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“Cradled on the Sea”: Positive Images of Prison and Theories of Punishment

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“Cradled on the Sea”: Positive Images of Prison and Theories of Punishment

Martha Grace Duncan†

This interdisciplinary study investigates the meanings of incarceration through an analysis of prison memoirs and novels. It argues that many prisoners and nonprisoners exhibit powerful positive associations to penal confinement. The Article draws on psychoanalysis, philosophy, and sociology to account for the various kinds of attraction that prison exerts. The Article also considers the interrelationships between the analysis of the positive images and three traditional purposes of punishment: rehabilitation, deterrence, and retribution.

INTRODUCTION

Man lives, not directly or nakedly in nature like the animals, but within a mythological universe, a body of assumptions and beliefs developed from his existential concerns. Most of this is held unconsciously . . .

Northrop Frye, *The Great Code*¹

[H]appiness is never as easy to explain as unhappiness.

Morton Sobell, *On Doing Time*²

This essay endeavors to explore one region of our unconscious mythological universe: affirmative images of prison. It seeks to show that alongside the negative vision of prison as a living hell, an island of the damned, or a place where men rot under their rocks and yearn for freedom, many prisoners and nonprisoners exhibit powerful positive associa-

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1. N. FRYE, *THE GREAT CODE: THE BIBLE AND LITERATURE* xviii (1982).

2. M. SOBELL, *ON DOING TIME* 502 (1974). The full passage reads:

At one point Helen [Sobell's wife] observed that even under these insufferable conditions we were happier than many couples in the free world. I agreed, but cautioned Helen against voicing such an idea to others, lest it be misunderstood. People would say we were nuts, or even worse. Anyway, happiness is never as easy to explain as unhappiness.

Martin Sobell, a co-conspirator of the Rosenbergs, was serving a 15-year prison sentence.

tions to incarceration. In particular, I will present evidence to suggest that prison is viewed as a refuge from the prosaic, as a mother who provides and protects, a matrix of spiritual rebirth, and a catalyst of intense friendship.

Besides setting forth the positive portrayals of incarceration, the Article offers explanations for the attraction that prison exerts. The sources I will adduce and discuss range from psychological processes (such as institutional transference and oral fixation), to cultural archetypes (such as the dialectically related polarities of death and rebirth, suffering and redemption), to socio-political factors (such as the actual negative aspects of life in freedom).

Part II of the Article considers two methodological issues raised by this study. It first examines the legitimacy of my interpretations of the texts, then discusses the representativeness of the authors who depict incarceration in a favorable light.

Part III relates the analysis of the positive images of prison to traditional justifications of punishment: retribution, deterrence, and rehabilitation. It argues that, for an appreciable number of criminals, the risk of imprisonment is—far from being a deterrent to crime—actually an inducement to it. It further suggests that the lack of political will to improve prison conditions may stem from the largely unconscious attractiveness of penal confinement to the general population. That is, deprivation of freedom, being invested with both love and hatred, is seen as an insufficient punishment for crime; hence, prisons must be allowed to remain places of physical and psychological brutality.

This Article is based on a textual analysis of prison memoirs and novels.³ Most, though not all, of the authors experienced prison themselves. Because I aim to show that certain associations to imprisonment

3. Increasingly, lawyers are turning to literature for the illumination of legal issues. See, e.g., R. POSNER, *LAW AND LITERATURE* (1988); R. WEISBERG, *THE FAILURE OF THE WORD* (1984); J. WHITE, *THE LEGAL IMAGINATION* (1973); Bollinger, *The Homer of the Pacific: Melville's Art and the Ambiguities of Judging Evil*, 75 MICH. L. REV. 823 (1977); Leventhal, *Law and Literature*, 32 RUTGERS L. REV. 603 (1979); Weisberg, *Wigmore's "Legal Novels" Revisited: New Resources for the Expansive Lawyer*, 71 NW. U.L. REV. 17 (1976).

Among previous theoretical works on the prison, three books warrant brief discussion here: J. BENDER, *IMAGINING THE PENITENTIARY: FICTION AND THE ARCHITECTURE OF MIND IN EIGHTEENTH-CENTURY ENGLAND* (1987); M. FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* (1977); and V. BROMBERT, *THE ROMANTIC PRISON: THE FRENCH TRADITION* (1978). Both Bender and Foucault are concerned with the origins of the penitentiary in the late eighteenth and early nineteenth centuries. Bender draws on works by Defoe, Hogarth, Fielding, and others to argue that narrative literature and art between 1719 and 1779 made possible the conception of the penitentiary and its construction later in the eighteenth century.

Whereas Bender offers several related causal arguments, linking the penitentiary to the realistic novel and to the modern city, Foucault's interest lies less in the dynamics of change and more in the affinity of styles between the prison and other institutions, such as schools, factories, armies, and hospitals. All these institutions, he argues, exercise class domination through new techniques of

are universal, I do not differentiate in Part I between people who have been incarcerated and those who have not, nor do I draw distinctions based on culture, era, or type of prisoner. My approach to the texts is informed by classical psychoanalytic theory and its modifications.⁴ I thus take for granted such basic psychoanalytic tenets as the existence of the unconscious, the meaningfulness of all mental manifestations, and the profound causal significance of early life.

I

POSITIVE IMAGES OF PRISON IN LITERATURE

A. "A Thousand Leagues Above": Prison as a Refuge from the Prosaic

By "world" I mean the whole complex of incidents, demands, compulsions, solicitations, of every kind and degree of urgency, . . . which overtake the mind without offering it any inner illumination

Paul Valery⁵

systemization and classification—techniques that expand both the range of discipline and its legitimacy.

Closer to my own work than the previous two books is Brombert's analysis of the happy-prison motif in nineteenth-century works by major French writers, such as Stendhal, Hugo, and Baudelaire. Brombert explores a number of themes, focusing on the relationship between physical confinement and artistic freedom. In the concluding pages, however, he suggests that the Holocaust and the Soviet penal camps have changed the way we imagine prison, relegating the nineteenth-century motif to the "status of a reactionary anachronism." V. BROMBERT, *supra*, at 182-83. He observes that the Romantics' "dream of a happy prison has become hard to entertain in a world of penal colonies and extermination camps, in a world which makes us fear that somehow even our suffering can no longer be our refuge." *Id.* at 209. By contrast, the present study demonstrates that the psychological sources of the attraction to prison are deeper than Brombert perceived, and that, in consequence, the theme of the happy prison has withstood the realities of the twentieth century's particularly nightmarish forms of incarceration.

Like Brombert, linguist Joseph Shipley mistakenly assumes that the paradoxical image of prison as a refuge and a place of freedom has become difficult to conceive in the context of contemporary prison conditions. In discussing *kagh*, the Indo-European root of the word jail, Shipley quotes Richard Lovelace's famous poem "To Althea, from prison" (1642), which reads as follows:

Stone walls do not a prison make,
Nor iron bars a cage;
Minds innocent and quiet take
That for an hermitage,
If I have freedom in my love
And in my soul am free,
Angels alone, that soar above,
Enjoy such liberty.

Shipley comments: "There is little room for such feelings in the overcrowded prisons of today." J. SHIPLEY, *THE ORIGINS OF ENGLISH WORDS* 153 (1984).

4. For examples of works applying psychoanalytic theory or methodology to law, see J. KATZ, J. GOLDSTEIN & A. DERSHOWITZ, *PSYCHOANALYSIS, PSYCHIATRY AND LAW* (1967); Bienfeld, *Prolegomena to a Psychoanalysis of Law and Justice*, 53 CALIF. L. REV. 957 (1965); Ehrenzweig, *Psychoanalytic Jurisprudence: A Common Language for Babylon*, 65 COLUM. L. REV. 1331 (1965); Goldstein, *Psychoanalysis and Jurisprudence*, 77 YALE L.J. 1053 (1968).

5. Gass, *Paul Valery: Crisis and Resolution*, N.Y. Times, Aug. 20, 1972, § 7 (Book Review), at 6, col. 2 (quoting Paul Valery).

Toward the end of Aleksandr Solzhenitsyn's novel *The Cancer Ward*, Oleg Kostoglotov is released from the hospital where he has been confined⁶ and goes to buy a shirt in a department store. While looking over the shirts, he hears a man ask the clerk, "Do you have a size twenty-five shirt like this one, with a size fifteen collar?"⁷ Oleg reacts with horror and righteous indignation to the small-mindedness that he feels this question reflects:

It staggered Oleg like an electric shock. He turned in amazement and looked at this clean-shaven, smooth man in the good felt hat, that wearing a white shirt and tie, stared at him as though the man had struck him.

Men had endured the agony of the trenches, bodies had been heaped in mass graves, others had been buried in shallow pits in the icy Arctic, people had been arrested time and again and sent to camps, they had frozen in barred railroad cars, men had broken their backs working with pick and shovel to earn the price of a tattered padded jacket, and this sniveling fop remembered not only his shirt size, but his collar size?

This last fact shattered Oleg. He could not have imagined that a collar had its own separate size. Suppressing a groan, he turned his back on the shirt counter. A collar size, no less! Why such a refined life? *Why return to this life? If you had to remember your collar size, you'd have to forget something. Something more important!*⁸

The incident of the collar size illustrates the former captive's rejection of the trivial preoccupations that he finds in freedom. We see a similar reaction in a book by a very different kind of prisoner: an American who spent more than thirteen years in a Florida state penitentiary for breaking and entering, petit larceny, and burglary. During an interval of freedom, James Blake writes to a friend:

Another kind of nostalgia I've been fighting is the Brotherhood-Of-The-Doomed feeling I had in the penitentiary and no longer have, with nothing to put in its place. I've been trying hard to isolate and name this virus, and think I have. *Thing is, it's better than many things the world of electric toothbrushes has given me.*⁹

In an earlier letter, written inside prison, he attempts to explain what attracts him to a life of confinement. Again, the words echo those of Oleg Kostoglotov: "Life has indeed been reduced to its simplest terms, a state of affairs not completely unpleasant. So many of the trimmings that go with life outside have often been merely confusing to me.

6. The cancer ward as depicted by Solzhenitsyn is not, of course, a prison, but it resembles one in important respects. Solzhenitsyn himself calls attention to the parallel, for he describes Oleg as thinking: "Emerging from these hospital gates—how did this differ from emerging from prison?" A. SOLZHENITSYN, *THE CANCER WARD* 562 (1968).

7. *Id.* at 576.

8. *Id.* at 576-77 (emphasis added).

9. J. BLAKE, *THE JOINT* 326 (1971) (emphasis added).

The food here is simple but entirely adequate, as are the pleasures."¹⁰ Blake's words suggest a parallel between the allure of imprisonment and that of monastic life—a point others have made explicitly.¹¹

After returning to prison for another crime, Blake elaborates his vision of life outside prison as meaningless, frenetic activity:

Your concern over my welfare is indeed gratifying, . . . but the basic misconception of most civilians about convicts seems to be that they suffer, when actually they are comparatively blithe and carefree. *Certainly they're not as harried as the gnomes I see on New York streets, scuttling and scurrying into subways like apprehensive White Rabbits.*¹²

By contrast with this negative image of life in freedom, Blake significantly names prison with a symbol of the eternal: "I'm still trying to make it here and resisting the awful temptation to go back to the peace and quiet of the Rock."¹³

The image of prison as an island of calm amidst the hurly-burly also appears in Shakespeare's *King Lear*. Here too we see a variation on this theme: prison as a place of endurance amidst ephemerae. Toward the end of the play, just after Lear and Cordelia are reunited, Cordelia asks: "Shall we not see these daughters and these sisters?"¹⁴ Lear's reply constitutes one of the loveliest carceral fantasies in literature. It suggests that he, who has been greatly troubled by possessions, and who suffers from gnilt over his treatment of his youngest daughter, can look forward with rapture to an austere existence.

No, no, no, no! Come let's away to prison.

We two alone will sing like birds
i'th cage.

When thou dost ask me blessing, I'll kneel down

And ask of thee forgiveness. So we'll live,

And pray, and sing, and tell old tales, and
laugh

At gilded butterflies, and hear poor rogues

Talk of court news; and we'll talk with
them too —

Who loses and who wins, who's in, who's out —

And take upon 's the mystery of things, As if we were God's

10. *Id.* at 72-73.

11. See, e.g., M. BRALY, *FALSE STARTS: A MEMOIR OF SAN QUENTIN AND OTHER PRISONS* 251 (1976); E. GINZBURG, *JOURNEY INTO THE WHIRLWIND* 57 (1967). Eldridge Cleaver also perceived the similarity between prisons and monasteries, but denied the attraction of either. See E. CLEAVER, *SOUL ON ICE* 32 (1968).

12. J. BLAKE, *supra* note 9, at 330 (emphasis added).

13. *Id.* at 147. For the rock as a symbol of the eternal, see Von Franz, *The Process of Individuation*, in *MAN AND HIS SYMBOLS* 209 (C. Jung ed. 1964) ("[M]an's innermost center is in a strange and special way akin to [a stone]. . . . In this sense the stone symbolizes what is perhaps the simplest and deepest experience—the experience of something eternal . . .").

14. W. SHAKESPEARE, *KING LEAR*, at act 5, sc. 3, line 7.

spies:
and we'll wear out,
In a wall'd prison, packs and sects of
great ones,
*That ebb and flow by'th moon.*¹⁵

The prisoners are still and endure, while those in freedom come and go.

Like James Blake and William Shakespeare, Solzhenitsyn imagines prison as a calm place in the midst of motion. In *The First Circle*, he depicts the *sharashka* (a special prison for intellectuals) as an ark resting on the water. He suggests that by virtue of their seclusion and relative stillness, the prisoners enjoy a truer perspective on life than can be attained from the outside world, which is rushing by: "From here, from the ark, . . . the whole tortuous flow of accursed History could easily be surveyed, as from an enormous height, and yet at the same time one could see every detail, every pebble on the river bed, as if one were immersed in the stream."¹⁶

Elaborating on his metaphor, Solzhenitsyn conceives of the prisoners as floating on the river, hence "weightless" in that they are free of prosaic concerns:

Those who floated in the ark were weightless and had weightless thoughts. They were neither hungry nor satiated. They had no happiness and no fear of losing it. Their heads were not filled with petty official calculations, intrigues, promotions, and their shoulders were not burdened with concerns about housing, fuel, bread, and clothes for their children. Love, which from time immemorial has been the delight and torment of humanity, was powerless to communicate to them its thrill or its agony.¹⁷

Whereas these excerpts depict prison as a calm but passionless abode, elsewhere Solzhenitsyn portrays prison as the place where one can engage life at the most profound level. In the following passage he describes the thoughts of the prisoner Gleb Nerzhin on the occasion of his wife's visit to the prison:

Seen from the outside [his life] appeared an unhappy one, but Nerzhin was secretly happy in that unhappiness. He drank it down like spring water. Here he got to know people and events about which he could learn nowhere else on earth, certainly not in the quiet, well-fed seclusion of the domestic hearth. From his youth on, Gleb Nerzhin had dreaded more than anything else wallowing in daily living. As the proverb says, "*It's not the sea that drowns you, it's the puddle.*"¹⁸

The broadening experience of imprisonment is contrasted with the nar-

15. *Id.* at act 5, sc. 3, lines 8-19 (emphasis added).

