**Inclusive Exclusion:
Rethinking American Prisoners and Prisons.**

A thesis submitted to the Faculty of Graduate Studies and Research in partial fulfillment
of the requirements for the degree of Master of Arts.

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Abstract

The fundamental question underlying this thesis is that concerning the exclusion of undesirable groups who unlike immigrants and refugees cannot be stopped and turned away at the border, for they are already on the 'inside' of society. While it is relatively easy to protect the ranks of citizens from penetration by external undesirables, purging these ranks of those who are already there is more complicated, as undesirable citizens cannot simply be expelled beyond state borders. With an analysis of the processes and institutions of imprisonment in the United States, the thesis attempts to expose one mechanism through which these undesirable populations are removed from among the ranks of 'respectable' citizenry.

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Introduction

In our age, the state of exception comes more and more to the foreground as the fundamental political structure and ultimately begins to become the rule.¹

A commitment to the 'nation-state' as the principal, and often exclusive ontological, epistemological and methodological container of the political has gained for conventional discourses of International Relations the 'state-centric' label. The discipline's fundamental set of assumptions sustains the understanding that a patchwork quilt comprised exclusively of sovereign states wholly and perfectly blankets the globe. The quilt is infrequently punctured by international waters or air space, and at times embellished with transnational organizations, but is otherwise flawless. Such ontology necessitates the conceptualization of movement in terms of a zero-sum game, where the simultaneity of exit and entrance is inevitable. Alternate ontologies, however, reveal a myriad of spaces that from a state-centric perspective are either entirely obscured, or at best deemed exceptions unworthy of much consideration. While these exceptional, liminal spaces have always existed, critical, non state-centric ontologies are exposing their recent proliferation. As the epigraph poignantly reveals, the exception is increasingly becoming the rule.

Although liminal spaces exist in innumerable incarnations – as concentration and refugee camps, *zones d'attentes* in international airports, no-man's lands dividing disputed territories, foreign embassies, squats, and shantytowns – they are all characterized by their lack of representation among the patches of the unadulterated

¹ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*. Stanford, Calif.: Stanford University Press, 1998. 20

Westphalian-state quilt. Poised between the ‘internal’ and the ‘external,’ located (but actually dis-located) beyond the mundane ambit of inter-state borders, straddling political, economic and juridical boundaries, these increasingly un-exceptional states of exception – and the escalating number of subjects that inhabit them – are included in the global order precisely through their exclusion.

While many of the aforementioned liminal spaces have been examined to varying degrees by academics, international legal scholars and representatives of humanitarian organizations, the study of prisons and prisoners has remained outside of this realm of analysis. In fact, arguments are advanced against the inclusion of prisons into the category of liminal spaces. Giorgio Agamben, who imagines the ‘camp’ paradigm in order to illuminate the existence and proliferation of liminal spaces, resists the inclusion of prisons in that category. Agamben argues that as a simple space of confinement the prison is topologically different from the absolute space of exception that is the camp, as prison law constitutes only a particular sphere of penal law and is not outside the normal order.² Although her conceptualization of camp is qualitatively different from that of Agamben, Hannah Arendt is similarly reticent, noting that only individuals sent to concentration camps – and not those who are simply jailed – are absolutely excluded from the rights they possess in what Agamben would call the state of normalcy.³

The following thesis objects to this distinction. Through an analysis of contemporary trends in American imprisonment, it attempts to illustrate that Agamben’s error is a result of his excessive generalization of contemporary prisons. While this paper does not argue that all prisons can be classified under the rubric of camp, it does contend

² *Ibid.* 20

³ Hannah Arendt, *The Origins of Totalitarianism*. New York: Harcourt, 1951. 437

that the super-maximum security institutions that are increasingly the ‘norm’ of American imprisonment resemble the liminal space that is Agamben’s camp. The thesis examines the seemingly contradictory trend within the American penal system, whereby liminal, camp-like prisons are proliferating in conjunction with a simultaneous expansion in prisons that Agamben and Arendt would have rightly excluded from the camp paradigm.

Two important distinctions between what will be henceforth referred to as camp prisons and standard (non-camp) prisons are addressed within the thesis, namely prison labour and citizenship status. First, while there is a resurgence of interest in labour within prisons, inmates of camp prisons perform no labour at all. Second, although both those confined in standard prisons and those incarcerated in camp-prisons partially lose their rights of citizenship, it is clear that non-camp prisoners both retain more of their citizenship status, and have a greater chance of eventually returning to the ranks of full citizens. Camp prisoners, on the other hand, seem to thoroughly embody the liminal subject, permanently suspended in the zone of indistinction between inside and outside, inclusion and exclusion, citizenship and non-citizenship, existence and oblivion, life and death. Yet, even though the distinctions between camp and non-camp prisons are significant, it is the contention of this thesis that Agamben’s concept of *inclusive exclusion* - or inclusion through exclusion - aptly articulates the location of both spaces (and the subjects who inhabit them) with the social, political and economic realm.

In order to address effectively the aforementioned contentions, the thesis is divided into four chapters. The first chapter outlines the theoretical foundation and framework of the thesis, focusing specifically on Agamben’s camp paradigm, its

illumination and privileging of the liminal zones obstructed by state-centric paradigms, and its relevance to the contemporary environment. Subsequently the chapter attempts to establish the liminal character of both contemporary super-maximum security prisons and the subjects that file ‘in’ and ‘out’ of them. To this end, the chapter elaborates on the previously mentioned distinction between camp prisons and standard prisons, and attempts to illustrate their precarious location on the borderline between the ‘inside’ and the ‘outside.’ In order to establish the liminal character of the contemporary prison population, the chapter situates the prisoner at a nexus of Arendt’s notion of superfluity, Julia Kristeva’s conception of the abject, and the historically recurring image of the ‘dangerous classes.’

Building on the distinction between camp prisons and standard prisons, as well as on the unique location of the prisoner at the nexus of superfluity, abjection and dangerousness, the second chapter attempts to understand the economic relationship of prisons and prisoners to ‘the outside’ (which, paradoxically, is the ‘inside’ of society, if the inclusion/exclusion binary is employed). The chapter argues that despite the significant distinction between camp and standard prisons, Agamben’s notion of *inclusion through exclusion* or *inclusive exclusion* best characterizes the location of *both*. The chapter attempts to understand the manner in which both types of prisons include through exclusion by considering how prisoners’ bodies and the industry that emerges around them precariously situates prisoners within the economic realm of the society from which they have been physically excluded.

Transplanting the above insights and assumptions into the political realm, chapter three examines the manner in which the fluid, fluctuating and volatile citizenship status

of American prisoners situates them within the political realm. To this end, the chapter analyzes a number of American policies that delineate the relationship between current and former prisoners and the citizenship regime. The chapter argues that as was the case in the economic realm, the concept of inclusion through exclusion aptly illustrates the precarious relationship between prisoners and the political realm.

Central to both the second and the third chapter is the prisoner's body, for it is impossible to discuss ambiguous spatial and social positionings without addressing the body as the entity that is spatially and socially positioned at the intersection of inside and outside, existence and oblivion, utility and superfluity. Following the arguments of social constructivism generally, and Alan Hyde specifically, discussions of the body are anchored in the assumption of the impossibility of a discursively unmediated corporeal epistemology. As Hyde cautions, this premise is not equivalent to a denial of corporeal materiality.⁴ While the chapters do not concern themselves with metaphysical questions regarding the body's ontology (as "the body, whatever its ultimate reality, is unavailable to us as a standard of political analysis except as mediated through constructions"⁵) they confirm the importance of corporeal social constructions and discourses to theorizations of liminal subjects and spaces. As corporal metaphors abound within the discourses of abjection and superfluity, both as modes of conceptualizing the process by which society expels its undesirables – a body abjecting waste – and as modes of understanding the post-abjection interaction between the abjected and its abjector, the material and metaphoric body must be highlighted in examinations of liminal subjects and spaces. The chapters, therefore, illustrate the methods through which the bodies of liminal

⁴ Alan Hyde, *Bodies of Law*. Princeton, N.J.: Princeton University Press, 1997. 6

⁵ *Ibid.* 8

subjects such as prisoners, who are physically sequestered from society, actually remain politically and economically included precisely through their exclusion. The two chapters also address the mechanisms, techniques and policies that work on the bodies of prisoners in order to re-mold them into more desirable citizens, or alternately, to extract from them the greatest possible value.

The fourth and final chapter commences with an attempt to delineate the parameters of the present incarnation of ‘undesirables’ by presenting an overview of the available statistical information regarding both the extent of imprisonment, and the identity markers most frequently possessed by incarcerated populations. The chapter grapples with the identified trends and interrogates them through the theoretical prism constructed in the first chapter. Chapter four concludes with an attempt to illustrate the advantages of conceptualizing the aforementioned relations through this theoretical construct.

Chapter One: Superfluity, Abjection and Danger – Liminal Subjects and their Volatile Spaces

This chapter establishes the conceptual and theoretical foundations upon which the remainder of thesis will be constructed. In the process, it addresses four related issues. First, it endeavours to construct an intersection between Arendt's notion of superfluity, Kristeva's concept of abjection, and the historically reoccurring image of the 'dangerous classes'. Second, it illustrates the importance of locating prisoners at this particular conceptual nexus. Moving into an analysis of the prison space itself, the chapter addresses the utility of gazing at prisons through the lens of Agamben's camp paradigm. The chapter concludes with an attempt to distinguish between standard prisons and institutions that fall outside of that rubric, namely camp prisons, to which the aforementioned analyses can be most fruitfully applied.

Liminal subjects

It is crucial, first, to arrive at an adequate conceptualization of the subjects who occupy the aforementioned liminal spaces. It is a contention of this thesis that the inhabitants of the liminal zone that is the camp prison are most accurately theoretically positioned at the nexus of the concepts of superfluity, abjection and dangerousness. Although the prisoner does not fit flawlessly into any one of these categories, their intersection provides a comprehensive understanding of the prisoner's societal location. In order to arrive at an adequate appreciation of this nexus, it is useful first to analyze its three components separately, and subsequently to examine their point of intersection. As Arendt's notion

of superfluity forms the metaphorical foundation of the nexus, it is useful to attend to it first.

The essence of superfluity is most comprehensively elucidated in the closing pages of *The Origins of Totalitarianism*, where Arendt likens the “totalitarian attempt to make men superfluous” with the general experience of “modern masses of their superfluity on an overcrowded earth.”⁶ To further illustrate the concept, Arendt conjures the image of the African gold rush, describing its participants as by-products of society, the “inevitable residue of the capitalist system...the representatives of an economy that relentlessly produced a superfluity of men and capital.”⁷ Crucially, however, these individuals “had not stepped out of society but had been spat out by it...they were not enterprising beyond the permitted limits of civilization but were simply victims without use or function.”⁸ They exist in the liminal zone between purposefulness and frenzy, recognition and oblivion, society and the ‘state of nature’.

Crucial to the notion of superfluity, and perfectly resonating with the act of abjection that will be discussed further in the chapter, is Arendt’s insistence on its violence. Superfluous individuals are not eased out of society, but rather, are “spat out” by it, are violently abjected from within it. The abjected, however, is never utterly irrelevant or absolutely useless. In fact, the abjected (and similarly, the “immediate other” as discussed by Engin Isin⁹) are critical as the dialectical other in relation to which the abjector self is defined. The notion of thorough superfluity, (excess and overflow), therefore, may seem at first glance to clash with the concepts of abjection, alterity and the

⁶ Arendt (1951) *op. cit.* 431

⁷ *Ibid.* 189

⁸ *Ibid.*

⁹ Engin Isin, *Being Political: Genealogies of Citizenship*. Minneapolis: University of Minnesota Press, 2002. The concept of the “immediate other” will be elaborated upon shortly.

concept of ‘dangerous classes’, as individuals subsumed under these categories maintain a crucial, if precarious and uncomfortable relationship with the society/self. There are two conceivable ways for reconciling this contradiction. First, it is possible, and eminently useful to conceive of superfluity as the foundational axis upon which the more refined concepts of abjection and dangerousness can be articulated, or alternately, as a backdrop against which the concepts attain greater luminescence. Second, superfluity can be recast as a more elastic concept. Such conception of superfluity does not necessitate its rejection as a foundation or backdrop for the more nuanced concepts of abjection and dangerousness, but permits the retention of superfluity as a critical part of the tripartite nexus. According to this more extensive conception, individuals who are superfluous (exceed what is sufficient) on the ‘inside’ are pulled back from the brink of utter superfluity through their abjection or expulsion. They are “spat out” as superfluous to the fringes of the ‘inside’, and paradoxically regain their utility and necessity precisely (and exclusively) because of their positioning at these fringes, in the abyss that marks the boundary between the ‘inside’ and ‘outside’, between desire and abjection. Superfluous and redundant on the ‘inside’, their utility is wholly dependent on their abjection from society, and their marginal existence as its dialectic alterity.

Such understanding of superfluity seems not only more useful than its conception as a flat, one-dimensional backdrop, but also more in line with Arendt’s understanding of the concept. The gold-diggers, the quintessential superfluous spat out by society become, after all, an important (if unacknowledged) cog in the political-economic machine. Thus, even though Arendt never explicitly addresses this tension, such implication can be drawn from the image of superfluity she conjures.

It is superfluity's second incarnation, totalitarianism, and specifically the totalitarian 'solution' of German National Socialism, which Arendt elaborates on with greater detail and interest, as it is this instance that embodies for Arendt the most comprehensive understanding of human wickedness. Absolute evil, according to Arendt,

seems to be closely connected with the invention of a system in which all men are equally superfluous. The manipulators of this system believe in their own superfluousness as much as in that of all others, and the totalitarian murderers are all the more dangerous because they do not care if they themselves are alive or dead, if they ever lived or never were born. The danger of the corpse factories and holes of oblivion is that today, with populations and homelessness everywhere on the increase, masses of people are continuously rendered superfluous if we continue to think of our world in utilitarian terms.¹⁰

While this thesis is not concerned with definitions of 'evil' nor with the structure-agency debate that the passage seems to allude to, it is pertinent to note Arendt's insinuation that all human beings are a breath away from superfluity, and accordingly, that those rendered redundant today were not so yesterday. This insight will be elaborated on momentarily, but it is first important to understand how the theoretical concept of superfluity finds expression in the current politico-economic context.

If one circumnavigates the globe in a metaphorical journey, one will find it a difficult task to deny the mass proliferation of human superfluity. Social, political, and economic realms function at an unprecedented degree of sophistication. Communication technology is being refined at incredible rates, with this year's avant-garde obsolete the following year. Individuals traverse unimaginable distances in the blink of an eye, residing simultaneously on a number of continents, truly embodying the recently coined concept of a 'de-nationalized', 'global citizen' in a 'global village'. This sophisticated, high-tech lifestyle, however, is the domain of an infinitesimal portion of the global

¹⁰ Arendt (1951) *op. cit.* 433

population. For the vast majority, the globe remains untraversable, all technologies unavailable, and daily survival the paramount concern. It is this multitude that embodies the superfluosity of humanity, for while a small portion of it is required (on the 'inside') for the continued functioning of the economic system as cheap labour or potential market, most exist entirely outside of the realm of utility, lacking the jobs that would make them cheap labour or potential market. Instead, they languish and die on streets, in prisons, in labour camps, to be buried in mass graves, without the fast-paced, technologically savvy global citizen experiencing the slightest discomfort, except perhaps a minor and temporary dip in stock-market value.

While there can be little doubt of the proliferation of superfluity, the 'global village' continues to function politically, socially, and economically despite the perpetually widening gap between the rich and the destitute. Its continued functioning (and some would argue, improvement) indicates that the system has been able to circumvent the destabilizing potential of the increasing superfluity that it produces. Whether it can continue to do this indefinitely is an issue that lies beyond the scope of this research project. More important for this project are the progressively refined methods through which this superfluity is harnessed in order to produce not only additional profit, but also a self-sustaining and regenerating sphere of superfluity. Consequently, what is most interesting is not its simple proliferation, but the evolution and increased sophistication with which it is harnessed. Superfluous on the 'inside', the dregs of society become not only useful but actually necessary when "spat out" into the abyss that comprises the frontier of the 'outside'.

It is in this context that this thesis examines the contemporary maximum-security prison, the prevalence of which seems to be increasing as the rhetoric employed by the American penal system shifts from that of restitution and rehabilitation to that of incapacitation. Consequently, 'life without parole' sentences, to be served in super-maximum security institutions where inmates are deposited by society into a space of perpetual solitary confinement, are precluded from interaction both with their fellow inmates, and with their guards and those on the 'inside' of society, where they have no access to rehabilitative programs or services, and are effectively erased from social consciousness are more frequent and less jarring. Due to the progressively hegemonic perception that such punishment is a 'normal' response to acts constituted as social ills, super-maximum security prisons are proliferating, and the subjects confined in them are increasingly regarded as permanently removed from all social contact, confined behind a lock for which even the guards no longer need a key. The proliferation of super-maximum security camp prisons - storehouses for superfluous populations, where even the pretense of rehabilitation is unnecessary - has not, however, occurred at the expense of standard prisons, where prisoners labour in prison industries, have access (however minimal) to rehabilitative programs, and where at least the rhetorical goal of confinement is rehabilitation and eventual reintegration into society. The current experience, therefore, is indicative not only of the proliferation of the superfluous population, and consequently, the increased urgency to confine and control it, but also of the increased sophistication with which this superfluousness is harnessed and channeled - in both camp prisons and standard prisons - in a manner that buttresses the political and economic status quo.

While superfluity can serve as the foundation for an examination of prison populations, analysis cannot be restricted to this concept alone, for the simple fact that not all superfluous individuals are imprisoned. Consequently, additional concepts must be utilized, ones that can account for the fact that only a portion of superfluous humanity (although an ever increasing one) is jailed. It is here that Kristeva's notion of abjection attains significance. As the aforementioned excerpt from Arendt's discussion of superfluity indicates, what is perhaps most disturbing about today's superfluous populations is that they were a part of 'us' yesterday, but today are expelled from among 'us' as the unnecessary and the redundant, the leftover from humanity's feast that is instinctively thrown aside. The superfluous is therefore utterly frightening, as it is "something like oneself that still under no circumstances ought to be like oneself,"¹¹ and that has the potential to *be* oneself tomorrow. It is in the moment of this horrifying realization that Kristeva's 'abject' overlaps with the superfluous, for the abject is utterly opposed to the self, yet "the uncanniness, the threat of the abject is that *it used to be (part of) ourselves*."¹² The abject, as Hyde's sentimental body, is "somewhat like us, neither exactly like us, or wholly different."¹³ Like the superfluous, it was once a part of 'us', but has since been rendered not only unnecessary on the 'inside' of 'our community', but also persistently threatening to its cohesion, perfection and purity.

While the abject overlaps with the superfluous in this sense, it is the disjuncture between the concepts that is of greater importance, as an adequate conceptualization of the prisoner as a liminal subject is dependent on the rather precarious and volatile complex produced by the coagulation of these differences. First, abjection is more

¹¹ *Ibid.* 192

¹² Hyde (1997) *op. cit.* 212; Italics in original.

¹³ *Ibid.* 193

versatile than superfluity, as Kristeva develops the concept both as an act (verb) and as a state of being or characteristic (noun), allowing it to be utilized to expose both a process as well as its result. Abjection as an act, therefore, invaluable complements superfluity by illuminating the process by which superfluity is generated, for the act of abjection can be understood as the moment at which the superfluous is ejected from either the individual or social body. As such, abjection is desire's dialectical other, for while desire starts with a lack, abjection begins with the experience of an excess or surplus that must be expelled. In its noun form the abject hints at a particular configuration of identity markers within the ranks of the superfluous, which determines whether they remain the superfluous 'dregs' on the social 'inside', or are relegated beyond its borders to languish in camp institutions.

Interestingly, Kristeva characterizes the ephemeral moment of abjection as one of intense pleasure (at the expulsion of waste). With the passing of this momentary euphoria, however, the abject-less glances at the abject of whom it has purged itself and is disgusted and threatened by what it recently embodied.¹⁴ Precisely what can inhabit the self yet cause it such horror? Kristeva's answer hints at the second reason for which it is necessary to augment the concept of superfluity with that of abjection. Kristeva's definition of the abject is two-pronged:

It is...not lack of cleanliness or health that causes abjection but what disturbs identity, system, and order. What does not respect borders, positions, rules. The in-between, the ambiguous, the composite. The traitor, the liar, the criminal with a good conscience, the shameless rapist, the killer who claims he is a savior...Any crime, because it draws attention to the fragility of law, is abject, but premeditated crime, cunning murder, hypocritical revenge are even more so because they heighten the display of such fragility...Abjection is...immoral, sinister, scheming, and shady: a terror that disassembles, a hatred that smiles, a

¹⁴ *Ibid.* 212

passion that uses the body for barter instead of inflaming it, a debtor who sells you up, a friend who stabs you.¹⁵

The abject, therefore, is primarily what disturbs identity, refuses to conform to order, norm, system, and secondarily, what is immoral, sinister and murderous. It is the notion that the abject disturbs normalcy, order and identity that illustrates the importance of intersecting it with the concept of superfluity in discussions of camp prisoners. Arendt's superfluous do not inherently possess these destabilizing characteristics and consequently, are not necessarily all confined to super-maximum security institutions. Only subjects constructed at the intersection of superfluity and abjection, who are the abject species in the genus of superfluity, are camp prisoners, removed to society's liminal zones not only as redundant, but also as a glitch in the system, an interruption of its 'normal' structure and function.

Kristeva's aforementioned definition, however, is also somewhat ambiguous, as its two prongs do not always exist in tandem. While that which is immoral, sinister and cunning disturbs normalcy and order, the opposite is not necessarily true, for that which disturbs identity, system and order may not be motivated by immorality or hatred, but rather, may simply fail to find itself among the classifications and categories that represent 'normalcy' at a particular historical juncture. It is necessary, therefore, especially in the context of a thesis that examines the figure of the prisoner, to decouple the two prongs. The thesis does not wish to concern itself with the details of the crimes committed by its subjects, nor the criminological assessment of their actions and resultant punishment. It proposes to sidestep this field of investigation – which is abundantly represented in criminology literatures – and enter instead the lesser-charted territory of

¹⁵ Julia Kristeva, *The Powers of Horror: An Essay on Abjection*. New York: Columbia University Press, 1982. 4

conceptualizing the prisoner as a disturber of identity, an agitator within a system, who is not only superfluous to it, but also the abject that disturbs and causes discomfort, and must be expelled.

The distinction between the concepts of superfluity and abjection can also be conceptualized as a disjuncture between different locations and scales of expulsion, where superfluity describes social purification, or the elimination of redundancy within society, while abjection denotes purging from within the self. The complimentary nature of these two notions provides the third justification for intersecting the two concepts. Rather than being mutually exclusive, such understandings of superfluity and abjection expose the complimentary character through which the totality of expulsion (from within the individual and social body) is illuminated. Contextualizing the abject, Hyde points out that the history of human kind is replete with instances of abjection: “Bodies define their boundaries through the expulsion of wastes. Societies define their boundaries in part through their rituals concerning bodily wastes, ‘abjecting’ the threat as the body abjects waste.”¹⁶ Societies continuously participate in rituals of social abjection, constructing a threat and reacting (or striking preemptively) with corresponding rituals of eradication, expulsion and purification. At the nexus of superfluity (as social purification) and abjection (as individual cleansing), therefore, it is possible to conceive of the prisoner both from a unitary and an aggregate perspective, where the prisoner is abjected both as a representative of the disruptive and disturbing potentiality within the self, and as a disrupter of societal normalcy. The prisoner is thus simultaneously abjected at both the individual and social level, in an almost desperate attempt to stabilize and normalize both corporeal and societal integrity.

¹⁶ Hyde (1997) *op. cit.* 206

Fourth, prisoners can be most fruitfully conceptualized at an intersection of superfluity and abjection, for while the abject is expelled from within the individual and social body, it nevertheless maintains with it an uneasy relationship. Although Arendt's concept of superfluity seems to imply a similar precariousness, she does not elaborate on, or develop this insinuation. The abject, alternately, is defined precisely by its unstable relationship with its abjector. Thus, while the abjector fervently casts out its abject, it can never purge and purify itself completely (nor does it necessarily want to). Kristeva likens abjection to a border, for "while releasing a hold, it does not radically cut off the subject from what threatens it – on the contrary, abjection acknowledges it to be in perpetual danger,"¹⁷ confronting it with the most liminal of unclassified states, "where man strays on the territories of *animal*."¹⁸ On the border between human and animal, subject and object, sound and silence, "the vacillating, fascinating, threatening, and dangerous object is silhouetted as non-being – as the abjection into which the speaking being is permanently engulfed."¹⁹

The concepts of superfluity and abjection, therefore, are related in the sense that they both refer to the expulsion, yet continued interaction between a societal self and its extreme other, horrifying precisely because of its recent affiliation with the self. At the nexus of abjection and superfluity, the camp prisoner is positioned as an individual who is evacuated into the liminal recesses of society in an attempt to rid permanently and completely the social and individual body of an excessive mass and a destabilizing element. Despite the best of efforts, this project is inherently unfinishable, as the superfluous abject always remains within frightening proximity of its abjector.

¹⁷ Kristeva (1982) *op. cit.* 10

¹⁸ *Ibid.* 12

¹⁹ *Ibid.* 67

As a danger to individual and social normalcy, the superfluous abject shares some features of the more mundane notion of the ‘undesirable citizen’, or the related concept of ‘dangerous classes’. In *Being Political: Genealogies of Citizenship*, Engin Isin identifies 1848 as the year in which the term ‘dangerous classes’ gained currency as a rubric under which “the nomads, savages, vagrants, and mob” could be conveniently subsumed.²⁰ Like Arendt’s superfluous beings, members of this group were economically, politically and socially useless on the ‘inside’ of ‘civilized’ society. Like the abject, they disrupted its normalcy, challenging its prescriptions of residence, employment and respectable behaviour. “The dangerous classes were not only transient, intransigent, and nomadic,” notes Isin, “they were also ugly, smelly, dirty, and disgusting, ‘so brutal, ignorant, vain people, [so] disagreeable to rub shoulders with, so repulsive when seen close up’.”²¹ Yet, like the superfluous abject, these dangerous classes are never entirely effaced from society, nor (as a potentiality) from within the self. As Isin illustrates, for instance, the spatial organization of the late 19th century French city guaranteed the perpetual encounter between the ‘dangerous classes’ and their civilized counterparts, producing both anxiety and a heightened awareness of their otherness and undesirability.²² Consequently, the ‘dangerous classes’ can also be conceptualized as undesirable citizens, who cannot be expelled beyond the borders of their state without being welcomed in the neighbouring jurisdiction – an unlikely scenario - yet must be cast out or set aside in the interest of preserving an ever-elusive purity of citizenship. Intra-state abjection – as when the ‘proper’ citizenry resided at street level, while the poor were consigned to the

²⁰ Isin (2002) *op. cit.* 203

²¹ *Ibid.* 413

²² *Ibid.* 143

upper floors and attics of houses²³ – was never complete, and as the expelled abject haunts the newly abject-less self, the ‘dangerous classes’ continued to encounter and haunt the ‘citizen proper’. As will become apparent in the following chapters, American super-maximum security prisons are little more than more sophisticated spaces of intra-state exclusion.

The concept of ‘dangerous class’ adds a unique dimension to the nexus of superfluity and abjection. Not only does it contextualize these more abstract notions by connecting them to historical marginalization of particular populations thereby augmenting abstraction with historical concreteness, but it also adds to the concepts of superfluity and abjection the properties of class. It exposes the class dimension of abjection and superfluity by alluding to the stratification of the society from which the abject superfluous are removed, as well as to the class character of the abject superfluous themselves, who are frequently constituted from the social and economic underclass. Moreover, the notion of a ‘dangerous class’ implies that such class encompasses those whose citizenship in society is undesirable, and thus embeds the nexus of superfluity and abjection within discourses of citizenship.

It is analytically advantageous to locate contemporary camp prisoners at this nexus of superfluity, abjection and dangerousness. They are usually – but not always – the politically, economically and socially superfluous, already nearing the margins of the ‘inside’, slipping out of socially constructed categories of normalcy and civility. Although rendered superfluous on the ‘inside’, they escape utter superfluity precisely by their removal to the intra-state ‘outside’ that is camp prison, where their exclusion is harnessed by the political-economic circuit constructed around it. They are the abject

²³ *Ibid.*

always, in that they jeopardize, disturb, dispense with, or hijack identities, categories, rules and borders. It is they who threaten society's infamous 'moral fibre', and are all the more revolting because the potential to become them resides within each citizen. Unlike the immigrant or refugee who can be turned away at the border, they are already formal (if not substantive) citizens, already on the 'inside' but as, if not more, undesirable. As expulsion beyond state borders is unlikely, they are imprisoned, de-franchised, immobilized, stored away, out of sight, out of mind. Yet, as their exclusion rescues them from the brink of utter superfluity, they never become completely and absolutely undesirable, for they are never wholly politically and economically irrelevant. The camp prisoner, therefore, hovers between the inside and the outside, the 'self' and the 'other', the citizen and the non-citizen, the necessary and the superfluous, the desire and the abjection. The camp prisoner straddles innumerable borders, but is also in fact the borderline, a liminal subject who inhabits the liminal zone of which the contemporary maximum-security prison is but one incarnation.

While liminal spaces and the liminal subjects/bodies that reside within them have always existed in tandem with their categorized and codified counterparts, serious analyses of such populations have only recently appeared in academic literature. The analyses that are undertaken usually focus on what Isin terms the "distant other," the "barbarian," or the "alien," while the 'immanent other' is given remarkably little attention. Alternately, analyses frequently consign all liminal populations under the homogenous rubric of 'other', failing to acknowledge the importance of their internal differentiation.²⁴ In an attempt to supplement this literature, Isin develops a complex

²⁴ *Ibid.* 281

classificatory scheme that discriminates between the inappropriately homogenized ‘others’.

Isin defines groups that reside within and outside of a city – the spatial and analytical microcosm he utilizes in *Being Political* – relationally, in accordance with the technologies and strategies they employ in their interaction with each other, and not according to the essential characteristics of their membership.²⁵ Isin identifies three such strategies: alienating, agonistic and solidaristic. Alienating strategies correspond to the frequently theorized logic of exclusion, and consist of exclusion, estrangement, oppression and expulsion. Agonistic strategies, alternately, include conflict, competition, resistance and tension, while solidaristic strategies are comprised of affiliation, sociation and identification.²⁶ While Isin remains convinced that the relationships through which groups are constituted involve domination, he points out that this does not necessarily indicate that the goal of such relationship is elimination or even subservience. On the contrary, dominant groups engage in a number of different strategies with a number of disparate ‘others’. These distinct strategies produce diverse outcomes, and consequently, differently structure the relationships between various groups.

While *Being Political* is only tangentially concerned with the category of the ‘distant other’, Isin offers a comprehensive definition of this group. Distant others are those with whom there is no substantial interaction beyond formal and informal strategies of effacement; they are excluded entirely from the realm of sociation and association as they are considered the enemy.²⁷ Consequently, the relationship between the citizen and the distant other does not move beyond the previously defined strategy of alienation.

