

Wired on the Inside

The case for connectivity in the US prison population

By Max A. Fishko

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Overview: The US Penal System: A Critical Mass

The United States currently incarcerates 2,245,189¹ adult men and women in it's federal and state penitentiaries. There is a contention that this number represents roughly one quarter of people incarcerated globally.² Whether the exact percentage is correct or not, the fact remains that 1 in every 136 U.S. residents was in prison or jail as of the last Census in 2005³ and that these individuals do not simply disappear. The treatment of these individuals and the policies that effect their lives and the lives of their loved ones are a subject that receives productive public attention on an intermittent basis at best.

¹ US Bureau of Justice Statistics
<http://www.ojp.usdoj.gov/bjs/prisons.htm>

² Evaluation of Prisons in the Organization of American States
International Citizens United for Rehabilitation of Errants
Washington D.C., 2006

³ US US Bureau of Justice Statistics

They are out of sight and out of mind for many Americans and their political representatives. Penal policy is largely carried out through the court system both at the state and federal level. Oversight of the budgets of those institutions is the mandate of the legislature.⁴ In a fashion characteristic of the US judicial system, penal policy created by the legislature often finds itself refined, changed or completely abolished by judicial review. Either way, the incarcerated population in the United States exercises little or no political power on its own, as 46 states in the US strip felons of the right to vote. Worse yet, the inmate population is predominantly from a demographic that consistently demonstrates low voter turn out, that demographic being non white males between the ages of 18 and 28, who according to the Pew Research Center report that they “vote regularly” less than thirty percent of the time.⁵ Publicly funded legal aid is available through Prisoners Legal Services, but such services are heavily overburdened. The shaping of penal policy has been influenced in no small part by groups like the ACLU and Human Rights watch, who are able to privately fund legal proceedings challenging institutional policy. However as a result the process is slow and focused upon ameliorating failures rather than generating success. Prisoners and their families must wait until their rights are violated in order to try and influence the policies that malign them. The US has seen numerous incidences of large scale prison violence and has created an string of institutional environments which to describe as unsafe would be a dramatic understatement. The political and policy making process that crafts the penal

⁴ Private Prisons and Public Accountability Harding, Richard
Transaction Publishers, New Jersey 1997

⁵ **Who Votes, Who Doesn't, and Why**
Regular Voters, Intermittent Voters, and Those Who Don't
The Pew Research Center for the People and the Press
Washington DC, 2006

environment takes place with relatively little scrutiny or oversight and almost no input from the individuals it effects most.

This does not mean that there is not an interest in prisons on the whole. In the United States there has been a sweeping cultural interest in the penal system, however the benefits of this interest (if any) are at best unclear and as yet to be seen. A growingly curious public has created a demand for several weekly dedicated, nationwide television programs dedicated entirely too documentary coverage of prisons. Fictional programming about prisons abounds, with a plethora of films being set in various penal institutions. Fox Networks “Prison Break” (the first season of which, contrary to its title, actually takes place entirely in a fictional prison facility) averaged 9.2 million viewers a week. Several correctional facilities around the country have installed web cameras in various parts of their facilities, and using them both to (theoretically) provide a deterrence to would be offenders who see how unpleasant the conditions are and to protect their staff from false accusations of battery or abuse. As this author is writing, the webcam installed in the booking room of the Maricopa County Sheriffs Office is offline, while Sheriff Joe Arpaio appeals the decision of the 9th US Circuit Court of appeals decision that the webcams he had installed in his jail violated his prisoner’s rights as it was unduly humiliating. In July of 2000 the sheriff installed the cameras after a prisoner died while in restraints in 1996, resulting in a costly wrongful death suit.⁶ It is difficult to asses whether or not attention paid to prisons on the cultural landscape has increased with time, but what is clear is that there are a substantial number of Americans who are interested in

⁶ Nation's toughest sheriff' adds Web cam to jail, Associated Press
 July 2000, <http://archives.cnn.com/2000/TECH/computing/07/18/jail.webcam.ap/>

seeing some kind of depiction, fictional or otherwise, of what the life of inmate looks like though sadly few are interested in doing anything about whatever problems they might see. This being the twenty-first century however, something new is being generated by this interest, not because of the size of that interest but because of the medium through which it is taking place. There has been a proliferation of web based services that both allow individuals outside the inmate community to access information from inside, but allow inmates to reach out to the world from which they have been confined. Blogs, personal WebPages, social networking sites and several large message boards have sprung up to service the needs of the free and incarcerated alike. This is an unprecedented ebb and flow of data through the ether over a physical boundary that was once nearly absolute, the prison wall.

What has occurred is a reshaping of the boundaries of information to and from prisons in the United States.

I) Jail 2.0: The Networked Inmate

Across this nation, countless young men and women, like you, are vegetating in juvenile halls and in youth authorities. More and more prisons are being constructed to accommodate your generation when you grow to adulthood. The question is, can you become motivated enough to defy the expectations that many people have of you?

For those of you who are fortunate enough to regain your freedom, prepare an agenda to survive outside the walls of incarceration. Learn about computer technology, politics and the sciences.

