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Repeat Performances:

Why Good Reforms Go Bad & Testing the Next Wave, Restorative Justice

by

DANA GREENE

A dissertation submitted to the Graduate Faculty in Criminal Justice in partial fulfillment
of the requirements for the degree of Doctor of Philosophy,
The City University of New York

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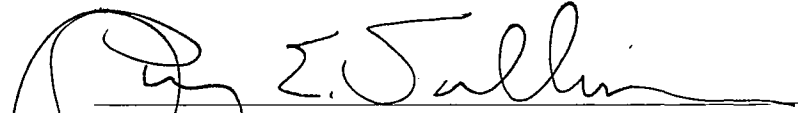
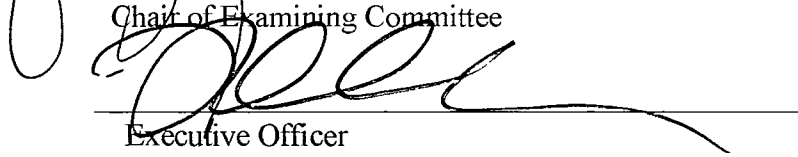
DANA GREENE

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THE CITY UNIVERSITY OF NEW YORK

Abstract

Repeat Performances:

Why Good Reforms Go Bad & Testing the Next Wave, Restorative Justice

by

Dana Greene

Adviser: Professor Larry Sullivan

The project identifies parallel pitfalls and shared qualities in social change movements that earnestly struggle, but fail, to effect substantive benevolent penal change. Findings show that various properties consistently found in their expression contribute to, or ensure, a recurrently regressive outcome -- thus accounting for how collective action aimed at reducing and substantially altering the punishment system ultimately grows and embeds it. The study examines the latest wave of benevolent reform, restorative justice, and demonstrates that this cycle is again underway. In addition, the analysis asserts that the United States' persistent penal reform rut is not inevitable and can be interrupted and redirected.

Such inquiry is pressing as criminal justice discourse tends to reify the existing penal reform schema and is somewhat cynical regarding meaningful change. The country's penal repertoire swells, growing ever more costly in both human and financial terms, and continues to fall short of its stated aims or satisfy the public's will. By identifying specific characteristics that facilitate this repeated outcome a way out of an enduring penological paradox, one in which the struggle for change reinforces the status quo, is forged.

Building on the work of Armand Mauss this study asserts a new social movement type, a 'regressive' model, that is used to frame the careers of various American

benevolent penal reforms. Regressive campaigns, the study demonstrates, have all the traditional sociological markers of movement success (significant logistical gains and legitimacy granted to its ideas or participants) and yet are actually failures that serve to intensify and further embed that which they aimed to replace. To chart the character of regressive movements and uncover what properties contribute to their unique outcome the study examines and compares three benevolent penal reform campaigns - *the penitentiary, the adult reformatory, and parole*, and builds a “regressive reform profile” (RRP). The comparative analysis uses a set of eight movement characteristics to (1) assemble the RRP, (2) demonstrate the pattern of regressive movements in the penal sphere, (3) explore and account for how sincere action goes ‘wrong,’ and (4) test whether *the restorative justice movement* is delivering a repeat performance.

For anyone who has struggled to be free

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Introduction

You say you want a revolution
Well you know
We all want to change the world
You tell me that it's evolution
Well you know
We all want to change the world
But when you talk about destruction
Don't you know you can count me out?
-- *Revolution* lyrics by John Lennon

One of the few things upon which criminal justice scholars can agree is that good reforms go bad. A consensus on why this is the case is much harder to come by. This two part study sets out to directly resolve this troubling penological paradox, to explain how collective action aimed at reducing and substantially altering the punishment system ultimately grows and embeds it. It also addresses whether the latest benevolent penal reform movement, restorative justice, is poised for a similar outcome. The project is designed to account for why it is that the United States remains stuck in a persistent and repetitive penal reform rut and suggest the ways in which a new path may be forged. Such inquiry is pressing as criminal justice discourse tends to reify the existing penal reform schema and scholars tend to be rather cynical regarding meaningful change. Reformers, conversely, tend to exude unbridled optimism with little thought to past failures. Meanwhile the criminal justice system consistently falls short of its stated aims and the public remains invariably dissatisfied. Each new wave of reform swells the

country's penal repertoire which grows ever more costly in both human and financial terms. Penal stasis has become the status quo and substantive change virtually impossible to come by.

The Study

The means by which to examine these issues, too long ignored, were not to be found in the criminal justice literature. It was by turning to the work of social movement scholars that I was able to develop and assemble an instrument with which the structure and profile of benevolent penal reform campaigns could be examined. A concrete and custom designed tool for dissection was critical in order to pinpoint *specifically* where and how past benevolent movements went wrong. It also provided a valid, reliable means to test whether or not the latest wave of penal reform was on a similar course. Building on the work of Armand Mauss, the study asserts a new social movement type, a **regressive** model, to frame the careers of various American benevolent penal reforms. Regressive campaigns, the study demonstrates, have all the traditional sociological markers of movement success (significant logistical gains and legitimacy granted to its ideas and/or participants) and yet are actually failures that intensify and further root what they aim to replace.

To chart the character of regressive movements and uncover the properties that contribute to their unique outcome, Part I of this study examines and compares three benevolent penal reform campaigns: *the penitentiary*, *the adult reformatory*, and *parole*, and builds a **Regressive Reform Profile** (RRP). The comparative analysis uses a set of eight social movement characteristics to (1) assemble the RRP, (2) demonstrate the pattern of regressive movements in the penal sphere, and (3) explore and account for how

sincere action goes 'wrong.' Part II uses primary data gathered during visits to thirteen restorative justice sites to explore whether or not this most recent penal reform is exhibiting the RRP. The study was designed to gauge how the aforementioned eight characteristics are manifesting in the restorative justice movement. The goal was to uncover specific social movement properties *not* to mine information about individual programs or evaluate individual restorative practices. The findings are juxtaposed against the earlier movements to determine whether a repeat performance is yet again underway.

Findings

The project establishes that social change movements that earnestly struggle, but fail, to effect substantive benevolent penal change share distinct qualities and display parallel structures and equivalent tactical pitfalls. The analysis states that various properties consistently found in BPRs expression contribute to, or ensure, a recurrently *regressive* outcome -- thus accounting for how collective action aimed at reducing and substantially altering the punishment system ultimately grows and embeds it. Such findings suggest that the failure to deliver substantive change is not inevitable nor is it the fault of the host society or of the campaign's specific agenda. In particular it was found that these movements are initiated by people rooted in the status quo; have an insular limited membership distribution; employ narrow practice-fixated strategies; and rather than replace any criminal justice theory or practice add considerably to the criminal justice mix. These movements do not simply share an outcome or classification but truly embody a uniform structure. By pinpointing the sources of regression the study reveals what movement properties should be avoided and offers how a campaign may redirect its course.

Part II confirms that the restorative justice movement is exhibiting a robust articulation of the RRP. The hypothesis, that a repeat performance is underway, is firmly supported by the data. The evidence demonstrates that this still emerging campaign is evolving as past benevolent penal reforms have and shows that the restorative justice movement is manifesting all but two of the elements associated with a regressive social change movement. With these properties well in place restorative justice is headed on the path to regression and poised to grow the very punishment system it is aiming to substantially temper. Participant-observation revealed circumstances in which this campaign is already poised to grow punishment. It is too early to write the movement off but if it does not take action to redirect its course this social movement *will* come to be just another good reform gone bad. It is maintained that the current trajectory can be interrupted and that this movement contains some valuable assets. In the interest of forging an alternate, more promising course a set of directives are offered. The study details specific means to interrupt the current course and enable the movement to progress toward a more desirable end.

By identifying the seeds of unwelcome outcomes and the project provides the means for new or existing social change movements to avoid past missteps and better their odds. Because, as the study demonstrates, the problems were found to reside in the movements themselves, failure is not inevitable. Change is possible. Identifiable structural and tactical choices thwart a movement. By uncovering these knowable factors, this study advances a way out of our penal rut.

The Question

In preparing for my orals I read histories of several substantial penal reforms back

to back. I started to notice patterns in the rhetoric, development, and outcome of these movements. What was so troubling was not just the repetition -- the good intention, energy, and effort that ultimately failed to deliver -- but also the landscape these campaigns left in their wake. The punishment system they intended to diminish was in fact grown by their efforts. This made a strong impression on me as I came to the study of criminal justice from a history of street activism and saw my career and future labors directed at affecting change in the criminal justice system, in particular working toward a diminished reliance on incarceration. I had been reading and writing about restorative justice since I began graduate school and had found myself strongly compelled by its ideas and promise. But the past told me a story, a cautionary tale I could not ignore. Attempts to substantially alter the punishment system had never met with success and what's worse had led to grievous unintended outcomes. Prison, meant to be a humane alternative to corporal punishment proved a bleak and harsh substitute. Parole, meant to shorten prison terms lengthened them dramatically. The adult reformatory proved as brutal and ineffectual as the prison it was supposed to overhaul. The juvenile court system's legacy is renown -- and so on. I became very concerned about participating in any movement struggling for penal change and worrying about the course of restorative justice. Restorative justice calls for intimate participation and a redistribution of power and it is easy to imagine how this might result in more ingress and control. I did not (and do not) want to contribute to the expansion of control. How then to escape this all too familiar pattern?

Criminal justice scholars are not asking the right questions

What does the penal reform literature tell us? Penal reform literature may be vast

but it paints a clear consistent picture. Today's standard punishment practices, the theories underlying them, and their byproducts are much the same as those at the nation's start. There are continued attempts to transform the system. These efforts shift back and forth across a narrow channel, either toward retribution or rehabilitation. Quickly absorbed and rarely delivering much, these movements are written off as failures and the pendulum begins to swing the other way. Change has been cursory, though meaningful in some respects (sanitation, visitation, recourse), and the foundation and framework of the punishment system remains the same. It is static. Scholars disagree as to why penal reform efforts have not produced much but they share in a consensus that the penal reform legacy is one of failure. The discourse goes beyond merely acknowledging the cyclical nature of penal reform. There is a pervasive tendency to reify this state of affairs. The unvarying penal landscape, including the well worn rehabilitation-retribution rut, is considered eternal. These thinkers seem to be suggesting that the history of penal reform is bound to be its future.

Furthermore, scholars tend to share an intellectual approach when exploring these issues. It is common within this body of work either to discuss penal reforms in the aggregate or to single out individual reforms. There is little delineation between reforms nor are they placed within the context of a history of penal reform. As efforts are not organized or compared in a deliberate manner patterns are not examined in any depth. Even scholars who carefully describe and uncover the distinct failings of an individual reform don't connect what they've found to other instances when this may have occurred. As for the thinkers who map the progression of a reform wave few identify the reasons a reform took the route it did. Such scholars, whether intending to or not, have cultivated an atmosphere in which there is no expectation of change and the continuing

cycle of failed penal reform accompanying a failed penal system rooted in incarceration is a permanent fixture of American society. This reification means no one is asking the right questions. Rather than ask, “why are we here,” we should be asking, “why are we stuck and what is it that produces and maintains the static repetitive nature of our punishment system?” Since repugnance for the system seems to transcend ideology, we must start asking why has change been so impossible to come by and how might we actually effect substantive change.

A-hah -- Explore Penal reforms through a social movement lens

Long before I undertook this project I had studied social protest movements and had myself participated in multiple movements (pro-choice, gay liberation, ACT UP, anti-nuke). I was well aware that sociologists and political scientists study social movements, examine the reasons for their success or failure, and deconstruct them naming and defining their various components, features, and characteristics. These thinkers had already done some of the heavy intellectual lifting and it was in this discourse that I wanted to root my study. I thought that using a social movement lens to explore penal reform efforts would yield some answers as to why and how they go so bad. After all, attempts at penal reform are in effect social change movements though they are not discussed as such. There is a prevailing misconception that social change movements are by definition grassroots, driven from the ground up. Penal reform efforts therefore do not always look like what is typically identified as contentious or organized sociopolitical action. Regardless of why scholars don't relate these two areas of study, the relationship is both legitimate and vital.

Incorporating the work of social movement scholars represents a profoundly

different approach to the issue of penal reform failure. Sociological and historical works from the field of criminal justice are combined here with validated tools to deconstruct, understand, and explain social movements. Such a frame serves to identify junctures where other choices can be made, mark elements that contribute to dangerous undesired outcomes, unravel and explain the ongoing repetitive failure to substantively change the punishment system, and ultimately suggest a different path. The objective is to pinpoint, trace, and analyze the repetition. Earlier works have failed to identify or mark patterns with any precision or specificity. Without such a map the repetition is mere anecdote and the power and drive behind it amorphous, mysterious, and even a bit conspiratorial. In other words impossible to recognize and difficult to avoid. The intention here is to fill this void.

Two Types of Reform & Why I Went With the Benevolents

In reviewing penal history it becomes evident that there are two discrete types of penal reform which are closely related to the two ends of the aforementioned narrow continuum of penal “change.” There are reform efforts that aim to enhance the punishing nature of penal policy and practice. Examples include chain gangs, three strikes legislation, and capital punishment. These expressions and manifestations of movements moving toward the retributive deterrence end of the spectrum are typed here as **punitive reforms**. Another set of reform efforts are those that campaign and struggle for a more “humane” or less punishing system. These represent the other end of the distribution, the treatment or rehabilitation side of the equation, and are typed here as **benevolent reforms**. Examples include the reformatory, parole, and community service. Ideologically, practically, and rhetorically these two reform types operate quite

differently from one another. However, as this study will show, an exploration of several benevolent reforms, reveals markedly evident intragroup patterns.

I chose to focus exclusively on benevolent reforms for a variety of reasons. It could be argued that punitive reforms are not interested in *substantive* change but benevolent campaigns have a pronounced agenda to dramatically alter the penal landscape. Though many scholars do not take them at their word these reformers are well intended and do want to affect meaningful change. Therefore their persistent lack of success warrants examination. Furthermore benevolent reforms deliver a very unique outcome that is far more complex and sinister than mere failure. In exploring the histories of past benevolent reforms it becomes clear that they do not merely fail to deliver their objectives. These concerted drives to reduce punishment succeed in growing and entrenching the very system they aim to dismantle. Without an understanding of how this transpires, and how to chart an alternate course, a way out of our penal stasis becomes less likely with each cycle of reform. A novel and deeper exploration of these particular reform efforts is demanded.

Focus on the United States

Issues of race, religion, and scale make the United States a unique venue with regard to punishment. It is the most religious democracy, grows more heterogeneous by the day, and punishes at a rate not common elsewhere. The historic reform movements targeted by this study (the penitentiary, the adult reformatory, parole) did not evolve in the United States as they did in Europe (a subject in need of further study). Their trajectory of growing punishment was confined to the United States. It follows then that no matter how cohesive the movement restorative justice is not likely to evolve the same

the world over. Restorative justice may be an international phenomenon but the United States is unquestionably a distinct penological environment. Research and discussion pertaining exclusively to the U.S. are critical if we are to understand why this nation's penal landscape remains so static and why effective change in this country seems so hard to achieve. Therefore, this study deliberately looks only at the American evolution and manifestation of said penal reform movements.

Chapter Outline

Part I is comprised of chapters one through six.

Chapter one reviews the criminal justice literature and finds that today's penological landscape looks much like it did two hundred years ago. Criminal justice scholars are found to be resigned to this penal stasis. They are rather cynical regarding any substantive change and are shown to have accepted our narrow retribution-rehabilitation penal rut as inevitable. The field does recognize that good reforms repeatedly go very very bad. Scholars appear to reify the tradition of poorly faring reforms and though this failure must be a key factor in our penal stasis no one is pursuing a way out of a paradox in which campaigns to temper or replace the punishment system grow it. Criminal justice literature is shown to be rich with discourse addressing penal reform and yet there are glaring holes and unanswered questions. In particular, scholars have not concentrated on why our punishment system is so entrenched even as our other social institutions change; nor have they accounted for why *penal* reform campaigns deliver so little when reform efforts in other arenas have achieved many of their aims. The literature indicates that criminal justice thinkers have constructed various arguments as to why reform fail but are still not asking why substantive change is so hard to come

by. Furthermore, they have not explored reform failure in aggregate and tend to focus on one campaign at a time thereby missing the opportunity to mark and explain patterns. This chapter makes the case for turning to a different discourse, that of social movement scholars, to begin to speak to these pressing under-explored issues.

Chapter two explores the collective behavior social movement (CBSM) literature to uncover how this discourse defines a social movement. These findings are used to support the exploration of penal reforms as campaigns for social change. The chapter shows how both fields (criminal justice and social movement) have been remiss in making this connection and argues that the relationship can be a rich one for each. Social movement discourse is shown to offer many tools to understand, examine, and deconstruct social movements. These include an analysis of how social movements function, identification of their various components, and a frame for exploring the issues of success and failure. The chapter then identifies which specific tools borrowed from the social movement literature and explains how they will be used to organize, analyze, and dissect benevolent penal reforms of the past and present.

Chapter three is less theoretical than the first two chapters. It addresses why this study is focused specifically on *benevolent* penal reforms (BPRs). This includes a discussion establishing and distinguishing between categories of penal reform, asserting the value of such a methodology, and accounting for why a singular class of reforms makes for a favorable unit of study. A comprehensive review of extant social movement models show that none adequately fit the typical and *complete* career of a benevolent penal reform. The argument centers on the singular, rather distressing, and quite repetitive outcome of these movements. These movements do not simply fail to meet their stated aims or merely succeed in reproducing the host society. No, these

movements actually enhance punishment. The unique aftermath of BPRs, heretofore unnoticed by social movement scholars, indicate that a new model is in order. This chapter establishes that traditional prevailing notions of social movement success and failure are overly simplified and warrant development. Finally the chapter defines and describes a new social movement model, one termed **regressive**, that embodies elements found in BPRs but unaccounted for in existing models and social movement literature.

In order to better understand how regressive movements operate we must trace their career course and identify distinguishing characteristics. The study traces the contours of the regressive social movement to build what will be termed the **regressive reform profile (RRP)**. Chapter four designates and defines the variables that will ultimately mark the RRP. CBSM scholars recognize a great many factors, both internal and external, that play into the outcome, expression, and evolution of collective action and social movement organizations. Eight were selected for this study, based upon the insight they provided into the regressive social movement. These characteristics are: **conditions of the host society** (the sociopolitical landscape from which the benevolent penal reform movement emerged), **carriers** (those who initiated and assembled the social change movement), **membership distribution** (the arrangement social movement participants), **early rhetoric** (the rhetoric at the *start* of movement -- how it critiqued the status quo, constructed ideas about criminality, and promoted the innovations for which it fought), **repertoires** (the initial and primary means by which the movement forwarded its aims), **time to ubiquity** (how quickly the movement became institutionalized), **outcome** (what was replaced, what was added, did it deliver on its claims), and **the score** (an appraisal of traditional social movement success markers and an accounting of whether or not the movement was considered a failure in its day).

Chapter five examines and compares these eight social movement characteristics across three benevolent penal reform campaigns: the penitentiary, the reformatory, and parole. Using seminal historical works, the aforementioned elements for each individual BPR are identified and discussed. These findings are then plugged into a graph so that comparisons and parallels across movements are more apparent and easier to pinpoint and track. The comparative analysis serves to map and trace the contours of the ‘regressive’ social movement and build the RRP. This exercise illustrates the regressive nature of each campaign and allows for a valid exploration into shared or similar qualities among the movements. The survey shows that both the *outcome* and the *profile* of each movement resembles that of the others. The parallel aftermaths of these campaigns indicate a repetitive cycle, across time, of attempted and distinctly failed efforts to change the penal landscape. The comparison also reveals repetition with regard to the evolution, operation, and structure of these movements. These movements are found to embody a truly uniform structure. Findings support the study’s theory that there is a relationship between the nature, profile, and very troublesome outcome of these movements and the static nature of our unchanging penal landscape.

Chapter six analyzes the findings laid out in the previous chapter. It explores how each of the specific qualities comprising the RRP contributes to, or facilitates, regression. In particular, it is evident that the composition of the movement’s carriers, the distinct membership distribution, the limited repertoire, and the speed at which such movements institutionalize nourish a campaign that may enrich and expand the host and fail to deliver on its stated aims. The structural examination of these failed movements reveals why substantive change is hard to come by and why the cycle of regression continues to be repeated. The findings explain why at its core the penal landscape remains static,

transformed only in terms of scale and the kind of punishment rendered. Most importantly, the investigation demonstrates that penal reform is not manipulated by some unaccountable force. Nor is there a concentrated conspiracy out to administer outrageous and dangerous failure. Regression is not inevitable. We need not be resolved, as so many criminal justice scholars contend, to penal stasis. The analysis addresses why these movements unfold as they do, why the cycle is repeated, and what might be done differently to secure an alternate, hopefully *progressive*, course.

Part II is comprised of chapters seven through nine.

Chapter seven reviews the restorative justice literature and finds that though it is growing and evolving, certain critical gaps remain. Until recently a considerable percentage of the work was produced by only a small handful of scholars. This has changed with the tremendous surge in publications during the past five to ten years. Even so, quite a bit of the literature simply champions the restorative justice cause. Empirical studies are only slowly emerging. Nevertheless, the word on the academic street is that restorative justice “works,” though what is meant by “works” is often undefined or differently construed. Critiques of restorative justice had been relatively limited in both scope and number but the content of this type of inquiry is becoming much more sophisticated. Yet, there is still not much in the way of critical analysis of the restorative justice *movement*. Critiques tend to concentrate on the evolution of restorative practices and theory, neglecting the campaign itself as an object of scrutiny. While some scholars have voiced concerns about the history of benevolent failures, no one has articulated whether or not this current campaign is indeed traveling a problematic course, let alone suggested how failure might be avoided. A discourse that addresses the specifics of place,

in particular the United States, is absent and scholars are not discussing the religious undercurrent of the restorative justice movement. This study covers this unexplored ground.

Chapter eight maps out the methodology used to gather data on the restorative justice movement. In order to get as broad and detailed a picture of the movement as possible the study had to include what has been happening on the ground and in the movement's name. To capture the breadth of the campaign, program typology was created: **academic**, **religious**, **government**, and **community** programs. To gather a sample of twelve sites, (three from each category) introductory letters were sent to thirty-six different restorative justice sites, nine in each of the four categories. There was a concerted effort toward regional diversity. This was partially successful. The final study sample included a total of thirteen sites, two academic, two religious, four government, and five community. Data was collected through participant observation and one-on-one interviews. At each site considerable time, in some cases weeks, was spent surveying how that particular restorative justice program or organization expresses itself. Research included an investigation of that site's written material (manuals, promotional tools, handouts, etc.), its propaganda, funding sources, and participants. It also encompassed program observation, and in many cases participation in that site's case resolution or training services. Interviews with program directors, volunteers, former program participants, restorative justice pundits, and practitioners were also conducted. Specifically the condition and manifestation of the eight social movement characteristics delineated in chapter four were carefully gauged.

Chapter nine, incorporating both field work and written material, explores restorative justice's expression with regard to these same eight elements. The purpose of

such a survey is to affirm or negate the hypothesis: the restorative justice movement is evolving like the benevolent penal reforms that came before it and is headed for a similar *regressive* outcome. The findings for each of the properties is spelled out in detail. Next, the restorative justice data is juxtaposed with that of the other BPRs in a table (similar to one in chapter five) to allow for an easy comparison between the current campaign and those of the past. The findings support the hypothesis. This graphic illustration clearly demonstrates that the restorative justice movement is manifesting much of the RRP. A discussion highlighting key examples of this repeat performance shows that this latest campaign is poised to deliver an unwelcome outcome and grow punishment. Restorative justice is not necessarily doomed to repeat the BPR cycle. The movement is found to contain some unique assets and it is still early in the campaign. The chapter closes with specific directives on actions, tactics, and measures movement actors might want to embrace in order to deliver an outcome closer to their aims.

The conclusion pulls the expansive study together, retracing its steps and reviewing pertinent findings. This two part study accounts for why good reforms go bad and why substantive change has been so hard to come by. The analysis indicates that the central reasons for the highly dangerous failings of these social change movements lie in their own structure and tactics. This is welcome news because movements do have considerable control over these elements. The study began by dissecting past benevolent penal reform campaigns. By identifying their problematic features, new tools were forged that, in turn, were applied to BRP's heir apparent, restorative justice. The subsequent assessment that this too is traveling a regressive course provides the opportunity to interrupt that course, regroup, redirect, and build a movement with better odds of

delivering meaningful change. In addition, the conclusion surveys other possible avenues of inquiry including questions raised by this study and its findings. This study demonstrates that the criminal justice system is not intractable, that penal stasis need not be the norm, and that reform campaigns are not destined to fail.

Part I -- Chapters 1 - 6

You know, if one person, just one person does it they may think he's really sick and they won't take him.

And if two people, two people do it, in harmony, they may think they're both faggots and they won't take either of them.

And if three people do it, three, can you imagine, three people walking in singing a bar of Alice's Restaurant and walking out. They may think it's an organization.

And can you, can you imagine fifty people a day, I said fifty people a day walking in singing a bar of Alice's Restaurant and walking out.

And friends they may think it's a movement.

-- Arlo Guthrie, *Alice's Restaurant*

Chapter 1

Sanctioned Stasis: An Overview of the Penal Reform Literature

No firm consensus reigns on what should be considered the first prison, Newgate Prison, a copper mine in Simsbury Connecticut that opened in 1773 (Welch, 1996) the Walnut street Jail in Philadelphia which began operations in 1790 (Allen & Simonsen, 2001), or European antecedents which embodied many of the elements closely associated with punitive incarceration such as incapacitation and classification (Bosworth, 2000; Schmallegger, 1999). Yet, there is absolutely no debate that reform efforts accompanied each one. No sooner is a mechanism for punishment developed than someone stands to oppose or transform it. Penal reform is as old as punishment itself.

That being said, this study will not be served by travels back to the first rumblings of such discontent. For our purposes here, the tale will begin at the turn of the nineteenth century as the ideas and drive toward a penitentiary system in the United States are coming into full swing. We will follow it to the present day, a landscape which bares an uncanny resemblance to our starting point. This is, in fact, the crux of the story. What follows is a review of the scholarly literature addressing the last two hundred years of penal practice and reform efforts. The body of work demonstrates a relative stasis within the practical realm of punishment, reveals a continued appreciation for classical criminology; confirms that any mutations have been profoundly limited and stuck between two proximate ideals; and establishes that most thinkers are resigned to this state of affairs. An account of penal reform illustrates two centuries of roaring disappointment alongside numerous organized and haphazard efforts at change that have yielded little more than a resigned acquiescence to an inadequate penal system and perennial fruitless efforts toward change. The actual impact of these campaigns never moves the system

beyond the paradigm of its origins and travels between two closely associated and barely distinguishable schema. This author, not yet prepared to submit to this state of affairs, will then show how a different intellectual approach, embodied by this study, may very well forge a new perspective on an old problem.

Same Old, Same Old

Penal reform's abundant allure has resulted in an abundance of discourse. Multitudes have turned their eye, and pen, toward its mysteries. This vast body of work includes historical accounts, sociological examinations, comparative studies, empirical explorations, logistical manuals, program evaluations -- micro and meta, theoretical deconstructions, philosophical treatises, calls to arms, calls to desist, scholarly reasonings, polemical expositions, cultural explorations, and analyses from across the political spectrum. Fictional forays and social commentaries on the penal system, from Dickens to Victor Hugo, endure. Literature continues to mount. Yet, even within this varied and prodigious work, two aspects of the penal reform story are reiterated again and again. Profound dissatisfaction is a constant refrain and secondly, scholars note the range of institutional or systemic change has not been particularly deep, substantial, or lasting. Sullivan's evocative title *Forlorn Hope* (2002) aptly captures the sentiment and findings of prison reform literature. The punishment terrain is woefully constant. Penal reformation, in any literal sense, has failed.

