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# Reforming Punishment

PSYCHOLOGICAL LIMITS  
TO THE PAINS OF IMPRISONMENT

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## LIMITING PRISON PAIN: A PSYCHOLOGICALLY INFORMED CORRECTIONS AGENDA

If human beings are in prison to receive punishments, they ought to get a maximum of treatment to improve their general conditions and soften their pain.

—Nils Christie<sup>1</sup>

Prison reform is a daunting task, made more so by the sheer size to which the correctional system has grown in recent years and the many political and economic interest groups that now have a stake in maintaining it. In addition, as many commentators have lamented, there seems to be no “basic public policy vision from which penal reform may grow.”<sup>2</sup> Other critics have noted that “following the collapse of the rehabilitation theory of the 1970s, prison reformers lacked a theoretical basis with which to justify their proposed alternatives.”<sup>3</sup> Thus, we may have entered “an era when penal institutions will direct penal change” for themselves.<sup>4</sup> Indeed, the absence of a public policy vision or theoretical basis for reform—so that the impetus and the rationale for change have been relinquished primarily to correctional insiders—does seem to explain the impasse in prison policy-making, wherein high levels of prison pain are dispensed now as much by default as anything else.

With these sobering realities in mind, this chapter returns to the thesis with which I began: Acknowledging the powerful influence of past and present contexts and situations on behavior has important implications for correctional policy and practice. Instead of persisting with the prison status quo, modern psychological theory encourages a reconceptualization of the

causes of crime and a recalibration of the fairness of legal punishment. It represents an important framework from which to generate new and better crime control and prison policies.

In conceptual terms, I will suggest three basic categories of correctional reform that follow directly from a contextual model of behavior. The first is that exclusively individualistic approaches to crime control are too limited in scope to be effective over the long term. This implies that prison—as a people- rather than a context-changing institution—should be used more sparingly and supplanted instead by more context-based strategies of controlling crime.

Second, understanding the transformative power of contexts and situations forces us to acknowledge the pains and potential harms of imprisonment per se, and highlights the need to identify and reform potentially damaging conditions of confinement. Indeed, because this is a book primarily about the context of prison itself, the reforms I suggest in this chapter are focused mostly on that goal—changing the nature of imprisonment rather than developing genuine alternatives to incarceration (as essential as those reforms clearly are).

Finally, however, recognition of the important role of social context and circumstance in crime causation underscores the need to carefully assess and systematically address the criminogenic situations to which prisoners are returned following incarceration. Whatever gains prisoners may achieve in restructured prison contexts designed to minimize the damaging effects of incarceration and maximize programming opportunities are not likely to survive the harsh realities that most of them confront in their postprison lives. Those realities must become a major target of reform.

In fact, no amount of prison reform can substitute for the larger set of badly needed social and economic changes in the wider society. The overwhelming majority of persons in prison are poor and, disproportionately, of color. Thus, the social deviance for which they are being punished is rooted in large part in their social and economic circumstances. These circumstances and the marginalized status to which they give rise are assigned rather than chosen, and they cannot be meaningfully addressed by changes in prison policy alone, no matter how broad based or fundamental in nature those changes might be. Fair, effective, and humane approaches to crime control will require models of genuine social and economic justice to be implemented. Addressing structural inequality and unequal opportunity counts more than alleviating adverse conditions of confinement.

But prisons matter, too, especially because of the enormous numbers of persons who are now locked inside them. Modern psychological theory reminds us that prison contexts “possess unique and enduring characteristics that impinge upon and shape individual behavior,”<sup>5</sup> and they can serve as powerful and potentially criminogenic influences in their own right. Thus,

this chapter concentrates on the various ways in which the powerful and important context of prison can and should be transformed. As Hans Toch put it, correctional institutions can be restructured and redirected in ways that “increase their humaneness and their sense of concern for inmates.”<sup>6</sup>

Indeed, Toch’s optimistic and idealistic vision—expressed before the worst excesses of the last several decades had surfaced—is worth renewing. He urged the corrections establishment to vigorously pursue “trends that variously include increasing social services to inmates, the ‘opening up’ of prisons to outside contacts, the humanizing of staff, the liberalizing of inmate self-expression, the upgrading of educational and vocational opportunities, and a general aligning of prisons with our conception of ‘civilized’ standards.”<sup>7</sup> Recommitting prisons to programs like these would go a long way toward limiting the pains of imprisonment and reducing the harmful effects of confinement.

Referencing Toch’s vision reminds me to situate my own. Books on institutional reform face an insoluble dilemma. They can attempt to deal at length with the numerous political forces and practical considerations that have helped to create and maintain the problems the authors seek to solve—and risk the inevitable criticism that they are too political. Or they can largely ignore these forces and contingencies to concentrate instead on the conceptual core of the problem and the intellectual framework needed for potential solutions—but incur the equally likely critique that they are unrealistic for having failed to anticipate and overcome all of the political and practical obstacles that impede change. I have chosen the latter course.

I noted early in this book that I had the luxury of writing as a psychologist, not as a politician or prison official. Nowhere is the extent of that luxury more apparent than in this chapter, in which I concentrate on a range of potential, psychologically inspired prison reforms. I acknowledge that I have not assumed the burden of answering many difficult questions about whether and how the large number of obstacles to these reforms can be overcome.<sup>8</sup> Instead, I hope that underscoring the need to transform certain aspects of the prison system and outlining the nature of the changes that should be made in order to better align it with modern psychological theory will itself help to create some of the political will and practical ingenuity that are needed to bring these changes about.

#### LIMITING PRISON PAIN BY ENDING THE OVERUSE OF IMPRISONMENT

In recent years, many social problems that were once addressed by social welfare programs and other institutions in our society have been folded into the prison system. Thus, not only have we increasingly criminalized various

maladies like poverty, mental illness, and drug addiction over the last several decades, but we have “prisonized” their solutions as well. This is a trend that modern psychological theory argues to reverse. If prison is a painful and potentially harmful social context, then the risks associated with exposing people to it—especially people whose vulnerabilities and other special needs increase the probability that they will suffer psychological harm—must be weighed more heavily.

For these reasons, prison should be acknowledged as an inappropriate criminal justice placement for many persons who are mentally ill, have committed certain kinds of drug offenses, or have been convicted of only minor or trivial crimes. Indeed, the recent creation of mental health, drug, and other kinds of specialized courts that rely on more community-based, treatment-oriented approaches helps to address this concern. These innovative programs also reflect a growing recognition that, in many such cases, the nature of the underlying crime-related problem deserves a more benign (perhaps even therapeutic) and less punitive response—or no response at all.<sup>9</sup> Such “problem-solving” court reforms lead naturally to context-oriented solutions that address the real causes of criminality and allocate criminal justice resources accordingly. As a result, prison would be seen as one small component in a contextually oriented overall strategy of crime control.

At the same time, ways must be found not only to punish more serious wrongdoing but also to minimize the psychologically damaging aspects of the sanctions—for all defendants, not just for those with special vulnerabilities. More than 2 decades ago, sociologist David Ward observed, “When Americans think about punishing criminals, they do not think of probation or diversion to community corrections programs. Punishment in America means long-term confinement in state penitentiaries.”<sup>10</sup> Although this is still the case, new perspectives on the causes of crime and an increased awareness of the severe psychological costs of imprisonment suggest a different, long-overdue approach. Intermediate sanctions—punishment short of prison—must be substituted in a much wider range of cases than at present. By allowing persons convicted of certain kinds of criminal offenses to remain in or return earlier to community settings, these sanctions reduce the number of psychological and other transitions that they must undertake before reentering free society.<sup>11</sup>

Of course, intermediate sanctions—like any form of punishment—must be structured in context-sensitive ways that are designed not only to avoid the pitfalls of the prison environment they are supposed to replace but also to create the appropriate social conditions under which participants are likely to succeed. Intermediate sanctions certainly must function as genuine diversions from prison into the community (rather than widening the net of criminal justice system surveillance and control to include persons

who otherwise would not be subjected to it).<sup>12</sup> In addition, however, these alternatives to prison—intensive community supervision and the like—must seek to reduce the number and magnitude of criminogenic forces in the communities where they operate.<sup>13</sup> Thus, intermediate sanctions programs should engage the participant's "family, employer, and neighborhood to create a support and supervision network," foster their direct involvement in the program, and facilitate prosocial activities and opportunities in the community.<sup>14</sup>

In addition to intermediate sanctions that keep participants in *community-based* facilities and maximize time in freeworld settings, *restorative justice* models that take the contexts of disputes, conflicts, and infractions explicitly into account should be used more often as alternatives to traditional, individual-centered criminal justice processing. Rather than focusing only on individual perpetrators and then applying typically individualistic, exclusively punitive solutions, restorative justice approaches to dispute resolution broaden the analysis of what happened and why, and are more likely to involve a larger segment of the community in deciding what should be done about it. Thus, these models include a consideration of contextual causes of conflict and crime, and attempt to implement context-based changes to resolve those problems at their source.<sup>15</sup>

Modern psychological theory also argues in favor of revamping the current decontextualized sentencing policies that I discussed in chapter 4, so that the defendant's social history and present circumstances can play a greater role in the decision-making process. At present, the lack of judicial discretion and the dramatically increased numbers of defendants who are being sent to prison have produced a system in which the overwhelming number of cases are resolved without any prison-related treatment or rehabilitation recommendations prepared, introduced, or considered by the courts. This has resulted in what one recent courtroom observer described this way: "The concept of studying an offender and devising a rehabilitation plan isn't frowned upon so much as not looked upon at all; the proper sentence is whatever both sides [in a plea bargain] can agree on to belch out one defendant and make space for the next."<sup>16</sup>

Finally, one of the most important ways to reduce the excessive pains of imprisonment is to reform the sentencing practices and related parole policies under which our society now incarcerates more prisoners for longer periods than at any other time in our history. In general terms, this broad set of reforms would significantly reduce the sheer number of people who are exposed to the potentially damaging social context of prison, as well as shorten the periods of time that prisoners are confined there. Prisons must return to being the criminal justice system's response of absolute last resort. Their current central role will be taken instead by a wide range



of preventative programs that address the most important contextual causes of crime. If crime is caused in large part by past and present contexts and circumstances, then it follows logically that crime-control attention and resources should be allocated accordingly.

### DO NO HARM: NORMALIZING PRISON CONTEXTS

Even in a more psychologically sophisticated overall system of crime control that used imprisonment as a last resort, conditions of confinement and the forms of correctional treatment to which prisoners are exposed would still matter greatly. Whether there are many prisons or few, there must be real limits to what prisons are permitted to do to the persons confined inside—nearly all of whom someday return to free society.<sup>17</sup> Indeed, each year well over half a million persons are released from prisons in the United States. As several previous chapters have underscored, what happens to them while they are incarcerated has a profound influence on what they will be like once they leave. Ensuring that the social contexts to which prisoners have been exposed during incarceration have done more good than harm serves the interests of the families and communities to which they return.<sup>18</sup>

Prisons punish by depriving prisoners of their liberty; anything more—unnecessary deprivations, indignities, and ill treatment—represents gratuitous pain. Especially when it is experienced over long periods of time, as I have tried to show, this kind of pain is not only cruel but can have debilitating psychological consequences for individual prisoners and lasting repercussions for society at large. A new appreciation of negative prison effects should sensitize prison policymakers and officials to the harmful consequences of adverse conditions and provide an impetus for reform.

Even very widespread problems, such as chronic idleness—confining prisoners for long periods in places where they lack meaningful activity of any sort—can be detrimental. As I noted earlier, the notion that large numbers of prisoners can be warehoused for years on end—placed in a kind of psychological suspended animation or “behavioral deep freeze”<sup>19</sup>—and then be unproblematically absorbed back into the communities from which they came is psychologically naive; it reflects an outmoded, asocial view of prison effects.

Recognizing the power of the prison context to so effectively shape behavior represents a strong argument in favor of making correctional environments as much like the freeworld as possible. Innovative prison administrator Dora Schriro has recommended creating a “parallel prison universe” in which “life inside prison should resemble life outside” and prisoners “can

acquire values, habits, and skills that will help them become productive, law-abiding citizens.”<sup>20</sup> The logic of the model is straightforward and psychologically sound—the more that the circumstances and situations that prisoners encounter during incarceration are like those they experience upon release, the more adjustment to prison will facilitate successful integration into the freeworld.

“Normalizing” the prison environment by removing some of its harshest edges might be accomplished by introducing some of the norms of therapeutic communities into correctional settings in general.<sup>21</sup> Housing prisoners in places where they “experience support, understanding, and affection from people who have had life experiences similar to their own,” and “find a community with which they can identify [and] people toward whom they can express their best human emotions rather than their worst,” should help to limit some of the pains of imprisonment and minimize the degree of prisonization that occurs.<sup>22</sup>

The fact that certain prison environments can cause stress-related and even traumatic reactions in prisoners is another reason to lessen the pains of imprisonment by modifying the context that creates them. For example, we know that, over time, prisoners who become involved in work and other activities and who maintain more extensive contact with the outside world make more positive adaptations to prison life. They also experience reductions in “dysphoric” emotional states and suffer lower levels of stress-related medical problems.<sup>23</sup> Thus, programs that involve prisoners in meaningful activity and reduce the psychological barriers between prison and the outside world—for example, ones that facilitate and encourage visitation and the maintenance of family ties—can actually change the prison environment in ways that reduce the harmful alienation that often occurs there.<sup>24</sup> As John Irwin put it, “the obvious recommendation here is that any situation of long-term confinement should maximize contacts between prisoners and the outside world.”<sup>25</sup>

Addressing other aspects of the prison environment also can help to alleviate the unnecessary pains of imprisonment. When prisoners are disempowered and emasculated, subjected to forms of forceful institutional control, abuses of power, and even brutal mistreatment, they may experience forms of “retraumatization” that are psychologically reminiscent of abusive, traumatic childhood experiences. Highly problematic survival strategies may emerge in response. In some cases, prisoners seek to achieve and maintain a more defensible social status and personal identity in prison by exploiting whatever advantages they can gain over others. Exaggerated forms of masculine domination are still highly functional in many prisons, in part because of the role that they continue to play in the psychological survival under diminished and dehumanized circumstances. As Michael King noted,

coercive sexual activity in prison "is primarily an expression of anger and frustration in men who may be unable to achieve masculine identification and pride in avenues other than sex."<sup>26</sup>

Yet, in a freeworld society where empathy, tenderness, and equity in intimate and interpersonal relations are valued, adapting to the sexually dysfunctional world of prison may guarantee a degree of social marginalization upon release that will compromise future relationships and long-term social adjustment in free society. Approaching the problem exclusively through punishment "is unlikely to change the root causes of assaults, which lie in the frustrations of a class of men who seldom have work, successful families, or opportunities for emotional expression." Often, the institutional structure of the prison makes these issues more problematic by further limiting access to work and family and narrowing (or eliminating) opportunities for emotional expression. Thus, "without humanitarian changes within institutions the problem is unlikely to be reduced."<sup>27</sup>

By examining the social contextual origins of this problematic prison dynamic, however, King was able to gain insights into those aspects of prison life that were most in need of monitoring and change. In the spirit of doing no harm, the kind of "humanitarian changes within institutions" needed to reduce sexual aggression would proceed from this kind of careful analysis of the dysfunctional dynamics of sexuality, in turn, to targeting those aspects of the prison context that are in need of change. Among other things, those changes would include providing prisoners with access to conjugal and family visits that help to preserve preexisting sexual and familial relationships and normalize the atmosphere that prevails inside prison itself.

