal Justice System

As established in the previous chapter, recidivism is a primary measure of prison system effectiveness. In order to make the case that the prison system is not effective, this study turns now to a discussion of the actual recidivism rates observed in the American criminal justice system according to a non-restrictive (and thus inclusive) conceptualization of recidivism: recidivism as measured by the rate of rearrest following imprisonment.

Arrest marks the beginning of the prosecutorial process and thus comes closest, both chronologically and in terms of correspondence rates, with the offense in question. With recidivism being conceptualized in the general sense as *reoffense* following release from prison, then, it is in the best interest of researchers to supply a broader operationalization of recidivism so as to more accurately reflect the realities of recidivism in the data collected. The selection of this non-restrictive operationalization of recidivism has a variety of consequences. As discussed in the previous chapter, less restrictive definitions of recidivism tend to result in higher recidivism rates in the literature.<sup>1</sup> However, the lack of consensus as to how to operationalize recidivism as well as procedural difficulties in obtaining data on recidivism provides a methodological

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<sup>1</sup> Daniel P. Mears and Jeremy Travis, "Youth development and reentry," *Youth Violence and Juvenile Justice*, 2 no. 1 (Jan. 2004): 4.



argument in favor of a less-restrictive definition. Additionally, less-restrictive operationalizations of recidivism tend to best approximate actual rates of reoffense.

Because recidivism is limited as a measurement of prison system effectiveness “useful only for evaluating goals related to the offender,”<sup>2</sup> the data set chosen had to focus on the individual criminal as the unit of analysis. In order to maximize representativeness, data need to be based on a large number of released prisoners from many different states.<sup>3</sup> The 2002 D.O.J. study chosen comes close to meeting these standards. Additionally, it reports a number of significant trends demonstrating that patterns of recidivism are as complex as the factors of crime. Of the 272,111 prisoners released in 15 states in 1994, approximately two-thirds were re-arrested for a new crime within three years of their release.<sup>4</sup> As discussed in chapter one, this cohort demonstrates a remarkable lack of diversity across class and racial lines that represents a systemic challenge in its own right. In this thesis, however, patterns of recidivism are considered across crime types in order to better understand which criminals are the most likely to recidivate and to propose steps that can be taken to correct this.

Recidivism of prisoners who were released in the 15 states surveyed varied greatly by type of crime and criminal history. Criminal history was the most indicative of likelihood of rearrest: prisoners with one prior arrest had a 40.6% chance of being

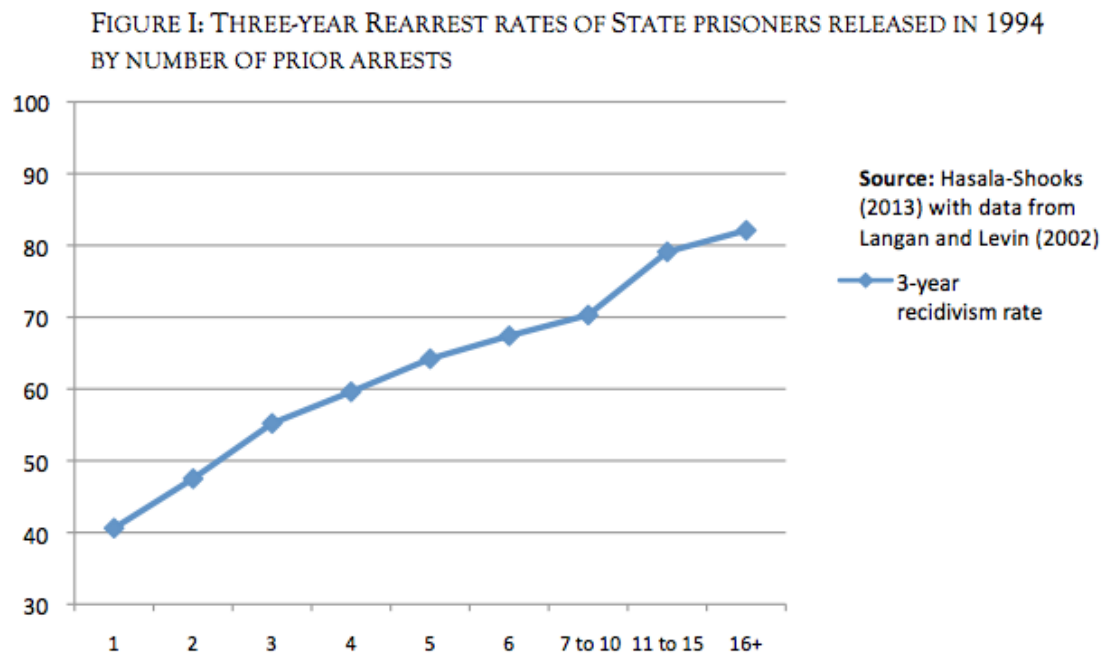
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<sup>2</sup> Maltz, 3.

<sup>3</sup> Representativeness of sample is difficult to achieve in recidivism studies for many reasons, but the most constraining factor is the sheer breadth of criminal types in the legal code. A truly representative sample would have to take this into account, thus necessitating a very large sample size.

<sup>4</sup> Unfortunately, this antiquated statistic is the most current, comprehensive measure of recidivism comparable to national trends. The US Department of Justice began undertaking a third revision of this study (the 1994 release date is the second, the original being 1983) using recidivism data from prisoners released in 2005; this study was originally due for publication in 2012, but as of January 2014, results have yet to be released. For more information, see <http://www.bjs.gov/index.cfm?ty=dcdetail&iid=270>.

arrested again within three years, though this percentage rose to 47.5% with two prior arrests and again to 55.2% with three.<sup>5</sup> This pattern continues as the number of prior arrests is increased, culminating in a likelihood of a 82.1% chance of re-arrest for 15 or more prior arrests in a criminal record.<sup>6</sup> Moreover, the frequency of arrest grows along a similar pattern. For criminals with one prior arrest to their record, 51% of subsequent arrests occur in the first year following release, compared with 62% for those with five prior arrests and 74% with 16 or more.<sup>7</sup> In other words, the longer the prisoner's criminal history, the more likely they are to be re-arrested soon after their release.



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<sup>5</sup> Patrick A. Langan and David J. Levin, "Special Report: Recidivism of Prisoners Released in 1994." (Bureau of Justice Statistics, 2002): 10.

<sup>6</sup> Ibid.

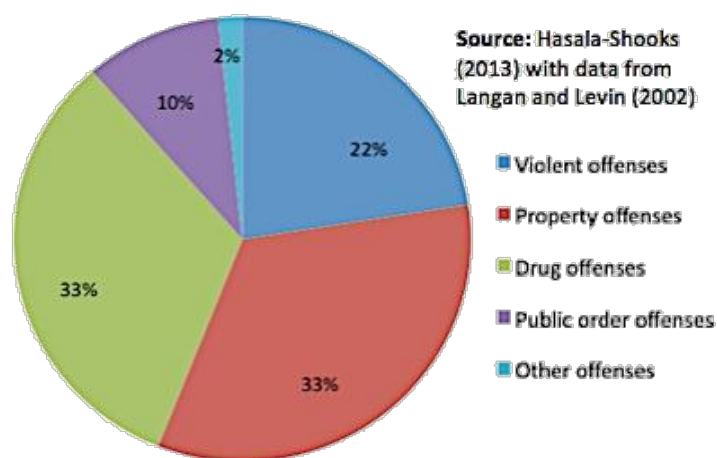
<sup>7</sup> Ibid.

The 2002 study also accounts for who went to prison by crime type. 22.5% of the released prisoners were imprisoned for violent offenses such as homicide, rape, and robbery, 33.5% for non-violent property offenses such as burglary and motor vehicle theft, 32.6% for drug offenses such as possession and trafficking, and 9.7% for public-order offenses such as illegal possession of firearms and driving under the influence of intoxicants.<sup>8</sup> Prisoners with the highest rearrest rates after release were initially arrested for crimes for money: 78.8% of motor vehicle thieves were re-arrested, 77.4% of possessors/distributors of stolen property, and 74.6% of larcenists. An exception to the rule was that the re-arrest rate for drug traffickers was not above average (64.2%), though drug trafficking is typically considered a crime for money.<sup>9</sup> Conversely, those with the lowest re-arrest rates were all violent crimes: 40.7% of homicide offenders were rearrested, though only 1.2% of these for another homicide. Likewise, 46% of rapists were rearrested, though only 2.5% for another rape.

At the aggregate level, less than 1% of prisoners released in the 15 states in 1994 were re-arrested for rape and less than 1% for homicide; meanwhile, 13.7% were re-arrested for assault and 9.9% for burglary, regardless of what crime had originally landed

them in prison. Re-commission of the same crime for which the released prisoner was recently incarcerated is most common in property crimes such as larceny (33.9%) and

FIGURE II: MOST SERIOUS OFFENSE FOR WHICH RELEASED



<sup>8</sup> Ibid, 8.

<sup>9</sup> Ibid.

burglary (23.4%), though offenders incarcerated for drug-related offenses were the most likely of any offender group to be re-arrested for the same type of offense (41.2%).<sup>10</sup>

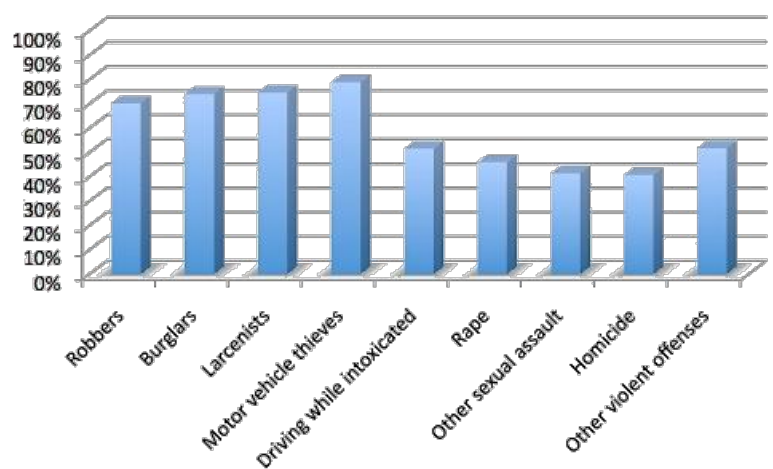
This trend can be explained a few different ways. First, violent crimes tend to beget longer sentences than non-violent crimes. Because most “crimes for money” (with the exception of robbery) are considered non-violent offenses, crimes of this nature tend to be considered less severe on a legal basis and may be met with shorter prison

sentences.<sup>11</sup> Some of the implications of this may be increased opportunities for recidivist offenses in the outside community and a lack of investment in reintegrative programs.<sup>12</sup>

Secondly, the crimes with both the lowest re-offense rates and the lowest rates of reconviction

for the same crime were violent offenses, in particular homicide and rape. Rape in particular is known both within and outside of the prison system as having one of the

FIGURE III: THREE-YEAR RECIDIVISM RATE BY CRIME TYPE IN 1994



Source: Hasala-Shooks (2013) with data from Langan and Levin (2002)

<sup>10</sup> Ibid.

