

Union College

Union | Digital Works

---

Honors Theses

Student Work

---

6-2023

## Getting What You Deserve: A Philosophical and Sociological Analysis of Punishment in America

Haley Martuscello

*Union College - Schenectady, NY*

Follow this and additional works at: <https://digitalworks.union.edu/theses>

---

### Recommended Citation

Martuscello, Haley, "Getting What You Deserve: A Philosophical and Sociological Analysis of Punishment in America" (2023). *Honors Theses*. 2722.

<https://digitalworks.union.edu/theses/2722>

This Open Access is brought to you for free and open access by the Student Work at Union | Digital Works. It has been accepted for inclusion in Honors Theses by an authorized administrator of Union | Digital Works. For more information, please contact [digitalworks@union.edu](mailto:digitalworks@union.edu).

*Getting What You Deserve: A Philosophical and Sociological Analysis of Punishment in America*

By

*Haley Martuscello*

\*\*\*\*\*

Senior Thesis

Submitted in partial fulfillment  
of the requirement for Honors  
in the Department of Sociology  
and the Department of Philosophy

UNION COLLEGE

Schenectady, New York

*March 2023*

## **ABSTRACT**

Martuscello, Haley. 2023. Getting What You Deserve: A Philosophical and Sociological Analysis of Punishment in America. Departments of Sociology and Philosophy at Union College.

ADVISORS: Professor Timothy Stablein and Professor Krisanna Scheiter

The U.S. Penal System is known to be one of the most punitive punishment systems in the world. Many discussions around the system's approach to punishment have often used either a sociological framework or philosophical one, but rarely use both. The purpose of this thesis is to use philosophical theories of punishment and sociological observations of the current U.S. penal system to appropriately analyze the system and determine what kind of approach to punishment the system uses and what approach it should use. To do so, the thesis lays the groundwork for such analysis by establishing that the purposes of laws are to ensure social order and equal protection of all people. This thesis also establishes the distinction between law and morality. Next, the purposes of laws and the sociological function of deviance are used to determine how punishment should simultaneously reflect the purposes of laws while acknowledging when deviance is necessary. With these conditions, an assessment of deterrence, rehabilitation, and retributivism as justified theories of punishment is conducted with the conclusion that retributivism is the only justified approach to punishment. Then, the history of the U.S. Prison System, the current conditions of U.S. prisons, and societal treatment of offenders after they leave prison are all presented. Using this information, my thesis comes to 3 conclusions: the U.S. prison system is historically callous towards prisoners, perpetuates inequality, and uses a vengeful approach to punishment.

## **TABLE OF CONTENTS**

|  |           |
|--|-----------|
| <b>ABSTRACT</b>  | <b>i</b>  |
| <b>TABLE OF CONTENTS</b>   | <b>ii</b> |
| <b>INTRODUCTION</b>  | <b>1</b>  |
| <b>CHAPTER 1: THE PURPOSES OF LAWS AND THEIR (DIS)CONNECTION TO MORALITY</b> | <b>4</b>  |
| Are Laws Necessary?  | 5         |
| Hobbes' Perspective on Laws  | 6         |
| Plato's Perspective on Laws  | 6         |
| The Problem  | 9         |
| The Compromise: Why Laws are Necessary                                       | 10        |
| The Purposes of Laws   | 11        |
| Law and Morality   | 13        |
| <b>CHAPTER 2: PUNISHMENT AND DEVIANCE</b>                                    | <b>15</b> |
| Why is Punishment Necessary?   | 15        |
| The Functions of Deviance  | 19        |
| Justifying How We Punish: Choosing the Correct Theory of Punishment          | 23        |
| Deterrence   | 25        |
| Rehabilitation   | 30        |
| Retributivism  | 34        |
| Retributivism vs. Revenge  | 41        |
| <b>CHAPTER 3: WHAT DOES THE U.S. PENAL SYSTEM LOOK LIKE?</b>                 | <b>45</b> |
| A Brief History of the U.S. Prison System                                    | 46        |
| Racism and the History of Prisons  | 50        |
| Treatment of Prisoners During Prison   | 52        |
| Physical Living Conditions   | 53        |

|  |           |
|--|-----------|
| Treatment from Guards  | 56        |
| Prisoner Interactions and Treatment                            | 59        |
| Treatment of Prisoners After Prison                            | 61        |
| Reintegration and Societal Treatment                           | 61        |
| Personal Struggles   | 63        |
| Employment   | 63        |
| Housing  | 64        |
| Personal Relationships   | 65        |
| Recidivism   | 67        |
| <b>CHAPTER 4: DISCUSSION</b>                                   | <b>69</b> |
| What We Want the U.S. Penal System to Be                       | 69        |
| What The U.S. Penal System Really Is                           | 73        |
| 1. The U.S. Penal System is historically callous of prisoners. | 73        |
| 2. The U.S. Penal System perpetuates inequality.               | 77        |
| 3. The U.S. Penal System is based on revenge.                  | 80        |
| Concluding Thoughts  | 82        |
| <b>REFERENCES</b>  | <b>84</b> |

## INTRODUCTION

As of 2022, the United States has over 2 million incarcerated people. The U.S. is the number one country in the world in total number of incarcerated people—with China trailing at number 2 with 1.7 million and Brazil at number 3 with 800,000 incarcerated people. The U.S. makes up 25% of the world prison population, but makes up only 4.25% of the world's general population (World Population Review 2023). Over 500,000 of the people who are incarcerated have not been convicted—they are being held in jails and are awaiting trial (Sawyer and Wagner 2022). The incarceration rate in the U.S. is 629 per 100,000 people, almost double that of China and Brazil (World Population Review 2023).

These general incarceration statistics are alarming for a number of reasons. They showcase that there is a very distinct phenomenon happening within the U.S. that makes the country's penal system appear more punitive than others. This raises the question “how does the U.S. penal system operate to have so many people incarcerated?” There are many ways that one can answer this question, like identifying certain branches of the U.S. penal system that directly contribute to the large incarceration rate, such as policing or sentencing policies (Maslow 2022). While these factors certainly contribute to the problem, they do not explain the underlying reason as to *why* the U.S. criminal legal system operates in this way. There has to be something that drives the penal system to be so strict when it comes to people who break the law.

Philosophical discussions of punishment can help to answer this question. Philosophical discussions of punishment try to explain how wrongdoers should be treated using moral reasons. These moral reasons for punishment ultimately become theories of punishment that societies can use to shape their penal systems. The goal of this thesis is to use philosophical theories of punishment to analyze how the current U.S. penal system justifies punishment in comparison to

how the system *should* justify punishment, which will explain why the current system appears to be so harshly punitive.

The purpose of Chapter 1 is to lay the groundwork that all discussions of punishment are based on which is to establish the purpose of laws and why they are important to follow. By understanding the purpose of laws and their rather complicated relationship with morality, we can use them to create an intentional system of punishment that aligns with the purposes of laws. To help guide this discussion, I use two different political philosophical thinkers and their theories on how people come together to create a uniform society. In the *Republic*, Plato argues that there would be no need for laws in a just city because everyone would do their equal part in making the city fair and orderly. In the *Leviathan*, Thomas Hobbes argues that laws are necessary to ensure order. Taking the most useful points from both arguments, I argue that laws are necessary to ensure order and equality. I end the chapter with a section on law and morality and how their relationship should not be confused as being synonymous. This distinction is important when acknowledging the value of deviance in the next chapter.

Chapter 2 begins by explaining the function and value of deviance and its relevance to punishment. Many people would argue that punishment is necessary because deviance needs to be mitigated. While that is true in some cases, it is also important to acknowledge how deviance is valuable in the way it also works to promote the purposes of laws—by showing others why laws are necessary and when certain laws do not adequately represent the society. From there, I begin the discussion of punishment and what societies should do when a law is broken. I explain why punishment is necessary and establish what the conditions of a justified theory of punishment is using the purposes of laws. Using these conditions, I consider three common theories of punishment—deterrence, rehabilitation, and retributivism—and determine which

theories satisfy the necessary conditions. After analyzing each theory, I determine that retributivism is the only theory that satisfies the necessary conditions to be a justified punishment. I conclude the chapter by making a necessary distinction between retributivism and revenge which often get confused for one another. While retributivism in application must work for the best interest of all people, including the wrongdoers, revenge does not care for the wellbeing of the wrongdoers or what happens to them.

The purpose of Chapter 3 is to describe different aspects of the U.S. penal system to understand how exactly the system punishes its wrongdoers. The chapter covers the history of the prison system to see how it has changed, how prisoners are treated during prison in terms of living conditions and interactions with guards and other prisoners, and how convicted felons are treated in society after prison in terms of employment access, housing access, and how personal relationships are affected. Chapter 4 uses the information discussed in the previous chapters to analyze how the U.S. penal system punishes wrongdoers in comparison to how it should punish wrongdoers under a retributive system. After coming to the conclusion that the system never used a justified method of punishment, I argue that the system only ever followed a vengeful approach to punishment because of the way it wished to bring suffering to each wrongdoer without caring about what really happens to them. I end the chapter by providing suggestions for how the U.S. penal system can become more retributive and ultimately more fair.



## CHAPTER 1: THE PURPOSES OF LAWS AND THEIR (DIS)CONNECTION TO MORALITY

In this chapter, I intend to lay the groundwork for discussing legal punishments by understanding why laws are necessary, what the specific purposes of laws are, and their connection to morality. To understand why laws are necessary, this chapter analyzes two different thinkers who have had a lot to say about society and what they would be like without laws. In his famous *Republic*, Plato describes the “just city” in which very few laws exist because people learn how to make choices for the sake of society and they have no desire to do wrongful actions. Thus, in Plato’s perfect city, laws are unnecessary. Thomas Hobbes has a different view. In the *Leviathan*, Hobbes believes that a society without laws is a society that is savage and cruel and thus laws are necessary for the sake of order and control. In this chapter, I will review and discuss both Plato’s and Hobbes’ views, the similarities and differences, and how exactly both views can answer the question of what the purpose and importance of laws are. Ultimately, it becomes clear that laws are necessary to provide order and structure to a society, but they must also ensure equal protection of every member in that society in order to keep the structure of society maintained. The reasons why laws are necessary are also what their main purposes should be: to provide order and equal protection for all. At the end of this chapter, I discuss laws’ connection with morality. While it is easy to understand why many conflate laws with morality, their distinction needs to be acknowledged in order to recognize when laws are no longer working towards the betterment of that society or towards their original purpose. By understanding that the purposes of laws are not as directly related to morality and are more concerned with order and equality among people, we have a better understanding of what exactly

we are punishing criminals for, not just that they broke the law, but that they disrupted the order and equality of society.

### ***Are Laws Necessary?***

Before looking at different theories of legal punishment, there are two fundamental questions that must be answered: why are laws necessary and what are the purposes of laws? These questions must be answered because we cannot jump into the conversation of punishment without first understanding why breaking laws are worthy of punishment to begin with. Punishing someone “because they broke the law” is not a sufficient reason to punish someone. Laws are not an impenetrable declaration of what is good or bad and therefore punishing someone for merely breaking the law is not reasonable when the laws themselves don’t always get it right. Therefore, there must be a different reason why laws are necessary to follow other than they declare what’s right or wrong in a society. Laws can be a set of understood rules in a society, but laws can do more than just declare rules. Laws can declare what sort of rights people are entitled to and what rights they are denied. But there’s still the question of why these rules and rights need to be declared anyway. Why do societies need laws? Do societies need laws at all? Understanding why laws are necessary and what they intend to do will lay the groundwork for discussing what kind of theory of punishment is suitable for a penal system.

To find the answer for why laws are necessary, I want to compare two thinkers and their different perspectives on laws. In the *Republic*, Plato states that laws are not necessary to a society at all. English philosopher Thomas Hobbes thinks laws are essential and societies would not be able to survive without them. By comparing their arguments and examining which premises are similar and which differ, the purposes of laws become quite clear in that they are more important than just being rules for people to follow.

### *Hobbes' Perspective on Laws*

One of the first arguments in Thomas Hobbes's *Leviathan* is that laws are necessary because without them, there would be chaos and anarchy. Hobbes bases this argument on his beliefs of the state of nature and how people come together to join a society. Hobbes believed that humans are self-sufficient creatures and could obtain everything they needed, but they would constantly be competing with other humans for resources or notoriety. Hobbes thought that a world without laws would be "nasty, brutish, and short" (Hobbes 1967: 70). Hobbes then puts forth the first fundamental law of nature, which is for men [people] to seek peace and avoid war and. The second law of nature that follows is that people will come together in a society and lay down certain rights in exchange for peace (Hobbes 1967). Those "certain rights" that people give up to come together are essentially the rights of unrestricted liberty. To come together in a society means that people no longer have the right to do whatever they want without penalty. This is the foundation of social contract theory that Hobbes puts forth. "By [civil laws], I understand the [laws] that men are therefore bound to observe, because they are members, not of this, or that commonwealth in particular, but of a Commonwealth...Law in general, is not Counsell, but Command, nor Command of any man to any man, but only of him" (Hobbes 1967: 132). And so in Hobbes' view, laws are absolutely necessary for a society to function because it ensures that the agreement that people made when they came together to create an organized and peaceful society is preserved.

### *Plato's Perspective on Laws*

In the *Republic*, Plato argues, through the character Socrates, that laws are unnecessary because in a city with the correct education and training, people do not have the desire to commit injustice. To explain this, Plato explains what makes people desire good or bad things to begin

with. Plato argues that the soul is split into three parts: the appetitive part, the rational part, and the spirited part. To put it simply, the appetitive part of the soul desires pleasures such as (unhealthy) food, alcohol, sex, and other things that are not necessary but are pleasurable. The rational part of the soul knows and desires things that would be good for the goals of the body or self, such as choosing a salad over pizza if you're trying to eat healthy. The spirited part of the soul is what pushes people to make the more rational choice over the appetitive one (434e3-444d11). With the correct education and training, people can strengthen their rational and spirited parts of the soul to make them always choose the option that is better for the values of the self. "And these two elements [the rational and spirited parts], having been trained in this way and having truly learned their own jobs and been educated, will be put in charge of the appetitive element" (442a3). In having this training, people learn how to be temperate to never desire appetitive wishes..

Plato argues that a perfect city operates in a parallel manner as an individual's soul: people who have the correct education that strengthens their rational and spirited parts can make the best decisions for the sake of the city and help govern those who cannot. "The appetites of the masses are mastered by the wisdom and the appetites of the few" (431d). The few are able to "master" the appetites of the masses because they themselves have educated and trained themselves to be temperate. By being temperate with themselves, they are able to be temperate in the decisions they make for the city. Through temperate leadership and appropriate education for everyone, everyone in the city comes to be equal in their shared values. "Temperance has literally been stretched throughout the whole, making the weakest the strongest, and those in between all sing the same song in unison" (432a). To be clear, temperance does not make everyone equal in power, because there are still ranked positions in Plato's perfect city. However, everyone

understands that the few who are most temperate govern the masses and help make everyone else temperate so that everyone is equal in understanding what is good for the established order and what is not.

Teaching temperance through leadership and education in Plato's perfect city are what makes laws unnecessary. Plato stresses the importance of an education that aligns with temperance because temperance is how one makes good decisions for the established order and anything that goes against the established order promotes lawlessness (424b5). Thus, to ensure that people do not go against the established order and promote lawlessness, education must promote temperance. Once this kind of education and training are established, it can be passed down to children which they will inherently absorb the ability to be rational and spirited to be in alignment with the established order.

For good education and upbringing, if they are kept up, produce good natures; and sound natures, which in turn receive such an education, grow up even better than their predecessors in every respect...So whenever children play in a good way right from the start and absorb lawfulness from musical training, lawfulness follows them in everything and fosters their growth, correcting anything in the city that may have been neglected before. (424a5-425a6)

If the education and training that people receive helps strengthen their rational and spirited parts of the soul, then people learn what choices are in line with their values. Not only do they learn what choices are in line with their values, they lose any desire for choices that do not align with their values. Conversely, Plato argues that cities which do not promote such education, where people do not have control over their appetitive part of the soul and choose the wrong things, the city is intemperate. "Whenever, as a result of bad upbringing or associating with bad people, the

smaller and better one is mastered by the inferior majority, this is blamed as a disgraceful thing and is called being weaker than oneself, or being intemperate” (431a6). The inability to be temperate in this “disgraceful” city leads people to make the wrong decisions and create a bad society. Ultimately, people in Plato’s perfect society have no desire to choose anything that would go against the shared values of the city, including injustice. Since there is no desire to choose these things, laws are unnecessary.