Moreover, although this book has been focused on limiting the pains of imprisonment for prisoners—rather than the difficult and sometimes very compromised circumstances under which many correctional officers work—I am well aware that prison staff have an enormously important impact on conditions of confinement. They can significantly undermine or make vital contributions to the nature of prison life. Clearly, a comprehensive contextual approach to prison reform would focus on restructuring the environment in which they work as well. Thus, doing no harm in prison would also mean, in part, placing correctional officers in places where they would be encouraged to be helpful rather than hurtful, and where they would be institutionally supported and rewarded for having done so.

Consistent with the social psychological framework on which the reforms in this chapter are based, staff-related reforms would move from the traditional emphasis on the nature or characteristics of the people employed in prison (although certainly without suggesting that their traits and training are irrelevant) to a greater focus on the circumstances under which they work. Indeed, the Stanford Prison Experiment that Phillip Zimbardo, Curtis

Banks, and I conducted some 35 years ago is an instructive starting point for the proposition that context matters for guards as well as prisoners, and that even good people can do bad things if and when they are placed in an environment designed to elicit mistreatment.<sup>28</sup> The recent prison abuse scandals in Abu Ghraib, Iraq—as one important government report that drew on the insights of the Stanford Study reminded us—clearly underscore what can happen in real-world contexts in which this basic lesson is ignored.<sup>29</sup> But there are many domestic analogues to this lesson. Thus, the restructuring of prison environments to prevent mistreatment would include, among other things, introducing greater levels of accountability in those contexts where they have been lacking.<sup>30</sup>

Alison Liebling's work on the moral performance of prisons brings this point full circle. She and her colleagues have demonstrated the interconnect-edness of the perspective that both prisoners and staff bring to bear on the quality of their lives in prison (including the shared importance of values such as respect, humanity, trust, fairness, order, and safety).<sup>31</sup> Because prison is a complex social environment in which the day-to-day life of the prisoners is very much influenced by the behavior and mind-set of the staff (and vice versa), it is not surprising that elevating the quality of prison life by improving the atmosphere and conditions under which the prison staff works can have beneficial effects for prisoners. In addition, there is evidence emerging from the study of other prison systems in Europe that increasing the professional orientation of prison officers and their commitment to helping rather than hurting prisoners not only appears to improve the overall quality of life in the prison and enhance the well-being of the prisoners but also may increase the job satisfaction of the officers themselves.<sup>32</sup>

## MINIMIZING AND RESPONDING TO ADVERSE PRISON EFFECTS

Doing no harm also means being more sensitive to exactly where particular prisoners are placed in the correctional system once they have entered it. Recognizing the power of prison contexts to change persons—not just confine them—underscores the importance of careful screening and classification at the initial stages of incarceration. Assigning prisoners to those institutions that can assist them in obtaining the skills they will need to acquire before their release ought to be of utmost importance in a psychologically informed prison system.

Conversely, context-sensitive placements would ensure that prisoners are not sent to environments that are likely to worsen any preexisting problems from which they suffer, housed in places where their identified vulnerabilities are likely to be exploited, or assigned to prisons that put them otherwise clearly at risk. Thus, Kevin Wright, whose research on the

causes of prison violence led him to conclude that "the environment (or at least the individual's perception of his or her environment) plays a significant role in who takes drastic and unacceptable action in response to the pressures of incarceration," also recommended that "attention to [prison] placements is important if inmates are to have the facilities to successfully adjust."<sup>33</sup>

As several earlier chapters emphasized, coping with the pains of imprisonment—the deprivations of prison life, its atypical patterns of living, and the skewed behavioral norms to which one is exposed—exact a significant psychological price. Sociologist John Irwin noted more than 20 years ago that although the nature and amount of prisonization that prisoners undergo varies, "all prisoners acquire new definitions and special social responses that are different than those of outsiders. The longer the confinement, the greater the impact of prisonization."<sup>34</sup> I noted in chapter 6 that there are many dimensions to this process. Prisoners learn to be hypervigilant, to adopt a tough convict veneer, to suppress outward signs of emotion, to be generally distrustful of others, and to become more dependent on external structure to regulate their behavior. Some internalize the stigma of having been in prison and will reenter the freeworld with a diminished sense of self-worth. Those who have come to deeply embrace the convict code and regard it as second nature may find that it is difficult to relinquish upon their release. As Irwin noted, "prisoners can become ill-equipped for the experiences and interactions outside prison that we take for granted."<sup>35</sup>

Thus, prisoners need insight into prisonization to resist its worst effects. That is, they should be given the tools with which to identify the troublesome and dysfunctional habits of thinking, feeling, and acting that prison threatens to instill in them and that these changes may impede their successful reentry into the freeworld. They also need to be given assistance to reverse the process once it has taken place. Many of the psychological changes brought about by prisonization and related prison coping mechanisms can be addressed through transitional, or "step-down," programs in which prisoners learn to approach social interactions and relationships differently, in ways that are more consistent with the norms and expectations that they will encounter in social contexts outside of prison.<sup>36</sup>

Of course, some prisoners react in more extreme ways to their conditions of confinement, and some prison contexts have especially extreme effects on the persons exposed to them. I noted earlier that, although imprisonment does not appear to cause diagnosable clinical disorders in most prisoners—most prisons do not make most prisoners "crazy"—it does bring about extreme psychological changes that can prove debilitating for many ex-convicts.<sup>37</sup> Indeed, many prisoners—like many trauma victims in general—continue to manifest the effects of their exposure long after their traumatizing prison experiences have ended. As Judith Herman and others

have suggested, long-term imprisonment represents a form of chronic and severe situational stress that, in extreme cases, may lead to the trauma-related syndrome termed *complex PTSD* in some prisoners.<sup>38</sup>

Thus, recognizing the way that context matters means weighing the risks of particularly extreme forms of confinement more heavily. It is an empirical and theoretical argument in favor of prohibiting the use of any prison sanction that is likely to have traumatic, damaging consequences. This means, for example, that no approach to the "management" of troublesome prisoners should be undertaken until very careful consideration has been given to the known risks and potential dangers involved. For example, a contextualist understanding of prison effects would lead to a better appreciation of the way in which the use of solitary confinement not only reflects a "very atomistic, unsocial" (and, therefore, outmoded) view of prisoners and prison behavior,<sup>39</sup> but also represents a potentially harmful practice that—depending on what it entails and how long it lasts—can inflict real pain on prisoners that may have enduring, damaging effects.<sup>40</sup>

In short, then, a psychologically informed approach to ameliorating the harmful aspects of prison life would involve broadly analyzing the context of prison itself to identify those features that produce the most adverse and problematic reactions and adaptations (staff and prisoners alike), and carefully but significantly restructuring harmful aspects of the prison environment to minimize potentially debilitating effects. It would also mean thoughtfully assessing and classifying prisoners' vulnerabilities and needs as they enter the prison system and assigning them to particular prisons accordingly, thereby providing prisoners with insight and assistance with which to resist the negative transformations brought about by prisonization and precluding the use of any harsh or punitive environment known to cause serious psychological harm.<sup>41</sup>

## RESURRECTING THE REHABILITATIVE IDEAL

As critics often have noted, many past efforts at prison rehabilitation were inherently flawed and easily perverted.<sup>42</sup> Most rehabilitation programs and practices probably never worked as effectively as their enthusiasts claimed they did or could, and some were outright destructive to the psyches of prisoners. Indeed, it is difficult to dispute Edgardo Rotman's historical judgment that "the language of rehabilitation legitimated a prison system that was all too commonly abusive."<sup>43</sup> Although the reasons for these failures can be debated, few penal institutions ever devoted the kind of resources that were needed for the diverse prison programs and range of services from which most prisoners were likely to benefit. As one commentator put it,

"In retrospect it is clear that rehabilitation could not fail because it had never been tried."<sup>44</sup>

Moreover, even though the kind of rehabilitation programs that might have succeeded in the short-term—ones with adequate resources, qualified personnel, minimal custodial interference, and careful postprison follow-up—were rarely if ever implemented, they also were flawed by their inherent individualism. They could never have been the crime-control panaceas that many of their advocates promised. Much of this book has been devoted to examining the core limitations of an approach to reducing crime that ignores the context in which it occurs.

That said, rehabilitation—in a much revised, more realistic, and carefully monitored form—must be restored as the primary goal of imprisonment. Contexts are shaped in part by the purposes they serve, and prison environments that are mandated to provide prisoners with opportunities that will facilitate their reintegration into the freeworld function differently from ones whose only purpose is to punish. As Hans Toch once put it, "We can of course carelessly leave the environment's impact to chance by running warehouses where we unwittingly let negative influences predominate. Or, we can consciously try to maximize constructive and positive forces available to us even in last-resort prisons."<sup>45</sup> Maximizing the available positive forces helps to prevent inherently negative influences from accumulating in and dominating correctional environments. In this way, structuring prisons around the goal of rehabilitation can be seen as much as a program of institutional reform as one of individual change.

The restoration of the rehabilitative ideal, when conceived of in this way—prison "treatment" that is *not* premised on the notion that crime is sickness and prison programming that is *not* based on a trait-based deficit model in which prisoners are seen as needing to be "fixed" before they can be released—is entirely consistent with modern psychological theory.<sup>46</sup> A renewed emphasis on rehabilitation does not imply that all prisoners leave prison lacking the skills, talents, and strengths that can carry them through the transition to a productive freeworld life. But they too often obtain these things in spite of how they have been treated in prison, not because of it. Indeed, a context-based model of rehabilitation would reflect the fact that it is prisoners' past social histories and present circumstances that have often prevented them from leading more fulfilled and successful lives in the places to which they eventually will return. This means, of course, that prison rehabilitation is likely to succeed only when it is made part of a larger strategy of social contextual reform.

This is more than a mere shift in semantics. Thinking of rehabilitation in social contextual terms would require the creation of programs and services that were devoted to persons *and* situations as targets of potential change. These new rehabilitation programs would be focused primarily on specific

context-related problems that prisoners were likely to encounter when released. Programs geared toward personal change also would be linked as realistically as possible to the freeworld settings in which they were likely to have the greatest effect. Thus, a social contextual model of rehabilitation would focus more on the kinds of circumstances and situations that prisoners were likely to be placed in later on and would assist them in acquiring the skills they would need to function and succeed in them.

This way of broadly conceptualizing rehabilitation would mean that individual-level prisoner change would be seen as only one small component in a larger program of crime control. It would be joined with an equally or more important mandate to *alter contexts*—by providing extensive community support designed to reinforce and buttress whatever positive gains may have been produced by rehabilitation programs inside prison. Because no amount of positive prison change can withstand or resist the powerful criminogenic forces at work in many of the communities where ex-convicts are concentrated, these places—rather than merely the prisoners themselves—must be targeted in the name of rehabilitation. Putting the implications of modern psychological theory in their simplest terms, what happens in prison to improve the outlooks, education, job skills, and psychological well-being of prisoners will not reduce crime in a significant way unless the freeworld contexts to which prisoners return are restructured to allow these positive changes to stabilize and be developed further.<sup>47</sup>

Correctional classification systems would need to be revamped with this broad range of new goals explicitly in mind. Prisoners would no longer be seen as decontextualized bundles of traits and deficits. Correspondingly, meaningful prison classification could not proceed without a real understanding of an individual's background and social history and the criminogenic contexts from which he or she came. Among other things, this means that the pro forma and often only marginally useful probation reports that are produced in many jurisdictions would be replaced by more comprehensive assessments of the broad array of social contextual as well as personal factors that contributed to the defendant's criminal behavior. These substantive and focused assessments would then serve as the basis for context-centered classification and programming decisions.

Because we now know that putting prisoners in the wrong environment can have long-term damaging consequences, classification officers would be required to justify their decisions on the basis of detailed knowledge about prisoner needs. Their recommendations also would include references to the nature and quality of available rehabilitative services and other features of the various institutions where prisoners were scheduled to be sent. Moreover, prison classification would proceed mindful of the freeworld context to which prisoners would return once their terms have ended.<sup>48</sup> Indeed, judges' sentencing orders and recommendations might be required to address these



issues as well. That is, there is no reason why a context-sensitive approach to the reentry process cannot begin at the time of sentencing, with recommendations from probation officers and judges about the kinds of rehabilitative services prisoners will need to ensure their successful return to the communities from which they are being taken.

This modest recommendation implies several others, including requiring probation officers and judges to become more knowledgeable about the rehabilitative services and programs available in the institutions to which they sentence prisoners. It also suggests that they be required to do follow-up monitoring to ensure that prisoners receive the services and assistance that they need and to which they are entitled. Simultaneously, prison classification officers would need to become more responsive to the recommendations of the sentencing authorities themselves. Thus, prison staff would need to know and be able to justify their decisions on the appropriateness of the programming options available within the correctional system—those places where prisoners could maximize opportunities to receive the kind of education, vocational training, and counseling that was designed to increase their chances of successful community reentry.

Decision makers also would need to be explicitly responsible for avoiding placements of particular prisoners in environments likely to be harmful—for example, places where vulnerable and special-needs prisoners are likely to be victimized or to deteriorate psychologically or in other ways. This implies that some greater degree of accountability would be introduced into the classification process, so that officials would be responsible for harmful consequences that they knew or should have known would occur in certain kinds of prisons and, especially, for certain kinds of prisoners.

Indeed, there also is no reason why prison systems could not be required to answer to the communities to which prisoners eventually are returned, and to the judges whose programming recommendations should have guided at least some of the course of a prisoner's incarceration.<sup>49</sup> In the spirit of accountability that has become so important in other public service agencies and arenas—especially in our education system—prisons, too, can be evaluated, graded, and even funded on the basis of the results that they achieve. Indices of success might focus on a range of intermediate measures, such as the number of vocational and educational courses and other rehabilitative services the prisons offered and the amount of programming that prisoners completed at a facility. Of course, more long-term and definitive measures might include the number of ex-convicts who were successfully employed in the freeworld and the positive impact that the particular prison had in reducing the recidivism rate over a specified period of years.

Thus, a kind of “no prisoner left behind” system of correctional assessment and evaluation could be implemented that would result in a dramatic, but entirely appropriate, shift in the way we gauge the effectiveness of prison

systems and those who run them.<sup>50</sup> For example, even though many prisoners suffer from poor educational backgrounds and lack job skills and significant work experience, most still do not participate in meaningful educational programs, vocational training, or prison industries while they are incarcerated.<sup>51</sup>

Indeed, the data on prisoner literacy and levels of educational attainment underscore this concern. Thus, among those entering state prisons in the United States in the mid-1990s, over 70% had not completed high school and 16% had no high school education whatsoever.<sup>52</sup> One national study reported that over two thirds of prisoners were functionally illiterate and one in five adult prisoners was completely illiterate.<sup>53</sup> For prisoners who are expected someday to reenter a labor force that requires increasingly higher levels of intellectual proficiency, the importance of providing remedial and even advanced educational opportunities should be obvious.<sup>54</sup>

Moreover, the value of prison educational programs has been well documented. For example, participation in college programs has proven to be an excellent predictor of institutional adjustment. It also is relatively inexpensive, and pays substantial dividends once prisoners are released. Numerous studies have found that participation in such programs produces positive effects and outcomes. Psychologist Michelle Fine and her colleagues found that among the women inmates at one correctional facility they studied, only 7.7% who participated in prison education courses recidivated, compared with 29.9% of those who did not participate.<sup>55</sup> In other research, college course work appears to have a substantial positive effect on postprison outcomes,<sup>56</sup> and actually completing a college bachelor's degree appears to have the greatest effect.<sup>57</sup>

Thus, one of the most important ways we can maximize the potential of prison to control crime is to greatly expand all levels of educational programming in prison—from basic literacy to college courses.<sup>58</sup> The great majority of prison wardens who have been surveyed on the issue acknowledge that these programs work.<sup>59</sup> However, recent estimates suggest that less than 10% of prisoners are enrolled in full-time job training or education programs.<sup>60</sup> A psychologically informed prison policy would acknowledge the educational demands that freeworld contexts will make on virtually all prisoners once they are released and, therefore, would make learning opportunities more widely available to them.