²⁵ *Ibid.* 34

²⁶ *Ibid.* 32

²⁷ *Ibid.* 30-1

“For ancient Greeks and Romans,” notes Isin, ‘barbarians’ were such aliens. For modern Europeans, ‘orientals’ have served the same purpose. For contemporary Eurocentrism, ‘Islam’ has become its alien Other.”²⁸ It is only in relation to the distant other that the logic of exclusion – which, according to Isin, certain theorists erroneously apply to all ‘others’²⁹ – is suitable. For immanent others – comprised of ‘strangers’ and ‘outsiders’ – the logic of exclusion loses its purchase, as immanent others continuously interact with each other, as well as the full citizen against whom they are constituted. Isin defines a stranger as someone who “comes today and stays tomorrow,” attempting to capture the stranger’s immanence and interiority to social space. “The stranger is the potential wanderer, who although an insider, interacts as though he is an outsider.” As being estranged from a group is a condition of both being a member of the group and being distanced from it, the stranger’s membership in social space involves simultaneous alienation and recognition.³⁰

The second ‘immanent other’ is the ‘outsider’, whose difference from the ‘stranger’ is subtle yet significant. “While both are immanent”, notes Isin, “strangers are often implicated in a combination of solidaristic and agonistic strategies and technologies, and outsiders often in a combination of agonistic and alienating strategies.”³¹ Thus, although citizenship is often withheld from strangers, they are nevertheless considered as belonging to the city, and expected to associate with citizens via solidaristic or agonistic strategies and technologies. By contrast, outsiders such as slaves are conceptualized as neither belonging to the group nor interacting with it, even

²⁸ *Ibid.*

²⁹ *Ibid.* 281

³⁰ *Ibid.* 30

³¹ *Ibid.*

though they are recognized as necessary to the functioning of the social space in which strangers and citizens interact.³²

The logic of exclusion, or an alienating strategy, therefore, depicts only the relationship between the citizen and the distant other. Citing Edward Said's *Orientalism* as well as the vast literature of postcolonial, oriental and cultural studies, Isin chooses to focus instead on the immanent other.³³ Since the logic of exclusion does not adequately define the relationship between citizens and immanent others, Isin theorizes instead the logic of alterity as the fundamental tool for understanding this complex relationship:

While the logic of exclusion would have us believe in zero-sum, discrete, and binary groups, the logics of alterity assume overlapping, fluid, contingent, dynamic, and reversible boundaries and positions, where agents engage in solidaristic strategies such as recognition and affiliation, agonistic strategies such as domination and authorization, or alienating strategies such as disbarment across various positions within social space. The logic of exclusion would have us believe that the formation of identity involves establishing opposites and others whose actuality is always subject to the continuous interpretations and articulation of their difference from the group. But the logic of exclusion based on establishing opposite others is only one among countless strategies open to the formation of identities. That is why it is important to distinguish between the logics of alterity that constitute strangers and outsiders as immanent identities, and the logics of exclusion and enclosure that constitute aliens or barbarians as transitive or exterior identities.³⁴

The logic of alterity, therefore, allows for a more nuanced and heterogeneous understanding of the relationship between the citizen self and its immanent other. Moreover, while the logic of exclusion presupposes that the excluding and the excluded are conceived of as irreconcilable, and further, that the excluded are perceived in purely negative terms, the focus on otherness as a *condition* of citizenship allows for its conceptualization not as preexisting citizenship but as constituted by it. Isin argues, therefore, that “closure theories that define citizenship as a space of privilege for the few

³² *Ibid.* 30-1

³³ *Ibid.* 22

³⁴ *Ibid.* 30

that excludes others, neglect a subtle but important aspect of citizenship: that it requires the constitution of these others to become possible.”³⁵

The logic of alterity doubly contributes to the analysis of liminal subjects and the liminal spaces they inhabit. Primarily, it ensures that both liminal subjects and spaces gain theoretical and analytical primacy not as exceptions but as subjects and spaces that persist in tandem with their non-liminal counterparts, and whose constitution enables the latter’s existence. Like strangers and immanent others who are conceived of as necessary to the constitution of citizens (and not as teleologically progressing toward eventual citizenship), liminal subjects and spaces can be understood as existing outside of the Westphalian state norm not because they have yet to reach their evolutionary apogee, but because they are necessary to its constitution. By implication, attempts to reform these subjects and spaces and integrate them into the ‘mainstream’ will certainly fail (or if they succeed, the integrated subjects and spaces will simply be replaced by new liminal ones), unless the ‘mainstream’ is also revolutionized no longer to require their existence for its constitution. More generally, the logic of alterity contributes to the analysis of liminality by embedding liminal subjects and spaces into critical discourses of citizenship, exposing their intimate correlation, and the need for analyses to engage them simultaneously.

The aforementioned approach to citizenship – one that employs the logic of alterity to argue the necessity of non-citizens for the constitutions of citizens - moves beyond traditional, mainstream approaches. First, it denies the historical continuity and incontestability of citizenship. As Isin notes,

if...there is a harmonious unity and unbroken continuity in the images we are given of citizenship, it is not because of a natural growth, but a strategic emulation and appropriation – invention - of tradition that had made it

³⁵ *Ibid.* 4

possible...At the very least, investigating citizenship historically ought to require contrasting the claims of citizens against the claims of their others.³⁶

Consequently, the analysis of citizenship as alterity views as suspect the narratives provided by citizens, and focuses instead on the narratives of the citizens' others, not necessarily because their perception of reality is somehow less distorted, but simply as an alternative or supplement to the hegemonic narratives. Second, as the aforementioned section indicates, this approach rejects the exclusivity and rigidity of homogenized binaries such as 'us' and 'them', 'inside' and 'outside', 'friend' and 'enemy', exposing instead not only the permeability and malleability of these classifications, but also the existence of liminal populations and spaces that transcend such categories or occupy their boundaries. Consequently, Isin is critical not only of Carl Schmitt's hermetically sealed friend versus enemy 'dialectic', but also of other citizenship theorists who engage in the homogenization of citizens, the homogenization of others, or both.³⁷

Citizenship literature has only recently begun concerning itself with the citizen's 'other'. Classic literature, such as that of T.H. Marshall,³⁸ hardly even recognizes that differentiation exists among the citizens of one state. Marshall's argument, based on an evolutionary approach to citizenship that recognizes its civic, political and economic stages acknowledges the existence of a differentiation in citizenship regimes among states, but disregards the coexistence of different levels of citizenship and otherness *within* states. Moreover, unlike the analysis of Isin, which insists on extending the realm of political beyond that of citizenship, Marshall's analysis positions the citizen as the exclusive actor on the political scene. Finally, Marshall's conceptualization of

³⁶ *Ibid.* 3

³⁷ *Ibid.* 32

³⁸ T.H. Marshall, "Citizenship and Social Class." *Citizenship and Social Class*. T.H. Marshall and Tom Bottomore (Eds.) London: Pluto, 1992.

citizenship seems wholly ignorant of the existence of 'others', be they immanent or distant, and their necessity to, and relationship with the citizen.

Other theorists, such as Iris Marion Young and Will Kymlicka, who recognize the intra-state heterogeneity of citizens and their rights nevertheless fail to theorize the immanent others that reside among the citizens in a manner other than through the logic of exclusion,³⁹ and fall short of acknowledging that the existence of otherness is a *condition* of citizenship. Consequently, they often subscribe to an idealistic teleology, which presumes that a potential exists for citizenship regimes to evolve so that they justly include all members of society as full citizens. The second strand of literature that acknowledges the existence of otherness is that represented by Edward Said and postcolonial theory in general. As Isin aptly points out, such literature focuses on distant others to the exclusion of immanent others.

Some recent attempts at critically re-conceptualizing the notion of citizenship are more promising. The work of Étienne Balibar,⁴⁰ Michael Dillon⁴¹ and Michael Shapiro⁴² interrogate the interface between the distant other/barbarian and the strangers and outsiders that are the immanent other. In theorizing the figures of the immigrant and the refugee, the authors offer a uniquely important insight, namely, that the categories of the distant other and the immanent other are mutually permeable. In other words, distant others upon a successful crossing of numerous inter-state borders often enter the ranks of

³⁹ Will Kymlicka and Wayne Norman, "Return of the Citizen: A Survey of Recent Work on Citizenship Theory." *Theorizing Citizenship*. Ronald Beiner (Ed.) Albany: State University of New York Press, 1995.

⁴⁰ Étienne Balibar, *Politics and the Other Scene*. New York: Verso, 2002.

⁴¹ Michael Dillon, "The Scandal of the Refugee: Some Reflections on the 'Inter' of Inter-national Relations and Continental Thought." *Moral Spaces: Rethinking Ethics and World Politics*. David Campbell and Michael J. Shapiro (Eds.) Minneapolis: University of Minnesota Press, 1999.

⁴² Shapiro, Michael J. "The Ethics of Encounter: Unreading, Unmapping the Imperium." *Moral Spaces: Rethinking Ethics and World Politics*. David Campbell and Michael J. Shapiro (Eds.) Minneapolis: University of Minnesota Press, 1999.

the immanent others. 'Oriental' refugees, therefore, can slide out of the category of distant other and into the category of outsider and then stranger amid the citizens of their country of asylum.

While this fluidity and superimposition of subject positions is crucial to a comprehensive understanding of the complex interrelations among societal groups, and provides a considerably more sophisticated understanding of citizenship, it leaves unanswered a crucial question: How can superfluous, abject and undesirable citizens be removed from the ranks of citizens? Recent critical literature examining citizenship, immigration, and refugee policies comprehensively details the strategies and mechanisms through which citizenship is protected from incursion by both distant and immanent others, but the issue of purifying or abjecting from within is not adequately theorized. It will be the goal of the following chapters to fill this theoretical lacuna.

Liminal spaces

Having defined the liminal subject, it is now possible to theorize the liminal spaces to which this superfluous, abject and dangerous subject is consigned. In a revolutionary paradigmatic shift that reflects a global environment in which the state of exception is increasingly becoming the rule, Agamben insists on the necessity of replacing (or at least supplementing) the Westphalian paradigm with that of 'camp' as the lens through which to view the global landscape. This thesis follows Agamben's analysis by suggesting that 'camp' as a paradigm usefully illuminates ontological categories obscured within the Westphalian paradigm, and consequently allows for the complete understanding of liminal spaces in general, and the contemporary camp prison as a liminal space in particular.

Eschewing debates over the precise historical origins of concentration camps, Agamben grounds his depiction of camps in the assumption that they ought not be considered as finite historical structures or anomalies belonging to the past, but that they comprise instead the oft-observed matrix that supplies the continuity between past and present political spaces.⁴³ Taking great pains to provide a comprehensive characterization of camp as a paradigm, and harkening back to his assertion that states of exception are increasingly becoming the rule within global political space, Agamben defines camp as “the space that is opened when the state of exception begins to become the rule.”⁴⁴ Not only does the camp emerge from the normalization of the state of exception, but through camp, “the state of exception, which was essentially a temporary suspension of the rule of law on the basis of a factual state of danger, is now given a permanent spatial arrangement, which as such nevertheless remains outside the normal order.”⁴⁵ The camp therefore, both emerges from, and embodies the normalization of the state of exception. Like the abject who permanently haunts its abjector, the superfluous whose utility is restored by exclusion and the undesirable citizen who is indispensable to the citizen’s constitution, the camp’s externality is not synonymous with absolute effacement, nor does it indicate the existence of a non-relation between the camp and spaces of ‘normalcy’. As Agamben indicates,

The camp is a piece of land placed outside the normal juridical order, but it is nevertheless not simply an external space. What is excluded in the camp is, according to the etymological sense of the term ‘exception’ (*ex-capere*), taken outside, included through its own exclusion. But what is first of all taken into the juridical order is the state of exception itself. Insofar as the state of exception is ‘willed’, it inaugurates a new juridico-political paradigm in which the norm becomes indistinguishable from the exception...Only because the camps constitute a space of exception in the sense we have examined...is everything in

⁴³ *Ibid.* 166

⁴⁴ *Ibid.* 169

⁴⁵ *Ibid.*

camps truly possible...Whoever enter[s] the camp move[s] in a zone of indistinction between outside and inside, exception and rule, licit and illicit, in which the very concepts of subjective right and juridical protection no longer [make] sense.⁴⁶

It is crucial to expand on two ideas present in the above definition. First, it is vital to understand Agamben's concept of 'inclusion through exclusion' and its relationship to camp as a space of exception. The notion of 'inclusion through exclusion' fundamentally links the sometimes-disparate threads of Agamben's analysis, and is crucial to a complete understanding of the innovativeness of the camp paradigm. Agamben explains this concept by means of an analogy with the notions of exclusion and exception:

The exception is a kind of exclusion. What is excluded from the general rule is an individual case. But the most proper characteristic of the exception is that what is excluded in it is not, on account of being excluded, absolutely without relation to the rule. On the contrary, what is excluded in the exception maintains itself in relation to the rule in the form of the rule's suspension. *The rule applies to the exception in no longer applying, withdrawing from it.* The state of exception is thus not the chaos that precedes order but rather the situation that results from its suspension.⁴⁷

The analogy with the definition of an example clarifies this further. "While the example is excluded from the set insofar as it belongs to it", writes Agamben, "the exception is included in the normal case precisely because it does not belong to it. And just as belonging to a class can be shown only by an example – that is, outside of the class itself – so non-belonging can be shown only at the center of the class, by an exception."⁴⁸ The *relation of exception* – the extreme instance of *inclusive exclusion* when something is

⁴⁶ *Ibid.* 142

⁴⁷ *Ibid.* 18; Italics in original.

⁴⁸ *Ibid.* 22

included *solely* through its exclusion⁴⁹ - is thus what constitutes, and prevails within the camp paradigm.

The second crucial insight in Agamben's conceptualization of camp is precisely its status as a paradigm comprising an ontology, epistemology and methodology distinct from state-centric paradigms that occlude the existence of liminal spaces. As a paradigm, camp is not a specific structure distinguished by particular characteristics but exists, irrespective of form, whenever and wherever the state of exception is materialized into a space at the threshold of inside and outside, inclusion and exclusion, exception and rule. As Agamben argues,

If the essence of the camp consists in the materialization of the state of exception...then we must admit that we find ourselves virtually in the presence of camp every time such a structure is created, independent of the kinds of crime that are committed there and whatever its denomination and specific topography. The stadium in Bari into which the Italian police in 1991 provisionally herded all illegal Albanian immigrants before sending them to the Germans, the *Konzentrationslager für Ausländer* in Cottbus-Sielow in which the Weimar government gathered Jewish refugees from the East, or the *zones d'attentes* in French international airports in which foreigners asking for refugee status are detained will then all equally be camps. In all these cases, an apparently innocuous space...actually delimits a space in which the normal order is de facto suspended.⁵⁰

The importance of camp's paradigmatic status to the analysis of liminal spaces in general, and prisons in particular is paramount. Not only does it prominently illuminate and unite spaces that are otherwise obfuscated as merely singular, historically and geographically specific anomalies that can eventually be eliminated, but it also exposes the proliferation of such subjects and spaces, and the alarming pace at which these 'exceptions' are becoming the 'norm'.

⁴⁹ *Ibid.* 18; Italics added for emphasis.

⁵⁰ *Ibid.* 174

Conclusion

Agamben and Arendt reject the conflation of camp and prison, arguing that while prisons remain embedded within social and legal structures, camps form a zone of indistinction beyond such structures, entirely removed from the purview and scrutiny of society. As previously mentioned, however, it is the contention of this thesis that the proliferation of super-maximum security prisons in the United States calls into question such an oversimplified dichotomy, as the supermaxes increasingly resemble Agamben's camps, and consequently, are most fruitfully analyzed through the camp paradigm. While Agamben is not entirely incorrect, as not all prisons can be subsumed under the rubric of camp, his error arises from the inappropriate conflation of all prisons, and an inattention to their distinctiveness. The distinction between standard prisons and camp prisons can be marked by at least three crucial elements. First, while the rhetoric of rehabilitation remains employed in justifications of imprisonment in standard prisons, it is entirely absent from camp prisons, which if legitimated at all (a disturbing trend whereby camp prisons are accepted unreflectively as parts of the natural landscape seems to be emerging) are justified through the logic of incapacitation. As such, it is no surprise that the 'lock 'em up and throw away the key' mentality is gaining prominence as a method for dealing with liminal subjects who not only need to 'pay for their crime', but who are also conceptualized as the abject superfluous that perpetually endanger the citizenry.

The second and related distinction between standard prisons and camp prisons is that of prison labour. As individuals incarcerated in standard prisons are perceived to have the potential for rehabilitation and eventual reintegration into society, prison industry is frequently conceptualized as either a tool of rehabilitation, restitution, skill

development for future productive employment on the ‘outside’, or all three. Concurrently, it is a source of extremely cheap, indentured labour that is undoubtedly more desirable, from the perspective of profit-maximization, than the employment of a potentially unionized, fickle workforce protected by the minimum wage and other legislation. In camp prisons, alternately, prisoners do not perform any labour, as these spaces are essentially enclosures for the disenfranchised, excluded, abjected individuals, permanently abandoned to the extreme fringes of society and normalcy. Inmates of supermaxes are the liminal subjects, precariously located at the nexus of abjection, superfluity and dangerousness, whose position at this nexus precludes release and social reintegration, and who are consequently abandoned to the liminal space that is the camp prison, where their prohibition on interaction with each other and with society at large effectively effaces most traces of their existence. As previously noted, however, the abject superfluous is included specifically through its exclusion, never unequivocally outside, but rather simultaneously straddling and comprising the border between outside and inside, exclusion and inclusion. As such, the liminal subjects of camp prisons become economically and politically useful upon their exclusion precisely because of the ‘prison industrial complex’ that emerges to manage their abjection and superfluity. Chapter two is dedicated to a more comprehensive analysis of the location of standard prisons and camp prisons in the economic circuit.

The third distinction between standard prisons and camp prison, which clearly positions the latter within the camp paradigm, is that between the political and legal frameworks that delineate the realm of possibility with respect to the treatment, rights, and overall quality of life of the inmates. While laws governing standard prisons are

certainly not a paragon of perfection, camp prisons and their inhabitants are more visibly pushed to the fringes of legal frameworks. Chapter three is dedicated to the thorough elaboration of this theme.

Thus, while not all prisons should be subsumed under the camp label, a nuanced analysis of the trends in contemporary American imprisonment exposes the existence of a fundamental division between what may be labeled as standard prisons and camp prisons, with the latter increasingly converging with camp as discussed by Agamben and Arendt. The alarming proliferation of American prisons generally (despite the continually decreasing crime rate) and of super-maximum security (camp) prisons specifically, intensifies the urgency of analyzing society's relationship to prisons and their populations. The above chapter attempts to lay the groundwork for such analysis by establishing a theoretical framework for examining prison populations and prisons as liminal populations and liminal spaces respectively. The first part of the chapter endeavours to establish a comprehensive framework for conceptualizing the camp prisoner as located at the nexus of the socially superfluous, abject and dangerous. The chapter subsequently utilizes critical citizenship literature, especially Isin's notion of the logic of alterity, in order to illustrate the relationship between liminal and non-liminal subjects, and the necessity of the former for the constitution of the latter. Having addressed the liminal subject, the chapter finally attends to the liminal space, augmenting the theoretical framework established by Agamben so as to include American super-maximum security prisons within the camp paradigm, while continuing to exclude standard prisons. The following chapters build on this theoretical foundation by tacking

specific economic and political issues that come to the fore when the inclusive exclusion of the Agamben's camp paradigm is employed as the fundamental analytical tool.

Chapter Two: Economic Inclusive Exclusion

“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”¹

“Pain delivery is an activity of great economic importance for the providers.”²

As alluded to previously, the next two chapters attempt to elaborate on, and understand the relationship between inmates of both standard and camp penitentiaries and the ‘outside’, or rather, the ‘inside’ of society from which they were cast out as superfluous, abject, dangerous and undesirable citizens, yet with which they maintain a partial and volatile relationship. The present chapter considers the socio-economic expression of this relationship of *inclusive exclusion*, while chapter three explores its socio-political manifestations. As an overarching organizational tool, the corporeal metaphor structures the analysis of prisoners’ economic *inclusive exclusion*, and discloses the methods by which their bodies are dually re-implicated in society’s economic realm upon their exclusion and seclusion into prisons. The bodies of inmates are historically exploited through productive and unproductive prison labour. While both types of labour re-implicate excluded prisoners in societal relations, they are engaged economically only through productive labour. Consequently, while unproductive labour is alluded to in this chapter, productive labour is more substantially theorized. The economic *inclusive exclusion* of prisoners, however, is twofold. In addition to inclusive exclusion through productive labour, prisoners are economically re-implicated through the burgeoning industry that attends to the management and storage of their excluded bodies. Thus,

¹ Excerpt from the American Constitution, as cited in Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the South*. New York: Verso, 1996. 27

² Nils Christie, *Crime Control as Industry: Towards Gulags, Western Style*. London: Routledge, 2000. 111

industry that attends to the management and storage of their excluded bodies. Thus, subjects who in all likelihood were entirely superfluous, or at least at the economic margins of society prior to incarceration⁵³ are embedded into the economic system only upon their physical exclusion and abjection.

This chapter commences with a necessarily cursory glimpse at the history of imprisonment, which focuses on the economic aspect of confinement. While the genealogy constructed in this section is skeletal, to say the least, it nevertheless serves its limited purpose of sketching the historical contours in which further analysis can be located. Consequently, it is perhaps most productive to conceptualize it as an exposition of a series of anchoring ‘moments’ or ‘markers’, rather than a detailed and sequential account of the history of imprisonment. Beginning with labour conducted in the workhouses and bridewells of England, and proceeding through the banishment of prisoners to work in the colonies that are the present day United States and Australia, and the subsequent post-independence convict lease and chain gang regimes of the United States to the contemporary incarnation of the American prison industry, and its mastery of “rehabilitation for profit,”⁵⁴ the chapter traces the twofold economic *inclusive exclusion* of prisoners’ bodies. The chapter also alludes to the disparity between the tradition of prison labour, and the equally salient historical and contemporary trend of isolationism and idleness, currently represented in the United States by super-maximum security camp prisons. A substantive analysis of this trend is, however, left to chapter three, as the sole purpose of broaching camp prisons in the present chapter is to illustrate

⁵³ A number of studies indicate that prisoners are disproportionately drawn from the ranks of the un- or under-employed. See Alex Lichtenstein and Michael Kroll. “The Fortress Economy: The Economic Role of the U.S. Prison System.” *Criminal Injustice: Confronting the Prison Crisis*. Elihu Rosenblatt (Ed.) Boston: South End Press, 1996.

⁵⁴ Lichtenstein (1996) *op. cit.* 22

the relevance of Agamben's notion of inclusion through exclusion to such institutions thereby illustrating that although the bodies of camp prisoners are not re-instated into the socio-economic realm through prison labour, the colossal industry constructed around their excluded bodies economically re-embeds them within the society from which they have been excluded.

Prison Labour in Historical Perspective: The Workhouses of England

For the purposes of this chapter, it is sufficient to commence the history of imprisonment *en media res*, during what has been dubbed by Michel Foucault as the "Great Confinement" of the 17th century.⁵⁵ Prior to the 'Great Confinement', monetary restitution and corporal punishment – public shaming, execution, whipping and maiming – were the favoured methods for coping with criminal behaviour, with individuals who survived their sentences walking among their fellow citizens, their injuries a testament of their sinfulness, and deterrent to those who may consider straying off the righteous path. Those whose sentences condemned them to death were executed publicly at the "hanging match,"⁵⁶ as a lesson to those gathered on the consequences of socially unacceptable behaviour. Sentences of imprisonment in this period, while certainly in existence were handed out infrequently to common criminals, and most of those confined were political prisoners.⁵⁷ By the 17th century, however, support for "hanging matches" began to wane, as they increasingly occasioned disturbances, brawls, and riots, undermining rather than

⁵⁵ Michel Foucault, *Madness and Civilization: A History of Insanity in the Age of Reason*. New York, Vintage, 1965.

⁵⁶ Roger Matthews, *Doing Time: An Introduction to the Sociology of Imprisonment*. New York: Palgrave, 1999. 3

⁵⁷ George Ives, *A History of Penal Methods: Criminals, Witches, Lunatics*. Montclair, N.J.: Patterson Smith, 1970. 1-10

upholding public decency and order.⁵⁸ Simultaneously, the economic transformation associated with the breaking down of the feudal order encouraged an influx of “vagrants, rouges [and] beggars” into burgeoning urban centers.⁵⁹ The practicality of individualized punishment diminished, and the necessity to arrest the proliferation of undesirable populations, and to remove them from sight begot the craze of quarantine and confinement. An assortment of institutions sprung up, ready to contain the unemployed, the infirm, the old, the mentally disturbed, ‘loose’ women, orphaned and bastard children, and anyone else whose ‘abnormality’ threatened the homogeneity and constancy of the social fabric and moral fibre. While an examination of all such institutions can significantly contribute to an understanding of society’s historical urge to purify itself through the abjection of superfluous and undesirable populations, this chapter focuses on only one of these institutions – the workhouse. Such narrowing of scope should not impoverish the analysis, as workhouses most aptly evidence their inmates’ economic *inclusive exclusion*.

The contemporary standard prison has its origins in the combination and centralization of numerous institutions. Local jails, workhouses and bridewells are its most obvious antecedents.⁶⁰

⁵⁸ Matthews (1999) *op. cit.* 3

⁵⁹ *Ibid.* 4

⁶⁰ The bridewell seems to have originated in 16th century England as a method for the suppression of idleness and vagrancy, while the workhouse was popularized in the 18th, 19th and 20th century as an attempt to dissuade the poor from making an application for public relief. While a distinction between bridewell and workhouse (although often difficult to ascertain) arguably exists, it is not necessary to develop it substantially, as the chapter’s primary concern – the economic relationship between such spaces and the remainder of society – can be adequately addressed by examining the labour conditions that were common to the workhouse and bridewell. The chapter, therefore, will focus on an analysis of workhouses, with the understanding that such analysis is equally applicable to bridewells. For an elaboration on the distinction see *Ibid.* 6

Both productive and unproductive labour existed within these spaces, and the justifications for their prevalence are as varied and ambiguous as the spaces themselves. As M.A. Crowther notes in *The Workhouse System 1834-1929: The History of an English Institution*, it is with respect to labour that the workhouse was most confusing, for the purpose of workhouse labour was never entirely clear.⁶¹ While the rhetoric of reformatory labour is common in many institutions that employ their inmates, the actual labour undertaken by inmates has historically vacillated between ostensibly rehabilitative productive and unproductive labour. In the former instance, inmate labour contributed to the maintenance and sustenance of the inmates, either through the production of goods for the use and consumption of the prisoners themselves, or their sale. The utility of such labour was defended with the argument that, in order to possess a rehabilitative quality the consequence of work must be positive, productive and socially valuable.⁶² Thus, although each workhouse “was almost entirely enclosed, and its contact with the outside world deliberately restricted,”⁶³ labour of the productive sort maintained its inhabitants in perpetual association with the ‘outside’, while unproductive labour attempted to preserve a level of ‘social normalcy’ by (imperfectly) mimicking the daily schedule of efficient, productive, and ideal citizens.

Unproductive rehabilitative work seems to have emerged not as a strategy in itself, but as an unintended consequence of the workhouse structure and function. In periods of economic downturn, the cost of raw materials and other inputs frequently was not recuperated through the sale of inmate-produced goods, while in times of economic

⁶¹ *Ibid.* 196

⁶² *Ibid.* 196-7

⁶³ M.A. Crowther, *The Workhouse System 1834-1929: The History of An English Institution*. London: Batsford Academic and Educational Ltd., 1981. 114

revival able-bodied individuals did not enter workhouses in sufficient numbers. Consequently, as Crowther argues, workhouse labour often assumed an exclusively penal character, and “was done not for profit or use, but because it was irksome.”⁶⁴ Inmates were employed at tasks such as stone breaking and pounding, oakum picking and the grinding of bones for fertilizer. While this work is perhaps more monotonous, arduous, and certainly more repulsive than production of goods for consumption, Crowther’s depiction of it as “not for profit or use” is erroneous. The employment of inmates at repulsive and irritating labour is a sound and potentially profitable (or at least less costly) economic strategy as socially necessary but highly undesirable occupations, which free labour will undertake only sporadically in times of economic recession, can be reliably and permanently filled. Moreover, while inmates employed in both labour categories were not properly remunerated⁶⁵ for their work, employing inmates in hazardous or revolting occupations can bring greater economic returns, as free labour would have demanded above-average wages to compensate for the work’s negative attributes.

While Crowther’s distinction between productive and unproductive labour is misplaced, truly unproductive rehabilitative labour did exist in the workhouse, and was often marked by a regression to the manual production of goods whose manufacture has been mechanized for centuries (the hand-grinding of corn, for instance). In the prison, the introduction of the treadwheel and crank is characteristic of an analogous trend. As workhouses coexisted in 19th century Britain with the newly centralized system of

⁶⁴ *Ibid.* 198

⁶⁵ In an attempt to justify the lack of remuneration, an argument was made that if inmates of workhouses were paid for their work, they would have no incentive to look for work on the ‘outside’. Inmates performing extra work within the workhouse such as cooking, cleaning and nursing were sometimes paid in kind, with extra food rations, tobacco or alcohol. Although authorities frowned upon this practice, guardians of workhouses frequently ignored their objections, as paying inmates in kind was more economical than paying for outside labour. See Crowther (1981) *op. cit.* 197

prisons,⁶⁶ “the corn mill was to the pauper as the treadmill to the convict.”⁶⁷ Thus, while the poor were still formally separated from criminals, their punishment and the strategy employed in their rehabilitation was beginning to converge. The treadwheel, invented by Sir William Cubitt sometime in the late 18th century, and the crank, devised by an individual named Gibbs at the beginning of the 19th century, quickly became staples of prisons labour.⁶⁸ Inmates working on the former would walk in circles, chained in position, pushing around an enormous wheel with their collective strength. Those occupied with the crank remained in their individual cells turning its handle 12,000 to 14,000 times a day, 1,800 revolutions for breakfast, 4,500 for dinner, 5,400 for supper, and 2,700 between their last meal and bedtime.⁶⁹ If the required number of rotations was not completed, food was withheld. While inmates participating in such occupations were not implicated directly in the economic relations like their counterparts involved in ‘productive’ labour, their unproductive labour was nevertheless designed to rehabilitate through mimicry of these economic relations. Thus, inmates had to earn their daily sustenance through labour, and if they did not work efficiently, they did not eat. Workhouse and prison spaces, therefore, were like distorted parallel universes, which functioned to completely estrange inmates from society, while simultaneously employing them in bizarre occupations designed to functionally mimic its economic relations.

⁶⁶ The Prison Act of 1865 formally amalgamated the jail and house of correction into the institutional precursor of contemporary prisons. Matthews (1999) *op. cit.* 8

⁶⁷ Crowther (1981) *op. cit.* 199

⁶⁸ Ives (1970) *op. cit.* 190

⁶⁹ *Ibid.* 193

Prison Labour in Historical Perspective: The Colonies

Even inmates inhabiting the parallel universe of unproductive rehabilitative labour, however, were thrust periodically into the economic relations of the society from which they were otherwise excluded. Decrees passed in 17th century France, for instance, entreated magistrates to refrain from sentencing prisoners to death, torture, mutilation, or alternately, from allowing a fine to be paid in lieu of a sentence, so that the labour of as many prisoners as possible could be utilized in galleys of ships.⁷⁰ Moreover, in an interesting twist on the parallel universes of workhouses and prisons – where the labour of inmates remains intricately connected to the economic realm of the society from which they are otherwise sequestered – Britain and other colonial powers began shipping their convicts to labour in the colonies, where their work remained integral to the colonial power despite the even larger chasm physically separating it from the inmate. As early as 1606, a number of convicts joined the Virginia Company, binding themselves to five years of servitude in the colony in return for passage, maintenance and the alluring prospect of eventual freedom.⁷¹ By the mid-17th century, transportation of British convicts overseas was customary, proving an efficient method for supplying the colonies with much needed labour, and simultaneously lessening the burden on already overcrowded penal institutions. It is estimated that approximately 30, 000 convicts were removed to present day United States between 1718 and 1775.⁷² The American Declaration of Independence in 1776 abruptly ended this transportation scheme, causing a temporary crisis of overcrowding. Shipment of convicts soon resumed, this time to Australia.

⁷⁰ *Ibid.* 103

⁷¹ *Ibid.* 108

⁷² Matthews (1999) *op. cit.* 8

The inherent problems of such schemes – the progressive diminishment of the mythical *terra nullius*, and the perpetually increasing number of newly independent colonies whose sovereignty effectively curtailed the dumping of convicts onto their territory – necessitated the implementation of alternate solutions to crowding in prisons. An ingenious plan was soon devised, whereby convicts were stored on hulks, the old sailing and war vessels permanently docked in British rivers and harbours. These floating prisons were similar to their grounded counterparts in that they were crowded and dirty, and their inmates were poorly treated, most labouring at difficult occupations in the harbour. Reports suggest that special ships were designated for underage boys, some as young as nine.⁷³

Like the convict transportation scheme, this development in imprisonment implies not only the desire of society to purge itself of its superfluous, abject and dangerous elements, but also the need to cordon off this population, to create around them a perimeter that incontrovertibly denotes their abjection. As was alluded to in chapter one, however, the abject that is expelled from within the social body remains with it in a permanent, albeit uneasy relationship. Consequently, Kristeva likens abjection to a border: the abjector purges itself of the abject, yet is never radically divorced from it. If this relational pattern is superimposed onto the economic realm of 17th and 18th century British society, the resemblance between Kristeva's model and society's relationship with superfluous, abject and undesirable prisoners is uncanny. As the body abjects that which is superfluous and undesirable, so too does society expel its superfluous, undesirable citizenry, and confines them to enclosed spaces such as workhouses, prisons and hulks, or better still, expels them overseas into the colonies. As the abjector is never radically

⁷³ As cited in Ives (1970) *op. cit.* 126

purged of the abject, however, so the society can never wholly efface this population – the zero-sum game of inter-national movement prohibits their indiscriminate dumping into other territories – nor does it truly want to, as economic benefits can still be sapped out of these abjected bodies. Consequently, they are made to labour at occupations avoided by ‘proper’, ‘self-respecting’ citizenry, are remunerated in kind or not at all, and consequently, not only contribute to the society that has rejected them, but actually generate for it an economic benefit. Thus, through their expulsion and exclusion they are implicated and included in society’s economic realm, and snatched back from the brink of utter superfluity.