The bedrock principles, power dynamics, rhetoric, and structure of America's penal system resemble its initial framework. Were de Toqueville and de Beaumont to return to the United States and retrace their prison investigations (the original journey began in spring of 1831) they would, in essence, see much the same landscape they

initially chronicled (1964). It is true that the tension between the Pennsylvania and Auburn Systems (the great penal debate of the day) has been resolved but their descriptions and discussions of the then emerging punishment system stand today:

This separation, which prevents the wicked from injuring others, is also favorable to himself. Thrown into solitude he reflects. Placed alone, in view of his crime, he learns to hate it; and if his soul be not yet surfeited with crime, and thus have lost all taste for anything better, it is in solitude, where remorse will come to assail him.(p. 55)

To sum up the whole on this point, it must be acknowledged that the penitentiary system in America is severe. While society in the United States gives the example of the most extended liberty, the prisons of the same country offer the spectacle of the most complete despotism. The citizens subject to the law are protected by it; they only cease to be free when they become wicked. (p.79)

Moral and religious instruction forms, in this respect, the whole basis of the system. In all penitentiary systems, those who have not learned to read are instructed in it. These schools are voluntary. Though no convict is obliged to join them, they consider it as a favor to be admitted, and if it is impossible to receive all who offer themselves, those among the prisoners are selected who are most in need of the benefit of instruction.(p.82)

These descriptions have stood the test of time. The United States, in its response to the violation of criminal law, still believes in and relies primarily on incarceration, fixed sentences, solitary confinement, and reduced stimulus for the inmate. "The wicked" are incapacitated so as to keep them from harming society, are expected to face what they've done, and to hopefully change their ways, never to offend again. These outcomes are

supposed to derive from the same sources we depended on at the prison's inception. Loss of freedom, then and now, is expected to be so disagreeable as to ensure that a convict will not risk it again. The time away from society is still trusted to inspire meditation upon one's actions. "Thinking about what one did" supposedly produces remorse or suffering, preferably both. "Instruction" be it emotional, intellectual, religious, or any combination thereof continues to be thought of as an inestimable way of affecting inmates, though many see it as a luxury or indulgence that should not be afforded those who have transgressed.

Ideological axioms that spurred the rise of the prison continue to guide our penological convictions. **Deterrence**, specific and general, and its presupposition of a rational man, critical to the birth of the prison, remain a cornerstone of penal theory. **Incarceration's** hold on the public imagination is no less magnetic, though over the years it has grown deeper and come to overpower any other possibility. **Longer sentences** continue to be associated with an increased power to deter potential offenders or scare those enduring these severe punishments from considering any future transgressions. **Proportionality** and **fairness** are no less relevant or common issues today. **Redemption**, then believed to come about through isolation and religious introspection, now linked to program participation, treatment, and religious commitment, is an enduring aim. **Equitable punishments**, across class and crime, remain a primary objective, the difference being that today equity across race has been added to the discourse (though surely not delivered).

The ideas first unleashed in Beccaria's seminal *On Crimes and Punishment* first published in 1764 retain their potency. They remain the fodder for today's leading criminal justice scholars and as such are debated, dissected, and appraised ad infinitum. A

quick purview of standard criminal justice reading--*Doing Justice: The Choice of Punishments*. (von Hirsch, 1976), *A Reader on Punishment* (Duff & Garland, 1994), *What Do We Deserve?* (Pojman & McLeod, 1999), *A Theory of Justice* (Rawls, 1971), *Punishment, Communication, and Community* (Duff, 2001)--affirms this claim. Emerging criminological theory has no choice but to respond to these standard ideas, whether contradicting (Gottredson & Hirschi, 1990), expanding (Samson & Laub, 1993), or supporting them (von Hirsch, 1998), because, though established long ago, their currency has yet to diminish. Classical criminology endures.

Alas, alongside the lingering ideas and structures of punishment sit the invariable fruits of these ideals. These too look much as they did in the early years of the prison. Lousy conditions, a pervasive critique of today's institutions, was first articulated long ago (Sullivan, 2002). This legitimate complaint has yet no reason to fade. Objectionable behavior on the part of those charged with the custody and care of inmates is a timeless problem and, two hundred years later, is no closer to extinction. The poor, marginalized, and downtrodden are over-represented on the inside as was the case in 1790. Cells fill faster than they can be built and overcrowding remains the norm. The environments inside today's correctional facilities, as was the case inside Walnut Street, Auburn, and Eastern veer quickly and far (if ever they reflected them) from the intended design. From the onset prisons languished and delivered a host of vicissitudes from which the system has yet to escape.

As is true of the first prison built and the last -- the mechanisms of punishment do not deliver on their promises or match the ideals that give rise to them. A class of activists eager to name, fiddle with, and solve the problem continue to emerge. Reformers have blossomed alongside the prison and remain as interminable as the institutions

themselves. The first prison society, the Philadelphia Society for Assisting Distressed Prisoners, was founded in 1776 and is believed to have given rise to the Society for Alleviating the Miseries of Public Prisons an activist group who had their first meeting in 1787. (Welch, 1996; Sullivan, 2002) The Osborne Society, the John Howard Society, the Women's Prison Association are but a few examples of a huge pool of penal reform organizations organizing today. These social activists and their progeny have formed societies, created oversight boards, gone to court, lobbied, joined the system to make change from the inside, marched outside the gates, published, spawned new laws, stricken old laws, and agitated any which way in the hopes of altering the penal landscape. Some called for harsher punishment, some more lenient. It is merely the the timbre of these calls that varied. The tension between a forward looking utilitarian eye and a backward looking just deserts premise is not a new struggle. There has never been an accord on how to solve the punishment problem, only an agreement that there is one. Yet, this discussion plainly illustrates that ultimately little has changed. Then as now prison, deterrence, rehabilitation, and dissatisfaction compose the terrain. The complaints and aims of today's reformers echo campaigns of the past. The mechanisms, theories, and products of punishment look disarmingly like those of two hundred years ago. The existence of a class of people, reformers, working to change these elements are also a perpetual component of the punitive landscape. Not much is new under the penal sun.

There are some who may take issue with this portrait of a static terrain. Their point is well taken. Let me clarify. I do not wish to say that there has been, thus far, absolutely no modifications whatsoever to the penal system during its life course. Many would argue, rightly so, that today's correctional institutions include elements that could not have been imagined in the days when Benjamin Franklin belonged to the Society to

Alleviate the Miseries of Public Prisons. Toilets are customary as is access to fresh air, though this can be dramatically limited. Depending on state, gender, security status, and individual institution inmates now have access to healthcare, dental care, conjugal visits, psychologists, overnights with their children, law libraries, mail, kosher food, yoga classes, and telephones. Many are able to have paying jobs though their pay is far below the going minimum wage and they have none of the protections that commonly accompany such work (e.g. sick pay). Convicts are now “free” to bring charges against correctional officers for violating their civil rights and are entitled to some kind of hearing if they are given a ‘ticket’ or charged with an in-house violation. Keep in mind these actions come with consequences that may make doing the time harder not easier. It is important to note that many of these “benefits” were hard won and rather recently, the prisoner’s rights movement only dates back to the nineteen seventies. Furthermore, amenities that are not court mandated, such as education and exercise equipment, are eroding as the sociopolitical climate changes and monies dry up. Even those essentials that institutions “must” provide by law are being curtailed. For instance, quite a few states now charge inmates a fee each time they see a medical provider and some facilities charge for room and board.

Nevertheless reformers, on the inside and outside, have managed to influence the system and deliver several changes that have improved the experience of being incarcerated. For inmates, and those who love them, these changes have without a doubt made a tremendous difference. “Although the balance of change was meager, prisons could not remain impervious to momentous technological and economic progress” (Rotman, 1995). But, to counter, these modifications however meaningful are ultimately only skin deep. It is even safe to say that many of these alterations are squarely in line

with the Quaker dictates that generated the first penitentiary and reflect advances in technology, e.g. plumbing, rather than shifts in punishment. The procedure side of “justice” has been home to substantial change. Due process, thanks to the activist Warren court, is more secure. The police are restrained by Miranda as well as assorted fourth amendment rulings; and the accused is now armed with court appointed lawyers. But this has had little impact on the actual administration of punishment. Prison’s original foundation remains the same. Its design, ideals, and rhetoric reflect the initial framework. In fact, as we move into the 21st century our prisons’ resemblance to those of the 19th century become all the more literal. Reliance on solitary confinement mounts and today’s supermax prisons virtually mirror the Pennsylvania system. (Porter, 1998)

Incapacitation, isolation, and controlled stimulus is the still penal order of the day.

The More Things Change, the More they Stay the Same

While the punishment system has yet to undergo significant transformations there is a stirring or mobility of sorts. Pains to change the nature, quality, or scope of punishment move back and forth across a continuum on which at one end lies strict and severe punishment - retribution and deterrence - and on the other a merciful or humanitarian response to offenders - rehabilitation and treatment. Public and political penal appetites and favor also travel within these ideological confines. Though tension to move beyond or outside this construction appears ever-present, as disgruntled parties of every political ilk and across time are forever expressing fierce discontent, little headway is made beyond this narrow channel. To quell or meet the uproar of the day policies emerge and generate new mechanisms of punishment. As the system’s heading, its prime ideological direction, shifts between these points small changes that reflect the trend of a

given era are incorporated into the penal landscape. Ultimately they prove as unsatisfying or disappointing as those they aimed to displace. At this point in the cycle they are either discarded or so ubiquitous as to be considered status quo. This cycle is well documented. (Sullivan, 2002; Morris & Rothman, 1998; Sheff, 2004) So long has this routine been in place that it appears almost habitual. As scholars are given to note, “the fate of reform efforts is distressingly similar ...” (Rotman 1995).

A prime example, typifying this well worn rut, is capital punishment. As the mood moves toward retribution the death penalty gains favor and more states, district attorneys, and juries put it to use. When the pendulum swings in the other direction, as it always does, mercy takes a stronger foothold and executions wane. Capital punishment has been moving in and out of vogue since 1776. Thus it is never stamped out or fully rooted. There was a four year period between 1972 and 1976 when the death penalty was deemed unconstitutional but this controversial Supreme Court stance centered around statutes and so was rather quickly resolved. Other illustrations of this reform cycle are pervasive. Inmate programs, available education, means for early release, long sentences, treatment, no frills tough love prison conditions all rely on the ideological tide and have a long history of waxing and waning. Penal reform efforts continue to ebb and flow much as they have throughout the over two century history of modern American punishment. Founding principles are never genuinely challenged or altered. The system remains approximately the same but this repetitive “reform” failure cycle has become an added inveterate component.

A note on geographic difference. This study refers to the penal system as a unified whole having one history; but that is not the most precise characterization. This is not say that it is incorrect to use such an approach just that there is a more complex

story of which the reader should be aware. Place and regional properties have a definite impact on the shape and quality of punishment. Local economies, race relations, customs, immigration patterns, and topography all contribute factors that inform the distinct structure and nuance of punishment in a particular region. This is why the penal farm is a southern phenomenon and prison factories born in the north. Though it is important to recognize the meaning and actuality of these sometimes subtle distinctions such a level of intricacy does not enhance, and may confuse, the aims of this work. For the purposes here it is safe to say that the penal system in the United States is basically static. Its history is one of relative stasis in which a repetitive cycle of reform travels a narrow but consistent groove between two fixed points that ultimately share the same ideological foundation.

Speculation as to how and why penal reform efforts have “failed” is easy to find. Widespread disagreement as to what “success” is, and what penal reform goals ought to be, is equally pervasive. Responses to this vexing conundrum represent diverse intellectual and political positions. What follows is a recap of the most widely known and discussed of these suppositions.

One popular and credible argument points to the omnipresent mass of contradictory or shifting aims (Sullivan, 2002). Currently and historically, the reasoning asserts, there are so many mandates cited and embraced as paramount that the system, reflecting this confusion, is chaotic, rather absurd, and perpetually fluid. Striving toward multiple opposing ends results in practices and procedures that undermine and obstruct one another. Long sentences, often mandatory even as we supposedly allow for and celebrate judicial discretion, coupled with increasingly creative ways to allow for early release is a clear example. Not unrelated is the widely shared opinion that we’ve

neglected to embrace a singular guiding principle, and what is often missing are clear steadfast priorities and standards. (von Hirsch, 1998; Duff 2001) This claim asserts that a particular intention has not, could not, and can not be reached until a specific and primary directive is identified e.g. deterrence. Then it can be singularly pursued and achieved.

Another compelling and recurring analysis of this “failure” credits the state’s latent goals of mounting and maintaining the economic or social status quo, suggesting that in fact there is no failure at all. The punishment system acts as a strong force supporting, maintaining, and ensuring an existing set of relationships. There are many variations and renderings of this perspective. Some thinkers assert that capitalism and its accompanying labor demands are what dictate the shape and nature of punishment. (Greenberg, 1993; Rusche & Kirchheimer, 1939; Takagi, 1993; Wacquant, 2000) As this is the case, they argue, then changes, reforms, or penal ideals that interfere in any way with the interdependencies that benefit the ruling classes will not be allowed to flourish. Elements of the penal system that reinforce these stations will thrive. Durkheim and others suggest that it is social and moral order that are served by systems of criminal justice. Thus it is social cohesion drives the nature of penal practice, as well as its shifts or stagnation. (Durkheim, 1947; Erikson, 1966) If no one was to commit crime as we understand it today, we would name some other behavior transgressive and punish it. This, these scholars claim, is how we know who we are, what we believe, and what we value. Punishment is a functional tool, a necessary element of an advanced society. Therefore changes that could weaken or attenuate its purpose, defining an other, will not be accommodated. Yet another common explanation for the failure to effectively reform punishment cites it as a successful and meaningful way in which race and class divisions

are affirmed. The penal system is designed to maintain social control and thus serving as a tool for political exploitation. (Greenberg, 1993; Reiman, 2000; Parenti, 1999; Tonry, 1995; Cohen, 1985; Davis, 2003)

The discourse took a new turn in 1977 with the English language publication of Foucault's *Discipline and Punish*. In it he contends that technologies of power are at the heart of the issue. Though this fits within the frame that the prison and our punishment system do just what they are supposed to do, assert power and control people, Foucault saw no direct agency on the part of those that may seem to benefit. He also saw far more dire and widespread consequences than the aforementioned "maintain the status quo" analyses. Foucault saw power becoming increasingly centralized, omnipotent, and omnipresent thanks to the mechanisms of punishment. His ideas made a huge splash, have been widely embraced and though are presently experiencing a bit of a backlash, have changed the conversation altogether. A Weberian approach to understanding penal reform's failure asserts that rationalization and modernity, the mechanisms of bureaucracy, are directly responsible. (Feeley & Simon, 1992) The system will ensure its continued existence. There are those that declare a tradition of mismanagement is to blame. (DiIulio, 1987) Yet others cite poor program implementation. (Lin, 2000; Martinson, 1974) Ignatieff convincingly argues that to date social histories, including his own, are wanting, and we've to account for why and how punishment is what it is. (1981)

The nuances and details of these various theses are important, though for the purposes here it is safe to say that this body of work joins in the consensus that the landscape of penal reform is one characterized by misdirection, obscured goals, harm, stagnation, sinkholes, dubious aims, false starts, missteps, circularity, runaway trains, and

ruses. According to these thinkers, though each may imagine a very different “ideal system,” we’ve yet to build a better mousetrap and we may, in fact, not even be interested in doing so. All in all, penal reform has been a washout.

Reform efforts may share similar prospects but they are not all alike, though it is not uncommon for scholars to discuss them in aggregate. The literature tends to either lump all efforts together (Colvin, 1997; Sullivan, 2002) or single out a specific reform (Platt, 1977). Neither approach is adequate. A deliberate, finer, and more precise classification is warranted. For this reason the author has generated a penal reform typology that serves to anchor and structure this study. Such a categorization offers a practical framework for sorting patterns and conducting deeper analysis.

In reviewing penal history it becomes evident that there are two discrete types of penal reform which are closely related to the two ends of the aforementioned narrow continuum of penal “change.” There are reform efforts that aim to enhance the punishing nature of penal policy and practice. Examples include chain gangs, three strikes legislation, and capital punishment. These are expressions and manifestations of movements moving toward the retributive deterrence end of the spectrum are typed here as “**punitive reforms.**” Another set of reform efforts are those that campaign and struggle to engender a more “humane” or less punishing system. These represent the other end of the distribution, the treatment or rehabilitation side of the equation, and are typed here as “benevolent reforms.” Examples include the reformatory, parole, and community service. Ideologically, practically, and rhetorically these two reform types operate quite differently from one another. Though, as this study will show, by looking specifically at several “**benevolent reforms,**” intragroup patterns appear markedly evident.

Don't be fooled by the language. 'Benevolent,' 'humane,' and 'rehabilitation' may be words that suggest a kindly or gentle approach to offenders but this is not how such reforms generally play out. In fact, often, so-called strict or harsh punishments have often proven to be less harming than those implemented in the name of mercy and benevolence. Reformatories, the re-formed prison, were dens of violence. (Rothman, 1971) The indeterminate sentence, initially created to limit and reduce inmates' time on the inside, put people under their captors thumbs in an unprecedented and insidious way, often resulting in interminable prison sentences. (Morris & Rothman, 1998) The "treatment era" of American punishment is notorious for its abuses. Ironically retributive ideology calls for restraint or limits in a way that rehabilitative aims, since they are "good for you," do not. "Righteous" aims, and what is carried out to achieve them, need not be questioned or scrutinized thanks to a believed inherent good. Conservative scholars have often used this very argument to mount intellectual support for retribution, claiming it alone honors autonomy. (von Hirsch, 1994) The discussion as to the merits of a retributive or humanitarian approach is long-standing and considerably more complex than alluded to here. For now it is only necessary to observe that the appellation of each category does not tell the entire story. Nevertheless the classification is sufficient and appropriate for the demarcation of a typology of penal reform efforts.

Take note, there are penal "innovations" that do not at first glance easily conform to this dichotomy (examples include the prison factory or penal farm). Political pragmatism and opportunism on the part of a few shrewd well-connected actors are often what give rise to such episodes in penal history. To secure patronage politicians provide cheap labor, prisoner labor, to those whose favor and money they are courting thereby generating a new penal practice. Local governments can find themselves, as many

southern states did after the Civil War, in a fiscal and cultural morass. Punishment is costly and in the name of finding a quick or cheap fix a new penal practice emerges. Reform is probably not the correct word to characterize these policy shifts and the social movements with which they are associated are most probably not penal, so in many respects they need not fit into the model presented here. But even as these permutations are animals unto themselves a rhetoric and public face was necessary to implement them. In this sense they can, and do, fit as the reasoning offered up publicly always contorts itself to fit either a “benevolent,” work-is-discipline or education-will-create-better-citizens rationale, or a “punitive,” chains-and-hard-labor-are-deserved-punishments bent. Thus the typology is a thorough and suitable classification tool. Whether benevolent or punitive, penal reform efforts fail to deliver much and in due time the pendulum merely swings in the other direction; of course only to eventually swing back again.

Though this is the first work to identify and mark a strict distinction between two separate categories of penal reform, it is not the first to address ‘benevolent’ reform. Many scholars discuss the problematic and specific outcomes of this particular type of reform. Anthony Platt’s history describing the emergence of a juvenile justice system carefully shows how and what kind of damage grew from supposed good intent. (1977) Jonathan Simon takes a vigilant look at one hundred years of parole, a reform grown from mercy, and its oppressing effects in his extremely compelling *Poor Discipline*. (1993) Pisciotta’s brilliantly titled *Benevolent Repression* lets the reader know exactly what the reformatory movement achieved. (1994) In *Visions of Social Control*, Cohen looks at the decarceration efforts of the sixties and explores the counterrevolutionary shape and impact of an struggle intending quite the opposite, one that had hoped to radically reduce control. (1985) Countless other works that chronicle the history and development of

penal reforms from the penitentiary, parole, and the juvenile justice system to probation, community corrections, and the reformatory describe, document, and account for how and why truly well-meaning endeavors did not produce the change they claimed to desire and how they ultimately led to rather onerous results. (Foucault, 1977; Friedman, 1993; Morris & Rothman, 1998; Rothman, 1971) These studies share an approach, a focus on the particular failures and sinister outcome of an individual “benevolent” reform.

There is value and veracity in all of the aforementioned treatises of penal reform failure, benevolent or otherwise, but they don’t tell a comprehensive story; they paint in general sweeping strokes. These thinkers ultimately decline to account for *how* specific reform efforts did not deliver. Why is it that *penal reform*, specifically, consistently fails? Their broad theories are weakened by the fact that there are other social institutions, that match their analytical construction and battle, or are burdened by, many of the aforementioned afflictions, in which change *has* occurred and reformers *did* succeed. This is not to say they are now “perfect” or even necessarily improved but they have been subject to change, deep meaningful change.

Social institutions, from Jim Crow to Tammany Hall, that reinforce certain social, political, and economic relationships (those that support racism, capitalism, and the patriarchy) have fallen. The public schools, many might argue, are prime examples of poorly managed systems with fitful program implementation. Yet they have not produced across the board failure nor do they look as they did at their inception. Conflicting goals or lack of a prime directive have not obstructed profound mutations in all arenas of society. ‘Do-gooder’ settlement house activists, whose motives were driven by protestant zeal and the desire to remake immigrants in their image, managed to create some social institutions that did not control or repress. Compulsory school may have

been intended to force immigrants and the proletariat into conformity or controllable circumstances but these institutions deliver countless benefits, freedoms, and options. Why is it that the realm of *punishment* has been so static when other vast social systems such as education, health care, and the social safety net have evolved substantially?

Sanctioned Stasis

Penal reform scholars have yet to adequately answer this question. But of deeper concern is that they appear unlikely to ask it in the first place. The failure of penal reform seems expected and each new movement is met with skepticism by those charged with studying the matter. As these attempts travel the short distance between rehabilitation and retribution thinkers nod knowingly, chronicle the details, and wait for the tide to turn yet again. Criminal justice discourse treats this rather fixed back and forth as inevitable and inescapable. Scholars have reified this well documented penal reform blueprint. It is written about and discussed in ways that suggest it will continue ad infinitum, can not be any other way, and is not likely to change. It is as if the swinging pendulum has generated a momentum all its own, one that can not be interrupted.

Prisons exist in society, and as long as society does not undergo a deep and radical structural transformation, there is little chance that institutions, especially coercive ones, will be qualitatively changed. Perhaps the best we can hope for is a measure of humanity in the way we treat criminals, out-casts, and deviants.”

(Sullivan p. 146)

The static penal landscape in the United States, which grows more rooted with each penal reform cycle, is sanctioned by the field of criminal justice.

There are some scholars who assert that this cycle is not inescapable; but because

they do not identify where or how an alternate course may have been forged they undermine their aim and reinforce the inevitability of a static penal landscape. Garland goes to exceptionally erudite lengths in *The Culture of Control* to show how the retributive fever of the last quarter of a century was not our only possibility, even given a variety of social and cultural factors that played critical roles; yet he doesn't address why it went this way and, more importantly, not another. "They [responses to crime and punishment] are the outcome (partly planned, partly unintended) of political and cultural and policy choices - choices that *could have been different* and that can still be rethought and reversed." (2001, emphasis added) Then why weren't they? How and where could it have gone differently? He never tells us. In Rothman's seminal work, *Discovery of the Asylum*, he carefully illustrates that within one generation prisons lost their luster and were deemed failures. (1971) But rather than start fresh or move in a new direction penal change took the form of a reconfigured prison, the reformatory. The penal foundation remained the same. Rothman never addresses why this was the case. Though he expertly chronicles the shift, his reluctance to account for the primacy of the prison and the aversion to substantive change suggests no other road was possible.

Intuitively this does not make sense. Surely there are a multitude of knowable factors that determine, contribute to, or at least account for this continued binary stasis. Certainly there must be junctures or opportunities when other possibilities, roads, decisions, could be or might be adopted. Ones that are more likely to lead beyond this restrictive plane. Have we declined such occasions or failed to notice them? Is this stale model perpetuated with calculated intent? There are those that seem to suggest it is a conspiracy of sorts (Foucault, 1977) though they don't name the power behind the plot. This analysis underestimates the earnestness and determination reformers have brought to

their task. Each new tide of reform sincerely positions itself as novel and innovative, a departure from the norm, a campaign toward improvement. Stanley Cohen in *Visions of Social Control* honors the stated will of reformers while recognizing the unconscious nature of most agendas. Further, he urges us not to underestimate the culture in which a reform is born and operates. But he is reluctant to forge a new path, “[m]y aim... is to provide neither a handbook of practical recommendations ... nor a set of lofty political platitudes...” and comes off as a cynic regarding change. (1985) There must be, this author asserts, a way out of our penal reform rut though it requires that we recognize where, how, and thus why we are stuck. Barriers to understanding this phenomenon are not due solely to its complex nature but lie with the circumscribed singular lens with which these issues tend to be studied.

To review, what does the penal reform literature tell us? Penal reform literature is vast but it paints a clear picture. Today’s standard punishment practices, the theories underlying them, and their byproducts are much the same as those at the nation’s start. There are continued attempts to transform the system. These efforts shift back and forth across a narrow channel, aiming either toward retribution or rehabilitation. Quickly absorbed and rarely delivering much, these movements are written off as failures and the pendulum begins to swing the other way. Change has been cursory, though meaningful, and the foundation and framework of the punishment system remains the same: static. Scholars disagree as to why penal reform efforts have not produced much but they share in a consensus that the penal reform legacy is one of failure. The discourse goes beyond merely acknowledging the cyclical penal reform groove. There is a pervasive tendency to reify this state of affairs. The unvarying penal landscape, including the well worn rehabilitation-retribution rut, is considered a given, these thinkers seem to be suggesting

that the history of penal reform is bound to be its future.

Furthermore, scholars tend to share an intellectual approach when exploring these issues. It is common within this body of work to discuss penal reforms either in aggregate (Lin, 2000) or to single out individual reforms (Pisciotta, 1994). There is little discrimination between reforms nor are they placed within the context of a history of penal reform. As efforts are not organized or compared in a deliberate manner patterns are not examined with any depth. Even scholars who carefully describe and uncover the unique failings of an individual reform don't connect what they've found to other occasions where this may have happened (Simon, 1993). As for the thinkers who map out how a reform wave went the way it did (Garland, 2001; Rothman, 1971), they tend not to relate these events to past reforms nor do they point to why it did not or could not have taken an alternate route. These scholars, whether intending to or not, have cultivated an atmosphere in which there is no expectation of change and the continuing cycle of failed penal reform accompanying an ever-failing penal system rooted in incarceration is a permanent fixture of American society. This reification means no one is asking the right questions. Rather than ask, why are we here we should be asking why are we stuck and what is it that produces and maintains the static repetitive nature of our punishment system? Since repugnance for the system seems to transcend ideology, we must start asking how we can affect substantive change.

Reframing the Question

This author does not share in the perception that there is nothing to be done or that the current state of affairs is inescapable. Such a tack simply does not make sense. Other social institutions have undergone profound change or deep-seated reform. This

sanctioned stasis is man made. Therefore it is not beyond our control. In the hopes of getting off this merry-go-round this study will cast a fresh eye on the issue by asking and answering the question of penal reform in a new way. The study of criminal justice is touted as interdisciplinary though to its detriment it appears more myopic than such claims allow. Can it be that understanding lies not in the history of penology but rather within the dynamics of social change? Social movement scholars already have a discourse that explores why social movements act as they do. They have models, frames, and language to describe, deconstruct, and analyze social movements. What are reform efforts if not movements for social change? By joining and employing discourse from both the criminal justice and social movement arenas in order to account for the penal landscape's unrelenting sameness, this study departs dramatically from the traditions of penal reform literature. Using a social movement lens the study focuses on benevolent penal reforms in the hopes of mapping and ultimately interrupting the repetition. By uncovering patterns such an approach will demystify the continued impotency of such reform efforts and identify concrete variables that are key to the cycle of penal reform failure.

This researcher chose to focus exclusively on benevolent reforms for a variety of reasons. Recall the earlier discussion marking the distinction between punitive and benevolent reforms. These two classes of penal reform efforts, ideologically, practically, and rhetorically operate quite differently from one another. It could be argued that punitive reforms are not interested in *substantive* change but benevolent campaigns have a pronounced agenda aiming to dramatically alter the penal landscape. Though many scholars do not take them at their word these reformers are well intended and definitely do want to affect meaningful change. Therefore their persistent lack of success warrants examination. Furthermore benevolent reforms deliver a very unique outcome that is far

more complex and sinister than mere failure. In exploring the histories of past benevolent reforms it becomes clear that they do not merely fail to deliver their objectives. These concerted drives to reduce punishment succeed in growing and entrenching the very system they aim to dismantle. Without an understanding of how this transpires, and how to chart an alternate course, a way out of our penal stasis becomes less likely with each cycle of reform. A novel and deeper exploration of these particular reform efforts is demanded.

