

**The Need to  
Abolish  
the Prison System:  
an ethical indictment**

by Steve Martinot

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## Introduction

### The Problem of Prisons

Today, in the US, there are 2.5 million people in prison. This is more than any other country in the world. One could say it represents a serious social crisis. Or one could say that there is something happening in the US that is very wrong. If prisons are a means of maintaining social order, to use them in a wrong way makes a mockery of the idea of social order itself.

Prison is supposed to be a way to separate society from bad guys. But 2.5 million bad guys? That doesn't say much for US society. It is not a certificate of merit. Instead, maybe prison itself is a bad idea. But then, how do we think about what we owe all those people who have been the victims of that bad idea?

The abolition of prisons is today unthinkable. Perhaps that is because this society thinks it must "teach people lessons" when they stray, and the only way it can imagine doing that is through violence (all imprisonment is violence). To presume an entitlement to "teach" someone through violence is to assume a supremacy. The European aristocracy assumed a supremacy when it threw people in dungeons or tortured them to death. The colonists in Virginia assumed a supremacy when they enslaved Africans. Is the current problem just an assumption of a more "civilized" supremacy?

Perhaps prison abolition is unthinkable because the act of imprisonment is thought of as revenge. Many people relish the idea of saying about others, "serves them right." Vengeance is satisfyingly self-justifying. But vengeance only responds to transgression with another transgression, to a crime with a crime, by definition. If vengeance is the inner logic of imprisonment, then imprisonment is only a huge criminal endeavor adding to the sum total of criminality. In that case, those clamoring for an end to crime and violence through more prisons and more executions find themselves calling for more social violence. Systematic violence, which is what prison represents, stands in contradiction to the very idea of social order. If the innermost logic of prisons is a bad idea, then the abolition of prisons will have to become thinkable. This essay will be an attempt to make it thinkable.

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There are 2.5 million people in prison in the US. This is far beyond the number of crimes committed in this society. It is more than in any other country, per capita as well as in absolute numbers. The US accounts for 5% of the world's population, but it has 25% of the world's prisoners. In addition, there are 5 million under the thumb of probation officers, and altogether a total of 8 million people disenfranchised as ex-felons. The vast majority are people of color. Even governments that strictly suppress freedom of speech or oppositional political activity do not engage in this degree of imprisonment or social control. What is happening in the US is beyond the suppression of freedom of speech or political opposition. Something else is happening for which there is no justification.<sup>1</sup>

Here's the problem. When you throw someone in prison for whatever reason, whether you call it "justice" or something else, you are committing a crime against that person. It is the crime of sequestering a person against their will. This is even recognized in law as a crime, though law decriminalizes imprisonment as "punishment." Or rather, legislation decriminalizes it. In legalizing imprisonment, legislation acts against the meaning of law. But the fact that legislation can establish that a convicted person deserves prison does not constitute a justification. Instead, it constitutes a use of political definition, and justification is conjured up. Someone may have been injured or harmed by the convicted person (which today is true only in a small minority of cases) for which the transgressor is to be punished. But both the substance of punishment and the form it takes as imprisonment remain arbitrary, the magic result of political decision.

Five percent of the prison population are there for having committed crimes of violence (murder, rape, assault, robbery with a weapon, kidnapping, etc.). Another 25% are there for non-violent crimes (white collar, fraud, forgery, theft, etc.). The rest, some 70%, are there for victimless crimes (drug possession, disobeying an officer, resisting (unjust) arrest, gambling, a variety of categories of consensual sexual activity, etc.). Punishment for victimless crime violations constitutes the core of the prison system. Yet imprisonment

for a victimless crime cannot be to avenge anyone. The people arrested and prosecuted for victimless crimes are the victims, not of criminals but of victimless crime laws.

Prisons constitute a form of victimization.

Though people of color make up only 25% of the total population, 75% of the prisoners in the US today are people of color. People of color do not commit proportionately more crimes than whites. The crime rates between those different communities are pretty much the same. But if the ratio of whites to people of color is three to one, and the ratio of white prisoners to prisoners of color is one to three, than a person of color has a nine to one greater chance of being imprisoned for a crime than a white person. This disparity is so great that it disposes of any social pretense to equality before the law. Though legal rhetoric proclaims that every individual has equal rights in the judicial process, somewhere between the act of policing and the slam of a cell door, that equality gets transformed into a nine-to-one disparity. In other words, the disparity is engendered at the heart of the judicial machine. That means it is something that some people are doing to others. It is a policy enacted to create a racial disparity in prisons.

What crime is being avenged by this nine-to-one ratio, the crime of not being white? That is an absurdity so great that only a white supremacist could not see it. The problem of prisons today has become so extreme that only the abolition of prisons will resolve it.

### **The Role of the Revenge Ethic**

A revenge ethic informs the social acceptance of the prison system today. It resides in popular consciousness about prisons, rather than in government policy. Government generally finds popular consciousness irrelevant to itself insofar as it is really interested in control. But many people justify imprisonment by saying, "Look what the convicted guy did (if he really did it). He has to pay for that. He should be victimized." And others will add, "What about the victim? Doesn't the victim have any rights? Shouldn't the victim get recompense, or closure?" Surely an injury to a person and to the community occurs with the commission of a crime. In the person of

the victim, there has been a transgression against all. The judicial machine pretends that this is so by calling itself "the people," as in "*the people vs. John Doe.*"

If each crime as a transgression against all, then a sense of community responsibility to the victim indeed becomes paramount. It is a community and not simply the judicial machine, bent upon committing criminal acts against those it convicts of crimes, that must take up that task. But of what would that task consist, if it is really a community that takes it up? Community involvement in the victim of an anti-social act must also be community involvement in the perpetrator of that act, as a community. This dual involvement would imply bringing the victim and the perpetrator together, in an act designed to heal the torn fabric of the community. That would be the response implied in its responsibility.

It would also be a sense of responsibility that can not just pick and choose. Community involvement in the victim must be community involvement in all victims, including those of the judicial machine. It must include those who are victimized by imprisonment. It must apply to all those victimized by biased prosecutions that substitute a nine-to-one incarceration ratio for "equality before the law."

Instead, the more general social response (by prosecutors and spectators) is a call for avenging the wrong (allegedly) done by the convicted person to another (we will see that that is rarely ascertained). It is a call that rationalizes imprisonment as vengeance. But revenge is always an act designed to respond to a criminal act with an "equal and opposite" criminal act. Repetition is its essential nature. The desire for vengeance is always a desire to take the law into one's own hands, which means to dispense with the constraint of law. Its purpose is to make someone suffer for what they did. The revenge ethic thus erases the difference between crime and punishment. It proposes to bargain a suffering for a suffering. Its reality is the commission of a crime in response to a crime.

But what about the "rights of the victim"? The concept of the "rights" of the victim has been used not only to justify imprisonment but to negate the rights of the accused, prior to trial and thus prior to

conviction (we shall deal with the issue of lynching below). It is a call for violence and vengeance against those arrested, simply on the basis of their arrest. In other words, it is a call for the victimization of the accused, rather than justice. The rights of the accused were written into the Constitution to protect society from tyranny. If today, tyranny takes the form of social vengeance, it only highlights the criminality of that ethic. Insofar as a crime is an act of victimization, and the response to it is another act of victimization, then legal response and community responsibility are set in conflict with each other. In such a war, justice becomes impossible. Both justice and healing disappear behind the smoke of revenge.

Capital punishment, as the extreme case, is the clearest example of how vengeance is both absurd and criminal. The murdered person gets no satisfaction or closure from the act of punishing the criminal, since s/he is dead. The convicted person (whether guilty or innocent) eventually ends up dead, so death is multiplied. There are the bereaved of the first murder victim, whose presumed desire for vengeance is fulfilled by proxy by the state. But the bereaved of the first killing are then joined by the bereaved of the second killing (performed by the state), who they will have to confront (in imagination or in reality). Together, along with the rest of society, they then must try to make sense of two dead bodies instead of one (and they generally fail).

Seventeen states have abandoned capital punishment over the last 20 years. A few judges or politicians have stopped it here and there when they got too disgusted with the process. But many people actually enjoy thinking of killing the convicted person, and support it as a political project. The fact that this marks a criminal desire on their part generally escapes them.

But the mind of one who supports capital punishment is interesting, in a morbid sort of way. They find it satisfying that a convicted person will be put to death. For some, it represents "closure," in the sense of "case closed." Or rather, case "clothed" in the presence of another corpse. Perhaps these spectators to death think that the convicted person enjoyed the act for which he is punished, and so they will enjoy the retribution. Many movies portray criminals

as enjoying what they do. Thus, popular sentiment demands that a murderer be penitent, break down and cry in court, and express remorse and contrition. That way, one doesn't have to consider the desperation that had driven a person to commit such an extreme act. And it alleviates the need to recognize that, in calling for blood, one is accepting the same role model (the permissibility of killing) that the murderer himself emulated.

Actually, the revenge ethic serves a broad cultural function. It constitutes a system of implicit instructions as to who to feel empathy for, and who not to. It is thus a building block for social exclusionism and the sense of internal community cohesion that valorizes itself through exclusion. Like all ethics of exclusionism, it establishes exile. The convicted person is no longer justified in claiming status or rights as a human being. Prison is the technology of that internal exile, attaching it as a prison record to a convicted person wherever they go. The ex-convict endures disenfranchisement, second-class citizenship, and disqualification from social programs such as welfare or housing assistance, food stamps, and employment, just when they need those the most. By enlisting all social institutions into this exclusionary process, the revenge ethic takes each prison sentence and transforms it into exile for life, which is actually a form of social death. The revenge ethic becomes a call for the production of death. Yet it hides and decriminalizes itself behind the convicted person's double exile, their physical removal in prison, and then their ostracism at the hands of social exclusion. Prison becomes the technology as well as the symbolism of both that internal exile and its self-decriminalization.

Ultimately, vengeance makes justice (though not self-justification) impossible because it creates an unbridgable separation between the perpetrator of the initial transgression and the community injured by it. Society must pay attention to the person injured. Part of community response and responsibility in each transgressive act would necessarily have to contain some restoration to the injured party. Attention to the victim must be positive in terms of restoring the person and/or those in close emotional connection to full relation to the community. The damage must be mended. But when the judicial machine takes over and exacts revenge in the community's name, mending is obviated. We see that in how the accused is

generalized by the machine. His/her transgression is reduced to a small set of criteria, a template into which the act is fit, and by which the person as such is filtered out.

Each transgressive act has a specific character, conditioned by the transgressor's individual relation to both the injured party and the community. That dual relationality obviates the possibility of generalizing either the crime or the transgressor. Each transgression must be dealt with in its singularity, for the sake of restoration and healing. Recompense must be appropriate to both the injured party and the community of healing. The process of healing must provide the umbrella under which the transgressor, the communal mode of recompense, and the victim are brought together. For justice to be feasible, the humanity and relation to society of both the victim and the accused must continue to be respected. To sunder the relation between the accused and the community, and between the accused and the injured party, is to increase the damage, the tear in the social fabric. No healing can occur.

Yet under the aegis of the revenge ethic, granting the accused his/her humanity has become unspeakable. Response to the damage done, and responsibility for the people involved, cannot be fulfilled once an ethic of revenge has separated them. Prison renders all justice impossible. "Closure" becomes a sign for the impossibility of healing.

Nevertheless, what goes around comes around. The revenge ethic has an inverse form, an unintended or disowned consequence. The person who emerges from the prison system has a strong motive to feel a desire for revenge in his/her own right for having been treated so violently. That often expresses itself as a desire to engage in criminal activity. Society creates criminals by imprisoning people. This has been said again and again by sociological studies of the effects of imprisonment. But it has been essentially ignored. It might not be the case if a form of punishment were possible that did not violate the human rights of the person being punished. In that case, however, it would not serve as revenge.

And suppose the person is actually innocent, and imprisoned because framed by the state, or by other people, or through plea bargaining (which holds today for about a third of all US prisoners).

(Remember that in Illinois, the Innocence Project found that fully one sixth of the people on death row were found to be in fact innocent, about to be murdered by the judicial machine.) If you imprison an innocent person, thinking you are avenging someone, you are committing an injustice as well as two criminal acts, and calling it "justice." (And for what acts do convictions under victimless crime laws constitute revenge?)

Vengeance is generally considered "common sense." One has to do something to the convicted person. But insofar as revenge is the commission of another crime in response to the commission of a crime, by definition, it only tears the social fabric even more. Neither its sanctioning by law, nor the proxy assumed by the judicial machine as acting for the victim change this. In rendering the tear in social relations permanent, the judicial machine and its prisons transform damage into destruction. In short, common sense doesn't work here. It is already a failure of critical thinking, a failure to see into the nature of punishment, the performances of the judicial machine, and even into the nature of "crime."

The problem with imprisonment is that it acts against the purpose for which it was supposedly defined.

### **The Criminality of Punishment**

All this may be familiar. It has been hashed out repeatedly in the sociological literature. The critique of prisons recognizes that imprisonment is itself a criminal act. The injustice of the revenge ethic, the failure of common sense, the absurdity of "closure," the general sense of social victimization that prisons represent (not simply through victimless crime laws), all find a place in that critique. But let us break that criminality down to its component parts.

We understand imprisonment as sequestering. In the judicial machine's rhetoric, its purpose is to remove the convicted person from society (I will refer to those in prison as "convicted persons" rather than "criminals" out of a distrust of the judicial machine's process of imprisoning them). We shall see below that "removal from society" is an instrumentality for something else. But sequestering is just a fancy word for kidnapping.

Kidnapping means to hold a person against their will, in order to trade that person's release for something else. The kidnapper seizes the victim, exerts total physical domination and control over him/her to prevent escape, and to keep the victim out of reach of others (family or police). The purpose of the act is to cause suffering in order to induce others to pay a ransom of some sort. Imprisonment has the same structure (and by "structure" I am referring to the form rather than the motive for the act). The judicial machine seizes the person convicted of a crime (whether guilty or not), exerts total physical domination and control over him/her to prevent escape, and acts by design to cause suffering and harm to the prisoner. And there is an analog to the ransom.

Imprisonment and kidnapping differ in substantial respects, and it is in terms of the difference in ransom that this becomes interesting. The kidnapper gets the ransom paid by the victim's family or friends in the form of money. For the judicial machine, the ransom is paid by the prisoner in the form of time (a portion of life). For the kidnapper, the ransom is paid for the kidnap victim. For the judicial machine, the ransom is paid by the kidnap victim – namely, by the prisoner – and not for the kidnap victim. And the form the prisoner's ransom takes is penance, penitence, and penal servitude. The kidnapper seeks ransom for personal gain, or perhaps to exchange the victim's freedom for the freedom of another person, or to obtain the ability to tell their story to the nation on a TV station. For the prisoner, the ransom is called a "debt to society." One is an act of aggrandizement, and the other is presented as an act of bill-collection. (We shall address this idea of a "debt to society" later in this essay.)

Only certain kinds of persons qualify for the role of kidnap victim – for instance, belonging to a family or organization rich enough to ransom them. And the kidnapper must live at a certain level of desperation, either from poverty, debt, or obsessive desire, to consider the risks worth the effort. The judicial machine, on the other hand, substitutes power for desperation and generally imprisons poor people, people who have no way to defend themselves (by paying for the right lawyers, or buying the prosecutor, etc.). The desperation appears on the side of the kidnap victim (the one who transgresses), rather than the kidnapper. And the ransom ("debt to society") that the

judicial machine collects from the convicted person does not go to the person owed, namely the one injured by the transgressor's acts, but to the state itself. In other words, the judicial machine is metaphorically embezzling that "debt" payment.

Insofar as the state's purpose in punishing convicted persons is to pay a debt to itself using the prisoner as its currency, it depends on social acceptance of this "embezzlement of the debt" to decriminalize it. The citizen, after all, is the audience for the judicial machine's performance, the means of rendering that performance "legitimate theater." For that reason, the judicial machine insists on confessions. Whether it gains them through torture and the blackmail of plea bargaining, they confirm the the judicial machine's decriminalization.

The judicial machine grants itself license to imprison and to collect that debt, as representative of the people – its "audience." Some of those people remain dissatisfied with the ransom collected, and demand that the state seek more dire revenge – that is, exact greater ransom, either through longer sentences or through torture in prison. In the sense that solitary confinement constitutes torture, torture is routine in US prisons. In demanding greater "ransom," they are truly adopting the role of kidnappers, by proxy through the judicial machine.

In sum, imprisonment and kidnapping, insofar as they reveal a common structure, are both criminal endeavors. The judicial machine may categorize them differently – one as "accountability" and the other as common crime – but the form is the same. (Accountability is thrown out as an issue with "three-strikes" laws, which imprison people for "who they are" rather than for what they have done.) The only real difference is that the judicial machine's act is legally sanctioned. But since "legal sanction" is something the judicial machine gives itself, it remains a self-referential procedure, something it does simply by political decision. "Self-referentiality" means that an idea, an argument, or a procedure has only its own existence by which to justify itself. It can call on nothing beyond itself for rationale or authorization.

I am not arguing against the notion of accountability. Everyone must take responsibility for the harm or damage they do to

others, and be held accountable. But that means everyone, including cops, prosecutors, and fraudulent mortgage lenders. However, accountability does not imply prison. It could just as well signify a process of restorative justice, or therapeutics, or other forms of communal interaction. Indeed, once one steps away from the revenge ethic, communal interaction offers itself as deterrence as well as healing. And deterrence is supposed to be one of the reasons for punishment. Instead, we have the revenge ethic, which has become the way this society interprets "accountability."

### **Criminality as Structural**

Let us be clear about "structure." Structure refers to the interrelations of the various elements discerned in an event or an institution or a social phenomenon. Two different events can be said to have the same structure if comparable elements are found to be in the same relation to each other in both. For instance, a high school class room and a catholic church have the same structure. There is an arena (classroom or church) in which an individual (teacher or priest) dominates and gives information and ideas to those attending, who are in all senses subordinate to this hierarchical figure. Questions are directed to the hierarch/teacher, and critical dialogue among the attendees about the subject matter (curriculum or doctrine) is not encouraged. The hierarch periodically checks up on whether the attendees are properly absorbing the information given, either through tests or through confession. Thus, though the subject matter, the information, and the historical tradition of each institution is quite different, they have the same structure. And similarly, individual crime and institutional criminality can have the same structure.

We have seen this similarity with respect to kidnapping. But another type of crime also reveals a commonality of structure with imprisonment, the crime of rape. Rape consists of the violation of a person's body sexually. With respect to the rape of women, a woman's body must first be immobilized by some means, by either force or terror. Rape cannot occur without its victim's body being momentarily imprisoned in forced passivity, with a loss of sovereignty or control over herself and her destiny. Loss of sovereignty does not substitute

itself for consent; it renders the question of consent wholly irrelevant. A sexual act is committed by assault upon this immobilized body that disregards her humanity, or negates it. It is an assault that reduces her to her body as its only concern, the fact that she is female. As with kidnapping and imprisonment, the woman is forced to pay a ransom that consists of herself (and sometimes her life) through what is demanded of her.