Prison Labour in Historical Perspective: American Imprisonment Schemes

Having sketched some of the European antecedents of American penal practices, it is now possible to shift continents in order to examine some of the milestones in the development of the American penal system. As in the case of England, the history of American prisons will be told through a series of ‘moments’ that seem significant to an analysis of society’s tendency to expel the superfluous, abject and undesirable, yet include them precisely through such exclusion in its economic system.

The philosophy and practice of imprisonment that characterized the 18th and early 19th century United States is frequently subsumed under two categories: the ‘silent associated’ or ‘congregate’ system, and the ‘separate solitary’ system.⁷⁴ The Auburn State Prison in New York and the Eastern State Prison in Cherry Hill, Pennsylvania respectively represented the two arrangements. Inmates under the ‘silent associated’

⁷⁴ See Ives (1970) *op. cit.* 183-4 and Matthews (1999) *op. cit.* 17

system were housed in solitary cells but laboured collectively, without pay, during the day (although they were severely punished for speaking to each other, or even glancing around while they worked). Alternately, the infamous Pennsylvania Prison System housed all inmates in permanent solitary confinement, under the impression that, “left in total solitude and divorced from evil influences, the prisoners would have the opportunity to reflect on the error of their ways and to examine their consciences.”⁷⁵ The experience of entering this prison was in itself isolating and alienating. Upon reception, prisoners passed through three rooms: in the first, they were undressed, in the second, they were cleaned by a warm bath, and in the third, were dressed in a prison uniform and led blindfolded to their cells. Morally uplifting reading materials – the Bible – were only available after prisoners were thoroughly crushed and humbled by utter solitude. Following an initial period of isolation, the prisoners could work and read in their cells, but had no other contact with the ‘outside’, as they were allowed no visitors and no letters. The lucky few who occupied ground floor cells could exercise infrequently in an 18ft by 18ft yard – alone.⁷⁶ As word spread that of each one thousand prisoners who passed through the penitentiary’s gates approximately one hundred did not live to finish their sentence and insanity among perpetually isolated prisoners was rampant, the popularity of the Pennsylvania Prison System began to wane, and the Auburn System eventually triumphed. Auburn’s superior returns on convict labour, and consequently, the reduced costs of maintaining the prisoners surely contributed to the decision.

Two separate, yet equally important conclusions can be drawn from an examination of these penal systems. First, it is important to notice that both are

⁷⁵ Matthews (1999) *op. cit.* 17

⁷⁶ Ives (1970) *op. cit.* 184

underpinned by the assumption that removal from all interaction with law-abiding, honourable and desirable citizenry is the best method for dealing with anyone deemed socially superfluous, abject and dangerous. Inmates found themselves in both types of institutions because they could not be ejected beyond the borders of the state – as was the case prior to the entrenchment of the Westphalian state system – so expulsion into specially designed, enclosed and segregated intra-state spaces was the next best alternative. Impermeable as these walls were to the inmates that they surrounded, their exclusion was not absolute. The second conclusion that can be drawn from an analysis of both penal systems is that the physical and psychological sequestering of inmates involved their simultaneous participation in a prison economy intricately connected and firmly embedded within the external socio-economic realm. Through their labour, prisoners under both the ‘silent associated’ and ‘separate solitary’ systems were implicated in the production relations of the society that expelled them. Consequently, both systems included prisoners in the economic relations of the society from which they had been otherwise excluded. As was the case in the workhouses and early prisons of England, therefore, social abjection of undesirables was never complete, the abjected were never radically separated from their abjectors, and the border between the ‘inside’ and ‘outside’ was always selectively permeable.

As the Auburn system of separate housing and associated labour continued to evolve through the 19th and into the 20th century, the Southern states began developing alternate penal mechanism, namely the Convict Lease System most frequently associated in contemporary discourse with road-work chain gangs. While chain gangs were not entirely new – short-term iron gangs and penal settlements to which inmates were sent on

temporary bases to work on roads and in quarries existed in a number of British prisons – the system that prevailed in the South during the American Progressive Era was qualitatively different. In his book *Twice the Work of Free Labor: The Political Economy of Convict Labor in the South*, Lichtenstein details the history of the convict lease and public chain gang system of the Southern United States from the Reconstruction Era to the Great Depression. For the purposes of this chapter, his sophisticated analysis is notable in one specific respect. Attempting to understand the divergence of the Northern and Southern prison systems at this particular historical juncture, Lichtenstein posits that while prison labour generally benefits the capitalist and the state, as it exploits labour to an extreme degree, the convict lease system was a particularly Southern development because in addition to its exploitive character, it was especially suited to the political economy of the post-emancipation South.⁷⁷ Following the outlawing of slavery, the convict lease and later the public chain gang systems were found to be ideal methods for the continued exploitation of black labour, and the simultaneous curbing of its infiltration into the economic sphere, preventing African Americans from climbing the economic ladder and disrupting the homogeneity of the socio-economic system.

Lichtenstein argues that the industrial convict labour popular in the North – where inmates manufactured shoes, clothing, furniture, appliances and other value-added products - was explicitly rejected as a penal strategy for the South, as Southern convicts were mostly of African American decent, and considered incapable of developing the skills necessary to engage in industrial work. Simultaneously, the unskilled nature of the convict lease and chain gang systems ensured that black labour would not infiltrate the

⁷⁷ Lichtenstein (1996) *op. cit.*

white industrial economy, and the restricted place of African Americans' in the Southern labour market would not be undermined. Analyzing the decisions of a Southern committee on prison labour, Lichtenstein also concludes that its members appeared offended by the prospect that industrial prison labour would potentially train African Americans to compete with white artisans and craftsmen, or to work side by side with them.⁷⁸ The convict lease and chain gang systems, therefore, preserved the functions of the outlawed slavery system by ensuring the continued socio-economic exclusion and segregation of African Americans from Southern society.

A booming economy, however, left Southern states in somewhat of a bind. Rail tracks had to be laid, roads had to be built and employment of cheap – better still, free – and docile labour would generate the ideal expense to profit ratio. Contracting out black convict labour to private construction companies proved ingenious, as the states' profit return on such leases was nearly four times their operating expenses,⁷⁹ the pesky issue of housing and maintaining convicts was eliminated – for instance, 1869 marked the last year when Georgia's legislature appropriated any money for the maintenance of the penal system, as the convict lease system was supposed to make it self-sufficient⁸⁰ - and control over the African American population and labour continued to be exerted. While nationally only a small percentage of prisoners laboured under the convict lease system – in 1886 for instance, of the 64,349 prisoners in the United States, 9,699 were leased – the regional discrepancy in the use of the convict lease is staggering.⁸¹ Thirteen Southern states leased their convicts to private entrepreneurs, and it is estimated that Georgia's

⁷⁸ *Ibid.* 33

⁷⁹ *Ibid.* 19

⁸⁰ *Ibid.* 58

⁸¹ *Ibid.* 19

convicts alone graded the beds of at least 496 miles of new rail lines between 1869 and 1971,⁸² extracted hundreds of tonnes of coal, made permanent 6,000 miles of road and improved another 15,000 in one year.⁸³ The regional differences were so visible that one geologist noted that all of the eleven Georgian counties without chain gangs (all in northern Georgia, and with negligible African American populations) made no visible improvements in their roads, while the rest of the state built twelve miles of good roads each day.⁸⁴ “With little or no inconvenience,” noted a road engineer, William L. Spool, “[the convict] accomplishes double as much in a day as a free laborer.”⁸⁵

When set against the living conditions of leased out convicts, the actual labour indeed seems only slightly inconvenient. Lichtenstein notes that,

Convicts labored, ate, and slept with chains riveted around their ankles. Work was done ‘under the gun’ from sun-up to sundown, shoveling dirt at fourteen shovelfulls a minute. Food was bug-infested, rotten, and unvarying; ‘rest’ was taken in unwashed bedding, often in wheeled cages nine feet by twenty feet long containing eighteen beds. Medical treatment and bathing facilities were unsanitary, if available at all. And, above all, corporal punishment and outright torture – casual blows from rifle butts or clubs, whipping with a leather strap, confinement in a ‘sweat-box’ under the southern sun, and hanging from stocks or bars – was meted out for the most insignificant transgressions, particularly to African-Americans who remained the majority of gang prisoners.⁸⁶

The expansion of convict leasing, and the resultant decrease in the volume of prison construction produced an ever-increasing disparity between the number of convicts and the available prison facilities. Consequently, ten-year leases were implemented in 1874, and subsequently, the period was extended to twenty years.⁸⁷ Inmates participating in the convict lease, therefore, were doubly displaced, first from society, and second from the

⁸² *Ibid.* 47

⁸³ *Ibid.* 178

⁸⁴ *Ibid.* 173

⁸⁵ *Ibid.*

⁸⁶ *Ibid.* 83

⁸⁷ *Ibid.* 68

space of their penitentiary home. The society that initially expelled them for their vagrancy, their disruption of categories, identities and social decorum now re-imposed on them the identity of itinerant populations, treading permanently on the verge of political and economic extinction, following the hunt as it were and teetering on the brink of vanishing from the socio-economical realm unless another corporation picks up the contract.

The leasing of convicts did end eventually, not due to humanitarian or ethical conundrums arising from what seems like an extension of slave labour, but as a result of complaints over unfair competition, as those able to employ convicts – who, of course, were not remunerated for their work – were able to eliminate most of their labour costs. As a result, the convict lease metamorphosed into the public chain gang system, whereby convicts laboured only under state contracts. This too was eventually phased out, again for reasons of economy. As the Great Depression set in, so did the realization that “the more prisoners that are worked on the roads the less opportunity is given to citizens...many [of whom] formerly worked upon highways [and] are now seeking relief from the Welfare Agencies.”⁸⁸

The convict lease and chain gang systems are particularly interesting when analyzed through the theoretical lens proposed in this chapter, namely economic *inclusive exclusion* or alternately, inclusion through exclusion. Although both systems fit uneasily in the category of standard prison labour, they are in some ways *inclusive exclusion*’s more radical and pure representations. The convicts’ exclusion is extreme, as they are rendered territorial-less, unfixed nomads, wandering chained at the ankles from one

⁸⁸ Letter from a concerned member of the public sent to the American government in 1922, as cited in Lichtenstein (1996) *op. cit.* 190

roadway to another, passed on from one construction company to the next, sleeping and eating on the move, ceasing their procession only once they have been worked to death. At the same time, their inclusion radically epitomizes not only *inclusive exclusion's* selectivity and ephemerality, but also its necessity - to the economic as well as racial order of late 19th and early 20th century South. The racial composition of the chain gangs reinforces the notion that superfluous (after the termination of slavery), abject and undesirable (due to their perceived racial inferiority) populations are unhesitatingly excluded from society, but never wholly expelled or disconnected, always within reach, if temporarily necessary, or somehow economically desirable.

The eventual demise of the convict lease and chain gang systems engendered a convergence in the penal economies of the North and South, and the prison industry continued its development along a unitary path. As a pamphlet published by the Department of Federal Prison Industries in 1996 called *Factory with Fences: The History of Federal Prison Industries*⁸⁹ indicates, Federal Prison Industries Incorporated (also known as FPI or UNICOR, the latter of which will be used henceforth) was established in 1934, and has since operated the federal government's portion of prison industry. In addition to its obvious task of production of goods and provision of services, which supplies "tens of thousands of inmates with [the] vocational training and work experience they [need] to become gainfully-employed, law-abiding citizens after release," the pamphlet touts UNICOR's "incalculable contribution to law enforcement," as it structures an environment of "safety and security [in] Federal correctional institutions."⁹⁰

⁸⁹ *Factories with Fences: The History of Federal Prison Industries*. Federal Prison Industries, May 1996. Accessed at <http://www.unicor.gov/history/index.htm>.

⁹⁰ *Ibid.*

UNICOR's development was partially spurred by a 1928 report issued by the U.S. Bureau of Efficiency (forerunner to the Office of Management and Budget), which decried the situation of prison labour, noting that in some states less than 30% of eligible inmates were productively employed, idleness "loom[ed] as a serious threat," and wardens were so desperate to occupy inmates that they resorted to dispensing unproductive assignments such as arranging salt shakers in straight lines on mess hall tables.⁹¹ As a result, the 1930s saw the streamlining and centralization of the Federal Prison Industry, as well as the development of four basic categories of work assignment for inmates: institutional support (janitorial duties, landscaping, etc.), farming, public service (highway construction, forestry, etc.), and prison industries (work in prison factories). In order to assuage private corporations, the prison industry attempted to diversify in order to avoid unduly impacting any one product area, and entrenched the principles of the 'state-use system,' in accordance with which inmate labour and production does not compete with free labour and production on the consumer market, but rather, is available exclusively for use and purchase by state agencies.

This reorganization of prison industries proved immensely successful. In its first two years of operation, UNICOR was producing more than seventy categories of goods at twenty-five separate factories – including clothing, furniture, canvas products such as mail bags, tents, automobile seat covers, and cast bronze and iron products such as iron gates and manhole covers - and in the third year, net profits on gross sales of over \$3.7 million reached \$570,000.⁹² Production soared over the course of World War Two, when 95% of UNICOR's output was sold to the military. To meet demand, UNICOR

⁹¹ *Ibid.*

⁹² *Ibid.*

diversified its production, manufacturing bomb fins and castings, TNT casings, parachutes and cargo nets, handled most of the army's laundry contracts, and gave new meaning to the phrases 'military industrial complex' and 'prison industrial complex'. By 1941, its sales reached \$18.8 million.⁹³

The prison industry's wartime boom was followed by a period of contraction and readjustment. Noting the need to adapt production to changing technologies, UNICOR made numerous modifications, overhauling its existing production and developing new lines in stainless steel, thermoplastics, Kevlar-reinforced products (such as military helmets) and optics, introducing novel production techniques and increasing the educational requirements for its inmate employees. While it continued outfitting state agencies, UNICOR also expanded its military contracts. Taking pride in its patriotic contributions, *Factory with Fences* details UNICOR's involvement in the 1990-91 Persian Gulf War, noting that it outfitted the US military with Kevlar helmets, camouflage battle uniforms, lighting systems, sandbags, blankets, cables for chemical gas detection used by the Patriot missile system, and night vision eyewear used during Operation Desert Shield and Operation Desert Storm.⁹⁴

As of 31 December 2002, 2,166,260 prisoners were being incarcerated in the United States.⁹⁵ Of this number, approximately 98,990 were federal prisoners, and thus technically eligible for UNICOR employment.⁹⁶ Statistics available from 2002 indicate

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ Paige Harrison and Alan Beck, "Prisoners in 2002." U.S. Department of Justice, Bureau of Justice Statistics, July 2003. accessed at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p02.pdf>. For a more detailed breakdown of prisoners see chapter four, page 121, footnote 267.

⁹⁶ With the exception of individuals imprisoned in super-maximum security units or facilities, as well as prisoners awaiting trial or deportation, all other federal inmates are eligible to apply for UNICOR employment. Their application can be refused, however, if they are deemed by prison authorities to possess the potential to disrupt the prison work environment. "Work Programs for Inmates: Program

that during that year UNICOR employed 21,778 inmates (22% of the medically able prison population) in 111 factories at 71 locations, and while it was initially established with the intention of providing employment to all able-bodied inmates, its current goal is the employment of just 25% of those eligible,⁹⁷ a discrepancy that speaks to the previously mentioned trend toward super-maximum security confinement where no labour occurs. Federal Prison Industries also employs a non-inmate staff of approximately 2,171, allowing it to claim that in addition to providing productive employment to inmates, it stimulates the job market particularly in rural settings, traditional areas of high unemployment and underemployment, and the customary location for large penal complexes.

It is valuable to sketch broadly the parameters of the discourses utilized by UNICOR in its justifications of prison labour. All materials available from UNICOR engage four broad themes with respect to the necessity and desirability of prison labour. First, prison labour contributes to the creation of a safe prison environment, aiding in the reduction of prison violence and disruption by reducing inmate idleness (seen as the cause of boredom, frustration and consequently, disturbances and riots.) Second, UNICOR argues that prison labour enhances cost-efficiency in the maintenance of the penal system, and thus reduces the burden normally shouldered by taxpayers. Third, the specter of rehabilitation, in the form of job training and skill development is raised, and UNICOR notes that while “prisons cannot magically rehabilitate offenders...they can

Statement.” U.S. Department of Justice, Federal Bureau of Prisons. Accessed at www.bop.gov/progstat/8120_002.pdf.

⁹⁷ Statistics from the year 2002, provided by the U.S. Department of Justice, Federal Prisons Industry 2002. Accessed at <http://unicor.gov>.

provide opportunities for inmates to reform their behavior and rehabilitate themselves.”⁹⁸

With an ingenious sleight of hand, UNICOR not only rationalizes the existence of prison labour, but also simultaneously unburdens itself of the task of rehabilitation, transferring that responsibility (and potential blame for failure) to the inmate. Finally, UNICOR raises the issue of inmate financial responsibility, noting that prison labour allows an inmate to fulfill his/her numerous financial obligations, from alimony and child support payments, to court-imposed fines, victim restitution and room-and-board at the institution.

Wholly inadequate, however, are the wages, with which these financial obligations must be fulfilled. Inmates employed by UNICOR earn between \$0.23 and \$1.15 per hour. It is not surprising then, that inmate labour costs comprise only 6% of UNICOR’s expenditures.⁹⁹ It is, in turn, not surprising that UNICOR’s net income in 2002 was \$9 million, on net sales of \$679 million (an increase of almost \$100 million from the previous year.)¹⁰⁰ The increase in profit was inversely related to UNICOR’s expenditure on salaries, wages and benefits, which decreased over the course of that same year from \$29,714 to \$26,913.¹⁰¹ Low wages notwithstanding, inmates employed in UNICOR industries contributed approximately \$3 million in the year 2002 toward fines, restitution and child support. Such a staggering amount cannot be accounted for through the meager earning of inmates. It seems that the magnitude of imprisonment has more explanatory value.

⁹⁸ *Factories with Fences* (1996) *op. cit.*

⁹⁹ “Federal Prison Industries Snapshot 2002.” Federal Prison Industries. Accessed at www.unicor.gov/about/2002annual/index.html.

¹⁰⁰ U.S. Department of Justice, Federal Prisons Industry. Accessed at <http://unicor.gov>.

¹⁰¹ *Ibid.*

The cornucopia of inmate manufactured products and services is astonishing. UNICOR divides its output into eight categories: Clothing and Textiles, Electronics, Office Furniture, Graphics, Industrial Products, Fleet Management and Vehicular, Recycling/Computer Electronics, and Services. At 6,665 workers, the Clothing and Textiles unit employs the greatest number of inmates, followed closely by Office Furniture. UNICOR's greatest profits are also derived from these two lines of production, albeit in reverse order, with net sales of Clothing and Textiles (at \$159.7 million) lagging behind those of Office Furniture, pegged at \$217.9 million on 30 September 2002.¹⁰² The sophistication of the federal prison industry, and the volume and diversity of its production is evident from even a cursory perusal of UNICOR's website, which offers photographs and detailed descriptions of the majority of products and services offered (and the possibility of ordering a mail-in catalogue). UNICOR's Clothing and Textile line includes military, medical and law enforcement apparel, draperies, custom embroidery and product repair; its Electronics line includes finished electronic products and sub-components for cables and fiber optic assembly, circuit boards, and guided missile components; the Office Furniture category is self-explanatory, except to say that UNICOR's variety and selection rivals that of any Business Depot! UNICOR's Services Department provides everything from data processing - including document conversions, scanning and image clean-up - help-desks, call centers, web- and enterprise-based catalogue and content management, mailing-list management, product assembly and restocking, to laundry, dry-cleaning, embroidery and alteration services, supplying a "viable and cost-effective alternative to off-shore firms."¹⁰³ The Fleet

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

Management and Vehicular unit caters mainly to the military establishment, manufacturing and retrofitting automotive and equipment components. Its web advertisement boasts that,

FPI [Federal Prison Industries] operates facilities throughout the country, comprising more than half a million square feet of factory and warehouse space. The size of our operations, combined with almost 2,000 skilled workers means that no job is too big – or too small. And our skills are proven: FPI is a major vehicular remanufacturing contractor for the Department of Defense, and the major retrofitter for the Immigration and Naturalization Service.¹⁰⁴

Sub-sectors of the Fleet Management and Vehicular include Remanufactured Vehicle Components, Diesel Engine Manufacturing (which, since its inception in 1997 has produced more than 3,000 engines for use in various weapons and support systems by all branches of the U.S. military),¹⁰⁵ Equipment and Vehicle Refurbishing (which repairs and rebuilds automotive components, medium and heavy equipment components, forklifts and portable generators), the Forklift Programs, Electrical Components (a sub-unit dedicated to the rebuilding of common starters, alternators, generators and regulators used in military trucks, tanks and other vehicles), and Mechanical Components (which reconstructs power train components and remanufactures hoods for military HMMWVs) .

In a related field, UNICOR offers recycling services for electronic equipment – “an inmate staffed approach to managing e-scrap”¹⁰⁶ - recently brought to the public’s attention when the Silicon Valley Toxics Coalition (an environmental group based in California) released a report criticizing Dell Computers for its involvement with UNICOR, and accusing it of being party to a primitive manufacturing system that

¹⁰⁴ *Ibid*

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

exposed inmates to dangerous chemicals.¹⁰⁷ Other miscellaneous products manufactured by UNICOR industries include filter products, organizing and warehousing ‘solutions’, prescription- and safety-eyewear, and a “full line of safety, non-prescription eyewear, including industrial face shields, chipping and welding goggles, and safety glasses in both dress and industrial frames...protective eyewear for virtually every eye-threatening situation in the workplace.”¹⁰⁸

The staggering dimensions of the American prison industry are even more apparent when consideration is also afforded state prison industries. In addition to Federal Prison Industries, each state manages its own, local industry. This chapter will briefly outline the extent of the prison industries in three states: New Jersey, California and Florida. These states were chosen specifically, as some of the most notorious super-maximum security prisons (where no labour takes place) are also located within them. The striking contrast between the standard and camp prisons is, thus, brought to the fore, and the previously mentioned contradictory trend in American penology can be comprehensively examined.

New Jersey currently imprisons approximately 27,000 individuals in fourteen institutions – twelve adult male correctional facilities, one women’s correctional institution, and a central reception and intake unit. DEPTCOR is New Jersey’s equivalent of UNICOR, the Department of Correction’s Bureau of State Use Industries, which employs over 1,800 inmates. Like the two other states, it does not sell its products to private citizens or private corporations, but supplies only state, county and municipal

¹⁰⁷ Dell has since cancelled its contract with UNICOR. See “Dell stops using prison labor.” *Associated Press and the Daily Texan*. 11 July 2003. Accessed at http://dominionpaper.ca/international_news/2003/07/11/internatio.html

¹⁰⁸ U.S. Department of Justice, Federal Prison Industry. *op. cit.*

government agencies, including state colleges, universities and public schools. Its self-declared mission, “to employ inmates in enterprises that reduce idleness, produce quality goods and services, offer marketable skills, and yield taxpayer benefits,”¹⁰⁹ succinctly and precisely restates the objectives of, and justifications for prison labour as championed by Federal Prison Industries. DEPTCOR’s website thoroughly details the rationale and benefits of prison labour, but as these are a mirror image of the rationalizations offered at the federal level, they will not be restated here. It is sufficient to note that like UNICOR, DEPTCOR raises the specter of security for inmates and guards, rehabilitative labour, stimulation of the private sector job market and the amelioration of taxpayer burdens – the site notes that \$2.1 million in taxpayer savings were realized in fiscal year 1995 alone, through a reduction in the costs of incarceration by means of inmate contributions, and a decrease in the prices of goods and services demanded by the state. The site also illustrates the steady rise in civilian employment generated by the ‘prison industrial complex’, pegged at 1,778 in fiscal year 2000 (the last year for which statistics are currently available), up from 1,530 in 1998 and 1,260 in 1997.¹¹⁰

Although DEPTCOR operates on a much smaller scale than its national counterpart UNICOR, it certainly rivals the latter in production diversity. New Jersey’s Textile Enterprise manufactures a product line comprised of 200 items including, “a newly designed” winter coat, jumpsuits and orange baseball caps, shoestrings and laundry-bag cords. South Wood Enterprises manufactures letterheads, envelopes, brochures, business cards, greeting cards, vehicle validation stickers, traffic signs, license

¹⁰⁹ New Jersey Department of Corrections, DEPTCOR. Accessed at <http://www.state.nj.us/deptcor/index.html>.

¹¹⁰ *Ibid.*

plates - the industry produces approximately three million license plates annually¹¹¹ - banners and binders. At Bayside Enterprises inmates bake pastries, cakes and breads, the sales of which exceeded \$3 million in the fiscal year 2000. Bayside Enterprises' product line "was [recently] expanded to include steak rolls, bringing the total number of items baked to twenty-five."¹¹² New Jersey inmates can also work in the Metal and Furniture Enterprise, the Data Entry Shop, Warehousing and Logistics, and at numerous other miscellaneous operations including in call-centers. As in the case of UNICOR, inmates' wages are extremely low. The pay scale begins with the 'Learner' wage of \$0.28 per hour, increasing to \$0.33 per hour for 'Unskilled' workers, \$0.48 for 'Semi-Skilled' workers, \$0.58 for 'Skilled' workers, and \$0.88 per hour for 'Highly Skilled' workers employed as Inmate Instructor Assistants.

The California Department of Corrections manages thirty-three correctional facilities and 301,105 inmates with a civilian staff of 49,729, on an annual budget of \$5.3 billion.¹¹³ The Prison Industry Authority (PIA) is the institution that oversees California's prison industries. It operates over sixty services, as well as manufacturing and agricultural plants at twenty-two prisons, which provide employment for approximately 6,000 inmates. Like UNICOR and DEPTCOR, the PIA on-line merchandise and service catalogue is a testament to the sophistication and diversity of the American prison industry. Imprisoned Californians process milk and meat products, chicken products, almonds, coffee, office and dormitory furniture of magnificent variety, clothing, boots, shoes, gloves, cleaning supplies, body restraints, pot holders, mourning ribbons, flags, diapers and bibs, and offer services ranging from graphic design and

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ California Department of Corrections. Accessed at <http://www.cdc.state.ca.us/default.asp>.

printing to institutional laundry services. Following the deduction of court-ordered restitutions, which are transferred to the Crime Victim's Restitution Fund, but prior to numerous other deductions (including taxes, room-and-board and family support payments), the inmates receive a wage of between \$0.30 and \$0.95 per hour.¹¹⁴

The prison industry in Florida is so similar to the aforementioned industries that it does not merit detailed discussion. Inmates engage in comparable occupations and are paid comparable wages. The Florida Department of Corrections presently manages 77,355 inmates housed in 121 facilities, an increase of 4.2% from the year 2002, when 74,249 individuals were incarcerated by the state.¹¹⁵ As in the other states, there is evidence of the recent proliferation of prison labour and of penal institutions that employ prisoners. Similarly, evidence exists of the ever-increasing quantity of goods and services provided to state agencies through prison labour.

While all three of the states discussed, as well as Federal Prison Industries maintain a state-use system whereby state agencies are the exclusive consumers of prison made goods and services, a number of states have begun selling to private corporations.¹¹⁶ MicroJet Corporation (a major supplier for Boeing Corporations) employs prisoners in Washington state who train to make aircraft components at six dollars per hour, progressing eventually to seven dollars per hour, an amount that represents almost one fourth of the wages of free, unionized labour in comparable industries.¹¹⁷ MicroJet further reduces its expenses by avoiding the cost of health

¹¹⁴ Prison Industry Authority California. Accessed at <http://www.pia.ca.gov/piawebdev/index.html>.

¹¹⁵ Latest available statistics, 30 September 2003, from the Florida Department of Corrections. Accessed at <http://www.dc.state.fl.us/pub/factsheet/1003/prison.html>.

¹¹⁶ Kansas, Nevada, Ohio, Oregon, South Carolina, Tennessee, Texas, Washington and Wisconsin are a few of the states that allow the sale of items produced in state-run prison industries to the general public.

¹¹⁷ Paul Wright, "Profiting from punishment: Boeing goes to prison." *Prison Labor News*. 1 March 1997. Accessed at <http://www.corpwatch.org/issues/PID.jsp?articleid=854>.

insurance, unemployment insurance and worker's compensation. Finally, the state's provision and maintenance of the necessary industrial space reduces the company's overhead costs. It is not surprising that the competitive advantage generated by such reduction in expenditure has convinced many corporations to maintain their production in North America – where they can more efficiently manage the post-fordist 'just-in-time' production characteristic of the current economic climate – and simply replace expensive and volatile free labour with inexpensive and stable prison labour. In addition to MicroJet, companies such as the TWA, Redwood Outdoors – which manufactures clothes for Eddie Bauer, Kelly Hanson, Planet Hollywood and Union Bay, among others – Victoria's Secret, Microsoft, Dell, Elliot Bay, A&I Manufacturing and the Washington Marketing Group (a telemarketing company) are among the many that purchase inmate goods and utilize inmate staffed services. Even states that maintain a state-use system have managed to infiltrate the private sector market. California's PIA, for instance, is aggressively developing markets in foreign countries: its inmate produced, denim clothing bearing the orange stencil, "California Department of Correction" is sold in Japan.

As in the case of state-use prison industries, inmates employed by private corporations pocket wages that are significantly below not only the wages received by free labour in comparable industry, but also the mandated minimum wage. In Washington State, for instance, while prisoners employed by MicroJet receive a wage of seven dollars per hour, they pocket only a fraction of that amount. The state deducts 20% for the "cost of corrections," 10% is placed in a mandatory savings fund controlled by the Department of Correction, 5% is taken away by the Crime Victim's Compensation Fund,

and up to 20% more is deducted for victim restitution, legal costs and other court-ordered financial obligations. For one inmate, a forty-hour workweek at a wage of six dollars per hour – manufacturing carabiners for Omega Pacific - yields a weekly income of \$240, from which he pockets \$60.¹¹⁸ At the Lockhart Correctional Facility in Texas, where 180 prisoners assemble circuit boards for Lockhart technologies, an inmate paid the minimum hourly wage makes approximately \$0.50 per hour in actual income. Lockhart Technologies closed its Austin, Texas plant in 1993, where approximately 130 workers were paid \$10 per hour, and moved its entire manufacturing operation to the prison, where its costs are reduced not only through the decrease in labour expenses, but also by the virtual elimination of overhead costs – Lockhart presently pays \$1 annually in rent.¹¹⁹ Bret Atwater, owner of Omega Pacific, which also recently moved its entire manufacturing component into a prison, succinctly encapsulates some of the benefits of prison production in an interview with the *Spokane Spokesman Review*: “The workers are delighted with the pay; [there are] no workers who don’t come in because of rush hour traffic or sick children at home; workers... don’t take vacations. Where would these guys go on vacation anyway?”¹²⁰ Contrary to Atwater’s statement, not all inmates are delighted with their wages and working conditions. While inmate unionization is outlawed in most states, some prisoners have attempted to unionize, notably in Missouri.¹²¹

As previously mentioned, the current economic climate where just-in-time, flexible production is gaining momentum, inexpensive and adaptable production in local

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ As cited in *Ibid.*

¹²¹ For testimonial regarding inmate unionization attempts in Missouri see Sidney Williams, “MPLU Missouri Prison Labor Union.” Accessed at www.patrickcrusade.org/MPLU.html

prisons is making increased economic (as well as political) sense. The intensified interest in post-fordist, just-in-time production makes inmate labour desirable, due to its relative proximity to the intended market (in contrast to sweat-shops located in export processing zones thousands of miles away), and the potential for short-term flexible contracts (as opposed to paying unionized labour during down times). Even the commodities produced by inmate labour, and the prison paraphernalia industry (to be discussed subsequently) seems to reflect the changing economic system and the present drive towards product differentiation and niche marketing.

In addition to its post-fordist flexibility, prison labour is desirable in other ways. For state entities, prison labour is doubly attractive. The desire to obtain goods and services at the lowest possible prices (so as to reduce state expenditure and thus maintain the illusion of a small, non-interventionist state), combined with the economic nationalism it is often expected to espouse, makes the purchase of relatively inexpensive, prison-made commodities both economically attractive and more politically appealing than the purchase of their foreign-made equivalents. Private industries, also increasingly interested in cost-cutting and competitive advantage, find the low or non-existent overhead costs, the low wages, and the ability to eliminate the costs of health and unemployment insurance and the inconvenience of a unionized or fickle workforce attractive.

The present state of the American penal industry is not only attuned to the economic but also to the political milieu. First, the radical economic liberalism currently practiced in the United States dictates that individuals employ their own, individually secured resources for the purposes of survival, and rely on state 'handouts' as

infrequently as possible. It is likely that such ideology contributes to the increasing interests in prison labour as a mechanism through which prisoners can at least mitigate the costs of their maintenance, and consequently, experience at least partially the revered state of self-sufficiency. Coupled with the discourses of active and responsible citizenship (to be discussed at greater length in chapter three), which can encourage inmate labour as a means of symbolic and monetary atonement for transgressions committed against the specific victims of crime and society in general, radical neo-liberalism can be seen as a contributing factor to the current penal climate and the proliferation of inmate labour in standard prisons.

