

HOPE, ILLUSION AND IMAGINATION:
THE POLITICS OF PAROLE AND REENTRY
IN THE ERA OF MASS INCARCERATION

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I.
LOOKING BACKWARD AND NOT FORGETTING

There is a traditional saying when you leave prison, “Leave your shoes but don’t look back.” How could I not look back as I walked down the path to the security building, after being in prison for twenty-two years? I could see the hands of women waving, pressed up against windows divided by bars and chicken wire. I, myself, had done this for many year—watching, and holding my

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breath. This time I was leaving, I walked through one door of the security kiosk as a prisoner, and only minutes later I came out of another door a free person. I turned around and waved, taking a long look to hold on to my friends, and then I left. And they were left there.

A year later I met with the director of a foundation that supported criminal justice reform work. I asked the director if he would be willing to provide a grant to investigate the lives of men and women serving long sentences in prison. I explained that people serving the long sentences are actually the real leaders in prison and they are the positive role models for the younger people recently incarcerated. Yet, parole boards deny them release over and over again and they spend many extra years in prison. He listened. I hesitated, but then moved forward adding that these are people who have been convicted of violent crimes, usually crimes in which someone died.

He looked at me, shook his head and said, “Kathy, why do you want to help *those* people? Couldn’t you be interested in some other group?” I took a deep breath and said, “I am one of *those* people,” and I added that his question was an example of my point. I went on to explain that people in the broader society are becoming increasingly more comfortable advocating for men and women who have committed what are called “non-violent” crimes, especially for those who have received extreme sentencing for drug-related crimes. But to advocate on behalf of those in prison convicted of murder is still rare.

These people are called longtermers, also referred to as lifers in some states. They have picked themselves up after they have landed in prison—after the scattering of their lives, and the harm they did to others. Many longtermers look ahead to more years in prison than they had previously lived, yet they learn to move forward. The longtermers often become teachers, nurses, cooks, or group facilitators of parenting classes or pre-release services. Not only do they learn how to survive prison, but their survival often involves helping others. By demonstrating that they have survived in prison and developed meaning for their lives, the longtermers give newcomers hope.

The longtermers provide another critical lens into the criminal justice system. Parole boards consistently deny release to longtermers—usually using as a basis the seriousness of the crime for which they were convicted, the very act that they will never be able to change. Even if risk and needs assessment instruments show that the individual has the lowest level of risk to return to prison, and even if the individual has a sterling record of transformation and this is acknowledged by the parole board, longtermers are often turned down. The consistent denial of parole to longtermers reveals the mistaken emphasis of the criminal justice system on punishment rather than change, transformation or even public safety.

When I finished explaining all of the foregoing information to the foundation’s director, I stopped speaking, hoping that I had not totally lost him. He thought for a moment, looked at me, and said, “Well, I’m not interested in

just interviews with them. If you want to add a study of their recidivism rates, I would consider helping with that.”

The research study that the foundation funded confirmed that longtermers have one of the lowest recidivism rates.¹ The parole denials do not appear to correlate with the issue of public safety. Parole denials are part of a much larger system of mass incarceration that has evolved over the past decades. Punishment has been the driving norm in the criminal justice system, impacting poor people, and people of color, particularly the Black community.² The “punishment paradigm” describes the essence of the criminal justice system, and has also permeated the school system, in the form of the “school to prison pipeline.”³

The very numbers about incarceration rates, which are now familiar statistics, reveal the emphasis on punishment. There are currently 2.3 million people in the U.S. who are incarcerated, which translates to one out of 100 people in this country. Also, one out of nine African-American males age twenty through thirty-four are incarcerated.⁴ Although there are recent decreases in both numbers and rates of incarceration,⁵ the United States remains by far the leading incarcerator of the world.

While teaching a module on mass incarceration at the Columbia University School of Social Work, I asked each of the five classes for a show of hands to demonstrate the pervasive impact of the punishment paradigm on a range of different communities. I first asked, “How many of you know someone who has been arrested?” Almost every single hand went up among the 300 primarily white students who are able to afford to attend Columbia University. This exercise demonstrated to my students that arrests and punishments are widespread on a massive level. Furthermore, this reality is not illustrative of just temporary punishment. The quality is more of “permanent,” “perpetual,” or “persistent” punishment that is characterized by the death penalty, life without parole, juveniles in prison, solitary confinement, parole denials, civil commitments, mounting numbers of aging people in prison, punishments after

1. Michelle Fine & Todd Clear, *Policy Brief on Long-Term Incarceration: An Analysis by Gender and Crime in New York State*, City University of New York, 7 (2007); Carla Marquez-Lewis, Michelle Fine, Kathy Boudin, William E. Waters, Mika'il DeVeaux, Felipe Vargas, Cheryl “Missy” Wilkins, Migdalia Martinez, Michael G. Pass & Sharon White-Harrigan, *How Much Punishment Is Enough? Designing Participatory Research on Parole Policies for Persons Convicted of Violent Crimes*, J. OF SOC. ISSUES 778 (2013).

2. REPORT OF THE SENTENCING PROJECT TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE REGARDING RACIAL DISPARITIES IN THE UNITED STATES CRIMINAL JUSTICE SYSTEM, THE SENTENCING PROJECT (2013).

3. *School-to-Prison Pipeline*, ACLU, <https://www.aclu.org/racial-justice/school-prison-pipeline>.

