

Responsibility for Criminal Acts and the Role of Society in Producing and Perpetuating Crime

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Section 1:

There are but two alternatives:

Either the man you punish has no family, no relatives, no ties that bind in this world. In which case he has received no schooling, no education, no attention has been paid to his heart or his mind; therefore by what right do you kill this hapless orphan? You punish him because he has been dragged up, untrained and unsupported! The solitude in which you left him is held against him! You hold his misfortune to be a crime! Nobody taught him to know right from wrong. This man is ignorant. His destiny is the culprit, and not he. You punish an innocent man.

Or else the man has a family; in which case, do you believe that to slit his throat wounds him alone? And that his father, his mother, and his children will not also shed blood? Of course they will: in killing him, you strike the head from his entire family. And once again, you punish innocents.

- Victor Hugo, 29

Here Victor Hugo, a nineteenth century French novelist and politician, takes on the plight of the marginalized, of he who society has branded as Evil and who has therefore taken this label to heart, internalized it, and made it his own. On the question of responsibility, Hugo charges society with the crime of producing criminals and then unjustly and inconsistently punishing them for the outcome. For Hugo, this man's lack of education, family, moral training, and support is important in the determination of his responsibility for his actions and the justification for his punishment.

The state of Florida appears to disagree. Aileen Wournos, murderer of seven men and hailed as 'the first female serial killer,' was executed for these crimes in October of 2002. Her story fits the description above: deserted by her teenage parents before the age of 4, a ward of the court, pregnant at 14, and before the age of 20 working on the streets to survive. She became a prostitute and was arrested for robbery, assault, and various other crimes. Allegedly raped and assaulted by her first victim, she proceeded to kill 6

more men. Despite her problematic childhood, difficult life, and the criminal record of her first victim, Aileen was sentenced to death.

In a situation like Aileen's, who are we to hold responsible? Is the uneducated and unfortunate criminal fully responsible for his actions? Or, as Hugo argues, should his ignorance and misfortune – his destiny – take some of the blame? Might society be, in some way, responsible? In order to answer these questions, we must examine the formational influences that affect one's development and the societal influences that alter one's life options. Do these factors take away from an individual's responsibility? Clearly these influences differ from one individual to the next. Should this disparity be taken into account when deciding on an acceptable punishment? In this section, we will look to two philosophers, Aristotle and Jean-Paul Sartre, to help formulate an answer to these questions and formulate a theory on responsibility. The second section will apply these philosophical conclusions to American societal practices to determine the flaws they highlight and their implications for reform.

1. Aristotle

Aristotle provides an interesting viewpoint on responsibility that takes an angle quite distinct from Hugo's. He claims that an individual is fully responsible not only for all of his voluntary actions, but also for knowing what is right and wrong. Here we will look into his theory of responsibility and analyze its advantages and shortcomings.

1.1 Voluntary vs. Involuntary actions.

Aristotle has an interesting and comprehensive guide to distinguishing the actions for which the agent should be held responsible from those for which he should not. The first important distinction is between voluntary and involuntary action, and the determining factor between the two is whether the principle of the action is in the agent (voluntary) or external to the agent (involuntary). Both types of action can be divided into various categories. A voluntary action is either truly voluntary or what Aristotle calls “mixed.” If the action is truly voluntary, for example if a man knowingly and intentionally shoots his wife when various other options were available to him, the agent is responsible for the action and should be blamed.

A mixed action, on the other hand, is more complicated and can be grounds for pardon, blame, or even praise. A mixed action is the result of a choice that is unwelcome and repugnant and is made in extreme circumstances that one would wish to avoid. Despite the difficult nature of the choice, however, the character of the agent’s action still reflects his view of what is best – the principle is still in the agent. For this reason, the action is voluntary. Nonetheless, because the conditions can be of the type that overstrains human nature, in certain cases the agent can be pardoned for his decision. Depending on the extent of pain endured by the agent and the quality of the result, the agent can also receive praise or blame. An example of this type of action might be an individual who is told that if he kills one man himself, ten others will not be shot. Here the right choice is not obvious, and the agent is unwillingly put in a difficult situation. These factors must be considered when deciding how to judge his actions. ‘Mixed’ actions can get very complicated and will be discussed further in the following section.

An involuntary action can occur either by force or by ignorance. An action occurs by force if the cause is external and the agent contributes nothing. In this case, the agent is not responsible for the action and can be pardoned. If someone pushes the agent into a vase, he is not responsible for breaking it. An involuntary action can also be caused by ignorance of the particulars, for which the agent is not responsible. If an individual shoots a person thinking it is a deer, he cannot be held responsible for killing a man.

More interesting and relevant here is what Aristotle calls ‘ignorance of the universal.’ When an action is done *in ignorance*, as opposed to an action *caused by ignorance*, meaning that the agent is ignorant of what is beneficial and therefore does not know what is the right decision to make, Aristotle holds the agent responsible for his actions. In order to clarify this we must note that Aristotle holds the individual responsible for his character. If one is responsible for his character, than he is to blame if he turns out to be a ‘vicious person.’ In this case he will be ignorant of the beneficial since “certainly every vicious person is ignorant of the actions he must do or avoid, and this sort of error makes people unjust, and in general bad.” (Aristotle, 1110b29)

1.2 Mixed Actions

An examination of what Aristotle calls ‘mixed action’ leads us to the question of whether misfortune reduces the responsibility of the individual. If one is put in a difficult situation and forced to choose between undesirable options, is he fully responsible for his decision? One who commits an evil action due to a lack of options often has a fully-developed sense of what is right and wrong. He is nonetheless driven to act because he

feels that it is his only viable option, lest he die himself, allow a loved one to die, or receive an unacceptable punishment. This individual might feel compelled to join a gang in order to survive in the streets. He might take up arms in order to defend his people who are in the process of being exterminated by the ethnic group in power. He might be a US army soldier horrified by the atrocities he is ordered to commit against enemy civilians.

When evaluating the guilt of someone in such a situation, we must consider the influence of luck upon the individual and his actions. This is a very difficult area to assess because much of who we are and what we do is determined by factors beyond our control. It appears logical not to blame someone for something that is not his fault. In practice, however, moral judgments tend to hold one responsible for what one does, excluding only the influence of such factors as coercion, ignorance, or involuntary movement. (Nagel, 35-36) Yet it is possible to attribute much of what we do to external occurrences and circumstances. Thomas Nagel uses the term 'moral luck' to describe such situations in which we judge one for an action that depends on factors outside of his control.

There are various ways in which luck has an influence on how we are morally judged. While our decisions may be our own, the way things actually turn out, the circumstances with which we are faced, and even our personality, are all largely determined by luck. Nagel notes that "everything seems to result from the combined influence of factors, antecedent and posterior to action, that are not within the agent's control."(Nagel, 35) The problem, Nagel explains, is the 'external view' that people are things and what they do are events, and all is part of a larger whole that eliminates the

possibility of a responsible self. In direct contrast with this is the internal conception of the self, which makes moral judgments on our actions despite an ability to roughly distinguish what is beyond our control. We furthermore assume that others possess a similarly active self, and we therefore make similar judgments on their actions. Nagel argues that we cannot limit ourselves or others to external evaluation; we must not explain everything away with what is outside ourselves.

Aristotle agrees that in situations of ‘mixed action’ the agent is responsible for his decision, since the principle is in the agent. The agent has knowingly made a decision one way or the other, even if neither option was desirable. He does believe, however, that the agent need not necessarily be blamed for his decision and can in certain circumstances be pardoned or even praised. The verdict clearly works on a case by case basis. Despite the difficulty of the choice or the undesirability of the circumstance, it seems that the individual is ultimately responsible for his decision. It is, after all, a representation of his opinion, of his character. It is reasonable, however, that depending on the circumstances he be pardoned or punished less severely for his action.

1.3 Ignorance of the universal

Here we come to the question of whether one can be held responsible for his ignorance of what is right and wrong. Aristotle argues that if an individual commits an evil action because he does not know that it is bad – because he is ignorant of the universal – he is responsible for this action. We must examine his theory on the acquisition of virtues in order to understand this claim.