The relationship between prison labour and both a society's politico-economic environment and its politico-economic needs is of course not novel. The history of prison labour thus far presented in the chapter seems to give credence to the idea that prison labour both reflects, and complies with the politico-economic context of a society at a particular historical juncture.¹²² As the chapter has shown, unproductive labour prevailed in workhouses and early prisons when productive labour was difficult to sustain, and consequently economically unfeasible. Subsequently, criminals were transferred to the colonies when labour was scarce there, in order to maintain the economic viability of the colonial possessions through an adequate exploitation of their resources. Similarly, labour under the convict lease and chain gang systems was

¹²² A more rigid version of this sentiment was initially forwarded by Otto Kirchheimer and Georg Rusche in their seminal *Punishment and Social Structure*. Kirchheimer and Rusche argued that prisons are part of a disciplinary network for the regulation of economically and otherwise marginalized groups, and that the relations of production at a given historical juncture determine the nature of punishment. While critics have (rightly) condemned the excessive economic reductionism and determinism of the authors' argument, they have also noted their sophisticated understanding of the complexity that characterizes the relationship between punishment and a society's economic, political, social and cultural realms. Otto Kirchheimer and Georg Rusche, *Punishment and Social Structure*. New York: Columbia University Press, 1939. For an analysis of their arguments see Matthews (1999) *op. cit.* 10

administered in southern United States as ‘rehabilitative punishment’ at least partially because of its particular suitability to the politico-economic environment of the 19th and early 20th South. Transformations in the economic realm, and the onset of the Great Depression in turn contributed to the demise of the two systems. The subsequent rise in fordist industrial production on the premises of prison institutions seems to have coincided with the development of fordism on the ‘outside’, and as previously mentioned, the current incarnation of the prison industry seems particularly suited to the contemporary politico-economic context. While a more detailed examination of this apparent relationship is beyond the scope of this project, a cursory allusion to it usefully reveals yet another facet of prisoners’ *inclusive exclusion*.

The contemporary *inclusive exclusion* of inmates through prison labour, therefore, can be conceptualized as an outgrowth of the historical tradition of productive inmate occupation. Another form of economic inclusion, however, has flourished recently - the industry dedicated to effective and efficient exclusion. While the construction and outfitting of prison facilities has unarguably benefited the winners of such contracts for centuries, the recent proliferation of what will be referred to as prison paraphernalia, is unprecedented. The number of corrections-related journals, magazines and product catalogues is staggering itself. The American Correctional Association publishes one of the most popular journals, *Corrections Today*, seven times per year, and maintains an online store and catalogue from which one can purchase books and videos on correction-related issues, sign up for conferences and workshops and enlist in a variety of training modules including the Correctional Emergency Response Teams (CERT) training session, which teaches prison guards the “advanced response techniques” required to

manage “critical incidents.” In his analysis of *Corrections Today*, Nils Christie found that the June 1991 issue contained 111 advertisements for corrections paraphernalia and prison construction.¹²³ Among these was an advertisement for the TD Guard System, “a strategic arrangement of tear gas dispensers installed at the ceiling level... [which] can be fired from a remote-control console by protected personnel. The firing can be in a chosen pattern and with various levels of concentration to force the inmates to evacuate an area in a [chosen] route.”¹²⁴ The *Buyers Guide of Correctional Products and Services*, notes Christie, listed “296 companies, with a specification of their products, from A-Access Control Systems, via P-Portable Jail Cells, down to X for X-ray and security screening equipment.”¹²⁵

Catalogues of correctional products have now appeared on-line. *Correctional News Online*¹²⁶ and the off-line *Buyers Guide of Correctional Products and Services* are similar in that both function as indexes comprised of hundreds of companies providing goods and services in each of the three areas into which the industry for prisons can be divided: equipment for prisons, building of prisons, and ownership and management of prisons. For purposes of clarity, each area will now be discussed separately. First, as the example of the TD Guard System indicates, the use of security/insecurity discourses by developers of prison equipment has become an art form. In addition to remote-controlled gas dispensers, prison employees can

create a rehabilitative atmosphere – and still maintain a high security level – [with the use of] a laser-scanning and portable data-collection system to identify and monitor the inmates. By using hand-held laser units to scan... wristbands, deputies enter data into a small computer.¹²⁷

¹²³ Christie (2000) *op. cit.* 113

¹²⁴ *Ibid.* 114

¹²⁵ *Ibid.*

¹²⁶ *Correctional News On-line*. Accessed at <http://www.correctionalnews.com>.

¹²⁷ Christie (2000) *op. cit.* 115

With the help of the companies listed in *Correctional News Online*, the prison connoisseur can build and outfit a state-of-the-art, safe and secure prison from scratch. Under hundreds of thematic headings, ranging from Administration, through Architectural and Engineering Services, to Communication and Inmate Management and Maintenance, the entire industry is at the buyer's fingertips. Under the Architectural and Engineering Services heading one finds, among many, Acorn Engineering, which manufactures "stainless-steel, vandal-resistant" plumbing fixtures, Actall Corporation, producing personal duress security products, and Senstar-Stellar, manufacturer of the Barricade 500 system,

adaptable to most types of fences constructed of metal fabric...designed to detect attempted intrusions [and by extension, attempted escapes] through the perimeter's fence. The propriety vibration sensors type GS-18, fastened to the fence fabric, detect vibrations caused by scaling the fence or cutting thorough it. These vibrations produce electronic signals, which are analyzed by the control unit.¹²⁸

Alternately, from the ATD-American Corporation's on-line catalogue¹²⁹ one can purchase riot gear including, for a mere \$118.90, a riot helmet with a face mask, in black brown, midnight blue, or olive drab, while for \$359.90 one can own the Twin Turbo, DynamicEntry ThunderBolt Entry Ram, with "Proven Performance in the Most Violent Environments."

At *Corrections Catalogue.Com*,¹³⁰ an index site similar to *Correctional News Online*, the variety of paraphernalia is astonishing. Browsers can order fire resistant mattresses and pillows, clothing of all sorts – including suicide prevention accoutrements such as the \$300 "suicide smock" that provides "warmth and modesty for suicidal

¹²⁸ Senstar-Stellar Corporation. Accessed at

<http://senstarstellar.com/Main.cfm?URLPage=Products&URLSubPages=5>.

¹²⁹ ATD-American Corporation. Accessed at <http://atdamerican.com/catalog/index./php/cPath/2>.

¹³⁰ *Correction Catalogue.Com*. Accessed at <http://correctioncatalogue.com>.

individuals in locked facilities” – innumerable locks and doors including deadbolts, automatic door closing mechanisms and food-pass doors; drug-testing kits and other specimen collection implements; knee and elbow pads, and other prison riot gear; and various restraints, including bed restraints, locking extremity and torso restraints, body wraps and transport boards. The “locking ankle hobble,” available in 10 and 20 lbs. varieties is marketed with the slogan “Slow ‘em down with leg weight.” Restraining Body Wraps are available in “multiple sizes, easy-to-clean cotton, and [featuring] a control handle. They may be used alone to aid in physical holds...or along with wrist or ankle restraints.” Apparently, the body wrap greatly complements the Restraint Blanket Wrap, which comes in three sizes, adjusts to accommodate juveniles or adults, and features a pillow for head support, eight handles for team transport, and is made from a heavy-duty, easy-to-clean canvas that provides a “snug, comfortable fit.” If a blanket does not suffice, there is the TransBoard, “ideal for transport and temporary stationary restraint situations, [equipped with a] five-point polypropylene restraint system...[and] a pillow [that] protects the head from banging.” The board sells for \$1012.50. If even the board proves ineffective, Expandable Batons are also available. They feature “larger diameter tubes and end caps [that] disperse energy and prevent thrust penetrations.” As the advertisement indicates:

[Their] heavier weight makes effective stopping power possible. Lightweight batons are ineffective when employed against the large muscle groups of aggressive attackers. Immediate stopping power lowers the risk of potential injury to officers and the related legal liabilities of unnecessary multiple strikes. Primary striking tube completely machined, not expanded or swaged. This provides a stronger joint and prevents cracking and separations. Unsurpassed durability and effective performance due to special joint design and tube diameters.¹³¹

¹³¹ *Ibid.*

The site also offers eight types of handcuffs – in addition to an array of disposable restraints or ‘flex-cuffs’- intercoms, pagers, video and audio equipment for video conferencing, video arraignment, and video visitation, as well as pre-cast padded and isolation cells, “with architectural finishing to provide aesthetically appealing exterior façades.” At last check, the site’s “order-o-meter” registered 23,821 orders.¹³²

The second area of prison industry, namely the construction of prisons, is also booming.¹³³ A pioneer in prison construction is Durrant Justice, which specializes in urban penitentiaries.¹³⁴ The company’s most recent achievements include the \$137 million Maricopa County 4th Avenue Jail in Phoenix Arizona (to be completed in 2003), the Milwaukee Secure Detention Facility, a nine story medium/maximum security prison located on a 1.7 acre site in downtown Milwaukee, Wisconsin, and a maximum security addition to the Dodge Correctional Institution in Waupun, Wisconsin. Despite the perpetual construction of new institutions, the American penal system is presently experiencing a crisis of overcrowding.¹³⁵ This crisis has generated two bizarre spin-off industries – ‘bed brokers’ and ‘coastel’ manufacturers. As described by Eric Schlosser, a state with a surplus of inmates will employ the services of a bed broker, who will search for a private facility with empty beds within the indicated price range – the daily cost can range from \$25 to \$60 depending on the facility, and its level of occupancy. Upon the

¹³² *Ibid.*

¹³³ As pointed out by Christie, more than one hundred firms specialize in prison architecture and construction, with the prison construction industry securing approximately \$6 billion in annual construction business. Christie (2000) *op. cit.* 117

¹³⁴ The popularity of urban penitentiaries located in sky-scrapers that blend into the downtown core of urban centers is growing. It seems as though intra-state exclusion, and liminal space construction has reached such sophistication that it can be achieved in intimate proximity to the ‘inside’ of society. For photographs and descriptions of some of the newest urban penitentiaries see Durrant Justice at <http://www.durant.com>.

¹³⁵ The overcrowding crisis has been discussed since the 1980s boom in imprisonment. See Peter Matthews and Peter Francis (Eds.) *Prisons 2000: An International Perspective on the Current State and Future of Imprisonment*. London: MacMillan Press, 1996.

completion of a transaction, the bed broker will earn a commission of \$2.50 to \$5.50 for each day of successful allocation.¹³⁶ In an eerie throwback to 18th century hulks, the Bibby Line Group offers crisis relief through alternatives to land based facilities. Within 9-12 months, Bibby Line can construct a 'coastel,' "internally indistinguishable from its land-based counter-part," but externally, floating on a body of water, fastened to a dock. According to the Bibby Line website, coastels are self-sufficient, able to provide accommodations that exceed the standards of shore-based equivalents, and are "highly competitive where time is of the essence or traditional land-based facilities are unavailable." The website boasts that the company has provided 800 beds for prison accommodation in the United States, 3,000 beds for asylum seekers in Sweden, Germany and the Netherlands, and contractor accommodation in the United Kingdom and Scandinavia.

With the prison construction business booming, and the overcrowding crisis showing no signs of subsiding, it is no surprise that the third area of the prison industry, the ownership and management of prisons and local jails is also lucrative. In 1987, only 3,000 American prisoners were housed in institutions run by private firms. By 1996, the number increased to 85,000.¹³⁷ The advertisement for the American Jail Association Training and Conference in Indianapolis in May of 1994 aptly captures the mood of excited eagerness that has increasingly characterized the private prison and jail industry:

Jail Expo 1994 / Tap into the Sixty-Five Billion Dollar Local Jails Market/.../
There are over 100,000 people who work in the nearly 3,400 local jails in the
United States. / Last year alone, over \$65 BILLION was spent in the industry. /
The local jail market is very lucrative! / Jails are BIG BUSINESS.¹³⁸

¹³⁶ As cited in Christie (2000) *op. cit.* 123

¹³⁷ *Ibid.*

¹³⁸ As cited in *Ibid.* 117; Emphasis in original.

Conclusion

There is no doubt that the ‘prison industrial complex’ has never before reached the current level of sophistication, diversity, and sheer magnitude. As the previous sections indicate, labour in prisons has a lengthy pedigree stretching from crude unproductive and productive labour in early British and American penitentiaries, to the state-of-the-art production facilities found in an increasing number of American prisons. Productive prison labour in the United States has evolved from small-scale production of simple, undifferentiated goods such as license plates and vehicle validation stickers, to the provision of sophisticated services and the production of incredibly diverse lines of consumer goods. American prisoners manufacture everything from baked goods, via lingerie and furniture, to sophisticated military products including night-vision goggles and missile components, the latter two illustrating the erroneous analytical severance of the ‘military-industrial complex’ and ‘prison-industrial complex’. As such, the abject, dangerous, undesirable and often economically superfluous populations are included precisely through their physical exclusion in both the production circuit of the society from which they have been removed, as well as being indirectly implicated in the broader economy through the industry designed to manage their exclusion.

Inmate labour in prison industries, therefore, is no longer the exclusive mechanism of economic *inclusive exclusion*, as evidenced by the highly evolved and differentiated industry of prison paraphernalia. Seen through the corporeal metaphor alluded to previously, this enterprise dually implicates the prisoner’s body in the economic realm of the society from which he/she has been removed. Industries dedicated to the construction of spaces for the storage of these expelled bodies and to the outfitting

of these spaces with state-of-the-art equipment for their confinement, discipline, and surveillance are the mechanisms of *inclusive exclusion* in this instant. Prisoners are thus doubly implicated in the *inclusive exclusion* dynamic, as upon their expulsion from society and confinement at its liminal margins, they are simultaneously included in the sophisticated economy of the prison-military-industrial complex through both their labour in prison industries, and the industry represented by the prison itself. Therefore, even though prisoners in maximum-security units do not engage in prison labour (or much else, for that matter), they nevertheless remain affixed to the society that has expelled them. Inmates confined in standard prisons are implicated through their labour in prison industries as well as through the industry that has emerged to manage their exclusion, while those stored in maximum-security units and institutions are implicated through the latter process alone. Consequently, Agamben's concept of inclusion through exclusion aptly illustrates the relationship between society and *both* standard and camp prisons. The American penal industry, therefore, is not only perfecting its 'rehabilitation for profit' economic sector, but has actually managed to create an industry from the process of exclusion itself.

Building on this relationship between the 'inside' and 'outside', and on Agamben's concept of *inclusive exclusion*, the third chapter attempts to complement the understanding of the economic relationship between society and its prisoners with an analysis of the socio-political relationship between the abject, superfluous and undesirable populations and the society from which they are excised.

Chapter Three: Political Inclusive Exclusion

The previous chapter endeavoured to demonstrate that populations situated at the nexus of abjection and superfluity, who by virtue of this positioning acquire the label of “dangerous classes,” remain embroiled in a precarious and selective economic relationship with the society that excises them as undesirables, which is best characterized by Agamben’s concept of *inclusive exclusion* or inclusion through exclusion. Prison labour, as well as the industry that revolves around the administration and maintenance of exclusion, are the twin mechanism through which the imprisoned segment of these “dangerous classes” remains inclusively excluded in socio-economic relations. The ambiguous relationship between citizens and their abject, superfluous and dangerous “immanent others,” however, permeates all realms of social interaction, and replicates within all realms the logic of alterity that continues to tenuously include ‘the outsiders’ in the society that excludes them.

The current chapter, therefore, attempts to supplement the previous analysis of economic *inclusive exclusion* with an investigation of its manifestations within what will be referred to as the political sphere. As the ‘political sphere’ can comprise an array of interactions, the chapter will utilize citizenship discourse as the primary lens through which to explore the relationship between prisoners and the socio-political sphere. For the sake of consistency, the chapter will employ a structure analogous to that of chapter two. First, it will selectively revisit the history of penal institutions presented in the previous chapter, and complement the attention afforded to the economic consequences of the evolving penal policies with an analysis of their political aspects and implications. Second, the continued political relationship between standard or non-camp prisoners and

the society from which they are extracted will be considered, followed by a corresponding analysis of camp inmates and institutions. Finally, the chapter will examine the intensification of the trend toward the permanent physical and socio-political exclusion of both standard and camp prisoners – including those who have already ‘served their time’ - from the sphere of formal and substantive citizenship. Throughout the chapter, allusions will be made to one of the issues that will be afforded greater consideration in chapter four, namely, the apparent transformation in the functions of American imprisonment from rehabilitation, punishment and restitution, to their present service as part of a more complex process of permanent, intra-state incapacitation and exclusion of the “dangerous class” of abject and superfluous individuals.

Prison Exclusion in Historical Perspective: Amsterdam House of Correction

In order to appreciate fully the historical ambiguity that characterizes the relationship between society and its superfluous, abject and dangerous “immanent others,” it is useful to momentarily and very selectively resurrect the discussion of European precursors to modern American prisons undertaken in the previous chapter. It is vital then, to revisit the house of correction, and explore its political relationship with the balance of society. The Amsterdam House of Correction, administered under the authority of Dr. Sebastian Egbertszoon, was one of the first of its kind in continental Europe, and perfectly exemplifies the ambiguity of this relationship. In his detailed analysis of the institution, Thorsten Sellin¹³⁹ notes that the house was entirely inaccessible to the public. While Sellin does not present historical material that would expose the logic behind this rigid

¹³⁹ Thorsten Sellin, *Pioneering in Penology: The Amsterdam Houses of Correction in the Sixteenth Centuries*. Philadelphia: University of Philadelphia Press, 1944.

separation of inmates and citizens, he advances the hypothesis that such action was taken to keep the identity of inmates from being revealed and from hindering their post-release social re-integration. Although this may well have comprised a part of the reasoning, the prevalence of contamination discourses at this historical juncture, and the resultant fear that criminal and undesirable behaviour spreads by association, suggests that other factors had a larger bearing on the decision to detach the institution from the public realm. Thus, it may have been perceived as necessary for the ‘greater good’ of the citizenry, who may otherwise be corrupted unknowingly while passing beggars and vagrants on city streets, that such populations, and the institutions housing them be as inaccessible as possible – not to mention the convenience of removing such institutions beyond the realm of public scrutiny. That the segregation was impeccably implemented is evidenced by the testimonials of a number of early writers, who noted that while the pest raged in Amsterdam in 1602-3, none in the House of Correction were infected by disease.¹⁴⁰ However, as every philosophy and every conviction has its price, soon enough Dr. Egbertszoon began dispensing visiting permits against the payment of a “nominal fee,” to all who wanted to gasp in horror at the levels to which human beings could sink and look with self-satisfaction and pride at their own superiority, and to tourists who took in the city’s outcasts along with its architectural and cultural attractions.

The desire for such contact despite fears of contamination epitomizes the ambiguous relationship between the abjected ‘other’ and the abjector ‘self’ as described by Kristeva. Although the body (be it individual or social) abjects its superfluous and undesirable elements, it never successfully obliterates them (nor does it necessarily want to), but maintains with them a perpetual relationship of fearful yet obsessive fascination,

¹⁴⁰ *Ibid.* 61

akin to that of a fetish. The ambiguity of the relationship, however, extends beyond the purview of psychoanalysis. Despite discourses of contamination and fears that the “dangerous classes” are multiplying, infecting and debilitating the urban centers that they increasingly inhabit, conjugal visits were permitted and even encouraged at the Amsterdam House of Correction, and probably at its successor institutions, with the explicit purpose of aiding the state’s population policies and its objective of population growth.¹⁴¹ Thus, while the socio-political rights of the inmates were removed, they were symbolically stripped of their status as ‘respectable’ and ‘worthy’ citizens, and they were physically isolated for fear of contamination, they were simultaneously commissioned by the state to perform certain duties and responsibilities of citizens, which in this instance were the reproduction and maintenance of population.

Prison Exclusion in Historical Perspective: The Colonies

An analogous ambiguity and contradiction seems to have existed within the practice of convict expulsion to the colonies. As Patricia O’Brien details in *The Promise of Punishment: Prisons in the Nineteenth-Century France*,¹⁴² the French system of convict deportation into the colonies was modeled chiefly on the British scheme discussed in the previous chapter. As the economics of these schemes were analyzed in chapter two, the current section will explore the political intricacies of this process of expulsion. Initially deportation from France was reserved for political prisoners, as they were considered the greatest threat to the nation and state. As revolutionary fervour intensified in the mid- to

¹⁴¹ *Ibid.* 77

¹⁴² Patricia O’Brien, *The Promise of Punishment: Prisons in the Nineteenth-Century France*. Princeton N.J.: Princeton University Press, 1982.

late-1800s, two new categories of deportation were introduced – transportation and relegation – amid fears that the corruptive influence of hardened criminals would foment discontent and disobedience among the already volatile working classes. Thus, criminals sentenced to hard labour were banished to Algeria or French Guiana under the rubric of “transportation” for no less than five years and no more than ten, while anyone deemed a recidivist was sentenced to life in the colonies under the category of “relegation.”¹⁴³ As recidivists were considered the most dangerous of criminals, who presented the greatest threat of infecting others with their incorrigible behaviour, the law guiding their banishment frankly indicated that its sole purpose was their removal from France.¹⁴⁴ Relegation, of course, was most frequently applied to the poor, as the greatest incidence of multiple offences occurred in categories such as vagrancy, begging and prostitution. Expelling this group beyond the borders of France was touted as an efficient means of cleaning up burgeoning cities.

The French government of the time seems to have taken the sentiments of Charles Bertheau – “As long as we have wrongdoers in our midst to be expatriated, we shall always have a corner of the world far from us to be colonized”¹⁴⁵ – to heart, as 29,000 prisoners were transported to Guiana and New Caledonia between 1852 and 1875, 42,000 were shipped between 1871 and 1885,¹⁴⁶ and the sentence of relegation to the colonies was pronounced against 10,000 men and women between 1885 and 1900.¹⁴⁷ Although some criticized the policies of transportation and relegation as insufficiently severe,

¹⁴³ Recidivism was determined by a formula that accounted for the number of convictions over a specific time period. *Ibid.* 261 and 265

¹⁴⁴ *Ibid.* 265-6

¹⁴⁵ *Ibid.* 258

¹⁴⁶ *Ibid.* 270

¹⁴⁷ *Ibid.* 50-292

statistical information on rates of sentence survival are testament to the presence of extremely difficult living conditions, prompting the leading penal reformer René Béranger to call the policies “la guillotine sèche,” the bloodless guillotine.¹⁴⁸ Of the 42,000 prisoners sent between 1885 and 1900, for instance, 16,440 died prior to the completion of their sentence.¹⁴⁹

Convicts of all categories serving time in the colonies were doubly punished, for upon the completion of their allotted sentences they were obliged to reside in the colony for a corresponding period of time. Both economic and political considerations seem to have justified this policy. As Louis Napoleon explained on 12 November 1850,

Six thousand convicts shut up in our prisons are an enormous burden on the budget and they become more depraved and threaten our society without cease. It seems impossible to me to make the punishment of hard labour more effective, more edifying, less expensive and more humane, while making use of it for the advance of French colonization.¹⁵⁰

Expulsion, then, made economic sense in that it enabled inexpensive exploitation and settlement of the colonies while reducing the costs of incarceration in France, and political sense in that it purged and cleansed the motherland of its abject, superfluous scum. Numerous individuals, in fact, including a prison official by the name of Dr. Vingtrinier, urged deportation of all groups that were ‘undesirable’, infectious and burdensome: convicts, recidivists, parolees, abandoned children, the poor and the unemployed.¹⁵¹

As in the case of the houses of correction, policies of expulsion served as a method of purification, whereby the social body abjected from within itself that which

¹⁴⁸ *Ibid.* 268

¹⁴⁹ Between 1852 and 1875, similar death rates were recorded, with 11, 267 convicts, or 61% of the population dying prior to the completion of their sentence. *Ibid.* 270

¹⁵⁰ *Ibid.* 262

¹⁵¹ *Ibid.* 263

has become excessive and superfluous. Yet, as in the case of intra-state expulsion into houses of correction and prisons, the ties between the abjector and the abjected are never completely severed. Beyond the continued economic relationship described in chapter two, an ambiguous socio-political interdependence existed between the convicts residing in the colonies and the states from which they were banished. The relationship was analogous to that which existed between society and the inmates of the Amsterdam House of Corrections, for even through the criminals ‘transported’ and ‘relegated’ to the colonies were abjected as undesirable citizens and discouraged from returning to France, they were simultaneously charged with the reproduction of French civilization abroad. Prisoners subject to individual relegation (as opposed to collective relegation, which bound them to labour in prison compounds) were allowed to reside in the colonies in a state of relative liberty, exercising their professions, working as hired labour and frequently receiving plots of land on which to settle and cultivate crops.¹⁵² In addition to conforming to the economic responsibilities of productive citizens, banished convicts were expected to contribute to the reproduction of French civilization in the colonies. Consequently, the French government was acutely interested in the fostering of family units within the colonies, an interest that translated into incentives for the families of banished convicts to join them in the colonies, as well as into the shipment of “volunteer” female convicts for the explicit purpose of marriage.¹⁵³ The brilliance of these policies, of course, lies in their dual function – an increase in settler population, and the simultaneous expulsion from France of individuals who may not be criminals themselves,

¹⁵² *Ibid.* 273

¹⁵³ *Ibid.* 282; O’Brien expresses doubt over whether these shipments were in fact “voluntary,” alluding to evidence indicating that the most ‘problematic’ female prisoners were most frequently the ones who ‘volunteered’ for transfer to the colonies.

but whose association with criminals makes them equally infectious, objectionable and undesirable.

Stripped of citizenship in their home country and expelled beyond its borders, convicts were treated as model citizens in its colonies. "Having achieved exclusion in the most extreme form by the physical removal of criminals from their environment," notes O'Brien,

the system encouraged the social interaction of prisoners and former prisoners within the penal colony...[attempting to] reconstitute 'normal' life by integrating the convict into a specially created community of other outcasts...[However,] criminals constituted another race; rehabilitation in the penal colony as in France could never mean a return to normal society.¹⁵⁴

Fears of contamination eventually also infected the colonies, whose non-convict residents often banded together to protest the increasing propinquity of outcasts, arguing that their presence retarded development and immigration, and undoubtedly adulterated the wholesomeness of the population. The transportation and relegation of French convicts to penal colonies, however, did not end until 1938 and 1942 respectively. Seemingly lamenting the unattainability of complete effacement of the criminal element from France, Béranger accounts for the failures of colonial expulsion in the following manner:

To skim off the dregs of our society in order to dispose of them elsewhere is not a solution. Because to transport them, even to faraway places, is neither to make them disappear or to change them. This process has the appearance of ridding us of criminality: but it only throws it elsewhere, infesting the colonies in order to relieve the mother country. Where, therefore, is the advantage, since the colonies are the country, too?¹⁵⁵

Regardless of the innovativeness of the penal policy, therefore, neither absolute exclusion nor absolute inclusion can characterize the relationship between society and its abjected dangerous classes. The relationship can be best conceptualized as that of inclusion

¹⁵⁴ *Ibid.* 284

¹⁵⁵ As quoted in *Ibid.* 295

through exclusion or *inclusive exclusion*, as the superfluous dregs of society, who as free individuals would be avoided like the plague and considered the antithesis of desirable citizenry, are included both symbolically and practically – albeit selectively - in the discourses of nation building and in the responsibilities of citizenship precisely through their symbolic and physical exclusion. Like Arendt’s luck-hunters, who were spat out by society as superfluous residue, yet maintained a semblance of utility through their exploration and exploitation of the African continent, the superfluous abjected into both the houses of correction and the colonies, acquired both economic and political utility through their very expulsion.

Prison Exclusion in Historical Perspective: American Imprisonment Schemes

As the previous chapter demonstrated with respect to the economic sphere, the concept of *inclusive exclusion* continues to accurately describe the relationship between American society and its prisoners. The subsequent sections will establish that this concept is equally valuable in analyses of the socio-political facet of this relationship. Through an investigation of standard (non-camp) prisons first, and camp prisons second, the following sections attempt to illustrate that while the present penal climate is qualitatively different than that of 18th and 19th century Europe, socio-political *inclusive exclusion* constitutes the fundamental continuity between the otherwise disparate penal schemes.

The history of incarceration, and the relationship between society and its prisoners have always reflected the “doctrine of less eligibility,” albeit to varying degrees. At the core of the doctrine lies the assumption that a disjuncture must exist between the living conditions of prisoners and free citizens, with the former necessarily inferior to the

conditions encountered by the most marginalized social groups. While its first theoretical articulation can be attributed to Cesare Beccaria's 1764 essay "On Crime and Punishments,"¹⁵⁶ Richard Sparks argues that the doctrine's manifestation can be traced to the 'Great Confinement,' and the widespread fear that any amelioration in the prison environment will weaken the institution's deterrent effect upon the "lower orders," whose living conditions were already only slightly superior to those of prisoners.¹⁵⁷ While rigid adherence to the doctrine was maintained during the 18th, 19th and early 20th centuries, its popularity waned toward the end of the 20th and beginning of the 21st century. During this period, criminologists displayed an overwhelming interest in penal rehabilitation, which necessitated the provision of goods and services for prisoners that clearly surpassed the threshold of survival adequacy. Combined with a watershed in inmate access to the judicial system (which resulted in a number of favourable rulings with respect to conditions of imprisonment), the interest in rehabilitation was ensuring that prisoners were beginning to climb the ladder of eligibility.

While some argue that the future of imprisonment philosophy lies along this general trajectory,¹⁵⁸ the current politico-economic environment seems ripe for a reversion to the doctrine of less eligibility, and even a cursory glance at the conditions governing American prisons indicates that the trajectory has already been altered. Sparks argues that the entrenchment of the doctrine of less eligibility requires a specific

¹⁵⁶ In this famous essay, Beccaria argues that while socially irrational, crime is individually rational, in the sense that individuals committing a crime do so with the intention of securing a specific result. Consequently, punishment for a crime should not be arbitrarily cruel, but rather, should just outweigh the benefits of the crime, as rationally judged by the criminal. As cited and analyzed in Wayne Morrison, "Modernity, Imprisonment and Social Solidarity." *Prisons 2000: An International Perspective on the Current State and Future of Imprisonment*. London: MacMillan Press, 1996. 108

¹⁵⁷ Richard Sparks, "Penal 'Austerity': The Doctrine of Less Eligibility Reborn?" *Prisons 2000: An International Perspective on the Current State and Future of Imprisonment*. London: MacMillan Press, 1996. 77

¹⁵⁸ See analysis of Emile Durkheim's penal philosophy in Morrison (1996) *op. cit.*

economic and political context, one that is increasingly becoming a reality in American society, and one that has been reflected in political rhetoric since the 1980s.¹⁵⁹ According to Sparks, a sense of the centrality of punishment to the maintenance of the social order must be fostered, together with the perception that a rising tide of lawlessness is threatening the social fabric. Moreover, resentment toward ‘soft’ or ‘cushy’ penal measures must be cultivated through continued comparisons of prison conditions with the hardships experienced by ‘respectable’ and ‘worthy’ law-abiding citizens. The economic environment, consequently, must be one where an increasing gap between the rich and the poor is perceptible, with certain impoverished groups distinguished as hard-working, respectable citizens, worthy of admiration for their law-abiding ways. The existence of such groups, and their repeated valorization entrenches the notion that imprisoned individuals make a deliberate choice to stray off the path of hard work and respectability, and as such, should not be rewarded with conditions of imprisonment that resemble the living conditions of those who chose the more difficult path of righteousness. This politico-economic context is certainly in evidence in present day United States, underlined by the increasingly neo-liberal economic climate, government policies such as the ‘War on Drugs’, ‘Truth-in-Sentencing’ and the ‘Three-Strikes’ initiative, as well as the rhetoric that accompanies them.

The resurgence of the doctrine of less eligibility in American penal philosophy is also apparent in the increasingly severe regulations to which both camp and non-camp prisoners are subjected. First, inmates housed in both categories of prison must adhere to an extremely regimented schedule that wholly deprives them of the element of choice, a ‘privilege’ exclusively associated with ‘respectable’ and ‘worthy’ citizenship. As such,

¹⁵⁹ Sparks (1996) *op. cit.* 79

prisoners have little or no influence over their daily activities, their meals (their composition and consumption times), the length, time and frequency of showers, recreation and even sleep patterns. Although some institutions couch these regulations in the language of safety and security, strict governance of the aforementioned aspects of existence is clearly not security related. Although forceful early morning wake-up calls defy logic (if inmates are to spend many years in utter boredom, they might as well try to sleep through them – besides, are not sleeping inmates the least threatening to institutional security?), society seems oddly comforted by the idea that prisoners are made to rise at 5 or 6 a.m., when most hard-working citizens must start their days. Consequently, many institutions display inmates' daily schedules on their websites, taking special pride in their early wake-up calls. The Capital Sentence Unit of the New Jersey State Prison for instance, proudly displays the schedule to which its inmates conform on the institution's website. Inmates are awakened at 6:30 a.m. and served breakfast in their cells – a luxury, as inmates in Texas and on Florida's Death Row are served breakfast at 5 a.m. They are allowed out of their cells, two at a time, from 8:30-10 a.m., 11:30 a.m.-1 p.m., 4:30-6 p.m. and 7:30-9:00 p.m. for indoor recreation, during which they can read, do puzzles and play cards. On alternate days, they recreate outdoors, three at a time. Although the website avoids indicating how much recreation each inmate actually gets, considering that there are currently fourteen inmates in the Capital Sentence Unit, each inmates cannot possibly be allowed out of his cell every day, four times per day. Inmates eat lunch at 11a.m, dinner at 4 p.m. and are locked in their cells by 9 p.m. (although, as the website informs, no official 'lights out' policy exists.) A cursory perusal of a number of institutional websites can make one feel as through one is

witnessing an inter-institutional contest for the title of ‘most severe morning routine’. A number of institutions in Texas are currently in the lead with 4:30 a.m.