16. A. SOLZHENITSYN, *THE FIRST CIRCLE* 340 (1969).

17. *Id.* at 339-40.

18. *Id.* at 181 (emphasis in original).

row "seclusion of the domestic hearth," with wallowing in the quotidian, with drowning in a puddle.

In addition to the symbol of calm amidst motion, another image used to express the theme of prison as a refuge from the prosaic is that of a high place. Thus, in Stendhal's novel, *The Charterhouse of Parma*, the prison is constructed so far above the ground that Fabrizio refers to his "airy solitude."¹⁹ On the first night of his incarceration Fabrizio spends hours at the window, "admiring this horizon which spoke to his soul."²⁰ In prison, he finds the happiness that had eluded him in freedom: "By a paradox to which he gave no thought, a secret joy was reigning in the depths of his heart."²¹ Endeavoring to account for this paradox, Fabrizio reflects: "[H]ere one is a thousand leagues above the pettinesses and wickednesses which occupy us down there."²²

We see the same theme of prison as a cloister in Solzhenitsyn's depiction of the meek Baptist, Alyoshka, in *One Day in the Life of Ivan Denisovich*. When the protagonist, Shukhov, tells him that prayer is ineffectual, since it cannot shorten one's sentence, Alyoshka remonstrates: "'You mustn't pray for that.' Alyoshka was horror-struck. '*What d'you want your freedom for? What faith you have left will be choked in thorns. Rejoice that you are in prison. Here you can think of your soul . . .*'"²³ Shukhov reflects: "Alyoshka was talking the truth. You could tell by his voice and his eyes he was glad to be in prison."²⁴

A variation on the theme of prison as a refuge from the quotidian appears in Graham Greene's novel *The Power and the Glory*, which concerns a Mexican priest imprisoned during a period of religious persecution. The following passage occurs following the priest's release from prison, while he is hearing confessions in relative safety:

The old woman prattled on and on, . . . prattled of abstinence days broken, of evening prayers curtailed. Suddenly, without warning, with an odd sense of homesickness, he thought of the hostages in the prison yard, waiting at the water-tap, not looking at him—the suffering and the endurance which went on everywhere the other side of the mountains. He interrupted the woman savagely, "Why don't you confess properly to me? *I'm not interested in your fish supply or in how sleepy you are at night . . . remember your real sins.*"²⁵

19. STENDHAL, *THE CHARTERHOUSE OF PARMA* 264 (1839).

20. *Id.* at 263.

21. *Id.* at 264.

22. *Id.* For a discussion of the happy-prison theme in Stendhal, see V. BROMBERT, *supra* note 3, at 62-87.

23. A. SOLZHENITSYN, *ONE DAY IN THE LIFE OF IVAN DENISOVICH* 198 (1963) (emphasis added).

24. *Id.* at 199.

25. G. GREENE, *THE POWER AND THE GLORY* 206 (1971) (emphasis added).

Here we see the priest's nostalgia for prison as a place where serious things happen, where people suffer and acknowledge grave sins. To the trivial preoccupations of his civilian penitent he opposes prison as an embodiment of what is "real."

I have said that prison is often pictured as a refuge from the trivial or prosaic. But what is it a refuge for? Two principal themes emerge from the literature: prison as the quintessential academy and prison as a catalyst of intense friendship. The image of prison as an academy appears in Solzhenitsyn's novel *The First Circle*. Early in the book, Gleb Nerzhin elaborates on the ways that prison has developed his understanding of life. He says that as a free man he read books on the meaning of life or the nature of happiness but understood those works only superficially. "Thank God for prison!" he exclaims. "It gave me the chance to think."²⁶

Nerzhin goes on to tell a fellow prisoner that an understanding of happiness comes from recognizing that it does not depend on external blessings:

Remember that thin, watery barley or the oatmeal porridge without a single drop of fat? Can you say that you *eat* it? No. You commune with it, you take it like a sacrament! . . . [I]t spreads through your body like nectar. . . . Can you really compare the crude devouring of a steak with this?²⁷

Compare the similar insight that Tolstoy attributes to Pierre, in *War and Peace*:

While imprisoned in the shed Pierre had learned not with his intellect but with his whole being, by life itself, that man is created for happiness, that happiness is within him, in the satisfaction of simple human needs, and that all unhappiness arises not from privation but from superfluity.²⁸

The black American prisoner Samuel Melville perceives what he has learned in prison in much the same light:

for the first time since i was a small boy i have no money and no keys in my pockets. you can't imagine the rehabilitating effect of that! from the muslims i am learning to fast and control my own body. from reading thoreau and some of the eastern teachings i can live on much less than even prison allows . . . and i am tripping all the time. not with the frenzy of acid but with the confidence of my liberation from superficialities.²⁹

Whereas these prisoners regard prison as a place where they have gained wisdom, Malcolm X portrays his confinement as a catalyst of

26. A. SOLZHENITSYN, *supra* note 16, at 38.

27. *Id.* (emphasis in original).

28. L. TOLSTOY, *WAR AND PEACE* 1176 (G. Gibian ed. 1966) (1869).

29. S. MELVILLE, *LETTERS FROM ATTICA* 101 (1972).

learning in a more concrete sense. In a chapter of his autobiography entitled "Saved," he describes how he taught himself to read with understanding while in prison and how this ability opened up a new world to him. He believes that prison enabled him to study more intensively than would have been possible in college, where there are "too many distractions, too much panty-raiding, fraternities, and boola-boola and all of that."³⁰ He asks: "Where else but in a prison could I have attacked my ignorance by being able to study intensely sometimes as much as fifteen hours a day?"³¹

Inmates have portrayed prison as a place that uniquely promotes friendship as well as learning. For example, throughout *The First Circle*, Solzhenitsyn contrasts the isolation and mistrust that characterize relationships among the general public with the camaraderie and profound friendship that pervade the prisoners' lives. In the following passage, Solzhenitsyn describes friendship in the *sharashka* in the language of ecstasy:

In these Sunday evening hours solid matter and flesh no longer reminded people of their earthly existence. The spirit of male friendship and philosophy filled the sail-like arches overhead.

Perhaps this was, indeed, that bliss which all the philosophers of antiquity tried in vain to define and teach to others.³²

Solzhenitsyn is not alone in portraying prison friendships as unusually passionate. For example, Eugenia Ginzburg, imprisoned by Stalin for eighteen years, declares simply: "There are no more fervent friendships than those made in prison."³³ So too Vera Figner, confined by the Tsars, writes that upon her release from prison she experienced despair at "losing the people with whom [she] had spent twenty years in close communion, under the most exceptional circumstances."³⁴

Many prisoners have attempted to explain why friendships tend to

30. MALCOLM X, *THE AUTOBIOGRAPHY OF MALCOLM X* 180 (1965).

31. *Id.* Compare the remarks of an anonymous prisoner quoted in Kohn, *Time: Two Interviews*, in *GETTING BUSTED: PERSONAL EXPERIENCES OF ARREST, TRIAL, AND PRISON* 249-50 (R. Firestone ed. 1970) [hereinafter *GETTING BUSTED*]:

The situation I got myself into [in prison] was just perfect for me. For a long time prior to getting busted, I lived a very hectic life. Running around like crazy trying to make a lot of money and do a lot of things . . . What I needed and what I always was aware of needing was some literary enrichment.

. . . After coming to Auburn, I started right from the beginning and went through the Myths, the Greek Classics and everything else from Cervantes to Dostoevsky, Tolstoi, and Balzac.

For other illustrations of the theme of prison as an academy, see B. BEHAN, *BORSTAL BOY* (1959); T. GADDIS, *BIRDMAN OF ALCATRAZ* (1955); E. WALLACH, *LIGHT AT MIDNIGHT* 196-97, 396 (1967); Kroll, *Counsel Behind Bars*, *CAL. LAW.*, June 1987, at 34.

32. A. SOLZHENITSYN, *supra* note 16, at 340.

33. E. GINZBURG, *supra* note 11, at 99.

34. V. FIGNER, *MEMOIRS OF A REVOLUTIONIST* 302 (1968).

flourish under conditions of penal confinement more than in freedom. Figner and Solzhenitsyn adduce the absence, in prison, of those relationships that tend to compete with friendship in the outside world. Thus, Figner explains that the "whole world was closed to [her], all human ties broken," and her fellow prisoners substituted for "family and society, . . . party, homeland, and all humanity."³⁵ Incarceration imposes an isolation from the world, but those who share this isolation see themselves as gaining relationships of an emotional power unequaled in the world outside. Solzhenitsyn theorizes in a similar vein: "Men with exceptional intellect, education, and experience, but too devoted to their families to have much of themselves left over for their friends, here belonged only to friends."³⁶ He reiterates this point in a later scene:

They drank to friendship. They drank to love. Rubin praised it: "I have never had any doubts about love. But to tell you the truth, until the front and prison I didn't believe in friendship, especially the 'give-up-your-life-for-your-friend' kind. *In ordinary life you have your family, and somehow there's no place for friendship, is there?*"³⁷

Other prisoners have explained the passion of prison friendships by the frankness that characterizes carceral relationships³⁸ or the unusually close living. As Blake writes: "Locking together in a joint is like no other association I know of, a constant proximity and ubiquity comparable only to that of Siamese twins. A profound attachment can ensue"³⁹ Finally, Eugenia Ginzburg offers an explanation centering on the sharing of a unique experience, which imparts a knowledge available only to initiates:

Oh, the feeling of prison kinship! It is perhaps the strongest of all human relationships. Even now, many years later, as I am writing these memoirs, all of us who have tasted the blood of the lamb are members of one family. Even the stranger whom you meet on your travels, or at a health spa, or at someone else's house, immediately becomes near and dear to you when you learn he was there. In other words, he knows things that are beyond the comprehension of people who have not been there, even the most noble and kindhearted among them.⁴⁰

. . .

Three ideas serve to explain the image of prison as a refuge from the trivial and quotidian. This image may reflect (1) actual negative characteristics of life in freedom; (2) personality growth that sometimes occurs

35. *Id.* at 303.

36. A. SOLZHENITSYN, *supra* note 16, at 340.

37. *Id.* at 372 (emphasis added).

38. See Beck, *Thoughts on the Theater from Jail: Three Letters to a Friend*, in GETTING BUSTED, *supra* note 31, at 319.

39. J. BLAKE, *supra* note 9, at 209.

40. E. GINZBURG, *WITHIN THE WHIRLWIND* 156-57 (1981) (emphasis in original).

under conditions of penal confinement; and (3) impulse neurosis, which causes some people to experience as gratifying a situation where they are controlled.

Let us consider first the theory that this pleasant carceral image, prison as an escape from the quotidian, is in part a reaction to the unattractive aspects of life in freedom.⁴¹ James Blake repeatedly denigrates life outside prison, characterizing it as the "world of electric toothbrushes" and describing the people as scurrying like "white rabbits" or "gnomes."⁴² While his remarks may be attributable in part to a "sour grapes" reaction,⁴³ many nonprisoners would agree with Blake that materialism and careerism impoverish contemporary life. Blake's observation that the "trimmings that go with life outside [had] often been merely confusing" to him⁴⁴ parallels the feelings expressed by men studied in a noncarceral setting, men whose perceptions of life in freedom cannot be explained away as a disparagement of what they cannot have.

Thus, in Robert Lane's study of working-class American men, we find the following wistful passage in a chapter entitled "The Burden of Freedom." The speaker, a wholesale shoe salesman, is describing what the word freedom means to him:

What it makes me think of is a pastoral scene—I don't know why—being soothed by a nice balmy breeze, green pastures, and a girl and a boy romping through the fields. That's what freedom means to me. . . . It would suggest to me a closeness to God. . . . There are times, I'll say that "what the heck" to my existence, rather than crying. You're bombarded by so much—ah, pressure in the present day, pressures of business, pressures of actual day-to-day living—cost of living. . . .

*There are so many things that you are constantly bombarded with—tiny messages the people are trying to get across to you in their effort to sell you. It's a tough life. I think the recluse has probably got something. And every so often you get a little bit tired; you sort of wish you could get some place and just lead that kind of existence.*⁴⁵

Commenting on this passage, Lane recalls Freud's observation that "[p]rotection against stimuli is an almost more important function for the living organism than *reception* of stimuli."⁴⁶ Some forms of penal confinement may afford such protection.

41. Cf. Gluzman, *Fear of Freedom: Psychological Decompensation or Existentialist Phenomenon*, 139 AM. J. PSYCHOLOGY 57, 61 (1982) (Soviet psychiatrist arguing that political prisoners who fear freedom are healthy in that they are experiencing specific, realistic fears of having to conform to a society that does not allow the individual to realize his needs).

42. See *supra* text accompanying notes 9 & 12.

43. For a discussion of the sour grapes reaction, see *infra* note 158 and accompanying text.

44. J. BLAKE, *supra* note 9, at 40.

45. R. LANE, *POLITICAL IDEOLOGY: WHY THE AMERICAN COMMON MAN BELIEVES WHAT HE DOES* 27 (1962) (emphasis added).

46. *Id.* (quoting S. FREUD, *BEYOND THE PLEASURE PRINCIPLE*, in 18 *THE STANDARD*

The idea that positive images of prison reflect actual negative aspects of life in freedom finds further confirmation in Russian and Soviet prison memoirs. For example, in *Notes from a Dead House*, the novel based on his own experiences in a Siberian prison, Dostoevsky writes that "some [people] commit[ted] crimes deliberately to get into hard labour and thus escape liberty, which is harder for them than imprisonment."⁴⁷ The context makes clear that Dostoevsky is referring not to any psychological longing to "escape from freedom" but rather to the fact that in Siberian prisons—even in hard labor—the work was easier and the bread more plentiful.⁴⁸

Echoing *Notes from a Dead House* a little over a century later, Erica Wallach writes that many women prisoners in Vorkuta dreaded the day of release more than another ten-year sentence. She reports that often they had to be kicked out of the camps by the soldiers. At least in the camps the women enjoyed shelter, food, and security. Once released, unable to return to their original homes, the women had to stay "in liberty" in the Vorkuta area. Consequently, "[f]reedom for most of the women meant prostitution," that is, becoming the wife of the first man who could offer them protection and material support.⁴⁹

Finally, in thinking about the possible objective sources of the image of imprisonment as life on a higher plane, we consider the dissimilar descriptions of friendship inside and outside the prison walls. In totalitarian societies, where governmental control penetrates even intimate relationships, suspicion and atomization characterize social life. For example, in her memoir of life under Stalin, Nadezhda Mandelstam describes how many Soviet civilians found their friendships pervaded by mistrust, because "friends" sometimes betrayed people for whom they

EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD 53 (1955) (emphasis added by R. Lane).