### *The Problem*

There is an obvious problem between Hobbes and Plato in which both fundamentally disagree on whether laws are necessary. To review, Hobbes argues that humans will do anything it takes to survive which results in a world where people will do brutal and nasty things to survive and acquire power over others. People will then agree to hand over the liberty to do whatever they want in exchange for a more organized and peaceful society. It is through the power and command of laws that remind people that they have to follow these rules to preserve the order in their society. On the other hand, Plato argues that people simply need the correct kind of education and training to control the part of the soul that leads people to make unhealthy choices. If people are getting this kind of education and learn that the wrong choices are undesirable, then laws are not necessary to keep society united and under control. In a good society, you wouldn’t have anyone who wants to commit injustice and having people who would commit injustice signifies the corruption of that society. Herein lies the problem: are laws necessary to keep people orderly or would people all work together to preserve established order without laws?

### ***The Compromise: Why Laws are Necessary***

The main issue with Plato's argument for why laws are not necessary is that it rests on the premise that every person in a society shares the same beliefs and education. While this might work for smaller societies, it is difficult for every person in larger, more advanced societies to all share the same beliefs. Plato requires that a certain education curriculum and training be implemented for everyone. Again, this is difficult to implement in an advanced society where beliefs and values become varied. Because beliefs and values are so varied in advanced societies, a universal education system is unrealistic. Without the guaranteed premise that all people share the same basic values and are getting the same education, it is difficult to ensure that people learn temperance. Without temperance, people are not dissuaded from the idea of making decisions that would not help the established order. In other words, since people's values are different from each other and there is no education system teaching them temperance, there is nothing that prevents people from making wrongful decisions.

A point in Plato's argument that is valuable is the notion that, regardless of the hierarchy between people, everyone is still equal in the rights they are entitled to and the protection they get from being in a society. Similar to Hobbesian theory, the exchange that came from everyone being temperate was that everyone was an equal citizen of that society in how it brought people together. Temperance made "the weakest the strongest, and those in between all sing the same song in unison" (432a). In Plato's city, power dynamics are absent. There is a hierarchy of people in which the most temperate leads the least temperate, but the hierarchy is a necessity of the established order and not out of personal benefit for anyone. With the absence of power dynamics and the security that everyone has equal protection,

there is less of a reason to commit wrongdoings. Although this equal protection came from everyone being temperate, that does not mean that is the only place equal protection can come from. Using Plato and Hobbes, two main purposes of laws become apparent.

### ***The Purposes of Laws***

The first purpose of laws is to establish peace and order to prevent chaos and anarchy. This purpose is mostly demonstrated by Hobbesian reasoning in that people will make choices that are better for their own personal gain than it is for the sake of society. While not every person thinks like this and many good people will make choices that do not hurt others, humans cannot be expected to remain this way when there are opportunities for personal gain and nothing negatively consequential enough to make them choose otherwise. Thus, the importance of the main purpose of laws is evident in that without laws society would not be orderly or sustainable enough for necessary functions (Gathering/producing food, making shelter, etc.) would be fulfilled resulting in that society to fail and disband.

The second purpose for laws that is not necessary for establishing society but I think is important in *maintaining* a just society is that the laws ensure equal protection for all and allow for equal opportunity for all members of that society to flourish. This purpose can be found through One of the main reasons that Plato's city functions so efficiently is because the people are all treated as equals. Even though there are different roles in the society that need to be fulfilled by people suited for the task, everyone is seen as equal citizens. By making laws that protect the equality of people, people are then given the equal opportunity to flourish as members of that society. Laws do not need to ensure that people are the same in terms of values and beliefs, because that is difficult to do in advanced societies. But regardless of how different people in advanced societies are, they are still equally members of that society and should be



treated as equal members. Without equal protection or equal opportunities to flourish, power imbalances and the benefits to committing wrongs become more appealing. Another Hobbessian reason that people come together in a society is to stop people from overpowering others so that everyone is agreeing to give up that liberty and be a part of a society that gives peace back to them *equally*. Unreasonable laws can easily create inequality between people by giving some more than others and creating a wealthy or more knowledgeable class; or laws can promote discrimination to people who are a minority in terms of race, gender, and/or sexuality. The basis of the inequality does not matter. A law that perpetuates inequality of any kind does not make for a fair and sustainable society. Again, this point may not be necessary in societies where the people are always choosing to be fair and just themselves, but that is an unrealistic expectation for people to uphold. People should agree with the laws in such a way that they are fair and equally represent everyone so that peace and order are not just established but maintained.

A point that should be acknowledged is that, in most of the world but specifically in the United States, authentic equality does not exist. The language that I have been using so far has been in reference to building a society from scratch, but that is an unrealistic solution to inequality, especially for a capitalist world power. What the goal should be for many countries with a history of inequality towards minoritized groups and poorer classes is equity. With laws that promote equity and bring everyone to the same level, preserving equality could then follow. Nevertheless, I must acknowledge that it is impossible to preserve equality in a country where it does not exist to begin with. This issue will be relevant in the second and fourth chapters and I will continue to talk about solely equality to make the end goal clear, but the distinction needs to be made so that my arguments are not misunderstood.

## ***Law and Morality***

There is something to be said about law and morality, especially when it comes to discussing the foundations of laws. It has been heavily debated whether law and morality are connected or separated and it is not hard to understand why. People have been socialized to believe that breaking the law is morally wrong, so why wouldn't morality be connected to law? While this confusion is understandable, I don't think the idea that breaking the law is morally wrong, it is more so the act that was committed was (or wasn't) morally wrong.

There are so many instances where breaking the law is not considered immoral. For example—jaywalking. Is there anything truly *morally* wrong about walking outside of a crosswalk other than the fact that there is a law against it? Personally, I have a difficult time believing that. However, there is still importance in following this law that is separate from morality in which following this law helps to keep people safe. The law encourages a degree of order. It would be hard to keep people safe when they're crossing the street at any moment in any area. Thus, a valuable law that is separate from morality does exist.

In some cases, following the law is morally wrong and breaking the law is the right thing to do. For example, when Rosa Parks broke the law by not giving up her seat on a bus to a white man or when people would help/use the underground railroad to escape from slavery in the US. It is also worth noting that these laws were rooted in inequality which further adds to my point that equality should be considered more of a foundational legal principle than it has in the past. Breaking the law was not only justified, but some could argue that doing nothing and being complacent would be morally wrong. Regardless, these examples demonstrate how law does not equal morality.

When people confuse law with morality, it makes it that much harder to change laws that are either unjust, unequal, or simply irrelevant to evolving societies. We should not look at laws as being hard rules of a moral life. That is not what laws are for. As long as laws are promoting order and equality in a society then it's doing its job. I am not arguing that immoral laws are acceptable, quite the opposite. I am arguing that it is important for people to understand that laws should not be seen as an irrefutable guide to a moral life and once this is understood, they can better reflect when laws are suitable for their society or not. If people equate law with morality, it becomes much harder for people to let go of the idea that laws are not always moral and just. This connects to my final point that confusing law with morality makes it harder for people to know when deviating from the law is necessary, like in the Rosa Parks and Underground Railroad cases. Sometimes, deviance is necessary to bring attention to the mistakes that laws have made.

## CHAPTER 2: PUNISHMENT AND DEVIANCE

A common misconception about deviance is that it is assumed that all deviance is wrong and deserving of punishment. This misconception is most often due to how people conflate law and morality. However, a more sociological analysis will reveal that deviance has purposes in the same way that laws have purposes. The previous chapter explained that establishing the purposes of laws was necessary to know exactly what we are punishing for exactly. Deviance is also necessary to discuss because in recognizing the purposes of deviance, penal systems can recognize when an act of deviance (breaking the law) calls for a punishment and when it does not. This chapter will outline the functions of deviance to better understand this concept and when acts of deviance call for punishment. Then, I will consider the three main choices for punishment: deterrence, rehabilitation, and retributivism. After discussing the strengths and weaknesses of each, we should come to the understanding that retributive punishment should be the goal of penal systems because it is the only theory of punishment that preserves social order, promotes equity, *and* allows for justified deviance. I will end this chapter by discussing the difference between retributivism and revenge, which I believe is a common misconception that leads to the misunderstanding of retribution.

### ***Why is Punishment Necessary?***

Since the purpose of laws have been explained, the next discussion must explain punishment. There can be many explanations of punishment. Punishing a wrongdoer sets an example for others so that they are deterred from breaking the law. Punishments can also serve as a way for the wrongdoer to pay back the debt they owe to society for breaking the law. Punishments can even be a way for wrongdoers to receive the help they need in order to become better people after they leave prison. In considering all of the possible purposes of law, there is

the more fundamental question: *why* is a punishment necessary for breaking the law? The simple answer might be because they broke the law, but that's not *really* what's wrong here. The act of deviance alone cannot justify punishing someone because it does not explain why deviance is bad. Our question then turns into: why is deviance so bad that it deserves punishment?

Emile Durkheim's concept of social solidarity can help answer this question. In his *Division of Labor in Society* (1984), Durkheim argues that societies need solidarity to keep them together. Their solidarity is derived from the division of labor and maintained by the laws of a society. Connecting back to the philosophical thinkers from the last chapter, this is how Plato and Hobbes believe social solidarity comes to be, though they argued for separate reasons. Plato believed that social solidarity came from shared values. Hobbes believed that social solidarity came out of the collective laws that a society agrees to be essential to keeping it safe. Similar to the compromise I concluded at the end of Chapter 1, Durkheim believed that solidarity came from the division of labor and is maintained through the laws.

Durkheim argues for two different kinds of solidarity that a society can attribute to: mechanical solidarity and organic solidarity. Mechanical solidarity is characterized by how members of a society bond together because of the shared beliefs and values they have and the collective consciousness that results from those shared beliefs. The collective consciousness is the "totality of beliefs and sentiments common to the members of a society [which] forms a determinate system with a life of its own" (Durkheim 1984: 38-39). Mechanical solidarity occurs most often in less advanced societies because all the people in that society experience a similar way of life (Nickerson 2022). The similar way of life and the collective consciousness is what brings the people together. Organic solidarity occurs in more advanced industrialized societies because of the way that people become interdependent on each other for the specialized tasks

that each individual does. Mechanical solidarity is dependent on everybody having the same beliefs in a society while organic solidarity is dependent on the different skills of people (Nickerson 2022). Durkheim (1984) does allow for common consciousness to exist in societies that are organically solid, though the consciousness is weaker in that society than in mechanical societies.

Understanding mechanical solidarity shows us how deviance is harmful and why punishment is a justified consequence of it. In a society that exemplifies mechanical solidarity, a deviant act from someone shows that the person is no longer a part of the same collective consciousness and/or the act threatens the collective consciousness of that society which that solidarity depends on. Durkheim (1984) describes this as such:

The acts which such law forbids and stigmatizes as crimes are of two kinds: either they manifest directly a too violent dissimilarity between the one who commits them and the collective type; or they offend the organ of the common consciousness. In both cases, the force shocked by the crime and that rejects it is the same. [Common consciousness] is a result of the most vital social similarities and its effect is to maintain the social cohesion that arises from these similarities. (P. 61)

In other words, deviance threatens the very thing that is holding that society together which is the common consciousness. Thus, the “effect to maintain the social cohesion” is where we find the justification for punishment: to maintain social order and equality in a society. In the context of societies held together by mechanical solidarity, everyone is *equal* in their way of thinking which is what their *social order* depends on. Tying back to the purposes of laws, punishment is justified because it restores the equality and social order that deviance disrupts.

Even though society today is too advanced to procure mechanical solidarity, we can still use the same justification for punishment that it uses. Mechanically solid societies say that deviance is harmful because of how it goes against the way everyone thinks and makes society unequal. In our organically solid societies, difference is the norm which makes deviance less harmful in that respect. However, deviance can still create inequality within society without changing the way people think. Specifically, deviance can perpetuate inequality if it brings unequal and undeserved benefits to the offender than no other person would have gotten without breaking the law. For example, someone who commits tax fraud is acquiring financial benefits by not having to pay as much taxes. A rapist takes away a person's equal right to bodily autonomy. Of course, not every crime perpetuates inequality so explicitly, if at all. All people in a society, mechanical or organic, must equally agree to abide by the laws for society to remain orderly. Those who break the law and commit a deviant act are then threatening the social order that every person in that society is entitled to by being in that society. In this way, punishment can still be justified by restoring the social order and equality that was disrupted as a result of the deviant act.

However, punishment in societies that showcase organic solidarity, as Durkheim explains it, presents some issues that conflict with the purposes of law. Durkheim (1984) argues that since the solidarity of people is not so dependent on (equal) collective consciousness in organically solid societies, punishment only has the purpose of "restoration of the status quo ante" (P.68) or making things go back to the time before the crime was committed. This understanding of punishment in modern societies dismisses the need for restoring equality through punishment and only uses social order as a justification. It rests on the assumption that restoring equality is not necessary because it is not existent in a society with people who do not think the same.

However, as it is described in the purpose of laws, laws are meant to preserve and maintain equality and equal opportunities throughout all people. Punishment cannot contradict the purpose of laws or else there is no point of punishment. If punishment is only working to restore social order and not about the equality of people, it ignores the inequality or denial of equal opportunity that can result from breaking the law and therefore, contradicts the original purposes of laws. Thus, in order to remain consistent with the purpose of laws, punishment must serve to restore social order *and* equality.

To answer the original question of what is so bad about deviance that it necessitates a punishment, mechanical and organic solidarity show that deviance threatens the social order and equality that the laws are supposed to provide. If social order and equality are threatened, it can be detrimental to keeping that society intact and punishment is justified in that way. Justifying punishment cannot stop there, however. As we discussed in the previous chapter, there can be laws that can get the shared moral and social values of a society wrong. Laws are not impenetrable. Laws themselves can become unrepresentative to society. Because of this fact, we also have to acknowledge that there are functions to deviance.

### ***The Functions of Deviance***

The first function of deviance is, in an almost paradoxical way, deviants show other members of society why the shared goals of societies are still important to work towards. Using our understanding of mechanical solidarity, there is a level of common consciousness in all societies in which all people share similar values. Jetten and Hornsey (2019), explain that deviants are important for groups because they affirm the overall values of that group and help group members understand how their group is different from others. For example, most societies have laws against vandalism. We know that vandalism is wrong because the consequences are



damaged property. People having the right to own and preserve their property is a moral and social value that is important to many people. If everyone could go around vandalizing things, there would be broken homes, buildings, objects everywhere, which would equate to social disorder. So, when people vandalize, other people in that society can see the consequences of that act. Those consequences are a) that social order is threatened and b) the punishment (whatever that may be) is not worth the benefit of committing the wrong and disrupting social order. By seeing the consequences of a deviant act, it instills in people and reminds them that there is a good reason for those anti-vandalism laws to exist, because they help keep order and ensure that people can flourish. To reiterate, the first function of deviance is that it shows the non-deviants why committing to peace and obeying laws is important for the sake of preserving the moral and social values of that society. On the surface, it might seem like any deviant behavior goes directly against societal order, and in the short term it certainly does, but in the long term, deviance actually helps people work toward peace and organization to create a better society for everyone.

A possible philosophical objection to this function of deviance is that if people can see the consequences of deviance without the law coming in and punishing people, why are laws and punishment necessary? Connecting back to Plato and why his lawless city would not necessarily work is that societies today are so varied that it makes it hard for everyone to have the same values. How one person sees an act of deviance as wrong might be the source of inspiration of deviance for another. While laws can show some people the consequences of acting deviantly, it would not deter others. Thus, there needs to be a system (laws) that can regulate (and be regulated) people's actions in such a way that promotes social order and equality to give a boost for the consequences when someone is weighing the cost and benefits of a deviant act.

Furthermore, there needs to be another system (the penal system) to enforce the power of the laws so people can see that the consequences outweigh the benefits of any deviant act.

Admittedly, this is more specific to premeditated acts of deviance that aren't out of emotion or spur of the moment decisions. But laws are not going to be fool-proof and they shouldn't be, because laws should be changing as society changes to best represent the current moral/social values of that given society. This gets into the second function of deviance, but the first function of deviance shows people why having collective social and moral values are important, but a legal system is needed because without it, people would always see deviant actions as more beneficial than not and social order is jeopardized.

While the first function of deviance relates to the first purpose of law, the second reason why deviance is valuable relates more to the second purpose of law in that it can be an indicator of when laws are unequal and deviance sparks positive change for the society. Deviants create alternative forms of behavior which thereby allows for social change; like for example, when Rosa Parks refused to give up her bus seat, sparking the civil rights movement (Jetten and Hornsey 2019). Sometimes it takes an act of defiance for people to realize that change is necessary. In this way, deviance might seem like something that negatively impacts the order of society at first, but the disruption might be necessary to get back to creating an equitable society that people can thrive in, through highlighting unjust laws. This connects to my earlier point about why law and morality should remain separated because if not, people would conflate the importance of obeying laws even when they are immoral or unfair. So, there is some value in deviant behavior in which the rest of the community sees it either as an indicator of who they don't want to be or an indicator of who they do want to be and both options work toward an overall more organized society.