Inmates have no choice with respect to their daily menu, save for the last meal prior to execution, which nevertheless remains heavily regulated, with the State of Florida proudly stipulating that in order to guard against inmate extravagance, its ingredients must be locally available, and not exceed twenty dollars. Prisoners have little choice with respect to the activities in which they engage in on a daily basis. Severe regulations exist with respect to the quantity and quality of books and personal property inmates can have in their cell, while the menu of out-of-cell activities is restricted to card games, puzzles and physical activity that requires little or no equipment. The more abundant and comprehensive the deprivations, the more successful are the penal institutions in the eyes of the public. Inmates on Florida’s Death Row, for instance, are allowed only a “small” black and white television in their cells (a prohibition on colour televisions seems to represent the height of absurdity in prison policies), and as the Department of Corrections website advertises, their unit is not air-conditioned.

In addition to subjecting prisoners to highly regimented routines and an increasing number of deprivations, great efforts are made to discourage inmate contact with the ‘outside.’ Inmates at the Capital Sentence Unit in New Jersey are allowed two phone calls per day, again a luxury, as a large number of maximum and super-maximum security prisoners are allowed one 10-minute phone call per month. Rivaling Florida’s colour-television ban in absurdity, the California Men’s Colony prohibits visitors from wearing the following:

White t-shirts as outerwear, under wire garments; strapless garments, halter, midriff, tank tops (male and female), sheer or transparent wrap around tops, skirts or dresses; leg warmers; shower shoes; clothing that exposes the

breast/chest area, genitalia or buttocks; dresses, skirts, pants and shorts exposing more than two inches above the knee, including slits; clothing or accessories displaying obscene or offensive language or drawings; warm-up, sweat suits, jogging suits, lycra or spandex clothing; clothing that resembles officers' clothing or inmate clothing; camouflage type clothing or Army fatigues; wigs, hairpieces, weaves, extensions, or any other headpiece of artificial or human hair worn as personal adornment (except for medical reasons, **with prior approval**); skin-tight or form fitting clothing; clothing items with hoods; scarves, gloves, hats, or excess clothing.¹⁶⁰

New Jersey's Capital Sentence Unit prisoners are allowed two non-contact visits per month, each lasting no more than one hour. The New Jersey State Prison, as well as most other institutions, cites security concerns as justification for the severe limit on contact visits. Such explanations, however, are difficult to believe considering that many institutions strip search inmates prior to, and following all social visits. Again, the only reasonable explanation is society's seemingly unquenchable thirst to suck out of all convicted criminals the last vestiges of humanity, reduce them to the lowest possible denominator of eligibility, and the barest of life.

Deprivations encountered by inmates of camp prisons, which will be discussed in detail in the section on camp prisons, are much more severe and equally illogical. A number of guards employed in camp prisons admitted in interviews with Human Rights Watch that many of the policies and regulations do not actually contribute to the security of the prison environment.¹⁶¹ This of course is not surprising, as anyone would be hard pressed to explain how three 10-minute showers per week represent the optimum balance

¹⁶⁰ California Department of Corrections, California Men's Colony. Accessed at http://www.cdc.state.ca.us/InstitutionsDIV/INSTDIV/facilities/Fac_prison_CMC.asp#inmate_pgms; Emphasis in original.

¹⁶¹ Jamie Fellner, "Out of Sight: Maximum-Security Confinement in the United States." *Human Rights Watch*. New York: Human Rights Watch, February 2000. Accessed at <http://www.hrw.org/reports/2000/supermax/>.

between inmate cleanliness and security, while four 15-minute showers would throw the entire equation off kilter.

The doctrine of less eligibility also extends to the privacy expectations of inmates. Most departments of correction provide some form of electronic inmate, parolee and escapee search engines. None, however, are as detailed as that of the New Jersey Department of Corrections. The website of the New Jersey State Prison's Capital Sentence Unit, for instance, enables browsers to access each inmate's full name and known aliases, date of admission into the unit, prison identification number, birth date, sex, race, ethnicity, hair and eye colour, height and weight, county in which his offence(s) was committed, details of the inmate's current charges and prior convictions, the facility in which he is imprisoned and a colour photograph. The department-wide search engine contains all of the above information, in addition to the parole and release dates, as well as home addresses upon release of all inmates, escapees, parolees and released individuals. Less eligibility to privacy, therefore, permanently plagues even those who have already 'served their time'.

The clearly arbitrary deprivations may lead some to wonder how such practices withstand legal and constitutional scrutiny. Since inmates also have less eligibility with respect to the judicial system, historically relatively few inmates were able to present their cases. Although inmates were formally granted access to courts in 1941, the judiciary employed a 'hands-off' approach to penal institutions until 1961, when Justice Douglas cited the Civil Rights Act of 1871 as affirming the duty of courts to hear claims of citizens against states perceived to be infringing on their constitutional rights and

1963, when Justice Warren extended its applicability to prisoners.¹⁶² The 1960s and 1970s marked a watershed in cases brought before the courts by disgruntled inmates of state penitentiaries. A sampling of cases from that period illustrates not only the quantity of litigation, but also the absurd volume of arbitrary regulations to which inmates were subjected. A number of cases revolved around prisoners' religious freedoms, with the vast majority related to the increasingly active Black Muslim movement. A plethora of rulings concerned *Elijah Muhammad Speaks*, prohibiting prisoners from possessing the book, reinstating the right, and then removing it again. In *Pierce v. LaVallee* (1961) the courts allowed Black Muslims to be placed in solitary confinement on the suspicion of belonging to a group with "overtones of secrecy and intrigue," while in *Jones v. Wilingham* (1965) they outlawed the congregation of Black Muslims, along with the teaching of Karate. *Brooks v. Wainwright* (1970) resulted in the mandatory shaving of all inmates, notwithstanding religious prohibition (perhaps out of concern for the potential of concealing contraband in a beard.)¹⁶³ A number of other cases were fought over correspondence censorship and inmate access to media outlets,¹⁶⁴ the amount of reading material inmates could have in their cells,¹⁶⁵ as well as over the length and quality of solitary confinement.¹⁶⁶

¹⁶² See Blake McKelvey, *American Prisons: A History of Good Intentions*. Montclair, N.J.: Patterson Smith, 1977.

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¹⁶³ Richard Singer, *Prisoner's Legal Rights: A Bibliography of Cases and Articles*. Boston: Warren, Gorham and Lamont, 1971. 25-7

¹⁶⁴ *McDonough v. Director* (1970) declared that a prison could stop letters that are critical of the institution, if such criticism would damage its "administrative ease," while the judge in *People v. Ray* found the "reasonable censorship" of mail not unconstitutional. *Ibid.* 31-3

¹⁶⁵ Among others, *People v. Matthews* (1970) allowed two books per cell, while *Williams v. Wilkins* (1963) upheld the right of prison officials to prohibit books in segregation cells. *Ibid.* 36

¹⁶⁶ The notable case is *Tyree v. Fitzpatrick* (1970), where the court ruled that since prisoners can obtain release from solitary confinement by acquiescing to authority, continuous solitary confinement does not violate their rights. *Ibid.* 43-6

Although inmates were not always successful in their challenges, their increased access to the judicial system was a victory in itself. Petitions brought by prisoners increased from 218 in 1966 to 11,000 in 1979,¹⁶⁷ 25,992 in 1990, and 41,679 in 1995.¹⁶⁸ From 1996 onwards, however, the numbers began to decline again, following the previously discussed re-entrenchment of the doctrine of less eligibility. The Prison Litigation Reform Act of 1996 epitomizes its reestablishment in the judicial system. The Act severely curtails the ability of inmates to file civil rights complaints, mandating that: a) inmates exhaust all administrative remedies prior to filing suit, b) court filing fees be imposed on prisoners, c) inmates illustrate physical injury when suing for compensation over mental or emotional injury suffered while in custody, d) court orders against unlawful prison conditions be automatically terminated after two years, regardless of the prison authorities' level of compliance, and e) grants of attorney fees for successful "prison condition suits" be severely restricted, a measure that reduces the ability of many inmates to expose the conditions of their imprisonment.¹⁶⁹ Within two years of the legislation's enactment the number of civil suits decreased by almost half, to 26,462 cases in 1998.¹⁷⁰

The judicial and constitutional measures under which inmates are still protected are vague and frequently ineffectual. The Eighth Amendment to the U.S. Constitution, which states that "excessive bail shall not be required, nor excessive fines imposed, nor

¹⁶⁷ Stephen Gottfredson, and Sean McConville. "Introduction." *America's Correctional Crisis: Prison Populations and Public Policy*. New York: Greenwood Press, 1987. 3

¹⁶⁸ Marika Litras, "Civil Rights Complaints in U.S. District Courts, 1990-1998." U.S. Department of Justice, Bureau of Justice Statistics Special Report. January 2000. Accessed at <http://www.ojp.usdoj.gov/bjs/pub/pdf/crcusdc.pdf>.

¹⁶⁹ Sasha Abramsky and Jamie Fellner, "Ill-Equipped: U.S. Prisons and Offenders with Mental Illness." *Human Rights Watch*. New York: Human Rights Watch, September 2003. Accessed at <http://www.hrw.org/reports/2003/usa1003/>

¹⁷⁰ Litras (2000) *op. cit.*

cruel and unusual punishment inflicted” is customarily used in inmate litigation over imprisonment conditions, including solitary and super-maximum confinement. The Amendment is violated, however, only when injury to the inmate arises from “deliberate indifference” (rather than simple negligence), and so its violation is difficult to prove.¹⁷¹ The second most frequently utilized provision is that regarding the “totality of conditions” within prison institutions, which guarantees that even if no single maltreatment qualifies as “cruel and unusual punishment,” the combination of a number of undesirable conditions may. That such rulings are based on the subjective assessment of individual judges is even more apparent than in the case of Eighth Amendment litigation. Moreover, the recent retrenchment of inmates’ judicial rights ensures that prisoners can make use of these protections sporadically at best, and that their right to judicial review is a formal right only. While a number of international laws also protect inmates from excessive punishment, negligence and inappropriate confinement conditions,¹⁷² the American record of non-compliance with international law, and the almost insurmountable obstacle of access to international human rights tribunals essentially forecloses this avenue of recourse to inmates.

In addition to the increasing foreclosure of the judicial system, prisoners are also progressively disenfranchised. Only two states (Maine and Vermont) presently allow convicted felons to vote while incarcerated, and although the permanent disenfranchisement of prisoners (to be examined later in the chapter) has elicited some opposition, the lack of debate surrounding the right of franchise for prisoners indicates its acceptance as a fundamental and unquestionable necessity. Prisoners are also barred

¹⁷¹ Abramsky and Fellner (2003) *op. cit.*

¹⁷² See Abramsky and Fellner (2003) *op. cit.* for a discussion the International Covenant on Civil and Political Rights and the Human Rights Committee.

from accessing many of the economic benefits of citizenship. While imprisoned, inmates are denied access to Social Security Benefits, Supplemental Security Income, and all Title II Benefits, including Disability Insurance Benefits, Childhood Disability Benefits, benefits for disabled widows and widowers, and Surviving Spouse Benefits.¹⁷³ Moreover, according to the Social Securities Act, “any physical or mental impairment which arises or is aggravated...in connection with the commission of an offense...which constitutes a felony...shall not be considered in determining whether the individual is under disability,” and similarly, physical and mental impairment which arises or is aggravated in connection with the individual’s confinement in any penal institution cannot be considered in determining disability for the purposes of benefits payable during the months of the individual’s confinement.¹⁷⁴

Indicative of the socio-political exclusion suffered by prisoners, as well as the manner in which they are perceived by the society from which they are excised, are arguments such as those that suggest that convicts should be less eligible for organ transplantation. In a recent op-ed published in the *San Jose Mercury News*,¹⁷⁵ Dr. David Perry, Director of Ethics Programs at the Markkula Center for Applied Ethics at Santa Clara University expressed his outrage at the fact that a convicted robber received a heart transplant, “courtesy of California taxpayers,” while “hundreds of law-abiding citizens who desperately need the organ are made to wait.” Perry proceeded to argue that while “it would be repugnant to allocate organs based on estimates of persons’ “social worth,”

¹⁷³ See Section 223(f)(1) of the Social Securities Act. Accessed at http://www.ssa.gov/OP_Home/rulings/oasi/27/SSR-OASI27toc.html

¹⁷⁴ See SSR 83-21: Title I: Person Convicted of a Felony. Accessed at “Old Age and Survivor’s Insurance. Limitations on Payments to Prisoners.” Accessed at http://www.ssa.gov/OP_Home/rulings/oasi/27/SSR-OASI27toc.html

¹⁷⁵ David Perry, “Criminals should be far down on the heart transplant list.” *San Jose Mercury News*. 31 January 2002. Accessed at <http://www.scu.edu/ethics/publications/submitted/Perry/transplant.html>, under the title “Should Violent Felons Receive Organ Transplants?”

criminals should not have access equal to that of “the rest of us” to highly scarce medical resources, and suggests that organs should be distributed according to a) degree of need, b) probability that the transplant will be successful, and c) a history of violent crime. Perry’s argument lacks contradiction only under the assumption that violent criminals are no longer part of the society of citizens, thereby having no relationship to the category of ‘social worth’, which only applies to citizens. It is only based on such conjecture that Perry can find organ allotment based on ‘social worth’ objectionable, while simultaneously believing that its denial to criminals is ethically sound.

While non-camp prisoners are excluded from most benefits of citizenship, discarded, in essence, beyond the symbolic borders of civilized society, they are nevertheless expected to shoulder some of citizenship’s responsibilities. At the most abstract level, the penal system, as well as the system of corporal punishment that preceded it are founded on the principles of understanding the social consequences of one’s actions, taking responsibility for these consequences, and paying the necessary price – axioms according to which ideal citizens ought to conduct themselves. It is on these tenets that more specific arguments are built, such as the contention that inmates should pay the costs of their own incarceration (as they should pay the price of their actions, and as they are, after all, imprisoned both for their own good and the greater good of society.) Thus, although the U.S. Code Title 18, Part III, Chapter 301, Section 4007 (Expenses of Prisoners)¹⁷⁶ dictates that all expenses related to incarceration are to be paid out of the Treasury of the United States, the notion that prisoners should shoulder some (or all) of the expenses for their prosecution and incarceration is popular among

¹⁷⁶ U.S. Code Collection. *Legal Information Institute*. Accessed at <http://www4.law.cornell.edu/uscode/42/1973.html>

American lawmakers, and continuously resurfaces in American penal discourses and practices. As E.C. Wines argued in the late 19th century, sentences of hard labour are “dictate[s] at once of justice and good policy; of justice, because it is right that criminals who have put the state to more or less expense should do something towards defraying the cost of their crimes.”¹⁷⁷ As early as 1890, convicted prisoners would be doubly sentenced, serving a number of years as punishment for their crime, and an additional period of hard labour to pay for the cost of their prosecution.¹⁷⁸ Although Gresham Syke’s *The Society of Captives: A Study of Maximum Security Prison* was published in 1958, the current relationship between prisoner and society is still best expressed by his simile:

The criminal in the custodial institution is in a position somewhat like that of a wayward son who is forced to work by a stern father. The troublesome youth may not earn his keep, but at least he is to be employed at honest labor; and if his earnings make up only a portion of his expenses, that is better than nothing at all... The parent... is motivated by a curious blend of economic self-interest, faith in the efficacy of work as a means of spiritual salvation, and a basic, hostile feeling that no man should escape the burden of supporting himself by the sweat of his brow.¹⁷⁹

Although convicts are no longer given sentences of ‘hard labour’ to pay for the costs of their prosecution, the notion that penal institutions should function as self-sustaining communities prevails. The increasing number of deductions from the remunerations inmates receive for working in prison industry indicates continuity of attitude. As discussed in chapter two, a fraction of the inmate’s salary is slated for payment for his or her crime, while the Victim Restitution Fund confiscates another portion. Some institutions are also charging inmates for toilet paper, medical care and use of the law

¹⁷⁷ E.C. Wines, *The State of Prisons and of Child-Saving Institutions in the Civilized World*. Cambridge: Cambridge University Press, 1880. 107

¹⁷⁸ Lichtenstein (1996) *op. cit.* 85

¹⁷⁹ Gresham Sykes, *The Society of Captives: A Study of Maximum Security Prison*. Princeton, New Jersey: Princeton University Press, 1958. 61

library, while others have instituted 'room-and-board' fees. Berks County Jail in Pennsylvania, for instance, was recently charging inmates ten dollars a day to be there.¹⁸⁰

The history of the American penal system, therefore, is replete with both unnecessary and arbitrarily enforced rules and regulations guiding the imprisonment and conduct of convicts, as well as with infringements on, and outright denials of inmates' constitutional rights. Concurrently, a persistent effort is being made to transform prisoners into highly regimented and perversely distorted replicas of ideal citizens. The paradox is palpable. While stripping inmates of formal and substantive citizenship rights, and thus excluding them from full citizenship, the American penal system is designed to simultaneously elicit hyper-conformity in terms of citizen obligations. Thus, as Stanley Cohen aptly argues, exclusion and inclusion conceived of as two diametrically opposed concepts cannot adequately account for the relationship between society and its prisoners.¹⁸¹ The complex relationship between prisoners and citizen society outlined above cannot be conceptualized as either wholly exclusionary or wholly inclusionary. As Cohen suggests, it is also unwise to assume that inclusion is always superior to, and more magnanimous than exclusion. As chapter two, as well as the above sections demonstrate, inclusion of inmates into the economic realm, and their partial inclusion into the realm of citizenship responsibilities underpins a highly exploitive relationship, whereby prisoners are forced to contribute to a society from which they have been effectively banished.

¹⁸⁰ Christie (2000) *op. cit.* 136

¹⁸¹ Stanley Cohen, *Visions of Social Control: Crime, Punishment and Classification*. Cambridge: Polity Press, 1985.

The result of this paradox is the establishment of two distinct societies, which nevertheless remain intricately entwined. The “society of captives”¹⁸² is the coarse image of the society of citizens in a distortion mirror at a carnival fun house – perverted yet still recognizable, alien yet uncomfortably familiar, always within reach, always a replica of the society of citizens, no matter how vehemently the latter denies it. The superfluous and abject, after all, were at one time part of the social body, and even through they are abjected from it, they are never completely effaced, and maintain with it an uneasy relationship, at times exploited by their abjector, and at times haunting it from behind the fun house mirror.

While all American penal institutions and all prisoners are, in theory, subsumed under the same judicial and constitutional guidelines, an actual distinction emerges between standard minimum-, medium-, and maximum-security prisons, and what have been thus far referred to as camp prisons. Under the rubric of camp prisons are subsumed all stand-alone institutions as well as units within institutions (‘prisons within prisons’) that are rated above the level of maximum security. These include secure housing units (SHUs), super-maximum security prisons (supermaxes), intensive management units (IMUs) and administrative segregation units (ASUs), all of which are characterized by virtually perpetual solitary confinement, and the severe regimentation and discipline of inmate behaviour. These camp institutions should not be confused with disciplinary cells that have historically been present in most standard prisons, where ‘disruptive’ and ‘dangerous’ prisoners were temporarily confined, to ‘cool down’ before reintegration into the general population. Unlike these disciplinary cells, which functioned as a means of

¹⁸² The phrase is borrowed from Sykes’s *The Society of Captives: The Study of Maximum Security Prisons. op. cit.*

temporary punishment and a control mechanism within the confines of standard penitentiaries, supermaxes represent a qualitative shift in penal philosophy.

While the rehabilitative paradigm was never entirely uncontested, its hegemony was palpable in American penal discourse from the early 1900s to the mid 1970s, at which point both conservative and liberal elements politicized the issue of crime, caricatured rehabilitation efforts as the ‘coddling’ of dangerous criminals, and joined the anti-rehabilitation crusade.¹⁸³ A significant impetus for supermax confinement, therefore, came from the political elite who capitalized on the previously discussed politico-economic context of the 1980s and 1990s, and entrenched punitive penology within socio-political discourse to the extent that even the slightest objection almost automatically translates to charges of weakness and ‘inmate coddling’, and the subsequent loss of voter confidence.

This qualitative shift engendered quantitative changes, as community-based treatment programs were scoffed at, and the ‘War on Drugs’, ‘Three-Strikes’ legislation, and ‘Truth-in-Sentencing’ policies further increased both the number of prisoners, and the length of time for which they were incarcerated. The qualitative and quantitative transformations prompted Feely to accurately pronounce that the United States has entered a new penological phase, oriented away from collective or individual punishment and rehabilitation, and toward the “management of aggregate populations.”¹⁸⁴ The tools

¹⁸³ Francis Cullen, Patricia Van Voorhis and Jody Sundt. “Prisons in Crisis: The American Experience.” *Prisons 2000: An International Perspective on the Current State and Future of Imprisonment*. London: MacMillan Press, 1996. 35

¹⁸⁴ This trend, of course, is not restricted to the United States, although it is perhaps its clearest and most extreme exemplar. Camp prisons are, for instance, also proliferating in Britain, under the label of Special Secure Units (SSUs). As is the case with American camp prisons, British SSUs are heavily regulated, inmates have few resources with which to check the power exercised by prison authorities, and living conditions are hauntingly similar to those in American supermaxes. For a more detailed examination of

employed in this task, argues Feely, are ‘indicators’, prediction tables and classification schemes in which individualized diagnosis and response is displaced by “aggregate classification systems for purposes of surveillance, confinement, and control.”¹⁸⁵ Drawing a guarded comparison between this tendency and the purity of stock and race advocated by Adolph Hitler, Christie argues that the prison system in the United States is rapidly progressing in a similar direction.¹⁸⁶

It is the contention of this thesis, however, that not all American prisons are moving in this direction – hence the necessity of distinguishing between standard and camp prisons. Nevertheless, a trend toward super-maximum confinement in camp prisons is clearly perceptible, as is the increasing homology between supermaxes and camps as theorized by Agamben. A 1997 Report by Human Rights Watch reveals that the federal government and thirty-six states currently operate fifty-seven super-maximum security prisons or units within already existing institutions, which house 1.8% of the total inmate population.¹⁸⁷ The Federal Department of Corrections indicates that construction is underway to increase the national supermax capacity by 25%.¹⁸⁸ California, the nation’s leading jailer, is also at the forefront of supermax confinement with camp institutions housing over 10% of all state prisoners.¹⁸⁹

British SSUs, see Stephen Livingstone and Tim Owen, *Prison Law, Second Edition*. Toronto: Oxford University Press, 1999. 138-141

¹⁸⁵ As quoted in Christie (2000) *op. cit.* 183

¹⁸⁶ *Ibid.* 179. In the final analysis, contends Christie, gulags rather than Hitler’s concentration camps may best describe the current direction of the American penal system.

¹⁸⁷ Jamie Fellner and Joanne Mariner. “Cold Storage: Super-Maximum Security Confinement in Indiana.” *Human Rights Watch*. New York: Human Rights Watch, October 1997. Accessed at <http://www.hrw.org/reports/1997/usind/>

¹⁸⁸ Christie (2000) *op. cit.* 103

¹⁸⁹ Corey Weinstein and Eric Cummins. “The Crime of Punishment: Pelican Bay Maximum Security Prison.” *Criminal Injustice: Confronting the Prison Crisis*. Elihu Rosenblatt (Ed.) Boston: South End Press, 1996. 310

The current incarnation of camp prisons has its roots in the Adjustment Centers (ACs) of the 1960s, which were conceived as a rehabilitative tool of last resort, where for a maximum of three months ‘difficult’ and seemingly incorrigible inmates would receive intensive, daily, individualized psychiatric assistance, group counseling, and special education and work programs. As rehabilitative discourses waned, the number of prisoner riots, protests and law suits over unsatisfactory conditions proliferated – spurred by the increasing momentum of the civil rights movement, and prisoners’ extended access to courts – the character of the ACs changed. By the end of the 1960s, these ‘prisons within prisons’ replaced their rehabilitative mandate with a punitive one, restricted inmates’ access to all programs and activities, and were effectively transformed into long-term warehouses for Black Muslims, jailhouse lawyers, accused gang members, union organizers, ‘radicals’, ‘revolutionaries’ and other ‘problematic’ prisoners.¹⁹⁰ In 1972, then California governor Ronald Reagan called for the development of new high-tech, super-maximum security prisons, which could house “troublemakers” and would be loosely modelled on Adjustment Centers, as well as the ‘permanent lockdown’ solution devised by Illinois’ Marion State Prison in response to inmate rioting.¹⁹¹

The insulated nature of supermax institutions, combined with the seeming non-existence of the rule of law on their premises – or at best, a severe disregard for it -

¹⁹⁰ *Ibid.* 316

¹⁹¹ In October 1983, after years of mounting tensions, Marion experienced a week of violence during which two guards were knifed to death and one inmate murdered. In response, prison officials instituted a “permanent lockdown” in the facility. Marion prisoners spent 23 hours in their cells, exercised in small groups, were denied all work and social programs, were permitted one ten-minute social phone call per month, three showers per week, and could not exit their cells without being handcuffed and shackled. The Bureau of Prisons has noted that since that time, most inmates have been downgraded from Marion and moved to standard institutions. However, the twenty-one original prisoners who remained have been under lockdown conditions for over a decade. For more information on the lockdown at Marion, see Robert Perkinson, “Shackled Justice: Florence – The Cutting Edge of Social Control.” *Criminal Injustice: Confronting the Prison Crisis*. Elihu Rosenblatt (Ed.) Boston: South End Press, 1996. 334-336, and Fellner and Mariner (1997) *op. cit.*

situates these institutions within the realm of Agamben's camp. While it is difficult to assess the extent to which these establishments operate outside of the purview of social scrutiny and law, statements from inmates indicate that at the very least, such is the *perception* shared by many supermax prisoners, and one that is purposely fostered by the correctional officers. As one inmate at California's Pelican Bay asserted, "the way the system works, is that the guards run it."¹⁹² Another prisoner told Human Rights Watch: "The day I arrived I was...told that I was at Red Onion [State Prison in Virginia] now and if I act up they would kill me and there was nothing anyone could or would do about it."¹⁹³

The perception that supermaxes operate outside of the purview of social scrutiny and judicial review is also substantiated by an array of tangible evidence. First, the decision to move an inmate into super-maximum confinement is usually not subject to judicial oversight, and cannot be appealed. The decision to remove an inmate from the general population is made by a warden, in conjunction with correctional officers, and frequently without the presence of the inmate. If the inmate is present, he or she is not provided with attorney representation, and is at best represented by prison staff. Although some institutions have established guidelines for the removal of inmates into super-maximum security confinements, and make certain provisions for appeal, these frequently exist in theory only. At Red Onion State Prison in Virginia, for instance, inmates require a score of at least thirty-four points on a recently instituted classificatory scale if their security level is to be increased to that necessitating secure confinement. A

¹⁹² Weinstein and Cummins (1996) *op. cit.* 313

¹⁹³ Jamie Fellner, "Red Onion State Prison: Super Maximum Security Confinement in Virginia." *Human Rights Watch*. New York: Human Rights Watch, April 1999. Accessed at <http://www.hrw.org/reports/1999/redonion/>

discretionary override, however, can arbitrarily increase (or decrease) the inmate's security status.¹⁹⁴ Moreover, most inmates transferred to supermax units or institutions can be housed there indefinitely, frequently without being told what, if anything, could hasten their release back into the general population.¹⁹⁵ In Virginia, for instance, segregation is indefinite, and the Department of Corrections provides no instruction on the permissible length of time an inmate can spend in solitary confinement.¹⁹⁶ A number of institutions, however, do possess limited re-instatement guidelines. For instance, the total length of confinement of prisoners at the Maximum Control Facility in Indiana depends on their accumulation of "vested months" – months during which they remain free of 'serious' violations of prison regulations. Prisoners who have twenty-four consecutive vested months, or a total of thirty-six vested months (with at least six consecutive months) must be re-instated into the general population. Some prisoners, however, never accumulate the required vested months, as they frequently lose all or part of them for minor or accidental infractions. In the summer of 1997, for example, at least three prisoners confined in the facility had been there since its opening in 1991.¹⁹⁷

For inmates placed in super-maximum confinement due to suspected gang ties, generally the only possibility for release is parole, death or snitching. As all alleged gang members released back into the general population are assumed to have snitched, most prefer to remain in super-maximum confinement indefinitely. The frequency of retaliation against inmates suspected of complicity has given B Yard at Pelican Bay (the exercise yard adjacent to the 2,200 man Secure Housing Unit) the reputation of being the

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*

¹⁹⁶ *Ibid.*

¹⁹⁷ Fellner and Mariner (1997) *op. cit.*

most violent in California's prison system. In 1992, for instance, sixty-seven stabbings were reported there in a stretch of three-months.¹⁹⁸

Second, administrative decisions made within the supermax environment are rarely scrutinized, and remain the exclusive domain of the prison warden and correctional officers. Inmates who disobey, question or attempt to file suit against the institution are frequently punished. Two favoured methods of quelling dissent and disobedience are "cell extractions" and "strip cell" confinement. The former involves the storming of a cell by five riot-gear clad guards, the overpowering of the inmate (usually accompanied by beating), the placement of the inmate in a five-point restraint, and his or her subsequent removal from the cell, to be left hog-tied in the corridor. Alternately, an inmate can be extracted from his or her cell and placed in a "strip cell" (a cell devoid of all furnishings and appliances), until correctional officers deem the inmate fit to return to his or her permanent abode. In one case, it was reported that an 'extracted' inmate was tied to an infirmary bed for a total of fifteen days (five days, a six-day break, then ten subsequent days) in June of 1992, while another was left hog-tied for hours in the prison corridor.¹⁹⁹ In addition to complete impunity with respect to inmate discipline, supermax administrators exercise their power in other questionable, yet rarely questioned ways. It was rumored in the early 1990s, for instance, that the officials at Folsom State Prison in California cut a deal with African American gangs, promising the transfer of rival Latino gangs to the SHU at Pelican Bay in return for the curbing of yard violence. While only 15% of California's population in 1992 was Latino, Latinos made up 37% of the

¹⁹⁸ Weinstein and Cummins (1996) *op. cit.* 313

¹⁹⁹ Fellner and Mariner (1997) *op. cit.* and Weinstein and Cummins (1996) *op. cit.* 311

Department of Corrections prisoners, and a suspicious 59% of SHU prisoners at Pelican Bay.²⁰⁰

Finally, routine, day-to-day discipline of inmates seems, frankly, not only beyond the scope of the law, but also beyond the scope of all moral and ethical behaviour. According to Human Rights Watch interviews conducted at Red Onion State Prison, inmates believe that they can be shot for talking over the wall that separates one recreation yard from another, for crossing the red line used to mark areas of permissible inmate presence, for leaning against a wall or for not moving quickly enough.²⁰¹ As outrageous as these perceptions seem, they are not entirely unfounded. Virginia, California and Nevada are the only states where firearms are routinely carried within prison perimeters, and judging by the statistics provided by prison administrators and anecdotal evidence offered by inmates, they are deployed with shocking frequency. According to press reports, in the first nine months of operation, Red Onion guards fired their weapons 63 times, injuring ten inmates.²⁰² In interviews with Human Rights Watch, inmates recounted that prisoners were shot for seemingly the most trivial of offences. One inmate described seeing a fellow prisoner shot for failing to hear an order:

[An inmate] was jogging around the yard, he was wearing closed headphones with a walkman listening to a cassette while jogging. The order to move to the opposite side of the yard did not come over any loud speaker or megaphone device – it was a shouted order from a gun port. The man never heard the order. The first shot knocked him down. He jumped up not knowing why he was shot and was shot again. No one's life was in danger. No staff or prisoner was threatened by this man. In less than one minute he would have been on the other side of the yard where other prisoners would have gotten his attention. The man was jogging in a circle. Had he stopped, turned around, and jogged in the opposite direction, he would have not gotten to the other side of the yard any faster.²⁰³