These aspects also characterize imprisonment. The prisoner's body's is held by force, a loss of sovereignty through captivity, their humanity is reduced to insignificance. The assault of imprisonment is intended to cause suffering and harm through that immobilization and dehumanization. In short, the rapist and the judicial machine have the same mode of operation. The goal of rape, kidnapping, and imprisonment is absolute obedience as a self-defined role.

Ironically, another aspect in which imprisonment and rape coincide is the idea of deterrence (one of the traditional justifications for imprisonment). Severity of punishment is thought to deter others from committing the crime being punished. A similar notion informs rape. Because the rapist's actions reduce the woman to her body, she becomes generalized as female. The act of raping her then causes suffering and harm not only to the specific woman assaulted, but to all women through that generalization. Each assault participates in the creation of a general fear of assault that besets women. It represents an extant masculinist ideology that forces itself on women's social consciousness, leading them to seek protection, most often in and through other men – though there are alternatives, such as modes of self-defense, organization, isolation, etc. But the overall effect is to deter women from acting independently, thinking for themselves, and perhaps thinking critically of the social structures of patriarchy and sexism to which they are subjected. So too the suffering experienced through imprisonment is designed to create a general public fear of the judicial machine, to dissuade people from thinking critically about the true nature of their society – a society that needs to deploy a prison system as central to its concept of social order. Similarly, people seek protection from the judicial machine in the judicial machine itself, ignoring the criminality of its operations.

Imprisonment is not simply a criminal act. It actually equates structurally to specific legally prohibited acts of violence against people. Let us follow the logic of this criminality.

### **The Criminal Logic of a "Role Model"**

Though sociology recognizes that imprisonment fosters criminality among the populace, it ignores the main mode by which this occurs. Prison serves as a "role model."

When someone is convicted of murder and executed for that crime, the state, through its judicial machine, is committing an act of murder. In fact, it is first degree murder, because pre-meditated. In killing the convicted person, the state thereby sanctions the act of killing a person. It is not providing a license to kill, nor is it creating a right to kill others. But it is removing the act of killing from the category of the impermissible. The state warns people not to emulate the acts of murder it commits when it executes a convicted person. Indeed, it clearly states that this is prohibited. But the fact that it gives such a warning is clear recognition that emulation of its act of killing is a real possibility. When the judicial machine exiles a thief to prison, it steals a life. In stealing years from a life, it is not stealing property, as does the thief. It is stealing human rights in response to the thief's violation of property rights by stealing. In that tangential sense, it is providing a role model for stealing. When the prison administration isolates a prisoner in special captivity (solitary confinement), unable to defend himself, for the purpose of controlling him and his personhood through the intimate control of his body, it is providing a role model for rape. Because imprisonment and kidnapping have the same structure, the state sanctions kidnapping or sequestering through its prison system.

In general, all sanctions performed by the judicial machine impose something on another person against their will, thereby committing a crime in punishing a crime. Crime is thus established as the response to transgressions, even by private individuals. In that sense, the judicial machine has providing a role model for individual's rectifying personal transgressions against themselves. Crime becomes the proper response to what persons perceive as crimes against

themselves. When people regulate their interpersonal relations through assault or murder, they are in essence keeping up with the government.

The essence of the "role model" is that the transgressive act is removed from the realm of the impermissible. To be impermissible means to be taboo, to be something that simply cannot be done without a total loss of honor, respect, and social standing. When the judicial machine kills, it removes the act of killing from the realm of the impermissible. In imparting a sense of normality to that act, it says it can be committed without loss of honor or social standing. It has put the possibility of violence on the table, despite its own legal prohibitions.

Indeed, one person will commit violence against another to remove them from his world (murder or assault). The motive could be money, position, social standing, etc. Implicit in it is also the desire to dominate them (rape, kidnapping, torture, beating, etc.). In either case, the violence results in the destruction of some or all of the victim's human rights. And this is the purpose for exiling a person from society (imprisonment), to curtail their human rights. As any prison administration will tell you, one has no rights in prison. There are only privileges, and they can be taken away. Solitary confinement, being held incommunicado, is the total deprivation of all privileges, as well as of all human rights. Prison, and all violent crimes, belong to the same category, the violation or abrogation of human rights.

Insofar as prison is the context in which privileges can be taken away, it institutionalizes the fact that human rights have no ineluctable claim to existence for any person. Once human rights have been rendered contingent, for which privileges are substituted, both inside prison and outside, then social order and violence become synonymous. The violence by which the state substitutes privileges for human rights is the violence that constitutes its social order. Though the state rationalizes imprisonment as a means to protect people or property from those who commit acts of violence or theft, it is also protecting its own foundation on violence by deploying that violence.

Recently, there have been a number of prisoner actions -- hunger strikes and mass petitions in the super-max prisons of California. What these prisoners have been demanding is better medical care, better food, and an end to harassment. That is, in simply demanding these fundamental aspects of human life, they are testifying to the total reduction of human rights in prison. In attempting to affirm that those in prison are still human, they are claiming that their rights as human beings are being criminally abrogated. Insofar as protection or restitution of one's human rights, of the sanctity of personhood, is the main claim of assault victims, the fact that prisoners have had to organize and petition for these as well only points to the fundamental nature of prison as a form of assault. The destruction of those rights through the social violence that prison exemplifies marks the most general destruction of those rights in this society. It testifies to the fact that deprivation of human rights is not taboo. Human rights are not sacred in a society the legitimizes imprisonment for itself.

The violation of human rights, which most often takes the form of violence against persons, is thus made a possibility in general for people to emulate. When the judicial machine commits criminal acts in punishing a crime, it is giving such emulation a certain legitimacy. It is creating a social environment for ordinary people to similarly regulate their interpersonal relations through force. Legal prohibition only implies that they need to be planned in advance in order to "get away with it." It is immaterial that kidnapping or murder have existed and been prohibited for millenia. What is relevant are the cultural effects of the judicial machine valorizing them in the present.

The social significance of this goes far beyond prison. Though it is against the law to aggressively assault individuals, for whatever reason, when the police use violence to break up a demonstration, to quell a domestic dispute, to stop and harass (frisk) people who are minding their own business on the street, they are creating a role model for social behavior. As agents of the political framework, they are committing crimes that the framework (the Constitution) itself prohibits. Once violence has lost its impermissibility at the hands of society's political leadership and political institutions, it loses it with respect to individual interactions with others. In other words, violent

crime is exacerbated throughout the society under the tutelage of the government.

Furthermore, these "role models" get generalized throughout "normal" social life. If one wishes to punish someone in one's family, one locks them in their room. With respect to husbands who wish to control their wives, many will bar her from leaving the house. One is told not to do certain things because "they will get you for that," as an expression of the revenge ethic. Many impoverished people are said to get what they "deserve." A woman who is assaulted is considered to have brought it on herself, and thus having gotten what she deserved (presumably for acting or dressing seductively). If rape occurs inside a prison among the inmates, it is only because the absolute control they face under the prison's power turns them inward against each other, but on the same model as the power of imprisonment itself, that is, the immobilization of a person, and a destruction of their sovereignty. For the judicial machine, rape among prisoners is only an extension of the fundamental purpose of the prison. If rape occurs outside the prison, it is an expression of the power relation generalized by the prison itself.

It is thus somewhat disingenuous for people to complain about violent crime, as long as they sanction the crimes committed by the political structure by supporting the prison system. They are accepting the extension of violence to their own social environment. If they call for greater policing, and larger prisons, then they are calling for an increase in social violence. They are thus unwittingly aiding and abetting the spread of criminality that they think they are standing against.

Of course, prisons and judicial punishments are not the only criminal role models provided by the government in this country. War, for instance, is both the legalization and the valorization of killing, as a role model. War movies make killing both honorable and patriotic. Yet, that honor is strangely perverse, because the role model provided by war is contradictory. For the last 60 years, the US has waged wars of aggression, bombing other countries and landing troops they have trained to be killers on foreign soil – Korea, Vietnam, Panama, Iraq, Afghanistan. It has however referred to these

aggressions as "self-defense." Self-defense against aggression is universally accepted as a human right. To consider aggression a form of self-defense twists the concept of aggression beyond recognition. Most people in the US actually think that US invasions of other countries is defensive. On the individual level, criminal violence or assault against an individual who one may imagine as threatening (whether physically, or simply psychologically, or in terms of one's social position or standing) is thus given tacit legitimacy as self-defense. It is common for homophobic men, who have chosen to assault gay men, to then say they felt threatened. It has become routine for police officers to excuse their having shot and killed a person on the street by saying that they "felt threatened." (Eleanor Bumpers, an 86 year old woman, had a screwdriver in her hand when the police arrived to evict her, and they shot her dead because they felt threatened.) When SWAT team raids on houses result in people getting killed, it is rationalized as defending society against crime. Thus, tacit legitimacy is given to extreme violence committed by an individual who feels threatened.

Though these role models provided by political institutions do not confer licence to commit crimes of violence, they link to personal behavior through the dimension of power. Power is an interesting concept. Most political science, including Marxism, speaks of state power as that wielded through violence and the institutions of violence, such as the army, the police, etc. Foucault asks why it works, and analyzes the structures of internalization of power in the individual's sense of self-discipline. One subjects oneself to the power of the state and its institutions, as their reflection, and claims entitlement on the same basis. Adolph Berle, on the other hand, goes out of his way to argue that power is wielded only by individuals. [*Power*] Power for him is "invariably personal." And one could conclude from this that role models would necessarily be a stronger influence than rules (law). But Berle goes on to argue that the exercise of power, even by the individual, can occur only through organization. "The obligation of power takes precedence over other obligations formerly held nearest and dearest." (65)

In other words, one thinks by means of the obligation, and not simply through an acknowledgement of it. The obligation (of the

individual to the organization through which power is expressed) ceases to be an object for contemplation in itself and becomes instead an internalized sense of subjectivity. That is how organizations, be they corporate or cultural or police or government, control and condition what those in organizational positions will think, and therefore how they will act (in the sense of being cogs in a machine). To think otherwise than what the organization establishes would then be to separate or alienate oneself from it, risking being forced out. And this would also hold for those in ordinary economic activity – the obligation of "holding" a job, for instance, or of participating in social organizations like clubs or gangs. Thus, the influence of role models is strengthened by this individual-structure relation, in the context of formations of individual power.

In short, prisons are both the symbol and the source of institutional inducement of criminality throughout this society. They reveal a deep hypocrisy, deterring and fostering violent crime in the same gesture. But then, it is more proper to say that, rather than prison being a response to crime, crime is a response to the existence of prisons. Prisons stand as a source of crime not as an institution, but through the logic of imprisonment itself, for which the institution is only the technology.

Prisons must be abolished because that is the only way that the operation of the logic of prisons can be brought to a halt. To do that, we shall have to change our notions of crime and law, as well as of punishment. This will not require a change or reinvention of a notion of "justice," however. So far, the concept of justice has not entered into any of these considerations. It remains alien to and beyond the scope of the logic of prisons.

### **The Judicial Machine and the Myth of Justice**

The logic of the role model constitutes an inducement if not a justification of crime. The logic of prisons is the production of criminal role models by the state. This logic stands in contradiction to the common view that, when someone violates the law, they should be caught, brought to trial, and punished by imprisonment if convicted. It stands in contradiction to it in two ways. The first is that

the judicial machine is an accessory to inducing crime. And second, because that linear sequence of stages generally understood as the operation of "justice," is actually a myth. It is a fantasy of "justice" that departs from any real justice in two important ways. First, it considers each transgression as isolated, unconnected to political context, economic conditions, or background events. It is no longer possible to make connections between cases (to "connect the dots"). The Baldus study (1990), introduced in *McCleskey vs. Kemp*, statistically showed the existence of clear racial bias in death sentences. Yet it was not admissible in court because racial bias had to be shown in each specific case, an impossible job if it becomes evident or discernible only in the aggregate. At the same time, each transgression is refused uniqueness since it is defined only through its relation to the law, and not to the transgressor's personhood, nor to the social context in which the allegedly anti-social act was committed, and in which the victim was embedded.

Once upon a time, judges had the ability to consider both the uniqueness of each case and their social matrix. Whether they did so fairly or not is another question. But today, as Michele Alexander has shown (in "*The New Jim Crow*"), the growing power of prosecutors, the passage of minimum sentencing laws, and a politics of being hard-on-crime, have discarded that sense of judicial operation, and replaced it with a machine. As such, the linear view of judicial process fails. The uniqueness of each case, and its situatedness in a social context, are not in contradiction. But both are contradicted by generalization at the hands of a machine and the isolation of each case from all its social relations.

More importantly, on a procedural level, the judicial process gets derailed by the prevalence of plea bargaining. Plea bargaining is a ploy by prosecutors to clear the docket and fill the jails. A person may be arrested on a minor charge for which evidence is scanty. The prosecutor however can decide on more serious charges (for which there is no evidence), conviction for which threatens the person with decades in prison. The person is then offered the option of pleading guilty to a lesser charge, rather than risk the longer sentence. The bargain is presented as an economic move to save the state the expense of court trial procedures, but it is actually blackmail. Worse,

it is also based on terrorism. In addition, prosecutors have large budgets by which make the cases they decide to take on, while public defenders are underfunded, unable to hire assistants or get research done. Thus, in the absence of alternatives, public defenders end up advocating for the plea bargain. Many individuals are thus induced to confess to things they didn't do.

More than a third of the prisoners in the US today are doing time as a result of a plea bargain. The absurdity of this is revealed by the fact that an assertion that all of them are innocent of any crime cannot be contradicted. The process of plea bargaining renders judicial guilt or innocence totally unknowable, by definition. The only record of guilt is a confession obtained by threat. Thus, the true number of actually guilty individuals cannot be known. In other words, plea bargaining upholds the myth of judicial procedure by violating it. And it puts the lie to the cost-cutting argument, since expenses are simply shifted to prison operations.

The real purpose of plea bargaining is to fill the prisons.<sup>2</sup> The ballooning of prison populations was not the result of an increase in crime, but rather of a change in policy. That policy included augmenting victimless crime laws, enhancing police obedience statutes, declaring a "war" on drugs, and a general sanctioning of racial profiling. After 30 years of the so-called war on drugs, the volume of drug trafficking is higher and the prison population is greater.<sup>3</sup>

The US does not have the highest crime rate in the world. At the time the prison industry started to expand (in the 1980s), crime rates were actually falling. What it has developed is the highest rate of state criminalization of its own people in the world, and the severest policy toward imprisonment. The police have been militarized and given greater control over people on the street (stop and search laws), and the instances of police shootings has skyrocketed (over 2000 unarmed people were killed by the police in the decade of the 1990s; that number has gone up since). Imprisonment in the US signifies the highest level of criminality committed by the judicial machine, both in its police operations and its prison operations.

In short, people are caught by the judicial machine and prosecuted at a high level of arbitrariness, for which "law" only serves as a procedural dictionary. The machinery of prosecution may think its procedures are legitimate, but its self-legitimization spansks of fraudulence. It is an imprisonment machine which has imparted on police operations the mythology that arrest implies guilt. But if arrest now produces guilt, then the common "linear" understanding of crime and punishment (as given above) has it backwards.

### **The Nature of the Judicial Machine**

What can we say about the judicial machine? It is composed of people who perform different tasks, the totality of which, in their outcome, have the same structure as violent crime, and which they accept as their jobs, for which they get paid. Some of those tasks involve search and seizure, or holding a person at gunpoint; some are the acts of sequestering, locking in cells; others are the placing of chains on persons (not all, and certainly not the rich) before they appear in court. Each of these constitutes a crime against a person. The punishment the judicial machine imposes on the convicted person is itself a criminal act. These tasks are performed by individuals who do not see themselves as criminals because they are cogs in the judicial machine. It is the judicial machine that provides an umbrella of institutional legality under which these tasks can be performed. Ironically, that umbrella attracts many who are driven to engage in criminal activity, such as the judicial machine performs, because it provides the opportunity to satisfy their psychological need. And it provides social status. They are given the aura of peace keepers while having imminent access to the deployment of violence. To the extent the judicial machine honors and valorizes its own institutional violence and criminality, it implicitly honors and valorizes similar acts by individuals who work for it.

The judicial machine is also racializing. Its operations rest upon a vast system of racial profiling, and biased prosecutions. Michele Alexander has described these operations in detail in *The New Jim Crow*. A directed mode of police violence is aimed at specific people (of color), reflecting a political decision to criminalize

them. Applied by the judicial machine, it constitutes a policy of racializing violence, which constitutes another paradigm of social criminality, and whose function is to justify and decriminalize racialized prosecutions and imprisonment. And racially biased incarcerations have the effect of enhancing socially extant racial discrimination and segregation. This entire complex of processes forms part of the cultural structure of racialization in the US, designed to produce an undercaste defined on a racialized basis. [Steve Martinot, *The Machinery of Whiteness*] It is a way of returning to the racial situation that existed before the civil rights movements and their attempt to democratize this country.

Among the personnel who function in the judicial machine, there is a sense of community. It provides membership and belonging, whether despite or because of the crimes the judicial machine commits. And there is a deference and social recognition on the part of others toward the police and the courts that accompanies this. The desire for membership and recognition is so strong that it often sweeps aside any sense of justice, fairness, or humanity (aka human rights). Thus, the impunity granted those in the judicial machine who act violently toward people is ratified by others in the machine, rather than condemned as illegitimate or anti-democratic. A similar sense of belonging has been seen to infect some veterans returning from Afghanistan or Iraq. Despite their recognition of the utter criminality and horror of those wars of invasion and conquest, they desire to rejoin their units in order to retrieve that sense of communality.

Ironically, for members of the judicial machine, there is also a profound cultural separation from ordinary people. They know their job is to imprison people, to immobilize people in order to control them. They are taught a disdain, and are required to despise people labeled "other" (aka "convicted person"), as part of their membership in the machine. To the extent this knowledge and disdain informs their actions, police, prosecutors, and prison guards all take on the structural attributes of the rapist.

Ultimately, the function of the judicial machine is to decriminalize its criminal acts, to decriminalize its act of judicial punishment, the criminality of punishment itself, in advance.

## The Institutional Criminality

### The Structure of Punishment

#### Judicial Morality

What is the true nature of a society that can construct a judicial machine for itself that exacerbates the social problems it addresses? Few sociological critiques of prison and judicial systems have asked that question. For most, the "nature of society" is assumed, and their questions concern how institutions or social processes succeed or fail in their self-assigned projects, such as whether prisons or capital punishment actually deter crime. That is, sociological critique tends to take the judicial machine at its word that its purposes and functions are to eliminate crime, and study whether it is successful or not. For many, the idea that the judicial machine is at the core of the political problem, that violent crime is a reflection of the logic of state violence, does not compute. Thus, they spend time trying to resolve the problem of punishment (not "solve," but "resolve"). But rationalizing the machine's assumptions only leaves them unquestioned.