While I've stated this in passing, it is worth explaining why there are still instances where deviance is to be expected, regardless of its value. To put it simply, it would be unreasonable to expect a group of people (and a large group of people at that) to never deviate from laws and it would be wrong for laws to try and do so. The first purpose of laws is to promote social order, but it does not *require* that there's *always* social order. In his justification of criminal law, Michael Davis explains this by stating:

The criminal law need not establish social tranquility. It does enough if it holds the commotion of life below a roar. The primary rules need not forbid all conflict between persons or even all undesirable activity. The rules need only forbid the more substantial harms and regulate major conflict" (Davis 2019: 257).

There are so many different types of people in the world to expect that they would all always get along just because some laws told them to. Davis is explaining that conflict and "undesirable activity" are inevitable in society. But as long as these conflicts or activities are not hurting people or promoting negative change, then laws need not worry about those singular acts of deviance. Davis is not trying to dismiss the importance of laws, because having them is better than not, but societies cannot guarantee "social tranquility" with them. If societies try to guarantee social tranquility, they look more like a strict society without much freedom for people to exist. In turn, people become unhappy and disorder is inevitable. In short, trying to require social tranquility often ends in social disorder anyway.

In societies with strict laws that are no longer representative of those people, people begin to stop accepting strict laws, revolt happens, and either the society completely dissolves or there is a better organized society which was the goal in the first place. Historical examples of this include the American Revolutionary war and their success in gaining independence from

Britain in the late 18th century, the Mexican War of Independence in the early 19th century and the Guatemalan Revolution in 1944. There are even modern examples that don't always result in the complete upheaval of government but still work to make a statement. For example, the Black Lives Matter movement in America and the Green Movement in Iran. In these cases, deviance was brought about because of a strict legal system and/or the laws that were in place were not representing the social and moral values of that society. Deviance was necessary to shed light on the inequalities that were apparent in each society. The deviant groups' actions restored order and equitable representation of people under that government. Penal systems have to allow for some deviance in order to appropriately validate the purposes of law. Again, laws only need to worry about the more harmful acts of deviance-the acts that disrupt social order (that are not doing so out of demand for equality/better representation) and the acts that deny equality/promote inequality. By keeping this point in mind, it should allow creators of penal systems to have a more rational and perceptive mindset when creating a system to punish and address deviant behavior.

### ***Justifying How We Punish: Choosing the Correct Theory of Punishment***

Now that the purposes of punishment and the function of deviance have been discussed, we can formulate conditions for a justified punishment. The general answer is that there should be some type of consequence for the perpetrator of the crime. As previously mentioned, it cannot be expected that laws will always be followed or that no person will ever be deviant. Individuals are too different from each other and there will always be people who break away from the status quo. There are times when this is acceptable, however, deviance should not go without consequence. The purpose of laws is to uphold social order and equality. Any purpose of

punishment that does not include these values would not be sufficiently empowering the laws. Thus, legal punishment, whatever that ends up looking like, must uphold the original purposes of laws. From this conclusion, there becomes two conditions that must be fulfilled in order for a punishment to be justified: (a) the punishment must be effective in correcting the harm by either restoring social order and/or restoring equality that was disrupted due to the crime and (b) the punishment cannot violate the reasons for the law in the first place by disturbing the social order or making society less equal.

There are a number of different ways that punishment can make society less equal. In the previous chapter, I explained that equality is an important purpose for laws because it helps to maintain society and keep it from becoming unbalanced. A society can become unequal in two different ways: 1) when the government is unequal to the people to the extent that the government exerts too much power over the people that prevents them from thriving and 2) when unjust laws create inequality between the people themselves and favor a certain group of people over others. These instances of inequality through laws can be translated to punishment. A punishment can make a society less equal when: 1) the unjustified punishment exerts too much power over the people to the extent that the punishment prevents people from thriving (after said punishment is over) and 2) when unjustified punishments create inequality between people and favor one group over another by giving lesser punishments than what is deserved. Having laws without punishment weakens the power of those laws. When a person is weighing the costs and benefits of committing a crime and there are no serious consequences, it isn't hard for a deviant person to determine that the benefits outweigh the consequences and they would be able to get away with committing the act. If people are able to get away with breaking the law, people would see no reason to follow laws and so social order would be jeopardized. Furthermore, those

who do wrong would be gaining all of the benefits from doing so and those people would be in a better position than people who did not break the law, which creates inequality. Having laws without punishment would not support the original purpose of those laws to begin with, thus punishment has to be a necessary consequence of breaking the law.

Using these conditions, we can now answer the final question of legal punishment: *how* we should punish those that break the law? There are 3 main theories of punishment that this section will cover: deterrence, rehabilitation, and retributivism. For each theory of punishment, I will use each theory's definition and application to investigate whether they satisfy the necessary conditions to be considered a justified punishment. By the end of this chapter, it will be clear that the only theory of punishment that satisfies these conditions is retributivism. Deterrence is not a justifiable theory of punishment because its application further disturbs social order and makes society less equal. Rehabilitation is not a justifiable theory of punishment because while it can be a fit punishment for some, it is an unfit punishment for others which threatens the integrity of legal punishment and, subsequently, social order. The only justified theory of punishment, when understood and applied appropriately is retributivism because it succeeds in satisfying both conditions and is applicable to everyone. Many theorists misunderstand retribution as being synonymous with revenge, which would make retributivism an unjustified theory of punishment. In the final section of this chapter, I explain the difference between retributivism and revenge and why they should never be confused.

### *Deterrence*

Deterrence as a theory of punishment asserts that the main purpose for punishing wrongdoers is to prevent others from committing the same crimes in the future (Meyer 1968). Ultimately, deterrence wants to ensure that every punishment for a wrongdoer is a message and

that message tells other people “don’t do [crime], or you’ll end up like this person.” This might seem like a good theory of punishment because it does a good job of preserving social order. When a person commits a crime and they get punished, other people who might be thinking of committing a crime are going to see how those who get caught are treated and it might ultimately deter them from committing the act. For example, there is a person who hot wires an unlocked car on the street and steals it. This person gets caught and is sentenced to a year in prison. Other people who are thinking about stealing a car might not want to risk getting caught and spending a year in prison, and so they choose not to do it. At a fundamental level, deterrence is a justification for all punishments. As previously stated, we need punishments for when people are making cost-benefit decisions, they see the consequences more than the benefit. Thus, it is understandable why people would want to use deterrence as a main justification for punishment, because inherently, deterrence does justify a lot of punishments. The issue with deterrence, however, is that in its application it stops short of fulfilling either conditions for a justified punishment. In other words, deterrence does not correct the harm that the crime has caused by restoring (long term) social order and/or inequality (the first condition) and it exacerbates further inequality and subsequently, it exacerbates further social disorder (the second condition).

Deterrence fails to fulfill the first condition to justify punishment because it is an incomplete theory of punishment. Deterrence only answers *why* the criminal justice system should punish, but it does not answer *how* the criminal justice system should punish. Without an answer to how the penal system should punish, the entire theory becomes an ineffective strategy in addressing deviance. It leaves too much to be interpreted to administrators of punishment and there is nothing keeping deterrence in check. With no boundaries or guidelines for deterrence as an applied theory of punishment, this results in penal systems administering overly harsh

punishments. Deterrence leads to harsher punishments because while it wants to make a statement to other potential wrongdoers to deter them from committing any crimes that others have committed, this does not stop deviance from happening. As previously stated, there is nothing that will stop people from deviating from social norms, which includes laws. Since the punishments that deterrence uses are not going to stop deviance, the answer that follows under deterrence is that those punishments are not making a big enough statement to future wrongdoers. With this logic it follows that a harsher punishment must be the answer to this problem. Once people realize that those harsh punishments still do not stop people from committing crime, the cycle will continue until there is an extreme gap in the severity of the crime and the severity of the punishment. At the most extreme level, people end up getting sentenced to death for minimal crimes. Thus, not only does deterrence fail at its main goal of preventing future crime and securing social control, it also fails at ensuring equality by the way it administers unfair punishments. It might ensure social order for the short term, but it does not think about social order in the long term.

Evidence of how deterrence ultimately fails as a theory of punishment can be found in the United States. In the 1970's, many political leaders in the U.S. used a “tough on crime” strategy to lower crime rates, specifically relating to drugs, (Shjarback and Young 2017) by having no structured system of punishment other than punishing harder than what is deserved. This resulted in many people being given long prison sentences for minimal drug convictions. But no matter how harsh the punishments got, people continued to break the law. A 2014 study showed that 76.6% of released prisoners in 30 states were arrested for a new crime within 5 years (Durose et al. 2014). Meyer (2019) also agrees that deterrence is limited when he states:



The criminal often acts irrespective of the consequences, learning little from experience and living for the present. Deterrence fails in crimes of emotion and passion, or in acts governed by greed, impulse or fear. When the criminal seeks punishment from a sense of guilt, or considers punishment as the collection by society of its due, or desires punishment to take him out of the “rat race of life,” deterrence is of no effect. (P. 597)

Using Meyers' argument, deterrence or fear of consequences is not going to stop an angry husband from killing his wife who he just caught having an affair with another man. People do not think about the consequences in moments like these and crime still occurs. Or even in instances where the wrongdoer does think about the consequences but sees the immediate benefit of the crime as worth it for the consequence they face, like people who commit tax fraud and know it's wrong but sees the money as worth it (especially in a penal system where money gets you out of severe punishment). Further evidence of how deterrence is not an effective justification for punishment is exemplified in states where the death penalty is legal vs in states where the death penalty is illegal. Murder rates in states with the death penalty are higher than those in states without the death penalty (Death Penalty Information Center 2020), showing that even the potential consequence of getting sentenced to death is not enough to stop people from committing crime.

Using the evidence already presented about deterrence, it is easy to see how deterrence fails to satisfy the second condition. In short, since the theory cannot fulfill the first condition, there is no way it can fulfill the second condition because the second condition is dependent on the first being completed. In other words, since deterrence only corrects social order in the short term, but does not ensure equality in doing so, this results in deterrence perpetuating inequality and subsequently social disorder. A society that is inequitable will inevitably become disorderly

as those who are oppressed begin to fight back against the inequality. There are a number of historical examples of this that I discussed in the section on deviance. And while this social disorder would be considered necessary in order to ensure equality, it is social disorder that ultimately could have been avoided if the punishment system was fair and equitable to begin with. Thinking back to Hobbes and his justification for coming into a society, people come together because they want to avoid the “brutish” life that comes without having any laws. But if a brutish life can still come from having laws, then what was the point of coming together to create a peaceful society? If the reason we are joining together in a society is to get out of a life where anything goes, then how is overly harsh punishment preventing that at all? Allowing cruel or inhuman punishments would only reinforce a society that the original social contract theory meant to avoid. Thus, deterrence ultimately fails at promoting social order in the long term due to its inability to ensure equality in the short and long term.

Evidently, deterrence only goes so far when justifying punishment. Punishing offenders on the basis of deterrence is not enough to prevent people from committing crimes. Even though deterrence is often used as the main justification for criminal punishment, it does not fully explain how a person should be punished, thus a different (or another) justification is needed. The problem with deterrence is not that it is an unfounded reason for punishment, because obviously if we want social order we will want people to avoid breaking the law. The problem with deterrence is that it is just not *enough* of a reason to fully justify punishing someone for breaking the law. Deterrence can certainly be part of the justification for punishment, but deterrence should not be the only justification for punishment.

## *Rehabilitation*

Rehabilitation's approach to deviance as a theory of punishment is to reform the wrongdoer in such a way that teaches them how their wrongdoing is harmful and return them back to society a better person (Meyer 2019). Some proponents of rehabilitation would argue that it is not a form of punishment but a "positive obligation" of breaking the law (Meijer 2017), but I continue to use the term "punishment" for anything that happens in consequence of a crime that a person would not willingly agree to if the crime did not occur. The goal of rehabilitation is "resocialization through the fostering of personal responsibility" (Meijer 2017:148). Meyer explains rehabilitation as being "motivated by a belief in the worth and dignity of every person and a willingness of society to expend its time and energy to reclaim him for his own sake, not merely to keep him from again harming society" (Meyer 2019: 597). To understand rehabilitation how Meyer describes it would be to look at rehabilitation as an altruistic approach to punishment. Unlike deterrence, a rehabilitative penal system does not see deviants as a danger to the rest of society but instead sees them as troubled anomalies that were led to believe that deviance is the right answer and need help getting back on track for their own good. Rehabilitation entails putting the deviant through programs and challenges to help rework their thought process so that they no longer see deviance as a desirable choice to make. The most common examples of rehabilitative punishments are how people charged with drug-related crimes are put through drug rehab or when sex offenders are put through sex offender programs. Rehabilitation can actually be a very reasonable and beneficial punishment for some wrongdoers, but the desire to "reclaim" *every* person is not feasible depending on the type of crime that has been committed, which leads to problematic effects when rehabilitation is formally applied.

Using rehabilitation as the main approach in a penal system ultimately fails because it can only be used equally and not equitably. This is problematic for social order *and* for equality in the long term. This might seem counterintuitive, but it is a real issue that has to deal with the equality vs. equity problem that I mentioned in Chapter 1. When a society is inherently unequal from long standing systems of oppression (like the United States), equally giving the people something like rehabilitative services will not erase the past inequalities that have already occurred no matter how altruistic the intentions are. For example, a country is dealing with extreme monetary inequality such that the richest person is 10X richer than the average person and it is very difficult to get to the rich person's position through ethical means. Say the government gave every single person \$1000 to help combat the economic inequality with the country. The government giving everyone a sum of money does not erase the fact that the richest person is still 10X richer than the average person because they also got the \$1000. Inflation would make the action ultimately useless. The only effect this change would have would be that the specific number value of people's earnings are slightly higher, but the differences between each other are still the same and the problem of inequality persists. This is exactly what happens when rehabilitation is applied generally in a penal system. Rehabilitation treats people equally but not equitably. In an already unequal society, rehabilitation cannot fix the pre-existing inequalities perpetuated by societal institutions. It is in this way that rehabilitation can help restore social order in the short term (by simply taking them out of society), but rehabilitation can not restore equality in the society and thus fails the first condition of a justified punishment.

To further explain why rehabilitation cannot be applied generally, I'll use the drug-related example that I mentioned earlier. Rehabilitation can be a beneficial form of punishment when looking at crimes related to drug-use or psychological issues. Say a person has been charged with

a DWI due to an alcohol dependency that has completely taken control of their life. That person would not benefit from sitting in a prison cell doing nothing all day, but they would benefit from alcohol withdrawal treatment and counseling. In another example, say there is a person who has an uncontrollable impulse to harm people. That person should not be forced to serve a 20 year sentence without treatment and be expected to reenter society without the same homicidal urges as before. It is examples like these when rehabilitation can be really useful, but these examples are only a fraction of the kinds of cases the justice system experiences.

As soon as non-violent or petty crimes are considered the overall benefit of rehabilitation as a form of punishment decreases. If a person is in prison for stealing large sums of money from the bank, rehabilitative services are not going to be helpful for them the same way that it is for someone with substance issues or mental health issues. The only thing that rehabilitative services will really do for the thief is put them through programs and give them resources they do not need and would not benefit from. There is a difference between the substance/mental health example and the thief that makes rehabilitation suitable for one and not the other. Rehabilitative services work best on people suffering from external factors that relinquish their ability to control themselves or make reasonable decisions. But when there are offenders who can control what they are doing and fully understand why committing that crime is wrong, there is not much rehabilitation to be done that would make that person a better individual than before they started it. This is not to say that anyone who murders people (or insert any other crime) doesn't know it is wrong and/or cannot stop themselves. However, regardless of the real reason any specific person commits a crime, it does not resolve the fact that rehabilitative services cannot be applied so generally as to use it as the basis for a penal system. If rehabilitative services were given *equitably* to those who needed it, the theory would be a great justification and would satisfy both

conditions. However, rehabilitation cannot explain what to do for wrongdoers who would not benefit from rehabilitative services. Furthermore, rehabilitation cannot explain what to do with wrongdoers who successfully undergo treatment programs but still continue to choose harmful decisions or they are placed back into a society where inequality forces them back into bad habits. Since rehabilitation can only help some and not all, it cannot restore equality. Because of this, rehabilitation fails to satisfy the first condition to justify punishment.

As previously mentioned, as soon as a theory of punishment fails to satisfy the first condition to justify a punishment, there is no way for the theory to complete the second condition. This also applies to rehabilitation as a theory of punishment. Even though rehabilitation can be beneficial in some cases and it restores social order in the short term, the fact that rehabilitation cannot restore equality results in further inequality *and* social disorder for the future. Obviously if rehabilitation cannot restore equality in the short term, it is not going to be successful at preventing future inequality. The reason why rehabilitation cannot prevent social disorder in the future is because, for similar reasons as deterrence, failing to restore equality leads to social unrest. Those who do not benefit from or are not receiving treatment programs will reach a point where they will no longer want to accept the inequality that affects them and social disorder will ensue. Once again, while this would be considered necessary deviance and disorder, the social disorder could have been avoided if the society's penal system were using justifiable punishments to begin with. Even though rehabilitation can be a beneficial punishment to some, it is not a theory that can be applied generally to every case which is why the theory fails to satisfy the conditions needed in order for it to be considered a justified theory of punishment. Thus, there must be another theory of punishment that can fully justify what the purpose of that punishment is.

