An Argument for Prison Abolition and a Relational Theory of Rectification

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Abstract

This thesis presents an argument for the abolition of prisons based on Axel Honneth's theory of recognition. I first criticize some arguments used to justify the state's purported right to punish. I then use recognition theory to establish a set of desiderata for community-facilitated rectification, for a more general standard against which to evaluate prisons and punishment. Next, I argue that imprisonment, as a function of punishment, does not and cannot satisfy these desiderata for community-facilitated rectification. Lastly, I offer some theoretical alternatives to the punitive logic of state punishment. On the one hand, this thesis is an argument for disbanding a systematically unjust response to other injustices. On the other hand, it asks the reader to imagine a world in which one another's humanity, and the other's formative role in each of our senses of self, is central to how we collectively move forward from interpersonal and structural harm.

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Intro – How do we address harm and conflict?

Penal incarceration is the paradigmatic mode of criminal punishment. Foucault notes that, while the prison has quickly become one of the most ubiquitous political institutions around the world, it is a rather new practice, at least at the systematic and institutional level (Foucault, 1977: 9), distinctly of the modern era. Incarceration began to replace other forms of punishment, such as corporeal punishments and public executions, in the mid-late 18th century and has expanded since. Today, around 11 million people are incarcerated worldwide, with over 2.1 million officially incarcerated persons in the United States alone (excluding those in pre-trial detention, non-punitive detention centers, and border camps) (Walmsley, *World Prison Population List*, 12th ed., 2018). The material conditions in actual prisons are often awful and abusive. Prisons are spaces conducive to the abuse of imprisoned people by authorities because they are isolated and monitored by the state (which sanctions such abuse), and because those labeled as "criminals" have been excluded from the dominant moral-political community and even deemed its enemies (Fletcher, 2007, 173).

Movements for the reformation of prisons are as old as prisons themselves (Davis, 2003), usually coming from a place of general concern for human rights, and which strongly emphasize the rehabilitative ideal of punishment. If prisons are abjectly violent places, how can they prepare offenders to re-enter the political community once they have served penance? Abolitionist critiques of reformist approaches attack the movements' historically proven inadequacy in actually improving the material conditions of incarcerated persons over time. Instead, they argue, reform movements perform the vital function of making the practice of penal imprisonment temporarily more palatable to the general public in order to maintain its longevity. The only way to meaningfully address the abuses engendered by systematic criminal incarceration is to abolish

prisons and seek out alternative, non-violent means of reaching social harmony (Goldman, 1917; Davis, 2003). The arguments that attempt to justify continuing the use of prisons, some even calling for more heavy-handed and widespread application of imprisonment and militarized policing and surveillance, tend to hinge on a straightforward "it works" mentality (Walker, 1991: 1-11). What "it works" to do always references reductions in crime rates, and the assurance that criminals "get what they deserve." Essentially, they boil down to punitive retributivist and deterrence arguments.

The overall project of this thesis is to make an argument for the abolition of prisons on the basis of recognition theory's normative implications and other inquiries into the nature of moral intersubjectivity. After arguing that prisons and legal punishment are bereft of any robust normative justification, I will analyze some ways in which prisons and systems of legal punishment serve as sites for the consolidation of sovereign state power, rather than as justifiable means to the enforcement of laws or the ensuring of norms. I will then outline some political theories and practices which establish alternatives to punitive penal logic. So the three core claims in the argument for abolition are that legal punishment has no adequate normative justification; that because of this there must be some other function prisons serve for the state than as tools for the achievement of justice or rectification; there are theories and practices which present a view of rectification and justice that emphasizes the ethical demands invoked in recognizing our engagements with others as crucial to the formation of one's own selfhood.

Much mainstream moral and political philosophy remains at a high level of abstraction when explaining or arguing about punishment in society, which has resulted in a failure to rigorously examine existing or imagine new methods of/frameworks for punishment (Fletcher, 2007: 151). I think this level of abstraction, especially when applied in the circumstances of a

purportedly objective or removed "criminal justice system," obscures the way in which the form or method of punishment deployed may actually operate to *increase* circumstances of harm and violence in society. The ubiquity of prisons, and their widespread normalization as an unquestioned dimension of statehood, means that when analytic arguments about punishment-in-general are made, then such arguments become available for use by the state in order to justify prisons as a particular form of punishment. Such abstract argumentation makes a justificatory rhetoric available to states when challenged with the injustices of prison practices. However, as chapter one will show, the extent to which mainstream philosophical arguments provide the state with justification for punishment in general is questionable.

Chapter One: The philosophy of punishment provides states with a justificatory rhetoric when confronted with the injustices of carceral punishment. For this reason, even though analytic moral and political philosophy of punishment rarely discusses prisons in particular, an argument for prison abolition must contend with arguments in the philosophy of punishment. Chapter one will ask: What, if anything, can justify a state's right or duty to punish? It will be an overview of deterrence and retributive justifications of punishment. This chapter will also define legal punishment, as distinguished from community-facilitated rectification in general.

Chapter Two: Chapter two proposes Axel Honneth's recognition theory as a social ontology with normative content. In *The Struggle for Recognition: The Moral Grammar of Social Conflict* (Honneth, 1995), Honneth elaborates three key theses: 1) the process of subject-formation, and the individual development of the capacity for self-realization, is necessarily intersubjective. 2) History can be conceptualized as moving in the direction of an ever-widening collective scope of recognition; as societies progress, individuals can lay intelligible claims to more and different kinds of subject positions. Every new claim to recognition must be won in the form of social

struggle. A term such as "social struggle" can be applied widely, whether to organized movements or personal conversations, since existing as an unrecognized/unrecognizable subject always seems to constitute a struggle in and of itself. In this sense, the progression of history has a *telos,* and this *telos* is a distinctively ethical one; 3) "Ethical life" refers to the set of social structures which make up the conditions for universal self-realization. Honneth aims to describe a kind of ethical end-state through elaborating a set of ethical norms which relate to the possibilities and structures of self-realization and universal mutual recognition. I will use Honneth's theory of recognition, intersubjectivity, and ethical life to infer a set of desiderata for community-facilitated rectification.

Chapter Three: Chapter three will be an argument as to why prisons are incapable of satisfying the desiderata for systems of community-facilitated rectification. I will focus on two core reasons: first, penal confinement constitutes a deprivation of reality, and thus a denial of recognition; second, prisons involve a rescinding of legal personhood. In short, prisons perpetuate structural denials of recognition in such a way that makes them contrary to any recognition-based approach to the rectification of harm.

Chapter Four: Prisons create a social circumstance which normalizes the denial of subjectivity to people the state has incarcerated. The fact that prisons constitute institutionalized denials of recognition, almost always in the form of physical and psychic violence, means that one has a normative imperative to advocate for the abolition of prisons and to join the already existing social struggles for de-carceration and de-criminalization. This ethical imperative relates to Honneth's normative theory of history, by which history moves in the direction of increased recognition of previously marginalized (or impossible) subject-positions *but only through widespread social struggle.* Chapter four will describe the positions of some contemporary

abolitionist thinkers, before considering theories of restorative justice and transformative justice as alternatives to the punitive justice approach taken by the state.

(1): What is punishment? Can it be justified?

1.1 Defining (legal) punishment

Before a critical discussion of punishment, I must clarify exactly what it is I am talking about. Hart's criteria for "standard" punishment: "(i) it must involve pain or other consequences normally considered unpleasant; (ii) it must be for an offence against legal rules; (iii) it must be of an actual or supposed offender for his offence; (iv) it must be intentionally administered by human beings other than the offender; (v) it must be imposed and administered by an authority constituted by a legal system against which the offence is committed" (Hart, 1968: 5). These criteria have been formative for many subsequent analyses of punishment, both in favor and against.

I like Dave Boonin's (2008) explanation of legal punishment as "Authorized Reprobative Retributive Intentional Harm" (Boonin, 23). Unless noted otherwise, I will use the terms "punishment" and "legal punishment" interchangeably. Particular considerations of extra-judicial punishment will not be covered in this essay. For Boonin, punishment involves an intent to harm the person being punished, with harm broadly construed to involve anything from inconvenience to death. Boonin's view of punishment with regard to harm is close to Hart's (i) but differs on an important point, since for Boonin the *intent* to cause harm is the essential element, rather than Hart's requiring that the attempt to harm be *successful*. "Intentional harm" works both in the above sense, and in the sense that somebody cannot be punished by accident. Additionally, it clarifies the difference between harm as intended and harm as merely foreseen; for example, the state requiring the perpetrator of a crime to compensate the victim does not necessarily qualify as

punishment. Boonin uses "retributive" here to define punishment as essentially retributive in distribution, although not necessarily retributive in aim. This is Hart's third (iii) condition of punishment, which also makes the distinction between retributivism in distribution and in aim; retributivism in distribution means that the person who is punished must be the person who committed the correlative crime, it also means that if an innocent person mistakenly receives hard treatment or consequences for a transgression they did not commit then those consequences cannot technically be called punishment. Punishment is "reprobative" because it serves an expressive function and communicates social condemnation, a point that J. Feinberg highlights in "The expressive function of punishment" (Feinberg, 1970). The reprobation in punishment is meant to exercise a kind of shaming, the communication of a particular disapproval. Finally, punishment is "authorized" in that it must be "carried out by an authorized agent of the state acting in his or her official capacity" (Boonin, 24). Somebody who is not acting explicitly on the state's behalf cannot perform punishment; this is Hart's fifth (v) requirement. I found "authorized reprobative retributive intentional harm" to be a clear, useful, and value-neutral description of legal punishment.

Legal punishment refers to punishment meted out by a state. This is to distinguish it from other forms of punishment, such as when administered within a family, or when people informally punish each other in response to interpersonal conflict. While such circumstances sit outside the scope of this paper and are excluded from my use of the term punishment, one can still fruitfully apply analyses of legal punishment to other kinds of punishment since people punishing each other extra-judicially often re-enact an internalized logic of the penal state. Here, I understand a state as a bureaucratic constellation of hierarchical political power with a purported monopoly on legitimate violence, a monopoly on policy decisions, and the necessary

authority for extracting the obedience and compliance of its subjects. Any consideration of punishment must call into question the nature of the state since "punishment is an exercise of state power, and therefore the justification for punishing a particular individual must be located in a general theory of the state and its purposes" (Fletcher, 181).

1.2 What is "community-facilitated rectification"?

However this thesis does not deal exclusively with punishment, but also discusses the some conceptual parameters for a guiding theory of community-facilitated rectification in general. Punishment is one conceptualization of community-facilitated rectification. By community-facilitated rectification I mean those processes which moral communities turn to in order to cultivate just social relations after circumstances of injustice. This applies both to situations of injustice at the interpersonal level, or to injustice at the structural level. For example, if two neighbors have a dispute that ends in the destruction of property, blows, or some other violence, then community-facilitated rectification may look like a mediation which ensures the restoration of wrongly damaged possessions and arbitrates further means of community accountability for those involved. At the structural level, it could look like the official paying of reparations to historically disenfranchised or colonized communities by the state. Such processes are "community-facilitated" in that it is a moral community or some representative of it which makes the intervention, either due to the collective nature of the transgression or norm-violation in question or the inability of agents to come to conflict-resolution without the insight of a third party. It is "rectification" because there is an attempt at making-right, or correction.