The history, sociological relevance, and fate of benevolent reforms has been well documented and yet something is missing. (Platt, 1977 ; Pisciotta, 1994; Simon, 1993; Cohen, 1985; Foucault, 1977; Rothman, 1971) These authors suggest the distinct outcome of these reforms is due to either corruption (Levrant, 1999; Rothman, 1971), or an intentional drive to control a certain sector of the population (Platt, 1977; Foucault, 1977; Simon, 1993). Neither school of thought identifies the responsible agents. They allude to a vague conspiratorial engine thereby discounting those with a sincere interest in change.

So successful has the prison been that, after a century and a half of 'failures', the prison still exists, producing the same results, and there is the greatest reluctance to dispense with it. (Foucault, 1977, p. 277)

... [F]or the past 150 years the proclamation of the failure of the prison has always been accompanied by its maintenance. (Foucault, 1977, p. 272)

In short , these scholars fail to place these campaigns in the context of ongoing penal history, guaranteeing that repetition, sequences of events, and methods to the madness remain underexplored. Over and over the reformers are surprised, the criminal justice

scholars nonplused, and each exploratory study is entered into blindly, no structure in hand.

The tendency to focus on one specific reform at a time has ensured that these scholars missed a critical part of picture. By carefully reading these works alongside, or atop, one another this author sees signs of a striking unmistakable pattern across the life course of these movements.

Usually these types of reforms are born at a time of agreed upon penal crisis. The parties that clamor for change at the dawn of a movement tend to look alike or come from similar sectors of the community and the rhetoric they use to promote and legitimize the reform is parallel. One part of the campaign routinely contains a critique of the current practice, in particular a damning of the controlling and punishing nature of the day's penal repertoire. The other focuses on the capacities or reach of the "innovative" practice and tends to be rather grandiose, repeatedly revolving around curing or eliminating crime and generating a more cohesive peaceful society. In practice these new programs initially focus on those previously ignored or considered less dangerous to society (believed therefore to be more responsive to the benevolent hand). Practically speaking these populations are targeted because they are seen as less controversial, are often less legally protected, or are not spoken for with regard to penal policy. The reforms share a evolutionary pattern, growing ubiquitous seemingly overnight, adopted first in handful of locales and then exploding onto the scene so that they become virtually synonymous with punishment quite quickly. These alterations are so extensive, expensive, and universal that dismantling them is already out of the question well before substantive evaluation, debate, or prudent assessment. Perhaps most noteworthy of all is the strikingly similar landscape left in the wake of these various 'benevolent reform' efforts. Not only have

they failed to make substantive systemic change for the better (whatever their stated idea of what constitutes better), the culture of control they were so hoping to diminish has been both expanded to include targets heretofore out of the system's grasp and deepened as authority over those already within its scope multiplies. That which began as a social change movement to abate punishment serves to significantly amplify, augment, and entrench it.

In criminal justice circles it is not uncommon to hear references to the "corruption" or disastrous route of benevolence. Previous scholars have, on occasion, remarked that benevolent reform efforts have tended to produce outcomes similar to those outlined above. (Levrant, 1999) And yet, much in the way that penal reform failure has been reified so too has this paradigm. Though the toxicity of benevolent aims has been chronicled it is clear that yet still another perspective is warranted, one that is more comprehensive, looking at multiple reforms, and placing these efforts within the scope of penal history; one that is poised to concretely mark the aforementioned pattern so as to begin to forge a way out of a recognized, but far too accepted, quagmire; an approach that can speak directly to why and how "good" reforms go "bad" again and again in very much the same way. Using the historical and sociological works from the criminal justice literature is not sufficient nor is empirical work rooted in its discourse. Rather than ruminate on conspiracies or wax on cynically about a hopeless penal landscape this study builds an existing organizing structure to explore this phenomenon by predicating the investigation on the basis of these reforms' unifying status as social change movements.

Attempts at penal reform are, in effect, social change movements though they are not necessarily studied or discussed as such. This noticeable and costly failure may well lie at the heart of why we can't break out of the mold. The literature on social

movements and social change has much to offer those who study punishment and vice versa, and it is not entirely clear why thinkers tend to overlook these connections. One reason may be an erroneous and popular tendency to conflate grassroots action with social change movements. There is a prevailing misconception that social change movements must be driven from the ground up. Penal reform efforts therefore do not always look like what is typically identified as contentious or organized sociopolitical action. Regardless of why scholars don't relate these two areas of study, the relationship is both legitimate and vital - a breach this study bridges.

Incorporating the work of social movement scholars represents a profoundly different approach to the issue of penal reform failure. Sociological and historical works from the field of criminal justice are to be combined here with validated tools used to deconstruct, understand, and explain social movements. Such a frame will serve to identify junctures where other choices can be made, pave a path to go in another direction, mark elements that contribute to dangerous undesired outcomes, and ultimately unravel the ongoing repetitive failure to substantively change the punishment system. The objective is to pinpoint, trace, and analyze the repetition. Earlier works have failed to identify or mark patterns with any precision or specificity. Without such a map the repetition is mere anecdote and the power and drive behind it amorphous, mysterious, and even a bit conspiratorial, thereby impossible to recognize and difficult to avoid. Penal reform scholars have neglected a critical piece of the puzzle. The aim here is to fill this void.

The study at hand will utilize this construction to explore specific benevolent efforts aimed at changing how America deals with convicted criminal offenders. By closely inspecting the birth, evolution, and aftermath of three different 'benevolent

reforms? -- *the penitentiary, the reformatory, and parole*, -- the researcher develops a new or amended social movement prototype, the *regressive* model, and traces its contours marking what she terms "*The Regressive Reform Profile*" (RRP). Penal reform literature is necessary to conduct such an inquiry but it is not sufficient. To do this she incorporates social movement discourse, in particular building on the work of Armand Mauss (discussed in-depth in the following chapter). The author will carefully identify the characteristics, conditions, and variables associated with the life course of benevolent reform campaigns thus constructing a theoretical model that will account for when a particular phenomenon is likely to unfold and suggest how it may be bypassed entirely. This framework will address how these reform efforts are like other social movements and also unique in their own right. Part II of the study will use this new theoretical approach to examine the growing benevolent reform movement of our time, restorative justice. This is the first step toward making our way out of the prevailing punishment landscape and sanctioned stasis of penal reform.

Criminal justice literature is rich with discourse addressing penal reform and yet there are glaring holes and unanswered questions. In particular, scholars have not concentrated on why punishment is so static even as other social institutions change; nor have they accounted for why *penal* reform campaigns deliver so little when reform efforts in other arenas have achieved their aims. Why are we stuck in a long-standing rut when dissatisfaction has been a constant constituent since the system emerged. This study is dedicated to addressing these questions.

Chapter two, by mining the social movement literature, make a sturdy case as to why, and how penal, reforms are indeed social movements. It will show how both fields(criminal justice and social movement) have been remiss by not making this

connection and that the relationship can be a rich one for each. Social movement discourse offers many tools to understand, examine, and deconstruct social movements. They will be used here to analyze and dissect benevolent penal reforms of the past and present and then built upon so as to generate a new social movement model and map its course. The merging of these discourses will augment not only the criminal justice and penology fields by focusing on previously ignored issues, but also that of social movements by expanding the understanding and definition of failing social change campaigns.

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Chapter 2

Making the Case: Penal Reforms are Social Change Movements

What is a Social Movement?

There remains ongoing debate within the CBSM literature as to what *exactly* a social movement is. Various thinkers tend to highlight or concentrate on different properties. Yet, it is not unfair to say that there is, to a considerable extent, agreement regarding key components. The field does concur and identify certain elements deemed both necessary and sufficient to label a phenomena a social movement. However differently defined or discussed certain ideas, phrases and concepts, though granted varying levels of importance, are routinely present. These consistently recurring themes include collectivity, sustained interaction, challenges to the social order, claim making, common expectations, shared demands, and purposiveness. The following will clarify the characteristics and qualities that earmark a social movement thus showing that penal reform efforts absolutely qualify for such status.

Interestingly many features that first come to mind when thinking of a social movement are not necessarily fundamental or key elements. Social movements need not be huge and may range widely in scale from localized efforts to instate recycling to national efforts towards universal healthcare. What they seek can be very specific, relatively small, and in accord with much of the prevailing ideology. Mothers Against Drunk Driving is an example of such a movement. Some movements seek to resist change and others to effect change. They may be fueled by dissatisfaction or satisfaction. They can stem from any political perspective and radicalism is not a requirement. Recall that gradual, non-confrontational efforts at change, commonly labeled reforms, are (if other

elements are present) indeed social movements. Protest, which CBSM scholars propose can encompass a wide variety of behavior, is *not* a definitive social movement element. The set of elements actually necessary to indicate a social movement are not particularly vast or unusual and enjoy broad interpretation.

Though protest is not essential, contention is, which is to say that the claims embodied by the social movement must affect others' interests. (McAdam, Tarrow, & Tilly, 1996) These need not be the government or powerholders, though often they are. This clashing of claims, integral to social movements, is considered contentious even if no one's voice is raised nor a street blocked. This is why CBSM is sometimes considered the study of contentious politics. Each wave of penal reform, benevolent or punitive, asserts claims that are in conflict with another group's interests be they dominant power holders or not. Those demanding parole or early release infringe on the demands of those advocating stiffer truth-in-sentencing prisons terms. Those fighting for juvenile differentiation are clashing with those demanding adult sanctions for all. Contention is absolutely present in penal reform campaigns.

SMs "are networks of interaction between different actors which may either include formal organizations or not, depending on shifting circumstances." (Porta & Diani, p. 16) There need not be an organized arm to make collective action a movement and it is important not to confuse a social agitation organization with a social movement. A SMO (Social Movement Organization), is its own animal and not the object of this study. Penal reform movements should not be confused with penal reform organizations such as the Women's Prison Association or the Osbourne Society. These may be entities working toward penal reform and they may play a part or take action in such a movement but they are not an indication per se of a movement nor are they sufficient to embody or

give evidence of a movement. A SM is not a pressure group, not a trend, not a tendency, not a process. (Heberle, 1951)

So, what then *is* a social movement? Here is how a variety of leading CBSM scholars answer this question. “A social movement is a collective, organized, sustained, and non-institutional challenge to authorities, powerholders, or cultural beliefs and practices.” (Goodwin & Jasper, 2003) According to Heberle the main criteria of a social movement are an aim to bring about fundamental changes in the social order and an intent to change the patterns of human relations and social institutions. He further notes that ‘movement’ suggests “a commotion and stirring among the people, an unrest, a collective attempt to reach a visualized goal especially a change in certain social institutions.” (Heberle, 1951) The key component is collective action to bring about change, “socially shared activities and beliefs directed toward the demand for change in some aspect of the social order, “group activity channeled into actions relevant for change. Collective action denotes a ‘group component’. (Gusfield, 2003) What makes a social movement a particular kind of agent for change, Gusfield asserts, is that it is an “articulated” and “organized” group, organized meaning a “regularized method for carrying on the activities of the movement” and that there are people with responsibilities and tasks performed in a predictable manner. (2003) Armand Mauss cites the following as necessary SM elements, collective behavior (organized or not), the desire or aim for change in the social order (or aim to resist change), dissatisfaction, and shared demands. (1975) Blumer states simply that collective behavior involves common understanding and expectations and Crossley reduces the description to “sustained interaction with opponents.” (Blumer, 1951; Crossley, 2002)

Regardless of the individual language choices or unique technical definitions

found in these scholars' work they clearly express shared ideas as to what constitutes a social movement -- sustained collective or group action that reflects shared demands, aims at affecting some aspect of the social order, and conflicts with the claims of another. None of these critical elements are missing in concerted efforts in the United States to transform punishment practices. CBSM scholars offer such a varied list of collective behavior when discussing social movements that this author feels confident they would agree that penal reforms are social change movements. The catalogue is so extensive that the omission of penal reforms is noteworthy. "[S]ocial movements share a family resemblance rather than a fixed essence and their definition inevitably rests upon the fuzzy logic of ordinary language use." (Crossley, 2002) Penal reform campaigns are most certainly members of the family.

An Overview

Chapter one illustrates how criminal justice scholars have failed to account for a long-standing penal rut while successfully chronicling its existence and resigning themselves to what they view as its inescapable permanence. This chapter, by reviewing the social movement literature, will make a case for exploring penal reforms as social change movements. It will show how both fields of discourse have neglected to make this connection with any depth, a noticeable and costly omission, and that the relationship, one that will be expressly and intricately explored here, can be a rich source of knowledge for each field. The definitions of a social movement, it will be demonstrated, are aptly suitable to penal reform campaigns thus supporting the argument for exploring them as such. Furthermore, the chapter will identify and explain which specific tools and means from the social movement literature will be used to organize, analyze, and dissect

benevolent penal reforms of the past and present (these individual variables will be discussed in greater detail in subsequent chapters). This approach will ultimately produce a new social movement model with a distinct set of outcomes and by charting its profile the study will begin to open the door to possible substantive change in the penal realm.

Attempts at penal reform are social change movements. It is not entirely clear why thinkers tend not to make these connections. One reason may be the popular tendency to associate volatile, disruptive, or grand-scale street protest with social change movements. Since penal reform efforts do not necessarily look like what is typically identified as contentious or organized sociopolitical action they fail to get identified as campaigns for social change. Another explanation may be the familiar yet erroneous disposition to equate social movements with grassroots action, in other words a belief that social change movements must be driven from the ground up. The grassroots level, however, is rarely where the energy and impetus to transform punishment originates. Interestingly neither of these common “definitions” of social movements are, according to scholars in the social movement field, key to marking or identifying such phenomena. Regardless of why scholars don’t relate these two areas of study to one another, the relationship is both legitimate and vital.

By excluding this class of collective action, scholars both of social change movements and penology have thus far missed an important opportunity to enhance their theories and analyses. This study brings together two fields which have yet to be connected. The purpose of this novel synthesis is quite specific. One is to assert a relationship others have failed to note. Another, is to shed new light on an unanswered and ignored question in the criminal justice discourse. Why has this sector of society,

even as there have been multiple efforts to the contrary, been immune to or unable to change.

Social movement discourse is traditionally found within the wider field of sociology. Yet over the last several decades this area of study has evolved into complex sub-fields, a specialty niche of many literatures including sociology, political science, history, and economics. (McAdam, Tarrow, & Tilly, 1996) The study of social movements enjoyed a heyday in the nineteen sixties and seventies the field has now settled into and secured a solid place, albeit on the margins of the academy, as some might argue. Often academic discourse is a response to, or a reflection of, its time and social movement discourse is no exception. Ideas move in and out of intellectual vogue, this is nothing new. Though social movements may not be at the fore of academic inquiry they continue to capture the attention of thinkers from a variety of fields and some even assert a revival is underway (Tarrow, 1998). These scholars argue that events of the past fifteen years, in Europe in particular, have given birth to a new wave of social movement scholarship. This may be the case, if a new journal that came on the scene as recently as the spring 1996 is any indication. Even a quick glance a *Mobilization*'s book reviews indicates continuing robust publishing on the topic. Perhaps the present study may be illustrative of the theme's resurgence. It is too early to christen a new era of social movement study; besides the first wave is hardly defunct.

The field's grand theorists including Blumer, Heberle, and Smelser maintain ongoing relevance. Their names, and more importantly their ideas, can be found in much of today's writings on the subject. Thinkers continue to build on their work and carry on exploring, investigating, and analyzing how, why, and when collective action takes root. These scholars employ a variety of approaches often derived from alternate disciplines.

Some explore the political opportunities that allow for, support, or suppress collective behavior. Others focus on 'resource mobilization' or the factors that fuel and drive social movements. Those with a physiological bent may look at the actors engaging in collective action and discuss the emotions and rationale that move these people to participate. Regardless of the tack, research and discussion of social movements continues. The field is growing and, perhaps to its misfortune, becoming increasingly specialized and micro-focused.

It is now common for this area of inquiry to be referred to as 'collective behavior and social movements' or CBSM though sometimes it is discussed as the study of 'contentious politics.' The arena of social movement discourse is a specialized field usually inhabited by those admittedly interested in social change. It has been associated with left leaning politics but it is inaccurate to write it off as polemical, rhetorical, or propagandist. Much of the scholarship is first rate and thinkers in this field are connected to some of the world's most well regarded universities (Charles Tilly is connected to Columbia & Doug McAdam to Stanford). Discourse is inclusive and international in scope. Collective behavior from around the globe (be it environmental movements in the Bay area, democratizing efforts in Latin America, or peasant resistance in Malaysia) over time (from the first wave of feminism to the Nazi party to modern day LGBT activism), and across the political spectrum (from the Christian Right to Italian Anarchists) is represented in the CBSM literature. (Costain & McFarland, 1998; Meyer & Tarrow, 1998; Peck, 1985; Lofland, 1996; Klandermans & Staggenborg, 2002) Subsets of CBSM literature include economic structures, labor, and class formation; revolutions; identity and collective action; protest; resource mobilization; political opportunity structures; why and how actors come to participate in social movements; and new social movements to

name but a few.

As this body of work is considerably diverse what follows is not the quintessential review of the *whole* of social movement literature. The review here is shaped by the specific aims of this study. The literature is being explored for precise reasons. The first is to uncover whether social movement scholars have turned their attention to the subject of penal reform campaign(s) or the development, evolution, or stagnation of punishment institutions in the United States. What do they have to say? What is the meaning of their inquiries or lack thereof. The second is to understand and identify the characteristics and qualities that earmark a social movement in order to ascertain if a particular class of penal reform efforts qualify as such. The literature will show whether the author's claim that they are is supported by CBSM scholars. Third, the literature is mined with an eye toward pinpointing the mechanisms and tools it offers to structure and focus an examination of benevolent penal reforms. This includes finding language with which to talk about and understand the movements as well as means to dissect and explore them. Lastly, the literature must be explored in an effort to answer the question, 'does the particular cycle and corresponding outcome of benevolent penal reforms match social movement models described in the CBSM literature?' If so, these must be represented and employed further in this study. If not the researcher must build on what the literature offers and develop an amended or new model that fits the class of social movements being analyzed here. Collective behavior and social movement literature is far more nuanced and complex than these pages may suggest. Nevertheless, the author has delved deeply, and with a specific focus, into the mass of CBSM literature to produce the following literature review.

Social Movement Scholars Fail to Recognize Penal Reforms as Their Own

Within the academy each field is confronted with the dilemma of whether to maintain a broad area of adeptness and relevance or to carve out tiny though intense areas of expertise. The trend, mounting with each passing decade, is the latter, specialization. While this may make for extremely informed scholars their purview becomes a rather small province and often a universe unto itself. These worlds are comprised of meta languages, theories, and analyses easily accessible only to the informed few. Each field is composed of assumed knowledge sets so unique and specific that “outsiders,” thinkers from another field, have a difficult time making use of them and so rarely do. The result is a profound, and false, separation of ideas and concepts that have the fertile potential to inform and enrich one another. Social movement research has suffered from such missed opportunities.

It is rather poignant that the study of social movements as engines of change began at the Chicago School, (della Porta & Diani, 1999) where modern criminology was born. The last chapter illustrated how criminal justice scholars have, thus far, not explored the collective behavior aimed at penal change as collective behavior or social movements. In turn, a fairly comprehensive search of the CBSM literature including library data bases, journal articles, papers, and books has found that penal reform efforts, or the social institution of punishment, is rarely if ever mentioned. SM scholars do suggest that other fields would benefit from using the findings and knowledge in their field but make no mention of criminal justice or penology specifically. Within the field there are grumblings that the study of contentious politics is inordinately inclined toward the west and the last two hundred years. (McAdam, Tarrow, & Tilly, 1996) Interestingly enough penal reform efforts also correspond to this time period and geographical locale, the ones most studied

by CBSM scholars, and yet still no focus on the subject.

From the field's first theorists to current empirical case studies and the scholarship between, there is a noticeable void of any conversation that even refers to penal reform campaigns. Theorists such as Blumer, Heberle, and Smelser tend to discuss how collective action comes to erupt, unfold, and decline. Their writings offer explicit explanations on the individual behaviors, characteristics, and operations of movements and their participants by talking about collective action in aggregate, not particular movements though sometimes examples are cited. These examples, even in the midst of 'reform' movement discussions, do not include penal reforms. Thinkers that analyze or dissect specific movements do not focus on penal change campaigns and neither do case study and CBSM readers include them. Often the subjects of these works are familiar, obvious, and repeatedly presented. Frequently studied movements include the labor movement, the civil rights movement, the gay liberation movement, the women's movement, environmentalism, peasant revolts from around the globe, or great revolutions such as the French, Iranian, or Russian. (Goodwin & Jasper, 2003; della Porta & Diani, 1999) While a wide variety of SMs are represented in these works, efforts to transform punishment institutions or practices simply do not appear. CBSM text books, though admittedly few in number, do not mention penal reform. (Turner & Killian, 1972) There is one notable exception, Armand Mauss' out of print *Social Problems as Social Movements*.

Armand Mauss' recognition of penal reforms and his consideration of corrections and punishment is unmatched by his peers yet ultimately his lack of expertise and familiarity with penological history render his associations overly broad. He uses the term "correctional reform" to discuss what he sees as a series of overlapping poorly

integrated and uncoordinated movements. Mauss cites only three “major reform movements” since and including the rise of the penitentiary, far fewer than even the most prudent criminal justice scholar is likely to name. Because his view is not informed by a richer understanding of penal history Mauss is blind to a great many penal reform campaigns thereby seeing overlapping where there is none. A further result of his generalized perspective is a failure to note the nuances, patterns, and distinctions of these movements thus unable to make the kinds of connections that will be forwarded here. Nevertheless, much of what Mauss has to say about the three movements he does mention (prison-the reformatory-prisoner’s rights) is quite astute. He recognizes that “religiously committed professionals” play critical roles in these movements and that the general public is *not* active in these efforts. He notes that they follow the “natural history” of traditional or “ideal” social movements. (see chapter three for a full discussion of SM careers) Each of these insights will prove consequential to the analysis of benevolent penal reform movements and their distinct regressive outcome. Kudos to Mauss for turning his eye to the arena of punishment; for this he stands alone amongst social movement scholars. Moreover his survey of social movement types provide a critical foundation for this work. Mauss’ work is integral to the present study.

In its first issue the journal *Mobilization*, Doug McAdam and others note how “disciplinary fragmentation” has hurt the field. (1996) Their article is structured to help and urge future scholars to synthesize and compare existing work that has tended to be left to wallow alone. And yet, this place, *Mobilization*, designed for this purpose, has yet to publish an article that includes agitation or collective behavior targeting, for or against, penal practices or the institution of punishment in the United States (except for a review of a book on the anti-death penalty movement). While the journal may have

provided and cultivated opportunity for integrated scholarship, the work still tends to keep to a rather finite and familiar territory.

Some readers may be wondering if 'reform movements' qualify as social change movements. The tendency may be to think of them as anti-movements as they are often devoid of revolt, radical ideas, and scathing discontent. Such efforts are by their nature interested in keeping much of the status quo intact. Be that as it may, in the CBSM literature reform movements, with a capital R, are discussed and definitively acknowledged to be social movements. (Schlesinger, 1970) Schlesinger even claims Americans are predisposed to 'reform' efforts rather than other forms of social change action. He sees these campaigns as rooted in middle-class attitude and an associated vested interest in orderly change. Perhaps, but this is not the issue here. What is of relevance is that even as some scholars place them in a distinct category, the CBSM field is in agreement that reform movements are indeed collective action and social change movements.

A more complicated question asks if penal reform efforts are indeed reform movements or if they just happen to share the title. This is hard to say. A standing feature of traditional reform movements is gradualism. This tack is true of some penal change campaigns and not others. Prison was a radical, one might say revolutionary, departure from public corporal punishment, the practice it succeeded at replacing. The system was categorically altered beyond recognition. Parole, truth-in-sentencing, and the war on drugs, at least on their surface, call for a more temperate change to the penal landscape. Though some of their underlying precepts may depart dramatically from the prevailing beliefs regarding punishment, crime, the criminal, and prison, it is correct to identify each of these efforts as penal reform and most certainly social change

movements. According to Blumer the reform movement seeks to change a limited area of the social order. It accepts the basic tenets of that social order and makes use of the social order's institutions. Again, this applies to some penal reforms and not others. So too does it characterize more decidedly radical movements like the struggle for Black civil rights which relied heavily on the Constitution, mechanisms of the law, and the church. Ultimately for this study the finer points of this contradiction are not that important; though later arguments will include evaluating the radical or modest nature of penal reform aims and their role in movement outcomes. What is important to make clear at this juncture is that be they reform movements or revolutionary, penal reform efforts are not inherently disqualified from being social change movements. Their absence in CBSM discourse is not due to an understanding that they do not meet that field's criteria.

Take note, penal reform literature also does not make this connection (recall chapter one). This is not to say that criminal justice discourse never speaks of social movements. It does. Prisoner uprisings, both organized campaigns and spontaneous convict revolt, have sometimes been seen as such, or at least evaluated as seeds for or evidence of collective action. (Cleaver, 1968; Wicker, 1975; Useem, 1989) The prisoners' rights movement has been explored and referred to as a social movement. (Cummins, 1994) The abolitionist movement to get rid of the death penalty, has been studied and considered a social movement. (Haines, 1996) All the same, rights-based or identity-based movements that involve or center around the punished or incarcerated classes are most certainly *not* traditionally categorized as penal reform efforts. These tend to be classified among other movements of their time or decontextualized and isolated from efforts aimed to squarely and specifically affect paradigm shifts in punishment. This disconnect is beautifully and clearly illustrated by Tamar Pitch's book,

Limited Responsibilities: Social Movements & Criminal Justice. (1995) In such a construction social movements are seen as distinct from criminal justice, two categories, exclusive of one another. What this field, like that of CBSM, has failed to do is view what is typically called penal reform campaigns as social change movements.

There are those in the CBSM field who see themselves as studying ‘social problems’ which are defined, ironically, by the existence of social movements. Their position is that it is public opinion that makes a social condition a “social problem” and this is set in motion when that public opinion supports a social movement aimed to change that condition. “A social problem is dependent on a social movement for its very existence... ” (Mauss, 1975) Social movements thereby generate social problems. Yes, the rise of penal reform efforts serve to illustrate or identify the social problem of punishment and yet this author aligns herself with thinkers like Skolnick, Currie, and Kant who would say there is an objective moral problem of punishment in each society. For those of us embracing this world view it is the problem of punishment that calls us to act (write, think, lobby, march, study, petition, work, or educate). Regardless of whether the chicken, in this case social movement, or the egg, social problem, comes first, penal reform campaigns *are* social change movements.

A Qualitative Approach

Under the rubric of social movements the field has come to identify and discuss a host of phenomena integrally related to collective behavior. These commonly include social movement organizations(SMOs), social movement institutions(SMIs), and social movement systems (SMSs). It is worth noting that though the organization and institutionalization of benevolent penal reforms (BPRs) will be explored this investigation

will not delve deeply into the organizations, institutions, and systems of penal reform movements.

Throughout this study the author uses the terms social movement and collective action to mean virtually the same thing. Those most intimate with the nuances of the field may take issue with this choice though there are CBSM scholars who also engage in the practice. Some scholars make a distinction between collective action and collective behavior. They point out that the study of collective action can include crowds, movie theaters audiences, fashion trends, and so on. True enough but for the purposes of this study these terms refer to sustained group action that reflects shared demands, aims at affecting some aspect of the social order, and conflicts with the claims of another. Penal reform certainly qualifies as ongoing example of well-meaning, ineffectual, virulent, co-opted, sinister, undermined, enthusiastic, feeble effort at just that.

Social movement literature provides many many tools for understanding, explaining, and dissecting collective behavior. To use them all would be chaotic and confusing and in truth some of these organizing systems compete with and contradict one another. The social movement literature is not without the debate, controversy, and intellectual contention associated with a healthy and rich discourse. Therefore careful thought and economy regarding which elements of the CBSM literature are to be employed here are a critical aspect of this study. Excessive or unfocused scrutiny would disorder the exploration and muddle its findings. The goal is to find means that would sort and systematize the investigation of benevolent penal reforms with the questions or aims of the research in mind. Choices were made with an eye to the following--to identify and employ enough factors from CBSM to make the examination meaningful, to understand these reforms' life-cycle--how they emerge and decline, in particular what's

left in their wake. Tools should help structure the pattern such efforts appear to express and facilitate a clear simple way to organize BPRs.

This is a preliminary examination of BPRs as social movements not the ultimate inquiry into this relationship. This study is not focusing on *why* these SMs happened when they did but at the *repetition* of their exact cycle, rhetoric, and outcome. This is to gain understanding of a conundrum, a steadfast penal stasis within a climate of constant dissatisfaction, change movements, and system failure. The researcher is marking the pattern to look at what is shared by these movements in order to ascertain if these characteristics play a role in the repeated and (as the next chapter will show) malignant outcomes.