4. *One in 100: Behind Bars in America*, THE PEW CENTER ON THE STATES (2008).

5. Jennifer Laudano, *U.S. Prison Population Drops for Third Year as States Adopt New Policy Strategies*, THE PEW CENTER ON THE STATES (Aug. 8, 2013), <http://www.pewstates.org/news-room/press-releases/us-prison-population-drops-for-third-year-as-states-adopt-new-policy-strategies-85899496>.

people return from prison, stigma, and exclusion. All of this amounts to dehumanization.

The focus of this article could have been any one of the above – each is serious, and each needs to be dealt with individually as well as together. I selected the issue of longtermers and the parole system partly because it represents my own life experience. It is representative of the women with whom I did time at Bedford Hills Correctional Facility, the New York State maximum security prison for women, and the formerly incarcerated men whom I have come to know and work with since I returned home. I chose this focus because the people in prison defined as longtermers are generally typecast and stigmatized by the laws and policies that create separations in release policies including work release, compassionate release, as well as parole, widely-circulated media language and assumptions, and also within many progressive reform groups. These reform groups create the distinction between those who are in prison for “non-violent” crimes versus those in prison for “violent” crimes, which consequently isolates the longtermers.

In order to embrace longtermers as human beings there must be change, which will challenge us to go to the essence of certain key questions: Can people change? Do we believe in or value transformation or redemption? Can we acknowledge the role of race as central to the dehumanization of people in prison? Can we make the connection between crimes that are tragic and involve deaths with the social conditions in which people grow up? Can we overcome the simplistic dichotomy between the categories of “perpetrators” and “victims,” and acknowledge that many people in prison have also been victims? If we can deconstruct this, it will take us to the core of problems within our system and hopefully allow us to make changes. Our current system of permanent punishment is bereft of hope. We should not ignore violence; we should attempt to understand both social and individual responsibility. This perspective views people as being more than the act that brought them to prison; it views them as part of a shared humanity of both the incarcerated person and the person to whom harm has been done.

II.

THE PAROLE SYSTEM, LONGTERMERS AND THE PARADIGM OF PUNISHMENT

A. A Story

I met Farid a year ago, shortly after he came home. He told me that he had just completed thirty-three years in prison. I asked what his sentence had been and he said fifteen years to life. His relationship with the juvenile justice system began when he was a teenager, and as an adult he was ultimately convicted of attempted murder. While waiting to be sentenced, he received his GED. And while in prison during his fifteen years before making his first appearance before the parole board, he went on to earn an associates degree in business

administration from the State University of New York, a bachelors degree from the University of Syracuse, a Masters degree in sociology from SUNY New Paltz, and a Masters degree in Theology from New York Theological Seminary. He led a life of service in prison—initiating the first peer AIDS program in correctional facilities, and became a brilliant jail house lawyer helping others with their cases. The judge had sentenced him to fifteen years to life and he went to his first parole board at the age of forty-three after serving fifteen years.

Farid finally returned to society when he was sixty-three after being denied release by the parole board for eighteen years beyond his original parole date. He had entered the world of the elderly. Within two years of returning home, Farid received a Soros Fellowship to create a project specifically about longtermers, aging, and the parole policy of denials: Return Aging People from Prison (RAPP), which was hosted by the Correctional Association of New York. How does it happen that a person serves eighteen more years in prison than the minimum sentence, a total of thirty-three years in prison, when there is no indication of risk to public safety, and when the parole denials often include praise for the person's rehabilitation and good behavior?

B. What is the System of Parole in New York State?

In New York State the Board of Parole makes the decision about whether or not to release people from prison who are convicted of certain crimes,⁶ including longtermers. Longtermers serve indeterminate sentences—a prison term sentence without a specific period of time or release date—that only has a minimum and a maximum. The parole board makes the decision about when to release a person once the minimum has been served. Parole decision-making plays a significant role in how long a person serving an indeterminate sentence must spend in prison.

In New York State, the minimum for an individual convicted of an A-I felony is between fifteen and twenty-five years and the maximum is life.⁷ With a maximum of life, the parole board can keep people in prison for as long as they determine is appropriate. The New York State Executive Law governing parole release decisions lists a set of factors considered,⁸ including a recent amendment to the law that requires a risk and needs assessment.⁹ One of the factors considered during the parole decision-making process is the seriousness of the crime, and it is this factor that is used in denial decisions, even when rehabilitation is acknowledged.

6. The role of the Board of Parole in New York State is described on the website of the New York State Department of Corrections and Community Supervision. *Board of Parole*, NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, <https://www.parole.ny.gov/introboard.html>.

7. N.Y. Penal Law § 70 (McKinney 2009).

8. N.Y. Exec. Law § 259-i(2)(c) (McKinney 2005).

9. N.Y. Exec. Law § 259-c(4) (McKinney 2005).

The common longtermers' parole issue is not whether the person poses a risk to public safety, and not whether rehabilitation has taken place. The parole board focuses instead on an event—the crime—that was already assessed for its seriousness by the judge in the sentence. This event cannot be changed; thus for the individuals who do not pose a safety risk and who show clear rehabilitation, parole denials do not include any recommendations to the incarcerated person about what to do in order to change the outcome of her next parole board hearing. As long as the obstacle to being granted parole is an event—albeit a serious crime, that took place fifteen to thirty years or even forty years before—there is nothing the individual can do to make a difference in the outcome of her parole hearing.