All legal punishment, at least when considered in ideal theory, is community-facilitated rectification. Or rather, all theories of legal punishment are theories of community-facilitated rectification. In such cases, the state is the representative of the moral (legal) community, and

punishment serves as the means of rectification. Even a hardline utilitarian about punishment should agree with this. On the one hand, the strong utilitarian may claim that punishment is not a function of rectification since it is only forward-looking; it does not attempt to right a wrong, but instead only aims to produce better outcomes for everyone. It aims towards utility, not justice (or conflates them). However, in this instance I would argue that under a strict utilitarian framework the "making better" of punishment still constitutes a "making-right" of rectification, since a failure to maximize utility constitutes a wrong under a utilitarian moral paradigm. Using punishment to maximize utility is then rectification of a sort, since it is the "making-right" of social contexts under which utility could not be maximized without it. Thus, theories of rectification can be backwards-oriented, forwards-oriented, or both. I do not mean to argue for a particular reading of utilitarian ethics, but instead intend to show the broadness with which "community-facilitated rectification" can be theorized.[1]

Choosing to contextualize punishment within this broader framework accomplishes two things: 1) it emphasizes the plurality of approaches to justice, definitions of justice, and theories of community available to social philosophers. It reminds us to remember punishment's contingency, and allows one to see, or at least to think, beyond punishment and the state even as this paper zooms in on them. In other words, I argue in terms of community-facilitated rectification rather than legal punishment because I want the horizons of this thesis to move beyond particular ways of organizing society and instead to be applicable across various communities and contexts, since I think imagining an otherwise is vital to critiques of existing

[1] I want to again stress that these comments about punishment as theoretical rectification apply to *legal* punishment. Extra-legal punishment, such as that enacted by parents, teachers, or between community members, could also fall under categories like retaliation or discipline. Additionally, I want to emphasize the distinction between legal punishment as it is actually applied and legal punishment as it is theoretically justified; I claim that all legal punishment is *justified* as rectification, not that all legal punishment is in fact rectificatory (either in actuality or in aim).

social orders and paradigms; 2) if one develops an ethical theory at the level of community-facilitated rectification, then this gives them something to evaluate punishment (or particular methods of punishment) against. Such theorizing gives one two vantages from which to critique punishment, whether a specific method or in general; I critique arguments about punishment (Chapter One) before building a more general ethical theory and using that as an additional standard of criticism (Chapters Two and Three).

1.3 Mainstream justifications and aims of legal punishment

1.3.1 Deterrence and General Prevention

Consequentialist justifications of punishment understand punishment as justified if it produces overall better outcomes in society than if punishment were not applied, or if it were applied differently. General prevention, or deterrence, is one aspect of consequentialist and utilitarian theories of punishment. A consequentialist proponent of punishment on the grounds of deterrence might argue that we need systems of punishment in place in order to manipulate the cost-benefit analyses conducted by potential lawbreakers. In other words, if one assumes individual agents are rational, and if a society wants its laws to be followed, then the cost of committing a crime must be greater than its possible benefits. Those actors who choose to risk it must be adequately punished in order to exemplify the deleterious consequences of breaking the law to other potential lawbreakers, and to reassert the demands which the state in civil society makes upon its subjects. General prevention can be summarized as "the notion of preventing not the inmate, but others, from committing criminal acts" (Mathiesen, 55). In modern criminology, general prevention and punishment's deterrent effects "constitutes a prevailing *paradigm* in society...The notion of the general preventative effect of punishment is so deeply ingrained in the 'common sense thinking' of society that questions about its actual existence are frequently not

raised or remain unasked" (Mathiesen, 55). However, despite the taken-for-granted-ness of general prevention and deterrence-based approaches to punishment, I think there are some important grounds for criticism which undermine their core claims.

One such critique is based on the means principle (Kant, 1785; Parfit, 2011). I this principle to mean that to treat another human being merely as a means to an end, rather than as an end in themselves, is a violation of moral norm. The logic of deterrence-based justifications of punishment seems to run counter to the means principle because under general prevention people are punished merely as a means to improve the circumstances of others, or to help others avoid committing acts for which they would be similarly liable for punishment. By the justificatory logic of deterrence, those whom the state punishes become a sacrifice to a hypothetically better future and for others as ends (Mathiesen, 76). When framed in terms of the means principle, deterrence-based justifications of punishment turn persons into non-persons because their punishment is used as a means to increase the good of others (treated as ends) without taking their interests into account.

A second widespread objection to deterrence stems from its theoretical openness to punishing innocents. Deterrence theories of punishment imply the utilitarian permissibility of punishing innocent people for crimes they did not commit in order to generate punishment's deterrent effects. Innocents can be punished justifiably because the future good generated by such punishment outweighs the negative value of the harm entailed by the punishment. The deterrence-consequentialist could respond by arguing that, when punishment is deployed against the innocent in order to generate positive social outcomes, then the hard treatment cannot strictly count as punishment because it violates "punishment's" distributive criteria. Therefore such objections actually argue against something other than punishment, and are thus irrelevant.

Utilitarian approaches to punishment are often criticized on the basis of valuing overall social good above any robust conception of interpersonal justice, and the arguments which answer the deterrence proponent's semantic rebuttal to reassert the punishing-the-innocents objection are extensive (see Boonin: 2008, 41-52 and Golash: 2005, 43-4). However, I will take the deterrence proponent's point as a well-founded response for the sake of argument. But even then, I think a hypothetical similar to the punishing-the-innocents objection can be used to expose deterrence justification's intuitively objectionable implications, while still maintaining the definitional integrity of the concept of "punishment" as retributively distributive. It is a scenario in which the harming of innocent people becomes a function of the punishment of a guilty person; such innocents could be the punished person X's family members, friends, community members, or people X is not directly related to but whom they would not wish to suffer on their behalf. If causing the suffering of innocent others is part of the punishment of a guilty person, and also the most effective way of deterring future crimes, then this shows that deterrence-based justification of punishment implies the justified harming of innocents through a state's punishment apparatus, even if it is not strictly "punishment." Deidre Golash refers to this as "vicarious punishment" (Golash, 2005: 43), and it is an intuitively unacceptable consequence of deterrence-justified punishment which rests on the same moral intuitions as the punishing-the-innocents objection, while circumventing the deterrence-proponent's semantic point. Golash puts it, "the burdens of producing the social good of crime prevention may fall heavily on some subgroup of the population, and there is no reason in (utilitarian) principle why that subgroup must correspond to the sub-group responsible for the crimes" (Golash, 43-44). This objection illuminates deterrence-justified punishment as highly vulnerable to distributive unfairness and other counterintuitive results.

In addition to intuitive flaws in utilitarian distributive rationale, deterrence-based justifications of punishment depend on an empirical claim which has yet to be sufficiently supported to the extent necessary to justify the breadth, power, and authority of national criminal justice systems. The claim is twofold: that punishment does in fact deter people from committing future crimes (or that general social good is maximized through the infliction of harm on a comparatively small group), and that *nothing other than punishment* could produce such positive outcomes. In other words, under a utilitarian, deterrence-based justification punishment is only justified if it is necessary, since if comparably good social outcomes can be reached without the inducement of suffering entailed by punishment, then the state's causing harm is no longer justified. Mathiesen (*Prison On Trial,* 2006) analyzes the empirical shortcomings of deterrence theory on the level of society's communicative media infrastructure, and by asking whether punishment deters more than other sorts of social interventions (if it really even deters at all).

Deterrence is really made up of two things, the act of punishment itself and the state's communication of the punishment, or the correlating criminal legislation, to the public. Mathiesen writes that "as a method of implementing general prevention, state-produced punishment is confronted by problems...state punishment with a view to general prevention fails to the extent that the factual events and objects in question (the legislative measures, the sentencing practice, and so on), the designations used, and the sign structure within which the signification is received and interpreted deviate from what it takes to make general prevention work" (Mathiesen, 68). Mathiesen mounts his critique through an explanation of the mass media apparatus's operating through a "filtration" and "focusing" of information with regard to legislation and crime.

Filtration is the systematic omitting of the law's mundane, quotidian details (which makes up the bulk of criminal legislation and sentencing decisions) from communication to the public. Filtration may also refer to the exclusion of legal details which the state or those in positions of communicative power do not want the public to have widespread knowledge of. "Focusing" occurs after filtration, and involves drawing close attention to particular instances of crime and punishment, usually those which are most likely to engage media consumers or be considered "newsworthy. "Focusing takes place through decisions about priorities concerning the front page, the selection of pictures, decisions about layout, the use of vignettes calling the reader's or viewer's attention to the story, as well as dramaturgic treatment of the material through the use of serials, selection of background material and so on...Through filtration, unsenational and undramatic material is taken *out,* while through focusing, sensational and dramatic material is moved *forward.*" (Mathiesen, 72). If deterrence is to justify a system of punishment, it requires an effective and comprehensive delivery of legal information. However, due to the nature of the messaging and its media packaging, punishment cannot reasonably serve the interests of general prevention if information about only the most sensational crimes and punishments is disseminated. When this is the norm, "the small differences, and the way in which the criminal justice system handles mass crim, which constitute the large bulk of grey, everyday attempts to provide messages with a preventative effect, are only to a very small extent transmitted. Communication of 'legal news' is fundamentally distorted" (Mathiesen, 73).

Finally, it is still unclear whether punishment functions as the kind of deterrent which proponents of deterrence-justified punishment seem to think it does. Actual empirical data on the deterrent effects of punishment remains inconclusive and unclear; however, because general prevention operates so pervasively as a research paradigm in modern criminology, such

disjunctures are explained away as flaws in the research design rather than exposures of flaws in the paradigm itself. Mathiesen argues that "general prevention research adjusts to general prevention as a paradigm, and also to an underlying main view in research in general, which implies that uncertain and unclear results are a function of imperfect research instruments, and that *reality is 'actually' certain and clear*" (Mathiesen, 75). Because they can't rely on data, most arguments for deterrence take 'common-sense' as their point of departure; however, Mathiesen questions the validity of arguments from common sense since 'common-sense reasoning' entails a generalization of one's own experience, and a taking for granted that others experience the world in similar ways to oneself. This form of reasoning fails to take into account the ways in which one's material circumstances and life experience shape one's motivational schema; as Mathiesen notes, a person's proximity to illegal behavior or their level of material need tends to neutralize the kinds of deterrent effects punishment may have on their normative reasoning. Deterrence only justifies punishment if it works in the way its justificatory arguments claim, *and* if it works demonstrably better than other non-punitive social interventions. For example, it seems 'common-sense' to me that the best way to curb the crime brought about through different forms of social insecurity is to find ways to meet unmet material and psychological needs, rather than threaten people with further pain and precarity (Waquant, 2009). Mathiesen comments, "the point here is that when facing people with such a complex and problematic background, a background which, as a life context, increases the probability of criminal behavior, the preventative effect of punishment is also neutralized" (Mathiesen, 74).