Other kinds of programs and services also are essential to improve prisoners' chances for postprison success. For example, we know that there is a significant relationship between drug and alcohol abuse and criminality. Nationwide data collected in the mid-1990s indicated that nearly two thirds (62%) of all persons under state correctional supervision and 42% admitted to federal prison suffered from "poly-substance" abuse problems before they were imprisoned. In addition, a very high percentage of persons had used

drugs or alcohol before committing the crime for which they were arrested—indeed, data from some cities indicated that 70% to 80% tested positive for drug use at the time of their arrest.<sup>61</sup> Drug use brings users into contact with a criminal subculture in which illegal behavior may be condoned and rewarded. It thus influences the nature of the situations in which users find themselves and puts them in places where violence is more commonplace, including ones where weapons are more accessible.<sup>62</sup>

The Justice Department's own extensive data on this issue not only document the magnitude of the problem but also underscore the inadequacy of our current approach. According to a nationwide study published in the late 1990s, despite the high number of "alcohol- or drug-involved offenders" in state and federal prison, only 1 in 7 had been treated for drug abuse since the current admission to prison, and the same number—1 in 7—had received treatment for alcohol abuse while incarcerated.<sup>63</sup> Other studies have estimated that the percentage of prisoners in treatment is even lower—including one indicating that only about 1 prisoner in 10 received drug treatment while incarcerated.<sup>64</sup>

Ironically, lawmakers often embrace a causal analysis of crime that implicates drugs, but typically only to more intensely target—and then more severely punish—drug users. Yet modern psychological theory suggests that focusing exclusively on the punishment of individual users while ignoring the social contexts that precipitate and maintain their substance abuse is destined to fail. Punishing persons for drug offenses by imposing prison terms that do not include opportunities for extensive drug treatment is even more self-defeating. Thus, in addition to providing prisoners with meaningful educational and vocational training opportunities, prison rehabilitation services must include access to extensive and effective drug and alcohol programs and related counseling services.

Context sensitivity also means that these programs must be structured with the nature of the prison environment in mind. For example, because group therapy depends on the active and open participation of group members, "in a prison setting where trust and confidentiality are limited, the effectiveness of group counseling is also limited."<sup>65</sup> Instead, the creation of a different kind of prison atmosphere would need to be created, preferably one that separated drug treatment programs from the rest of the prison setting. Ideally, such an approach "isolates the program and the clients from the prison culture of manipulation, mistrust, violence and drug use, and creates an environment in which sensitive issues can be addressed."<sup>66</sup>

Indeed, the value of the therapeutic community model to which I earlier referred turns largely on the ability of such programs to change the prison context in which they are implemented—to create healthier, less destructive prison environments that support rather than undermine whatever positive changes are brought about. But, once again, context sensitivity

means recognizing that no program of prison change can succeed without giving careful attention to the environment to which prisoners will return once they are released. Thus, successful therapeutic communities and other effective treatment models also develop extensive "aftercare" plans and provide assistance and follow-up services for prisoners once they have returned to free society.<sup>67</sup>

These contextually oriented models of rehabilitation can be implemented on a widespread basis to address the substance abuse problems and broader treatment needs of prisoners. Indeed, many newer forms of treatment focus explicitly on "dynamic interactions between multiple risk factors and situational determinants" of drug use, recognizing that "relapse prevention" often depends on the management and control of a variety of contextual factors.<sup>68</sup> Although they are no substitute for the creation of alternative treatment programs *outside* prison (into which many persons who have committed drug-related crimes can be diverted instead), in-prison drug treatment programs—because of the sheer numbers of people involved—are likely to remain an important part of prison rehabilitation.

In the long run, providing these kinds of rehabilitative services and other meaningful activities for prisoners should not add significantly to the overall expense of imprisonment. Indeed, commentators have suggested that prisons that strongly emphasize this kind of enriched programming are easier and less expensive to run; some have established track records that impress even conservative criminologists.<sup>69</sup> More generally, there is evidence that the implementation of a whole range of broad-based correctional standards intended to improve prison conditions actually may decrease rather than increase operating budgets.<sup>70</sup> In any event, the real cost-effectiveness of programs designed to enhance reentry and reduce recidivism comes from their ability to end cycles of crime, incarceration, and reoffending in the future.

#### PSYCHOLOGICAL TREATMENT IN A CONTEXT-ORIENTED PRISON SETTING

The use of more traditional forms of psychotherapy and psychological counseling in prison is a complicated and controversial topic. The many excesses that have been committed in the name of "prison therapy" in the past provides a basis for continued skepticism and legitimate concern. So, too, does the way that individual-level treatment models imply that criminality stems primarily from personal psychopathology. Thus, I have advocated psychologically informed programs of rehabilitation that focus broadly on preparing prisoners to reenter free society through educational and voca-

tional training, rather than attempting to cure psychopathology that most of them do not have.

However, the psychological legacies of the past histories of trauma and mistreatment that many criminal defendants share should not be ignored. Recall, for example, that Donald Dutton and Stephen Hart found that over 40% of the prisoners they studied had been exposed to some form of serious childhood abuse, and those who had been victimized in this way were 3 times more likely to have engaged in violent offenses as adults. These and similar data argue strongly in favor of making some form of in-prison counseling available to those prisoners who seek to address these issues while incarcerated. In this regard, Dutton and Hart offered what they characterized as a “counterintuitive suggestion”—namely, that persons who have committed violent offenses should be treated in prison for their earlier experiences *as victims*. Such therapy would address whatever feelings of loss of control, emotional numbing, hyperactivity, and substance abuse have come about as longer term symptoms of severe early trauma.<sup>71</sup>

Moreover, the high rates of mental disorder among prisoners that were discussed in chapter 8 require a thoughtful and caring response. Although a contextual model of crime and punishment would explicitly reject an exclusive focus on individual-level causal factors in understanding and responding to criminal behavior, vulnerable prisoners nonetheless deserve opportunities to receive appropriate treatment in properly designed settings. For example, Kenneth Adams’s study of maximum-security prisons in New York State found that prisoners who were referred for mental health treatment had “much in common with civil psychiatric patients by way of treatment experiences and little in common with stereotypic notions of the criminally insane as chronically violent offenders.” He concluded that prisons obviously contained a significant number of persons “who can benefit from service delivery arrangements that merge mental health and criminal justice concerns.”<sup>72</sup> More generally, the data that I cited earlier—indicating that as many as 20% or more of prisoners currently suffer from serious mental disorders or developmental disabilities—justify higher levels of mental health screening, monitoring, and treatment than are currently available in many correctional facilities.

Indeed, recall the nationwide data (cited in chap. 8, this volume) which showed that more than 1 in 5 prisons in the United States did not even screen incoming inmates to determine their mental health needs and that about the same number failed to conduct psychiatric assessments of prisoners or to make therapy or counseling available to them once they were incarcerated.<sup>73</sup> Obviously, one important way to address the needs of the hundreds of thousands of mentally ill and developmentally disabled prisoners would be to provide all of them with adequate intake screening and psychiatric assessments, access to well-trained mental health counselors,

24-hour mental health coverage, and community mental health referrals on a comprehensive and effective basis.

The increased presence and potential involvement of clinical personnel at the time of admission—when the pains of imprisonment are acute—also could improve the quality of correctional screening and classification decision making in general. It would allow prison staff to better address the needs of incoming prisoners and would help to avert irreversible psychiatric emergencies (such as suicide). Moreover, it would minimize the disruption that occurs when prisoners with mental illness or developmental disabilities have been assigned to institutions that are ill equipped to treat them.<sup>74</sup>

Beyond these commonsense recommendations—more and better screening and in-prison services—a social contextual approach to treatment in a correctional setting also would need to address the ways in which the prison setting itself compromises the nature and quality of the therapeutic response that is possible there. For example, the fact that “in institutions . . . the wearing of socially appropriate masks is frequently the condition of personal survival”<sup>75</sup> limits the amount of behavioral and attitudinal changes that are likely to occur in traditional prison environments. Thus, ways would need to be found to transform the prison contexts in which psychotherapy is conducted to overcome these barriers. This is another argument in favor of screening certain groups of prisoners with mental illness out of the traditional prison system entirely and placing them in facilities that are structured primarily for treatment rather than punishment.

Indeed, modern psychological theory underscores the numerous ways in which “the social organization of penal institutions is . . . antithetical to rehabilitative efforts”<sup>76</sup> and challenges reformers to address them. Among other things, the working relationship between treatment and custody personnel in correctional settings would need to be restructured so that recommendations like those previously mentioned—that prisoners with mental illness be carefully screened, given access to mental health treatment, and sometimes referred to more appropriate therapeutic settings—are more routinely implemented. When mental health workers are required to comply categorically with the judgments of custody personnel or are under pressure to defer to assignments made by classification or housing officers who may summarily override their clinical recommendations, of course, they cannot effectively address the needs of disturbed or vulnerable prisoners.<sup>77</sup>

In addition, both mental health and custodial staff members would need to be provided with specialized training that focused on the various context-related disorders that arise or are exacerbated in prison, as well as the range of additional psychological problems that come about in response to more severe prison conditions (such as solitary or supermax-type confinement). As I have suggested throughout much of this book, precisely because context matters, the individual-level consequences of even short-

term exposure to deprived, degrading, and brutalizing prison conditions cannot be ignored. Prison staff need to be trained to recognize prison-related stressors, and to become sensitive to the ways in which the environment of prison can cause psychological distress in many prisoners. The tendency to automatically attribute psychiatric or mental health complaints to preexisting character disorders or to some form of malingering or "secondary gain" often reflects a naïve view of the pains of imprisonment and their psychological consequences. This dismissive approach is less defensible or justified in light of the more psychologically sophisticated context-sensitive perspective on institutional behavior that has emerged over the last several decades.

In broader terms, Hans Toch described an approach to "multiproblem" prisoners in which case managers serve to coordinate the delivery of a wide range of services to them.<sup>78</sup> Despite the limited role that mental illness *per se* plays in crime causation in general, there are some prisoners whose underlying psychological disorders not only should be taken into account in classification decisions and housing assignments but also must be addressed before they are likely to make a successful transition to the freeworld.<sup>79</sup> Indeed, effective programs of rehabilitation would include enhancing the capability of prison counselors to engage in needs assessments of prisoners and actually to deliver appropriate services accordingly—not just directly to prisoners in confinement but also as participators in the coordination of continuing care in the broader freeworld contexts to which those prisoners will return.<sup>80</sup>

One caveat is in order concerning the complex and sensitive topic of correctional mental health programs. As I acknowledged earlier in this chapter, in the days when "treatment" was the stated mission of many prisons, there were many abuses committed in its name. Distinguished forensic psychiatrist Bernard Diamond once criticized what he saw as a "prevailing attitude of hypocritical cynicism" in which, despite an "official posture" that the prison provide therapy, prisoners still experienced the prison as "deprivation and punishment." However, they also knew that some ostensible participation in the therapeutic process was crucial to their release. Thus, as he put it, "a complex confidence game results in which staff administers treatments which they know full well to be ineffective and inadequate to inmates who are quite aware that they are not being treated but are undergoing punishment."<sup>81</sup> No intelligent, psychologically informed set of reforms would ignore this history or risk re-creating such a cynical, hypocritical system.

To avoid doing so, a dramatic shift in correctional budgets must occur, so that the context of prison itself can be broadly reshaped. Prison staff and administrators would need to acknowledge that harsh punishment and severe deprivation are incompatible with treatment-oriented environments. At the

same time, to be sure, strict oversight of treatment programs is needed to avoid delivering punishment in the name of therapy. Moreover, except in the most acute cases, treatment programs must be made available on a voluntary basis, and participation never made a precondition for release from prison. Involuntary, coercive therapy in an already overcontrolled environment like prison is unlikely to produce positive and lasting change. Instead, participation should be ensured by the quality of the programs themselves. This, in turn, would require adequate numbers of highly trained, properly funded, and institutionally empowered therapy and counseling personnel to be in place to effectively screen, monitor, and treat those prisoners who enter the system with preexisting psychiatric conditions, as well as those who may become the psychological casualties of incarceration.<sup>82</sup>

I should note that the tendency to see the negative effects of imprisonment in exclusively clinical terms has sometimes produced an anomalous pattern of treatment that has harmful long-term consequences for mentally ill prisoners who are subjected to it. Because their clinical disorders have been approached from a traditional perspective that discounts or ignores the nature of the social context in which they occur, acutely disturbed prisoners often are removed from especially harsh prison conditions (such as solitary confinement) only long enough to be treated and stabilized, after which they are returned to the same adverse conditions that helped to precipitate their mental health crisis. This kind of “revolving door” approach seems to be a remnant of the individualistic view of behavior in which patients are treated independent of context. A more psychologically sophisticated appreciation of the interaction between painful conditions of confinement, acute threats to the psychological well-being of prisoners, and acute forms of mental illness would result in a different approach—either to drastically change the harsh context that precipitated or exacerbated the psychological disorder or to permanently remove vulnerable prisoners from it.

Finally—and perhaps most importantly—in recognition of the fact that certain countertherapeutic aspects of the prison environment simply cannot be overcome, many more community-based alternatives need to be created to which prisoners who are mentally ill and psychologically vulnerable can be diverted. In the final analysis, the appropriate solution to high numbers of prisoners with mental illness is not to turn prisons into mental hospitals but rather to provide adequate treatment outside (and instead) of prison, so that their incarceration can be avoided altogether.

## RACE-RELATED PRISON REFORMS

Chapter 4 was devoted largely to a discussion of the racialized nature of prison punishment in American society, a topic that also was acknowl-



edged in passing in many other parts of this book. Many of the forces that have resulted in significant racial disparities in imprisonment are generated outside of the correctional system itself and, therefore, are beyond the scope of traditional prison reform. This is a clear example of the limitations of bringing change to only one sector of a highly interconnected set of socioeconomic, political, and legal institutions (especially because prison systems typically respond to, rather than produce changes in, these other institutional systems).