There are traditionally four prevailing stances from which to analyze social movements. (Porta & Diani) 'Collective behavior' explores the acts driving social change. 'Resource mobilization' examines how collective actors operate. The 'political process' school looks at the political and institutional environment surrounding a movement. The most recent camp, 'new social movements,' addresses characteristics of the social change movements in post industrial society. By looking at action, actors, and the institutional environment this study encompasses a little perspective from each, though not the latest school. New SMs are a fairly recently identified class of SMs and are defined as postindustrial (after the sixties) movements in Europe and the United States that are "not pursuing the economic or class interests of their members." (Gamson, 2003) Identity movements-queer liberation-black power-women's lib- are the type of collective action new SM scholars are referring to when they discuss the category. Much of the literature dealing with new SMs discusses the use of media and visual images as tactics unique to postindustrial society and the anti-corporate nature of these "new" movements.

(Goodwin & Jasper, 2003) The work tends to focus on individual movements and does not deal directly with CBSM grand theory. Furthermore, some thinkers have noted that non-class movements are not entirely new, especially in the United states, and site the temperance and anti-vice efforts as examples of such from the nineteenth century.

(Goodwin and Jasper) Penal reform movements, which are two hundred years old, are also not class or economic movements in any traditional sense nor are they mentioned by new SM scholars. This researcher is not entirely persuaded by the new SM scholars though they have certainly made contributions to the field. Their work is not applicable here and will not be used.

Before the nineteen seventies two approaches dominated the totality of CBSM literature. (Crossley, 2002) In the United States it was collective behavior and in Europe it was Marxism. From the seventies on resource mobilization and political processes came to the fore in the United States and in Europe 'new social movements' became the dominant analytical frame. This study does not plant itself squarely in any one of these schools. The researcher is relying on the work of several CBSM scholars whose work falls into most of the aforementioned categories. This study is not offered to support or condemn a particular theory or view on collective action. The goal is to use a sociological social movement lens to explore a repetitive cycle of BPR in the hopes of mapping the phenomena. This in turn will perhaps shed light on the institution of punishment in the United States, in particular the way in which it does and does not change. The belief is that by sufficiently marking this repetition we will recognize it when comes around again and possibility illuminate an alternate route. Again, the aim is to mark, name, and analyze why a certain outcome is continually achieved, NOT to analyze how or why these social movements happened or developed when they did.

Lofland (1997) has adeptly constructed two ways of approaching social movement research including the elements and questions one tends to employ with each method. His structure is as beautiful as it is sophisticated-inclusive and simple at the same time. A more quantitative analysis, which he suggests is “less rich” would involve evaluating frequencies, magnitudes, causes, and effects. The “richer” qualitative approach includes examining variations or types of movements, structures, processes, and agency. This researcher has opted for the latter tack. Therefore when mining the social movement literature she expressly looked for means that would (1) help address what kind of movements are benevolent reforms; (2) give structure to the ‘career’ or ‘life cycle’ of such campaigns; (3) account for the evolution and outcome of collective action (that is, the processes by which they evolve); and (4) speak to the distribution of BPRs participants(agency).

Over time CBSM scholars have come to identify, describe, and sort social movements by establishing ‘types’ including general, specific, nationalistic (these tend to be in the West), new(postindustrial), religious, reform, revolutionary, and poor people’s to name a few. (Blumer, 1951; Smelser, 1962; Gusfield, 1970; Schlesinger, 1970; Piven, 1979) The framework for these versatile typologies varies and tends to represent a different method for exploring and ordering social movements rather than contradictory ideas. They are therefore not necessarily in competition and the designs are indicative of each thinker’s particular intellectual stance. Often these different organizing systems add to or augment each other. Though making the subject of CBSM more complex, these various classifications actually reduce confusion and help clarify both the singularities and similarities of social movements. Several of these are useful for this study and in subsequent chapters will help to name, categorize, and distinguish BPR movements.

Their use will augment the claim that these are indeed social movements, show the parallels between them, and provide the blueprint from which a new model will be built.

Picking Apart a Movement

In order to structure and compare the various characteristics of BPRs this study will incorporate a 'life cycle' frame. (Blumer, 1951; Mauss, 1975; Gusfield, 1970) Such a design offers an effective way to organize the emergence, rise, evolution, and decline of a singular movement as well as providing a viable way to discover parallels and distinctions between movements. Thinkers sometimes discuss this as the natural history of a social movement or the movement's 'career.' This researcher will employ a five stage life cycle schema first put forth by Blumer and later reworked by Mauss. (Mauss, 1975) The five stages are incipency (fumbling uncoordinated efforts), coalescence (organization, alliances, & formal associations), institutionalization ("full-blown movement" , government and traditional institutions take notice), fragmentation (movement has achieved successes so members are appeased), and demise (mopping up, most members have been "bought off"). (see chapter two for more thorough discussion of stages) In an analysis of the repetitive natural history of BPRs, particularly their outcomes, this schema will serve to root and order the identification of a variety of movement variables that will ultimately map the distinct course BPRs travel. Mauss represents this cycle as a curve with institutionalization at the apex. He identifies the force propelling the movement through the various stages as the interaction between the movement and the 'host society,' a term first coined by Blumer. (Blumer, 1951) It is believed that most, if not all, social change movements typically pass through each stage, albeit in their own time and not necessarily in a wholly linear fashion. Overlap, reversals, and backtracking

are not unprecedented. Distinct and recurrent ways of traveling this along this life cycle will be explored later and directly related to the different social movements models described in the literature. The researcher will also examine the pace at which these BPRs move through the stages.

There are CBSM scholars that assert that certain social conditions are more likely to give rise to collective action than others. (Smelser, 1962) Social structures can be more or less susceptible to the rise of a social movement and, according to Smelser, each one adds to the likelihood that a movement will emerge. No one is sufficient and predictability is impossible, a claim this study takes issue with (see chapter six). There are still other thinkers in the field who suggest that no 'special' conditions need be present to explain or understand the rise of a social movement. (Mauss, 1975; Moore, 1963; Killian, 1964) This stance suggests that an imperfect social order, which they view as the norm, cultivates dissatisfaction or tension from which movements and social change grow. There are merits to each approach and this author is not entirely sure that they are mutually exclusive though that discussion is for another day. Nevertheless, as the hope here is to mark a recurrent pattern the researcher will explore such 'conditions' to see if they are shared by the various BPR movements. These will include elements in place before the movement rises and those that materialize as the movement grows. In the next chapter a far more comprehensive explanation will include more detail and specificity regarding each individual element.

CBSM scholars have identified additional factors as material social movement characteristics. They do not necessarily comprise as substantial a place in the literature as social conditions or member rationale yet they are significant and some will be incorporated in this study. Of particular interest here are those properties that can be

examined across BPRs and may show similarities or account for the unique outcomes these campaigns yield. One such element is movement 'repertoires', this refers to the means and ways by which a movement forwards its aims. The researcher will thus examine the literal tactics and strategy styles utilized by these social change movements and assess whether BPRs have the same or shared repertoires.

Ideology plays several roles in collective action. It cultivates member cohesion, momentum, legitimacy, and meaning. (Mauss, 1975) Furthermore, it is the source for symbols and slogans as well as providing certainty in the face of antagonism. This study will explore the ideology of BPRs looking expressly at the movements' objectives, demands, and rhetoric, again considering similarities and shared themes. Those who initiate and assemble a movement are referred to as 'carriers'. (Heberle, 1951) BPR 'carriers' will be identified and compared. Finally, none of these movements delivered on their promises so the study will examine the rhetoric and stories forwarded by the movement as to why and how it came to fail. These tales, this author asserts, are part of the most neglected aspect of a movements career, its decline. (chapter four will define and explain each of these factors in detail)

Concentration on the tail end of a movement, its decline, and outcome, sets this study apart. This is traditionally oversimplified and its significance underestimated in the CBSM literature. Scholars have actually said quite little on the decline of a social movement & most "focus on the surrounding political environment." (Goodwin & Jasper, 2003) The tendency is to discuss how an *individual* movement, for example the U.S. labor movement, declined. Scholars often cite conflict between visionaries or aggressive opposition to explain the waning of a particular movement and interpretations of movement decline do not address types or aggregates of movements. For example,

thinkers do not develop theories to account for the decline of identity movements. The literature suggests that these thinkers do not entertain that similar types of movements may decline in a like fashion even though they recognize that movements emerge and evolve in similar ways. This study will pick up the neglected thread of movement decline and failure. The claim here is that it is the aftermath, the landscape left in their wake, that individuates BPRs. Therefore the last phase of their cycle is critical and demands significant attention in order to comprehend and ultimately account for this unique and highly problematic outcome. One way the researcher will do this is by identifying, examining, and comparing the new language(s), processes, and practices left in the wake of a given BPR (other outcome analysis will be discussed further on in this chapter). It is said that social movements produce “innovative forms of understanding” or can change wider established cultures. Even unsuccessful collective action is said to affect cultural change. (Goodwin & Jasper 2003) Investigating how the culture has changed in the wake of BPRs will tell us a great deal about the movement.

Incentives for individual action are an important and interesting aspect of collective behavior. Why do people participate in a movement? What drives them? Is it emotional? Are they getting something out of it that feeds their psychology or intellect? There is a substantial school within CBSM that focuses entirely on the motivations and characteristics of individual actors within movements. These scholars discuss issues such as ‘rational choice’ and wax on about the ‘free rider’ question. Though this study will address movement actors it will not dive into the individualized nature of movement participation. Rather, the study will identify, in aggregate, BPRs participants and the sectors of society from which they originate. This will be a broad and rather simple overview. To further inspect the actors in BPRs the researcher will closely examine their

membership distribution.

Armand Mauss offers a simple and comprehensive model for arranging the the actors who participate in collective action. (1975) He constructs a three concentric ring design that will be employed here to organize and understand those that take part in benevolent penal reform campaigns. The outer ring denotes the public that cares about the movement, 'fair weather friends.' The middle ring is made up of active movement members and in the core or inner ring reside the principal movement leaders. The subsequent chapters will explore and employ this layout in far greater detail. The manner in which BPR actors are distributed, the researcher will show, is in large part the reason these reforms result in the particular outcomes that they do.

The literature must further be explored to answer the question, do the particular cycles and outcomes of benevolent penal reforms correspond to social movement models or theories described in the CBSM literature. No, they do not, because BPRs have a distinct outcome thus far absent in the literature. These social movements do not simply fail or succeed in meeting their aims. Their momentum and practices actually heighten and expand that which they sought to replace. Instead of reducing punishment, BPRs grow it. There is a discussion in the literature about social movement goal change which, thinkers maintain, tends toward conservatism. (Zald & Ash, 1970) This study will look more at these influencing factors in later chapters but BPRs unique outcome is not due to goal change. That their goals do not change is evident in the discussions around the movements 'failure.' (see chapter five and six for further discussion) Another possible explanation for the distinct BPR outcome is backlash. Yet, with BPRs the surge of punishment is not in fact due to backlash; the movement itself provides the practices, language, and momentum for the host growth. CBSM scholars do discuss how

movements can, and do, reproduce the host, but BPRs do not simply replicate. They amplify and renew that which they condemn, expanding the host well past reproduction. None of the literature's theoretical explanations describe what is happening in the wake of BPRs.

What SM models have been identified? There is an 'ideal' which follows the aforementioned life cycle affecting some or all of the change it intended. (Mauss, 1975) This is not a BPR's career. There is an 'aborted' model in which the continued repression by the host wins out and the movement never really takes off. (Mauss) While there may be such efforts in the history of penal reform the BPRs in this study most definitely rise up. Another movement prototype, 'overlapping,' describes a cycle in which an earlier movement's sequel starts up before a present one is dead. (Mauss) Some scholars talk of such movements as being in 'abeyance.' "Some political causes go through long periods of relative inactivity, disappearing from the public eye, before springing back to life. While in abeyance, they are kept alive by small groups or networks of people who remember previous mobilizations and remain committed to ideals that are generally out of favor among the broader public." (Goodwin and Jasper) Are BPR and punitive penal reform (PPR) really just two movements that move in and out of abeyance? It is tempting to see penal reform in this light but alas incorrect. When new waves of penal reform arise they start anew and do not build on the ideas, structures, or efforts of past reforms. Often they involve a serious critique of past reform inroads, even those that share their political bent. Each time a wave emerges part of its campaign is to tout the freshness of its vision. The collective action involves new actors and the organizations established in one BPR may or may not take part in the next wave. In most cases they do not and their goals conflict. Established CBSM models do not fit benevolent penal reform.

A new or amended model is warranted.

Success or Failure

It is customary both on the street and in the ivory tower to talk of a movement's 'success' or 'failure.' But just what does this really mean? In the literature, discussions of success are prone to talk of accomplishments or efficacy, did the movement deliver on its aims. A reductionist analysis. Rarely, if ever, do scholars look at negative outcomes per se. Yes, there is talk of reproducing the status quo or backlash but this is different than exploring whether the movement itself produced distinct unfavorable outcomes. In CBSM literature 'movement failure' tends to mean it disappeared without effect and did not 'succeed' which is to say did not achieve its stated objectives. Also an overly simplified, not particularly useful resolution of this question.

W.A. Gamson, on the other hand, does an extraordinary job of addressing this issue, at least with regard to movement success. (Gamson, 1975, Gamson, 2003) It is his approach that will be embraced, utilized, and expanded by this study. Gamson states that success is "a *set* of outcomes." (emphasis added) An outcome is assessed at the *end* of the challenge (his term for social movement), and is determined by "inactivity" or major acceptance by the antagonist. There are, according to Gamson, two "clusters" or spheres that are of consequence. The first is the fate of the group or movement, the collective in collective action, as an entity. Are they accepted by the antagonist, are they seen as valid and legitimate? The second is the distribution of new "advantages;" by this he means literal gains during and after the movement. This construction, both comprehensive and simple, is useful for many reasons. Here it will be turned on its side and applied to the question of movement failure. Gamson offers three versions of

unsuccessfulness, only one of which is truly all-out failure, 'collapse' (no acceptance; no advantages). Both 'preemption' (no acceptance; yes advantages) and 'co-optation' (yes acceptance; no advantages) are viewed as partial successes. However, this study is marking a different possible outcome, which most would concur is a failure. Yes acceptance and yes advantages *but* they turn out to be disadvantageous and counter to the movement's aims. An outcome that this author calls "**regressive.**" With BPRs, this research project will show, gains are actually losses and acceptance turns out to be no success.

The discussion of changes brought about by SMs has been expanding. When discussing the influence or impact of a SMs it had been customary to talk about goals attained, if the movement, its participants and its ideas have gained recognition, and if it has been suppressed or ignored. Scholars now talk about 'outcomes.' Undoubtedly this is progress, as it expands the discussion beyond political opportunities and grants there is much more going on. Today scholars also recognize 'unintended consequences'.

(Goodwin & Jasper, 2003) The kinds of changes that CBSM literature catalogs as unintended are not necessarily negative. They include shifts in culture and public attitude that may pave the way for future social change, social networks, tactical innovations, and organizational forms left by the movement that can be used by future movements.

(Goodwin & Jasper) None of the above happen in the wake of a BPR. This study seeks to expand the possibility set of movement outcomes.

Wrap-UP

This review confirms that penal reform campaigns absolutely qualify as social movements. Furthermore, the literature shows that this perspective has been grossly

under-explored by both the CBSM and CRJ discourse. Why is probing this neglected relationship meaningful? CBSM scholars have explored the dynamics of social movements. They discuss how collective action rises and falls, succeeds and fails, as well as the substance, import and foibles of such phenomena. The study of collective behavior, a subset of sociology, looks to study "... the ways by which the social order comes into existence..." (Blumer, 1951) Punishment is a significant cultural, fiscal, and political aspect of our social order, one in which organized efforts toward change have proved exceedingly futile. The penal landscape has thus been rendered static. Scholars have recognized this and yet have not adequately accounted for it. By exploring penal reform effort as social change movements this study will do just that. This research begins to address why and how it is that attempts to alter punishment go awry and how it is that punishment, unlike the vast majority of other social institutions, looks much the same as it did two hundred years ago. Why is it that change can not be realized in this arena? This question can only be answered by exploring efforts at change through a social movement prism.

SM scholars have keenly stated why SMs are important. First, they are prevalent in western society. Second, they are "key agents for bringing about change" (change may be local and/or cultural). Third, they are an effective way to "gauge the working of political structures." (Crossley, 2002) "These processes of change and movement are important from a sociological point of view because the discipline revolves around the questions of stability and change: the problem of order and the problem of transformation." (Crossley) "The question of change ... [i]s a question about the difference which social agents themselves can make to the various structural dimensions of their life, a question about the form and distribution of power in society and the

adequacy and limit of democracy.” (Crossley) If we hope to understand the institution of punishment in a rich or full manner it must be explored through a social movement lens. It is this tack that will allow for sagacious insight into its evolution or lack thereof. Penology and criminal justice should not be denied the riches such a critical and valued sociological perspective may yield regarding the makings and shiftings of social order.

There is a call from within the CBSM literature to link the study of political institutions and social movements. SMs are an “important part of discourse of American politics.” (Costain & McFarland, 1998) This study answers their call though it may not have been exactly what Costain and McFarland were imagining. The punishment system with local, state, and national systems is most certainly a political, as well as social, institution. The aim here is to use CBSM literature to organize and root an examination of a class of penal reform campaigns. Such an approach provides a precise and organized way to better understand and discuss penal reforms.

As the above literature review demonstrates, merely relating these two fields to one another is tilling fresh ground. Penology or criminal justice discourse, as discussed in chapter one, will benefit from this novel approach in several ways. It offers an alternate way to look at an old problem, the institution of punishment, and as such will uncover new ground that may explain why so little changes in this arena even with pervasive dissatisfaction and earnest concerted attempts at change. In turn, social movement research will also be forwarded in a variety of ways. By adding an ignored area of collective behavior, penal reform efforts, the horizon of social movements is expanded exponentially. This unprecedented perspective yields a new social movement model. Furthermore by explaining how it is that these BPR movements yield the distinct outcome that they do the author will develop the ideas regarding membership distribution

in a social movement.

This literature review detailed which characteristics or elements, defined and described by CBSM scholars to interpret social movements, will be used here to explore BPRs. This typology will provide the structure in which to conduct a comparative analysis between 5 historic benevolent penal reform campaigns as well as a newly emerging movement (see Part II). These include a membership distribution blueprint, success and outcome definitions, a life cycle framework, and a host of other variables such as rhetoric, ideology, tactics, strategies, and conditions that gave rise to the movement. The set of SM models forwarded by CBSM scholars do not describe what exactly occurs during and after a benevolent penal reform campaign. Therefore in subsequent chapters the author will use the tools provided by the CBSM literature to expand the way social movements are typed, defined, examined, and explained.

Chapter three will spell out why this study embraced *benevolent* penal reform campaigns as its unit of research. It will then show how these movements are unlike all the existent SM models, how the current models therefore do not fit properly, and why a new model is warranted. The chapter will further demonstrate that BPRs are a unique type of social movement and define and describe the parameters of this newly created model, one the author names *regressive*. This argument centers on the singular, rather distressing, and quite repetitive outcome of these movements. These movements do not simply fail to meet their stated aims or merely succeed in reproducing the host society. These movements literally grow punishment. Punishment, which these movements actively disavow, is bigger and better than ever. Punitive incursion is heightened and the culture of punishment is more deeply entrenched than before the movement arose.

The characteristics that shape and define these movements will, in subsequent

chapters, be marked and termed the *regressive reform profile* (RRP). The researcher will lay out out the methodology for charting the RRP in chapter four. Chapter five, a comparative analysis of three BPRs, will serve to trace the contours of the RRP.

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Chapter 3

A New Social Movement Prototype:

How Benevolent Penal Reforms Insist on a Rethinking of SM Models

The previous two chapters laid the groundwork for a fresh theoretical approach to a set of slighted questions. Why is the penal landscape so static? Why have efforts to substantively change this landscape ultimately proven so impotent? Why have scholars sanctioned or ignored this uncharacteristically inert social realm? These chapters established that such issues have not received their due and that a logical place to look for answers is within social movement discourse. Though, it was demonstrated, this field has failed to explore or include penal reforms in its reach, it does present analyses and specific tools that can be useful in organizing and directing an examination of these social change efforts. Exploring penal reforms through a SM lens will allow the researcher to build a theory as to why these movements fail to bring about meaningful change and subsequently to account for the unyielding stasis.

This chapter, less theoretical than the two that preceded it, will concretely address why this study is focused specifically on *benevolent* penal reforms (BPRs). This will include a discussion establishing and distinguishing between categories of penal reform, asserting the value of such a methodology, and then accounting for why a singular class of reforms makes for a favorable unit of study. A comprehensive review of extant social movement models will then show that none adequately fit the typical and *complete* career of benevolent penal reforms. The argument centers on the singular, rather distressing, and quite repetitive outcome of these movements. These movements do not simply fail to meet their stated aims or merely succeed in reproducing the host society. No, these movements, while aiming to reduce punishment, literally grow it. The unique aftermath

of BPRs, heretofore unnoticed by SM scholars is itself an indicator that a new model is in order. Furthermore, this chapter will establish how traditional prevailing considerations of social movement successes and failures are overly simplified and warrant development, a mission this study will begin to meet. The chapter will thus define and describe the qualities of a new SM model, one termed 'regressive,' that will embody the elements found in BPRs and unaccounted for in existing models. In order to better understand how these 'regressive' movements operate we must trace their course and identify other distinct characteristics; the following two chapters will meet this demand.

A quick review of the characteristics and qualities that earmark a social change movement, according to CBSM scholars, clearly illustrate that penal reform efforts absolutely qualify for such status (for a more comprehensive discussion see chapter two). Regardless of the individual language choices or unique technical definitions found in these scholars' work they clearly express shared ideas as to what makes up a social movement - - sustained collective or group action that reflects shared demands, aims at affecting some aspect of the social order, and conflicts with the claims of another. All of these critical elements are present in concerted efforts, in the United States, to transform punishment practices. "[S]ocial movements share a family resemblance rather than a fixed essence and their definition inevitably rests upon the fuzzy logic of ordinary language use." (Crossley, 2002, p. 7) Penal reform campaigns are most certainly members of the family.

Though criminal justice scholars have yet to make this connection they do indeed write a great deal about penal reform. Alas, within this discourse such efforts tend to be discussed in aggregate, as if they are all one animal (Colvin, 1997; Sullivan, 2002) or singled out and isolated suggesting none share a relationship with any other campaign

(Platt, 1977). This approach may explain why such collective activity has yet to be understood as a social change movement. More importantly, it has made for crude analysis across reforms. Without a frame for organizing, sorting, or directing an investigation, similarities and notable differences can not be chronicled. An unstructured eye affords an overly muddled or under-focused perspective making it difficult to conduct comparisons or register and record parallels, correlations, divergences, and discrepancies amongst or between movements. As this study aims to account for a repeated series of occurrences a deliberate, finer, and precise classification of penal reforms is warranted. This categorization will serve to organize a myriad of seemingly singular events in penal history to offer a practical framework that can incorporate and order patterns.

Why Benevolent Penal Reforms

In reviewing penal history it becomes evident that there are two discrete types of penal reform. There are reform efforts that aim to enhance the punishing nature of penal policy and practice. Examples include chain gangs, three strikes legislation, and capital punishment. These are expressions and manifestations of movements moving toward the retributive deterrence end of the spectrum and are typed here as “punitive reforms.” Another set of reform efforts are those that work to generate a more “humane” or less punishing system. Examples include the reformatory, parole, and community service. These represent the other end of the distribution, the treatment or rehabilitation side of the equation, and are typed here as “benevolent reforms.”

This binary classification system proves to be an efficient and parsimonious way of organizing the myriad of penal reform efforts since the rise of the prison. By using a movement’s own perception of itself, its desired goals, and its critique of why there ought

to be change, even the most broad examination of a given reform effort shows it fits rather neatly into one or the other category. Take note, there are penal “innovations” that do not at first glance easily conform to this dichotomy (examples include the prison factory or penal farm). Political pragmatism and opportunism by a few shrewd well-connected actors are often what give rise to such events in penal history. To secure patronage politicians supply cheap labor, prisoner labor, to those whose favor and money they are courting, thereby generating a new penal practice. Local governments can find themselves, as many southern states did after the Civil War, in a fiscal and logistical morass. Punishment is costly and in the name of finding a quick or cheap fix a new penal practice emerges. Reform is probably not the correct word to characterize these policy shifts and the social movements with which they are associated are most probably not penal, so in many respects they need not fit into the model presented here. But even as these types of changes are entities unto themselves, a rhetoric and a public face was necessary to implement them. In this sense the typology works, as the public reasoning has always contorted itself to fit either a benevolent or punitive bent: work is an educative, humane discipline and will create better citizens *or* chains and hard labor are deserved punishments. Ideologically, practically, and rhetorically these two reform types operate quite differently from one another. Though, as this study will show, by looking specifically at several “benevolent reforms,” intragroup patterns appear markedly evident.

With two strong and clearly identified categories of penal reform and a sound argument for studying them in this organized manner, why research just one, and why pick the benevolents? Because this project aims to account for why penal *change* is so hard to come by, the researcher chose to examine a class of movements that absolutely

aspire to affect substantive change. It would not be difficult, or entirely incorrect, to argue that punitive reforms are not seeking *transformation* per se but rather an expansion or amplification of the punishment system as it stands and that therefore they are not social change movements. Yes, in turn one might respond by suggesting that this is rather a *type* of change but no such parsing of words or semantic argument is necessary when it comes to benevolent collective action. Those spearheading, participating in, and supporting these movements assert a very clear agenda that is rooted in meaningful change. The goal is to categorically alter the system. This is not in dispute. As the goal of change can not be contested when it comes to these movements, their failure to produce change is significant and therefore a valuable and sensible source of inquiry. It is worthwhile to note that this distinction does not mean to imply that punitive penal reform efforts are *not* social movements. They are. These too have not been explored in aggregate and they may share characteristics and express patterns that would tell us a great deal about our penal landscape specifically and social movements in general. Whether they are a distinct type of as yet unnamed movement or fit nicely into an existing category, the field would only be enhanced by an aggregate survey of such movements. Such a task is beyond the scope of this work.

Don't be seduced by the language. 'Benevolent,' 'humane,' and 'rehabilitation' may be words that suggest a kindly or gentle approach to offenders and a departure from punishment but this is not how such reforms generally play out. In fact, often, so-called strict or harsh punishments have proven to be, in the final analysis, less harming and less punitive than those implemented in the name of mercy and benevolence. Reformatories, the re-formed prison, were dens of hidden disciplinary violence. (Rothman, 1971) The indeterminate sentence, initially created to limit and reduce inmates' time on the inside,

put people under their captors thumbs in an unprecedented and insidious way, often resulting in interminable prison sentences. (Morris & Rothman, 1998) The “treatment era” of American punishment is notorious for its abuses. This is, in fact, why benevolent movements caught the researcher’s attention and a key aspect of the study at hand. These social change movements produce outcomes profoundly antithetical to their intent. It is precisely this feature that differentiates them from existing SM models and why talking about movement success or mere failure is insufficient. Something goes abstrusely awry as action mobilized to affect fundamental change results in obstructing change and entrenching the status quo.

Some scholars take issue with, and remain suspicious of, benevolent activists of the past. They claim that these actors actually had a controlling goal in mind all along and the fact that their actions resulted in increasing rather than diminishing punishment is no misstep. (Foucault, 1977; Greenberg & Humphries, 1993; Rusche & Kirchheimer, 1939; Ignatieff, 1981; Takagi, 1993) But that analysis too simple. This is not to say that capitalist motives were not in play. They most certainly were but the bulk of the people initiating and driving these movements were sincere in their beliefs that punishment was highly problematic; that charitable humanitarianism is the right path and is in all our interests--offender, society, citizen, and government alike. This researcher chooses to take them at their word, there is little reason not to, they believed in what they were doing. They wanted to “better” the system, and introduce or cultivate mercy, humanity, and benevolence toward those convicted of a criminal offense. They thought punishment was damaging - detrimental for the society and the offender. Yes, they were products of their time and class. Yes, they embraced ideals that to us today may seem condescending, patronizing, racist, insulting, and imperious. Nevertheless, these activists nurtured

sentiment and practices that were in their time, if not radical, certainly out of step with the punitive norms of the day. They worked for a particular type of change, decreased punitiveness, and ultimately achieved results completely contrary to their aim.

