

PROPORTIONALITY AND MAKING THINGS RIGHT:  
AN INTEGRATIVE APPROACH TO RETRIBUTIVE AND  
RESTORATIVE JUSTICE

by

SAM LINDER

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Approved: Michael Stern, Ph.D.  
Primary Thesis Advisor

In this project, I aim to integrate principles of retributive justice and restorative justice into a comprehensive philosophy of justice that can punish wrongdoers while still acknowledging and respecting their humanity. Retributive justice aims to punish offenders in proportion to the crime they committed. However, its emphasis on bringing perpetrators to justice through punishment can cause people to forget that the perpetrators are human beings, resulting in punishments that may be too extreme or immoral. The aim of restorative justice is to heal, not just the person who has been harmed by the wrongdoer, but to heal all parties involved. This usually means the victim, the offender, and both of their respective communities. I think each system of justice has its merits, since the retributivist system has been widely used in the U.S., but it would be beneficial to integrate some restorative principles into the current American criminal justice system. In my project, I examine the core beliefs of the retributivist system and their origins, detailing how they came to be what they are today. Next, I cover restorative justice and its benefits. Finally, I outline an integrative approach to both systems of justice, with the hope that it will encourage people to reconsider how they view criminals and those they perceive as “enemies.”

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## Table of Contents

|  |    |
|--|----|
| Introduction   | 5  |
| Punishment   | 9  |
| Retributive Justice  | 12 |
| Nietzsche's "The Pale Criminal" and Labeling                                       | 16 |
| The Origin and Consequences of Separation  | 22 |
| A History of the Prison System in the United States and Jim Crow                   | 33 |
| "Rehumanizing" the "Other"   | 54 |
| Restorative Justice  | 60 |
| Counterarguments to Restorative Justice  | 66 |
| The Practicality of an Integrative Approach to Retributive and Restorative Justice | 70 |
| Bibliography   | 75 |

## **Introduction**

Looking back on my college experience, I've increasingly come to appreciate the opportunities I've had to gradually become independent, not just in terms of living by myself, but also thinking for myself. While I think this has generally been beneficial for my growth as a person, I've also noticed how I've become more focused on myself and less on other people. On any given day in college, I'm most concerned with assignments I have to do, deadlines I have to meet, requirements I have to fulfill, and the ins and outs of daily life that I have to take care of. In comparison, the countless people I pass on campus in between classes or on the way home generally mean less to me. I don't know the vast majority of them, who they are, how they feel, or what's going on in their lives, and I don't really have the time to find out. Even at the beginning of terms, the professor and most of my classmates are complete strangers to me, and this generally makes me apprehensive. I feel separate from them even though we are physically in the same room (or, during the pandemic, in the same Zoom call). But then we end up interacting, whether it's during office hours, during discussion, or just because we're near each other and want someone to talk to, and each time, even if it's brief, I'm reminded of something so simple, yet so important: they're human, too. I get so caught up in what's going on in my life that I often fail to fully consider the humanity of other people, that they have hopes, dreams, fears, and worries just like I do. While I recognize that it's likely unreasonable to expect everyone to be acutely aware of everyone else's humanity throughout their day, I also think this points to a significant issue with the criminal justice system in the U.S. We are so focused on bringing a criminal or an offender to justice through punishing them that we lose sight of their humanity in the process. In my thesis, I aim to outline a philosophy that can not only punish

wrongdoers, but also respect their humanity, as well as the humanity of those who have been affected by the wrongdoing.

In Western societies, the primary method of responding to the injustice implicated in a wrongdoing is punishment (Wenzel, Okimoto, Feather, & Platow, 2008). Punishment is imposed on offenders by courts, and once this happens, justice is considered done. Although achieving justice isn't the only goal of punishment, my thesis will focus on two different approaches to justice restoration, retributive and restorative justice, and attempt to integrate the aims of each system into a more comprehensive form of justice, one that punishes, yet still respects the humanity of those involved. According to retributive justice, an offender who has violated the law deserves to be punished, and, in order to reestablish justice, they have to be disciplined in proportion to the severity of their offense (Wenzel, et al., 2008). Models of restorative justice, on the other hand, usually consider transgressions as conflicts that should be given back to their rightful owners to resolve, meaning the offender(s), the victim(s), and their respective communities (Wenzel, et al., 2008). As opposed to retributive justice, where justice is primarily determined by the courts, the affected parties are directly involved in the restorative justice process (Wenzel, et al., 2008). Through deliberative interaction, they are given an opportunity to share their feelings, present their side of the story, and preferably reach a consensus regarding the hurt the offense caused, the offender's responsibility, and what can be done to restore a sense of justice (Wenzel, et al., 2008). This can take the form of direct compensation to the victim or compensation or service to victims of similar transgressions or the broader community (Wenzel, et al., 2008). It is important to note that while punishment can be and usually is part of restorative justice, its role is not as central as it is in retributive justice. Instead, restorative justice's deliberative approach emphasizes healing over punishing: healing the victim and

undoing the hurt done to them; healing the offender by rebuilding their moral and social selves; and healing communities by repairing social relationships (Wenzel, et al., 2008).

I think restorative justice's emphasis on healing, not just the victim, but all parties involved in the transgression is worth serious consideration. The current justice system in the U.S. is predominantly retributivist, where offenders are punished by courts and sent to prison to serve sentences that are proportional to the crimes they've committed. What bothers me about this approach is that I take it to be too harsh to use as the primary method of responding to wrongdoing. To me, the retributivist approach does not get to the root of the issue: it removes the "issue" (the offender) from society and isolates it in prison, but this does not show any concern for the humanity of the individual (Davis, 2011). Instead, prisons are more concerned with punishing criminals through isolation and surveillance rather than trying to rehabilitate them (Davis, 2011). They also don't do much for the parties who have been harmed. If we want to get to the root of the transgression or issue, I think we should approach it by trying to understand it and give opportunities to foster growth for everyone involved, which means recognizing that everyone involved is human. My research will contribute to philosophy and criminology by exploring alternatives to the current retributive justice system in the U.S. and will hopefully cause people to reexamine how they view criminals and wrongdoers. I wish to outline a philosophy that integrates restorative justice principles into the existing retributive framework. My aim is not to get rid of one system in favor of the other. Rather, I want to combine elements of both into an integrative approach to retributive and restorative justice that can punish without losing sight of the humanity of those involved.

Chapter II gives a brief synopsis of the idea of punishment as it has changed over the course of history. Retributive justice is examined in chapter III. In chapter IV, we explore the

harmful effects of labeling, paying particular attention to the “criminal” label. Chapter V attempts to give an account of the idea of separation and how it’s been used throughout history to create “enemies” that need to be fought against or destroyed. Chapter VI continues this lineage of separation into the last three centuries in the U.S., examining its prison system, slavery, Jim Crow laws, and mass incarceration, culminating in criminals being perceived as one of the “enemies” modern society has to combat. In chapter VII, we discuss how the humanity of the “enemy” or “Other” may be restored. Chapter VIII investigates restorative justice. Counterarguments to restorative justice are laid out and responded to in chapter IX. Finally, chapter X details the practicality of an integrative approach to retributive and restorative justice.

## **Punishment**

Punishment, in a relatively more modern, legal context, is defined as “pain, suffering, loss, confinement or other penalty inflicted on a person for an offense by the authority to which the offender is subject” (Alexander, 1922), but its function has differed throughout human history. This makes sense because “a single definition of ‘punishment’ is bound to be too narrow unless one focuses on a very particular aspect of punishment” (Gendin, 1967). Before humans’ security and rights were protected with the help of an organized society, punishment for crime had straightforward significance. Since self-preservation was of utmost importance, one’s instincts led them to immediately destroy things or people which caused harm or posed a threat to them and their property (Alexander, 1922). Revenge and retaliation were central to this conception of punishment, and they gave rise to the idea of “lex talionis” or the law of punishment in kind (Alexander, 1922). This was also the basis for retributive justice, as well as the capital punishments that were common in Europe before reforms were made during the Enlightenment.

The responsibility of the offender was also measured by the gravity of their offense, which involved the standing and position of the victim (Alexander, 1922). The perpetrator could compensate for their wrongdoing through trying to satisfy the party that was harmed or through a fixed scale (Alexander, 1922). Eventually, this idea of compensation was extended to society, where offenses committed by a wrongdoer were considered to be against not only the victim, but the larger group they were both a part of (Alexander, 1922). Thus, crimes violated the peace and harmony of the group and the criminal, being a menace to society, had to be cast out (Alexander, 1922). They were made to be an example to discourage others from acting as they did, a strategy of deterrence (Alexander, 1922). As we can see, previous theories of punishment for crime had

varying motives, and Gendin (1967) suggests that punishment “is a word best restricted to the suffering imposed on suspected wrongdoers.”

In his famous treatise *On Crimes and Punishments*, Cesare Beccaria (1872) set forth several principles of punishment, many of which remain influential to this day. First, he said that punishment serves a preventive (or deterrent) function, as opposed to the retributive function that was common in his day (Beccaria, 1872). Additionally, he thought that this preventive effect would be best achieved through the high probability of punishment, rather than its severity (Beccaria, 1872). Finally, he proposed that punishment should be prompt (in order to be effective), public, and proportionate to the crime committed (Beccaria, 1872).

According to Frase (2005), there are two general categories of punishment purposes in the twenty-first century: utilitarian and nonutilitarian. Utilitarian purposes aim to achieve beneficial effects and lower frequency and seriousness of future crimes committed by offenders. The five main utilitarian methods are rehabilitation, incapacitation, specific deterrence, general deterrence, and denunciation (Frase, 2005). Nonutilitarian methods include principles of justice and fairness viewed as ends in themselves (intrinsically valuable) and will be addressed in the following paragraphs.

The first three utilitarian methods try to prevent future crimes by particular offenders, assuming that certain offenders have a higher risk of reoffending and that these individuals and their elevated risk of reoffending can be identified in advance (Frase, 2005). Rehabilitation assumes that the offender has identifiable and treatable problems that cause them to commit crimes, and that their future criminality can be reduced by addressing these problems through education and other programs (Frase, 2005). Incapacitation prevents crime by putting high-risk criminals in prison, physically preventing them from committing future crimes against the public

(Frase, 2005). Specific deterrence aims to discourage perpetrators from committing subsequent offenses by instilling fear of receiving the same penalty, or an even more severe one, in the future (Frase, 2005).

The last two methods, general deterrence and denunciation, are supposed to prevent future crimes by members of the public at large or by certain subgroups thought to have a higher risk of offending. General deterrence tries to discourage potential offenders from committing further crimes by making them fear the penalties given to current offenders (Frase, 2005). Through denunciation, criminal penalties serve to outline and reinforce important social norms of law-abiding behavior and the seriousness of crime (Frase, 2005).

## Retributive Justice

Retribution is the most widely acknowledged nonutilitarian method of punishment (Frase, 2005). Drawing on Beccaria's (1872) ideas, this theory holds that offenders should be punished in proportion to their blameworthiness in the crime being sentenced (Frase, 2005). An offender's blameworthiness is determined by the nature of the harm that was caused or threatened by the crime, as well as the offender's degree of culpability in committing the crime (Frase, 2005). The offender's culpability depends on several factors, including their intent, their capacity to obey the law, and their motives (Frase, 2005).

Hugo Bedau (1978) mentions an important tenet in a retributive theory of punishment, which he calls the principle of just requital. It states that "the justification for punishing persons is that the return of suffering for moral evil voluntarily done is itself just or morally good" (Bedau, 1978). There are several crucial aspects to acknowledge here. First, according to a retributivist view, imposing hard treatment on wrongdoers is intrinsically justified. This is contrasted to an instrumental justification, which holds that imposing hard treatment on offenders would only be justified if it brings about a separate good, like the maintenance of security, the deterrence of future crime, or reform of the offender (Allais, 2011). The essential retributivist idea is that wrongdoing is necessary to justify punishment and, given wrongdoing, no further reason for imposing harsh treatment on the wrongdoer is required (Allais, 2011). According to Allais (2011), "it is intrinsic to the justification of punishment that it is appropriate to impose it on the guilty, and only on the guilty."

Herbert Fingarette (1977) offers a different retributivist justification for punishment in *Punishment and Suffering*. He argues that retributivist punishment is necessarily internal to law (Fingarette, 1977). This is independent of moral justification or moral justification of law itself

(Fingarette, 1977). A central idea in Fingarette's (1977) argument is the force of the law or the power to require people to do things. The point of laying down a requirement of law, in this view, is that people subject to that law are required to will what obeys that law (Fingarette, 1977). It is assumed that every person is an agent with a will (control over their actions). Thus, the power of law is the power over the will (Fingarette, 1977). In other words, public law allows and defends each agent's innate right to freedom. However, this still allows an individual to have the power to will otherwise, or to disobey the law (Fingarette, 1977). When this happens, when someone does not will in accordance with the law, the law is required to humble their will, and this is the justification for retributive punishment (Fingarette, 1977). While the law is capable of nullification, restoration, and reparation, the aim in this case is "the categorical imperative of the law itself" (Fingarette, 1977). In other words, do not disobey the law or you will be punished and justifiably so. On this account, an intrinsic part of what it means for there to be laws is that breaking results in punishment. Getting punished for breaking a law is an essential aspect of the very existence of laws.

Punishment, then for Fingarette (1977) is pure suffering. He defines suffering as experiencing what is against our will (Fingarette, 1977). Pain is not essential to punishment, but the humbling of one's will is (Fingarette, 1977). Fingarette (1977) agrees that the punishment should fit the crime, but also holds that "the gravity of the offense derives not from the putative [assumed] moral wrong, but from the gravity of the requirement [of law] it violates."