Acquisition of virtue

Aristotle argues that virtues of character do not arrive in us naturally but are acquired through habituation. The process is similar to learning to play a musical instrument – one must practice the piano in order to become a pianist. Like dogs, people can be trained, and the results of this training are tied to the individual's nature. It is important that one perform the right actions since one must do and repeat virtuous actions in order to become virtuous. Virtue is a mean between excess and deficiency and comes out of our responses to pleasure and pain – it is “the sort of state that does the best actions concerning pleasures and pains, and vice is the contrary state.” (NE 1104b28) A non-virtuous person will therefore feel pleasure and pain in the wrong things. A person must know that a given activity will lead to a corresponding state, willingly decide on it, and perform it deliberately. He must furthermore come to realize his natural tendencies and weaknesses and work with or against them towards virtue. Aristotle believes that there is a certain point when one's character becomes fixed. If one has acquired a vicious characteristic, it is difficult for him to change. Eventually, once one's vicious character is formed, one is unable to distinguish what is truly good.

Responsibility for one's character

Aristotle posits that we are in control of, and therefore responsible for, forming our characters. He claims that actions in accord with decisions we make are voluntary. We deliberate about an action and then decide to carry it out – at this point it is voluntary. He concludes that if doing virtuous (or vicious) actions is up to us and if doing virtuous actions is what makes us virtuous in character, then becoming virtuous or vicious is up to

us. Virtue and vice, Aristotle claims, are in our power: “an individual is responsible for being unjust, because he has cheated, and for being intemperate, because he has passed his time in drinking and the like; for each type of activity produces the corresponding sort of person.” (NE, 1114a5) This reasoning holds the individual accountable to the highest degree for the character he acquires. If one does not acquire virtues of character, it is because he has ‘lived carelessly,’ and therefore the outcome was his fault. Aristotle assumes that if a person is vicious in character it is because he has chosen to become this way.

How do external influences factor in to character formation?

Thus, Aristotle holds that since one is responsible for the formation of his character, one is therefore responsible if he turns out to be ignorant of what is beneficial. However, we have not yet touched upon the influence of external factors in character development. If Aristotle believes that we are in control of forming our character, than it is not consistent to hold that external influences during childhood can have any serious effect on the process. He does allow for some degree of involvement from outsiders when he claims that “we need to have had the appropriate upbringing – right from early youth, as Plato says – to make us find enjoyment or pain in the right things; for this is the correct education.” (Aristotle, 21) Aristotle holds that pleasure and pain lead us to do virtuous or vicious actions; however the individual must know how to respond to these feelings in a virtuous way. In order to develop the right character an individual must know which activity is the source of a corresponding state. If one does not receive the ‘appropriate upbringing,’ how is he to know which actions to perform? Might it not be

possible that one is raised in an immoral society, or by a vicious parent, or by no parent at all? Would he not, then, develop vicious characteristics, simply because he does not know any better?

In order for his theory to be plausible, Aristotle must argue that at some point we are responsible for recognizing that the vices that we have acquired are vicious, and that our incorrect views are not in fact correct, before it is too late to change them. It is normal for an individual who lives in a racist society his entire life to, at first, have racist views. It is unlikely that a child born into a racist society would at first think any other way. Eventually, however, Aristotle would expect him to rethink the views he was raised with in a critical and objective manner and realize that his was mistaken. The problem with Aristotle's demand that the individual overcome the external influences of his upbringing and come up with his own conclusions on what is right is that it does not truly recognize the role that these influences can have on character formation.

If Aristotle claims that we are responsible for knowing which actions lead to which characters and for eventually figuring out which of our views are wrong, then we MUST be ultimately (and totally) responsible for our character. Even if external influences do originally have an effect in character formation, according to Aristotle, they can have no effect on the final outcome, since we must basically filter out the bad influences. Therefore he must argue that we are fully, not partially, responsible for our character. And yet he does admit to a certain degree of external influence in character formation. Herein lies the tension of Aristotle's argument on responsibility, and it is left unaddressed by the philosopher. We shall see in the following section that Sartre recognizes this tension as being the ultimate contradiction of the human condition, and

finds a satisfactory, and yet still imperfect manner in which to respond to it. With regard to Aristotle's theory, there are two possible ways in which to resolve the tension.

Aristotle could simply relinquish his insistence on the importance of a 'good education' and flat out deny that external factors have any enduring effect on character formation. Yet is it possible to hold an individual responsible for knowing, on his own and despite his environment, which actions lead to which characters and for figuring out which of his beliefs are wrong? Clearly such factors as education, family life, and disturbing experiences affect the way we turn out and the decisions we make. There is significant evidence, for example, that those who undergo physical abuse as a child tend to treat their own children in a violent and abusive manner. Biologists from the Human Genome Project explain that "behaviors exist only in the context of environmental influence" (McInerney). Behaviors are complex and involve multiple genes that interact and are turned 'on' and 'off' by a variety of dynamics. While one's nature may be the basis upon which humans develop, environmental influences undoubtedly factor into character formation. Surely with only minor influences in the wrong direction, one can reach his own conclusions about the good using his rationality.

However, in certain cases, it seems possible for education and upbringing to completely brainwash an individual to the point that he has no sense of what is right and wrong. If one is completely inculcated, from birth, with an irrational or evil morality, how is he to distinguish right from wrong? A Palestinian freedom fighter, for example, has been trained to believe that his own life, as well as that of many innocent people, is worth taking in his fight for a cause. Similarly, an evangelical Christian might be convinced that it is justified to take the life of a living, breathing human being, in order to

defend the life of an unborn child. A soldier in the Nazi army may have been educated to truly believe that the slaughter of another, 'inferior' race is acceptable. Under different circumstances, one who was raised in an extremely violent environment might learn to see killing as a normal part of everyday life. It seems impossible, then to deny the possibility of insurmountable external influences that can cause an individual to be ignorant of the universal through no fault of his own.

If Aristotle is to admit to a certain degree of external influence in character formation, a second manner in which to relieve the tension in his argument is to acknowledge that one may be only partially responsible for his ignorance of the universal. If he would like to maintain his claim that one is responsible for actions that are a result of an ignorance of the universal, he must allow partial responsibility for one's character to generate full responsibility for one's actions. This is the path that Aristotle seems to take, however it creates for certain weaknesses in his theory of responsibility. If an individual is truly brainwashed, can we hold him responsible for his evil actions when he thinks he is doing good? As we shall see, it may be necessary that the individual accept full responsibility for his actions, no matter what the influence of external factors. However in determining a punishment, it is important to take these influences into account.

2. Sartre

2.1 The tension created by total responsibility

Similar to Aristotle, modern-day French existentialist philosopher Jean-Paul Sartre holds the individual responsible for his character (although he uses the term 'identity'). He does not, however, believe that one's character will become fixed at any point, arguing that it can shift throughout life at the will of the individual. While maintaining that one must accept full responsibility for his actions, this view provides the individual with greater freedom to act in whatever way he chooses throughout his life. Even so, Sartre recognizes and accounts for the external influences and limitations that call into question one's full responsibility for his choices. He nevertheless insists that individuals embrace the totality of their freedom, and accept full responsibility for their actions. Sartre's view not only provides a more comprehensive theory of individual responsibility, but furthermore explains the roots of certain ills in modern society caused by a faulty interpretation of responsibility.

Sartre's existentialist point of view places a great deal of responsibility on the individual, by giving him complete freedom in decision-making. Every choice an individual makes defines both himself and his image of what he thinks man should be. One is therefore responsible for the choices he makes, who he becomes, and the actions he performs. This view of the individual's ultimate and total responsibility at first appears to break down upon examination of Sartre's writings in Saint Genet, where his subject, Jean Genet, is limited in his choices and actions by external factors. Genet was a French novelist abandoned by his parents and adopted by a foster family. He became a thief, beggar and prostitute, going in and out of jail and eventually turning to writing where he was successful and recognized for his work.

Sartre uses the case of Genet to look into the question of the existence of evil and its connection to society. In this work, Sartre places much of the blame for Genet's criminality in the hands of society. Genet's life choices appear to be very much constricted by societal judgments and pressures, mixed with vulnerabilities inherent in youth. For example, Sartre states that "they (society) took a child and made a monster of him for reasons of social utility. If we want to find the real culprits in the affair, let us turn to the decent people and ask them by what strange cruelty they made a child their scapegoat." (Sartre 1965, 385) Here Sartre clearly and directly blames society for the corruption of young Genet. Accusatory adults seem to have created an environment in which a young child had no choice but to grow into a criminal. How, then, do we reconcile Sartre's emphasis on the individual's ultimate free will in decision-making and in the creation of his identity with the important role he affords to societal influences in youth that appear to decisively shape one's choices?