I have found deterrence as a justification of punishment lacking along multiple dimensions, in both ideal and nonideal circumstances. Next I will criticize retributivism as a justification of legal punishment.

1.3.2 Retributivism

The other most commonly discussed argument justifying legal punishment is retributivism. David Scott broadly characterizes retributivist justification for punishment as the belief that "we should punish because the guilty deserve to suffer... Retributivism is grounded in the principle that through harming another human being in the past, wrongdoers *deserve* to be harmed. In doing so, retributivists focus on an offender's guilt and equate the penalty with the wrong done" (Scott, 2018: 92). Boonin (2008) taxonomizes different strands of retributivist theory, and deals primarily with two sets of justifications, desert-based justification and forfeiture-based justification. I will follow Boonin in this regard, and deal with each of these in turn. Following a summary of Boonin's argument, I will critique how retributivism positions victims with regard to the means principle.

a. Desert-based justification

One kind of retributivist justification has to do with the notion of desert. Desert retributivists believe that when somebody commits some wrong, then they deserve to be punished and that some good is achieved through the actualization of their punishment. Desert-based justifications for punishment can be understood as "the claim that punishing a particular offender is justified regardless of whether the act produces any further positive consequences in the future simply because his being punished right now is better than his not being punished. Punishing the offender who deserves it will, on this account, be constitutive of the world's being better, rather than merely serve as a cause of some further effect that will make it better" (Boonin, 93). The punishment should be directly proportional to the crime, or be formulated with exactness as that which somebody "deserves." Michael Moore (1987) espouses a retributivist theory of justice and justification of punishment on the basis of our intuitive retributive feelings towards perpetrators

regarding cases of horrific violence or injustice, which are then generalized as supportive rationale for the permissibility of punishment in general; Boonin criticizes this argument, and calls it the "argument from cases."

It is unclear how exactly somebody's pain is transmogrified into a good, even if they "deserve" it. Such an explanation seemingly relies either on affective intuitions, which may or may not be warranted, or on the notion of some cosmic moral alignment being set right. It is not clear why the infliction of pain is the only thing capable of delivering desert. Additionally, even if the basic claim of desert is true (that it is good that people get what they deserve through pain infliction), it remains unclear how this would form the justification of the state's right to impose disparately that which people deserve upon them. And finally, even if the retributivist were able to adequately respond to these considerations, retributivism would still be rejected as a justification of legal punishment since it is incapable of tracking legal and moral obligation in a way which is consistent with punishment as a tool deployed by the state for the enforcement of its laws (Boonin, 94-100). I will focus on this last point.

There are people who break laws and quite obviously do not deserve to suffer, even when the laws they break are just and reasonable. This is because

> "there are many acts that are not immoral even though they violate morally justified laws...Unavoidably, therefore, there will be cases in which an act is not immoral even though it violates a just and reasonable law. But if an act is not immoral, then the person who performs it does not deserve to suffer for it. And if the person does not deserve to suffer for it, then the desert-based retributivist position cannot justify the claim that the state has the normal right to punish him for doing it" (Boonin, 94).

According to this argument, one basic flaw of retributivism is that the scope of law and the scope of desert will never perfectly align; laws do not track morality (nor are they meant to), which makes moral desert an unsteady base for a justification of legal punishment. On the one hand,

there are cases where a reasonable law prohibits activity that is not immoral, such as competently driving without a driver's license, or acts in which the morality depends on context, such as Robin Hood's thievery. However, if illegal acts are not immoral, then it cannot be said that their perpetrators deserve punishment. On the other hand, there are cases in which somebody transgresses a moral norm outside the purview of law; some people may "deserve" punishment but will not have broken any laws, and it may not be just or reasonable to make laws against it.

That the law does not track morality is not a deficiency in the law per se, since law is not a mechanism for discerning and imposing moral code, but is rather a practice of creating and maintaining social order (Hart, 1961: 202-204). However, the mere idea of some "desert" existing is not enough to justify the state's epistemic and penal power; the malleability of the notion of desert makes it an easy conceptual tool for justifying the state's use of repressive force. Even if somebody who transgresses a moral norm deserves some form of punishment, that alone does not justify the state having the power to determine which moral norms warrant punishment, nor the state taking upon itself to forcibly assert them. The combination of retributivism's failure to account for the disjuncture between law and moral desert, and the justificatory gap between the existence of desert and the right to punish, evince some of retributivism's shortcomings.

b. Forfeiture-based justification

Boonin also criticizes the argument for a retributive theory of punishment based on the forfeiture of rights[2]. The foundational claim of forfeiture retributivism is that "if *P* violates *Q*'s right to *X*, then *P* forfeits *P's* own right to *X* (or perhaps instead forfeits some equivalent right or set of rights)" (Boonin, 105). If committing a crime is in some sense a violation of the rights of another, then "it follows that offenders forfeit some of their rights in a way that non-offenders do

[2] He uses the work of Alan Goldman (1979) as the paradigmatic example of this form of retributivism.

not" (105). The state's right to punish "offenders" comes from the idea that those who violate others' rights abandon their moral duty in doing so, thus forfeiting their own claims to rights; thus, punishment cannot be considered a violation of one's rights since there is no respectable claim to a right in the first place.

The forfeiture claim is based on an entailment relation between having rights and having moral duties; if having rights (A) entails also having duties to respect others' rights (B), then not-B (no longer having a duty to respect other's rights) entails not-A (no longer possessing rights). The "not A" of this entailment lays the groundwork for the claim about forfeiture. However, while the logical formulation may appear valid at first, upon closer examination one realizes it is not. This is because the violation of a duty does not negate the existence of such a duty (Boonin, 109). Nobody would say that a person's duty not to kill disappears after they have killed once. Additionally, "it is difficult to believe...that it would be morally permissible for the state to torture the torturer, censor the censorer" and so forth (110); certain rights are inalienable, and their revocation unacceptable. The retributivist cannot turn to the "equivalent right or set of rights" component of the forfeiture claim here, since if the revocation of one kind of right is unacceptable, then so will too be the revocation of any true "equivalent right or set of rights." These considerations create an unbridgeable gap between the entailment claim about rights and the forfeiture claim at the center of forfeiture-based retributive justifications of punishment.

c. The place of the victim

An additional problematic feature of retributivism is the way it treats the victims of wrongdoing. At minimum, it fails to center the perspective of victims; it asks "what does an offender deserve on account of their transgression?" rather than "what does a victim deserve on account of their harm?" However, retributivism does not claim to be a theory of justice in general, but is rather a

justificatory theory of punishment; therefore, criticizing it on the basis of not addressing the desert of the victim is an issue with its incompleteness rather than its invalidity. But as Russell Christopher (2002) argues, retributivism does not merely ignore the victim of an offense but actually *uses the victim as a mere means* in order to justify and gauge punishing the offender. This is a hard-hitting claim, since criticisms based on the means principle are frequently levied against deterrence-based theories of punishment *by retributivists*, who claim to treat offenders as ends whereas deterrence theorists treat them as mere means. It if can be shown that retributivists also violate the means principle, but through their treatment of the victim rather than the offender, it would be a blow to the force of their arguments.

I will quote Christopher's summary of his argument that retributivism uses victims merely as a means, and then elaborate on its points. Christopher writes,

> "1) Victim-relative norm violation is necessary for the imposition of retributive punishment and for retributivism to treat culpable wrongdoers as ends; 2) The interests of crime victims as ends are irrelevant in retributivism; 3) Therefore, the necessary use of victims' being victimized constitutes using the victims merely as means in order to treat culpable wrongdoers as ends and to attain appropriate retributive punishment" (Christopher, 934).

I think the first claim is somewhat uncontroversial; it is in virtue of somebody having transgressed a norm which is defined in reference to an actual or hypothetical victim that retributivists claim somebody deserve to be, or have forfeited their right not to be, punished. This is obvious in cases where there is an evident victim, such as murder, theft, or battery. In situations where there is not a direct victim but the prohibited act poses a public risk, such as driving while intoxicated, the prohibition is defined in terms of a hypothetical or potential victim. Lastly, if a case does not fit into either of these categories, then either the state or "society" itself could be conceptualized as the "victim" of a crime, such as in cases of vandalism; in this sense,

even “victimless crimes” are still breaches of victim-relative norms (although the majority of criminal offences are conceived with reference to an individual human victim [Christopher, 936]). At this stage of the argument, victims of crime are used as means (though perhaps not merely as means) to determine the corresponding level of punishment deserved based on how much they were affected; retributivism must use victims as means both to define what qualifies as a crime deserving of punishment and to adjudicate the amount of punishment an offender allegedly deserves.

On the second point, that the interests of victims are irrelevant in retributivism, Christopher references Moore’s arguments. Moore, an oft-cited retributive theorist, argues that the victim’s interests or perspectives are necessarily irrelevant to an instance of retributive justice (Moore, 1999). This is because retributivism does not seek to empower a person who was harmed by a crime, or even to compensate them, but rather only seeks to mete out an offender’s proper desert. Moore argues that justice is not a function of what a victim wants or believes to be appropriate, but rather that the issue of just desert supersedes the interests of a victim; in this sense, it would actually be a failure of justice to take the interests or perspectives of a victim into account beyond their use in gauging the proper amount of punishment due to the offender. This does not mean that victims ought not be compensated or receive some sort of reparation, but rather that such compensation is not a part of the retributive justice process.

The first step in Christopher’s argument established that retributivism uses victims as a means, while the second argued that retributivism does not treat victims as ends. “If retributivism uses victims as means and fails to treat them as ends, then retributivism uses victims as *mere* means in order to determine if and to what extent offender should be punished” (Christopher, 939). A retributivist may attempt to reject this argument by saying that compensation to the

victim *can* be a part of the justice process, which means that retributivism does not *necessarily* treat victims as ends; however, as Moore (1999: 89) notes, such measures lie outside the purview of retributive justice, and become corrective or restitutional forms of justice. Since retributive justice uses a victim as a means to justify some corresponding amount of punishment (and to justify the punishment itself), and victims are not treated as ends under a retributive theory of punishment, then it follows that retributive theories of punishment violate the means principle because they inevitable treat victims of offenses as mere means.