The indeterminate sentencing structure, accompanied by a parole system, was designed to encourage rehabilitation and good discipline as a basis for release. It theoretically gives the individual and his or her family the hope that if the individual does not present a risk to public safety and indicates positive change, she or he will be released from prison.¹⁰

C. Beyond New York: Parole Policies in Other States

Parole release decisions have been determined by the broader political context and policies. This has been true not just in New York State but also nationally, even with variation in parole systems and laws. The growth of the “tough on crime” era led to a dramatic decrease in release of longtermers, and also led to an equally dramatic increase in the number of people given life sentences.¹¹ In New York State,

The results are telling: In fiscal year 1992-93, the state released 23 percent of prisoners eligible for parole who had committed . . . A-I felonies—murder, attempted murder, kidnapping and arson. By 2004-2005, that [proportion] had plummeted to 3 percent, which was just nine prisoners. At the same time, the release rate for other violent criminals appearing before the parole board plummeted [from 51 percent] to 18 percent, or 337 inmates.¹²

In Maryland, during the mid-1990s, the governor announced he would not approve parole for any person accused of a violent crime with a life sentence.¹³ And in California, four governors in a row, over a period of 20 years until the

10. See *Indeterminate Sentencing at a Glance*, LAWS.COM, <http://trial.laws.com/sentence/types-of-sentences/indeterminate-sentencing>.

11. Ashley Nellis, *Life Goes On: The Historic Rise in Life Sentences in America*, THE SENTENCING PROJECT 4 (2013), http://sentencingproject.org/doc/publications/inc_Life%20Goes%20On%202013.pdf.

12. John Caher, ‘Dismantling Parole’: Parole Release Rates Plunge Under Pataki’s Tough Policy, N.Y.L.J. (Jan. 31, 2006), <http://www.newyorklawjournal.com/id=900005446230>.

13. Dan Rodricks, Editorial, *Glendening: ‘Life Means Life’ Absolutism Was Wrong*, BALTIMORE SUN (Feb. 20, 2011), http://articles.baltimoresun.com/2011-02-20/news/bs-ed-rodricks-glendening-oped-20110220_1_life-without-parole-death-penalty-maryland-parole-commission.

election of Governor Brown, either turned down or reversed 80 percent of the recommendations from the parole board to allow people with violent crimes to go home.¹⁴

1. The Experience of the Parole Hearing in New York State

People in prison and their families experience a transforming energy when they have a parole hearing. It is an imaginative anticipation that is held in check for years because it is too painful to hope to go home. Yet, hope is necessary in order to endure prison. In waiting for the approaching parole board hearing, hope is literally palpable in the energy emanating from the individual going to her first parole board:

*Hope is the thing with feathers
That perches in the soul
And sings the tune without the words
And never stops at all*

Emily Dickinson

Many issues come into play for people in prison awaiting the day of a parole hearing: leaving a now familiar life for unfamiliar freedom, one imagines oneself and one's relationship with children now grown, grandchildren, family members, and old friends, finding housing, supporting oneself financially, a new sense of self, new roles. Put yourself in the shoes of someone going to the parole board. You walk into the room for the parole board hearing. The hearing will be done through a video monitor system. This type of hearing is rapidly replacing the hearing when you are in the same room as the parole commissioners. You cannot easily see the parole commissioners in the video monitor. After twenty years in prison, this is your moment, and yet, the head of one of the interviewing commissioners is buried in reading a file. Maybe it is your file, or maybe it is the next person's. A lead person asks you questions. The parole commissioners seem uninterested in learning about your educational achievements, your work as a peer counselor for people with AIDS or what your plans are for your return home. They are more concerned about the crime that you were sentenced for. When you leave the hearing you have no idea what the decision is and you may or may not hear that day. Your hearing may have lasted just fifteen minutes—after twenty years of waiting. Hope helped sustain you.

14. Martina Castro, *Governor Brown Takes 180-Degree Turn on Parole for Lifers*, CROSSCURRENTS FROM KALW NEWS (May 26, 2011, 5:06 PM), http://kalwnews.org/audio/2011/05/26/governor-brown-takes-180-degree-turn-parole-lifers_1007439.html.

2. *After the Parole Hearing*

When you receive your decision, you run your fingers over the envelope. If the envelope is thick, you know you have been denied parole because it is filled with papers for appeal. For a brief moment, you had dreamed of being outside of prison wearing your blue jeans and a black shirt—the forbidden colors of blue and black, walking down the street and into a restaurant. This crushed hope forces your mind to accept again the limits of prison, and you feel that freedom was a momentary illusion. Parole denials flatten the hopes not just of individuals, but also of their children and families. Hope resides in the expectation that after serving the minimum time the judge gave you, you could go home if you are productive, mature, help others, obey the rules, and have a plan. Demoralization spreads through the prison as people who are respected role models are turned down over and over again.

One man named Easy Waters, who is now home, wrote a narrative while incarcerated called “Upon Completing 20 Years.” Writing that piece helped him to survive numerous parole denials. These denials had nothing to do with his prison record, public risk, or even the conviction of felony murder. Easy was not even the one who physically committed the murder. When he had the required pre-board interview with mental health staff, he stated, “Yes, when I think of my upcoming parole board appearance I think about who I was and who I am. I would like to be seen in the present not in the past. I don’t want the thirty-five year old to be judged again for what the sixteen-year-old did. I don’t want the man to be punished for what the teenager did. They’re two different people.”