To underscore just one aspect of this dilemma, note that prison policy alone is hardly responsible for the larger social equation by which our nation sentences almost twice the percentage of young African American men to prison than it awards bachelor's degrees.<sup>83</sup> Although sentencing reform certainly could have some impact on that stark disproportion, it cannot directly address the broader lack of educational opportunity that obviously plays a more significant role.<sup>84</sup>

At the same time, however, this means that community-level reforms that helped to bring social and economic justice to minority neighborhoods would go a long way toward reducing racial disproportions in rates of imprisonment. Given the finite resources available to address these problems, the choice to approach drug-related and other kinds of crime by focusing so aggressively on individual perpetrators has precluded the simultaneous investment in preventive and other community-oriented programs. The construction of a very large and costly correctional system (that holds a disproportionate number of minority prisoners) has come at the expense of programs that address the structural roots of crime. As I have noted, our crime control policies continue to be based on a narrowly individualistic model of behavior, and certain groups in our society have paid an especially high price for the pursuit of these outmoded and ineffective approaches.<sup>85</sup>

In addition, other factors that contribute to the race-based disparities in incarceration—although they are located outside the prison system—nonetheless are subject to reform and could be addressed in a more psychologically informed system. These certainly include current drug law enforcement, prosecution, and sentencing policies that ignore social context to produce clear racially disparate consequences. Recall that the dramatic increase in incarceration rates over the last several decades was produced in part by the targeting of drug offenders that occurred in the course of the War on Drugs.

Notwithstanding their unfairness, these policies should be vulnerable on the basis of their sheer ineffectiveness. According to their proponents, imprisonment policies that concentrated so intensely on drug-related crime certainly should have produced massive decreases in drug use. They did not. As one political analyst of the use of imprisonment as a weapon in the war

on drugs concluded, "The massive growth of prison cells to incarcerate a small percentage of the nation's addicts has done nothing meaningful to reduce the staggering number of civilian addicts. Neither the public safety nor the drug addiction problem has been satisfactorily addressed."<sup>86</sup> In fact, drug use continued to rise, leading the American Bar Association to recommend in 1998 that the nation rethink its exclusive reliance on arrest and incarceration for drug offenders.<sup>87</sup>

Race-related sentencing reforms also might address the relatively recent legal doctrines that have precluded any meaningful judicial consideration of background and circumstance in calculating culpability and meting out punishment. In addition to its general effects, the law's decontextualized view of the social behavior of crime has meant that race-based differences in exposure to criminogenic circumstances are ignored in the sentencing process. As I discussed at length in chapter 4, the failure to improve the life chances of persons exposed to these criminogenic conditions and instead to intensify their criminal prosecution and incarceration reflects an intrinsically dispositional view of crime control. It also has had discriminatory consequences and allowed the characteristics of the perpetrators (rather than their circumstances) to be used as the basis of causal inferences that are erroneous as well as racialized in nature. As one partial solution to some of these problems, legislation such as the proposed Racial Justice Act—which was designed to trigger inquiries into state death penalty sentencing practices whenever significant race-based disparities were identified—might be broadened to include those instances in which significant racial disparities in prison sentences occurred as well.<sup>88</sup>

Inside prisons, proposals to improve prison life in general should have some ameliorative effect on racial conflict—including the way in which creating program-rich environments may lessen racial and other kinds of tensions overall. In addition, however, practices that afford institutional legitimacy to racial divisions inside prisons or give credence to the notion that racial animosities cannot be overcome other than by segregating or separating different racial and ethnic groups must be prohibited. Consistent with the modern psychological view that individual-level attitudinal change alone will not be sustained unless it is supported by the appropriate situational contingencies, policies of racial tolerance will have to be implemented that both require and reinforce behavioral change on the part of inmates and officers.

This means, of course, that proactive strategies of racial integration would need to be pursued—frank acknowledgement of the potential for racial tension and conflict in prison must be followed with the implementation of diversity-related racial tolerance programs for staff and prisoners alike. To be sure, racial integration may need to be phased in in prison settings where equality between prisoners has been little more than an idle claim half-

heartedly pursued. Yet, despite the need to strike a sensitive balance between prisoner safety and legitimate preferences, on the one hand, and genuine race-neutral official policies, on the other, prison systems must structure living arrangements and day-to-day procedures in ways that break down the institutionally sanctioned racial barriers that exist inside many correctional facilities.<sup>89</sup>

Of course, it is unrealistic and unfair to expect prisons to become engines for broader social reform, or to insist on a level of racial harmony and cooperation in correctional institutions that has proven difficult to attain elsewhere in society. Yet the intimate and intense nature of prison life virtually requires that an extraordinary level of interpersonal tolerance be achieved and maintained. Indeed, government policymakers with a stake in promoting improved race relations outside of prison should consider the long-term societal-level implications of widespread, deeply engrained prison-based racism. Specifically, each year hundreds of thousands of ex-convicts are released back into the freeworld, many having spent years housed in the racially toxic and sometimes hate-filled world of prison. Policies of overincarceration in environments like these may contribute to race-related gang violence and the persistence of racism in society at large. This, too, is a kind of negative “prison effect,” but one with potential consequences for contexts outside of prison.

#### GANGS AND CONTEXT: REDUCING PRISON PATHOLOGIES

Correctional officials typically have viewed the prison gang problem as a reflection of the individual pathology of gang members, and they have responded accordingly. That is, they have undertaken much the same approach that they use with other troublesome inmate behavior—punishing the people whom they believe are most involved. For the most part, as I pointed out in chapter 7, this strategy ignores the contextual factors that contribute to the formation of the gangs themselves. Not surprisingly, there is little evidence that it has been effective.

Moreover, this individualistic response has certain contextual consequences of its own that can worsen the very problem it is designed to solve. For one, the punitive isolation of gang leaders—done with the intent both of punishing them and preventing their communication with other members—creates vacuums within the power structure of the gangs themselves. It allows many younger prisoners to compete for leadership positions vacated by those sent to isolation. Because the conditions that gave rise to the gangs are not addressed, new leaders, new members, and even new gangs often emerge as a result to fill this vacuum. In addition, the policy of isolating

gang members and housing them all in the same places—usually punitive segregation units that lack any programming opportunities or other meaningful activities—focuses their attention even more intensely on gang-related issues. In the absence of anything else to become involved in or care about, the gang assumes even greater significance in their lives. Moreover, those persons who are misclassified as gang members—ones with little or no actual gang affiliation before being placed in segregation—are surrounded with committed members and leaders. Many feel they have no choice but to become more actively involved.

Finally, punitive isolation may be counterproductive in another sense. If it is true that “alienation, anger, and conflict tend to feed and reinforce gang membership,”<sup>90</sup> then placement in these harsh units can exacerbate these feelings. Thus, the intense punishment that characterizes prison isolation—the deprivation, harsh conditions, and especially punitive forms of control to which they are subjected—may have the paradoxical effect of intensifying loyalties to the group for which the prisoners feel they are suffering.

A similar approach to “gang suppression” that punishes individual leaders and members has been unsuccessful outside of prison—when it has been tried in communities and neighborhoods plagued by chronic gang problems. It has fared no better in correctional settings. A context-oriented approach to prison gangs would look instead beyond exclusively person-centered policies that repress only individual members and simultaneously ignore the conditions that foster gang activity. It would recognize that, like other voluntary associations, gangs gain strength when recruits have little hope and are given few meaningful pathways through which to achieve desired goals—that is, when they perceive that important needs cannot be met any other way.

Thus, the lure of the gangs begins to fade in program-oriented prisons in which prisoners are provided with useful and productive activities in which to engage and are not deprived of basic amenities (that many gangs become skilled at providing). Gangs also lose power when prisoners can become invested in their own progress within the prison in ways that they anticipate will carry over to free society—so that there are some future-oriented goals that they are reluctant to jeopardize or lose. As prison analyst John Conrad once observed, “without full and genuine work and activity it is inconceivable that the gangs will attenuate in influence, numbers and violence.”<sup>91</sup>

Sophisticated gang-reduction programs in local communities have succeeded by merging individual-level counseling with context-oriented programs designed to change the circumstances that have created and maintained gang allegiances. One such program provides participants with opportunities to explore the basis for the feelings of anger and rage that

many of them share, and helps them find behavioral alternatives to violence that they formerly “displaced onto people and property in the community.”<sup>92</sup> Mentoring-based programs like these are designed to enable gang members to understand and address past abuse issues, develop more positive identities, “differentiate between emotional states and behavioral actions,” and explore the nature of the sociological stressors that have impacted their own family dynamics.

However, because these feelings and behaviors so often arise from structural and neighborhood-related forces and factors, their ultimate resolution must be accomplished within the community as well as with individual gang members. By embracing this perspective, other innovative programs have recognized that the twin goals of achieving community-level peace in neighborhoods torn by gang violence and attaining “inner peace” for gang members “needs a transitional bridge to institutions that will support and open the doors” to the current generation of at-risk youth. That is, the decision to relinquish gang life must be reinforced “most of all, [with] remedial education, training, and employment at decent wages.”<sup>93</sup>

There is no reason why many of the same insights—such as the use of mentoring-based counseling and structural change that is designed to provide meaningful opportunity—cannot be applied to the gang problem that exists inside many prisons. Of course, here, too, the current rigid separation between in-prison programming and neighborhood-based transformations will have to be bridged. Community-based organizations will need to be given access to the prisons to facilitate these interconnections and to begin to create transitional pathways—opportunities for productive work and meaningful activity in community settings that will be in place at the time of a person’s release from prison. When combined with the opportunity to move into neighborhoods that are not dominated by gang activity, or to work in programs that are designed to transform communities so that the grip of the gangs is loosened, this kind of contextual approach to prison “peacemaking” represents a more viable way of addressing this important problem.

#### THE CONTEXT OF REENTRY: PRESERVING POSITIVE CHANGE

Even properly designed and well-funded prison programs often have failed to improve recidivism rates, largely because they have disregarded the contexts and circumstances to which prisoners are released. Here, too, the individualistic bias that characterizes traditional correctional thinking has limited the scope of reform. As people-changing institutions, prisons (at

their best) have been charged with the task of producing only individual-level change. No matter how good or effective we make them, their beneficial effects are limited unless they are supported and maintained in the settings and circumstances that follow incarceration. A psychologically sophisticated, context-oriented approach would recognize this fact and implement a fundamentally different strategy.

For example, a deeper appreciation of the nature and consequences of the prisonization process that occurs as prisoners adapt over time to the pains of imprisonment highlights the importance of providing direct assistance to help reverse these changes as release dates approach. Indeed, because of the obvious challenges that arise whenever persons move into dramatically different social contexts—and few transitions in our society are more dramatic than the one from prison to the freeworld—intensive “decompression” programs are needed to prepare prisoners for the sudden and often wrenching changes they will undergo. Even though the value of these kinds of programs has been known for many years,<sup>94</sup> few prison systems have adopted them on a widespread and routine basis.<sup>95</sup>

In addition, however, recognizing the extent to which context matters also significantly broadens the perspective through which decompression and reintegration are approached. That is, here, too, it underscores the extent to which changing the context to which prisoners return is at least as important as changing the readiness with which prisoners themselves undertake the transition. Indeed, postprison environments exercise a major influence over whether and how prisoners make the transition back to the families, social networks, and communities from which they have been taken. As Dina Rose and Todd Clear observed, a contextualist approach like the one I am proposing would recognize “that reentry is not just about individuals coming home; it is also about the homes and communities to which ex-prisoners return.”<sup>96</sup> Because community context is as important to reintegration as prison itself—and, for some prisoners and some communities, more important—altering this environment by providing resources and supportive services is critical.

Of course, ex-prisoners are children, spouses, parents, and loved ones, who must be welcomed back into their families and friendships as well as the neighborhoods and communities, where they once again will become residents and citizens. Psychologically sophisticated prison policies would make a concerted effort to assist families in preparing for the return of loved ones, help communities acclimate and absorb prisoners back into their neighborhoods, and create infrastructural supports (such as employment counseling, job placement services, counseling opportunities, and so on) to facilitate their reentry.<sup>97</sup> Basic issues—such as helping prisoners prepare for difficult reunions with family members, giving families access to longer

term family counseling, and working with community and neighborhood employers to facilitate job placement and retention<sup>98</sup>—are essential components in a context-based approach.

Among other things, this approach suggests that probation and parole agencies should be restructured and revamped to provide services and meaningfully assist in reintegration (a drastic change from their present emphasis on surveillance and social control).<sup>99</sup> Unfortunately, as a recent Urban Institute analysis of parole underscored, the parole function itself has shifted from providing services to becoming a “surveillance-oriented, control-based strategy centered on monitoring behavior.” Its authors also drew this context-based conclusion: “Parole officers are often located far from the neighborhoods where parolees reside, and therefore lack an understanding of the situational context that geographically oriented supervision could provide.”<sup>100</sup> As the focus and mission of probation and parole shift to the provision of services and the maintenance of postprison success, agents’ knowledge of and connection to the local communities in which ex-convicts are concentrated will have to be greatly improved.<sup>101</sup>

Moreover, truly contextual models of reintegration would focus on the core task of transforming the actual social and economic circumstances to which prisoners return—conceptualizing community and neighborhood-level change as part of the process by which successful postprison adjustment is made possible. That is, models of crime control that embody modern psychological theory must include structural change—the supportive networks, viable economic circumstances, and hospitable living conditions that would have to be created to replace the chronically “high risk” situations to which many prisoners return.<sup>102</sup>

Finally, the important task of interconnecting the entire set of these context-related reforms would need to be addressed in order to ensure their effectiveness. Just as proposals to change the way prison life is structured will have limited long-term effects in the absence of postprison programs that address the obstacles to reentry, elaborately structured reentry programs—in the absence of genuine prison reform—are unlikely to fare much better. Thus, so-called second-chance programs that focus on the needs of prisoners *after* they are released must be joined with efforts to reduce the numbers of persons who enter prisons in the first place and, for those who do go, to minimize the damage that overly harsh and punitive conditions of confinement can inflict.<sup>103</sup> For prisoners whose vulnerabilities should have precluded their incarceration in the first place, or for those persons who were deeply and perhaps irrevocably harmed by their exposure to painful and damaging prison settings, or for those who were the victims of psychologically or physically disabling forms of correctional mistreatment, second-chance programs realistically may offer no chance at all.

## CONCLUSION

This chapter has set out an overarching, unifying vision that both establishes the logic with which prison policy changes can be guided and provides an intellectual framework from which specific reforms can be generated. As I have repeatedly noted, we now understand the important causal role played by traumatic social histories, criminogenic social conditions, and broad structural inequalities in the origins of criminal behavior. The growing recognition that context matters also means that there is greater appreciation of the way in which the process of prisonization and exposure to the situational pathologies of prison can create unwanted changes in prisoners that may have severe personal and community-level consequences.

Just as the contextual model of behavior developed in the preceding chapters would predict, "most studies support the idea that intervention is more likely to be effective if it focuses on certain areas that have been shown to be risk factors for criminal activity."<sup>104</sup> Yet, over the last several decades, many politicians and prison policymakers have been less than completely candid about these issues. Indeed, they often have refused to address crime control and prison-related problems in meaningful ways, leaving citizens largely ignorant of the real long-term implications of the "get tough" movement in which they have been encouraged to participate.<sup>105</sup>

The transformative nature of the prison experience, the kind of adaptations it requires prisoners to undergo, and its potential to inflict long-term harm all must become the focus of context-based prison change. From a modern social contextual perspective, "doing no harm" in corrections means minimizing or prohibiting exposure to painful and damaging prison contexts and environments, where the risk of psychological harm is great (no matter the short-term practical convenience they seem to afford). Because many current legal approaches to these prison-related challenges are limited and do not encompass the behavioral aspects of crime and punishment that I have presented in the preceding chapters,<sup>106</sup> a psychologically inspired set of prison reforms seems to be in order.