2.2 The inherent contradiction of the human condition

Existentialism claims that the above question is unanswerable – it is the inherent contradiction of the human condition. In his life, man is responsible for one thing – his own identity. We are free to shape our identity, however only through the particular options we face. We are therefore absolutely free, within finite conditions and herein lies the contradiction. In her discussion of this contradiction and of the ambiguity of human existence, Simone de Beauvoir explains that man "asserts himself as a pure internality against which no external power can take hold, and he also experiences himself as a thing crushed by the dark weight of other things." (De Beauvoir, 343) Because our decisions

express only our choice within certain limitations, any particular choice we make defines our identity in some way, yet at the same time is in no way a complete representation of who we are. While it is impossible to determine one's identity through any particular action or choice, without these choices our identity would not exist at all.

In the same way, we cannot determine one's ultimate responsibility through his responsibility for any particular action, however this ultimate responsibility is created by a culmination of our responsibility for every action. In Genet's case, for example, his responsibility for his first theft, is a part of but does not fully make up his ultimate responsibility for his identity. His thievery will influence his identity, particularly if he continues to steal, however only a culmination of his actions throughout his life will ultimately define him. Social dynamics, however, require that we make concrete decisions about responsibility, and so determining responsibility becomes a matter of practicality. It is necessary that each take full responsibility for his decisions. Genet must take responsibility for stealing because, like all his actions, it expresses his essence.

Normally, according to existential ethics, a single action should not define an individual. However, Sartre explains that Genet cannot reject the label of thief because of the young age at which he was sentenced. As soon as he hears the word 'thief,' he is condemned. He is caught stealing at ten years old, during the vulnerable and malleable stage when he had accepted and internalized the 'simple-minded morality' of his surroundings. Furthermore suspicious adults assume this one incident is a result of a predisposition to steal, and therefore will forever expect this type of behavior out of the orphan. His only option is therefore to embrace the sentence imposed upon him. His condemnation as a thief leaves him with the complete freedom to do evil and at the same

time the inability to become good (Sartre 1965, 381). In his case then, it is the finite conditions of his place in society (an orphan), his environment (living with distrusting foster parents with no possessions of his own), and his circumstances (caught with his hand in a drawer at a very young age) that limit his freedom.

Genet was condemned, yet was constantly conscious of his own freedom. In the face of his prescribed identity, he therefore chose freedom. Sartre explains that the only way to be free in his situation was to embrace his destiny – to be evil – and through this obtain his individuality. He could never truly reach this goal because his consciousness would not permit him to see himself as a thief. As discussed above, while we must take responsibility for each action we commit, we cannot define ourselves by one type of action because it would deny our wholeness. Furthermore, “the notion of ‘thief’ is on principle incommensurate with the realities of the inner sense. It is of social origin and presupposes a prior definition of society, of the property system, a legal code, a judiciary apparatus and an ethical system of relationships among people.” (Sartre 1965, 390) Genet can only be a thief in the gaze of others, who are able to cast him aside and define him with this single word.

In striving to accept his destiny, however, Genet did express his freedom through his attempts to demonstrate that his evil nature is unique and by choice (Laing & Cooper, 75). Throughout his life, he continues to accept total responsibility for his actions and strives for freedom. Through art – his writing – he communicates his experiences of solitude and rejection, relays the inequities of the world he lives in, and most importantly universalizes the darkness and horror that has become his life. He manages to gain respect, acceptance and even admiration. His writing appeals to the masses, even those

who condemned him, because it strikes a chord in the minds of all men. As we shall see in the following paragraphs, Sartre claims that this is because “Genet is ourselves.”

(Sartre 1965, 410) Within everyone’s consciousness lie the solitude, anxiety and horror that Genet expresses through his writing.

Evil and society

According to Sartre, evil is a social phenomenon. This conclusion is derived from his theories on freedom, being and nothingness. A logical derivative of human freedom is that one must continually choose and create himself through every decision he makes. When one becomes aware of this freedom, Sartre claims, anxiety results due to the realization that the possibilities are endless and can be both ‘good’ and ‘bad’ in nature. Good is associated with that which already is, “as Being is the measure of perfection; an existing regime is always more perfect than one which does not exist.” (Sartre 1965, 386) He who Sartre terms the ‘right-thinking man’ will define himself by his obedience to what is good, basically by his acceptance of societal norms. By creating and staying within the limits of society, he perpetuates established customs, traditions and laws. Evil, then, is all that transgresses these limits, “that which calls being into question, with negation, non-being, and otherness.” (Laing & Cooper, 72)

The negation of what is ‘good’ is a constant possibility inherent in one’s freedom; however Sartre explains that the ‘right-thinking man’ refuses to recognize his impulses to criticize, judge and reject what is. In doing so he ‘self-castrates’ the negative part of his freedom and throws it away, creating “the object of a constant and constantly rejected will which he regards as other than his (the upright citizen’s) ‘true’ will. Not the will of

some particular Other, nor even of all Others, but of that which in each individual is other than himself, other than self, other than all. Evil is the Other.” (Sartre 1965, 387) He then denies that this evil originates from his own freedom and instead projects it onto an external unity that comprises the thieves, murderers and all the oppressed and downtrodden of society. He claims that the social position of these subjugated people is a posteriori proof of their evil nature, reaffirming his own wholesomeness and power.

Genet is part of this marginalized group whose evil nature has been prescribed by the ‘right-thinking man’ of ‘good society’: “the wrath of the just wants to perpetuate itself; if Genet became honest, it would lose its object.” (Sartre 1965, 381) Although his first inclination to steal was as innocent as any impulse that passes through one’s mind, a normal exercise of his freedom, eventually he feels compelled to fulfill the role of thief that society has attached to him. He has been judged, labeled, and cursed by the adults that surround him. His naïve, yet ‘evil’ impulse as a ten year old provides them with a scapegoat for their own anxieties. Sartre explains that “his sacrifice serves as a bond among his sacrificers. All the others, whatever the differences separating them, recognize that they are fellow creatures in that they are not, thank God, thieves.” (Sartre 1965, 384) Genet becomes the ‘other’ upon whom society can discard its negativity, thereby effectively affirming its own goodness and moral purity.

3. Conclusions

Both Aristotle and Sartre hold that the individual must accept ultimate responsibility for his actions, no matter how important the external influences. For Aristotle, as long as the action is voluntary – the principle is in the agent – the agent is responsible for it. Even in situations where all options are undesirable, the individual must nonetheless choose one and is therefore responsible for his choice. Sartre allows no exception for he who is put in an unfortunate situation and forced to make a difficult decision. Man always has a choice and he is always responsible for his decision. Sartre explains that “this absolute responsibility is not resignation; it is simply the logical requirement or the consequences of our freedom. What happens to me happens through me, and I can neither affect myself with it nor revolt against it nor resign myself through it.” (Sartre 1991, 210) For Sartre, the individual is responsible for every action he takes.

While both philosophers recognize the existence of external influences on one’s life options, only Sartre truly incorporates the tension they create into his theory on responsibility. While Aristotle recognizes and takes a consistent stance on ‘mixed action’ situations, where one should be held responsible even for all ‘voluntary’ decisions even when constrained by pervasive external influences, his treatment of childhood influences proves to be rather contradictory. He admits to their existence and importance in education, however conspicuously leaves them out in his theory on responsibility, which in the end works to discredit his conclusions. We were previously able to resolve his argument for individual responsibility for one’s actions, however his case for one’s full responsibility for his character does not come out intact. Aristotle’s main error lies in his reciprocal link between action and character. According to him, our actions early on create our character by habituation, and once this character is formed our actions flow

from it. Our character therefore becomes fixed and our actions predetermined. There are various reasons, however, why we may not perform the proper actions right from the start and therefore turn out with vicious characters and proceed to perform vicious actions. If our characters were formed at an early age, as Aristotle argues, it seems likely that the reasons behind our vicious actions are external, and in this case our responsibility for our characters becomes questionable. Yet Aristotle sees change as nearly impossible – old habits die hard – and therefore performing the wrong actions in childhood can determine our future identity and actions for the rest of our lives.

Sartre, on the other hand, understands the link between our actions and our identity as less important and more volatile. He claims that our characters are constantly being formed and changed throughout life. While external factors limit our options, we are nonetheless fully responsible for our choices and the identity they create. However, no particular action can define our identity in totality. Sartre accounts for external influences by denying that our actions, individually, define our identity. Because external factors limit our options, each action is only an expression of what we think is best in the particular situation we face. We define our identity through the constant accumulation of our actions, and are always free to act in the manner we desire (within the finite conditions of the options presented to us) and define ourselves in the way we would like. Our characters are never set in stone, and therefore if we encounter vices in our character or flaws in our morality we can always change them. Therefore, while Aristotle would claim that vice is a characteristic of the ‘vicious’ individual, Sartre refuses to define the individual in such concrete terms. In fact, he denies that any such “pre-formed human essences” exist. Laing & Cooper explain that to Sartre, “cowardice,

courage, are simply convenient resumes of the sedimentation of complex activities.” (Laing & Cooper, 119) The self cannot be defined in adjectives. He views evil as something that exists in humanity as a whole, but that does not define the individual (except in the gaze of the ‘good society’ through the label of evil imposed upon the weak in order to devalue their identity).