And then the usual denial, the words written on the paper communicating the parole decision: “Parole Decision: Denied hold for 24 months. Based on the nature and circumstances of the instant offense involving the planned robbery of the victim wherein one of your codefendants shot the victim causing his death. You were convicted at trial We note your academic accomplishments and program participation”

Easy Waters wrote this piece to help him survive the despair that he experienced while going through another five years of denials until he came home. Easy still writes poetry. He also directs programs to help people in jail, and supports families that are waiting for their loved ones to return home.

Sue, who spent ten extra years in prison, said “After each parole denial, you have to keep going back to yourself. Don’t let this denial send you backwards because nothing gets accomplished; that’s what they feel about you, anyway. You did what you did for you, to feel better about yourself. You know in yourself, you did it for you. Hold on to that so that you don’t get angry at them.”

And after a former Maryland governor announced that he would not let anyone out of prison who had been convicted of the death of someone, Larry Bratt wrote, in a piece that won a PEN prison writing award, that the

announcement of this policy “had drained the state’s prison culture of a crucial, if intangible, element—its sense of hope.”¹⁵

III.

THREE PARADOXES IN THE PAROLE DENIALS AND THE SYSTEM OF PERMANENT PUNISHMENT

Three paradoxes exist when analyzing repeated parole denials of longtermers.

Paradox #1: Studies of recidivism rates for people convicted of murder show they are the lowest when compared with rates of people convicted of other crimes.¹⁶

In California, only 5 out of the 860 [people convicted of murder and] released on parole since 1995 had been sent back to prison for new felonies by 2011. This equals a recidivism rate of about roughly 0.5 percent. This is far below the recidivism rate among people given determinate sentences in California, which is above sixty percent.¹⁷

In the most recent New York State recidivism study, 40.9 percent of the more than 25,000 people released in 2009 returned to prison. Among the 211 who were convicted of murder, just 20—or 9.5 percent—returned, and only one of those 20 (0.5 percent) returned because of a new conviction; the other 19 (9 percent) returned to prison because of a parole violation.¹⁸

Government officials, criminal justice publications, media, and public conversations use the concept of “low risk” and “high risk” when discussing who should be released from prison. They use “low risk” to refer to people in prison with non-violent crimes and “high risk” for people with violent crimes. The irony is that those convicted of murder are at the lowest risk for returning to prison.¹⁹

Before these statistics were known, a group of women longtermers approached the then-Chair of Parole on his visit to the prison and asked him why does parole continue to deny women the opportunity to go home? Was he aware that no woman who was paroled after serving fifteen years or more in prison ever came back? That meant the recidivism rate was about zero. He said he didn’t know the answer but he would get back to them. Some months later, he returned and said, “You’re right. No one has come back.” Despite all of this, parole denials continued.

15. LARRY BRATT, GIVING ME A SECOND CHANCE, IN *DOING TIME: 25 YEARS OF PRISON WRITING* 37, 38 (Bell Gale Chevigny ed., 2000).

16. State of N.Y. Dep’t of Corr. & Cmty. Supervision, 2009 Inmate Releases: Three Year Post Release Follow-up iii (2012) [hereinafter *Inmate Releases*].

17. Keith Wattley, *Insight into California’s Life Sentences*, 25 FED. SENT’G REP. 271, 273 (2013).

18. *Inmate Releases*, *supra* note 16, at 10 tbl.5.

19. *Id.*

Paradox #2: Longtermers are the ones in prison who mentor, lead programs such as HIV/AIDS peer counseling, and encourage their peers towards education and community service.

Almost any prison superintendent or warden understands the role of longtermers as one that makes an enormous difference inside of prison. So many of those turned down are people who have become central to maintaining prison morale, and they are also role models for younger people. I have heard the question from people outside prison, “Do they deny parole to longtermers because they play such a valuable role inside prison?” There is no dispute that the same people who are mentoring, teaching, group facilitating, and working with youth coming in are those same people being denied release by the parole board.

Paradox #3: The continuing punishment of repeated parole denials does not bring accountability or responsibility to the person imprisoned, or necessarily help the victims/survivors of the crime.

A typical experience for a person convicted of a serious crime and given a long sentence is illustrated by the following example: A person is arrested for a serious crime when a man is killed in a robbery. The role of the lawyer in our adversarial system is to help the client get the shortest sentence possible, or even be acquitted. In order to do this, the lawyer tries to help the person minimize his or her role in the crime. Perhaps it is simply saying, “Well, you weren’t the person who did the shooting, you were just a look-out, so you aren’t really responsible for the death.” The lawyer may also say, “Maybe you were the person who shot the gun, but you didn’t mean to, the other guy jumped you and the gun went off; it was not intentional in any way.”

Imagine you are the person arrested for the death of an individual during a robbery; you were the person who shot the storeowner during a struggle over your gun and you are now facing trial. With your lawyer, you develop an internal narrative to help minimize your role and responsibility as much as possible, in order to get the best sentence possible, or perhaps complete a plea bargain. You are nineteen years old and you receive a twenty to life sentence—longer than you have been on the earth, a sentence that is difficult to imagine. You feel depressed, confused, angry, and lost, because you are looking at the unimaginable twenty years in prison. Moreover, you enter prison with a legal narrative minimizing your role in the crime. This contributes to the likelihood that you will avoid facing responsibility for the death and suffering that was the result of the crime that you were involved in. This denial of responsibility eases your conscience. And then you are in the correctional system: a prisoner, degraded, punished, stripped of most of life’s basics, and facing a long sentence. You are likely to feel like *you* have become a victim. And it is very probable that you were in fact a victim of an oppressive, racist and classist system, or from a troubled family situation as a child or adolescent.