In this chapter, after clarifying terms such as "punishment" and "community facilitated rectification," I have criticized two popular approaches to the justification of legal punishment and found them lacking. Of course a full survey of such justificatory arguments lies outside the scope of this paper, nor do I think that I have outlined knock-down arguments or settled the issue definitely. Rather, in critiquing two of the major philosophical sources of justificatory rhetoric for the state's use of punishment, I hope to have created a persistent doubt that the usefulness, goodness, or justifiability that legal punishment has been or can be philosophically defensible; at the very least, I hope to have pierced legal punishment's "common-sense" normalization enough to make one question the reasonableness of the extent of the state's penal power. In the next chapter, I will discuss Axel Honneth's recognition theory and use it to infer a set of desiderata for community facilitated rectification processes.

(2): Intersubjectivity, Recognition, and Rectification

"Recognition Theory" is one kind of relational theory of autonomy and subjectivity. Relational theories of subjectivity and autonomy are groups of ideas and theories which explain and/or ground concepts such as freedom, consciousness, autonomy, self-realization, political and ethical life, and becoming in terms of human beings' confrontations with others in social life. Such theories are "intersubjectivist" in the sense that one's engagement with others is the point of departure for any further conceptual analyses, normative reasoning, or examinations of social life. In this chapter I will use Recognition Theory to ask: What sorts of creatures are we? How do we become moral agents? What are the formative conditions of our psychic and social life, and what kinds of frameworks can such inquiries provide in an analysis into the ethics of punishment's justification, aims, and methods? I will lay out Recognition theory as a social ontology which grounds a theory of normative ethics and a theory of history. I will then discuss why the socio-ontological framework Axel Honneth (1995) constructs presents us with a set of desiderata for the rectification of harm in moral communities.

In *The Struggle for Recognition,* Honneth uses the work of early Hegel and social psychologist George Mead to construct an intersubjectivist framework of ethical life. By "ethical life," Honneth refers to relations amongst others such that they engender the self-realization of morally autonomous agents and a society formatted around a universal possibility of a "good life." Honneth indexes a good life to the structural conditions of self-realization rather than any particular set of substantive conditions. In Honneth's project, "morality...becomes one of several protective measures that serve the general purpose of enabling a good life...it has to do with the structural elements of ethical life, which... can be normatively extracted from the plurality of all particular forms of life" (Honneth, 176-177). Honneth argues for a relational concept of ethical

life based on the intersubjective structure of relations of mutual recognition. The core idea in Honneth's recognition theory is that it is through engagements with others that we form self-consciousness and come to understand ourselves as subjects imbued with normative status. Honneth's overarching argument can be divided into three interconnected theses regarding the nature of becoming a moral subject amongst other subjects (Subjectivity Thesis), the normative *telos* of history (Historiographical Thesis), and regarding the nature of ethical life (Ethical Thesis).

2.1 Subjectivity Thesis

One's relations-to-others have structurally formative roles in one's relation-to-self. This implicates people in one another's selfhood and subjectivity. The inter-relatedness of one another's consciousness, personhood, and subjectivity presents certain ethical demands regarding the widening of possible recognitive relationships we can have, at both individual and social levels. Honneth argues that new possible relations of recognition only come about as the result of social struggle. In order to develop his theory of the subject and its corresponding theory of ethical life, Honneth draws on the early writing of Hegel during his time at Jena. During his Jena years, Hegel "sees a society's ethical relations as representing forms of practical intersubjectivity in which the movement of recognition guarantees the complementary agreement and thus the necessary mutuality of opposed subjects" (Honneth, 19). For Hegel, conflict between subjects is central to each of their respective processes of self-realization, as well as to the creation of ethical communities (and persons), and the eventual cultivation of universal respect.

Honneth criticizes Hegel's conception of intersubjectivity by showing it to rely upon unsound metaphysical assumptions, especially as Hegel's thinking moves away from his earlier intersubjectivist hermeneutic and into what will become his philosophy of consciousness in the

Phenomenology of Spirit. In order to salvage the early Hegel's insights, Honneth bolsters them by turning to the 20th century social psychological writing of George Mead and replacing Hegel's metaphysical base for his intersubjective hypothesis with Mead's empirical psychological one. Honneth uses the synthesis of Hegel and Mead to outline three sites of recognition formative for the intersubjective relations of ethical life. The three sites of recognition which Honneth outlines are those of love, law, and solidarity, and each correspond to different modes of self-realization. Honneth's overall thesis regarding subjectivity can be understood as: "The connection between the experience of recognition and one's relation-to-self stems from the intersubjective structure of a person's identity...to this extent, the freedom associated with self-realization is dependent on pre-requisites that human subjects do not have at their disposal, since they can only acquire this freedom with the help of their interaction partners" (Honneth, 174).

2.1.1 Love

Love is the first site of recognition. It is a relation of dependence found in parent-child dynamics, dear friendships, companionships, or between romantic or non-romantic life partners. It is an intense emotional bond shared amongst few people, and a kind of recognition through which one comes to inhabit an "I" in the first place. Honneth discusses Hegel's conception of love as the first stage of reciprocal recognition, because it is at this stage where we recognize one another as creatures with needs. It is the mutual intersubjective acknowledgment of neediness which fosters the recognition of one's own status as a creature with various needs. Similarly, it is through one's learning to understand oneself as a creature with needs that we come to understand others as creatures with needs, whose vulnerabilities are related to one's own, and to engage with them as such. For Hegel, love is a 'being oneself in another' (Hegel, quoted Honneth, 96), which

is a way of "speaking of primary affectional relations as depending on a precarious balance between independence and attachment" (Honneth, 96). Honneth sees such a balance also playing out in psychoanalytic object-relations theory, which "convincingly portray[s] love as a particular form of recognition...to strike a balance between symbiosis and self-assertion" (Honneth, 98). Psychoanalysts provide Honneth insight into some structural dimensions of intersubjectivity through its theories of the dynamic between a caretaker and infant.

Honneth uses the mother-child relation as a paradigmatic example of the symbiosis-individuation dialectic involved in recognitive love relationships[3]. Infanthood is one primary instance of a subject's self-conception growing from mutual recognition with an other *as other*. If a newborn is to remain alive, they require a kind of care which does not position them subjectively outside of the caretaker, but rather the caretaker "is merged with the child in such a way that one can plausibly assume that every human life begins with a phase of undifferentiated intersubjectivity, that is, of symbiosis" (Honneth, 98).This is an instance of "absolute dependency," (Honneth references Donald Winnicott), in which the child and its caretaker are mutually dependent on one another for the satisfaction of their needs "and are incapable of individually demarcating themselves from each other" (Honneth, 99); the infant is absolutely dependent because they cannot satisfy any of their own physical needs and because the state of their cognitive maturation causes them to projectively identify themself with their surroundings, and the caretaker is absolutely dependent because they projectively identify themself with the infant. In such an instance of radical symbiosis, Honneth summarizes Winnicott's: "how are we to conceive of the interactional process by which 'mother' and child are able to detach

[3] For this, Honneth turns to the work of Donald Winnicott and other object-relations theorists such as Melanie Klein and John Bowlby

themselves from a state of undifferentiated oneness in such a way that, in the end, they learn to accept and love each other [and themselves] as independent persons?" (Honneth, 98).

After the discontinuation of the caretaker-child symbiosis, as the infant ages and the caretaker can begin separate themselves from the child's needs, then the child must "learn to be alone" in the sense of developing an undistorted relation-to-self, which can only occur through the child's remembering its caretaker's love as it was issued from an independent being and re-enacting such relations with other beings or things in its environment. Performing the movement from total symbiosis to independent entity engaged in an environment of other independent entities, and then inhabiting the space between symbiosis and self-assertion[4] frames all future love relationships. The relation between symbiosis and self-assertion is such that "ego-relatedness and symbiosis here represent mutually required counterweights that, taken together, make it possible for each to be at home in the other" (105). Love as one level of mutual recognition is important to describe because it provides a useful introduction to recognitive relations, and one way in which our experience of conscious self-hood hinges on our engagement with an other mutually recognized as both independent and needy. Next, I will consider a different kind of recognition, which centers the universality of law rather than the particularity of love.

2.1.2 Legal personhood

Legal persons are such that they "can be sure that certain of their claims will be met" (Honneth, 108) by their community. Honneth, following Hegel, implicates the state and the development of modern legal relations in his understanding of the progressive widening of a society's scope of

[4] What Winnicott understood as the "balance between boundary-establishment and boundary-dissolution" (Honneth, 105)

recognition. However, I will use "legal" here in a way which does not entail a state or even law as we know it, but rather that the normative claims a "legal person" makes can be sure or almost-sure to be met. This may be in virtue of something other than law and other than a penal apparatus, such as a robust code of ethics or strong and non-coercively applied community norms. I find this consistent with the other aspects of Honneth's theory, since Honneth's overarching project in *The Struggle for Recognition* involves developing a universal, historically un-tethered framework for the constitution of ethical life, I think my reading of Honneth's use of "legal person" is more true-to-form than a reading which essentializes a state as the assumed background social context and arbiter of justice. In this sense, when I use the word "law" I understand it to indicate more generally those social institutions (whether cultural, political, or some other source of collective norms) which ensure the universal meeting of certain subjective claims.

Honneth describes how relations of recognition operate with respect to law; "we can only come to understand ourselves as the bearers of rights when we know, in turn, what various normative obligations we must keep vis-à-vis others: only once we have taken the perspective of the 'generalized other', which teaches us to recognize other members of the community as the bearers of rights, can we also understand ourselves to be legal persons, in the sense that we can be sure that certain of our claims will be met" (Honneth, 108). Legal recognition, then, is applied to all persons in a non-graded fashion (unlike social esteem), which in my view indicates that a stripping away of legal recognition amounts to a stripping away of recognized personhood. Which human beings qualify as "persons" for a given community depends on the particular structures of intersubjective recognition at work, while the ideal of ethical life of course involves universal legal personhood. Additionally, Honneth foregrounds the importance of being treated

as a legal person with normative status in order to form an awareness both of oneself as a normatively endowed being and of others as beings with normative status. With legal recognition, mutuality is such that one must be treated as a legal person in order to fully and truly recognize others as legal persons. A widening of a given community's scope of legal recognition, the inclusion of more human beings under the umbrella of persons, only occurs through some form of social struggle or conflict.

One way in which subjects reciprocally recognize one another as legal persons is through acknowledging one another as agents capable of moral autonomy and freely orienting themselves toward the good. Such ascription of moral autonomy to others is vital to the validity of law itself, since "if legal order can be considered to be valid and can count on the willingness of individuals to follow laws only to the extent to which it can appeal, in principle, to the free approval of all the individuals it includes, then one must be able to suppose that these legal subjects have at least the capacity to make reasonable, autonomous decisions regarding moral questions" (Honneth, 114). Another mode of legal recognition occurs when subjects recognize one another as participants in social will-formation; "social" or "discursive will-formation" should be understood as those instances of collective rationalizing which go on to inform the extension of relations of legal recognition itself. The connection between legal recognition (or legal personhood) and social will-formation hinges on the extent to which somebody's claims to subjectivity are recognized as intelligible and valid, since legal personhood is a prerequisite for participation in collective rationalizing about legal relations themselves.