It is important, in examining these two philosophers, to note their distinct definitions of the self. Aristotle discusses an embodied self, one that is inseparable from our experiences and bodily limitations. Sartre, on the other hand, envisions a self that is akin to the spirit and that exists outside of and beyond our body. This distinction creates an important dynamic in the way each discusses the formation of one’s identity. Both claim that an individual’s identity is shaped by his actions. What he has done cannot be erased and influences the way others view him. In Sartre’s view, one’s actions are the expression of his true self, yet do not fully define him. Eventually certain labels come to represent the individual within society. Others begin to interpret all of his actions as pointing to this identity, and he becomes trapped within it. This label originates in the minds of others (and most likely has a seed in the individual’s mind as well – we have all contemplated evil). When it is expressed in his actions, it becomes ingrained into the minds of others and eventually internalized within himself. It is at this point that it is difficult for him to act outside of this projected identity. This occurrence is the basis upon which Aristotle rests his theory on character acquisition. Sartre argues, however, that this is only a social phenomenon. Society may create a label that is based on one’s actions and therefore related to one’s identity, yet it still will not fully define the individual. He claims that one’s true identity is his own creation; it is expressed (but not

determined) by his choices, which spur his actions. Until we die we have the freedom (limited by the particular options we face) to define ourselves in the way we would like.

Finally, both philosophers would agree that one is responsible for knowing what is right – if he acts wrongly, he is at fault. However, Sartre leaves room for the individual to change and correct himself, while after a certain point Aristotle does not. It is important to remember that any individual in society can be ‘ignorant of the universal,’ whether or not he commits a punishable crime. Oftentimes, an entire society is based on an ignorance of the universal. Before slavery was abolished in the United States, for example, it was legal to enslave, whip, and even kill another human being, while it was illegal to help an escaped slave to freedom. Such a society perpetually punishes innocent people for ‘crimes’ that are not truly evil, while disregarding the true crimes of others. We therefore cannot simply look at society’s recognized ‘criminals’ in our distribution of responsibility for evil acts, or in our conclusions on how to combat evil in society.

Section 2:

But do not believe that law and order will be banished with the executioner. The roof of the society of the future will not collapse if this grisly keystone is removed. Civilization is nothing other than a series of successive transformations. What therefore is in store for us, if not a transformation of penal law? The merciful precepts of Christ will at last suffuse the Code, and it will glow with their radiance. Crime will be considered an illness, with its own doctors to replace your judges, and its hospitals to replace your prisons. Liberty shall be equated with health. Ointments and oil shall be applied to limbs that once were shackled and branded. Infirmities that once were scourged with anger shall now be bathed with love. The cross in place of the gallows: sublime, and yet so simple.

- Victor Hugo, 33

Writing more than a century and a half ago, Hugo professes his hope that society would transform its approach to crime, and his confidence that such a conversion would effectively rehabilitate both criminals and society. In the United States, this transformation has yet to occur. We have not even joined the other Western countries in ‘banishing the executioner.’ Instead, currently in place in the US is a society that breeds crime and a criminal justice system that perpetuates it. A reexamination of our institutions, a redefinition of our goals, and a new underlying philosophy are necessary in order to move towards a more just society and functional criminal justice system. The conclusions of the previous section provide a basis for this task, from which we can develop a comprehensive set of guidelines for reform. The four basic principles and their general implications are as follows:

1. We are ultimately responsible for our actions, for it is through our actions that we define our identity. Because we have complete freedom in decision-making, we are responsible for our choices and must accept the consequences of our actions. In every situation, we have a choice – if nothing else than to choose death. This view does not imply a particular definition of crime or its appropriate type of punishment. It does recognize the agency of the individual and demand that he take his decisions seriously and utilize his ever-present freedom.

2. A variety of external factors can influence our development and limit our options. We are not responsible for the options presented to us – we are not responsible for our genetic constitution, our family, our social position, or the particular situations in which we find ourselves. Each of these can greatly influence the decisions that we make,

and the outcome of our actions. Some argue that one should not be held responsible for that which is beyond his control. In practice, however, this would be impossible to carry out since most of our actions are influenced in some way by external factors, to the point that individual responsibility would be completely eliminated. We are not the victims of various forces, for it is always our decision who we are. It is therefore necessary that we take responsibility for all of our actions. While acknowledging the existence of these external influences does not take away from our responsibility, it does have certain implications for punishment and reform. In particular, environmental influences during childhood can have a decisive effect on the options one faces and the actions one chooses, yet at the same time they are almost completely based on luck. Those growing up in destructive environments are therefore at a great disadvantage. Opportunities have become extremely disproportionately distributed in many societies to the point that those with the fewest options often cannot escape their dire situation. This pervasive occurrence in American society highlights the importance of taking certain external influences into account when determining the appropriate punishment for a criminal act. Furthermore, the large disparity in life prospects requires us to take action to level out the playing field by working to eliminate negative societal influences and by creating new opportunities for the underprivileged.

3. One's character is not fixed, and therefore one can always change. This is based on Sartre's view that we constantly define our identity through our actions, and always have the freedom to act in the way that we chose. Thus one who commits a criminal act need not be defined by this action, and therefore can be rehabilitated. This is in contrast to Aristotle's view that once one's character is formed, his actions flow from

his character and it is difficult for one to change. This second hypothesis would imply that one who commits a crime is evil in nature, suggesting that he be locked up for life for reasons of containment alone, if not retribution as well. Sartre's view of change, however, is a more realistic description of human nature and activity because it protects the freedom essential to our humanity (and therefore is the only view to remain consistent with our previous principles).

4. The projection of evil onto weaker groups in society can create and perpetuate marginalization. Those in power have a tendency to create a false dichotomy of good and evil, affirming their own moral purity and labeling others as evil. This subjugation can further constrict the already limited options of disadvantaged groups, perpetuating their marginalization. This implies the need to further investigate this occurrence in society, find institutions and practices that encourage it, and eliminate them. All must be encouraged to embrace their freedom – the powerful in order that they accept the negative half of their freedom instead of discarding it onto the weak; and the weak in order that they escape their condemnation and assert their individuality. It is further necessary to step outside of societal norms, explore the possibilities of humanity, redefine criminality, and discourage labeling.

The implication of these principles is our obligation to reform society and the criminal justice system through a process similar to the one Hugo suggests. The major steps toward reform include the reconstruction of destructive social environments, the creation of new opportunities for the disadvantaged sectors of society, the consideration of environmental factors in sentencing, and a rehabilitative criminal justice system. If society had taken in Aileen Wournos as soon as she was rejected by her parents, tended

to her educational and developmental needs, and presented her with viable options outside of a life of crime, she most likely would not have become a serial killer. Furthermore, if society had attended to her broken soul early on in her career of criminal activity – treated it as an illness as opposed to a character flaw – she might have transformed her life before deteriorating to the point of murdering seven men.

This second section will examine in greater detail the need for, and the ways to go about, the implementation of the above mentioned reforms within American society. It will start off in Chapter 1 by examining the phenomenon of marginalization, since this seems to be a central issue in determining the need for reform in all areas. It will develop two theories about the causes of marginalization, and test them in Chapters 2 and 3 by applying them to various parts of American society. The goal will be to seek out methods to bring the cycle of marginalization to an end and to create institutions that will prevent its recurrence, while remaining consistent with the principles derived from philosophical conclusions of the first section.

1. Marginalization

The Conflict Theory is a theory of criminology that, similar to Sartre, sees society to be controlled by the powerful. The subjugation of the poor functions as a mechanism to maintain a stasis and societal continuity of established norms, laws, customs and balances of power. Sartre describes the process of subjugation as the rejection by the powerful of the negative half of their freedom, which they project onto the lower classes through fear and loathing. They affirm established societal norms through their

definition of good and evil, asserting that what is (what affirms their position of power) is good, and the negation of this is evil. Conflict Theory puts Sartre's hypothesis in practical terms in its view that the criminal justice system is the essential tool of the powerful. The system defines criminal activity as crime which is practiced by the lower classes, functioning to 'protect' the powerful from threatening members of this class. White collar crime therefore tends to go unnoticed, un-judged, and unpunished. A morality created by the powerful reinforces the law. In both cases the powerful control the institutions necessary to maintain their own position of privilege as well as the marginalized position of the lower classes.

