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RESPECTING BEASTS:

**THE DEHUMANIZING QUALITY OF THE
MODERN PRISON AND AN UNUSUAL
MODEL FOR PENAL REFORM**

*James M. Binnall**

Over forty years ago, President Johnson, “recognizing the urgency of the Nation’s crime problem and the depth of ignorance about it,” established the Commission on Law Enforcement and Administration of Justice.¹ In 1967, the Commission published a comprehensive report after an “examination of every facet of crime and law enforcement in America,”² which addressed, in part, the management of correctional institutions.

Proposing change, the Commission recommended “a collaborative regime in which staff and inmates work together toward rehabilitative goals, and unnecessary conflict between the two groups is avoided.”³ The Commission, with this recommendation for a collaborative approach to prison reform,

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¹ Nicholas deB. Katzenbach, *Foreword* to THE CHALLENGE OF CRIME IN A FREE SOCIETY: A REPORT BY THE PRESIDENT’S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE (United States Government Printing Office 1967). The Commission was established on July 23, 1965 by Executive Order 11236 (Hereinafter THE CHALLENGE OF CRIME IN A FREE SOCIETY).

² *Id.*

³ *Id.* at 173.

called for staff to exercise their “great potential for counseling functions, both informally with individual inmates and in organized group discussions.”⁴

Today, however, the recommendations of Johnson’s Commission amount to folklore. America’s current prison management methods do not foster collaborative efforts focused on promoting reintegration. Instead, prisons are now impersonal storage units that dot the Nation’s landscape, urging some to term them “warehouses.”⁵

Principally troubling about the modern prison is that it dehumanizes inmates. Almost unanimously, the managerial regimes that operate today’s prisons view prisoners as commodities, unworthy of rehabilitative efforts. Consequently, current prison management schemes are moving in a direction entirely divorced from the “cure and punish camps”⁶ that once predominated scholarship, leading some sociologists to theorize that “the penal enterprise may well be evolving into a ‘waste management’ system rather than a normalizing or rehabilitative one.”⁷

Conversely, many penal reformers are understandably of the view that “inmates deserve decent treatment and respect as individuals with basic human rights.”⁸ As Justice Marshall once noted, “the needs for identity and self-respect are more compelling in the dehumanizing prison environment.”⁹ However, those that

⁴ *Id.*

⁵ See generally JOHN IRWIN, *THE WAREHOUSE PRISON* (Dawn Vandercreek et al. eds., Roxbury Publishing Company 2005).

⁶ VICTOR HASSINE, *LIFE WITHOUT PAROLE: LIVING IN PRISON TODAY* 162 (3d ed. 2004) (citing an interview conducted with the Honorable Judge Richard J. Nygaard, 3d Cir., titled *Prisons As I See Them*).

⁷ Mona Lynch, *Waste Managers? The New Penology, Crime Fighting, and Parole Agent Identity*, 32 *LAW & SOC’Y REV.* 839, 839 (1998) (citing Malcolm M. Feeley & Jonathan Simon, *The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications*, 30 *CRIMINOLOGY* 449, 469–74 (1992)).

⁸ Susan Sturm, *Resolving the Remedial Dilemma: Strategies of Judicial Intervention in Prisons*, 138 *U. PA. L. REV.* 805, 824 (1990).

⁹ Melvin Gutterman, *The Prison Jurisprudence of Thurgood Marshall*, 56 *MD. L. REV.* 149, 150 (1997) (quoting *Procunier v. Martinez*, 416 U.S. 396, 428

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oversee our “modern-day houses of the dead”¹⁰ value inmates as little more than warehouse stock, seldom acknowledging them as human or even considering the notion of respect. As a convicted felon and a former inmate, I have felt the pains of dehumanizing treatment, but I have also witnessed the intricacy with which respect weaves its way through prisons, specifically within the inmate culture.

Through a lens carved with unfortunate personal experiences, but mindful that my experiences as an inmate may vary significantly from those of others, I examine the interpersonal climate inside the walls of prison. Focusing on the notion of withholding respect, this Article contends that current prison management practices do not foster a healthy sense of self-respect among inmates. Instead, I argue that the inmate culture, guided by the normative expectations of the convict code, is a prisoner’s only source of recognition as a human being worthy of respect. Accordingly, I propose that those charged with running modern prisons look to this aspect of the inmate culture for guidance and treat those who exist behind concrete and steel as beings rather than beasts.

Part I offers a conceptualization of self-respect, focusing on the work of Kant and noting the bifurcated theory of respect made popular by philosopher Steven Darwall. Part II discusses the prison climate, specifically tracing the rise of the modern prison and exposing the practice of objectifying the inmates that it houses. Part III examines the manner by which withholding respect influences one’s concept of self, noting the importance of self-respect and its potential for facilitating successful post-release reintegration. Part IV highlights the role of respect within the inmate culture while tracing the likely origins of this feature of life inside prison, contending that inmates recognize one another as human beings, and that it is this aspect of the convict code that is worthy of reproduction by the modern prison’s managerial regime.

(1974) (Marshall, J., concurring)).

¹⁰ See James E. Robertson, *Houses of the Dead: Warehouse Prisons, Paradigm Change, and the Supreme Court*, 34 HOUS. L. REV. 1003, 1028 (1997).

I. CONCEPTUALIZING SELF-RESPECT

Self-respect receives little attention in psychological literature.¹¹ Instead, scholars in that field tend to focus their efforts on the idea of self-esteem.¹² Yet, there is interplay between the two concepts in that “in order to maintain self-esteem it is necessary to possess self-respect.”¹³ Conceding potential confusion, some distinguish self-esteem from self-respect by noting that one “might regard ‘self-esteem’ as ‘a favourable opinion of oneself,’ whilst ‘self-respect’ is more concerned with a recognition of our own moral worth.”¹⁴

However, self-respect has garnered significant attention in philosophical literature,¹⁵ where philosophers often explore “the moral significance of self-respect.”¹⁶ A “complex and elusive”¹⁷ concept, “self-respect is considered to be a conceptual ‘off-spring’ of respect, which allows it logical placement into the same conceptual family as dignity, regard, esteem, and honor because all

¹¹ Constance E. Roland & Richard M. Foxx, *Self-respect: A Neglected Concept*, 16 PHILOSOPHICAL PSYCHOLOGY 248 (2003) (“Despite the fact that respect for self and others is necessary for stability and harmony within a society, there is little literature on self-respect or how it influences the mental health of individuals and communities.”).

¹² *Id.* at 247 (“[T]he field of psychology has focused on self-esteem and paid little attention to self-respect.”).

¹³ David Middleton, *Why Should We Care About Respect*, 10 CONTEMPORARY POLITICS 229 (Sept.–Dec. 2004) (citing D. Sachs, *How to Distinguish Self-Respect from Self-Esteem*, 10 PHIL. AND PUB. AFF. 346 (1986)).

¹⁴ *Id.* (citing S. COOPERSMITH, *THE ANTECEDENTS OF SELF-ESTEEM* 4–5 (1967); R.S. DILLON, *DIGNITY, CHARACTER, AND SELF-RESPECT* 292 (1995)); *see also infra* text accompanying notes 42–48; *see also infra* Part III.B.

¹⁵ *See* DILLON, *supra* note 14, at 3 (commenting that “[c]ontemporary philosophers have approached self-respect with a variety of interests”).