Stanley "Tookie" Williams

The above quote was written by a death row inmate from California named Stanley "Tookie" Williams, who is attributed with the creation of the notoriously violent Los

Angeles street gang known as the Crips. In addition to a book entitled “Life in Prison” (Published by Chronicle Books) Mr. Williams, who was executed in 2005 for his role in a 1981 quadruple homicide, penned two open letters he entitled “Letter to Incarcerated Youth” 1 and 2. These letters offer positive advice from one inmate to another and they have been accessible on the internet since some time in 1998. To the best of anyone’s knowledge, Mr. Williams never had access to a computer throughout that time period. Mr. Williams had a friend on the outside who administrated his website, taking handwritten copy from Mr. Williams and posting it to his site and brought him hardcopies of the emails he received. Although it is unclear if he had actually ever seen the internet in person, Williams understood its importance as a tool for education and the sharing of knowledge. His words take on a somewhat prophetic sensibility in the current penal environment. In 2001 Mr. Williams was nominated for the Nobel Peace Prize for his work in youth violence prevention by six members of the Swiss Parliament.⁷ Mr. Williams is a high profile example of a trend that has been gaining ground for some time and is only likely to proliferate.

Many inmates are using their ability to communicate face to face, via telephony and through standard mail to access the web in order to raise funds for their defense and try and generate public interest in their cases. This author contacted several such individuals this year through various public forums, such as Prisontalk.com and Myspace and found a few very responsive individuals willing to share information about the process of web based organizing while in prison. The following is an excerpt of a substantial interview between Charles “Chucky” Mamou and Kenneth Foster Jr. (who

⁷ Antigang 'Role Model' Is Up for a Nobel and Execution, Evelyn Nieves
The New York Times, December 6, 2000

now calls himself Haramia KiNassor) both of whom are death row inmates. Due to their situation, it is impossible to interview them personally, as these inmates have no access to the web directly and their phone time is limited to 300 minutes a month. Their solution to this obstacle is to interview each other.

(This is un-edited to avoid misconstruing any vernacular)

CHUCKY

Talk about any of the organisations or other programs that you are involved in?

HARAMIA

Im involved with quite a bit. Id first like to highlight D.R.I.V.E which is a movement that Im co founder/mobilizer of with Reginald Blanton, Rob Will, and Gabriel Gonzales. We are a collective of men who have banded together to expose the neglect of Texas death row prisoners and also the vile nature of the death penalty. We have been involved in non violent protest here at the unit, highlighting both. We have helped spearhead the prices of men not walking to their executions nor participating in them (e.g. eating last meals) The more we do that the more we humanise this and its nothing humane about systematic social genocide. You can learn more about DRIVE at www.drivemovement.org Im also consolidated with a group called the WELFARE POETS whom are a collective of artist and activist from New York who myself, Hasan Shakur (now transited) Tony Ford and Randy Arroye (a former Death Row prisoner-released to life in prison as a juvenile) reached out to in 2004. In struggle and love we built bonds and these brothers have dropped a Hip Hop compilation album against the death penalty called "Cruel and Unusual Punishment" Its phenomenal and unprecedented. I encourage ones to check this out at www.myspace.com/deathpenaltycd projects like this are needed to tap into the much needed youth out there who are very disenchanting with the political process. Hip Hop is a mobilizing tool for this generation. We are moving forward with projects like this to touch the world. This is just the beginning. Im involved with many other groups and people. Ive got my hands in quite a few things, viewing my website will shed more light on some of these things.....

CHUCKY

Okay "Walk with me" for a sec (smile) I hear there is a video a music video dedicated to your plight. Care to explain its origin, and intentions to us? How we can see it, view it? Who is in it, or whatever you want us to know about it?

HARAMIA

Well "Walk with me" is a song that Tasha wrote to highlight our relationship, my injustices and our combined struggles with this situation, Tasha is a Hip Hop artist from the Netherlands (her stage name is Jav'lin) The song was produced in 2005 and the video was shot in October 2006. It was just released in February 2007. and can be downloaded for .99c at: www.javlin.nl. The video entails Tasha

rapping and each verse is accompanied by correlating scene. What we are hoping is to use this video as an educational and mobilizing tool for my plight. We know how universal music is. We also know how powerful Hip Hop is. Next to religion its probably the only force that is this influential from California to China. If I may say so myself a song and video for a death row prisoner is pretty unprecedented. I think the only death row prisoner to come before me is Former black panther Mumia Jamal. If im not mistaken I believe Rage against the Machine did a song and video for him. Either way im very honoured to have this done for me. Its important to point out that Tasha did not have to do this video. She could have done a video for any of her other songs. Theres a lot of sacrifice on Tashas part. The death penalty is not an easy or popular topic in a country where there is no death penalty. Because of such the youth there are even more disconnected from this type of fight. Its foreign to them. Whereas Tasha is rapping about death row, most rappers over there is talking about partying, sex and gangsta-gangsta. Shes faced a lot of critique behind this, so I give her so much love and respect for the courage she showed to do what was right over what was trend. These are the champions of our life time-the world changers, such a small thing will indeed turn into a great achievement. I ask for persons to support this video-not just for me but for what it represents and that's Love, Life, Loyalty and Liberation.

The ability to get their message out is on the face of the interview. There are three imbedded links in this section alone which lead to content generated or heavily influenced by inmates. They are connecting each other, forming groups and sharing ideas. They are collectively creating literature, poetry, music, legal and academic research and sharing it with each other and the rest of the world from a cell with no windows. The websites they link to feature streaming audio, video, message boards and in one case is available in four languages. These men are in the most secure area of the largest death row population in the United States of America and they are selling rap music for ninety-nine cents a download. The blog space where this interview appeared was hosted by Myspace and had over 1,000 subscribers. This is a phenomenon that is unique in penal history and poses new obstacles and opportunities for correctional facilities.