Honneth emphasizes that material circumstances play an important part in granting a subject access to processes of discursive will formation, since "in order to be involved as morally responsible persons, individuals need not only legal protection from interference in their sphere

of liberty, but also the legally assured opportunity for participation in the public process of will-formation, an opportunity that they can only actually take advantage of if they also have a certain social standard of living" (Honneth, 117). In this sense, exclusion from participation in public discursive will-formation, which can be taken as shorthand for the wide range of social deliberation that goes into politics, through the systematic withholding of material or psychic resources is a kind of denial of legal personhood. To be a legal person, for Honneth, means to possess rights, and "possessing rights means being able to raise socially acceptable claims" (Honneth, 120). If one's claims are unacceptable on the basis of those making the claims, rather than something substantive to do with the claims themselves, then it can be inferred that the people making the claims are being denied legal personhood. Honneth concludes the section on law and legal personhood by reiterating the multi-directional nature of legal recognition, or its lack, when he says "we can conclude that in the experience of legal recognition, one is able to view oneself as a person who shares with all other members of one's community the qualities that make participation in discursive will-formation possible" (120). In other words, before one can conceive of or relate to oneself as a legal personhood, and fully extend that status to others, they themselves must be regarded as a legal person with valid and intelligible claims.

Honneth also discusses "esteem" as a form of recognition, but I omit it from the body of the essay because it is less fundamental to Honneth, and less important for my argument.[5]

[5] Esteem is the third kind of recognition Honneth discusses. "Esteem" here simply refers to one's feelings of valued-ness by their community or society. It is distinguished from legal recognition in that esteem involves being recognized and recognizing oneself in term's of one's particularity, whereas legal personhood (at least ideally) involves a logic of universality. Esteem is a form of recognition because one's perceived relations of esteem impact one's relation-to-self. Under a system of ethical life, instead of one being esteemed in terms of one's value-contingent usefulness, one is valued based on one's singularity; this places the source of value not in one's performance of a role but rather in the fact of oneself and one's abilities (Honneth, 128). In a system of ethical life, esteem would be distributed symmetrically, when "symmetrical must mean instead that every subject is free from being denigrated so that one is given the chance to experience oneself to be recognized, in light of one's own accomplishments and abilities, as valuable" (130). Honneth understands the universal valuing of one another's particularity, and in doing so adopting certain shared goals, as "solidarity."

2.1.3 Misrecognition

Misrecognition and denials of recognition come in various forms, whether through violations of the body, denials of rights, or denigrations of ways of life. Regarding denials of recognition, "negative concepts of this kind are used to designate behavior that represents an injustice not simply because it harms subjects or restricts their freedom to act, but because it injures them with regard to the positive understanding of themselves that they have acquired intersubjectively" (Honneth, 131). In this sense, where a positive relation-to-self only becomes possible under conditions which foster relations of mutual recognition, instances of a denial of recognition or maladaptive recognition result in a distorted relation-to-self for the subject in question; an individual's capacity for forming future relations of recognition is in some sense dependent upon having developed a positive relation-to-self. And a positive relation-to-self

On the one hand, the struggles which results from instances of misrecognition are essential to the nature of relations of recognition, both individually and collectively. Honneth showed this, with regards to individuals, by describing the infant's attempted destruction of the mother as a necessary step in a child's cognitive maturation as they develop a sense of self as distinct from their environment; in doing so they begin to cultivate the intersubjective tools necessary to view their caretaker as an independent and needy being, whose needs are also fundamentally tied to their own. Honneth also centers struggles for recognition in describing the widening of possible recognitive relations at the legal and collective level when he writes that "the experience of a particular form of recognition was shown to be bound up with the disclosing of new possibilities with regard to identity, which necessarily result in a struggle for the social recognition of those new forms of identity...We are dealing here with a practical process in

which individual experiences of disrespect are read as typical for an entire group, and in such a way that they can motivate collective demands for expanded relations of recognition" (162). Common experiences of mistreatment and degradation form often the basis of social movements, which are then bolstered by the acknowledgement and recognition of one group's maltreatment by people outside of the demographic in question, who then reformulate their own recognitive relations and are compelled to participate in the social movement so that those denials of recognition can be reconfigured at a structural, systematic level. At all levels, struggle resulting from a denial of recognition is imperative to a widening of possible relations of recognition.

2.1.4 Deprivation of reality

However, Honneth's emphasis on and positively connoting of struggle should not transfer to his descriptions of denials of recognition or instances of disrespect. Denials of recognition are decidedly value-negative, and have deleterious consequences. Denials of recognition come in myriad forms, operating on both interpersonal and systematic levels. One site at which a denial of recognition occurs is the level of one's physical integrity.

> "The forms of practical maltreatment in which a person is forcibly deprived of any opportunity freely to dispose over his or her own body represent the most fundamental sort of personal degradation...For what is specific to these kinds of physical injury...is not the purely physical pain but rather the combination of this pain with the feeling of being defenselessly at the mercy of another subject, to the point of *feeling one has been deprived of reality*" (Honneth, 132, emphasis mine).

I find Honneth's point about the deprivation of reality as an element in the denial of recognition useful and telling. With regard to disruptions of bodily integrity, discussed in the above quote, it brings into focus embodiment as an issue of at-home-ness in the world. "World" in this case exists, like recognition, in the push and pull of the individuated and the social. Human subjects engage with and shape the world around them through their bodies, and feelings of confidence in

or identification with one's body is important to one's capacity for the projection of oneself into a shared world. Elaine Scarry (1985) notes that instances of excruciating pain (her case study is torture) bring about the dissolution of the world for a subject, as the subject is thrown back upon itself and becomes unable to reach through the barrier of pain into the external world. Experiences of the disruption of physical integrity can corrode someone's possibility for at-home-ness in their body (and thus, the world), after having such a basic relation of recognition ruptured, and can hinder their capacity for conscious engagement with the material and social world in the future.

Deprivation of reality also occurs in other forms of denials of recognition. In the case of the denial of legal recognition, for instance, humans are denied access to the creation of reality in virtue of their being systematically excluded from contexts of collective will-formation. They are also denied the possibility of making certain normative claims that, were they issued from a different utterer, would be granted as valid and reasonable. A contemporary example of this can be seen in the ongoing "Black Lives Matter" movement network as a response to centuries of racialized state violence in the form of police brutality and, more recently, mass incarceration in the United States. A key feature of "Black Lives Matter" is the contestation of the denial of legal personhood to a group of people. Black peoples' normative claims to something like a life free from state terror and racially disparate and violent policing is met by BLM's opponents either with retorts that the issue of state violence has been fabricated, or that the agendas of anti-racist movements operate under ulterior motives. Deprivations of reality of this sort function to exclude people from the processes which shape a collective social world.; in this sense, denials of legal recognition are double deprivations in being both a deprivation of one's reality (a negation of the validity of one's experience and any subsequent normative claims it may engender) *and*

exclusion from participation in the creation of a legally recognized world (exclusion from a shared reality). These deprivations of reality, both essential to and resulting from denials of recognition, generate widely felt experiences of disrespect which form the affective basis of progressive social movements.

2.2 Historiographical Thesis

The arc of history, its "moving in a certain direction" according to Honneth (171), can be analyzed in terms of societies' widening of their intelligible recognitive claims. The core element of such a theory of history is the continuous operation of struggles for recognition. History, and the subsequent widening of available recognitive claims, takes place through the struggles of the un-Recognized and those who align with them in social struggle. History "moves" towards a system of ethical life.

Commentary on the historiographical elements in Honneth's theory mostly lie outside the scope of this paper. However, I will say that I think Honneth's theory of history ought to be read not as an argument for the inevitable telos of history but rather as an extension of his ethical theory. As ethical subjects and historical actors we are normatively compelled to enact history with certain abstract, diachronic ethical goals in mind. Honneth centers social struggle, in which un-Recognized persons engage in social disruption in order to bring about recognition for their claims to a particular kind of subjectivity. In this sense, I would position Honneth's theory of history not as a metaphysical, neo-Hegelian teleological re-packaging of *Spirit,* but rather as the establishment of a normative compulsion both to widen the kinds of recognitive claims we, as individuals, grant to other subjects *and* to participate in social movements oriented towards the bringing about of such instances of widening on a structural scale. However if we are compelled

by history to participate in those struggles which harken over time towards the actualization of a theoretical ideal, then one must have a clear picture of how such an ideal can be articulated.

2.3 Thesis on Ethical Life

"In order to describe the history of social struggles as moving in a certain direction, one must appeal hypothetically to a provisional end-state, from the perspective of which it would be possible to classify and evaluate particular events" (Honneth, 171). Honneth proceeds to formulate a conception of ethical life based on his notion of recognition, which constitutes the intersubjective conditions necessary for universal human self-realization. However, since the ethical demands that recognition place on us vary depending on particular historical content, a theory of ethical life based on patterns of recognition will not "represent established institutional structures but only general patterns of behavior...[it] can be distilled, as structural elements, from the concrete totality of all particular forms of life...A formal conception of ethical life encompasses the qualitative conditions for self-realization that, insofar as they form general prerequisites for the personal integrity of subjects, can be abstracted the plurality of all particular forms of life" (Honneth, 174-5). On the one hand, then, Honneth's formal conception of ethical life is not tied to any particular historical content but is rather an ideal formulation based on the intersubjective relations necessary for self-realization, without specifying the specific social structures which make this possible. In this sense, a formal conception of ideal ethical life is ahistorical.

On the other hand, Honneth also emphasizes the way in which this ethical theory is inextricable from the historically contingent. While we can infer a theory of ideal ethical life through an examination of the structure of relations of recognition, the specific "character of intersubjective pre-requisites for self-realization becomes visible only under the historical

conditions of the present, which in every case has already opened the prospect of further normative development regarding relations of recognition...The formal conception loses its ahistorical character in that, hermeneutically speaking, it winds up dependent on what constitutes, in each case, the inescapable present" (Honneth, 175). "Ethics" then becomes participating in the progression towards the manifestation of a system of ethical life; the historically contingent content of ethics becomes a combination of expanding one's own possible relations of recognition, by unlearning internalized systems of value which hinder one's ability to form mutually recognitive relationships, and engaging in those social movements which work to widen the possible societal scope of recognition.

2.4 How does a theory of recognition illuminate harm? What does this have to do with rectification?

I think recognition theory provides conceptual tools with which to understand the social nature of harm, how it relates to mutual recognition or denials of recognition, and how it involves one's relation-to-self. I think it can also be used to infer a (non-exhaustive) list of desiderata for rectification.