Near the end of his essay, Fingarette (1977) makes an observation which he takes to be self-evident, but I think is nonetheless important to mention: "retributive punishment is in itself an evil." Furthermore, he believes that punishment has no constructive aim (Fingarette, 1977). This is concerning because it introduces the possibility that people may be excessively punished

or are suffering unnecessarily. For example, Angela Davis (2011) argues that the prison system in the U.S. is an outdated form of punishment that violates basic human rights. When Davis wrote *Are Prisons Obsolete?*, more than two million people were in U.S. prisons, jails, youth facilities, and immigration detention centers (Davis, 2011). Both Davis (2011) and Michelle Alexander (2011) assert that prisons are racist institutions, and Alexander (2011) further states that the U.S. criminal justice system has used the War on Drugs to create and maintain forms of oppression, both traditional and new. This has resulted in the U.S. having the highest rate of incarceration in the world, and Alexander's main argument is that mass incarceration is a well-disguised form of racialized social control that functions very similarly to the Jim Crow laws that enforced racial segregation in the southern U.S. during the 19th and 20th centuries (Alexander, 2011).

Stephanie Kane (2013) also provides support for the prison system being an excessive form of punishment, even if it is justified by retributivist principles. She conducted an interview with Wilbert Rideau, an American man who spent 44 years at Angola prison, and more than a decade in solitary confinement on death row, for killing a bank teller in a failed robbery. According to Rideau, solitary confinement is the worst thing that can be done to a person because it strips them of their sense of self and place in life, as well as any emotional bonds they have (Kane, 2013). In prison, "there is no encouragement, no incentive, no support" (Kane, 2013). Although I can see how one could argue that this punishment might fit some crimes (e.g., murder), this does not fit all the crimes that people are imprisoned for (e.g., robbery or theft) and seems unnecessarily harsh. Although Rideau acknowledges that not everyone can be rehabilitated, he also points out that, "at some point, long-term prisoners want to be better than

they were before they went to prison” (Kane, 2013). If that is indeed the case, I think a different approach to justice should be considered.

## Nietzsche's "The Pale Criminal" and Labeling

"The Pale Criminal" is a chapter in German philosopher Friedrich Nietzsche's *Thus Spoke Zarathustra*. The chapter details the end of a criminal proceeding in which an accused murderer is being sentenced to death by the red judge (this is how the judge is described in the text). An important question raised here is whether there is a difference between violence carried out in violation of the law and violence carried out in the name of the law. Nietzsche is suggesting that the red judge, who is about to sentence the pale criminal to death, is actually concealing his own desire to kill. This is what he means when he tells the red judge, "if thou would say audibly all thou hast done in thought, then would every one cry: 'Away with the nastiness and the virulent reptile!'" (Nietzsche). While the criminal acted openly and is now suffering the consequences of his actions, the judge is able to mask their desire for blood behind legal procedures, instead appearing to "desire" law and order. Nietzsche hints at this at the beginning when he says "Ye do not mean to slay, ye judges and sacrificers, until the animal hath bowed its head?" (Nietzsche). Society has created a mechanism, the justice system, that allows law-abiding members to behave immorally without being punished.

The essence of Nietzsche's critique of legal, institutionalized punishment is that it is a cowardly display of the (hidden) desire for violence. Nietzsche may want punishment replaced by an approach to wrongdoers that rehabilitates them as opposed to penalizing them. This is evidenced when he asserts: "'Enemy' shall ye say, but not 'villain,' 'invalid' shall ye say, but not 'wretch,' 'fool' shall ye say, but not 'sinner'" (Nietzsche).

Labeling is the final important aspect of Nietzsche's critique of the criminal law process that has been part of the retributive justice system. The criminal is described throughout the chapter as "pale." Nietzsche explains that "an idea made this pale man pale. Adequate he was for

his deed when he did it, but the idea of it, he could not endure when it was done.” He argues that the red judge causes the murder the criminal committed to lose its meaning by portraying it as the consequence of a robbery. This assumption takes away the act’s experiential element, which can’t be understood by others. By being labeled with a name and an image, the act is no longer unique. The crucial takeaway is that the criminal himself no longer perceives the act as unique; as Nietzsche details, “evermore did he [the criminal] now see himself as the doer of one deed.” The criminal doesn’t see the act as he experienced it, but as an image, one that he cannot bear. Internalizing society’s image of him as a “criminal” or “murderer,” as if that’s all he is, is what is most destructive and what causes him to become pale. He is pale because he has lost his sense of identity. Society views him a certain way and that perceived identity, the criminal, supersedes all other possible identities the criminal has, even if they are positive. This way of thinking about crime is the mistake the retributive justice system makes. Perhaps it is necessary to view crime this way if the goal is proportional punishment, but I take it to be dehumanizing, which is why I consider this to be a problem. Criminals carry the “criminal” label for the rest of their lives, even if they leave prison, making it harder for them to find work and housing when they try to reintegrate into society.

The harmful effects of labeling are also discussed by nonviolence authors like Thomas Nagler (2014) and Barry Gan (2013). Nagler (2014) thinks that “labels depersonalize, which is why soldiers so often use them to get over the natural psychological abhorrence we all feel at killing another (17-18). Since “all violence begins in the failure or refusal to recognize another as fully human” (Nagler 2014, 17), labeling someone negatively makes it easier to justify harming them. Nagler (2014) defines violence as “deliberate harm to another’s person or basic dignity” (3), and he contends that our current worldview, as well as our institutions based on that

worldview, consider violence to be the status quo. Violence seems to be everywhere, while nonviolence seems rare by comparison, though Nagler (2014) believes that has more to do with our worldview than the way the world really is (4). The term “nonviolence,” for example, implies that the default condition is violence and that nonviolence is a temporary deviation from the normal state of affairs (Nagler 2014, 4). This limits our options when we consider how to respond to violence. If nonviolence isn’t considered as a serious possibility, then the remaining options are to either passively endure the violence or to fight back (Nagler 2014, 4). The former probably isn’t attractive to most people because it seems too submissive and inactive, so it’s understandable why retributive justice is appealing and why it’s the prevailing justice system in the U.S.. It’s active because one is fighting back against the violence being used against them and fair because the people who carried out the violence deserve to have violence done to them (in the spirit of the Golden Rule or the idea of “an eye for an eye”). However, both of these approaches, to yield and allow violence to be done or to respond to it in kind, only increase the violence (Nagler 2014, 5).

Gan (2013) considers labeling itself to be a violent act, and it is part of one of five violent myths that American society relies on. I will focus on Gan’s (2013) concept of myths in more detail later on, but for him, a myth is a mistaken belief or assumption that cultures rely on to solve their problems. The myth relevant to labeling is what Gan (2013) calls “The Myth of Good Guys and Bad Guys.” According to this myth, some people are inherently good and others are inherently bad, and because of this, many people are prepared to divide individuals into two groups, the good and the bad (Gan 2013, 30). Once they’ve been divided, it isn’t difficult to arrive at the conclusion that the bad should be eliminated or killed (Gan 2013, 30). Even though Gan (2013) acknowledges that the number of people who can truly be classified as inherently

evil “are an infinitesimally small percentage of any population” (Gan 2013, 30), the amount of people “who can be roused by demagogues to believe that others are evil are virtually uncountable because they include almost all of humankind” (Gan 2013, 30). The problem with this is that nearly everyone is susceptible to classify not only individuals, but also groups of people (ethnic groups, nations, religious denominations, and races) as either good or evil (Gan 2013, 26). This ignores the diversity and complexity of the individuals in any given group and instead boils their identity down to a single label. Thus, it is easier to view those who are “evil” as less than human and undeserving of our respect, which in turn makes justifying their punishment or elimination more straightforward. Since criminals are generally regarded as “bad” or “evil” people, punishing them through imprisonment makes sense and is another reason why the retributive justice system appears attractive.

The idea of “good vs. evil” and the resulting separation may be more closely associated with religious traditions, but the secular domain has a similar myth. In many religions (Christianity, Judaism, Islam, Hinduism, etc.), one can find individuals who consider anyone who doesn’t believe in their religion as flawed (Gan 2013, 30). Non-believers can be considered misguided, traitorous, or evil, fully deserving of whatever unpleasant fate awaits them. However, early scientific theories about aggression, particularly those of Sigmund Freud and Konrad Lorenz, promoted a view of humans as essentially aggressive and inclined towards violence (Gan 2013, 30). Although more recent theories have weakened those claims, Gan (2013) believes that “among non-scientists, it is almost a platitude that people are innately aggressive” (Gan 2013, 30). If this is true, then the idea is that we need to properly channel this aggression, using operant conditioning, genetic engineering, drugs, therapy, and (especially important for the sake of this project) the threat of punishment (Gan 2013, 30-31). Furthermore, the most evil people never

learn to channel their aggression in a productive manner and thus need to be eliminated (Gan 2013, 31). The key takeaway here is that the good vs. evil dichotomy is “apocalyptic” (Gan 2013, 31), meaning that saving the world or redeeming one’s character is dependent on eliminating “the other.” Gan (2013) meant this in terms of killing someone to eliminate them, but I think that imprisoning someone, especially if it’s for an extended period of time (e.g., more than five years) essentially eliminates them from society because they are separated from everyone else due to the threat they pose to the public’s safety and well-being. This is another issue with the retributive justice system, that it focuses too much on simply eliminating the “evil” criminals from society. It doesn’t see any potential for them to improve because of their “evil” or “criminal” label and is thus more concerned with ensuring they get the punishment they deserve.

I want to return to Gan’s (2013) concept of myths because it helps us become aware of and subsequently examine some of the myths that our society in the U.S. has been built on. A central point that Gan (2013) makes is that “our assumptions govern or direct our individual behaviors, and the assumptions of a community or a society govern or direct its social, political, and economic behaviors and policies” (3). The problem with assumptions, on both a personal and societal level, is that they can be mistaken and thus prevent people or societies from addressing their problems (Gan 2013, 3-4). Furthermore, if they are mistaken, the assumptions themselves can also be the root cause of many personal and societal issues (Gan 2013, 4). Crucially, these misleading or false assumptions can become embedded in a personality or a society, potentially becoming “so powerful that they underpin and undermine the very character of a personality or society, explaining and justifying unhelpful behaviors and policies” (Gan 2013, 4). This has already been hinted at earlier, with Nagler’s (2014) assertion that our current prevailing worldview in the U.S. considers violence to be the default state of affairs (4).

Additionally, he believes that we see ourselves as separate, physical, and competitive (8), thus making any dispute or conflict a matter of “me against you” (14) where in order for me to win, you have to lose. This worldview is echoed by Cameroonian philosopher Achille Mbembe (2019) in *Necropolitics*, where he states that “the contemporary era is, undeniably, one of separation, hate movements, hostility, and, above all, struggle against an enemy” (42). How did this society of enmity come to be? How deeply embedded are these ideas regarding violence, separation, conflict, competitiveness, and hostility? Are they well-founded or are they what Gan (2013) would consider to be myths?

## **The Origin and Consequences of Separation**

One of the earliest sources that contains ideas concerning separation is the Book of Genesis. I chose this text because it is the account of the creation of the world for both Christianity, currently the world's largest religion, and Judaism, another of the world's major religions (World Population Review 2022). Thus, Genesis has had, and currently has, significant influence on our worldview, particularly regarding separation. On the sixth day of Creation, according to this account, "God said, 'Let us make man in our image, after our likeness. They shall rule the fish of the sea, the birds of the sky, the cattle, the whole earth, and all the creeping things that creep on earth'" (Genesis 1.20). There are several key points to note. First, humans are not equal to nature in this view. Instead of simply being a part of nature, alongside everything else, they are above it. They were created in God's image, which gave them the divine right to rule and dominate nature. The God-given right to rule the earth is what distinguishes humans from the rest of nature. Although it doesn't separate them entirely, as they still live in the same physical world, it demarcates a clear boundary between them, where humans are superior. Animals were described as "creeping things that creep" (Gen. 1.20), which to me carries a negative connotation. This suggests that animals are distasteful or even frightening creatures that need to be controlled. Since animals are a part of nature, this conception could reasonably be extended to the rest of nature, which was later seen in the aims of colonialism.

The implications of this view are problematic because its logic is flexible, which can be used to justify the domination, submission, and colonization of other peoples. Humans, on this account, constitute the Self, the "we," the "us," the familiar. "We" have a right to rule, and therefore dominate, nature, the unknown Other, and submit it to "our" will. This is apparent in Genesis, where "God formed out of the earth all the wild beasts and birds of the sky and brought

them to the man to see what he would call them; and whatever the man called them, that would be its name” (Gen. 2.23). According to this, naming or labeling is also a God-given right. Humans order and classify the world according to how they see it, and this becomes the universal truth, creating a dominant order. This is especially important to consider because, as mentioned previously, Genesis is the creation story for both Christianity and Judaism, two of the world’s major religions. Thus, the idea not only that individuals and groups can be labeled, but also that the act of naming can justify the loss of their humanity, as well as their domination and submission, has long been a part of our worldview. Given the harmful effects of labeling discussed in prior sections, I think it’s important to trace how this “human-nature” dualism has embedded itself into modern society, using naming and classification to separate people into groups and create hostility between them. This matters because I think the way we view criminals and wrongdoers has been greatly influenced by this genealogy of separation.

In introducing this “human-nature” dualism, I want to briefly discuss the nature of dualisms themselves. On one hand, dualisms are useful because they help us compartmentalize and understand the world. Many of us, even those who love philosophy, cannot reflect on everything we encounter because we need to attend to what’s happening in our lives in the present. Thus, dualisms are helpful in a practical sense because they allow us to save time in understanding our world and acting in it. However, dualisms can be problematic if they are never reflected upon because then they are taken for granted. To me, this is how Gan’s (2013) myths are created. Dualisms are not challenged, become assumptions, and in turn are established as a society’s main method of problem solving. As we will see, they can be seamlessly applied to different situations to separate things previously unified, creating an account of the way things

are separated and always have been, which can justify the separation and dehumanization of individuals and groups.

An early way in which the “human-nature” dualism was used was in the separation of Western culture from other cultures. First seen in colonialism, and later in fascism and Nazism, this asserted “the absolute superiority of so-called Western culture, understood as the culture of race—the white race” (Mbembe 2019, 121). Western culture was “a culture like no other” (Mbembe 2019, 121), making it untouchable because it was the only culture which could relate all other cultures to itself (Mbembe 2019, 122). According to Mbembe (2019), “its project was to steer the world according to its will” (122) and it had a body and a soul. From this we see how smoothly Western culture took human characteristics, not only the physical ones, but the right to rule nature mentioned in Genesis. Nature, in this view, became the other non-Western cultures in the world, whose existence was dependent upon the West, thereby establishing Europe as the center of the world.