Jeffrey Rieman, writing in *Criminal Justice Ethics*, actually begins by recognizing the similarity between "criminal justice" and crime, that is, the fact that punishment for conviction of a crime retains a similarity to a criminal act. Rather than address the meaning of this similarity, or the logic of imprisonment, he examines how the state must establish for itself the moral authority to proceed with imprisonment, that is, substantially differentiate itself from its "other." He argues that the state assumes the moral right to bring criminals to justice as part of its moral right to define crime in the first place. If "moral right" is what must legitimize punishment by establishing a difference between the criminal's act and society's response, than not only must that moral right be justified, but the state must show itself to be more moral than the citizen who breaks the law. Without moral legitimacy, what the judicial machine does would occupy the same moral plane as the criminality it punishes. The underlying question

however assumes the possibility that a judicial machine can inhabit a higher moral plane, and thus morally justify its prison system.

For Rieman, an institution that punishes crime could count itself as moral if its punishments were imposed equitably and equally under the law. That would mean that two acts of cold-blooded murder with a pistol from a distance of 15 feet, such as the killing of a jewelry store owner during a heist and the killing of a man in the subway by a cop because the man was acting funny, should both get the same sentence. (Charles Hill was killed in cold blood from 20 feet by a BART cop in SF, July 3, 2011.) Yet because the cop works for the judicial machine, his act is seen, in the logic of the judicial machine, to be on a different political plane from that of the jewelry robber. Of course, no two crimes are equal because they are committed by different people with different experiences that drive them in different ways toward violating the fabric of the social order. The jewel thief is clearly driven by a level of social desperation that the subway cop with his job security does not face. Thus, the cop has less justification for killing a person, making his act of murder all the more heinous. But the subway cop was not even indicted. He was adjudged by his department to have acted "lawfully." That is, the cop and the jewel thief were in fact judged under the same law. And since it is the judicial machine that judges, it thereby establishes its moral legitimacy by fiat, self-referentially.

Equitability under the law does not take into account the real problem. A moral distinction between the criminal's act and the judicial machine's act would be meaningful only if the judicial machine's actions did not serve as a role model. As soon as they do, they become a source of criminality among the populace, a criminality the machine claims to wish to suppress. As a role model, the state generates the idea that killing and/or the deprivation of human rights are permissible. That is, they have moral legitimacy a priori. The justification for a distinction between acts dissolves. The reality of the role model destroys all moral credibility for such a distinction. However, to lose credibility means to lose legitimacy. In effect, acts that violate the law and acts of the judicial machine enforcing the law both belong to the same category of anti-social behavior. Both enact a criminality. And that is probably as good an

explanation as any for why punishment has never worked as a deterrent -- not in England when thieves were routinely hung in public, nor in the US where somber morbid circuses are performed by the media around death row executions.

There is nothing unusual about the forms of punishment for crimes committed being themselves criminal. This has been the case throughout European history, since the Roman Empire. And there is nothing unusual about the government that performs the crimes it calls punishment feeling self-righteous and sanctimonious about itself and its actions. The problem is the role model, the inseparability between criminal behavior and the criminality of punishment, which undermines the morality needed by the state to justify itself.

### **The Objective View of Crime**

Another approach to this problem of punishment (and of its moral justification) is the so-called "objective" view of crime. The assumption it makes is that the commission of crimes is an "objective" occurrence, and can be studied like any other object, such as an electrical storm or a flood. Floods can be understood in terms of mountain snow accumulations and spring thaws. And similarly, the foundations of crime can be found in certain social phenomena, which produce various psychological drives in a person. Actions performed at the behest of those drives, in the context of those underlying social phenomena (to the extent they are known), can be studied and generalized. To conclude on that basis that a person is objectively criminal provides the justification for locking them up, to bar them from further criminality and to defend society against further depredations. This is the thesis underlying California's three-strikes law. It is a common theme in TV cop shows. "He's done it before; he'll do it again if we don't stop him." As with floods, society simply has to defend itself by building dikes (i.e. prisons).

This is a theory of crime that is not concerned with the guy who gets into a shouting match with his wife and leaves finger bruises on her arm. Its attention is focused on those who lurk, hidden in darkness, and strike out at the unsuspecting because "that's how they

are." It is a theory that imposes an objective nature on people. But to do so has a number of strange effects.

First, it treats those it categorizes as if they, as real human beings, were totally unknown to the community. They are assumed to be somehow alien to their own neighbors, since they emerge as criminals whereas their neighbors do not. In their own struggles to survive on a daily basis, both psychically or physically, they must be estranged, since their criminal nature had remained unknown. When a person suddenly erupts in violent behavior, their actions are simply explained by saying that, under a kind façade, they had a "criminal mind." But here, the explanation produces its own basic assumption in postulating that there is such a thing as a "criminal mind" (as the famous TV show about profiling argues in case after case). This "mind" may be born in response to social factors like child abuse, but it is considered to grow aberrantly on its own, since there are people who don't develop a criminal mind in response to similar environmental or childhood factors.

The media plays up this aspect of estrangement, interviewing people who express dismay or shock upon learning that a person they knew slightly, often as kind and helpful, was capable of "such things." However, the meaning of this disparity rarely becomes an issue. Alienation is a two-way street. It includes an individual's withdrawal from others, but also an exclusionism by those others. Personal reserve and a subtle ostracism by others both produce a separation, which the individual must find a way to survive.

But there is an alienation in the theory itself. In addressing the "criminal mind," it reduces the person's social environment, the neighbors and acquaintances, to a passive background, a non-factor in the subject's behavior. Indeed, the point in categorizing people as "objectively" criminal (after the fact) is to ideologically remove them from the realm of the social. It assumes that social phenomena (community and social norms) and individual actions exist on separate planes. This allows violent behavior to be relegated to the realm of the unethical and punished accordingly, while leaving the social environment or framework in which this behavior occurs as virtuous and non-criminal by definition. What the social environment

or immediate community "teaches" by its own alienating practices are thus inherently discounted with respect to the assailant. The latter is not responding to anything, but acting out lone drives and intentions, in which the community and social environment are by definition uninvolved. In other words, objectifying the criminal is a purification procedure for all to whom the criminal may have related.

Part of that purification process is that the social institutions that define certain individual acts as crimes define their own operations to also be on a different plane, one to which the concept of crime is not relevant. They are simply doing the necessary job of removing "criminal minds" from the social environment. Dahmer was a serial killer, portrayed as a man who enjoyed what he did, while the prison system does not. Prisons, criminally assaulting people in case after case, and capital punishment, killing people execution after execution, are not seen as serial criminality, and thus not as part of the social environment of actual killers. The "objective" approach to crime thus conceptually subjects the "criminal mind" to an exile, through confinement to a category, long before imprisonment actually does. Sanitized in advance, social institutions are given exemption from moral impurity by political definition. In short, the notion of an objectively criminal mind is a self-decriminalization procedure on society's part.

The real problem with such an "objective" approach is that it is self-justifying and self-defining – which means it is not "objective" at all. Self-justification means that the only rationale one has or needs for one's actions are those actions themselves, not anything beyond them. A self-defining system defines what is objective for itself in the world, in effect placing that "object" there for itself to then find.

This actually explains the nature of law and its prohibitions. An act is categorized as criminal through political enactment. To outlaw something means to define it legislatively by law as outside the law. Having defined certain actions as criminal, one can then find them in the world as if they had always already existed as criminal. In other words, an act's very existence as a crime has its source and foundation in the legislature, not in the act itself. To treat crime as objective means that it is precisely not the product of socio-political

definition, but was spawned in the world from a different origin, somewhere else out of relation to others. It permits the judicial machine, committing its long series of executions, to not be seen as a serial killer, without pointing out that it is only politically defined as not being one.

What ironically characterizes legislative enactment, however, whether defining crime or anything else, is that it can be repealed. A crime can be legislatively redefined as a non-crime. Thus, there is no objectivity to a crime. An act becomes criminal only because it has been defined as such, and would cease to be criminal in the event of repeal. For example, prior to 1945, the concept of "crimes against humanity" did not exist. That concept was encoded in international law through the Nuremberg Process, and later by the UN. When the US committed acts in Vietnam to which that concept applied (as does the concept of "serial killer"), and then refused to countenance the jurisdiction of the UN or the World Court over what it was doing, it was simply de-defining such actions for itself as non-crimes. But it used the same kind of gesture to justify its aggression in Vietnam as it uses to define some men as serial killers, that of political definition. The concept of criminality hinges only on the power to define, or to redefine, and not on the act itself.

This implies that there is no such thing as objective criminality. It also implies that there is no "right" to punish, but only the power to punish at the behest of a politics of punishment. Dahmer is punished, but the men who killed Goodman, Cheney, and Schwerner were not. Lynching is a form of serial killing by a community of white people. Congress has never managed to pass a law defining it as a crime, let alone outlawing it. The fact that certain acts that are clearly criminal can be considered legal by default because left undefined is of a piece with the fact that certain other clearly criminal acts can be defined as legal – for instance, imprisonment and capital punishment.

When a police officer shoots a person to death and then says he felt threatened, he is generally not charged with murder. Oakland police officer Rodriguez shot Randy King (16 years old) in the back as he was walking away, but was not charged with murder because

the officer said he saw King reach for his waistband, and so felt threatened. Randy King was black, and black people get shot fairly routinely by the police under cover of racial profiling. In recent years, such killings seem to be happening on a weekly basis (Kenneth Chamberlain, Ramarley Graham, Raheim Brown, Brandy Martell, James Rivera, Brisenia Flores, Jordan Miles, Kenneth Harding, Shaima Alawad, Alan Blueford, Derrick Gaines, and on and on). None of the officers who killed them have been prosecuted. In Oscar Grant's case, the cop was prosecuted only because of massive demonstrations, the existence of video tapes, and the formation of resistance organizations. Charles Hill, a white man, standing still on a subway platform in San Francisco, 20 feet from the three cops who confronted him, was shot to death, and the cop who did it was not charged with murder because he said that he felt threatened (this case is mentioned above). When Amadou Diallo was killed by four cops in NYC, his assailants were so intent on killing him that the last two bullets to enter his body went through the bottoms of his feet. A massive outpouring of citizen outrage shook the city, forcing the indictment of the four cops. A month after the four were acquitted, two men who had been instrumental in organizing the protest movement against Diallo's murder, Malcolm Ferguson, and Patrick Dorismund, were themselves killed by police.

The fact that this kind of police action has become so prevalent signifies that it has become routine, which is another way of saying it has become a mechanical procedure on the part of the police. And here too, the state, through its police actions, is providing a role model to the citizens. When George Zimmerman, a civilian, stalked and shot and killed Trayvon Martin, a black teenager, in Sanford, Florida, Feb. 2012, he had simply to say he was attacked by Martin to back up his claim that he shot in self-defense, though there was no evidence of his having been assaulted by anybody (the fact that evidence surfaces a month later makes it worse than suspect). It took massive protests and federal intervention to get Zimmerman indicted.

But if clearly criminal acts can be either left undefined or actually defined as legal (police killing when allegedly in "self-defense"), then there are no theories to be applied. Neither speculation on deterrence nor the thesis that crime can be considered objectively

can have real social import. The only relevant overarching concept with respect to crime, prisons, and imprisonment is the question and arena of political decision. We cannot understand what crime, prison, or punishment mean except as the expression of political decisions, which means through the operations of a power structure.

It does not even matter that the political arena of that power structure might consider itself democratic. Its decisions remain its own, and not those of any electorate. Democracy means that those people who will be affected by a policy not only decide on the policy but get to articulate the terms of the policy on which they decide. But in the US, this simple idea has been withheld. Like war itself, as well as the war on drugs, prison expansion, police racial profiling, and the militarization of the police, the nature of punishment and imprisonment has never been put to a vote, let alone discussion, by the people. The entire issue is purely the result of a power structure's self-legitimizing procedure.

### **Ethical Judgment vs. Political Decision**

Let us summarize briefly. By looking at the structure of social actions rather than the political definition of those actions, we arrive at the following. Imprisonment is a criminal act, comparable to any other kind of assault on a person's human rights. The judicial machine is a criminal enterprise (an enterprise to make people suffer) whose central purpose, however, is also to decriminalize the criminality of imprisonment. Both imprisonment and the judicial machine serve as role models for further criminality among the populace, and are thus wholly implicated in what the judicial machine calls a "crime problem" (from which it subjectively excludes itself). In light of the "role" of the role models that the judicial machine provides, crime is as much a social phenomenon responding to the existence of prisons as the other way around. Punishment cannot alleviate crime or the totality of criminality in a society because it adds to it. Insofar as prisons are responsible for a crime problem, despite being politically defined as a response to it, a prison system has no justification.

By regarding the structure of prison and punishment, we have moved aside the political rhetoric that defines them in order to open

space for a more direct ethical interpretation. Actions such as imprisonment or assault can be judged by what they do structurally rather than by what is said about them by the judicial machine or by the law. For instance, to think that dropping napalm on a Vietnamese village is an act of mass murder is an ethical judgment. It contradicts the US government declaration that its bombing of villages was a legitimate act of war (though it violated the Geneva Agreements on war). To see that bombing as murder means to come out from under the discourse of US political decision, and stand in an entirely different arena of judgment. One has to stand outside a structure in order to see its contours and the way social institutions name them. Ethical judgment examines the structure of an event, where political decision (by the US government or the judicial machine) simply exercises the power to define. Such judgment may use the language of law (the term "murder," for instance), but applies it to the action's structure. It is ethical discourse that apprehends the self-legitimizations of power as decriminalizations procedures.

Ethical judgment and political decision are two distinct forms of discourse. The difference between them should not be mistaken for the difference between a populist protest and legality. Both protest and legality originate and are contextualized by power and its decisions, and thus belong to the discourse of power. The former, the populist protest, may stand against those decisions, but from within their purview. A demonstration calling on the US government to stop the bombing of Afghanistan is acting from within an acceptance of the existence of this war maker and its having permitted itself that war, while standing in opposition to this particular aggression. Ethical judgment, on the other hand, stands outside the umbrella of power and articulates a description of events from a human point of view. From that human point of view, the napalming of a Vietnamese village, or the bombing of Afghani towns by B-52 bombers, are nothing but acts of mass murder. The question the human point of view then faces is not how to influence government policy but how to end institutionalized mass murder and the institutions that commit it. It is from the human point of view that capital punishment reveals itself to be just another act of pre-meditated murder. And it is from that human point of view that imprisonment is an act of kidnapping.

The irony of imprisonment, insofar as it is a vengeful act, is that it actually criminalizes the victim of the crime being avenged by naming that victim as an accomplice to the criminal act of vengeance.

Across the ethical difference between ethical judgment and political decision, the self-legitimization of the judicial machine and the reality of its acts of punishment are in total contradiction. It is in terms of that contradiction that the judicial machine can be grasped as both criminal in substance and a system of role models for criminality in form. And from the perspective of ethical judgment, the deterrence function defined or assumed for imprisonment becomes its opposite through the role model effect.

Ultimately, without access to that ethical difference, we would have no independent means of evaluating the government's actions. We would be locked into its self-justifying terms. Our judgments would be restricted to deciding whether it did its job competently or not, but not to whether that job had virtue or was itself criminal instead insofar as it made other people suffer. Without access to ethical difference, people would have no independent means of evaluating the actions of any organizations to which they belonged. A political party that advocated policies designed to enhance racial segregation, or punish the impoverished for their poverty, could be seen as criminal only through the ethical judgment that would discern the suffering such policies engendered. Either we judge ethically or we accept what organizational self-legitimizing reasoning tells us. Thinking critically must always choose the former. To accept the state's political decisions as such is to refuse to be critical of either its actions or its reason for being.

To the extent there is general support for the paradigm of imprisonment, it is because the judicial machine's self-legitimization is accepted without critical thought. Prisons are assumed to be fundamental to society only because they concretize the judicial machine's account of itself. The task of that account is to make the technology of imprisonment look natural.

From the human point of view, political or organizational decisions can have no greater sanctity than personal decisions do. The acts of institutions and their agents (such as officers of corporations)

can be judged in the same way as individual behavior. What an institution does pursuant to political decision parallels what the individual does pursuant to personal decision. Insofar as the judicial machine renders certain criminal acts "not impermissible," any individuals who comport themselves in like fashion can be considered to be simply emulating the machine. When the acts of each display the same form, then those acts must be judged the same ethically.

While this may seem to accord with the concept of corporate personhood, it is a principle that would actually render the corporation itself impossible. The purpose of incorporation is to avoid personal responsibility for corporate actions while insulating the corporation itself from criminal law insofar as that law refers only to humans.

The dilemma of prisons, the problem of its being both a response to crime and a role model for crime, expresses itself as an opposition between the ethical and the political. If the political cannot be brought into accord with the ethical, then prisons, as a technology of unmitigated injustice, will have to be eliminated.

## **The Structure of Crime**

### **The Elements of a Criminal Act**

Common sense understands crime as something that violates the law. But the law can only play one of two roles. Either it is the expression of political decision, meaning that something becomes a crime because a power structure has defined it for itself as such. Or the law functions as a language by which to speak about the relation that a power structure adopts toward the things people do. The first is arbitrary and the second is dictatorial. In order to speak about crime in a meaningful way, we shall have to distance ourselves from either situation. We need a concept that expresses a human point of view on the phenomenon called "crime," without recourse to "law" and its ineluctable power-identification. (Granted, some form of standardization of concepts is indispensable to a social order, but the concept of "law" would have to be changed if it were to fit into a structure of participatory democracy, for instance.)

Let us begin with a simple (and wholly simplistic) description of a criminal act. It is an act committed by a person that harms someone. The harm may be bodily, emotional, social, economic, or some combination of those. It may be damage to a person's property, damage to a person's body, damage to a person's social reputation, or other forms of harm. Robbery harms the owner of the property taken, insofar as s/he suffers from its loss. Assault makes the one assaulted suffer physically. Blackmail makes its victim suffer for the loss of what is extorted as well as emotionally in having to face the threats on their lives that constitute the force of blackmail. Murder makes society, family, and friends suffer the loss of the person killed. Rape and torture are too complicated, with too many dimensions of suffering, to deal with in sound-bytes like this (we shall return to them later). In short, there is a victim who is afflicted by the act, and made to suffer.

The person acting criminally may be an individual or an organizational agent (such as a police officer), but there is generally some form of personal benefit (gain of property, money, revenge, ridding the world of an adversary, or exacting obedience). The person committing the act may not intend to make the victim suffer, but there is a victim who suffers. That is the core of this human concept of crime, the suffering of a victim at another person's hands.

This has to be distinguished from the suffering that occurs from the breakup of a personal relationship, for instance. When an intimate relationship ends, there is often great personal suffering. When a person is jilted, or stood up on a date, or cheated on, or the relationship is unilaterally broken off, the source of feeling wronged comes from within the relationship itself, from a sense of violation of its intimacy, its mutuality, or that an important level of agreement has been broken. What is violated is not the person's standing or situation in society, but rather their standing or situation within the relationship. There is an internal common language and a common feeling that is torn asunder, and the cause of suffering come from within that, not from outside it. That is, the relationship itself rather than the social environment is the context for there to be suffering. For crime as conceived here, the violation comes from beyond mutuality, and dehumanizes the victim by breaking his/her relation to

the world or to society through physical, economic, or emotional assault.