The Cycle & The Movements

Why, or how, is it that these movements deliver something antithetical to their goals again and again? It has recurred across time, with different actors working within variant political backdrops toward integrating a wide variety of alternate principles and practices. No matter the specific reform objectives, be they early release or community service, historically collective action aimed to reduce punishment serves to grow it. There must be knowable identifiable factors at play that are contributing to or ensuring that this continues to repeat itself and this study will mark at least some of them and account for why punishment remains the same.

Before excavating these variables (see chapter four) let us review, in broad strokes, the repeated BPR cycle so it will be possible to discern whether it corresponds to an existing SM model. (details of this life course will be spelled out in the next chapter and compared across movements in chapter five) Usually these types of reforms are born at a time of agreed upon penal crisis. The parties that clamor for change at the dawn of a movement, “moral entrepreneurs” as Howard Becker termed them, tend to look alike or come from similar sectors of the community and the rhetoric they use to promote and legitimize the reform is parallel. (Mauss, 1975) One part of the campaign usually contains a critique of the current practice, in particular a damning of the controlling and punishing nature of the day’s penal repertoire. The other focuses on the capacities or reach of the “innovative” practice and tends to be rather grandiose, repeatedly revolving

around “curing” or “eliminating” crime and thus generating, they further assert, a more cohesive peaceful society. In practice these new programs initially focus on individuals previously ignored or considered less dangerous to society (believed therefore to be more responsive to the benevolent hand). Practically speaking these populations are targeted because they are seen as less controversial, are often less legally protected, or are not spoken for with regard to penal policy. The penal net widens. The reforms share an evolutionary pattern, growing ubiquitous seemingly overnight, adopted first in a handful of locales and then exploding onto the scene so that they become virtually synonymous with “punishment” quite quickly. These alterations are so extensive, expensive, and universal that dismantling them is out of the question well before substantive evaluation, debate, or prudent assessment. Perhaps most noteworthy of all is the strikingly similar landscape left in the wake of these various ‘benevolent reform’ efforts. Not only have they failed to make substantive systemic change for the better (regardless of their stated idea of what constitutes “better”), the culture of control they were so hoping to diminish has been both expanded to include targets heretofore out of the system’s grasp and deepened as authority over those already within its scope multiplies. No practice is actually replaced and the new practices are simply added to, and thus grow, the penal landscape. These principles and practices touted as more humane and less punishing prove to be even more harsh, controlling, and punitive than that which they aimed to supplant. That which began as a social change movement to abate punishment serves to significantly amplify, augment, and entrench it.

This movement life cycle, penal history shows, has been repeated across time, political era, and a myriad of specific, albeit benevolent, reform goals, as the movements selected as study units in this project clearly illustrate. Chapter five will compare these

movements in greater detail but at this juncture it is enough to name each one and assure the reader they qualify as *benevolent* penal reform movements and that they have followed the aforementioned life cycle. Recall the discussion in chapter one on how the term 'benevolent' or its equivalent has been used by criminal justice scholars in the past (Pisciotta, 1994; Platt, 1977; Simon, 1993) to describe penal reform movements with merciful intent that have ultimately delivered quite the contrary. What is new here is the assertion of a movement model type that chronicles this course and a comparison across movements as they have previously only been explored individually.

The Penitentiary or Prison Movement began in the late 1700's. Pro-prison activists saw corporal public punishment as severe and crude; they proposed a "humane" response to criminal activity that would foster repentance (eradicating an individual's criminality) and be a successful deterrent thereby eliminating potential future criminal behavior. These institutions delivered a whole new kind of strict harsh punishment. Punishment now went on and on with offenders separated from any community life, often subjected to physical violence (those in the Pennsylvania System went crazy due to isolation). Ask anyone today and they are likely to prefer a public whipping than doing time. (1971, Rothman; 1977, Foucault; 1990, Garland)

The Adult Reformatory Movement began in the mid 1800's. The prison, a den of violence and inhumanity, was in need of re-formation these activists clamored. Punishing criminals was further harming these damaged folks, especially the young, considered more pliable or not yet fully formed. The reformatory would embody a new set of ideals and practices that represent society's true values of decency, christianity, and goodness thus

result in re-forming offenders into productive citizens, gentlemen and gentlewomen. The reformatory scooped up people who would not have necessarily been locked up, primarily the young, first timers, and women, and subjected them to isolation, considerable physical violence, and “re-training” regimens that were profoundly invasive and overbearing as they embodied and forced a singular idea of what it means to be “good”. (Pisciotta, 1994)

The Parole Movement began in the late 1800’s. Long sentences of incarceration, these activists, asserted damaged and harmed offenders. The purpose of punishment is rehabilitation so once that aim is realized continued incarceration is sadistic. Let people out early, as soon as they are “ready.” Treat offenders humanely and they will act in kind. Treat them cruelly and they will act in kind. Parole delivered a brand new bureaucracy that subjected offenders to a board they had to satisfy in order to secure early release and to supervision once they were out. Freedom on the outside was now revocable, conditional, and in the hands of a mercurial panel. Thanks to parole prison terms grew longer than ever with inmates currently incarcerated serving zero to life sentences. (Simon, 1993)

The Life Cycle of a Social Movement & Social Movement Models

There are several models of social movements. This study will rely primarily on Armand Mauss’ discussion of these different possible movement life cycles. (1975) Each one will be reviewed and shown to be insufficient to represent what appears to be a typical BPR arc. Mauss concludes that there is an ‘ideal’ SM blueprint, “a normal pattern for the natural history of a social movement”, and several variations which are

built upon or deviate from this archetype. (p. 66) Mauss uses a sloped mountain or rounded pyramid-like shape. CBSM theorists identify four or five movement stages, depending on who you read. It is said that the drive or force advancing the movement through these stages is the interaction between the movement itself and the “host society” in which it is acting. This dialectic involves a give and take between repression and co-optation (much more on this later). (Mauss, 1975) What is important to note at this juncture is that different possible manifestations of this struggle, and the progression of the stages, correspond to the varying movement types. In order for the reader to best understand the lay out of these models she must first gain a sense of what is commonly referred to as the stages of a movement’s ‘career.’ A brief discussion is in order to anchor and orient the reader to the design and cast of the various SM models (though the various stages are more complex and sophisticated than may be presented here).

Stage one, which can last for quite some time, is *incipiency*. It is made up of “groping uncoordinated efforts.” (Mauss, 1975, p.61) There is no leader or membership per se, and action is unorganized and not controlled. The host is usually not too threatened or repressive. Overtures of absorption, conciliation, and compromise are common and the movement may or may not accept or reject these overtures as it seeks to forge identity. *Coalescence* is stage two. The movement gets organized, “promotes” convictions, and “ensures more sustained activity.” (Mauss, 1975, p.62) Alliances are formed as local and regional associations become formalized. The movement, at this point, can only be stopped by serious repression or total concession. *Institutionalization* comes next. Traditional, including governmental, institutions take notice of the movement and develop coping mechanisms to manage it. Movement mobilization continues. Other characteristics of this stage include a large base of members and resources, growing

respectability, participation in the political process. The movement at this stage is said to be in a period of its “greatest power.” (Mauss, 1975, p.64) Co-optation is more salient than repression in this stage. Ironically a movement’s success leads to the next stage *fragmentation*. There is enough ‘improvement,’ sufficient co-optation, that a critical mass of movement members have been neutralized. They see no further need to be active. Those not yet pacified are labeled “fanatics” and marginalized. (p. 64) Infighting often ensues. The final stage is *demise*. According to Mauss many theorists do not acknowledge this stage at all and some term it ‘success’ or ‘setback.’ He sees it as a phase in which the society or establishment is “mops up.” (p. 65) At this point in the movement virtually all members have been “bought off” and true believers appear more ridiculous than ever. (p.65) Public consensus is now completely against the movement. There is no more action, or movement if you will. It is over, the movement has moved from near total co-optation in stage one to almost total repression here in stage five. Mauss views the last two stages as inevitable. Again, what is important here is how these stages serve as a frame to mold and shape SM models, the archetype and its successive variants. First, a quick overview of Mauss’ characterization of the ideal and its progeny.

Traditional or Ideal SM Model - This model is considered the “normal pattern” or life cycle of a social movement. (p.66) The movement moves through each stage as described above. When it is all said and done the host society has adopted or met at least some of the claims demanded by the movement. There has been social change. Though no movement meets all it aims, which scholars recognize as often being overly optimistic, these movements are commonly considered successes, albeit the scale of accomplishment

can, and does, vary dramatically.

Aborted SM Model - An aborted social movement is one that experiences total repression before it reaches institutionalization. The movement is stopped dead in its tracks, usually by the government, but it could be by any institution that has the power and ability to apply such absolute authority. Though in a pragmatic and more instant sense these movements make little to no change to the host society and are likely to be deemed failures, they may have residual effects leaving behind lingering ideas or tactics that may prove significant in cultivating or energizing a movement in the future.

Revival, Quiescent, or Abeyance SM Model - This is a movement that moves through the five stages but never quite fully meets its demise. What Mauss terms a “flicker of life” remains and at some point in the future this energy sparks the interest of a fresh crop of players who in turn feed a new or revived movement. (p.68) Small groups or networks established by a previous movement help keep ideas alive, or in abeyance, and can serve to mobilize or propel the next rush of activity. These “sequel movements” often embody objectives that vary a bit from the original movement but at the root these two sets of ambitions are deeply related. (On a side note, a preliminary overview of punitive penal reforms (PPRs) suggests that they may best correspond to this model type. Of course PPRs need not all be of one type nor is this the final word on the subject) There is no organic definitive length of time over which this chain of movements may continue or must end. Revival social movements are likely to achieve at least some successes, having moved through the five stages and their members having thus been satisfied.

Overlapping SM Model - This type of social movement is evident when a sequel to an earlier movement starts up before a previous one has fully ebbed. Unlike the revival model which resembles this one, overlapping social movements tend to *share* objectives and interests. The newer movement does not alter or reconfigure root principles of the preceding movement even as tactics, strategies, and membership are different.

Overlapping movements, as described by Mauss, tend to travel the traditional life cycle. One simply starts before the decline of the previous is fully realized. It is noteworthy to see or identify continuing waves which are surely different sociological phenomena than the occurrence of a singular social change movement. Does the drive for a second or third movement wave indicate failure on the part of the preceding movement? No, it may indeed suggest successes and along with them corresponding new expectations about what can be achieved via collective action. (It may be, at first glance, tempting to identify BPRs as overlapping movements but the discussion below will explain why each of these models, including this one, makes for a poor fit with the repeated BPR career.)

Any single social movement, over the whole of its lifetime, may express elements of more than one model. Moreover, the evolution of a movement is not absolutely linear. A social movement may travel in an inconsistent manner across any one of these life cycles. Mauss chose, effectively, an arc to illustrate a SM career. There is no rule or template as to how fast a single movement may move through any given stage or travel the whole of the arc. Each movement is likely to display a uniquely shaped arc with its own particular gradient. Where one stage begins and another ends is not a fixed or absolute point and variations from movement to movement are only natural. Nevertheless, it is likely that a given movement, taken in sum, comports generally to one

of these models. That is, it is expected to do so. Yet, a prevalent and recurring aspect of BPRs their particular effect of growing and further developing that which they aimed to replace, diminish, or abate, is not represented in any of the models.

Movement Outcomes

Existing SM models account for two possible movement results. *Success*, (understood to be relative) means at least some of what the movement aimed to do has come to pass. *Failure*, is understood to mean the movement did not deliver any or much of the social change it was after or in some cases it did not fully develop so as to even have an aftermath. Failure can also refer to the discrediting of movement leaders, participants, and values. “Social problems” are rarely “solved in anything near the sense originally expected and demanded by the interest groups that identify them.” (Mauss, 1975, p. 66) As a matter of fact, successful movements are acknowledged to inspire at least some disappointment alongside whatever gains they may have achieved as expectations tend toward the grand and utopian. (Mauss, 1975; Smelser, 1962) Nevertheless, a multitude of movements are considered to be successes and plenty identified as failures. While debate about a given movement’s status may exist there is a general consensus on what characterizes a successful movement and what characterizes one that fails.

This discussion of movement performance has been expanded beyond a simple binary and it is now customary to talk about the *outcome* of a movement. Yet, even this broadened conversation relies on the familiar and traditional notions of success and failure. Recall W.A. Gamson’s analysis discussed in the previous chapter.(2003, Gamson) He asserts that success is a “set of outcomes” thereby significantly developing the

understanding of a movement's accomplishments. (p.350) An assessment is made at the end of the "challenge," what he calls the social movement, which is determined by "inactivity" or major acceptance by the antagonist. (p.351) There are, according to Gamson, two "clusters" or spheres that are of consequence. (p.350) The first is the fate of the group or movement, the collective in collective action, as an entity. Are they accepted by the antagonist, are they seen as valid and legitimate? The second is the distribution of new "advantages," literal gains during and after the movement. (p.350) Gamson offers a movement outcome distribution with four categories. One is considered all-out failure -- *collapse* (no acceptance; no advantages. Another is all-out success --*full-response* (yes acceptance; yes advantages). The remaining two categories express degrees or classes of both success or failure, depending on how you choose to define your terms: *preemption* (no acceptance; yes advantages) and *co-optation* (yes acceptance; no advantages). (Gamson, 2003, p. 350-352) However complex his distribution, he still operates within the small range of two possibilities, success or failure, and uses very conventional, if more sophisticated, definitions of these categories.

Benevolent penal reforms show us that movement failure is far more complex than the simple absence of success. This author suggests that there are all sorts of ways a movement might fail and some are more dangerous than others. If BPRs were to be assessed using Gamson's model they would be deemed full-on successes with 'full-response' outcomes having achieved both considerable acceptance and advantages. Yet, ask anyone in the field of criminal justice or even the gal on the street and they would say penal reform history is a trail of failed movements. Moreover, what is so troubling about BPRs is not their mere lack of success (unfavorable as that outcome is) but the toxicity, depth, and recurrence of their brand of failure. Their gains prove to be anything but and

social acceptance may contribute to these movements' tendency toward dereliction. The conversation about movement outcomes is in need of further development.

The degeneration of social movements is not well studied or understood; it has even been described as "mysterious." (Mauss, 1975, p. 66) Scholars have tended to say more about how movements arise rather than how they fade. Furthermore, they are inclined to focus on the surrounding political environment to explain a movement's decline rather than look inside or at the movement itself. (Goodwin & Jasper, 2003) By no means minimizing the roles that these external factors play in a social movement's decline, this study veers dramatically from that tradition. By identifying, scrutinizing, and comparing multiple examples of an unexplored type of social movement we can begin to develop insight into the decline and subsequent outcome of BPRs specifically and collective action generally. This is not the place to try to account for *why* BPRs have the singular and potent outcome that they do. That analysis will come later. (see chapter six) What is of import here is that the aftermath of these movements is not represented in existing SM models nor can it be found in current discussions of movement outcomes; therefore a new social movement model is justified.

Before a new social movement model is forwarded it is important to address whether the particular evolution and outcome of BPRs resemble any other SM described in the CBSM literature. It is not fair to say that scholars have not reported, commented on, and tried to account for certain other disadvantageous and inconvenient movement results. They have. "Goal transformation," during the course of a movement, is not uncommon. (Zald & Ash, 1966, p. 517) Often this occurs in order to preserve the organizations that developed as part of the movement though it also happens to accommodate the host society. What is of interest here, and somewhat disturbing if one

is interested in social change, is that goal transformation, according to Zald and Ash, is “always in the direction of greater conservatism.” (p. 517) This is a Weberian model and some call it a “becalmed social movement.” (Zald & Ash, 1966, p.527) Bureaucracies and institutions see to their own survival by tempering their agenda and making decisions that sustain their existence. (Zald & Ash, 1966, p.517) One has to ask, is this what happens during the course of a benevolent penal reform campaign? The answer is no. BPRs do not assert a goal change and their outcomes are not related to shifts in their objectives. Rather they get some of what they were initially calling for only to see it deliver the opposite of what they aimed to achieve. The values of BPRs remain, if not radical, certainly counter-traditional or deviant from the status quo and even as they make their way to the fore of the host society do not come to be seen as conservative in any way until long after the movement has declined. BPRs do not go wrong due to goal transformation.

Zald and Ash specify influencing factors that result in a social movement’s goal change. They challenge the above model and suggest that the direction of change is not only reliant on self preservation but also on other issues such as the changing sentiments of movement participants. The specifics of their analysis are not relevant as it is already clear that BPRs do not suffer from goal transformation. Furthermore, the discussions of goal transformation focus on organizations that arise to support or advance a social change movement, not the movement itself. These scholars equate a social movement with the organizations it produces. This does not jibe with the unit of research here. This study is squarely focused on benevolent penal reform *movements*, not the reform organizations left in their wake.

It is said of ‘reform movements’ that they tend to reaffirm the ideals of a given

society rather than transform them. (1951, Blumer) This may be true but does it account for the outcome of BPRs. No, this class of social movements, which it could be further argued are not reform movements in the traditional sense, do far more than ratify the host's values. These movements develop and expand the host, taking it to a whole new level, a place it would not have gone but for the movement. BPRs are not merely reproducing or reinforcing society's values; they are in effect deepening the power these values have as well as developing and instituting practices and mechanisms that grow and widen that which they aimed to supplant. This outcome of BPRs is not due to a backlash by the host or a counter movement that develops to oppose it. This review makes clear that what is happening during the course and in the aftermath of a BPR is not accounted for in existing SM analyses. A new SM model is warranted.

Here it is.

Regressive SM Model - This is a social movement that takes the values and practices of the host society to a whole new, and deeper, level. In its wake the society is more attached to, and entrenched in, the very ideals the movement set out to change, shrink, and supplant. These social movements unconsciously deliver an outcome that is contrary to their aims. They do not merely fail to achieve their stated aims or become discredited. Quite the contrary, these movements tend to be legitimized within the greater society and are often accommodated by the host and get to institute practices, laws, or changes that correspond to their stated agenda. On the surface it appears as if these movements are somewhat successful. Yet, in the final analysis, the changes brought about by the regressive movement serve to move the society backwards in the sense that the landscape is altered but not progressed or forwarded. The "new" landscape resembles that which

was in place prior to the movement only more so. The ideals and practices in place before the rise of the regressive movement are taken to new heights, they become more entrenched, their scope widened, their roots deepened and the mechanisms and institutions that assert and express these values multiplied before it's all over.

Wrap-Up

The above description explains what a 'regressive' social movement is. Subsequent chapters will compare the life cycle and a variety of movement characteristics of three BPRs in order to show not only that they indeed are regressive social movements but also to survey and map their contours thus producing the *Regressive Reform Profile* (RRP). By identifying properties specific to these movements the researcher will gain insights into when, why, and how they come to be regressive. Are all BPRs regressive? This is impossible to say at this juncture. What this study will do is provide the tools to evaluate if that is the case.

There are some other descriptive properties scholars employ to help characterize and categorize a social movement. These are not specifically related to a movement's career per se. They are mentioned here, briefly, so that the reader might develop a stronger grasp of the ways one can understand a social movement and, more importantly, to get a better feel for benevolent penal reforms. Blumer stated that movements tend to be general or specific. A general social movement lacks leadership and structure. Its goals are vague and collective action grows from cultural drift. (for example the women's movement) A specific movement grows from a general one. (for example the reproductive rights movement) It is an expression of the activities of interest or pressure groups. Such a movement has defined goals, be they reformist or revolutionary, acknowledged leaders,

guiding philosophy, and identifiable expectations. This develops over time or rather over the course of a movement's career. Penal reforms, punitive or benevolent, are specific movements and have sprung from a wide variety of general movements that have little to do with punishment. Smelser named two classes of specific movements, norm-oriented and value-oriented. The former leave the underlying culture of a society intact and change only social arrangements, rules, norms, and laws. The latter create new culture and deal with fundamental aspects of the society and change its bedrock values. (Smelser, 1962) Though this division will be further explored in chapter six it appears that penal reforms are norm-oriented movements though their rhetoric also contains value-oriented language and objectives. The tension between these two divergent approaches to social change may contribute to the particular nature of BPRs failures. Plainly stated, BPRs are specific, norm-oriented social movements.

This chapter showed a distinction between benevolent and punitive penal reform campaigns and explained why this study is focused solely on the former. It reviewed the common types of social movements and showed why existing models do not fit the three benevolents scrutinized here. The incompatibility is due to the unique outcome and aftermath of such movements summarized earlier in the chapter. These movements do not simply fail to meet their stated aims or merely succeed in reproducing the host society. No, these movements, while aiming to reduce punishment, literally grow it. This movement upshot, until now unnoticed, begs a new social movement model, one that incorporates this unique phenomenon. The researcher proposed such a model, the 'regressive' social movement and went on to define this new class of collective action. Furthermore, the preceding pages established that the prevailing considerations of social movement successes and failures are oversimplified and warrant development, as BPRs

meet both of Gamson's success variables and yet are by all accounts failed movements. They remain enigmatic. How is it that they veer so far from their objectives? Why does this cycle repeat itself? A new model is not enough. In order to better understand how these 'regressive' movements operate we must trace their career course and identify other distinguishing characteristics.

The next series of chapters will examine and compare various features of three benevolent penal reform campaigns that adhere to this regressive social model. In doing so the study will map and trace the life cycle and contours of the 'regressive' social movement and build what will be termed the 'regressive reform profile' (RRP). An analysis of this data will follow. Part II of the study (chapters seven through nine) will test the theories and models (regressive SM & the RRP) asserted in Part I on a newly emerging benevolent penal reform, restorative justice. Again, this is all in the hope of addressing and accounting for a profoundly static penal landscape, one in which concerted efforts at social change chiefly progress in the direction they aim to abandon.

CBSM scholars recognize a great many factors, both internal and external, that contribute to the outcomes and evolution of social movements and SM organizations. Chapter four will name and explain the variables and methodology that will be used to conduct the subsequent comparison and mark the RRP. Chapter five will, by carrying out a comparative analysis of three BPRs (all regressive social movements): the penitentiary, the reformatory, the juvenile justice system, parole, and community corrections, give shape to the RRP. Chapter six will discuss the researcher's theories on why these movements unfold as they do, why the cycle is repeated, and what might be done differently to alter the highly dangerous, and surely unwelcome, outcome(s).

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Chapter 4

Methodology: The Building Blocks of the RRP

Chapter three introduced a new type or model of collective action, the ‘regressive’ social movement. This is a social movement that takes the values and practices of the host society to a whole new, and deeper, level. In its wake the society is more attached to, and entrenched in, the very ideals the movement set out to change, shrink, and supplant in the first place. Regressive social movements tend to be legitimized within the larger society. Accommodated by the host, they are allowed to institute practices, laws, or changes that correspond to their stated agendas, but deliver an outcome that is contrary to their aims.

Social movements that fail in the traditional sense i.e. don’t deliver on their objectives, don’t really get off the ground, or do not manage to gain acceptance, can bring heartache and profound disappointment; but a regressive movement’s failure is far more toxic and problematic. It undermines itself and future efforts to affect change as it reinforces, strengthens, and grows the very social structures it aims to unseat. Change becomes harder to come by, there is more to overcome, overturn, and subvert than before the movement began. This outcome, a reinforced host bolstered by additional impediments to change, is not due to a backlash or a counter movement that develops to oppose the movement; it is due to the movement itself.

In the case of penal reform, ‘regressive’ collective action is the course expressed by *benevolent* penal reform (BPR) campaigns (details of this course will be spelled out in the following chapter). These BPR movements aim to reduce and diminish punishment, yet grow and deepen the punitive nature of the system. New marks are pulled into the government’s control and those already in its clutches find their personal dominion and

liberty further reduced. As chapter three argued, existing social movement analyses do not account for what is happening during the course of a BPR and its aftermath. Clearly the exploration of movement success and failure must be expanded and a new SM model is justified.

Naming these types of movements for what they are, regressive, removes a little of their mystery. How is it that they veer so far from their objectives of increased freedom, mercy, and autonomy for the punished? Why does this cycle repeat itself? In order to better understand how these 'regressive' movements operate we must trace their career course and identify other distinguishing characteristics. Chapter five will examine and compare various features of five benevolent penal reform campaigns that adhere to this unprecedented SM model. The study will map and trace the contours of the 'regressive' social movement and build what will be termed the 'regressive reform profile'(RRP). This chapter will designate and sketch the variables that will ultimately mark the RRP.

Collective behavior social movement (CBSM) scholars recognize a great many factors, both internal and external, that play into the outcome and evolution of social movements and SM organizations. To employ them all would be unmanageable and unnecessary. Deciding which to use for this study was fairly clear cut. It was important to have enough to conduct a meaningful comparison and to illustrate the character and quality of this new movement type. It was important to show as multidimensional a picture as possible (all the elements could not focus on just one aspect, membership for example, of a social movement). It was important that the elements represent or cover the full life span of the movement and not concentrate on one or another stage or omit any phase of the movement. Heberle aimed "to provide the theoretical tools for the study of

concrete social movements. (Heberle, 1951, p. 17, emphasis added) Keeping his practical approach to social movements in mind the author developed a small and expressive set of variables that will be the building blocks of the RRP. What follows is an explanation of the measurements that will be used to explore specific BPRs and help account for their regressive nature: conditions of the host society, carriers, membership distribution, early rhetoric, repertoires, time to ubiquity, outcome, and the score.

Conditions of the Host Society

This element delineates the sociopolitical landscape from which the benevolent penal reform movement is born. Specifically, it will describe the quality and character of the criminal justice and penological status quo at the time the movement emerges. The host society is defined as “the society that produces the movement.” (Mauss, 1975, p.59) *Conditions of the host society* will be a general overview and is important as the claim here regarding a regressive movement is that it grows the host. This category will therefore be compared with the movement outcome to show that a regressive trajectory has occurred.

A note on social conditions: Mauss states that numerous historical studies have indicated that social unrest is more or less likely to occur under some social conditions than others. (1975) Smelser suggests that certain conditions, for example structural strain, make a society susceptible to the rise of a social movement. (1962) These observations are most assuredly true but not what the author is aiming to capture with this particular component of regressive reform. At issue in this study is a distinct type of social movement, regressive, and how it comes to have such a unique and problematic outcome. CBSM scholars have done a fine job identifying the factors that contribute to,

or diminish, the likelihood of a movement's rise. This need not be especially documented here. The BPRs in this study did occur and therefore the conditions necessary for their rise must have been, present to some degree. The particulars of these conditions are not thought, by this researcher at this time, to contribute directly to the regressive nature of these movements, though further study may indicate otherwise.

Carriers

This element will depict those who initiate and assemble the social change movement. The term "carriers" is one advanced by Heberle. (1951) Succeeding scholars have coined other terms. Howard Becker uses the phrase "moral entrepreneurs" and focuses his study of these actors on the variety of interests, from economics to religion, that motivate them. (Mauss, 1975, p. 16) Mauss refers to those that generate movements as "champions" and describes the evolutionary process people travel to become such actors, moving from an issue-specific public, to an interest group, and finally to a pressure group involved in direct action of some sort. (1975, p. 11) This author embraces Heberle's perspective as she feels it best captures the flavor and breadth of the role these actors play. *Carriers* are those that provide the social foundation and support for a social movement. Of critical importance here, this definition allows for a legitimate comparison across movements. After an assessment of who these people are in each movement they will be juxtaposed to see if they share characteristics. It will then be possible to deduce whether the nature of *who* carries these movements plays a role in their evolution and outcome.

Heberle names four categories of *carriers* religious groups, status groups, ethnic groups/nationalities, and social classes. This classification is imperfect and will not be

employed. The categories are too sweeping to be of use in this context. To further muddy the waters, Heberle noted that a religious group can correspond to social class or nationality group. He was focused on grand movements such as socialism and the tremendous crossover amongst the subdivisions would diminish the value and nuance of the present comparison of specific smaller-scale 'reform' movements. Some language similar to Heberle (social status, religiosity, economic standing) will be used to help identify the *carriers* of the study's research units.

A movement's *carriers* do *not* make up the whole of its membership. This variable, *carriers*, is dedicated to those who launch the movement. The range of movement participants will be evaluated and recorded in *membership distribution*.

Membership Distribution

This element concerns the arrangement of social movement participants. Heberle identifies role differentiation and distribution of power (among participants) within the movement as *the* expression of a movement's structure. (Heberle, 1951) By using a distribution model put forth by Armand Mauss this author will account for and order the ways in which people participate collective action in order to understand the structure of benevolent penal reforms and their regressive nature.