Another key point to note is that Mbembe (2017), like Gan (2013), also mentions myths, saying that they were necessary for the Western world to rationalize its power (11). In addition to considering itself the center of the world, Western culture viewed itself as the origin of reason, universal life, and the truth of humanity (Mbembe 2017, 11). The self-appointed most “civilized” region of the world was, according to their view, solely responsible for creating the rights of the people; for building a civil society of nations; for introducing the idea that being human meant possessing civil and political rights that allowed them to develop powers, both privately and publicly, as citizens of a human race; and, finally, for codifying “a range of customs accepted by different peoples that included diplomatic rituals, the rules of engagement, the right of conquest, public morality, and polite behavior, and practices of business, religion, and government”

(Mbembe 2017, 11). As we can see, the Western world used myths to solidify itself as the humans in Genesis, the Self, the “we,” the positive force. This separated it from the rest of the world, what Mbembe (2017) calls “the Remainder” (11), what constitutes nature in Genesis, and, above all, what was there to be conquered.

The separation of the West from all other cultures enabled colonialism, which sought to dominate, subjugate, and control them. According to Mbembe (2019), “colonizing broadly consisted in a permanent work of separation: on one side, my living body; on the other, all those ‘body-things’ surrounding it; on one side, my human flesh, through which all those other ‘flesh-things’ and ‘flesh meats’ exist for me” (Mbembe 2019, 46). This was partly caused by what Mbembe (2019) calls “annihilation anxiety felt by the settlers themselves” (46). The colonizers were in a new and unfamiliar environment in which they were outnumbered, which explains why they “lived in fear of being surrounded on all sides by ‘bad objects’ that threatened their very survival and were ever liable to take away their existence: natives, wild beasts, reptiles, microbes, mosquitoes, nature, the climate, illnesses, even sorcerers” (Mbembe 2019, 46). Colonialism clearly demonstrates a reliance upon the “human-nature” dualism. The colonizers were the “human” in opposition to the environment, the “nature,” of the place they were sent to conquer, which aligns well with the Genesis account. However, these “bad objects” or “other entities” were not completely devoid of humanity, thus making it the European colonizers’ duty to help them, to “raise them up to our level” (Mbembe 2017, 12). Viewed this way, the colonial project was “a fundamentally ‘civilizing’ and ‘humanitarian’ enterprise” (Mbembe 2017, 12), morally justifying the resulting violence. From this, we see how the Western world imagined, labeled, and classified other worlds and their cultures in a way that rationalized Europe’s goals of conquest and domination. This way of thinking invented and conjured up ideas, but presented

them as factual and certain, which allowed this erroneous belief to become the Western world's main approach to "solving" the problem of these separate, subhuman worlds that needed to be brought under colonial control. It is also key to point out that Mbembe considers colonialism to be a permanent work of separation, meaning that the division (or divisions) created may have endured to the present day, which we will see later.

Part of the reason for this enduring separation may be due to colonialism's reliance upon racism. For Fanon, racism was rarely accidental and always subtended by a structure which drove an economic and biological subjugation (Mbembe 2019, 130). This involved "an arbitrary and original declaration of superiority—a superiority destined to establish the supremacy of a group, a class, or a species of humans, over others" (Mbembe 2019, 130), which was discussed at length in previous paragraphs. According to Mbembe (2019), racism carries out this process by creating a double, taking a real human face and pushing it into the background or obscuring it from view with a veil (32). Through imagination, it evokes a ghost of a face, an image, a silhouette, that replaces the real human face hidden from view (Mbembe 2019, 32). This is the essence of racism, its ability to distort reality through imagination and substitution. The substitution of a ghost of one's face, in place of their real one, is how they are classified and labeled, and this becomes the justification for any harsh treatment they receive. Their humanity has been replaced by an image, one that is fantastical, concealed by shadows, and the uncertainty that this inspires creates a fear of them.

To "maintain its virulence and its efficacy" (Mbembe 2019, 130), racism constantly must renew itself and metamorphose. This was done through what Fanon considered to be two types of racism. The first was a vulgar racism that appealed to the sciences, particularly biology and psychology, to establish and justify its authority (Mbembe 2019, 130). The second was

cultural racism, a mutation of vulgar racism that “attacked particular forms of existing, which colonialism then sought to liquidate” (Mbembe 2019, 130). If it didn’t destroy them, then it tried “either to devalorize them or to turn them into exotic objects” (Mbembe 2019, 130). At work here are value judgements and classifications made by the colonizers about the people they were trying to dominate. Condemning the ways in which the colonized lived made it easier to subjugate and maintain control over them because it emphasized their inferiority as colonial subjects rather than human beings who were independent.

Making judgements and classifications in the context of Fanon’s cultural racism can also be traced back to Genesis because it is closely related to the concept of naming. Mbembe (2019) provides a particularly illuminating description of the disastrous psychological effects this can have on someone:

“The essential human person, witnessing its dissolution in the thing, is suddenly stripped of all human substantiality and imprisoned in a crushing objectality. Others have ‘fixed’ me, ‘in the same way you fix a preparation with a dye.’ My ‘blood congealed,’ here I am henceforth the prisoner of a vicious circle. A representative instance of the ‘white’ took my place and made my consciousness its object. Henceforth, this instance breathes in my place, thinks in my place, speaks in my place, monitors me, acts in my place” (133).

The issue is that a person assigned a race or given a label still exists behind the silhouette imposed on them (Mbembe 2019, 32). Their imprisonment in the silhouette or image separates them from their essence (Mbembe 2019, 33). Mbembe (2019) believes that everything “starts with an identification” (151), that “to unveil one’s identity is also to recognize oneself” (151), to affirm one’s existence. This cannot happen if one is confined to an image. For Fanon, a person in this situation is unhappy because their existence involves living out the separation from their essence as if that were a part of their true identity, in “hating what they are and seeking to be what they are not” (Mbembe 2019, 33). This demonstrates the power of labeling. If someone is denied the ability to name themselves, they can’t develop a self-image with which to understand

themselves in the world. They are denied their humanity, which explains why slaves in the New World essential cogs in a global colonial and capitalist process of accumulation (Mbembe 2019, 170) were. Instead of being considered as people, with agency and the right to be treated decently, they were seen as a means to an end.

I have shown how racism was a driving force behind colonialism, but it has also played a role in democracy, which resulted in a form of separation. At first, this seems contradictory because in theory, brutality and physical violence should either be non-existent or at the very least brought under control in democratic societies, but Mbembe (2019) thinks that the brutality of democracies has been hidden from the public (16). He observes how the United States began as a pro-slavery democracy, where slaves were “foreigners” in a society of fellow humans (Mbembe 2019, 17). Thus, Mbembe (2019) considers a pro-slavery democracy to be:

“Characterized by its bifurcation. Two orders coexist within it — a community of fellow creatures governed, at least in principle, by the law of equality, and a category of nonfellows, or even of those without part, that is also established by law. A priori, those without part have no right to have rights. They are governed by the law of inequality. This inequality and the law establishing it, and that is its base, is founded on the prejudice of race. The prejudice itself, as much as the law founding it, enabled a practically unbridgeable distance to be upheld between the community of fellow creatures and its others. Pro-slavery democracy, supposing it to be a community, could only be a community of separation” (17).

The existence of a community entails some form of separation because, according to Mbembe (2019), we desire an enemy, an enemy that we can objectify, even though this terrifying object doesn't (and never will) exist (43). Desire must continually invent it, so while it previously fixated on the “Negro” and the “Jew,” these are now known by other names: Islam, the Muslim, the Arab, foreigners, immigrants, and refugees (Mbembe 2019, 43). Colonialism and democracy are thus part of the same historical matrix because both are driven by a racism that metamorphoses, constantly creating new threats that must be addressed and kept in check. Control and surveillance are done through constructing concrete walls, wire fences, and security

structures like checkpoints, watchtowers, and trenches, as has been done in Palestinian towns surrounded by Israeli forces.

Consequently, a security or surveillance state has emerged and been consolidated. In Mbembe's (2019) view, it thrives on a state of insecurity which it instigates and to which it believes it is the solution (54). The security state holds this belief because it "presupposes that a 'cessation of hostilities' between ourselves and those who threaten our way of life [which form an irreducible enemy who is endlessly transforming] is impossible" (Mbembe 2019, 54), creating a constant sense of fear and unrest. This resembles Gan's (2013) myth of the good guys and bad guys, where the world's salvation depends on the elimination of the "bad guys." To conquer this perceived threat, a war is permanently waged which is global in its scope and whose "privileged theater of action is everyday life itself" (Mbembe 2019, 54). Its main concern is "to control human life in general, whether it is a case of its subjects or of those designated as enemies" (Mbembe 2019, 54).

The aim of the security state's project seems, to me, exceedingly paranoid. In my eyes, there is a significant difference between wanting to be prepared to defend oneself and constantly being on the lookout for, and instilling fear about, threats that may not even exist. The former is a natural and understandable tendency, but I think adopting the latter view is harmful. On an individual level, you become your own worst enemy. While imagination is certainly capable of wonderful things, it is also capable of effectively separating a person from the rest of the world because their fear of perceived threats is too great. Something similar can happen on a societal level, where society begins to be on the lookout for enemies within. One could argue that this is what is meant by the existence of a community entailing a form of separation, as that might bring one closer to the community (or communities) they're a part of, but I'm wary of this claim. As

has been demonstrated with both racism and desire, metamorphosing to create new perceived threats has significant negative consequences, and I believe the same is true of the security state's assumption that there can be no peace between "us" and our "enemies."

There are two main repercussions of the security state's assumption, the first being a negative messianism. This messianism is not about salvation (Mbembe 2019, 106). In its minor version, it is about survival, sacrifice or being sacrificed (Mbembe 2019, 106). In its more extreme version, it means "collective suicide before the Apocalypse" (Mbembe 2019, 106). For Mbembe (2019):

"Stories about an increasingly dangerous and insecure world in turn feed a thirst to trace and mete out 'justice' and retribution to dispersed anonymous and not-so-anonymous enemies: from terror cells manufacturing AK-47s on 3-D printers to freelance 'assassins with termite-sized drone armies' to Google, Amazon, and Facebook, responsible for bundling 'all our personal data—social security numbers, credit card numbers, nude photos, names of children, pets, and second cousins' before selling them to data brokers or peddling them to identity-theft crime rings and pedophiles" (106-107).

I don't see how that fosters the growth of community, nor how it would give one a sense of security. As mentioned in the previous paragraph, it separates a person from the world, painting it as an evil and dangerous place, like a more extreme version of the idea of nature (animals) implied in Genesis. Instead of building relationships, it cuts them off, creating a comprehensive and isolating separation.

The second main repercussion is the establishment of borders, which carries its own consequences. According to Mbembe (2019), "the aim of a society of security is not to affirm freedom but to control and govern the modes of arrival" (104). This means that "everything leads back to borders—those dead spaces of non-connection which deny the very idea of shared humanity, of a planet, the only one we have, that we share together, and to which we are linked by the ephemerality of our common condition" (99). More specifically, Mbembe (2019) means

borderization, where world powers “permanently transform certain spaces into impassable places for certain classes of populations” (99). To me, this effectively dooms humanity. By definition, humanity is collective. If we cannot share the planet in the relatively brief time (in the grand scheme of things) that we live on it, it seems like our existence is destined to fall short, which to me inevitably leads to despair because it implies that we will always be irrevocably separated. To wage war against our enemies “whose means of existence and survival we have previously destroyed” (Mbembe 2019, 99) using warheads and other bombs is not an effective way to live because it separates humanity. Yet “it is on the verge of defining the times in which we live” (Mbembe 2019, 100).

In this section, I have detailed how the idea of separation appeared in Genesis, that one group of people, the humans, the “we,” had the God-given right to label everything else, the rest of nature, the “other.” This framework was flexible and was used to justify other projects involving the classification and domination of other groups of people, like European colonialism and the racism that drove it. In more modern times, this has manifested itself as a pro-slavery democracy and, in the present, a security state heavily influenced by Gan’s (2013) myth of the good guys and bad guys. Our ideas (or assumptions) regarding violence, separation, conflict, competitiveness, and hostility are so deeply embedded in our worldview that there seems to be no possibility for reconciliation between us and the enemies that threaten our very existence. We truly live in a society of enmity.

To build on Mbembe’s (2019) ideas discussed in the preceding paragraphs, I think desire has created another enemy: the criminal. Although the concept of a criminal is not new, I believe it has recently become another one of the principal perceived threats to our society in the United States. In *Necropolitics*, Mbembe (2019) mentions how, through a process of dissemination and

inculcation, a “massive coating of nonsense, lies, and fantasies has become a kind of exterior envelope whose function has since then been to stand as substitute for the being, the life, the work, and the language of Blacks” (39). What once began as an appearance transformed, through classification, into a framework and finally into what he calls a “calcified shell” (Mbembe 2019, 39), a second way of being in the world, that gradually consumes its victim. Similarly, I want to argue that desire has constructed a similar exterior of fantasies around the being, life, and work of criminals, both those who are incarcerated and those who have not yet been caught. In the next section, I will give a history of the prison system in the United States and its relationship with racism and Jim Crow laws, examining how it came to define criminals as a serious threat to the rest of society.