¹⁶ Roland & Foxx, *supra* note 11, at 248 (“[I]t was Kant who first placed the concept of self-respect into its central role in moral philosophy”); *see also* DILLON, *supra* note 14, at 2 (“Aristotle, Aurelius, Augustine, Aquinas, Montaigne, Descartes, Pascal, Spinoza, Hobbes, Rousseau, Hume, Hegel, Mill, Nietzsche: all have had something to say about what is variously called ‘magnanimity,’ ‘proper pride,’ ‘self-esteem,’ ‘a sense of dignity.’”).

¹⁷ Roland & Fox, *supra* note 11, at 248.

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are concerned with worth.”¹⁸ Accordingly, one must consider respect and self-respect concomitantly.

A. Do We All Deserve Respect?

Kant’s theory of self-respect is perhaps the most innovative. While “[p]re-Kantian descriptions of the concept of self-respect diverge into two lines of thought, the idea of respect as it pertains to the recognition of something important and the evaluation of the quality of something,”¹⁹ Kant’s approach “joined these two lines of thought by defining two distinct grounds for the presence of self-respect—the person and the quality of the person’s conduct.”²⁰

Kant wrote: “[a]ct in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end.”²¹ “[W]idely regarded as the preeminent statement of the principle of respect for persons,”²² Kant’s words suggest “the simple but powerful idea that all persons as such must be respected.”²³ Psychologists Roland and Foxx point out, “Kant proposed that because of their ability to rationalize, think, and choose, individuals have a moral duty to respect others and themselves, which requires them to act in certain ways and not in others.”²⁴ Thus, self-respect is “a supreme moral duty”²⁵ and also, “a precondition of respecting others.”²⁶

¹⁸ *Id.*

¹⁹ *Id.* at 249 (citing DILLON, *supra* note 14, at 1–49).

²⁰ *Id.* at 249–50.

²¹ *Id.* at 249 (citing IMMANUEL KANT, *THE MORAL LAW: GROUNDWORK OF THE METAPHYSICS OF MORALS* (H.J. Patton trans., Routledge 1st ed. 1992) (1785)).

²² DILLON, *supra* note 14, at 14 (citing the contradictory position of Carl Cranor, *Kant’s Respect-for-Persons*, 12 *INT’L STUDIES IN PHILOSOPHY* 19–40 (1980)).

²³ *Id.*

²⁴ Roland & Foxx, *supra* note 11, at 249.

²⁵ *Id.*

²⁶ *Id.*

While philosophers differ as to their views about the definition and source of self-respect,²⁷ many still conceptualize it in Kantian terms²⁸ stressing the “appreciation of the importance of being a person.”²⁹ Those who adhere to this principle emphasize the importance of dignity, noting that it is “how self-respect is displayed to others.”³⁰

Tracing Kant’s philosophical conceptualization of self-respect, some contemporary philosophers conclude that “[t]he inability to see another’s dignity is an affront to both the self-respect of the viewed and the viewer.”³¹ They also explain that “while self-worth is inherent, it is possible that some individuals may be unable to express it and/or see it in others because of prejudiced views and insights.”³² Thus, the “public availability”³³ of one’s dignity, as a show of self-respect, is important to maintaining that self-respect. When one attacks and suppresses another’s dignity, self-respect is also injured, and this process serves to diminish one’s “sense of humanity.”³⁴

B. How Should We Respect Ourselves?

The work of Stephen Darwall, an influential modern

²⁷ See *id.* at 250 (“The writings of contemporary moral philosophers are grounded in these historical accounts of self-respect and be categorized into four distinct groups.”) (citing DILLON, *supra* note 14, at 1–49).

²⁸ See DILLON, *supra* note 14, at 43 (stating “[t]his view is also a staple of introductory ethics textbooks”).

²⁹ Roland & Foxx, *supra* note 11, at 250.

³⁰ *Id.* (defining dignity also as “the way in which individuals visibly demonstrate their humanity and their worthiness of respect”) (citing M.J. Meyer, *Dignity, Rights and Self-Control*, 99 *ETHICS* 520–34 (1989)).

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 256 (offering an example of an “annihilation of dignity” involving the Nazi death camps) (citing P. LEVI, *IF THIS IS A MAN: REMEMBERING AUSCHWITZ* (1986)); see also DILLON, *supra* note 14, at 61 (“Through the action of environmental or other factors, . . . dignity may increase or diminish in the course of time.”).

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philosopher, focuses not on “what self-respect is,”³⁵ but rather what forms self-respect takes. He maintains that respect for others and self exists in two forms: recognition respect and appraisal respect.³⁶ He contends that “[t]o have recognition respect for someone as a person is to give appropriate weight to the fact that he or she is a person by being willing to constrain one’s behavior in ways required by that fact.”³⁷ Conversely, offering appraisal respect amounts to making “a positive appraisal of an individual . . . with regard to those features which are excellences of persons.”³⁸ Accordingly, appraisal respect, unlike recognition respect, “is not owed to everyone, for it may or may not be merited.”³⁹

Distinguishing appraisal and recognition respect, Darwall points out that only appraisal respect can “admit of degree.”⁴⁰ For example, “when one person is said to be more highly respected as a person than someone else, the attitude involved is appraisal respect.”⁴¹ However, “if all persons as such should be treated equally, there can be no degrees of recognition respect for them.”⁴² This is because,

to have recognition respect for a person as such is not necessarily to give him *credit* for anything in particular, for in having recognition respect for a person as such we are not appraising him or her as a person at all. Rather we are judging that the fact that he or she is a person places moral constraints on our behavior.⁴³

³⁵ Roland & Foxx, *supra* note 11, at 257.

³⁶ See Stephen L. Darwall, *Two Kinds of Respect*, 88 ETHICS 1, 38–39 (1977).

³⁷ *Id.* at 45.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 45–46 (continuing “[o]ne’s appraisal of a person, considered as a person, may be higher than of someone else”).

⁴² Darwall, *supra* note 36, at 46.

⁴³ *Id.* (emphasis in original).

Importantly, recognition respect and appraisal respect “are attitudes which one can bear on oneself.”⁴⁴ Recognition self-respect is present when one properly assesses “the rights and responsibilities of being a person”⁴⁵ and “[e]xactly what such self-respect requires depends on what moral requirements are placed on one by the fact that one is a person.”⁴⁶ Therefore, by virtue of being human, we are all entitled to our own recognition self-respect. Conversely, there are additional considerations when one contemplates appraisal self-respect.⁴⁷

Appraisal self-respect occurs because “[p]eople appraise themselves as persons, and the attitude which results from a positive appraisal is appraisal self-respect.”⁴⁸ In assessing the level of appraisal self-respect one should afford oneself, one must consider “those excellences of persons which we delimit as constituting character.”⁴⁹ As Darwall explains,

those features of persons which form the basis of appraisal respect seem to be those which belong to them as moral agents . . . [t]hose dispositions which constitute character (at least as it is relevant to appraisal respect) are dispositions to act for certain reasons, that is, to act, and in acting to have certain reasons for acting.⁵⁰

⁴⁴ *Id.* at 47.

⁴⁵ *Id.*

⁴⁶ *Id.* (“It is recognition self-respect to which we appeal in such phrases as ‘have you no self-respect?’ hoping thereby to guide behavior.”).

⁴⁷ THOMAS E. HILL JR., *AUTONOMY AND SELF-RESPECT* 19 (1991) (noting the difference between recognition self-respect and appraisal self-respect: “[b]asic respect as a human being, one feels, does not need to be earned; and if respect is having proper regard for rights, then at least some respect is due each person without his needing to earn it. A person may lack self-respect not merely by underestimating his merits and achievements but also by misunderstanding and undervaluing his equal rights as a human being”).