Among other things, limiting the pains of imprisonment—and doing so in the name of a psychologically sophisticated model of crime control—would mean increasing the number of alternatives to prison, creating places where otherwise dysfunctional adaptations to prison are far less necessary, housing prisoners in environments where they are not constantly challenged to survive the dangerous extremes of confinement, and making a significant investment in ensuring their postprison adjustment by properly preparing them for this dramatic transition. Finally, it would mean restructuring the nature of the environments to which they eventually return, and providing them with a wide range of context-sensitive support services once they do.



## NOTES

1. Nils Christie, *Limits to Pain* (Oxford, England: Martin Robertson, 1982), 49. Christie also cautioned that presumably well meaning reforms often have unintended consequences. For example, "Recent experiences with 'alternatives to prison' indicate that they easily turn into 'additions to prison,' and that conditional sentences in reality turn into more time spent in prison. The lesson from periods of 'treatment for crime' ought also to be kept vividly in mind. If pain delivery is limited, will we then get a rehearsal of the old story? . . . Skeptics will be greatly needed" (ibid., 110). All proposals to make prison systems "better"—including my own—should be judged with these lessons in mind.
2. S. Pillsbury, "Understanding Penal Reform: The Dynamic of Change," *Journal of Criminal Law & Criminology* 80 (1989): 726, 779.
3. J. Bleich, "The Politics of Prison Crowding," *California Law Review* 77 (1989): 1125, 1166.
4. Pillsbury, "Understanding Penal Reform," 779.
5. Kevin Wright and Lynne Goodstein, "Correctional Environments," in *The American Prison: Issues in Research and Policy*, ed. Lynne Goodstein and Doris MacKenzie (New York: Plenum Press, 1989), 266.
6. H. Toch, "A Revisionist View of Prison Reform," *Federal Probation* 45 (1981): 3, 9.
7. Ibid., 4 (footnote omitted).
8. Not surprisingly, given what I have said up to this point about the causes of the current corrections crisis, I believe that many of the most important obstacles to prison reform are political in nature. Thus, I agree with the late Norval Morris on this point. He wrote, "The major impediment to reducing the use of imprisonment in the United States, and to bringing its imposition into accord with that of other developed countries, lies in its having become, over the past two decades, the plaything of politics. Being 'tough on crime' has become a necessary precondition of election to political office and of the retention of incumbency." Norval Morris, "The Contemporary Prison, 1965–Present," in *The Oxford History of the Prison: The Practice of Punishment in Western Society*, ed. Norval Morris and David Rothman (New York: Oxford University Press, 1995), 230. Numerous accounts have been published recently that examine how and why these political forces were applied to criminal justice issues and with what effect. Among the best ones are Sasha Abramsky, *Hard Time Blues: How Politics Built a Prison Nation* (New York: St. Martins Press, 2002); Joe Domanick, *Cruel Justice: Three Strikes and the Politics of Crime in America's Golden State* (Berkeley, CA: University of California Press, 2004); Joel Dyer, *The Perpetual Prisoner Machine: How America Profits From Crime* (Boulder, CO: Westview Press, 2000); Alan Elsner, *Gates of Injustice: The Crisis in America's Prisons* (Upper Saddle River, NJ: Prentice Hall, 2004); and Christian Parenti, *Lockdown America: Police and Prisons in the Age of Crisis* (New York: Verso, 1999). For other perspectives, see also P. Chevigny, "The Populism of Fear: Politics of Crime in the Americas," *Punishment & Society* 5 (2003): 77; and C. Haney, "Riding the

Punishment Wave: On the Origins of Our Devolving Standards of Decency," *Hastings Women's Law Journal* 9 (1998): 27.

9. On the use of drugs courts, see, e.g., P. Hora, W. Schma, and J. Rosenthal, "Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America," *Notre Dame Law Review* 74 (1999): 439. For a discussion of the use of mental health courts, see E. Stratton, "Solutions for the Mentally Ill in the Criminal Justice System: A Symposium Introduction," *Capital University Law Review* 32 (2004): 901, and the other articles in the symposium special issue. The emergence of these problem-solving courts that are designed to address specialized crime-related problems and implement specialized—typically non-prison—solutions is a good example of the contextual perspective at work. See, e.g., D. Rottman and P. Casey, "Therapeutic Jurisprudence and the Emergence of Problem-Solving Courts," *National Institute of Justice Journal* 240 (July, 1999): 12. It is true that these new specialty courts "focus on large scale social problems that are difficult to resolve," but this is in part because other social agencies no longer address them (because the agencies now lack either the resources or, in some instances, the legal mandate to attempt to do so). T. Case, "When Good Intentions Are Not Enough: Problem-Solving Courts and the Impending Crisis of Legitimacy," *Southern Methodist University Law Review* 57 (2004): 1459, 1516. The concern raised by Case and others—that courts may not have the expertise to solve such large-scale social problems—overlooks the fact that the problems are not likely to solve themselves. Eventually, courts will be called on to address many of them (albeit in a different, perhaps less solvable, form). Indeed, the movement toward greater numbers of problem-solving courts also seems to be a reflection of the increasing awareness that solutions to these difficult problems must be implemented earlier in the process and can be better fashioned by judges who are working closer to the context in which the problems first arise.
10. D. Ward, "Punishment by Imprisonment: Placing Ideology Into Concrete [Reviewing Michael Sherman and Gordon Hawkins, *Imprisonment in America: Choosing the Future*. Chicago, IL: University of Chicago Press (1983)]," *Michigan Law Review* 81 (1983): 1202, 1202.
11. See, e.g., John Smykla and William Selke, ed., *Intermediate Sanctions: Sentencing in the 1990s* (Highland Heights, KY: Anderson Publishing, 1995); Michael Tonry and Kate Hamilton, ed., *Intermediate Sanctions for Overcrowded Times* (Boston: Northeastern University Press, 1995); and Norval Morris and Michael Tonry, *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System* (New York: Oxford, 1990). For a discussion of the framing of these proposals in ways that are likely to achieve public support, see Michael Castle, *Alternative Sentencing: Selling it to the Public* (Washington, DC: National Institute of Justice, 1991).
12. Early versions of intermediate sanction programs—adopted during the "tough on crime" era—proved more punitive than rehabilitative and did little to actually steer persons who were headed for prison into the community instead. Appropriately designed intermediate sanction programs should "divert low-

risk prisoners to the community or place higher-risk probationers on smaller caseloads with more restrictions," or both. J. Petersilia, "A Decade of Experimenting With Intermediate Sanctions: What Have We Learned?" *Federal Probation* 62 (1998): 3, 5.

13. Thus, as Joan Petersilia reported, intermediate sanction participants who were involved "in treatment, community service, and employment programs—prosocial activities—had recidivism rates 10% to 20% below that of those who did not participate in such additional activities." Petersilia, "A Decade of Experimenting With Intermediate Sanctions," 6. Similar conclusions were reached by Paul Gendreau and his colleagues. See P. Gendreau, T. Little, and C. Goggin, "A Meta-Analysis of the Predictors of Offender Recidivism: What Works!" *Criminology* 34 (1996): 401.
14. Petersilia, "A Decade of Experimenting With Intermediate Sanctions," 7, describing aspects of Wisconsin's "community confinement and control" program.
15. The Europeans have made a much more serious commitment to restorative justice alternatives in their criminal justice and prison systems. For example, one innovative restorative justice program implemented inside selected Belgian prisons—a "restorative detention" project—includes the creation of a "culture of respect" for staff and inmates alike (to counteract the negative aspects of imprisonment); the introduction of a genuine restorative process that includes a victims' perspective in different justice-related activities (that allows prisoners to shift their focus from prison survival to understanding the causes and consequences of their actions); and, finally, programs that address "the financial problems of prisoners (insolvency, impoverishment, debts, fines, legal costs, civil action remedies and the lack of possible remedies)" and are designed not only to help them meet their restorative justice obligations but also to "provide prisoners with sufficient means to manage their budget as independently as possible." Luc Robert and Tony Peters, "How Restorative Justice Is Able to Transcend the Prison Walls: A Discussion of the 'Restorative Detention' Project," in *Restorative Justice in Context: International Practice and Directions*, ed. Elmar Weitekamp and Hans-Jurgen Kerner (Devon, England: Willan Publishing, 2003), 95, 103, 115. See also D. Miers, "Situating and Researching Restorative Justice in Great Britain," *Punishment & Society* 6 (2004): 23, and the references cited therein.
16. Steve Bogira, *Courtroom 302: A Year Behind the Scenes in an American Criminal Courthouse*. (New York: Knopf, 2005), 41.
17. See, e.g., Timothy Hughes and Doris Wilson, *Reentry Trends in the United States: Inmates Returning to the Community After Serving Time in Prison* (Washington, DC: Bureau of Justice Statistics, 2002).
18. As Human Rights Watch noted, the collective social good is advanced whenever "individuals who walk out of prison each year . . . do not leave more dangerous than when they entered." Human Rights Watch, *Prison Conditions in the United States* (New York: Author, 1991): 11.
19. See E. Zamble, "Behavior and Adaptation in Long-Term Prison Inmates: Descriptive Longitudinal Results," *Criminal Justice and Behavior* 19 (1992): 409.

20. Dora Schriro, "Correcting Corrections: Missouri's Parallel Universe," in *Sentencing and Corrections: Issues for the 21st Century* (U.S. Department of Justice, Papers from the Executive Sessions on Sentencing and Corrections, May 2000). Available at <http://www.ncjrs.org/pdffiles1/nij/181414.pdf>.
21. For a review of this model, see George De Leon, *Community as Method: Therapeutic Communities for Special Populations and Special Settings* (Westport, CN: Praeger, 1997). Here is how several European experts described the advantages of this approach: "The main theoretical assumption is that healthy and participatory environments in custodial institutions will bring about greater psychological balance in prisoners and will reduce their anti-social behavior, both during the individual's stay in the custodial institution and afterwards." Santiago Redondo, Julio Sanchez-Meca, and Vincente Garrido, "Crime Treatment in Europe: A Review of Outcome Studies," in *Offender Rehabilitation and Treatment: Effective Programmes and Policies to Reduce Re-offending*, ed. James McGuire (Chichester, England: John Wiley, 2002), 113, 118.
22. B. Peat and L. Winfree, "Reducing the Intra-Institutional Effects of 'Prisonization': A Study of a Therapeutic Community for Drug-Using Inmates," *Criminal Justice and Behavior* 19 (1992): 206, 207. Although therapeutic community models can improve some of the worst aspects of prison life, they have some limitations of their own. Among other things, many of them place the causal locus of psychological problems exclusively inside the patient. Thus, although the ameliorative aspects of the therapeutic community are worth adopting, its psychological assumptions need to be critically analyzed from the same social contextual perspective I have applied to other forms of prison treatment.
23. Zamble, "Behavior and Adaptation in Long-Term Prison Inmates." See also J. Gibbs, "Environmental Congruence and Symptoms of Psychopathology: A Further Exploration of the Effects of Exposure to the Jail Environment," *Criminal Justice & Behavior* 18 (1991): 351, for a discussion of the ways in which conditions of confinement interact with prisoner characteristics to increase or decrease symptoms of psychological distress.
24. Creasie Hairston and others have addressed the importance of maintaining family ties for both in-prison and postprison adjustment. See C. Hairston, "Family Ties During Imprisonment: Do They Influence Future Criminal Activity?" *Federal Probation* 52 (1988): 48; C. Hairston, "Family Ties During Imprisonment: Important to Whom and for What?" *Journal of Sociology and Social Welfare* 18 (1991): 87. Cf. also W. Collins, "The Effect of Social Isolation on Inmate Self Concept," *Dissertation Abstracts International* 45 (1984): 643, who found that the more isolated prisoners—those who had less contact with persons outside the prison—tended to experience greater reductions in measured self-concept during their incarceration.
25. John Irwin, "Sociological Studies of the Impact of Long-Term Confinement," in *Confinement in Maximum Custody: New Last-Resort Prisons in the United States and Western Europe*, ed. David Ward and Ken Schoen (Lexington, MA: DC Heath, 1981), 49, 51.

26. Michael King, "Male Rape in Institutional Settings," in *Male Victims of Sexual Assault*, ed. Gillian Mezey and Michael King (Oxford, England: Oxford University Press, 1992), 67, 73.
27. Ibid.
28. Discussions of this study can be found in C. Haney, C. Banks, and P. Zimbardo, "Interpersonal Dynamics in a Simulated Prison," *International Journal of Criminology and Penology* 1 (1973): 69; Craig Haney and Philip Zimbardo, "The Socialization into Criminality: On Becoming a Prisoner and a Guard," in *Law, Justice, and the Individual in Society: Psychological and Legal Issues*, ed. June Tapp and Felice Levine (New York: Holt, Rinehart & Winston, 1977); and C. Haney and P. Zimbardo, "The Past and Future of U.S. Prison Policy: Twenty-five Years After the Stanford Prison Experiment," *American Psychologist* 53 (1998): 709.
29. One of the most widely cited official analyses of the prison abuse scandals at Abu Ghraib came from a governmental review panel that produced a document known as the "Schlesinger Report," after the panel's chair, James Schlesinger. Appendix G ("Psychological Stresses") of the Schlesinger Report noted that "In 1973, Haney, Banks and Zimbardo published their landmark Stanford study. . . . Their study provides a cautionary tale for all military detention operations. . . ." In detailing that cautionary tale, the Schlesinger Report quoted both our 1973 article to the effect that the abnormality in the behavior of the student guards in the Stanford study "resided in the psychological nature of the situation and not in those who passed through it," and our retrospective discussion in 1998: "Haney and Zimbardo noted their initial study 'underscored the degree to which institutional settings can develop a life of their own, independent of the wishes, intentions, and purposes of those who run them.'" The Schlesinger panel acknowledged one of the overarching implications of our study—"the need for those outside the culture [of the institution] to offer external perspectives on process and procedures [inside]." The report also listed a series of social psychological forces inherent in prison contexts that help to explain "why humans sometimes mistreat fellow humans." The list included *deindividuation* (the way that anonymity allows persons to suspend "customary rules and inhibition[s]"); *groupthink* (illusions of moral superiority and unanimous group support ensures that "pressure is brought to bear on those who might dissent"); *dehumanization* (which depicts others "as somehow less than fully human"); *enemy image* (whereby one's own group is seen as good in comparison to an enemy that is "seen as evil and aggressive"); and *moral exclusion* (in which viewing others as "fundamentally different" from one's own group obviates the need to treat them in accord with "prevailing moral rules"). See James Schlesinger et al., *Final Report of the Independent Panel to Review Department of Defense Detention Operations* (Arlington, VA: Independent Panel to Review Department of Defense Detention Operations, August 2004). Of course, these social psychological forces inhere in domestic prison contexts as well as military detention facilities.
30. Legal commentators have begun to address the need for greater accountability in corrections—including accountability in the day-to-day operations of the prison and especially those cases in which prisoners complain of use of excessive