<sup>11</sup> Michael Tonry, “The Mostly Unintended Effects of Mandatory Penalties: Two Centuries of Consistent Findings,” *Crime and Justice* 38 (2009): 70.

<sup>12</sup> Time constraints present one reason for this; if the criminal is spending less time in the prison system, the prison system has fewer opportunities to treat him or her with programs designed to facilitate pro-social reintegration.

strongest rehabilitation programs of any offense category, programs that have largely tended to decrease recidivism among inmates who partake in them.<sup>13</sup>

Thirdly, however, is the motivation of the crimes themselves. Contrary to many common schools of criminological theory, most empirical evidence about offender motivation does not support the theory that crimes for money are committed out of material necessity.<sup>14</sup> Rather, crimes for money are typically committed based on the offender's *perception* that he or she needs money and cannot obtain it any other way. It is here that the question of how the prison system can meet its goal of reintegration encounters the question of what can be done about the fact the most recidivist criminals are committing crimes out of a perceived need to do so. From a purely theoretical perspective, we can presume that those criminals who commit crimes for money out of a perception of necessity—about 85% of those in this group<sup>15</sup>—would be less likely to do so if that perception of necessity did not exist. Theoretically, then, one possible treatment for this perception could be found in the development of shorter-term programs designed to counteract the notion of criminal behavior as necessary.<sup>16</sup> Additionally, successful

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<sup>13</sup> It is worth mentioning that reintegrative programs for sex offenders such as the Safer Society program, the Stop It Now program, and Canada's Community Reintegration Project exist alongside a number of disintegrative shaming mechanisms as well, such as the American practice of sex offender registry. Low rates of re-offense among sexual offenders may be attributable in part to a higher level of community oversight among this type of offender, oversight that is not necessarily reintegrative. For more, see Davis et al. 458-460 and Anne-Marie McAlinden, "The use of 'shame' with sexual offenders," *British Journal of Criminology* 45 (2005): 380.

<sup>14</sup> Bruce A. Jacobs and Richard Wright, "Stick-Up, Street Culture, and Offender Motivation," *Criminology* 37 no. 1 (1999): 163.

<sup>15</sup> Gavin Butler, "Commercial burglary: what offenders say," *Crime at Work: Studies in Security and Crime Prevention* 1 (1994): 138; Ibid.

<sup>16</sup> California's prison fire camps could serve as such an example. These emphasize development of a good work ethic as a control mechanism on an offender's tendency to commit more crime; this idea will be revisited in chapter six. For a good discussion of the programs, see Philip Goodman, "Another Second

reintegration might be attained if the prisoner were met with greater societal acceptance and forgiveness from those whom his or her criminal behavior had harmed. While societal “acceptance” of the offending individual is a problem largely outside the influence of the prison system itself, the system is at least theoretically capable of preparing the prisoner for release to a far greater extent than it does at present.

If the goals of the prison system that relate to reformation of offenders are deterrence, incapacitation, and rehabilitation, high recidivism rates indicate the prison system is failing to meet its goals for a number of reasons. Deterrence is found ineffective when criminals reoffend; high recidivism, then, suggests a low efficacy of deterrence, which implies something is missing in current rehabilitation efforts. That criminals reoffend in the first place is an additional indicator they are not being effectively rehabilitated. The only goal of the prison system that is currently being met is incapacitation, and even this case can be argued both ways. The affirmative case rests on the fact criminals are accruing longer and longer sentences at greater frequencies due to the rise of mandatory sentencing.<sup>17</sup> The negative case is that allegedly “less dangerous” criminals are often released before their sentences expire to make room for new prisoners; however, high recidivism means that in many cases, the “new prisoners” belong to the cohort of individuals recently released from prison.

No one culprit may be singled out for the continually ineffectual reintegration of released criminals. As will be discussed at length in the following chapter, the

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Chance:’ Rethinking Rehabilitation through the Lens of California’s Prison Fire Camps,” *Social Problems* 59 no. 4 (Nov. 2012): 442.

<sup>17</sup> Tonry, 70; Mark Mauer, “The impact of mandatory minimum penalties in federal sentencing,” *Judicature* 94 no. 6 (2010-2011): 7.

“processing plant” nature of the prison system is not conducive to reintegration due to its limited effects on criminal behavior. Moreover, released criminals, many of whom do not exhibit reformed behavior, are unlikely to find societal acceptance upon release. Just as “the nub of deterrence is not the severity of the sanction but its social embeddedness,” the “nub” of reintegration is found in strong, supportive networks of family and friends that many recidivist individuals lack as well as strong community intervention and interest in the criminal’s behavioral reform over the long term.<sup>18</sup>

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<sup>18</sup> John Braithwaite, *Crime, shame, and reintegration* (Cambridge, UK: Cambridge University Press, 1989), 55; Davis et al. 447.

## CHAPTER FOUR

### Reintegrative Shaming and the Divided Criminal

Criminals who exit the correctional system tend not only to re-offend at higher rates but also become more serious offenders in terms of the frequency of re-offending.<sup>1</sup> Meanwhile, both the judicial and correctional systems alike have become more impersonal since the procedural revolution of the Warren court era. The end goal of reintegration is that the offending individual be brought back in to the fold of society. However, the fact that approximately two thirds of prisoners are re-arrested within three years of their release suggests neither the prison system itself nor society at large have been able to facilitate successful reintegration of released prisoners. This is partly the fault of the character of the justice system itself.

The dominant theories of criminal punishment taught in American law schools today are those of retribution and deterrence, these being, respectively, the moral and economic justifications for imprisonment.<sup>2</sup> Retribution holds that punishment for crime is a moral good because crime is a moral wrong. Punishment, then, is designed to negate the evil done to society by inflicting evil upon the perpetrator in proportion to the evil he or she inflicted on society. Deterrence is what leads the evil inflicted upon the criminal to exceed that of what he or she inflicted on society: because crime is socially costly, it is best reduced by raising the price paid by those who commit crimes such that crime

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<sup>1</sup> Patrick A. Langan and David J. Levin, "Special Report: Recidivism of Prisoners Released in 1994." (Bureau of Justice Statistics, 2002): 10.

<sup>2</sup> Stuntz 51.



becomes less appealing a course of action in the first place.<sup>3</sup> These two theories, though divergent in content, both hold that the more often crime is punished, the more effective the system. However, no justice system, no matter how expansive, can hope to account for all crime. Moreover, the principle of deterrence would be undermined if prison stays became common enough to become ordinary life occurrences, as they would if every crime punishable by incarceration were met with its due.<sup>4</sup> Thus, some system had to be devised by which law enforcement agencies, prosecutors, jurors, and judges could better discern to whom such sentences ought best be meted out. The procedural revolution was, in part, an answer to this, and its consequences on the justice system were dire.

The problem with the largely procedural justice system of the United States that developed from this need for discrimination is found in its impersonal character. This system is based principally on two design elements: the first is legal in nature, a product of a number of precedents established largely under the Warren Court that dramatically complicated the prosecutorial process. The second was a theoretical response to the complications brought forth by this proceduralization that necessitated the justice system be made more efficient.<sup>5</sup> This efficiency, based largely on principles of control and deterrence theories, came at the expense of efforts to reform the offender and re-introduce him or her into society as a non-offender following release. That is, rather than be reformed or rehabilitated, prisoners in the current system are processed, with the coding of the official language only serving to re-assert the impersonal nature of corrections management in the American system.

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<sup>3</sup> Ibid.

<sup>4</sup> Ibid, 53.

<sup>5</sup> Ibid, 229.

Retributive justice systems like that of the United States are set up in such a way as to remove deviant offenders from society altogether. The process by which a convicted criminal's removal occurs is lengthy, complicated, impersonal, and strictly regulated by a set of procedural guidelines originally based on the Bill of Rights, though it has since been adapted quite extensively.<sup>6</sup> Following apprehension after moderate to severe criminal offenses, offenders are brought to detainment facilities. Clear through the indictment, arraignment, and trial processes, the criminal is confronted by intentionally objective jurors and judges. An impersonal state ultimately becomes responsible for meting out proscribed punishment sentences as delineated by the penal code of the state where the crime was committed. Imprisonment, then, represents the ultimate removal from society. Additionally, the greater society may be reluctant to re-admit the offender into its fold if it senses she has not reformed her behavior.<sup>7</sup> According to John Braithwaite, this reluctance is the product of a social disapproval of the deviant behavior that, when coupled with such factors as stigmatization of the released offender, renders his reintegration with society much more difficult.<sup>8</sup>

A broad-scale, *de facto* ban on re-assimilation into the society of non-offenders has the effect of restricting the criminal to his former illegitimate means of sustenance. By such means as restriction of job opportunities and imposition of stigmatizing labels such as "registered sex offender," offenders exiting the criminal corrections system face tremendous social difficulty re-assimilating with their society. Stigmatization increases

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<sup>6</sup> Robert Perkinson, *Texas Tough: The Rise of America's Prison Empire* (New York: Metropolitan Books, 2010), 369.

<sup>7</sup> Braithwaite, 67.

<sup>8</sup> Ibid, 68.

the social distance between the offender and his society. Once this social distance with the non-deviant master society is increased, the likelihood increases of such outcomes as perception of a need to commit crimes to obtain material goods, attraction to criminal subcultures, or dissociation from society altogether.<sup>9</sup> Empirical evidence shows that the greater social distance an individual feels from his society, the more at risk he is of engaging in antisocial behavior such as crime.<sup>10</sup> However, disintegrative outcomes of the interaction between a released criminal and his society are far from inevitable. For those who violate the law or the moral code, shame can be applied pro-socially in order to help such individuals realize their actions were socially unacceptable.

Shame is the social disapproval conveyed by one's intimates, familiars, and community designed to entice him or her into upholding the moral status quo. It is designed to apply pressure to the individual against engaging in antisocial behavior in order to help him to discriminate between moral and immoral conduct. For those who do not commit such violations, shame may be used constructively as well as destructively. In its constructive form, shaming represents a means by which an offender is made aware of the moral wrongfulness of his actions by means of an appeal to his own moral character. This allows him the opportunity to make amends for the wrong he committed and re-join the community of morally upright individuals. As Braithwaite discusses, this process, known as "reintegrative shaming," is best implemented by individuals of high relational significance to the criminal.