## **A History of the Prison System in the United States and Jim Crow**

Shortly after achieving their independence, Americans questioned the death penalty, as well as severe punishment in general, views that resembled those of Bentham, Beccaria (2005), and Voltaire (O'Connor 2014). For them, the cause of crime was due to inequalities in classes and wealth (Morris & Rothman 1998, as cited in O'Connor 2014), so if their newly formed nation was formed on the bases of equality and class mobility, then there would be a decrease in crime (O'Connor 2014). However, the general public's desire for social order remained, and the concept of prison appeared to balance the need to adequately punish people for crimes they committed so it would deter them in the future, with the means to rehabilitate criminals (Morris & Rothman 1998, as cited in O'Connor 2014). Thus, most prisons had rehabilitation-focused plans, the two most popular being the Auburn Plan and the Pennsylvania Plan (O'Connor 2014). Under the Auburn Plan, prisoners worked and ate together during the day, and were separated in isolated sleeping quarters at night, in cells, though they were allowed to read the Bible (Barnes 1921). Prisoners were required to always be silent, and a rigid daily schedule was enforced through disciplinary means like lockstep marching, special regulations in the dining halls, and whipping (Barnes 1921). In the Pennsylvania Plan, however, prisoners were confined to their individual cells the entire time they were serving their sentence (O'Connor 2014). The defining quality of American prisons during this time was their persistent eerie silence (Morris & Rothman 1998, as cited in O'Connor 2014). Rehabilitation, under these prison plans, was achieved through the establishment of habits and order during one's sentence, as well as solitary confinement, all of which were thought to positively influence prisoners' moral conduct upon reentering society. Though solitary confinement today is considered one of the worst forms of punishment imaginable, most reformers at the time were religious and thought

it would have an emancipatory effect on prisoners (Davis 2011, 46-47). One's body was put in conditions of segregation and solitude so the soul could flourish, and the architecture and regimes of the prison were thought to reproduce the architecture and regimes of monastic life (Davis 2011, 47).

According to O'Connor (2014), punishment underwent two major changes in this period during the 18th and 19th centuries. First, physical punishment was widely eschewed in favor of efforts to rehabilitate wrongdoers' souls and characters through subjecting them to rigid routines and schedules. However, these rehabilitative practices took place behind the prison walls, which caused the second significant transformation: punishment was no longer a public spectacle, meaning that society became disconnected from, and increasingly less aware of, the experience of prison. In addition to physically separating them from the community, this created an imaginary divide between prisoners and everyone else (O'Connor 2014). Although rehabilitation was the main goal of the early prison systems in the U.S., society increased their disapproval of those who had to serve time. Thus, boundaries, both physical and mental, had been established between those who served time in prison, the "criminals," the "wrongdoers," and the rest of the public, the "innocent," the "good guys" who did not want to be associated with the other. There were already traces of Gan's (2013) myth of good guys and bad guys, but there needed to be more separation, and subsequent justification, for the criminal to become widely perceived as a major threat to society.

Although the seeds of separation had been planted early in the founding of the first prison systems in the U.S., racism helped accelerate the divide between the criminal and the rest of the community and establish the former as an easily recognizable enemy. As mentioned earlier, Alexander (2011) argues that mass incarceration is a hidden, racialized form of social control

that effectively functions as a more modern form of the Jim Crow laws that imposed racial segregation. Like Mbembe (2019), Alexander (2011) observes how racism metamorphoses. According to her, the rules, and justifications that the political system uses to impose and maintain status relations, in this case racial hierarchy, evolve and change in response to challenges brought upon them (Alexander 2011, 21). Thus, the idea of race, as well as racial division, lived on even after the end of slavery. Racism functioned as a deeply embedded belief system based on unquestionable “truths,” namely that people of African origin were savage, that whites were inherently superior, and that slavery was for blacks’ own good (Alexander 2011, 26). Using Gan’s (2013) idea of myths, whites were the “good guys,” and the blacks were the “bad guys.” However, once slavery was abolished, there was a need for a new way to control the “bad guys,” which entailed the development of a new racial order.

Racism’s first metamorphosis after the end of slavery came in the form of the new Black Codes. These were laws passed by former slave states designed to regulate free blacks’ behavior in a way that resembled conditions during slavery (Davis 2011, 28). Actions like vagrancy, being absent from work, breaking job contracts, carrying firearms, and gestures or acts perceived as insulting were criminalized, but only if the offending person was black (Davis 2011, 28). This meant that former slaves could be legally sentenced to servitude in prison. It also helped develop a stigmatized image of the criminal. As mentioned earlier, Mbembe (2019) describes how racism creates an image that distorts one’s humanity and hides it from view. Due in part to the new Black Codes, this emerging image of the criminal portrayed wrongdoers as black. Because blacks were already viewed by many as less than human, and thus deserving of any harsh treatment or sentences, criminals were now regarded in a similar manner. This was important because it changed the goal of punishment in the U.S. prison system. While its aim had

previously been to rehabilitate wrongdoers, it now shifted more towards simply punishing them. Blacks criminalized and sentenced to prison could not be rehabilitated because they were considered less than human. According to this view, they couldn't be rehabilitated, and they didn't need to be. They were a threat to the rest of white society and needed to be surveilled and controlled. This was an early instance of what Mbembe (2019) called the emergence of a surveillance state.

Although the Reconstruction Era marked a period of significant social and political advancement for blacks, racism again metamorphosed and manifested itself in the convict lease system. The list of meaningful legislative progress for blacks during Reconstruction includes the Thirteenth Amendment, which abolished slavery; the Civil Rights Act of 1866, granting African Americans full citizenship; the Fourteenth Amendment, which prevented states from denying citizens due process; the Fifteenth Amendment, which protected the right to vote from being denied on account of race; and the Ku Klux Klan Acts, which made interfering with voting a federal offense and violent transgression of civil rights a crime (Alexander 2011, 29). Additionally, the Freedmen's Bureau, which provided resources and assistance to impoverished former slaves, was expanded and a public education system in South, giving blacks, as well as poor whites, their first opportunity to learn to read and write (Alexander 2011, 29). In response, the Ku Klux Klan experienced a resurgence, beginning a terrorist campaign, called "Redemption," against Reconstruction governments that included bombings, lynchings, and mob violence (Alexander 2011, 30). This stopped the federal government's efforts to enforce civil rights legislation and funding for the Freedmen's Bureau was cut to such an extent that it effectively put the agency out of business. The new Black Codes enabled a large market for convict leasing, where prisoners were contracted out for their labor to the highest private bidder

(Alexander 2011, 31). Tens of thousands of blacks were arrested during this time, and many had to work off court costs and fines to be released (Blackmon 2008, as cited in Alexander 2011, 31). Since they couldn't pay these "dues," prisoners were sold and forced to work on lumber camps, brickyards, railroads, farms, plantations, and other corporations in the South (Alexander 2011, 31). Compared to the period when slavery was legal, death rates were higher because the private contractors didn't care at all about the health and well-being of their laborers, whereas slave owners needed their slaves to at least be healthy enough to survive hard labor.

Convicts did not have significant legal rights and were considered slaves of the state. Although the Thirteenth Amendment abolished slavery, it permitted slavery as an appropriate punishment for a crime. A decision by the Virginia Supreme Court in *Ruffin v. Commonwealth* (1871) clearly indicated that convicts were legally indistinguishable from slaves:

"For a time, during his service in the penitentiary, he is in a state of penal servitude to the State. He has, as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him. He is for the time being a slave of the State" (as cited in Alexander 2011, 31).

In the decade following Redemption, the convict population grew ten times faster than the general population, with prisoners becoming younger and increasingly African American, as well as having longer sentences (Alexander 2011, 32). It was the country's first prison boom, and prisoners were disproportionately black. This further cemented the image of the criminal as African American, which in turn strengthened the idea that they should be punished, not rehabilitated. Drawing on Mbembe's (2019) ideas, criminals' humanity had been replaced with the image of an African American, which, due to previous fantasizing and imagining, already inspired uncertainty and fear. Thus, the image of the criminal also began to evoke unpredictability and terror, which helps explain why the prison population during Redemption contained a disproportionate number of African Americans and continues to do so today.

In response to Redemption, alternative philosophies of race relations emerged, and radicalism, whose leaders later formed the Populist Party in the late nineteenth century, held the most promise for African Americans. It was critical of large corporations, especially railroads, and the wealthy elite in the North and South. According to this view, the socially advantaged classes conspired to keep poor whites and blacks in an inferior economic and political position (Alexander 2011, 33). The Populists argued that working-class whites and African Americans had a common grievance (being held in a subordinate economic and political position) and a common oppressor, the wealthy whites (Woodward 2001, as cited in Alexander 2011, 33). Thus, they advocated for a multiracial, working-class movement against white elites, which emphasized racial integration as a symbol of their dedication to class-based unity (Alexander 2011, 33). This inspired optimism and enthusiasm among African Americans throughout the South, as it seemed they would have true partners in a struggle for social justice (Alexander 2011, 33). Initially, the Populist movement was highly successful in the South, helped by widespread discontent caused by agricultural depression during the 1880s and 1890s (Alexander 2011, 33). The Populists went directly after the conservatives, then known as a party of privilege, and they achieved a series of political victories throughout the region (Alexander 2011, 33-34).

Frightened by the Populists' success, the conservatives appealed to white supremacy and utilized the tactics that had worked so well for them during Redemption, including intimidation, fraud, and terror (Alexander 2011, 34). Segregation laws, known later as Jim Crow laws, were proposed to drive a wedge between poor whites and African Americans and destroy the alliance between them. If lower-class whites maintained a sense of superiority to African Americans, they would be less likely to sustain interracial political alliances. While the Populists redirected working-class whites' hostility from working-class African Americans toward the wealthy white

elite, the conservatives used an aggressive and uncompromising approach to again redirect that hostility back toward African Americans.

In the end, the Populists gave in to the pressure and dissolved the biracial partnership. By the beginning of the twentieth century, every state in the South had codified laws that disenfranchised African Americans and discriminated against them in all aspects of life, leading to segregation in schools, churches, housing, jobs, restrooms, hotels, restaurants, hospitals, orphanages, prisons, funeral homes, and cemeteries (Alexander 2011, 35). Racism had once again metamorphosed into a new racial order, known as Jim Crow, and was the “permanent system” (Woodward 2001, as cited in Alexander 2011, 35), just as slavery had before it. Like slavery, Jim Crow appeared “natural” (Alexander 2011, 35), which was a sign that it had become one of the myths American society relied on.

Although there has been debate among scholars concerning the precise end of Jim Crow, the public considers *Brown v. Board of Education* to be the beginning of its end (Alexander 2011, 35). By 1945, there was an increasing number of whites in the North who believed the Jim Crow system would have to be modified, if not scrapped altogether (Alexander 2011, 35). This like-mindedness was due to several factors. First, African Americans had increased political power due to many of them migrating to the North, which also resulted in the growth of membership and influence of the National Association for the Advancement of Colored People (NAACP). The NAACP was particularly successful in its campaign to challenge Jim Crow laws in federal courts (Alexander 2011, 36). Second, the events of World War II provided an important ideological conflict. Although the U.S. was opposed to the crimes that the Third Reich carried out against European Jews, the continued existence of a racial caste system, which Alexander (2011) defines as a “stigmatized racial group [in this case, African Americans] locked

into an inferior position by law and custom” (12) made it difficult for the country to claim it was the leader of the “free world” (Alexander 2011, 36). Finally, there was concern that the absence of greater equality for African Americans would cause them to become more susceptible to the influence of communism (Alexander 2011, 36).

According to Alexander (2011), *Brown v. Board of Education*, which ruled that racial segregation in public schools was unconstitutional, was important because it ended the “home rule” in the South regarding racial affairs. Though earlier decisions had slowly reversed the “separate but equal” dogma, Jim Crow had metamorphosed and adapted to the changes in the legal environment, meaning many Southerners were confident that the institution would persist (Alexander 2011, 36). However, in addition to abolishing segregation in public schools *Brown* also threatened to dismantle the entire system of legalized discrimination in the South, which had been in place for more than half a century (Alexander 2011, 36).

The *Brown* decision was met with fury and rebelliousness throughout the South, like the reaction to emancipation and Reconstruction after the Civil War. North Carolina Senator Sam Erwin Jr. drafted a racist polemic called “the Southern Manifesto,” which pledged to fight to maintain Jim Crow laws by all legal means, receiving 101 out of 128 votes of support from Congress members from the eleven original Confederate states (Alexander 2011, 37). White Citizens’ Councils were formed in many Southern cities and towns, mostly made up of middle- to upper-middle-class whites in business and the clergy (Alexander 2011, 37). Similar to how Southern legislatures had passed the black codes in response to Reconstruction, five Southern legislatures passed nearly fifty new Jim Crow laws in response to *Brown v. Board* (Alexander 2011, 37). Resistance in the streets also became violent, as the Ku Klux Klan committed castrations and killings, the bombing of black homes and churches, and violence against NAACP

leaders, who they beat, pistol-whipped, and shot (Alexander 2011, 37). All of this caused desegregation in the South to halt in the late 1950s.

However, while the South was taking drastic measures to combat the Brown decision, a civil rights movement was simultaneously developing, encouraged by Brown v. Board and a changing political environment, both at the domestic and international level. Civil rights leaders, activists, and progressive clergy led boycotts, marches, and sit-ins in protest of the Jim Crow system, enduring fire hoses, police dogs, bombings, and beatings by white mobs (Alexander 2011, 37). President Kennedy announced on June 12, 1963, that he would deliver a strong civil rights bill to Congress, indicating his alliance with the Civil Rights Movement. After Kennedy's assassination, President Johnson ensured the passage of extensive civil rights legislation. The Civil Rights Act of 1964 legally dismantled the Jim Crow system of legal discrimination in public accommodations, employment, voting, and education (Alexander 2011, 38). The Voting Rights Act of 1965 eliminated numerous discriminatory barriers preventing African Americans from effectively participating in politics and mandated federal review of new voting regulations to prevent possible voting discrimination in the future. As a result, the percentage of African American adults registered to vote in the South increased between two and tenfold, depending on the state (Lawson 1976, as cited in Alexander 2011, 38). Black children were no longer segregated from their white peers, and miscegenation laws were declared unconstitutional, causing the rate of interracial marriage to climb (Alexander 2011, 38).

Although there was significant progress in the political and social realms, civil rights activists worried that most blacks would remain in poverty without major economic reforms. Thus, economic issues became a principal focus of discontent, and boycotts, picket lines, and demonstrations were held to protest discrimination in accessing jobs, as well as the denial of

economic opportunity (Alexander 2011, 38). The most famous of these was the March on Washington for Jobs and Economic Freedom in August 1963, which drew President Kennedy's attention to poverty and black unemployment (Alexander 2011, 38). Following Kennedy's assassination, President Johnson called for an "unconditional war on poverty" in January 1964 and weeks later proposed the Economic Opportunities Bill of 1964 to Congress (Alexander 2011, 39).