When robbery happens within a friendship, it constitutes a criminal violation as well as a break in the relationship. It reduces the one robbed to the level of an object, reflecting a refusal on the part of the robber to preserve the other's sense of personhood, eroding or discarding the mutuality of friendship. Thus, robbery or assault within a friendship or intimate relation causes suffering not only as a criminal act, and not only as a sundering of the relationship's mutuality, but by reducing the friendship to a subject-object relation. The violation is triple. When a husband beats his wife, the violence of that assault comes from beyond the intimacy of their relationship, and violates the understanding of mutuality and care that any intimate relationship depends on, while dehumanizing the woman as both a person and as a member of the family. A husband stealing his wife's wages to go out drinking has all the same effects. The fact that the battered wife, in escaping the relationship to seek safety elsewhere may cause the husband suffering would not ethically constitute a criminal act (though her abandonment of the marriage might under certain legal definitions). Her motive for doing so would be his violence, which would constitute a criminal act. She has not committed an act of assault by turning and walking away from him. But she is breaking the relationship, a relationship that is already torn.

Thus, in our general description, crime is an act that a person commits which harms another person, usually for some kind of personal gain, and which both causes its victim to suffer and dehumanizes the victim (however momentarily) by and for the one acting. The victim's suffering can be physical, emotional, social or economic, or some combination of those, and the perpetrator may or may not feel concern for the suffering of the victim. But there is always a goal for the perpetrator (personal enrichment, personal survival, vengeance, an expression of rage or hate, a defense of social standing, and many others), from the attainment of which the victim will suffer. The true essence of crime is that it is an act that makes another person suffer.

And there are people who truly desire to make others suffer. Among them, two groups are primary, those who live in antipathy toward certain groups or individuals, and those who wish to imprison people who they perceive as wrong-doers. In the first group, expressions of antipathy can range from individual assault (such as rape) to general anger against a community or group (many white supremacists relish the idea of torturing or killing people of color), or even mob action driven by a bloodlust. The two white men who, in April 2012, drove through a black neighborhood of Tulsa, OK, shooting people at random, killing three and wounding two, belong to this group. The cops who broke up a peaceful demonstration on Cal-Berkeley campus in Nov. 2011, crashing their batons into people's bodies and putting many in the hospital (one woman ended up in intensive care), did so because they desire to make people suffer, and reveal a deep-seated rage against disobedient students as a group.

The second group is composed of those who seek and accept employment in the judicial machine because it gives them the opportunity to satisfy a desire. They make a living imprisoning people, especially those in violation of victimless crime laws (the vast majority of arrestees), in order to make them suffer. It would be comforting to think that they might eventually realize the criminality of their desire and their employment. But if they did, they would simply quit the job and get an honest one somewhere else. It would have little effect overall.

This latter group would not include those who might support imprisonment out of a fear of being attacked (on the street or elsewhere). Such people have simply been fooled into accepting the myth that removing violators from society will make things more stable and secure. They may not wish to make prisoners suffer, but cannot think beyond the ethos of exiling anyone who expresses active contempt for the law. They do not understand the nature of prisons, nor of the judicial machine.

Individual acts of criminality differ from the criminality of the judicial machine in that the judicial machine always has the goal of making its victim suffer, while that is not always true of individual crime. In each undertaking, someone suffers, but only the judicial

machine acts for the express purpose of making someone (the convicted person) suffer. Ordinary criminals who commit crimes for personal gain generally don't care. It is not something they focus on. But the judicial machine does. That is another dimension of the similarity between imprisonment, rape, and kidnapping.

What this doubling of criminality means is that the function of law is to define the difference between the crimes committed by individuals and the crimes committed in punishing individuals. The judicial machine materializes a politically defined dividing line between the anti-social act of the criminal and the criminal act of social punishment. Since law exists only by political definition, the difference between those two criminal acts exists only by political definition. That is, there is nothing inherently distinguishing in that difference.

### **The Crime of Punishment**

To recapitulate, in the operations of the judicial machine, there is an (institutional) act, an agent who performs it, a convict (a word from the same root as "victim"), and a goal of making the convict suffer. A convicted person is locked in prison against their will for that purpose. Those in the judicial machine generally assume that they are doing something good (for social rather than personal gain), though the desire to make someone suffer is the acknowledged and conscious goal.

Because they have the same structure, the goal of the act of punishing someone for a crime is similar to the goal of any other crime. A robber thinks that by gaining another's property, he is gaining survivability or social stature. And the judicial machine thinks that by establishing imprisonment of people it convicts of crime as a social norm, it is gaining in virtue and security. But the judicial machine is committing a crime in doing so, regardless of how guilty the convicted person may be. Insofar as "crime" does not have an objective character, like colors or the clarity of tone from a violin, because it is the result of political definition, there is no strict distinction that can be drawn between an individual committing an act and a social institution committing the same act.

Many in society demonstrate this in their bloodlust for the punishment of criminals. In the context of society thinking itself virtuous by punishing those it convicts, though it is only acting out of a desire for revenge, those who clamor the loudest about victim's rights do so only in order to see the convicted person suffer more in exacting revenge. They thus express a generalized desire to victimize. In structure, they differ little from the torturer or rapist.

We need a different designation by which to refer to individual crimes and those crimes committed by the judicial machine in punishing someone. We could call the individual's act "specific" in the sense that the suffering of the act's victim is specific to the crime and its situation. Crimes committed by the judicial machine would then be forms of generalized or generic crime insofar as their essence and goal are always the same, regardless of context, and that is to make its victim (the convicted person) suffer. To name the former a "specified crime" would then include both its experiential specificity and the fact it has been discursively specified as a crime by political definition. "Generalized crime" would be an appropriate term for the criminality of the judicial machine insofar as it acts as a general agent of social vengeance or violent oppression of the prisoner by the state. The criminality of the judicial machine is generalized in the sense that it supersedes the law by proceeding in a criminal manner. The ethic accepted by society and its judicial machine, under which it commits its criminal acts, would then be an ethic of "generalized criminality," embracing the entire purpose for which there is a judicial machine in the first place.

Generalized crime can be seen as criminal only through an ethical judgment that escapes the terms of the judicial machine's justifications for itself. The social ethic by which the judicial machine legitimizes its "generalized criminality" is on a different plane from that of ethical judgment. Specified crime exists only because defined by law. But the law is itself implicated in criminality because implicit in the generalized crime committed by its judicial machine. Insofar as punishment is defined politically as not criminal, though it has the same form as crime, it does not belong to the category of specified crime. But it belongs to the category of generalized criminality in its desire to make people suffer.

In addressing the nature of punishment in the US, we are skipping over the issue of justice. Once punishment is understood as political, justice disappears into the mists of policy and administrative decision. It falls into the abyss between suffering and punishment, that is, between the injustice of specified crime and the injustice of generalized crime as vengeance. Punishment as vengeance has nothing to do with justice. In the absence of justice, punishment simply reduces itself to the category of violence upon which the state itself rests.

### **The Structure of De-criminalization**

The essential socio-political project accompanys the defining of crime is state self-justification. Though it claims the "law" to be its justification, it produces the law for itself for that purpose (to decriminalize itself). The judicial machine mystifies its criminal actions through the mystifications of that self-decriminalization process. In particular, it mystifies its having brought crime into existence by positing that crime came first and required a judicial machine to be society's response.

As a double mystification, law and the judicial machine form a self-generating cycle. The government must believe in imprisonment first in order to pass laws that will imprison those who violate them. Prisons precede specified crime. The state must first have the desire to subject people to the suffering caused by imprisonment in order to believe in and build prisons, and then pass laws to fill them. It is only in pursuit of that desire that it defines crime punishable by imprisonment. The definition of specified crime is then used as the justification for the prisons and the suffering they cause. Its various definitions of crime provide it with the people (law transgressors) it needs to satisfy its desire to make people suffer. The strength of that desire is measured by the number of people the state imprisons (2.5 million, as of now).

The act of punishing crime, as the expression of its power to define crime, implies the power to define that act as not itself criminal. It is its power to define that grounds its definition of crime, its justification of imprisonment, and its self-decriminalization. By

defining crime, it transforms certain real events occurring in the society it governs into crimes, thus bringing those acts into existence as criminal. And it then proceeds to make those who commit those acts suffer. The first process generates the second one, and the second one then regenerates the first, round and round.

Having defined crime, the state must then construct a police force to police the behavior it has defined as criminal. But unleashing a police force on a society requires further justification. The justification for a police force is the need to punish violations of state definitions. Its own definition of crime, and the criminality that it brings into existence, is what constitutes the problem (of social insecurity) for which the police are created as the solution. Judicial cyclicity gets shifted to the police. Police enforcement of law becomes the justification for imprisonment, while imprisonment of those defined as criminals by law becomes the justification for the police. The police and the prisons together form the axis of these cycles by which the judicial machine decriminalizes itself.

These are political cycles. Prison provides the justification for the political definition of crime. Political definition provides justification for the police. The police provide the justification for prison. The judicial machine commits criminal acts in punishing those arrested by the police, and police interdiction of crime decriminalizes the judicial machine. In the process, social attention is shifted from the judicial machine to those arenas politically defined as the location of criminality, such as neighborhoods and the social environment in which specified crimes are to be found. It is this shift of attention that enables the state to make crime look like it has an objective character.

In conclusion, two political acts are contained in each act of punishing a person for a specified crime. The first is a criminal act designed to make a (convicted) person suffer. The other is the political act of decriminalizing the first act. The judicial machine kills, rapes, kidnaps, and robs (robs people of parts of their lives), and justifies this through its power to define, expressed in the double gesture defining crime and defining itself as non-criminal.

The key to understanding crime, whether it be rape, murder, torture, theft or fraud, is to understand the criminality of the prison

system. The decision to make some acts punishable by imprisonment, which leads to the passage of laws that provide for imprisonment (already decided as desirable), is governed by the desire to control people and to make people suffer. It is a structure of violence, whose essential procedure is to violate human rights. The outcome of this is to set all those acts that violate human rights on the social table, not as licensed, but as "not impermissible." Though its violence in punishing those who emulate the state's violence pretends that their personal violence originated with themselves, the judicial machine in reality occupies that central role.

Implicit in this critique of prisons is the recognition that there have always been other ways of dealing with those anti-social and anti-personal acts that the state defines as "punishable" crimes. A few will be suggested later in this essay, though the unalienated imagination and a knowledge of archaic societies will provide anyone with access to such alternatives. The choice to center its sense of social order on the defining of crime and the expression of the power to punish proceeds from the state's need to articulate itself through violence. The double cyclicality described above is driven by that violence, and represents the state's mystified desire to make people suffer as the expression of that violence.

### **Victimless Crime Laws**

The state's desire to violate human rights and make people suffer is most emphatically revealed in its vast system of victimless crime laws. They signify a society that has abandoned all but the most superficial pretense to any respect for justice or humanity.

Victimless crimes are victimless because no one is hurt by them. Drug use and drug possession are examples. (We're not talking about addicts here. Every smoker is an addict. Alcoholism is a need for healing.) Gambling is a victimless crime. Organizations that control gambling, complete with enforcers who make sure the numbers runners and others turn their money into their bosses, are exploiting the labor of those runners through force and threats. Syndicated gambling is not victimless, but the victim is not the

gambler. Casinos with crooked roulette wheels are not victimless, and there, the gambler is the victim.

Prostitution is a victimless crime. A woman simply decides to charge money for her sexual talents. Women confront special problems of survival in a patriarchal society insofar as it marginalizes and commodifies them. There is thus a market in women and women's sexuality, which some women use to meet the needs of survival. But it is complicated by the fact that prostitution exists in a context of prevalent violence against women. Indeed, in the eyes of many men, if prostitution demeans women, it then justifies violence against them, though such men rarely see their own complicity in the patriarchal structure that had already demeaned women. In prostitution, there is for a woman also a possible internal violence insofar as prostitution produces a division between her sense of personhood and her sexuality. But at the level of specified crime that we are considering here, prostitution is, in itself, victimless. Pimping however is not a victimless crime. It is an exploitation of a woman's work, often accompanied by forms of captivity.

Victimless crimes are crimes that only exist by political definition, because there is no victim to whose aid society can come by defining such a crime. They are crimes whose existence lies only in specifying them. They are the purest form of specified crime.

The existence of victimless crimes might seem marginal, in comparison to the real harm committed by crimes that hurt people. But over a million people are now in prison in the US for having committed victimless crimes (another million are there for non-violent crimes). If a million people are now in prison as a result of victimless crime laws, then they are the victims of those laws. Such laws are then playing a horrendously criminal role in society. They are themselves criminal acts for which those jailed are the victims.

The existence of victimless crime laws is so evil that it makes the criminality of imprisonment unconscionable. Imprisonment through enforcement of victimless crime laws constitutes the most generalized form of generalized crime because it is committed (as enforcement) only for the purpose of making people suffer, pure and simple. It has no socially redeeming value. No one in society is saved

from suffering by imprisoning a person for a victimless crime. Society gains nothing from these acts of imprisonment. The enforcement of victimless crime laws is criminality in its purest form.

### **Other Examples of the Same Structure -- Sweatshops**

But there are other forms of pure criminality in this society. They become evident when examined structurally. Economic oppression, for instance, makes a class of people suffer through acts committed by members of a dominating group or class. People who work in sweatshops are economically oppressed by the conditions of arduous labor and low pay. The factors of debt, poverty, hard work and long hours prevent them from finding better jobs. Labor organization is unscrupulously prevented by the employers. The absence of alternatives keeps them working. Thus, they suffer from the acts and policies of the employer, who gains personally from his employees' labor.

In other words, the sweatshop reveals a criminal structure. Economic duress keeps the workers socially immobilized so that they cannot escape their conditions of labor. And in that state of bodily immobilization in the sweatshop, at work, they are subjected to torturous conditions. They are made to suffer. Sweatshop conditions thus have the same structure as violent crime, such as rape, insofar as the employer uses the bodies of these laborers for his personal gain, and of kidnapping insofar as they are held economically captive.

In general, economic oppression depends on immobilizing its victims in some sense, either through threats of starvation (if they lose their job), or police actions (busting pickets lines, arresting organizers, etc.). The dominating class of people, whose policies obstruct a laborer's ability to escape, may claim legitimacy under norms established by social institutions. But if their acts and policies make other people suffer, and especially if they make people suffer for personal gain, then those acts have the same structure as generalized crime.

There are a number of social institutions that serve to legitimize a sweatshop owner's policies, and thus his ability to make

people suffer. One is the sanctity given private property, which renders most use of one's property unquestionable. A second is local labor laws, whose deficiency permits hyper-exploitative wages and shop conditions. A third institution is the judicial machine itself. Traditionally, union organization is considered by the courts as "combination in restraint of trade" (infringing on the impunity of property). The first court decision in which that principle was used to criminalize labor organization occurred in 1806 in Boston. The New Deal legalized union organization in 1934, but thereby reserved the right to determine which organizing campaigns were legitimate and which were not, which strikes would be recognized as legal and which would not.

Ultimately, the major social institution which empowers the sweatshop owner in his criminal endeavor is the total commodification of society. Under social conditions of total commodification, people must purchase everything they need for their survival, even the most basic needs like food and shelter. Every element of life must be bought and paid for. That means that every individual must have some source of income, if they are not to perish. Commodification is what dictates a workers' absolute need for a job. Those closest to perishing are the most desperate, and will thus take even the most dangerous and low paying jobs in order to survive. Sweatshop employers benefit by keeping their employees as close to desperation as possible, so that they will keep working under conditions of extreme hardship. The total commodification of society is first and foremost a form of labor control.

But the sweatshop's relation to criminality does not end with the working conditions. There are other dimensions of criminality that are associated with them. In the context of total commodification, firing a person puts them in danger of starving, freezing, or dying of exposure (when unable to afford shelter). In other words, it is life-threatening. Homeless people, most of whom are rendered homeless through lost employment, die by the thousands each year in the US, unseen and unnoticed. Death-threats are a specified crime. But firing a person from their job is a legal act and is considered neither a death-threat nor attempted murder. In society's refusal to define firing a

person from a job to be a crime, we see the relation of crime to political definition at its most overt.

When a sweatshop foreman threatens one of the women workers with being fired if she does not give him sexual favors, he is forcing her to submit to being raped by threatening her life (through joblessness). While he may be committing a number of crimes, her options for defense against him are limited. They do not include going to the police because the foreman's word will be valorized by property ownership over her word. She will not have the same social standing as the foreman in the eyes of the judicial machine. And she will lose her job anyway in retaliation. Her main options for defense against the foreman will either put her life in danger (if she is forced to quit her job) or subject her to arrest if she attempts to physically defend herself against the foreman's intentions, which will be interpreted as some form of assault against him.

### **Poverty and Criminality**

Some people are poor because their jobs don't pay enough to cover rent, food and clothing for their families without running out of money first. In these days of exorbitant rent, for which the mass of homeless people is unmistakable testimony, housing costs form a primary element of impoverization. To need to supplement one's income in order to survive will generally lead one into illegal activity.

Community gardens are useful for supplementing people's food supply, but in urban settings, the land on which gardens can be farmed are usually privately owned. When a community occupies land in order to grow food, as they did in South Central Los Angeles in an area of a few acres called "The Garden" in the midst of an industrial zone, it is generally without permission. In most cases, permission is not forthcoming, though the land lies fallow. The Garden and its community efforts were eventually destroyed by the landowner with impunity, using police bulldozers, against which any defense of its crops or its labor would run the risk of arrest. As with most community gardens, the gardeners made no one suffer, but their efforts were vulnerable to arbitrary and legal destruction. The Garden, as an attempt to alleviate impoverishment, was a criminal enterprise in a society that sanctifies private property.<sup>4</sup>

Is there a difference between crime and "oppression"?

"Oppression" refers to a general condition imposed upon a class of people by others, from which they suffer and under which they are made to work, whereas the victim of a crime confronts an individual with injurious intent. Those who are oppressed also confront uncaring individuals, like employers and foremen and police officers, whose intention is to keep them suffering. The difference is that one is punishable by law, and the other is not. If some acts make people suffer and are punishable, while other acts also make people suffer and are not punishable, then what distinguishes crime from oppression is simply political definition, and not any sense of justice.

When the judicial machine distinguishes specified crimes from those it commits in punishing specified crimes, it is making a false distinction. Both are anti-social acts. When the machine acts assumes the power to enforce what it has itself defined as an anti-social act, it is acting in a self-referential manner, under an assumption of impunity.

This sense of self-referential impunity extends to property rights. Not all property rights are equal. For instance, growing marijuana, which is not addicting, will end in imprisonment when the police decide to intervene, while growing tobacco, which is always addicting, is a legitimate use of land, and a legitimate employment of agricultural workers. Many people suffer from the tobacco industry. The power of monopolizing a market gives the tobacco industry greater control of land and agricultural labor, and leads to impoverishment wages. The addictions produced by tobacco products are extant sources of suffering and impoverishment among the people. "Bumming" cigarettes because of addiction to them is practically an art form.