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<sup>9</sup> Bruce A. Jacobs and Richard Wright, "Stick-Up, Street Culture, and Offender Motivation," *Criminology* 37 no. 1 (1999): 163; Carter Hay, "An Exploratory Test of Braithwaite's Reintegrative Shaming Theory," *Journal of Research in Crime and Delinquency* 38 (2001): 144; Braithwaite, 67.

<sup>10</sup> Greg Pogarsky, Alex R. Piquero, and Ray Paternoster, "Modeling Change in Perceptions about Sanction Threats: The Neglected Linkage in Deterrence Theory," *Journal of Quantitative Criminology*, 20 no. 4 (Dec. 2004): 344.

Reintegrative shaming helps control criminal behavior by both internal and external means. It does this within a context of respect for the criminal despite rejection of his actions. Reintegrative shaming thus upholds the dignity of the person as it rejects the wrongfulness of her behavior. As opposed to outright rejecting her for her deviance, this constructive pattern of shaming represents a more comprehensive and humane framework of punishment than does the purely retributive justice characteristic of the American criminal justice system. In contrast, the current prison system operates on a platform of retributive justice. This model holds that repayment of a harm done to society is to be met with a harm done to the offender.<sup>11</sup> The idea behind this practice is, in a sense, to counter-harm the offender to the extent that he is deterred from committing further offenses. The severity of the punishment is designed to make commission of the crime so unattractive an option the would-be offender is dissuaded from crime at all. Such forms of punishment, however, tend to address the *deviance* rather than the *deviant*. The problem with a purely procedural view of justice is thus that it treats only one side of the criminal.

In addition to the external means of shaming provided by society and groups of familiars, also central to the shaming practice is a phenomenon Braithwaite calls *dissociation*. An individual guilty of breaching the moral order in a society that practices reintegrative shaming does this by dividing his self-conceptualization<sup>12</sup> in two, leaving a part that is guilty of an offense and a part that affirms societal belief that his conduct was

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<sup>11</sup> William J. Stuntz, *The Collapse of American Criminal Justice* (Cambridge, MA: Belknap Press, 2011), 51.

<sup>12</sup> Self-conceptualization is defined in this thesis as an individual's perception of him or herself.

wrong.<sup>13</sup> This self-conceptualization occurs in tandem with shame that is directed toward the offender as to his morally reprehensive conduct. The concept of dissociation is part, then, of how the offender processes the fact he is being shamed. As dissociation occurs, the offender recognizes the foul moral character of her conduct and wants to remove herself from its acquaintance. This leaves, in a way, two “selves” existing in tandem in the shamed individual. It can be said, then, that reintegrative shaming is effective when the morally upright “self” emerges as the dominant of the two, though the conditions to the success of reintegrative shaming are extensive.

The prison environment “provides a stark and vivid social context for exploring the conditions that allow for quantum personality change.”<sup>14</sup> As Maruna et al. discuss, the prison system embodies a marginal form of society deprived of almost all of its constructive social elements. The procedural justice system, based as it is on a deterrence model, is not designed for character reformation but punishment of wrongdoing. One possible consequence resulting from this is that the prison system itself facilitates the type of disintegrative shaming responsible for creating social distance between an offender and his society. By neglecting the part of the criminal that affirms societal belief in the wrongness of her conduct, she is “set up for failure” in the sense that she is never challenged to learn of any real alternative means of conduct than antisocial during her prison stay. It is understandable, then, that she would “maintain taken-for-granted ways

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<sup>13</sup> Braithwaite, 75.

<sup>14</sup> Shadd Maruna, Louise Wilson, and Kathryn Curran, “Why God Is Often Found Behind Bars: Prison Conversions and the Crisis of Self-Narrative,” *Research in Human Development* 3 nos. 2&3 (2006): 163.

of acting and living without questioning them as long as they prove relatively successful and adaptive.”<sup>15</sup>

The “two selves” hypothesis can only be true if in fact there is a self within the offender who would choose to dissociate from the deviant conduct. The choice to dissociate in such a way is strongly mitigated by the lack of societal interest in seeing the offender re-join the fold. That is, not only must the society in question be open to re-integrating the offender, but the offender must want to re-integrate with society. According to Braithwaite’s theory, successful offender reintegration requires the social gravity of the shaming to be heavier than the potential benefits of remaining deviant. Likewise, the offender must be conscious that his conduct was morally reprehensible. The two selves hypothesis requires the offender to agree with society at large as to the nature of his conduct; calling upon the language of Sutherland’s differential association theory, if the offender has a different definition of the nature of his conduct than that of his society, the shaming might not be as effective.

Perhaps the most remarkable tenet of this hypothesis, however, is its spiritual parallel. This quality will be discussed at length in chapter six; for the time being, suffice it to say the two selves hypothesis involves the offender recognizing the wrongfulness of her conduct and coming to agreement with society at large about its nature. But it also requires a step beyond that: the two selves hypothesis in fact requires her to reject the wicked self in favor of the morally upright self as part of the successful reintegrative

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<sup>15</sup> Maruna et al., 168.

shaming process.<sup>16</sup> While it is a strong claim to make that this implementation of the conscious is a spiritual mechanism, it is less controversial to claim that utilization of this mechanism calls upon the consideration of the emotional capacity of the deviant in a way that current mechanisms of procedural punishment do not consider.

According to Braithwaite's theory, the consequence of stigmatization is attraction to criminal subcultures.<sup>17</sup> Integration within criminal subcultures allows a stigmatized criminal not only to "reject her rejecters" but to integrate herself within a subculture in which her behavior is not considered deviant. Because of its dissociative effects, stigmatization is classified by Braithwaite as "disintegrative shaming," or shaming that tends to undermine social bonds and to make an outcast of the criminal. In contrast, reintegrative shaming allows for the rejection of the criminal behavior while the criminal himself remains enmeshed in bonds of respect or love.<sup>18</sup> It does so by terminating disapproval with forgiveness as the offender comes to realize the wrongfulness of his behavior and to make amends; expressions of disapproval that vary in severity are followed by gestures of re-acceptance into the community of law-abiding citizens.<sup>19</sup> This process is most effective when embedded in context of relationships characterized by social approval.<sup>20</sup> Likewise, because reputation in the eyes of close acquaintances and familiars tends to be more valuable to individuals regardless of criminality than does reputation in the eyes of an impersonal state, shaming is most potently employed by a

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<sup>16</sup> Ray Paternoster and Shawn Bushway, "Desistance and the "feared self": toward an identity theory of criminal desistance," *The Journal of Criminal Law and Criminology* 99 no. 4 (Fall 2009): 1107.

<sup>17</sup> Braithwaite, 14.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid, 55.

<sup>20</sup> Ibid, 68.

criminal's close familiars than it is by society at large.<sup>21</sup> That is, if a given relationship is valuable to her, fear of shame in the eyes of these familiars will be a greater deterrent from crime than would fear of formal punishment.

Braithwaite holds, and I affirm, that those criminals who are able to develop empathy for their victims or some degree of understanding of the harmfulness of their criminal conduct are those most able to be affected by shaming. It is the decision of those doing the shaming as to whether the shame is reintegrative or disintegrative. Reintegrative shaming, due to its constructive nature, is much better suited for development of a sense of empathy that could, if Braithwaite's theory is correct, help mitigate the rise in recidivism rates that has occurred since 1972. Traditional justice practices are concerned more with repayment of harm than with correction of human character that may well have allowed the harm to be perpetrated in the first place; thus, in a sense, current practices of efficient, procedural justice treat only half the criminal. If recidivism rates are to decrease over time, the whole criminal must be treated, and Braithwaite's theory may provide an effective framework for this to take place. However, Braithwaite's theory has a number of limitations that should be considered.

Reintegrative shaming functions to help criminals realize the wrongs they have committed unto society by means of appeals to their moral characters. Two limitations are immediately brought forth by this claim: first of all, the criminal in question had to perpetrate a harm unto *society*, and thus reintegrative shaming is limited in its effectiveness when the crime in question is not predatory. For those cases in which no second-person victim exists, such as drug possession, reintegrative shaming would likely

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<sup>21</sup> Ibid, 69.



not be as effective due to a lack of a victimized party capable of reintegratively shaming the offender in the first place, insofar as it is presumed the offender cannot reintegratively shame herself. Secondly, if the criminal has no moral character to appeal to, reintegrative shaming cannot function, as its success is contingent upon some degree of empathetic ability. Although one of the foremost goals of reintegrative shaming is to instigate empathy for victims in the offenders, there is nothing to instigate if the offender does not possess the requisite capacity to empathize with his victim. If the offender were incapable of affirming that his behavior was wrong, shaming of any kind would have no real effect.

The third objection is the most important and the most complex. As stated earlier, reintegrative shaming is contingent upon the offender being enmeshed in nurturing, constructive social relationships of the sorts typically found in communitarian societies. As it stands, then, the theory would only apply to empathetic individuals with strong, supportive social networks who were guilty of predatory crimes.<sup>22</sup> What remains unaccounted for in this model, however, are the mechanics of what differentiates reintegrative shame from disintegrative shame. In other words, while Braithwaite's shaming model and the two selves hypothesis present viable cases for how the prison system's goal of offender rehabilitation may be met in practice, what remains unclear is how these processes are carried out at the individual level. An understanding of the mechanics of shaming—both reintegrative and disintegrative—is fundamental to

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<sup>22</sup> Should any of these conditions not be satisfied, the efficacy of reintegrative shaming on preventing future crime would be severely constrained. Individuals who have been "shamed so remorselessly and unforgivingly that they become outcasts" may find it more comfortable to associate with others similarly displaced from mainstream values. Once labelling and rejection have occurred, "further attempts at admonishing association with the group which provides social support for deviance have no force." For more, see Braithwaite, 67.

overcoming the limited applicability of Braithwaite's model. To do this requires an understanding of how shaming is received and processed by criminal offenders.

## CHAPTER FIVE

### The mechanics of reintegrative shaming: The Van Stokkom circle and the shame-guilt spectrum

The fact that shame can be applied two different ways implies the presence of different internal mechanisms influencing the way it affects the individual being shamed. Shaming is an act that requires a director and a recipient; some party must be doing the shaming in order for shame to be felt.<sup>1</sup> But shame becomes still more complicated upon consideration of what factors determine whether shaming is reintegrative or disintegrative. Does the individual being shamed feel as though he is being put on the defensive? Does he recognize the wrongness of his actions? Is he interested in making amends? Whether he feels defensive due to embarrassment or remorseful due to guilt seems to play some role in determining how shaming is conducted, though Braithwaite did not consider this distinction significant.