²⁰⁰ Weinstein and Cummins (1996) *op. cit.* 311, 314

²⁰¹ Fellner (1999) *op. cit.*

²⁰² *Ibid.*

²⁰³ *Ibid.*

Others recounted seeing inmates shot for not returning fast enough to their building and for refusing to exit the shower after their allotted time.²⁰⁴ One inmate told Human Rights Watch that upon his arrival at Red Onion, he and other inmates were told to strip and permit a visual body search, including the spreading of their buttocks. Female staff were present, recording the proceeding with a video camera, and the inmate hesitated, as he was uncomfortable in their presence. He was then shot with a taser gun (in the presence of the warden and associate warden), and forced to submit to the search. The inmate filed a grievance (with the same warden, as is dictated by supermax procedures), and the grievance was denied. While the warden acknowledged that a taser gun was used, he felt such a measure was justified as the inmate “was failing to obey instructions.” The regional director upheld the verdict, and the matter was not allowed to proceed further.²⁰⁵

Super-maximum Security Confinement: Tales from Eight Institutions

In order to comprehend fully the living conditions of inmates housed in camp prisons, it is necessary to view the aforementioned incidents within the context of inmates’ daily routines. The following section, therefore, will look briefly at a number of supermaxes and the regulations to which their residents are subjected. One of the first supermaxes, the United States Penitentiary at Marion, Illinois opened in 1963, went into a permanent lockdown mode in 1983, and is currently considered one of the highest security prisons in the United States. In addition to the super-maximum security conditions that prevail within the entire institution, Marion also contains a security control unit within the

²⁰⁴ *Ibid.*

²⁰⁵ *Ibid.*

prison, where the most 'dangerous' and 'disruptive' inmates are held. The findings of a court in which the National Prison Project of the American Civil Liberties Union filed suit on behalf of the prisoners of Marion's B-Range (the control unit) most clearly articulate the conditions of the prison:

The last (10) cells of B-Range in the Control Unit...are equipped with a steel front door (with window), which is kept closed as a disciplinary measure or at the prisoner's request. [These are the 'boxcar' cells that the court ordered closed.] There are no mirrors in Control Unit cells. Control cell prisoners are restricted in the amount of personal property they may have in their cells...Prisoners...are generally confined in their cells for an average of 23 hours and 20 minutes per day...[and are] not allowed to attend educational classes...There is no television...Prisoners in the Control Unit are not allowed in the institution's library...Prisoners in the unit are required to conduct all visits, except attorney visits, in a controlled visiting room in which the prisoner and visitor are separated by a Plexiglas wall...The Control Unit Prisoners are strip-searched before and after all visits, except attorney's visits...Prisoners are released from the cells for approximately 30 minutes a day of exercise, recreation on a locked tier, sometimes with one other prisoner. Recreation outside in the fresh air occurs approximately one hour per month.²⁰⁶

The increasing trend toward total isolation of prisoners from correctional officers as well as from each other is frequently referred to as Marionization, after the Marion penitentiary. Solitary confinement as a means of rehabilitation, punishment or control of 'disruptive' inmates has been repeatedly discredited for centuries. Pennsylvania's solitary confinement system was replaced by the Auburn system within years of its establishment, and a 1839 report commissioned in New Jersey concluded that, while "solitary confinement apparently had little influence in decreasing the amount of crime committed in the state," it engendered disturbing levels of mental degradation among prisoners.²⁰⁷ After centuries of unfavourable reviews, however, the American prison system is increasingly one founded on a practice of solitary confinement that is more

²⁰⁶ Alvin Bronstein, "Legal and Constitutional Issues Related to Last-Resort Prisons." *Confinement in Maximum Security: The Last Resort Prisons in the United States and Western Europe*. David Ward and Kenneth Schoen (Eds.) Toronto: Lexington, 1981. 75

²⁰⁷ Sykes (1958) *op. cit.* 7

severe than both the Auburn system of two centuries ago - where prisoners were at least allowed to labour collectively - and late 19th and 20th century prisons where inmates were released from their cells for meals, social activities and work.²⁰⁸

The trend toward Marionization is apparent throughout the country, and is currently evolving beyond simple solitary confinement and toward solitary confinement combined with purposeful and humiliating deprivations, and a fanatical adherence to the philosophy of isolation and the doctrine of less eligibility. Inmates of the Q-Wing of the Florida State Prison at Starke, for instance, have almost no direct contact with other prisoners or correctional officers. The inmates are released from their cells for three showers a week and two hours of solitary exercise. Inmates under close management are deprived of all exercise outside of their cells, and are not released outdoors for years at a time.²⁰⁹

At Pelican Bay State Prison in California, one of the most notorious supermaxes in the United States, prisoners are housed in analogous conditions and are subjected to similar deprivations. In 1989, the California Department of Corrections opened a 1,056 cell SHU within the prison. An inmate at Pelican Bay's SHU is guaranteed at least twenty-two and one half hours of solitary confinement a day, in an environment technologically structured to minimize human contact and maximize sensory deprivation. Prisoners at the unit have almost no contact with guards, as they have been largely replaced by electronic surveillance. The *Los Angeles Times* describes the unit as follows:

Pelican Bay is entirely automated and designed so that inmates have virtually no face-to-face contact with guards or other inmates...For 22 ½ hours a day, inmates are confined to their windowless cells...They don't work in prison industries; they don't have access to recreation; they don't mingle with other inmates. They

²⁰⁸ *Ibid.* 6

²⁰⁹ Christie (2000) *op. cit.* 102

aren't even allowed to smoke because matches are considered a security risk. Inmates eat all meals in their cells and leave only for brief showers and 90 minutes of daily exercise. They shower alone and exercise alone in miniature yards of barren patches of cement enclosed by 20 feet high cement walls covered with metal screens. The doors to their cells are opened and closed electronically by a guard, in a control booth...There are virtually no bars in the facility...Nor are there guards with keys on their belts walking the tiers. Instead, the guards are locked away in glass-enclosed control booths and communicate with prisoners through a speaker system...The SHU (Secure Housing Unit) has its own infirmary; its own law library (where prisoners are kept in secure rooms and slipped law books through slots); and its own room for parole hearings. Inmates can spend years without stepping outside the Unit.²¹⁰

Prisoners may not speak to each other, and the tier tender (a prisoner who sweeps the walkways) is not permitted to speak to anyone as he passes the cells. Communication with the outside world is also heavily restricted. The television brings in only six stations from Colorado, and severe restrictions exist with respect to reading materials. Only non-contact visits are permitted. Prisoners may not decorate their cells (which are windowless, and consist of a poured concrete sleeping slab, an immobile concrete stool and a small concrete writing platform), no hobbies are permitted and no collective educational, vocational, religious or social activities exist.

Research conducted by the Pelican Bay Information Project (PBIP) indicates that in addition to the severe deprivations that constitute the daily reality at Pelican Bay, inmates are subjected to lockdowns (or, more appropriately, lockdowns within permanently locked-down institutions). PBIP estimates that in 1994, for instance, prisoners were locked-down for 40% of the year, possibly in retaliation for the Madrid v. Gomez class action civil rights suit filed against the institution.²¹¹ While under

²¹⁰ *Los Angeles Times*. 1 May 1990. As cited in *Ibid.* 101

²¹¹ The Madrid v. Gomez trial was heard in the summer of 1993. A class action civil rights suit was filed on behalf of Pelican Bay inmates, who alleged that their 1st, 6th, 8th, and 14th Amendment rights were violated by correctional officers who read confidential legal mail, mishandled personal and legal mail, denied inmates access to the law library and refused inmates the necessary medical and psychiatric care. For details see Weinstein and Cummins (1996) *op. cit.* 309 and Fellner and Mariner (1997) *op. cit.*

lockdown, the minimal rights possessed by SHU inmates are further retrenched – no yard, no law library, extremely limited showers, and further delays in medical care. Moreover, as the tier tender is not allowed to sweep the tiers or clean the showers, and as inmates are permanently deprived of items necessary to clean their cells, tiers and showers quickly become filthy and inmates are forced to use body soap, shampoo, tee shirts and toilet paper to clean their cells.²¹² In spite of these conditions (or perhaps because of them), *Correctional Digest's* assessment of Pelican Bay boasts that, “California now possesses a state-of-the-art prison that will serve as a model for the rest of the nation.”²¹³

Yearning for its own state-of-the-art prison, Indiana opened its first super-maximum security institution in April of 1991. Originally called the Maximum Control Complex (MCC), it has been since renamed the Maximum Security Facility (MCF). A second supermax, an SHU attachment to the Wabash Valley Correctional Facility, was opened in December of 1993. As the Human Rights Watch report titled “Cold Storage: Super Maximum Confinement in Indiana”²¹⁴ exposes, the living conditions at both facilities mimic those at Marion and Pelican Bay, although in a shocking display of leniency, a two-by-three section of wall has been marked off in each cell, within the borders of which inmates may affix posters and photos. While the Wabash Valley SHU is equipped with both an indoor and outdoor recreation area (although thanks to their small size and surrounding concrete walls, the distinction is largely semantic), the MCF has only an outdoor yard. Cold and icy conditions in the yard, therefore, eliminate all out-of-cell activity for MCF inmates. Time with visitors (only non-contact visits are

²¹² Weinstein and Cummins (1996) *op. cit.* 309

²¹³ *Corrections Digest*. 27 June 1990. As cited in Christie (2000) *op. cit.* 101

²¹⁴ Fellner and Mariner (1997) *op. cit.*

permitted) is deducted from recreation time. While the MCF is required to release each prisoner from his cell for at least six hours per week, limited space prohibits inmates from receiving the requisite recreation. Thus, prisoners at both facilities spend most of their time in forced and enforced idleness. Inmates can obtain access to GED high-school equivalence programs based on good conduct. No vocational or work programs are available, and no hobby materials are permitted except playing cards, and in the MCF, coloured pencils. Although both facilities house a large number of prisoners with serious mental illnesses (staff at the SHU admit that between one-half and two-thirds of all inmates are mentally ill²¹⁵), little psychiatric care is available. At the SHU, a therapist offers anger management and long distance parenting courses - consisting of assignments and weekly meetings at the front of the cell.²¹⁶

The previously mentioned Red Onion State Prison in Virginia does not differ substantially from any of the aforementioned institutions.²¹⁷ The facility houses both 'general population' inmates and 'segregation inmates'. Many inmates at Red Onion prefer segregation as they are then single-celled. Since the facility possesses only an outdoor recreation area, inmates must recreate in all weather conditions, or have no out-of-cell time altogether. They are not provided with (or allowed to use their own) gloves or hats in cold weather, and are not permitted to come inside early if the weather worsens while they are out. As in other institutions only infrequent, non-contact visits are permitted, even though inmates are strip-searched before leaving their cell (and must hand their uniforms through the food slot to be inspected), as well as before and after each social visit. Dismissing the need for inmate rehabilitation frequently associated with

²¹⁵ *Ibid.*

²¹⁶ *Ibid.*

²¹⁷ Fellner (1999) *op. cit.*

training and counseling programs (which do not exist in Red Onion), the former Director of Corrections Ron Angelone noted, referring to Red Onion prisoners, “What are they going to be rehabilitated for? To die gracefully in prison?”²¹⁸

The Administrative Maximum Security (ADX) Unit at the Florence State Prison in Colorado takes a similar approach. What is striking with respect to this facility are the extreme barriers that separate it from the rest of society and its high-tech accoutrements, which guarantee virtually no contact between prisoners and guards. As Robert Perkinson describes in “Shackled Justice: Florence – The Cutting Edge of Social Control,”

The Florence ADX sits in the southeast corner of the four-prison complex. It is an imposing triangle of x-shaped cell-blocks, surrounded by double 20-foot fences, interwoven with razor wire. Two perimeter roads, 8,000 watt lights, microwave sensors, and six sniper towers separate the ADX from the other facilities...Inside, guards control every door, light, intercom and fiber-optic communication lines...The shower [in each cell], along with food slots in the door and individual phone jacks, allows for total isolation. Interlocking doors will allow only one prisoner out of his cell at a time. Totally alone, with nothing but an electronic escort, prisoners will move to the perma-steel mesh-covered coop for their one promised hour [of exercise] each day.²¹⁹

Although there are few super-maximum security facilities for female convicts, they are not entirely non-existent, and conditions of confinement are analogous to those at the aforementioned male facilities. In the edited collection, *Criminal Injustice: Confronting the Prison Crisis*, Mary O’Melveny presents a brief history of the Women’s High Security Unit at Lexington.²²⁰ The unit opened in 1986 and closed in 1988, but remains one of the more controversial camp prisons, as it housed a number of women whose security designation was based on their political affiliations.²²¹ The unit was

²¹⁸ *Ibid.*

²¹⁹ Perkinson (1996) *op. cit.* 337-8

²²⁰ Mary O’Melveny, “Lexington Prison High Security Unit: U.S. Political Prison.” *Criminal Injustice: Confronting the Prison Crisis*. Elihu Rosenblatt (Ed.) Boston: South End Press, 1996.

²²¹ A number of women confined in Lexington’s High Security Unit were imprisoned at this level of security solely on the basis of their ostensibly volatile political affiliations. Susan Rosenberg (member of

located in the basement of an old Public Health Service building, where daylight rarely seeped in, and occasional ten-minute social phone calls were the only connection to the outside world. A 1988 Amnesty International report condemned the “constant and unjustified use of security chaining, the repeated strip searching, the almost total lack of privacy, the claustrophobic lack of sensory stimuli, freedom of movement, possessions, choice of activities, and incestuously small range of contacts” found in the prison. Upon its closure, Lexington’s remaining inmates were transferred to the maximum-security women’s facility in Marianna, Florida.

Super-maximum Security Prisons as Camp Spaces

Having examined both standard and camp prisons, some of the legal configurations that underpin the American penal system, and their practical relevance in both environments, it is useful to revisit Agamben’s theorizations regarding the concept of camp, as well as Agamben and Arendt’s conceptualizations of the distinction between camps and prison. For Arendt, camp as a spatial construct is always, if only tangentially, associated with Nazi concentration camps, and as such, functions as the warehousing and extermination chamber of the superfluous. Agamben, who theorizes camp in a more comprehensive manner, understands it as both a physical space that is opened when the state of exception becomes the rule, and a paradigm or lens through which to understand the present

the Weather Underground and the May 19th Communist Party), Silvia Baraldini (member of the May 19th Communist Party), as well as Alejandrina Torres (a Puerto Rican liberation activist) were among the women at Lexington. A memo to the prison administration regarding Baraldini clearly illustrates the political reasons for her confinement at the unit: “Although Ms. Baraldini scores well enough on her Custody Scoring Sheet to be considered for custody reduction, she is a member of the May 19th Communist Party which is sympathetic to other radical groups including the New African Freedom Front and FALN [Fuerzas Armadas de Liberacion Nacional].” As cited in *Ibid.* 324. The High Security Unit at Lexington, therefore, is sometimes referred to as America’s own political prison.

international environment. As a physical space, Agamben's camp does more than enclose, warehouse and exterminate. Although the camp does give permanent spatial arrangement to the state of exception, its most important function is its showcasing of "bare life,"²²² its illumination of human beings ripped out of their historical contexts, and gutted of their politics and identities. "Insofar as its inhabitants are stripped of every political status and reduced to bare life," argues Agamben,

the camp [is] also the most absolute biopolitical space ever to have been realized, in which power confronts nothing but pure life, without any mediation. This is why the camp is the very paradigm of political space at the point at which politics becomes biopolitics and homo sacer is confused with the citizen. The correct question posed concerning the horrors committed in the camps is, therefore, not the hypocritical one of how crimes of such atrocity could be committed against human beings. It would be more honest, and, above all, more useful to investigate carefully the juridical procedures and deployments of power by which human beings could be so completely deprived of their rights and prerogatives that no act committed against them could appear any longer a crime. (At this point, in fact, everything had truly become possible.)²²³

As a lens through which to understand the current international environment, the camp paradigm disrupts the entrenched epistemology, ontology and methodology of traditional international relations, upsetting its ontological triad of states, institutions and classes, and exposing the existence and continual proliferation of liminal spaces and liminal subjects (bare life). Camp as a paradigm insists that a connection be made between disputed no-man's lands, refugee camps, *zones d'attentes* in international airports and stadiums in Bari, effectively exposing the proliferation of liminal spaces that exist within the zone of indistinction between outside and inside, and the disturbing multiplication of liminal, superfluous subjects, reduced to bare life and abjected into these spaces.

²²² Although Agamben does not provide a precise definition of 'bare life', his reflections on this condition indicate that 'bare life' is the state of existence wherein a human being persists in the abyss that is the liminal space, stripped of everything (identity, politics, rights) but his or her corporeal being, effectively effaced from among humanity.

²²³ Agamben (1998) *op. cit.* 181

For Arendt and Agamben, camp is both an extraordinary space and a methodology for the analysis of humanity's recent trajectory, where mutually exclusive extremes merge, inside and outside, exclusion and inclusion violently coalesce, and the living are downgraded to bare life. For both authors, however, a prison is never a camp, as prisons are always embedded within social and legal structures, while camps are located outside of them. The fundamental argument of this thesis is that while Arendt and Agamben's fears of too readily conflating camps and prisons are justified (as not all prison should be subsumed under the label of camp), recent trends in American penology and practices of confinement have created an environment where two categories of prisons can be identified, one of which is a clear incarnation of camp. Thus, standard prisons, characterized by proliferating and increasingly valorized prison labour, vestiges of rehabilitative rhetoric, and the retention of citizenship responsibilities in combination with a partial removal of citizenship rights, should not be subsumed under the rubric of camp. While the rights of inmates confined in standard prisons are certainly truncated, and they are partially stripped of their citizenship status, they nevertheless remain at least partially within the purview of legal and social structures that restrict the realm of possibility with respect to their treatment and living conditions. Although less eligible to be treated with the dignity ideally afforded to human beings, and less eligible to access the judicial system, they are nevertheless partially protected by these legal and social structures, and included through their exclusion in both the economic and political spheres of the society that expels them.

Prisoners of non-standard or camp prisons (supermaxes), on the other hand, seem to exist outside of the rubric of citizenship, and outside of traditional penal discourses and

practices. Inmates of non-camp prisons, for instance, are perpetually assessed according to the doctrine of less eligibility, which leads to the severe regulation of their behaviour and environment: the wages they receive for prison labour, the quantity and quality of social activities they undertake, the length of showers, the size of televisions, and the number of photographs on a cell wall become important markers of the deflation of a prisoner's standard of living in comparison to that of the general population. Society's obsession leads to the proliferation of rules and regulations in standard prisons, which ensure with increased precision that the prisoner has just enough, but never too much freedom, choice, and dignity. In camp prisons, however, while prisoners remain less eligible than free and desirable citizens to all of the trappings of humanity, the doctrine of less eligibility is stretched to such an extreme that is almost unrecognizable, at best a severely distorted version of the doctrine and at worst, a creature altogether different.

While standard prisons tediously balance necessity and comfort, continually refining the equilibrium between what is required and excessive in freedom, choice, education, wages and physical and mental stimuli, camp prisons avoid much of this tinkering by simply removing all freedom, all work, all education and all physical and mental stimuli, confining its prisoners to a bare, solitary cell, and locking the door. Thus, unlike standard prisons, camp prisons do not simply restrict or eliminate the element of choice, they actually eradicate everything that could otherwise be chosen from. Why struggle over the size of televisions, the quality and quantity of posters on cell walls, or the elaborateness of prisoners' hobbies, when they can be altogether eradicated? Camp prisoners are thus effectively removed from the realm of humanity, stripped of all of the trappings of a complex human being – as the environment in which they are housed is

guttled – and reduced to subsisting in the zone of indistinction between life and death that is bare life. Moreover, whereas prisoners in standard institutions remain partial citizens, retaining some of the responsibilities (and less of the rights) of citizenship (through labour, the payment of taxes, restitution, room-and-board etc.), and consequently, maintain a relationship with ‘outside’ society, those confined in camp institutions are entirely removed from the realm of citizenship, stripped of both its rights and responsibilities.

It is precisely this absolute deletion from the sphere of citizenship that expands the camp prison’s realm of possibility with respect to its inmates’ treatment and conditions of existence. As Agamben argues with reference to camps, residents of these spaces are so completely deprived of their rights and prerogatives that no act committed against them appears a crime, everything is truly possible, and the state of exception is normalized. As previous illustrations of supermax prisons indicate, super-maximum confinement in the United States is analogous to the internment of liminal subjects in Agamben’s camps. Supermax inmates exist entirely beyond the realm of citizenship and thus, they can be utterly isolated from society, denied contact with each other, with correctional officers, and with their families, housed for decades in conditions of solitary confinement, without adequate medical treatment or sensory stimuli, can be shot at, beaten, and left hogtied in prison corridors, with few avenues of appeal – except internally, to those sanctioning their treatment – and little sympathy from the society which has evacuated them into these spaces. Indeed, within these liminal zones, anything seems possible. Moreover, as the history of the evolution of super-maximum prisons indicates, their entrenchment into American penological culture is literally a case of the

exception becoming the rule, or the normalization of a state of exception. After all, the supermax institution represents the entrenchment and normalization of lockdown measures traditionally employed only temporarily and in exceptional situations.

Agamben's other conceptualizations of camp, namely, its theorization as a paradigm through which to assess the current international climate, is also eminently useful to analyses of super-maximum imprisonment. The paradigm of camp offers an ontological and methodological foundation not only for the establishment of a theoretical platform from which to study super-maximum security institutions as distinct entities, but also for the insertion of supermaxes into the realm of other liminal spaces. While detailed case studies of particular super-maximum security prisons are invaluable as sources of information on otherwise inaccessible spaces, exclusively analyzing these institutions in isolation from other liminal camp spaces diminishes the potential that these interrogations will expose the collective significance of all such spaces, and the implications of their proliferation.

In order to adequately understand these implications, it is necessary to revisit Isin's distinction between distant and immanent others, and the corresponding logics of exclusion and alterity.²²⁴ Most of the camp spaces described by Agamben are places for the warehousing and management of distant others who have been reduced to the state of bare life (especially liminal spaces such as refugee camps and *zones d'attentes*). These zones serve to obstruct or at least delay the infiltration of distant others, the uninvited "them," into a society of "us." The thwarting of this external threat, however, does not eliminate the internal threat posed by immanent others, who while residing within the social body comprise a dangerous and undesirable class of abject and superfluous beings.

²²⁴ See Chapter One for a more detailed analysis.

Although it may be possible to deport a small number beyond the state's physical borders (if they were originally 'distant others' who managed to surmount the aforementioned obstacles), the majority of them - undesirable as they are - possess some form of citizenship (if only formal), and thus cannot be expelled beyond state borders as they once could. Super-maximum security prisons are a solution to this dilemma. As the previously mentioned camp spaces warehouse and restrain distant others, so the supermaxes warehouse and restrain undesirable, superfluous and abject immanent others. As distant others are reduced to bare life when entering camp zones, immanent others housed in camp-prisons are stripped of all citizenship, all vestiges of social belonging and reduced to their naked cores. The insertion of supermax prisons into the camp paradigm, therefore, elucidates the current social trajectory, which entails the narrowing of the scope of normalcy and acceptability, the proliferation of creative and sophisticated modes of intra-state exclusion of undesirable populations, the resultant multiplication of internal borders and segmentation of society, and the progressive normalization of the state of exception as a method for dealing with this madness.

Entrenching Exclusion

The drawback of intra-state exclusion into penitentiary institutions, of course, is its relatively temporary character. Although an increasing number of prisoners in both non-camp and camp institutions are confined permanently, or for long stretches of time, most of the incarcerated will be released back into society at one point or another. As they will be no more desirable and no less superfluous or abject than they were prior to their expulsion, modes for their continued exclusion (if not physical, at least institutional and

structural) are necessary. Thus, for those who are not sentenced to death or life imprisonment, both non-camp and camp prisons are increasingly becoming temporary stops on a road to permanent social, political and economic intra-state exclusion. The United States has perhaps the most extensive and comprehensive guidelines for the permanent removal of former prisoners from ‘respectable’ society. The process is often referred to as “invisible punishment,” “collateral consequences,” or “civil disabilities” and “civil death.” The last reference harkens back to traditions carried into Europe from ancient Greek and Roman civilizations, whereby offenders suffered a “civil death” that entailed the loss of all civil rights, confiscation of property, and exposure to injury or even to death, as the outlaw could be killed with impunity.²²⁵ Reduced to bare life, and effectively effaced from the realm of humanity (even though still physically present) the offender, like all those reduced to bare life, could be killed without being murdered, as he or she was at best an animal. In England, the debasement of offenders and their removal from the community was accomplished through “bills of attainder,” whereby a convicted felon was subject to forfeiture of property, was stripped of the ability to inherit property, and was unable to bring suit or perform any other legal function.²²⁶

British colonialists brought these concepts to North America, where “civil death” remains entrenched through laws restricting the formal and substantive citizenship rights of all convicted felons. The rescinding of the political rights of citizenship revolves around the disenfranchisement of individuals convicted of felony offences. While the U.S. Constitution secures the franchise for all individuals, a provision in the 14th

²²⁵ Jamie Fellner and Marc Mauer. “Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States.” *Human Rights Watch*. New York: Human Rights Watch, 1998. Accessed at <http://www.hrw.org/reports98/vote/>

²²⁶ *Ibid.*

Amendment to the Constitution allows for the exclusion of citizens “for participation in rebellion, or other crime.” Arguments that the words “other crime” refer to some form of rebellion or treason against the state did not convince the United States Supreme Court, which used these words in 1974 to sanction disenfranchisement.²²⁷ The practice of disenfranchisement in the United States, however, dates much further back. While the poor, women, African Americans and a host of other groups were all disenfranchised at particular historical junctures, the exclusion of convicted felons took on a new significance in the aftermath of the Civil War and the passage of the 15th Amendment, with which the franchise was expanded to include recently freed slaves.²²⁸ Ex-convict disenfranchisement was especially visible in the South, where it came on the heels of other legislation aimed at reducing the number of ex-slaves at polls, including literacy tests, property taxes, grandfather clauses and poll taxes. While laws excluding criminals from the vote had existed in the past, between 1890 and 1910, on the assumption that certain crimes were ‘black crimes’ while others were ‘white crimes’, many Southern states tailored their criminal disenfranchisement laws with the explicit intent of keeping as many African Americans away from the polls as possible. In South Carolina, for instance, the disqualifying crimes were thievery, adultery, arson, wife-beating, housebreaking and attempted rape, while crimes such as murder and fighting were omitted from the list.²²⁹ Lawmakers in Alabama – whose explicit motivation was the

²²⁷ Robert Drinan, “Let prisoners keep the right to vote.” *Boston Globe*. 14 July 2000. Accessed at <http://www.commondreams.org/cgi-bin/print.cgi?file=/views/071400-101.htm>

²²⁸ Section 1 of the 15th Amendment to the U.S. Constitution states: “The right of citizens of the United State to vote shall not be denied or abridged by the United States or by any State on account or race, color, or previous condition of servitude.”

²²⁹ While it is difficult to understand the logic employed in the classification of certain crimes as ‘black’ or ‘white’, it seems that ideas regarding the natural inclinations of, and inherent differences between the groups may account for such categorization. Thus, the ostensible sexual licentiousness, uncontrollable passion and animal-like urges attributed to blacks could explain their association with adultery, wife-

establishment of white supremacy - instated a constitutional provision that made a conviction for crimes of “moral turpitude” (a category still used in some states) the basis for disenfranchisement.²³⁰

Presently, all but two states (Maine and Vermont, where both prisoners and former prisoners are allowed to exercise their right to vote) disenfranchise those imprisoned on felony convictions.²³¹ Alaska and handful of other states have also retained disenfranchisement provisions in regard to crimes of ‘moral turpitude’.²³² Of the states that disenfranchise prisoners, only thirty-one restore their rights automatically upon release from prison and the completion of parole. In Arizona, North Carolina and Washington the process is essentially automatic, although a formal application for the restoration civil rights is required. In Connecticut, a former convict must additionally provide written proof of having paid all fines stemming from the conviction, and in Pennsylvania ex-felons must be registered as voters prior to their conviction (in which

beating, arson and rape or attempted rape. The association of rape with African Americans may also speak to the fear that their infiltration of white society threatens its purity and wholesomeness.

²³⁰ Fellner and Mauer (1998) *op. cit.* and Marc Mauer, *Testimony of Marc Mauer, Assistant Director at The Sentencing Project, before the Constitution Subcommittee, House Judiciary Committee on Felony Voter Disenfranchisement*. 21 October 1999. Accessed at <http://house.gov/judiciary/maue1021.htm>; Crimes of “moral turpitude” are crimes that are considered disruptive of the moral fabric of society.

²³¹ In many jurisdictions of the United States, a felony is any offence carrying a potential penalty of more than one year in prison. In Massachusetts, on the other hand, a felony is any offence that carries *any* prison time.

²³² According to the State of Alaska, felonies and crimes of moral turpitude are “those crimes that are immoral or wrong in and of themselves.” The Alaska legislature states that these include: murder, manslaughter, assault, sexual assault, sexual abuse of a minor, unlawful exploitation of a minor, robbery, extortion, kidnapping, incest, arson, burglary, theft, forgery, criminal possession of a forgery device, receiving a bribe, perjury, endangering the welfare of a minor, escape, promoting contraband, interference with official proceedings, receiving a bribe by a witness or a juror, jury tampering, misconduct by a juror, tampering with physical evidence, hindering prosecution, terroristic threatening, rioting, criminal possession of explosives, unlawful furnishing of explosives, promoting prostitution, criminal mischief, misconduct involving a controlled substance or an imitation controlled substance, permitting escape, promoting gambling, possession of gambling records, distribution of child pornography, possession of child pornography, stalking, endangering the welfare of a vulnerable adult, fraudulent use of a credit card, and criminal use of a computer. The State of Alaska website cautions that the list is not exhaustive, and that many more crimes can be considered crimes of moral turpitude. See Restoring Your Right To Vote, Alaska at <http://www.usdoj.gov/crt/restorevote/Alaska2.pdf>

case the restoration of the franchise is automatic). Alternately, the mandatory waiting period is five years following release. In Arizona and Maryland, the right is automatically restored following release from imprisonment for a first offence, but a pardon from the state governor is required following subsequent offences.

The remaining states all institute some form of permanent disenfranchisement. Alabama, Florida, Iowa, Kentucky, Mississippi, Nebraska, Nevada, New Mexico and Virginia require former felons to obtain pardon from the state's governor, or in the case of Nebraska and Nevada, from the Board of Pardons. In Delaware, individuals convicted of murder, manslaughter, any felony constituting a sexual offence or an offence against public administration involving bribery, improper influence or abuse of office are not eligible to have their voting rights restored. A similar ban exists in Tennessee where those convicted of murder, aggravated rape, treason or voter fraud after 1 July 1986 or rape after 30 June 1996, are permanently disenfranchised. Wyoming institutes a lifetime ban for those convicted of one violent felony, while Maryland permanently disenfranchises individuals convicted of two violent felonies. For residents of those four states, the only avenue available for the restoration of civil rights is a presidential pardon.

Thus, while in all states the right to vote can be theoretically regained, the intricacy of the process and the resources required to follow it through make it extremely difficult in practice. Consequently, the number of former convicts who regain the right to vote is extremely low. For instance, of the 200,000 ex-felons residing in Virginia between 1996 and 1997, only 404 had the right of franchise restored.²³³ Prisoners convicted of federal offences face additional barriers, as at least sixteen states bar these offenders from using State procedure for the restoration of voting rights, necessitating in

²³³ Fellner and Mauer (1998) *op. cit.*

effect a presidential pardon.²³⁴ It is not surprising, therefore, that millions of Americans are currently prohibited from voting. The most recent national statistics available indicate that approximately 4.7 million Americans – one in forty-three adults – have currently or permanently lost their right to vote due to a felony conviction.²³⁵ This represents an increase of 0.8 million from a few years ago, when one in fifty adults were disenfranchised.²³⁶ Of the 4.7 million disenfranchised Americans, 1.4 million are individuals who have successfully completed their prison sentences.²³⁷ On a state-by-state basis, fourteen states are currently excluding over 2% of their population.²³⁸ In most states, a large portion of this population has already ‘done their time’, including parole. In Alabama, for instance, 80.3% of the disenfranchised population are ex-felons; in Mississippi, the figure stands at 86.2%; in Virginia at 80.3%; and in Wyoming, 73.8% of the disenfranchised population has fully served their sentence.²³⁹ It is interesting to note, however, that some of the states with exceedingly high disenfranchisement rates (such as the District of Columbia) actually restore voting rights to released prisoners. For these states, it is not post-release “civil death” laws that are responsible for high rates of disenfranchisement, but rather, their incredible prison populations.