The new focus on economic reforms aligned the goals of the Civil Rights Movement with those of poor and working-class whites, who also sought them. Thus, the Civil Rights Movement became a "Poor People's Movement," as it promised to not only address black poverty, but white poverty as well (Alexander 2011, 39). This created a poor and working-class movement that transcended racial lines, something not seen since the Populist movement of the late nineteenth century. According to historian Gerald McKnight, Martin Luther King Jr. was "proposing nothing less than a radical transformation of the Civil Rights Movement into a populist crusade calling for redistribution of economic and political power" (McKnight 1998, as cited in Alexander 2011, 39). Once again, a major disruption in the country's racial equilibrium had occurred, and if conservative whites wanted to maintain the racial order that had existed under Jim Crow, they would have to find a new order that was formally race-neutral—there could not be any explicit or clearly intentional racial discrimination (Alexander 2011, 40).

Advocates of racial hierarchy introduced a new racial caste system that did not violate the law or current limits of political discourse by demanding "law and order" (Alexander 2011, 40). After *Brown v. Board of Education*, civil rights activists had used direct-action tactics to force Southern states to desegregate public facilities. Southern governors and law enforcement officials considered these tactics to be criminal and asserted that the rise of the Civil Rights

Movement was indicative of a breakdown of law and order (Alexander 2011, 40). From the mid-1950s to late-1960s, conservatives systemically and strategically connected opposition to civil rights legislation to calls for law and order, claiming that King Jr.'s philosophy of civil disobedience was a principal cause of crime (Alexander 2011, 41). Civil rights protests were commonly portrayed as criminal rather than political, and the FBI began reporting significant increases in the national crime rate. Although the accuracy of these statistics was controversial, the reports received considerable national attention, and they served as further evidence that there was an ongoing collapse in lawfulness, morality, and social stability (Alexander 2011, 41). Additionally, riots broke out in Harlem and Rochester in the summer of 1964, followed by nationwide uprisings after King Jr.'s assassination in 1968, both of which supported the argument that civil rights for blacks resulted in widespread crime (Alexander 2011, 41). This distorted American society's image of blacks, making them appear as perpetually angry, violent, and dangerous entities, a portrayal that left them devoid of any humanity. Thus, they were perceived as "the other," an enemy that needed to be dealt with and potentially eliminated from society, perhaps not in terms of genocide, but certainly in terms of ever being equal. However, as acceptable discourse changed, this process could not be publicly advertised or described as racist, so segregationists had to find a race-neutral rhetoric.

The racially sterilized rhetoric that emerged was "cracking down on crime." Though now freely used by all politicians, conservatives who embraced the rhetoric at its introduction did not distinguish between the civil rights activists' direct-action tactics, the violent rebellions in inner cities, and traditional economic or violent crimes (Alexander 2011, 41). These were all put under the heading "crime in the streets" (Edsall and Edsall 1992, as cited in Alexander 2011, 42). This served to unite the segregationists and the poor and working-class whites, who had been swayed

by the Civil Rights Movement, against a common enemy, the criminal, who was portrayed as black, as well as a serious threat to the segregationists' and working-class whites' way of life. The seeds of what Mbembe (2019) called a security or surveillance state had been planted, as the segregationists created a state of insecurity due to the perceived existence of a dangerous enemy.

In the late 1960s and early 1970s, there were two competing opinions offered to the public concerning race, poverty, and the social order. Conservatives argued that poverty was caused by black culture, and all the criminal tendencies that supposedly were a part of it, while liberals believed that social reforms like the War on Poverty and civil rights legislation would get to the root causes of criminal behavior, instead focusing on the particular social conditions that would be most likely to generate crime (Alexander 2011, 44-45). Because lower- and middle-class whites had experienced a disproportionate share of the costs of integration, and now had to compete with blacks for jobs and status, conservatives were able to characterize the liberal Democratic establishment, whose members were often sheltered and immune to these costs, as out of touch with ordinary working people. In 1968, 81 percent of Gallup Poll respondents agreed with the statement that “law and order has broken down in this country” and the majority blamed “Negroes who start riots” and “Communists” (Edsall and Edsall 1992, as cited in Alexander 2011, 45). Society’s “enemy” was becoming increasingly well-defined, and politicians took this image and altered it to appear as an even larger threat.

During the 1968 presidential election, both the Republican candidate, Richard Nixon, and the independent segregationist candidate, George Wallace, centered their campaigns around the idea of “law and order,” collecting 57 percent of the vote combined (Edsall and Edsall 1992, as cited in Alexander 2011, 46). Nixon devoted seventeen speeches to the topic, and one of his television advertisements, using ominous music and images of protestors, bloody victims, and

violence, explicitly told voters to reject the lawlessness of civil rights activists and support “order” in the U.S. (Weaver 2007, as cited in Alexander 2011, 47). This helped explain the sizable decline in the belief among working-class whites that the condition of the poor (or those failing to succeed), was due to a faulty economic system that needed to be challenged and fixed. Instead, the blame was placed on the individuals, that they were responsible for putting themselves in their disadvantaged situation. While the Civil Rights Movement had united blacks and working-class whites, the conservatives’ political campaign during the late 1960s and early 1970s served to drive a wedge between them based on race, framing it as the hardworking blue-collar whites against the poor blacks who did not want to work.

Additionally, Nixon called for a “war on drugs,” declaring drugs “public enemy number one” even though he did not propose any dramatic shifts in drug policy. This was also used by Ronald Reagan during his presidential campaign, who continued the strategy, used by previous conservatives, of exploiting racial hostility or resentment for political gain, while not making any explicit references to race (Edsall and Edsall 1992, as cited in Alexander 2011, 47). Reagan’s appeal as a candidate, according to one political insider, was due to “the emotional distress of those who fear or resent the Negro, and who expect Reagan somehow to keep him ‘in his place’ or at least echo their own anger or frustration” (Edsall and Edsall 1992, as cited in Alexander 2011, 47). As mentioned earlier, the segregationists had created a state of insecurity among poor and working-class whites, and Reagan’s campaign thrived on this vulnerability. His most famous anecdote was one of a Chicago “welfare queen [a term that became a description for “lazy, greedy, black ghetto mother]” who had “80 names, 30 addresses, 12 Social Security cards,” and whose “tax-free income alone is over \$150,000” (Edsall and Edsall 1992, quoting New York Times, Feb. 15, 1976, as cited in Alexander 2011, 48). The food stamp program was described as

a vehicle that allowed “some fellow ahead of you buy a T-bone steak” while “you were standing in a checkout line with your package of hamburger” (Edsall and Edsall 1992, quoting Washington Post, Jan. 28, 1976, as cited in Alexander 2011, 48). These racialized appeals were frequently accompanied by promises to be tougher on crime and to increase the federal government’s role in fighting it. Reagan portrayed the criminal as “a staring face—a face that belongs to a frightening reality of our time: the face of the human predator” (Kirschten 1981, as cited in Alexander 2011, 48). The image of the criminal in the U.S. had previously been portrayed as black, unpredictable, and alarming, and this predatory depiction only served to increase the fear surrounding it. All these tactics were effective; 22 percent of all Democrats defected from the party to vote for Reagan in the 1980 presidential election (Alexander 2011, 48).

After his election, Reagan tried to fulfill his promise to enhance the federal government’s role in fighting crime. However, there were complications stemming from the fact that dealing with street crime has historically been the responsibility of state and local law enforcement (Alexander 2011, 49). Despite an initial period of confusion and controversy over the issue, the Justice Department announced that it would halve the number of specialists assigned to identify and prosecute white-collar criminals and instead focus on street crime, particularly drug-law enforcement (Beckett 1997, as cited in Alexander 2011, 48-49). The War on Drugs was officially announced by President Reagan in October 1982. At the time, less than 2 percent of the American public considered drugs to be the nation’s most critical issue (Beckett 1997, as cited in Alexander 2011, 49). This did not matter to Reagan because, according to Alexander (2011), the drug war from the outset was less about public concern about drugs and more about public concern about race. Through waging a war on those who used and dealt drugs, Reagan fulfilled

his promise to “crack down on the racially defined ‘others’—the undeserving” (Alexander 2011, 49).

With the War on Drugs officially declared, the budgets of federal law enforcement agencies shot up. FBI antidrug funding increased from \$8 million to \$95 million between 1980 and 1984 (Beckett 1997, as cited in Alexander 2011, 49). From 1981 to 1991, Department of Defense antidrug allocations increased from \$33 million to \$1,042 million (Alexander 2011, 49). In the same period, Drug Enforcement Administration spending went from \$86 million to \$1,026 million, and FBI antidrug allocations grew from \$38 million to \$181 million (Beckett 1997, citing Executive Office of the President, Budget of the U.S. Government 1990, as cited in Alexander 2011, 49). Conversely, funding was dramatically reduced for agencies responsible for drug treatment, prevention, and education. The budget of the National Institute on Drug Abuse was cut from \$274 million to \$57 million between 1981 and 1984, while antidrug funds given to the Department of Education went from \$14 million to \$3 million (Beckett 1997, citing U.S. Office of the National Drug Control Policy, National Drug Control Strategy 1992, as cited in Alexander 2011, 49).

To ensure that “the new Republican majority” would continue to support the aforementioned expansion of the federal government’s law enforcement activities and that Congress would continue funding it, the Reagan administration launched a media offensive to justify the War on Drugs (Beckett 1997, as cited in Alexander 2011, 49). The key part of this offensive was to sensationalize the appearance of crack cocaine in inner-city neighborhoods, communities that had been devastated by deindustrialization and ever-increasing unemployment. This strategy also proved to be effective, as in June 1986, Newsweek declared crack to be the biggest story since the Vietnam War and Watergate, and Time called it “the issue of the year”

two months later (Alexander 2011, 51). Thousands of stories about the crack crisis flooded the media, typically featuring black “crack whores,” “crack babies,” and “gangbangers,” all of which reinforced the stereotypes of black women as selfish and irresponsible “welfare queens” and black men as “predators” (Reinarman and Levine 1995, as cited in Alexander 2011, 51).

With the media frenzy surrounding crack in full swing by September 1986, the House passed legislation allocating \$2 billion to the antidrug crusade, required military participation in narcotics control efforts, allowed the death penalty for drug-related crimes, and allowed the admission of some illegally obtained evidence in drug trials (Alexander 2011, 52). Later in the month, President Reagan signed the Anti-Drug Abuse Act of 1986. Among other harsh penalties, it included mandatory minimum sentences for the distribution of cocaine, as well as far more severe punishment for the distribution of crack (normally associated with blacks) than the distribution of powder cocaine, which was normally associated with whites (Alexander 2011, 52).

According to Alexander (2011), few criticisms of the legislation could be heard leading up to its enactment, but Congress did revisit drug policy in 1988. The resulting legislation was again extremely punitive, extending beyond traditional criminal punishments and including new “civil penalties” for drug offenders (Alexander 2011, 52). The Anti-Drug Abuse Act allowed public housing authorities to evict any tenant who allowed any form of drug-related activity to occur on or near public housing premises and eliminated many federal benefits, including student loans, to anyone convicted of a drug offense (Alexander 2011, 52). The act also expanded the death penalty for serious drug-related offenses and imposed new mandatory minimum prison sentences for drug offenses, including a five-year mandatory minimum for simple possession of cocaine base with no intent to sell, which also applied to first-time offenders (Alexander 2011,

52-53). The severity of this punishment was unprecedented in the federal system, as, prior to 1988, one year of imprisonment had been the maximum for the possession of any amount of any drug. Eventually, the legislation passed by a vote of 346 to 11. This result was indicative of the success of the segregationists,' and later the conservatives,' campaign to create a new racial order after the Brown decision and the end of Jim Crow. The resources invested in fighting the War on Drugs, as well as the unprecedented increase in the severity of punishments for drug-related offenses demonstrated that the U.S. was in a state of insecurity due to the perceived existence of dangerous, predatory blacks, who were supposedly abusing crack and uninterested in working. Their image was replaced by that of a criminal, making them the enemy that had to be fought against, even though the segregationists and conservatives were the one who created their image and status as the enemy in the first place.

Reagan's successor, President George Bush Sr., also employed implicit racial appeals, having seen the successes of other conservative politicians in mobilizing the poor and working-class whites who had previously been loyal to the Democratic Party. His most famous appeal was the Willie Horton ad, featuring a dark-skinned black man, who was a convicted murderer, escaping while on a work furlough and subsequently raping and murdering a white woman in her home (Alexander 2011, 53). The ad blamed Bush's opponent, Massachusetts senator Michael Dukakis, for the white woman's death, since he had approved the furlough program. For months, the ad played on news stations and was subject to political commentary, and despite being controversial, was highly effective, as it ended Dukakis's chances of becoming president (Alexander 2011, 53).

Once elected, Bush Sr. enthusiastically supported the drug war, claiming in August 1989 that drug use was the "most pressing problem facing the nation" (Beckett 1997, as cited in

Alexander 2011, 54). A New York Times/CBS News Poll reported shortly after 64 percent of respondents now thought drugs were the most significant problem in the U.S., the highest number ever recorded (Beckett 1997, as cited in Alexander 2011, 54) and a drastic change from the public opinion at the beginning of Reagan's presidency. This change in public opinion did not correspond to an actual change in reality: the level of public concern regarding crime and drugs was weakly correlated with actual crime rates, but highly correlated with political initiatives, campaigns, and partisan appeals (Beckett 1997, as cited in Alexander 2011, 54).

By the early 1990s, mass incarceration emerged as the new racial caste system, using a similar political dynamic to that which resulted in the birth of the old Jim Crow laws. In the late nineteenth century, Populists eventually gave in to the political pressure created by the conservatives, who had successfully appealed to poor and working-class whites by proposing the openly racist Jim Crow laws. At the end of the twentieth century, politicians, regardless of political affiliation, were competing to win the votes of poor and working-class whites who felt threatened by racial reforms and deindustrialization. Former allies of blacks adopted a political strategy that required them to prove how "tough" they could be on the "other," what Alexander (2011) called "the dark-skinned pariahs" (55).