The US prisons and justice system display this biased attitude towards the disadvantaged through the tendency to target the weaker sector of society and trap them in the system – drawing them back into its institutions instead of showing them a way out. Not only does the United States have the highest prison population in the world, but the rate of incarceration has been rising dramatically since 1980. The race, income, and family backgrounds of the inmates do not at all represent the demographics of the general US population. While about 64% of prison inmates belong to a racial or ethnic minority, this group makes up only 30% of the general population. African-Americans are by far the most disproportionately represented population, making up 46% of the prison population and only 12 % of the overall US population. Other factors also have a notable prevalence among inmates, including the 31% that grew up with a parent who abused alcohol or drugs, the 12% that lived in a foster home, and the 46% that has a family member who has been incarcerated.

There is no evidence that these over-represented sectors of society are more naturally prone to criminality. If the cause is not biological, then their pervasiveness in US prison system indicates the incidence of one or both of two trends, both indicators of marginalization. First, one could blame external factors that push certain individuals towards crime. It is possible that the environment in which much of the prison population was raised is one that encourages criminality. This explanation is supported by the data above indicating the high degree of risk factors present in the backgrounds of prisoners. Besides growing up in environments – often burdened by poverty, crime, substance abuse, and broken homes – that are detrimental to a healthy development, many inmates become discouraged from the conventional path at a very early age and do not obtain the education that could help them out of their desolate situation – 43% of prison inmates don't have a high school diploma, as compared to only 20% of the general population.

Second, it may be a result of the marginalization described by the Conflict Theory, in which law enforcement targets particular sectors of society in its arrests and incarceration. Conflict Theorists hold that the law enforcement's bias is a representation of widespread societal attitudes towards certain population groups. The hypothesis is supported by the manner in which the penal system treats criminals once they are convicted. The system is such that 68% of those released from prison are rearrested within 3 years, and 47% are reconvicted in this time. One need only take a quick glance at our prisons to realize that convicts are generally viewed not as sick or unfortunate individuals who need help, but as evil people and threats to society who must be locked up and kept away from the good, law-abiding citizens.

The remainder of this section will more thoroughly investigate these two theories, their validity, and their implications for society. It will principles derived from the first section in an attempt to determine an appropriate manner in which to deal with the punishment and/or rehabilitation of criminals. Chapter 2 will look into the ways in which various aspects of one's formation can increase the probability of future criminality and how society can provide preventative resources and support in order to avoid such an outcome. Specifically it will examine the contribution that genetic constitution, upbringing, and education make towards the development of delinquent individuals. Chapter 3 will consider the manner in which society currently deals with its criminals, both in its attitudes and its criminal justice system, in an attempt to determine the extent of targeting and marginalization, analyze the various flaws of the system, and provide suggestions as to how we might better address the issue of crime.

2. Formation

Having established previously that nurture does play a role in the formation of a child's character, it is important to examine the various ways in which a child's upbringing and education can affect his nature and growth into an adult. The goal here is not to relinquish the individual of responsibility for his actions, but to examine the ways that particular environmental influences might increase the occurrence of the development of a violent or criminal nature, and furthermore to discuss the implications for punishment and rehabilitation.

2.1 Genetic constitution

Before looking into environmental influences on character development, it seems important to make a quick note on the role of one's nature. It is not possible to explain criminality through genetics, however genes can create vulnerabilities and susceptibilities to disease, dysfunction, and both negative and positive character traits. Genetics do not act independently, but mix with environmental influences to create our character. The outcome, however, is highly unpredictable, and its exact causes impossible to determine. Both genetic and environmental influences are open to intervention, although while some can be overcome, others cannot. Aristotle would argue that we should get to know our weaknesses and work around them. However, a young child is not always able to recognize and take action against his undesirable natural traits early enough to make a difference. Here we will argue that not only the individual, but also those who play a vital role in his formation (and if applicable rehabilitation), should take his vulnerabilities into account. Parents, educational institutions, society, and penal and reform institutions must keep in mind that genes can play an important role in how the individual turns out.

In his article "Problematic Agency," Norman Care takes a serious examination of constitutive luck – the ways in which luck affects one's makeup (personality, temperament, capabilities). He argues against the idea of the in-control agent – a popular view that holds that adult human beings with a mature mind have the capacity to make consistent rational judgments. This view allows us to make judgments on the actions of others based on an objective standard, and to hold people morally accountable for refusing or failing to meet this standard. If all competent humans are rational, then we

can model everyone's rationality on our own. This would lead us to assume that others should be able to do whatever we can, that all, after careful examination of a problem, should come to whatever moral judgments we do. If they do not, we can judge them as being morally wrong.

Care's objection to this view is based on his argument that external factors "affect our mastery of our fates not only in terms of what in fact we must face and do in life but also in terms of how we are emotionally and spiritually affected by what we face and do in life." (Care, 74) Good and bad luck can affect one's basic makeup and even deny an individual control over certain areas of his life. One can therefore possess vulnerabilities over which he is powerless. These vary from person to person. We therefore cannot assume that the in-control agent is present in all human beings. Examples of constitutional vulnerabilities include shyness, alcoholism, and depression. However, we must not assume that all those who possess these characteristics are constitutionally shy, alcoholic, or depressed.

The implications of Care's discussion tell us that we must be careful to judge, generous in our outlook, understanding of our differences, yet not uncritical. It is difficult to fully understand anyone's constitutional vulnerabilities, even our own. However those involved in the process of raising, educating and rehabilitating an individual have a special duty to do their best to get to know him and help him deal with weaknesses he may discover. If influential people in each individual's life were to take the time to do this, much harm might be avoided. The National Research Council of the Institute of Medicine came to the conclusion that, "since parenting and other environmental influences can moderate the development of inherited tendencies in

children, efforts to assist parents and other caregivers to sensitively read a child's behavioral tendencies and to create a supportive context for the child are worthwhile.” (National Research Council, 43) Society should therefore insure that if such influential figures are lacking in a child's life, it provides the appropriate persons and resources to perform these duties.

We cannot, however, use supposed constitutional vulnerabilities as an excuse for one's actions or a reason not to try to change. We have already defended the importance of maintaining individual responsibility for one's actions. Constitutional vulnerabilities are just one type of many possible factors that might limit one's options in life. Despite such constrictions, the individual must nonetheless utilize his freedom by making choices from what is available and taking responsibility for his decisions.

2.2 Upbringing

As long as the child is regarded as a container into which we can safely throw all our 'emotional garbage,' little will be done to bring about any change in the practice of 'poisonous pedagogy.' At the same time we will be struck by the rapid increase in psychosis, neurosis, and drug addiction among adolescents; we will be outraged and indignant at acts of sexual perversion and violence and will become accustomed to regard mass murders as an unavoidable aspect of our present world.

- Alice Miller, 206

Swiss Psychoanalyst Alice Miller is a firm believer that misguided child-rearing practices are the primary cause of criminality later in life. She argues that parents redirect their suppressed anger from their own childhood and life experiences onto their children through emotional, psychological and physical abuse. If the subjugated child is

not allowed to express his emotions or vent his fury, these will be suppressed and eventually redirected as hatred towards himself or other substitute persons. Misguided parenting, Miller claims, is the cause of most criminal action, including that of Adolf Hitler, who she claims grew up in a totalitarian household where he was completely subservient to his father and unable to communicate his needs or express his frustration and humiliation (Miller, 146).

In her examination of German murderer and sex-offender Jurgen Bartsch, Miller points to specific instances of abuse and suppression of anger in his upbringing that she feels are later reflected in his crimes. While the maltreatment of his childhood certainly contributed to his extremely disturbed character and horrific criminal actions as a young adult (he committed his crimes before he reached the age of twenty), it is likely that his innate sensitivity and temperament also factored in. Miller presents an argument that lies at the extreme end of the nature-nurture debate, holding environmental influences to be of utmost importance. Biological influences probably factor in more than Miller admits. Siblings, for example, with similar upbringings and childhood experiences tend to show moderately stable individual temperament differences within their first year (Wachs, 13). However, most in her field maintain that external influences in the early years of a child's life are the most important to his healthy development.