Over time, having the benefit of being in a prison where there are some decent programs, e.g. parenting programs or college programs, individuals will figure out how to find meaning in their lives. If you started at nineteen years old and spent twenty or twenty-five years in prison and are now around forty, you have matured, grown, gained wisdom, and developed skills—in many ways you have become a different person.

When you go to the parole board, you get dressed up nicely in your pressed greens, with your prisoner identification number ironed onto your shirt. You walk into the parole hearing hoping that they see a person ready to go home. Instead of seeing a safety risk, they see a person who is able to make a contribution to society. But the parole board only wants to know what happened on that day, twenty years ago. And if you are a person incarcerated in New York State, rarely, if ever in your twenty or twenty-five years in prison have you ever talked about the crime. And you probably repeat the narrative that you started with, the one, which the adversarial system encouraged you to develop. You say, “The gun went off,” instead of “I shot the gun,” or you say, “I wasn’t involved; I was just a look-out. I wasn’t at all involved in the death.” And the parole board will ask you in a *pro forma* and disinterested manner about your accomplishments in prison and your future plans. In a few days, you will receive your parole decision, saying you will be denied and asking you to return in two years.

Even if an individual is able to talk about her role and responsibility in the crime, the parole board will likely deny her parole. A person has an even smaller chance of being granted parole if she is unable to talk about the details of the crime and take personal responsibility.

People see themselves as victims of the unjust system that is incarcerating them. The parole denials have no impact on responsibility, remorse, or empathy for crime victims. The current parole system creates a new class of victims who have to explain to their family members why they were denied after serving the sentence the judge gave them, and superintendents have to figure out how to manage the prisons full of longtermers and demoralization.

I was no different from many others in this process. I, too, was involved in a crime in which people were killed. I, too, was able to distance myself from the deaths because my role was indirect and, for a long period, I could remove myself from feeling deeply responsible. But slowly I listened to friends who visited and talked with me about my choices and my role. I was also in a writing group in which people wrestled with their decisions, responsibility, and their life conditions that led to them ending up in prison. I was fortunate to be able to meet with one of the individuals who had witnessed the shooting that took place when I was arrested. I heard her story of that day, how her life was threatened, and the impact on her life in the years that followed, and I was able to answer her questions. I also met with people involved in law enforcement, not involved in my case, one of whom had been injured in the course of his duties. I worked to

develop my own process of figuring out responsibility and accountability in a system that mainly relies on punishment.

IV.

A DIFFERENT MODEL: THREE EXAMPLES

The prevailing value of the current criminal justice system including the boards of parole is that of punishment. If transformation, public service and public safety were valued, then Sue and Farid would not have faced a combined thirty additional years in prison, which was beyond the minimum sentences given to them by their judges.

The emphasis on punishment misses the extraordinary power that comes from within people who have been through years or decades of imprisonment, climbing through that to grow, develop and create a better world for themselves, their children and the people around them. I witnessed this power within people over and over again. The New York State Department of Corrections previously referred to people in prison as “inmates” but now uses the word “offenders,” defining people solely as a person who was convicted of a crime. Yet people enter prison with far more complex identities including enormous strengths. And people in prison are often driven to change their lives; they are filled with ideas, dreams, and energy. People in prison are capable of being agents of their own change, rather than passive recipients to be “rehabilitated.” They also inspire others to change. They can tackle the social problems that confront them, their families, and others inside the prison.

Prisons are not the best place for those things to happen. Prisons are primarily oriented around security, control and punishment. It is therefore very difficult to take initiative and to develop self-reliance or act collectively. Nevertheless, I was fortunate to be part of many creative initiatives in prison. I have also learned from men who have come home of some of their experiences as well. This requires a paradigm shift from thinking about a person as solely defined by her crime to thinking about that person as a whole human being. In order to move beyond defining people as “offenders” and “ex-offenders,” transformation requires dealing with the impact of racism and white supremacy that has been a key factor in dehumanizing people in the history of the United States. The impact continues in the development and functioning of the carceral state. Below are three examples of alternatives to a punishment model.

A. Inside Prison: The Promise of Higher Education

While incarcerated at Bedford Hills Correctional Facility, I was part of the effort to bring higher education back to prison.²⁰ Higher education is probably

20. Michelle Fine, María Elena Torre, Kathy Boudin, Iris Bowen, Judith Clark, Donna Hylton, Migdalia Martinez, Missy, Rosemarie A. Roberts, Pamela Smart & Debora Upegui, *Participatory Action Research: Within and Beyond Bars*, in QUALITATIVE RESEARCH IN

the most important tool people in prison can access – it is a door for them to walk through, redirect their lives, and grow within themselves.