The above interview was transcribed by the two prisoners, mailed and reposted by the girlfriend of Charles Mamou, who maintains several such sites. The site solicits

donations for his defense, provides details about his case and links to numerous other inmate sites which do the same. For those who are not lucky enough to know someone with such a skill set or motivation, there are numerous for profit companies that offer services to maintain inmate websites. They receive written or verbal instructions from the inmate regarding the update of the site or blog and implement the changes the inmate requests. Any responses the inmate receives are printed and mailed to the inmate. Such services are very expensive (some charging as much as 40 dollars per communication) which presents a unique set of issues, as prisoners usually do not have very much income and may resort to criminal activity in order to generate enough money to support their web service. Furthermore, the family members and loved ones involved in the inmate network serve as a kind of governor on what kind of content is displayed and what kind of goals are pursued. While those who are incarcerated may be criminals, but that does not necessarily mean that they can persuade their support system on the outside to engage in criminal activity. Inmates using family and friends to host their sites have their identity tied to the sites and have an interest in seeing their family stay out of trouble (if only to keep hosting the site). Devoid of any direct responsibility for the communications however, inmates with malicious intent could use these services to achieve myriad malicious ends, committing crimes or simply terrorizing their victims or victims families. These services provide the networked prisoner with the anonymity required to engage in nefarious activity. Similarly, there are several "Prison Dating" services set up on the web, where inmates post photographs of themselves and descriptions in order to encourage individuals on the outside to interact with them, sometimes with the promise of sexual favors. The inmate information is unverified and,

like the web maintenance firms, these sites extract exorbitant fees from the prisoners they register.

There is a substantial negative incentive for correctional facilities in the US to address the need for connectivity inside their walls in a way that puts a stop to the growing number of third party web service providers who operate with little or no oversight in terms of who a prisoner can contact with what kind of messages. The specific dangers of such a marketplace are described later, though it should be said that they are probably more prolific than any recording could depict, as many of the societal harms likely go unreported or even unnoticed. Moreover, there is a substantial positive incentive to integrated networked systems into correctional facilities. They can provide an improvement in the wellbeing and mental health of inmates, generate cost savings, decrease tensions between prison administrators and those inside the system, inform the public about prisoners issues and act as a deterrent for potential criminals outside the system, reducing the number of victims. However for any of those positive incentives to find their way into reality, or any of the negative ones to be ameliorated, one must ask a critical question;

II) Is there a right to communication in prison?

The constant threat, real or perceived, of inmates accessing the outside world in order to commit crimes makes it very hard to balance the constitutional free speech issues that arise from connectivity for inmates. In 1974 the United States Supreme Court broke with its long tradition of refusing to rule on individual penal policies when it heard and

ruled on *Procunier v. Martinez*, a class action suit brought on behalf of all the inmates in the California penal system. The case challenged a California penal policy that allowed the correctional facilities in that state to examine all outgoing mail for any derogatory mention of the prison facilities, inflammatory political or religious content or mention of criminal activity and, if found, refuse to send the letter to its intended recipient.⁸ The court struck down this policy, and contained in the decision was a critical quote, that “A prisoner does not shed such basic First Amendment rights at the prison gate.”⁹ In a subsequent decision, *Turner v. Safely*, the court explicitly laid out a test that would be used to determine the validity of prison regulations in regard to the infringement upon speech.

The Court employed a rational relation test to determine the validity of the rules, noting that a strict scrutiny standard would prevent prison officials from being able to foresee security problems. To determine the reasonableness of a prison regulation, the Court considers four factors: (1) the prison regulation must rationally related to a legitimate governmental interest; (2) whether alternative ways of exercising the right exist; (3) the impact that accommodating the prisoner’s places on the institution and (4) the lack of alternatives available to prison administrators.¹⁰

The language and impact of the test enumerated above is unambiguous. Prisoner have a right to communicate, but that right can be infringed upon by the penal system so long as there is a relationship between the policy and security, and that relationship is rational. These are not hard criterion to meet for the correctional facilities, as one imagines much of what they do is rationally related to security. However there the issue at hand becomes murkier when one considers the second portion of the test. Is access to

⁸ The Proper Approach to Prison Mail Regulations: Standards of Review Mannetta, Jennifer A. In *The New England Journal on Criminal and Civil Confinement* #209, 1998

⁹ See *Procunier vs. Martinez*, 416 U.S. found in above journal

¹⁰ Mannetta 3

the internet part of the right to communicate, and if so is there an alternative to internet access?

In an ever increasing way, technology and specifically networked communications services are becoming more and more integrated into municipal services in the United States. With the rapidly approaching turning point of municipal Wi-Fi clouds, there is going to be substantial impact upon first amendment issues and government.¹¹ The current mayor of San Francisco, Gavin Newsom has already declared internet access to be a fundamental right for every citizen and believes it ought to be provided by government similar to water or sewage systems.¹² While Mr. Newsome is somewhat of an outlier in his feelings regarding municipal Wi-Fi, his sentiment does have supporters and merit. In his very recent article on this topic, Timothy Zick points to Professors Jerry Kang and Dana Cuff as the inventors of the term “pervasive computing”¹³ It is a term that refers to the internet becoming imbedded into a digitally saturated world, and it is a process that is already occurring.¹⁴ In a 2000 decision by the Supreme Court, the justices dismissed the internet as too young a medium to qualify as a quintessential public forum.¹⁵ The speed and dramatic impact of a networked social, political and economic landscape will bury that thinking. Access to the internet is not simply part of the right to communicate, it is the only way to communicate right. New, effective services will converge with other platforms for communication in rapid

¹¹ Clouds, Cameras, and Computers: The First Amendment and Networked Public Places Zick, Timothy Florida Law Review, January 2007

¹² Zick, 5

¹³ Zick 8

¹⁴ Zick 8

¹⁵ Zick 11

succession until there is no way to distinguish them. If there is a right to communicate, there is a right to communicate via the net.