It is agreed among developmental psychologists that neglect and maltreatment are the primary sources of aggression in youth. Children have certain 'basic human needs' that include having a close, dependable, and nurturing relationship with their parents or caregivers, and receiving warmth, security, interaction and encouragement. Neglect of these needs can seriously disrupt the child's development. Furthermore, exposure to

violence in the family or community can have substantial and long-lasting consequences. Some 30% of those who are victims of abuse during childhood will act violently towards their own children, in comparison to 2-3% of the general population who abuse their children (Staub). It is difficult, however, to establish a clear and direct cause-and-effect relationship between one's experiences in childhood and one's character as an adult. Not all of those who experience abuse as children are violent as adults, and not all violent adults experienced abuse in their youth. This does not mean that upbringing is not vital to a child's growth process, but only that we cannot always point to the specific cause of dysfunctional behavior. Genetics and a variety of environmental factors all blend together to create one's resulting character.

It is possible to look at various risk factors in a child's environment that can lead to an increased possibility of subsequent criminality. According to a study by Cicchetti & Toth, such factors as family unemployment, single parenting, dependency on the state for subsistence, and disadvantaged minority status can improve one's chances of becoming a criminal (Cicchetti & Toth, 133). Certain factors can affect children in somewhat unexpected ways. For example, this same study found that maltreated children with adequate-good relationships with their mothers performed worse in their overall school functioning than did maltreated children without a good maternal relationship (Cicchetti & Toth, 139). This makes sense considering the self-reliance, independence, and detachment from familial instability that a lack of a close mother figure might foster. It demonstrates, however, that even seemingly beneficial circumstances can mix with other harmful factors to contribute to a child's development in a detrimental fashion,

while seemingly harmful factors can contribute to a child's resilience to his already detrimental situation.

Because upbringing proves to be vital to a child's healthy development into an adult, parenting support and intervention are extremely important and yet also relatively scarce in most communities. Especially important in a child's life is an adult figure – usually, but not necessarily a parent or caregiver – to whom the child can express his feelings and vent his anger and resentment. Without such an outlet, any repressed emotions could create serious problems, for himself and/or society, later in the child's life. In order to insure that all children have such a person in their life, and furthermore to detect and deal with maltreatment and neglect before they are able to cause long term harm, certain social services are essential.

Parenting programs are necessary to foster healthy development of child, and to create an opportunity for intervention if necessary. These should begin as early as possible, and can be provided by hospitals or government or community organizations. A variety of services should be available and encouraged, including group meetings, in-home parent aids, child care, and crisis intervention. An integration and coordination of services can often be helpful, particularly to parents who require a variety of types of aid (Gowan & Nebrig, 315). It is important to note that intervention services must take into account cultural, racial and ethnic differences in parenting (Cicchetti & Toth, 142). Exposure to violence in the neighborhood and community can be extremely harmful, and therefore while street violence must clearly be combated, services in schools, churches, and community centers must be provided to help children deal with such issues. Finally there must be services to treat abused, neglected and traumatized children at as early of

an age as possible. Prevention and intervention programs are of utmost importance in poverty and violence stricken communities, where there is unlikely to be the money or time for community members themselves to set up and provide such services. The children are our future and we must protect them, and ourselves, from the serious damage that adverse environmental influences can inflict upon their development.

2.3 Education

If you believed in the innate rottenness of certain human beings, you could blame the child and you could say, as it was said at school almost daily of somebody, that he was just plain miserable and no good. Or, if you were more combative and realistic you could blame the State Division of Child Guardianship which was responsible for placing him in a dangerous home, for not looking after his mental health and for taking no interest in the fact that he went uneducated with no permanent teachers for two years in a hapless morbid school. You couldn't blame the school for all that. But you could blame the school for this: When these things were noticed, observed, thought about, the school discouraged you, by a policy which seemed to militate carefully against Negro children, from doing anything about it.

- Jonathan Kozol, 110

Jonathan Kozol, a teacher in an African-American district of the Boston Public School System in the 1960's and now a writer and advocate for education reform, recognizes the various influences that can damage a child's character, and argues that the education system has an important role in ameliorating the situation. There can be no doubt that he is correct. Children are the poorest age group in America, with 16 percent (30 percent of black children) living under the poverty line. Statistics show that upon entering kindergarten, children growing up in adverse environments are already at a great disadvantage. Only 27% of children with two or more risk factors (based on mother's education, receipt of welfare aid, number of parent-household, etc) perform in the top

half of reading scores, while 60% of children with no risk factor fall into this category (National Center for Education Statistics, 31). A child's performance in the first couple years of schooling is, in fact, directly related to his mother's level of education, among other factors.

The public school system should be the obvious solution to level the playing field. Attending school is required for all children until the age of 16 – plenty of time to seek out those who have suffered from a difficult childhood or a lack of options and provide them with support and new opportunity. Public schools are also the perfect place to take notice and intervene in situations of abuse and neglect. Unfortunately, the current public education system in the United States does not do much to help the most disadvantaged students. This is partially due to the fact that public school funding comes from property taxes, which will obviously lead to much greater revenue in wealthier districts. The disparity is so great that spending per student in the wealthiest schools is ten times greater than in the poorest - \$30,000 per student as compared to \$3,000 (Darling-Hammond, 6). Differences in class size, number and experience of teachers, materials, facilities, and technology lead to a situation where by twelfth grade, the average African American and Latino student is four years behind the average white student. The state of public education, when measured in terms of the least advantaged, is dismal and leaves many children behind.

While there is a general agreement that the American public education system fails our children in many ways, neglecting the educational needs of many of those who pass through it, there is a large diversity of opinions on what exactly its flaws are and how exactly to repair them. Some claim that the basic ideas behind the system are

completely misguided, and that we should therefore replace them with a new underlying philosophy. Others argue that our current philosophy is sound, and that the problem lies in more superficial blemishes in the system. The public education system now in place pursues specific goals, and values specific skills and abilities, that follow a traditional and mainstream view on this topic. We have gathered together a body of basic knowledge and skills, which we believe should be taught in an organized classroom setting in which students submit their authority to the adults charged with imparting this knowledge upon them. Those who learn best in this setting are deemed ‘successful’ and those who fail out are called ‘delinquents.’

The defenders of this system tend to have a traditional, or ‘essentialist’ philosophy of education. The essentialists, such as E.D. Hirsch, follow a teacher-centered approach to learning – the “transfer of knowledge, information, and skills from the older (presumably wiser) generation to the younger one.” (Sadker, 354) They feel that it is most important to teach students a core curriculum of the basic accumulated knowledge of our civilization. The essentialist argues that a successful learning process requires the memorization of certain ‘essential’ facts, and an educated person is one who is ‘culturally literate.’ Only a structured education, he claims, including systematic control over the student and the information he receives, can lead to his ultimate achievement of this goal. Essentialists might criticize such issues as the lack of funding for schools, the lack of teacher training, or inequality. Many are additionally concerned with the demise of the basic public school curriculum, particularly at the early formative stages, and the cultural ignorance that this generates.

The other main viewpoint is the ‘progressive’ philosophy of education, which believes in a more student-centered approach, in which students have a large say in determining what they should learn and how they should learn it. Progressives feel that giving a child control over his own experiences allows him to gain greater value from each, better learning about and thus more fully understanding himself, his environment, and the world around him. While traditional schools rely on memorization and auditory learning, progressives realize that students vary in terms of their preferred learning styles and do not all thrive in the traditional classroom setting. Daniel Greenberg of the Sudbury Valley School explains that a progressive education system allows a child’s “natural state to flourish.” (Greenberg) It respects each person’s individuality, passions, and ability to think critically.

Progressives believe that a child’s natural curiosity should be encouraged, so they provide the child with resources so that he can find answers to his questions on his own, with limited guidance if desired. They argue that this method of self-induced learning will greatly empower the child. For one, he is able to use the learning method most suitable to his needs, whether it be through reading, conversing with an adult or peer, exploring the outdoors, or playing a game. Furthermore he will, over time, grow confident in his ability to learn about any topic he may desire, coming to believe that with enough dedication no question is unanswerable. Finally, because the child has a large degree of control over his education, he will get the chance to explore all the areas in which he is interested, helping to give him an idea of his passions, interests and goals. Additionally, having been encouraged to follow his own heart and mind, he will have a strong sense of self-identity, confidence, and self-awareness.

While both philosophies have their merits, it seems that if incorporated into the US public school system, progressive schools would be highly beneficial to many children. Students who are raised in a violent, abusive, or neglectful environment could gain a great deal from this type of education. A child's confidence and belief in himself could be restored, while at the same time he could experience the world in a new light full of a wide range of opportunities. As opposed to being disheartened by his below average test scores and poor performance in comparison to more fortunate students in his class, he could learn without competitive pressure and become motivated by the areas in which he is talented. Whatever the philosophy behind education, it is urgent that schools encourage and provide options to children who start out at a disadvantage, as opposed to disheartening them or expecting and therefore promoting failure and delinquency.