47. F. DOSTOEVSKY, *NOTES FROM A DEAD HOUSE* 63 (Foreign Language Publishing House trans. 1950).

48. Immediately following the passage quoted in the text accompanying note 47, Dostoevsky writes:

It may be that his life before was miserable, that he never ate his fill and was compelled to work for his master from morn till night, while the work in the convict prison is easier, there's enough bread, and better bread than he ever hoped to eat, let alone meat on holidays

Id.

49. E. WALLACH, *supra* note 31, at 207. In our own society, the Depression-era movie *Modern Times* depicts Charlie Chaplin preferring life in jail to the difficulties of keeping a job on the outside. One inter-title describes Chaplin as "[h]appy in his comfortable cell." When the sheriff tells him, "Well, you're a free man," Chaplin objects, "Can't I stay a little longer? I'm so happy here." After his release Chaplin is characterized as "[d]etermined to go back to jail." In an effort to get arrested he buys more food than he can pay for. The police do arrest him; however, Chaplin's new acquaintance, Paulette, pushes him out of the van and back to the hardships of life outside prison. *Modern Times* (1936).

had professed affection and loyalty.⁵⁰ Likewise, in his autobiographical work, *Prisoner of Mao*, Bao Ruo-Wang reports that friendship blossomed more in prison than in the suspicion-riddled society outside:

"A living hell" is the popular image inevitably conjured up by the idea of Communist labor camps. There is truth in the image, of course, but it is distorted because it is incomplete. The reality, the most exquisite irony that I discovered as the years slipped by, was the same that had already been testified to by the survivors of Stalinist camps: Not only is the society within the camps in many ways purer than the larger one outside, but it is also freer. *It is in the prisons and camps that the notions of friendship and personal freedom are the most highly developed in China.*⁵¹

In democratic societies, as well, the image of prison as a catalyst of friendship can be explained partly by the loneliness that permeates civilian society. Thus, anthropologist Robert Brain writes:

To me, it is the strangest thing that in Western Christian society, founded on the love of God and the fellowship of mankind, loneliness has become one of the hallmarks. . . . [S]o many of us eke out an existence as loveless and unloved atoms—free individuals in an open society, condemned to form part of the great grey subculture of the lonely⁵²

Brain offers an explanation for this isolation in the culture of chronic change: "Friendship is a basic need but in our swift turnover of jobs, homes, and even marriages we are constantly starting off to look for a new 'community' of friends."⁵³ By contrast with common citizens, prisoners are immobilized and, to that extent, are better situated to form lasting relationships characterized by affection and trust. Moreover, instead of going through life as modern man does—having an essentially unique pattern of experiences—prisoners share most aspects of their lives.

A second explanation for the image of prison as a refuge from the quotidian is that, for some persons, incarceration fosters intellectuality and spirituality. A study by the late psychoanalyst Edith Jacobson supports this explanation. She observed about one hundred female political prisoners during her two years' confinement in the state prisons of Nazi Germany.⁵⁴ With respect to strong and intelligent persons, Jacobson

50. See N. MANDELSTAM, *HOPE AGAINST HOPE: A MEMOIR* 88, 337, and *passim* (1970).

51. BAO RUO-WANG & R. CHELMISNSKI, *PRISONER OF MAO* 12 (1973) (emphasis added); cf. Gluzman, *supra* note 41, at 61 ("A paradoxical conclusion can be reached: the transition from life in prison camps to 'free' life in the U.S.S.R. is characterized by a substantial reduction of the degree of internal freedom and of the possibilities of defending one's dignity from encroachment by social institutions.").

52. R. BRAIN, *FRIENDS AND LOVERS* 259-60 (1976).

53. *Id.* at 257.

54. Jacobson, *Observations on the Psychological Effect of Imprisonment on Female Political Prisoners*, in *SEARCHLIGHTS ON DELINQUENCY* 341 (K. Eissler ed. 1966). Dr. Jacobson made all of

found that prison often set in motion a constructive development. For example, nearly all the political prisoners felt impelled to do artistic work, such as writing poetry, and many embarked on a systematic study of natural science, history, or languages. Some who had never before felt any interest in the classics began to learn the ancient poets by heart.⁵⁵

Analyzing this behavior, Jacobson posits that the experience of imprisonment causes a regression of the ego to a state of adolescent dissolution. As in adolescence, so in prison, a strong id confronts a relatively weak ego. The deprivation and frustration of confinement produce aggression, but discharge of this aggression is impossible in the prison situation. Similarly, in prison a normal sex life is precluded. To cope with this impasse, the prisoner develops reaction-formations and sublimations.⁵⁶

As an example of this process, Jacobson recounts the story of a thirty-two-year-old woman who had lived as a prostitute prior to her arrest. In prison "[f]or the first time in her life, the prisoner met with outward barriers against those impulses which had ruled her so far."⁵⁷ Living among people who were well-controlled and intellectual, she changed greatly. Not only did she grow to love poetry, but also, while in the prison, she arranged for courses in anatomy and first aid. In addition, she began to question the spiritual basis of her existence. While still in prison, she obtained a divorce from the procurer on whom she had been sexually dependent and found work and lodgings for herself in another region.⁵⁸

By contrast with this example, Jacobson stresses that for most common criminals, imprisonment tends to have harmful effects, aggravating an already infantile personality.⁵⁹ Moreover, she believes that even where sublimations are formed in prison, they will not endure once the situation of extreme privation is ended.⁶⁰

Robert Jay Lifton's book *Thought Reform and the Psychology of Totalism* provides an extension and partial confirmation of Jacobson's findings. On the basis of interviews with people imprisoned for years in the People's Republic of China, Lifton finds that the Western subjects, long after their release from prison, "consistently reported a sense of having been benefited and emotionally strengthened, of having become more

her observations between 1935 and 1938 during her confinement in a Nazi State Penitentiary. By contrast with the concentration camps, the City and State Prisons at that time were not under the control of the Gestapo. *Id.* at 342.

55. *Id.* at 359-60.

56. *Id.* at 359-60, 363.

57. *Id.* at 359.

58. *Id.* at 359-60.

59. *See id.*

60. *Id.* at 365.

sensitive to their own and others' inner feelings, and more flexible and confident in human relationships."⁶¹

While acknowledging the difficulty of explaining this reaction, Lifton believes it has to do with the prisoners having explored their emotional limits, of having "hit rock bottom" in their negative view of themselves, and having then reacquired some degree of self-respect. He analogizes this to the feeling of well-being that people exhibit after subjection to severe stress. By contrast with the limited rebound euphoria that occurs after a brief stress,

after an experience as totally disintegrating as prison thought reform, the relief at being put together again is more basic and more enduring. In the experience itself, and in the process of recovery and renewal which followed it, these men and women gained access to parts of themselves they had never known existed.⁶²

Finally, a third explanation for the image of prison as a refuge from the prosaic lies in the concept of impulse neurosis. Impulse neurosis is a form of severe character pathology characterized by "chronic, repetitive eruption of an impulse." The individual experiences gratification of the impulse as highly pleasurable during the impulsive episode but as unacceptable at other times.⁶³

The basic disposition for this disorder is the same as that for addiction and depression: impulse neurotics are fixated on the earliest—that is, the oral—phase of development. Hence, any tension is experienced as a dangerous trauma, and sexual gratification and the sense of security are not differentiated from each other. Because they cannot tolerate tension, impulse neurotics direct their actions not so much "toward the positive aim of achieving a goal but rather more toward the negative aim of getting rid of tension."⁶⁴ More specifically, the unconscious purpose of most impulsive acts is to avoid depressions.⁶⁵ Typical examples of impulse neurosis are alcoholism, drug addiction, kleptomania, and chronic running away.⁶⁶

James Blake can be understood as an impulse neurotic who unconsciously—and even to some extent consciously—experiences incarceration as pleasurable because it affords him the control that his own ego cannot provide. In the following passage Blake expresses his awareness that in prison he is able to concentrate and sublimate in a way he finds impossible outside: "I wrote Dr. Algren about a week ago and as yet no

61. R. LIFTON, *THOUGHT REFORM AND THE PSYCHOLOGY OF TOTALISM* 238 (1969).

62. *Id.* at 238-39.

63. See O. KERNBERG, *BORDERLINE CONDITIONS AND PATHOLOGICAL NARCISSISM* 12 (1975).

64. O. FENICHEL, *THE PSYCHOANALYTIC THEORY OF NEUROSIS* 368 (1945).

65. See *id.* at 369.

66. *Id.* at 369-75.

reply. I hope he isn't displeased with me. . . . Certainly the book will be finished in a shorter time than it would if I were out, *with all the distractions I manage to find.*"⁶⁷

Although Blake displays considerable insight into his attraction to imprisonment, he falls short of understanding the deepest sources of this fascination. The true nature of the distractions against which Blake feels he need protection is suggested by the juxtaposition of his descriptions of homosexual love affairs and his expressions of nostalgia for prison. Immediately after describing an affair he regards as demeaning, he writes: "How many times I have wished myself back in the joint, *the perfect peace I had and did not value . . .*"⁶⁸ Again, after being seduced in a way he considers humiliating, he declares: "I wish now I'd never left the Rock in Florida, but this maniac [his lover] didn't come on like a maniac at first."⁶⁹ Significantly, it is not when he is in prison, but when he is involved with a sadistic lover outside that Blake writes: "So here I am—trapped, beset, lonely, bored, frightened, and confused."⁷⁰ In contrast, Blake describes his homosexual affairs in prison less in terms of self-abasement and more in terms of either pragmatism or genuine passion.⁷¹

As additional evidence of the impulse-controlling function that prison performs for Blake, I would cite the contrast between the letters Blake writes from inside and outside prison. In prison, he writes more about music, books, and writing, whereas outside he writes predominantly about his obsessive infatuations with one man after another—and about his longing to return to prison.

The Irish playwright Brendan Behan, who described his prison experiences in *Borstal Boy*, provides another example of the impulse neurotic who unconsciously feels the need to be controlled by an external force. A writer reviewing a biography of Behan sums up the benefits Behan derived from incarceration:

He seemed at home in prison. Most of his formative reading was done in Borstal, and it was in Dublin jail that he learned Gaelic and began to write. Prison gave him material for "The Quare Fellow," the gallows-humor play which brought him world fame. It inspired "Borstal Boy," which will outlive a swarm of "Papillons." And, what is impor-

67. J. BLAKE, *supra* note 9, at 60 (emphasis added).

68. *Id.* at 137 (emphasis added).

69. *Id.* at 132.

70. *Id.* at 135.

71. See, e.g., *id.* at 195 (of a love affair he has in prison, Blake writes: "But the beauty part is the shared laughter, I've never known that in a relationship before, it's novel and precious to me."); see also *id.* at 197.

tant, it kept him off the drink.⁷²

The writer continues: "In retrospect it seems odd that he spent so many of his years in jails, for if there was one thing he was not, it was a revolutionary."⁷³ But it is precisely because of the benefits prison provided him, in terms of freedom from being subject to his alcoholism, that Behan, on some level, sought incarceration.

Consider also the case of Paul Verlaine, for whom prison was "really and objectively, a solution to an untenable situation: his murderous impulses, the alcoholism which stoked them, the torment of his 'bimetallism' made of Mons a refuge into which he threw himself."⁷⁴

The objection may arise that such prisoners as Behan, Verlaine, and Blake are hardly representative; their reactions may not tell us anything about less cultured criminals. However, the notion of prison as a place where one is protected from oneself also finds support in the popular literature about common criminals. A *New York Times* article, for instance, describes an American woman, Terry Broome, imprisoned in Italy on a charge of premeditated homicide. After reporting on the Italian-language lessons and the ceramics workshop in which she was engaging at the prison, Broome is quoted as saying: "Maybe I needed to get away, to be put away, . . . so I could get out of the kind of life I was leading, so self-destructive, and change myself. I have changed myself. I am a different person now."⁷⁵

A similar observation appears in a recent magazine article that describes a woman suffering from irresistible impulses to spend money. She was imprisoned for embezzlement after taking money to cover her spending sprees. The author of the article writes that, while in prison, the woman "felt free for the first time in years" because she did not have to face the temptation to spend.⁷⁶

In the next section I continue with the motif of prison as a refuge. The emphasis there, however, will be less on prison as an escape from mundane preoccupations and more on prison as a protective and nurturing abode. Whereas the most salient images in the preceding pages were of prison as high up, or a calm place in the midst of motion, in the next section the images will be those of envelopment: being cradled, surrounded, embosomed.

72. Moore, N.Y. Times Book Review, Apr. 25, 1971, § 7, at 35 (reviewing U. O'CONNOR, BRENDAN (1959)).

73. *Id.* at 35, col. 4.

74. D'Eaubonne, *Jean Genet, Or, The Inclement Thief*, in GENET: A COLLECTION OF CRITICAL ESSAYS 65-66 (P. Brooks & J. Hapern eds. 1979).