According to McAdam, movement participation is a synthesis between identity and interest. (McAdam, Tarrow, & Tilly, 1996) A substantial number of CBSM scholars study the attitude and motivation of movement participants. They adhere to the idea that people, as a rule, are passive and indifferent so those that have been activated are worthy of study. These thinkers look to identify and understand individual motivators such as a sense of civic duty, family tradition, or psychology, and concluding that people

are likely to become active only when they perceive that their present personal interests are at issue. They further examine who a movement's ideology may appeal to and why, as well as to which role in the movement an individual is drawn. This approach to movement participation is profoundly interesting but does not correspond directly to the present aims -- looking for elements of the movement that induce or facilitate a regressive outcome.

Motives are extremely difficult to study and many who take part in a movement can not say why. Because such reasoning is complex and interwoven it is too difficult and diversionary to be studied here. In addition, these are historic movements and for the most part participants are no longer available for study. This motive aspect of movement membership will not be addressed directly. The study will look at one very distinct aspect of movement participation, how the actors are distributed. As Heberle asserts, this will shed light on the movement's structure and, this researcher believes, reveal in part why these movements regress rather than progress punishment.

Armand Mauss offers a simple and comprehensive model for arranging the parties who participate in collective action. Like Heberle, he recognizes that this aspect of collective action offers insight into a movement's structure. (1975) Mauss constructs a three concentric ring design (inner, middle, and outer). Gusfield offers a four tiered model (the professional , the hard-core activist, the rank & file, and the fellow traveler or sympathizer). (Gusfield, 1970, p.456) In terms of capturing the ways in which people participate in movements the two are strikingly similar, but the simple and clear graphic nature of Mauss' distribution, along with the exclusive and concise definitions of each circle, make it a more workable model. Consequently, this study will employ the Mauss model to organize, identify, and account for those that take part in BPR campaigns. In

Mauss' model, the *outer ring* denotes the public that cares about the movement, its 'fair weather friends.' They are no less important than more committed participants as they often provide resources crucial to a movement's existence. (this avenue of analysis will prove critical to understanding the regressive nature of BPRs - see chapter six) The *middle ring* is made up of active movement members, these are often people of influence who provide a movement with legitimacy and acceptance. They are also usually willing to compromise. The *inner ring* contains the "heart" or "core" of the social movement. These are the principal leaders and where the most fervent and committed members are located. (Mauss, 1975) The researcher will plug BPR actors into this concentric ring model. The manner in which BPR actors are distributed, which is an expression of the structure of these movements, the researcher will show, is in a large part the reason these reforms result in the particular outcome, regressive, that they do.

Early Rhetoric

This element will report the rhetoric at the *outset* of movement. The purpose of its examination is twofold. First it is to be able to juxtapose the movement's ultimate outcome with its original aims and claims. Second it is to compare the approach and tenor of each BPR to the others and explore what role this may play in the distinct failures of regressive movements. To best study and capture each movement's rhetorical flavor the survey will be organized into three thematic subdivisions, the way the movement critiqued the status quo, how it constructed ideas about criminality, and how it talked up the innovations for which it fought. This exploration will include a review of the movement's ideology, objectives, demands, and claims as the movement rises and comes into prominence.

According to Heberle it is not always easy to ascertain what a social movement's ideas and ideals are. They are not necessarily written down. They can be hidden, misrepresented, or vague. Members themselves may not always be clear about the movement's ideology and as a collective they may still be searching. Nevertheless movement ideology is a critical element of collective action for those interested in studying social movements according to virtually all CBSM scholars. By examining the breadth of rhetorical expression (objectives, promises, claims, demands, and critiques) this study will hone in on the specific qualities and timber of a movement's ideology and explore how this in turn shaped the movement.

Repertoires

This element will point out the initial and primary means and ways in which a movement forwards its aims; its overall strategy. Here the researcher will examine the strategy styles most employed by these social change movements and assess whether BPRs have the same or shared repertoires. It may be that the very tactics movements undertake to accomplish their goals ultimately determine or result in a regressive outcome.

Time to Ubiquity

This element will delineate how quickly the movement becomes institutionalized, or reaches the apex of its career (see chapter three for an elaboration on the life cycle or 'natural history' of a social movement). This is the stage in a movement's evolution when traditional, including governmental, institutions take notice of the movement and develop coping mechanisms to manage it. Other characteristics of this stage include a large base of members and resources, growing respectability, and participation in the

political process. The movement at this stage is said to be in a period of its “greatest power.” (Mauss, 1975, p.64) This variable explores movement velocity by gauging the celerity to “*institutionalization*.” How slowly or swiftly does each movement reach this commanding point in its life cycle? Does the pace at which these movements operate play a role or contribute to the regressive nature of their outcome?

Outcome

This element will chronicle the mien of the penal landscape upon the movement’s decline. An investigation into how the culture has changed in the wake of each BPR. Has the movement traveled a ‘regressive’ course? This variable will be organized into three categories: has anything been replaced, what has been added, and whether the movement delivered on aims. In particular the researcher will be looking to ascertain if there is:

- anything replaced or if mechanisms have only added thereby expanding control
- more ingress & government control for those already in the punishment system
- any change with regard to penal harms
- a wider net cast i.e. new marks caught up in the punishment system (expansion)
- a larger bureaucracy -- more jobholders, practices, and systems
- an aftermath that corresponds to movement aims

The author uses the term *outcome* as an umbrella that will take into account practical, intellectual, and cultural changes in the wake of the movement. The researcher is ultimately looking to see if, and how, punishment has been changed by the movement. What has the movement actually accomplished? Has it reached some of its stated aims? What is the movements material legacy and does it represent a move forward or

backward?

The Score

This element will tabulate and report on three specific movement characteristics: gains, legitimacy, and failure.

Recall Gamson's two "clusters" or spheres of consequence. The first is the fate of the group or movement, of the collective in collective action, as an entity. Are they accepted by the antagonist, are they seen as valid and legitimate? The second is the distribution of new "advantages"; the literal gains during and after the movement (e.g. the right to vote, early release, minimum wage guarantee). As was first stated in the last chapter, *regressive* social movements, using these traditional measurements, are judged 'successful' or in Gamson's parlance attain 'full-response.' (Gamson, 1975; Gamson, 2003) This is to say that they achieve both legitimacy and gains before their decline. This variable will evaluate if this has occurred. What is the nature and scale of the actual gains realized by each movement? Are they sufficient to suggest accomplishments were indeed attained? Were movement actors and its ideology legitimized or accepted by the host society? How is this expressed?

After assessing if either or both of the two success markers are present the question will turn to whether or not the movement was in fact judged to be a failure. This will be calculated not by using a modern day appraisal but rather gauging how the movement was reviewed in its immediate aftermath. At the heart of this study is the claim that regressive movements' "successes" embody their distinct and deleterious failure. Is this evident in these BPR movements, are they indeed highly successful failures?

Wrap-Up

It appears that regressive social change movements travel through the five “natural history” stages specified by Mauss. At this juncture there is no reason to suspect otherwise. Recall the discussion in chapter three of the five stages a traditional or ideal social movement travels: *incipiency* (fumbling uncoordinated efforts), *coalescence* (organization, making alliances & formal associations), *institutionalization* (“full-blown movement,” government and traditional institutions take notice), *fragmentation* (movement has achieved successes so members are appeased), and *demise* (mopping up, most members have been bought off). (Mauss, 1975) Regressive movements are collective action fully realized. As such they move through the expected stages, though not along quite the same path as an ‘ideal’ social movement.

The question to resolve here is, what is the relationship between the aforementioned SM elements and these five SM life cycle stages? How or where might each one conform to Mauss’ SM “natural history”? Do these elements play a part in the evolution of the movement from one stage to another? Which elements are found at which stage? In the final analysis, when and where in the course of a regressive movement’s trajectory these elements express themselves is not relevant to the present study. This may in fact vary from movement to regressive movement. What matters is that these elements are present and materialize in regressive movement after movement. Of issue in this study is when and why a movement goes regressive. The researcher believes the elements identified and described in this chapter play a critical role. Whether they simply indicate that a regressive movement is afoot or are directly responsible in generating the regressive momentum remains to be seen and will be discussed at length in

chapter six. What is being marked by this approach are the contours of the regressive SM 'career'; identifying elements that this researcher believes are specific to regressive movements and relate directly to their unique and dangerous outcome.

CBSM scholars recognize a great many factors, both internal and external, that play into the outcome, expression, and evolution of collective action and SM organizations. This chapter named and described those that will be employed by *this* study. There are plenty of others: leadership styles, esprit de corps, resource mobilization, morale, etc. . In the interest of this study's goals a finite and manageable number of variables was decided upon, those thought to convey insight into the regressive social movement. To review, conditions of the host society; carriers; membership distribution; early rhetoric; repertoires; time to ubiquity; outcome; and the score are the social movement elements or variables that will be used.

Chapter five will examine and compare these various SM features across three benevolent penal reform campaigns: the penitentiary, the reformatory, and parole. This exercise will illustrate the regressive nature of each and allow for an exploration of shared or similar qualities among the movements thereby reaffirming that indeed a repetitive cycle is at play. In the process the study will map and trace the contours of the 'regressive' social movement and build what will be termed the 'regressive reform profile' (RRP). The data gathered in chapter five will be analyzed with an eye toward understanding how and why these identified elements predetermine, contribute, or facilitate a social change movement expressing a regressive outcome again and again. An analysis of this data, an exploration as to how these variables contribute to the regressive nature of these social movements, will follow in chapter six. Chapter six will also discuss the researcher's theories and analyses as to why these movements unfold as they do, why

the cycle is repeated, and what might be done differently to alter the grave and surely unwelcome, though as of yet inescapable, outcome. Part II (chapters seven through nine) of the study will examine the manifestation of these features with regard to the latest benevolent penal reform, restorative justice, to see if this still developing BPR contains the elements of a regressive movement. Again, the objective is to address and account for a profoundly static penal landscape, one in which concerted efforts at social change can not make much headway except in the direction they aim to abandon.

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Chapter 5
Constructing The Regressive Reform Profile - RRP
A Comparative Analysis of Three Benevolent Penal Reforms

Social movement scholars recognize a great many factors, both internal and external, that are integral to the expression, evolution, and outcome of collective action and social movement organizations. The previous chapter identified and described those that will be explored in this study. Eight were chosen, as it was explained, because the researcher believes they are associated, directly or indirectly, with the unique and dangerous outcome of ‘regressive’ social movements. To review, these elements are **conditions of the host society** (the sociopolitical landscape from which the benevolent penal reform movement is born); **carriers** (those who initiate and assemble the social change movement); **membership distribution** (the arrangement of those participating in the social movement); **early rhetoric** (the rhetoric at the *start* of movement - expressing ideology, objectives, demands, claims, and critiques of status quo as the movement rises and comes into prominence); **repertoires** (the initial and primary ways and means by which a movement forwards its aims and its tactical and strategic stance); **time to ubiquity** (how quickly the movement becomes institutionalized); **outcome** (what the penal landscape looks like at the movement’s decline); and **the score** (an appraisal of traditional SM success markers, gains, and legitimacy and an accounting of whether or not the movement is considered a failure in its day). This chapter will examine and compare these various SM features across three benevolent penal reform campaigns: *the penitentiary, the adult reformatory, and parole*. The aforementioned elements will first be identified and discussed for each individual BPR. These findings will then be plugged into a graph so that comparisons and parallels across movements are more apparent and easier

to pinpoint and track.

A comparative analysis serves multiple purposes. One intent is to gather and organize data to establish that each individual benevolent penal reform(BPR) is indeed a regressive movement, a brand-new type of social change effort recognized and asserted for the first time by this study (defined and detailed in chapter three). Another is to illustrate and confirm the repetition these campaigns demonstrate. The survey will show that this repetition is twofold: both the *outcome* and the *profile* of each movement resembles that of the others. The parallel aftermaths of these campaigns indicate a repetitive cycle, across time, of attempted and distinctly failed change of the penal landscape. Furthermore, these movements resemble one another not just with regard to their grave and analogous outcomes. There is a repetition concerning how these movements evolve, operate, and are structured. This suggests that there is a relationship between the nature of these movements, their profile, and their very troublesome outcome and, ultimately, the static nature of our unchanging penal landscape (the following chapter will dig much further into this possibility).

This chapter will map and trace the contours of the ‘regressive’ social movement’s career and build what will be termed the ‘Regressive Reform Profile’(RRP). This will allow for an examination into the shared or similar qualities among movements with an eye toward answering (in the subsequent chapter) a series of questions. These include assessing whether these characteristics indicate that a regressive movement is afoot, whether or not they play a role in the regressive nature of these movements, and whether their presence predetermine a regressive outcome? The following chapter will analyze if, why, and how these elements contribute to, facilitate, or foreshadow a regressive social movement. Further it will discuss the researcher’s theories and analyses as to why these

movements unfold as they do, why the cycle is repeated, and what might be done differently to alter the highly dangerous and surely unwelcome, though as of yet inescapable, outcome. Part II of the present study, chapters seven through nine, will examine the manifestation of these features with regard to the latest BPR, restorative justice, to see if the elements of a regressive movement are found in this still developing benevolent penal reform campaign. Again, the objective is to address and account for a profoundly static penal landscape. One in which concerted efforts at social change can not make much headway except in the direction they aim to abandon.

To review in brief, the BPR campaigns dissected in this chapter were chosen as the units of study for a variety of reasons. First, there is no question that they are collective action that sought definitive *change*, they are indeed social change movements. Second, each is considered by criminal justice scholars to be a major penal movement with lasting impact strikingly different from their intent, the criminal justice field recognizes them and their failed outcomes. Third, they represent various eras in the country's history, therefore illustrating that their failures can not be written off as products of their respective ages. Fourth, they have yet to be considered in aggregate and have only been studied as singular efforts. Though on occasion they have been individually recognized to have been perverted from their initial aims, patterns have not yet been deeply explored. Finally, using multiple movements across time gives the model, theories, and analysis validity and credibility. One or two examples would expose the findings to legitimate critiques suggesting that the theories, model, and analyses advanced were based on anecdotal and circumstantial evidence or that findings were isolated incidents and not a pattern.

THE PENITENTIARY OR PRISON MOVEMENT

The words prison and penitentiary will be used interchangeably. True, *penitentiary* incorporates the idea of repentance, integral in the development of incarceration as punishment, and *prison* does not necessarily do the same. Nevertheless they are, particularly for the purposes here, one and the same. Nuances could be argued but these do not affect the organization and evaluation of the data in this study.

Much has been written about the rise of the penitentiary. There is some debate and disagreement as to the particulars. What should be considered the *very* first prison, Newgate Prison, a copper mine in Simsbury Connecticut, opened in 1773 (Welch, 1996) the Walnut street Jail in Philadelphia opened in 1790 (Allen & Simonsen; 2001) or European antecedents which embodied many of the elements closely associated with punitive incarceration such as incapacitation and classification (Bosworth, 2000; Schmallegger, 1999)? Was the ideology of the Enlightenment fueling the drive toward prison or capitalism's need to consolidate or centralize power? (Rothman, 1971; Takagi, 1993) This depth of detail is not of critical import here. Ultimately these differences are rather modest, their meaning lost to all but a handful of historians and criminal justice scholars. Interpretations of the historical facts, which to give more weight and which are more meaningful, vary and no quintessential analysis will asserted here. The goal here, to chart the penitentiary movement, does not require a firm standing on any one of these issues. These scholars would agree that there was a social change movement at the dawn of the new nation, a surge of collective action that brought forth a swift and remarkable shift in the realm of punishment. The penitentiary moves to the foreground and becomes the dominant punishment practice. The author uses agreed upon facts from seminal works on the rise of the prison to gather data and demarcate the shape and contours of the

penitentiary movement.

The prison movement may at first glance not appear to be obviously or conclusively 'regressive' or as ineffectual (failed) as the others chosen for this study. In many respects it is not like the others. The face of punishment most certainly changes due to this movement's efforts (though the claim here is not that changes do not occur but rather the changes do not achieve what the movement sought and actually deliver a greater concentration of that which the movement aimed to reduce, supplant, eradicate). The changes brought by the penitentiary movement are quite dramatic and should not be minimized. Yet, considering the study determinants the prison movement qualifies. The failure to deliver on its aims and actually growing the host is embodied by this campaign and its aftermath. While it did indeed produce consequential change on a scale untouched by the other BPRs; ultimately (like the other BPR movements) it fell profoundly short of its stated aims and ended up delivering more cruelty, widening the net of the punished and enhancing the inhumanity of the system all the while growing and embedding a network of control unseen and unimaginable prior to the movement. Society's punishment system, after the movement, was more harming, bigger, and far more entrenched. A regressive path was traveled.

Notably, this movement, unlike the other BPRs in this study, did actually replace something. Public corporal punishments were indeed supplanted by incarceration, although public condemnation and the theatrics of punishment did not disappear. The adversarial open court room has come to take on many of the qualities of a town square whipping or execution. Nor did corporal punishment disappear, as it remained rampant behind prison walls. Nevertheless, it is important to recognize that the penitentiary movement, while adding significantly to control and punitiveness (beginning the cycle of

'regressive' penal reform), did do away with practices and customs that had long been part of social and civic life.

Conditions of the Host Society: The Penitentiary or Prison Movement

At the time the ideas and efforts that gave rise to the penitentiary were emerging, society equated crime and sin. Religion was central to public and private concerns alike. An offense against god was a crime against the society and vice versa. Crime was understood as an expected human behavior (i.e., people are by nature depraved and expected to succumb to temptation as they are weak). The ideological underpinnings of the society were those of Puritanism and predestination. Nothing could be done to effect whether one ascends to heaven, all is in god's hands. Those who lived in a given community kept an eye on one another and perceived or witnessed transgressions were brought to the attention of local authorities, be they church or civic leaders (often these one and the same).

Criminal events and those that perpetrated them were dealt with locally. It was believed that punishment would help "draw offenders back into the community." (Colvin, 1997, p. 33) The punitive practices of the day encompassed shaming public punishments, moral degradation and humiliation. These included an array of possibilities from the pillory and branding to execution and banishment but the most widely used punishments were public whipping and fines. (Bloomberg & Lucken, 2000) Corporal punishments were usually administered in the town square or a whipping post near to where the court sessions took place. "Overall, punishment in colonial America emphasized condemnation, repentance, and shaming." (Bloomberg & Lucken, 2000, p. 33) The idea of deterrence, though not named as such, was evident as offenses believed to

incite others to do the same were more likely to receive a public response and repeat offenders received harsher punishments. (Bloomberg & Lucken, 2000) Execution was utilized, though sparingly, and took place in a public space. A surge of property crimes in the 1770's dramatically increased the use of capital punishment.

There was at this time little distinction between offenders in terms of gender or age. 'Incorrigible' children were executed and women too were topless when receiving the lash. There was however a class disparity and those who could afford to pay a fine were less likely to receive a corporal penalty. Social divisions and hierarchy were respected and perceived as god's will. Slaves were 'punished' by their masters. If both were charged with a crime the slave would be subjected to a physical punishment and the master would pay a fine.

Institutions in which people were confined did exist. Jails could be found in many communities but they were for those awaiting trial. They were not particularly secure and inmates had to pay for their keep. They were overcrowded, unsanitary, and dangerous as all manner of folks were thrown together and unsupervised. Workhouses, a combination of poorhouse and jail, were also prevalent. These were for "keeping and setting the unproductive to work." (Bloomberg & Lucken, 2000, p. 33) Here the poor, idlers, beggars, prostitutes, and minor offenders were to be trained and cared for. (Bloomberg & Lucken, 2000, p. 33) If one committed a more serious offense they were most likely to receive a public response.

Punishment did not separate offenders from their families or communities. Even those who were excommunicated were expected at church. No one lost their standing or social connections due to a criminal conviction.

Key Themes: Conditions of the Host

Bounded & Disappointing Punishment System -- A penal system in which the boundaries are fixed (who is caught in the net and what is done to them is constant) and one that inspires disappointment, either because it does not 'cure,' resolve, or fix the problem of crime and criminality, or does not meet the social norms of decency regarding the treatment of human beings.

Carriers: The Penitentiary or Prison Movement

Those who generated the social foundation for the prison, the movement's *carriers*, were highly religious educated white males from the middle and upper classes. These men had power or were closely connected to those who did. "The advocates of penitentiaries ... came from secure positions in the social structure" according to Colvin "[t]hey were skillful at lobbying and were trusted by politicians." (1997, p. 81) They saw themselves as benevolent patrons acting on the behalf, and in the interest, of others. The carriers were not the ones who would be subjected to the new practice. "Reformers who were driven by religious commitment were much more involved than rationalists in the developing the actual practices of the penitentiaries." (Colvin, 1997, p. 49)

Thomas Eddy and Caleb Lownes, two merchant quakers, and Benjamin Rush, a religious Universalist, were among the first people responsible for spreading and advocating the idea of using incarceration as punishment, though by no means did they act alone. The Society for Alleviating the Miseries of Public Prisons was founded in 1787 by 37 men, spearheaded by Rush and composed mostly of merchants and educated physicians. The society petitioned to substitute public punishment with private solitary labor and soon renamed themselves the Philadelphia Prison Society. (Colvin, 1997) All

were exceedingly religious minded and together represented an array of Protestant belief systems. They were opposed to debtor relief which scholars maintain betrays their class allegiance. (Colvin, 1997, p. 54)

The prison movement suffered from disillusionment and backlash in the early 1820's though a second wave of enthusiasm and advocacy quickly surged and propelled the movement onwards in the late 1820's and 1830s. The *carriers* of this renewed drive were again men of means, education, and religiosity. One of, if not the, most influential reformers of the Pennsylvania system was Roberts Vaux a wealthy Quaker merchant and longtime member of the Prison Society. He was involved in a great many other 'good works,' a close friend of the state's governor, and considered the man behind the design and construction of Eastern Penitentiary. In New York, the development of the Auburn system can be attributed to Louis Dwight an extremely popular and renowned religious propagandist who in 1826 founded the Boston Prison Discipline Society. He dedicated himself to spreading word of the prison and attracted the support and interest of the Tappans, wealthy brothers who believed in, financed, and built what they termed a "Benevolent Empire." (Colvin, 1997, p. 78) The prison was just part of the Tappan's vision of discipline. "The benevolent empire sought to lift a nation to virtue by spreading the gospel of individual self-denial." (Colvin, p. 79) Also connected to and influencing the Tappans was Charles Grandison Finney who abandoned a career in law to devote himself to a life of ministry. He was an extremely popular Presbyterian minister who traveled the country preaching that salvation lay in the hands of the sinner. Elam Lynds a professional military man, well connected and respected, is also associated with assembling and supporting the penitentiary movement. He is responsible for the discipline system integral to the Auburn approach and an important contributor to the

prison movement's rhetoric and ideology. These activists spawned the prison movement by establishing the social foundation and support (spreading ideology and activating and exploiting political and fiscal connections) critical to the development of collective action. (Colvin, 1997)

Key Themes: Carriers

Holy Rollers, Credibles, Patrons, & Professionals -- Those who initiate and assemble the social change movement are religious, educated actors with access to power, means, & the penal system. They are not on the punishment end of the penal system nor will they, or those like them, be personally reached by changes to that system. These carriers are working benevolently to save, rescue, deliver, or heal the *other*. Their standing in society makes them credible to the host, they are legitimate from the start.

Membership Distribution: The Penitentiary or Prison Movement

Inner Ring

The principal leaders of this movement were religious and rationalist thinkers generating and spreading the idea of prison as well as the intellectual or spiritual arguments to create, champion, and shape its design and use. Many of the 'idea' men were also the most passionate and committed reformers, especially the religious minded. Men like Dr. Benjamin Rush, Thomas Eddy, John Howard, Jeremy Bentham, Cesare Beccaria, the Tappan brothers, Charles Grandison Finney, and Elam Lynds formed the movement core, spawning and fueling collective action.

Middle Ring

This movement's most active participants were often associated with a prison

society, held office, were respected, well-known men of considerable means, or religious leaders. Many of those who comprised the inner ring also made up the middle one. These activists did not merely spread and communicate their ideas, but directed, governed, and managed the new practice.

The Philadelphia Prison Society became a strong force in running the Pennsylvania penitentiary system. (Colvin, 1997) Ten of the twelve inspectors serving on the board running the prison were members of the society. "Many of the designers of the Pennsylvania model had gained their knowledge of prisons as administrators of the Walnut Street Jail." (Colvin, 1997, p. 84) Roberts Vaux, benevolent Quaker activist, member of the Philadelphia Prison Society and friend of the governor, served on and controlled the building commission that oversaw the planning of Eastern Penitentiary. (Colvin, 1997)

Newgate's first agent (warden in today's parlance) is Thomas Eddy. The Tappans and Finney took part in the Boston Disciplinary society - the promoter of Auburn. Lynds became Auburn's agent when it reopened in its newer form based on solitary confinement and congregate work. A friend of Louis Dwight, founder of the Boston society and renowned religious propagandist who spread the word of benevolence and salvation, Lynds personally oversaw the building of Sing-Sing which opened in 1828. The bulk of visitors to the prisons tended to be from prisons societies. (Colvin, 1997, p. 87)

Outer Ring

There was most certainly a popular belief in the underlying ideals and ideas that gave rise to the prison -- religious zeal, belief in human reformation through effort and

focus, utilitarianism, equality, the doctrine of rational man, deterrence, and the promise and possibility of a new nation. The public at large shared an optimism and enthusiasm for incarceration but did little to participate in or support the movement.

Key Themes: Membership Distribution

Insular & Limited -- Movement membership encompasses a small group of actors generally located in the two inner rings of the distribution. There is virtually no “interested public” participating in the movement and the outer ring of the distribution is thin or imperceptible.

Early Rhetoric: The Penitentiary or Prison Movement

Two powerful ideological threads shaped, propelled, and justified the prison movement: a new and impassioned religiosity of salvation through striving (moral reformation -- penitence) and the Enlightenment ideals of rational man, utilitarianism, freedom, and equality. Principles from each doctrine informed the way the movement critiqued the status quo, constructed ideas about criminality, and promoted the innovations for which it fought.

Reformers asserted that traditional criminal sanctions were fruitless and problematic. Public corporal punishments were cruelty without purpose and were generating ill effects. They were creating disorder not addressing it since “[o]ccasions of public punishment often became scenes of chaos” when the crowd became so aroused as to act on their anger toward the offender. (Colvin, 1997, p. 36) Furthermore, they were unable to control crime as it was on the rise and perceived to be growing out of control. Whipped or fined offenders return to their “private pursuits” instantly. (Colvin, 1997, p.

36) A renewed reliance on executions wasn't working either as juries were reluctant to impose the severe penalty. Crime and sin were being differentiated somewhat and it was thought that while the former should be the purview of the state moral offenses should not. Stern punishments and autocratic authority were increasingly associated with absolutism, the crown, and injustice. Additionally, benevolence and mercy began to emerge as values to which society must strive and to which corporal punishment did not adhere. Corporal punishments were "stains against humanity" too harsh and uncivilized. (Colvin, 1997, p. 56) Fines were not viable as many offenders were indigent and therefore forced to endure harsher penalties. A system that favors or privileges the rich was not recognized as an equitable one and thus contradicted ideals of the new nation. Ultimately, the movement's critiques maintained that the day's punishment was ineffectual with regard to intention, produced significant harm, and stood in contradiction to prized social tenets.

Man's moral nature, prison activists stated, is not set in stone and criminals they said are not incorrigible. Those reformers that embraced the new religiosity maintained that moral regeneration was possible once one was awakened to guilt. Salvation was in our own hands. Goodness and righteousness were not predetermined and consequently could be nourished or fostered. The rationalists saw man as autonomous and free thinking. Crime was not due to a sinful nature but a decision to act unlawfully and choices can be influenced and altered. This penal movement thus declared that punishment, if designed properly, can effect criminal behavior and produce righteous, orderly, reformed citizens (be it through repentance or deterrence).

Their new rhetoric insisted that punishment be purposeful, humane, and just. Reformers promised and argued that incarceration fit each of these conditions beautifully.