Following from that thinking, there is no way that the correctional facilities can offer an alternative to internet access. There is no other medium that would allow the inmates to engage in the kinds of discourse in which they find themselves now. How would the correctional facility in Atlanta provide inmates with access to a marketplace of Danish human rights lawyers without using the internet? Not only does removing these individuals from the global network do them harm, it is a harm that cannot be ameliorated any other way.

A direct question, specific to the concept of connectivity, crime and the right to communicate is this one: As government gains a new tool for enforcement of its laws, the right to privacy becomes diminished. What does the public get in exchange for giving up it's privacy? Huge networks of cameras cover urban landscape, street lights take photographs and GPS enabled devices can locate individual network users within a few feet. By giving up our right to privacy, do we not garner the right to participate in the newly networked public environment? The networked public sphere is online and will become a critical forum for currently disenfranchised voices. By the year 2000, in a war to eliminate the digital divide, the 95% of public libraries in the United States had web access, most through federal programs.¹⁶ The country has invested a huge amount of money to try and ensure that the digital divide doesn't grow yet it denies web access to roughly 2.5 million citizens. It hardly seems rational and it almost seems cruel. *As the US fashions this new system and integrates it more and more into everyday life, the consequences of excluding anyone become more drastic and less humane.*

¹⁶ Zick, 10

III) How does the connectivity impact the goals of the American penal system?

There are various theories on confinement, it's purposes and desired impact. Within the US, one finds three predominant theories and here we can discuss how the potential impact of a networked prison population fits into them.¹⁷ In order to assess the viability of a networked prison system, we must look at a networked system in the context of why we have prisons in the first place. In their book Incapacitation, penal theorists Zimring and Hawkins lay out the justification for using such a method of analysis.

“Although is logically and legally possible to continue both to administer prisons and to use imprisonment as a punishment without the support of any specific justification or ideology of imprisonment, it would be difficult in a political democracy to do so without any positive sense of purpose or function for them. Those who work in prison, those who sentence offenders to prison, and those who support the institution in less palpable ways all need some paradigm of imprisonment, a sharp image of what prisons are needed for and may achieve.”¹⁸

On popular theory of confinement is theory of incapacitation or disablement, which is predicated upon the notion that the prison exists to restrain the prisoner from committing more crimes. The method by which a prisoner is to be restrained is by confining them, segregating the rest of society who are his or her potential victims. Restraint theory comes into direct conflict with a networked prison population for several

¹⁷ Restoring Rationality in Punishment Policy, Alfred Blumstein in The Future of Imprisonment, Michael Tonry
Oxford Press, New York 2004

¹⁸ Incapacitation: Penal Confinement and Restraint of Crime Zimring, Frank and Hawkins, Gordon
Oxford University Press, New York 1995 Pg.4

reasons. Hawkins and Zimring characterize restraint as the dominant theory at large in America today. "Incapacitation now serves as the principal justification for imprisonment in American criminal justice: offenders are imprisoned in the United States to restrain them physically from offending again while they are confined."¹⁹ If the concept of protecting society from the prisoners (who are presumed to be dangerous due to having previously committed crimes) is to be given primacy in the construction of penal policy, then the risk of providing internet access to felons likely outweighs the potential benefits to the inmate and to society. There are well documented cases in the past where prisoners using communications technology were able to commit crimes while still incarcerated.²⁰ However this issue bears further parsing out. There are certainly discreet ways in which the internet can be used to commit crimes, however this is also true of telephony and traditional mail communication. Prisoners have used conventional mail to commit fraud and telephony to lure victims into relationships that result in blackmail, identity theft or worse. There is a case in California where the state itself was the victim of mail fraud perpetrated by inmates. A large portion (up to ten percent) of California inmates were involved in a 1995 mail fraud conspiracy to defraud the Social Security Administration out of somewhere between thirty and sixty million dollars a year.²¹ Yet those forms of communication are still available to inmates based on a presumption by the Federal Bureau of Prisons that it is beneficial for prisoners to maintain ties with their families. Is the Internet really so much more of a threat than conventional mail or telephony services? It seems that the threat to restraint provided by

¹⁹ Zimring and Hawkins, Pg.6

²⁰ Virtual Freedom-Physical Confinement

James L. Esposito, New England Journal on Criminal and Civil Confinement, 39, 2000

²¹ Mannetta Pg. 8

the internet comes in two forms. One is the fear on the part of institutions of tech savvy, experienced convicts using the internet to generate revenue through illegal activity.