Traditionally, shame and guilt have been conceived of as separate emotions with different emotional pathways.<sup>2</sup> Guilt is an other-regarding emotion that follows an individual recognizing she has harmed someone or has done something wrong. Shame, on the other hand, is a self-regarding emotion often experienced in reaction to rejection or

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<sup>1</sup> Christopher H. Loeffler, Andrew J. Prelog, N. Prabha Unnithan, and Mark R. Pogrebin. "Evaluating Shame Transformation in Group Treatment of Domestic Violence Offenders." *International Journal of Offender Therapy and Comparative Criminology* 54 no. 4 (Aug. 2010): 519.

<sup>2</sup> Laura Flicker and Deborah Hill Barlow, "Are Shame, Guilt, and Embarrassment Distinct Emotions?" *Journal of Personality and Social Psychology* 70 no. 6 (1996): 1257; Robert Svensson, Frank M. Weerman, Lieven J.R. Pauwels, Gerben J.N. Bruinsma, and Wim Bernasco, "Moral emotions and offending: Do feelings of anticipated shame and guilt mediate the effect of socialization on offending?" *European Journal of Criminology* 10 no. 1 (2013): 23-24.

condemnation by others.<sup>3</sup> However, Braithwaite directly states in the model of reintegrative shaming in *Crime, Shame, and Reintegration* that “the old distinction between shame and guilt cultures ha[d] no place in [his] theoretical framework.”<sup>4</sup> The reason given is that the subconscious mechanisms for inducing guilt are formed within an individual’s native culture by the practice of shaming itself.<sup>5</sup> This characterization holds that shame is an external, other-driven mechanism responsible for inducing an internal, self-driven guilt mechanism, the guilt mechanism then being what affects the individual to change his behavior based on the shaming he is receiving.<sup>6</sup> This model holds that shame and guilt coexist in a continuous process, the shame leading to the guilt and the guilt to the impetus of behavioral self-correction. The literature has largely affirmed this revision, either treating exposition of the distinction between shame and guilt as briefly as did Braithwaite or affirming the model he posited in *Crime, Shame, and Reintegration*; appropriately, this model is known in most of the literature as shame-guilt.

The problem with this conceptualization is that it neglects treatment of a separate internal mechanism, that of shame. Braithwaite and authors who affirm his position, such as Harris and McAlinden, consider the internal mechanism of shame to be identical in

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<sup>3</sup> Loeffler et al., 521; Svensson et al. 23-24.

<sup>4</sup> John Braithwaite, *Crime, shame, and reintegration* (Cambridge, UK: Cambridge University Press, 1989), 57.

<sup>5</sup> Ibid.

<sup>6</sup> More specifically, the distinction between whether a shame or guilt mechanism is considered “internal” or “external” depends on whether it is directed toward an individual by a third party (external) or whether it is self-directed (internal). External shame, for example, would be exhibited by a mother toward her son who has just broken their neighbour’s window playing baseball; she might feel internal shame after running over her neighbour’s dog while backing out of her driveway.

effect to that of the internal guilt mechanism.<sup>7</sup> While this conclusion may be true in itself, it neither identifies the internal shame mechanism nor considers the actual emotional pathways utilized by the respective internal shame and guilt mechanisms in changing behavior. However, neglect of these considerations means that the researcher is cheating him or herself of a better understanding as to the specific emotions being generated by the invocation of shame or guilt mechanisms respectively.<sup>8</sup> I affirm the distinction; rather than being in contradiction with Braithwaite's theory, however, this distinction actually strengthens the argument in favor of reintegrative shaming-based treatments by expounding how shaming works.

Two complimentary models by Loeffler and Van Stokkom beget the existence of a spectrum along which shaming ranges from its absolute positive to absolute negative forms. Loeffler's research suggests that external shaming that utilizes primarily the internal guilt pathway is actually the more restorative of the two.<sup>9</sup> On the other hand, external shaming that utilizes the internal shame pathway may generate similar effects to disintegrative shaming. This leaves room for a distinction between internal shame and guilt. Thus, it can be stated that these exist along a spectrum; shaming itself can be positive or negative, which Braithwaite affirms.<sup>10</sup> How shame is conducted, then, determines how effective it will be.

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<sup>7</sup> Anne-Marie McAlinden, "The use of 'shame' with sexual offenders," *British Journal of Criminology* 45 (2005): 376; Nathan Harris, "Reintegrative Shaming, Shame, and Criminal Justice," *Journal of Social Issues* 62 no. 2 (2006): 331.

<sup>8</sup> Loeffler et al., 520.

<sup>9</sup> Ibid, 521.

<sup>10</sup> Braithwaite refers to positive shaming as "reintegrative" and negative as "disintegrative." In this thesis, the terms are used interchangeably unless otherwise specified.

Whether shaming has a constructive or destructive effect on the criminal depends largely on the emotional pathways utilized throughout the shaming process. Guilt is a moderate positive form of reintegrative shaming that leads to remorse, a strong positive form. Van Stokkom associates remorse with “self-alienation” that leads to horror at one’s deeds and a questioning of the self.<sup>11</sup> Because it discourages self-indulgence, however, it follows the pathways of guilt more than those of shame.<sup>12</sup> Guilt and remorse are positive due to their causal associations with recognition on the part of the offender that she has committed an immoral act. In this sense, these two positive forms of shaming constitute other-regarding emotions capable of motivating an offender to reconcile himself with those he has wronged.<sup>13</sup> This is consistent with the hypothesis offered in the previous chapter: the two selves hypothesis is based necessarily on lasting behavioral reform.

Embarrassment and stigmatization, on the other hand, are negative forms of shaming due to their tendencies to evoke defensive reactions. Here a distinction is drawn between shaming, an action completed by an interested party, and shame, here defined as a negative or destructive outcome of shaming. Embarrassment is the negative counterpart to guilt and amounts to a derivative of shame that is relatively non-severe, less severe even than guilt. It derives from shame, then, because it is self-regarding, invoking the urge to counteract against criticism.<sup>14</sup> Where these associations lead is to a linear model that can be characterized as follows: the disintegrative form of shaming is stigmatization,

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<sup>11</sup> Bas Van Stokkom, "Moral Emotions in Restorative Justice Conferences: Managing Shame, Designing Empathy." *Theoretical Criminology* 6 no. 3 (Aug., 2002): 350.

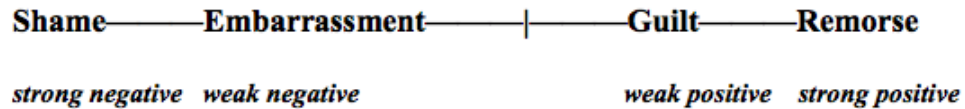
<sup>12</sup> Van Stokkom, 350.

<sup>13</sup> Tasmin Owen and Simone Fox, “Experiences of shame and empathy in violent and non-violent young offenders,” *Journal of Forensic Psychiatry and Psychology* 22 no. 4 (Aug. 2011): 553.

<sup>14</sup> Loeffler, 521.

brought about by its moderate form, embarrassment. Their positive counterparts, then, are guilt in the weak form and remorse in the strong.

FIGURE I: THE SHAME-GUILT SPECTRUM



Loeffler and Van Stokkom had similar conceptualizations of the differences between shame and guilt. Van Stokkom’s framework for the distinction between shame and guilt begins with the explanation that a person who feels guilt acknowledges she has made a specific error, which invokes a sense of shortcoming.<sup>15</sup> A person who feels shame, however, experiences a sense of inferiority, which represents a more potent attack on the person. As shame attacks the individual’s self-image with greater fervor, it also has greater potential to generate a contemptuous reaction from that individual.<sup>16</sup> To Van Stokkom, the person experiencing chronic shame both externally (being shamed by others) and internally (shaming himself) is more likely to feel degraded, exposed, and lacking in control.<sup>17</sup> Internal shame is a sign of a severed or threatened social bond.<sup>18</sup> By alluding to the offender’s lack of moral integrity, it becomes an attack on the person.<sup>19</sup>

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<sup>15</sup> Van Stokkom, 340.

<sup>16</sup> Ibid, 342.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid, 343.

<sup>19</sup> Ibid, 344.

Guilt, on the other hand, is “distilled from overt shame” and responds to the standards of others.<sup>20</sup>

It is here that Van Stokkom’s model becomes problematic. Reintegrative shaming is associated with the trigger of the offender’s empathy drive. Disintegrative shaming is not. Thus, whether the positive or the negative pathway is utilized depends on whether or not the shaming mechanism of choice is used to trigger empathy in the offender. In Van Stokkom’s model, the central element to his conceptualization of guilt comes from the notion that it “arises from being able to consider the perspective of the other person with whom one is in conflict.”<sup>21</sup> In such a case, guilt would arise by way of the very empathy restorative justice practices are supposed to engender. The tautological nature of this argument could become its underpinning if the matter were not further explored. Loeffler et al.’s modification offers one such lifeline for this model of internal shame and guilt as distinctive concepts.<sup>22</sup>

Loeffler et al.’s conceptualization is similar to Van Stokkom’s in many respects, holding that while guilt is a proactive and pro-social means of promoting acceptance of one’s mistakes, internal shame has a more global nature involving condemnation of the self as a whole.<sup>23</sup> Where Loeffler et al. diverge from Van Stokkom’s model is in the expansion of the effects of internal shame and guilt to include two entirely different

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<sup>20</sup> In sum, remorse is guilt that is strong enough to inspire people to seek reconciliation, whereas stigmatization is embarrassment that is so strong it marginalizes the people who feel it. For more, see Van Stokkom, 346-47.

<sup>21</sup> Van Stokkom, 347.

<sup>22</sup> This is not a full-fledged theory, more of a proto-theory.