⁴⁸ Darwall, *supra* note 36, at 48; *see also* HILL, *supra* note 47 (commenting that a lack of appraisal self-respect does not entail a lack of recognition self-respect, “[o]ne who lacks this sort of respect for himself, perhaps because he does not have any special merit, does not necessarily misunderstand or undervalue his *rights*”).

⁴⁹ Darwall, *supra* note 36, at 48.

⁵⁰ *Id.* at 43 (offering an example of a character trait, stating “honesty is a

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Darwall also notes that appraisal self-respect and self-esteem comprise different self assessments; “[t]hose features of a person which form the basis for self-esteem or lack of it are by no means limited to character traits, but include any feature such that one is pleased or downcast by a belief that one has or lacks it.”⁵¹ Thus, confusion of these two concepts often arises because of an over-inclusion of considerations by someone assessing his or her worthiness for appraisal self-respect.⁵²

Characterizing a person as “a being with a will who acts for reasons,”⁵³ clarifies exactly how and to what degree self-respect is of two distinct varieties. Maintaining recognition self-respect is to acknowledge “oneself as a person, a being with a will,”⁵⁴ and maintaining appraisal self-respect is to positively assess one’s reasons for acting. When Kant recommended that you “treat humanity . . . in your own person . . . as an end,”⁵⁵ he spoke of recognition self-respect, suggesting that all people, by virtue of being people, deserved this type of respect from others and from themselves,⁵⁶ and it is this type of respect that does not exist in the modern prison as inmates are objectified and, in turn, disrespected by those charged with their control.

II. THE PRISON CLIMATE: DO THEY RESPECT THEIR CLIENTS?

As Erving Goffman pointed out in his seminal work, *Asylums*, prisons are places that are “organized to protect the community

disposition to do what one takes to be honest at least partly for the reason that it is what honesty requires”).

⁵¹ *Id.* at 48 n.18 (commenting that even Rawls confuses self-respect with self-esteem).

⁵² *See id.* (noting that “one’s appearance, temperament, wit, physical capacities, and so forth” do not amount to considerable character traits).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *See* KANT, *supra* note 21, at 91.

⁵⁶ *See* Darwall, *supra* note 36, at 45 n.14 (addressing concerns that Kant’s theory of respect is the root of confusion among scholars as to the differences between recognition respect and appraisal respect, and noting “[i]f we interpret Kant as identifying recognition respect for persons as such with a willingness to treat persons as ends in themselves no such problem arises”).

against what are felt to be intentional dangers to it, with the welfare of the persons thus sequestered not the immediate issue.”⁵⁷ Perhaps more accurate today than when he wrote, Goffman’s observations make clear that prisons often function at the expense of those they house.⁵⁸

The managerial style of today’s prison administrators and staff is possibly more offensive than the imposing physical structures that it governs.⁵⁹ Preliminarily, the state dehumanizes inmates by sending them to institutions “where they have been assigned storage space.”⁶⁰ Then, instead of treating inmates, the state controls those who have broken the law, designating prison personnel as “custodians” charged with taking care of the mess.⁶¹ Consequently, prison staff identify inmates as inanimate space fillers, monsters “worthy of absolute moral condemnation,”⁶² by objectifying those under their control, prison personnel withhold the recognition respect that Kant and Darwall contend is deserved by all human beings.

⁵⁷ ERVING GOFFMAN, *ASYLUMS* 4–5 (1961).

⁵⁸ Robertson, *supra* note 10, at 1028 (“The [N]ew [P]enology is neither about punishing [justly] nor about rehabilitating individuals. It is about identifying and managing unruly groups. It is concerned with the rationality not of individual behavior or even community organization, but of managerial processes.”) (citing Feeley & Simon, *supra* note 7, at 455).

⁵⁹ *Id.* at 1031 (“[In] sharp contrast to the lofty aspirations of its founders, the prison of the 1990’s is deemed successful if stores and degrades offenders under a regime of idleness.”).

⁶⁰ *Id.* at 1029.

⁶¹ JAMES G. FOX, *ORGANIZATIONAL AND RACIAL CONFLICT IN MAXIMUM SECURITY PRISONS* 29 (Lexington Books 1982) (“The major prison-guard role in the United States is custodian, that is, preventing escapes, enforcing prison discipline, and maintaining social control.”).

⁶² Robertson, *supra* note 10, at 1031 (citing MAX WEBER, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* 157–58 (Talcott Parsons trans., 1958); *see also* Marcus D. Dubber, *Legitimizing Penal Law*, 28 *CARDOZO L. REV.* 2597, 2606 (2007) (“Penal discipline eliminates threats through incapacitation and humiliation.”)).

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A. When Did Human Beings Lose Their Value?

Incarceration began as an alternative to Britain's harsh "methods for dispensing punishment."⁶³ Particularly concerned with the death penalty, Colonial Americans who sought to distance themselves from the crown believed that "[c]apital punishments are the natural offspring of monarchical governments . . . [k]ings consider their subjects as their property; no wonder, therefore, they shed their blood with as little emotion as men shed the blood of their sheep or cattle."⁶⁴

Consequently, Americans reshaped the Colonial rule of law by incorporating an enlightened view of punishment. Many states eliminated capital punishment statutes⁶⁵ and instead of stockades, whips, and gallows, early Americans sought a more "certain and humane" form of punishment—incarceration.⁶⁶ However, "Americans were still thinking in terms of deterrence. What mattered most was the certainty of the punishment, not the internal routine or management of the prison."⁶⁷ Nevertheless, construction began, and the prison system in the United States was born.⁶⁸

At the turn of the twentieth century, the Progressive Party ushered in the concept of the "Big House."⁶⁹ Employing the

⁶³ David J. Rothman, *Perfecting the Prison: United States 1789–1865*, in THE OXFORD HISTORY OF THE PRISON 114 (Norval Morris and David J. Rothman, eds., Oxford University Press 1995).

⁶⁴ *Id.* (quoting Benjamin Rush, a "Pennsylvania physician and signer of the Declaration of Independence").

⁶⁵ *Id.* ("[B]y 1820, practically all (states) had abolished the death sentence except for the crime of first-degree murder or had strictly limited it to a handful of the most serious crimes.").

⁶⁶ *Id.* at 115.

⁶⁷ *Id.*

⁶⁸ *Id.* at 114 ("Pennsylvania led the way in turning the old Philadelphia jail at Walnut Street into a state prison. In 1796, New York appropriated funds to build the Newgate state prison in Greenwich Village. New Jersey completed its state penitentiary in 1797 and Virginia and Kentucky theirs in 1800. That same year, Massachusetts made an appropriation for the prison at Charlestown, and in short order Vermont, New Hampshire, and Maryland followed suit.").

⁶⁹ Edgardo Rotman, *The Failure of Reform: United States 1865–1965*, in THE OXFORD HISTORY OF THE PRISON, *supra* note 63, at 185 (The "Big House")

psychotherapeutic model of prison reform, “Progressives fully endorsed a medical or therapeutic model of rehabilitating inmates,”⁷⁰ as “psychiatric interpretations of social deviance began to assume a central role in criminology and policy making.”⁷¹

This reform “spurred on the design and appeal of indeterminate sentencing statutes,”⁷² and “[r]elease from prison became the equivalent of release from a hospital.”⁷³ Prisons classified inmates according to the treatment they required, and were “democratized so as to pave the way for the future reintegration of the inmate into free society.”⁷⁴ Additionally, the Progressive reforms included “a new range of alternatives to incarceration.”⁷⁵

However, the Progressive reform movement “fell considerably short of its aims.”⁷⁶ Rehabilitation programs housed in outdated structures led to a “superficiality” that led some to comment that “this dismal record of reform was an inevitable by-product of incarceration, that the very idea of trying to carry out reform behind bars is flawed from the start.”⁷⁷ Big Houses held thousands of inmates⁷⁸ and these “[p]enal institutions, with their treadmill and

emerged in the early 1900’s and was “managed by professionals instead of short-term political appointees and designed to eliminate the abusive form of corporal punishment and prison labor prevailing at the time.”).