Prison's utility would be to change habits or convert souls, either way appropriately ambitious. The threat of incapacitation would deter the rational man from doing crime by being a too costly (freedom is the supreme treasure of the new world) and too sure (punishment must be certain) an end. Potential criminals would refrain from violating the law as the consequence of that act (doing time) would outweigh any gain. Those foolish enough to have miscalculated and broken the law would learn their lesson by suffering the pains of incapacitation and would never offend again. Discipline, self-control, and self-sacrifice would reform a criminal actor. Hence, the prison, rather the penitentiary, had to be designed (inside and out) to develop repentance and righteous living. Offenders would be saved through persuasion and solitary meditation (with a bible in hand). Work would change their idle nature and produce "healthy effects." (Colvin, p. 56). Inmates would be segregated from one another (the birth of the prison cell) and cared for by the state in a humanitarian manner (given food and clothing) while being lead in the right direction through religious guidance and quiet. This benevolence toward the lost was mandated by God and part of Christian grace.

Incapacitation was considered more fair and egalitarian, treating the rich and poor alike, with no reduced penalty for the wealthy nor a way to buy one's way out of punishment. It is a sanction that could be modulated (sentence length) to fit the crime in a way that corporal punishment could not. This less severe penalty was deemed more humane and civilized as the public was not subjected to grand violent spectacles and one's body was not on display or desecrated. Thus prison movement rhetoric asserted that incarceration, its specific structure as they called for it, and its inherent qualities, best expressed and conveyed the values and ideas (religious and rationalist) of the new nation.

Key Themes: Early Rhetoric

Cruel & Ineffective Status Quo, Fresh Criminal Theory, Grandiose Claims -- Movement rhetoric decries the status quo as inhumane and ineffective, it incorporates a new “narrative of criminogenesis,” and proclaims extraordinary cure-all powers. The grandiose claims declare that the innovations will cure crime and generate a more cohesive society.

Repertoires: The Penitentiary or Prison Movement

The dominant movement strategy was one of working from inside the system using traditional means of change associated with a democratic structure. Prison movement activists created societies (Boston, Philadelphia), held meetings, lobbied their elected officials and public officers, and pushed legislation to achieve its primary goal of getting the practice (in this case incarceration) going. “They were skillful at lobbying and were trusted by politicians.” (Colvin, 1997, p. 81)

Thomas Eddy lobbied the state for 11 years to get a state-run penal institution (his political patron was Alexander Hamilton’s father-in-law) and in 1796 was successful in getting legislation passes under which most felonies would receive a long prison term as the penalty. (Colvin, 1997, p. 57) The Act of 1790, “forced” through by the Philadelphia Prison Society, converted the Walnut Street Jail to a penitentiary. (Colvin, 1997, p. 55)

The movement’s promotional tactics frequently revolved around anecdotes that ‘proved’ the value, possibility, and merits of their crusade. Sermons, religious tracts, and pamphlets were filled with success stories about those who were “saved” by these new measures and alternate approach to both crime and criminals. (Colvin, 1997) Touting positive effects was not the only spin. Prison activists showed quite a bit of savvy as campaigns designed to appeal to the largest number of people as possible often

contradicted themselves. Propaganda addressed multiple concerns of the day e.g., crime is a growing problem and this will reduce/eliminate crime; money is a concern and this will be cost effective-prisons will pay for themselves; this is a humanitarian substitute for cruel and inhumane punishment, yet severe and strict as it is guaranteed and dreaded.

Key Themes: Repertoires

Narrow, Non-Confrontational, & Practice Fixated -- The movement employs few means to forward its aims. These are exclusively traditional, non-confrontational avenues of social action such as generating legislation, promoting anecdotal successes, and lobbying. The chief tactic is the creation and administration of programs and practices that reflect or incorporate the movement's agenda. Program implementation quite literally dominates movement strategy.

Time to Ubiquity: The Penitentiary or Prison Movement

The first penitentiary, the Walnut Street Jail, opened its doors in 1790. The ideas (see Early Rhetoric) that helped to generate the prison had been percolating for some time before activists took hold of them and pushed for this momentous event. The first prison society was created in 1787 only three years before Walnut Street opened for business. The movement was off and running. "Success," both making gains and garnering legitimacy came rather quickly. Prisons began popping up around the country -- Connecticut 1790; New York, Virginia, & Rhode Island 1796; Kentucky 1799. Auburn Penitentiary opened in 1817 but by 1819 the realities of overcrowding, disorder, debt, and disillusionment were already overpowering the movement and the penitentiary's future was in doubt. The prison was increasingly perceived as a failure and there was a growing call for a return to corporal and capital punishment. (Colvin, 1997, p. 63) In social

movement parlance a backlash movement was on the rise and the prison movement was on the precipice of decline. Yet, the penitentiary movement was about to experience an extraordinary rush of energy.

In the mid to late 1820's there was a potent renewed interest in the penitentiary and the idea that it "should be entirely abolished would never again become a compelling sentiment." (Colvin, 1997, p. 95) The country was experiencing an economic boom and the movement was addressing and resolving many of the criticisms lodged at these relatively new institutions. Riots and disorder were coming under control thanks to the assertion of a rhetoric and practice of in-house discipline and the focused use of solitary confinement. New facilities made overcrowding less of an issue and the introduction of well-designed industry inside the prison calmed fiscal concerns. Institutionalization on a whole was being welcomed with wide open arms. (Rothman, 1971)

The prison movement spawned two competing systems of incarceration. Auburn Penitentiary, originally opened in 1817, became the model for one approach and in 1823 committed to the practice of total solitary confinement for all inmates except during the day when silent congregate work was strictly enforced. Eastern Penitentiary, the model for the Pennsylvania system (total isolation with work only done in one's cell) opened in 1829. By the 1830s, while debate raged as to which model was best, penal institutions were erupting everywhere. By 1834 16 out of 24 states had penitentiaries and 7 of the 8 that did not were slave states. (Colvin, 1997, p. 95) Incarceration was fast becoming the primary punitive practice. The movement was institutionalized.

Key Themes: Time to Ubiquity

Rapid Institutionalization -- The ideas and practices introduced by the movement are usually ubiquitous within twenty-five years. Institutionalization occurs very quickly.

Outcome: The Penitentiary or Prison Movement

The *outcome* determination conducted here is to assess the aftermath of the penitentiary movement. What is discussed below may not be emblematic of each and every correctional facility of the era, as each penal institution was unique, but it does reflect the overall landscape (in spirit and practice) generated by and left in the wake of the prison movement.

What was replaced

Public corporal punishment was supplanted by incarceration which quickly became the primary and dominant punishment practice. It is important to keep in mind that physical punishments were not dismantled entirely and that behind the prison gates they continued to be used not as punishment for one's crime but to forward the aims of the prison, be they institutional order or "education."

What was added

The prison movement changed the punishment landscape completely. A comprehensive national system comprised of institutions, bureaucracies, classifications, regimens, and procedures demanding time, staff, and money was organized for the first time. Punishment moved out of public view and a criminal class, named and separated from society, was established. This movement put into place a network of control on a scale never before imagined and that, thus far, has proved impossible to dismantle or significantly change. Specific highlights include the following:

- Punishment now separates offenders from family, community, & society.
- Centralized state punishment systems are put in place.
- Classification system -- categories are not just based on the criminal actions that led to incarceration but include assessments of behavior inside the institution.
- Convicts are 'processed' -- (physical data recorded, hair shaved, body cleaned, clothes replaced by uniform)
- Permanent records (on behavior, physical data, etc.) are generated and stored.
- Greater ingress -- now the body *and* the mind are targets and the offender is in the hands of the punishers for an extended period of time with no one watching.
- Punishment "net" -- with the advent of the penitentiary comes the birth of a system that can cull and clutch bodies for as long as it deems appropriate and that can target and pigeonhole groups selectively (with and without conscious intention).
- "Criminal class" -- offenders are now labeled or marked as criminal (distinct from those not in prison i.e., the innocent).
- Reinforced social divisions and prejudices -- 'the lower rungs of society' are now separated from society and classified as criminal, some more than others (inmates are disproportionately black, immigrant, and foreign-born), thereby producing and strengthening the ideas that some people are criminal by nature of who they are (race, class, ethnicity). (Colvin, 1997, p. 81)
- Hidden brutality -- behind closed doors cruel and inhumane measures are used for discipline or educative purposes.

Did it deliver on its aims

Movement rhetoric was quite grand. Prison enthusiasts asserted that crime and criminal behavior would be eradicated or dramatically reduced by this new punishment. Offenders would become productive citizens and souls reborn. A brutal system would be replaced by an egalitarian, humane, and benevolent one that would pay for itself. While no movement, even the most successful, delivers on all its pledges this one failed to meet a single principal aim.

- Self-sustaining -- prisons ended up being very expensive and a tremendous drain on the public coffers (it still is).
- Crime deterring -- Man, rational or otherwise, did not desist from criminal activity.
- Morally reforming -- Institutions proved to be places of moral corruption and cruelty.
- Meditative -- Solitary confinement proved impossible (overcrowding) and dangerous (insanity).
- Humane -- Long sentences with harsh stimuli proved detrimental to the mind, soul, and body.
- Benevolent -- The new system was harsh and merciless (no pardons, no oversight of practices, inmates had to do full terms and were at the complete mercy of the staff which applied corporal punishment freely and with brutality). "Punishments that had been denounced as barbaric when used in public before the rise of the penitentiary were now alive but hidden from public view." (Colvin, 1997, p. 103)
- Citizen producing -- People did not leave prison with prospects, skills, or connection to a community. Discipline and industry did not train so much as abuse and exploit.
- Equalizing -- The rich were not caught up in the punishment net and those from the

'lower rungs' were disproportionately enmeshed.

Key Themes: Outcome

Aims Undelivered & Punishment Grown -- The movement does not deliver on its aims. Little, if anything, of the former system is truly replaced (ideas or practices) though much is added. In its wake there are more mechanisms for actual punishment, deeper government ingress into the lives and bodies of convicted offenders, and a wider pool of people are caught up in the penal system. The nation's network of control is considerably expanded by the movement's efforts. Punishment is grown.

The Score: The Penitentiary or Prison Movement

By traditional sociological standards the penitentiary movement achieved delirious success. Significant gains were realized rather quickly as prisons were built in most states (often more than one institution per state) and quickly overtook other punishment practices by the century's second decade. By the end of the 1830's incarceration had supplanted all other sanctions. Movement actors and movement ideals were profoundly embraced by leaders of all stripes (community, economic, political, church) and the society at large. Deterrence via incarceration was a commonly held notion as was the belief that punishment should be purposeful, forward looking, and fair. Movement participants were handed important jobs, positions of prestige on sundry boards, and their vision touted as a prize example "American" ingenuity. The country's prisons were the pride of the nation as the movement was legitimized on all levels, its ideas, practices, and actors fully integrated and accepted by the host society.

Yet in just a few years the prevailing attitude regarding prisons was a pessimistic one. "By the 1850's, penitentiaries generally fell into a pattern of stagnation, growing

debt, corruption, and endemic disorder.” (Colvin, 1997, p. 107) Notably this did not rouse much of a response from the public or the reformers who propelled the practice into being. “There was little discernible public opposition to the decline in penitentiary organization. The gap between the promise of the innovation and the later performance did not spark outcries or remonstrances.” (Rothman, 1971, p. 252) The absence of action or commentary in the face of such terrific dereliction is remarkable. Though expressing a rich display of social movement “success” markers (tremendous gains and widespread legitimacy) the prison movement by all accounts was a profound failure. “[R]eformers had lost all hope of fulfilling the penitentiary's early promises of inmate reform and profitability. Instead these institutions declined into grim warehouses for criminals.” (Colvin, 1997, p. 30) In the final analysis this movement was a dismal success.

Key Themes: The Score

Dismal Success-- The campaign displays the markers of social movement success. These include evidence of literal gains or inroads for which the movement is directly responsible and a confirmation that both the actors and ideas associated with the movement attain legitimacy. Yet, despite these success indicators, there is no question that the movement is a failure.

THE ADULT REFORMATORY MOVEMENT

The the adult reformatory movement rose up in the middle of the nineteenth century which is also the point of origin for parole and the emergence of juvenile court, give or take a decade. The question then is why, or whether these are separate movements at all or rather part of one large wave of penal reform? Though they share a sociopolitical backdrop and certain ideological roots each is indeed its own campaign with discrete expression and evolution that led to different sets of bureaucratic procedures and systems. "Progressivism was not a unified movement" (Colvin, 1997, p. 173) Therefore they will be dissected and explored as the distinct, specific, and *regressive* social movements that they are, while honored as stemming from a shared general social movement.

The adult reformatory movement is responsible for introducing several ideas and practices into the punishment schema that remain integral to today's system one of which, the indeterminate sentence, gave rise to parole. Others include merit systems that reward inmates for good behavior, complex multi factor classification systems (of institutions and inmates), separate institutions for different "populations," the fetishization of offender types (the first timer, the youthful offender, the misdemeanor, the felon), drawing science into punishment, "treatment" programs, and the steadfast professionalization of penology. This was a marked change from what came before. Houses of refuge, built and populated well before the first reformatory opened, did separate young men from adult offenders and had some intention of being more educative than punitive. These institutions are seen by some (Pisciotta, 1994; Rothman, 1971) as a distinct penal movement and by others (Colvin, 1997; Foucault, 1977) as an addendum to the prison movement. But the ideals and practices associated with the reformatory are

not evident in the house of refuge. The survey here will focus on a singular campaign, the adult reformatory movement.

Alexander W. Pisciotto's exceptional book, *Benevolent Repression*, is a critical resource for the data that follows and his approach spurred many of the ideas found in this study. He urges readers not to underestimate the influence and consequences of this movement, taking great care to point out its grave and oppressive legacy. Pisciotto goes on to ask "Why do we continue to promise benevolent reform but deliver benevolent repression." (1994, p. 6) His is a vital query, one quite similar to this study's purpose, but his answers focus on the ulterior intent of movement activists and the underestimated power of institutions. His characterization of the reformers as cunning repressive masters ("successful public relations and marketing campaign masked a repressive class control agenda."), profoundly underestimates just how much these movement participants believed in the benevolence and humanity of their ideas, innovations, and actions. (Pisciotto, 1994, p. 7) They did not calculatedly aspire to suppress the "dangerous classes" so much as *train and transform* those not fortunate enough to have been socialized into proper middle-class Protestant values and lifestyle. Yes, some may have been driven by a desire for power but this is true of certain actors in all social movements. The social landscape and power dynamics explain part of the story but still leave much unaccounted for. As for Pisciotto's contention that the foul aftermath of this movement also relates directly to the toxic nature of institutions again only tells a partial tale. To fully understand how such benevolent intent repeatedly creates enhanced long-lasting brutal punitive control, an outcome entirely disparate from the one intended, one must look at the *movements* that propel these innovations and ideals into the mainstream.

Conditions of the Host Society: The Adult Reformatory Movement

During this period the nation was becoming exceedingly urban and industrial. Immigration was on the rise. Women are moving into the industrial workforce, getting educated at colleges and universities, participating in (and often spearheading) social campaigns and entering the public sphere in record numbers. Conflicts about gender power, access, and behavior arose. Urban political machines and their accompanying ambiance of ward bosses, ethnic power bases, and political favors came into being. Cities were ill equipped for the rapid growth, struggling with issues of housing, gangs, riots, and sanitation. There was a growing urban middle-class. Increased class awareness yielded antagonisms, labor struggles, and, among the middle and affluent classes, a fear of the poor. As the nineteenth century came to a close immigrants were predominantly non-English speakers from southern and eastern Europe. Their cultures, languages, and traditions were foreign to native born protestants and not steeped in “the cult of domesticity.” (Colvin, 1997, p. 169) These populations were quickly judged aberrant, coarse, threatening, and frightening. An evolving, and soon to be dominant, perception emerged one that equated industrialization, urbanization and immigration with delinquency, moral decay, and poverty. Chaos, crime, the breakdown of family, and social disorder came to be unshakably associated with city living.

Amid this changing landscape was an intellectual and ideological move toward science, professionalization, and social liberalism. Unitarianism competed with evangelical modern light theology. Secularism was on the rise. There is “an increasing movement toward rationalization of all aspects of American life.” (Colvin, 1997, p. 155) The idea of a rational free man was superseded by a belief in determinism (biological and environmental) which held that elements in our bodies and environments determined who

we are (poor, criminal) and how we behave (criminally, lazy, slovenly). Multi factor positivism arrived. It was believed that with a concerted, organized, systematic, (ie 'scientific') investigation these determinants could be identified and with proper "retraining" a different outcome is possible. One could be quite literally re-formed by a controlled environment. Of course, biology could not be overcome entirely. Ideas of heredity and eugenics came on the scene and produce nefarious, invasive, harming social policies (some of which involve or capitalize on the evolving penal landscape).

"Humanitarian sympathy for the poor, which prevailed among charity workers in the 1830' and 1840's was replaced by a hard-nosed, fact-finding, business orientations." (Colvin, 1997, p. 161) An "efficient benevolence" emerged, one focused on details, bureaucratization, and processes. Social work moved from a philanthropic foundation to a scientific one. (Colvin, 1997, p. 155) The drive for order fueled campaigns of many stripes including temperance, social purity, eugenics, white slavery, anti-immigration, and the reformatory.

There appeared, to the professional middle class, a desperate need for "regularity, rationality, and careful management." (Colvin, 1997, p. 173) Society's virtues were in need of saving and this was to be done thru "scientific charity." (Colvin, 1997, p. 160) People were not entirely to blame for their lot. The lives of poor, the criminal, and the fallen needed to be probed to discover causes and then "fix" them. The prison had degenerated into a brutal warehouse and its promises of deterrence and spiritual renewal no longer held currency. The penitentiary experiment was a failure. A crime crisis was afoot, not merely violence and property crime but the offense of men, women, and children living outside Protestant norms. In the 1860's there was a sharp rise in female "criminality" and crimes of the poor. Women were being convicted at rates higher than

men and usually arrested for suspicion of prostitution though they were often convicted of drunkenness, idle and disorderly conduct, and vagrancy. (Colvin, 1997)

Out of this 'disorder' came a "new penology" with fresh ideas about the origins of transgression and how to address it. America's new "penologists" spoke with authority and with the weight of experience and science behind them. They commanded attention and America was more than prepared to hand the punishment problem over to professionals. The American Prison Association had its first annual meeting in 1870 where it spelled out 37 principles that would provide the bedrock ideology for the reformatory movement and inform the new institution's design. The prison must be reformed, inside and out.

Key Themes: Conditions of the Host

Bounded & Disappointing Punishment System -- A penal system in which the boundaries are fixed (who is caught in the net and what is done to them is constant) and one that inspires disappointment, either because it does not 'cure,' resolve, or fix the problem of crime and criminality, or does not meet the social norms of decency regarding the treatment of human beings.

Carriers: The Adult Reformatory Movement

Those who laid the social foundation and ensured support for the ascension of the adult reformatory, the movement's *carriers*, were Protestant men and women (and a few Quakers) who had committed their lives to either penology (as emerging professionals in this "new" field) or social activism (moving from one campaign to another), or both. They came from a tradition of patronage, advocating for the *other*, and did not see

themselves or those like them as potential beneficiaries of the reformatory.

Humanitarians, opposed to harsh cruel punishment, they saw their approach as non-punitive, benevolent, scientific, and educational. They were equipped with organizing skills, education, righteous determination (either from religious values or the backing of science), and money, coming as they did from the middle and upper classes. They had tremendous access to institutions, legislators, and governors. The actions and ideas of the following individuals gave impetus and direction to the adult reformatory movement.

One can be assured that no matter what type of reformatory account-historic, analytical, or theoretical-one name will always be prominent, that of Zebulon Brockway. He was without question the great patriarch of the reformatory movement, both in terms of its ideas and its implementation. Born in Connecticut to a wealthy merchant father and into a devout, strict Protestant household, "Zebulon Brockway was raised to be a Christian gentleman." (Pisciotta, 1994, p. 28) In 1848 he went to work as a clerk in the Wethersfield Prison (keeping records -- a skill he would come to be known for) and was promoted to assistant superintendent at a penitentiary in New York and went on to several other administrative prison posts until 1861 when he became the first superintendent of the Detroit House of Correction. "This assignment was instrumental in propelling him to the forefront of American corrections." (Pisciotta, 1994, p. 28) There he initiated novel programs (many would eventually become the template for the reformed prison, the reformatory) and became an active reformer of renown, organizing, lobbying, and speaking out for penal change. Zebulon Brockway was a new breed of administrator, a professional penologist.

Brockway claimed to be pioneer in both the development and application of the "new penology" and everyone believed him. In 1868 he opened a "House of Shelter" for

women offenders that was to be a precursor of the adult reformatory. Emma Hall was the matron (a tremendous innovation) though Brockway was considered the overseer of both institutions and she had to answer to him. A primary leader of the American Prison Association (a society that helped cultivate and secure the climate a professionalism) he headed up the first annual conference in 1870. It was here that the ideological and logistical framework for the adult reformatory ripened and was broadcast internationally. In 1877 Brockway opened Elmira, the first adult reformatory, and the movement's archetype. He was adept at public relations and once Elmira opened initiated a system of distributing reports that would greatly help legitimize and publicize the merits of the reformatory. He did not, however, act alone.

Women who had participated widely in relief efforts during the Civil War found themselves idle but were unwilling to return to the circumscribed private sphere of the home. They were energized by their competence and new found capabilities but needed a new focus. They found it in prison reform. In particular, these women turned their attention to women 'offenders' and efforts for the creation and management of reformatories exclusively for females. Their war work had trained them well and these women were well -versed in efficiency and order. Some were driven by religiosity and moral fervor others by an equally intense concern for organizational structure and "maternal state activities." (Colvin, 1997, p. 168) Women were moving from irrepressible do-gooders to professionals with careers in benevolence. (Colvin, 1997)

There were two varieties of women reformatory carriers. The first, born in the century's first decade shared a foundation of religious zeal and were motivated almost universally by morality. This older group included Abby Hopper Gibbons and Elizabeth Buffum Chace, each a veteran of several other movements. They visited prisons and then

publicized concerns over the conditions they found there and what this was doing to women inmates. Chace was appointed to a prison oversight board and many other women took her lead. The second group, much younger, was born mid-century and came of age in an era dominated by ideas of organizational development, efficiency, and scientific clarity. To be sure, they too were faithful but religiosity, a given, was now much more placid and shared the stage with other ideas (seen as compatible). Josephine Shaw Lowell, from this second tradition, came from a radical well connected family, was appointed to the NY Board of Charities, and developed women's reformatories in two states.

Other key activists who created the support for the reformatory movement include the Coffins, a Quaker couple who publicly advocated for separate female institutions; and in 1873 they were successful in creating the first women's facility, entirely discrete from men's, and run by a woman. Enoch Cobb Wines and Theodore Dwight, members of the New York Prison Association wrote the initial report calling for a new institution, the adult reformatory. Hannah Chickering and Ellen Cheney Johnson had done work for soldiers' wives and dependents and with help from Boston's wealthy they opened the Dedham Asylum for Discharged Female Prisoners. Dr. Eliza Mosher, a physician, was the first professionally trained woman to run a punishment facility, the Massachusetts Reformatory for Women, and brought a "scientific orientation" and expertise from her work with juveniles to the job. (Colvin, 1997, p. 164) A key ingredient found only in women's reformatories was a devotion to domestic science. This was promoted by Catherine Beecher and quickly adopted into women's facilities.

In the movement's early years, female reformatory pioneers and activists encountered problems that their male counterparts did not. They found themselves and

their ideas ignored and often quit the boards to which they had been appointed. When women were given administrative positions they were not allowed to do their work without male oversight and input and many found themselves so encumbered they quit their jobs. (Colvin, 1997) Eventually, as the movement grew, women were given greater autonomy, authority, and freedom to head up penal institutions and boards.

Key Themes: Carriers

Holy Rollers, Credibles, Patrons, & Professionals -- Those who initiate and assemble the social change movement are religious, educated actors with access to power, means, & the penal system. They are not on the punishment end of the penal system nor will they, or those like them, be personally reached by changes to that system. These carriers are working benevolently to save, rescue, deliver, or heal the *other*. Their standing in society makes them credible to the host, they are legitimate from the start.

Membership Distribution: The Adult Reformatory Movement

Inner Ring

This movement's principal leaders were professional penologists, both men and women, and wealthy female activists who participated in a variety of social campaigns. These benevolent activists generated the ideas about the form and function of the adult reformatory. They worked to publicize these ideas, mounted political, intellectual, spiritual, and scientific support for them, and pushed hard to actualize them. Often they proved to be the very same people who oversaw and managed the institutions and innovative practices they fought to build. These reformers were the core from which the reformatory movement evolved. Examples include: Zebulon Brockway, Elizabeth Buffum Chace, Josephine Shaw Lowell, Catherine Beecher, and Abby Hopper Gibbons.

Middle Ring

There is considerable cross over between the two inner most rings. The distribution does not cover much of a spread. Many of the “idea men/women” went on to implement and control these emerging facilities similarly social activists came to oversee the reformatories. These two circles seem to cover a rather small group of innovators and reformers who knew or at least knew of one another. Sarah Smith, a Quaker friend of the Coffins who used to study under a Brockway protégé became a superintendent. Rhoda Coffin, who long advocated for separate female facilities became the first women president of the board of managers for the Indiana reformatory run by Smith. Zebulon Brockway, the father of the movement, is completely in charge of Elmira from its inception and a big wig in the American Prison Association. This small cadre of activists were quite connected and were able to exploit their ties to those with money and political power and make possible a reformatory boom.

This movement’s most active participants fell into two categories. The first was made up of those employed by the prison system whose familiarity with the deficient penitentiary drew them to the concepts and strategies espoused by the movement’s leaders. They stepped up to build, oversee, and administer these new institutions and as professionals were welcome with open arms. Sarah Smith, in Indiana in 1873, became the first superintendent of a women’s reformatory. She had studied penal methodology from Emma Hall who worked for Brockway in Detroit and had become a reformatory believer. Professional penology at this time was evolving into a specialized field and associations, conferences, and publications helped to coordinate and solidify collective action.

The second category of participants active at this level was comprised of social

workers, humanitarians, and local activists interested in penal reform. Most had been active in the public sphere already. They joined boards, founded service agencies like the *Dedham Asylum for Discharged Female Prisoners* and the *Bureau of Social Hygiene* (funded by John D. Rockefeller who was brought in by Katherine Bement Davis “a model of the new professional social worker”), visited institutions and publicly reported what they saw in order to get the word out. (Colvin, 1997, p. 177) Charles and Rhoda Coffin, a Quaker couple, both addressed attendees at the American Prison Association meeting in Cincinnati. (Colvin, 1997) Josephine Shaw Lowell was appointed to the New York Board of Charities to steer it toward issues of women’s punishment. Due to shaken confidence and a corrections crisis, the New York Prison Association appointed Enoch Cobb Wines and Theodore Dwight to investigate the prisons. Their 1867 report, a movement milestone, documented terrific abuse and waste and called for a new institution, an adult reformatory. (Pisciotta, 1994)

Outer Ring

The public certainly shared the movement’s distaste and cynicism for the penitentiary, but as for an interested public, “fair weather friends” as Mauss called them, they were few in number. After reformers applied the hard sell governors, legislators, and wealthy patrons gave what they could to the movement, money and power. Many of the financial benefactors embraced movement ideology but saw the reformatory as part of a larger social crusade. Their commitment and interest in the reformatories and penal change was only a portion of their larger endeavors. They did not demand accountability or watch the movement closely. As for the politicians, their vested interests centered around saving face should a reformatory or its programs be called into question. For

example, as word of brutality and severe cruelty leaked out of Elmira the governor called for an investigation. The forthcoming report was scathing. The governor then created a new committee to investigate the report and all was quickly sanitized. Brockway stayed on as superintendent and Elmira remained a national example and a source of pride. There was not much, if any, of an “interested public” participating in the reformatory movement. The outer ring consisted of wary politicians and a less than engaged citizenry.

Key Themes: Membership Distribution

Insular & Limited -- Movement membership encompasses a small group of actors generally located in the two inner rings of the distribution. There is virtually no “interested public” participating in the movement and the outer ring of the distribution is thin or imperceptible.

Early Rhetoric: The Adult Reformatory Movement

Two ideological threads framed and fueled the reformatory movement. One was the belief in moral uplift particularly the drive of middle and upper class Protestants to ennoble those that were weak, fallen, and unschooled in righteous ways. The other force, equally potent, was a growing faith in the scientific method. Organization, efficiency, and structure were fast becoming reigning ideals. Elements from each doctrine informed the way the movement critiqued the status quo, constructed ideas about criminality, and promoted the innovations for which it fought.