Growing marijuana is a victimless crime, and the hemp plant has more uses than simply providing something to smoke. Because smoking marijuana is healthier than smoking tobacco, legalizing marijuana would greatly injure the tobacco industry through competition, and erode its profitability. (It would also injure the profitability of the paper industry, since paper can be made from hemp more cheaply than from wood pulp.) Government decisions

outlawing marijuana production are a direct intervention in the economy of tobacco and paper production, by eliminating competition. It is thus an example of a government choice to enhance an industry's ability to make people suffer. The prison forms one of the technological links between government power and impoverishment.

In effect, there is a sense in which the commission of criminality gets so generalized that the concept reduces to meaninglessness. Illegal acts committed by individuals are not always, and not necessarily anti-social acts, and there are many anti-social acts that are not considered illegal. When a thief steals something from a person, the owner suffers from the loss of it, and the thief will be made to suffer if caught. When those with property make people suffer through the impunity given them by socially guaranteed property rights, they are not accused of any crime. They impoverish people and are not made to suffer in turn. This is a central part of the definition of class difference.

Because society is divided along class and ideological lines, the same act will have a different social character (or relation to legality) on different sides of those lines. For the poor, robbing the rich would not necessarily be seen as an anti-social act. Teenagers ripping off a store in retaliation for arbitrary harassment by the police as teenagers could be seen by them as an identity-preserving act against that "anti-social" harassment [Cf. *Punished*, by Victor Rios]. It depends on which class one identifies with whether one considers an act anti-social or not. The difference between the armed robber and the sweatshop owner becomes more than simply political definition. It becomes a question of class perspective. Thus the punishment given the robber by the judicial machine is not a response at all, but a choice. And to the extent its choices escape accountability, it becomes a role model for impunity.

This ability of the judicial machine to choose who it will make suffer is only an extension of the political decisions that name certain acts as criminal and others not. And those choices (reflecting its impunity) serve to valorize its actions. To say that this is a law-abiding society self-righteously misses the mark. Law simply divides

one category of criminality, the acts specified politically through a system of rules as crimes, from another category of criminality, the acts of impunity committed by the state, which makes rules as it goes along. Punishment is not an act of revenge when committed by the judicial machine. It is a political choice made by a power structure built on a foundation of violence. It expresses its fixation on power the same way that individuals do, through acts of criminality that are often sadistic (the SHU, solitary confinement, torture, etc.), marked by cruelty, and racializing procedures.

These choices made by the judicial machine breed a level of rage on the part of the poor, of working people, of those ostracized through social status reduction, the expression of which requires increased police action to suppress. The police state is the only possible outcome for a society that refuses to take responsibility for the well-being of its citizens, and thus is the logical outcome of the centrality of prisons. [see note 2] Ultimately, this is what those who support prisons and imprisonment are actually supporting – the rise of the police state, the general suppression of human rights, and the prevention of human flourishing. They are misled into thinking that prison is for punishing people, where it is instead for the sake of control.

On the other hand, when people complain to government that something should be done about social criminality, they are falling prey to a hucksterism. The prison and the judicial machine are the main role models for that social criminality.

### **Crime and Social Criminality**

Crime takes many forms – as specified crimes, economic oppression, the violent acts of the state or of individuals. Increased taxes on poor farmers to drive them off the land in the interest of corporate land consolidation is another form of criminality. All violations of human rights are crimes. Rape and other forms of torture are examples of specified crimes that are also forms of oppression as we have considered it.

Rape constitutes the archetype of how women are rendered objects in patriarchal society (for instance, in advertisements, in

bureaucracies, in pornography). Insofar as it depends on immobilizing the body of the victim, in order to render a woman available for a variety of services of her assailant's choosing, it is of a piece with slavery, with sex-slavery, and with imprisonment. Some men accomplish these same purposes through marriage. For those men, and for those engaged in other forms of domination of women, the prison forms a supporting archetype, a standard role model that also provides justification.

The suffering that accompanies rape, kidnapping, and imprisonment is always a form of torture. But there is a special kind of suffering that accompanies actual torture, as a conscious act. Torture goes far beyond the torment to which crimes like assault or theft subject a person. Torture is the direct infliction of pain, whether physical, psychic, or emotional, a direct relation between the act of inflicting pain and personal benefit to the torturer.

The mythology of torture asserts, in the words of those who rationalize its political use, that its purpose is to gain information. But torture is never inflicted for the sake of information. For the torturer, what the victim knows is immaterial. The torturer tells the victim what he wants the victim to say, which may or may not concern what the victim actually knows. What the torturer wants is obedience, the total obedience of the victim's consciousness and thinking. Confessions, statements, names, etc., all simply mark acts of obedience by their existence. In that sense, torture is pain for its own sake. That was the point of Abner Louima's torture in a NYC police station – simply pain for its own sake, to destroy Louima's sense of himself through mindless pointless pain, using his body against himself for arbitrary destructive purposes.

To torture a person, the victim must be rendered helpless and unable to defend him/herself. Whatever the form of immobilization, whether it be physical force or a police command to not move, the body is assaulted by pain or terror until personhood itself, as well as personal will, is surrendered. The purpose of that pain or terror is to turn the victim's body or identity against the victim's mind, against the victim's subjectivity, against the victim's sense of sovereignty as a person (Sartre, *Le Question*). The stories told by US Guantanamo

base survivors speak of the personality destruction that occurs from the coupling of sensory deprivation with sensory overload to which the prisoners were subject for months and years (these were people arrested by an invading army in their own lands, trying to defend their homes, yet labelled by the invader as "aggressors" or "terrorists").

Where physical torture dominates by direct physical contact with the victim's body, prison dominates by control of space, isolation from the world, and restriction of bodily motion. Control, immobilization, the imposition of helplessness, constraint through force, physical domination in general, are all designed to destroy the ability to think independently, to render the victim obedient both in body and in consciousness. In all prisons, solitary confinement is a form of torture. Some prisoners have been kept in solitary confinement for 25 years or more. In super-max prisons, the torture of solitary confinement is routine. The goal is to reduce the consciousness of the person to the bounds given by the power over them. Resistance to this power is the only hope of psychic survival.

Political obedience, for instance, is the real purpose for which the police beat people on the street – at a demonstration, perhaps, or in the process of harassing teenagers. Because a person is socially immobilized by laws demanding obedience to the police, the pain inflicted by a police beating constitutes torture. This was the nature of the beating given Rodney King. Beating a person at a political demonstration, tortures that person in public for the purpose of obtaining obedience to both the police and to the policy that the demonstration is perhaps protesting. The campus police officer at UC-Davis who sauntered back and forth spraying demonstrators sitting on the ground with pepper spray in Nov. 2011 was openly torturing them. He used their very purpose in seizing that ground, as a space from which to speak (silently) to make their political position known, to immobilize them. And then, as immobilized and available for torture, he inflicted pain. Police brutality is state-sanctioned torture because it is performed by an agent of the judicial machine (despite the fact that state-sanctioned torture is against national and international law).

In all instances of torture, including rape and imprisonment, the victim's preservation of personhood is always an act of political and social resistance against social oppression.

### **A Culture of Supremacy and Obedience**

Not all obedience is demanded by the state, and not all torture is administered by the state, or by the judicial machine. In the US, there is a long tradition of collective torture of individuals, a societal demand for obedience (which goes beyond conformity to norms) exercised through terrorism. Terrorism, under UN definition, as the commission of acts of violence designed to squelch political thought and thus foster obedience to the terrorizing party. Torture is one of its forms. Another form is the collective torture of individuals known as "lynching." It has a long history in the US as extra-judicial torture and murder, performed for the purpose of solidifying cultural cohesion to certain prejudices and social uniformity.

The acceptance and valorization of lynching in this society was exemplified by an incident that occurred in Waco in 1916. A black man, Jesse Washington, was arrested on some charges, and put in jail. Word went around that he was going to be lynched. The newspapers in the area announced this, advertising the time and place (in front of city hall), and the railroad put on extra trains going to that town that day. Fifteen hundred white people showed up to watch this man being tortured and killed. In a frenzy of psychotic obsession, many seized pieces of his body to take home as souvenirs. [Grace Hale, *Making Whiteness*]

Lynching is socially sanctioned murder, like capital punishment. It is a form of collective terrorism designed to enforce total obedience on the part of the group targetted by it. But it has also been the crime by which and through which white society has created an internal cohesiveness for itself. It is a collective crime by which white society enforces the membership and solidarity of all white people in itself. (In parallel, many men rape women to consolidate their belonging in a masculinist community, as their dues for membership.)

Whiteness exists as a social identity. It provides white people with a sense of belonging that is created through the suppression, the

dehumanization, the reduction to object status of people defined by whites as not white, that is, as "other." The many processes of defining and objectifying others as not white is the fundamental operation in the construction of white identity. But this means that white racialized identity is wholly dependent on the existence of those "others," and on its own active social denigration of them. Because of this dependence, it requires an establishment of impunity, as a replacement for independence, for fostering collective acts of terror and murder against the other. The many acts of collective murder, because collective, decriminalize themselves through their de facto criminalization of the victim. This dual level of violence, its self-decriminalizing criminalization of others, is indispensable to the racialization of society. The charge levied against the victim, be it theft, or rape, or simply their assumption of self-respect or equality, only serves as a pretext for violence and impunity by which white identity collectively preserves itself.

Congress has never succeeded in outlawing lynching, though there have been huge popular movements demanding federal prohibition. Neither has Congress ever succeeded in banning capital punishment, nor did it succeed in abolishing slavery until after slavery had already been abolished by war and the Emancipation Proclamation. Lynching has thus always had an aura of legitimacy, even when recognized as a most horrible crime.

Today, few are openly lynched by civilians, though it still happens (Willie Turk (1982), Michael Griffith (1986), Yusuf Hawkins (1989), all beaten to death by civilian mobs in New York City. There are the incidents of James Byrd's murder in Texas (1998), the April, 2012, killing spree in Tulsa, the Halloween shooting of Yoshi Hattori in Baton Rouge in 1992, the collective police shooting of Sean Bell (2006) and Tyisha Miller (1999)). In the shooting of Trayvon Martin in Florida in Feb. 2012, by George Zimmerman, the collectivity of the act emerged when the police and political officials refused to arrest or indict the killer. Each instance of a SWAT team sent to serve a warrant on a person, and killing him or her (and perhaps others in the house) because the subject acts in self-defense or offers some minimal resistance when the team breaks down the door, is a lynching. But most often, lynching today is technological and

performed through media involvement. The trial and conviction of five black teenagers in the Central Park Jogger case in 1989 is an example. A woman jogging in Central Park was raped and almost killed. Without any evidence connecting them to the case, the five were arrested, and convicted in the media as frontpage news. They were tortured into confessing, and convicted at trial even though all five confessions differed significantly from each other. In believing the prosecution without hard evidence, the jury in effect joined the mob. They were all sentenced to 10 years in prison. In 2002, after the five accused had served their sentences, a man then in prison for murder admitted to the crime, and DNA testing proved he was telling the truth. In other words, the New York police did what lynch mobs had done for a hundred years -- if a crime is committed, find a black man (or men) and torture or kill them for it. [Cf Ida B. Wells, *On Lynching: Southern Horrors*] None of the officers or city attorneys involved in the frameup of the teenagers were ever sanctioned. It was merely an imprisonment "by mistake."

The collective violence of white racializing social criminality persists today. It expresses itself through its inordinate extension of the prison system. People and communities of color are criminalized and demonized in advance, though police actions and the corporate media, through physical and assaultive processes that white society finds reasonable – or at least finds itself unable to oppose.

The lynch mob ethic goes considerably beyond the structures of racialization, however. It is often what one must outflank or neutralize in order to simply live a human life. This notion was portrayed allegorically in a recent movie called "The Ballad of Little Joe." It is the story of a woman during the late 19<sup>th</sup> century who harms no one and commits no crimes, but is in constant danger of being killed by society at large in her every attempt to simply survive. Her life is a chain of close encounters with a lynch mob.

Her first encounter is in the person of her father. As a young woman, she gets pregnant. With no thought of the humanity of his daughter, her father casts her out of the house in the name of his group (class) position, to become the potential victim of the elements or of other men. In other words, insofar as her humanity is an

infraction of his honor and social position, he feels justified in responding with a death threat. She is hidden by her sister until she has the baby (access to an underground community is indispensable for dominated and marginalized people), after which she leaves and wanders west (into the wilderness). On her way to the frontier, she decides to dress like a man (a violation of law) in order to survive and to be left alone. She arrives in a Montana mining camp, where she is accepted as a young man. Outside the town, she finds land to homestead, and she settles on it. She learns to use guns, and her skill and marksmanship win her the respect of the townspeople. She knows that if they ever discover that she is a woman, the men of the town will lynch her, torturing her terribly in the process.

While Little Joe is living in this frontier town, she comes upon a mob in the process of lynching a Chinese man. He owed someone money, and couldn't pay it, so they will kill him (an attitude typical of the rackets). Little Joe saves the man's life by paying the debt, and takes him to her ranch as a hired hand. Because they work together on the ranch, he eventually discovers that she is a woman. With that barrier of secrecy out of the way, the curtain of alienation drops, and they do what people normally do. They become lovers. Yet they must keep that a secret as well, because if the townspeople ever found out, they would lynch them both, not only for her gender deception, not only for their cohabiting out of wedlock, but for their mutual miscegenation, his intimacy with a white woman as a man of color.

### **Some Examples of Current Social Criminality**

Social criminality lurks at every turn in one's confrontation with political authority. A woman comes from Honduras in 2009 to make a new life for herself after her country's economy is thrown into chaos by an illegal coup against a legitimately elected president (a coup the US was heavily involved in fostering). In 2011, after getting married and having a baby, she is stopped by a cop while driving (Driving While Brown). He notices a small crack in her windshield, claims it violates the law, and arrests her. Fortunately a friend is with her who can care for the baby while she deals with the police. The police call the immigration authorities (ICE), and they deport her to

Honduras. The State Department refuses to give her baby a passport so that he can join his mother. The baby was put into foster care.

How many crimes are committed by persons in authority in that simple story? I count ten. They include violations of the UN Charter and international law, arbitrary police harassment, falsifying evidence, false arrest, kidnapping, illegal transportation across state lines, illegal transportation across the US border (false deportation as a treaty violation), and a second count of kidnapping and false imprisonment (of the baby).

The Honduran woman's friend can go to the ACLU, or to any one of many immigrant legal assistance organizations, and perhaps bring about, after much effort and expenditure of money, a rectification of all this malfeasance. But at the time the wheels of this judicial machinery start turning, churning out their dehumanizing performances in the name of judicial process, this woman had no recourse.

It is important to understand that the US Constitution, in guaranteeing equal treatment before the law (and requiring accountability on the part of those in authority), actually speaks about "persons" and not just "citizens." That is, the Honduran woman should have the same equal access to due process as anyone else. In this example, those in authority who actually violate the law include law officers, judicial machine officials, and other government officials. Yet nothing is done to punish them, least of all for having denied this "person" due process. A society that can conveniently forget its own laws in the enforcement of the law, supporting and approving officials who can violate the law with impunity, without accountability, is a criminal society.

Three conditions hold for a criminal society. First, those in authority can commit acts that are listed as specified crimes (that is, acts defined as criminal by law), and escape accountability or punishment. Second, those harmed or victimized by the choices made by officials in authority have no recourse, and no ability to hold those who harmed them accountable. Third, the citizens of that society, people who have not been party to the decisions pursuant to which authority engages in criminality, but who are spectators (whether

directly or through the media) to authority's criminal actions, not only accept those acts, and acquiesce to them, but identify with the institutions that perform them, as the foundation for their own sense of security and social identity. Thus, collectively, they become accessories to the actions of those in authority.

Mumia Abu-Jamal, a black man, was convicted of killing a police officer. The trial occurred under the control of an overtly racist judge, in which the prosecution used falsified evidence, depended on police officers who withheld evidence, and forced false testimony from witnesses (in particular, prostitutes who were promised immunity from prosecution for their cooperation). Ballistics evidence proved Mumia's innocence, since the fatal bullet was withheld from evidence, and the bullet admitted in evidence was pristine, not having been fired from a gun (and it did not fit the caliber of Mumia's gun). No GSR (gunshot residue) test was performed on Mumia. Since his conviction, the witnesses have recanted, new evidence has been obtained that proves innocence, and the real shooter has admitted to the deed in affidavit and on videotape. None of this new evidence can be entered into the record because the perjured evidence was all accounted for through proper procedure. The only way to admit new evidence into the process would be to show that proper process had not been followed. So Mumia's conviction stands, despite the evidence of his innocence. How many crimes have been committed by persons in authority in this little story? Considering all the counts of perjury, evidence tampering, jury tampering, police and prosecutorial malfeasance, they number in the hundreds. Yet Mumia lives in prison, while the police officers, judges, prosecutors, and other officials who have committed the crime of placing him in prison (kidnapped at the hands of a criminal organization) walk free.

The US, through the CIA and directly through the State Department has armed and trained organizations of counter-revolutionary Cubans to commit acts of terrorism against Cuba in an effort to destroy its new chosen revolutionary way of life ("new" in the sense that the social process of the Cuban revolution has constantly changed and progressed over the decades, despite the US embargo and its other aggressions [Cf. Isaac Saney, *Cuba, a Revolution in Motion*]). The Cuban government has informed the US

government of these many acts, and received no hearing or attention from US authorities, though these acts all violate international law, US law, and the US Constitution. The Cuban government sent five men into Florida, pretending to be anti-Cuban refugees, to infiltrate the anti-Cuban terrorist organizations, discover their criminal plans, and warn the Cuban government about impending attacks. Thus, they contributed to saving lives in Cuba. When discovered, the five were arrested by the FBI and convicted of conspiracy to commit espionage (though they were not spying on the US government, nor interested in obtaining US government secrets). Four were sentenced to life imprisonment. So the US imprisons anti-terrorists, while arming, training, and giving sanctuary to terrorists, who openly function politically in Miami. How many crimes are committed by person's in authority in this horrendous, fifty year old story? It is no longer countable. Over the course of 50 years, there have been incendiary bombs dropped on Cuban sugar fields, Cuban hotels bombed, medical deaths due to the trade embargo, a Cubana Airways plane bombed in midair, and two CIA-governed invasions (guerrillas parachuted into the Escambre mountains, and the Bay of Pigs invasion). Several thousand Cubans have died as a result of these combined acts and others, all committed by anti-Cuban terrorists supported by the US government . Each one is an act of murder for which the US government is the perpetrator or an accessory.

The more than 110 military interventions in the world committed by the US during the 20<sup>th</sup> century are all criminal acts and enterprises. The arrest of Noriega in Panama in 1989 for violation of US law is so absurd as to need no comment. No Panamanian citizen can be held under US law in which s/he has played no role in enacting. The continued occupation of the Guantanamo base in Cuba is in violation of international law, which guarantees the sovereignty of each state over its national territory. Continual Cuban demands that the US vacate the premises have been ignored.