Denials of recognition and instances of misrecognition have important implications regarding one's relation-to-self, both in the sense that a subject who causes harm has a warped or maladaptive relation-to-self from past experiences of denials of recognition or misrecognition *and* in the way the instance of harm negatively impacts both parties' relations-to-self. The difference between denials of recognition and misrecognition is important here; "denials of recognition" refer to an instance of withholding of a degree of personhood, some form of disrespect, or the framing of an identity, individual, or way of life in some derogatory fashion. "Misrecognition" doesn't necessarily involve disrespect, but is rather the positioning of someone as anything but a human of symmetrical value, neediness, capacity for freedom, and normative

status to oneself and *all other humans.* In this sense, misrecognition also constitutes recognizing somebody as someone who has undue power over others or asymmetrical normative status. For example, when men are socialized into misogynistic ways of thinking (which are then perpetuated in their language, behavior, and other relationships), they are not denigrated or disrespected, but their relation-to-self is formed such that their possible relations of mutual recognition are severely limited.

Recognition theory gives one the tools to think of the intersubjective structures of harm both at the level of those directly involved, and as a social whole. If the structure of subjectivity is fundamentally social, that is, inter-subjective, then particular instances of harm are inextricable from those social processes which form subjects who enact harm and deny people different kinds of recognition. Causing harm indicates a maladaptive relation-to-self, which can be contextualized in terms of one's life-narrative and their contexts and experiences of socialization. A relational, social theory of harm does not detract from the importance of personal accountability, but rather seeks to understand personal accountability in terms of the collective co-creation of ethical life, or universal relations of mutual recognition; personal accountability and collective shifts in the contexts of socialization are mutually constitutive. Harm, and denials of recognition in general, can occur on the systemic level as well as between individuals, and a theory of recognitive rectification should be able to accommodate harm on different scales.

A recognition theoretical approach to community facilitated rectification ought to operate on different levels, both between those immediately involved in the situation in need of rectification *and* as oriented towards the collective widening of society's recognitive scope. With this in mind, what desiderata for a theory of community facilitated rectification can be drawn from Honneth's account of recognition theory?

1: The response to harm should repair the broken relation of recognition between the directly involved parties, if possible. One may understand interpersonal harm as resulting from the denial of recognition manifested in action. If so, then rectification at the interpersonal level should include some kind of restitution for damage, and the person who harmed coming to a fully felt understanding of the extent to which they have disrupted another person's at-home-ness in the world. If possible and desired by the person who had been harmed, resources and mediation should be provided such that mutual recognition can occur between both parties. However, true mutual recognition should be understood as a desiderata, but not necessarily a condition; people who have been harmed may not have any interest or capacity to engage in a mutually recognitive relation, even a distant one, with the person who harmed them and, depending on the gravity of the harm, we shouldn't ask them to. This varies, for instance, in a case of assault or abuse and the destruction of one's possessions; it would be reasonable to have mutual recognition as a condition in the latter case, but not the former. The recognition of the person who was harmed by the person who harmed them is a condition, however, since no proper restitution or rectification could be said to have taken place without the person who harmed coming to understand the person they harmed *as a person* with the same normative status as oneself.

2: It should address the circumstances which produce harm and promote the perpetration of harm, whether social, cultural, historical, or material. This implies that the conditions of socialization undergo a kind of transformation such that relations of recognition are widened, strengthened, or reconfigured in the community in general. The collective widening of recognitive scope indicates a transformation in the conditions of socialization which produce

subjects with a proclivity to harm. This stipulation is a preventative one, which Honneth analogizes to medical prophylaxis as "the parallel to the preventative treatment of illnesses would be the social guarantees associated with those relations of recognition that are able to protect subjects most extensively from suffering disrespect" (135). In other words, rectification must address the structural roots of compounding harm, not simply each isolated instance. Since denials of recognition are often acts of asymmetrical power, though not always, relations of power which allow the perpetration of harm also ought to be reconfigured.

3: It should have a transformative impact on the person who committed the corresponding transgression, itself a denial of recognition, such that the scope of their possible relations of recognition is widened. It will also positively transform the person's relation-to-self, since denials of recognition often spring from and reinforce ingrained maladaptive recognitive patterns. This point is similar to (1), except that where (1) deals with the particular relation of recognition between the parties, (3) deals with the recognitive structure of the person's relation-to-self and relation-to-others.

4: It should not itself constitute a denial of recognition. This is because on a recognition theory account of rectification as woven into a historical progression of widening recognitive relations and possible claims to subjectivity, the means of rectification ought to be commensurate with the ends. This works in two ways: on the one hand, the method of rectification should not violate the personhood of the person who committed harm, because if one understands harm as an instance of the denial of recognition, and denials of recognition or maladaptive relations of recognition are related to one's relation-to-self, then the denial of recognition to somebody cannot be

justified in the process of rectification since it would only re-perpetuate a cycle of compounding harm instead of working to end it. It would thus be contrary to (3), and in tension with (2). On the other hand, a lack of any robust rectification process is also a denial of recognition to the person who committed the harm, since to refrain from accountability measures would be to fail to treat the person as a morally autonomous agent.

These desiderata can be adapted for the rectification of structural injustices and harm at systematic levels by emphasizing (2), and shifting (1) and (3) away from describing the circumstances of individuals and toward describing relations of structural and material recognition or denials of recognition. In this case, an emphasis on reconfiguring the structures of power (rather than simply switching power's occupants) becomes even more important.

Such a list of desiderata should not be taken as exhaustive. It is rather the beginning of an account which should be added to and re-formulated over time as the concepts outlined above are incorporated into the re-imagining of rectificatory processes.

This chapter has discussed Recognition theory as a social ontology, and provided some arguments as to why a theory by which we are respectively implicated in one another's subjectivity leads to a set of desiderata for community facilitated rectification. It should be stated that this by itself is not a policy proposal. I do not have a clear picture of what institutions would have to look like in order to go about justice in this way, and if I did I would not have a ready and easy answer to the question of how to bring them about. I also do not have an answer to the question of how to *ensure* a process of recognitive rectification. Rather, I have tried to infer a set

of criteria from Honneth's account of recognition theory which formulate some overarching conditions for rectification processes, while understanding that the particular contents of such practices will be indexed to the communities which are applying them.

In the following chapter, I will show some ways in which prisons are structurally incapable of meeting these desiderata, which means they are also not a recognitively acceptable practice for a state to enact as legal punishment.

(3) Carceral Confinement and the Deprivation of Reality

David Scott writes that "prisons are designed to deliberately create human suffering, hurt, and injury...Other sites of State detention (and other social institutions) may at times be experiences as equally, or even more painful than prison, but pain infliction is not their primary intention...*Pain* and the allocation of *blame* are the very reason why prison exists" (Scott, 2018: 204). Two aspects central to the concept of a "prison" are systematic confinement and punishment; prisons are institutions of penal confinement. The particular form of suffering which prison inflicts is not contingent upon poor material conditions or casual proximity to physical violence (although these characteristics are common and exacerbate the brutality of the penal apparatus) but has rather to do with the nature of carceral confinement, penal time, and civil and social death. In this chapter, I will describe two ways in which imprisonment is essentially a denial of recognition. One is the way in which the nature of confinement constitutes a deprivation of reality, which operates through the state's hegemony of space and a saturation of time-consciousness. The second way is through the removal of legal personhood that accompanies imprisonment.

The chapter's claim is that prisons are structurally incapable of meeting the desiderata of a recognition-theory approach to a just rectification of harm in moral communities because they constitute deprivations of reality and removals of legal personhood. The removal of legal personhood itself constitutes a deprivation of reality in the general sense, but I separate the two terms here so that "deprivation of reality" is used such that it applies to individuals' felt experience, and focuses on how punitive confinement impacts and shapes a person's being in the world and targets consciousness itself as the site of punishment. The removal of legal personhood is a deprivation of reality in the sense of the collective eschewing of one's normative claims and exclusion from participation in social life, which works on a logic of civil and social death.

3.1 The Deprivation of Reality

3.1.1 Hegemony of Space

Space structures life, and life animates space; an analysis of space cannot be taken out of the context of social relations, and any analysis of social relations must include an analysis of space. Such is Henri Lefebvre's refrain in his seminal work *The Production of Space* (1974). The way in which space permits, effaces, or makes meaning from/with certain feelings, actions, and experiences is an indication that the material and social, political, and existential and phenomenological dimensions of space cannot be disentangled. Lefebvre writes "(social) space is not a thing amongst other things, nor a product amongst other products: rather, it subsumes things produced, and encompasses their interrelationships in their coexistence and simultaneity…Itself the outcome of past actions, social space is what permits fresh actions to occur, while suggesting others and prohibiting yet others" (Lefebvre, 73). On Lefebvre's account space is no mere container or vessel, but is instead active in the (re)production of different social

relations, histories, institutions, and hierarchies; at the same time, it is a foundational aspect of a particular subject's existential engagement with the world, and how they relate themselves to it.

Lefebvre explains three different axes of social space; there is a spatial practice, the representations of space, and representational space (Lefebvre, 33). Representations of space are the "order which those relations [of production] impose" on and through space. Representations of space use codes, signs, and other communicative devices to affect how one perceives space; they are communications of spatial order. One example of a representation of space is, obviously, a map. Representations of space can also be given mathematically, such as latitude and longitude, or literally and imperatively, such as placing an arrow where people should begin a queue. While representations of space deal with how one perceives space, "representational space" has to do with how subjects *imagine* space and the meanings which are projected upon it and then re-absorbed into one's experience of it. Lastly, spatial practice can be thought as the physicality of space's (re)production, as the actual corporeal space; Lefebvre positions spatial practice as that which mediates and directs representations of space and representational space. It is that around which other dimensions of space cohere and from which they gain power. Often these respective ways of analyzing space bleed into one another, and discerning a sharp line between them can be impossible. With his conception of social space, Lefebvre shows that (social) space frames human being-in-the-world in a basic way, and that space is always produced through, and itself re-produces, different social meanings and relations of power.

In what sense does the state's spatial practice of imprisonment produce a deprivation of reality? It is because for an imprisoned person, every aspect of space re-signifies the hegemony of the state and the confines of punishment. Prisons are saturated with the referentiality of the state by nature of forced confinement, as space itself becomes a perpetual reiteration of the

state's totalizing power over you. Such a point does not rest on whether or not material conditions in prisons are poor or abusive. Rather, imprisonment enacts a spatial practice of the deprivation of reality since totalizing confinement so drastically warps one's being in the world as it is experienced through space. The representation of space in penal confinement always brings to the fore of one's consciousness their status as a prisoner. At the level of representational space, the imprisoned person's being in the world, whenever their consciousness extends beyond their body and into the space which they inhabit, comes up against the fact of total spatial control. Prisons deprive people of reality in that their spatial practice leaves one unable to engage with their being in the world without re-confronting their ultimate powerlessness at the hands of the penal state.