75. N.Y. Times, June 16, 1986, at A6, col. 1.

76. Kirschenbaum, *Women: The New White-Collar Criminals*, 306 GLAMOUR 359 (1987).

B. "Cradled on the Sea": Prison as a Mother Who Provides and Protects

The student of prison memoirs cannot fail to be startled by the repeated characterizations of prison as a peaceful and safe place. In some instances the idea can be understood by reference to the relative quietude of life inside, but the theme is equally salient where there is no such basis in reality. Thus, notwithstanding that he has earlier listened in pain to the sounds of a gang rape,⁷⁷ during an interval outside of prison Blake writes to a friend:

You know what's in my mind? The joint. I thought I was getting off free from that experience. I thought they hadn't managed to touch me, but it colors every moment and every action of my life. *I think always of the peace that I had there*—this working to survive and surviving to work seems increasingly like an arrangement I would not have chosen, were it up to me. *Those gates, man, they're inviting.*⁷⁸

Blake resists his attraction to prison, but in the very passage where he announces his determination to stay outside, his choice of metaphors reveals his image of freedom as a battlefield and prison as a place of safety: "It's too easy to crawl back inside the gates. I want to stay out and do battle—but I need a couple of hammers."⁷⁹ Here Blake's use of the word "crawl" underscores the infantile nature of the dependent, passive longings with which he is struggling.

The motif of prison as a uniquely protected place is echoed in the autobiographical account of a British criminal, Diana Christina. At forty-seven, her age when she wrote her memoir, Diana Christina had spent nearly a third of her adult life incarcerated for burglary, pimping, and prostitution.⁸⁰ Reflecting on her attraction to prison, she says:

After a great deal of looking back into my past I realized that spending those years in prison had been beneficial to me in one important way: it had, I was convinced, saved me from being murdered! I had had so many violent encounters with men, and some very near misses.⁸¹

Although here Christina writes of safety in a literal sense, elsewhere she provides a glimpse of a deeper vision of prison as a protected abode:

I began to believe that it wasn't thieving that was my natural bent, it was being a gaol-bird that was my natural disposition. . . . *I began then to have visions of landing in a cell in isolation in prison and of spending the rest of my days there—curled up in a little ball and immersed in dreaming*

77. See J. BLAKE, *supra* note 9, at 66.

78. *Id.* at 148 (emphasis added).

79. *Id.* at 51.

80. Christina & Carlen, *Christina: In Her Own Time*, in CRIMINAL WOMEN 59 (P. Carlen ed. 1985) [hereinafter CRIMINAL WOMEN].

81. *Id.* at 88.

*fantasies.*⁸²

In this passage Christina's language suggests that she associates imprisonment specifically with being a fetus in a womb. By contrast with the usual stereotype of prison as a jungle, Christina, like Blake, views prison as the peaceful place and life outside as unremitting effort: "I told myself, 'You've got to stop escaping into gaol to hide away from it all. You've got to go forward into the struggle and come out on the other side.'"⁸³

Christina does not appear to recognize that the struggle is, at least in part, with herself. By her own admission, she had been attracted to the violent men and had initiated or acquiesced in the relationships with them. It was her own self-destructive impulses against which she needed protection. This can be seen still more clearly in Christina's decision, during an interlude of freedom, to take a job and residence in a nurses' home, where no men were allowed. Of this decision she observes that it would "make life far easier" for her: "I could still carry on meeting men socially, but I could also withdraw from them into my nurse's room—my own little cell-in-the-world—whenever I felt the need to."⁸⁴

Malcolm Braly's autobiography, *False Starts: A Memoir of San Quentin and Other Prisons*, provides another variation on the theme of prison as the quintessential safe place. Braly had been raised on the West Coast in a family that moved frequently. "The only continuity of our lives," he writes, "was that we had none."⁸⁵ Abandoned by his mother at age seven, Braly remembers her as a cold person who had expeditiously disabused him of his early beliefs in Santa, the Easter Bunny, and God. He cannot recall ever feeling love for her, whom he often imagines "as an angry Medea who murdered the normal lives [they] might have had."⁸⁶

Braly does remember loving his father, a used car salesman and embezzler who "always tried to laugh and joke his way through . . . misfortunes."⁸⁷ However, the father, too, abandoned him seven years after the mother did. Eventually, his stepmother turned him over to the county probation officer, after which Braly was well-treated by the community. He attended school, worked part-time as a reporter for the local paper, and received an offer of a college scholarship. Nevertheless, partly out of an identification with his father, Braly began to engage in regular stealing. He later realized that he must have wanted to be caught, because he stole clothes from a dry-cleaning establishment in a small

82. *Id.* at 100 (emphasis added).

83. *Id.* at 89.

84. *Id.* at 92.

85. M. BRALY, *supra* note 11, at 10.

86. *Id.* at 7.

87. *Id.* at 9.

town, then proceeded to wear the garments publicly. In and out of prison for most of his early adulthood, Braly served eighteen years for burglary and other theft crimes.

Toward the end of his autobiography Braly relates an epiphany he had about the years he spent behind bars. He had just been released from prison and had decided to steal when a patrol car happened along, and he ran in a panic. Of this moment he writes: "I sensed then in some clarity how that part of me which had always been fearful was once again trying to return me *to the safest place I had ever found*. Some primitive center, some ur-self, who still refused to recognize that life was always a gamble."⁸⁸ To Braly, prison seemed safe not because he encountered no physical danger there, but because it entailed no risk that he would fail to meet his own standards. Thus, he describes his feelings immediately after his release in this way: "I was discharged. Finally free. Free to be lonely. Free to go broke. Free to fail. Free to deal with the still ominous mysteries of my own most intimate nature. Still I was free."⁸⁹ Through irony, Braly expresses his insight that leaving prison forces the relinquishment of a childlike status.

Elsewhere he notes a more concrete similarity between the conditions of prisoner and child: "However harshly, the joint mothered us—fed us, kept us warm, treated our ailments—and now, away from home, I could hardly remember to pay the rent, and the gas bill and the phone bill, let alone take proper care of my teeth."⁹⁰ In the same vein, J.D. Bing, a character in one of Braly's novels, expresses his appreciation for the "[t]wenty years of free food,"⁹¹ the "[c]lean socks every night, [and the] [c]lean clothes three times a week"⁹² that he received in prison.⁹³

The point, of course, is not the material benefits that prison provides; rather, it is the unconscious meaning of having them provided, and provided unconditionally. Tamsin Fitzgerald, a nineteen-year-old woman imprisoned for her role in hijacking an airplane, makes this meaning explicit: "In a way, the less free you are, the more freedom you have. With every rule and locked door you have one less responsibility No worries, no job hassle, no bother about when or what to eat,

88. *Id.* at 372 (emphasis added).

89. *Id.* at 369.

90. *Id.* at 346.

91. M. BRALY, *IT'S COLD OUT THERE* 35 (1966).

92. *Id.* at 64.

93. On the theme of prison as a place where one feels cared for, consider the words of an old Russian prisoner's ballad:

Here are we, the Emperor's guests,
As befits our station

E. GINZBURG, *supra* note 11, at 325.

what to wear. *Free of responsibility, returned to a form of infancy.*"⁹⁴

If one similarity between prison and idealized infancy is the dependence on others for food and shelter, still another resemblance is the perception of life as timeless. Dylan Thomas has lyrically rendered the child's obliviousness to the passage of time in these lines:

Oh as I was young and easy in the mercy of his means,
Time held me green and dying
Though I sang in my chains like the sea.⁹⁵

James Blake writes wistfully of prison as a place where time is virtually infinite: "So much lovely time stretches out before you, time to read, to write, to play, to practice, to speculate, contemplate . . ."⁹⁶ Similarly, Malcolm Braly experiences imprisonment as being outside of time. Upon returning to San Quentin after an interlude of freedom, he associates timelessness with lack of responsibility: "In some ways it wasn't awful to be back. . . . *This was not our real life, our real lives were once again projected into the future.* . . . We could neither succeed nor fail here, we were in stasis, and preserved against failure and loss until once again, we were set free."⁹⁷

The associations among imprisonment, timelessness, and childhood are elevated to a symbolic level in Mary Renault's novel *The King Must Die*. Here she describes Theseus's thoughts as he is being taken in captivity to Crete:

We victims lived on the afterdeck, and had an awning to sleep under, just as if we had paid our passage. We belonged to the god, and had to be brought unspoiled. . . .

It was a time of pause with me. I had passed from my own keeping. I lay in the god's hand, as once in boyhood, cradled on the sea. Dolphins raced along with us, diving under the waves, and blowing 'Phool' through their foreheads. I lay and watched them. My life was still.⁹⁸

Though a particularly idyllic fantasy, this description resembles the other fictional portrayals and the realistic prison memoirs in equating imprisonment with a pleasant sense that one is no longer responsible for one's life. The image of the child borne up by the waves is reminiscent of Solzhenitsyn's prisoners floating in the ark on the water.⁹⁹ And the sea is

94. T. FITZGERALD, *TAM SIN* 112 (1973) (emphasis added). Margaret Drabble expresses the same idea in her fictional work, *The Ice Age*. The protagonist, Anthony Keating, searches for a place where he will be protected from choice, eventually finding it in prison. See, e.g., M. DRABBLE, *THE ICE AGE* 225 (1977) ("Yet again, he was going to have to decide what to do with his life. It was too exhausting. It was too much of an effort. . . . He wished profoundly that he was where Len Wincobank was [in prison], out of harm's way.").

95. D. THOMAS, *Fern Hill*, in *SELECTED WRITINGS* 80 (stanza 6) (1946).

96. J. BLAKE, *supra* note 9, at 148-49.

97. M. BRALY, *supra* note 11, at 217 (emphasis added).

98. M. RENAULT, *THE KING MUST DIE* 169 (1958) (emphasis added).

99. See *supra* text accompanying note 17.

a common symbol of the mother, as in Swinburne's lines:

I will go back to the great sweet mother,
Mother and lover of men, the sea.¹⁰⁰

In the memoirs and novels quoted above, prison is described as a place that is uniquely safe, as an unconditional provider of food and shelter, and as a timeless space. Because these qualities are also identified with home or, more exactly, with being a child in a nurturing and protective home, prison becomes assimilated to this powerfully-charged symbol. In psychoanalytic terms, some people develop toward prison an institutional transference—unconsciously displacing onto prison the feelings they originally experienced toward the significant figures of their childhood.

More specifically, as we have already seen in the proliferation of water imagery, prison is associated with the mother—the one who provides and protects. An unusually clear portrayal of this meaning appears in *Little Dorrit*, when Dickens describes the relationship between Little Dorrit and the debtors' prison where her family dwells: "The Marshalsea walls, during a portion of every day, again embraced her in their shadows as their child . . ."¹⁰¹ That the yearning for prison is unconsciously a yearning for a nurturing mother comes through in the last entry in Blake's book *The Joint*. Here Blake describes his abortive attempt to hold up a gourmet food counter and his subsequent realization that he wants to return to prison:

[T]hen at the cash register I showed the piece to the fat lady in charge and told her in menacing tones to put all the bread in the bag.

Well. She sagged, a deflating dirigible, slowly toward the floor and lay there like a beached whale, out cold, of no fucking use to anybody, especially me.

I couldn't understand the mechanism of the cash register, and so the money remained out of my reach. There was nothing to do but walk out into the warm Florida evening, into jingle bells jingle all the way. *I think it was then I realized I wanted to go back to the tribe, to my people, in the joint.* And I said to myself, home is where, when you go there, they can't turn you away.

Homesick, how about that? And homesick is where, when you go home, they make you sick.

No, Virginia, there is no Santa Claus. So dummy up and drink your beer.¹⁰²

Blake immediately reacts to a woman's failure to give to him by

100. A. SWINBURNE, *The Triumph of Time*, in *THE COMPLETE WORKS OF ALGERNON CHARLES SWINBURNE* 177 (stanza 33) (1925).

101. C. DICKENS, *LITTLE DORRIT* 809 (Chapter XXXIII) (Oxford Illustrated Dickens ed. 1953) (1857).

102. J. BLAKE, *supra* note 9, at 378-79 (emphasis added).

experiencing an impulse to run away, back to the penitentiary. For him, prison is a place where love, or the material goods symbolic of love, are provided unconditionally. To be sure, he quickly scoffs at his "homesickness," expressing the other side of his ambivalence toward prison. But his penultimate comment reflects his profound disillusionment with, and repudiation of, the outside world where "there is no Santa Claus," where one is not "cradled on the sea"—where one must earn one's keep.¹⁰³

Prior to the events described above, Blake had attempted to stay outside, for a time taking a job in a sanitarium for mental patients in the Westchester countryside. Like the nurses' home of Diana Christina, the sanitarium represented the total institution¹⁰⁴ that Blake unconsciously sought. In the end, however, Blake's attraction to prison proved more powerful than his good intentions. On the same day that he wrote the letter just quoted, Blake was arrested outside a medical building after an attempted burglary there. He was sentenced to five years in the state prison.¹⁰⁵

As I discussed in the preceding section,¹⁰⁶ Blake, an impulse-neurotic and drug addict, exhibits a fixation on the oral level of development. Like all other such orally-fixated people, he desperately needs external supplies, in the form of love and approval, to maintain his self-esteem. If the vital supplies are lacking, we can surmise that he will go into a severe depression. However, Blake acts impulsively to ward off depression by returning to a place where he can perceive himself as a loved and cared-for child.

Clinical findings suggest that oral fixation characterizes many chronic thieves like Blake, Christina, and Braly. In their classic study *Roots of Crime*, Franz Alexander and William Healy concluded that thieves exhibit a regressive longing to be in a passive, dependent condition—a longing that is inadmissible to their conscious minds.¹⁰⁷ Within this context, stealing functions as a compromise formation. On the one hand, by symbolizing aggressiveness and independence, it defends against the unconscious dependent longings. On the other, by allowing the thief to get something without working for it, stealing gratifies his

103. There may be other, equally valid ways to interpret this sequence of events and its meaning for Blake. I have highlighted certain aspects of the situation which seem particularly significant in light of the independent evidence that Blake is fixated predominantly at the oral state. Cf. *supra* text accompanying notes 63-69.

104. For the seminal discussion of the concept of the total institution, see E. GOFFMAN, *ASYLUMS* 1-124. Goffman defines a total institution "as a place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life." *Id.* at xiii.

105. J. BLAKE, *supra* note 9, at 379.

106. See *supra* text accompanying notes 63-71.

107. See F. ALEXANDER & W. HEALY, *ROOTS OF CRIME* 284 (1935).

passive yearnings.¹⁰⁸

If thieves typically display an oral fixation, it follows that they may find imprisonment deeply gratifying—gratifying enough that they would even commit crimes in some cases to be incarcerated. For such orally dependent people, the risk of imprisonment constitutes not a deterrent, but an incentive, to commit crimes.