In 1995, all but 8 out of 350 colleges in prisons throughout the country closed because the Omnibus Crime Bill passed by Congress during the tenure of President Clinton removed Pell grant funding for correctional facilities.²¹ The Pell grants were what colleges utilized to develop degree-offering college programs inside correctional facilities throughout the United States. The college program at Bedford Hills Correctional Facility, operated by Mercy College, closed down. Demoralization set in as the women who worked in the Learning Center packed up books and word processors and the door closed. Instead of a 6:00 p.m. “movement line” with people in their greens carrying books going down the hill to classes, women stayed on the units, playing cards or dominoes. Fights were more frequent. Even the motivation among those studying for their GEDs lessened.

Women took initiative to try and bring a college program back to Bedford, hoping to develop a model using private funding. Examples of women in the prison playing a major role in developing and implementing key programs already existed at Bedford Hills C.F., in the Children’s and Parenting Center and the AIDS Counseling and Education (ACE) program. With support from the prison administration, a process began in which the incarcerated women who initiated the effort met with a group of community people, leaders within the criminal justice field, and academics—including professors and one president of a college—to brainstorm solutions.

The plan that emerged, led by the then-President of Marymount College, was to create a consortium-Marymount Manhattan College that would offer a college degree. If possible, other colleges would provide the college with a professor per semester or year to teach a course within that degree program. College presidents one by one came in to meet the women in prison, and the women expressed their urgency and passion for education, and persuaded the college presidents to commit to the project. The women who took the initiative conducted a survey of all the women in the prison to learn how many women would like to attend college if it were reestablished. More than 150 women expressed their interest in college classes, even those at an ESL or fifth grade reading level were excited. It represented an opportunity, a new role in life, and

PSYCHOLOGY: EXPANDING PERSPECTIVES IN METHODOLOGY AND DESIGN 173, 179–80 (Paul M. Camic, Jean E. Rhodes & Lucy Yardley eds., 2003) (describing empirical study on impact of college involvement on women in prison, completed by partnership of researchers from Graduate Center at City University of New York and female inmate researchers).

21. Michelle Fine, María Elena Torre, Kathy Boudin, Iris Bowen, Judith Clark, Donna Hylton, Migdalia Martinez, “Missy”, Rosemarie A. Roberts, Pamela Smart & Debora Upegui, CHANGING MINDS: THE IMPACT OF COLLEGE IN A MAXIMUM-SECURITY PRISON 5–6 (2001), http://www.prisonpolicy.org/scans/changing_minds.pdf; see Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994) (Section 20411 prohibiting awards of Pell grants for prisoners).

possibility. This survey confirmed the deep interest in higher education and helped convince the many college presidents that this was a worthwhile project.

Two CUNY graduate students taught a qualitative research class, and the thirty inmate students investigated the significance of higher education by interviewing other women about topics they developed such as what was the view of higher education in your family. Or what they thought about college before going to prison. There was mobilization throughout the prison. Excitement and hope was palpable. Within a year and a half, community volunteers obtained book donations and computers. Community volunteers along with students who already had taken some college courses also began teaching pre-college classes in order to prepare new students for college. A new learning center was established where women would have access to word processors, and a college library. Once the Learning Center was established, the women in prison became tutors and established an “each one teach one” ethos. Marymount College developed the infrastructure for the actual college program, and the college started offering both an associates degree and bachelors degree from Marymount Manhattan College.

At the same time that we were reestablishing a college program, we began a research project to study the impact of higher education on women in a maximum security prison, on their children, and on the prison as a whole. Under the leadership of a professor at the CUNY Grad Center, a team of CUNY graduate students and women in prison carried out the research in collaboration with the research division of the Department of Corrections. Ultimately, this work became a published study: *Changing Minds, The Impact of College in a Maximum-Security Prison: Effects on Women in Prison, the Prison Environment, Reincarceration Rates and Post-Release Outcomes*.²²

The Marymount College Program continues today. After the college program was established, its very existence inspired other incarcerated people in different prisons in New York State to develop alternative models for reestablishing higher education using private funding. And the Changing Minds research report became part of the growing research nationally documenting the importance of higher education inside of correctional facilities. The women at Bedford Hills C.F. initiated and implemented a collaborative process that reestablished higher education in the prison; they were also conscious about supporting other prisons through their research in developing models to bring higher education back with private funding while still advocating for public funding to be restored. The women addressed social conditions in their own prison i.e. the need for college, and advocated about the broader policy issues related to higher education and incarceration.

22. Fine, *supra* note 21.

B. Accountability: the Longtermers Responsibility Project

The Longtermers Responsibility Project seeks to develop a different approach to accountability.²³ In New York, a small group of people—a number of formerly incarcerated longtermers, defense attorneys, the Osborne Association, a therapist trained in restorative justice work, and people from the victims' rights movement—worked together to create a program that gives longtermers the opportunity to think about their accountability and responsibility in a safe space and to do it in a way that looks at a person holistically.²⁴ The Longtermers Project first worked with men and women, individually and then developed a group model. The groups used a curriculum called “Coming to Terms.”²⁵