While there have been instances of this occurring, they are relatively few and largely come from the avoidable problem of the institutions not having appropriate hardware and software restrictions on the usage by the inmate. One of the more notorious instances occurred in Utah in 2000 used a computer in the prison library to access a message board and post ads that lured men to respond with the intention of having homosexual relations. The inmate would then threaten to expose the men's sexual preferences unless they paid.²² If the ability of an inmate to surf the net was restricted, monitored and secured in a cohesive and centralized way, upload capacity would be extremely limited. A system could be designed whereby the only way a prisoner could send data packets was if they were logged onto an approved site, like a message board that was accessible only to their families or friends. The hardware terminals and software packages could be designed to make the internet as a whole "Read Only" to the incarcerated user, only allowing them to make contact with approved individuals. This would stop them from email or message "fishing" (sending out mass emails or posting deceptive messages to popular boards in an attempt to get responses from an unwitting user). Technical solutions like the one described above are already available for secure networks like those used by the US military and civilian agencies. Many corporations go to great lengths to limit the ability of their employees to share information with third parties while still granting them internet access. A workable solution to the primary issues of restraining the inmates access to society as a whole already exist. James Esposito, in his New England Law Journal article on the subject was rather definitive regarding the impact of a networked

²² Esposito

prison population and restraint. “Given the immediacy with which information can be transferred electronically and the ability to conceal one’s identity over the Internet, it is apparent that allowing prisoners to use the Internet compromises the goal of restraint”²³

If prisoners were encouraged to use the internet through an officially sanctioned, secure network then those issues could be addressed. If the concept of having immediate data transfer poses a security, a delay in delivery can be built into the system, slowing it enough to alleviate concerns that it could be used to deliver actionable information between individuals with a criminal agenda.

Stanley “Tookie” Williams was not trying to conceal his identity, in fact the opposite, it was only by advertising his personal history as an offender that allowed him to reach people inside the prison system and outside. Mr. Williams’ example is obviously one of a networked inmate with a benevolent agenda, however that is certain to not always be the case.

There are so many avenues available to inmates if they decide they want access to the web that it is clearly impossible to stop them from getting it. Through the engagement of third parties, financial or otherwise these individuals are accomplishing their own goals. However those goals, so it appears, have sometimes been carried out with an eye towards collective activity with a purpose that is not at odds with the goals of the penal institutions. One such service that has been created by third party participation includes the website called PrisonTalk.com, which offers message board services for inmates and their families. This networking hub offers advice for health issues, addiction problems, financial issues unique to prisoners and much more. It is well structured, well maintained and has upwards of eighty eight thousand members. In an environment as

²³ Esposito, Pg. 8

large and complex as the Department of Corrections or the Federal Bureau of Prisons, it is exceedingly difficult for incarcerated individuals and their families to stay in touch with each other and with institutional policy. Many of the threads posted on PrisonsTalk.com regard an attempt by people within the system to maneuver effectively and cooperate with the administrators. They discuss rule changes, requirements and the logistical issues involved with either being or being close to an inmate. If the correctional facilities can integrate this kind of service into a larger network of incarcerated users with confirmed identities and limits on the amount and types of data that could be posted, they would likely make progress towards a restraining the prisoner not only on the internet but in the facility itself. It would be foolish to contend that individuals in or around penal institutions break the rules because they don't know what they are, but it certainly does happen sometimes and that is avoidable. Furthermore, clarity on institutional policy would reduce some of the friction between inmates, their family members and the facility administrators, perhaps easing some of the tension out of the environment as a whole. If correctional facilities choose to learn what kinds of programs have been developed using the third party collaborations described above, they could create a system that was under their control, in line with the goal of restraining their inmates yet served the need so of their prisoners and their families

Another goal of the American penal system is retribution. The concept behind this theory is that the infliction of pain and suffering upon the prisoner restores "the peace of mind of both the victim and society."²⁴ The concept of retributive justice is in direct odds with created a networked prison population. There is a perception that the act of surfing the net creates a kind of proxy freedom for the inmate, easing the pain of their life

²⁴ Esposito 8

in captivity. An espousal of this view by the court can be found by referring once again to the Procunier case, where the court said “that by confining criminal offenders in a facility where they are isolated from the rest of society, a condition that most people presumably find undesirable, they and others will be deterred from committing additional criminal offenses.”²⁵ Here the court recognizes the denial of communications is a punitive measure. One of the Texas Death Row Inmates who maintains an active web presence is Randy Halprin. Mr. Halprin, up until recently has maintained a Myspace profile and currently has an active and updated webpage with photos, video and audio content. The hit counter for the website claims nearly 18,000 visitors. Mr. Halprin has a personally written greeting on the welcome page for his site in which he wishes peace and love to his virtual visitors.²⁶ Mr. Halprin is also a member of the Texas Seven, a group of convicts who escaped from the John Connolly Corrections Facility in Kennedy Texas in the year 2000 and has been sentenced to death for his role in the shooting of police officer Aubrey Hawkins during the subsequent crime spree. This particular inmate’s participation in networked activity has met with some public criticism, largely because of the extremely high profile nature of his escape and the crimes committed afterwards, which have inspired a syndicated television show and at least one rock and roll song. And while the Myspace page was taken down for violating the Myspace terms of use regarding hate speech, Mr. Halprin’s personal website is still up and running, much to the chagrin of Aubrey Hawkins’ mother. In a 2006 newspaper article, she had this to say: “Websites that allow criminals are helping turn them into romantic figures. This kind of thing dishonors Aubrey (speaking of the webpage). What should happen on

²⁵ Pell vs. Procunier, in Esposito, 8

²⁶ <http://www.randyhalprin.net/>

death row is that these people should sit behind a locked door and we should be allowed to forget about them...It's like getting harmed all over again"²⁷ Though not a penal theorist, Mrs. Hawkins was able to enunciate on of the critical conflicts between the concept of retributive justice and a networked prison population. However a closer analysis reveals that there is an opportunity for a networked inmate population to serve to goals of retributive justice. Retributive justice runs parallel with the theories of using the penal system for prevention and deterrence.²⁸ Penal theorist R.A. Duff describes deterrence saying