⁷⁰ *Id.* at 178.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 179.

⁷⁵ Rotman, *supra* note 69, at 182 (“Probation – the release of a convicted offender to the community under supervision without serving prison time – was one essential component. Invented in Massachusetts half a century earlier, probation was invested with a new seriousness and energy by Progressives, making it a basic tool of the flexible individualized sentencing strategy.”).

⁷⁶ *Id.* at 183.

⁷⁷ *Id.*

⁷⁸ *Id.* at 185 (“Big Houses were large prisons that held, on average, 2,500 men, prisons such as San Quentin in California, Sing Sing in New York, Stateville in Illinois, and Jackson in Michigan. In 1929, there were two prison with a population of more than 4,000 inmates each; there were four with more than 3,000 each; six with more than 2,000 each; and eighteen with more than 1,000 prisoners.”).

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mechanical quality of existence, did little to prepare for the resumption of a law-abiding life.”⁷⁹

The 1950’s and 1960’s brought about significant changes to the prison landscape of the United States. A “general rehabilitative thrust” influenced those who made prison policy, perhaps spawned by the “international reconstructive optimism” and the “relative prosperity of the 1950’s.”⁸⁰ Additionally, “prisoner complaints were encouraged by sympathetic language that crept into a number of the federal court opinions.”⁸¹ Thus, America began the business of reshaping the penal system by concerning itself less with punishment and more with the welfare of its clients.

However, in 1974 Robert Martinson publicly called rehabilitation into question, concluding in an article that “nothing works to rehabilitate offenders.”⁸² Correctional policies soon reflected Martinson’s hopelessness: “the mainstays of the rehabilitative ideal—indeterminate sentencing, parole, and prison educational, vocational, and substance abuse programs—gave way in many jurisdictions to longer, determinate sentences and ‘no frills’ prison environments.”⁸³ As James E. Robertson points out, more troublesome was that inmates “lost their status as victims of

⁷⁹ *Id.* (citing the National Commission of Law Observance and Enforcement which noted that “in most prisons, the life of the inmate was controlled for the prisoner, giving him or her no chance for initiative or judgment”).

⁸⁰ *Id.* at 189.

⁸¹ MALCOLM M. FEELEY & EDWARD L. RUBIN, *JUDICIAL POLICY MAKING AND THE MODERN STATE: HOW THE COURTS REFORMED AMERICA’S PRISONS* 35 (Cambridge University Press 1998).

⁸² Robertson, *supra* note 10, at 1027.

⁸³ *Id.* at 1027–28 (citing Francis A. Allen, *Criminal Justice, Legal Values and the Rehabilitative Ideal*, 50 J. CRIM. L., CRIMINOLOGY, & POLICE SCI. 226 (1960); BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, *DICTIONARY OF CRIMINAL JUSTICE DATA TERMINOLOGY* 107 (2d ed. 1981); Marvin Frankel, *Lawlessness in Sentencing*, in *PRINCIPLED SENTENCING* 265, 267 (Andrew Von Hirsh & Andrew Ashworth, eds., 1992); Ralph Thomas, *No-Frills Prison Bill Back on Legislature’s Slate*, ANCHORAGE DAILY NEWS, Jan. 23, 1997, at 1D (discussing Alaska’s proposed bill to make state prison a tougher place to live by banning all tobacco products and sharply restricting prisoners’ access to televisions, telephones and computers and arguing that similar no-frills legislation has become popular in other states).

treatable social pathologies”⁸⁴ and “joined the ranks of those persons deemed undeserving of aid, comfort, or compassion.”⁸⁵ Today, the American prison stands “[i]n sharp contrast to the lofty aspirations of its founders”⁸⁶ Instead, it represents “an institution that is not only expensive and ineffective, but affirmatively dehumanizing and brutal.”⁸⁷

What resulted from this shift in correctional policy is now the modern prison. “The principal arm of the New Penology,”⁸⁸ the modern prison seeks only to contain—it does not seek to treat or punish.⁸⁹ As Judge Nygaard explains, “[t]he ‘honey-trap’ logic of the warehousing model goes something like this: since we have yet to develop an effective treatment against criminal behavior, the most logical thing to do is to quarantine criminals until an effective cure or punishment for crime can be developed [t]his is the ‘leper colony’ approach.”⁹⁰

B. Objectifying Human Beings

Traditionally, as Goffman emphasized, in prison “there is a basic split between a large managed group, conveniently called inmates, and a small supervisory staff.”⁹¹ Therefore it is not surprising that prisons have always acted as a catalyst for hostility between the keepers and the kept. As Goffman observed, the roots

⁸⁴ Robertson, *supra* note 10, at 1028.

⁸⁵ *Id.* (citing FRANCIS T. CULLEN & KAREN E. GILBERT, REAFFIRMING REHABILITATION 178 (1982)).

⁸⁶ Robertson, *supra* note 10, at 1031.

⁸⁷ J.C. Oleson, *The Punitive Coma*, 90 CAL. L. REV. 829, 850 (2002) (citing Richard L. Nygaard, *The Myth of Punishment: Is American Penology Ready for the 21st Century?*, 5 REGENT U. L. REV. 1, 9 (1995)).

⁸⁸ Robertson, *supra* note 10, at 1029.

⁸⁹ HASSINE, *supra* note 6, at 162 (citing Nygaard, *supra* note 6) (“[I]n this post-modern age of advanced technology, a third possibility intruded itself into the long-standing feud between those who would cure and those who would punish convicts. Locking away offenders indefinitely suddenly became an achievable possibility, and the warehousing model soon became the most widely used and accepted penological purpose in the nation.”).

⁹⁰ *Id.*

⁹¹ GOFFMAN, *supra* note 57, at 7.

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of this hostility perhaps occur because “[e]ach grouping tends to conceive of the other in terms of narrow hostile stereotypes.”⁹² Inmate and author Jack Abbott succinctly characterized the relationship between guard and inmate, concluding:

Among themselves, the guards are human. Among themselves, the prisoners are human. Yet between these two the relationship is not human. *It is animal*. Only in reflection—subjective reflection—do they acknowledge sharing a common consciousness. What is that common consciousness? It is the consciousness that we belong to a *common species* of life. But this is not the consciousness of society. It is not humanistic; *it is animalistic*.⁹³

This dehumanization of the inmate is noted also by criminologist Robert Johnson; “[t]he standard notion that is ‘us’ against ‘them’ does not fully capture the animosity the state-raised convict feels toward his keepers. ‘Us’ against ‘that’ comes closer to the mark.”⁹⁴ Thus, the relationship between guard and inmate constitutes a hierarchical separation that denotes the former as superior and the latter as inferior.⁹⁵

This objectification of the men and women who exist inside modern prisons manifests itself in the personal interactions between guard and inmate. As noted criminologist John Irwin explains, “[t]hrough the guard world is heterogeneous and somewhat divided, there are some common attitudes held by most guards and staff”⁹⁶ like “their shared derogatory attitude toward prisoners; generally, they perceive prisoners as worthless, untrustworthy, manipulative, and disreputable deviants.”⁹⁷

⁹² *Id.*

⁹³ ROBERT JOHNSON, *HARD TIME: UNDERSTANDING AND REFORMING THE PRISON* 150 (3d ed. 2002) (citing JACK HENRY ABBOTT, *IN THE BELLY OF THE BEAST: LETTERS FROM PRISON* 60 (1981)) (emphasis in original).