<sup>23</sup> Loeffler et al., 521.



forms of empathy. Connecting internal shame more explicitly with disintegrative external shaming than does Van Stokkom, Loeffler's team holds that those for whom external shaming results in activation of the internal shaming mechanism are more concerned with how others evaluate them than with their effect on others. On the other hand, those who experience activation of the guilt mechanism are more concerned with their effect on others. Because of this, the guilt mechanism can be characterized as proactive while internal shame is detractive.<sup>24</sup>

In the case of most offenders, the initial reaction to punishment is some form of internal shame. This is associated with indignation and embarrassment over having been caught defying the law.<sup>25</sup> Indignation and embarrassment, being negative manifestations of shaming on account of their lack of empathy, often inspire defensive reactions in the offender. A criminal who feels *she* has been wronged in having been caught defying the law is unlikely to be receptive to castigatory forms of punishment whose successes are predicated on her recognition of her own guilt. That is, while the end goal of punishment is to exact retribution from an offender who has wronged some other party, the offender would presumably view his punishment as retributive only if he realizes he has done something wrong. Current forms of punishment take this recognition for granted in error. While most incarcerated offenders have been found guilty in the eyes of the law, many do not hold themselves responsible for their offenses, a mindset which manifests itself in such forms as resisting arrest, back-talking prison guards, and, most seriously, in re-

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<sup>24</sup> Thomas Scheff and Suzanne Retzinger, "Shame, Anger and the Social Bond: A Theory of Sexual Offenders and Treatment," *The Electronic Journal of Sociology* (1997): 8.

<sup>25</sup> Ibid, 8-9; Greg Pogarsky, Alex R. Piquero, and Ray Paternoster, "Modeling Change in Perceptions about Sanction Threats: The Neglected Linkage in Deterrence Theory," *Journal of Quantitative Criminology*, 20 no. 4 (Dec. 2004): 348.

offense following release from prison.<sup>26</sup> The key question thus concerns how to overcome the offender's lack of recognition of culpability so as to capitalize on the offender's empathy drive and lead her to recognize her own guilt. In order for this to take place, the offender needs to come to view himself as a moral being. Until he feels responsible for his actions, he is unlikely to feel remorse and is more liable to fall into his old behavior patterns following his release.

Guilt is better suited to reintegrative shaming because its effects are more pro-social than those of internal shame, as demonstrated by the research of Van Stokkom and Loeffler. One problem with the theoretical framework remains, however, in that internal shame seems connected only with disintegrative shaming and the guilt mechanism with reintegrative shaming. This very concern represents the key reason why internal shame and guilt must not be combined into the same internal mechanism the way Braithwaite and his affirmers describe. That is, while Braithwaite did hold that there is a distinction between positive and negative forms of shaming, he did not consider the effects of shaming along any kind of emotional spectrum that could be used to predict the behavior of an offender. Nonetheless, the positive and negative forms of shaming have distinct mechanisms, triggers, and pathways they follow. Further analysis of these distinct internal mechanisms of reintegrative and disintegrative shaming models may provide a framework through which more effective criminal justice practices can be constructed, practices that consider the emotional aspect of criminality along with the behavioral element the justice system in its current form is not effectively treating.

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<sup>26</sup> Bruce A. Jacobs and Richard Wright, "Stick-Up, Street Culture, and Offender Motivation," *Criminology* 37 no. 1 (1999): 168.

## CHAPTER SIX

### Restorative justice in practice

The theoretical discussions in the previous two chapters suggest that so long as a criminal continues to view himself as a product of his environment and as an individual whom society has wronged, he is unlikely to feel remorse over his criminal behavior. Offenders who maintain belief in their own victimization will be more apt to seek retribution from society in the form of criminal behavior than to seek forgiveness or reconciliation for their wrongs. It stands to be seen, thus, that a criminal can only be brought to see his criminality once he has recognized he has committed not simply an illegal but immoral act. Absent this recognition, subjection to any forms of punishment predicated on a criminal's cognizance of his own culpability is likely to be met with failure. The criminal must first be brought to realize she has committed a moral wrong before punishment forms based on guilt and empathy can find success. The question remains, then, of how criminals can be taught to see themselves as moral beings in order that criminal punishment, largely ineffective in its current form, can be made effective while remaining humane.

Criminologists have debated the question of how criminal corrections can be reformed in order to better meet all goals related to the offender for decades. Shortly after Braithwaite's *Crime, shame, and reintegration* was published in 1989, his team undertook a study of the effects of restorative conferencing among young offenders in the Australian capital of Canberra who had been convicted of drunk driving. This study,

which focused primarily on the courtroom phase of the criminal punishment process, analyzed the level of success victim-offender conferencing in a controlled environment had over a traditional courtroom trial in engendering a reintegrative rather than disintegrative shaming process toward the offender. Known as the Reintegrative Shaming Experiments (RISE), the general consensus following over a decade of interpretation of Braithwaite's data is that restorative justice conferencing results in higher levels of victim satisfaction and positive psychological effects on the offender.<sup>1</sup> Both parties consistently reported higher levels of satisfaction with the justice process and tended to reoffend less than participants in traditional courtroom trials.<sup>2</sup> Likewise, this research affirmed Braithwaite's conclusion that the conferencing tended to be a more pro-social means of addressing offending behavior than were traditional, antagonistic courtroom trials, as the victim-offender conferencing created an environment wherein the victim finds resolution through the delinquent's admission of guilt and understanding of how others were affected by his behavior without damage to his personal integrity or hope for the future.<sup>3</sup>

Nonetheless, the offender demographics amongst which these conferences are most often utilized leave much to be desired. Conferencing is typically not practiced among adult offenders or violent juveniles; moreover, the low-level juvenile offenders

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<sup>1</sup> Heather Strang, *Repair or Revenge: Victims and Restorative Justice* (Oxford, United Kingdom: Oxford University Press, 2002): 18; Geoffrey C. Barnes, "Procedural Justice in Two Contexts: Testing the Fairness of Diversionary Conferencing for Intoxicated Drivers," Ph.D. dissertation, Department of Criminology and Criminal Justice, University of Pennsylvania (1999); Barton Poulson, "A Third Voice: A Review of Empirical Research on the Psychological Outcomes of Restorative Justice," *Utah Law Review* (2003): 201.

<sup>2</sup> Natalie Kroovand Hipple, Jeff Gruenewald, and Edmund F. McGarrell, "Restorativeness, Procedural Justice, and Defiance as Predictors of Reoffending of Participants in Family Group Conferences," *Crime and Delinquency* XX no. X (2011): 18; also see Heather Strang, Geoffrey C. Barnes, John Braithwaite, and Lawrence W. Sherman, "Experiments in Restorative Policing: A Progress Report," Australian National University, July 1999.

<sup>3</sup> Hipple et al., 5.

amongst whom conferencing *is* practiced almost never receive jail time, limiting the applicability of these findings to the prison system itself. Studies of “alternative” rehabilitation programs in prisons have typically focused on programs such as boot camps, Scared Straight, and technical skill courses, and have often demonstrated either limited efficacy or even counterproductivity in reducing reoffense.<sup>4</sup> These findings have led some criminologists to believe that these programs “fail to initiate the fundamental change often needed to counteract recidivism.”<sup>5</sup>

However, a substantial body of criminological research is taking shape that suggests the most substantial flaw in these programs is the fact they do not address the behavioral shortcomings of criminal offenders in such a way that they learn of positive alternatives.<sup>6</sup> The “two selves” hypothesis posited in chapter four holds that by neglecting the part of the criminal that affirms societal belief in wrongfulness of his or her conduct, the prison system itself facilitates disintegrative shaming that creates social distance between offenders and society. If this hypothesis is correct, it stands to be seen that programs that do not force criminals to consider and question their behavior and character will be less successful than those that do. A growing body of research is tending to affirm this conclusion.

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<sup>4</sup> Anthony Petrosino, Carolyn Turpin-Petrosino, Meghan E. Hollis-Peel, and Julia G. Lavenberg, “Scared Straight and Other Juvenile Awareness Programs for Preventing Juvenile Delinquency: A Systematic Review,” *Campbell Systematic Reviews* (June 2012): 42.

<sup>5</sup> Jocelyn Fowler, “Baylor studies seminaries behind bars,” *The Baylor Lariat* 113 no. 26, October 11, 2012, 6.

<sup>6</sup> Ray Paternoster and Shawn Bushway, “Desistance and the “feared self”: toward an identity theory of criminal desistance,” *The Journal of Criminal Law and Criminology* 99 no. 4 (Fall 2009): 1105; Michael Hallett and J. Stephen McCoy, “Religiously motivated Desistance: An Exploratory Study,” *International Journal of Offender Therapy and Comparative Criminology* (2014): 8; Celeste Davis, Stephen J. Bahr and Carol Ward, “The process of offender reintegration: Perceptions of what helps prisoners re-enter society,” *Criminology and Criminal Justice* 13 no. 4 (Sept. 2013): 447.

One example of a restorative justice program that is being met with good results is California's prison fire camp program, an alternative sentencing option typically offered to non-violent offenders in that state's overtaxed prison system. Unlike walled prisons, the fire camps are relatively open; each camp holds between 100-125 prisoners of the same sex, stationed in a rural area where inmates receive training to fight wildfires and perform manual labor for various state and local agencies when there are no fires to be fought.<sup>7</sup> Sentencing to a fire camp is both a burden and a privilege, the wider freedoms and more favorable environment of the camps "paid for" by the requirement of difficult, dangerous labor. Administrators of these camps hold that the focus of the camps is to serve as "an enabler of change for those inclined to engage in self-transformation"—in other words, to provide an environment for those likely to morally reform themselves to do so, principally by development of a good work ethic that keeps offenders out of trouble. Remarkable consensus exists among inmates, staff, and administrators that rehabilitation is facilitated at the camps by development of such a work ethic, itself understood as an impetus of self-transformation.<sup>8</sup> However, these findings are significantly constrained by a lack of attention to offender outcomes and societal re-entry. This focal constraint becomes especially problematic when considering that this program does not always generate lasting behavioral change; offenders have been known to cycle back through up to three times.<sup>9</sup>

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<sup>7</sup> Philip Goodman, "'Another Second Chance:' Rethinking Rehabilitation through the Lens of California's Prison Fire Camps," *Social Problems* 59 no. 4 (Nov. 2012): 442.

<sup>8</sup> Ibid, 447 & 450.

<sup>9</sup> Ibid, 450.

Another apparently successful case of restorative justice in practice came about through a private religious partnership between the New Orleans Baptist Theological Seminary and the Louisiana State Penitentiary, a maximum-security facility more commonly known as Angola. The facility holds more than 6,300 prisoners, some 80% of whom have a life sentence.<sup>10</sup> As of October 2013, 241 prisoners have graduated from the program that began operations in 1995. Burl Cain, who has served as warden at Angola since the program was initiated, claims the impact of the program has gone beyond spreading religion among inmates: assault rates amongst inmates had plummeted to 28.6% their 1990 levels in 2012, the equivalent inmate assault rate against staff members to just 19.6%. The program has utilized religion and peer counseling, backed by sharp discipline for defiant behavior, to promote a moral rehabilitation and sense of community amongst inmates.<sup>11</sup> Since then, a similar program has been established at the Darrington Unit in Rosharon, Texas, and similar programs are being considered in California, Georgia, Illinois, Mississippi, and other states.<sup>12</sup>

Baylor University's Institute for Studies of Religion began studying the effects of these prison seminaries in 2012. Though the first round of data from this study will not be available until early 2016, the Angola unit has never seen a sustained decline in violence—even amidst a rapid increase in prison population—such as has been exhibited following establishment of Angola Bible College, and the college's presence appears to have something to do with it. Critics claim that “there is no firm evidence that it is the

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<sup>10</sup> Erik Eckholm, “Bible College Helps Some at Louisiana Prison Find Peace,” *The New York Times*, October 5, 2013.