By invading another country that it finds noxious, the US government is saying that it is okay to invade other people's space, and that this is even patriotic. If a few men then invade someone else's home somewhere in the US and take things, they should be seen as

acting like the US government, looking out for themselves in an "upstanding" way, and be honored as patriotic.

None of these are simply isolated stories. They are all part of a system that reveals a consistent and intolerable ethos of impunity. They express a contempt toward people through that impunity, especially egregious on the part of governmental authorities. Yet that ethos is itself a logical extension of US society's high level of criminality, as expressed by the sanctification it gives the act of imprisonment. These cases represent a general societal criminality for which the prison system and its massive dehumanizations are symbolic as well as productive.

The existence of homelessness in the US is evidence of a criminal society which can rob people of their dignity and social status through the venality of a property-owning class. Homelessness signifies the deprivation of one's proper status in society as a human being. Each homeless person is evidence of dispossession and expropriation without due process. And due process is at the entryway for any procedure that pretends to justice. The withholding of due process, wherever it occurs, and it occurs everywhere nowadays, is a criminal act in violation of the Constitution by the authorities of this society. It occurs in all racial profiling, in asset forfeiture, in immigrant detention, mortgage foreclosure, industrial electromagnetic or chemical pollution, and war. All these policies (they are more than just occurrences), that all result in victims, proceed without due process, yet with the acquiescence of the people of this society. There is nowhere for an individuals to go to demand justice and human rights where those rights are withheld or violated by the judicial machine. In other words, we live in a society run on the basis of impunity, not of law or justice.

The prison is the institution emblematic of this vast societal criminality. A general social acceptance of imprisonment is at the core of the social acceptance of racialization, homelessness, political frameups, and torture. It reflects a massive refusal to recognize the humanity of people.

### **The Notion of "paying a debt to society"**

In the common (pragmatic) sense of "justice," when a person commits a specified crime (defined by law), they are to be apprehended, judged through some judicial proceeding, and if proven guilty through evidence, punished. The person is made to pay for their social transgression, and imprisonment is the primary mode of doing so.

Procedurally, a bargain is struck. The convicted person, who has made someone suffer, is made to suffer in turn. Thus, the suffering of the first person is supposedly neutralized by the suffering of the second. In other words, the suffering of a second person is traded, in some fashion, for the suffering of the first. It is like a "market" transaction, in which the mutual needs of two persons are neutralized by exchanging the goods or money they bring to the exchange.

But this notion of "paying" for a crime only marks a form of commodification. The convicted person is transformed into a commodity by which to pay the debt incurred by the victim's suffering. To "pay" for a crime makes the crime itself a commodity. And finally, it makes the suffering of the victim a commodity, because it says to the victim, "now your suffering has been paid for." Indeed, when the judicial machine treats the victim of a crime like a thing in this way, which is what the criminal had done, it is doubling the dehumanizing effect of criminality. It is adding its own production of suffering to the suffering resulting from the crime, through its commodification of the victim.

But suffering is not a commodity. We all recognize that one person's suffering does not atone for another person's suffering. What becomes unignorable about the judicial machine is its unremitting dehumanization of all it touches. Though it propagandizes its operations with rhetorical phrases about justice, victim's rights, social order, democracy, and representation of the people, the entire system is designed to reduce persons to things.

The concept of "paying a debt to society" is clearly a metaphor (a convenient one). Yet in that capacity, it represents something very deeply ingrained in this society, so deep that it literalizes itself. One

sees this in the anger and confusion that ex-prisoners express when they find themselves trapped within their prison records. Felons must state that they are ex-felons on employment applications. Enfranchisement, social programs, welfare assistance, housing assistance or food stamps, and most possibilities of employment are withheld from them precisely when they need that assistance the most. It doesn't matter what a convicted person had done, nor how it related to a real struggle for survival in an impoverishing society, nor how much time the person did in prison, nor on parole, nor in community service. They are permanently rendered second-class citizens. Their common complaint is, "I paid my debt to society. Now what does it want from me?"

Eventually, the ex-prisoner realizes that punishment will continue endlessly, that the "debt" never gets paid. If payment of the debt continues after release, then what is paid is one's life, and every prison sentence is a life sentence. But then, if the "debt" is so absolute that it never gets paid, then paying a "debt to society" is not the point of imprisonment. Imprisonment is for a different purpose.

But to whom would the debt get paid anyway? Certainly not to the public at large. Only the state can lay claim to the convicted person's body through imprisonment, and only the state can demand "payment" of the debt. If prison is the sign of that claim, then the state pays the convicted person's debt to itself through the prisoner's body. No one but the judicial machine participates in the process, though it happens in the "people's" name. For the "people," it is a spectacle occurring out of reach on the other side of a chasm that separates them from the political structure. Across that chasm, the concepts of justice, democracy, participation and morality become mere pretense. All that is left, in both its metaphoric and its life-encompassing sense, is the "transaction."

A debt is something owed to another, because one previously borrowed from them. But one never borrowed one's life from anyone. To have to pay one's life means that one's existence itself becomes the "debt." One's very "self" is transformed into a form of property, an inert entity that someone else can claim or transfer in payment for things. In other words, the idea of "paying a debt to society" is a

reversion to the concept of chattel, a re-imposition of chattel status on people. "Chattel status" refers to the idea that a person is, or can be considered, a commodity owned by another person, a thing that can be traded or used in commercial transactions. It is the economic dimension of enslavement. Chattel status was abolished by the Emancipation Proclamation (1863). It was then rendered unconstitutional by the 13<sup>th</sup> Amendment, everywhere except in prison.

This social reversion to chattel status, not only in its juridical metaphor but in the social reality that those imprisoned confront during and after their imprisonment, is not a return to a slave economy. But it does imply that the concept of chattel status and the image of slavery within it resides deep in this culture. It is so deep that the national psyche can not bear to let it go. Even after a massive Civil War designed to expunge the idea of human chattel from all but the historical record, it remains fundamental to the way the US thinks about itself.

The profundity of the chattel idea bears witness to the common origin of both the sanctification of property rights and the structures of racialization. Both were born in the colonial system of enslavement and its commodification of human beings. The modern concept of race and whiteness were invented in the original colonies to rationalize the colonists seizure of land and enslavement of people which together marked the structure of the colonies.

With respect to the land, land cannot be stolen by picking it up and putting it in your pocket. It is stolen by changing its juridical character. Boundaries are marked off, and deeds written referring to those marks and the land they enclose, after which the deed becomes the "ownership" of property. Thus, the colonists engendered the commodification of land in a new way. With respect to labor, laborers could not be controlled at that time by commodification, since there were few things to buy. So labor was controlled by force, and transformed into a different form of property. A political decision was made in the 1650s in Virginia to shift chattel labor to Africans (originally English laborers had also been held as chattel, though under contract with release dates; the first Africans were obtained by the colony in 1619). That decision initiated a process of social

evolution that culminated in the invention of a corporate form of slavery, of whiteness as a cultural identity, and eventually the development of the modern concept of race. Slavery is more properly understood as a form of prison labor insofar as the bond-laborer is restricted in movement to small areas, while being forced to work endlessly and through brutality without pay, as is the case with most prisoners. The prison (and prison labor) thus stands at the origin of the structure of racialization in the US.

In sum, the prison symbolizes the commodification of society, the commodification of people, the dehumanizing sanctity given private property, and the structures of racialization in the US. And to that extent, it marks the fact that the US has never managed to rise above the colonialism of its origins.

In short, the point of prison in the US is not punishment but the transformation of those human beings who fall into its clutches into a different form, a politically defined mode of commodity status. Chattel status signifies the total abrogation of all human rights. Human rights stand in diametric opposition to the commodification of personhood. The contemporary notion of "paying a debt to society" (through imprisonment) marks the fact that, between human rights and the reduction of persons to commodity status, the US as a society and a culture has chosen the latter. As a participant in Occupy Oakland informs us (in paraphrase), "When prisoners come out they are broken. If a person gets 5-10 for something for which only 2 years would be fair, he will feel scorn and contempt for "law and order," and not give a damn about society." Thrust into "outsider" status through commodification, a prison inmate then faces a form of permanent exile not only from society, but from human being itself. It is an exile that marks the destruction of innate humanity, whether one is actually guilty of a crime or not. Far beyond vengeance, or "paying a debt" (forget about "rehabilitation," which is obviated in advance by the very logic of prison), the point of prison is destruction.

One could say that there is an economic dimension to prisons, but it would be a mistake to rank that above its cultural functions, or the supremacist cultural necessity that produces it. The prison itself does not make money for the government. Certain corporations make

a lot of money building and administering prisons. And many corporations opportune on the massive size of the prisons by contracting convict labor for their factories and farms, at less than minimum wage (money which does not go to the prisoners employed). That is, the prison system does without a doubt provide a labor force, and adds to the profit picture of the economy. But its purpose is cultural and political, transcending economic interest while at the same time lending itself to economic interest.

This destructive "task," first expressed in the institution of slavery, further expressed in the debt-servitude of Jim Crow, and reflected in the violence of US labor history (surpassing other industrial nations, most notable because in the absence of a revolutionary working class movement), is today found in what is called the "school to prison pipeline," which has transformed the schools into institutions for the criminalization of teenagers in massive numbers. [Cf. Annette Fuentes, *Lockdown High*, and Victor Rios, *op sit.*]

Prison attests to a political desire to make some people suffer, and not others, for which it has defined certain acts as criminal and not others. Prison is not a response to crime. Crime cannot explain the enormity of the US prison system.

### **The Need for Prison Abolition**

To recapitulate, there are acts that make other people suffer and thereby violate the law, and there are acts that make other people suffer and do not violate the law. And finally, there are acts that violate the law but do not make anyone suffer. Only the first and third categories will lead to someone being imprisoned.

The logical conclusion to be drawn from this is that imprisonment has nothing to do with a victim having suffered from someone's actions. Those who think that a criminal must pay for having made people suffer are simply missing the point. Having made someone suffer is not the cause of one's being punished. Otherwise, all people who make others suffer would be punished, including jailers, judges, police, and sweatshop owners.

Prisons are built in order to satisfy the morality of a society that places the commodification of persons at the center of its cultural interests. They mark the acceptance of governmental impunity as the central form of social order.

Insofar as crime and punishment exist only by political definition, no necessary connection exists between morality and imprisonment. Political decision constitutes the radical separation between the two. A moral code can judge political definitions only through the political decisions that emanate from them, that is, from a perspective outside them. But in defining crime for itself, the state has already defined what is moral for it. To accept the state's political definitions is to accept its morality, and to judge its decisions from within those definitions. Thus, the judicial machine preempts moral judgment by definition, and the state obviates moral judgment of its decisions through that preemption. If the state's decisions and institutions cannot be judged ethically from beyond them, then there is no non-criminal standard from which a concept of crime, and the unfolding of social criminality, can be understood.

The mythology of the prison is that its role is to curtail crime. But how is crime to be curtailed if there is little difference between the most violent criminal acts and the operations of the judicial machine? Curtailing crime would have to imply curtailing both. In other words, to curtail crime, prisons must be eliminated. Maintaining the judicial machine valorizes all forms of crimes of violence, including murder, rape, and kidnapping, which emulate it.

Nevertheless, the strident complaint gets endlessly repeated, "If you seek to eliminate prisons, what are you going to do about real criminals, like rapists?" And of course, it can't be answered in that form. The question is pragmatic, while any response would have to be in terms of ethics and regime change. The first step, however, would logically be to get rid of the role models.

If this society were really interested in curtailing crime, it would adopt measures that would take responsibility for the well-being of the people. It would end the exploitation and impunity of economic institutions, establish norms of cooperation and collective decision-making at the local level, stop committing wars of

aggression against other nations, beef up the educational system and give it highest honors and funding, establish community-controlled policing and restorative justice systems, eliminate victimless crime laws and the entire system by which the government surveilles and controls the people, and decentralize political power. None of this would be hard to construct, but it would mean severely curtailing the power and impunity of the state, as well as the sanctity of private property and its ability to control people for its private enrichment. In sum, it would mean to establish a social ethos in which people would be more important than property or the profitability of capital.

Ultimately, imprisonment as such must be judged as having no morally or socially redeeming value.

Again, for those who complain about "all the violent people," it is hypocritical to do so while supporting social structures that teach and inculcate violations of human rights through their own systemic and systematic violence. We must recognize that all prisoners are imprisoned in bad faith insofar as they suffer from a criminal enterprise. Furthermore, the problem of individual prisoners and the ostensible specified crimes that they may have committed is only a small part of what we must now recognize as a vast system of social criminality.

Any process of eliminating crime from this society will require stages, many of which form part of the process of abolishing prisons. The first thing to do is eliminate victimless crime laws, which are the most naked indication of the state's desire to simply make people suffer. They are also the means by which the police have attained the ability to criminalize any person at will, and thus the power to criminalize entire communities as well. The second step must be the elimination of all the role models. And that immediately implies the elimination of the prisons. It also implies the immediate elimination of police brutality, police torture, and police impunity. And finally, the structures of racialization, the entire cultural structure of white supremacy, whose reconstruction and maintenance is the real political purpose of the prison industry, of the current massive imprisonment of people (mostly of color), and of the police impunity that feeds it, must be eliminated.

In short, in response to those who panic at the thought of eliminating prisons, a society that sees prisons as normal and necessary is a society that sees crime against persons as normal. It is a society that has placed criminality at the center of its cultural foundation (even in thinking that it must eliminate crime). When you imprison a person for a victimless crime, under any of the victimless crime laws, you are teaching a lesson in the fundamental injustice and irrationality of this culture. But the injustice of that culture goes all the way to its foundation, through its many forms of control (commodification, the primacy of property rights, police impunity) and its many forms of racialization of people. To see all that as normal or necessary is to support a system that is totally devoid of moral or ethical value.

## **Policing and the Structures of Racialization**

### **The Historical Position of Victimless Crime Laws**

Victimless crime laws have a long history. They didn't fall from the skies one day, or emerge as an expression of a traditional puritanism. They are at the core of structures of racialization and of policing in the US.

In each era, certain laws exemplify a specific thematic or purpose of power, the refusal of which requires punishment. For instance, in 18<sup>th</sup> century England, a person caught stealing anything was executed. Even children who inadvertently pocketed something (for instance, a handkerchief) were hung for the crime. This insistence on destroying theft by destroying all thieves had two purposes. The first was the consolidation of the total commodification of society as a form of labor control. And the second was the destruction of earlier forms of community cooperativism.

After earlier feudal organization had fallen into decay, but before capitalism began to develop on the wealth extracted from colonial conquest, rural communities emerged throughout Europe based on communal land and cooperative farming. These communities developed a high degree of self-sufficiency (cf. Sylvia Federici, *Caliban and the Witch*). As the possibility of capitalism

emerged, beginning in the 16<sup>th</sup> century, the self-sufficiency of these communities, and their ethos of cooperativism stood in the way. To eliminate this obstacle, royal military action was used to assault them and break them up. The land was seized under royal edict and privatized. Those who had lived on the land were evicted from it. Divested of their communal mode of survival, and impoverished by the same gesture, they were transformed into people who would have to work for private landowners for wages. The privatization of the land and the impoverishment of the people by expropriation were two sides of the same capitalizing coin.

But replacing a culture of communal self-sufficiency with one based on the sanctity of private property took some time. Along with impoverishment, memory had to be obliterated, along with the ethos of survival through collective activity and cooperativism. That meant breaking the individual's relation to the common product of cooperative labor as a form of consciousness. Vestiges of the former consciousness were politically defined as theft, and actual theft was punished severely insofar as it represented resistance to impoverishment. By such means, the claim of private ownership to all products and things gradually became the norm. An economic system that depended on impoverishment thus generated the crime of violating the sacredness of property, as a means of consolidating itself.

The logic of this process was murderous. The expanding execution of thieves placed killing at the center of survival. In the context of growing impoverishment, either one died, whether by starvation or at the hands of others, or one stole and killed. The cultural transformation at work thus left human life with little value next to the sanctity of property. Criminality, the judicial machine, and commodification were the adjuncts to capitalist development and a new form of violent state power and its juridical focus on theft.

A different situation, with different political requirements and exigencies, is faced today by the US government, for which victimless crime laws are the instrument. In the wake of World War II, massive anti-colonialist movements emerged among the nations of color against the hegemony of the EuroAmerican corporate economic

system. Popular anti-hegemonic movements have a tendency to de-privatize, to de-commodify, and to cooperativize in their struggles against oppressive hierarchies. The capitalist system faced the need to suppress those uprisings. In doing so, it spawned a process of corporate globalization, which shifted industrial production to a transnational level. To reverse the popular cooperativizing tendencies, globalized corporate capital deployed its control of finance capital to force re-privatization at all levels. [Cf. *Re-Creating Democracy in a Globalized State*, eds. Cliff Durand and Steve Martinot] Through centralized control of lending, interest rates, import and export licensing, currency exchange rates, etc., corporate capital could blackmail borrowing countries into obedience to its dictates. Money lent for the purposes of development and trade was accompanied by "Structural Adjustment Programs," which imposed the privatization of land, of governmental social welfare programs, of social services such as education and health care, as well as ending product subsidies and tariffs, thereby opening all social arenas to private investment and the impunity of corporate capital.

Nations that resisted, that attempted to maintain their sovereignty, were attacked through the use of discriminatory interest rates, embargoes, and war. While not even US military power could defeat the Vietnamese, EuroAmerican political power has found the means to foster internal ethnic conflict and civil war. The wars instigated in Yugoslavia, Nicaragua, Iraq, Angola, East Timor, Libya, Syria, and others, have resulted in the destruction of existing social infrastructures, which leaves the country abject, transformed into a hungry market, and open to predatory corporate investment. In some areas, such as the Ukraine, this tactic has not succeeded. But the goal has always been both the privatization of the area assaulted, and the seizure of resources, such as oil.

The toll this has taken on the quality of life in the target countries has been enormous. It has also had terrible effects on the quality of life in the US through deindustrialization, the decay of education, the refusal to provide free health care, and the rise of a police state. At the center of this erosion has been the process of rolling back what the civil rights movements had gained in terms of democracy, equality, and justice. Those movements had not simply

contested racism and racial discrimination, but established a pro-democracy ethos antithetical to a culture attuned to capitalist operations. That is, they took on an anti-colonialist aspect in contesting and struggling to throw off institutional racism, that is, those aspects of white cultural structures that depended in a colonialist fashion on racialization for their social identity.

Rolling back the gains of the civil rights movements involved repealing affirmative action, cancelling minority job training programs, defunding civil rights offices and agencies, and fostering the dissolution of integrated industrial unions by federally subsidizing the runaway shop movement. All this rendered communities of color particularly vulnerable to attack. It not only laid the basis for the massive incarceration of people of color in general, but for the criminalization of immigrants in particular.