We may not all evince an oral fixation to this degree, but we do all manifest less pronounced regressive yearnings. As Norman O. Brown has pointed out, our deep childhood-fixation reflects a nostalgia for the illusion that time does not pass and, hence, that we do not die. This wish to avoid death is related to dependency, for separation from the mother is the first step toward individual life, which in turn must lead to death.¹⁰⁹

Our unconscious feelings toward imprisonment are affected by this desire to return to a period before we came to terms with the reality principle, to the womb, to the fantasy of paradise. Hence, on an unconscious level, we can never regard penal confinement as an unequivocal evil. Hence, too, the ill-disguised envy that some common citizens express toward prisoners, who are viewed as “coddled” when they are merely deprived of their freedom. Thus, the universal oral fixation may help to explain why our prisons remain places of great brutality: to the degree that the population unconsciously associates imprisonment with a peaceful womb or a timeless Arcadia, it finds the mere deprivation of liberty an insufficient punishment. The word *paradise*, after all, is derived from the Middle Iranian word for *enclosure*.¹¹⁰

In the next section I examine a different kind of positive fantasy about incarceration—one in which prison is associated not with a static image, but rather with a drama or allegory, with a journey during which the traveler undergoes profound change.

C. “To Die And Become”:¹¹¹ *Prison as a Matrix of Spiritual Rebirth*

Except a corn of wheat fall into the ground and die, it abideth alone: but if it die, it bringeth forth much fruit.

John 12:24

In *The Gulag Archipelago*, Solzhenitsyn writes of prison:

108. See *id.*

109. See N.O. BROWN, *LIFE AGAINST DEATH* 284 (1959); cf. E. FROMM, *ESCAPE FROM FREEDOM* *passim* (1941). Fromm maintains that over the course of history people have been liberated from prejudices and limitations. Such liberations, however, have exacted a high price: loneliness and anxiety owing to the loss of a sense of belonging. These feelings, in turn, may give rise to the longings for a Fuehrer and sado-masochistic submission.

110. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 163a (3d ed. 1981).

111. E. ERIKSON, *DIMENSIONS OF A NEW IDENTITY* 43 (1974). Erikson uses “die and become” to refer to a world view that “courts death or, at any rate, self-denial as a step towards a more real and everlasting life.” *Id.* at 42-43.

[T]he day when I deliberately let myself sink to the bottom and felt it firm under my feet—the hard, rocky bottom which is the same for all—was the beginning of the most important years of my life, the years which put the finishing touches to my character.¹¹²

Solzhenitsyn thus describes in positive terms the condition of having lost everything: the appeal of having something firm under one's feet, as one can fall no farther, and the state of equality with one's fellow man.

This passage illustrates the association between prison and the downward, or chthonic,¹¹³ spatial dimension. Prison is thereby also linked with earth, and earth's two principal mythic roles: as the recipient of the dead, and as the mother of all life.¹¹⁴ The connections between prison, descent, and resurrection are made explicit by Bill Sands in his autobiography *My Shadow Ran Fast*:

All I can say for sure is that Warden Duffy was looking into my eyes with an expression that few men are privileged to see. The thief on the other cross, the one who repented, must have seen a Face like that when he cried out in his agony. When he spoke, *I knew at last that my long descent had ended*. My life was not over. It was just beginning.¹¹⁵

John Cheever's fictional work *Falconer* also depicts prison as the site of a drama based on the Christian story. This novel concerns a professor named Farragut, who is serving time for killing his brother with a fire iron. At the end of the novel Farragut escapes from prison by taking the place of a dead inmate in a burial sack, which he refers to as "his grave." Farragut experiences himself as someone in an infantile, even embryonic, state:

He had never, that he remembered, been carried before. . . . The sensation of being carried belonged to the past, since it gave him an unlikely feeling of innocence and purity. How strange to be carried so late in life and toward nothing that he truly knew, freed, it seemed, from his erotic crudeness, his facile scorn and his chagrined laugh How strange to be living and to be grown and to be carried.¹¹⁶

While the guards are busy elsewhere, Farragut slits the burial sack with a razor and makes his exit into the free world. A stranger he meets at a bus stop befriends him, offering to share an apartment with him and making him a gift of a raincoat. Farragut then walks to the front of the bus and gets off at the next stop. Cheever concludes the book with these words: "Stepping from the bus onto the street, [Farragut] saw that he had lost his fear of falling and all other fears of that nature. He held his

112. A. SOLZHENITSYN, *THE GULAG ARCHIPELAGO* 98 (1978).

113. Literally, "chthonic" means "in or under the earth," "dwelling or reigning in the underworld," or "relating to infernal deities or spirits." WEBSTER'S, *supra* note 110, at 403.

114. See P. WHEELWRIGHT, *THE BURNING FOUNTAIN* 176 (1968).

115. B. SANDS, *MY SHADOW RAN FAST* 48-49 (1964) (emphasis added).

116. J. CHEEVER, *FALCONER* 203-04 (1977).

head high, his back straight, and walked along nicely. Rejoice, he thought, rejoice."¹¹⁷

These passages portray prison as the set for a drama of falling and rising, dying and being reborn. A different image links prison with rebirth in the following passage by Malcolm X:

For the next years, I was the nearest thing to a hermit in the Norfolk Prison Colony. . . . I still marvel at how swiftly my previous life's thinking pattern slid away from me, like snow off a roof. It is as though someone else I knew of had lived by hustling and crime. I would be startled to catch myself thinking in a remote way of my earlier self as another person.¹¹⁸

The metaphor of snow falling off a roof captures Malcolm X's perception of the ease and naturalness with which the transformation occurred. In a similar example, Watergate convict Charles Colson asserts his belief that prison is a price he has to pay "to complete the shedding of [his] . . . old life and to be free to live the new."¹¹⁹

Why do these authors view prison as a vehicle for rebirth? The answer seems to be that, for them, imprisonment offers an opportunity to renounce arrogance and separateness. We have already seen an example of this view when Lear happily envisioned prison as a place where he would kneel down and ask Cordelia for forgiveness.¹²⁰ Another illustration appears in Diana Christina's memoir, where, during a period in solitary confinement, she forgave her mother. She reports: "Magic happened to me then. . . . I was completely transformed. I had a feeling of complete harmony and bliss with the whole of creation."¹²¹ Similarly, in *Kiss of the Spider Woman*, Manuel Puig associates the relinquishment of separateness and superiority with prison life. The revolutionary Valentin, who at first despises homosexuals and considers personal relationships inferior to the revolutionary cause, comes to embrace a fuller vision of life through his love for his cellmate, Molina.¹²²

The acceptance of equality with others is also linked to imprisonment, death, and personal transformation in Graham Greene's novel *The Power and the Glory*. Greene's priest protagonist, traveling incognito in Mexico during an era of religious persecution, is thrown into jail for bootlegging when he tries to buy wine for Mass. While in jail, he tells the other prisoners that he is a priest, and fully expects them to betray him to the authorities. When one of the prisoners declares roughly, "[n]obody

117. *Id.* at 211.

118. MALCOLM X, *supra* note 30, at 170.

119. C. COLSON, BORN AGAIN 283 (1976).

120. See *supra* text accompanying note 15.

121. Christina & Carlen, *supra* note 80, at 83-84.

122. M. PUIG, KISS OF THE SPIDER WOMAN 261, *passim* (T. Colchie trans. 1978).

... here wants their blood money," the priest is "touched by an extraordinary affection. He [is] just one criminal among a herd of criminals" and has "a sense of companionship which he had never received in the old days when pious people came kissing his black cotton glove."¹²³

The priest, who had previously held himself above and apart from others, while they "kissed his black cotton glove," now accepts his commonality with them—as "just one criminal among a herd of criminals." So strong is his sense of fellowship that in the morning, when no one betrays him, "[i]n an odd way he [feels] abandoned because they [have] shown no sign of recognition."¹²⁴ The guilt-ridden priest comes to see the night in prison as a turning point in his life: "It was the oddest thing that ever since that hot and crowded night in the cell he had passed into a region of abandonment—almost as if he had died there . . . and now wandered in a kind of limbo . . ."¹²⁵

Since prison is often imagined as a matrix of spiritual rebirth, it should not surprise us that some people aspire to experience imprisonment, embracing the opportunity joyfully when it arrives. Thus, Russian political prisoner Vera Figner describes the calm and radiance of the prisoner who interprets this sentence as a test of her Christian faith.¹²⁶ And Jawaharlal Nehru writes of his wife, Kamala's arrest in 1931: "I was pleased, for she had so longed to follow many of her comrades to prison. . . . [N]ow she had her heart's desire! How glad she must be. . . ."¹²⁷ In the contemporary United States, street youths often want to go to prison to prove their toughness. For the same reason, some of them prefer a prison such as Attica or Stateville to a "softer" facility.¹²⁸

A particularly interesting example of prison as a rite of passage appears in John Edgar Wideman's nonfictional book *Brothers and Keepers*.¹²⁹ Wideman, a professor and successful author, sets out to understand the divergence between his fate and the fate of his brother Robby, who is serving a life term for felony murder. Towards the end of his book, Wideman comments on the prisoner's grace—a grace he attributes to his brother's suffering behind the walls:

In prison Robby had achieved an inner calm, a degree of self-sufficiency and self-reliance never apparent when he was running the streets. I

123. G. GREENE, *supra* note 25, at 153.

124. *Id.* at 162.

125. *Id.* at 199.

126. V. FIGNER, *supra* note 34, at 209.

127. J. NEHRU, *TOWARD FREEDOM: THE AUTOBIOGRAPHY OF JAWAHARLAL NEHRU* 181 (1963).

128. Telephone interview with Professor James Jacobs, author of *Stateville* and Director, Center for Research in Crime and Justice, NYU Law School (June 23, 1987).

129. J. WIDEMAN, *BROTHERS AND KEEPERS* (1984).

didn't know many people, inside or out, who carried themselves the way he did now. *Like my mother, he'd grown accustomed to what was unbearable, had named it, tamed it. He'd fallen, but he'd found the strength to rise again. Inch by inch, hand over hand, he'd pulled himself up on a vine he'd never known was there, a vine still invisible to me. . . .* To discover the source of my brother's strength I found myself comparing what I'd accomplished outside the walls with what he'd managed inside. The comparison made me uncomfortable.¹³⁰

Here, the successful nonprisoner feels threatened by what he perceives to be the prisoner's achievement. The vine, which Wideman imagines his convict-brother climbing, is a symbol of Christianity. In the Gospel of John, the vine itself becomes a metaphor for Christ.¹³¹

Insofar as it is perceived as a rite of passage, incarceration confers a status on those who experience it. Imprisonment is thought to afford a special insight, attainable only to the initiated. Thus, Irina Ratushinskaya, the poet and political activist released from a Soviet prison in the autumn of 1986, reports that prison taught her to "discriminate among peoples' souls . . ." She adds: "I have seen the reverse side of humanity."¹³² Her remark evokes the myth of Orpheus, whose ordeal is not a trial of strength, requiring an effort of will, but rather an act of submission, a descent into a fearful realm, an exposure of self to the darkness.¹³³

The affiliation between incarceration and death stems in part from the significance of imprisonment as a withdrawal from life in the world. Because it is imagined as an inward movement, an entrance into a great container, being incarcerated may unconsciously signify an entry into the mother's womb, which, in turn, implies the possibility of being reborn.¹³⁴

The dialectical relationship between death and rebirth has religious origins as well. It is a salient theme of the Old Testament, expressed especially in the books of Job and Psalms, that one must be humbled through suffering in order to appreciate one's dependence on God.

130. *Id.* at 201-02 (emphasis added).

131. See *John* 15:1-8.

132. Blau, *Poet Rebuilds Life in U.S. After Soviet Prison Term*, N.Y. Times, Mar. 24, 1987, at C13, col. 5. Compare Chekhov's exulting words after his 1890 sojourn on the island of Sakhalin, which the Russian government had selected as the place of exile for its most dangerous criminals:

I am so filled with joy and satisfaction that it would not bother me in the least if I succumbed to paralysis or departed this world by way of dysentery. I can say: I have lived! I have had everything I want! I have been in Hell, which is Sakhalin, and in Paradise, which is the island of Ceylon!

Letter to Leontiev-Shcheglov quoted in Payne, *Introduction* to A. CHEKHOV, *THE ISLAND: A JOURNEY TO SAKHALIN* 34 (1967). Before undertaking this journey, Chekhov had been suffering from a severe depression over the death of his brother Nikolay. *Id.* at xiii.

133: For a discussion of the two kinds of hero myth, see Henderson, *Ancient Myths and Modern Man*, in *MAN AND HIS SYMBOLS*, *supra* note 13.

134. Cf. *id.* at 132 picture caption (describing the "archetypal Great Mother" as "the container of all life"); J. CAMPBELL, *THE HERO WITH A THOUSAND FACES* 91 (2d ed. 1968) (explaining that in the belly of the whale motif, the hero "goes inward, to be born again").

Christianity teaches that suffering enables man to put away the corruption of the flesh and to embrace the Kingdom of Heaven.¹³⁵ Moreover, the central symbol of Christianity, the Cross, means not only death, but also resurrection.

From a psychoanalytic perspective, the connection between rebirth and imprisonment derives from the universal sense of guilt and the consequent feeling that one deserves to be punished. Since all persons fail to live up to the requirements of the superego, everyone experiences guilt. Like anxiety, guilt feelings create a tension that craves release. The primary means of alleviating this tension, this burden of guilt, is through punishment. Thus, all people experience, to some degree, a need to be punished—not as a goal in itself, but rather as a lesser evil, a means to the goal of absolution. This largely unconscious belief that through suffering one can placate a threatening superego is a very archaic one.¹³⁶

Clear documentation of this psychological dynamic in the prison context is hard to obtain; most prisoners either do not consciously feel guilt or do not write about these feelings. An exception is the Communist Party member and history professor Eugenia Ginzburg who spent eighteen years in Soviet prisons and camps during the Stalinist era. Since, prior to her incarceration, she had been an ardent Bolshevik, she felt responsible for the Party's murder and imprisonment of her fellow citizens, even though she had not taken part in such actions directly. "Mea culpa," she writes, "and it occurs to me more and more frequently that even eighteen years of hell on earth is insufficient expiation for the guilt."¹³⁷

. . .

In the preceding sections, I have attempted to delineate images of prison as a place better than the outside world. The section that follows, by contrast, sets forth a view of imprisonment as merely no worse than life in freedom. The reader may question just how positive such a perspective is. But compared with the common perception of penal confinement as horrific, the notion that prison is the same as any other place can be considered positive.

D. "Flowers are Flowers": Prison as a Place like any Other

Lately, I've seen . . . [my prison] as an English garden because of the flowers that grow in abundance along the walks. . . . Flowers are flowers.