## *Retributivism*

Retributivism is the simple belief that wrongdoers should be punished based on what they deserve in proportion to the crime they committed (Cottingham 2014). This definition alone obviously raises a lot of questions which inherently leaves room for a lot of misunderstandings about the theory to take place. I will attempt to answer every question in such a way that will help others understand what retribution really is and how it is able to satisfy both conditions for a justified punishment. To rephrase, the main idea of retributivism is “getting what you deserve,” but what does that mean exactly? In other words, it means that a person should be punished proportionately to the crime that they committed. Many retributivists use the term “desert” to describe what is deserved of a person based on their actions (Celello) which will help clarify what retributivism is and answer some of the questions it raises.

One of the first questions that retributivism raises that is the most important to understand is why is it important for a wrongdoer to get what they deserve? The simplest answer is because choosing not to give people what they deserve would create unfairness and inequality in a society. In a simple example, students in a class together have a final exam that they must study for to do well on. Every student studies for the test except for one student. This singular student was able to obtain a copy of the exam answers and memorize them for the exam. Everyone in the class did well on the exam. The student who cheated got special kudos from the professor for scoring the highest on the exam in previous years. Most people would agree that the student who cheated did not *deserve* their good grade or the praise they got because they did not really know the material as well as everyone else did and did not work for the grade like everyone else. But because they were able to cheat and do well, they were rewarded. While this example might seem inconsequential, it is instances like these that can add up and ultimately lead to widespread

inequality in a society. What if that student were to figure out how to get past exams for every exam they take and continue to get higher grades than the people who worked harder? That person could get the reward and praise of a high class standing without even trying. Situations like this should cause concern for a number of reasons but mainly because the person did not get what they deserved which is unfair to the rest of the class. In this example, someone is receiving positive reward for something they do not deserve so I will now use an example where someone is receiving a consequence for something they do not deserve to be better compared to punishment. Say there are two people, Alice and Brian, working on a special project at work with each other. Their boss instructs both of them to have their parts completed by the end of the week. Alice worked tirelessly on her section of the project, so she is not worried about it coming to an end. The end of the week comes and Alice realizes all of her work had been deleted by someone else, likely Brian, since he was the only one who had access. Brian admits to Alice that he deleted Alice's work because he does not like working with her but did not explain that to their boss. While Alice tries to explain to her boss what the situation is, her boss can only go off of what was presented to them and ultimately decides to dock Alice's pay for not receiving the finished project and for not keeping up with what was expected of her. Once again, it is easy to see how this situation is unnerving to many people. Many people would agree that Brian deserved to be penalized for intentionally trying to get Alice in trouble. There is something unsettling about the fact that Brian did not get punished and Alice did. This is how giving people what they do not deserve ultimately creates unfairness and inequality among a group of people. These are not the only ways that inequality can come out of not administering a person's just desert. Inequality can also occur if someone is punished too harshly or not harsh enough for their wrongdoing. Punishing someone too harshly for a wrongdoing causes inequality because others



who were punished fairly for the same crime do not receive the same courtesy as others. Not punishing someone enough is unequal to the wrong that they ultimately created by doing the action and would allow for that person to continue to choose the wrong act instead of the right one. This is not to say that this is exactly how every single situation dealing with desert will play out, but the end result is undoubtedly always inequality which is why it is important for people to get what is deserved of them.

The next question that retributivism raises is often called the proportionality problem or knowing what someone deserves in proportion to the wrong that they committed. This question is slightly harder to answer than the last because there is no straightforward answer or a formula that can be given to determine what is deserved of someone. To give a straightforward answer would be to ignore all of the varying circumstances that each case comes with. A straightforward answer would also ignore the different ways that people can classify desert. What I think is deserved of someone might not be what you think is deserved of someone. So, how should this issue be solved? To start, it is important to establish that desert does not have to be the exact same crime that the wrongdoer originally committed done onto them. This is a common misunderstanding of retributivism in which people believe it to be similar to the “eye for an eye” system where any wrongdoing must be balanced with the same wrongdoing done back. This view is problematic because, from the penal system’s political point of view, there is ultimately no benefit that comes from it. If a person believes that every murderer deserves to have their lives ended because they ended another life, all that does is create a lot of murder and a lot of people who deserve to be murdered. This is not practical or sustainable for any society. Thus, there must be a different way to approach the proportionality dilemma within retributivism.

The best way that this question should be answered is through two approaches used simultaneously which ultimately depend on the severity of the crime. First, a wrongdoer should be receiving a punishment that is unpleasant enough for that person to understand that the crime they committed was wrong. This might sound similar to many parenting styles and that's because it is and it works, evident by the way that children come to understand what is right and wrong. Just because humans get older does not mean they are always perfect in knowing what is right and wrong so this approach can still be applied. Specifically, this approach should be applied mainly to non-violent and petty crimes because the effects of these crimes are not as severe as others and so determining a punishment that reparates the crime is much simpler than others, often due to the lack of victims and/or major consequences of said act. Not every crime should require that a person needs to spend time in prison in order for the person to be justifiably. Traffic violations, for example, are crimes that do not have any victims or cause major consequences. Most people would agree that putting a person in prison for a traffic violation is not justified because prison is too harsh of a consequence for the minimal effect that traffic violations have. A person who violates traffic laws is not causing major disorder or inequality in any community, but traffic laws are important to avoid the minimal disorder that can occur if they are not followed. Sometimes all it takes to achieve satisfactory reparation for a crime could be mandatory community service or probation. Regardless of what specific punishment is given to a wrongdoer of a minor crime, the point of the lesser punishments are because they are lesser crimes, and they should be seen as such in penal systems.

In the second approach, a wrongdoer should experience as close to the equivalent amount of suffering that resulted from the original crime as possible. "Suffering" might sound cruel but it doesn't have to be. I'd argue that I suffer a little every time I have to wash the dishes. Any

amount of displeasure that can come from an act can equate to suffering. That's how suffering under a retributive system would also work. This approach is often used in cases that are more violent, there are victims, and/or cause a lot of harm in a community. This might sound contradictory to a previous point I made about how penal systems should not utilize "eye for an eye" philosophies because there is no societal benefit, but there is a difference. The reason why it is important to match the suffering with the crime but not administer the exact same punishment is because of a moral dilemma in which it might be justified for a penal system to administer a certain punishment but it would not be practical for a penal system to do so. Jeffrey H. Reiman (2019) describes this discrepancy between morality and practicality:

It seems certain that there are at least some crimes, such as rape or torture, that we ought not try to match. And this is not merely a matter of imposing an alternative punishment that produces an equivalent amount of suffering, as, say, some number of years in prison that might 'add up' to the harm caused by a rapist or torturer. Even if no amount of time in prison would add up to the harm caused by a torturer, it still seems that we ought not torture him even if this were the only way of making him suffer as much as he has made his victim suffer. Or, consider someone who has committed several murders in cold blood. On the *lex talionis* [eye for an eye], It would seem that such a criminal might justly be brought to within an inch of death and then revived as many times as he has killed (minus one) and then finally executed. but surely this is a degree of cruelty that would be monstrous. Since the retributivist principle establishes the *lex talionis* As the victims right, it might seem that the question of how far this right should be exercised is up to the victim. And indeed, this would be The case in the state of nature. But once the state comes into existence, public punishment replaces private, and the victim's right to

punish reposes in the state. With this, the decision as to how far to exercise this right goes to the state as well. To be sure, since the victim's right is the source of the state's right to punish, the state must exercise its right in ways that are faithful to the victim's right. (P. 293)

Reiman makes a very important distinction between what the penal system can be justified in doing and what the penal system *should* be doing when administering punishment. This distinction helps us to understand why it might be morally permissible to do something, the penal system still has a job to serve the collective people in a society, which means having to sacrifice doing what might be justified. This distinction also supports the point that the purpose of a legal punishment should be for the sake of original purposes of laws, which are set for the sake of order and equality. In order for a penal system to effectively carry out this duty, it must recognize that it may not be able to administer the same amount of suffering to a wrongdoer that the wrongdoer's crime had caused. Nevertheless, it is still important to act in respect to the victims and sentence the wrongdoer to a proportional punishment connected to the range of punishments that a penal system may have. Reiman (2019) suggests upper and lower limits of just punishment or coming up with a range of punishments for a certain crime that would be justified. If it is an especially heinous case, the upper limit of a just punishment for that crime would be the most severe punishment that the system is able to administer (i.e. life in prison, death, etc.). Upper and lower limits of just punishment are an option, but specific details can be left up to the society of that justice system.

Both of these approaches are broad and they are meant to be. I do not intend to create my own version of what I believe to be the most justifiable penal system. Anyone who has ever constructed a penal system probably believed that what they created is the most justified but few

are as just in application as they try to be. Again, there is no easy formula for punishment that can decide what is deserved of a person and I do not intend to try and create one. My intention in offering these solutions is to provide a framework for constructing a penal system that preserves the original purposes of law (social order and equality) but is still flexible enough to allow societies to include values that are most important to them and to recognize when something within the system is not working.

Now that a comprehensive understanding of legal retributivism has been established, we can investigate if this theory satisfies the two conditions for a justified punishment system. First, does retributivism restore social order and equality? As seen in the previous theories of punishment, restoring social order is easily attainable as long as the wrongdoer is caught and receiving some type of punishment for their action. Retributivism emphasizes that every wrongdoer who deserves to be punished, should get punished, so it reduces the likelihood of people getting away with a crime when they deserve to be punished. Under retributivism, no crime will go without some type of deserved punishment. Thus, social order is restored. What other theories of punishment have not been able to do is restore and preserve equality while administering a punishment. Retributivism restores inequality by making the punishment proportionate in suffering to the suffering that the victim experienced. Even in crimes where there is no victim, retributivism calls for the punisher to restore whatever debt he has to society, a debt created because the wrongdoer broke the law. This ensures that no person, either the wrongdoer, the victim, or society, is suffering any more than the other. It could be argued that a murder victim experiences more suffering than a wrongdoer and so the suffering is not *exactly* equal, but retributivism still pushes for the worst wrongdoers to get the worst punishment

possible. This allows for retributivism to remain practical while also doing its best to correct any inequality or suffering that might have been caused by the action.

Retributivism also satisfies the second condition because it does not violate the purpose of laws in such a way that it creates potential societal order and/or inequality in the future. The main way that retributivism is able to satisfy this condition but not the previous theories is because retributivism rests on the founding principle that every person is equal to each other. By doing this, retributivism is then able to recognize when crimes offset this equality and is then able to administer punishment *equitably* to be able to achieve equality once again. Since people are given equitable punishments to keep everyone equal and people are not given more or less than what is justified, social order is not threatened because there is little room for inequality. As long as retributivism is kept in check and punishments do not become disproportionate to the crime, the retributive penal system will be able to succeed in acting as a self-correcting system for social order and inequality, making sure that any instances where those are unbalanced become balanced again. Since retributivism is able to satisfy both conditions of a justified punishment system, it should be the foundation of every penal system.

### *Retributivism vs. Revenge*

An important distinction needs to be made between retributivism and revenge. A distinction needs to be made because while they might be similar in theory, they are very different in application. Many philosophical thinkers have argued that revenge and retribution are the same or at the very least, they are two subsets of the same genus. Paul H. Robinson (2019) defines retributivism similar to how I've described it, but includes revenge to be inherently intertwined with institutional retribution.

Retributive justice consists in seeking equality between offender and victim by subjecting that offender to punishment and communicating to the victim a concern for his or her antecedent suffering. In willing the crime, he willed that he himself should suffer in the same degree as his victim. And the association with the victim's suffering, in turn, associates vengeful desert with the feelings of revenge and hatred that we commonly see in victims. Thus, punishment under this conception of desert is sometimes seen as essentially an institutionalization of victim revenge; it is injury inflicted on a wrongdoer that satisfies the retributive hatred felt by that wrongdoer's victim and that is justified because of that satisfaction. (P. 207-208)

From Robinson's description, there are obviously many similarities to the description of retributivism that I presented earlier. First, this description includes the notion of desert in which a wrongdoer is deserving of this suffering because of the wrong that they committed. Second, the notion of equal "suffering" is present and the notion of proportional suffering of the wrongdoer to the suffering of the victim. These are both foundational aspects of retributivism that have nothing to do with revenge.

Where I believe Robinson conflates retributivism and revenge is when he asserts that this notion of desert is seen as an "institutionalization of victim revenge...that satisfies the retributive hatred felt by that wrongdoer's victim and that is justified of that satisfaction" (P. 208).

A retributive penal system does not have to (and should not) be inherently vengeful. In the description of retributivism I presented, punishment takes the victim's suffering into account, but the punishment is not from a place of "hatred" and the punishment is not justified of that "satisfaction." Retributive punishment is punishment from a place of equality and is justified

from a place of justice. In other words, while the outcome might be similar between retributivism and revenge, their justifications of the punishments are inherently different.

The difference between justifications of punishment is the reason why retributivism is more of a justified theory of punishment than revenge. Once again, *why* we punish must be explained before administering the punishment. Vengeful punishment, as Robinson describes it, is from a place of “hatred.” Retributive punishment *could* come from a place of hatred, since the outcomes would be similar, but it should not. The reason why retributivism should not come from hatred is because strong emotions such as hatred can lead people to become unequal, specifically in how they administer punishment. These strong emotions are what prompt people to become uncaring of the effects or implications that a punishment may have on a person. Hatred also generally leads people to be more harsh than necessary, even though it might be justified. Leonardo Zaibert, whose earlier works argue that retributivism and revenge are more similar than we think, also believes this distinction is important.

The [thought of a] punisher who, upon confirming that the punishment she is about to inflict is indeed perfectly justified, inflicts it and walks away “whistling a happy tune” would be barbaric... We want punishers to feel bad (in the requisite sense, a sense that goes beyond mere sadness) when they inflict punishment – even when they are justified in inflicting it. In this sort of case, their emotional distress is evidence of their moral fiber, of their decency. To return to a point made earlier, this emotional distress is *precisely* what the avenger – at least *any* avenger we may encounter in any period and in any tradition of world literature – cannot experience. The very genre of a revenge tale involves avengers displaying the type of resolution and doggedness – in short: the type of



simplemindedness – that is antithetical to the sort of emotional distress and remainders just described. (Satne, Scheiter, and Zaibert 2022: 115)

While I am not trying to discuss whether an individual would be wrong to have these feelings or feel compelled to punish someone in a harsh manner in the name of retribution, it would be wrong for a penal system to punish in this way. Thinking back to the purposes of laws and the conditions for a justified theory of punishment, a penal system's foundational values should be centered around the restoration and aid of social order and equality. But now a third condition for a justified punishment which was not relevant before has been revealed: the reason why a penal system should center around social order and equality is because of the *people* and so the people should always be thought of first. The emotional distress that a punisher feels, what Zaibert calls “evidence of their moral fiber, of their decency,” is what I would call evidence of compassion of all people involved. Punishers in any justified penal system should not feel satisfaction from punishing someone (even when they deserve it) because at the end of the day, it is hurting someone. Vengeful punishment, as both Robinson and Zaibert argue, does not leave room for care or compassion towards the wrongdoer. This hatred or simple lack of compassion is what allows penal systems to become unequal which, as I have argued a number of times already, goes against the original purposes of laws. Therefore, while retributive punishment and vengeful punishment could be the same, they should be kept distinctly different when applied to penal systems.

### **CHAPTER 3: WHAT DOES THE U.S. PENAL SYSTEM LOOK LIKE?**

Now that we have fully assessed the purpose of laws, the value of deviance and why retributivism is the most appropriate form of punishment for any penal system, we can assess what kind of punishment(s) the U.S. penal system uses to analyze what theory of punishment the system is founded on. In order to appropriately analyze the U.S. penal system, it is necessary to first look at the creation and evolution of the U.S. prison system. Doing so will reveal the main causes/factors that led to the major issue of mass incarceration in the U.S, which specifically targeted black men. Once we see where the prison system started, we can better understand how we got to where we are currently with all other aspects of the U.S. prison system. Other aspects that are important to assess what method of punishment is most emphasized in the U.S. penal system is treatment of prisoners during prison, including general living conditions, treatment from guards, and treatment from other prisoners. While one may assume that consequences for a legal wrongdoing would stop after the offender leaves prison, that is not necessarily the case for offenders in America. Offenders often experience social exclusion after they leave prison, so much so that it affects everyday living for them. This chapter will look at the kinds of treatment offenders experience after prison, which comes from general societal views of convicts that leads to personal struggles involving housing, working, and familial (and other) relationships. While this chapter is not intended to be a fully comprehensive analysis of the U.S. prison system and its treatment of prisoners, its goal is to present all of the information necessary to assess what kind of method the U.S. penal system uses in punishing wrongdoers.