2.4 Conclusions and implications

The broad implication of this chapter is that a variety of factors in a child's genes, upbringing, and education can increase his chances of criminal activity later in life. Furthermore, certain sectors of society, particularly disadvantaged minority groups and the poor, have a much greater likelihood of growing up exposed to a number of these risk factors. We have concluded that society must do what it can to level the playing field by insuring that: 1. specific genetic vulnerabilities are noticed and attended to; 2. parents receive the support they need so that neglect and abuse are avoided, and; 3. public education encourages children to discover and follow their passion and provides greater

(not less) opportunities to the underprivileged. Once these goals are obtained, it is hoped that crime will be significantly reduced.

Currently society does not fulfill the requirements listed here. How, then, must we treat the criminals who have been seriously disadvantaged by their environment? We concluded in the first section that individuals must maintain responsibility for all their actions, no matter what the external influences that affected their development. Insisting that one accept complete responsibility, however, does not necessitate that the utmost severity of punishment be applied, or that one's crime wholly define his identity. The disparity in the distribution of harmful influences and favorable opportunity that unevenly impairs certain sectors of society suggests that the criminal justice system should take environmental factors into account when determining a criminal's punishment. It furthermore requires that society consider a criminal's entire life experience, not just his crime, when making judgments and imposing labels. We cannot cast aside and lock away all of those that our society has neglected and rejected.

3. Criminal Justice

We suggested earlier that the disproportionate presence of certain population groups in US prisons might be partially a result of biased societal attitudes. This would affect the type of people that tend to get arrested, those who are actually convicted, and the way convicts are viewed and treated. Here we will investigate the claim that there are certain marginalized sectors of society that are pushed into crime only to become trapped in the system with no clear way out. We will then look into ways that the US criminal

justice system might be reformed so as to truly deal with, and potentially minimize the country's crime problem.

3.1 The failing US prison system

A society should not be judged on how it treats its outstanding citizens, but by how it treats its criminals.

- Fyodor Dostoyevsky

The discriminatory attitude evidenced in today's criminal justice system was not always quite so acute or unashamed. Only in the past 30 years has the system deteriorated to its current disgraceful state in which its claim to promote justice is nothing short of ironic. Paradoxically, the US prison system of the early 1970s was highly criticized, while the ills of today's system go practically unnoticed. Many questioned the previous system's harsh treatment of inmates, overcrowding, high costs, and effectiveness in rehabilitating criminals and preventing crime (Zimbardo, 711). Since 1970, the US prison population has increased eleven fold – from 200,000 to more than 2,200,000 in 2003. The incarceration rate, which was the same in 1928 and 1970 (96 persons incarcerated per 100,000) with little variation over this 42 year period, is more than 7 times higher today (714 per 100,000). (Bureau of Justice Statistics) Prisons in the '70's operated at up to 90% capacity and today, despite an explosion in new prison construction, some prisons run at close to 50% *over* capacity (Zimbardo, 713).

This sudden and dramatic increase in arrests and incarceration was a result of a shift in correctional philosophy and in sentencing laws responding to changing societal

attitudes. In the 1960's, the primary purpose and justification for incarceration was rehabilitative. Prisons were supposed to help the convict reverse his criminal lifestyle and come out as a productive member of society. Perhaps as a result of a surge in violent crime from the 1960s to the '70s, a deep fear of crime spread throughout the country and instigated a competition among legislators to be the 'toughest on crime.' (Zimbardo, 712-713) This so-called 'war on crime' did not quell societal fears, but perpetuated them. Despite steadily decreasing crime rates, the political 'war on crime' and the 'culture of fear' raged on and still dominate American attitude and policy today. Since the 1980's, government spending on criminal justice is greater than spending on education. From 1984 to 1996, California built 21 new prisons and one new university (McVay, 100).

With fear abound, rehabilitative punishment was not sufficient. The shift to a principally retributive system thus ensued, in which prisons serve the purpose of punishing criminals for their wrong acts and protecting society by locking them away. Not only did incarceration begin to skyrocket, but sentences were increased in length due to a change in many states from indeterminate to determinate sentencing. This removed sentencing from the hands of experts (prison administrators, parole officers, judges) and into the hands of legislators, thus politicizing it. This transition confirmed that prison time was no longer anything more than a fixed debt a criminal must pay to society proportional to his crime. Sentencing flexibility and discretion based on the speed of his rehabilitative progress was no longer needed.

Following this pattern, retribution and containment goals have dominated the criminal justice system from the 70's on, causing drastic legal and policy shifts. Training, education, treatment, and counseling programs are scarce and no longer

emphasized while segregation, isolation, and confinement of violent criminals in maximum security prisons has become the trend (Zimbardo, 716). While such practices are proven to lead to psychological trauma, the Supreme Court and US Congress have ascertained, through court rulings and legislation, the limited constitutional rights of prisoners. The atmosphere within prisons has thus grown more violent and inhumane. Evidence of this includes the rising number of violent criminals in prisons, the rising number of assaults within prisons against fellow inmates and guards, brutal treatment by prison guards such as staging fights between inmates, reduced prisoner privileges, and overcrowding (Van Slambrouck, 1). If anything, these harsh prison conditions encourage violence and crime, as opposed to deterring it.

An important contribution to the shift in criminal justice policy was the reclassification of all drug-related crimes from a 'public order' offense into its own category of criminal activity. Drug arrests approximately doubled from 1985 to 1995, eventually accounting for 25% of state and 60% of federal prisoners. Minorities have been disproportionately affected by these changes, particularly by the surge in drug arrests. African-Americans make up 42% of those incarcerated for drug crimes in federal prisons and 58% in state prisons. This is partially due to the fact that African Americans convicted of drug crimes are more likely to be sent to prison – only 33% of white, as compared to 51% of black, drug offenders are incarcerated (McVay, 103).

Recidivism (re-arrest, or re-incarceration after release from prison) rates and reentry (into society) patterns further indicate indifferent attitudes towards criminals and the inability of the system to deter crime. Sixty-eight percent of released prisoners are rearrested within 3 years, and 51 percent are re-incarcerated (Visher & Travis, 94).

Studies show that the prisoner's experience in prison can influence his chances of being rearrested in various ways. Longer prison terms and exposure to harsh and impersonal conditions lead to higher recidivism rates (as well as factors such as psychological health issues and difficulty reintegrating into society), while rehabilitative programs prove to reduce recidivism (Visher & Travis, 96). Successful reintegration into non-prison life is an important process in terms of reducing crime, and yet can be problematic for various reasons, including difficulty in finding jobs, lack or loss of family and peer connections, inability to participate in community, societal stigmatization. The criminal justice system, however, rarely provides programs to help in this process.

Clearly, despite the complete overhaul of the prison system, in fact partially due to the complete overhaul of the prison system, US criminal justice is causing more harm than it is good. We now find ourselves in the midst of what Philip Zimbardo brands "arguably the worst corrections crisis ever" (Zimbardo, 712). The surge in incarceration rates, extended prison sentences, harsh treatment of inmates, and lack of rehabilitative programs demonstrates a complete indifference to the welfare of the criminal. When a large part of the prison population is made up of those who have suffered and been discriminated against their entire lives, the treatment they receive by the criminal justice system becomes an unwarranted, yet expected response. Instead of recognizing the various factors that led them into conflict with the law, the new 'tough on crime,' retribution-based criminal justice policy instigates and perpetuates the marginalization of these individuals. The targeting of already disadvantaged populations, through the creation of new punishable crimes that happen to increase minority imprisonment, has created a hugely disproportionate minority representation in US prisons.

3.2 Reform of the Justice System

Having concluded that the criminal justice system in the US does more damage than it does good, the first step in order to reform the system is to define its purpose. Criminal justice is rooted in our concern for the proper treatment of those accused of wrongdoing. Part of this has to do with the right to a lawyer and a fair trial, which are clearly important, but for the purposes of this paper we are more interested in sentencing and punishment. In determining the proper sentence for one who is convicted of wrongdoing, we must keep the two basic goals of criminal justice in mind: 1. to restore justice, and 2. to prevent future crime. The best type of system would grant a fair sentence to the convict and in doing so promote both these goals. If the system truly fulfills its purpose, crime should decrease sustainably and in the long run. In order for all parts of a criminal justice system to work together in a productive and consistent manner, some sort of underlying philosophy is necessary. Here we will investigate the correctional philosophies behind the current system and why they do not work to promote the above-mentioned goals, and then come up with a new philosophy that should take its place.