First, the threat of punishment can deter potential offenders, while its actual infliction shows others that the threat is serious ('general' deterrence) and brings it home with special force to the person punished ('special deterrence'). Deterrence as thus portrayed is a matter of rational, prudential dissuasion. It is rational in that it aims to give potential offenders reason to refrain from crime (not just to induce an unreasoned aversion to crime) and prudential in that the reason it gives appeals not to the potential offender's consciences but to their self interest in avoiding the pains of punishment.²⁹

Using Duff's definition, one can see how a networked prison population might serve the goals of retributive justice. Remember the example of Joe Arpaio, the sheriff who installed webcams in his booking station. His stated intention was twofold, one was to protect himself from allegation of misconduct in the treatment of his inmates. The other was to demonstrate to the outside world what an unpleasant experience it would be to be caught committing a crime in his county.³⁰ While the constitutionality of Sheriff Arpaio's conduct is highly dubious, the concept works in concert with the penal goal of deterrence. The inmate created content that this author has viewed was not laudatory of

²⁷ Inmates go to court to seek right to use the Internet

Johnson, Kevin in USA Today, November 24 2006

²⁸ Esposito AND Punishment, Communications and Community Duff, R.A.

Oxford University Press, New York, 2001

²⁹ Duff, 4

³⁰ See Nations Toughest Sheriff....

the penal system in the least. Esposito says of deterrence that it is predicated on the belief that when someone has “witnessed the pains of another’s confinement, are discouraged from committing crimes because they fear their actions will result in a similar deprivation of social interaction”³¹ How exactly is anyone supposed to witness the pains of confinement if those who are confined are given no opportunity to share that pain. The prisoners tend to use their public forums to voice complaints about their treatment and in some cases, describe the violence and terror that they experience as part of everyday life in prison in graphic detail. The following are excerpts from a blog entitled “Waiting to Die” written by an inmate in Kern Valley State Prison, California. It is hosted by Prisonactivist.org, which reprints thousands of prisoner letters per year. The reprints can be found in their “Prison Voices” section.

A low moan escapes from the prisoner’s throat as he is half carried, half dragged down the dimly lit hall. The two burly guards escorting the unfortunate creature stop as one reaches up to adjust the black hood placed over the prisoner’s head. Both are stone faced and detached, as they ready the man for the transport to another facility.

A momentary glimpse of the prisoner’s face reveals the frightened and desperate eyes of a feral animal caught in a trap. Upon reaching the rear door of the drab complex, he will be trussed up hog-style and unceremoniously dumped in the rear of an unmarked van and driven away... Corporal punishment in the administrative segregation units, and to a lesser degree amongst the general population is a daily occurrence. Officers in the segregation units will spray a prisoner for the simple crime of door battering, leaving the unfortunate soul to writhe in agonizing pain as the chemicals burn the skin.

Like the popular documentary programming about American prisons, inmate created content does not make prison seem like an appealing place to spend time. The descriptions of penal policies and inmate culture combined with constant, heartbreaking

³¹ Esposito 9

protest of innocence on the part of the inmate users convey the desperation and overall horror of their situations. There is an important issue at stake here. A person who ascribes to notions of attributive justice does so both to enact vengeance on the criminal who has already committed crimes against society and to deter those who have not committed crimes yet. Networked inmates would likely serve the latter purpose, while being completely at odds with the goals of the former. So which ought to take primacy? It seems logical that while the goal of vengeance can be legitimate and does generate societal good, that good is not as widespread or substantial as the good caused by deterring new crimes from being committed. Providing prisoners with limited access to the internet to communicate their messages and solicit interaction with the outside world does provide them with some solace and a brief taste of the freedoms of their former lives. That connection, relatively brief and sterile, will make a material change in the lives of inmates, but not such a drastic one that the penal environment will lose its punitive capacity, the promise of that dreaded atmosphere of violence, terror and confinement. If anything it will serve as an advertisement to individuals on the outside just how unpleasant the incarceration experience can be. There is less societal benefit to severely punishing an inmate in an environment where their hardship remains inside the walls of their facility than there is to punishing an offender in a slightly less severe manner in a networked penal facility.

The final concept to consider in penal theory is that of rehabilitation. Rehabilitation theorists believe that the experience of confinement should be unpleasant, however should also work towards the goal of installing and reinforcing the dominant

social values upon the prisoner.³² This manifests itself in an increase in vocational training, educational resources and counseling services in the correctional atmosphere. This theory is surrounded by substantial debate and is likely the most directly linked to networked prisoners and prisons. Zimring and Hawkins describe the place of rehabilitation in the landscape of contemporary penal theory.

“It would be difficult to overstate the degree to which the concepts and vocabulary of rehabilitation have dominated discourse about the purposes and functions of imprisonment in modern American history. The professional field concerned with the administration of prisons and jails is called corrections. Institutions of confinement are referred to as reformatories, training schools and correctional institutions. According to the rehabilitation ideal, not only is the reform, reorientation and rehabilitation of the convicted offender seen as the official purpose of the prison sentence but judgments about progress in rehabilitation programs are supposed to provide the basis for determining when sentences should be terminated in favor of parole to the community. For most of the twentieth century, the concept of rehabilitation has dominated penal policy and practice by acclamation and largely without dissent.”³³

American penal policy for the twentieth century leading up to the 1980's was dominated by forward looking ideals and programs. However concerns over effectiveness, safety considerations and budgetary restrictions all contributed to a sharp change in US penal theory in the eighties.³⁴ Unfortunately it seems that the theory of rehabilitation in the penal system lost substantial ground just as electronic networking capabilities began to become prolific. However as netcentric solutions and products proliferate throughout the country, it obviously worthwhile to ask the question, how does a networked inmate population fit in with the theory of rehabilitation?