## ***A Brief History of the U.S. Prison System***

This section will briefly explain the history of the U.S. prison system in America to provide background as to why the prison system is the way it is today. Majority of this section uses information from Rafter and Stanley's *Prisons in America: A Reference Handbook* (1999) unless otherwise cited. Before the revolutionary war, "prisons" did not exist in the same way they do now. Many towns had jails to keep offenders in for short periods of time, but the main form of punishment for offenders were more physical punishments (often in public display) such as flogging, branding, mutilation, hangings, humiliation, and banishment to the wilderness. The sentencing for an offender was usually decided based on the individual laws and rules of that town. At this time, there was no real generalized method of punishment, other than possibly infliction of pain to emphasize deterrence.

After the revolutionary war, Americans wanted to set themselves apart from the overbearing government they were just freed from and rethought a lot of the ways in which they went about distributing punishment. Instead of the physical punishments that were offered as punishment in colonial America, people started to move towards "deprivation of liberty" (Rafter and Stanley 1999: 3) as the main form of punishment, though most punishments of minor offenses were still left up to the towns and the more severe offenses were judged by the state. Deprivation of liberty is the beginning of what we now consider to be confinement in prisons, though prisons were still not necessarily created yet. Deprivation of liberty happened in houses with rooms that branched off a main hallway. The most prominent religious group at the time, the Quakers, advanced the idea of reflection and repentance to God as a method of punishment. They thought individual confinement with nothing else to do would lead offenders to repent their wrongdoings and become better people afterwards. Here, we can see that the idea of

rehabilitation was starting to be introduced, though their form of rehabilitation involved more religious justifications instead of scientific ones like the programs that we know today. They believed that reform came from keeping offenders alone in a room with a Bible for a long period of time and by the end they would come out to be reformed citizens of society.

This form of rehabilitation through confinement penal strategy began in Philadelphia and slowly moved towards other areas of America in the late 1700's. Another thought process called the principle of proportionality, created by Cesare Beccaria, began to become popularized by the Quakers in which incarceration could be adjusted in time according to the severity of the crime. In an attempt to have adequate quarters for more severe offenders, states began building penitentiaries which is closer to our current model of prisons, though they were still more like houses. Their attempt to provide adequate quarters ultimately failed when the number of offenders began to increase and prisoners had to be left in large rooms together. The failure of states to provide adequate quarters was probably most exemplified by Newgate Prison at Simsbury in Connecticut, which was not a house, but an old copper mine where prisoners would endure unhealthy living conditions, become ill, and die. In the early 1800's, states began building penitentiaries that look a lot like the current model of prisons which include large buildings surrounded by gates and rows of individual cells on the inside.

Reflection and repentance was still considered the main method of punishment at this time and so incarceration meant exclusion from the outside world and other prisoners to promote reflection. Sentences were always at a flat rate of 5 years, however, to give prisoners motivation, states introduced early release/parole for good behavior. Other than giving prisoners a Bible to read, not much effort or care was put into the process of reformation and states were happy as long as deviants were kept out of society. This worked for a short period of time, however,

penitentiaries quickly became overcrowded and recidivism rates were high, so people began to realize that a change needed to be made.

Reformers Enoch Wines and Theodore Dwight were two reformers who inspected all of the states penitentiaries (at that time, there were only about 1 per state) and came up with their “Report on the Prisons and Reformatories of the United States and Canada” (1867). They brought their report to the National Congress on Penitentiary and Reformatory Discipline in Cincinnati (which is now known as the first meeting of the American Correctional Association) where they established “The Declaration of Principles” which would be used to guide prisons. The Declaration of Principles established that the three goals of penitentiaries should be reform, that there should be incentives to reform, and they should keep convicts incarcerated until proof of reformation. This is when penitentiaries began offering “religious and vocational education” (Rafter and Stanley 1999: 9) to help their reformation. States also began classifying prisoners based on their degrees of reformability at this time.

Beginning in the early 1900’s, the medical model began to emerge as an approach to punishment where it was believed that people who break the law are “sick” and so a more scientific/psychological approach to prisons were implemented. Through the medical model, it was easier to differentiate when deviance was a result of mental ailments. The medical model also helped promote the original goal of rehabilitation of prisoners while also promoting social control of deviants. The medical model was supported by the eugenics movement which associated deviants as being “inferior” humans to society. This eventually led to the sterilization of prisoners in an effort to keep “inferior people” from breeding (Rafter and Stanley 1999). The eugenics movement and the sterilization of prisoners largely victimized women, disabled people, and minoritized people (Stern 2020). “The practice of locking up the unfit or disabled had little

to do with any knowledge about or desire to implement treatment; confinement of the mentally ill, the cognitively disabled, the poor, and the contagious preceded the development of psychiatry” (Appleman 2018, p. 424). In California alone between 1909 and 1979, more than 20,000 women were sterilized without their consent (Jogoleff, 2021). In the mid-1900’s, the medical model then morphed into the weaponization of rehabilitation and people (namely black people and women) were sent to prison in the name of reformation and many were sterilized. Habitual offender laws were also created to increase sentences for repeat offenders. Between the medical model and the weaponization of rehabilitation, these phases helped to contribute to a prison boom in the 1970’s and states began building more prisons to be able to house the new large number of prisoners in each state.

The rise in incarcerated people in the 1970’s was also largely due to the fact that prisons shifted away from rehabilitative programs and indeterminate sentences to definite sentences. People on both ends of the political ideological spectrum objected to indeterminate sentences for being unfair, either to the prisoner or the general public because it meant prisoners did not have to serve entire sentences if they were let out on parole. Many states abolished parole completely. The result became longer definite sentences and more people spending more time in prison. Definite sentences also resulted in judges being forced to send people to prison under terms they had no say over. Newly reformed habitual offender laws, now called repeat offender laws or three-strike laws, forced courts to send anyone to prison for life if they commit three felonies. States also came up with presumptive sentencing in an effort to keep judicial discretion limited. Presumptive sentencing provided judges with a grid that stated the minimum and maximum sentences depending on the crime and the criminal history of the offender. Longer prison

sentences, presumptive sentencing and habitual offender laws are directly linked to the large uptick in incarcerated people in the 1970's.

The large number of incarcerated people has led to a "private prison" boom that began in the 1980's (Rafter and Stanley 1999). The Reagan administration called for the privatization of prisons in an attempt to solve multiple issues, including growing financial burden and prison overcrowding (Price, Morris, and King 2012). To help alleviate many prisons from overcrowding issues, companies have offered to run entire prisons in exchange for prison labor to save money on production labor by paying prisoners very little. These private prisons often offer better living conditions, medical services, and even staff in exchange for prison labor (Rafter and Stanley 1999). This has created a large economic value of prison labor (similar to the economic value of slavery) in the U.S. penal system. Today, the private prison system is controlled by two main companies, CCA and Wackenhut, who operate 75% of all private prisons (Price Morris, and King 2012, p. 17). Proponents of private prisons argue that private prisons promote competition and relieve economic burden, however there are no reports of significant financial improvement from the private prison system and the system is largely monopolized (Price, Morris, and King, 2012).

### *Racism and the History of Prisons*

While this has not been addressed yet in this chapter, no overview of the history of prisons and mass incarceration can be had without acknowledging the way the U.S. penal system largely targeted people of color, mainly black men. While this section is not exhaustive, it is important to acknowledge how the U.S. penal system has historically been one of the largest perpetrators of racial targeting. the civil war and southern states could no longer punish slaves by their own authority as slave masters, states came up with racist legislation that largely targeted

black people. When prisons focused on reflection and repentance, southern states actually allowed “leasing” black prisoners to farmers as a way for black prisoners to carry out their sentences, a loophole after slavery had been legally abolished (Bauer 2018: 121). Prisons remained segregated until the 1970’s. Even though most penitentiaries had men, women, and patients suffering from mental health issues all living together, black people always got inferior living spaces. In some prisons, they would assign “tough” white prisoners as guards to serve as “trusties” to other guards and administrators (Bauer 1999: 219). The war on drugs is another example of how black people were targeted by criminalizing drugs that were largely used in poorer communities (which mainly consisted of black people) but did not criminalize drugs that were used in wealthier, whiter communities. Majority of offenders in the war on drugs were black men and so a large spike of black prisoners entered in the late 70’s/80’s, however, black people were always targets to the U.S. justice system.

Today, racism is perpetuated in the penal system through targeted policing in communities that are largely comprised of minoritized people. The invention of Geographic Information Systems (GIS) to police forces meant that police could use past crime data and statistics to predict where crime would occur on any given day which only reinforced policing in minoritized neighborhoods (Pollack et al., 2012). In a study that analyzed GIS and the Chicago Police Department, Pollack, Oliver, and Menard (2018) found that although Chicago has a population of roughly 33 percent black, 31 percent white and 29 percent latinx:

Roughly three fourths of recorded CPD–civilian engagements involve civilians classified as black. Circa the Predictive Analytics Group’s inception to 2015, 74 percent of civilians shot by CPD officers were classified as black, 14 percent were latinx, and 8 percent were



white. Black subjects comprised about two thirds of all fatal shootings, and 60 percent of shootings occurred in Black Belt districts. (P. 11)

While Chicago is just one city that demonstrates how black people have been victimized by police, overall prison statistics showcase that this is a nationwide issue. The fact that the U.S. Census (2021) reports that Black or African American people only make up 13.6 percent of the U.S. population, but the same demographic makes up 38.5 percent of federal prisons and 34 percent of state prisons (Federal Bureau of Prisons 2023) is representative of how policing and sentencing has perpetuated racism and inequality. Increased policing in lower socioeconomic areas (which are largely composed of people of color) and little policing in higher socioeconomic areas (which are largely composed of white people) result in a “double-consciousness” of people. This double-consciousness is what makes people believe that people of color are “naturally” more deviant, when really, they’re just more targeted by police (Rios, Carney, and Kelekay 2017).

### ***Treatment of Prisoners During Prison***

The following sections discuss contemporary prison conditions to see where the examine the life of prisoners while they are in prison. Many people do not think about what happens after a wrongdoer is sentenced but that is what is going to tell us whether or not a punishment is suitable for the type of crime that a wrongdoer has committed. The next section will cover what happens to prisoners while they are incarcerated including general living conditions, treatment from correctional officers, and treatment from other prisons. By looking at these three areas of incarcerated life, we will be able to analyze what it means for an offender to serve their sentence and endure the punishment they supposedly deserve.

### *Physical Living Conditions*

One of the first things that should be looked at when it comes to examining the life of an inmate in prison is the living conditions that they have to go through. It is generally understood that the most basic things that every human being should be provided with is adequate shelter, food supply, medical care, and hygiene. While those necessities are provided in prison, whether or not they would be considered adequate is left up for debate. In a web report detailing the basic living conditions of prisoners in the U.S. by Delaney, Subramanian, Shames, and Turner (2017), they described it as:

A typical cell is a small cement and brick box—the size of a typical parking space—with a metal or cement bed (sometimes a bunk bed) covered with a thin mattress, an open metal sink and toilet, perhaps a fixed metal desk, and a small window that is often sealed shut. Other interior spaces are similarly utilitarian in nature, with hard fixtures and fittings, cinder blocks, and little color, ornamentation, or natural light. These common prison architectural designs do not encourage positive individual or group experiences. Even recreation spaces are designed in this way—with little or no access to green spaces, often as covered cages, sometimes outdoors, but too often simply as another indoor space, such as a gymnasium.

The report further explains how food is often restricted for prisoners as they may or may not receive three meals a day and the quality and preparation of the food is rarely done with care. Inmates also rarely receive adequate medical attention and when prisoners are already living in buildings with high temperatures and poor air quality, it leads to negative consequences for the health and wellbeing of each inmate (Delaney et al., 2018).



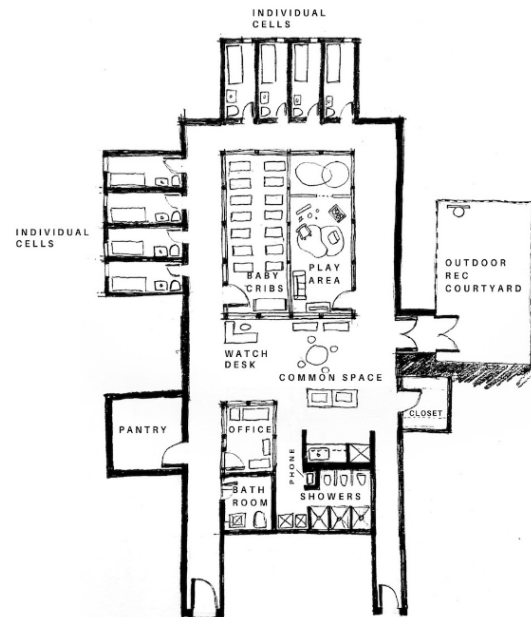
Image from Shane Bauer's book, *American Prison*, showing an inmate in a suicide watch cell.

Shane Bauer, a journalist, went undercover in 2014 and worked as a correctional officer at a prison in Winnfield, Louisiana to report on the types of conditions that inmates and correctional officers experience in prison. On Bauer's first day out of training, he was assigned to supervise the suicide watch cells. Bauer wrote that out of 1500 inmates, there were no full-time psychiatrists employed at the prison and only one social worker. According to the social worker, one third of the prisoners suffered from some type of mental illness. When inmates were found/confessed to be suicidal, they would be taken out of general population and placed in suicide watch cells. Bauer's job was to document everything the inmates were doing. A fellow correctional officer informed Bauer not to record every 15 minutes on the dot, or auditors became suspicious that the prisoners were not as closely monitored as they should be, so he told Bauer to write notes every 14 minutes so auditors wouldn't suspect anything. Bauer wrote that the inmates were not allowed to wear clothing or a mattress and had to sleep on a steel bunk. They were given one "tear-proof" garment to use as a blanket. Inmates on suicide watch got worse food, which consisted of "one 'mystery meat' sandwich, one peanut butter sandwich, six carrot sticks, six celery sticks, and six apple slices per meal" (Bauer 2018: 132).

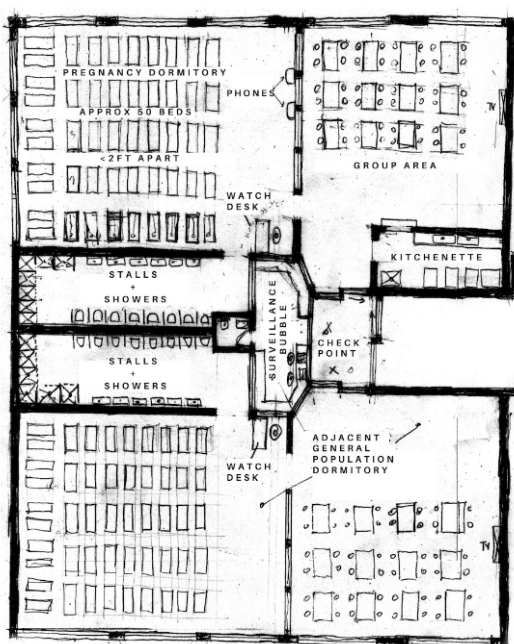
For example, one of those groups is pregnant inmates and how they experience pregnancy and/or childbirth while in prison. Geunsaeng (Olivia) Ahn wrote an essay describing

the experience of pregnant inmates and what their living conditions are like. Anh wrote that nothing was kept private for pregnant inmates as there was a surveillance checkpoint near them at all times. The limited number of objects they were allowed to have included a metal bed, a plastic vinyl mattress, a ten gallon plastic storage bin, a felt blanket, a gallon plastic dishpan, one pillow, and a small selection of 10 cent paperback books. When an inmate does give birth, the child is allowed to

remain in the prison with them until the child reaches 2-3 years old, depending on individual prison policies. The figure on the left is a memory map of what the living arrangement was like for incarcerated pregnant women in a prison in NYC. The figure on the right is a memory map of what a prison nursery looks like in prisons in New York City. In the nursery, parents are kept



Memory map of a "nursery" in an NYC prison (Anh 2021)



Memory map of pregnant women's quarters in prison (Anh 2021)

separated from their children and need permission from correctional authorities before they can have any contact with their child on any given day (Anh 2021). While there has been no clear research on the development of children as they are born into prison and then ultimately separated from their mothers, there was a study done on mothers in prison and how they felt like they lost autonomy to appropriately practice motherhood and how

concerned they were about how being born in prison would affect their children (Sapkota et al., 2022).