⁹⁴ *Id.*

⁹⁵ GOFFMAN, *supra* note 57, at 7. “Social mobility between the two strata is grossly restricted; social distance is typically great and often formally prescribed.” *Id.* This aspect of prison, the prohibition on fraternization, is a far more historical notion than that of objectifying inmates.

⁹⁶ IRWIN, *supra* note 5, at 63–64.

⁹⁷ *Id.* at 64.

While accounts of dehumanization by prison personnel abound,⁹⁸ perhaps the most illuminating descriptions of the inmate/guard relationship comes from those charged with running the modern prison:

A guard at the U.S. Penitentiary, Leavenworth explained why he had not tried to stop a fight between two prisoners: “Most of us have wives and kids or grandkids. You tell me: Are you going to risk your life by stepping in front of a knife when you have one lousy piece of shit trying to kill another lousy piece of shit?”⁹⁹

Recalling Kant’s contention that human beings are worthy of respect by their status as human beings capable of rational thought, and Darwall’s theory of respect as a dual concept,¹⁰⁰ it is clear that for modern prison staff to offer respect to an inmate, they must acknowledge that the inmate is primarily a human being. By objectifying an individual, one withholds recognition respect simply by failing to recognize another as a worthy person.

III. PROMOTING SELF-RESPECT BY RESPECTING INMATES: IMPORTANT OR TRIVIAL?

Environmental factors affect one’s sense of self,¹⁰¹ and psychologists generally agree that human beings desire respect from others.¹⁰² Some also believe that respect received from others

⁹⁸ See K.C. CARCERAL, PRISON INC.: A CONVICT EXPOSES LIFE INSIDE A PRIVATE PRISON 188 (Thomas J. Bernard ed. 2006) (noting, as an inmate, that prisoners are often “treated like little children, and sometimes they are treated in ways that are even more degrading, as if they were stupid or brutal”); see also HANS TOCH, LIVING IN PRISON: THE ECOLOGY OF SURVIVAL 102 (1977) (commenting on the inmate’s realization that he is objectified by staff, noting “[t]here is also the issue of ‘respect,’ the discovery that one is not dealt with as a person of worth, while one is expected to treat others as worthy”).

⁹⁹ IRWIN, *supra* note 5, at 64.

¹⁰⁰ See *supra* Part I.

¹⁰¹ See Middleton, *supra* note 13, at 228–29 (“[K]nowing ourselves is a precondition for knowing others, but personal identity is a highly complex phenomenon constructed through an interplay of personal feelings, desires and preferences together with influences from collective cultures and structures.”).

¹⁰² See, e.g., *id.* at 230 (“[T]he desire for respect, which appears to be

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dictates, at least in part, one's ability to maintain self-respect.¹⁰³ Conversely, withholding respect from another negatively impacts that person's ability to preserve self-respect.¹⁰⁴

The importance of self-respect for Kant lay in the moral significance of being a human capable of rational thought.¹⁰⁵ However, prison administrators generally do not share Kant's view of what it means to be human. For those who manage modern prisons, a utilitarian calculus is obviously more important than morality. Thus, examining the utility of self-respect as a prison managerial tool that will facilitate successful reintegration is far more practical than a discussion of the moral worthiness of inmates.

A. Influencing Self-Respect

Erving Goffman first suggested what he termed the "dramaturgical approach,"¹⁰⁶ claiming that "when we present ourselves in public we do so conscious of the image that we are trying to project, and as such we are playing a role."¹⁰⁷ Some suggest that a desire to play a public role "amounts to . . . a desire to be respected,"¹⁰⁸ and that it is "what Goffman called the

universal, suggests a strong psychological ground for this behaviour.").

¹⁰³ *Id.* at 231 ("[S]elf-respect is related to how we evaluate ourselves, but this is mediated by how we perceive other's reactions to us.") (referencing IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* (1990)).

¹⁰⁴ *Id.* at 230 (noting that "whilst most people can bear the feeling of being disliked, they cannot bear the injury to their sense of self from being disrespected") (citing Richard Buttny & Princess L. Williams, *Demanding Respect: The Uses of Reported Speech in Discursive Constructions of Interracial Contact*, 11(1) *DISCOURSE AND SOC'Y* 109, 110 (2000)).

¹⁰⁵ See Roland & Foxx, *supra* note 11, at 249 (concluding that "[t]he foundation of Kant's concept of self-respect was one's dignity as a person, which was also the foundation of all morality").

¹⁰⁶ Middleton, *supra* note 13, at 229 (citing ERVING GOFFMAN, *THE PRESENTATION OF SELF IN EVERYDAY LIFE* (1959)).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 230 (suggesting that most people "want to feel that those who matter to us . . . take us seriously" and that this drives people to play a "social role").

‘backstage area,’ where we live out our ‘personal’ lives”¹⁰⁹ and “construct our self-respect.”¹¹⁰

In prison, an inmate’s public persona is that which they display to other inmates and to staff. The backstage area consists of solitude, perhaps in a cell, when they reflect on their thoughts about the “type of person [they] are, and might become.”¹¹¹ It is there, at that time, that an inmate must “decide that [they] are the type of person deserving of respect. Not just the respect of others, but from the point of view of [their] own person[al] identity, the respect of [themselves].”¹¹²

However, being a “‘social actor’ is, to some extent, to be recognized both as an individual and a member of various collectives.”¹¹³ It is both “highly individualized”¹¹⁴ and influenced by “group identity.”¹¹⁵ Individually, “our self-respect is constructed in our interactions with others and in the reflexive backstage space.”¹¹⁶ However, as part of a collective, one may also face “group-based disrespect.”¹¹⁷

As David Middleton aptly notes, “[o]ur personal identity is not, and probably could not be, the result of our own emergent sense of self.”¹¹⁸ Instead, as Iris Marion Young contends, “our identity, that is, our sense of self, is constructed through our self-perception and an awareness of others’ perceptions of us.”¹¹⁹ Thus, backstage we consider the respect or disrespect others offer us, deciding whether

¹⁰⁹ *Id.* (questioning whether “this is the space where the ‘real me’ emerges” and concluding “[i]t is certainly a place where our own self-worth is to the fore”).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Middleton, *supra* note 13, at 230.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *See id.* (citing YOUNG, *supra* note 103) (“Young argues that group identity can make some people victims of what she terms ‘cultural imperialism.’”).

¹¹⁸ Middleton, *supra* note 13, at 230.

¹¹⁹ *Id.*

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to “recognize ourselves as persons of worth.”¹²⁰ David Middleton terms this “reflexive self-respect,”¹²¹ accurately concluding that “our self respect is related to the ways in which others seem to view us, and in particular whether they respect us or not.”¹²² Flawed prison management policies that promote the objectification of inmates implicate this reflexive property of self-respect and create environments in which maintaining a healthy sense of self is virtually impossible.