135. See, e.g., *Romans* 5:3-5 ("tribulation worketh patience; and patience, experience; and experience, hope: And hope maketh not ashamed; because the love of God is shed abroad in our hearts by the Holy Ghost which is given unto us.").

136. See O. FENICHEL, *supra* note 64, at 105, 293.

137. E. GINZBURG, *supra* note 40, at 153.

Walls and fences have no real power over them.¹³⁸

You are still in jail, in the hole or out of the hole. You are in jail in the street or behind bars. It is the same thing. . . .¹³⁹

While serving time on death row, Edgar Smith was often asked to explain why he read and made other efforts to improve himself. In his prison memoir, he answers this question as follows:

There is perhaps nothing more frightening to me than the prospect of finding myself stuck for the rest of my life in some dreary small town, working in some gas station or hardware store for sixty dollars a week. That would be going from one prison to another, from a cell to a cage, and I have had enough of prisons and cages.¹⁴⁰

For nonprisoners, the defining characteristic of prison is the deprivation of liberty. But the protean character of the concept *liberty* permits Smith to equate being behind iron bars with being stuck in a small town, working at a gasoline station for sixty dollars a week. In equating the two situations, Smith may be drawing on either the positive or negative sense of liberty. On the one hand, he may be viewing his imagined life in a dreary small town as prison-like because he believes that others have prevented him from obtaining the education and financial resources to leave. This reasoning would place his remark within the classical liberal understanding of freedom, that is negative liberty, or freedom from constraint. On the other hand, he may be drawing this equation because liberty to him means not merely the absence of coercion but also the capacity for self-realization. In the latter case, his observation would draw upon the concept of positive liberty best exemplified in the works of T.H. Green and Jean Jacques Rousseau.¹⁴¹

I began with an example of someone who imagines prison and the world outside (or some parts of it) to be equally bad, equally unfree. This same theme often appears in prisoners' reflections on the similarity between their plight and that of the guards. Note, for instance, how former prisoner Thomas Flynn empathically describes the constrained life of a prison guard nicknamed "Absurdo":

Absurdo hasn't had much freedom, no time to explore, just school, the service, marriage, children, and the first government job that required nothing more than a high school diploma. Two weeks off a year, three after another five on the job, Absurdo knows about being institutional-

138. Crockett, *Inside*, in *GETTING BUSTED*, *supra* note 31, at 260.

139. Brown & Dunmeyer, *A Way of Life in the Ghetto*, in *PROBLEMS IN POLITICAL ECONOMY* 364 (D. Gordon 2d ed. 1977).

140. Smith, *Life in the Death House*, in *GETTING BUSTED*, *supra* note 31, at 346.

141. For the distinction between positive and negative liberty, see Isaiah Berlin's seminal essay, Berlin, *Two Concepts of Liberty*, in *POLITICAL PHILOSOPHY* 141 (A. Quinton ed. 1967). For a discussion of Rousseau's concept of freedom, see S. WOLIN, *POLITICS AND VISION* 371 (1960). For a summary of T.H. Green's "idealist revision of liberalism," see G. SABINE, *A HISTORY OF POLITICAL THEORY* 655-63 (4th ed. 1973).

ized, he knows about time.¹⁴²

Albie Sachs, a prisoner in South Africa, also recognizes an important similarity between his situation and that of the guard who repeatedly seeks him out: "It occurs to me that the station commander may be almost as lonely for company as I am."¹⁴³ And Charles Colson, in *Born Again*, describes his fellow inmate's "conclusion . . . that some of the guards seemed more imprisoned than the inmates themselves."¹⁴⁴ Finally, an anonymous prisoner states: "You have to realize that the guards are there doing time just like the inmates."¹⁴⁵ He elaborates with this vignette:

I remember asking a guard how long he had been in Sandstone. "Twelve years." "Do you think that you will be doing all your TIME here?" "No, I'll finish up in Leavenworth." It blew my mind. He was talking about the next twelve years, which he has to serve in order to be eligible for retirement. I thought to myself—Wow, I am going home in a year, and this guy has twelve more years of this stuff.¹⁴⁶

In these examples it is unclear whether the guards perceive themselves as unfree. Colson's observation, in particular, seems to draw upon a concept of freedom as the absence of even unperceived restraints on behavior. This sense of the word liberty implies the possibility of false consciousness, of being unfree while thinking one is free. Another inmate, Julian Beck, makes his analogy between prison and the world outside clearly dependent on this sense of the word *freedom*: "I often think that if the people on the street would realize how the world we live in is a prison, they'd do more yelling and railing, too. The sad, perhaps tragic, thing is that people do not realize they're not free."¹⁴⁷

This concept of false consciousness is also expressed in a passage by the nineteenth-century revolutionary Vera Figner. Soon after learning that she will be released in twenty months, Figner writes the following indictment of the characters in Chekhov's play "The Three Sisters":

"The Three Sisters" aimlessly wander through life, expecting salvation from moving to Moscow. *But it is within himself that man bears corroding melancholy, or the buoyant spirit of creative life;* and the "sisters" will wither as fruitlessly in Moscow, as they withered in the provinces.

. . . .

. . . *If such was life, then what difference did it make whether one languished in prison or out of it? One would simply come out from behind*

142. T. FLYNN, *TALES FOR MY BROTHER'S KEEPER* 46 (1976).

143. A. SACHS, *THE JAIL DIARY OF ALBIE SACHS* 134 (1966).

144. C. COLSON, *supra* note 119, at 307.

145. Kohn, *supra* note 31, at 253-54.

146. *Id.* at 354.

147. Beck, *Thoughts on the Theater from Jail*, in *GETTING BUSTED*, *supra* note 31, at 321.

*the walls of the Fortress to find himself in a larger prison.*¹⁴⁸

To this ardent activist, a dull and languid life, which she fearfully anticipates finding outside prison, is not worth living. In comparing an apathetic life in freedom to a larger prison she, like Edgar Smith, draws upon a concept of positive liberty—not the absence of coercion, but the full realization of one's potential.

If one way of perceiving prison as a place like any other is to emphasize the coercive forces in the outside world, another is to affirm the capacity to transcend one's physical environment, to be free even in prison. The imperviousness of one's essential self to incarceration comes through in the following passage from *War and Peace*. The scene occurs when the French are holding Pierre as a prisoner-of-war.

"Ha-ha-ha!" laughed Pierre. And he said aloud to himself: "The soldier did not let me pass. They took me and shut me up. They hold me captive. What, me? Me? My immortal soul? Ha-ha-ha! Ha-ha-ha! . . ." and he laughed till tears started to his eyes.

. . . .

. . . Pierre glanced up at the sky and the twinkling stars in its far-away depths. "And all that is me, all that is within me, and it is all I!" thought Pierre. "And they caught all that and put it in a shed boarded up with planks!" He smiled, and went and lay down to sleep beside his companions.¹⁴⁹

Pierre is a character in a work of fiction, but his reflections resemble those of Tamsin Fitzgerald, the young woman imprisoned for hijacking a plane. She writes that there are two kinds of freedom: the "outer" and the "inner." Consequently, one can "be in prison and yet be free." It is futile and absurd, she concludes, to imagine that one can take away a person's freedom.¹⁵⁰

A similar observation occurs in Robert Bolt's play, "A Man for All Seasons." In the scene when Sir Thomas More is imprisoned in the Tower and his family comes to visit him, the following dialogue ensues:

Roper: This is an awful place!

More: Except it's keeping me from you, my dears
it's not so bad.

Remarkably like any other place.¹⁵¹

For More, who had wanted to be a monk, prison and life in freedom were essentially the same, because neither was the Kingdom of God. Besides, as a scholar, he probably believed it was the life of the mind, the inner life, that mattered.

148. V. FIGNER, *supra* note 34, at 297 (emphasis added).

149. L. TOLSTOY, *supra* note 28, at 1130.

150. T. FITZGERALD, *supra* note 94, at 112.

151. R. BOLT, *A MAN FOR ALL SEASONS* 138 (1960).

...

One approach to explaining the image of prison as a place like any other lies in recognizing that people care not only about negative liberty, or freedom from constraints, but also about positive liberty, or the capacity for self-mastery and self-realization. As Isaiah Berlin discusses in his classic essay, throughout history it has proved impossible to limit the concept *liberty* to its Western sense of "an area within which the subject . . . is or should be left to do what he is able to do or be, without interference by other persons . . ."¹⁵² Rather, the positive, or idealist, notion of liberty has persistently been expressed—reflecting the belief that a person may be divided against himself, or may suffer from false consciousness. We have seen numerous instances of this perspective on liberty in the prisoners' writings.

Still another source of the idea that imprisonment represents a difference only in degree from normal life lies in the inevitable gap between man's efforts to conceptualize reality and the complex, differentiated nature of reality itself. Dostoevsky makes this point in his prison memoir, *Notes from a Dead House*:

Reality is infinitely varied compared with even the subtlest workings of abstract thought and does not tolerate broad, clear-cut distinctions. Reality strives for infinite graduation. We too had a life of our own, poor though it may have been. By this I mean not the outward, but the inner life.¹⁵³

Erica Wallach provides another commentary on the same theme in her memoir of her five years in Soviet prisons and camps. She describes a dialogue with a friend in a camp in Vorkuta, at the beginning of their working day. As they watch their black-clad fellow prisoners march ahead of them to work through the snow, the two women remark on what a moving scene it would make in a film. Wallach and her friend agree that anyone watching the film would feel terribly sorry for them, whereas they, the prisoners, would "be laughing and joking or just be thinking about taking the next step, protecting [their] faces, keeping the circulation going . . ."¹⁵⁴ Wallach goes on to tell her friend that when she read Dostoevsky's description of the conditions he lived in as a prisoner, she had thought she could never stand it. Yet there she is, in conditions she deems much worse than those of Dostoevsky's time, tolerating and even joking about them.¹⁵⁵

Elsewhere, Wallach illustrates how the outsiders' stereotype of prison carries over into imprisonment itself, diminishing the prisoners'

152. Berlin, *supra* note 141, at 141.

153. F. DOSTOEVSKY, *supra* note 47, at 289.

154. E. WALLACH, *supra* note 49, at 256.

155. *Id.* at 256-57.

ability to share their experiences with each other. She reports that the great beauty of the Siberian landscape often awed her and her fellow prisoners. They could not help stopping their work at times to admire the scenery. Yet, "we did not dare admit it openly to each other: how could we possibly enjoy anything in the inferno!" Instead, they kept telling each other how much they *would* have admired the majestic scenery if they had gone there as tourists.¹⁵⁶

For certain positive aspects of experience—among them, beauty—the confined-free dichotomy is simply irrelevant. And here I may expand the point to summarize one thesis of this Article: that happiness itself bears no necessary correlation to either confinement or freedom.

II METHODOLOGICAL ISSUES

Before considering the implications of the foregoing analysis for criminal law, it is important to discuss two questions: (1) given the elusive relationship between text and meaning, how can we be sure that the interpretations presented here are legitimate? and (2) are the authors whose works we have examined representative—either of criminals or of people generally?

A. The Problematic Relationship Between Text and Meaning

There is, of course, some risk in assuming that a writer means what he says in any straightforward sense. When he writes, for example, "Those gates, man, they're inviting," or "[H]ere one is a thousand leagues above the pettinesses and wickednesses which occupy us down there," there is always a possibility that the writer is speaking ironically, or merely expressing a nostalgia that would never lead to action.¹⁵⁷

An individual's recollections of past events may be colored by a desire to suppress the more unpleasant experiences or to deny the effect of these experiences. Thus, a writer may focus on a few uplifting aspects of incarceration even though such positive associations were strongly mitigated by other, negative feelings towards prison. The author might also portray prison favorably in order to disparage the freedom he could not have. This latter theory could explain not only remarks made by prisoners while they are confined (that is, to ease the trauma of incarceration).

156. See *id.* at 285.

157. See, e.g., C. DICKENS, *supra* note 101, at 22 (" 'But I bear those monotonous walls no ill-will now,' said Mr. Meagles. 'One always begins to forgive a place as soon as it's left behind; I dare say a prisoner begins to relent towards his prison, after he is let out.' "); see also L. TOLSTOY, *supra* note 64, at 1123 ("All Pierre's daydreams now turned on the time when he would be free. Yet subsequently, and for the rest of his life, he thought and spoke with enthusiasm of the month of captivity . . .").

tion) but also observations made by ex-prisoners who may wish to justify the wasted years. From a psychoanalytical point of view, the notion that "the grapes are sour anyway"—*that civilians too are entrapped or that one can be freer in prison*—represents the use of a defense mechanism, denial. In denial, the ego avoids becoming aware of a painful aspect of reality by creating a fantasy that obliterates the unpleasant fact.¹⁵⁸

While irony, nostalgia, or denial may partially underlie the positive images delineated above, I submit that these images represent something more significant than those explanations would suggest. Most of the writers had strong incentives to disparage prison. Many had friends who had remained in prison and who might have resented an affirmative portrayal of incarceration. Moreover, in some cases, the author's conduct provides further evidence that these associations are deeply felt. Several of the prison memoirists quoted in the preceding pages appear to have committed crimes, or bungled their escapes, in order to go to prison. I have already adverted to this pattern in the case of Blake, who realized he wanted to return to prison after his failure to hold up the gourmet food counter, and later that day was arrested outside a medical building he had attempted to burglarize.¹⁵⁹

Similarly, Malcolm Braly reports several incidents which suggest that his criminal acts may have been motivated by an attraction to prison. In one example, he was walking along the street, searching for a place to burglarize, when what he calls "his voice" spoke to him, saying: "When you're back in Quentin, you'll have time to paint."¹⁶⁰

Braly's intuition warned him another time, just after he had committed a burglary with his friend George. He and George had gone through a suite of medical and dental offices, which they left carrying a stolen briefcase filled with money, drugs, and dental gold. Once out on the street, Braly became anxious because, in their dirty, unshaven state, they were conspicuous in the college town. Braly urged George to hide with him somewhere until morning, when it would be safe to travel, but George insisted on going home. On their way to the edge of town, George spotted an all-night coffee shop. Braly recounts what happened then as follows:

George said, "Let's get some coffee. It'll pick us up."

"It's not a good idea."

"I don't care if I have to do ten years in San Quentin, I want a cup of coffee."

That should have told me what forces were at work here, but I didn't

158. For one of the classical discussions of denial, see A. FREUD, *THE EGO AND THE MECHANISMS OF DEFENSE* 69-92 (rev. ed. 1966).