A final component of living conditions in prisons should include what solitary confinement is like. Prisoners are sent to solitary confinement when they are a threat to other prisoners/themselves or even as another form of punishment for acting disorderly in prison. Solitary confinement entails prisoners being kept in a small cell. 23 hours out of the day Inmates are allowed one hour in a concrete exercise pen. Prisoners in solitary confinement have very little access to the outside world. They are prevented from going outside, watching television, and even making phone calls (Sullivan 2006). In a study done on prisoners who had experienced solitary confinement, “22% had a documented suicide attempt and 18% had documentation of other self-harm, all at some point during their incarceration, either before or during their time” (Reiter et al., 2020 p. 58).

While the specific living conditions of inmates may differ between federal prisons, states or even person to person, it is generally understood that the living conditions of inmates is well below what is considered humane for people. While shelter, food, hygiene, and medical services are just one piece to the prison experience in America, the interactions between guards and other prisoners are also important to consider.

### *Treatment from Guards*

One of the only forms of contact that many prisoners have with non-prisoners comes from guards or correctional officers and these interactions are rarely friendly ones. Jeffrey Ian Ross (2013) has created a typology for guards based on their deviance from their job title and the ways in which it affects their job. The full study includes categories for how correctional officers demonstrate deviance against the prison as an institution and other correctional officers. Most

relevant to this section, however, are the ways in which guards act deviant towards the prisoners they are meant to watch over. The most common way a correctional officer acts against inmates is through abuse of authority. Correctional officers are aware of the power they have over prisoners while on the job and will exploit this power by humiliating prisoners, arbitrarily denying privileges, targeting prisoners, and destroying belongings. In the same sense, correctional officers abuse their authority by favoring certain prisoners over others by giving them special privileges and more desirable housing or jobs. This abuse of authority can create problems between prisoners. Other ways that correctional officers abuse their power is through mishandling or stealing from prisoners, general discrimination toward inmates either by race, gender, sexuality, etc.

Another way that correctional officers deviate against prisoners is through violence and/or excessive force against prisoners. Correctional officers are legally allowed to use force against prisoners when they deem it necessary for “life and property” (Ross 2013: 115). These acts of violence do not have to be physical violence, but can be psychological as well. Making prisoners stand naked outside during snow storms is one of the many ways in which psychological violence can be used against prisoners.

Finally, correctional officers have a long history of sexualizing assaulting or having sexual relations with inmates. Most commonly, it is a male correction officer and a female inmate, but these types of relations/assault can happen between any guard and inmate. Many states have enacted laws that automatically classify sexual relations between guards and inmates as sexual assault or they have “no touch no contact” policies that prohibit male correctional officers from supervising female prisoners. Nevertheless, these sexual relations still exist, either consensually or non-consensually (Ross 2013).

In another study that examines the use of physical coercion by correctional officers, James Marquart posed as a guard in a Texas penitentiary for 19 months. Marquart (1989) was able to identify the different types of coercion used by correctional officers. The first type was called “tune up,” “attitude adjustment,” or “counseling” which involved verbal humiliation, kicks, pushes, and slaps when prisoners were not following simple orders (P. 351). Another type of coercion were called “ass whippings” which consisted of officers using similar violence in tune ups but now with weapons, like batons or aluminum cases-flashlights (P. 352). The final type of physical coercion strategy used by correctional officers was the severe beating, which happened rarely but were used to “set an example” to other prisoners (Marquart 1989: 53). Through this study, Marquart (1989) argues, coercion types such as these are used to maintain control, status, and the organization structure (in other words, hierarchy) within the prison .

In another study by Worley, Worley, and Lambert (2021), they used 501 questionnaires on prison guards who were within the Texas Department of Criminal Justice to determine which characteristics were predictors of correctional officers having favorable attitudes towards the mistreatment of prisoners. They found that job satisfaction, perceived boundary violations of coworkers, supervisor support and family support were all factors that had a significant effect on a correctional officer's attitude toward mistreatment of prisoners. If a correctional officer has a negative relationship in any of these categories, they are more likely to be passive or supportive toward prisoner mistreatment. In all of these studies, their results showcase how correctional officers and guards can make serving a sentence in prison much more harsh than what an appropriate punishment for their actions would call for.

### *Prisoner Interactions and Treatment*

Interactions between other prisoners is arguably the biggest indicator of how a person's experience in prison will be. There is a subculture within prisons that most prisoners have to conform to or else they risk experiencing even more social exclusion than they already experience. It is important to acknowledge that the gender/racial/ethnic makeup of every prison population is different and these factors greatly influence the type of subculture within that prison. Furthermore, these subcultures have changed over time as prisons have changed and mass incarceration has taken over prisons. With this in mind, this section will mainly focus on prison subculture in men's prisons as that is the majority prison population in the U.S. (Federal Bureau of Prisons 2023).

Early research of prison subcultures in the mid 1900's found that the most prevalent form of subculture in U.S. prisons had a "convict code" that prisoners had to conform to. According to an overview of prison culture research by John Wooldredge (2020):

The code consisted of a set of norms for preserving inmate safety (from each other and from staff) and maintaining solidarity and strength in numbers. To these ends, the cultural norms promoted social distance from staff and stand-up behaviors, such as minding one's own business, no snitching, no stealing, no displays of weakness, and no contributions to situations that place others in harm's way of staff. Adherence to the code shaped an inmate's niche in the stratification system, corresponding status, and access to illicit goods, whereas the code itself promoted punishments for members who violated the norms, including social death and/or violence, the latter graded according to the level of perceived harm to other prisoners. (P. 168)



Later research also found evidence of similar uses of an unspoken prison code, however, the code was found to be a lot more specific depending on what “group” you were a part of in prison. Groups in prison were often constituted by race, religion, political ideologies, or general criminal behavior before entering prison (Wooldredge 2020). In the 1970’s during the prison boom, these individual subcultures were even more apparent as more and more offenders entered prison, specifically offenders who were a part of street gangs. Street gang subcultures in prison were also exacerbated by the fact that prisoners were starting to get more contact with the outside world, so communication between people in the gang who were both in and out of prison was easier (Wooldredge 2020).

While prisons might run differently depending on what type of people made up that prison, the overarching theme of prison culture was that it was very important for prisoners to follow in order to easily integrate into prison life. Following Erving Goffman’s (1956) performance theory, which asserts that social interactions are merely just performances for different audiences, there is clearly a performance that prisoners put on for the sake of the audiences they have to be a part of. Rebecca Trammell (2012) explored this phenomenon and found that “inmates described having two audiences. They maintained a worthy public identity to fellow inmates if they acted tough and in control. They kept correctional staff out of their way if they reduced conflict. The overlapping element was control” (Trammell 2012: 20). These performances are evidently hard to balance but were necessary to uphold because if they didn’t, prisoners could experience racial segregation, inmate violence - physical, emotional, and sexual, or general social exclusion (Trammell 2012).

The way that prisoners have been forced to create subculture participation is largely due to the survival atmosphere of prison. The physical living conditions in combination with harsh

treatment from guards has pushed prisoners to create a system within prison that advocates and protects themselves from others. The overall atmosphere of prison life pushes prisoners to become their most brutal selves in order to protect themselves. The prison atmosphere can stay with a prisoner for the rest of their life and change the way people think.

### ***Treatment of Prisoners After Prison***

Reintegration into society is one of the most challenging parts of life after prison for many ex-prisoners. Even if they have made a personal reformation in themselves in which they want to strive to be better people than they once were, society does not let them. Ex-prisoners often face social criticism as they are seen as “less-than” or unworthy of proper treatment for whatever they have done. Treatment differs from person to person, depending on the type of crime they committed and even what they look like which can decide how easily an ex-prisoner may reintegrate into society. This next section will cover what offenders experience after prison, including general societal views to personal struggles with employment, housing and personal relationships.

### ***Reintegration and Societal Treatment***

Usually, when someone is classified as an “ex-convict,” they are met with stigmatization and social exclusion. In discussions of punishment, this social phenomena is rarely acknowledged as being a part of a wrongdoer's punishment. Usually, people see an offender's punishment starting when they enter prison and ending when they leave. But consequences are something that one experiences as a result of a wrongful action and since this reaction from society is a result of the wrongful action, they should also be considered part of the punishment a wrongdoer has to endure. Jeremy Travis (2003) classified this as “invisible punishment” or “the

punishment that is accomplished by the diminution of the rights and privileges of citizenship and legal residency in the United States” (pp. 15-16).

One of the first examples of an invisible punishment that ex-offenders deal with is the fact that their voting rights are taken away. For many states, the right to vote is taken away only while the offenders are in prison, but other states have laws that bar offenders while they are on parole or for the rest of their life. Some modern examples of the types of services that ex-offenders are denied from include public housing, welfare benefits, certain jobs, education, and for many at risk of deportation, living in the United States completely (Travis 2003). All of these restrictions create a large distinction between convicted offenders and non-offenders in society that make it difficult for offenders to reintegrate into normal life after prison. When thinking about the implications of this, an offender’s punishment never really ends in America. Once a wrongdoer is convicted, the consequences of their actions follow them for the rest of their life.

Until recently, there were little resources for prisoners to adjust to reentering society after prison. The Second Chance Act of 2007 supported reentry programs for prisoners as a way to reduce recidivism (Jonson and Cullen 2015). While reentry programs get strong support from both political parties, only about 13% of inmates participate in rerelease programs (Jonson and Cullen 2015, p.526). Programs give very limited resources to inmates leaving prison. Inmates are given a small sum of money (under \$100), a bus ticket, and the clothes they wore when they entered prison (Jonson and Cullen 2015, p.527). Although reentry programs are supported by many, those programs often do not adequately prepare an inmate for reentry to society.

## *Personal Struggles*

### Employment

One of the biggest struggles for many ex-convicts is trying to secure a job after leaving prison. Research shows that more than half of ex-prisoners will be unemployed at least a year after release from prison and are automatically disqualified from as many as 800 jobs for having a felony conviction (Blanks 2021). Employers already have biases against certain applicants either because of education, skin color, or even just plain physical appearance and having a criminal record is on the list of stereotypes many employers shy away from. In a study by Devah Pager (2003), four male auditors, two white and two black, try to apply for jobs. One of the white applicants was given a criminal record while the other one did not have one. The same occurred for one of the black applicants. All other characteristics including physical appearance, education, and work experience were kept similar. Each pair (by race) of applicants applied to the same entry-level jobs. The study showed that white applicants without a criminal record were called back 34% of the time while white applicants with a criminal record were only called back 14% of the time. The likelihood of a call back from an employer for a black applicant without a criminal record was 17% and for black applicants with a criminal record, it was only 5%. These results demonstrated that having a criminal record reduced an applicant's likelihood of receiving a call back from an employer by 50%, and even more if you were black with a criminal record (Pager 2003).

As if acquiring a job wasn't hard enough for ex-prisoners, many often experience discrimination in the workplace once their coworkers discover they have been to prison. In a study by Crosby Hipes, people were given surveys in order to assess the biases that a person might have against a worker with a criminal record. The study found that people were more

likely to consider an employee who had to miss work with a criminal background more dangerous (with no knowledge of what the offense was) than an employee who had to miss time from work for an unspecified reason. Including being considered more dangerous than others, the study showed that people were more likely to social distance from coworkers who had to miss time due to serving a prison sentence than those who had to miss work due to receiving mental health services. The study also found that people considered employees with a criminal record less competent than those who did not (Hipes 2019). The results of the study demonstrate that there does exist a stigma associated with employees that have a criminal record. The stigmatization of ex-offenders in the workforce has led to blatant examples of discrimination and increased barriers to access employment, especially for ex-prisoners who are not white.

## Housing

A big struggle for a lot of ex-convicts after prison is trying to secure housing. After not making any significant money for a long period of time, having poor credit scores, and having difficulties finding a job that will accept people with a criminal record (Harding et al., 2013), ex-offenders have a lot stacked against them. Even staying in public housing can be difficult to retain for many ex-offenders due to the “One Strike, You’re Out” policy by the U.S. Department of Housing and Urban Development. The policy allowed supervisors of public housing to evict tenants if any one of their household members or guests were involved in criminal activity on the premises (US Department of Housing and Urban Development 1996).

A study by Bryan (2022) examined how individuals with a felony conviction but did not serve prison time also face housing instability issues. The study used National Longitudinal Survey of Youth 1997 data, which included self-reported data on arrests, convictions, and incarceration for young people, to analyze how young adults with a felony conviction and no

prison time served acquired housing. The study found that a felony conviction does increase housing instability, signaled by the amount of residential moves after the conviction, even if the person had not served any time (Bryan 2022). Overall, it is very hard for anyone with a criminal record, even not having served any prison time, to find adequate housing making it that much more difficult for ex-offenders to reenter society.

### Personal Relationships

The last aspect of life-after-prison that this chapter will look at is personal relationships. Being a convicted criminal in the United States can damage even the closest relationships that one may have. Braman (2019) reviewed multiple cases of families that were affected by a member entering prison. First, he covered the story of Lilly and Anthony. Lilly is Anthony's mother. Anthony has been in prison for ten years, beginning when he was just 18 years old, and still has four more years to go before he can be released. He was first put in prison for an altercation he had over a girl and he was sentenced to more time in prison for getting into another fight while in prison. Anthony financially relies on Lilly to help care for his three children. Lilly became a single mother at 18 and with only a high school education, she's worked many jobs to help pay for her children and grandchildren. Lilly's biggest worries about Anthony is his safety and wellbeing while in prison. She knows that he experiences a lot of violence and no mother wants that for their child. On top of this, Lilly also worries about how Anthony's incarceration affects their family's financial situation. Lilly described how difficult it was to just go and visit Anthony because of the financial burden it was:

She visits every month now; when she was younger and in better health and her son was in the District or Virginia, she would visit every week. For each visit to Ohio (where

Anthony was being held), the extended family pools resources for car rental, food, and a motel for a two-day trip, usually spending between \$150 and \$200. There are also the regular postal money orders and the twice yearly care packages allowed at the prison sent by Lilly, and Anthony's sister, grandmother, and great-aunt..In addition to phone travel and child care costs, there are a number of additional expenses that are difficult to quantify, such as stress-related medical expenses, Anthony's lost income (he was employed full time prior to his incarceration), and years of legal battles. Lilly makes do by getting groceries from the local food pantries, keeping her lights off, and not using air conditioning in the summer. Given her limited income, any additional sacrifice is a significant one. (Braman 2019: 121-122)

Even though Lilly has been getting support from some family members, she still experiences a lot of ostracism from family members who are embarrassed of Anthony's situation and refuse to talk about it. Most of Lilly's siblings won't talk to her and instead turn to the church to validate their "righteous" choices. Braman (2019) described familial exclusion perfectly when he stated "The stigma of criminality associated with incarceration marks them as well as the person incarcerated" (P. 133). Lilly and Anthony's case is just one example of many families whose relationships and financial situations become strained after someone in the family becomes incarcerated.

The next case is Davida and Charles and their case is similar to many parent-child relationships when the parent is incarcerated. Charles is Davida's father and has been using and selling drugs since Davida was born. In fact, Charles was serving his first adult sentence when Davida was born and he has been in and out of prison for her entire life. Despite her mixed feelings towards her father, she still loved him and was very close with him when he was out of

prison. Watching her father leave and come back many times made Davida question life's values and she herself resorted to deviant behavior. Davida began hanging out with older kids, drinking, and dropped out of school in sixth grade. Davida had been living with her grandmother until her health declined and Davida had to move in with her mother. Due to her mother's boyfriend sexually abusing her and getting no support from her mother, Davida continued to engage in more deviant behaviors. There were many factors that contributed to Davida being pushed into deviance. "Children [of incarcerated parents]...are not only more likely to be abused, live in poverty, and burden their extended family, but also more likely to be involved in the criminal justice system themselves, contributing to a cycle of abuse and neglect across generations" (Braman 2019: 127). In a study by Sykes and Pettit (2014), they found that one in nine black children has an incarcerated parent and one in four black children will have an incarcerated parent at some point in their life. As a reminder, this is not because black people are more deviant than white people, but black people are more targeted by the U.S. criminal justice system than white people. Sykes and Pettit (2014) also asserted that spouses and children of incarcerated people have to literally and figuratively carry the debts from their incarcerated family member which just perpetuates a cycle of deviance and neglect for their future generations. These cases just exemplify how the current U.S. penal system affects so much more than just the incarcerated person and how punishment does not start and end when a person enters and leaves prison.

## Recidivism

While reducing crime rates is a common goal for the U.S. penal system, their strategies in punishment are ineffective in keeping people from breaking the law again after they leave prison. In a 10-year study conducted between 2008 and 2018 across 24 states, 82% of prisoners who were released were arrested at least once in the 10 years after their release. The study also found



that 43% of offenders were arrested within one year of being released with the percentage declining over time (Antenangeli and Durose 2021). These recidivism rates can be attributed to the harsh treatment experienced by prisoners that ultimately affects their way of thinking and the overall lack of resources to support prisoners once they are released. Unfortunately, prisoners experience a number of risk factors that make it difficult for them to grow from their past mistakes.