<sup>11</sup> Eckholm, 2013.

<sup>12</sup> Ken Chitwood, “Prison seminary transforms culture from inside out,” *The Houston Chronicle*, January 3, 2013; Eckholm, 2013.

faith component that makes these programs work.”<sup>13</sup> Supporters, on the other hand, are more likely to focus on both cultural and character transformations of the prisons and prisoners that have taken place in religious and not vocational or other largely secular reintegrative efforts; under such a focus, the faith-based programs seem to have some quality the secular programs lack.

There are many reasons why this could be the case. One important critical argument against the faith-based programs has been that because these programs are based in religion, they are based in a practice inmates can carry outside the classroom.<sup>14</sup> Vocational programs, on the other hand, may only be accessible for a few hours every day, a difference in form that may be significant enough to skew comparisons between the two artificially in favor of the faith-based programs. This argument has yet to be tested, as until this point no comparative study of the lasting behavior-reformatory effects of secular versus religious prison programs has been conducted. However, a more significant limitation of the prison seminary studies is that these programs are designed for intra-prison ministry. That is, graduates of these programs are typically individuals who have received life sentences, and thus the impacts of programs such as this on *recidivism* has yet to be determined.<sup>15</sup>

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<sup>13</sup> Winnifred Sullivan, as quoted in Eckholm, 2013; also see Volkan Topalli, Timothy Brezina and Mindy Bernhardt, “With God on my side: The paradoxical relationship between religious belief and criminality among hardcore street offenders,” *Theoretical Criminology* 17 no. 1 (2013): 59.

<sup>14</sup> Eckholm, 2013.

<sup>15</sup> That said, the deliberate lack of attention to recidivism as an indicator of program successfulness in the California fire camp study limits its applicability to recidivism just as much. For more, see Goodman, 444.



Recent findings based on Ray Paternoster and Shawn Bushway's identity theory of desistance further reinforce the emerging trend of Baylor's study in ways pertinent to decreasing recidivism. The central tenet of Paternoster and Bushway's theory is that "desistance comes about as a result of the offender *willfully* changing his identity" away from a criminal working identity and toward a non-criminal conceptualization of their future self.<sup>16</sup> Their theory is built around a transformational mechanism in which the criminal offender makes the choice to desist not because of sudden awareness of the advantages of conventional life but due to the relative costs of crime.<sup>17</sup> Thus, desistance is, according to their framework, a rational choice. Institutions such as legitimate employment or "association with conventional others" would presumably reinforce the decision the offender has made to change her behavior, though the initial response would be up to her to initiate.<sup>18</sup> However, if this process takes place with "lifers" at Angola, who have no hope to return to society, more than rational choice is to be involved in their decision to end the acts of "old self" and begin a life of "new self," such as choosing to see themselves as moral agent rather than a passive product or even helpless victim of their past and present surroundings.

To the extent that a criminal fears becoming the "feared self," it is presumed that a consequence of this fear is a lifestyle change resulting from the push factor of his not

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<sup>16</sup> Paternoster and Bushway, 1108.

<sup>17</sup> Ibid, 1119.

<sup>18</sup> Ibid, 1105.

wanting to become the feared self.<sup>19</sup> This lifestyle change can take place in any context, so long as it is seen to continue past the conclusion of rehabilitative treatment. The ethic-based, transformative logic of the fire camps, then, can be construed as a pull factor—to the extent the prisoner wants to reform, she will invest herself in the opportunities offered her at the camp to do so. Again, however, the continuity question is raised in this context. Less than five percent of fire camp graduates find permanent employment with public or private fire crews after released, and finding permanent employment after release remains as difficult for these inmates as for any other in the California system. Moreover, it remains unknown how frequently fire camp inmates recidivate compared to traditional prison inmates; are fire camp participants able to integrate better than traditional inmates with the community upon their release?

Hallett and McCoy's study on religiously motivated desistance may provide insight into the question of what is missing in these two auto-deterrence models. Using a series of 25 interviews with reformed ex-offenders who cite their religious practice as a necessary component of their desistance, participants conveyed that their best hope for redemption was full acknowledgement and acceptance of their "sinful natures" and "repentance through spiritual practice and devotion to their 'church families.'"<sup>20</sup> These findings affirm both Paternoster and Bushway's "push" desistance and Goodman's "pull factor" work ethic, though the fact they do so in a context of continued integration in a supportive community of the type Braithwaite and others consider essential to

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<sup>19</sup> John Braithwaite, *Crime, shame, and reintegration* (Cambridge, UK: Cambridge University Press, 1989), 82; Shadd Maruna, *Making Good: How Ex-Convicts Reform and Rebuild Their Lives* (Washington, D.C.: American Psychological Association, 2000): 95; Davis et al., 447; Hallett and McCoy, 10.

<sup>20</sup> Hallett and McCoy, 10.

reintegration suggests “both social support and personal responsibility...a[re] essential for sustaining agentic moves away from offending.”<sup>21</sup> The religious narratives of these offenders, then, construct the essence of the “replacement self” as the antithesis of the “feared self”—by confronting the “feared self” in the context of repentance, offenders worked to sustain the “replacement self” through daily spiritual practice and accountability in the context of a supportive community of fellow believers.<sup>22</sup> These findings suggest, then, that successful desistance is product of a multitude of factors: identification of a “feared self,” confrontation of the feared self in a transformational context, and a desistance ethic in a context of support and accountability that follows offenders into the community upon their release. This is the essence of the two-selves hypothesis: an individual guilty of breaching the moral order in a reintegrative shaming context divides her self-conceptualization in two, leaving a part that is guilty of an offense and a part that affirms societal belief that her conduct was wrong. As an offender dissociates from the morally reprehensible conduct, he or she is motivated to change it.

If this hypothesis is correct, it stands to be seen that the prison system would have to be able to facilitate the individual offender’s arrival to the point at which he decides to desist. The active agent in the change is not, therefore, the prison system, but the individual offender. This leads back to the guiding question of how an ineffectual prison system that is essentially designed to exact retribution from offenders can be reformed for better treatment outcomes. Paternoster and Bushway suggest offenders must choose positive alternatives to criminality, a choice that is predicated upon, among other things, knowledge of the existence of alternatives, a view of alternatives as personally

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<sup>21</sup> Ibid.

<sup>22</sup> Ibid, 14.

achievable, and a means to achieve those alternatives, a diverse category that includes everything from a supportive social network and access to legitimate employment to a conception of themselves as individuals of worth.<sup>23</sup> The moral aspect to the decision, that of desistance being the “right thing to do,” reinforces the decision to do so on an individual level when criminals conceive of themselves as moral beings who have done immoral things and corporately as pertains to the moral consensus of the larger society, a consensus that tends to affirm desistance.<sup>24</sup>

The logic of prison practices in their current form is such that it intends to teach offenders these consequences to a sufficient extent to act as a deterrent from further crime. Paternoster and Bushway’s suggestion that desistance is a choice based principally on calculations of the cost of criminal activity reinforces this notion.<sup>25</sup> However, if desistance is re-framed through the lens that a criminal who is fundamentally transformed in his character no longer sees crime as a viable extension of his activities, then prison reformers seeking to capitalize on this transformation must come to a better understanding of the mechanics of personal transformation in the context of criminal individuals. In other words, it must be understood that personal transformation is a matter of more than rational choice.

The emotional aspect of criminality plays into this framework as well. As Paternoster and Bushway discuss, a criminal who has desisted with his criminal activity

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<sup>23</sup> John Braithwaite, *Crime, shame, and reintegration* (Cambridge, UK: Cambridge University Press, 1989), 55; Davis et al., 447; Paternoster and Bushway, 1105.

<sup>24</sup> N. W. Bakken, W. Gunter, and C. Visher, “Spirituality and desistance from substance abuse among reentering offenders,” *International Journal of Offender Therapy and Comparative Criminology* (2013): 2.

<sup>25</sup> Paternoster and Bushway, 1108.

is more likely to continue in desistance if he is enmeshed in a social framework that encourages pro-social behavior.<sup>26</sup> A criminal who experiences internal shame or stigmatization will have more incentives to revert back to criminal behavior than one who does not. On the other hand, if an offender feels no shame of any kind, she will have similarly few social incentives or compelling reasons to desist with her criminal behavior. Presumably, she must feel *some* shame—but it must be the *right kind* of shame, presumably reintegrative. It is here that the distinction between the shaming mechanisms finds its importance: guilt, when properly applied to offender, is a powerful tool for criminal desistance.

The conclusion from this argument thus suggests the dilemma of reducing recidivism may be much simpler than it seems. In Paternoster and Bushway's language, the very act of recidivating indicates offenders have not arrived at a reconceptualization of their criminal identities sufficiently strong to keep them from offending again. More simply, when criminals re-offend, this suggests they have not yet "learned the consequences of their actions," so to speak. As it stands, prison practices aligned more with a castigatory, punitive form of justice have the complication of seeking to reform criminal behavior by negative mechanisms that focus on retribution for a wrong already committed. A more effective framework would more likely presuppose the offender herself must recognize and choose a *positive* alternative to criminality—an alternative she would have less exposure to under a more retributive justice model. Reintegrative shaming, then, may provide an effective framework for restorative justice practice: such shaming addresses the whole criminal, his behavior, his emotions, and his identity.

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<sup>26</sup> Ibid, 1105.

The question then becomes one of how these elements can be brought back into a rehabilitative system. Participants in the faith-based programs came to see their best hope for redemption through full acknowledgement of their “feared selves,” repentance through spiritual practice, and devotion to their “church families.”<sup>27</sup> Offenders were brought to a point of realizing not only what they did but how it could be rectified—points also stressed by Braithwaite and the Canberra RISE experimenters in the 1990’s. In many ways, this puts additional responsibility on the prison system not only to abide by rising standards of human rights but also to address the role of human agency in the process. Few would vote for a softening of prison practice absent some kind of mechanism for bringing offenders to acknowledge and “make good” on their responsibility to those their actions have harmed. Many programs address this issue partially, such as the fire camps in their orientation toward giving back to the community through service.<sup>28</sup> An optimal program would integrate the identity component as well and provide transitional support into a community more likely to facilitate lasting desistance.