It was in terms of restoring the structures of racialization, of reconstructing and reinforcing the cultural cohesion of white society, that victimless crime laws have played a central role. They made possible expanded forms of racial harassment and racial profiling. Because, under these laws, the police can act without a complainant, they can approach people autonomously and arbitrarily. People can be stopped and harassed without evidence or "probable cause." Insofar as police suspicion is sufficient to stop and detain a person, the police become a law unto themselves. The resulting massive harassment and incarceration of people of color then fueled a social campaign of criminalization of communities of color. Its purpose was to refocus white people on themselves as threatened by those criminalized communities. A renewed cultural cohesion of white society was then called upon to respond to this artificial paranoia. On the one hand, this diverted white people's attention away from the political problems they faced, as the US economy deindustrialized and shunted its resources toward recolonizing people on other continents. On the other, it brought them under political control through its offer of security in a social environment of exacerbated violence, in which prisons and mass incarceration played a central role.

In sum, the laws most necessary in this era are not those guaranteeing the sanctity of property (as in 18<sup>th</sup> century England) but

those granting sanctity to police autonomy and impunity. Just as the sanctification of property needed for the total commodification of society required a harshness toward theft by the power structure, so a cultural sanctity for police impunity is required to render the judicial machine sacrosanct. It is a sanctity also designed to give power over life, and to generalize killing. The standardization of lethal police operations (shootings, SWAT raids, "suicide by cop," capital punishment), the phenomenon of mass incarceration, and the social death facing those released from prison, has had its social effects. Killing has become an essential part of the social order. And the police, having been given license to operate as a death-dealing machine, serve as its central role model. In the public eye, however, the police are decriminalized and exonerated in advance because of the prior criminalization of communities of color.

This has happened before. Under Jim Crow, even as late as the 1950s, in the deep south, the vast majority of murders committed against black people were never investigated. The cause of death listed for black people found by the side of the road riddled with bullets was generally "heart failure." This style of casual killing is the outcome of the impunity legitimized for the police, which spreads to the civilian population. When Zimmerman shot Trayvon Martin in Sanford, FL, he was following the police role model. In fact, he called the police as he began his stalking of Martin, to make sure they knew what he was doing.

But it is not white supremacy in its own name that is reconstituting Jim Crow today, but white supremacy in the guise of the massive criminalization of people of color. Nevertheless, as a form of social paranoia, that campaign generates an urgency for white solidarity, a unification of white people behind the judicial machine and the militarization of the police, in the name of defense against "the threat." It is often a subtle solidarity. Though many white people in Sanford, Florida, thought George Zimmerman should be indicted, very few participated in the many demonstrations that occurred calling for indictment. When asked why, they generally replied that they would be ostracized or attacked by other whites if they did. The axis on which this paranoid solidarity has been reconstructed is the

police-prison complex, and the reduction of communities of color to second-class citizenship by impoverishment.

Ultimately, the purpose of systematic victimless crime prosecutions has been to reconstruct a social landscape, through police rule, that in structure will be indistinguishable from the old forms of Jim Crow segregation, with its laws, its disenfranchisements, its many dehumanizations, and its white solidarity. Its crowning irony is to have been accomplished in the language of civil rights and democracy, the rhetoric of "equality before the law" and a "colorblind" society used to drive masses of people into prison.

### **Racialization and the Structure of Policing Today**

Racial profiling is something the US has never been without. It powered the evolution of the African enslavement system in the 1600s, it was inscribed in law by the Dred Scott decision before the Civil War, and it constituted the essence of all Jim Crow laws after that war. But racial profiling by the police is a direct inversion of law enforcement. In law enforcement, someone commits a criminal act, and the police search for a suspect to charge for it. Under racial profiling, the police commit an act of suspicion, and then search for a crime with which to charge the victim of that act. This procedure locates criminality in a person noticed by the police rather than in the actions of a suspect.

The power of the police is carried to a new level by enhanced obedience statutes. These statutes permit the police to arbitrarily criminalize whoever they want. An officer has but to give a command that the subject might consider humiliating or disrespectful, and whatever objection the person may offer in defense of dignity or self-respect can then be considered disobedience, resistance, cause for arrest, and perhaps violent treatment. All too common examples are the demand for a strip-search in public, or an order to lie face down on the ground. Police ability to criminalize any person at will is the essence of impunity, by which they become a law unto themselves. As such, the police become a boundary line between those whose humanity and dignity will be respected (the non-profiled) and those

whose humanity will not be respected (the profiled). In effect, the police themselves now constitute a new color line.

As Michele Alexander has shown, the drug issue has played a central role in these political developments. For that reason, it is important to understand the relation of the police to the drug trade. It has been well documented that the police have extensive involvement in drug trafficking. [cf. Gary Webb, *Dark Alliance* (New York: Seven Stories Press, 1998); also Peter Dale Scott and Jonathan Marshall. *Cocaine Politics: Drugs, Armies, and the CIA in Central America*. (Berkeley: Univ. of California Press, 1991)] By "involvement," I don't mean they are the main conduit of drugs, but they engage in it and generally act to insure the continued flow of drugs. This means they know who the main conduits are, and participate in keeping the drug trafficking industry in operation and functioning [Thalia Drori, *One Who Survived*].

There are, of course, many benefits for the police in this involvement. The most banal is financial. They get payoffs [as documented in the case of Serpico; cf. Peter Maas, *Serpico*, 1973; also a movie directed by Sidney Lumet, starring Al Pacino, 1973]. Frank Serpico had joined the police force in New York City, and refused to accept payoffs from drugs dealers or commercial enterprises. As a result, other police officers set him up for assassination, which he fortunately survived and wrote about.

Second, because the police know the pushers in each neighborhood, they have a free informer network to use at will. Should something happen that they feel pressed to solve, they round up the pushers of the area to find out what they know, or to invent testimony. (In 2010, in San Francisco alone, 5 people were released after years on death row because it was discovered that the primary evidence against them was the false testimony of drug traffickers, put up to the task by police investigators.) Third, in the wake of the upsurge of political movements for justice and equality during the 60s and 70s, the government was faced with highly politicized communities of color. Drugs, as the history of colonialism has shown, "stone out" and depoliticize such communities. Thus, the police, in

making space for the dissemination of drugs in such neighborhoods, are on the front line of recolonization inside the US.

But a fourth benefit is the main one. In the face of community impoverishment through withdrawn employment, bank redlining of business opportunities, underfunded schools and the progressive cancellation of welfare safety nets (all of which have severely affected communities of color since 1980), people not only turn to drugs but to the underground economy to survive. (In a wholly commodified society, the intentional imposition of unemployment and impoverishment on a community constitutes attempted mass murder.) The police turn this around and claim they are faced with an increasing crime problem (in which the police are complicit through their involvement in drug trafficking), demanding higher appropriations from the state legislature in order to deal with it. By these means, over the last 30 years, police departments have grown to be the most powerful political forces in most urban areas.

As police impunity increases, white people will be caught in its matrix, either because scared into it, required to toe the line, or out of real filiation with the white foundation of police actions against people of color. Where those on one side of the color line are killed with impunity or incarcerated wholesale, those on the other become trapped within the operations of racialization. They find themselves dominated by requirements that they affirm their membership in the culture of whiteness, or dragooned into tasks of harassment of others as a form of paying their dues by expending energy in hostility toward people of color. White people who would abjure such "duties" of membership often face threats of terror or assault.

To be white in the US has always been, in its various forms, to be both a prison guard and a person physically and psychologically controlled by the institutionalities of whiteness. At the present stage of this white reconstructive process, membership in whiteness takes the form of support for the police, for their impunity and brutality. And it takes the form of support for politicians who are "hard on crime," even though those politicians may project ideas that are counter to white voters' class or economic interests.

## The Grammar of Racialization

The fundamental implication of the concept of reconstructing whiteness is that race is something produced by social processes. It is not an attribute of a human being, nor an inherent characteristic of a person. Rather, it is constituted by systems of political and social actions. That is, "race" is something that one group of people (whites) does to other groups of people whom it defines as "other" (not white) in order to define itself as white through them. The term "race" then actually functions as a verb rather than a noun. The verb is "to racialize." It is what white people do in acting white with respect to themselves and others, and what they do in objectifying and derogating the others through whom and against whom they define their white identity. Insofar as white people function in the subject position of the verb "to racialize," they place people of color in the object position. Those one renders objects for oneself in defining one's subjectivity are thus culturally reduced in social status. White people assume the power to speak for others through this relation, and even determine an identity and consciousness for people of whom they know nothing but their color. That continual objectification of people of color constitutes a social process of dehumanization, a generalized discarding of human rights for those subjected to it. It is thus a criminal process. And it serves as the engine of racism and racial prejudice. Even liberal anti-racists often adopt a stance of speaking for those they think they are defending through their opposition to racism.

What racialization provides white people is a social identity. For a social identity to define itself (rather than simply evolve culturally from social conditions), it has to be able to define an other, an outsider whom it can refuse to be, and to whom it can refuse inclusion. Whiteness defines itself through the vast system of stigmas it places on people of color, which change according to historical conditions. The primary stigma now placed on people of color is criminality, for which the prison is the symbol as well as the material outcome. In that sense, white identity is today an identity represented by prisons. It emerges from and brings a prison mentality and an ethic of incarceration with it. Race was invented to valorize and decriminalize colonialist hierarchy and make it seem natural. To

reconstruct whiteness (and race) today, US society again enmeshes itself in the criminality of racialization, for which the essential concomitant is a de-criminalized social identity for itself. Its creation of a criminal element is essential to transforming its own criminality into something that can appear moral or virtuous.

This suggests an intimate relation between victimless crime laws and the process of racialization. Such laws reduce people to the level of objects in the eyes of social institutions, insofar as they attach meaning simply to the bodily existence and autonomous behavior of people. And this is allied to government involvement in impoverishment, as one effect of the repeal of affirmative action, for instance. Governmental power, focused on maintaining the historic tradition of preferential hiring of whites, thus feeds capitalism's power to impoverish through the structures of racialization. In the process of white reconstruction, poor whites come to expect the criminalization of people of color as part of their ticket. They thus blind themselves to their own potential as targets of the new norms of control. Police harassment of immigrant agricultural workers (mostly of color) may be supported by whites because it looks like it is saving "American" jobs. When that harassment is applied to white agricultural labor, attempting to preserve conditions previously struggled for, it is too late to complain. The government's criminalization of the impoverished occurs through its criminalization of the racialized. Racialization, impoverishment, and imprisonment are all symbiotically linked to each other.

Ironically, the political effects of this symbiosis are to render the alleged political power of the vote for the most part illusory. The reason is that neither property rights nor the technologies of racialization can be contested at any level of political representation. If the former is guaranteed by the Constitution, the latter exists as a cultural assumption, a system of beliefs that "go without saying," even (or especially) in the face of pro-democracy movements such as abolitionism or the civil rights movements. Like war and foreign policy, the growth of the prison industry and the direness of exile it constitutes have never been put to a vote.

The political power that resides in the symbiosis of property rights, white hegemony, and capitalism (aka the prison industry, racialization, and impoverishment, respectively) is far beyond what can be reached by the vote. When impoverished sweatshop workers organize to overcome their suffering on their own, they are the ones who are arrested and imprisoned for contesting the impunity of property rights, despite the fact that they constitute the majority in the industrial sector in which they work. As long as prisons exist as the axis for that symbiosis, voting will be a relatively inconsequential activity. It is that inconsequentiality which the Citizens United case inscribed into law (a 2010 Supreme Court case which ruled that the 1<sup>st</sup> Amendment barred the government from limiting corporate expenditures in political campaigns, and which thus placed party politics in the pockets of corporate interests).

For people immersed in such a political morass, however, alternatives to imprisonment would be hard to imagine.

## Summary

There are two kinds of crime: those in which the perpetrator does not care what the victim feels, and those in which the perpetrator's primary concern is that the victim suffer. The first is exemplified by theft and murder. The second is exemplified by the rapist, the torturer, and the judicial machine. Most individuals commit crimes for the purpose of personal benefit of some kind. The judicial machine commits its crimes by simply condemning others to suffering for its own sake. That is its conscious design and primary purpose. Imprisonment is the institutionalization of kidnap, rape, and torture, the purpose of whose conjunction is to transform control of the body in order to produce unquestioning obedience of the mind. And it bestows a decriminalized normality upon the act of making people suffer.

Ironically, neither those committing specified crimes nor the judicial machine recognize that each provides a rationale for the other. Denial of that two-way relation by the judicial machine is only a gloss on its self-decriminalization. To provide itself with a criminal element, the judicial machine has an armed police force and a prison

industry whose job is to produce that. Prisons are not built to resolve a crime problem, but to provide the crime problem that the judicial machine and the structures of racialization need to decriminalize themselves.

## **The Cultural Effect of Prisons**

### **Contempt**

To act with a sense of impunity represents an extreme contempt for the people affected by it. Impunity is always an imposition that insists on non-accountability in advance. A police officer who accepts the fact that he has license to do anything to anyone has already dispensed with any respect for others, though he may put on a false show. In the US today, contempt perfuses police work, just as it has always characterized bureaucratic procedure.

In the gaze of bureaucratic contempt, whether from a corporate representative or a government official, a person's humanity is implicitly reduced. When the government ignores people who petition it for fairness, it is social contempt that is being expressed. For instance, when a school system threatens to close some schools, and refuses to listen to the parents and teachers who not only demand they remain open but show how it can be done economically, it is acting in contempt of the people. In the government's refusal to take responsibility for the well-being of its people (citizen or not), there is a generalization of contempt as a matter of policy. The refusal to provide free health care for all persons (bowing to insurance corporation control over the medical profession) is a sign of this, as is the willingness to put police in schools and invade other nations but not allocate sufficient money for the educational process. Indeed, the entire social ethic that property is more important than people, and that property rights trump human rights, is a profound structure of contempt that resides at the core of this culture and its total commodification of existence.

Through these various social manifestations, contempt becomes a social norm. Its every institutional expression serves as a role model. It perfuses daily life and social relations. People find they

must adopt it as an essential attitude, simply as a response to others' contempt. One's own contempt for others becomes a primary defense against one's vulnerability to that of others.

Two other social phenomena accompany this infection of interpersonal relations and institutional life by contempt, a broad disregard for humanist values, and a dependence on the judicial machine as a defence against the threat of others' disrespect. In concrete terms, this generates both a general contempt for the law and for the judicial machine and a dependence on the police and the courts for security. The judicial machine disdains the people, while requiring them to honor it with obedience, and the people disdain the judicial machine as a defensive posture against it, while demanding that it fulfill its (idealized) protective role. The judicial machine responds to popular contempt by arming itself, and its militarized operations generate further disdain on the part of the people.

Thus a deep cultural sense of dehumanization is generated that is cyclic in nature. Institutional (generalized) criminality and specified crime breed each other. The criminality of the judicial machine, with the prison at its core, renders this cycle inexorable.

However, to fully understand this cycle, we shall have to take the machine apart. Like any machine, the judicial machine is composed of many elements, some of which are made of iron. (There are other materials found in the machine: paper, wood, plastic, ink, etc, which are used to construct courtrooms, offices, files and file cabinets, etc.) It is the iron elements that most concern us. They are the machine's teeth. There are guns in the hands of the police, chains used to immobilize suspects in court, and bars on prison cells. And they represent the essence of its institutional contempt and dehumanization.

The irony of these iron components is that they are not essential to a judicial system (only to a judicial machine). The police can function without guns, and courts can function without chains. Guns and chains are not indispensable. What is indispensable for a judicial system, a system that deals in "justice" and not "punishment," is respect -- respect on the part of the people for the police and the courts, and respect by the judiciary for the people. What the guns and

chains signify is that the people have no respect for the police or courts. They represent the substitution of a demand for obedience for respect, a demand manifesting itself through fear. Respect for institutions cannot be gained through fear. It has to be earned by those institutions. Guns and chains would not be necessary if a structure of justice existed that did not duplicate the criminality it condemned. But disrespect is a normal response to hypocrisy – and in this case, the hypocrisy of punishing crime through the deployment of criminality. The iron aspects of the machine, guns and chains, constitute a response to the contempt that people develop for that hypocrisy and in response to governmental contempt.

Prison, however, is the iron part of the machine that cannot function without the other iron elements, without guns in the hands of police, or without chains that hold arrested people in court. Just as a criminal has to have a means of forcing his victims to succumb, so prison does as well. Prison, as the technology that transforms a judicial system into a judicial machine, then represents and concretizes the contempt that the judicial machine has for the people. And the guns and chains represent the centrality of prisons to the entire social framework, as a direct response to the contempt the people hold for the judicial machine. To the extent crime is an expression of that disrespect, it too is a response to social and institutional contempt.

Criminality perfuses such a society with an urgency that prisons, guns, and chains not only cannot resolve, but can only exacerbate.

### **What Might Be a True Deterrent to Crime**

The idea that prison could be a deterrent is truly laughable. It can't deter that for which it is a role model, and it can't cease to be a role model as long as it expresses a contempt that then mirrors itself in the people's contempt for law, police, and the judicial machine. The only foundation for a deterrent to criminality would be a judicial system that people could respect, one that did not commit crimes as an inherent part of its every function.

For a sense of respect for the police and the courts to develop (respect in the sense of honor, and not from fear), there would have to be a social atmosphere countermanding contempt. A change of attitude would have to extend to those arrested and brought to court. If evidence convicted them, they would still have to be respected, and addressed with a sincere attitude of attempting to understand, to get to the bottom of why they chose to engage in criminal activity. If courts functioned openly (in public) to plumb the depths of what drove a person to turn on other individuals and make them suffer; if the courts functioned openly to allow individuals to offer their stories, not just of who they are, nor how they have been treated, but of why their responses as self-respecting people to the general social contempt they confront have been what they are; if courts functioned openly (in public) to allow individuals to describe what ultimately brought them to that court proceeding, then the entire social fabric would be transformed. Why? Because it would reestablish the social dialogue. People (non-judicial people) could come and listen, ask the person questions, and speak to them. That is, trial procedures proving that one had engaged in anti-social behavior would only be the first step. Confronting those who had thoughts on this matter, and talking to them, would be the second.

Such courts would become places where the wounds of contempt could begin to heal. They would serve as a rehumanizing alternative to the judicial machine. But they would go a step further.

If such courts existed in which people's stories, both those of the victims and those of the perpetrators, could be heard with respect, and with respect to each other, those courts would become real deterrents to crime. It is important for people who act in a criminal manner to hear the stories and feelings of those affected by those acts. But it would also be important for people, before they are subjected to criminal acts, to hear the stories of those who feel themselves driven to commit such acts, before the fact. In such courts, seeking to alleviate the dehumanizing effects of society and its contempt on themselves, people could come forward with their stories before they committed the crimes that for them would be responses to their dehumanization, rather than afterwards. Such courts would open space for people to say what they would like to do to others, before

they do it, and be heard in a way that gave respect to those feelings and desires, so that they would not have to enact them. (Self-incrimination, as the stock in trade of the judicial machine, would already be obviated, and replaced by respect.) To the extent such courts opened themselves to preempting the (specified) criminal intentions of individuals by hearing and respecting them, they would save themselves the trouble of having to listen to the victims of those preempted crimes, who would no longer have to offer their stories afterwards, since the events they came "after" would not have occurred.