## CHAPTER 4: DISCUSSION

This final chapter will use everything that has been discussed thus far to analyze the current U.S. penal system in comparison to the goals that we want the penal system to center around. By fully understanding what we want out of the penal system, it is easier to establish what methods are or are not working in the current system so that we can adjust as necessary to better align our strategies with our goals. Chapter 1 explained that the purpose of laws are to ensure social order and equality between people. Chapter 2 explained that the penal system should also be working towards those goals. Then I considered possible theories of punishment and whether or not those theories were justified in respect to those goals. My conclusion was that a retributive system works the best to simultaneously preserve social order and equality while also putting the people (including the wrongdoers) first. This distinction of administering punishment while also thinking of the people is the key that makes retributivism and revenge very different. Chapter 3 presented all of the relevant information, both historically and contemporary, about the U.S. prison system and how it operates. This chapter will look at how the current system functions in comparison to the goals it should be working towards and concludes that the current system works under a vengeful system rather than a retributive system. The chapter will end with suggestions as to how to make the current system more retributive and ultimately better representative of its people.

### ***What We Want the U.S. Penal System to Be***

Before getting into discussion, it is important to review the important characteristics of what an ideal penal system looks like. This thesis began by establishing what the purpose of laws are in order to figure out how punishment is justified. To establish the purposes of laws, I

reviewed two different theories on how a society comes to be. Plato believed that there was no need for laws because all the people in a perfect city have an equal understanding of their roles and do not seek out deviance. Hobbes (1967) believed that laws are essential to a society because people would make life chaotic and destructive if there were nothing keeping them in check. From these two different theories comes the purpose for laws. The first purpose is to ensure social order like Hobbes argued. The second purpose is to ensure and maintain equality and equal opportunities for all people, similar to what Plato asserts is natural in the perfect city. Thus, the purpose of laws is to ensure social order and equality among people. These purposes are relied on by the rest of the arguments in this thesis. It is made clear, however, that laws should not be seen as impenetrable statements of morality, because laws and morality are not synonymous. Laws can sometimes go against their own purpose and make society less equal. Knowing the separation of law and morality is important in administering punishment to ensure the punishment is justified.

In alignment with the purpose of laws, the purpose of punishment is to restore the social order and equality that was compromised as a result of an act of deviance. Durkheim's theory on mechanical and organic solidarity shows that deviance threatens the social order and equality of society and that is how punishment for deviance is justified. However, acknowledging that deviance has its own functions is also important when administering punishments. Deviance helps to show other people why the collective values and beliefs of society are important. More importantly, deviance indicates when laws might not be serving their own purpose of ensuring social order and equality and so the laws need to be changed. Again, these characteristics are important to keep in mind when administering punishments to know when a punishment is justified.

From here, conditions for a justified punishment system could be formulated. The purpose of laws and the purpose of punishment tells us that the first condition of a justified punishment has to be that it restores social order and equality. However, punishment also needs to help maintain social order and equality and cannot punish people in ways that ultimately make them less equal as that can eventually lead to disorder. Thus, the second condition for a justified punishment is that it must not further disturb social order by creating inequality. In sum, justified punishments must align with the purposes of laws during and after the sentence is over. Penal systems also have to recognize when acts of deviance are necessary or laws are unjust to ensure that it is not punishing offenders disproportionately because ultimately it goes against equality and social order.

After considering different theories of punishment, it was determined that a retributive penal system is the most justified approach to punishment. Neither deterrence or rehabilitation could satisfy the conditions, making them unfit to use in penal institutions. Retributivism rests on the notion that offenders should be punished how they deserve. Institutional retributivism administers punishment equal to what is deserved of the offender during their sentence and once the sentence is over, the offenders can be free and better people than before. By giving offenders what they deserve *and nothing more* is the key for penal systems to not perpetuate further inequality or social order. The difference between a retributive penal system and a vengeful penal system is that retributive systems work out to give people what they deserve while also ensuring that their deserved punishment is not too harsh than what is reasonable so that they can reintegrate into society afterwards. Vengeful systems only work to administer punishment without caring about what happens to the prisoner as long as they are punished. This leads to punishments that, while might be deserved, are harsher than necessary and prevents offenders

from returning to equal societal status after their sentence is over. When punishments are administered harsher than necessary without consideration of how it affects the offender after prison, it becomes difficult for prisoners to reintegrate into society. While some may think that harsher punishments is what the victims of crimes would want, this is actually not the case. A 2016 study conducted specifically on victims of crime showed that 60% of victims prefer shorter prison sentences and more spending on prevention and rehabilitation to prison sentences that keep people incarcerated for as long as possible (Alliance for Safety and Justice 2016). Even though we think we are giving an appropriate punishment when administering harsher sentences, that is not actually what victims of crime want, so why is it important to continue punishing harsher than necessary?

The assertion that offenders do not deserve punishments that are harsher than necessary and should be able to reintegrate into society afterwards is essential to ensuring that equality is restored for all parties involved, including the offender. Some might argue that offenders of especially heinous crimes deserve harsher punishments and do not deserve to be able to live equally after their sentence is over. However, if we allow for overly overt punishments for some, it can lead to the misuse of that overly harsh punishment and even if the person deserves it, it does not help crime rates. The death penalty is an example of this phenomenon. So, to prevent the overuse of harsh punishment, the "harshesht" punishment could be deprivation of liberty for a long period of time and only providing people with the basic necessities. At the very least, every human being is entitled to basic human rights which include things like adequate food, shelter, and hygiene. Choosing to take this right away from prisoners, even those who may deserve it, is not conducive to equality. Therefore, there has to be minimum and maximum punishments for

wrongdoers that ensure the majority of offenders can become equal citizens after prison and the heinous offenders are getting their due desert.

### ***What The U.S. Penal System Really Is***

Using the established conditions for a justified penal system and the information presented in Chapter 3, we can analyze the penal system to determine what kind of approach it uses for punishment. Analysis shows that there are at least three conclusions that can be made about the penal system, which this section will explain.

#### *1. The U.S. Penal System is historically callous of prisoners.*

The history of the U.S. penal system shows that the past justifications for punishment were not effective in ensuring social order and equality because they emphasized social order more than equality. By doing so, the system perpetuated inequality in two different ways: between wrongdoers and the rest of society and between wrongdoers themselves. Since none of these justifications have been corrected, the U.S. penal system continues to perpetuate the idea that wrongdoers in a society are less than everyone else. Seeing wrongdoers as unworthy of humane treatment and the lack of compassion towards how they are cheated exemplifies how the U.S. penal system uses revenge rather than retributivism as its main approach to punishment.

Analyzing the history of the U.S. prison system shows that the origins of the system emphasized social order in its justification for punishment and ignored equality. “Deprivation of liberty” (Rafter and Stanley 1999: 3) being the main (and often only) form of punishment in colonial America is evidence of this fact. The goal of deprivation of liberty was so that the wrongdoers could “reflect and repent” (Rafter and Stanley 1999: 5) their actions to attain forgiveness from God and become better people afterwards. However, those who facilitated

penal sentences gave no further instruction or support to the wrongdoer other than to “reflect and repent.” Leaving wrongdoers in a locked cell by themselves with nothing but a Bible is evidence that the penal system cared more about social order than equally administering punishment. If the penal system did value equality in administering punishment, they would have put more effort into ensuring that the punishment fit the crime. Instead, they put every wrongdoer in cells and left them there. Using deprivation of liberty solved immediate issues of social order and equality, but it did nothing to actively reform the wrongdoer in such a way that protected future social order and equality. Those who were in charge of administering punishment told criminals that they had to reform to become better people and free themselves, yet administrators did not aid in helping the prisoners in their reformation. The administrators’ main focus was to deliver an immediate punishment and any effects, including social order and equality, were not of their concern. Deprivation of liberty continues to be the main form of punishment even today, however, punishment is no longer just deprivation of liberty, it's much more than that.

After a wide scale review of prisons by Enoch Wines and Theodore Dwight (Rafter and Stanley, 1999), penal systems began to shift to more rehabilitative strategies which emphasized offering prisoners “religious, vocational, and remedial education”(P. 8) to aid in their reformation. This period can be seen as a time when prisoners were beginning to be seen as people worthy of helping. However, this period also emphasized “keeping prisoners in prison until proof of reformation” which is problematic. In theory, it would be ideal that proof of reformation would be sufficient evidence to deem when a prisoner should be released. However, proof of reformation still does not always align with the sentence that a prisoner *deserves*. This “proof of reformation” is still used in state-prisons where offenders are given a sentence, but receive a reduced sentence with parole after meeting with a parole committee. As argued

previously, reform (which I use synonymously with rehabilitation) cannot be administered equally because it cannot be applied generally insofar as it is not a fit punishment for every wrongdoer. Thus, using reform as the main approach to punishment continued to ignore equality in administering punishment.

The reformation period did not last long as the subsequent birth of the medical model ultimately led to the weaponization of rehabilitation. The medical model justified punishment as helping the “sick” so more and more people were being sentenced to prison in the name of rehabilitation. Since the reformation period already punished unequally, the weaponization of rehabilitation exacerbated inequality by administering punishments to more people who did not deserve that punishment. The weaponization of rehabilitation continued to occur while the introduction of “tough on crime” sentencing laws were introduced. A combination of the weaponization of rehabilitation and tough on crime laws all resulted in a nationwide prison boom in the 1970’s. Since then, the U.S. penal system continues to punish unequally and perpetuate inequality which only leads to social disorder and protests from the people. While “keeping the country safe and protecting civil rights” is the written goal of the U.S. Department of Justice, their methods of achieving these have proven to be ineffective.

The history of the U.S. penal system shows that none of the four justifications that were used for punishment helped to ensure equal administration of punishment. The first justification was reflection and repentance through deprivation of liberty for all prisoners without aid or guidance in reform at all. By generally administering this type of punishment to all prisoners, the penal system did not administer punishment equal to the desert of each prisoner. The second justification came from Enoch Wines and Theodore Dwight (Rafter and Stanley 1999) who led the Reformation Movement and argued that the goals of incarceration should be to reform, give



incentives to reform, and keep wrongdoers incarcerated until there is proof of reform (P. 8). So prisoners were aided in reformation but they were removed from society until they could “prove” they were reformed. How long it takes for a person to “prove” that they have reformed is often unequal to the sentence that the prisoner deserves. Either it is too weak of a punishment for what the wrongdoer deserves or it is too harsh of a punishment for what they deserve. Either way, the punishment is unequal to the wrongdoer’s desert. The third justification came from the medical model which argued that people who broke the law were “sick” in some way and needed to be removed from society and “reformed” in order to get better. The medical model is an extension of the reformation model but furthered inequality by exaggerating the need for “reform” for people who did not need it. Finally, the most recent justification of deprivation of liberty comes from the tough on crime movement in the 1970’s which purported that there would be little tolerance for deviant behavior resulting in harsher punishments for all offenders but especially repeat offenders. While harsher punishments for repeat offenders sounds like it equates to that offenders desert, the social structure of the U.S. makes it very difficult for offenders to reintegrate into society, forcing them to commit more crimes or not giving them a reason not to. All of these justifications emphasized social order in varying degrees but left out equality and care for people. Above all, while many tried to argue that harsher punishments were necessary to lower recidivism rates, 82% of prisoners still end up getting arrested within 10 years of being released from prison (Antenangeli and Durose, 2021). By forcing prisoners to adapt to a survivalistic lifestyle in prison and then labeling them as bad or unworthy of support pushes offenders to recommit rather than staying in a society where they no longer know how to function and are no longer accepted by the people within that society. Ultimately, the U.S. penal system as it stands today makes prisoners unequal to the rest of society.

Using Durkheim's social solidarity theory helps to explain how the U.S. penal system left out equality completely when administering punishments. Pre-modern societies that are characterized by mechanical solidarity punished for the sake of social order and equality. But their definition of equality is that all people in society think the same and so punishment is justified in protecting social order by ensuring that people remain thinking equally. This is evident in the first era of prisons where punishments were simply depriving people of liberty until they thought the same. While this punishment restored social order and equality, it did not maintain equality or social order because of the way it mistreated its prisoners. Now that our society is kept together through organic solidarity and differing thoughts and beliefs, punishment in the U.S. no longer considers equality of people to be important at all because it assumes that equality does not exist anyway for it to be restored. As previously explained, this is a flawed view of equality. Just because people think differently from one another does not mean that they are not equal citizens entitled to the same things in a society. While the U.S. transformed into a society that is mechanically solid to one that is organically solid, it neglected to consider equality as more than just "people thinking the same" which ultimately resulted in further unequal treatment of prisoners. As a result of the U.S. penal system being historically unfair to prisoners, the system is now one that does not restore equality, it perpetuates inequality.

## *2. The U.S. Penal System perpetuates inequality.*

As a result of the U.S. penal system being historically unfair to prisoners, the system is now one that does not restore equality, it perpetuates inequality. The U.S. penal system has created an overt negative social perspective of wrongdoers that has led to an attitude of apathy towards wrongdoers and how they are treated. The first aspect of the U.S. penal system that demonstrates how wrongdoers as a whole are seen as subordinate to the rest of society is the

general living conditions that they are forced to endure while serving their sentence. Physically, prisoners are forced to live in small cement cells, often sharing with another person, with very few personal items or items of comfort. Prisoners are given a limited amount of time outside or time to exercise as most of the time they remain in their cell. Prisoners under suicide watch or solitary confinement receive even less than the general population receives. Their cells often only have a hard bed frame and mattress with nothing else. Food is given infrequently and scarcely. Prisons are also known to be unhygienic in the way they prepare food and prevent/treat sicknesses and illnesses (Delaney et al., 2018). The conditions that prisoners have to live with are downright inhumane and no one, regardless of the crime they committed, deserves to be stripped from basic necessities such as adequate housing, food, and hygiene. Not only do prisoners have to endure unacceptable physical living conditions, they also have to endure poor treatment from guards. It is well known that in many U.S. prisons, guards often mistreat prisoners through abuse of power, excessive use of violence, and even sexual assault (Ross 2013). Job satisfaction, supervisor support, and family support are all contributing factors as to whether or not prison guards are passive or supportive of prisoner mistreatment (Worley, Worley, and Lambert 2021). The last aspect of living in prisons that add to the overall unhealthy environment is the prison culture that prisoners have made themselves. It is unclear whether the physical living conditions and/or mistreatment from guards necessarily led to prison culture, but the culture still exacerbates the fact that prisoners are forced into unhealthy conditions and administrators are doing nothing to mediate it. There is an unspoken “code” between prisoners to keep themselves safe from both staff and each other. This code is cultivated by whatever “group” the prisoner is a part of, which are often made up on the basis of race, religion, or street gang activity prior to entering prison (Wooldredge 2020). Ultimately, the use of this code by the general prison

population forces prisoners to follow it or else they would be at risk of violence and poor treatment from other prisoners. Inmates had to simultaneously uphold an appearance of obedience to authority while also upholding an appearance of strength to be able to defend themselves. Between the poor physical living conditions of prisons, mistreatment from guards, and the required culture that all prisoners had to conform to, these factors all combine to create an environment that makes it impossible for prisoners to live peacefully. While the purpose of punishment is to gain retribution for the crimes the prisoners have committed and prisons should not necessarily be a place where people would be *willing* to go, it should not be a place that forces people to become survivalists for themselves. The harmful environment that prisoners are forced to live under while in prison exemplifies the way in which the U.S. penal system continues to neglect wrongdoers that perpetuates inequality both between how the system treats wrongdoers and how the wrongdoers treat each other.

Another way that the U.S. penal system perpetuates inequality is the consistent targeting of minoritized groups, specifically black men in policing and in sentencing. From the beginning of the U.S. prison system and when slavery was abolished, the fact that states would often lease black prisoners to farmers as a form of legalized slavery (Rafter and Stanley 1999) is evidence that black prisoners were seen unequally to white prisoners because of their economic value. Prisons were also always kept segregated until the civil rights movement and even then, black prisoners would almost always be put in the inferior living spaces compared to white prisoners, when the living spaces were not pleasant to begin with. Over-policing of neighborhoods that were largely composed of black people is another way that black people are targeted.

The final way that the U.S. penal system showcases how unequally administering punishment has led to an apathetic attitude towards offenders is how difficult it is for offenders to

reintegrate into society. Once someone is a convicted felon, that label stays with them for the rest of their life. Socially, convicted felons are seen as “dangerous” or general threats to society. People are afraid of convicted felons, but they also look down on felons for being deviant and are unforgiving in the way they treat them. The “convicted felon” label stops people from being able to vote, from finding jobs, or even housing (Mauer et al., 2003). Even though historically the penal system has justified its sentences as being positively reformatory for wrongdoers, it is extremely difficult for many offenders to create a better life for themselves after they leave prison. While the penal system does not directly cause the negative social stigma that comes with being a convicted felon in the U.S., the origins of the apathetic societal attitude towards offenders certainly comes from the justice system. Furthermore, the U.S. justice system does not help prisoners reintegrate into society so that they can become better citizens, further showcasing general passivity towards offenders. Offenders are socially excluded to such an extent that the punishment lasts long after they leave prison, often for the rest of their lives, which is not how punishment on the basis of desert functions.