B. The Importance of Self-Respect: A Utilitarian Perspective

Robert Johnson believes that “mature coping”¹²³ is essential for inmates who attempt to adjust post-release.¹²⁴ He contends that “contingencies or ‘reinforcement schedules’ in prisons can be altered to more closely approximate those in the free community”¹²⁵ and that “[s]uch reforms would increase the usefulness of specific coping lessons learned in prison, reinforced in formal correctional programs and later applied in the free world.”¹²⁶ Johnson goes on to explain that “central to this thesis is

¹²⁰ *Id.*; see also DANIEL DOTTER, CREATING DEVIANCE: AN INTERACTIONIST APPROACH 2–3 (2004) (“Two basic concepts capture this complexity of meaningful interaction, W. I. Thomas’s ‘definition of the situation’ and Charles Horton Cooley’s ‘looking-glass self.’ . . . [T]he former asserts, ‘[i]f men define situations as real, they are real in their consequences.’ (citation omitted) . . . Cooley’s looking-glass self simply and effectively describes the interdependence of self-consciousness and the wider normative context: ‘the individual and society as opposite sides of the same coin.’”) (citing W. I. THOMAS & DOROTHY SWAINE THOMAS, THE CHILD IN AMERICA 572 (1928)); NORMAN K. DENZIN, SYMBOLIC INTERACTIONISM AND CULTURAL STUDIES: THE POLITICS OF INTERPRETATION 4 (1992).

¹²¹ Middleton, *supra* note 13, at 231.

¹²² *Id.*

¹²³ JOHNSON, *supra* note 93, at 110 (pointing out an alternative to current prison conditions and suggesting that a better approach is to use prisons “as arenas for constructive social learning, that is, as places where one feels secure enough to respond maturely to stress instead of trying to avoid it”).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

the notion that healthy self-esteem mediates coping behavior in any environment and must be enhanced if mature behavior is to occur.”¹²⁷

However, one who possesses a healthy self-esteem can still fail to reintegrate upon release. As Roland and Foxx point out, “self-respect, rather than being a synonym for self-esteem, is the unidentified mediating factor that accounts for the differences in how either low or high self-esteem is emotionally experienced and behaviorally expressed.”¹²⁸ Though noted social-psychologist Hans Toch and Johnson discuss successful readjustment as a product of a healthy self-esteem, their theories are perhaps more accurate when the notion of self-esteem is replaced with the notion of self-respect.

Roland and Foxx note that “if individuals possessing self-respect detect cues of rejection, they will not abandon self-respecting behaviors in order to meet inclusionary needs. On the other hand, individuals lacking self-respect may behave in ways that violate the law of respect in order to meet their inclusionary needs and experience positive levels of self-esteem.”¹²⁹ This analysis explains a common phenomenon among newly released inmates that Johnson describes,

[a] self image as a serious criminal—as a lone warrior set apart from an unjust world, as many male convicts like to see themselves—may well be inflated and unstable but it helps to reduce the pains of rejection by the larger society and is something an offender will cling to until a viable alternative is found.¹³⁰

While Johnson’s conclusion that “a history of successes at conventional activities . . . is necessary for a healthy self-esteem,”¹³¹ perhaps the “improved coping competence”¹³² he

¹²⁷ *Id.* at 111 (citing E. Scotland, *Self-Esteem and Stress in Police Work*, in *JOB STRESS AND THE POLICE OFFICER: IDENTIFYING STRESS REDUCTION TECHNIQUES 3* (W.H. Kros & J.J. Hurrell eds., 1975)).

¹²⁸ Roland & Foxx, *supra* note 11, at 268.

¹²⁹ *Id.* at 271.

¹³⁰ JOHNSON, *supra* note 93, at 112.

¹³¹ *Id.*

¹³² *Id.*

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anticipates achieving by increasing self-esteem is in fact rooted in self-respect. If this is so, the utility of self-respect is undeniable to successful reintegration.

Clarifying the distinction between self-respect and self-esteem, Roland and Foxx surmise that both rationality and autonomy are essential to an understanding of either concept. Regarding self-respect, “rationality is demonstrated through treatment of the self and others as worthwhile entities by virtue of one’s existence,”¹³³ thus “the basis of self-respect is the acceptance of one’s worth as a fact or a given.”¹³⁴ On the other hand, rationality also allows for “personal evaluation of capacities and successes . . . [which] leads to the emotional experience of feeling good or bad,”¹³⁵ a process that establishes one’s self-esteem.

Autonomy allows for a person to “respect one’s self and have the personal standards and personal life plans that give meaning to life while respecting others.”¹³⁶ Thus, autonomy is also crucial to self-respect. Additionally, autonomy is a factor when attempting to promote self esteem, but unlike its role in fostering self-respect, autonomy as it relates to self-esteem manifests itself as “intent.”¹³⁷ As Roland and Foxx point out, “[i]f increasing self-esteem is the sole motivation for behavior, one may respond to . . . self-evaluation by acting in ways that achieve success or increase acceptance without regard to the law of respect for persons.”¹³⁸

Psychologist Craig Haney, of the Stanford Prison Experiment, also contends that in some cases “prisoners may come to think of themselves as ‘the kind of person’ who deserves only the degradation and stigma to which they have been subjected while incarcerated.”¹³⁹ He notes that such a perception of self can serve to defeat reintegration efforts post-release. However, Haney bases

¹³³ Roland & Foxx, *supra* note 11, at 266.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* at 267.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Craig Haney, *The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment* 10 (“From Prison to Home” Conference, Working Paper, Jan. 2002).

his contention on the premise that prisoners evaluate themselves first as a human being, and second as a human being worthy of appraisal respect.¹⁴⁰ Much more troubling is a self perception that fails to consider human value.

IV. WHERE DO INMATES FIND RECOGNITION RESPECT?

Because inmates are not shown recognition respect by their captors, they seek affirmation of their human status from their only other source of human contact—their fellow captives.¹⁴¹ While individually, a non-exploitative friendship made in prison could serve to provide an inmate with a sense of recognition self-respect, those types of friendships are rare on the inside, as prisoners are generally leery of getting too close to other inmates who could potentially perceive their trust as weakness.¹⁴² Thus, when navigating the waters of state or federal prison, inmates typically receive recognition respect collectively from other inmates, as part of the normative code that drives the inmate culture.

A. Recognition Respect Within the Inmate Culture

As one might likely expect, the best source of information about the inmate culture comes from those who live under its auspice every day.¹⁴³ However, criminologists, sociologists, and psychologists have also long studied life on the inside,¹⁴⁴ and

¹⁴⁰ *See id.* at 15.

¹⁴¹ *Id.* at 9 (“In addition to obeying the formal rules of the institution, there are also informal rules and norms that are part of the unwritten but essential institutional and inmate culture and code that, at some level must be abided . . . [n]ote that prisoners typically are given no alternative culture to which to ascribe or in which to participate.”).

¹⁴² *Id.* at 10 (concluding “prisoner culture frowns on any sign of weakness and vulnerability, and discourages the expression of candid emotions of intimacy”).

¹⁴³ *See* HASSINE, *supra* note 6, at 70–71; *see also* CARCERAL, *supra* note 98, at 191.

¹⁴⁴ WAYNE GILLESPIE, PRISONIZATION: INDIVIDUAL AND INSTITUTIONAL FACTORS AFFECTING INMATE CONDUCT 35 (Marilyn McShane & Frank P. Williams III, eds., 2003) (“[B]etween the 1940’s and 1960s prison researchers

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consequently, their perceived characteristics and sources of the inmate culture vary greatly.¹⁴⁵

Sociologist Wayne Gillespie offers a relatively accurate description of the inmate culture, characterizing it as a “subterranean social order inside prison.”¹⁴⁶ He goes on to explain that “[t]he inmate subculture involves a system of power and interchange . . . that includes specific normative expectations, values, and behavioral outcomes.”¹⁴⁷ The “normative expectations”¹⁴⁸ Gillespie identifies comprise what many refer to as the “inmate code.”¹⁴⁹

Recalling Jack Abbott’s observation that “among themselves the prisoners are human,”¹⁵⁰ one discovers that recognition respect plays an important role in the inmate culture. A default expectation of the inmate code is that “going to considerable lengths to show respect and avoid giving offense”¹⁵¹ is proper behavior for an inmate when engaging other inmates in prison. This concept, which has eluded those who run the modern prison, manifests itself in a number of ways in the daily life of the prisoner as “the maintenance of interpersonal respect and personal space are so

were concerned with the definition of, and socialization to, the prison subculture”) (citing JOYCELYN POLLOCK, *THE SOCIAL WORLD OF THE PRISONER* 246 (1997)).