The process of rehabilitating inmates, as mentioned above, relies upon impressing upon them values that will allow them to function normally when they reenter society.

³² Esposito Pg.9

³³ Zimring and Hawkins, Pg.7

³⁴ Zimring and Hawkins

Through the language of rehabilitation, we encounter another negative incentive for institutions to network their inmates. The internet is a pull medium, meaning that the user selects the information that they want to see first and selects the sources from which that information comes. Using the web, prisoners can prioritize issues that are important to them and avoid imagery or messages that will upset them. If an inmate has recently learned he has Hepatitis C, a very common illness in the US penal community, he is going to want to find out information not only about the disease, but about how someone in his position copes with that disease. If his only access to information about the disease is through a prison library, then he is unlikely to get advice that necessarily pertains to him. He may in fact find advice that highlights the negative nature of the situation he is in. For instance, a medical reference book that suggest taking long walks, frequent showers or over the counter products, all of which are unavailable to the average inmate. The feelings of frustration and disenfranchisement that this process is likely to produce in the inmate runs contrary to the goal of impressing social norms upon the prisoner. The more disenfranchised he becomes, the less receptive he will be to the values of a world from which he feels increasingly disconnected. If he had access to a monitored message board like the one found at Prisontalk.com, he could access information not only about the disease, but get advice that made sense for him and his situation. There are sections in Prisontalk dedicated to Hepatitis and several other common illnesses within the prisoner community. Each board has productive advice that keeps in mind the restrictions and limitations of the inmate. If an inmate finds productive advice in one such section, he is going to be much more likely to visit other areas of the site, where he could find information about drug rehabilitation, educational services for inmates and employment

opportunities for ex-convicts. For an inmate to become vested interest in any of those areas would clearly serve to goal of rehabilitation, but what is required first is the ability of the inmate to pull the information he needs that is relevant to him.

Furthermore, the inmate may be in a situation to make better decisions about what kind of information he wants to see than either the penal institution or his support group outside of prison. Take, for example, an inmate who receives a sentence for committing an economically motivated crime like the distribution of narcotics. Such crimes frequently take place in the context of an organized gang or group of narcotics dealers.³⁵ When an individual goes into the penal system, this group could become his support group, the people that an inmate would turn to in order to get a magazine subscription or a book. In that case, the inmate would be relying on individuals who would reinforce the norms and values of criminal organizations. There are several publications that actively market themselves to inmates, like FEDS Magazine, which undeniably glorifies violence and criminal activity. The magazine is designed to be compliant with penal policies so the inmates can receive it whilst incarcerated (although some facilities have banned it anyway) and also actively promotes itself to friends and families of inmates, who likely purchase the subscriptions and resend the magazine within care packages. If an inmate is given the ability to access information that relevant to him on his own, he may still choose to consume information that would reinforce the criminal values that landed him jail in the first place, but he might discover an interest in contemporary politics, art or science that could draw him into a more productive lifestyle, at last in the legal sense, and contribute to his rehabilitation.

³⁵ *Freakonomics* Levitt, Steven J.
In "Why do drug dealers live with their moms?"
Harper Collins, New York, 2005

The ability of in an inmate to create and share, facilitated by a networked correctional facility would also contribute to the goal of rehabilitation by expanding the marketplace of ideas of correctional programs to pursue that goal. Inmate blogs are currently decentralized and unmonitored, which makes them difficult to use as a resource for policy makers and researchers. Moreover, many of the individuals who maintain such resources are justifiably concerned about their site, blog or networking site being infiltrated by individuals or institutional actors with motives inimical to the proliferation of networked inmates. This author encountered many such obstacles when conducting research for this work. However if the correctional facilities themselves embraced the concept of net centric solutions for inmate communications, the information being generated by the inmates would be easily accessible by those who are guiding the policy process that effects the inmates most. Better yet, the information would be accessible in near real time, allowing for more up to date evaluation of policy impact. For instance if a new policy regarding the training of prison guards were implemented, policy analysts could do a quick search of the centralized inmate blogosphere for first hand reports of inmate abuse or other indicators of the success or failure of the new training procedure. Trusted inmate bloggers could be identified over time. By tracking reposts, responses and traffic correctional facilities could identify the key opinion leaders amongst the inmate population and use that data to help evaluate their policies. Conversely, dishonest or manipulative contributors could also be identified and isolated from the trusted sources of valuable, contemporary actionable information. A centralized sphere of information generated by inmates could serve as a policy creation and evaluation tool to help pursue the goals of rehabilitation, or in fact any other.

The tension between networked prisoners and the penal goals of restraint and retribution are very high. It is undeniable that providing prisoners with access to web browsing and blogging capability presents a security risk and decrease in the punitive nature of the incarceration experience. Although, as was stated earlier, it is unclear how much more of a risk web access presents and how much less punitive the inmate experience would be. The penal goals of deterrence and prevention however seem to have more of a balance with a networked prison environment, as it seems clear that whatever easing of the pressures of confinement did take place would be outweighed by the proliferation of negative information about the penal experience as a whole through the networked system. The most positively correlated goal of the penal system is that of rehabilitation. A networked inmate population would have the opportunity to eliminate the negative impact presented by the lack of control and paucity of information available to inmates and could create a number of positive new modes of support for the achievement of inmate rehabilitation.