Despite the 15th Amendment and the Voting Rights Act of 1965, disenfranchisement disproportionately affects African American, and other visible

²³⁴ Sen. Harry Reid, *Amendment SA 2879 to Bill s. 565*. Excerpt from the Congressional Record. 14 February 2002. Accessed at <http://prisonactivist.org/pipermail/prisonact-list/2002-February/00468.html>

²³⁵ “Felony Disenfranchisement Laws In the United States.” *The Sentencing Project*. January 2004. Accessed at <http://www.sentencingproject.org/pdfs/1046.pdf>

²³⁶ Kweisi Mfume, “Reenfranchisement.” *National Association for the Advancement of Colored People*. Accessed at <http://www.naacp.org/work/voter/reenfranchisement.html>

²³⁷ Mauer, *Testimony of Marc Mauer, Assistant Director at The Sentencing Project, before the Constitution Subcommittee, House Judiciary Committee on felony voter Disenfranchisement*. (1999) *op. cit.*

²³⁸ Alabama, Arizona, Delaware, the District of Columbia, Florida, Georgia, Iowa, Maryland, Mississippi, Tennessee, Texas, Virginia, Washington and Wyoming. From statistics obtained from, “Fact Sheet: States that Bar Ex-Offenders from Voting.” *Human Rights Watch*. October 1998. Accessed at http://www.hrw.org/press98/oct/vote_fact1022.htm

²³⁹ *Ibid.*

minority populations. Approximately 1.4 million African American men – 13% of the African American population – are disenfranchised due to felony convictions.²⁴⁰ According to data obtained by Human Rights Watch, two states have disenfranchised one in three African Americans, while eight states have disenfranchised one in four.²⁴¹ All but eleven of the states that practice some form of disenfranchisement have excluded more than 5% of their black population. States with the highest rates of African American disenfranchisement include: Alabama, which disenfranchised 31.5% of its black population, Delaware 20.0%, Florida 31.2%, Iowa 26.5%, Mississippi 28.6%, New Mexico 24.1%, Texas 20.8%, Virginia 25.0%, Washington 24% and Wyoming, which refuses the right to vote to 27.7% of its black population.²⁴² According to projections, given the current rates of incarceration, more than 30% of the next generation of African Americans will be disenfranchised at some point in their lives.²⁴³

The “civil death” of ex-felons is not achieved by disenfranchisement alone, even though it seems that the majority of research and agitation by human rights organizations and prison-rights activists is dedicated to this cause. In addition to being disqualified from one of the fundamental political rights of citizenship, former felons are also ineligible for many of the economic rights accorded to ‘worthy’ and ‘respectable’ American citizens. First, Section 115 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (more commonly referred to as the Welfare Reform Act of 1996) allows states to permanently disqualify anyone convicted of a

²⁴⁰ Fellner and Mauer (1998) *op. cit.*

²⁴¹ *Ibid.*

²⁴² “Fact Sheet: States that Bar Ex-Offenders from Voting.” *op. cit.*

²⁴³ Reid (2002) *op. cit.*

felony drug offence from receiving welfare and food stamp benefits.²⁴⁴ While states can opt out of this provision, presently forty-three states are enforcing the ban in full or in part. Twenty-two states deny both welfare and food stamp benefits entirely and permanently to all individuals previously convicted of felony drug offences;²⁴⁵ three states deny both benefits to those convicted of the sale of drugs only;²⁴⁶ seven states deny benefits partially or for a temporary period;²⁴⁷ and in ten states, benefits are dependent on the ex-convict's participation in drug treatment.²⁴⁸ Only nine states have opted out of the ban completely.²⁴⁹ According to a study by Patricia Allard, which analyzed the specific impact of the ban on women, African American women (and surely by extension, the African American population in general) are disproportionately affected. In five states, African American women represent the majority of women subjected to the ban while in total, more than 48% of those affected by the ban are African American women (approximately 35,000 women).²⁵⁰

Second, individuals convicted of felony drug offences are also subject to discrimination with respect to public housing. A 1996 government policy titled the One Strike Initiative authorized local public housing authorities to obtain criminal conviction

²⁴⁴ Patricia Allard, "Life Sentence: Denying Welfare Benefits to Women Convicted of Drug Offences." *The Sentencing Project*. February 2002. Accessed at <http://www.sentencingproject.org/pdfs/9088.pdf> and Marc Mauer, "Invisible Punishment Block Housing, Education, Voting." *Joint Center for Political and Economic Studies*. May/June 2003. 3-4

²⁴⁵ Alabama, Alaska, Arizona, California, Delaware, Georgia, Idaho, Indiana, Kansas, Maine, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Pennsylvania, South Dakota, Tennessee, Virginia, West Virginia, and Wyoming. See Allard (2002) *op. cit.*

²⁴⁶ Arkansas, Florida and Rhode Island.

²⁴⁷ In Colorado, Illinois, Iowa, Louisiana, Massachusetts, North Carolina and Texas, ex-convicts must either wait a set period before being eligible for benefits, or alternately, are denied either food stamps of welfare benefits but not both.

²⁴⁸ Hawaii, Kentucky, Maryland, Minnesota, Nevada, New Jersey, South Carolina, Utah, Washington and Wisconsin.

²⁴⁹ Connecticut, the District of Columbia, Michigan, New Hampshire, New York, Ohio, Oklahoma, Oregon and Vermont.

²⁵⁰ Allard (2002) *op. cit.*

records of adult applicants or tenants for screening and eviction purposes. In accordance with the initiative, local public housing authorities are empowered to deny housing to individuals previously convicted of drug offences, or those presently *suspected* of drug involvement.²⁵¹ Since the implementation of this law, the number of applicants denied public housing due to criminal backgrounds doubled, from 9,835 to 19,405.²⁵²

Third, a 1998 Amendment to the Higher Education Act suspended eligibility for student loans for anyone convicted of a drug offence. The amendment promises to deny or delay all federal financial aid (including grants, loans and work assistance) for post-secondary education. During the 2000-2001 school year, more than 43,000 students were adversely affected by the amendment.²⁵³

Fourth, a lifetime public employment ban exist in several states, including at least six of the states that also fully or partially enforce the welfare and food stamp ban.²⁵⁴ While other states do not technically impose the ban, broad discretionary powers in hiring procedures increase the likelihood that previously convicted felons will not be hired in public service.²⁵⁵ In addition, a number of states prohibit ex-felons from obtaining occupational or professional licenses in fields such as education, childcare, social work, nursing, dentistry, health, physical therapy and accounting.²⁵⁶ As one resident of Alabama, who holds a marketing degree and was once convicted of cocaine possession noted, "I'm closed out of 85 percent of the job market. I'd like the state to take a step

²⁵¹ *Ibid.*

²⁵² Mauer (2003) *op. cit.*; Emphasis added.

²⁵³ Allard (2002) *op. cit.*

²⁵⁴ Alabama, Delaware, Iowa, Mississippi, Rhode Island and South Carolina. See Allard (2002) *op. cit.*

²⁵⁵ *Ibid.*

²⁵⁶ Jeremy Travis, Amy Solomon and Michelle Waul. "From Prison to Home: The Dimensions and Consequences of Prison Re-entry." *Urban Institute: Justice Policy Center*. June 2001. Accessed at http://www.urban.org/UploadedPDF/from_prison_to_home.pdf

forward and set an example. If they won't do it [hire ex-convicts], why would private enterprise? Basically, it's a life sentence being an ex-felon."²⁵⁷

The trend toward more symbolic exclusions of former convicts from the communities into which they are released is also gaining wider acceptance. The previously discussed web-based prisoner and parolee search engines, which provide the user with all of the personal information of ex-prisoners (including their addresses upon release) are one example. Even broader post-detention exclusionary measures are imposed on sex-offenders. Under the regime of "Megan's Laws" entrenched by federal and state governments in 1996, federal and state authorities are permitted to not only keep a registry of all former sex offenders in their jurisdiction for periods extending from ten years to life, but also to notify the public of the their whereabouts through mailings, posters, media announcements and CD-ROMs containing the files of all ex-offenders coded by geographical area. By 1998, convicted sex offenders in every state were subject to registration, with some states enforcing the law retroactively – as of that year, nearly 280,000 sex offenders were listed in registries across the country.²⁵⁸ In Louisiana, former sex offenders must notify their landlords, neighbours and the directors of the local school and municipal parks (in writing) of their penal status. They must post warnings of their presence in a community newspaper within thirty days of their arrival. In addition, the law authorizes "all forms of public notification," including posters, handbills and bumper

²⁵⁷ Nate Reens, "Problems plague criminal justice system." *Savannah Morning News*. 25 January 2004. Accessed at <http://savannahnow.com/cgi-bin/printme.pl>

²⁵⁸ Travis, Solomon and Waul (2001) *op. cit.*

stickers, and a judge may even request that former sex offenders wear a “distinctive garb” that readily identifies them as such.²⁵⁹

The consequences of such draconian deprivations are not difficult to comprehend. In 2001 alone, 600,000 individuals – roughly 1,600 a day – were released from state and federal prisons.²⁶⁰ With little or no government assistance, restricted access to public housing and post-secondary education, and with extremely limited job opportunities, the staggering rates of recidivism encountered by many counties are not surprising. In Allan County, Indiana where recidivism rates mirror the national average, 63% of offenders are returned to prison for technical violation of parole or on new charges within the first year of release, 78% within two years, and over 90% within three years.²⁶¹ Other studies reveal that a large number of prisoners are drawn from a relatively small number of neighborhoods. In Baltimore, for instance, 15% of the city’s neighborhoods account for 56% of prison releases.²⁶² Combined, the studies suggest that offenders, former offenders and those soon to be imprisoned not only come from the same neighborhoods, but are indeed the same individual. Thus, as Michel Foucault aptly argues, recidivism seems to represent a triumph rather than a failure of the prison system, as it produces an “enclosed illegality” of criminals who are perpetually recycled through they penal system and are consequently incapable of contaminating “respectable” citizens and their neighborhoods, while at the same time functioning as an example for these citizens of the dangers of non-conformity.²⁶³ Making a similar argument, Loïc Wacquant notes that the

²⁵⁹ Loïc Wacquant, “Deadly Symbiosis: When Ghetto and Prison Meet and Mesh.” *Mass Imprisonment: Social Causes and Consequences*. David Garland (Ed.) London: Sage, 2001. 100

²⁶⁰ Travis, Solomon and Waul (2001) *op. cit.*

²⁶¹ Jeff Johnson, “Felons Want Second Amendment Rights Restored.” *CSN News*. 25 January 2002. Accessed at <http://www.newsmax.com/archives/articles/2002/1/24/202310.shtml>

²⁶² Travis, Solomon and Waul (2001) *op. cit.*

²⁶³ Matthews (1999) *op. cit.* 21

vicious circle of imprisonment, ghettoization and re-imprisonment contributes to the ongoing construction of American identity

around the polar oppositions between praiseworthy 'working families' – implicitly white, suburban, and deserving – and the despicable 'underclass' of criminals, loafers, and leeches, a two-headed antisocial hydra personified by the dissolute teenaged 'welfare mother' on the female, and the dangerous 'gang banger' on the male side – by definition dark skinned, urban and undeserving. The former are exhaled as the living incarnation of genuine American values, self-control, deferred gratification, subservience of life to labor; the latter is vituperated as the loathsome embodiment of their abject desecration, the 'dark side' of the 'American dream' of affluence and opportunity for all... And the line that divides them is increasingly being drawn, materially and symbolically, by the prison.²⁶⁴

Conclusion

The present chapter augments the previous chapter's analysis of the economic relationship between society and its prisoners with an illustration of the relationship of *inclusive exclusion* that analogously prevails in the political sphere. Replicating the structure of chapter two, this chapter first draws upon aspects of the history and evolution of imprisonment, focusing on its relationship with discourses of citizenship. Second, the chapter examines the present conditions and laws governing American imprisonment in general and standard, non-camp prisons in particular. Third, it addresses the distinctive character and increased number of super-maximum security institutions, and presents a case for analyzing such prisons through the camp paradigm proposed by Agamben. In doing so, it attempts to understand the relationship of super-maximum security institutions to current citizenship discourses, positing that such institutions are increasingly tailored to the incapacitation, warehousing and intra-state eviction of the 'undesirable' and 'dangerous' class of abject and superfluous individuals.

²⁶⁴ Wacquant (2001) *op. cit.* 107

Acknowledging the disjunction between the largely temporary nature of imprisonment and the desire to permanently efface undesirables from society, the chapter concludes by examining a number of post-incarceration strategies designed to maintain the exclusion of ex-prisoners within society, until they are again evacuated to prison. The chapter also begins to lay the groundwork for a more theoretical understanding of the functions of the processes of inclusion and exclusion through a cursory analysis of prisoners and prisons in relations to discourses of citizenship. The following chapter will build on these musings, in an attempt to interrogate more comprehensively the nexus between modernity, penology, inclusion, exclusion and discourses of citizenship, belonging, superfluity, abjection and camp.

Chapter Four: Understanding the American Liminal Subject

Having analyzed the precarious and contradictory politico-economic relationship between society and the superfluous and abject individuals who comprise the 'undesirable citizens' expelled into standard as well as camp prisons (intra-state liminal zones), it is necessary to understand the precise composition of these groups and account for the increasing incidence of the phenomenon of expulsion in contemporary society. The current chapter attempts to identify the parameters of the 'undesirable classes' slated for expulsion by presenting an overview of the available statistical information regarding the extent of imprisonment and the identity markers most frequently displayed by incarcerated populations. Second, the chapter grapples with the identified trends, and attempts to fix some theoretical parameters for their empirical manifestations. Selected classical and contemporary criminology theory, the transformation in penal philosophy and the discourses that buttress this transformation, as well as the outside/inside dynamic and the technological transformations that sustain and refine it, will all be interrogated through the theoretical prism constructed in the first chapter. Chapter four concludes with an attempt to illustrate the advantages of conceptualizing these relations and transformations through such theoretical constructs.

Before attempting to understand why particular groups of citizens are labeled 'undesirable' and expelled beyond the politico-economic boundaries of 'respectable' society, it is necessary to establish who these individuals are, and how many of them are being removed. Censuses of the federal and state prison and jail populations conducted in 1974, 1979, 1984, 1990, 1995 and 2000 by the Bureau of Justice Statistics, U.S. Department of Justice, point to a persistent decline in the populations of full,

‘respectable’ citizens and a corresponding incline in excluded populations.²⁶⁵ As of 31 December 2001, 2.7% of the adult population had at some point in their lives served time in state or federal penitentiaries (5.6 million adults), up from 1.8% in 1991, and 1.3% in 1974 (in numerical terms, the number of current and former inmates has increased by 3.8 million between 1974 and 2001). In other words, one in thirty-seven adults living in the United States has been incarcerated during his or her lifetime. In just under thirty years the population of ‘citizens’ who were at some point abjected as undesirable or superfluous has more than doubled, with the annual average increase in prison population peaking in the 1990s at 7.4%.²⁶⁶ Presently, nearly one third of former prisoners remain under some form of correctional supervision, including probation, parole or imprisonment in local jails, and as of 31 December 2002, 2,166,260 individuals were being incarcerated in the United States.²⁶⁷

The two most frequently cited statistics regarding imprisonment are the rate of imprisonment (per 100,000 of the population) and the average daily (prison)

²⁶⁵ The following statistics are derived from the Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice. Accessed at <http://www.ojp.usdoj.gov/bjs/>; Bonczar, Thomas. “Prevalence of Imprisonment in U.S. Population, 1974-2001.” Bureau of Justice Statistics, U.S. Department of Justice. Accessed at <http://www.ojp.usdoj.gov/bjs/pub/pdf/piusp01.pdf>; James Stephan and Jennifer Karberg. “Census of Federal and State Correctional Facilities, 2000.” Bureau of Justice Statistics, U.S. Department of Justice. August 2003. Accessed at <http://www.ojp.usdoj.gov/bjs/abstract/csfcf00.htm>; James Stephan, “Census of State and Federal Correctional Facilities, 1995.” Bureau of Justice Statistics, U.S. Department of Justice. August 1997. Accessed at <http://www.ojp.usdoj.gov/bjs/pub/pdf/csfcf95.pdf>. Statistics derived from all other sources will be cited individually.

²⁶⁶ The tremendous increases can be accounted for by the War on Drugs, the Three-Strikes Initiative and Truth-in-Sentencing provisions. Since the 1990s, annual prison population growth rates have declined somewhat, to approximately 3.8% per annum over the 2001 calendar year. See Paige Harrison and Jennifer Karberg, “Prison and Jail Inmates at Midyear, 2002.” U.S. Department of Justice, Bureau of Justice Statistics. April 2003. Accessed at <http://ojp.usdoj.gov/bjs/pub/pdf/pjim02.pdf>

²⁶⁷ This represents the total number of prisoners housed in: federal and state prisons (1,361,258, excluding federal and state prisoners housed in local jails); territorial prisons (16,206); local jails (665,475); facilities operated by or for the Bureau of Immigration and Customs Enforcement, formerly the U.S. Immigration and Naturalization Service (8,748); military facilities (2,377); jails under Aboriginal jurisdiction (1,912, as of midyear 2001); and juvenile facilities (110,284 as of October 2000). Paige Harrison and Allan Beck, “Prisoners in 2002.” U.S. Department of Justice, Bureau of Justice Statistics. July 2003. Accessed at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p02.pdf>

population.²⁶⁸ The general rate of incarceration stands at 476 prisoners per 100,000 of the population, an increase from 411 in 1995,²⁶⁹ and approximately 110 between 1925 and 1973.²⁷⁰ If state rates of incarceration are combined with the rates of federal prisons and local jails, and the result is segregated by gender, the total number of male inmates was 1,309 per 100,000 of the population, at midyear 2002.²⁷¹ The average daily population is similarly on the rise, increasing by 43% between 1990 and 1995, and then by 38% between 1995 and 2000. Both general rates of incarceration and average daily populations are, however, frequently deceiving, not only in terms of the racial distribution of inmates (which will be dealt with separately), but also in terms of gender and geographical variations. Thus, as previously noted, the rates of incarceration increase significantly for the male population when gender is taken into consideration. Geographical discrepancies are similarly concealed by general incarceration rates. State-specific rates of incarceration indicate that almost two-fifths of all American imprisonment takes place in the South, with the region incarcerating 35 more prisoners per 100,000 than is the national average (its rate of imprisonment is 511 per 100,000 of the population). Leading the nation is Georgia, where one in every fifteen adults is under some form of correctional supervision.²⁷² More shocking still are future projections based on present incarceration patterns. If the 2001 incarceration rates persist, 6.6% of individuals born in 2001 will be confined in federal or state prisons over the course of their lifetime, up from the 5.2% estimate generated in 1991, and the 1.9% prediction for 1974. This is equivalent to the imprisonment of one in every fifteen individuals.

²⁶⁸ For an analysis of the advantages and drawback of each measurement, see Matthews (1999) *op. cit.* 86

²⁶⁹ Harrison and Beck (2003) *op. cit.*

²⁷⁰ Travis, Solomon and Waul (2001) *op. cit.*

²⁷¹ Harrison and Karberg (2003) *op. cit.* The equivalent statistics for females is 113 per 100,000.

²⁷² Reens (2004) *op. cit.* 2

Not all American citizens, however, stand an equal chance of being excluded from society through incarceration. The prevalence of imprisonment in 2001 was higher for black males (16.6%) and Hispanic males (7.7%) than for white males (2.6%). The same was true for black (1.7%) and Hispanic (0.7%) as compared to white females (0.3%).²⁷³ In 2001, 64% of prison inmates belonged to racialized or ethnicized minorities,²⁷⁴ an increase of 2% from the previous year. When accounted for in the national rates of incarceration, the variable of race - like the variables of gender and geographical location - illustrates the misleading nature of the aggregate figures. Although the rate of 476 per 100,000 is already one of the highest in the world, a staggering 6,607 black adults per 100,000 of the black population are under some form of correctional supervision.²⁷⁵ The conflation of age, geography and skin colour often exposes even larger discrepancies. A study conducted in 1991 by the National Center on Institutions and Alternative Studies revealed that on any given day, 42% of all African American 18-35 year old males residing in the District of Columbia were either in jail, prison, on probation or parole, out on bond, or sought on arrest warrants. The lifetime risk of imprisonment for that population hovered somewhere between 80% and 90%.²⁷⁶

Statistical evidence indicates that racialized individuals are removed from society as 'undesirable citizens' in increasing numbers. Over the 27 year period that is covered by the U.S. Department of Justice censuses, the share of those who are black or Hispanic among the incarcerated population has inclined dramatically, with the number of

²⁷³ Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice. Accessed at <http://www.ojp.usdoj.gov/bjs>

²⁷⁴ *Ibid.*

²⁷⁵ Christie (2000) *op. cit.* 95

²⁷⁶ A similar study conducted in Baltimore revealed that 56% of all of the city's young African American males were in prison, jail, on probation or parole, on bail or being sought on arrest warrants on an average day. For more details on the study see *Ibid.*

Hispanics rising nearly ten-fold and the number of blacks tripling while the number of whites doubled. A survey of the New Jersey State Maximum Security Prison in October of 1954 indicated that 38% of its inmates were of African American descent. While this figure already exceeds African Americans' share of the general population, the numbers continue to rise.²⁷⁷ Black males, moreover, experienced a greater increase in lifetime chances of imprisonment than any other group (Hispanics experienced the second largest increase). The same pattern holds true for black and Hispanic women.²⁷⁸ If the 2001 incarceration rates were to persist into the future, a black male would have a one in three chance of going to prison during his lifetime, as compared to a one in six chance for a Hispanic male, and a one in fifteen chance for a white male. In other words, approximately 32% of black males will enter state or federal penitentiaries over the course of their lives, compared with 17% of the Hispanic population, and 5.9% of white males.²⁷⁹ While blacks clearly comprise the most frequently abjected population, with Hispanics a distant second, Aboriginal populations are also disproportionally represented among prisoners. Their rate of incarceration is approximately 2,000 per 100,000 of the population.²⁸⁰

Although race frequently dictates a group's degree of desirability and their resultant relationship with 'respectable' society, it is not the sole determining identity.

²⁷⁷ Although African Americans account for only about 12% of the U.S. population, 44% of all prisoners in the United States are black. "Incarcerated America." *Human Rights Watch Backgrounder*. April 2003. Accessed at <http://www.hrw.org/backgrounder/usa/incarceration>

²⁷⁸ The lifetime chances of incarceration increased from 13.4% in 1974 to 32.2% in 2001 for black males, from 4.0% in 1974 to 17.2% in 2001 for Hispanic males, and from 2.2% in 1974 to 5.6% in 2001 for white males. A similar pattern is apparent with respect to women, as the lifetime chances of going to prison increased most rapidly for black women (from 1.1% in 1974 to 5.6% in 2001) and Hispanic women (from 0.4% to 2.2% in the same time period). For white women, the increase was slighter (from 0.2% to 0.9%). Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice. *op. cit.*

²⁷⁹ *Ibid.*

²⁸⁰ Lawrence Greenfeld and Steven Smith. "American Indians and Crime." Bureau of Justice Statistics, U.S. Department of Justice. February 1999. Accessed at <http://www.ojp.usdoj.gov/bjs/pub/pdf/aic.pdf>

Across all racial groups, prisoners are disproportionately drawn from the poorest sector of society. Statistics gathered by the U.S. Department of Justice reveal that 36% of the imprisoned population was unemployed in the month preceding incarceration, while an additional 15% worked only part-time or irregularly.²⁸¹ Of those who were employed, the majority reported incomes at or below the poverty level – 68% of those imprisoned in state and federal institutions earned less than \$15,000 per annum.²⁸² Other studies indicate that 53% of low-income defendants receive prison sentences, compared to only 26% of high-income defendants.²⁸³ The related factor of education similarly increases one's chances of being abjected as an 'undesirable' citizen. Only about half of all prisoners possess a high-school diploma or its equivalent,²⁸⁴ while 41% of young, black high-school dropouts are behind bars.²⁸⁵

In addition to race, income and education, it seems that degree of ability is also crucial in determinations of social worth and desirability. While mental illness is frequently acquired or aggravated behind bars (especially in super-maximum security institutions, due to experiences of utter isolation, boredom, and the lack of appropriate medical care), many inmates report prior illnesses. Over one-third of all jail inmates report some physical or mental disability, while one-quarter admit to having been previously treated for mental or emotional problems.²⁸⁶ Among state and federal inmates the prevalence of mental illness is higher still, with staff at certain supermaxes reporting that well over two-thirds of their inmate population suffers from some type of mental

²⁸¹ *Ibid.* and Wacquant (2001) *op. cit.* 92

²⁸² Lichtenstein and Kroll (1996) *op. cit.* 22

²⁸³ *Ibid.* 20

²⁸⁴ Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice. *op. cit.*

²⁸⁵ Mauer (2003) *op. cit.* 3

²⁸⁶ Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice. *op. cit.*

disease.²⁸⁷ In September 2000, Congressman Ted Strickland informed his colleagues from the House Subcommittee on Crime that between 25% and 40% of all mentally ill Americans would, at some point in their lives, become entangled in the criminal justice system. According to the American Psychiatric Association, over 700,000 mentally ill Americans are processed through jails and prisons each year; one in five prisoners is seriously mentally ill; and up to 5% are actively psychotic at any given moment.²⁸⁸ These numbers clearly indicate that American prisons have become warehouses for a large portion of the country's mentally ill population.²⁸⁹

As the dramatic increases in the rates of imprisonment indicate, American society is progressively purging itself of its undesirable elements and as abjection beyond state borders is no longer an option, intra-state expulsions are increasingly the answer. More importantly, however, such expulsions are increasingly less temporary and less partial than ever before. While standard prison confinement is increasing, more troubling perhaps is the growth in camp prison confinement, where the degree of exclusion (both economic and political) is much higher, and is increasingly permanent in duration. Thus, a growing number of 'undesirables' are warehoused within specially constructed intra-state liminal zones, politically almost entirely effaced from society and included only

²⁸⁷ Abramsky and Fellner (2003) *op. cit.*

²⁸⁸ The National Commission on Correctional Health Care issued a report to Congress in March 2002, which found that: on any given day, between 2.3 and 3.9 percent of inmates in State prisons are estimated to have schizophrenia or other psychotic disorders, between 13.1 and 18.6 percent have major clinical depression, between 2.1 and 4.3 percent have bipolar disorders, between 22.0 and 30.1 percent have anxiety disorders, and between 6.2 and 11.7 display symptoms of post-traumatic stress disorder. For these and other statistics regarding imprisonment and mental health, including state-by-state analyses of mentally ill prisoners, please see Abramsky and Fellner (2003) *op. cit.*

²⁸⁹ Evidence also exists of the shuffling of mentally ill individuals from penitentiaries to psychiatric hospitals and back to penitentiaries – a process referred to as the 'ping-pong effect'. Human Rights Watch research indicates, for instance, that one schizophrenic prisoner was admitted to the Central New York Psychiatric Center on more than twenty occasion since his incarceration in the late 1970s. When not under psychiatric care, he was housed continually in 23 hour confinement for at least the period from early 1991 through to May 2000, with at least six years of that segregation spent in a super-maximum secure housing unit. *Ibid.*

indirectly in the economic realm, through the sophisticated exclusion-management industry. Statistics confirm that a growing number of inmates are housed in maximum and super-maximum security confinement. First, more than half of the largest institutions (with daily populations of 2,500 and up) are maximum-security prisons.²⁹⁰ Consequently, maximum-security capacity has expanded by 31% between 1995 and 2000. Second, the number of inmates classified at the maximum-security level has expanded by 3% between 1995 and 2000. By 30 June 2000, nearly 36% of all state and federal prisoners were held in maximum security. While the U.S. Department of Justice rarely publishes statistics regarding the number of maximum security inmates who are actually housed in super-maximum security confinement (perhaps due to the ostensibly temporary, disciplinary – and thus fluctuating - nature of such confinement) it is reasonable to hypothesize that a growth in maximum security confinement engenders a growth in supermax confinement. This hypothesis is confirmed by statistics acquired by Human Rights Watch from the *Corrections Yearbook 2001*, which reveal that the average percentage of prisoners in segregation and protective custody has increased from 4.5% to 6.5% between 1994 and 2001.²⁹¹ The same source indicates that while the exact number of prisoners held in supermax confinement on any given day is not known, as of 1 January 2001 thirty-six states reported a total of 49,348 segregated prisoners, excluding those held specifically in protective custody. As with general imprisonment statistics, the percentage of the inmate population housed in supermax conditions varies geographically.²⁹²

²⁹⁰ Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice. *op. cit.*

²⁹¹ Abramsky and Fellner (2003) *op. cit.*

²⁹² Research conducted by Human Rights Watch exposed a significant variation in super-maximum security confinement between states. Arkansas, for instance, reported that 15% of its population was in either

As the number of abjected undesirables grows, so too does the industry that manages their expulsion. While the economy of exclusion was addressed in chapter two, the unprecedented growth in large warehousing facilities merits more detailed analysis. According to the U.S. Department of Justice censuses, the number of adult penitentiaries had increased by 17% between 1990 and 1995, and by another 14% between 1995 and 2000.²⁹³ Not only is the number of facilities increasing, but the facilities themselves are growing. The percentage of institutions housing fewer than 500 inmates fell from 63% to 57% between 1990 and 1995, while the number of institutions housing over 1,000 inmates increased by 8%. The gap widened between 1995 and 2000, as the number of smaller facilities declined by another 12%, while the number of larger facilities grew by 24%. Penal institutions are also increasingly automated and computerized, as can be deduced from the progressive decline in the number of staff to prisoners. Thus, while the number of correctional staff continues to increase in actual terms, the number of inmates grows faster: in 1990, there were 2.7 inmates per employee, in 1995, 2.9 inmates per employee and in 2000, every employee was responsible for 3.0 inmates. The racial composition of these correctional officers is also important to note. While most of the ‘excluded’ are racial minorities, the majority of those enforcing and maintaining this exclusion are white: 69% of correctional facility workers in 2000 were white, 21% black, and 8% Hispanic.

administrative or disciplinary segregation; Texas reported 6.8% in administrative segregation (and provided no data on disciplinary segregation); and New York reported that 7.8% of its prison population was in disciplinary segregation (and none in administrative). *Ibid.*

²⁹³ In numerical terms, the number state and federal prisons increased from 1,287 to 1,500 between 1990 and 1995, and to 1,668 in 2000. Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice. *op. cit.*

A number of conclusions can be drawn from the above statistics. First, it is apparent that American society is purging itself of its abject, superfluous and undesirable immanent others with increased frequency and efficiency. Moreover, those allocated into the category of 'immanent other' are most frequently individuals who deviate from the 'idealized citizen' – they are not white, their performance in the labour market (and consequently in the consumer market) is inadequate, their participation in what are constructed as 'dangerous' and 'criminal' activities is on the other hand excessive and they deviate from the manufactured 'norm' in their physical and/or mental abilities. As crime and imprisonment statistics indicate, not only is society purging itself of its undesirables, an increasing number of individuals are falling into this category as a result of the continual narrowing of the 'acceptable'. Thus, while crime levels are on the decline, incarceration levels are on the rise. The 'War on Drugs' is perhaps the single most significant variable responsible for the growth in the prison population, as well as being an important indicator of the constriction of social 'acceptability', and the growing intolerance for those who deviate from these norms. The number of drug offenders has increased twelve fold since 1980 (the 1980s and 1990s being the heyday of the War on Drugs), and in 2000, 57% of federal and 21% of state prisoners were drug offenders.²⁹⁴ Moreover, drug offenders accounted for the greatest share of the increase in the federal prison population between 1999 and 2000 (they accounted for 59% of the population increase).²⁹⁵

The War on Drugs has also provided an efficient means of excluding those whose race makes them objectionable, having succeeded in increasing the number of racialized

²⁹⁴ *Ibid.*

²⁹⁵ *Ibid.*

individuals behind bars. As Francis Cullen, Patricia Van Voorhis and Jody Sundt argue, together with the Three Strikes initiative, the War on Drugs serves the dual purpose of expelling undesirable segments of the population (young, black men living in inner-city ghettos), while garnering political support for politicians from concerned affluent, suburban voters (who, incidentally, are often purchasing these drugs) for their attempt to clear the streets of the “dangerous class ruthlessly pushing drugs on kids and killing their competitors in the drug trade.”²⁹⁶ That this is the intent and not the byproduct of the War on Drugs is indicated by punishment discrepancies such as those found in the Minnesota judiciary, where the presumptive sentence for the possession of three grams of crack cocaine (the ‘drug of choice’ for inner city poor) is four years, while a sentence of probation is recommended for the possession of the same amount of powder cocaine (the ‘drug of choice’ for affluent suburbanites).²⁹⁷ Consequently, although data compiled between 1996 and 1999 indicates that African Americans represent only 13% of monthly drug users, they account for 35% of those arrested, 55% of those convicted, and 74% of those imprisoned for drug related offences.²⁹⁸ It can be concluded, therefore, that individuals exhibiting specific identity markers (race, class, level of mental and physical ability) are increasingly marked as abject, superfluous, and undesirable. Moreover, it is apparent that that an increasing number of individuals and groups fall outside of the narrowing band of social acceptability and ‘normalcy’, and that ‘respectable’ American citizens are purging themselves of these undesirables with increasing frequency.