3.1.2 Saturation of time-consciousness

Time, and time-consciousness, are crucial to the punitiveness of penal confinement. Time is the unit of quantification by which penal punishment is measured and applied in the form of a sentence. But beyond "time" being used as the measure of punishment in quantifiable terms, time also becomes part and parcel of the psychic suffering which makes confinement a punishment in the first place. The saturation of time-consciousness engendered by penal confinement constitutes a deprivation of reality because it warps one of the fundamental structures of phenomenal consciousness and thus corrodes one's capacity for at-homeness in their being-in-the-world. To explain this, I will provide a brief explanation of phenomenological notions of temporality and time-consciousness, before elaborating further on how a saturation of time-consciousness constitutes a deprivation of reality.

Phenomenologists, such as Husserl (*Phenomenology of Internal Time-Consciousness*, 1905: §40-44) and Robert Sokolowlski (*Introduction to Phenomenology*, 1999: 130-145),

partition “time” into three parts, or levels: “world” or “objective” time, subjective time, and consciousness of internal time. World time is “the time of clocks and calendars...it is the time that belongs to worldly processes and events” (Sokolowski, 130). World time is that time which moves on regardless of how it is experienced. Prison sentences are expressed, though not felt, in world time. Internal, or “subjective,” time by contrast refers to “the duration and sequence of mental acts and experience, the events of conscious life...The way [one’s] intentions and feelings are temporally ordered, both in regard to one another and in regard to [one’s] present experiences, takes place in internal time” (Sokolowski, 130-131). Internal time can thus be described as the temporality of conscious experience as one lives it. Lastly, consciousness of internal time “constitutes the temporality of the activities that occur in our conscious life, such as the perceptions, imaginations, rememberings, and sensible experiences that we have: it allows such inner objects to appear as temporally extended and ordered” (Sokolowski, 133). Consciousness of internal time is what allows us to experience time, whether subjective or “objective,” as a flow. Both Sokolowski and Husserl privilege internal time consciousness amongst the three kinds of time because subjective time relies on the consciousness of internal time for its intelligibility, and world time relies on subjective time since one could not measure or name external/world time without first having an experience of internal temporality.

Consciousness of internal time can be divided into three constitutive components. When we experience a moment in time, experience sometimes called “the living present” (Sokolowoski, 136), we experience the inseparable parts of primal impression, retention, and protention. Retention is that faculty of the living present which retains already elapsed living presences, “so that we have a whole series of elapsed living presents that are retained through the mediation of prior living presents, through the mediation of prior retentions...the living present

always has a comet's tail of elapsed living presents, with their retentions, accompanying it" (Sokolowoski, 137). Protention is "the future-directed counterpart of retention." Whereas retention creates duration through the "comet's tail" of passed living presents, protention forms the structural basis for things like anticipation and future-projection. However, Sokolowski notes the basic and immediate sense of protention as distinct from projection (the imagining of oneself in a future situation), as protention "gives us the first and original sense of 'something coming' directly upon what we have now. Protention opens the very dimension of the future and thus makes full-fledged anticipation possible" (Sokolowski, 137). Lastly, the primal impression can be understood as the phenomenal time-slice which sits between retention and protention; however, temporality is not experienced atomistically, as a series of primal impressions, because the three structural features of the living present can only be separated conceptually, but never actually.

What, then, is the saturation of time-consciousness? David Scott (2015) writes that "the prison place destroys the natural flow of time, melding together past, present, and future perceptions of time. This reshaped sense of time consciousness immerses the prisoner within an acutely painful 'now time' awareness" (Scott, 53). Scott also uses the term "saturation of time consciousness" at a later point (Scott, 2018: 204), but does not clearly define it or explain its phenomenological gravity. As penal confinement generates a saturation of time-consciousness, the respective workings of internal time consciousness collapse upon themselves. Protention and retention become confused and scramble one's orientation to temporality; the imprisoned person finds themself in relation to the constantly felt presence of a quantified "sentence" while at the same time captured in an eternal now. The distorted saturation of the basic structures of internal

time consciousness with an eternal now constitutes a deprivation of reality since the temporality of one's experience is a tectonic dimension of one's being in the world.

Penal confinement constitutes a deprivation of reality because of the particular way it warps one's being in the world, and its being a deprivation of reality also makes it a denial of recognition (see p. 34-36). This does not have to do with the quality or comfort of one's material conditions (although the deprivations of reality discussed here are exacerbated or experienced in more painful ways depending on said material conditions). Instead, such deprivations have been explained in terms of the way space and time become sites of specific kinds of phenomenal suffering when structured by the spatio-temporality of penal confinement. That the spatio-temporal structures of confinement essentially constitute a deprivation of reality also means that they are denials of recognition. Next, I will describe the ways in which penal confinement constitutes a denial of recognition through the removal of legal personhood.

3.2 Removal of legal personhood

When a person is imprisoned, they are confined in a spatially discrete location with little to no engagement with the world outside of the prison. One's alienation from a sense of community and from any practical participation in social life constitutes a denial of recognition through the removal of legal personhood, and resonates with what Henry Giroux calls a "politics of disposability" (Giroux and Evans, 2016) in order to cultivate a "carceral utopia." This can be read in the structure of what Scott describes as the "spirit of death," made up of the triangulation of social, civil, and corporeal death (Scott, 2018: 163-184). Additionally, the tactic of punitively confining an individual in response to their disruption of the community's moral or legal norms

runs counter to the recognitive desiderata of rectification, since such an action forecloses rather than makes possible the widening of individual or collective recognitive scope.

3.2.1 Disposability and "carceral utopia"

Angela Davis describes prisons' relation to what I mean by "carceral utopia", addressing the way in which the incarceration of community members which the state deems problematic or criminal seems to rid society of certain underlying societal issues in the first place. With regards to prison's connections to other social problems, Davis writes

> "These problems often are veiled by being conveniently grouped together under the category 'crime'... Prisons thus perform a feat of magic. Or rather the people who continually vote in new prison bonds and tacitly assent to a proliferating network of prisons and jails have been tricked into believing in the magic of imprisonment. But prisons do not disappear problems, they disappear human beings" (Davis, 1998).

In this sense, "carceral utopia" refers to a society which maintains comparatively high standards of living for a privileged few by using incarceration to "deal with" those people whose behaviors or circumstances would otherwise require some kind of community level social intervention. In other words, when a social system is in some way recognitively defective, criminalization and incarceration are utilized to shuffle the societal defect out of view so that those whose status position is benefitted by existing social arrangements can continue to live as they do. The "utopic" element of this phrase is of course applied ironically, since the mirage of utopia is only created for some through the application of a decidedly inhumane technology of social control upon others.

The eschewing of people from the civil body operates through a logic of disposability. Henry Giroux and Brad Evans describe what they calls a "politics of disposability" as a configuration of power brought forth under neoliberal regimes; in the book *Disposable Futures: The Seduction of Violence in the Age of Spectacle* (2016) Giroux and Evans use "politics of disposability" to label

neoliberalism's positioning of certain people as "waste" or "wasteful," and the use of prisons (amongst other things) to other them.

> "...disposability conveys the violence of human expulsions as it concentrates on the *active production* of wastefulness...it suggests not only the power to dispose of...those considered excess but also to create those affective and ideological spaces in which the logic of control rooted in economic and governing institutions, *is rooted as well in the construction of subjectivity itself*" (Giroux and Evans, 2016: 48, emphasis mine).

Giroux and Evans convey two aspects of a politics of disposability in this quote. First, "disposability" involves certain people being labeled as excess in virtue of their position within a value-laden social structure. Second, they note how when exclusion or violence is normalized or effaced, the ethical attitudes and relations of recognition (or lack thereof) of other subjects will cohere around and rationalize such exclusion and violence. In the case of prisons and punishment, this could explain common retributive impulses and intuitions as resulting from the normalization of systematic punishment, rather than producing it or justifying it.

When I say "logic of disposability," I mean the dimensions of the politics of disposability outlined above, but in a way that is applicable outside of discursive contexts centering a critique of neoliberalism. While an analysis of prisons cannot be separated from its historical entanglement with neoliberalism, I think that imprisonment relies on a logic of disposability and would rely on such a logic regardless of what socio-political economic system it is deployed under. This is because somebody's expulsion and penal confinement on the basis of criminality labels the prisoner a social "excess," as unworthy of certain kinds of recognition in virtue of allegedly having transgressed a moral norm, and that such a label has consequences for how a prisoner comes to an understanding of themself in relation to other selves; it constitutes a

"getting rid of" a social problem, rather than approaching the problem with community investment.

3.2.2 The "Spirit of Death"

"The intersubjective self is dependent upon positive interactions and connections with other people for survival. The daily routines of prison life, however, contain within them practices extinguishing previous meanings, whilst at the same time presenting serious obstacles to the formation of new meanings" (Scott, 2018: 164). David Scott (2018) argues that imprisonment produces what he calls a "spirit of death." Scott writes that the spirit of death is present in prisons since "irrespective of the physical and material conditions of confinement or levels of security shaping the daily regime, the prison is an institution which deprives human needs and estranges people from their lifeworld (Scott, 2016). There is a constant presence of death in prison: civil death...social death...and corporeal death" (Scott, 2018: 164).

Civil death refers to the imprisoned person's "death" as a legal subject, in which some legal rights granted by the state to non-imprisoned people are revoked upon imprisonment. Scott notes that prisoners "remain outside the law" both in terms of the denial of their civil rights as having been excommunicated from the wider community, and in terms of the "prison place" being both spatially removed and institutionally sedimented which leaves imprisoned people especially vulnerable to dehumanization. Social death can be understood as widespread dehumanization and collective othering. Scott borrows this term from Orlando Patterson (1982) who coined it and applied it to an analysis of slavery. The social death of imprisonment occurs through estrangement and "the initial removal from society and previous social relationships. The prison creates a space of social isolation where the prisoners, uprooted from their social milieu and no longer belonging to their former community, are turned into strangers" (Scott,

2018: 168). Social death is also constituted by institutionally structured violence, which is the curtailing of autonomy, security, and wellbeing in relation to sociality through the structuring of prison space and temporality (as addressed earlier in this chapter). Finally, the presence of corporeal death is constituted by both a drastic increase in an imprisoned person's death-consciousness, and the lack of symbolic value that their actual death seems to have to the wider population.

> "By its very nature the prison orients people towards loss, trauma and endings and away from the fulfilment of human needs and hope and faith in the future....Through the monotonous deprivations of the penal machine the prisoner is forced to exist in a perilous state of an increasing awareness of the presence of death...Further, the pre-existing civil and social death make the corporeal death of prisoners appear much less socially and politically significant because they have ceased to count (symbolically) long before" they have died (Scott, 2018: 172).