IV A first step

The Bureau of Federal Prisons is moving towards more inmate computer access in areas such as e-mail and legal research, though they have not yet said anything about addressing the issue of inmate blogs or personal websites. The bureau's pilot inmate electronic messaging (e-mail) program is called Trulincs. Currently the program is offered in eleven of the lowest security rated Federal Correctional Facilities in the country. Unlike the Inmate Telephone System (ITS) which can only be accessed within

a given time period, inmates have access to Trulincs and message data storage 24x7. Little information is available regarding what kind of security measures have been implemented and it is likely the Bureau of Federal Prisons is engaging in a cyclical development strategy for the system, where they grant a short term contract to operate a test program to a private corporation, identify the problems when the contract is up and they evaluate the problems and redesign the system. According to the program webpage inmates pay 5 cents a page to send emails to individuals on an approved list of correspondents who can use web based email servers to send and receive messages from the inmate. Each message is limited to about 2 pages and inmates are limited to a contact list of thirty addresses. The system allows for strictly text messaging, no html , photos and or attachments are allowed. As the program expands to medium security and higher institutions, Trulincs access will more then likely follow ITS access schedules. The program has been actively supported by American Bar Association, which along with other organization has urged the bureau to implement the program nationwide. It is cost effective for the bureau and would drastically reduce the amount of incoming and outgoing inmate snail mail. This also reduces the introduction of contraband and requires less staff in the mail rooms tasked with inspecting the mails. Correctional Officers and analysts are able to use software to monitor the communications, although there have been issues with messages sent in foreign languages, although that issue is likely to resolve itself as the program expands to more facilities and more translators come on board. Records are kept of every email and they are accessible to all parties, including the facilities. No attorney client privilege exists on this network and prisoners are encouraged not to use it for legal or medical purposes. In September of 2006, Harley

Lapin, chairman of the Bureau of Federal Prisons reported on numerous programs including Trulincs, which is a privately funded initiative. He stated that the program had been successful in the pilot program and that the bureau planned to expand to program to the entire Federal system within a few months, though that appears not to have happened. More information about which facilities in particular are being added and their respective security levels is unavailable.³⁶ What is certain, however, is that the success or failure of the Trulincs system is critical to the expansion of networked information systems within US prisons. Mr. Lapin and his organization are running a number of programs that he hopes will impress pro social values on the offenders under his care. He is running faith based support groups and drug rehabilitation programs, however he made no mention of integrating any kind of networked applications for any of these programs. Trulincs is hopefully the first step towards netcentric solutions for prisoner issues, though the program on its own falls short of representing a sea change for the prisoners quality of life.

V.) Conclusion

The internet has been responsible for dramatic changes in media, culture and society in recent years. It has worked its way into most every aspect of daily American life, from interactive television programming to e-commerce, and now it has performed one of its most incredible feats yet. It has performed a nationwide jail break of

³⁶ Statement of Harley G. Lappin Director Federal Bureau of Prisons
Before the Committee on the Judiciary United States Senate
"The Cost of Crime: Understanding the Financial and Human Impact of Criminal Activity"
 September 19, 2006

information. Whether or not institutional policies catch up with the flow of information over, under or around the prison walls content generated by inmates, for inmates and with inmates is making its way to the discourse taking place on the web and filtering out to society as a whole. If correctional facilities are incapable of keeping this content segregated, which it appears that they are, then it is incumbent upon those institutions to find and explore the opportunities to integrate this content generation into a manageable and secure domain, an atmosphere where the content can be both encouraged for its positive qualities and monitored for its dangers.

The networked inmate is not simply a prisoner with access to email or the ability to take college courses online, though those are excellent programs that exist and have met with varying degrees of success. A networked inmate has the ability to present his point of view through a variety of mediums, introduce his ideas into the public sphere (all be it in a restrained way) and access information from many different sources regarding issues that he selects. A networked inmate is capable of organizing with other inmates to share ideas and collaborate on projects ranging from artistic development to legal research. In his testimony before Congress, Mr. Lapin informed the committee that the use of the Trulincs program had “Greatly enhanced intelligence gathering efforts”, imagine what could be done with a whole network of user generated content coming from the inmates. The information assurance and security that are presented by such system are eminently surmountable. Large systems integrators like Electronic Data Systems already provide Web 2.0 applications like information networking, data sharing, group whiteboards, Video over IP and message boards for the civilian security agencies in the United States. They operate across multiple secure networks, and if they are secure

enough for the CIA to keep intruders out, how much more difficult could it be to keep inmates in? These services are also relatively cheap when compared to the total IT budgets of most federal agencies.

Society as whole will see benefits from a prison population integrated into the new public sphere. It will benefit from a diversity of opinion and perspective that can only be possible in this era of hyper connectivity. To exclude millions of citizens from participating in arguably the most important social phenomenon of the century not only irreparably harms them, it harms everyone. Much has been made of the dangers of the internet becoming an echo chamber, a space where like minded people simply reaffirm one another's points of view. That is because internet users are a self selecting group, but the inmate population is certainly not. A system of networked inmates would encourage individual inmates who might otherwise never have participated in public discourse to lend their points of view to global audience and in doing so inject new ideas into the information landscape.

As this paper is being written individuals are sitting in prisons all around the country updating web content with a pen and paper. They are giving instructions on telephones, they are giving instructions to loved ones. This year some 7,000 new inmates will join the federal prison population and there will likely be more networked inmates joining in on the discourse taking place. This is a process that needs to be harnessed and structured to maximize the good it can do for the inmate population and for society as a whole.

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