¹⁴⁵ Many refer to the informal expectations among inmates as the “inmate subculture.” However, as an ex-inmate, I once adhered to those informal expectations as a matter of survival. Thus, I refer to those informal expectations as the “inmate culture” throughout this Article.

¹⁴⁶ GILLESPIE, *supra* note 144, at 39.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 39–40.

¹⁴⁹ Some refer to the “inmate code” as the “convict code.” I will use the terms interchangeably throughout this Article; *see also* JOHN IRWIN, *PRISONS IN TURMOIL* 11–12 (Little, Brown, and Company) (1980) (noting that the inmate code “could be translated into three rules: Do not inform, do not openly interact or cooperate with the guards or the administration, and do your own time”).

¹⁵⁰ JOHNSON, *supra* note 93, at 150 (citing ABBOTT, *supra* note 93, at 70–71).

¹⁵¹ *Id.* at 182 (citing D. Cooley, *Prison victimization and the informal rules of social control*, 4 *FORUM ON CORRECTIONS RESEARCH* 3, 33–34 (1992)).

inviolable.”¹⁵²

For instance, as an ex-inmate, I vividly recall hearing about those who had been engaged in physical confrontations following a relatively minor incident in the prison “chow hall.” Reaching over another person’s tray when procuring the salt or pepper, cutting into line when entering or leaving a meal, and taking a seat normally occupied by another inmate, are all seen as signs of disrespect. Additionally, seemingly insignificant gestures like holding a door open for the next inmate or offering apology when accidentally bumping into another prisoner show the recognition respect that the prison culture demands. Thus, to steer through prison without conflict, hypervigilance to this normative expectation of the inmate code is of the utmost import and may represent a lasting effect of prison, dictating a prisoner’s life even after release:

One man who had served almost 20 years described what it was like for him to step into a subway and be shoved by another rider. He began swinging to attack in an automatic move that he learned behind bars, only to stop short upon seeing that the person who had shoved him was a little old lady with shopping bags.¹⁵³

B. The Source of the Inmate Culture: Why Do Inmates Maintain Recognition Respect?

Sociologists traditionally forward three origination theories of the inmate culture that perhaps explain why prisoners show one another recognition respect as part of the convict code.¹⁵⁴ Importantly, while their hypotheses about the source of the inmate culture vary, prison researchers consistently agree that there is, in fact, a culture inside the walls—one that consists of certain values

¹⁵² Haney, *supra* note 139, at 10.

¹⁵³ JoAnne Page, *Violence and Incarceration: A Personal Observation*, in *BUILDING VIOLENCE: HOW AMERICA’S RUSH TO INCARCERATE CREATES MORE VIOLENCE* 138, 139 (John P. May ed., 2000).

¹⁵⁴ See GILLESPIE, *supra* note 144, at 41–44 (identifying the “deprivation model,” the “importation model,” and the “integration model” as the three theorized sources of the inmate culture).

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and expectations, significantly of which is recognition respect.¹⁵⁵

1. The Deprivation Model

The “deprivation model”¹⁵⁶ or the “indigenous influence theory”¹⁵⁷ holds that “the inmate subculture emerged as a direct result of the adjustment problems that are particular to life inside prison. That is, the subculture arose in order to compensate for the deprivation of prison life.”¹⁵⁸ Gresham Sykes notes that “the modern pains of imprisonment are often defined by society as a humane alternative to the physical brutality and the neglect which constituted the major meaning of imprisonment in the past.”¹⁵⁹ He also points out that “[t]hese deprivations or frustrations of the modern prison may indeed be the acceptable or unavoidable implications of imprisonment, but we must recognize the fact that they can be just as painful as the physical maltreatment they have replaced.”¹⁶⁰

As Gillespie concludes, echoing Sykes’ observations:

The entire machinery of the inmate subculture is an attempt

¹⁵⁵ See JOHNSON, *supra* note 93, at 163–94; see also Lucia Benaquisto & Peter J. Freed, *The Myth of Inmate Lawlessness: The Perceived Contradiction Between Self and Other in Inmates’ Support for Criminal Justice Sanctioning Norms*, 30 LAW & SOC’Y REV. 481, 505 (1996) (noting “[f]indings that reveal that inmates live by a code, that they reject their rejecters, that they identify with each other and bond together in solidarity have all been documented”) (citing GRESHAM M. SYKES, *THE SOCIETY OF CAPTIVES* (1958); GEORGE H. GROSSER, *EXTERNAL SETTING AND INTERNAL RELATIONS OF THE PRISON*, in *SOCIAL ORGANIZATION OF THE PRISON* (R. Cloward et. al. eds., 1960); GRESHAM M. SYKES & SHELDON L. MESSINGER, *THE INMATE SOCIAL SYSTEM*, in *THEORETICAL STUDIES IN SOCIAL ORGANIZATION OF THE PRISON* 16 (R. Cloward et. al. eds., 1960); LLOYD McCORKLE & RICHARD KORN, *RESOCIALIZATION WITHIN WALLS*, in *THE SOCIOLOGY OF PUNISHMENT AND CORRECTIONS* (N. Johnson et. al. eds., 1962)).

¹⁵⁶ GILLESPIE, *supra* note 144, at 41 (citing SYKES, *supra* note 155).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ SYKES, *supra* note 155, at 64.

¹⁶⁰ *Id.* (describing the “pains of imprisonment” generally as “the loss of liberty, the deprivation of goods and services, the frustration of sexual desire, and so on”).

to alleviate deprivations . . . the deprivation model proposes that a variety of pains, stresses, and problems associated with imprisonment and the criminal justice system in general labels inmates and thus confronts them with problems of adjustment that require a collective, subcultural response.¹⁶¹

It should come as no surprise that prisoners seek out what has been denied them through the deprivation of prison, specifically, recognition as a human being. As Stephen Duguid contends, “[b]y following the precepts” of the inmate code, “the prisoner can maintain a measure of autonomy and self-respect in the face of the carceral regime that is determined in Foucaultian fashion to deny him of both.”¹⁶² In essence, “[a] cohesive inmate society provides the prisoner with a meaningful social group with which he can identify himself and which will support him in his struggles against his condemners,”¹⁶³ and these struggles include finding the deserved respect withheld by institutional managing regimes, yet deserved by all human beings. Thus, the deprivation model fosters recognition respect among inmates by overtly depriving them of that respect while incarcerated within the modern prison.

2. *The Importation Model*

John Irwin first proposed the “importation model,”¹⁶⁴ or “cultural drift theory,”¹⁶⁵ as a means of explaining the root of the rules that make up the inmate culture.¹⁶⁶ He hypothesized that “the inmate code was itself a practical adaptation of the thieves’ code.”¹⁶⁷ Along with Cressey, Irwin “maintained that the inmate

¹⁶¹ GILLESPIE, *supra* note 144, at 41–42.

¹⁶² STEPHEN DUGUID, *CAN PRISONS WORK? THE PRISONER AS OBJECT AND SUBJECT IN MODERN CORRECTIONS* 88 (Univ. of Toronto Press 2000).