Corporeal death is present in spaces of carceral confinement because of the imprisoned person's heightened sense of death-consciousness (which is intimately related to the corresponding saturation of time-consciousness) and because of the closer proximity to physical death to which imprisonment pushes a person in virtue of heightened death-consciousness' proclivities towards actual suicide (Scott, 2018: 172). A logic of disposability and the presence of the spirit of death both constitute removals of legal personhood, since both exclude a demographic from making certain normative claims to recognition by reason of their status position as prisoners, and not in terms of the substance of the claim itself.

3.3 The untenability of prisons

I have argued that prisons are incapable of satisfying the recognitive desiderata of community facilitated rectification set out in chapter two (pp. 37-39). They contradict desiderata (4) (not

constituting a denial of recognition), and are in tension with (1) (repairing the ruptured relation of recognition between the directly involved parties), (2) (address the conditions and structures of socialization), and (3) (have a positively transformative impact on the person who committed the harm, such that their scope of recognition is widened and they come to a more positive relation-to-self). I use "in tension with" since while these things (1-3) are not technically totally conceptually incompatible with prisons, the nature of prisons is extremely unconducive to their fulfilment.

That imprisonment contradicts desiderata (4) has been the subject of this chapter; it is in tension with (1) because imprisonment separates the people directly involved in the circumstance (both in a spatially literal sense, and also separates them in a socio-ontological sense), and mediates their interaction exclusively through an apparatus of crime and punishment, which sediments the other's status as either victim or perpetrator rather than working to re-humanize each to the other. Prisons are in tension with (2) because, as described during the section on disposability, prisons function as a sort of cop-out to the collective solving of social ills and imbalances; rather than analyzing and addressing them at their roots, they simply push them elsewhere. Thus, any robust attempt to address the social conditions which result in harm will also involve a reduction in the power, presence, and moral palatability of prisons to the public. Lastly, prisons are in tension with (3) because, since they are themselves denials of recognition, imprisonment does not provide the kinds of social conditions that are important for a person to transform their scope of recognition in a positive direction; in virtue of one's relation-to-others centrality to one's relation-to-self, if a person is denied recognition then that hinders their capacity for self-realization, which in turn has a negative impact on their capacity for mutually recognitive relationships with others. With these points in mind, I think it can be said that prisons

are incapable of satisfying the recognition theory desiderata for community-facilitated rectification.

Conclusion: Alternatives to punitive logic

Abolition and Transformative Justice

The previous three chapters have described some problems with prisons and punitive rationales as tools for achieving justice after harm. The first chapter was intended to illicit doubt regarding the state's alleged right to punish on deterrence or retribution justificatory grounds. The second chapter laid out a theory of the subject and social change in order to come to a set of desiderata for community facilitated rectification. Finally, the third chapter gave some reasons as to why prisons, as the paradigmatic instrument of state punishment, do not and cannot satisfy chapter two's desiderata because of the spatio-temporal impact of punitive confinement (deprivation of reality) and the systematic exclusion of people from the moral community (denial of legal recognition). With these critiques in mind, I next ask: what would it mean to abolish prisons? And how might we reconfigure our collective sense of justice around such a goal?

The theories and frameworks that call for the abolition of prisons and a non-punitive reorientation of approaches to rectification are manifold. For instance, some philosophers like Boonin (2008) and Zimmerman (2011) are "legal abolitionists," in the sense that they take issue with the justifiability of legal punishment and believe state punishment to be an unjustifiable and unnecessary enterprise. They argue that existing theories fail to adequately justify the state's alleged right to punish, and because of this we ought to reorganize how we approach the notions of crime and rectification. I tend to agree with legal abolitionist arguments, but think that legal abolitionists leave certain questions unanswered, or do not fully address how moral communities

can rectify the broken relations of recognition between a perpetrator of harm and the moral community in general. The legal abolitionists often cease their critique at the level of abolition of legal punishment, without pursuing thoroughly enough alternative models for community-facilitated rectification. Additionally, legal abolitionism, as a position in the field of philosophy, tends to isolate the moral considerations of punishment as it is applied to individuated circumstances, which shapes any possible alternatives to punishment as *also* in response to individuated circumstances. This contrasts legal abolitionists in philosophy to other prison abolitionists, such as David Scott, Angela Davis, and Fred Moten, who understand the "prison" and state punishment in general as intimately related to the neoliberal state's establishment of racialized sovereign power, and which takes place within a broader nexus of material, discursive, and political relations termed the prison-industrial complex.

On this point, Angela Davis writes,

> "It is true that if we focus myopically on the existing system...it is very hard to imagine a structurally similar system capable of handling such a vast population of lawbreakers. If, however, we shift our attention from the prison, perceived as an isolated institution, to the set of relationships that comprise the prison industrial complex, it may be easier to think about alternatives. The first step, then, would be to let go of the desire to discover one single alternative system of punishment that would occupy the same footprint as the prison system" (Davis, 2003: 106).

Abolishing the institution of the prison, then, would certainly require a multi-faceted reorganization of notions of crime, criminalization, punishment, and the state. It would also demand a response other than prisons and the penal apparatus to those problems which, under the current paradigm, prisons are used to "disappear" (as discussed in the third chapter). One such problem is daily violence, harm, and the need for rectification after an injustice; other problems the penal apparatus is often used to address have to do with homelessness, addiction, mental

illness, poverty, and others. This points to the second recognitive desiderata of rectification, which discusses a transformative component regarding those social structures and contexts of socialization which place people closer to everyday forms of violence or criminality. In this sense, the abolition of prisons and the web of power they are situated in is a creative and constructive endeavor; "What is, so to speak, the object of abolition? Not so much the abolition of prisons but the abolition of a society that could have prisons...and therefore not the abolition as the elimination of anything but abolition as the founding of a new society" (Harney and Moten, 42). The heralding in of radically transformed social relations, however, will require a shift away from a punitive and penal understanding of rectification and justice, and towards restorative and transformative justice models.

I will discuss some shared features of transformative and restorative justice, before mentioning some of the ways they diverge; there are also divergent understandings of what "restorative justice" and "transformative justice" refer to. Christ Pelikan characterizes some aspects of restorative justice which set it apart from the criminal justice system, such as the "lifeworld element" (as opposed to the criminal system's purported objectivity), "the participatory element" (contrasted to the criminal system's professionalization and bureaucratization of punishment), and "the reparative element" (as opposed to the intent-to-harm part of the definition of punishment) (Pali and Pelikan, 2014: 153; Pelikan, 2007). The "lifeworld" element refers to restorative justice's focus on attending to the particular material and emotional needs of those involved in a criminal dispute, and to conflict's contextual nature leading to a context-embedded response (see Christie, 1977). The "participatory element" "implies the active participation of those concerned and affected by the conflict to become part of the effort to achieve reparation and reconciliation" (Pali and Pelikan, 153). The "reparative"

element frames crime and/or conflict as a "disruption of social relations" (153), where such intersubjective ruptures ought to be the sites of reparation and restoration. While theories of restorative justice are not always abolitionist, since there is divergence in the field as to whether a restorative justice framework is compatible with the use of a penal system, such concepts lend themselves well to an abolitionist critique because of their non-punitive and slightly more holistic frame of reference.

Where restorative justice ends and transformative justice begins is neither precise nor fixed, because of the high amount of conceptual and practical overlap between them. However, while I think that transformative justice adopts many useful concepts from restorative justice, I think its analysis of the social conditions of justice moves beyond restorative justice. What distinguishes transformative justice from restorative justice is its emphasis on the historical and structural conditions that create the contexts which place violence or transgression disproportionately closer to some peoples' lives. While restorative justice may have an approach to rectification and accountability that is *informed* by sociality, transformative justice seeks to alter the very social and material conditions which create the needs for rectification and accountability in the first place.

Transformative justice understands particular instances of harm or violence as inextricably linked to social relations, and as rooted in overarching systems of oppressions and marginalization. "Restorative justice stresses that the system is flawed...but does not address why it exists...whom it benefits, and how it was developed. Transformative justice, on the other hand, is explicitly opposed to helping someone get arrested, imprisoned, repressed, or oppressed. It is about looking for the good within others, while also being aware of complex systems of domination." (Nocella, 4). Transformative justice seeks to re-establish common humanity by

pointing out that everybody is capable of harm, and that an analysis of an individual wrongdoing is inseparable from an analysis of conditions of socialization. Adrienne Maree Brown characterizes transformative justice as a "practice that go[es] all the way to the root of the problem and generate[s] solutions and healing there, such that the conditions that create injustice are transformed" (Brown, 2020: 251).

> "To transform the conditions of the 'wrongdoing,' we have to ask ourselves and each other 'why?'...'why?' is often the game-changing, possibility-opening question. That's because the answers re-humanize those we feel are perpetrating against us. 'Why?' often leads us to grief, abuse, trauma, mental illness, difference, socialization, childhood, scarcity, loneliness. 'Why' makes it impossible to ignore that we might be capable of similar transgression in a similar circumstance" (Brown, 251).

To say that the structural conditions of social life, and processes of socialization more broadly, are the roots of interpersonal harm does not diminish a focus on the accountability of specific persons; it rather makes one frame individual accountability in terms of a subject's relation to the diachronic systems and histories of the social world that shape any given person's daily reality and identity. The "transformation" of transformative justice refers both to the transformation a person-who-has-harmed undergoes in terms of widening their possible scope of recognition (desiderata #3), as well as the wide-scale social transformations necessary to reckon with structural injustice and asymmetrical relations of power (desiderata #2). Of course, massive political, material, and cultural upheaval is more simply theorized about than actualized; this makes transformative justice a pre-figurative practice, in the sense that adopting a transformative justice process of rectification is an act of imagining and creating, in some small way, a world in which an abolitionist vision is realized. The centering of transformation, of widening the scope of mutual recognition at both an individual and collective level, makes transformative justice one

possible framework of justice through which to conceive community-facilitated rectification that meets the desiderata of mutual recognition.

Concluding Notes

This thesis has been an argument for the abolition of prisons on the basis of a recognitive theory of community-facilitated recognition. To summarize, it calls into question some basic justifications of legal punishment (chapter one), which is meant to weaken the abstract arguments which the state turns to in order to justify prisons. It also describes some ways in which "wrongdoing" is a notion that must be understood with reference to intersubjectivity, and indicates some desiderata for processes of community-facilitated rectification based on mutual recognition (chapter two). After laying out these desiderata, the argument moved on to discuss why prisons, as the paradigmatic mode of criminal legal punishment, cannot meet the desiderata outlined in chapter two (chapter three). And finally, chapter four asks, what kinds of concepts can we use to imagine and create a world without prisons? On a recognition theory account of personhood, intersubjectivity, and harm, a society or community's processes of rectification should be *opportunities* for the diagnosis and amelioration of the relationship between conditions of socialization and interpersonal harm, and opportunities for action to transform both. The contemporary literature on prison abolition and transformative justice is one place to begin when imagining what such opportunities look like, and the world of universal mutual recognition to which they strive.

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