159. See *supra* text accompanying notes 98-100.

160. M. BRALY, *supra* note 11, at 211.

hear precisely. I said, "Okay, but maybe we should leave the briefcase outside."

George looked at me sharply. "What's the matter with you?" My intuition was screaming, but I was so easily led I simply followed him into the shop and we ordered coffee and bearclaws.¹⁶¹

Soon after they left the shop, police officers stopped for their own break at the same coffee shop and were told that "two strangers had just been there with an expensive briefcase."¹⁶² It was not long before they picked up George and Braly. With these kinds of "mistakes" it is no wonder that, as Braly later observes, he "served more time for a handful of inept burglaries than most men would have served for killing a police officer."

These examples are not atypical; prison memoirs are replete with instances of criminals deliberately acting in a way that leads to their arrest and incarceration.¹⁶³ Often it is apparent, to the criminals themselves or to fellow inmates, that they not only wanted to be caught after committing the crime, but also committed the crime in order to be caught. Thomas Flynn, author of *Tales for My Brothers' Keepers*, describes his friend Al's ill-fated interlude in freedom: "As time passed he continued to find too subtle the world he had yearned to join when within the walls. Wearied by repeated gaffes, judging himself unfit for freedom, he committed a small and forlornly unsuccessful burglary and was returned inside."¹⁶⁴ The British woman Josie O'Dwyer, unsure of how to cope with life outside, describes herself as "actually . . . breaking and entering with the full intention of getting . . . nicked."¹⁶⁵

The legitimacy of any textual interpretation, of course, rests upon the structure of the work from which the passage is taken. Examples such as these, however, serve to confirm the real feeling behind the textual passages.

B. *The Problem of Representativeness*

We turn now to the second question raised above: whether the writers of these texts are representative of prisoners in general. Most of the prisoners cited here are gifted and articulate. Many of them are not coin-

161. *Id.* at 213.

162. *Id.*

163. See, e.g., J. NEHRU, SHADOWS ON THE WALL 74-75 (1948) (describing a thief-arsonist who committed crimes in order to return to prison); Tchaikovsky, *Looking for Trouble*, in CRIMINAL WOMEN, *supra* note 80, at 53 (describing her relief upon being caught and her surprising ineptness at preventing her capture).

164. T. FLYNN, *supra* note 141, at 20.

165. O'Dwyer & Carlen, *Josie: Surviving Holloway . . . And Other Prisons*, in CRIMINAL WOMEN, *supra* note 80, at 142.

mon criminals but rather political prisoners.¹⁶⁶ Some, such as Tolstoy, Stendhal, and Graham Greene, did not experience incarceration. Moreover, many of the works quoted were written in other cultures and eras. What relevance can these writings have for penal policy or criminal law in twentieth-century America?

Impressionistic evidence on this point comes from Kenneth Lamott, author of *Chronicles of San Quentin* and teacher at that prison. In reviewing Braly's book, *False Starts: A Memoir of San Quentin and Other Prisons*, Lamott comments on the typicality of Braly's attraction to imprisonment:

Our prisons are full of men who (whatever they may tell the parole board) are in fact in headlong flight from the uncertainties and outright terrors—women and jobs, for instance—of life outside. I've listened to dozens of them and, mutatis mutandis, Braly's story is, up to a point, their story.¹⁶⁷

Lamott's impressions are supported by clinical evidence suggesting that certain kinds of criminals typically exhibit a personality syndrome such that one would expect them to find imprisonment gratifying. In their classic study, *Roots of Crime*, Franz Alexander and William Healy present seven detailed case studies of young criminals, most of whom were habitual thieves.¹⁶⁸ The book presents the results of an unusual enterprise: the individual psychoanalytic treatment of criminal offenders. What is most fascinating for our purposes is the finding that chronic thieves exhibit a regressive longing to be in a passive, dependent state—a longing that is inadmissible to their conscious minds. As I mentioned earlier,¹⁶⁹ the act of stealing functions as a compromise formation, simultaneously gratifying the passive longings and defending against them.¹⁷⁰

166. It may be objected that political prisoners and common criminals are very different, the former breaking the law out of idealistic conviction, the latter out of necessity, passion, or antisocial personality disorder. I have ignored this distinction in this study for a simple reason; namely, that I did not find a difference between the political prisoners and the common criminals with respect to their affirmative images of prison. Indeed, one of the surprising findings of this study is precisely the similarity of themes in the two groups. For each of the positive carceral images delineated in Part I, we find examples from both types of prisoner.

167. Lamott, N.Y. Times, Feb. 29, 1976, § 7 (reviewing M. BRALY, *FALSE STARTS*). Consider also the observations of Joan Shapiro, M.D., a forensic psychiatrist who treated prisoners at Canon City Prison, Colorado. She was astonished to find that the prisoners felt cared for in prison. (Personal communication, May 10, 1987).

168. The study does not claim to represent a scientific sample of adolescent offenders; rather, the authors deliberately excluded mentally defective and mildly psychotic people as well as those exhibiting pronounced neurotic or psychotic symptoms. They also selected offenders whose criminal behavior seemed to flow from inner conflicts, rather than external circumstances. See F. ALEXANDER & W. HEALY, *supra* note 107.

169. See *supra* text accompanying notes 107-108.

170. See F. ALEXANDER & W. HEALY, *supra* note 107, at 284; cf. Redmount, *Psychological Views in Jurisprudential Theories*, 107 U. PA. L. REV. 472, 505 (1959) (suggesting that many criminals are characterized by a basic conflict over dependency).

We would expect that individuals with the characteristics Alexander and Healy describe would unconsciously enjoy being incarcerated. And, indeed, to the extent that their study treats this topic, it fulfills our expectations.¹⁷¹ We therefore conclude that chronic thieves, at least those who steal because of internal conflicts and not external forces, are particularly likely to experience imprisonment as gratifying.¹⁷²

In addition to impressionistic and clinical evidence, there is another reason to believe that the writers considered here stand for many people besides themselves. In the analysis in Part I, I adduce illustrations of positive images from a wide spectrum of times and places: Tsarist Russia and 1950s Florida; Elizabethan England and modern-day South Africa; exemplary federal penitentiaries and notorious state prisons. That we find the same themes recurring across such a range of cultures and institutional settings suggests that the positive meanings of incarceration do not depend on particular conditions but rather express something deep-seated about the way human beings experience the world.

III

POSITIVE IMAGES OF PRISON AND THEORIES OF PUNISHMENT

Thus far this Article has focused on the prisoner's subjective experience of imprisonment. It will now explore some implications of the preceding analysis for the three traditional theories of punishment: deterrence, retribution, and rehabilitation.¹⁷³ These theories, which are really justifications of punishment, are necessarily advanced from the viewpoint of society rather than the prisoner. The following discussion is in no way intended to provide an exhaustive examination of these theories. It seeks only to adumbrate some ways that the analysis of the positive images can contribute to a rich and complex dialogue—a dialogue

171. See F. ALEXANDER & W. HEALY, *supra* note 107, at 54 ("Analyst: 'It is rather interesting that deep down the jail has some attraction for you, although consciously you don't like it at all, but this infantile longing for the mother is somehow satisfied in the prison, inasmuch as you don't have to care for yourself.'"); see also *id.* at 52, 67-68.

172. The findings of the late British psychoanalyst D.W. Winnicott are consistent with this thesis. Based on his clinical work with delinquents, Winnicott maintains that the antisocial tendency, with stealing at its core, reflects a hopeful search for "that amount of environmental stability that will stand the strain resulting from impulsive behaviour." D. WINNICOTT, *DEPRIVATION AND DELINQUENCY* 125 (1984). For an example of a murderer with some degree of attraction to imprisonment, see Oberkirch, *Psychotherapy of a Murderer: Excerpts*, 39 AM. J. PSYCHOTHERAPY 499, 505 (1985).

173. Some scholars would include restraint or incapacitation among the traditional rationales of punishment. This theory argues that we are justified in punishing offenders by isolating them from society to prevent their committing further crimes while they are being punished. I omit discussion of restraint theory from the text because the argument of the study has little application to it. The positive meanings of incarceration cannot alter the fact that someone physically constrained will be unable to commit new crimes against society while he is confined.

that has already been under way for centuries.¹⁷⁴

A. Deterrence Theories and the Positive Images¹⁷⁵

Deterrence theories are based on the idea that fear of a threatened punishment may dissuade a person from committing a crime. Legal theorists customarily distinguish between specific deterrence, which is the effect of a current punishment on the person who has been convicted, and general deterrence, which refers to the effect of a punishment on society as a whole.¹⁷⁶

The positive meanings of incarceration bear on both types of prevention, not merely on specific deterrence. If the favorable images of penal confinement were solely the result of institutionalization,¹⁷⁷ then we might infer that the positive meaning applied only to individuals who previously had been incarcerated. But we have no reason to assume that this is the case. Rather, people with a longing to perceive themselves in a cared-for, controlled situation might recognize the affinity between their needs and incarceration prior to experiencing prison. For example, before he had any experience in prison, Malcolm Braly attempted to join the Navy. Announcing his decision to his favorite teacher, he explained: "I need to be somewhere where I am made to do things."¹⁷⁸ He was consciously looking for a place where he would be controlled. It makes

174. For examples of works that have contributed to this dialogue, see J. ANDENAE, PUNISHMENT AND DETERRENCE (1974); J. FEINBERG, DOING AND DESERVING (1970); S. GRUPP, THEORIES OF PUNISHMENT (1971); N. MORRIS, THE FUTURE OF IMPRISONMENT (1974); see also N. MORRIS, MADNESS AND CRIMINAL LAW (1982); H. OPPENHEIMER, THE RATIONALE OF PUNISHMENT (1975) (originally published in 1913); L. RADZINOWICZ, IDEOLOGY AND CRIME (1965); R. SALEILLES, THE INDIVIDUALIZATION OF PUNISHMENT (1968); E. VAN DEN HAAG, PUNISHING CRIMINALS (1975); H. VON HENTIG, PUNISHMENT: ITS ORIGIN, PURPOSE AND PSYCHOLOGY (1973); A. VON HIRSCH, DOING JUSTICE (1976); N. WALKER, PUNISHMENT, DANGER & STIGMA (1980); F. ZIMRING & G. HAWKINS, DETERRENCE: THE LEGAL THREAT IN CRIME CONTROL (1973); Martinson, *What Works? Questions and Answers about Prison Reform*, 35 THE PUBLIC INTEREST 22 (1974).

175. Two caveats are in order here: first, it seems likely that only the images presented in Part I, Sections A, B, and C, are sufficiently positive to serve as inducements to commit crimes. Second, here I consider only the deprivation of freedom inherent in imprisonment. I do not take into account the stigma that attaches to incarceration or the deterrent effects that stigmatization may produce.

176. See S. KADISH & M. PAULSEN, CRIMINAL LAW AND ITS PROCESSES 26 (3d ed. 1975).

177. For a poetic description of institutionalization, see Byron, *The Prisoner of Chillon*, in 4 THE COMPLETE POETIC WORKS 16 (1986):

These heavy walls to me had grown
A hermitage—and all my own!
and half I felt as they were come
To tear me from a second home: . . .
My very chains and I grew friends,
So much a long communion tends
To make us what we are: — even
I regain'd my freedom with a sigh.

178. See M. BRALY, *supra* note 11, at 32.

sense, then, to assume that the attraction to prison might apply both to those who have been penally confined and to those who have not. In those individuals for whom the attraction to prison overrides the aversion to it, the risk of incarceration is not a deterrent, but an incentive, to engage in criminal acts.

This is not to say that the unconscious yearning for prison is the only motive for criminal behavior, even in those individuals for whom it is a motive. That is, even for chronic thieves—people with the personality type that would incline them to find prison gratifying—we can isolate several other reasons for stealing. In some cases, theft has come to have a masturbatory meaning and is associated with intense sexual excitement.¹⁷⁹ Stealing also may signify an identification with a beloved criminal parent,¹⁸⁰ revenge against a parent who is hated,¹⁸¹ or simply a need for money or a desire to impress others. Given the multidetermined nature of any criminal act, it is impossible to say precisely to what extent that act is caused by a desire to go to prison. What we can say is this: For the sub-group of criminals who conform to my model, the risk of imprisonment constitutes one incentive to commit crimes.

The possibility that incarceration might function as a motive to commit crimes has received little previous attention from modern legal scholars.¹⁸² Although the deterrent theory of punishment has generated a large, conflicting body of literature, the controversy has centered on whether criminals are rational in the sense that they tend to engage in cost/benefit analysis. It has been assumed that if criminals are rational, and hence capable of being dissuaded by the threat of a sanction, they will be dissuaded by imprisonment. My analysis makes plain that the

179. See F. ALEXANDER & W. HEALY, *supra* note 107, at 109; O. FENICHEL, *supra* note 64, at 371.

180. See F. ALEXANDER & W. HEALY, *supra* note 107, at 102 & 113.

181. See *id.* at 67 & 117.

182. My research has turned up only one legal article on this subject. See Perry, *Escape from Freedom, Criminal Style: The Hidden Advantages of Being in Jail*, 12 J. PSYCHIATRY & LAW 215 (1984) (examining the writings of Jack Abbott and Malcolm X and concluding that these two men preferred life in prison). Another article mentions in passing that punishment may induce criminal behavior; however, it does not discuss the appeal of incarceration in particular. See Schonfeld, *Law and Unconscious Motivation*, 8 HOW. L.J. 15 (1962) ("What is startling, however, is the realization that by punishing criminals beset by strong unconscious guilt feelings, the law may actually encourage—rather than discourage—the commission of crimes.")

By contrast, many lawyers have written of the sometime attraction of capital punishment. For a partial summary of this research, see Glaser, *Capital Punishment—Deterrent or Stimulus to Murder? Our Unexamined Deaths and Penalties*, 10 U. TOL. L. REV. 317, 325-27 (1979).

Without focusing on any particular form of punishment, a few psychoanalytic works broach the subject of punishment as an incentive to criminality. See, e.g., S. FREUD, *Some Character Types Met With In Psychoanalytic Work*, in 14 THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD 332-33 (1957) (discussing "criminals from a sense of guilt"); S. FREUD, *Dostoevsky and Parricide*, in *id.* at vol. 21, 186-87 (1961) ("It is a fact that large groups of criminals want to be punished. Their superego demands it and so saves itself the necessity for inflicting the punishment itself.")

orthodox economists and others who adopt a choice-analysis paradigm¹⁸³ are confounding two questions: (1) are criminals deterrable at all? and (2) which measures do criminals regard as punitive? Nothing in my study points to a finding that criminals are undeterrable. My analysis does suggest the need to adopt a more complex view of criminal motivation, a view that takes into account the existence of inner conflict and of prison's sometimes potent allure.