Of course, such a system could exist only in a society that wasn't fixated on money, and that equated money with success. Most of the specified (non-victimless) crimes committed in the US are crimes of self-enrichment at others' expense. Essentially, they are simply taking capitalism itself as their role model. It is therefore not surprising that most of the crimes of self-enrichment are never prosecuted.

But there would have to be teeth to such courts. They would have to have the power to desanctify property rights, to punish the criminality of economic exploitation, of police and prison administrative impunity, and of the mass murders committed by military intervention. The dehumanization of mutual contempt can be addressed through dialogue. But that of economic exploitation and the impunity of property would require a shift in governmental responsibility from profit to people, from militarism to a transnational sense of social equality. And a response to the dehumanization that results from the supremacist reduction of the status of others, be it in terms of race or gender or style of life, would require that the supremacist, whether in the street or in the Pentagon or elsewhere, be rehumanized in a very fundamental way. But if society was open to hearing about the real experiences of people, and respecting it as part of its own social reality, and if government could bring itself to take responsibility for ending what made people suffer, including their subordination to property rights, such courts would constitute a real deterrent to crime.

Such a court system is impossible in a society governed by a judicial machine that inculcates a contempt for people's stories and whose primary purpose is to make people suffer. The ethos involved in a social desire to make people suffer is already at the core of a political system that can think of building prisons in the first place. Indeed, the one thing this society does not want to hear about itself is a description of how dehumanizing it is. In fact, those imbued with the legalist revenge ethic would refuse to hear that because it would mean hearing that crime itself, in many cases, had become a rehumanizing process in response to the social dehumanization of a society dependent on a judicial machine. As long as prisons exist, such an open court system will be impossible, because the judicial machine would lose its ability to engage in self-decriminalization.

Thus, we are faced with courts and police who desire to deploy iron technology (guns and chains and iron bars) rather than listen to people, or provide people with a human place to be. We live in a system in which those who are victims of crimes get treated with the same contempt as the criminals. Thus, society's response to the existence of violent assailants or economic fraud and exploitation is to generate more through its cycles of institutional contempt, its false justifications, and its technologies of dehumanization.

The first thing we must get rid of are the role models. As long as they exist we remain accessories to the hypocrisy of procedures that criminalize others in order to decriminalize itself.

## **Conclusion**

When we confront a judicial machine that is as criminal as the criminals it punishes, we find a society in dishonor. The real meaning of the role models provided by prisons and the judicial machine is that persons and personhood don't matter. They are unimportant to the social and political structure. Long sentences, a violent police force (violent in advance, violent in its demand for obedience), and a dehumanizing legal process, insofar as they impose themselves on real people without any sense of remorse or reconciliation, testify to the inconsequentiality of persons, of personhood, and of their humanity for society as a whole. In its contempt, the judicial machine

treats individuals as mere things to be pushed around, as if on a game board, or used as advancement rungs on a career ladder by the machine's officials (prosecutors, etc.).

If the government doesn't care about people, why should anyone else? Rape, theft, assault, all have a similar disregard for the personhood of the victim. The bind of poverty, and the underground economy that it spawns, in which people live on the edge of illegality, are precisely the products of a society that depends on prisons to maintain a system that impoverishes. If the judicial machine operates with a high level of arbitrariness, and does what it wants, why should people who follow suit be punished, and not seen as simply emulating the government?

This social structure, in its criminality, is not determined by law. But law, in defining who to punish, conditions it. Law serves as the dictionary of who or what will be specified as criminal or not. Under the sway of the judicial machine, the real social meaning of what is called "law" simply gets reduced to "obedience." The sweatshop owner is not criminalized because he is obedient to the dictates of profit development, impoverishment, and racialization.

The mythology of the law is that it is the foundation for social justice. It is not. While the government pretends to defend social order through the law against those who would disrupt it, it ignores the general category of similar actions which it considers a virtue, and in which it participates. The entire idea of social order is rendered self-contradictory, a morass in which the only clear dividing line is the prison itself. As the central technology of social order, the prison contradicts all pretense to justice on the part of the law. The real function of prison is to decriminalize the judicial machine, its role models, and the sweatshop owner.

### **The Concept of Justice**

The concept of justice becomes hardly a footnote to this discussion of prisons, since prisons stand in antithesis to it. But justice is a complicated concept. First of all, it has to mean an end to criminality, rather than a continuation of it. That means it is irrelevant to punishment to the extent punishment involves either revenge or an

alternate criminal act. As long as society employs a revenge ethic, or criminality in punishment, justice is impossible. And insofar as imprisonment is the primary form of punishment and revenge, justice remains irrelevant.

Secondly, justice has to have an egalitarian dimension. It has to treat all people equally – not personally equal (it has to take their personal inequalities into account), but equally insofar as all are due the same respect as persons. That means that justice must stand in opposition to all forms of domination and hierarchy, and thus in opposition to all forms of exploitation, racialization, and impoverishment. In other words, it must stand in opposition to all the choices that the judicial machine makes in the US. Its practice would signify that there would be no modes of making people suffer that would be unpunishable. That implies that our entire concept of punishment would have to have been transformed into something non-criminal.

What is relevant to "justice" is the individuality of those with whom it deals. That means that all its operations have to be a dialogue between the law, the community, and the individual who violates a social norm. This is not only a dialogue between the one committing the infraction and the community. It is bigger than that. It must be a dialogue between the social norms of the community and the law, which would entail both a dialogue between the community itself and the law, as well as a dialogue between the individual and those norms.

What then would be the status of the victim of criminal activity (including economic exploitation and police impunity) in this? The victim is in the embrace of the community, and the dialogue between the individual committing the infraction and the victim of that act is the individual's dialogue with the community. What is most important is that each infraction is dealt with as the act of a real person, in real relation to another who has suffered by that act, and in real relation to the ideals and fabric of society and social relationships.

But this is an old idea. It is based on the notion that when a person is wronged or harmed by another person, the social fabric of the community or communities to which they belong is torn. It needs

to be mended, and the harm done redressed and healed. Justice is then a reconstructive process, in which the community involved engages in repair operations. Imprisonment is only a destructive process.

It is important to note that neither law nor judicial procedure are necessary for addressing the concept of justice. Some social procedure is necessary, but no judicial machine need be assumed. To the extent that law and the judicial machine imply prison as punishment, then law and the judicial machine are part of the problem.

## **Toward the Abolition of Prisons**

In order for there to be justice, we have to get rid of the government's criminal role models. That is the essence of the issue. The judicial machine's role models are the engine by which social criminality and its injustices endlessly increase. They are no longer acceptable. Under the guise of protecting society from crime, a social situation is created in which people find themselves without protection from the judicial machine, while at the same time criminality is given the highest value by that machine. Instrumental in producing injury, suffering, and a social atmosphere of contempt, the judicial machine leads only to the formation of a police state. To support such a system, to rant against murderers and kidnappers, or to call for vengeance against them, is to express one's own criminal identity, and to thus be in bad faith.

To eliminate criminality at all its levels, we must eliminate all the aspects of society that make people suffer. This includes the prisons and imprisonment, the police forces and the pretended necessity for their militarization, and all other institutions of contempt for the people. Though these institutions pretend to provide security, it is a security that victimizes the people, while primarily providing security for those institutions themselves, in the name of the people. What they are essentially defending with that security are the institutions of economic exploitation, impoverishment, racialization, and the commodification of people.

What we must ultimately understand is that eliminating these institutions of security, which guard property rights, white hegemony, and exploitation, will finally leave those aspects of this society vulnerable to democratization. They have never been democratized, and it is high time they were. To democratize property rights, economic exploitation, and the institutions that form the technology of racialization will eventually eliminate all three, since they are anti-democratic constructs. What will open is the possibility of a truly humanistic society. To repeat, democracy means that those who will be affected by a policy not only get to decide on the policy, but get to participate in defining and articulating the policy they then decide on.

All societies today, in the wake of European colonialism, imprison people. Before that, not all did. Today, we have no sense of who we would be if we lived in a society that did not imprison people. Living in this society, it is hard to imagine living in a society that did not induce criminality through a culture of contempt, or produce suffering through impoverishment as a conscious project. We would be different people, however, very different from what a society based on prisons and the ethic of revenge has made us.

How we could go about eliminating prisons is a serious question. Given the logic of this essay, any campaign to rid society of its prisons and its criminality will be long and hard. The notion of the revenge ethic, and of punishment as suffering, are so deeply ingrained in this culture that it will take a huge cultural transformation to root them out.

One thing is certain; an economic argument will have little effect. We can shout out that the money spent on imprisonment is wasted, and would be better spent on education or social welfare, or providing jobs and income. But we would be wasting our breath. To point out that taxpayer money is being misspent, or used to enrich the corrupt, and could be better spent in humanistic endeavor, has shown itself to be an exercise in futility in the US. Examples are legion from the last 60 years, in which taxpayer financing of criminal endeavors has easily gained the support of the majority. Expenditure must simply fit the mythology of who they are. We have seen that with the war in Vietnam, the invasion of Iraq, the building of the prison

industry, and the militarization of the police. Only political scandal and the threat of racial equality will bring out multitudes demanding an accounting. Thus, an integrated welfare system, integrated education, and universal health care will cause an uproar about how the government misspends the taxpayer's money. But war, or bank and corporate bailouts, tax cuts for the rich, the abrogation of treaties or the violation of the Constitution are met with general equanimity, or some meek complaints ("How about us? Bail us out too."). In general, the government's oxymoronic rationalizations (for instance, military intervention is humanitarian, or tax cuts for the rich will produce jobs, etc.) are accepted. Taxpayers don't really care what happens to their taxes. Sixty percent of the budget goes for the military, while schools are closed for lack of funds and health care is left in the hands of insurance companies. The president can break the law, and kill thousands of people through criminal wars that put the country hopelessly in debt, and only a fringe group of leftists will say anything about the damage being done to US society.

As someone pointed out at an Occupy Oakland event, for each prisoner, the state spends \$45-50K a year. It could have given each prisoner a job for that money, and thus most likely rescued that person from the need for criminal enterprise. They would also have been off the street and not a possible target for the cops. Thus, economically, the substitution of prison for employment contradicts good economics. But though most people know these facts, to have people in prison rather than working seems more satisfying.

Unfortunately, no appeal to justice or morality will work either. During the early days of the Vietnam War, the anti-war movement had plenty of evidence of the horrors being committed by the US army in its war against the popular insurgency of the Vietnamese people. But little of it swayed popular opinion against the war. The facts did not matter. Instead, opposition to the government's criminal enterprise was seen as betrayal of the nation. The embargo of Iraq, after bombing it in 1991, was widely known to have resulted in a million and half deaths by 1997, a third of them children, yet to call for lifting that embargo on humanitarian grounds met with congressional silence. In other words, this society's generalized criminality is supported as a form of national pride.

## What It Will Take

Hypothetically if it could ever be brought to a simple vote based on actual principles of justice, at the local level, the issue of whether sweatshop conditions should be considered criminal or not would be easy to decide. Sweatshop conditions could be made as criminal as kidnapping, rather than simply a violation of local labor standards subject to a few fines. Three things stand in the way. The first is the fundamental sanctity of property. As a cultural norm, it puts property rights, its right to exploit, far above justice. To vote to criminalize sweatshops would mean to impose social standards of equality and humanity on how the employer ran his business. The second is the cultural norm of contempt for the poor, and the general thought that the poor are responsible for their own poverty. To outlaw sweatshops as criminal enterprises would mean understanding poverty as the result of a system of impoverishment, something imposed on people, something done to them. And the third is white supremacy and the structure of racialization, of which the prison system and the police-prison complex have become the central technology (replacing enslavement and renovating segregation).

People have tried again and again to overcome these fundamental cultural norms. Both the abolitionists and the civil rights movements proclaimed that people were more important than profits or property rights. During the 1990s, a "Living Wage" movement formed, whose goal was to set minimum wage rates according to local price levels so that a family could live comfortably, and perhaps even save some money, working a single job. It took a protest movement that flew in the face of the property ethic to even bring the issue to public awareness. The central obstacle that the movement encountered was the cultural environment of contempt for people. That contempt is content to relegate whole communities and whole classes of people to impoverishment, rather than transform the economic conditions responsible.

Ironically, the sanctity of property and a general social contempt for people are cultural norms that both spawn crime. The sanctity of property, through its machinery of exploitation and

impoverishment, throws many people up against a situation from which only crime offers escape. And institutional contempt produces an equal and opposite contempt for social institutions, for law and the judicial machine. From these, criminality flows naturally.

Nevertheless based on nothing more than the sanctity of property and a general contempt for people, many people scream that crime must be eliminated. What most cannot imagine is that their concept of "eliminating" crime is only a disguise for their own criminal intentions, their own need to experience (by proxy) the domination of those impoverished or exploited or racialized.

Before this society rids itself of its criminality, the prison system will have to be abolished. It is at the heart of social criminality, and the engine of social contempt. But also at the heart of social criminality are the socio-cultural systems for which the prisons are the fundamental technology – that is, the structure of impoverishment driven by capitalism, the sanctity of property rights, and the structures of racialization. These too will have to be replaced by a social ethic in which people are more important than profits, and democracy is more important than domination.

It is indeed tragic to think that standing for equality and democracy places one in opposition and in resistance to all the cultural norms that now drive this society. Nevertheless, it means to stand in ethical and political refusal of the criminality of existing institutions. And that implies that to be in resistance against prisons and the judicial machine is the only way to be an honest and virtuous person.

To gain the virtue of democracy and the equality it depends on, there are some steps we would have to follow.

1- First, eliminate the role models given by government, social institutions, the judicial machine, police, and economic exploitation. The central role model for crime, for impoverishment, and for racialization, is the prison itself. So the prison industry will have to be dismantled and abolished.

2- Second, those who have committed crimes through their participation in the operations of the judicial machine, including police, prison guards and administrations, bureaucracies, sweatshop

owners, etc. must be brought to justice. Justice here cannot mean the existence of a judicial machine, however. A judicial machine is a criminal enterprise that, because of its hegemonic status and standing in society, commits crimes with impunity. A concept of justice will have to be invented by the people, in their own way, to begin the process of repairing society and healing the harms that a criminal government and criminal institutions like the judicial machine have engendered. It will also have to be a concept of justice that understands the need to eliminate economic exploitation and the economic system that lives and profits from impoverishment.

3- Third, the courts will have to be transformed into places where people can come and tell the story of their humiliation and dehumanization at the hands of social institutions, at the hands of other people, at the hands of a culture of contempt, and be respected in the telling and in the response.

4- Restorative justice, that is, justice which is not administered by a judicial machine but engaged as a social activity on a decentralized communal basis, must become the law of the land, in a land free of prisons and institutionalized police impunity.

5- Finally, all those people who have been harmed and injured and wounded and enraged by crime, by a criminal society, and by a criminal judicial machine will have to be given the possibility of rising above their suffering, above their injury and their rage. Modes of having their innate humanity rehabilitated by a new and heretofore unexperienced environment of respect will be necessary. And a process of rehumanizing society itself must emerge from the same process. This rehumanization process must include both the victims of specified crime and the criminals who are victims of the judicial machine, and of social oppression. All are the victims of a criminal society that has needed and developed criminality for itself. This rehumanization process will be essential to transforming this into a just society.

Only within an atmosphere of respect and humanity can restorative justice procedures be constructed, a system that can hear would-be criminals before their complaints get put into action, after

which they will appear as the complaints of a victim. Central to that must be the total elimination of prisons from the social landscape.

## Endnotes

1. Rather than play an overt political role for the suppression of social opposition, prisons have become an industry, with privatized prisons, prison production of goods, the designing of prisons intended to drive inmates insane, the granting of enormous political power to prison guard unions at the state level, and a seemingly unresolvable overcrowding condition. No popular opposition arises against it, suggesting that the existence of the prison system reflects something very profound for the culture of the US, far beyond the mere suppression of crime or political freedom. Thus, though the prison industry has grown as an economic factor, that too is secondary to the cultural substrate that drives it.
2. This has also been the source of the "police scandals" brought to light in the last few decades, in which hundreds of people have been framed. We could mention the Oakland Rider's case, the Philadelphia police scandals (1989, 1995, 2005), the Innocence Project's discoveries about Illinois's Death Row, and specific frame-ups such as those of Geronimo Pratt, or Leonard Peltier.
3. Michele Alexander has enumerated the laws and Supreme Court decisions that have given the judicial machine the impunity to underwrite this prison situation. The process begins in the 1960s, when police power to stop and search was first expanded by the Supreme Court. Since then, the police have gained inordinate autonomy in dealing with individuals, to the point where 4<sup>th</sup> Amendment prohibition against unreasonable search and seizure has been eroded and relegated to vague obscurity. In its place, "race" has been granted the status of "reasonableness" for promoting police operations. In *Terry vs Ohio* (1968), the court gave the police the right to stop a person for what they judge is "unusual conduct" as "suspicious behavior." That case involved the police having stopped and searched a man seen walking back and

forth on the sidewalk while waiting for a friend. The only thing that made this "conduct" unusual was that he was black ("color" was thus included as an element of "conduct"). *Florida vs. Bostick* (1987) allowed requests for suspicionless searches, and consent searches. This was then extended to "pretext" traffic stops, and the right to search even without consent (*Ohio vs. Robinette* (1993)). Laws were passed validating SWAT team operations for serving warrants, even for non-violent offenses. Many people who were simply on the premises at the time of the raid have been killed by such teams. Asset forfeiture laws were passed that made it financially beneficial to police departments to stop and arrest people on drug charges, even without evidence. Caught in such operations, it was up to the suspect to prove both innocence and ignorance of any wrong-doing in order to prevent the seizure of their property. Mandatory minimum sentencing laws were passed, and ratified by the Supreme Court (*Lockyer vs. Andrade*, 2003).

4. At the time of this writing, a group of people from Occupy Oakland and Occupy Cal had taken over a ten acre plot on the border between Berkeley and Albany, and were farming it. It is called the Gill Tract, whose sale in 1928 to the University of California stipulated that it be used only for agricultural purposes, something the university had failed to honor. The university declared this act of farming to be illegal. And its first act was to turn off the water to that tract, in a childish outburst of annoyance. Three weeks after they began farming, university police evicted the farmers from that land.

Similarly, on Sunday, April 1, 2012, a group of people from Occupy SF took over a large building on Turk St. that was empty. The building was owned by the Archdiocese of SF. It had been empty for a year and a half. Occupy took over the building in order to set up social services, meeting rooms, education facilities, and a shelter for homeless people. The very next day, the archdiocese proclaimed that the building was going to be used for "social services," and demanded that the police evict the people who had occupied it. Again, the attempt to provide for the survival of people using unused space or resources gets defined as a criminal endeavor.

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