²⁹⁶ Cullen, Van Voorhis and Sundt (1996) *op. cit.* 27

²⁹⁷ In Minnesota, African Americans comprised 95% of those charged for crack possession, while whites comprised 80% of those charged with possession of powder cocaine. *Ibid.* 27. The eerie parallel between this and the ‘white’ and ‘black’ crimes discussed in chapter three is all too apparent.

²⁹⁸ Allard (2002) *op. cit.*

The second inference that can be made from the above statistics is that the mechanisms and processes of exclusion are progressively being expanded and refined. Not only are more convicts warehoused in maximum- and super-maximum security institutions (where they are more completely and permanently isolated from society), but more convicts are managed with increasingly sophisticated technology. Contact between society's 'outsiders' and 'insiders', therefore, is increasingly curtailed. Historically recurring discourses of contamination indirectly reinforce the perceived necessity of segregation between prisoners and the society from which they are abjected, as well as between prisoners themselves. Not only does the separation of prisoner from society signify that physical and social exclusion is the price of non-conformity, but it also protects vulnerable citizens from contamination by the corruptive influences of deviants. As Sykes notes, this is why "the prison wall, the line that divides the pure and impure, has all the emotional overtones of a woman's maidenhead. One escape from the maximum security prison is sufficient to arouse public opinion to a fever pitch."²⁹⁹ Moreover, within prisons themselves, the segregation and diverse treatment afforded different inmates not only serves as a 'stick and carrot' method of management, but also reinforces the distinctions between corrigible and incorrigible inmates, separating the latter from the former in order to avoid the contamination of those for whom there is still hope of reintegration.

Finally, the aforementioned statistics indicate that while political exclusion of maximum security inmates is increasingly absolute, their utility to the economy of the society that excludes them is also growing, precisely because of their expanding and

²⁹⁹ Sykes, Gresham. *The Society of Captives: Crime Prevention in Correctional Institutions*. Cambridge: Cambridge University Press, 2002. 18

increasingly sophisticated exclusion (as evidenced by the proliferation of prison construction and outfitting industries, as well as the perpetual growth in the demand for penal institutions). Contemporary society, therefore, is excluding more individuals, more permanently and more efficiently. As abjection and superfluity are on the rise, and the ranks of 'respectable' citizenry are narrowing, superfluous citizens become useful only in their abjection, and so the abjected are never fully detached from the abjectors.

The Penology of Inclusive Exclusion

The notion that superfluous, abject and dangerous individuals are routinely excluded from society in its urge to cleanse itself of undesirable elements, yet are re-implicated and included in this society exactly through this process of exclusion, is indeed a complex one. The following section attempts to propose a number of ways in which this phenomenon can be conceptualized in the context of penal systems and discourses.

Justifications of punishment, and by extension imprisonment (as this form of punishment has dominated North American penology since the continent's colonization) conventionally revolve around the four functions it ostensibly serves.³⁰⁰ One school of thought perceives imprisonment as social *retribution* for the convict's behaviour. Underpinning the philosophy of retribution are the assumptions that rational individuals who engage in socially undesirable behaviour must be punished, and that a schedule of punishment can be established in accordance with which each criminal action can be assigned a corresponding punishment. A second and related function of punishment is that of *deterrence*. Again based on the premise that responsibility for criminal behaviour

³⁰⁰ David Stanley, *Prisoners Among Us: The Problem of Parole*. Washington D.C.: The Brookings Institution, 1976. 9-13 and Sykes (2002) *op. cit.* 9-16

is to be vested exclusively in the individual, punishment through imprisonment is seen to provide dual deterrence. The imprisoned criminal, who upon experiencing the pains of confinement will abstain from future criminal activity, is deterred along with the free citizen whose actions are restrained by an awareness of the consequences of socially undesirable behaviour. Third, imprisonment is legitimated on the basis of its perceived *rehabilitative* function. In this case, time spent in prison serves to rehabilitate social deviants, who upon their release will be ready to re-enter society as responsible and productive citizens. The fourth school of thought applauds the *incapacitative* function of prisons. Prisons are lauded based on the rather simple assumption that it is difficult for individuals to commit crimes (at least against free citizens) while they are confined in penal institutions. The crimes that are committed within the walls of the prison are not all that concerning – except when they involve correctional officers – as both the perpetrator and the victim are deviants excluded from society and stripped of most citizenship rights, including the potential to be victimized.³⁰¹ The philosophy of incapacitation rests on the assumption that certain individuals are so far beyond the pale of respectable citizenship that they cannot be rehabilitated, nor trusted to be deterred from criminal behaviour by the potential of punishment. The only remaining option, therefore, is to separate them from society – if at all possible, ‘lock ‘em up and throw away the key’. Citing crime-by-age statistics³⁰² David Stanley quotes one criminologist’s sardonic statement on incapacitative imprisonment: “Virtually all criminals can have their

³⁰¹ As previously mentioned, civilly dead individuals, ones effectively reduced to the state of bare life, could be killed with impunity but never murdered, as they were no longer human, and so it was no longer appropriate to measure the worth of their existence using the standards of humanity.

³⁰² Stanley notes that more burglaries, larcenies and auto thefts are committed by young people, ages 15 to 17 years, than by any other group, while for crimes of violence, those from 18 to 20 are the most responsible, with the second largest group in the 21-24 age range. Stanley (1976) *op. cit.* 12

subsequent violent crime dramatically reduced by detaining them in prison until their fiftieth birthday.”³⁰³

A number of observations can be made with respect to the aforementioned justifications of imprisonment. The four schools of thought are not mutually exclusive, and during no period in the evolution of American penal institutions was imprisonment conceived of as accomplishing only one of these functions. While it can certainly be said that different functions attained discursive prominence at particular historical junctures (such as the rehabilitative function in the 1960s and 1970s), all were employed to different degrees in efforts to legitimate imprisonment. Second, as information presented in chapters two and three indicates, the contemporary period in American penology - referred to by some critics as the ‘punitive paradigm’³⁰⁴ - is actually much too complex to be categorized in a manner that indicates the prominence of discourses of retribution and deterrence (as the term ‘punitive paradigm’ alludes to). While it is clear that the hegemony of rehabilitative philosophy has been shattered in the 1980s and 1990s, it is more appropriate to conceptualize the current penal climate as comprised of two separate penal sub-systems that are differently legitimated even though they ultimately converge in their production of *inclusive exclusion*. The first sub-system utilizes most frequently a blend of the discourses of rehabilitation and security, and corresponds to the standard or non-camp prisons considered in chapters one, two and three. As alluded to in chapters two and three, the ‘mission statements’ and publications of both federal and state corrections departments for standard prisons belabour both the general rehabilitative qualities of the institutions (their counseling services, personal betterment programs, etc.)

³⁰³ *Ibid.*

³⁰⁴ Peter Matthews and Peter Francis. “Towards 2000: An Introduction.” *Prisons 2000: An International Perspective on the Current State and Future of Imprisonment*. London: MacMillan Press, 1996. 8

as well as the particularly reformatory attributes of prison labour. The New Jersey Department of Corrections for instance, states that its mission is,

to ensure that all persons committed to the state correctional institutions are confined with the level of custody necessary to protect the public and that they are provided with the care, discipline, training, and treatment needed to prepare them for reintegration into the community.³⁰⁵

UNICOR's mission statement provides a similar blend of security and rehabilitation discourses: "It is the mission of Federal Prison Industries, Inc. to employ and provide skills training to the greatest practicable number of inmates... [and to] contribute to the safety and security of our Nation's correctional facilities by keeping inmates constructively occupied."³⁰⁶ Thus, discourses of rehabilitation are combined with the discourses of safety and security, and while those of deterrence and retribution are sometimes present (mostly in unofficial statements and political rhetoric), the combination of rehabilitation and security dominates. This of course, is not to say that rehabilitation actually takes place in standard prisons. The rehabilitative discourse is nevertheless still employed to legitimize their existence.

Within the second sub-system, which corresponds to camp or supermax prisons, the discourse of incapacitation is almost exclusively employed to justify the institutions' existence. At times, the discourse of deterrence is also employed, especially in the context of the War on Drugs. Incapacitation, however, is dominant even with respect to the War on Drugs, as the rhetoric of 'getting drug dealers off the streets' indicates. This penal sub-system, therefore, is legitimized through a qualitatively different discourse than that employed in the legitimation of non-camp prisons. Correspondingly, these institutions function not as temporary facilities for the punishment and (theoretical)

³⁰⁵ New Jersey Department of Corrections. Accessed at <http://www.state.nj.us/corrections/>

³⁰⁶ U.S. Department of Justice, Federal Prisons Industry. Accessed at <http://www.unicor.gov/>

rehabilitation of wayward populations, but as mechanisms for the permanent separation, warehousing and management of aggregate – superfluous, abject and dangerous – populations. Thus, when perusing the website of the Florida State Prison at Starke, one finds its maximum security unit advertising that it provides no vocational programs, no wellness education programs and only the minimum mandated academic and substance abuse programs. One will find, however, detailed descriptions of the prison's close management unit and the particularities of the three security levels under which the unit's inmates are classified – with inmates at the highest level housed in constant solitary confinement with extremely curtailed privileges, and ineligible for work assignments inside or outside of the unit.³⁰⁷

All this being said, it is clear that although both sub-systems exist concurrently, and growth and expansion is occurring in both, American penal philosophy and practice are perceptibly shifting toward camp prison confinement. Thus, even while non-camp prisons and prison industries are utilizing a blend of rehabilitative and security discourse, they are subtly prioritizing the latter – as the previously cited mission statements reveal – perhaps guarding against accusations that they are upgrading the living conditions of ‘undesirable’ individuals beyond those experienced by ‘respectable’ populations. Moreover, as evidenced by the statistics presented earlier in the chapter, an increasing number of inmates are placed in super-maximum confinement and a growing number of prisons – larger prisons – are being constructed as exclusive super-maximum security environments. Finally, the rhetoric of the political elite with respect to the penal system (often a good measure of where public opinion stands, or at least in which direction it is

³⁰⁷ Florida State Department of Corrections, Florida State Prison at Starke. Accessed at <http://www.dc.state.fl.us/Facilities/region2/205.html>

being prodded) is almost exclusively focused on ‘getting tough on crime’, punishing and incapacitating criminals, and ridding society of its ‘bad apples.’ As Feely aptly states, American penal philosophy and practice are slowly but surely venturing into a new penal phase – one oriented not towards individuals and their transformation through rehabilitation or punishment, but toward the managerial task of incapacitating and warehousing an aggregate population of undesirables.

The standard and camp prison systems are slowly converging not only with respect to their function of incapacitation, but also in their fostering of *inclusive exclusion*. It is increasingly the case that inmates of both types of prisons are permanently excluded from the political and economic realms of social relations. Not only do physical barriers quarantine prisoners when they are incarcerated, but in the (increasingly rare) event that they are released, former inmates continue to remain excluded physically (in the ghettos in which they usually reside), politically (through the permanent ‘civil disabilities’ many experience), and economically (through their diminished access to the economic rights of citizenship). Both forms of prisons, therefore, are increasingly not the final and most desperate attempt at ‘straightening out’ those whose behaviour deviates from the social norm, but rather, are a single step on the path to the social annihilation of superfluous, abject and undesirable citizens. The continued physical segregation (ghettoization) of most ex-convicts after their ostensible release back into the ‘community’, the political and economic exclusion that can, in some states, continue permanently, and the incredible rates of recidivism (not entirely unrelated to these ‘disabilities’) create the previously discussed ‘enclosed illegality’, within which

the undesirables are permanently contained.³⁰⁸ Undesirable populations, therefore, exist in a permanent limbo - both during their physical confinement in prisons and their post-release exclusion - stripped of their citizenship status, and confined to a partial existence on the frontier between inside and outside, endurance and effacement.

Even in this permanent state of exclusion, however, these 'undesirables' continue to be partially included in the politico-economic realm of the society that has excluded them. As discussed in previous chapters, inmates of non-camp prisons retain some of the rights of citizenship (although largely in theory and not practice), are expected to fulfill certain responsibilities of citizenship, and are included in the economic sphere both through their labour in prison industries, as well as by default in the booming industry that manages their exclusion. Inmates of camp prisons, alternately, are excluded to a much greater degree, warehoused in institutions largely outside of the purview of society and its laws. Like standard prisoners, however, they remain economically implicated through the sophisticated industry that has developed to facilitate their greatest possible separation from society.

Another important conclusion that can be drawn from the four traditional functions of imprisonment is that they are all founded on the assumption that responsibility for criminal and otherwise undesirable behaviour rests solely with the individual perpetrator. As society is in no way implicated in this behaviour, and criminals can be likened to the 'few rotten apples' that are 'ruining it for the rest of us', imprisonment makes sense as it deters others from straying, reforms those who have strayed already through punishment or rehabilitation, and if all else fails incapacitates and separates them so that they do not contaminate the entire basket. It is not difficult to see

³⁰⁸ Matthews (1999) *op. cit.* 21

how such “gardening ambitions”³⁰⁹ lead to the proliferation of super-maximum confinement, and the increasingly permanent and extensive inclusive exclusion of populations deviating from socially constructed ideals of behaviour, skin colour, class, and ability.

It is important to acknowledge, therefore, that American penal philosophy is undergoing a process of quantitative and qualitative transformation. American society is obsessively purging itself of its undesirables in unprecedented numbers, narrowing the scope of ‘desirability’ and ‘social normalcy’ to an exceptional degree. While an extensive analysis of the causes and consequences of these transformations is beyond the scope of this project, a brief look at one author’s attempt to come to terms with these developments can help to further illuminate the position taken by this thesis. In an endeavour to explain the penal system’s quantitative and qualitative transformations, Wayne Morrison builds on the insights of Emile Durkheim, who argues that evolution within the penal system, marked by a progressive retreat from corporal punishment, toward punishment through the deprivation of liberty alone occurs in tandem with social evolution.³¹⁰ Notwithstanding the rather suspect teleological connotations of this model, one could reasonably argue that it corresponds somewhat to the history of penal philosophy within the United States. As the previous chapters revealed, American penal practices are presently based on the conversion of punishment with increasingly extensive deprivations of liberty in all areas of human existence (with the notable exception of capital punishment). Durkheim’s more problematic assertions come in his predictions regarding the future of penology. According to Durkheim, society will

³⁰⁹ Morrison (1996) *op. cit.* 114

³¹⁰ *Ibid.* 99

increasingly replace traditional forms of punishment with measures designed to facilitate social ties based on mutual psychological understanding. This will occur due to an increasing humanistic understanding of social interaction and interdependency, and a deepening respect for the dignity and worth of human beings.³¹¹ It is here that Durkheim's assessment begins to diverge from the reality of the contemporary American penal system. As previously mentioned, contemporary penal practice and philosophy is actually moving away from the Durkheimian humanistic ideals, and towards the perception that certain aggregate populations are abject, superfluous and undesirable as citizens, and should thus be permanently segregated from the 'respectable' community, and warehoused and managed in specifically constructed liminal camp spaces.

Attempting to explain Durkheim's erroneous predictions, Morrison argues that instead of being marked by an "integrative social conscience", modern society is increasingly characterized by its multiplication of private, disconnected spaces, where the ritual of segregation and exclusion is fundamental, and the distancing of punishment (through mechanisms such as sentencing guidelines, as well as the out-of-sight-out-of-mind phenomenon facilitated by hermetically sealed and inaccessible camp-prison spaces) allows citizens to avoid feeling the guilt of being implicated in the process of abjection and exclusion.³¹² In order to explain what he perceives as apathy towards a problematic penal climate, Morrison alludes to Max Weber's understanding of legal-rational legitimation, and his analyses of bureaucratic processes.³¹³ According to Morrison, social distancing achieved through modernity's legal-rational legitimation – which effectively makes legitimation redundant, as correct procedure itself legitimates

³¹¹ *Ibid.* 100

³¹² *Ibid.* 102

³¹³ *Ibid.* 103

each action/policy – constricts the space in which critical assessment of the objectives of actions and policies is possible, and restricts scrutiny to the evaluation and manipulation of procedure. Thus, assumptions regarding the necessity to abject ‘undesirable’ populations from society, and the bases of the ‘desirables’ and ‘undesirables’ classification itself, remain just that – fundamental, irreducible assumptions.

Moreover, argues Morrison, legal-rational legitimization creates a distancing effect between those affected by the policies (the ‘undesirable populations’) and the rest of society. Such distancing allows the latter to perceive themselves as wholly detached from the outcomes of ‘their’ actions – subduing any potential misgivings with the satisfaction that a procedural scrutiny yielded no difficulties – and consequently apathetic to the increasingly problematic penal climate. However, while legal-rational legitimization and an inadequate critical scrutiny of the assumptions underlying the current penal paradigm are certainly in evidence, there is little to suggest that the public has become increasingly distant from, and apathetic to the penal system. In fact, the opposite seems true. The turn toward a paradigm in which the permanent exclusion and warehousing of increasing numbers of ‘dangerous’ and ‘undesirable’ populations is occurring not because mass distancing and apathy is permitting an elite to pursue its agenda unencumbered, but precisely because of heightening social sensitivity, and perceived vulnerability to ‘deviance’, ‘difference’ and ‘otherness’. This hypersensitivity and the resultant hysteria can explain the visceral reactions an individual may have to a crime committed two thousand miles away, and the burning desire to ensure that the criminal is rounded up, locked up, and punished. It can also explain instantaneous and almost illogical dedication to the logics of abjection and exclusion, and a concern over the fate of a

distant and admittedly ‘undesirable’ and ‘unworthy’ individual, absent, for instance, when a next door neighbour cannot make ends meet. This hypersensitivity cannot be explained as empathy for the victim either, for frequently the victim is lost and forgotten in the frenzy to mete out the harshest punishment. It is such hypersensitivity and obsessive interest in criminal behaviour combined with legal-rational legitimacy that generates an environment where:

Not only [is] it now politically correct in America to watch executions, to announce them on the radio and seek to make the prize in local radio contexts a seat in the execution chamber, but [where the resulting] embrace of imprisonment [appears] to go against one of the fundamental items which [makes] us modern – namely that every institution and practice has to pass the test of effectiveness and rationality. By most accounts imprisonment simply [does] not work. There is a long line of studies which specify that imprisonment is a failure, illegitimate, and that whatever ideological forces support it, imprisonment does not achieve those purposeful activities which penal reason specifies.³¹⁴

Although it is beyond the scope of this thesis to attempt to tackle thoroughly the sources of this hypersensitivity and hysteria at the present historical juncture, a few rough hypotheses can be advanced. First, as Zygmunt Bauman points to in *Globalization: The Human Consequences*, a new realization is making its way into the public consciousness, an awareness of the intensification of global disorder, of the “essentially elemental and contingent nature of the things which previously seemed tightly controlled or at least ‘technically controllable’.”³¹⁵ The acute fear engendered by this increasingly vivid realization ensures the perpetuation of the hegemony of legal-rational legitimation – it is simply too frightening to attempt to look beyond the procedural, as most are subconsciously aware that they will see a disturbing picture of a disturbed world on a

³¹⁴ *Ibid.* 98

³¹⁵ Zygmunt Bauman, *Globalization: The Human Consequences*. New York: Columbia University Press, 1998. 57-8

trajectory of self-destruction. Moreover, this acute (but increasingly chronic) fear of global disorder, combined with the awareness that breakneck technological ‘progress’ is slowly but surely connecting all parts of the globe, creates a perception that disorder can infiltrate every space and obliterate any of the buffers that have previously existed. The shrinking of the globe and the reduction of all distances brings ‘respectable’ and ‘desirable’ citizens into closer contact with their ‘unworthy’ and ‘undesirable’ counterparts, a situation perceived by the former to be increasingly threatening. The ostensible vulnerability, combined with the notion that little can be done to reign in disorder on the global scale, leads to a feverish attempt to exert control and establish order at a more local and consequently more manageable level. Increasingly severe mechanisms of control are employed against those who are perceived to be destabilizing that order, allowing external disorder to infiltrate the cocoon.

Even those who thrive on the external chaos (‘global citizens’, transnational businessmen) recognize the benefits of rigorous order at subsidiary scales, as the paranoia that engenders it can most frequently be channeled toward the fighting of criminal activity exclusively in the lower echelons of the social hierarchy. In an attempt to understand why the penal system strikes at the bottom but not at the top of society, Bauman advances a number of hypotheses: (1) the penal system is only concerned with preserving certain types of order (recognizing, perhaps, that disorder at the top is concomitant with an increasingly expanding and metamorphosing capitalist system); (2) illegal acts committed at the top are exceedingly difficult to disentangle from the dense network of daily ordinary company dealings, and are consequently hard to detect; (3) public vigilance as far as crimes at the top are concerned is erratic, sporadic, or non-

existent; (4) it is difficult to conceive of upper-echelon crimes as threats to physical safety.³¹⁶ Most importantly, however, rigorous pursuit of lower-echelon crime not only creates the perception of a local haven of safety and security in the chaos of global disorder, but also ensures that upper-echelon disorder is largely ignored and the profit it generates continues to multiply. Thus, “the top of the new hierarchy is exterritorial; its lower ranges are marked by varying degrees of space constraints, while the bottom ones are, for all practical purposes *glebae adscripti*.”³¹⁷

A second and related reason for the rise in hysteria at this particular historical juncture is connected to the previously discussed ideality of the present politico-economic environment. The increasingly sophisticated, high-tech, ‘downsized’ neo-liberal capitalist system is spewing out increasing numbers of superfluous individuals, unable or unwilling to conduct themselves in a ‘respectable’ and ‘responsible’ fashion (i.e. unable or unwilling to participate ‘properly’ in the a neo-liberal market). The increasing ‘responsibilization of the individual’ in the neo-liberal political and economic climate, and the consequent retrenchment of social security provisions produce a general climate of insecurity. The growing despair among these superfluous individuals, as well as the mounting political and economic insecurity engendered by the perpetual narrowing of ‘proper’ participation in a neo-liberal society, contributes to a general paranoia, a feeling of hopeless vulnerability to forces beyond one’s control and a sense that danger and deception is everywhere. The inability to reign in global forces (or perhaps an acceptance of their necessity on the basis of legal-rational legitimation) translates into an

³¹⁶ *Ibid.* 123-5

³¹⁷ *Ibid.* 105

intense desire to control the superfluous and ‘undesirable’ populations whose numbers, and consequently visibility is increasing.

Third, the resurgence of criminological positivism – premised on the idea of a natural differentiation between the ‘deviant’ and the ‘normal’ and an assumption of pathology³¹⁸ – in an environment where rehabilitation rhetoric, while still present within the penal sub-system related to standard prisons is being progressively obliterated, leads to a segregational and exclusionary remedy. While positivist criminology advocated the ideal of a ‘solution’ to the ‘problem of crime’, in a post-rehabilitation environment its conflation with classical criminology’s acceptance of a permanent demarcation between ‘outsiders’ and ‘insiders’, ‘deviance’ and ‘norm’, is inevitable. It is not surprising that the combination of such conflation with the fervent desire for security in an increasingly volatile political and economic environment (the actualization of which is linked to the restraining of superfluous and ‘undesirable’ populations) generates the current penal paradigm, dedicated to the warehousing and management of aggregate populations, and their permanent exclusion from society. Thus, while spatial confinement and varying degrees of incarceration have historically been employed as a method for dealing with “unassimilable, difficult-to-control and otherwise trouble-prone sectors of the population,”³¹⁹ and as such, those who were generally unwanted and unneeded outside of prison walls, the present quantitative growth and qualitative shift in imprisonment is also indicative of a restructuring of the social order (disorder). The exponential expansion of imprisonment suggests both escalating paranoia and diminishing tolerance for deviation from the narrowly constructed ‘norm’. Imprisonment statistics point to an increasing

³¹⁸ Morrison (1996) *op. cit.* 114

³¹⁹ Bauman (1998) *op. cit.* 106

conflation of 'deviance' with non-white (and especially black), ghettoized, young males, with the poor, or alternately, with those whose physical and mental ability prohibits them from 'properly' functioning in a neo-liberal society. Thus, for those who cannot or will not be controlled through seduction into the neo-liberal hegemony (because they refuse to be seduced, or because they simply lack the necessary range of skills and social capital³²⁰), repression is the complimentary method of social control. Imprisonment and post-release civic and economic 'disabilities' are only two of the many repressive mechanisms at the disposal of contemporary society.³²¹ What they achieve is "immobilization and also eviction – protracted, perhaps permanent exclusion – removal of danger-carriers into spaces out of sight and out of touch."³²²

The proliferation of prisons - and more importantly, camp prison - the increasing length of confinement, and the expanding post-release exclusion (which together produce the previously discussed 'enclosed illegality' of 'unworthy' populations) signify an increasing obsession with the purification of the citizen body, the expulsion of what is abject and superfluous in it, and its permanent effacement from the landscape. Thus, in standard prisons, "the point [is] to make sure that the inmate [goes] through certain motions, [follows] certain routines, [does] certain things."³²³ What the inmate does (or does not do) in camp prisons, on the other hand, is inconsequential. What is of consequence is that he/she stay there, "non-seeing and non-seen, incommunicado."³²⁴ As Bauman argues using the example of one supermax,

³²⁰ According to Bauman, seduction necessitates the ability to relate to the market, and by extension, the requisite social, technical, and psychological capital. As analyzes in Morrison (1996) *op. cit.* 104

³²¹ *Ibid.* 105

³²² Bauman (1998) *op. cit.* 122

³²³ *Ibid.* 113

³²⁴ *Ibid.* 108

Pelican Bay prison has not been designed as a factory of discipline or disciplined labour. It was designed as a *factory of exclusion* and of people habituated to their status of the *excluded*. The mark of the excluded in the era of time/space compression is *immobility*. What the Pelican Bay prison brings close to perfection is the technique of *immobilization*... If the concentration camps served as laboratories of a totalitarian society, where the limits of human submission and serfdom were explored, and if the Panopticon-style workhouses served as the laboratories of industrial society, where the limits of routinization of human action were experimented with – the Pelican Bay prison is a laboratory of the ‘globalized’... society, where the techniques of space-confinement of the rejects and the waste of globalization are tested and their limits are explored.³²⁵

In their exclusion, therefore, the superfluous are pulled back from the brink of utter superfluity, their utility resurrected precisely through their exclusion. An exploration of ‘techniques of space-confinement’, and of the extremes of deprivation is a bottomless economic goldmine, which the increasingly technologically savvy society is ever more ready to explore. The unremitting contraction of the ‘norm’ generates an incessant demand for an industry dedicated to the exclusion, warehousing and management of ‘undesirables’. Absolute and utter social control is always slightly beyond grasp, which ensures the existence of a perpetual need for novel modes and mechanisms of control, and a persistent search for more efficient means of extracting compliance from the incarcerated body.

It is this process of resurrecting superfluous citizens from utter superfluity by creating an economy of their exclusion that ensures that prison walls are not as impermeable as the ‘lock ‘em up and throw away the key’ rhetoric implies. The desire to abject and permanently exclude from society is mitigated by the politico-economic benefits of maintaining with the abjected a relationship of *inclusive exclusion*. Inmates of non-camp prisons save the ‘responsible taxpayer’ untold amounts of money by providing cheap goods and services to state institutions. Inmates of non-camp prisons, as well as

³²⁵ *Ibid.* 113

inmates of camp prisons also contribute indirectly through the industry created to maintain their exclusion. The corrections industry, in fact, is one of the only industries that experiences growth during periods of economic recession,³²⁶ and is one of the few that provide a steady influx of employment into rural areas.³²⁷ The costs of corrections, however, are never fully recuperated, and large influxes of money are needed to sustain the burgeoning industry of exclusion. This, however, is rarely an issue. After all, it is the survival of society that hangs in the balance.

If all this is indeed true, the question of why, at this particular historical juncture the United States has chosen to engage its abject, superfluous and dangerous populations in this manner, and with this fervour, remains. While numerous states are experiencing the instabilities and disorders associated with the aforementioned global political-economic climate, the response of the United States is largely unique and certainly unprecedented. Although it is beyond the scope of this thesis to address this question in any great depth, it seems appropriate at least to suggest the beginnings of a possible response. It seems as though a specific confluence of economic and political variables underpins this particular reaction. The radical neo-liberal orientation of the American economy (as well as the increasingly neo-liberal global economic climate), makes possible the perception that superfluous, abject and dangerous individuals are personally responsible for their undesirability and should not be allowed to disrupt the functioning of desirable society. As they can no longer be expelled beyond state borders, they can be dealt with by incapacitation and warehousing in intra-state liminal spaces. The costs of this incapacitation and the necessary degree of state involvement in the process, however,

³²⁶ Christie (2000) *op. cit.* 137

³²⁷ *Ibid.* 136

may seem to some as not entirely compatible with the tenets of neo-liberalism. Not only is the notion that neo-liberal states are inherently small and uninvolved an illusion, but the confluence of neo-liberalism with the feverish pitch of discourses of insecurity structures an environment where protection from internal and external threat is not only necessary for the survival of the market, but also for the persistence of society itself. Relatively insignificant inconveniences and sacrifices, therefore, seem eminently worthwhile.

Yet, the conflation of the discourses of neo-liberalism and insecurity is not unique to the United States, and thus, should not engender from it a distinctive response. The combination of neo-liberalism and insecurity, however, with the increasing power of the religious right in particular and social conservatism in general, contributes to the narrowing of the spectrum of social acceptability and 'normalcy', which in turn enlarges the pool of superfluous, abject and dangerous individuals, and thus contributes to the expansion of populations to be expelled into intra-state liminal zones so that the citizen organism can be purified.

Moreover, while the discourses of insecurity are permeating the globe, the fear and insecurity generated in the United States is of a particular sort, the sort engendered by being "the last remaining superpower", or for that matter, the last remaining anything. The implication of eventual demise is almost inherent in such construction, and continuance and survival can be easily construed as depending exclusively on internal strength and purity, internal order, and homogeneity of purpose and thought. Thus, while neo-liberalism seems to be increasingly entrenched around the globe, its confluence with

the peculiarities of the American politico-economic context seems to begin to address the penal approach currently taken by the United States.

Conclusion

As the statistics presented at the beginning of this chapter reveal, contemporary imprisonment in both camp and non-camp facilities is increasingly a means of social purification, whereby groups of individuals possessing characteristics that deviate from the white, affluent, able-bodied American 'norm', and who cannot or will not 'properly' participate in the neo-liberal ideology and market economy, are loosely subsumed under the category of 'undesirables'. Since their danger lies in their potential to contaminate 'worthy' citizens, they must be abjected from society.

As the concept of abjection indicates, and as is implied by the logic of alterity and the intricate and constitutive connection between citizens and their immanent others, prisoners are never utterly superfluous, but attain their political utility precisely through their exclusion and status as 'undesirable' others, against which 'desirable' citizenship can be constituted. Capitalism, moreover, and neo-liberal capitalism especially, can and will suck blood out of a stone. Thus, a sophisticated, extensive and recession proof industry has been made of exclusion, which in effect snatches the abjected and previously superfluous 'undesirables' from the brink of utter economic superfluity, and inclusively excludes them into/from society.

While this chapter forwarded some hypotheses regarding the unprecedented levels of expulsion and abjection in contemporary American society, the hypotheses were but the beginnings of an answer, or more appropriately, comprised merely the skeleton, or the scaffolding around which substantial explorations can be constructed. Much more

research and thought must take place before one can even begin to say that a preliminary hypothesis has been advanced to explain the factors involved in contemporary expulsion and abjection into prison spaces. Further historical research must also be undertaken so that a more complete understanding of the transformations in the practices of exclusion is achieved. While the thesis presented what may be best characterized as historical vignettes, an extensive and diligent historical analysis would undoubtedly shed more light on the practices of imprisonment. Moreover, although the thesis espoused the desirability of analyzing camp prisons in connection to, and in the context of other camp and liminal spaces (and not in isolation from them) the thesis did just the opposite. It would have been difficult to address adequately other liminal subjects and spaces in the constrained context of a thesis. An examination of the relationship between camp prisons and other camp spaces, however, is crucial to the understanding of the paradigmatic nature of camp.

It is important to conclude this discussion with a reflection on the utility of this entire exercise. It is valuable to consider prisoners through the framework provided by the camp paradigm and the concept of inclusive exclusion for a number of reasons, two of which seem fundamentally significant. First, interrogating super-maximum security prisons through the camp paradigm permits not only the conceptualization of camp spaces as spaces into which undesirable citizens are routinely and repeatedly evacuated, but also the illumination of the frightening proliferation and normalization of the state of exception. Second, understanding the relationship of society to its prisoners through the lens of inclusive exclusion situates the figure of the prisoner in a different light. If prisoners are never completely excluded from the society that expels them, are

resurrected from the brink of utter superfluity precisely through their exclusion, and are not only useful, but crucial to the politico-economic existence of the 'respectable' citizen, a rethinking of the strategies for dealing with the soaring numbers of prisoners is in order. If the superfluous, abject and dangerous anti-citizen is indispensable to the citizen's constitution, then the search for a resolution to the crisis of imprisonment must begin with a transformation in the conceptualization of citizenship, and an interrogation of the global politico-economic context in which the current conception thrives.

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