As is discussed previously, our current system is based on a primarily retributive philosophy. Theoretically, retributive punishment assumes a sort of social contract where citizens agree to abide by the laws of the state because they know they are in their best interest. If a citizen breaks a law, he incurs a debt to society, which he must pay back through a determined sort of punishment. It is often said that a criminal has a 'right' to be punished, because once this punishment is fulfilled, he may return to society and to his

life as a free man. This philosophy recognizes the autonomy of the criminal and his rights as a citizen; it sees punishment as serving no other purpose than to restore justice to society and moral equilibrium to the criminal.

Retributive theory cannot be properly applied to American society because of the social backgrounds of many criminals. The theory assumes that all citizens gain something from his attachment to the state and its laws. Only if the individual benefits from abiding by these laws does he owe a debt to society if he breaks them. Many of those who are tried for breaking the law in the US did not receive protection or equal rights and opportunities from them in the first place. Retributive punishment therefore does nothing to restore justice, because justice did not exist to begin with. Furthermore, in practice in the US, criminals do not return to society with a clean slate. If they are released from prison, they are often stigmatized and discriminated against, leaving them with less opportunity than before they were arrested. If retributive punishment were to function as it should, recidivism would not be nearly as common as it is today.

Our current system also functions partially based on the philosophy of containment/incapacitation, in which punishment serves to keep criminals from committing crime by separating them from the rest of society. This, however, is not productive for our stated goals, because while it might to some extent prevent crime simply by removing all criminals from society, it does not generate fair sentences nor does it restore justice of any sort. Through certain new laws, such as minimum sentencing and the 'Three Strikes Law,' the US system has adopted this philosophy, dealing with crime by locking up everyone who breaks the law. The result has cut crime in half, while increasing the prison population ten fold. It is difficult to argue that this is

either a morally-sound or cost-efficient method of crime prevention. Furthermore, this method does nothing to reduce crime in the long run. Replacing current criminals with future ones, it will require the construction of more and more prisons as the population grows.

A last philosophy that influences current criminal justice practices is deterrence, which plays a particularly important role in the persistence of capital punishment in the US despite its abandonment in every other Western country. The deterrence theory claims that punishment makes an example of the criminal, by warning others of the repercussions of wrongdoing. It works to prevent crime by convincing the potential criminal that the crime is not worth the punishment he will receive. Deterrence, to a certain extent, is the reason that punishment gives the law any sort of weight or credibility; it gives people a good reason to follow it. However, in a society such as ours, many do not see the possibility of punishment as a good reason to follow the law. For some, the limited options that are available are no more appealing than going to prison. For others, the law and potential punishment are not even a consideration. Furthermore, in a society where the law is arbitrary and discriminatory, innocents are punished, and sentences are distributed unjustly and target certain sectors, deterrence loses its sway as a disincentive for crime. If one knows he has a good chance of being punished for something he does not feel is wrong, why should he make any effort do what he knows is right (Delgado, 266)?

We can draw two important conclusions from the analysis of current correctional philosophy in the US. First of all, it is fairly obvious that the criminal justice system that is in place does not properly deal with those who are accused of wrongdoing, nor does it

effectively fulfill its purpose. In terms of crime prevention, containment is inefficient and impractical in the long run, while deterrence does not do much to influence those who tend to commit the crimes. In terms of justice, the system does more to breed injustice than it does to restore justice to society. Secondly, a criminal justice system cannot pretend to promote justice through any method of correction while ignoring the injustice that is rampant throughout society and disproportionately impacts the very community the system deals with.

The last important correctional philosophy, one that does not have much influence in today's criminal justice system, is rehabilitation. This theory contends that punishment should serve to help a criminal change himself or his life in whatever way necessary so that, once released, he becomes a law abiding citizen and productive member of society. While not applicable to all cases, it seems that this theory would be most effective in preventing crime and restoring justice (both to the individual and society) in the United States. Some argue that rehabilitation is not a valid method of punishment because it treats the criminal as 'sick' when he often is not, and requires that he conform to mainstream societal values thereby stripping him of his autonomy. Furthermore the determination of who is rehabilitated and who is not is quite arbitrary and therefore sentencing and release can be easily abused. And who is to say that it will even work to rehabilitate criminals, much less to deter other criminals?

The broad answer to these questions is that rehabilitation must work in conjunction with other correctional methods. For one, it is important to recognize that not all criminals can be rehabilitated, and for those for whom it is possible, the method of rehabilitation is dependent on the individual's history and character. More specifically,

rehabilitation theory requires that a sentence take into account environmental and contextual influences, recognizing that a variety of external factors can inspire an individual to commit a crime that he otherwise would not commit. These types of mitigating factors, while they do not take away from an individual's responsibility, should have an influence on the severity and nature of his sentence. We need not contend that all criminals are sick, but can argue that some sort of support could push him in a productive direction from which he might be able to begin life afresh. This might occur through job training, education, therapy, creating an outlet for repressed anger, providing new life options and the chance to start again with a clean slate, or simply demonstrating a certain respect for the individual as a fellow human being. None of the above occurs with much frequency in our current system.

Forcing the criminal to adopt a new set of values is only required inasmuch as he becomes able to recognize that he is capable of, and is likely to be happier, living a life that is free of crime. It is true that in order for a rehabilitative system to function, sentences cannot be fixed and invariable, and therefore there will be a certain degree of subjectivity in determining when a prisoner is ready to be released. This may cause the abuse of power to a certain extent, however coordination between rehabilitative councilors, parole officers, judges, etc. should largely eliminate this risk. Despite the various criticisms put forward, rehabilitation appears to hold strong. It forces society to restore justice to those who have been seriously disadvantaged from the start by recognizing the external factors that influence one's character and life options. In order to truly claim to promote justice, however, it should be accompanied by efforts to take note of the environmental factors that tend to consistently push criminals into a life of

crime and make serious measures to reduce their influence on the individual. A rehabilitative criminal justice system, supplemented by the reform of various holes in society, will help to bring the cycle of marginalization and violence to a halt, thereby reducing crime in the long run.

4. Conclusions

This paper has demonstrated that environmental influences can and do limit an individual's options and his ability to choose his destiny. They do not, in general, take away from his responsibility for his actions, nor do they define his identity or prevent him from changing. As long as he has the freedom to make his own decisions, he is responsible for his actions. Environmental factors do not have a lasting or insurmountable effect on one's character that permanently eliminate his freedom or his ability to change (serious psychological damage may be the one exception, but is not addressed in this paper due to its complicated nature). They only take away from his responsibility insofar as they unjustly limit his options. They only define an individual insofar as they facilitate and perpetuate the labels imposed upon him by the powerful. They can, however, severely limit one's options, and this should be taken into account. The main reason it is necessary to consider these influences when sentencing a criminal is that they are largely the result of a social construction created and imposed by the powerful to keep the marginalized classes down.

It appears that society has been set up in such a way that instead of accepting that we are all fellow human beings, the privileged class claims a moral superiority based on the fact that it does abide by the established law. It is unimportant to this group whether the law is just or the system provides ample opportunity for all to abide by it. All that matters is that they follow it, and are therefore upright citizens, and others do not, and are therefore evil. The 'evil' class here discussed comprises all the downcast of society, the hated, rejected sector against whom all the upright citizens cast their fears and prejudices. While a few outliers will overcome their environment and rise to a level of success recognized by the powerful, the influences that work against their success is so overwhelming as to insure that one out of every three black men spends time in prison. Instead of acknowledging the great odds against certain members of society, the privileged take the evidence of their failure to reaffirm a belief in the innate 'evilness' of this unfortunate class, and convince themselves of the hopelessness of change.

It is the prejudiced attitude of those in power, who refuse to reform the system and in doing so perpetuate the cycle, that keeps the marginalized class down. How do we change the system, one might ask, with our attitudes and their failures set firmly in place, institutionalized, and maintained by the powerful? To begin with, those in power must initiate reform in both their attitudes and their institutions. Whether this will occur through the slow trickle of the underprivileged into positions of power, or a sudden party-driven shift in government policy and ideology is unclear. The change, however, must come from the top. The privileged must realize that much of the crime that occurs is not the product of the innate 'evilness' of certain sectors of society, but a result of the dismal environment to which many are born and cannot escape. Our own tendency to use this

class as a scapegoat for all of the ills of society is a response to the culture of fear that has become so pervasive in the past few decades. The upright citizens must recognize that only they have the power to rid society of the very things they are afraid of. They must take action to eliminate the societal roots of crime by minimizing the violence and poverty rampant in many communities and reforming the institutions that intensify the very crime they were designed to eliminate.

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