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<sup>27</sup> Hallett and McCoy, 10.

<sup>28</sup> Goodman, 446.

## CONCLUSION

### The future of American reintegrative justice

An unintended consequence of the Warren reforms was a shift away from the focus on offender responsibility in any capacity to officer conduct during the investigation. Viewing this shift through the lens of its effect on perceptions and management of offender agency is troubling. The cultural context of the Warren reforms was one of an increase in social constructivism; it was at this time that paradigms such as labeling theory and learning theory were making rounds in the discipline inside an overall context of tending to view criminals as victims of society.<sup>1</sup> Demographics of crime present a striking case for this: criminals, at least those populating American prisons, are overwhelmingly poor and non-white. Many grow up socially disadvantaged, oftentimes in physically or emotionally abusive environments. Many then look for support in deviant social groups, the costs of associating with which are often participation in criminal activities.<sup>2</sup> Essentially, then, offenders are socially adrift, and the way to reform them is to change society so that offenders are no longer on its margins.

The problem with viewing criminals as social constructs is that it effectively negates the role of human agency. If criminals are understood to be merely products of their social environments and upbringings, it is unreasonable to hold them accountable

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<sup>1</sup> Travis C. Pratt, Jacinta M. Gau, and Travis W. Franklin, *Key Ideas in Criminology and Criminal Justice* (Thousand Oaks, CA: SAGE Publications, 2010): 56.

<sup>2</sup> Ibid.

for their actions—under this framework, it would be impossible for them to live in any other way than as criminals. Castigatory justice systems, then, have a way of affirming this notion inadvertently, insofar as they do not expend significant energy on reformation but merely processing of the offender. It can thus be argued that human agency is the missing element in criminal justice policy. Its absence, seen in the depersonalized justice processing that remains the norm, has the effect of dehumanizing the criminal insofar as he is treated essentially as a collusion of social responses.

On the other hand, if he is allowed to accept responsibility for his actions, he has the opportunity to reform them. The decision to do so would presumably result in reformation, as Hallett and McCoy's study suggest; the decision not to do so would result in continued punishment or more crime, depending on an offender's imprisonment status. Van Stokkem and Loeffler et al. suggest, then, that it is guilt opposed to shame that seems to trigger more reformatory responses in offenders, as indicated by the comparative success of the RISE conferencing and the prison seminars over Scared Straight and traditional courtroom trials in facilitating behavioral self-transformation in offenders. Finally, confrontation with her "feared self" may be a better form of punishment than any punitive system could create. Through self-discipline, especially in the context of meaningful and lasting social support, individual desistance is rendered sustainable and significant; recognizing and promoting the agency of convicted criminals in their own desistance is thus key to lasting behavioral transformation.

If reformation is considered a matter of criminals reconceiving themselves as non-offenders, a number of plausible treatment outcomes can be inferred. The first is that any rehabilitation programs that are castigatory in nature will tend to continue treating the



symptoms but neglecting the disease. It is not enough to punish them—offenders who recognize their own culpability and are inspired to make amends are more likely to seek out opportunities to “make good” on their criminality, and a justice system that allows them opportunities to do so would have to do comparatively little to facilitate offender desistance due to the offender’s own agency being the driving force behind their reconciliation with society. Likewise, a criminal must be aware not only that her actions are harmful but also that she has other options available to her than criminality. Most importantly, however, a criminal must want to desist.<sup>3</sup> It is in this area that treatment programs find their most significant opportunity for growth.

The moral aspects of a prisoner’s decision to change his or her behavior are key to institutional efforts to promote successful offender rehabilitation. The reasons why are numerous: lasting desistance is difficult to force absent solitary incarceration or death, and attempting to force desistance is expensive and relatively ineffective. A theoretical consideration is added wherein that if criminals have merely desisted in their criminal activity on the basis of a rational calculation of the advantages of doing so over the disadvantages, little stands in the way of a criminal simply reversing that decision in the future if his or her contexts changed enough to warrant it. Thus, the identity component of criminal desistance seems unavoidable. Lasting criminal desistance seems to be the result of a fundamental change in the offender’s self-conceptualization, and the prison

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<sup>3</sup> Ray Paternoster and Shawn Bushway, “Desistance and the “feared self”: toward an identity theory of criminal desistance,” *The Journal of Criminal Law and Criminology* 99 no. 4 (Fall 2009): 1108; Michael Hallett and J. Stephen McCoy, “Religiously motivated Desistance: An Exploratory Study,” *International Journal of Offender Therapy and Comparative Criminology* (2014): 8.

programs that show the most promise in reducing reoffense on a long-term scale are those which force the offender to confront her criminal identity as undesirable and reject it.<sup>4</sup>

However, any reintegrative efforts for non-violent adult offenders are immediately presented with constraints. Of these, lack of time is perhaps the most critical: because these offenders are under jurisdiction of the prison system for shorter periods of time in their sentences, endeavors such as the Canberra RISE conferences that promote higher levels of satisfaction with the justice process and higher levels of personal satisfaction with conference outcomes may prove the most fruitful bases for reintegrative shaming-based treatment programs among non-violent offenders.<sup>5</sup> Though offender-victim conferencing will not always be a plausible option, similar forms of community-based rehabilitation that put the offender in contact with people who will uphold his or her moral self while rejecting deviant behavior may present worthy courses of exploration. Such programs may help to bridge the gap between the prison system's inability to contribute to character reform on its own and the community's typical reluctance to re-admit the offender into the fold of non-offenders.

Ultimately, desistance from criminal activity seems to come about through a process that is heavily dependent on an individual criminal's will to change. The strength of this transformational impetus is then an amalgamation of external factors such as accessibility of legitimate work and strength of social bonds and internal factors such as perception and identity as an offender or non-offender. It stands to be seen that a criminal

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<sup>4</sup> Paternoster and Bushway, 1106.

<sup>5</sup> Heather Strang, Geoffrey C. Barnes, John Braithwaite, and Lawrence W. Sherman, "Experiments in Restorative Policing: A Progress Report," Australian National University, July 1999; Loeffler et al., 521; Paternoster and Bushway, 1108.

corrections system based primarily on collective, systematized, procedural treatment is not conducive to the kind of transformation needed for lasting desistance. When our criminal corrections system is viewed through the lens of Braithwaite's theory, this leads naturally to criticism of a system that discourages criminals from changing by neglecting to treat the criminal character that brought about antisocial behavior in the first place. However, the growth and success of restorative justice practices of such types as the Angola Bible College suggest the field of prison practice is open to new developments. That the procedural revolution seems to be ending with a consolidation of more humane, more personal, and more successful justice practices represents a significant human rights victory. Beyond that, that moral understandings of crime have begun to enter mainstream criminological discourse may foresee greater cooperation between criminal and non-criminal individuals in the coming years.

There are many theoretical elements open for further investigation. First among these is perhaps the transformational mechanism—how prisoners arrive to the point where they decide desistance is in their best interests. That prisons have begun to embrace more personalized treatment programs is a sign of progress, but there is still much study to be done as to how to translate reintegrative treatment programs into a shorter-term context suitable for offenders with shorter prison sentences. There are also a number of theoretical questions remaining: how can a primarily informal method of social control be incorporated into a primarily formal, bureaucratic justice system? To what extent could justice models based on reintegrative shaming be effective with sociopathic criminals? How can American criminal corrections practices be modified to

avoid stigmatization and to treat the whole criminal? Questions like these provide fertile ground for future research.

Criminal agency represents the essential element that has been missing from American corrections practice. This agency is often viewed from a deterrence lens: that is, would-be criminals weigh the potential costs of crime against the potential benefits gleaned and presumably choose not to commit crime. In practice, however, lasting desistence seems to have more to do with criminals coming to recognize the wrongfulness of their conduct and its negative effects on others and seeking to make amends, usually through some kind of transformation of their conduct that stems from a transformation of their character.<sup>6</sup> That offenders must assume some degree of moral responsibility in order to truly reform is reinforced by the outcomes of disintegrative versus reintegrative shaming, the supportive social context of reintegrative shaming a necessary element of lasting desistence as well. Victimization of offenders, either by the self or the system, tends to negate incentives to reform due to the minimization of the offender's own transformative agency. However, a criminal who is motivated to reform himself may be a stronger agent of change than any restorative system; ultimately, the justice system may be rendered more effective through support rather than punishment of its charges.

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<sup>6</sup> Philip Goodman, "'Another Second Chance: Rethinking Rehabilitation through the Lens of California's Prison Fire Camps,'" *Social Problems* 59 no. 4 (Nov. 2012): 442; Hallett and McCoy, 10; Paternoster and Bushway, 1106.

## WORKS CITED

- Austin, James, Todd Clear, Troy Duster, David F. Greenberg, John Irwin, Candace McCoy, Alan Mobley, Barbara Owen, and Joshua Page. "Unlocking America: Why and How to Reduce America's Prison Population." The JFA Institute, 2007.
- Bakken, N. W., W. Gunter, and C. Visser. "Spirituality and desistance from substance abuse among reentering offenders." *International Journal of Offender Therapy and Comparative Criminology* (2013): 1-19.
- Barnes, Geoffrey C. "Procedural Justice in Two Contexts: Testing the Fairness of Diversionary Conferencing for Intoxicated Drivers." Ph.D. dissertation, Department of Criminology and Criminal Justice, University of Pennsylvania, 1999.
- Braithwaite, John. *Crime, shame, and reintegration*. Cambridge, UK: Cambridge University Press, 1989.
- Butler, Gavin. "Commercial burglary: what offenders say." *Crime at Work: Studies in Security and Crime Prevention* 1 (1994): 135-147.
- Chitwood, Ken. "Prison seminary transforms culture from inside out." *The Houston Chronicle*, January 3, 2013.
- Clark, Ramsey. *Crime in America: Observations on Its Nature, Causes, Prevention and Control*. 2<sup>nd</sup> ed. New York: Pocket Books, 1971.
- Council of Juvenile Correctional Administrators. "Defining and Measuring Recidivism." Nov. 2009.
- Cronin, Thomas E., Tania Z. Cronin, and Michael E. Milakovich. *U.S. v. Crime in the Streets*. Bloomington, IN: Indiana University Press, 1981.
- Davis, Celeste, Stephen J. Bahr and Carol Ward. "The process of offender reintegration: Perceptions of what helps prisoners re-enter society." *Criminology and Criminal Justice* 13 no. 4 (Sept. 2013): 446-469.
- "Defining and Measuring Recidivism." Council of Juvenile Correctional Administrators, Nov. 2009.
- Dilulio, John J. "Deterrence Theory." in *Encyclopedia of Prisons and Correctional Institutions*, ed. Mary Bosworth. Oxford, U.K.: Oxford University Press, 2005.