The increase in law enforcement budgets caused a subsequent increase in prison and jail populations. In 1991, the Sentencing Project reported that the number of people who were incarcerated in the U.S. was unprecedented in world history and that one-fourth of young African American men were now controlled by the criminal justice system (Alexander 2011, 55). Between 1984 and 1989, nine prisons were opened in California alone, whereas it had taken more than a century to build the first nine prisons in the state (Davis 2011, 13). Twelve more prisons were built in the 1990s, and by 2002, 157,979 people were incarcerated in thirty-three

prisons, thirty-eight camps, sixteen community correctional facilities, and five tiny prison mother facilities throughout California, demonstrating how simple it was to produce “a massive system of incarceration with the implicit consent of the public” (Davis 2011, 14).

This massive expansion of prisons and their populations occurred during the presidency of Bill Clinton, who promised during his 1992 presidential campaign that he would never allow any Republican to be perceived as tougher on crime than himself (Alexander 2011, 55). Once he was elected, President Clinton supported the idea of a federal “three strikes” law in his 1994 State of the Union Address, which would require any person with three serious offenses (typically felonies) to serve a mandatory life sentence in prison. The \$30 billion crime bill sent to President Clinton in August 1994 was considered a victory for Democrats, enabling them to “wrest the crime issue from the Republicans and make it their own” (Masci 1994, as cited in Alexander 2011, 55). The 1994 Crime Bill created dozens of new death penalty offenses (notable ones included non-homicidal narcotics offenses, murder of a federal law enforcement officer, civil rights-related murders, and drive-by shootings resulting in death), mandated life sentences for some three-time offenders, and authorized more than \$16 billion for state prisons and the expansion of police forces at both the state and local level (Alexander 2011, 55). The Justice Policy Institute observed that “the Clinton Administration’s ‘tough on crime’ policies resulted in the largest increases in federal and state prison inmates of any president in American history” (Johnson 2008, as cited in Alexander 2011, 55).

According to Davis (2011), the current construction and expansion of state and federal super-maximum security prisons, which serve to address disciplinary problems within the penal system, draws on the conception of the penitentiaries in the eighteenth and nineteenth centuries, which were designed to reform their inmates through long-term solitary confinement. The

difference between the penitentiaries and supermaxes, however, is that descriptions of the latter do not mention individual rehabilitation. When Charles Dickens visited the Eastern Penitentiary in Philadelphia in 1842, he was convinced that it was “kind, humane, and meant for reformation” (as cited in Davis 2011, 48) even though he also believed that the people running it underestimated the cruel effects of solitary confinement. A description of supermaxes in a 1997 Human Rights Watch report makes no such reference:

“Inmates in super-maximum security facilities are usually held in single cell lockdown, commonly referred to as solitary confinement ... [C]ongregate activities with other prisoners are usually prohibited; other prisoners cannot even be seen from an inmate’s cell, communication with other prisoners is prohibited or difficult (consisting, for example, of shouting from cell to cell); visiting and telephone privileges are limited” (as cited in Davis 2011, 50).

To me, the idea of the supermax is an essential part of establishing what Mbembe (2019) called a security or surveillance state. Supermaxes thrive on a state of insecurity, the fear of the existence of criminals who are so reprehensible and threatening that, according to a retributive model of justice, they deserve to be permanently locked up and segregated from the rest of society and from each other. Indeed, Davis (2011) notes that “no one—not even the most ardent defenders of the supermax—would try to argue today that absolute segregation, including sensory deprivation, is restorative and healing. The prevailing justification for the supermax is that the horrors it creates are the perfect complement for the horrifying personalities deemed the worst of the worst by the prison system” (50). There is no concern for the individual, nor respect for their rights. Instead, prisoners’ movement and conduct are constantly controlled by video monitors and remote-controlled electronic doors (Davis 2011, 50) due to their status as the “enemy,” which was the second key element of Mbembe’s (2019) surveillance state. The surveillance state assumes that there can be no reconciliation between us and our “enemies,” meaning the latter must be continually monitored and controlled. There is no possibility for reconciliation because

“we” are different from our “enemies.” They deserve the treatment they get because they are in some way worse than we are. Less human than we are.

This last point is what bothers me most about retributive justice. While I agree that a person should be held accountable for their wrongdoings, the retributivist system focuses too much on trying to punish an offender in proportion to their crime. Because the primary focus is on proportional punishment, the person who committed the crime is labeled as “bad,” “criminal,” or as the “enemy,” all of which serve to separate them from us. Separating them from us causes us to lose sight of their humanity, or even to choose to ignore it. While this may make justifying their punishment easier, I don’t think it’s right. We assume that they are less human than we are, but that assumption is based on a label and a part of a worldview that has been deeply embedded in our society—one of Gan’s (2013) myths. Mbembe (2017, 2019) mentions in both *Critique of Black Reason* and *Necropolitics* that there is only one world, a world that we, humanity, share. In order “to build a world that we share, we must restore the humanity stolen from those who have historically been subjected to processes of abstraction and objectification” (Mbembe 2017, 182). We must “rehumanize” the “Other,” which means recognizing the humanity of the individuals who we might have previously considered to be our “enemies.” This can be difficult, but it’s the reason restorative justice is so important. It gives earnest consideration to everyone involved in an offense, including those who we may initially assume don’t deserve it.

## **“Rehumanizing” the “Other”**

The thoughts of French philosopher, mystic, and political activist Simone Weil give crucial insight on the importance of restorative justice because she recognizes the desires and needs we have in common as human beings. I chose to include her work in my thesis because she devoted her life to improving social conditions for the disadvantaged and expressed several ideas on the human condition that I believe are closely related to restorative justice’s focus on the needs of everyone involved in a crime. Her thought brings attention to the existence and importance of human needs that everyone shares, which I think is crucial if we want to “rehumanize” the criminal, or the “Other.”

Weil’s thought rests on her conception of a transcendental reality, which she considers to be the foundation for all good. She believes that “there is a reality outside the world, that is to say, outside space and time, outside man’s mental universe, outside any sphere whatsoever that is accessible to human faculties” (Weil, 1981, 5). Corresponding to that transcendental reality, “at the centre of the human heart, is the longing for an absolute good” (Weil 1981, 5). Similar to how the reality of this world is the only basis for facts, this other reality is the only basis for good and is the unique source for all good that can exist in this world (Weil 1981, 5). Despite it being transcendental, a person has the power to turn their love and attention toward this other reality through consenting to do so (Weil 1981, 5). This consent may be expressed, but it doesn’t necessarily have to be; for Weil, all that matters is that it has in fact taken place (Weil 1981, 5-6). These two things, the longing in one’s heart for absolute good and the latent ability to direct one’s love and attention to a transcendental reality that is the foundation for all good, form a link that attaches every person to that other reality (Weil 1981, 6). If one recognizes that reality, they

also recognize that link and thus regard every human being as something sacred to whom they should show respect (Weil 1981, 6).

For Weil (1981), this is the only feasible motive for universally respecting all human beings. The reality of this world, the one we live in, is filled with variety and inequality (Weil 1981, 6). We direct our attention and love to certain people, while ignoring others (Weil 1981, 6). Even if they don't completely escape our attention, we at most see them as "items of a collectivity" (Weil 1981, 6). According to Weil (1981), "if our attention is entirely confined to this world, it is entirely subject to the effect of these inequalities, which it is all the less able to resist because it is unaware of it" (6). One cannot feel equal respect for things that are unequal unless one directs their respect towards something that is identical in all of them (Weil 1981, 6). Weil (1981) admits that people are unequal regarding all their relations with the things of this world, but the link to the transcendental reality of the good is identical in all of them (6). Thus, human beings are identical in that "they can be thought of as consisting of a centre, which is an unquenchable desire for good, surrounded by an accretion of psychological and bodily matter" (Weil 1981, 6-7).

The idea that a desire for good is an essential part of human nature is worth discussing because it avoids the harmful effects of labeling discussed by Gan (2013), Mbembe (2019), and Nagler (2014), particularly if one is labeled as "evil" or as the "enemy." When you label someone as such, they are given no chance to redeem themselves or to make things right. The act of labeling them like that assumes that they can't. They are bad, (might) have always been bad, and will always be bad. As Alexander (2011) demonstrated, they carry that label for the rest of their lives, and it affects their future job and housing opportunities after they leave prison. But what if they are willing to improve themselves or to reconcile with the people that they harmed?

I think that they should be given the chance to do so, which is why I think Weil's (1981) assumption about the desire for good being a core aspect of human nature is so important. Not every wrongdoer may make use of the opportunity to improve themselves or to make things right with those they harmed, but we'll never know if they're capable of doing so if we never give them the chance.

The other significant point about Weil's (1981) assumption is that it unites us as human beings by focusing on what we have in common instead of separating us based on our differences. That isn't to say we don't have differences. Mbembe (2019) recognizes that plurality is a basic human condition (74), but "the world belongs to all of us, equally, and we are all its coinheritors, even if our ways of living in it are not the same" (Mbembe 2017, 182). To me, this illustrates that while we may be different in some ways, those differences do not have (and should not have to) irrevocably divide us and pit certain groups against each other. Nagler (2014) mentioned that all violence begins with the refusal to acknowledge another as fully human (17). If we instead recognize that we are all human and assume we all desire good, I think that will bring us closer to the justice we seek when dealing with crime and wrongdoing.

The next important part of Weil's (1981) thinking is her idea of obligation. Obligation is "concerned with the needs in this world of the souls and bodies of human beings, whoever they may be" (Weil 1981, 8). The basis for this lies in the indirect expression of respect for human beings. The expression is indirect because it is inspired by the link between human beings (who are in this world or reality) and the transcendental reality that is the foundation of all good, meaning that respect can't, in this world, find any form of direct expression. Respect for human beings comes from the connection between our innate desire for good and our sensibility. Every need has a corresponding obligation and vice versa, and Weil (1981) believes that there are no

other obligations as far as human affairs are concerned. In her view, anyone whose love and attention are directed towards the transcendental reality of the good recognizes that they are bound to remedy, according to their responsibilities and extent of their power, “all privations of the soul and body which are liable to destroy or damage the earthly life of any human being whatsoever” (Weil 1981, 8). This obligation cannot be canceled under any circumstances, and the thought is present to all people, though in varying forms and degrees of clarity, meaning that some of us are bound to be inclined to accept it. Importantly, though, Weil (1981) believes that to refuse it is to become criminal (8). We, as human beings, have needs pertaining to both our bodies and souls, which I interpret as physical and mental needs, that should be met and taken care of by everyone else, to the best of their ability and responsibility. Weil (1981) considers them to be sacred, meaning that their satisfaction “cannot be subordinated either to reasons of state, or to any consideration of money, nationality, race, or colour, or to the moral or other value attributed to the human being in question, or to any consideration whatsoever” (10). This is another way in which we are brought closer together instead of being pulled apart. Our bodies and minds require certain things to function properly and every person, as a human being, should have those satisfied. However, I think we can get so caught up in satisfying our own needs that we forget that other people have needs, just like we do. Regarding the criminal justice system, in a retributive sense, we focus so much on the fact that the victim’s needs were violated that we fail to recognize that the perpetrator may have needs as well. My worry is that, in our desire to punish the perpetrator, we may not meet some of their needs, which I think is harmful to them. Everyone is obligated to take care of everyone else’s needs, to the extent they can. This includes criminals, who we may not think deserve it at first. Weil’s (1981) ideas on obligations and needs

remind us that every person has needs that merit consideration, regardless of how that person is labeled.

According to Weil (1981), the main needs of the human body are food, warmth, sleep, health, rest, exercise, and fresh air (10). The needs of the soul comprise a longer list, and there are several that I believe are relevant to this thesis. The first is equality. Equality for Weil (1981) is the public recognition, expressed in institutions and manners, that an equal degree of attention should be given to the needs of all human beings. This relates to the ideas discussed in the previous paragraph, as I believe that separation has been used throughout history to prioritize the needs of certain groups over the needs of others. In retributive justice, I think the needs of the victims have been given much more consideration than the needs of the criminal, whereas in Weil's (1981) framework, they should be given equal consideration because they are both human beings.

The next three needs of the soul, which I shall mention and discuss together, are the need for solitude and privacy, for social life, and to be rooted in a natural environment. Solitude and privacy are self-explanatory. I take social life to mean opportunities for human connection. Weil's (1981) examples of natural human environments include a person's country, a place where their language is spoken, places that share a culture or historical past with them, their professional milieu, and their neighborhood. She believes anything that uproots a person or prevents them from becoming rooted is criminal. I want to discuss these three needs together because I don't think the current prison system in the U.S. does an adequate job of meeting all of them. One could argue that a person does get solitude and privacy in prison, and I acknowledge that. However, one might get too much solitude and privacy, to the point where it jeopardizes the other two needs of the soul. Solitary confinement does not allow social life opportunities, and

this is harmful to a person even if their time in solitary confinement was meant to reform them. When Kane (2013) interviewed Wilbert Rideau, the man who spent more than four decades at Angola prison and more than a decade in solitary confinement, he mentioned how solitary confinement strips a person of their self-identity, their sense of place in the world, and their existing emotional bonds. I think this fits Weil's idea of uprooting a person, or preventing them from becoming rooted, and believe that the current prison system in the U.S. is too harsh of a punishment because it violates several basic needs of the human soul.

However, Weil (1981) does mention punishment as a need of the soul (12). She defines it as "reintegration with the good" (12). This is a key point. Punishment, in retributive justice, is based on vengeance. When you want to punish an offender based on vengeance, you want them to suffer just as much as or more than the victim suffered. If they suffer less, that isn't considered just to the victim. They can suffer more than the victim, though, because they are "bad" or "evil" and deserve it. But how can suffering be measured? There isn't a system to quantify it. So how can one know if the punishment is proportional to the crime? Furthermore, the victim isn't taken into consideration in a retributivist system because the state and the court handle it. Yet the victim is one of the two parties most involved in a crime (along with the offending party). I mention this because Weil (1981), despite her deep concern for and awareness of the needs of the human body and soul, still believes punishment is necessary for the human soul. Thus, we need to examine punishment a little differently because I don't think a purely retributivist definition is adequate. I think that punishment can be constructive instead of focusing mostly on suffering. Therefore, we will turn to restorative justice to examine this possibility.