- force by staff. See, e.g., A. Jacobs, "Prison Power Corrupts Absolutely: Prison Guard Brutality and the Need to Develop a System of Accountability," *Case Western Law Review* 41 (2004): 277.
31. See Alison Liebling and David Price, *The Prison Officer* (Leyhill, England: Prison Service and Waterside Press, 2001); and Alison Liebling, *Prisons and Their Moral Performance: A Study of Values, Quality and Prison Life* (Oxford, England: Clarendon Press, 2004).
  32. See Claudia Kesterman, "A Comparative Analysis of Cognitive Concepts of Prison Officers in the Baltic Sea States," in *Psychology and Law: Facing the Challenges of a Changing World*, ed. A. Czerederecka et al. (Krakow, Poland: Institute of Forensic Research Publishers, 2004); and Claudia Kesterman, *Prison Life: Factors Affecting Health and Rehabilitation*. Paper presented at the European Conference on Psychology and Law, Vilnius, Lithuania, July 2005.
  33. K. Wright, "The Violent and Victimized in the Male Prison," *Journal of Offender Rehabilitation* 16 (1991): 1, 23, 24.
  34. Irwin, "Sociological Studies of the Impact of Long-Term Confinement," 51.
  35. *Ibid.*
  36. Nowadays very little of this kind of basic preparation is provided. For example, in California in 1997, approximately 142,000 persons were released from prison, but no more than 5% of them had completed a reentry program beforehand. See J. Petersilia, "Challenges of Prisoner Reentry and Parole in California," *CPRC Brief* 12 (June, 2000): 1. The nationwide statistics were only slightly better—on the basis of 1997 figures, only about 8% of state prisoners participated in prerelease, reentry programs. Joan Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry* (New York: Oxford University Press, 2003), 95.
  37. Without in any way intending to diminish the significance of the added pains of imprisonment for prisoners with mental illness or developmental disabilities—which were the focus of chapter 8 and are discussed later in this chapter—concentrating on this group of especially sympathetic and vulnerable inmates has sometimes diverted attention from the conditions of confinement and treatment to which the great majority of other prisoners are subjected. In a related way, because of the exclusively clinical framework that often has been used to understand and respond to prison-related maladies and adverse psychological reactions, pains of imprisonment that stop short of creating diagnosable psychiatric disorders often have been ignored or discounted. This narrow and now outmoded view of context-related trauma has impeded the systematic assessment of, and legal sensitivity to, a broader range of negative prison effects.
  38. See, e.g., Judith Herman, "A New Diagnosis," in *Trauma and Recovery*, ed. Judith Herman (New York: Basic Books, 1992); J. Herman, "Complex PTSD: A Syndrome in Survivors of Prolonged and Repeated Trauma," *Journal of Traumatic Stress* 5 (1992): 377; and Judith Herman, "Complex PTSD: A Syndrome in Survivors of Prolonged and Repeated Trauma," in *Psychotraumatology: Key Papers and Core Concepts in Post-Traumatic Stress*, ed. George Everly and Jeffrey Lating (New York: Plenum, 1995), 87.

39. H. Franke, "The Rise and Decline of Solitary Confinement: Socio-Historical Explanations of Long-Term Penal Changes," *British Journal of Criminology* 32 (1992): 125, 139. This view is discussed at some length in chapter 7, this volume.
40. These ideas are developed more fully in C. Haney and M. Lynch, "Regulating Prisons of the Future: The Psychological Consequences of Supermax and Solitary Confinement," *New York University Review of Law and Social Change* 23 (1997): 477.
41. As one researcher has observed, "Those who take an exclusively person-centered or importation view of the prevalence of psychological disorder in jail should broaden their perspective to include situational or environmental factors." Gibbs, *Environmental Congruence and Symptoms of Psychopathology*, 351. See also James Gibbs, "The First Cut Is the Deepest: Psychological Breakdown and Survival in the Detention Setting," in *The Pains of Imprisonment*, ed. Robert Johnson and Hans Toch (Beverly Hills, CA: Sage, 1982), 302. Cf. Anthony Bottoms, William Hay, and J. Sparks, "Situational and Social Approaches to the Prevention of Disorder in Long-Term Prisons," in *Long-Term Imprisonment: Policy, Science, and Correctional Practice*, ed. Timothy Flanagan (Thousand Oaks, CA: Sage Publications, 1995), 186.
42. Jessica Mitford was perhaps the most trenchant of these critics. See Jessica Mitford, *Kind and Usual Punishment* (New York: Knopf, 1973).
43. Edgardo Rotman, "The Failure of Prison Reform: United States, 1865–1965," in *The Oxford History of the Prison: The Practice of Punishment in Western Society*, ed. Noral Morris and David Rothman (New York: Oxford University Press, 1998), 152.
44. J. Willens, "Structure, Content and the Exigencies of War: American Prison Law After Twenty-Five Years, 1962–1987," *American University Law Review* 37 (1987): 41, 94, n. 308.
45. Hans Toch, "Classification for Programming and Survival," in *Confinement in Maximum Custody: Last Resort Prisons in the United States and Western Europe*, ed. David Ward and Ken Schoen (Lexington, MA: DC Heath, 1981), 39, 40.
46. Fred Cohen's distinction between traditional forms of "treatment" (premised on a limited disease model) and "rehabilitation" (as a social construct "that seeks to restore the individual to socially acceptable behavior") is useful here. See F. Cohen, "The Limits of the Judicial Reform of Prisons: What Works, What Does Not," *Criminal Law Bulletin* 40 (2004): 421, 454. A definition that many European prison experts endorse—"at present, the 'ideal of rehabilitation,' in the context of the penal system, is achieved by applying educational strategies and giving social support"—also seems applicable. Redondo, Sanchez-Meca, and Garrido, "Crime Treatment in Europe," 114. I would add only that socially acceptable behavior must be understood in the context in which it occurs and can be realistically achieved and reliably maintained only in those settings that are structured to support it.
47. This is why juvenile justice system reformers and others have learned that the most effective approaches are ones that offer a "diversity of programs" to address the various needs of different inmates and that maintain "strong community

linkages." Jerome Miller, *Last One Over the Wall: The Massachusetts Experiment in Closing Reform Schools* (Columbus: Ohio State University Press, 1991), 222. It is also why, although prison treatment programs sometimes do work, contrary to the view that emerged in the mid-1970s, it is also true that "on balance, community-based interventions have larger effect sizes than those delivered in institutions." James McGuire, "Integrating Findings From Research Reviews," in *Offender Rehabilitation and Treatment: Effective Programmes and Policies to Reduce Re-offending*, ed. James McGuire (Chichester, England: John Wiley, 2002), 3, 21.

48. It is not surprising that research shows that the most effective prison treatment and rehabilitation programs are ones that address prisoners' needs and include some form of postprison follow-up. For a variety of perspectives, see, e.g., Gerald Gaes, Timothy Flanagan, Laurence Motiuk, and Lynn Stewart, "Adult Correctional Treatment," in *Prisons*, ed. Michael Tonry and Joan Petersilia (Chicago: University of Chicago Press, 1998); McGuire, *Offender Rehabilitation and Treatment*; J. Shine and M. Morris, "Addressing Criminogenic Needs in a Prison Therapeutic Community," *Therapeutic Communities: International Journal for Therapeutic & Supportive Organizations* 21 (2000): 197; Tony Ward and Lynne Eccleston, ed., "Special Issue: Offender Rehabilitation," *Psychology, Crime & Law* 10 (2004): 223, and the articles contained therein; T. Ward and C. Stewart, "Criminogenic Needs and Human Needs: A Theoretical Model," *Psychology Crime & Law* 9 (2003): 125. Obviously, carefully coordinating both the in-prison and outside components of these context-based forms of rehabilitation—conducted with prisoners' needs and circumstances in mind—should increase the overall effectiveness of these programs.
49. I know that talking about the programming recommendations of judges assumes facts that are not in evidence in most jurisdictions where judges sentence to terms of years and nothing else. But this, too, would need to be changed in a context-based system.
50. On January 8, 2002, President George Bush signed into effect Public Law 107-110, the "No Child Left Behind Act of 2001." Among other things, the act attempted to ensure successful learning by providing a series of benchmarks or performance standards that schools were required to meet in order to retain their federal funding. According to the rhetoric that surrounded the bill's passage, under the rubric of "increasing accountability" and "focusing on what works," the federal government sought to improve teacher training, fund schools where the greatest needs appeared to be concentrated, and promote educational excellence. It also was intended to reduce the achievement gap between rich and poor, and White and minority, students. All of these worthy goals can be applied to the context of prison—accountability, focusing on what works, putting resources where needs are greatest, and the like. The poor level of postprison success that is achieved by the graduates of many correctional systems—just as with many school systems—should be improved by implementing these kinds of reforms.
51. For the record, it is worth noting that prison systems in the United States have been doing a progressively worse job in providing educational and other



programming opportunities to prisoners. This was true even over the decade of the 1990s—when crime was decreasing at a modest, but consistent, rate—as Lynch and Sabol found when they compared program participation for two cohorts of prisoners: In 1991, 31% of prisoners who were released that year had participated in vocational training and 43% had participated in educational training; by 1997, only 27% of prisoners released that year had participated in vocational training and only 35% had participated in educational training. See James Lynch and William Sabol, *Prisoner Reentry in Perspective* (Washington, DC: Urban Institute, 2001), 11. Persistent overcrowding and the rejection of the rehabilitative ideal appeared to have taken a continuing toll on programming opportunities.

52. Kathleen Maguire and Ann Pastore, ed., *Sourcebook of Criminal Justice Statistics*, 1995 (Washington, DC: U.S. Department of Justice, 1995), 567.
53. Karl Haigler et al., *Literacy Behind Prison Walls: Profiles of the Prison Population from the National Adult Literacy Survey* (NCES Publication No. 94-102) (Washington, DC: U.S. Department of Education, 1994), 124. A California study reached similar conclusions. It found that some 20.8% of California prisoners read at below the third-grade level, and another 30% were only “marginally literate” by accepted educational standards. Gary Sutherland, *Reading Proficiency of Inmates in California Correctional Institutions* (Sacramento: California State University, 1997).
54. See, e.g., R. Tewksbury and G. Vito, “Improving the Educational Skills of Jail Inmates: Preliminary Program Findings,” *Federal Probation* 58 (1994): 55; Tootoonchi, A., “College Education in Prisons: The Inmates’ Perspectives,” *Federal Probation* 57 (1993): 34. See also the American Bar Association Report, Task Force on Youth in the Criminal Justice System, ABA Criminal Justice System Section, *Youth in the Criminal Justice System: Guidelines for Policymakers and Practitioners* (2001) (available at <http://www.abanet.org/crimjust/pubs/reports/index.html>), which found a positive correlation between high school education and employment and also found that high school dropouts are at risk for arrest as well as unemployment. One scholar found that young White men who lacked a high school diploma were more than 5 times as likely to be incarcerated as their peers who graduated. She concluded, “More schooling is associated with lower probabilities of committing illegal activities. . . . There is potential for affecting crime rates through education programs, either broad-based efforts or targeted to a criminally active population.” Ann Piehl, *Economic Issues in Criminology*, unpublished doctoral dissertation, Princeton University (1994), 70, 96. In a related vein, Becky Pettit and Bruce Western found that the risks of being incarcerated in the United States are highly stratified by education level. That is, “high school dropouts are 3 to 4 times more likely to be in prison than those with 12 years of schooling. . . .” B. Pettit and B. Western, “Mass Imprisonment and the Life Course: Race and Class Inequality in U.S. Incarceration,” *American Sociological Review* 69 (2004): 151, 160. In addition, they found that the risk of incarceration created by low levels of education was especially great for Black men: “Incredibly, a black male dropout, born

- 1965–1969, had nearly a 60 percent chance of serving time by the end of the 1990s” (ibid., 161).
55. See Michelle Fine et al., *Changing Minds: The Impact of College in a Maximum Security Prison* (New York: Ronald Ridgeway, 2001).
  56. For example, “Simply attending school behind bars reduces the likelihood of re-incarceration by twenty-three percent. Translated into savings, every dollar spent on education returns more than two dollars to the citizens in reduced prison costs.” Stephen Steurer, Linda Smith, and Alice Tracy, *The Three State Recidivism Study* (2001) (available at [http://www.research.umbc.edu/~ira/Recid\\_Study.doc](http://www.research.umbc.edu/~ira/Recid_Study.doc)). See also Florida Department of Corrections, *Return on Investment for Correctional Education in Florida* (1999) (available at <http://www.dc.state.fl.us/pub/taxwatch/index.html>).
  57. See, e.g., J. Chase and R. Dickover, “University Education at Folsom Prison: An Evaluation,” *Journal of Correctional Education* 34 (1983): 3, who found that recidivism rates 3 years following release from prison were 55% for California prisoners in general and 0% for those who obtained their B.A. degrees. See also D. Stevens and C. Ward, “College Education and Recidivism: Educating Criminals Is Meritorious,” *Journal of Correctional Education* 48 (1997): 106, which reported dramatic differences between prisoners in several states who completed college degrees in prison versus prisoners in general. States included were Alabama (1% vs. 35%), Maryland (0% vs. 46%), New York (26% vs. 45%), and Texas (10% vs. 36%). Finally, see J. Gilligan, “Reflections from a Life Behind Bars: Build Colleges, Not Prisons,” *Chronicle of Higher Education*, October 16, 1998, p. B7, who wrote that, among several hundred Massachusetts prisoners who had completed bachelor’s degrees over a 25-year period, not one had been returned to prison on a new conviction.
  58. In 1994, Congress eliminated the primary mechanism by which indigent state and federal prisoners were able to pay for college courses. The Violent Crime Control and Law Enforcement Act of 1994 S 20411, 200 U.S.C. §1070 a (b) 8 (2000) excluded prisoners from Pell Grant eligibility, as part of the general rejection of rehabilitation in vogue during those years. College programs in prison dwindled as a result. See E. Blumrosen and E. Nilson, “How to Construct an Underclass, or How the War on Drugs Became a War on Education,” *Journal of Gender, Race, and Justice* 6 (2002): 61. See also R. Tewksbury and J. Taylor, “The Consequences of Eliminating Pell Grant Eligibility for Students in Post Secondary College Educational Programs,” *Federal Probation* 60 (1996): 60. For an especially thoughtful and informed analysis of the political uses to which the debate over prisoner education was put, see J. Page, “Eliminating the Enemy: The Import of Denying Prisoners Access to Higher Education in Clinton’s America,” *Punishment & Society* 6 (2004): 357. Setting the antirehabilitation and politically expedient prisoner-hating rhetoric aside, however, prisoners’ Pell grant eligibility needs to be restored. As I have tried to show, it can and should be done in the name of genuine and effective crime control.
  59. Peter Elikann, *The Tough-On-Crime Myth: Real Solutions to Cut Crime* (New York: Insight Books, 1996), 151.