- Drago, Francesco, Roberto Galbiati, and Pietro Vertova. "Prison Conditions and Recidivism." *American Law and Economics Review* 13, no. 1 (2011): 103-130.
- Eckholm, Erik. "Bible College Helps Some at Louisiana Prison Find Peace." *The New York Times*, October 5, 2013.
- Flicker, Laura and Deborah Hill Barlow. "Are Shame, Guilt, and Embarrassment Distinct Emotions?" *Journal of Personality and Social Psychology* 70 no. 6 (1996): 1256-1269.
- Fowler, Jocelyn. "Baylor studies seminaries behind bars." *The Baylor Lariat* 113 no. 26, October 11, 2012, 6.
- Gal, Tali and Shomron Moyal. "Juvenile Victims in Restorative Justice: Findings from the Reintegrative Shaming Experiments." *British Journal of Criminology* 51, no. 6 (Nov. 2011): 1014-1034.
- George, Andrew L.: *The Texas Convict: Thrilling and Terrible Experience of a Texas Boy*. Austin, Texas: Ben C. Jones & Co., 1893.
- Goodman, Philip. "'Another Second Chance:' Rethinking Rehabilitation through the Lens of California's Prison Fire Camps." *Social Problems* 59 no. 4 (Nov. 2012): 437-458.
- Haist, Matthew. "Deterrence in a sea of 'just desserts': Are utilitarian goals achievable in a world of 'limiting retributivism'?" *The Journal of Criminal Law and Criminology* 99 no. 3 (Summer 2009): 789-822.
- Hallett, Michael and J. Stephen McCoy. "Religiously motivated Desistance: An Exploratory Study." *International Journal of Offender Therapy and Comparative Criminology* (2014): 1-18.
- Harris, Phil, Brian Lockwood, and Liz Mengers. "A CJCA White Paper: Defining and Measuring Recidivism." *Braintree, MA: Council of Juvenile Correctional Administrators* (2009).
- Harris, Nathan. "Reintegrative Shaming, Shame, and Criminal Justice." *Journal of Social Issues* 62 no. 2 (2006): 327-346.
- Hay, Carter. "An Exploratory Test of Braithwaite's Reintegrative Shaming Theory." *Journal of Research in Crime and Delinquency* 38 (2001): 132-153.
- Hipple, Natalie Kroovand, Jeff Gruenewald, and Edmund F. McGarrell. "Restorativeness, Procedural Justice, and Defiance as Predictors of Reoffending of Participants in Family Group Conferences." *Crime and Delinquency* XX no. X (2011): 1-27.

- Jacobs, Bruce A. and Richard Wright. "Stick-Up, Street Culture, and Offender Motivation." *Criminology* 37 no. 1 (1999): 149-174.
- Kubrin, Charis E., Gregory D. Squires, and Eric A. Stewart. "Neighborhoods, Race, and Recidivism: The Community Reoffending Nexus and its Implications for African Americans." *SAGE Race Relations Abstracts* 32 (2007): 7-37.
- Langan, Patrick A. and David J. Levin. "Special Report: Recidivism of Prisoners Released in 1994." (Bureau of Justice Statistics, 2002): 1-16.
- Latessa, Edward J. and Aleksander Holsinger, "The Importance of Evaluating Correctional Programs: Assessing Outcome and Equality," *Corrections Management Quarterly*, 2 no. 4 (1998): 22-29.
- Lave, Tamara Rice. "Inevitable recidivism—The origin and centrality of an urban legend." *International Journal of Law and Psychiatry* 34 (2011): 186-194.
- Lee, Harry. "Prison Flag Shows Men Aiding in War." *Atlanta Constitution*, October 3, 1943, 10B.
- Lipsey, Mark W. and Francis T. Cullen. "The Effectiveness of Correctional Rehabilitation: A Review of Systematic Reviews." *Annual Review of Law and Social Science* 3 (2007): 297-320.
- Loeffler, Christopher H., Andrew J. Prelog, N. Prabha Unnithan, and Mark R. Pogrebin. "Evaluating Shame Transformation in Group Treatment of Domestic Violence Offenders." *International Journal of Offender Therapy and Comparative Criminology* 54 no. 4 (Aug. 2010): 517-536.
- Maltz, Michael D. *Recidivism*. Orlando, FL: Academic Press, Inc., 1984.
- Maruna, Shadd. "Desistance From Crime and Explanatory Style: A New Direction in the Psychology of Reform." *Journal of Contemporary Criminal Justice* 20 No. 2 (May 2004): 184-200.
- . *Making Good: How Ex-Convicts Reform and Rebuild Their Lives*. Washington, D.C.: American Psychological Association, 2000.
- Maruna, Shadd, Louise Wilson, and Kathryn Curran. "Why God Is Often Found Behind Bars: Prison Conversions and the Crisis of Self-Narrative." *Research in Human Development* 3 nos. 2&3 (2006): 161-184.
- Mauer, Mark. "The impact of mandatory minimum penalties in federal sentencing." *Judicature* 94 no. 6 (2010-2011): 6-9.

- McAlinden, Anne-Marie. "The use of 'shame' with sexual offenders." *British Journal of Criminology* 45 (2005): 373-394.
- McKelvey, Blake. *American prisons: A history of good intentions*. No. 17. Montclair, NJ: Patterson Smith, 1977.
- Mears, Daniel P. and Jeremy Travis. "Youth development and re-entry." *Youth Violence and Juvenile Justice*, 2 no. 1 (Jan. 2004): 3-20.
- "Measuring Recidivism." National Institute of Justice. last modified February 20, 2008. Accessed October 26, 2013. <http://www.nij.gov/topics/corrections/recidivism/measuring.htm>.
- National Institute of Justice. "Measuring Recidivism." Last modified February 20, 2008. Accessed October 26, 2013. <http://www.nij.gov/topics/corrections/recidivism/measuring.htm>.
- Owen, Tasmin and Simone Fox. "Experiences of shame and empathy in violent and non-violent young offenders." *Journal of Forensic Psychiatry and Psychology* 22 no. 4 (Aug. 2011): 551-563.
- Paternoster, Ray and Shawn Bushway. "Desistance and the "feared self": toward an identity theory of criminal desistance." *The Journal of Criminal Law and Criminology* 99 no. 4 (Fall 2009): 1103-1156.
- Perkinson, Robert. *Texas Tough: The Rise of America's Prison Empire*. New York: Metropolitan Books, 2010.
- Petrosino, Anthony, Carolyn Turpin-Petrosino, Meghan E. Hollis-Peel, and Julia G. Lavenberg. "Scared Straight and Other Juvenile Awareness Programs for Preventing Juvenile Delinquency: A Systematic Review." *Campbell Systematic Reviews* (June 2012): 41-62.
- Piliavin, Irving, Rosemary Gartner, Craig Thornton, and Ross L. Matsueda. "Crime, Deterrence, and Rational Choice." *American Sociological Review* 51, no. 1 (Feb., 1986): 101-119.
- Pogarsky, Greg, Alex R. Piquero, and Ray Paternoster. "Modeling Change in Perceptions about Sanction Threats: The Neglected Linkage in Deterrence Theory." *Journal of Quantitative Criminology*, 20 no. 4 (Dec. 2004): 343-369.
- Poulson, Barton. "A Third Voice: A Review of Empirical Research on the Psychological Outcomes of Restorative Justice." *Utah Law Review* (2003): 167-204.
- Pratt, Travis C., Jacinta M. Gau, and Travis W. Franklin. *Key Ideas in Criminology and Criminal Justice*. Thousand Oaks, CA: SAGE Publications, 2010.



“Recidivism.” Bureau of Justice Statistics, accessed Dec. 2, 2012, <http://www.bjs.gov/index.cfm?ty=tp&tid=17>.

Scheff, Thomas and Suzanne Retzinger. “Shame, Anger and the Social Bond: A Theory of Sexual Offenders and Treatment.” *The Electronic Journal of Sociology* (1997): 1-15.

Strang, Heather. *Repair or Revenge: Victims and Restorative Justice*. Oxford, United Kingdom: Oxford University Press, 2002.

Strang, Heather, Geoffrey C. Barnes, John Braithwaite, and Lawrence W. Sherman. “Experiments in Restorative Policing: A Progress Report.” Australian National University, July 1999.

Stuntz, William J. *The Collapse of American Criminal Justice*. Cambridge, MA: Belknap Press, 2011.

Sullivan, Larry E. *The Prison Reform Movement: Forlorn Hope*. Twayne Publishers, 1990.

Svensson, Robert, Frank M. Weerman, Lieven J.R. Pauwels, Gerben J.N. Bruinsma, and Wim Bernasco. “Moral emotions and offending: Do feelings of anticipated shame and guilt mediate the effect of socialization on offending?” *European Journal of Criminology* 10 no. 1 (2013): 22-39.

*Telegraph and Texas Register* (Houston, Tex.), Vol. 7, No. 3, Ed. 1, Wednesday, January 5, 1842.

Texas. *An act establishing a prison system*. Published by the Board of Prison Commissioners, January 20, 1911. Houston, TX: Standard Printing and Lithographing Company.

Tonry, Michael. “The Mostly Unintended Effects of Mandatory Penalties: Two Centuries of Consistent Findings.” *Crime and Justice* 38 (2009): 65-114.

Topalli, Volkan, Timothy Brezina and Mindy Bernhardt. “With God on my side: The paradoxical relationship between religious belief and criminality among hardcore street offenders.” *Theoretical Criminology* 17 no. 1 (2013): 49-69.

Truman, Jennifer, Lynn Langton, and Michael Planty. “Criminal Victimization, 2012.” Bureau of Justice Statistics, 2013.

Van Stokkom, Bas. "Moral Emotions in Restorative Justice Conferences: Managing Shame, Designing Empathy." *Theoretical Criminology* 6 no. 3 (Aug., 2002): 339-360.

Western, Bruce and Becky Pettit. "Incarceration & Social Inequality." *Daedalus* 139, no. 3 (2010): 8-19.

Wickersham, George et al., "Report on Penal Institutions, Probation, and Parole,"  
Washington, D.C.: National Commission on Law Observance and Enforcement,  
1931.

Williamson, Joel. *The Crucible of Race: Black-White Relations in the American South Since Emancipation*. New York: Oxford University Press.