## **Restorative Justice**

According to New Zealand criminologist and restorative justice specialist Allison Morris (2002), restorative justice is best understood in contrast to conventional justice systems, which typically see offending as a violation of the state's interests. Decisions about how the offense should be dealt with are made by people representing the state (Morris, 2002). Restorative justice, however, puts these decisions in the hands of the people who were directly involved: victims, offenders, and their communities (Morris, 2002). The goal, according to Morris (2002), is to try to reconcile the victims, the offenders, and their communities by addressing each party's needs and reaching agreements about the best way to deal with the conflict. This approach emphasizes human rights, tries to heal the harm caused by the offending, and attempts to make things right (Morris, 2002).

Howard Zehr (2015), an American criminologist who is a pioneer of restorative justice, has a slightly different view of restorative justice compared to Morris (2002). Unlike Morris (2002), Zehr (2015) does not believe restorative justice is primarily about forgiveness or reconciliation (13). While he recognizes that it provides a context whether either or both may occur, he believes it to be an unnecessary outcome, and that there should not be pressure to make those things happen. Instead, he considers the reparation of harm to be the main goal of restorative justice, which will be discussed more later in this chapter.

There are several other key points Zehr (2015) makes about what restorative justice is not. First, the term "restorative" does not mean a return to past circumstances. In many cases, it is extremely difficult, if not impossible, to return to a state in which it seems as if the harm had not occurred. On the contrary, restorative justice often involves moving toward a new sense of identity or newer, healthier relationships. What it restores is a sense of hope and community to

our world (Zehr 2014, 14). Second, restorative justice does not necessarily mean mediation, where a third party facilitates an encounter between the parties involved because the offending party may not have been identified or a party may be unwilling or unable to meet (Zehr 2014, 15). Thus, restorative practices are not limited to an encounter, but even if one occurs, the parties are not necessarily on a level moral playing field, as in a mediated conflict. Responsibility is not always shared on all sides in all criminal cases, with victims of rape or burglaries being two examples (Zehr 2015, 15). The neutral language of mediation can be misleading, which is why “conferencing” or “dialogue” are more accurate terms to use in the field. Finally, restorative justice is not a particular program, nor does it follow a specific blueprint. All models are dependent on culture, meaning programs should be built from the bottom up, by communities, through dialogue and assessment of their needs and resources (Zehr 2015, 17). This is important because it is more sensitive to the social, political, and cultural context in which a crime takes place, meaning that the decisions being made on how to proceed are better informed about the situation. Instead of a map, restorative justice can be thought of as a compass, something that offers direction and invites dialogue and exploration (Zehr 2015, 17).

Like Weil (1981), restorative justice considers needs and considers the roles implicit in crimes. In the modern retributive system, the state and the offending party are the main stakeholders in a crime, but restorative justice expands the circle of stakeholders to include those harmed, those causing harm, and community members. Each party’s needs are considered, and these needs are referred to collectively as “justice needs” (Zehr 2015, 21). However, it is important to note that victims’ needs are the primary focus of restorative justice, since they are the ones who have been harmed, but the other “justice needs” are still given thoughtful consideration (Zehr 2015, 30).

Crime is legally defined as against the state, so in the current retributivist system, the state is the victim, or the party that has been harmed. However, this neglects the needs of crime victims, which are usually not met. These are information, truth-telling, empowerment, and restitution (Zehr 2015, 22-23). Information means answers to questions the victim has about the offense or the offender, such as why and how the crime happened or what has happened since. They need real information, which I take to mean honest and authentic information, as opposed to speculation or legally constrained information, and this usually comes from having access (either direct or indirect) to the offender (Zehr 2015, 22). Truth-telling means the opportunity to tell the story of what happened. The experience of a crime can be traumatic because it can upset one's self-image or worldview. A viable way to overcome this experience is to "restory" one's life by telling their story in significant settings (which does not necessarily have to be in court, but rather places where they feel safe) where they can receive acknowledgement from others, particularly to the party that caused the harm (Zehr 2015, 22). This gives the offending party the opportunity to understand the impact of their actions. Empowerment means a sense of control over oneself and one's life. Experiencing a crime can take this away from a person, whether it's a sense of control over their property, their body, their emotions, or their dreams (Zehr 2015, 22-23). The opportunity to be involved in one's own case can help return this sense of empowerment to them. Lastly, restitution is important, not only in terms of restoring actual, concrete losses to the victim, but also because of the symbolic recognition it implies (Zehr 2015, 23). When a person becomes a victim of a crime, they may wonder why it happened to them and whether they are to blame for the fact that it happened to them. If the offending party tries to right the harm, even if only partially, that gesture can mean that they are taking responsibility and that the victim is not to blame, which can be reassuring for the victim.

In a restorative framework, offenders also have needs, which may seem strange at first. According to retributive justice, all they “need” to do is be held accountable for their actions, which means getting the punishment they deserve. Restorative justice also considers accountability to be one of an offender’s needs, but the definition is different. Accountability, in a restorative sense, means facing up to what one has done, then, with a little encouragement from others, trying to understand the impact of the harms they’ve caused, and finally taking the steps to put things as right as possible (Zehr 2015, 24). Curiously, this is not encouraged in a retributive system, as acknowledging one’s responsibility can risk lengthier prison sentences. Thus, the legal process and prison experience can potentially heighten an offender’s sense of alienation from society, ironically leading to them feeling like victims of the system and society (Zehr 2015, 24). In addition to accountability, offenders may also need encouragement, whether that is to experience personal transformation (e.g., healing personal traumas, seeking treatment for addiction or other problems, and improving personal competencies) or to integrate into the community (Zehr 2015, 25). For a small number of wrongdoers, temporary restraint may be a need if they are unable or unwilling to take any of the steps previously mentioned.

Communities and their members also have needs arising from crime, since they are impacted and may have responsibilities to victims, offenders, or both. Former judge Barry Stuart, and national restorative justice leader Kay Pranis, both restorative justice advocates, argue that when the state takes over in a criminal case, it undermines our sense of community (Pranis, Stuart, and Wedge 2005, as cited in Zehr 2015, 26). There is no definitive definition of a community within the restorative justice field, but Zehr (2015) believes a good starting point is to look at who cares about the people or about the offense and ask how they can be involved in the process (Zehr 2015, 37–38). Communities need to provide attention to their concerns as far

as the community in question is considered a victim; to provide opportunities to build a sense of mutual accountability; and to provide chances and encouragement to take on their obligations for the welfare of their members, both those who have been harmed and those who have caused harm (Zehr 2015, 26). I think communities, in the context of restorative justice, need to be self-defined because they are made up of the people who care about the crime committed and want to be involved in doing something about it.

Restorative justice defines crime differently than the current retributivist criminal justice system, which stems from its worldview. According to the retributivist view, crime is a violation of the law and the state. The violation creates guilt and justice demands that the state determine blame for that guilt and impose pain as punishment (Zehr 2015, 30). This process is based on the worldview mentioned by Nagler (2014), where we see ourselves as separate, physical, and competitive, a perspective that I have tried to trace back to Genesis. Any dispute is a matter of “me against you” (Nagler 2014, 14), where one of us must win and the other must lose. In contrast, a restorative lens assumes that we are all interconnected (Zehr 2015, 29). This idea that all things are connected to each other in a web of relationships is present across many cultures: in Hebrew, the word is *shalom*; for the Maori, *whakapapa*; for the Navajo, *hozho*; for many African cultures, the Bantu word *ubuntu*; and for Tibetan Buddhists, *tendrel* (Zehr 2015, 29). I think Simone Weil (1981), with her thoughts about the human desire for good, obligations, and the needs of the human body and soul, Achille Mbembe (2017, 2019), with his reminder that there is only one world that we all share despite our differences, and Nagler (2014), with his idea that all violence begins with the failure to recognize another as human, all illustrate a similar point. We, as human beings, all share something in common, something that unites us. Thus, crime or wrongdoing is a wound in the community, damage to the web of relationships, and that harm

needs to be repaired as much as possible (Zehr 2015, 29-32). In this view, violations create obligations. While the first obligation may be on those who caused the harm to make things right, victims and community members also have obligations to participate in the process and decide what justice requires in a particular case and how these harms can be repaired (Zehr 2015, 34). These are the three pillars of restorative justice: harm and needs, obligations, and engagement.

In sum, restorative justice is about balancing concern for all parties involved. While it focuses on the harms and needs of the victim first, it also considers the harms and needs of the community involved and of those causing harm. Next, it addresses the obligations that result from those harms, again recognizing that offenders, the community, and society may all have differing obligations. Finally, it uses collaborative processes to involve those with a legitimate stake in the situation, including the victims, offenders, communities, and larger society, to work to repair the harm and right the wrongs to the extent possible (Zehr 2015, 43). The main goals of restorative justice programs are to place important decisions into the hands of those most affected by crime; make justice a more healing and (ideally) transformative process, and to reduce the likelihood of future offenses (Sharpe 1998, as cited in Zehr 2015, 48).

## Counterarguments to Restorative Justice

One criticism of restorative justice is that it erodes legal rights. The argument goes that it purposely fails to provide procedural safeguards or to protect the rights of offenders so that offenders more readily accept responsibility for their wrongdoing. If offenders are more open to taking responsibility for their actions, it makes it easier for participants to agree on how to address a crime. First, Morris (2002) notes that there is nothing in the values of restorative justice, which were detailed in the previous chapter, that denies or erodes offenders' rights (601). It could be argued that the protection of offenders' rights could be put into practice in diverse ways, and this is true, but recall that Zehr (2015) mentions that models of restorative justice are dependent on the cultures they are developed in. In South Australia, juveniles participating in conferences can consult with lawyers before admitting to an offense and before agreeing to the proposed outcome, even though the lawyers may not be present at the conference itself (Morris 2002, 601). In Real Justice conferences in the U.S., however, lawyers at conferences have a watching brief and can interrupt the proceedings if they feel that the young person's legal rights are being breached (Morris 2002, 601). If facilitators at a family group conference in New Zealand have concerns about young offenders' legal rights, they may request an appointment of a lawyer, which is paid for by the state (Morris 2002, 601). Based on these examples, restorative justice does not undermine offenders' legal rights. Rather, it places a different priority on the protection of offenders' rights because it doesn't use a procedure where offenders' lawyers are their primary spokespeople and whose purpose is to minimize the offenders' responsibility as much as possible.

Another common criticism of restorative justice, particularly regarding violence against women, is that trivializes crime. According to this view, restorative processes decriminalize

men's violence against their partners and return these instances to a "private" matter rather than a crime or more serious offense. However, Zehr (2015) points out that crimes have a societal and more personal and interpersonal dimension (19). While the legal system in the U.S. focuses more on the societal dimension (e.g., society's interests and obligations represented by the state), restorative processes tend to emphasize personal, interpersonal, and community aspects of crime, something the legal system does not prioritize. Since domestic violence against women is an interpersonal matter, restorative processes are better equipped to deal with these cases. Morris (2002) points out that denouncing the violence in front of the abuser's family and friends means the message is loud and clear for those who matter most to the abuser (603). Furthermore, it could be argued that crime is trivialized in the retributive legal system because in those justice processes, victims don't always play a role (except as witnesses) and offenders are passive observers. In contrast, we have already seen how restorative justice encourages the participation of all parties involved as one of its three pillars.

A third criticism of restorative justice is that it fails to "restore" victims and offenders. I think the validity of this criticism, as well as the validity of any response, depends on one's definition of "restore," which I will attempt to do here. Zehr (2015) mentioned how experiencing a crime can cause a victim to lose their self-identity, worldview, and empowerment or their sense of control over their body, property, and life in general. Assuming that this is what should be "restored" regarding victims, then research has shown that victims who have taken part in restorative processes are highly satisfied with reparative agreements, have lower levels of fear, and appear to have increased understanding of why the offense occurred, as well as how likely it is to reoccur (Morris 2002, 604). Although it is true that full restoration, in a monetary sense, does not always occur, since offenders typically have limited resources, Morris (2002) thinks

that this restoration could be considered a state responsibility. Research also shows, however, that victims are typically more interested in emotional reparation as opposed to monetary reparation. One could argue that emotional reparation does not always happen either and that is true. Recall that Zehr (2015) acknowledges that forgiveness and reconciliation are not the primary focus of restorative justice, that they don't always happen, and there should be no pressure to make them happen (13-14). However, he does acknowledge that restorative processes provide a context for both to happen, and they do appear to occur more frequently than in the criminal justice system. Indeed, in a meta-analysis of twenty-two studies, which examined the effectiveness of thirty-five restorative justice programs, victims who participated in restorative processes were significantly more satisfied compared to those who had participated in the traditional justice system (Morris 2002, 604).

“Restoring” offenders means them taking responsibility for their wrongdoing, as well as its consequences. What is being restored in them is a sense of control to right what they've done and a belief that the processes and outcomes were fair (Morris 2002, 604). Maxwell and Morris (1993) demonstrated that young offenders in New Zealand felt involved in the decisions being made in family group conferences (as cited in Morris 2002, 604). Another study done by Maxwell (2001) on 300 young people involved in family group conferences in New Zealand showed that more than half felt involved in making decisions; that more than two thirds said they had the opportunity to say what they had wanted to say; that over 80 percent understood the decision; and that two thirds said they agreed with it (as cited in Morris 2002, 604-605). Research in Australia refers to young offenders seeing conferencing as fair, and reports that they are satisfied with both conference processes and outcomes (Morris 2002, 605).