60. F. Butterfield, "Getting Out: A Special Report," *New York Times*, November 29, 2000, p. A1.
61. Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics 1989* (Washington, DC: Department of Justice, 1990), 591. Kevin Early, "Introduction," in Kevin Early, ed., *Drug Treatment Behind Bars: Prison-Based Strategies for Change* (Westport, CN: Praeger, 1996), 3. Data collected 5 years earlier indicated much the same thing—that over half of those incarcerated were under the influence at the time they committed the crime for which they were locked up. George Camp and Camille Camp, *The Corrections Yearbook 1991 (Adult Corrections)* (Washington, DC: Criminal Justice Institute, 1991), 54–55. Nearer to the end of the 1990s, the percentage was essentially unchanged: Over half the state prisoners and one third of federal prisoners in 1997 reported being under the influence of alcohol or drugs at the time of their commitment offense. Kathleen McGuire and Ann Pastore, *Sourcebook of Criminal Justice Statistics, 1999* (Washington, DC: U.S. Department of Justice, 2000), 525. Other studies have shown that over three quarters of all jail inmates and state and federal prisoners had some or all of these things in common: They were regular users of illegal drugs (at least weekly for 1 month), were under the influence of alcohol or other drugs at the time of the offense, had committed the crime for which they were incarcerated in order to obtain money for drugs, and/or had a history of alcohol abuse or had been incarcerated for alcohol abuse violations. See H. Wald, M. Flaherty, and J. Pringle, "Prevention in Prisons," in *Prevention and Societal Impact of Drug and Alcohol Abuse*, ed. Robert Ammerman, Ralph Tarter, and Peggy Ott (Mahwah, NJ: Lawrence Erlbaum, 1999): 369. The general relationship between drug and alcohol use and criminal behavior, of course, is not unique to the United States. For example, one Canadian study found that among a large sample of jail detainees, 77% had alcohol use or dependency disorders and 63% suffered from drug use disorders. Cited in J. Ogloff, R. Roesch, and S. Hart, "Mental Health Services in Jails and Prisons: Legal, Clinical, and Policy Issues," *Law & Psychology Review* 18 (1994): 109, 115. In addition, certain kinds of drug use has been implicated in a wide range of crimes, including serious violent offenses. See, e.g., Ogloff, Roesch, and Hart, "Mental Health Services," 133–134. See also B. Spunt et al., "Drug Use by Homicide Offenders," *Journal of Psychoactive Drugs* 27 (1995): 125; and A. Friedman, "Substance Use/Abuse as a Predictor to Illegal and Violent Behavior: A Review of the Relevant Literature," *Aggression and Violent Behavior* 3 (1998): 339.
62. See, e.g., Paul Goldstein, "Drugs and Violent Crime," in *Pathways to Criminal Violence*, ed. Neil Wiener and Marvin Wolfgang (Newbury Park, CA: Sage, 1989), 16. And, as I noted in chapter 4, even in cases where drug use does not initiate a criminal career, the nature and extent of drug use appears to significantly influence the pattern of subsequent criminal behavior. See, e.g., D. McBride and C. McCoy, "The Drugs–Crime Relationship: An Analytical Framework," *Prison Journal* 73 (1994): 257. See also W. Holcomb and W. Anderson, "Alcohol and Multiple Drug Abuse in Accused Murderers," *Psychological Reports* 52 (1983): 159.

63. Christopher Mumola, *Substance Abuse and Treatment, State and Federal Prisoners*, 1997 [Bureau of Justice Statistics Special Report NCJ 172871] (Washington, DC: U.S. Department of Justice, January 1999).
64. Marcia Chaiken, "Prison Programs for Drug-Involved Offenders," *National Institute of Justice Research in Action* (Washington, DC: National Institute of Justice, 1989), 1. See also Harry Wexler, Ronald Williams, Kevin Early, and Carlton Trotman, "Prison Treatment for Substance Abusers: Stay 'N Out Revisited," in *Drug Treatment Behind Bars: Prison-Based Strategies for Change*, ed. Kevin Early (Westport, CN: Praeger, 1996), 101: "An overwhelming proportion of all offenders in our nation's prisons lead lives associated with substance abuse prior to their incarceration. . . . [Yet] the vast majority of these offenders still remain without treatment while in prison" (*ibid.*, 101).
65. J. Inciardi, D. Lockwood, and J. Quinlan, "Drug Use in Prison: Patterns, Processes, and Implications for Treatment," *Journal of Drug Issues* 23 (1993): 119, 126.
66. *Ibid.*
67. Many experts recognize this. See, e.g., D. Hartmann, J. Wolk, J. Johnston, and C. Colyer, "Recidivism and Substance Abuse Outcomes in a Prison-Based Therapeutic Community," *Federal Probation* 61 (1997): 18; H. Wexler, "Progress in Prison Substance Abuse Treatment: A Five Year Report," *Journal of Drug Issues* 24 (1994): 349.
68. K. Witkiewitz and G. Marlatt, "Relapse Prevention for Alcohol and Drug Problem: That Was Zen, This is Tao," *American Psychologist* 59 (2004): 224, 224. For a description of an effective therapeutic community model that emphasized the importance of a transitional component that included work release as well as effective aftercare following incarceration, see J. Inciardi, S. Martin, C. Butzin, R. Hooper, and L. Harrison, "An Effective Model of Prison-Based Treatment for Drug-Involved Offenders," *Journal of Drug Issues* 27 (1997): 261.
69. See, e.g., R. Worth, "A Model Prison," *Atlantic Monthly* 276 (November, 1995): 38.
70. See W. Trumbull and A. Witte, "Determinants of the Costs of Operating Large-Scale Prisons with Implications for the Cost of Correctional Standards," *Law & Society Review* 16 (1981): 115.
71. See D. Dutton and S. Hart, "Evidence for Long-Term, Specific Effects of Childhood Abuse and Neglect on Criminal Behavior in Men," *International Journal of Offender Therapy and Comparative Criminology* 36 (1992): 129.
72. K. Adams, "Who Are the Clients? Characteristics of Inmates Referred for Mental Health Treatment," *Prison Journal* 72 (1993): 120, 135.
73. Allen Beck and Laura Maruschak, *Mental Health Treatment in State Prisons*, 2000 [Bureau of Justice Statistics Special Report NCJ 188215] (Washington, DC: U.S. Department of Justice, July 2001).
74. F. DiCataldo, A. Greer, and W. Profit, "Screening Prison Inmates for Mental Disorder: An Examination of the Relationship Between Mental Disorder and Prison Adjustment," *Bulletin of the American Academy of Psychiatry and Law* 23 (1995): 573. See also K. Adams, "Former Mental Patients in a Prison and Parole

- System: A Study of Socially Disruptive Behavior," *Criminal Justice and Behavior* 10 (1983): 358.
75. See, e.g., L. McCorkle, "Guided Group Interaction in a Correctional Setting," *International Journal of Group Psychotherapy* 4 (1954): 199. See also R. Craddick, "Group Therapy With Inmates in a Canadian Prison," *Group Psychotherapy* 15 (1962): 312.
  76. Elaine Genders and Elaine Player, *Grendon: A Study of a Therapeutic Prison* (Oxford, England: Clarendon Press, 1995), 187. This observation applies not only to institutions that are intended to function as therapeutic prisons (such as the Grendon facility in England), but also even more pointedly to therapeutic programs that are administered in otherwise more typical correctional settings.
  77. There is simply no reason why mental health professionals should be required to categorically abide by or defer to the judgments of correctional officers on how a prisoner who is experiencing emotional distress should be treated, where he should be housed, or which procedures he should be subjected to. The notion that security concerns *always* supersede mental health concerns has provided a blanket justification for some questionable and even—from a psychological perspective— indefensible practices in prison. What we now know about adverse prison effects and their psychological consequences for prisoners suggests that qualified mental health staff should be consulted on—and sometimes given decision-making authority over—placement, treatment, and retention decisions in housing units. This is especially true *whenever* there is any doubt about an inmate's stability or emotional state. In addition, however, there is no reason why they cannot be consulted even earlier—on the design of the units into which prisoners are placed, the arrangements that are set up, and the routines and procedures that are followed once prisoners have been placed there.
  78. H. Toch, "Case Managing Multiproblem Offenders," *Federal Probation* 59 (1995): 41.
  79. Thus, effective programs of rehabilitation must include access to psychotherapeutic services for at least some prisoners. As Adams observed, the group of prisoners referred for mental health treatment often is made up of persons who are less sophisticated and have committed more minor offenses (which likely increases their amenability to treatment). Moreover, for those prisoners with mental health problems, "it appears that criminality is a problem that is secondary to their legitimate psychological difficulties," which increases the importance of providing therapeutic services to help reduce their likelihood of reoffending. Kenneth Adams, "Who Are the Clients?" 134.
  80. So-called multisystemic therapies that are conducted with families, schools, and communities are consistent with the contextual model of behavior I have advanced here. See Scott Henggeler et al., *Multisystemic Treatment of Antisocial Behavior in Children and Adolescents* (New York: Guilford, 1988).
  81. B. Diamond, "From Durham to Brawner, a Futile Journey," *Washington University Law Quarterly* (1973): 109, 121.
  82. Here, too, oversight should translate into accountability. Thus, programs and personnel can and should be subjected to regular and meaningful forms of evaluation, so that only the most valid and effective approaches are retained.

My earlier suggestion that prisons in general be held to the same kind of standards that we are beginning to apply to educational environments is especially important to adhere to in the context of correctional treatment.

83. Becky Pettit and Bruce Western have calculated the percentage of Black men and White men who have experienced certain life events by various ages. For the cohort of men born between 1965–1969, they estimate that 22.4% of Black men had been to prison by age 35, as opposed to 12.5% who earned bachelor's degrees. These figures compares with 31.6% of White men from the same cohort who earned a bachelor's degree and 3.2% who had been to prison. See B. Pettit and B. Western, "Mass Imprisonment and the Life Course: Race and Class Inequality in U.S. Incarceration," *American Sociological Review* 69 (2004): 151, 164, Table 6.
84. On the racial implications of policy choices between education and corrections, the Justice Policy Institute has calculated that in 1995 the United States spent more on building prisons than on constructing colleges and universities; between 1985 and 2000, state expenditures for corrections increased at a rate that was 6 times greater than the rate at which spending for higher education increased; at the turn of the present century, there were more African American men in prison than in colleges or universities; and between 1980 and 2000, approximately 3 times as many African American men were added to the prisoner population as were added to colleges and universities. See Justice Policy Institute, *Cellblocks or Classrooms? The Funding of Higher Education and Corrections and Its Impact on African American Men* (Washington, DC: Author, 2002). Available at <http://www.justicepolicy.org/>.
85. Vivid illustrations of this fact can be seen by mapping the concentrations of incarcerated citizens in certain communities and estimating the amount of government resources being devoted to their imprisonment instead of other social programs. Using a technique termed "justice mapping" that employs Geographical Information Systems (GIS) technology to depict the economic and other consequences and correlates of incarceration in certain neighborhoods and communities, Eric Cadora and Charles Swartz were able to identify many "million-dollar blocks"—ones where at least a million dollars was being spent incarcerating the residents. These blocks were located in the poorest areas of each community and also tended to be the ones with the highest concentrations of minority citizens. The sheer expense involved, on neighborhood blocks that had so many other needs, suggested that alternative and more preventative strategies of crime control might be far more cost effective. As Cadora and Swartz put it, "When considered as a pool of resources, more strategic options to affect positive changes in the neighborhood as a whole may become apparent." See Eric Cadora and Charles Swartz, *An Explanation of Justice Mapping: Three Examples* (Appendix 17 of the Report of the Re-Entry Policy Council). Available at [http://www.reentrypolicy.org/documents/appendix\\_justicemapping.pdf](http://www.reentrypolicy.org/documents/appendix_justicemapping.pdf), 595. See also J. Gonnerman, "Million-Dollar Blocks: The Neighborhood Costs of America's Prison Boom," *Village Voice* (November 16, 2004): 1.

86. D. Feldman, "20 Years of Prison Expansion: A Failing National Strategy," *Public Administration Review* 53 (1993): 561, 563.
87. American Bar Association, *The State of Criminal Justice* (Chicago: American Bar Association, December, 1998). As William Chambliss has argued, if these draconian policies are truly a war on drugs rather than a proxy for racial oppression, then it is a war we have lost. W. Chambliss, "Another Lost War: The Costs and Consequences of Drug Prohibition," *Social Justice* 22 (1995): 101.
88. See, e.g., the discussion in E. Chemerinsky, "Eliminating Discrimination in the Death Penalty: The Need for the Racial Justice Act," *Santa Clara Law Review* 35 (1995): 519. Despite the fairness-based logic on which it is founded, the Act was never passed by Congress and has not been implemented on a widespread basis anywhere in the country.
89. For a study of prison desegregation that illustrates both the difficult transition that occurs when prison systems that have resisted integration attempt to rapidly undertake it and also the long-term benefits that may come about once meaningful, proactive policies of integration actually are implemented, see C. Trulson and J. Marquart, "The Caged Melting Pot: Towards an Understanding of the Consequences of Desegregation in Prisons," *Law & Society Review* 36 (2002): 743. For some thoughtful approaches to reducing and reforming harmful prison policies that permit or tacitly encourage segregation, see H. Toch and J. Acker, "Racial Segregation as a Prison Initiation Experience," *Criminal Law Bulletin* 40 (2004): 2.
90. George Knox, *An Introduction to Gangs* (Peotone: New Chicago School Press, 2000), 282.
91. Quoted in Phillip Kassel, "The Gang Crackdown in the Prisons of Massachusetts: Arbitrary and Harsh Treatment Can Only Make Matters Worse," in *Gangs and Society: Alternative Perspectives*, ed. Louis Dontos, David Brotherton, and Luis Barrios (New York: Columbia University Press, 2003), 241.
92. J. Belitz and D. Valdez, "Clinical Issues in the Treatment of Chicano Male Gang Youth," *Hispanic Journal of Behavioral Sciences* 16 (1994): 57.
93. Tom Hayden, *Street Wars: Gangs and the Future of Violence* (New York: The New Press, 2004), 50. Hayden describes the role of "peacemakers"—persons who are "former gang members or inmates with street knowledge, respect, and the capacity to be role models"—as critical to the success of these programs. Peacemakers facilitate community-level peace by helping to reduce conflict before it escalates into violence; they help to facilitate inner peace for former gang members by teaching them alternatives to gang life. (*ibid.*, 50).
94. See, e.g., D. LeClair, "Home Furlough Program Effects on Rates of Recidivism," *Criminal Justice and Behavior* 5 (1978): 249; Daniel LeClair, *Recidivism Trend Analysis* (Boston: Department of Corrections, 1985); L. Lowenstein, "Are There and Should There Be Alternatives to Present Forms of Sentencing and Imprisonment?" *Journal of Criminal Law* 1979 (1979): 165.
95. Psychologist Shadd Maruna has brought several important insights to bear on these issues. The first is that prisoners who are most successful at making the transition from prison to the freeworld often are those who have made sense

of their past lives in ways that include “redemption scripts”—an acknowledgment of their troubled past that does not preclude their own goodness or prevent them from envisioning and implementing ways of turning their lives around. Maruna also noted that this process of transformation is enhanced by social contexts that encourage or facilitate opportunities to “give back” to the community and also ones that involve community leaders, family members, and friends participating in and acknowledging a “psychological turning point” in which the ex-prisoner’s contributions and reconnection with the community are formalized in some way. Shadd Maruna, *Making Good: How Ex-Convicts Reform and Rebuild Their Lives* (Washington, DC: American Psychological Association, 2001), 163. See also S. Maruna and T. LeBel, “Welcome Home? Examining the ‘Reentry Court’ Concept from a Strength-based Perspective,” *Western Criminological Review* 4 (2003): 91, for a discussion of both the potential and the limitations of “reentry courts” that use the judicial process to manage the prisoner’s return to the community.