### *3. The U.S. Penal System is based on revenge.*

Based on the ways in which the U.S. penal system administers punishment without consideration for how the punishments affect the wrongdoers, it can be determined that the system uses revenge as a foundational principle in administering punishment. Institutional revenge uses the hatred that a victim might have for an offender to determine and justify the punishments that it gives. Institutional revenge, unlike retributivism, is not concerned with what exactly happens to the wrongdoer, they are only interested in ensuring that the wrongdoer is punished for their actions. When a vengeful system is concerned about the punishment, usually it pushes for harsher punishments. Due to the lack of consideration towards wrongdoers,

institutional revenge permits more harsh punishments that, while one may argue is deserved, classifies them as someone who is less than the law abiding citizens so that they may never truly learn or grow from their mistakes. Historically, the U.S. has always treated those who break the law as people who deserve to be treated poorly simply for breaking the law. The “reflection and repentance” phase used deprivation of liberty or incarceration as its only method and left wrongdoers to change themselves, not caring about what happens to them during incarceration or how that affects their mental health afterwards. The rehabilitation phase was a short time where administrators were concerned about wrongdoers reformation, though this phase was short lived due to the medical model phase weaponized rehabilitation and forced many wrongdoers to “reform” when they did not need to. The most recent “tough on crime” phase is the most prominent example of how the U.S. penal system is vengeful for the ways that it leaves no tolerance for deviance and punishes wrongdoers with extended sentences for smaller crimes (Rafter and Stanley 1999). In all of these phases (with the exception of the short-lived rehabilitation phase), all aided in the way that the prison system is today, including poor living conditions, poor treatment from guards, difficulty reintegrating into society, and over all negative stigma around the label “convicted criminal.” The U.S. penal system exemplifies institutional revenge because it sees wrongdoers as making a victim out of the integrity of the country and so the penal system acts as the “victim” getting revenge. As a result of this vengeful system, wrongdoers cannot escape the label of being a criminal that sets them up to struggle after their sentence is over. It is in this way that using revenge as a foundation of a penal system ultimately perpetuates inequality and social disorder.

To make the U.S. penal system less vengeful and more retributive, the system needs to implement policies that simultaneously administers justified punishments to offenders while also

giving them opportunities to become better citizens once their sentence is over. As I mentioned in the first chapter, equality cannot exist in an unequal society. Thus, unequal societies need equitable policies to make them equal. Examples of equitable policies include ones that promote fair policing that do not target communities that are largely made of people of color, perhaps even offering support and resources to those struggling communities. Other examples include proportionate sentencing, a strategy that Reiman (2019) proposes a higher and lower sentence (a minimum and maximum) be used in accordance with the circumstances of each case which would make the penal system more retributive. Better prison conditions would help prisoners live a more stable life while in prisons so that they don't have to focus so much on surviving but more on bettering themselves. Reintegration programs and more resources for ex-convicts after they leave prison would also aid in the betterment of offenders' lives after prison so there would be less appeal to reoffend. These policies are easier to suggest than implement and further discussion is needed if these policies can ever be implemented. Nevertheless, the vengeful penal system has perpetuated inequality so deeply that it violates the rights of offenders and thus change needs to be made.

### ***Concluding Thoughts***

My goal in completing this thesis was to bridge the gap between ethical conversations of punishment and how the U.S. penal system currently punishes offenders. Philosophical conversations of punishment often ignore what those theories look like in application while current policies only follow a vengeful system of punishment, disregarding ethics almost entirely. Some might ask what Plato has to do with discussions surrounding the U.S. penal systems and policy. What I wanted most out of this thesis was to show that philosophical conversations regarding ethical policies are essential. Furthermore, philosophical conversations

have to acknowledge the sociological and political realities of the world to truly make any theory mean something so that it can be applied. My thesis does not make any grand discovery, but it does address the gaps in conversation that need to be addressed.

Institutional change does not happen overnight and the U.S. penal system did not become what it is today overnight. In order to implement real change that better the lives of offenders and society in general, discussions on legal punishment need to address the root of where the current penal system came from. All of the changes that the U.S. penal system has historically gone through were all short-term solutions for the problems that they were seeing while administering life-altering sentences to people. The short term “tough on crime” strategy needs to end because as recidivism rates show, it’s not working. Even victims of crime do not want offenders to face harsh sentences and would rather they use other modes of punishment and/or rehabilitation to help offenders. Above all, the points and suggestions I’ve made require completely uprooting many principles not only in the U.S. penal system but in the justice system as a whole. While these changes are not going to occur overnight, addressing the root causes of the U.S. penal system’s problems are a starting point.



## REFERENCES

- Anh, Geunsaeng. 2021. "Abolition is not a one time event: Prison doulas as catalysts." *Asian American Writers' Workshop*. Retrieved February 5, 2023.  
(<https://aaww.org/abolition-is-not-a-one-time-event-prison-doulas-as-catalysts/>).
- Alliance for Safety and Justice. 2016. "Crime Survivors Speak – Alliance for Safety and Justice." *Alliance for Safety and Justice*. Retrieved March 23, 2023  
(<https://allianceforsafetyandjustice.org/crimesurvivorsspeak/>).
- Appleman, Laura I. 2018. "Deviance, Dependency, and Disability: The Forgotten History of Eugenics and Mass Incarceration." *Duke Law Journal* 68(3):417–78.
- Bauer, Shane. 2019. *American Prison: A Reporter's Undercover Journey into the Business of Punishment*. Waterville, Maine: Thorndike Press, a part of Gale, a Cengage Company.
- Blanks, Jonathan. 2021. "Our criminal justice system is making it really hard for people to find jobs." *The Washington Post*. Retrieved February 4, 2023.  
(<https://www.washingtonpost.com/posteverything/wp/2014/09/30/our-criminal-justice-system-is-making-it-really-hard-for-the-poor-to-find-jobs/>).
- Bryan, Brielle. 2022. "Housing instability following felony conviction and incarceration: Disentangling being marked from being locked up." *Journal of Quantitative Criminology*. Retrieved February 24, 2023 (<https://doi.org/10.1007/s10940-022-09550-z>).
- Celello, Peter. (n.d.). "Desert." *Internet encyclopedia of philosophy*. Retrieved February 19, 2023  
(<https://iep.utm.edu/desert/>).
- Cottingham, John. 2019. "Varieties of Retribution." *Retribution* 3–12.

Davis, Michael. 2019. "How to Make the Punishment Fit the Crime\*." *Retribution* 253–79.

Death Penalty Information Center. 2020. "Murder Rate of Death Penalty States Compared to Non-Death Penalty States." *Death Penalty Information Center*. Retrieved September 28, 2022

(<https://deathpenaltyinfo.org/facts-and-research/murder-rates/murder-rate-of-death-penalty-states-compared-to-non-death-penalty-states>).

Delaney, Ruth, Ram Subramanian, Alison Shames, and Nicholas Turner. 2018. "Examining Prisons Today." *Vera Institute of Justice*. Retrieved February 5, 2023

(<https://www.vera.org/reimagining-prison-web-report/examining-prisons-today>).

Durose, Matthew R., Alexia D. Cooper, and Howard N. Snyder. 2014. "Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010." *Bureau of Justice Statistics*. Retrieved March 5, 2023

(<https://bjs.ojp.gov/library/publications/recidivism-prisoners-released-30-states-2005-patterns-2005-2010-update>).

Federal Bureau of Prisons. 2023. *BOP Statistics: Inmate Gender*. Retrieved March 5, 2023

([https://www.bop.gov/about/statistics/statistics\\_inmate\\_gender.jsp](https://www.bop.gov/about/statistics/statistics_inmate_gender.jsp)).

Federal Bureau of Prisons. 2023. *BOP Statistics: Inmate Race*. Retrieved March 5, 2023

([https://www.bop.gov/about/statistics/statistics\\_inmate\\_race.jsp](https://www.bop.gov/about/statistics/statistics_inmate_race.jsp)).

Goffman, Erving. 1959. *The presentation of self in everyday life*. New York: Bantam Doubleday Dell Publishing Group.

- Harding, David J., Jeffrey D. Morenoff, and Claire W. Herbert. 2013. "Home Is Hard to Find Neighborhoods, Institutions, and the Residential Trajectories of Returning Prisoners." *The ANNALS of the American Academy of Political and Social Science* 647(1):214–36.
- Hipes, Crosby. 2019. "The Impact of a Felony Conviction on Stigmatization in a Workplace Scenario." *International Journal of Law, Crime and Justice* 56:89–99.
- Hobbes, Thomas. 2021. *Leviathan*. edited by D. Johnston and K. Hoekstra. New York, NY: W. W. Norton & Company, Inc.
- Jetten, Jolanda and Matthew J. Hornsey. 2014. "Deviance and Dissent in Groups." *Annual Review of Psychology* 65(1):461–85.
- Jogleff, Christina. 2012. "Criminal Reproduction: Early Eugenics and Gendered Imprisonment in California." *EScholarship, University of California*. Retrieved March 23, 2023 (<https://escholarship.org/uc/item/78f522b7>).
- Libretexts. 2021. "What Is Sociology?" *Social Sciences LibreTexts*. Retrieved March 11, 2023 ([https://socialsci.libretexts.org/Bookshelves/Sociology/Introduction\\_to\\_Sociology/Book%3A\\_Introductory\\_Sociology\\_1e\\_\(OpenStax\)/01%3A\\_An\\_Introduction\\_to\\_Sociology/1.02%3A\\_What\\_Is\\_Sociology](https://socialsci.libretexts.org/Bookshelves/Sociology/Introduction_to_Sociology/Book%3A_Introductory_Sociology_1e_(OpenStax)/01%3A_An_Introduction_to_Sociology/1.02%3A_What_Is_Sociology)).
- Marquart, James W. 1986. "Prison Guards and the Use of Physical Coercion as a Mechanism of Prisoner Control." *Criminology* 24(2):347–66.
- Maslow, Jacob. 2022. "5 Biggest Problems with the Outdated Criminal Justice System." *LegalScoops*. Retrieved March 5, 2023

(<https://www.legalscoops.com/5-biggest-problems-with-the-outdated-criminal-justice-system/>).

Mauer, Marc, Meda Chesney-Lind, and Donald Braman. 2003. "Families and Incarceration." Pp. 117–35 in *Invisible punishment: The Collateral Consequences of Mass Imprisonment*. New York, New York: New Press.

Mauer, Marc, Meda Chesney-Lind, and Jeremy Travis. 2003. "Invisible Punishment: An Instrument of Social Exclusion." Pp. 15–36 in *Invisible punishment: The Collateral Consequences of Mass Imprisonment*. New York, New York: New Press.

Meyer, Joel. 1968. "Reflections on Some Theories of Punishment." *The Journal of Criminal Law, Criminology, and Police Science* 59(4):595.

Meijer, Sonja. 2017. "Rehabilitation as a Positive Obligation." *European Journal of Crime, Criminal Law and Criminal Justice* 25(2):145–62.

Nickerson, Charlotte. 2022. "Durkheim's Mechanical and Organic Solidarity." *Durkheim's Mechanical and Organic Solidarity*. Retrieved March 7, 2023 (<https://simplysociology.com/Durkheim-Mechanical-and-Organic-Solidarity.html#mechanical>).

Pager, Devah. 2003. "The Mark of a Criminal Record." *American Journal of Sociology* 108(5):937–75.

Plato and Reeve C. D. C. 2004. *Republic*. Indianapolis, IN: Hackett Pub. Co.

- Pollock, Wendi, Willard Oliver, and Scott Menard. 2012. "Measuring the Problem." *Criminal Justice Review* 37(2):153–73.
- Price, Byron E., John C. Morris, and Matthew T. King. 2012. "The History of Private Prisons." Pp. 11–22 in *Prison privatization: The many facets of a controversial industry*. Santa Barbara, CA: Praeger.
- Rafter, Nicole Hahn and Debra Stanley. 1999. *Prisons in America: A Reference Handbook*. Santa Barbara, CA: ABC-CLIO.
- Reiman, Jeffrey H. 2019. "Justice, Civilization, and the Death Penalty: Answering Van Den Haag." *Retribution* 281–314.
- Reiter, Keramet, Joseph Ventura, David Lovell, Dallas Augustine, Melissa Barragan, Thomas Blair, Kelsie Chesnut, Pasha Dashtgard, Gabriela Gonzales, Natalie Pifer, and Justin Strong. 2020. "Psychological Distress in Solitary Confinement: Symptoms, Severity, and Prevalence in the United States, 2017–2018." *American Journal of Public Health* 110(S1).
- Rios, Victor M., Nikita Carney, and Jasmine Kelekay. 2017. "Ethnographies of Race, Crime, and Justice: Toward a Sociological Double-Consciousness." *Annual Review of Sociology* 43(1):493–513.
- Robinson, Paul H. 2019. "Competing Conceptions of Modern Desert: Vengeful, Deontological, and Empirical." *Retribution* 205–35.
- Ross, Jeffrey Ian. 2013. "Deconstructing Correctional Officer Deviance: Toward Typologies of Actions and Controls." *SSRN Electronic Journal*.

- Sapkota, Diksha., Susan Dennison, Jyai Allen, Jenny Gamble, Corrie Williams, and Nomxollsi Malope-Rwodzi. 2022. "Navigating Pregnancy and Early Motherhood in Prison: A Thematic Analysis of Mothers' Experiences." *Health & Justice* 10(1).
- Satne, Paula, Krisanna M. Scheiter, and Leonardo Zaibert. 2022. "Punishment, Revenge, and the Nature of Moral Philosophy." Pp. 101–17 in *Conflict and resolution: The Ethics of Forgiveness, Revenge, and Punishment*. New York, NY: Springer.
- Sawyer, Wendy., & Wagner, Peter. (2022, March 14). *Mass incarceration: The whole pie 2022*. Prison Policy Initiative. Retrieved February 24, 2023, from <https://www.prisonpolicy.org/reports/pie2022.html#:~:text=Together%2C%20these%20systems%20hold%20almost,centers%2C%20state%20psychiatric%20hospitals%2C%20and>
- Shjarback, John A. and Jacob T. Young. 2017. "The 'Tough on Crime' Competition: A Network Approach to Understanding the Social Mechanisms Leading to Federal Crime Control Legislation in the United States from 1973–2014." *American Journal of Criminal Justice* 43(2):197–221.
- Stern, Alexandra. 2020. "Forced Sterilization Policies in the US Targeted Minorities and Those with Disabilities – and Lasted into the 21st Century." *Institute for Healthcare Policy & Innovation*. Retrieved March 23, 2023 (<https://ihpi.umich.edu/news/forced-sterilization-policies-us-targeted-minorities-and-those-disabilities-and-lived-21st>).
- Sullivan, Laura. 2006. "An inside Look at Solitary Confinement." *NPR*. Retrieved March 23, 2023 (<https://www.npr.org/templates/story/story.php?storyId=5601506>).

- Sykes, Bryan L. and Becky Pettit. 2014. "Mass Incarceration, Family Complexity, and the Reproduction of Childhood Disadvantage." *The ANNALS of the American Academy of Political and Social Science* 654(1):127–49.
- Trammell, Rebecca. 2012. "Prison Culture." Pp. 19–40 in *Enforcing the convict code: Violence and prison culture*. Boulder, CO: Lynne Rienner.
- U.S. Census Bureau. Quick Facts Population Table. Retrieved February 26, 2023 from (<https://www.census.gov/quickfacts/fact/table/US/PST045221>)
- U.S. Department of Housing and Urban Development. 1996. 'One strike and you're out' screening and eviction policies for public housing authorities (HAs). 1996. PIH 96-16(HA).
- Wines, E. C., & Dwight, T. W. (1867). *Report on the prisons and reformatories of the United States and Canada, made to the Legislature of New York, January 1867, by E.C. Wines ... and Theodore W. Dwight ..* Print. by Van Benthuyssen and Sons.
- Wooldredge, John. 2020. "Prison Culture, Management, and in-Prison Violence." *Annual Review of Criminology* 3(1):165–88.
- World Population Review. 2023. "Incarceration Rates by Country." *World Population Review*. Retrieved March 5, 2023 (<https://worldpopulationreview.com/country-rankings/incarceration-rates-by-country>).
- Worley, Robert M., Vidisha Barua Worley, and Eric G. Lambert. 2019. "Deepening the Guard-Inmate Divide: An Exploratory Analysis of the Relationship between Staff-Inmate

Boundary Violations and Officer Attitudes Regarding the Mistreatment of Prisoners.”

*Deviant Behavior* 42(4):503–17.