The final argument to acknowledge here is that restorative justice does not “restore” offenders if it does not give them access to treatment programs they need to address the underlying causes of their offending in the first place (e.g., drug and alcohol abuse programs). Similarly, restorative justice does not “restore” victims if it doesn’t give them access to the help and support they need. However, Morris (2002) argues that the critics are pursuing the wrong target. Treatment programs for offenders and effective support for victims certainly should accompany good restorative practices, but she believes it is the state’s responsibility to fund them.

## **The Practicality of an Integrative Approach to Retributive and Restorative Justice**

The biggest criticism, as well as obstacle, to restorative justice is people's belief in the degree to which it generates real change in the world. Zehr (2015) admits that restorative justice is not necessarily a replacement for the current legal system in the U.S., and it isn't the answer in all situations. Even in New Zealand, where restorative justice is widely implemented in the juvenile justice system, youth courts still exist as a form of the Western legal system (albeit a restorative justice-oriented one) that functions as a backup and guardian of basic human rights. Zehr (2015) also admits that restorative justice is not necessarily an alternative to prison. While he thinks Western society, and the U.S., uses too many prisons, he recognizes that restorative practices may sometimes be used together with, or parallel to, prison sentences (20). Restorative justice might reduce our reliance on prisons, but it would not eliminate the need for some type of incarceration. So, if both retributive and restorative justice are flawed if they're functioning on their own, an integrative approach to both would be a helpful solution.

In fact, Zehr (2015) believes retributive and restorative justice are not polar opposites and have more in common than we might think. Both theories of justice recognize a moral intuition that balance has been upset by wrongdoing. Both theories attempt to vindicate through reciprocity, to balance the scales (Zehr 2015, 75). Thus, the victim deserves something, and the offender owes something. Both agree that the offender should be treated as a moral agent and that there should, in theory, be a proportional relationship between the act and the response. They differ, however, on how the obligations should be fulfilled and how the balance should be achieved again. According to retributive justice, pain vindicates, but this can be counterproductive for both the offender and the victim because it only increases the harm being

done. Restorative theory, in contrast, says that what vindicates is the acknowledgement of the harms being suffered by the victim, along with an honest and active effort to encourage the offender to hold themselves accountable, right their wrongs, and examine the causes of their behavior. Zehr (2015) notes how restorative justice “has the potential to affirm all parties and help them transform their lives” (75). What if we applied that statement to the prison system in the U.S.?

If restorative justice is not necessarily an alternative to prison, then perhaps we can apply restorative principles to prisons. One way to do this would be to make education programs available in all prisons. If prisoners want to educate or improve themselves, there is no harm in that. On the contrary, it would give the opportunity not only to understand the harm that they caused, but also become better so they have a future once they leave prison and can contribute to society. Davis (2011) mentions the influential role prison literature has played in campaigns around the prison calling for reforms or its abolition altogether (54-55). In his autobiography, Malcolm X mentions that he had never been as free in his entire life as he was during his incarceration in the 1950s, when he read a dictionary and copied each word onto his hand (Davis 2011, 56). According to him, prisoners who demonstrated an unusual interest in reading were thought to have started on a journey of self-rehabilitation and were thus allowed to check out more than the maximum number of books (Davis 2011, 56). In the aftermath of the Attica prison rebellion in New York, the leaders of the uprising made demands concerning their diet, improving the quality of the guards, more realistic rehabilitation programs and better education programs. This was because

“Prisoners very early recognized the fact that they needed to be better educated, that the more education they had, the better they would be able to deal with themselves and their problems, the problems of the prisons and the problems of

the communities from which most of them came” (Eddie Ellis, as cited in Davis 2011, 57-58).

The Attica Rebellion led to the establishment of an on-site four-year college program at Greenhaven Prison, which lasted twenty-two years until President Clinton’s Crime Bill. Some of the prisoners who earned their degrees at Greenhaven pursued postgraduate studies after their release, demonstrating that prison education could indeed produce people who could offer their newly acquired knowledge and skills to communities outside prison (Davis 2011, 58).

The biggest issues with the prison system in the U.S. become clear when they are compared with the prison systems in other countries. O’Connor (2014) conducted a comparative analysis of the prison systems in the U.S., the Netherlands, and Germany. At the time of the analysis, the U.S. had 2.2 million prisoners, which was more than Russia and China (the countries with the second and third most prisoners, respectively) had combined. In comparison, the Netherlands had 13,749 prisoners, while Germany had 64,379. The reason for this discrepancy is that the U.S. uses prison time as the punishment for nearly all crimes, whereas Germany and the Netherlands reserve prison sentences for only violent crimes (O’Connor 2014). Lesser, nonviolent crimes are punished with fines, community service, and probation (O’Connor 2014). In both Germany and the Netherlands, the maximum prison sentence is 15 years, with life sentences being reserved for murder cases. The average prison sentence in the U.S., in contrast, is 29 years, but the increased use of imprisonment and prolonged sentencing does not deter future crimes (O’Connor 2014). Another key difference is that both Germany and the Netherlands allow furloughs and mandatory work obligations, whereas the U.S. does not allow furloughs and occupation is optional (O’Connor 2014). While there isn’t much evidence that

furloughs and mandatory work programs help prisoners while they are in prison, they can earn a salary for their work, which helps immensely when they are released. In the U.S., however, prisoners often leave facilities with only a bus ticket and about fifty dollars (O'Connor 2014).

From this, we see that the U.S. does not help their prisoners' well-being by imprisoning them more frequently or for longer. When compared to the Netherlands and Germany, American prisoners also do not benefit from the lack of furloughs and limited educational and work programs. I think a large part of this is due to how our society and our current justice system views criminals. As demonstrated in previous chapters, the image of the American criminal is racialized, perceived as dangerous, violent, and predatory, and is thus undeserving of any opportunity to repair the harms they've caused or to improve themselves and their communities. But this image is a fantasized one, created by desire long ago, and has gradually metamorphosed into a monstrous enemy that instantly inspires fear and repulsion, or uneasiness at the very least. The goal of this thesis was to help people reflect on this image, examine it, and think about whether that image reflects reality. I don't think it does. We've been living in, and continue to live in, a society of enmity, and that has caused many of us to forget that prisoners are human beings, too. Although it's unreasonable to expect all of them to be willing or able to rehabilitate, we never even give them the chance to. American prisons don't just punish their inmates; they practically incapacitate them. I do see the merit of retributive justice in that it recognizes wrongdoing has occurred, and that something needs to be done to restore the balance, but I don't think that punishment through pain is the right answer. In practice, it's too easy to cross the line between proportional punishment and excess punishment. While I don't believe prisons should be abolished altogether, since I do think prison time can be a reasonable penalty, I also think that one's time in prison (if they deserve to be in there at all) should be spent in a constructive

manner. Alexander (2011) mentions re-entry programs for criminals that give them the training and education they need to get high-paying or, alternatively, viable and rewarding careers; the idea that prison workers should be retrained for meaningful jobs instead of locking people up; that on-demand drug treatment should be provided for all Americans; and that barriers to reintegration, like the laws that function to discriminate against drug offenders in every aspect of their lives, should be eliminated (221). An integrative approach to retributive and restorative justice allows for punishment, but not to the point where one becomes uprooted. I don't see the point of punishing someone if you don't give them an opportunity to become better.

The final thing I want to cover is the generalizability of this project. While I certainly hope that it will change how American society views criminals, the ideas discussed in this thesis, particularly regarding seeing the "Other" as human, can also be applied to other marginalized groups, including (but not limited to) homeless people, immigrants, people with disabilities, and the LGBT community. On a wider scale, it will help us with existential threats, like the possibility of nuclear war (and our relationships with other countries) and climate change (and our relationship with nature and Earth). In American society, there are many things, whether they are the pressures of daily life or deeply embedded assumptions and philosophies that our worldviews are based on, that cause us to see things outside ourselves and "our" groups as less than human and therefore less important. But they aren't and I don't think we should allow ourselves to forget that. Thus, the overarching aim of my thesis, and its main takeaway, is to bring awareness to those assumptions and philosophies and to develop a worldview that is more holistic and compassionate.

## Bibliography

- Allais, Lucy. "Restorative Justice, Retributive Justice, and the South African Truth and Reconciliation Commission." *Philosophy & Public Affairs*, vol. 39, no. 4, 2011, pp. 331–63, <http://www.jstor.org/stable/23261250>. Accessed 17 Apr. 2022.
- Alexander, Julian P. "The Philosophy of Punishment." *Journal of the American Institute of Criminal Law and Criminology*, vol. 13, no. 2, 1922, pp. 235–50, <https://doi.org/10.2307/1133492>. Accessed 11 Apr. 2022.
- Alexander, Michelle. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New Press, 2011.
- Barnes, Harry Elmer. "The Historical Origin of the Prison System in America." *Journal of the American Institute of Criminal Law and Criminology*, vol. 12, no. 1, May 1921, pp. 35–60., <https://doi.org/10.2307/1133652>.
- Beccaria, Cesare, and Voltaire. *An Essay on Crimes and Punishments*. W.C. Little, 1872.
- Beckett, Katherine. *Making Crime Pay: Law and Order in Contemporary American Politics*. Oxford University Press, 1997.
- Bedau, Hugo Adam. "Retribution and the Theory of Punishment." *The Journal of Philosophy*, vol. 75, no. 11, 1978, pp. 601–20, <http://www.jstor.org/stable/2025477>. Accessed 19 Apr. 2022.
- Blackmon, Douglas A. *Slavery by Another Name: The Re-Enslavement of Black People in America from the Civil War to World War II*. Random House, 2008.
- Davis, Angela Y. *Are Prisons Obsolete?* Seven Stories Press, 2011.
- Edsall, Thomas Byrne, and Mary D. Edsall. *Chain Reaction: The Impact of Race, Rights, and Taxes on American Politics*, Norton, New York, NY, 1992, pp. 21–22.
- Fingarette, Herbert. "Punishment and Suffering." *Proceedings and Addresses of the American Philosophical Association*, vol. 50, no. 6, 1977, pp. 499–525, <https://doi.org/10.2307/3129785>. Accessed 13 Apr. 2022.
- Frase, Richard S. "Punishment Purposes." *Stanford Law Review*, vol. 58, no. 1, 2005, pp. 67–83, <http://www.jstor.org/stable/40040252>. Accessed 17 Apr. 2022.
- Gan, Barry L. *Violence and Nonviolence: An Introduction*. Rowman & Littlefield, 2013.
- Gendin, Sidney. "The Meaning of 'Punishment.'" *Philosophy and Phenomenological Research*, vol. 28, no. 2, 1967, pp. 235–40, <https://doi.org/10.2307/2105285>. Accessed 17 Apr. 2022.

- “Genesis 1-3.” Tanakh: The Holy Scriptures, The Jewish Publication Society, Philadelphia. PA, 1985, pp. 3–7.
- Johnson, LaWanda. “Clinton Crime Agenda Ignores Proven Methods for Reducing Crime.” The November Coalition, 14 Apr. 2008, <http://november.org/stayinfo/breaking08/ClintonCrime.html>.
- Kane, Stephanie. “An Interview with the Most Rehabilitated Prisoner in America.” *Litigation*, vol. 39, no. 3, 2013, pp. 16–23, <http://www.jstor.org/stable/43916219>. Accessed 19 Apr. 2022.
- Kirschten, Dick. “Jungle Warfare.” *National Journal*, 3 Oct. 1981.
- Lawson, Steven F. *Black Ballots: Voting Rights in the South*, Columbia University Press, New York, NY, 1976 pp. 300, 321, 329, 331.
- Masci, David. “\$30 Billion Anti-Crime Bill Heads to Clinton’s Desk.” *Congressional Quarterly*, 27 Aug. 1994, pp. 2488–2493.
- Mbembe, Joseph-Achille. *Critique of Black Reason*. Translated by Laurent Dubois, Duke University Press, 2017.
- Mbembe, Joseph-Achille. *Necropolitics*. Translated by Steve Corcoran, Duke University Press, 2019.
- McKnight, Gerald D. *The Last Crusade: Martin Luther King, Jr., the FBI, and the Poor People's Campaign*, Westview Press, Boulder, CO, 1998, pp. 21–22.
- Morris, Allison. “CRITIQUING THE CRITICS: A Brief Response to Critics of Restorative Justice.” *The British Journal of Criminology*, vol. 42, no. 3, 2002, pp. 596–615, <http://www.jstor.org/stable/23638883>. Accessed 20 Apr. 2022
- Nagler, Michael N. *The Nonviolence Handbook: A Guide for Practical Action*. 1st ed., Berrett-Koehler Publishers, 2014.
- Nietzsche, Friedrich. “Thus Spoke Zarathustra.” Translated by Thomas Common, *Thus Spoke Zarathustra* < Friedrich Nietzsche <4umi Word, <http://4umi.com/nietzsche/zarathustra/>.
- O’Connor, Rachel, "The United States Prison System: A Comparative Analysis" (2014). USF Tampa Graduate Theses and Dissertations. <https://digitalcommons.usf.edu/etd/5086>
- Reinarman, Craig, and Harry Levine. “The Crack Attack: America's Latest Drug Scare, 1986-1992.” *Images of Issues: Typifying Contemporary Social Problems*, A. De Gruyter, New York, NY, 1995.
- "Religion by Country 2022", *World Population Review*, <https://worldpopulationreview.com>. Accessed 20 September 2022.

Weaver, Vesla M. “Frontlash: Race and the Development of Punitive Crime Policy.” *Studies in American Political Development*, vol. 21, no. 2, 2007, p. 242.,  
<https://doi.org/10.1017/s0898588x07000211>.

Weil, Simone. *Two Moral Essays: Draft for a Statement of Human Obligations and Personality*. Edited by Ronald Hathaway, Pendle-Hill Publ., 1981.

Wenzel, Michael, et al. “Retributive and Restorative Justice.” *Law and Human Behavior*, vol. 32, no. 5, 2008, pp. 375–89, <http://www.jstor.org/stable/25144639>. Accessed 21 Apr. 2022.

Woodward, C. Vann. *Strange Career of Jim Crow*, Oxford University Press, USA, Oxford, 2001, pp. 45–64.

Zehr, Howard. *Little Book of Restorative Justice Revised and Updated*. Good Books, 2015.