96. Dina Rose and Todd Clear, “Incarceration, Reentry, and Social Capital: Social Networks in the Balance,” in *Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families, and Communities*, ed. Jeremy Travis and Michelle Waul (Washington, DC: Urban Institute Press, 2003), 337.
97. Although the issue of prisoner reintegration recently has gotten much needed public attention—including setting up a new governmental organization to facilitate the creation of useful programs—few states actually have implemented them. See the report of the Prisoner Re-Entry Policy Council, an entity created by the Departments of Justice, Labor, and Health and Human Services: Prisoner Re-Entry Policy Council, *Charting the Safe and Successful Return of Prisoners to the Community* (2004). As recent editorials have correctly observed, as yet “the social services necessary for successful re-entry are virtually nonexistent in most communities.” Editorial, “New Strategies for Curbing Recidivism,” *New York Times* (January 21, 2005), p. A28.
98. See, e.g., the recommendations made in M. Fleisher and S. Decker, “Going Home, Staying Home: Integrating Prison Gang Members Into the Community,” *Corrections Management Quarterly* 5 (2001): 65; and Dina Rose, Todd Clear, and Judith Ryder, *Drugs, Incarceration and Neighborhood Life: The Impact of Reintegrating Offenders Into the Community*, Final Report to the National Institute of Justice (New York: John Jay College of Criminal Justice, 2000).
99. The Urban Institute analyzed the results of a large-scale U.S. Department of Justice study that compared recidivism rates in the 1990s. The original Department of Justice study was discussed in chapter 3 of this volume and was published as Patrick Langan and D. Levin, *Recidivism of Prisoners Released in 1994* [Bureau of Justice Statistics Special Report NCJ 193427] (Washington, DC: U.S. Department of Justice, June 2002.) The Urban Institute analysts looked more carefully at three groups released from prison in 1994: those who were released on mandatory parole (i.e., persons paroled after having served the legally required portion of their sentence), those on discretionary parole (i.e., persons screened for fitness for early release), and those discharged from prison after serving their entire prison sentence (i.e., persons without parole). Two years after their



release, 61% of those released on mandatory parole had been rearrested compared with 54% of the discretionary parolees and 62% of those who had been unconditionally released. See Amy Solomon, Vera Kachnowski, and Avinash Bhati, *Does Parole Work? Analyzing the Impact of Postprison Supervision on Rearrest Outcomes* (Washington, DC: Urban Institute, March 2005). Obviously, there was a significant difference between prisoners selected for discretionary parole compared with the others. However, the relatively modest effect of parole supervision on recidivism rates for both mandatory and discretionary parolees underscores the compromised nature of the role that parole agents now play. They manage large caseloads that preclude much meaningful contact with parolees and are required to perform largely law enforcement functions. Obviously, the nature of parole supervision would need to be significantly modified to advance the kind of reforms I have advocated here. Among other things, parole agents and probation officers would return to their original goal of improving parolees' postprison success by enhancing their access to services in the neighborhoods and communities to which they were released.

100. Solomon, Kachnowski, and Bhati, *Does Parole Work?*, 16. See also Jonathan Simon's trenchant historical analysis of these issues: Jonathan Simon, *Poor Discipline: Parole and the Social Control of the Underclass, 1890–1990* (Chicago: University of Chicago Press, 1993).
101. I agree wholeheartedly with Joan Petersilia that the “nearly unfettered discretion” of parole officers to revoke the parole of persons under their supervision needs to be reexamined and effectively limited. This is an important reform because, among other things, under the current system “the public can pass (or rescind) new laws but prison populations will not decrease dramatically as a result, since decisions made by parole officials can continue to feed the prison intake pipeline.” Joan Petersilia, *When Prisoners Come Home*, 239, 241.
102. For an excellent model of how this might work, applied to the difficult case of chronic gang members returning from prison to the community, see Fleisher and Decker, “Going Home, Staying Home.” Among other things, Fleisher and Decker note that “a community-wide solution must strengthen the social and economic link between gang neighborhoods and the dominant community. Doing that would require that the dominant community pour job training and employment opportunities into poor neighborhoods with the direct participation of residents of those poor areas” (*ibid.*, 74).
103. For a thoughtful analysis of many of these issues written by an effective advocate of “second chance” programs, see Jeremy Travis, *But They All Come Back: Facing the Challenges of Prisoner Re-Entry* (Washington, DC: Urban Institute Press, 2005). See also information on these and related issues disseminated by the Re-Entry Policy Council. This information can be accessed at <http://www.reentrypolicy.org>. A “Second Chance Act” was introduced in the House of Representatives on April 19, 2005, as HR 1704 (108th Congress, 1st Session), and a companion bill was drafted for the Senate by Senator Sam Brownback (R-Kansas). Both bills are designed to provide federal funding to states to assist in “recidivism prevention.” Among other things, “mentoring”

grants would be given to community and "faith-based" organizations as part of this effort. The text of the act quoted President George W. Bush's 2004 State of the Union Address to the effect that "America is the land of the second chance, and when the gates of the prison open, the path ahead should lead to a better life" [at Section 2 (4)]. It remains to be seen exactly how this vision—which has been lacking to date in the present administration (and previous ones for that matter)—will be implemented.

104. James McGuire, "Integrating Findings From Research Reviews," 22.
105. Many of the reforms I have suggested in this chapter are at odds with the politically expedient policies that have been followed over the last several decades, and some go well beyond the mainstream of current correctional thinking and practice (although many certainly do not). However, most of them are entirely consistent with alternatives now supported by many citizens who, despite the systematic miseducation they have received about these issues, are beginning to intuitively understand that our current approach to crime and punishment can and should be made much fairer and more effective. Thus, one broad-based study of public attitudes about crime revealed that, without rejecting punishment entirely (and certainly not for persons convicted of violent crime), "there is more support for rehabilitation and less for retribution than political rhetoric and media coverage would indicate." Most respondents thought that criminals should be punished by being sent to prison, but once there, they should receive programming designed to help them reintegrate back into free society. In addition, the researchers found that most citizens thought "more money should be spent on social and economic problems in an attempt to lower the crime rate." These views were not restricted to a few demographic categories but rather showed what the researchers termed "a remarkable robustness." See Jurg Gerber and Simone Engelhardt-Greer, "Just and Painful: Attitudes Toward Sentencing Criminals," *Americans View Crime and Justice: A National Public Opinion Survey*, ed. Timothy Flanagan et al. (Thousand Oaks, CA: Sage Publications, 1996), 62, 72–73. See also B. Applegate, F. Cullen, and B. Fisher, "Public Support for Correctional Treatment: The Continuing Appeal of the Rehabilitative Ideal," *Prison Journal* 77 (1997): 237.
106. In this regard, it is interesting and instructive to note that a number of Supreme Court justices who were unable to find sufficient constitutional grounds to limit the pains of imprisonment nonetheless have been troubled by them. Several even made recommendations not unlike many of my own. For example, former Chief Justice Warren Burger—whose court decided several key cases that were instrumental in legitimizing prison practices and policies that enabled much unprecedented prison growth over the last several decades—lamented the state of the prisons just a few years after some of those key decisions were rendered. See W. Burger, "The Need for Change in Prisons and the Correctional System," *Arkansas Law Review* 38 (1985): 711. Burger was troubled by the "prison building boom" that his court arguably contributed to, and asked whether the nation was "going to continue to build what some people call 'warehouses,' or are we going to convert them into, I hope, schools and production plants with fences around them?" (*ibid.*, 720). He expressed

further concerns about prison conditions in most states, which he believed were “not good,” in part because of the imposing “walls and guns in sight in most of them all of the time” and worried that even prisoners who stayed for only a few years left with “the imprint of that institution on them and no marketable skill” (ibid., 721). Nearly 20 years later—during which time the prison population was 3 to 4 times greater than when Chief Justice Burger spoke, and after a number of additional Supreme Court opinions in which the Justices declined to intervene in helpful ways to significantly improve conditions—Justice Anthony Kennedy told the American Bar Association (ABA) that no one who has “professional responsibilities for the criminal justice system can be neglectful when it comes to the subject of corrections.” He described the state of the nation’s prisons this way: “Our resources are misspent, our punishments too severe, our sentences too long.” He urged the ABA to study these matters and to begin “a new public discussion about the prison system.” Address by Associate Justice Anthony M. Kennedy, at the Annual Meeting of the American Bar Association (August 9, 2003), available at [www.supremecourtus.gov/publicinfo/speeches/sp\\_08-09-03.html](http://www.supremecourtus.gov/publicinfo/speeches/sp_08-09-03.html). (In response, the ABA formed the “Justice Kennedy Commission,” whose report can be found at [www.abanews.org/kencomm/reportintro.pdf](http://www.abanews.org/kencomm/reportintro.pdf).) Whatever else can be read into these statements, it would seem that, unless the Court changes its mind about the value and importance of intervening to correct the wide range of interrelated prison problems, ones that the Justices themselves acknowledge exist, the impetus for solving them will have to be found elsewhere.

# 11

## TOWARD A RATIONAL PRISON POLICY

Worse than the importance given to crime and individual blame is the legitimacy given to pain. Pain, intended to be pain, is elevated to being the legitimate answer to crime.

—Nils Christie<sup>1</sup>

This book has been about both limiting the pains of imprisonment and the value of using psychological insights to assist in the task of doing so. Of course, everyone understands that prison is painful. That is, in some sense, its purpose. As Hans Toch put it, simply, custodial power is power that “hurts and restricts.”<sup>2</sup> But there must be meaningful limits, ones that come from the practical reality that too much pain is counterproductive, to be sure, and also from the recognition that humane societies limit what they do to their least fortunate members because of the noble values to which their citizens subscribe.

The distinction between applying just punishment and inflicting real harm is a basic one, with roots in antiquity. The roots are both moral philosophical and utilitarian in nature. Thus, Plato understood that any punishment that actually harmed or damaged its recipient was wrong, in part because it merely answered one unjust act with another. Much later, James Mill wrote eloquently against any form of punishment whose lasting effect was to degrade or diminish the person to whom it was applied: “If a criminal in a prison is ever to be let out again, and to mix in society . . . nothing should be done . . . to make him a worse member of society than when he went in. There cannot be a worse quality of punishment, than that it has a tendency to corrupt and deteriorate the individual on whom it is inflicted. . . .”<sup>3</sup> In the recent history of imprisonment, unfortunately,

we seem to have lost sight of this age-old distinction between punishing and harming. As a result, some of the essential limits to which this important distinction gives rise have been put aside.

However, the arguments I have made in favor of imposing stronger limits on the pains of imprisonment have not been framed in strictly utilitarian or moral philosophical terms. I am neither a social engineer nor a moral philosopher. Instead, I have suggested that there are compelling psychological reasons to reconsider and redirect the path our prison policies have followed over the last several decades. My decision to employ a psychological framework as the basis for reshaping these policies was more than professional convenience. The discipline of psychology has had a unique role in helping to legitimize the original prison form. As penal institutions were established and proliferated in our society more than a century ago, psychological justifications were offered for their widespread use. Since then, psychology has continued to provide the intellectual underpinnings for many prison policies, and psychologists themselves have participated in devising and implementing procedures and programs inside various correctional facilities.

And yet, in recent decades—as the prison system expanded at unprecedented rates, became especially harsh and unforgiving, and spread pain to larger numbers of people than ever before—the discipline of psychology was relegated largely to the margins of correctional debates. In fact, this marginalization occurred at precisely the time when psychological insights were being developed that raised profound questions about the wisdom and logic of the policies that were being pursued. Thus, advances in psychological science increased awareness of the importance of past and present social contexts in shaping behavior; they represented arguments in favor of reducing the role of imprisonment in an overall strategy of crime control and of configuring our prisons in ways that would limit the excessive pains of imprisonment.

Yet, prison policymakers moved forcefully in exactly the opposite direction. They have continued to do so. Problematic patterns of misunderstanding, mistreatment, and misallocation persist. Thus, there are too many people in prison who do not need to be there, and too many prisoners who are exposed to painful and potentially damaging conditions of confinement for too long a time. Moreover, there are too many resources that could be directed to programs of primary and proactive crime prevention, and to assist in the successful reintegration of persons back into the communities from which they came, but are not. Instead, these resources have been used to create and maintain a vast custodial system whose sheer size seems to dwarf all other concerns and to preclude any real commitment to more effective alternatives.

Few members of the public are privy to the realities of prison life. Indeed, one of the hallmarks of modern prisons is that they are effectively hidden from public view. Citizens rarely peer inside an actual correctional facility, they are not encouraged to dwell on the subjective experience of confinement, and very few have an informed perspective with which to judge the harmful effects of incarceration. Instead, their view of how much prison pain is too much is often shaped by misleading messages from political figures with separate agendas of their own and by sensationalized media images and storylines that are created more for their entertainment value than the accuracy of their analysis. Here, too, the discipline of psychology is uniquely positioned to play an important educational role, one that has not been effectively filled over the last several decades.

Because the number of people who are affected by the potentially destructive experience of imprisonment has risen to unprecedented levels, and because they tend to be concentrated among certain groups and in certain places in our society, there is real urgency to the task of developing crime control strategies that mitigate the most harmful social and psychological aspects of our current prison policies. Otherwise we risk permanently damaging entire generations of already at-risk citizens, dooming them not just to lives on the margins of this society but—in light of what we know about cycles of crime and the application of newly enacted three-strikes laws, which count juvenile as well as adult offenses—to lives that will be spent largely, if not exclusively, behind bars.

Michel Foucault understood the dangers of a penal form that sought to “improve” the psyche of the criminal by remaking it in the image of the captor. He and others wrote eloquently about the expansion of the state apparatus that resulted.<sup>4</sup> However, very few scholars ever seriously contemplated or anticipated that an already vast system of coercive institutions would be dramatically increased in size and then turned primarily to the task of imposing punishment for the purpose of causing pain. Yet, that is precisely what has happened in the era we have entered, one in which we seem to confront the worst of both worlds: Prisons justified and maintained in the name of benevolent intervention—however well or poorly this goal was realized—have multiplied and then been directed to inflict penal harm.

The excessive levels of prison pain now generated by this system must be candidly addressed, carefully analyzed, and effectively limited—in psychological terms as well as others. It is important to begin a thoughtful dialogue about humane alternatives to these painful policies before the damage becomes irreversible and the social, political, and economic accommodations to such widespread practices become so extreme and entrenched that we can no longer turn away from them. This book is offered as one small step in that direction.

## NOTES

1. Nils Christie, *Limits to Pain* (Oxford, England: Martin Robertson, 1982), 46.
2. Hans Toch, *Corrections: A Humanistic Approach* (Guilderland, NY: Harrow & Heston, 1997), 65.
3. James Mill, "Prisons and Prison Discipline." In *Essays on Government, Jurisprudence, Liberty of the Press, and Law of Nations*, ed. James Mill (London: J. Innes, 1825): 1, 8. I have relied heavily on Terence Ball's discussion of the connections between Plato and Mill, and the central role that Mill's ideas played in the origins of both psychology and penology. See T. Ball, "Platonism and Penology: James Mill's Attempted Synthesis," *Journal of the History of the Behavioral Sciences* 18 (1982): 222.
4. Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Random House, 1977).