When I facilitated the Longtermers Project in a women's prison, for the first four sessions, the women examined their own lives—childhood and adolescence—family, neighborhood, school, and peers. They developed their own narrative to explain what brought them to the point of participating in or carrying out an act that resulted in death. They examined their years in prison in terms of personal change. And after examining their own lives they wrote down details of their involvement in the death of someone, and then read those details out loud to the group. And by doing so the women defined their own responsibility. By the time we reached the point of talking about being responsible for someone's death, the women were already complex people in each other's eyes, bigger than the act that resulted in someone's death. They worked to a point of defining their responsibility for the harm and suffering they caused. The story was in the context of their own life narratives, so that it could be understood, rather than demonized. They had the opportunity to genuinely feel remorse to varying degrees, depending on the circumstances. The women wrote letters of apology that developed from a genuine process, even though the letters could not be delivered. These women changed their own understandings of what their responsibility was, and how they understood the connection between their own lives and what they did. The longtermers project is based on the goal of integrating individual responsibility and social responsibility, as well as individual choice and social context. Of course, all the participants were already under severe punishment—fifteen, twenty, thirty years in prison. Even though our program could not ease the punishment of remaining in prison, the program helped us imagine a different kind of justice system—a justice system where even those who were responsible for the deaths of others could hold onto to their humanity. We also hoped that the work of the program would help people when they went to parole hearings.

23. *Longtermers Responsibility Project*, THE OSBORNE ASSOCIATION, <http://www.osborneny.org/programs.cfm?programID=19>.

24. *See id.*

25. *Id.*

C. What Did We Learn in This Work?

The overwhelming majority of men and women prisoners were people who themselves were victims of different kinds of violence. Given their context and the social context, victims' service organizations could reach out to people in prison as well as to people outside to recognize harm and pain and to overcome the usually false dichotomy between perpetrator and victim.

The punishment model, in practice, creates a new group of victims – those who are in prison and without the opportunity to be seen as human beings. Their actions that harmed others are their personal responsibility, and their choices are also influenced by social conditions. In the prison context, they have no opportunity to integrate the understanding of their previous life experiences with what brought them to prison.

There are no safe opportunities to talk about the crime, what happened at that moment, what their real role was, and no place to deal with the damage done. People in prison rarely have a relationship or contact with those who suffered from the acts that resulted in their conviction. As much as society freezes prisoners in a crime, people in prison are often frozen in their own narrative and unable to go deeper or to move forward. Under current New York law, the victims of crime are able to make an impact statement at the time of their perpetrator's parole hearing, but they have no information as to what the incarcerated individual has done or thinks after serving fifteen or thirty years in prison. No effort is made to let them know that the person in prison apologizes, has remorse, and has grown and changed. Hence those who are survivors or victims of crimes have an image of the person going to a parole hearing frozen in time some fifteen, twenty or thirty years ago.

There is reluctance among many prisoners' rights advocates to think about the role of individual responsibility, to talk about personal accountability, or to face the real damage that a violent act causes. Prisoners' rights advocates are focused on countering the social norm of "blame" and the related paradigm of the total separation of an individual's acts and choices from the larger social context and social responsibility. However, there are also numerous victims of crime or victims advocates who do not want endless punishment, but want ways for individual responsibility to be expressed. There is an enormous need for a different paradigm, which acknowledges both individual choice and social responsibility, and develops different forms of accountability.

People who are prisoners' rights advocates inadvertently contribute to demonizing and isolating those who are longtermers in prison because they are far more comfortable supporting people imprisoned for "non-violent" acts or only those who are innocent. This advocacy plays a vital role critiquing the expansive role of prisons. Yet along with government officials, the media, and the general public, numerous advocates appear to uncritically accept terms such as "low risk," "high risk," "non-violent," and "violent." These distinctions are

then reflected in laws that continue to deny parole and compassionate release to longtermers.

While there has been legitimate focus on the mass incarceration of non-violent drug-related acts, it is also true that in the state prison system fifty percent of the people are in prison for “violent” acts.²⁶ It is critical to acknowledge the harm done by all forms of violence and not cede caring about it to people who argue for only more punishment as a response. In fact, the issue to ask is why did the violence happen? The small but powerful restorative justice programs grappling with similar questions do not ignore the violence but are looking for a different way to reckon with its consequences and its sources.²⁷ Unless we address both specific responsibility and the root causes of violence – particularly poverty, racism, and under-resourced families, all embedded in deep structural inequality – we will be unable to downsize the prison complex.²⁸

V.

COMING HOME

Each year hundreds of people gather at the annual dinner of Citizens Against Recidivism, where individuals who have come home from prison and are making a contribution to their communities are honored.²⁹ A man who spent twenty-five years in prison and his wife, who both founded the organization — host the dinner. This event represents a model that is in direct contrast with the present framework, approach, and context that greet people returning from prison.

People coming back to society face ongoing punishments and stigma in addition to the enormous challenges of putting their lives back together. Some of these challenges include trying to get a job during a recession. Even using an umbrella after years of using garbage bags requires an effort. Umbrellas are not allowed in prison, people use plastic garbage bags in the rain, so it becomes a challenge to actually know when to close one when going into a subway. Other difficulties include using a subway metro card instead of a token; choosing an appropriate pair of shoes; and using a cell phone. They are not allowed to live in public housing. Additionally, they face having to check a box on employment forms, college applications and on privately owned apartment leases that ask if they have a felony conviction. These boxes often lead to rejection and always increase the stigma and rejection that people feel as they try to reintegrate into

26. James Forman, Jr., *Racial Critiques of Mass Incarceration: Beyond The New Jim Crow*, 87 N.Y.U. L. Rev. 21, 47 (2012) (citing Bureau of Justice Statistics for 2006).