The policy implications of the positive images are beyond the scope of this Article. It is important, however, to ward off one false policy inference; that is, that prisons should be made even more brutal than they already are. It is not the objectively positive character that gives rise to the positive associations delineated above. Recall that James Blake remembered prison as a peaceful, quiet place even though he had painfully listened to a gang rape one night in his cell.¹⁸⁴ Similarly, Brendan Behan experienced prison in a predominantly favorable way notwithstanding that his chums had to serve as bodyguards for him, or that another inmate had his buttocks razored until they were rivers of blood for stealing cigarette butts. The images of prison as an attractive abode are by no means unmediated reflections of external circumstances. Rather, there is an affinity between prisons and previous love objects, or current psychological needs, and that partial resemblance leads the individual to perceive prison in a positive light.

B. Retributivist Theories and the Positive Images

The retributivist theory of punishment rests upon the idea that a tribute, or price, must be paid to vindicate the law (general retribution) or avenge the victim and allow the criminal to expiate his sins through suffering (special retribution).¹⁸⁵ This view of society's justification for punishment looks back toward the wrongful act rather than forward toward the consequences of the punishment.¹⁸⁶ In H.L.A. Hart's words, the "application to the offender of the pain of punishment is itself a thing of value."¹⁸⁷

How do my findings on the positive images of prison bear on retributivist theories? On the one hand, the analysis undermines any formulation of retributivist theory which requires that the sanction be experienced by the offender himself as a privation, evil, or pain.¹⁸⁸ Where

183. See, e.g., Becker, *Crime and Punishment: An Economic Approach*, J. OF POLITICAL ECONOMY 169, 179 (1968); Sullivan, *The Economics of Crime: An Introduction to the Orthodox Literature*, in D. GORDON, PROBLEMS IN POLITICAL ECONOMY 374, 377 (1977).

184. See J. BLAKE, *supra* note 9, at 66.

185. See H. BERMAN, LAW AND REVOLUTION 183 (1983).

186. See A. VON HIRSCH, *supra* note 174, at 46 (1976).

187. H.L.A. HART, PUNISHMENT AND RESPONSIBILITY 8-9 (1968).

188. See, H. OPPENHEIMER, *supra* note 174, at 247 ("If we wish to remain on solid ground we

the prisoner says, with Solzhenitsyn, "Thank God for prison!"¹⁸⁹ or with San Quentin inmate Fernando Jackson, "I'm almost ready to thank them for sending me to prison,"¹⁹⁰ incarceration may be realizing other purposes, but it is not effecting the goal of retribution in this narrow sense.

On the other hand, other versions of retribution theory may be compatible with the positive meanings of imprisonment. Emile Durkheim, for example, maintained that the primary purpose of punishment was neither intimidation nor cure, but rather the maintenance of social cohesion in the civilian population. Social solidarity, he argued, would break down if a violation of the common conscience were not met with a compensatory emotional reaction. Specifically, the common morality must be affirmed by expressing the extreme repulsion which the crime inspires by inflicting suffering upon the criminal.¹⁹¹

From this perspective, it does not matter what meanings incarceration has for the inmates, so long as the civilian population believes that the criminals are suffering in proportion to their crimes.¹⁹² This brings us back to the question whether the positive images of prison necessarily apply exclusively, or with special force, to individuals who already have been incarcerated. In the discussion above I answered this question in the negative.¹⁹³ It should be added, however, that perhaps a disproportionate number of people who are orally fixated or tend to regress to the oral level are to be found in prison. If this is true, then the positive meanings of incarceration may be more evident to inmates than to civilians who never have been incarcerated. That would mean that the Durkheimian function of incarceration could be fulfilled even though some people were committing crimes to go to prison—provided the general public did not understand fully the affirmative meanings that penal confinement had for the inmates.

C. *Rehabilitative Theories and the Positive Images*

Like deterrence theory, rehabilitative theories view punishment not as an end in itself, but rather as a means to a beneficial result. While there are many definitions of the rehabilitative ideal, its core is the notion that the sanctions of the criminal law should be used to effect a transformation in the offender, with the two-fold aim of protecting society and of enhancing the offender's well-being.¹⁹⁴

shall have to avow that punishment means the infliction of evil upon the offender, and that it ceases to be punishment when it ceases to be an evil").

189. A. SOLZHENITSYN, *supra* note 16, at 38.

190. San Quentin inmate Fernando Jackson, quoted in Kroll, *supra* note 31, at 99.

191. See E. DURKHEIM, *THE DIVISION OF LABOR IN SOCIETY* 108-09 (1933).

192. *Id.*

193. See *supra* text accompanying notes 173-174.

194. See, e.g., Allen, *The Decline of the Rehabilitative Ideal in American Criminal Justice*, 27

More than deterrence or retribution, the rehabilitative ideal exhibits a consonance with the affirmative meanings of incarceration that we have examined. It is altogether fitting that this should be so, for a positive vision of prison is embedded in the original rehabilitative model, the model espoused by many prison advocates in the late eighteenth and early nineteenth centuries. Images of prison as a refuge from the hurly-burly, an academy, a matrix of spiritual rebirth, even a nurturing mother, all pervade the early prison reform literature. Thus, in the following passage from John Brewster's *The Use of Solitude in Prisons*, we see prison portrayed as a place of religious retreat: "It has been recommended, both by the practice and precept of holy men, in all ages, sometimes to retire from scenes of public concourse, for the purpose of communing with our own hearts, and meditating on heaven."¹⁹⁵

In its purity and optimism, this passage reminds us of the words spoken by Solzhenitsyn's character, Alyoska: "Rejoice that you are in prison. Here you can think of your soul."¹⁹⁶ Consider also the following statement by nineteenth-century prison advocates in Pennsylvania, which presents a mental picture of the prison as an academy and a refuge. They write, "In what manner can man be placed, where the words of the gospel would be more impressive than in their situation sitting alone . . . ; nothing to distract their thoughts, or divert them, from the truths delivered to them. . . ."¹⁹⁷

Here we see the idea that the Bible carries a heightened emotional impact when encountered in a prison setting. From their perspective as inmates, Malcolm X and Eugenia Ginzburg espoused this view in regard to books in general. A more elaborate positive conception of the prison as a refuge and academy appears in the following statement by the Inspectors of the Western-Pennsylvania Penitentiary in their *Annual Report for 1854*:

If hungry, he is fed; if naked, he is clothed; if destitute of the first rudiments of education, he is taught to read and write Shut out from a tumultuous world, and separated from those equally guilty with himself, he can indulge his remorse unseen, and find ample opportunity for reflection [H]e has books to read, and ink and paper to communicate with his friends at stated periods, and weekly he enjoys the privi-

CLEV. ST. L. REV. 147, 148 (1978) ("When I speak of the rehabilitative ideal I refer to the notion that the sanctions of the criminal law should or must be employed to achieve fundamental changes in the character, personalities, and attitudes of convicted offenders, not only in the interest of the social defense, but also in the interest of the well-being of the offender himself").

195. Hirsch, *From Pillory to Penitentiary: The Rise of Criminal Incarceration in Early Massachusetts*, 80 MICH. L. REV. 1179, 1209 (1982) (quoting J. BREWSTER, *The Use of Solitude in Prisons*, in A COMPANION FOR THE PRISONER 15 (5th ed. 1828)).

196. A. SOLZHENITSYN, *supra* note 23, at 198.

197. H. BARNES, *THE EVOLUTION OF PENOLOGY IN PENNSYLVANIA* 160 (1968) (quoting JOURNAL OF THE SENATE, 1830-31, 465).

lege of hearing God's holy word expounded by a faithful and zealous Christian minister.

Thus provided, and anxiously cared for by the officers of the prison, he is in a better condition than many beyond its walls guiltless of crime.¹⁹⁸

Among the affirmative aspects of penal confinement mentioned here, the image of prison as a catalyst of friendship between prisoners is significantly absent. Many of the early prison advocates, fearing that prisoners would corrupt each other, preached and implemented solitary confinement.¹⁹⁹

The passage quoted above implies that the prisoner's earlier existence in freedom may have been lacking in some essentials of life. Another report from the same period presents an explicitly negative picture of the typical prisoner's life in the world prior to entering the penitentiary. Note how the Pennsylvania official's words reverberate with James Blake's vision of the harried gnomes of New York streets, "scuttling and scurrying into subways like apprehensive White Rabbits":

Let us look for a moment at the condition of the majority of those who become subject to [the prison's] regulation. *We find them living a hurried and thoughtless life of hourly excitement, and shuddering at the possibility of a pause which could let in (to them the demon) reflection.* We see them wanting the ordinary comforts of clothing and cleanliness, without home save that afforded by chance companionship. We find them in the brothel and gin-shop, giving up all manner of excesses, indulging in every extreme of vice, self-degraded and brutal.²⁰⁰

By contrast, within the prison walls, the prisoners are restored to dignity: "They are taken to the bath and cleansed of outward pollution, they are new-clad in warm and comfortable garments, . . . they are lifted gently from their state of humiliation; self-degradation is removed, and self-esteem inducted."²⁰¹

Remarkably similar is the vision of a state-prison warden speaking a century and a half later. In a telephone interview in the summer of 1987, I spoke with James Garvey, Jr., the warden of New York City's Correctional Institution for Men ("Riker's Island"). I asked him to elaborate on an observation he had made to the *New York Times* that when criminals "hit rock bottom—selling their bodies for \$5 or stealing from loved ones—they have to come back to jail to regain their self-

198. H. BARNES & N. TEETERS, *NEW HORIZONS IN CRIMINOLOGY* 512-13 (1943) (quoting *INSPECTORS OF THE WESTERN PENITENTIARY, ANNUAL REPORT FOR 1854*).

199. See Hirsch, *supra* note 195, at 1207-10.

200. H. BARNES, *supra* note 197, at 162-63 (quoting *JOURNAL OF THE SENATE*, 1834-35, 467 (emphasis added)).

201. *Id.* at 162-163 (quoting *JOURNAL OF SENATE*, 1834-1835, 467).

respect."²⁰²

In prison,²⁰³ he observed, the correctional personnel *must* listen to the prisoners. They must make sure the prisoners get their special diet: Moslem, Kosher, salt-free, or low-calorie. The prisoners have a right to a job and to pick out the commissary they want. They have a right to spend two hours a day in the law library even if they are illiterate. If a woman has a cold, she has the right to a doctor, even if she is a hypochondriac. Thus, when they leave prison, the women are clean, their clothes are clean, they have money, they weigh more. Once they hit the streets, they begin selling themselves and they are treated with disrespect by everyone. The warden then remarked: "*The confusion is that jail to them is freedom and society is the jail. They can't operate in society because society has turned its back on them.*"²⁰⁴ The point here is not the objective veracity of Warden Garvey's description, but rather the way he imagines the offender and the prison experience.

Like the nineteenth-century prison advocates, Garvey exhibits the typical liberal belief in the environment as causative: a poor environment fosters criminality, a benevolent environment overcomes it. Also like the early prison reformers, he sees the prison as providing a benevolent and transformative environment. But in Garvey, liberal optimism is alloyed with twentieth-century despair. His words contain no hope of a permanent transformation. The rebirth he envisions for the prisoners is not in the Western, Judeo-Christian mode of one-time salvation, but rather in the Eastern religious style—a cyclical process of death and rebirth, and then again death and rebirth. "[They] have to come back to jail to regain their self-respect."²⁰⁵

I asked Warden Garvey whether he was implying that people committed crimes for the purpose of returning to prison. He answered that he thought in some cases this happened. If it does, this is an eventuality that was anticipated by the prison reformers. For so attractive was the prison depicted by the prison advocates that their opponents feared people might commit crimes to gain entry. The prison advocates responded by emphasizing the painfully ascetic and solitary character of carceral existence.²⁰⁶

My analysis of the positive images corroborates, from the prisoner's own perspective, the prison advocates' affirmative carceral vision. It thus

202. Martin, *At a Violent Jail Warden Strives to Ease Tension*, N.Y. Times, May 4, 1987, B4, col. 4.

203. Warden Garvey initially replied that he would answer my questions on the basis of his earlier experience at a women's prison; however, he later stated that everything he had said would apply to the men's prison as well.

204. Telephone interview with Warden James Garvey, Jr. (July 20, 1987).

205. Martin, *supra* note 202, B4, at col. 2.

206. See, e.g., Hirsch, *supra* note 195, at 1256.

highlights the tension between the rehabilitative model, on the one hand, and the deterrence and retributive models on the other. It also suggests that there may be a tension between two goals within the rehabilitative ideal. The rehabilitative ideal aims at both the happiness of the prisoner and the prisoner's ability to live a crime-free life outside of prison.²⁰⁷ Yet, the analysis of the positive images demonstrates that there are individuals for whom prison is rehabilitative in the former sense and not the latter—people whose newly acquired serenity and happiness is conditional on their remaining in prison.

EPILOGUE

But there is no such thing as a simple response to reality. External reality has to be "acquired." To deny that there is anything other than external reality . . . is a denial of the unconscious.²⁰⁸

At one point in her prison memoir, when describing her friendship with "Sunshine," nineteen-year-old hijacker Tamsin Fitzgerald writes:

We talked about a farmhouse with fields and woods, and about how strange happiness is. She always says, "But if I hadn't come to prison, then I never would have met you"²⁰⁹

This Article has been intended, in part, as an elaboration on the strangeness of happiness. And yet, it is not really so strange after all that many have found contentment, even joy, in penal confinement. For "[m]an lives, not nakedly or directly in nature like the animals, but within a mythological universe"²¹⁰ The images of prison as a desirable abode do reflect actual negative aspects of life in the world outside. But much more basically, they are an expression of man's essentially psychological and mythopoeic nature, of his tendency to transcend his immediate circumstances, transforming them in the light of his past experience and of his present needs.

207. See, e.g., H. OPPENHEIMER, *supra* note 188, at 242 ("The curative view of punishment according to which its infliction serves to dry up the spring of evil in the soul of the offender, either for the ultimate good of society or *for the benefit of the criminal alone . . .*") (emphasis added).

208. J. MITCHELL, *PSYCHOANALYSIS AND FEMINISM* 12 (1974).

209. T. FITZGERALD, *supra* note 94, at 22.

210. N. FRYE, *supra* note 1, at xviii.