¹⁶³ Benaquisto & Freed, *supra* note 155, at 505 (citing SYKES & MESSINGER, *supra* note 155, at 16).

¹⁶⁴ GILLESPIE, *supra* note 144, at 41–42.

¹⁶⁵ *Id.*

¹⁶⁶ *See* IRWIN, *supra* note 151.

¹⁶⁷ GILLESPIE, *supra* note 144, at 41–42 (Irwin also “observed that thieves were the most frequent criminal type imprisoned in the Big House. They had a

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subculture was an institutionalized version of the outside, criminal subculture (i.e., particularly the outside thief culture) . . . they believed that the inmate subculture drifted inside prison from the outside.”¹⁶⁸

Inmate and author Victor Hassine also supports the importation model of the convict code, explaining that “convicts coming to prison bring with them a moral and ethical code of conduct that they learned and developed from street experiences . . . when a convict enters prison he naturally gravitates to others who are or were part of his gang or community on the street . . . [i]n doing this, his code of conduct is likely to be similar, if not identical, to the one he must abide by within his new prison community.”¹⁶⁹

Essential to the importation model popularized by Irwin and Cressey is the idea that “one was a ‘man’ not a ‘prisoner’ and that the proper response to the prison was to ‘do your own time’ and not interfere with others.”¹⁷⁰ Thus, consistent with the deprivation model, the importation model as the source of the inmate culture seeks to foster the humanity of the inmate. Instead of spawning recognition respect through rejection of the practices of the managerial regime, the importation model observes that a transformation does not take place when one enters prison. Rather, an inmate retains the characteristics, good and bad, with which one was associated before incarceration. Thus, recognizing others as worthy of respect by virtue of their being human is a normative feature that an inmate imports from the free world.

strong communication network which ensured that their values would be imported from the outside and become permanent fixtures of the inmate subculture.”)

¹⁶⁸ *Id.* (citing John Irwin & Donald R. Cressey, *Thieves, Convicts and the Inmate Culture*, 10 SOCIAL PROBLEMS 2, 142–45 (1962)).

¹⁶⁹ HASSINE, *supra* note 6, at 205–06 (theorizing also that “prison populations do not have any single, common Convict Code, but instead a collection of unique codes derived from various distinct prison groups”).

¹⁷⁰ DUGUID, *supra* note 162, at 89 (citing Irwin & Cressey, *supra* note 168, at 155).

3. *The Integration Model*

Though the deprivation model and the importation model possibly explain its origins, some contend that features of both models operate to create the inmate culture.¹⁷¹ Those who favor the deprivation model claim that “the depersonalizing and stigmatizing effects of legal processing and induction into the prison, coupled with the alienative effects of the coercive power exercised by prison officials in their attempts to maintain social control within the prison, minimize the relevance of other types of variables.”¹⁷² Conversely, those who believe that “preprison”¹⁷³ factors significantly affect the inmate subculture argue that, “[o]nly through a careful examination of preprison socialization and experience . . . can either the type of inmate normative system or variations in the degree of assimilation into that system be properly understood.”¹⁷⁴

Rather than argue that one theory controls, most sociologists have come to agree that deprivation and importation work together to form a convict code and in turn, an inmate culture.¹⁷⁵ This conclusion reveals logic about culture generally, recognizing that, as with free societies, inmate cultures involve “a broad spectrum of factors that determine the impact of confinement.”¹⁷⁶ Additionally,

¹⁷¹ GILLESPIE, *supra* note 144, at 44 (“The importation model was pitted against the deprivation model in empirical analyses. Perhaps it is not surprising that neither theory was dominant in this contest.”) (citing THOMAS, C. W. & PETERSON, D. M., *PRISON ORGANIZATION AND INMATE SUBCULTURES* (1977)).

¹⁷² Charles W. Thomas, *Theoretical Perspectives on Prisonization: A Comparison of the Importation and Deprivation Models*, 68 J. CRIM. L. & CRIMINOLOGY 135, 137 (1977).

¹⁷³ *Id.*

¹⁷⁴ *Id.* (Here “degree of assimilation” is essentially a substitute phrasing of “level of prisonization.”).

¹⁷⁵ GILLESPIE, *supra* note 144, at 44 (“Rather than detract from each other, the theories seemed to actually complement one another.”) (citing THOMAS & PETERSEN, *supra* note 171).

¹⁷⁶ Thomas, *supra* note 172, at 144. Thomas asserts that several other factors could influence the “impact of confinement” such as “expectation about the future, the maintenance of family ties or lack thereof, contact with the outside world through visitations and mail, and so on.” *Id.* at 144–45.

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this spectrum of factors may also explain the presence of recognition respect among inmates confined in modern prisons.

Though deprivation may promote recognition respect by inmates as a response to disrespectful treatment by staff, it is also as likely that inmates of the modern prison imported the concept. Thus, the reason inmates show one another the respect that all human beings deserve is as debatable as the source of the inmate culture generally. However, while significant, it is less important that we identify the basis for recognition respect among inmates than it is that we acknowledge that this desirable feature of the inmate culture exists and is replicable.

V. CONCLUSION

[T]hose who respect themselves believe that they are worth the effort it takes to consider their disappointments and failures as closely as their triumphs and successes. They believe that they are worth the effort needed to try again tomorrow and will set new goals, rather than remain satisfied with their present ability or level of maturity.¹⁷⁷

Is that not what we want from those we send to prison and then release into the community? Over forty years ago, the Commission on Law Enforcement and Administration of Justice recognized this principle, but today we have strayed far from that ideal. Instead, modern prisons withhold recognition respect from human beings at an expense of mounting recidivism rates.

The perception of others certainly influences one's self-respect and this idea is crucial to any model of prison management purportedly designed to meet the reintegration needs of those it houses. For inmates to maintain and foster a healthy sense of self-respect, prison management schemes must afford inmates the recognition respect due all people, by virtue of their being living, breathing human beings capable of rational thought. Withholding this type of respect can damage inmates and have devastating consequences for those seeking to readjust post-release.

¹⁷⁷ Roland & Foxx, *supra* note 11, at 271.

Defining one's self, managing one's day and creating one's life plan around the objective behaviors inherent in self-respect provide the knowledge and actions necessary to recognize the truth, associate with constructive rather than destructive individuals and social groups, and cope effectively with the loss of personal relationships. These behaviors also provide the skills to cope with unmet expectations in regards to personal successes.¹⁷⁸

Although the inmate culture has a number of negative attributes, it possesses at least one positive normative feature in that it demands respect among those it governs. On the inside, while failure to adhere unquestionably to this standard elicits a violent response exposing an unhealthy feature of the convict code,¹⁷⁹ the core of the concept "respect all others as human beings first" is instructive.

To promote successful reintegration, the modern prison should help an inmate foster a healthy sense of self, and it should look to the inmate culture for guidance. Respect is a vital principle for the incarcerated, for those who run prisons to ignore this principle reminds all of us that many still forget that "the doors of prisons swing both ways"¹⁸⁰ and that successful reintegration is not an ideal, it is a necessity.

¹⁷⁸ *Id.* at 274.

¹⁷⁹ Haney, *supra* note 139, at 10 (noting that hypervigilance to the demand for respect "can also lead to what appears to be impulsive overreaction, striking out at people in response to minimal provocation that occurs particularly with persons who have not been socialized into the norms of the inmate culture").

¹⁸⁰ JOAN PETERSILIA, WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY 20 (2005) (citing MARY BELLE HARRIS, I KNEW THEM IN PRISON xiii (1936) (Taken from a speech given upon retirement, Harris was the first female federal prison warden in the United States.)).