27. See Mark S. Umbreit, Robert B. Coates, Betty Vos & Kathy Brown, *Victim Offender Dialogue in Crimes of Severe Violence: A Multi-Site Study of Programs in Texas and Ohio*, CENTER FOR RESTORATIVE JUSTICE & PEACEMAKING (2002), http://www.cehd.umn.edu/ssw/tjp/resources/Research/Exec_Sum_TX_OH_VOD_CSV.pdf.

28. See JAMES GILLIGAN, PREVENTING VIOLENCE 38 (2001) (describing social causes of violence).

29. See CITIZENS AGAINST RECIDIVISM, INC., <http://www.citizensinc.org/>.

society. People returning from prison are treated like permanent criminals as if the time served was not an adequate punishment. Even the official state language is now “ex-offender,” a term that flattens people into an act that took them to prison and then freezes them in that definition even after they fulfill their sentences.

I am part of a community of people who have come home—“returning citizens.” I know that the women and men who were longtermers and made it out of prison are driven from within themselves to advance in education. Formerly imprisoned people are becoming social workers and others are leading the effort to reinstate government funding for higher education in prison. One woman is directing a hospital clinic program for people returning from prison, and others are directing programs for people jailed at Rikers Island. These women and men are also spearheading initiatives to bring aging incarcerated people home. They are also leading projects to provide housing, and they are teaching in colleges as they pursue their doctoral degrees. These women and men are using their own life experience and their academic experience to make a difference. People returning from prison are mentoring others coming home, many of whom don’t have the degrees or the work experience. This critical support system is a vibrant and different paradigm—one that builds upon peoples’ remarkable strengths and tenacity, rather than dismissing people as “ex-offenders.”

VI.

LOOKING FORWARD AND NOT FORGETTING

The issue of longtermers and parole denials is a key characteristic of a criminal justice system driven by punishment and retribution. Change and rethinking our current criminal justice system are underway on many levels. Recent Supreme Court decisions indicate such change. The recent opinions that overturned extreme sentences for children³⁰ and a forty-one percent decrease of numbers of juveniles in confinement are indicators of this change.³¹ Progress is also seen with some increases in parole releases such as the turnaround in California³² and revisiting mandatory sentencing schemes for drug offenses.³³

30. See *Miller v. Alabama*, 132 S. Ct. 2455 (2012) (finding mandatory Life Without Parole sentences for juveniles unconstitutional); *Graham v. Florida*, 560 U.S. 48 (2010) (finding Life Without Parole sentences unconstitutional for juveniles convicted of non-homicide offenses); *Roper v. Simmons*, 543 U.S. 551 (2005) (finding unconstitutional execution of persons who were under 18 when their crimes were committed).

31. THE ANNIE E. CASEY FOUND., KIDS COUNT DATA SNAPSHOT: REDUCING YOUTH INCARCERATION IN THE UNITED STATES 1 (Feb. 2013), <http://www.aecf.org/~media/Pubs/Initiatives/KIDS%20COUNT/R/ReducingYouthIncarcerationSnapshot/DataSnapshotYouthIncarceration.pdf>.

32. See Scott Shafer, *In California, Life with Parole Increasingly Leads to Freedom*, NPR (May 26, 2014), <http://www.npr.org/2014/05/26/315259623/in-california-life-with-parole-increasingly-leads-to-freedom>.

33. See, e.g., *Drug War Détente? A Review of State-level Drug Law Reform 2009–2013*, VERA INSTITUTE OF JUSTICE (Apr. 2014),

Other indications are reflected in ongoing campaigns about solitary confinement,³⁴ restoration of public funding for college in prisons,³⁵ and ending of collateral punishments.³⁶

Finally, another harbinger of change is the development of frameworks that help people understand the current system and imagine a different one. The framework of prison abolition exposes and educates about the racist, classist and patriarchal structure of our society that creates extreme differences and inequalities. A book called, “The New Jim Crow: Mass Incarceration and the Era of Colorblindness” uses a framework that illuminates the racial focus that fueled the drug wars, the enormous growth of incarceration and the resulting harsh collaborative punishments.³⁷ The public health framework reveals that prisons are filled with people with untreated mental health and drug treatment needs. The restorative justice framework focuses on healing instead of retribution.

The broken parole system must be replaced. We must remove the focus from past crime as a basis for holding a person in prison and instead focus on whether there is a present risk to public safety in releasing the individual, plans for returning to society, and the individual’s growth in prison. Aging people in prison should be released. Parole commissioners must come from the communities and not solely from law enforcement. Finally, our common language must reflect these new frameworks and understandings. We must never again refer to people in prison as “offenders,” but instead as “people” with whom we share a common humanity.

<http://www.vera.org/sites/default/files/resources/downloads/state-drug-law-reform-review-2009-2013-v5.pdf>.

34. See, e.g., *About*, SOLITARY WATCH: NEWS FROM A NATION IN LOCKDOWN, <http://solitarywatch.com/about/>.

35. See, e.g., Jason Burford, *Restoration of Prisoners’ Pell Grant Eligibility Overdue*, THE PRISON MIRROR (June 2008), <http://www.realcostofprisons.org/materials/pellgrant.pdf>.

36. See, e.g., *Repeal the Collateral Punishment Policy*, CHANGE.ORG, <http://www.change.org/petitions/us-congress-repeal-the-collateral-punishment-policy>.

37. See Michelle Alexander, *The New Jim Crow*, 9 OHIO ST. J. CRIM. L. 7 (2011–2012).