According to reformers, fixed long term incarceration was crushing the lives of those condemned to such a fate. These already ‘damaged’ folks were being further harmed by such an approach, especially the young who were more pliable or not yet fully

formed. Locking people up in terrible conditions and subjecting them to random violence and immorality served only to hurt the offenders and the communities to which they would return. No positive end could come from punishment comprised of spite and suffering. Crime would not be reduced and reformation would not be achieved. The prison was a cruel harsh place filled with brutality and impurity, they asserted, and was in desperate need of re-formation. Critics of the penitentiary declared that its effects were dangerous and inhumane and not befitting a society that knew better and could do so very much more.

This reformatory movement was built on new ideas about the origin of crime, driven, informed, and molded by the growing prominence of a scientific platform. Offenders were not depraved, reformatory activists avowed, but more like wayward unrestrained children in need of firm focused education and oversight. It was not their fault that they did not conform, were not 'good.' Man, or woman, was not a free rational agent but rather shaped to violate the law. Such behavior was determined by factors outside a person's control such as the environment one grew up in or the biology one inherited. This meant that people (certain people that is -- white, young, misdemeanants, first-timers) could be reprogrammed, or trained, to be law abiding orderly citizens. The weak and fallen must be treated with tenderness and care and be remade. Reformers thus demanded a new type of institution whose programs and routine, if designed properly, would cultivate self-control and habituate the criminal into a productive lawful subject ready to join "the honest working class." (Pisciotta, 1994, p. 19)

The movement's rhetoric claimed that the reformatory would be the "the elixir for deviance and disorder." (Pisciotta, 1994, p. 22) This new institution would reflect society's true values of decency, Christianity, and goodness. With a design and practice

rooted in science offenders would be rehabilitated into productive citizens, gentlemen and gentlewomen. Inmates would be prepared for the "position assigned to them by god." (Rafter cited in Colvin, 1997, p. 163) Professional penologists, the movement's champions, asserted that certain principles and procedures as the blueprint for this benevolent and scientifically inspired punishment methodology.

The adult reformatory should be in the countryside, a pastoral atmosphere, as the city and its chaos produce crime and criminal tendencies. Instead of an institutional warehouse setting inmates should be housed in small cottages with homelike ambiance. A merit or point system would allow offenders to know when they were making progress and reward them for doing so. Lapses would result in loss of gains or demerits. Release should be dependent on true reformation. Emancipation should be conditional, meaning fixed sentences needed to be replaced by indeterminate ones. Definitions of various offender types (dangerous, youthful, fallen, etc...) needed to be developed and refined to assist in ordering the institutions and the inmates house inside their walls. Treatment (to retrain or cure), in the form of mandated programs and daily regimen, would be tailored to each offender's gender, diagnosis, and specific 'defects.' Offenders would be completely segregated by gender, age, and degree of criminality. Discipline was permissible only for the purpose of reformation, not for spite or to inflict suffering. Individual treatment regimens would be designed to best assess incoming inmates and progress gauged by comprehensive examinations, interviews and background checks. After comprehensive documentation an inmate would be assigned a class, an industry and a suitable cell. Religious services would be mandatory. More than just a bible and time to reflect inmates would be given actual religious instruction.

Reformatory advocates had a very definite analysis regarding women. They must

not transcend the boundaries of their domestic roles. If they appeared to be outside the normative female parameters (as defined by middle class Protestants) they were considered deviants, criminals, and in need of behavioral reintegration into their proper place. Women offenders needed 'nurturing' and guidance in a virtuous direction and this would occur in separate facilities run by women (a radical idea).

The movement's rhetoric touted the reformatory as purposeful humane punishment that benefited both the offender and the society. Its design principles honored scientific methodology, professional expertise, productivity, efficient operations, and "godly" social prescriptions. A punishment schema, one that fit the criminal not the crime, would (unlike the failed prison experiment) work. (Pisciotta, 1994, p. 18)

Key Themes: Early Rhetoric

Cruel & Ineffective Status Quo. Fresh Criminal Theory. Grandiose Claims -- Movement rhetoric decries the status quo as inhumane and ineffective, it incorporates a new "narrative of criminogenesis," and proclaims extraordinary cure-all powers. The grandiose claims declare that the innovations will cure crime and generate a more cohesive society.

Repertoires: The Adult Reformatory Movement

The reformatory movement's strategy was of varied although traditional means. Reformers worked for legislative change that would allow for the implementation of their innovations. This included lobbying ("bombarding legislators with letters and pamphlets"), cultivating political connections, and joining boards. (Colvin, 1997, p. 166) "Gibbons and Lowell *convinced* the legislature to establish a third New York reformatory." (Colvin, 1997, p. 167, emphasis added) Elizabeth Buffum Chace's

appointment to the state board overseeing prisons “encouraged other women to join state boards of charity that oversaw prison conditions in northern states.” (Colvin, 1997, p. 159) Activists investigated the situation inside prisons and used that as ammunition to push through change. “The governor and a legislative committee confirmed these charges and moved to establish a completely separate facility that would house women criminals and delinquents girls.” (Colvin, 1997, p. 162)

The reformatory’s champions created organizations, service agencies, and conferences. The Dedham Asylum for Discharged Female Prisoners tried to help women who were released from prison to become upstanding ‘good’ citizens. In 1869 there was a Boston conference on women offenders and in 1870 the infamous American Prison Association convened its first annual conference in Ohio. These men and women fought not only to institute new practices but to head up operations. Many reformers such as Zebulon Brockway and Sarah Smith become the first superintendents of the new institutions they clamored for.

Tactics also included public relation campaigns, professional reports, and opening the facilities for outside visitors, usually legislators or reformers. Brockway in particular conceived of a rather sophisticated campaign that involved wide distribution of periodic reports containing detailed data on the workings of Elmira. In an historic first documents that asserted “scientific proof” of success were produced and disseminated. These used actual numbers and individual cases to verify that the reformatory works and that the claims are true. Though still anecdotal and hardly conforming to today’s scientific rigor, such documented authentication marked a new trend that remains to this day.

Key Themes: Repertoires

Narrow, Non-Confrontational, & Practice Fixated -- The movement employs few means to forward its aims. These are exclusively traditional, non-confrontational avenues of social action such as generating legislation, promoting anecdotal successes, and lobbying. The chief tactic is the creation and administration of programs and practices that reflect or incorporate the movement's agenda. Program implementation quite literally dominates movement strategy.

Time to Ubiquity: The Adult Reformatory Movement

The 1867 *Report on the Prisons and Reformatories of the United States and Canada* called for a new type of institution, an adult reformatory. The goal, the report asserted, should be rehabilitation achieved through a new "science of punishment" that included education, religion, a de-emphasis on institutional profit, supervision for released inmates, and a resolution of sentence inequalities. (Pisciotta, 1994, p. 12) New York's governor endorsed the report and in 1869 the legislature passed "An Act Authorizing the Appointment of Commissioners to Locate a State Penitentiary or Industrial Reformatory." (Pisciotta, 1994, p. 11) A site was selected. Commissioners bought 280 acres in Elmira and hired an architect. In 1870 the New York legislature passed a law addressing who would enter the new corrective institution. Commitments would be limited to male first-time offenders between sixteen and thirty. Though the act mandated certain types of labor there was still a lot of questions as to the design and structure of the adult reformatory.

1870 marked a critical moment in the reformatory movement. Reformers convened the first national meeting of the American Prison Association in Cincinnati,

Ohio. Tens of professional papers were presented to an international attendance. The conference was effective not just in gathering enthusiasm and support for a reformatory movement but in concretizing the specifics of this innovative facility. *A Declaration of Principles* with 37 distinct points was produced. This gave language, ideology, and structure to the growing movement and clearly defined its goals.

Two years later, the New York legislature approved the Elmira design (after the 1870 conference details were easier to conceive), moneys were appropriated and construction began. "At this stage, New York's penal reformers had no inkling that they were on the verge of building a model correctional institution which would capture the attention of the world and reshape the American criminal justice system." (Pisciotta, 1994, p. 12) By 1876 Elmira was just about ready to open but "lacked a clear mission." Commissioners offered the superintendent position to Zebulon Brockway, "one of the nation's most respect penologists." (Pisciotta, 1994, p. 13) "The American criminal justice system was on the verge of a paradigmatic revolution." (Pisciotta, 1994, p. 13) In 1877 Elmira opened with Brockway at the helm.

In 1873 the Indiana Reformatory Institution for Women and Girls opened. Though it was a facility for felons, had fixed terms, and provided no formal education it was the first to offer "gender-stereotyped atmosphere and treatment" comprised of laundry, knitting, sewing and a "homey" atmosphere where discipline involved "motherly reproofs and reprimands." (Colvin, 1997, p. 163) This quality would come to be endemic to all women's reformatories and by many accounts is with us today (the one female jail on Riker's Island is painted pink). In 1877 the Massachusetts Reformatory Prison for women opened. In 1887 the first adult women's facility with cottages opened in New York. In 1893 the Western House of Refuge for Women opened in Albion and it

was the first to break entirely from a custodial model. Bedford Hills opened in 1901. Five more women's reformatories were built between 1873-1901.

No more women's institutions were built for about a decade, as the movement was confined to New York and Massachusetts "until the white slavery scare and the surge of anti-immigrant sentiments." (Colvin, 1997, p. 179) Then a national swell saw eleven women's reformatories built around the country between 1913 and 1921 with Albion and Bedford Hills serving as national models. As the movement advanced from state to state competing designs emerge. Two new models emerge promoted by men equally steeped in Protestant ethics and committed to reformatory ideals. It was in the details that the systems varied. Otis Fuller in Michigan preferred fixed sentences (note that parole was *not* part and parcel of the reformatory movement ideology), good-time but no merit system, and labor over education. His model also accepted felons. Fuller, unlike Brockway, did not embrace determinism and believed that free rational choice and hedonism led to criminal action. In Massachusetts, Gardiner Tufts and Joseph Scott emulated the Michigan system with regard to population, but the New York system with regard to the day to day regimen. (Pisciotta, 1994)

In all, twenty adult reformatories were constructed throughout the nation between 1876-1920 (including those in Pennsylvania 1889, Minnesota 1889, Co. 1890, Illinois 1891, Kansas 1895, Ohio 1896, Indiana 1897, Wisconsin 1898). The movement already exercised a solid command of the national stage by the beginning of its formative years in 1889. By the end of the century Brockway was the most "respected penologist in the world" and Elmira the most influential institution in the land. (Pisciotta, 1994, p. 22) The reformatory movement was completely institutionalized. Its leaders and ideology fully embraced (legitimization) and gains, though gradual at first had snowballed by the

century's end. Many of the reformatory's practices as well as the ideology supporting them moved beyond these new institutions into already existing prisons and today remain evident in all manner of correctional facilities.

Key Themes: Time to Ubiquity

Rapid Institutionalization -- The ideas and practices introduced by the movement are usually ubiquitous within twenty-five years. Institutionalization occurs very quickly.

Outcome: The Adult Reformatory Movement

This movement, like most, was not linear. Practices evolved somewhat differently across the country and the movement had two arms, one reaching out toward the male "youthful" offenders and the other toward women. They were absolutely born of the same roots and shared a common ideological foundation. What follows is a determination of the overall impact and influence of the reformatory movement as a whole on the American penal landscape and a juxtaposition of the movement's aims with its outcome.

What was replaced

Fixed sentences were replaced by indeterminate ones, although offenders who were in prisons and penitentiaries did not receive the possibility of a shorter term or an early release. Eventually fixed sentences faded from use throughout the criminal justice system but never fully disappeared and evolve into various related forms of finite prison terms such as truth-in-sentencing (a policy in which all inmates must serve a substantial percentage of their original sentences). Idleness was replaced with a variety of education and training programs. Again this was not true for those who ended up in the prison

though eventually this too moved into the mainstream of all correctional facilities. Vast institutions were replaced in some instances and locations by cottage style buildings in a country settings (many still in use like those in Nebraska's single women's prison), but again only the reformatories were constructed in this fashion and larger industrial buildings have yet to be eliminated. Correctional institutions are now customarily located in remote areas though this has less to do with penal ideology than practical, fiscal, and political concerns.

Before the movement's evolution offenders that were 'rescued' by the reformatory movement (women, first-timers, misdemeanants, youthful offenders) were in many cases, before the movement's evolution, incarcerated in prison serving long terms in a stark brutal atmosphere. Many of the laws these criminals broke were not terrifically serious (vagrancy, public drunkenness, prostitution, petty thievery) though at the time were of great and growing concern to a disorderly nation. In many cases terms in the reformatory *were* shorter and more easeful than those served in a penitentiary, but it is equally true that these types of crime were now policed and adjudicated with a new vigor thanks in part to a reformatory ideology that asserted that these people could be 'trained' to be upstanding citizens and a prison system that was filling up with a number of felons.

What was added

The reformatory movement forever altered the country's penal landscape. A multitude of common beliefs and punishment practices can be traced to this source as can much of today's correctional vernacular. Separate facilities for differently and elaborately classified inmates, individualized "treatment" plans based on 'professional' diagnostic procedures, in-house merit systems, early release programs, assorted educative programs,

and all variety of accompanying bureaucracies originated with this social change movement. The reformatory movement launched and legitimized the fusion of science and penology, ushered in a deterministic view of criminality, and begot a punishment system preoccupied with the criminal him/herself as much or more than with the crime. "The rise of the adult reformatory movement resulted in a wider, deeper, stronger, more sophisticated American network of social control." (Pisciotta, 1994, p. 27) Specific highlights include the following:

- Institutional classification system - The development of separate facilities for men, women, misdemeanants, youth, and felons.
- Offender typology -- An ordering of offenders such as first-timer, misdemeanant, youthful, or female.
- Diagnostic methodology - The use of "scientific testing, means to probe an inmate's background and body emerge in order to develop a rehabilitative plan just for her/him.
- Individual treatment procedures - Discrete characteristics including gender, diagnosis, race, and ethnicity become the base for determining 'treatment'.
- Strengthening of prejudices and stereotypes -- Rehabilitation considered possible only possible for some and the doors to the reformatory were not open to the "dangerous classes" (men and women of color, recidivists, felons) who the movement affirmed were incapable of reformation, learning, or progress.
- Reinforcement social hierarchies - This movement asserted that each person had a prescribed (by god and country) place in the social order based on gender, ethnicity, race, class, or religious affiliation and it was to these ordained stations that one would be constrained, coerced, socialized, trained, or reformed

- In-house deportment assessment -- The introduction of means by which to gain or lose status and thereby improve or downgrade one's living conditions on the inside.
- Conditional early release - Release is earned through parole or good-time and it can be revoked.
- Multi-factor positivism -- Behavior is determined by factors outside the offenders control (environmental or biological) 'determine' criminality.
- 'Correctional' argot -- New language with which to identify those that break the law: 'rehabilitated', 'born criminal', 'habitual', 'dangerous'.
- Expanded criminalization and new criminal classes - New systems to label and order criminals: 'the fallen woman', 'the dangerous youthful offender'.
- Scientific criminology - 'Scientifically' designed and driven treatment regimens, cures, data, 'professional' evaluations. Science and its "purity" allow for tremendous ingress into an inmates, past, body, future, and mind. Eugenics calls for sterilization. Today we see bail denied to those deemed, through scientific evaluation, 'high risk' or 'perceived dangerous'.
- Professional penology and penologists - Enhanced status, credence, and power awarded to those employed in the punishment system.
- Programming -- Instruction, training, and indoctrination are systematized and mandated.

Did it deliver on its aims

Like most movements this one espoused exalted objectives. The reformatory was to be "the final reform panacea and the key to America's crisis in crime and criminal justice." (Pisciotta, 1994, p. 32) Fallen and weak humans would be remade into

productive righteous citizens and social order would be reinstated. Punishment would no longer be brutal or inhumane but rather purposeful, kind, individualized “treatment” serving to socialize those in need of such instruction. The penal harms associated with the prison (corporal cruelty, victimization, consequences of long term incarceration) would be eradicated as the penitentiary was remade. Alas, while the impact of the movement is indisputable so too is how far it deviated from its stated intent. The reformatory scooped up people who would not have necessarily been locked up, primarily the young, first timers, and women, and subjected them to isolation, considerable physical violence, and “re-training” regimens that were profoundly invasive and overbearing in their commitment to a singular idea of what it is to be ‘good’. (1994, Pisciotta) Below is a review of some specific claims and how they fared:

- Create order -- Crime did not fade away nor was tranquility restored. Many who would have been left alone were now caught up in the criminal justice net.
- Socialize the uncivilized -- Inmates did not return to society with new found skills. In the case of women, inmates were trained and forced to be domestic servants for the upper classes. People were confined and coerced into a social order that did not benefit them.
- Provide kindly correction, tenderness, and care -- Brutal beatings and forced ‘training’ were commonplace.
- Generate shorter sentences -- Indeterminate terms of incarceration, for the most part, were just as long or in many many cases longer than the fixed term would have been and inmates were now subject to a mercurial board. Early release turns out to be a mechanism for control and persecution not relief and mercy.
- Rescue reformable whites -- The adult reformatory was intended for whites only

but people of color were soon subjected to its control, “prison science and the new penology were more stigmatizing, humiliating, and painful for minorities.”

(Pisciotta, 1994, p. 149)

- Provide a pastoral and homey atmosphere -- Reformatories become “ineffective and brutal prisons.” (Pisciotta, 1994, p. 103)
- Tailor programs and daily regimen -- Emphasis was quickly placed on custody and control throughout.

Key Themes: Outcome

Aims Undelivered & Punishment Grown -- The movement does not deliver on its aims. Little, if anything, of the former system is truly replaced (ideas or practices) though much is added. In its wake there are more mechanisms for actual punishment, deeper government ingress into the lives and bodies of convicted offenders, and a wider pool of people are caught up in the penal system. The nation’s network of control is considerably expanded by the movement’s efforts. Punishment is grown.

The Score: The Adult Reformatory Movement

By the turn of the century Brockway was the most “respected penologist in the world” and Elmira, the country’s first adult reformatory, the most influential institution in the land. (Pisciotta, 1994, p. 22) To anyone keeping score this social change movement appeared to be a rousing success, especially if one is using traditional sociological markers. Gains, though gradual at first, had snowballed by the end of the nineteenth century and multiple reformatories could be found in most states. These new institutions were the nation’s first punitive response to a criminal offender. Indications that movement leaders and ideology were embraced, and thus legitimized, by the host society

are exceedingly evident. Indeterminate sentences, a hallmark of the movement, were mandated by law around the country. The belief that criminality is determined by various factors beyond an offender's control became a preeminent conviction informing national and local policies as well as personal choices in arenas far beyond criminal justice (healthcare, city planning, child rearing). The women and men associated with the reformatory movement were awarded powerful and respected positions throughout the criminal justice system (superintendents, seats on oversight boards, planning committee memberships). A few enjoyed international renown as wise penal experts and their opinions were sought out by government officials and the public at large. This movement made a dramatic impression on the penal landscape and expresses success signifiers in spades.

However, not long after being the toast of town the world over, reformatories lost their luster. “[B]etween the years 1915-1922 [they] were plagued by poor management, scandals, maltreatment of inmates, and even riots.” (Colvin, 1997, p. 181) After 1920 reformatories deteriorated into brutal custodial institutions with “reformatory trappings.” (Colvin, 1997, p. 181) Yet, little comment can be found from the movement's champions. Critics of the day and modern historians agree, this movement was a bust. It failed to deliver on its promising claims and managed only to develop more of what it aimed to replace: violent human warehouses. In the final analysis this movement was a dismal success, a “triumphant defeat”. (Pisciotta, 1994, p. 148)

Key Themes: The Score

Dismal Success-- The campaign displays the markers of social movement success. These include evidence of literal gains or inroads for which the movement is directly responsible and a confirmation that both the actors and ideas associated with the movement attain

legitimacy. Yet, despite these success indicators, there is no question that the movement is a failure.

THE PAROLE MOVEMENT

Parole, though part of the reformatory plan, quickly went beyond the confines of the reformed prison. The reformatory used parole but the practice did not define such institutions and the opposite was also true. In many states adult reformatories did not employ a system of early release at all and by 1900 twenty states had legislation that allowed for, often demanded, indeterminate sentencing of all offenders and parole in all its penal institutions. Though these two specific benevolent movements stem from the same general social movement known as Progressivism, each developed independently and had its own precursors, logic, champions, ideology, mechanisms, and life course. Parole is a particular set of processes and practices, fueled and shaped by particular theories about criminality and punishment, that allow for and inform who should be granted conditional freedom. Parole is often mistakenly combined with probation, conditional freedom *in lieu* of incapacitation, (which also developed during the same era). Though intrinsically linked to the indeterminate sentence, parole is undoubtedly a distinct penal change movement with consequences all its own.

There is no definitive historical account of parole and within the criminal justice literature, unlike the other benevolent penal reforms in this study, there is no singular volume of centralized data on the parole movement per se. Some scholars (Rothman, 2002; Simon, 1993) suggest the movement has been underestimated and underexplored. The actual movement itself may appear on its surface small or merely a part of other more substantial movements but parole's remarkable influence and legacy are undeniable.

“No change that progressives brought to criminal justice had more significant consequences than the system of parole under an indeterminate sentence.” (Rothman, 2002, p. 159) Like other penal reforms parole has been deemed a failure by virtually all who write about it and it is commonly believed to have produced longer sentences and have fallen short on all its aims including reducing long sentences, cleaning out prisons, effectively selecting and classifying inmates, as well as supervising those released.

Almost from its inception parole enjoyed the benefit of little opposition though the police were not necessarily in favor of it. Ironically, from the start it was prisoners alone who saw how capricious and dangerous this new system of extended and highly discretionary governmental control was.

The roots of parole are found outside the United States and first took hold mid-nineteenth century in the British penal colony on Norfolk Island. The American movement came into prominence at the end of the nineteenth century and marked the dawn of community corrections. Over time parole became *the* primary means by which inmates of all stripes are released and, though the course of parole has not been smooth or linear, this remains true in many states to this day. *Poor Discipline*, Jonathan Simon’s seminal exploration of parole, identifies a distinct “clinical parole” movement that began, in his estimation, in the 1950’s. (1993) In SM parlance this would be a revived movement and will not be discussed here, though I suggest that it too follows a regressive path and were we to outline its dimensions we would find the characteristics that have been identified here as those comprising the RRP.) The parole movement is critical to this study and its career effectively validates the regressive SM model as well as provides critical details and evidence toward constructing the profile of such problematic movements.

Conditions of the Host Society: The Parole Movement

The latter part of the nineteenth century was a time of tremendous urban and industrial growth. Immigration was on the rise. Southern and eastern Europeans, particularly Jews, were not yet considered white. At the same time northern cities were experiencing the arrival of large numbers of African-Americans leaving the southern states. With urbanization and mass immigration came a loss of informal and community social controls. Cities were fast becoming crowded chaotic industrial centers and they were ill-prepared for the surge of development. Tremendous anxiety regarding the decay of social order characterize the era. The scale, nature, face, and structure of labor underwent unprecedented change. The nation was negotiating a place for the growing working classes whose status during this period *slowly* shifted from a strong association with dangerous classes toward their reluctant acceptance as members of the the respectable classes. (Simon, p. 254, 1993) New forms of social control “tied to the discipline of the industrial workforce” emerged. (Simon, 1993, p. 37)

Amid this rapidly changing landscape was an intellectual and ideological move toward science, professionalization, and social liberalism. The idea of a rational free man was superseded by a belief in determinism. Elements in our bodies and environments determined who we were and how we behaved. Principles of behavioral science materialized and they were used to devise systems and solutions focused on the individual. Multi factor positivism had arrived contending that people were not fully responsible for what they did. With concerted, organized, systematic i.e. ‘scientific’ investigation these determinants could be identified and with proper ‘retraining’ a different outcome was possible. Methodological investigation and efficient systems could

detect and diagnose human shortcomings and design and deliver their reformation. This approach was widely believed to be more humane and more effective. It was the dawn of 'social problems' and social workers to solve them. "[P]rogressive reformers shared a faith in government to carry out ambitious social undertakings and a faith in scientific achievements to resolve social and individual conflict." (Rotman, 1995, p. 157)

This backdrop gave rise to a prevailing trend to individualize and science-ify criminal justice. The 'professional field' of penology was growing and gaining tremendous legitimacy. National organizations of wardens and other prison personnel took root. Discourse among penal professionals incorporated the growing obsession with efficacy, expertise, and systems. Prisons had failed the nation. Deep concerns about prison management and institutional conditions lingered. The dawning zeitgeist declared that environment mattered. Anxieties were further aroused by the changing regulations regarding prison labor that came about in response to strong political opposition to the practice. From here on out inmate labor, no longer available to private industry, was only for use by the state. Focus shifted from the crime to the individual. Incapacitation increasingly came to be seen as a harmful and false environment. "[T]he prison may itself have become a model of the imperfections of industrial society which fired the conscience of the Progressives." (Simon, 1993, p. 35) Penal activism during this period was rampant. The new penology extended its ideas and practices into the community. Between 1880 and 1914 most states adopted probation, parole, and a juvenile justice system. Reformers contended that to act civilized one must live in civilization. Therefore activists worked to generate mechanisms to release people from the confines of prison cells and usher them into new systems of 'supportive' oversight and conditional 'freedom'. Parole was responsible for introducing broad and widespread discretion into the punishment system

as well as ushering in an array of “professionals” and methodological guidelines to administer that discretion.

Key Themes: Conditions of the Host

Bounded & Disappointing Punishment System -- A penal system in which the boundaries are fixed (who is caught in the net and what is done to them is constant) and one that inspires disappointment, either because it does not ‘cure,’ resolve, or fix the problem of crime and criminality, or does not meet the social norms of decency regarding the treatment of human beings.

Carriers: The Parole Movement

Those who laid the social foundation and generated support for parole were penal practitioners, politicians, and social reformers driven to make punishment more humane, “effective,” and less troublesome. This progressive program like others of the era was “the invention of benevolent and philanthropic-minded men and women.” (Rothman, 2002, p. 5) They were educated, religiously motivated do-gooders acting not on their own behalf, but generously for the betterment and in the interest of others. Progressive reformers focused on criminal justice tended to be social scientists, lawyers, wardens, and penological experts. Universities and colleges now had courses on “the punishment of criminality” and “public and private charities.” (Rothman, 2002, p. 46) Armed with fresh, and scientific, ideas about the origins of criminality as well as the means by which to cure it, “[t]hey marched under a very appealing banner, asking citizens not to do less for fear of harm, but to *do more*, confident of favorable results.” (Rothman 2002, p. 5, emphasis added)

Many scholars suggest that labor issues are key to understanding the ground from which parole grew. More importantly, they use labor to frame the development of parole. (Simon, 1993; Rothman, 2002) It is true that a prevalent idea of the day asserted that idleness was dangerous. There is also no question that at the time the face and nature of labor was undergoing profound changes, reshaping cities and the country's economy. Furthermore, strong political opposition to prison labor resulted in dramatically limiting the nature of the practice. No doubt the evolving labor landscape played a role in the evolution of parole, but this was more the case in the design of individual practices and their rhetorical justifications than in the birth or structure of the parole movement itself. Further, all social change movements are shaped by the sociopolitical environment from which they emerge. This study aims to explore movements from their inside to determine how the movements themselves (not the external environment) prompt unwelcome outcomes.

In 1840 Alexander Maconochie, considered by many to be the father of parole, became superintendent of the British penal colony on Norfolk Island. He created incentives for good behavior that included indeterminate sentencing. His reforms did not last long. Sir Walter Crofton, a warden, became director of the Irish prison system in 1854. Inspired by Maconochie, he instituted a system in which prisoners could "earn" a ticket-of-leave allowing for conditional release under police supervision. This was the precursor to parole. If convicts violated the conditions they returned to custody. The British government, in 1853, enacted the Penal Servitude Act making the ticket-of-leave law.

In 1852 the New York Prison Commission argued against "protracted incarceration." This was one of the first voices in the United States to do so. (Rothman,

1971, p. 244) State commissions (politically appointed) were commonly comprised of high ranking practitioners and well-connected community members. Theodore Dwight, a lawyer and educator, and Enoch Cobb Wines, a professional penologist with “religious zeal” interested in “behavioral methodologies and scientific data,” voraciously mobilized to discredit and overhaul the existent prison design. Thanks in part to their efforts the idea that incarceration was harmful grew “more popular in succeeding decades.”

(Rothman, 1971, p. 244) An 1867 report called for substantial penal reforms including the reformatory and the indeterminate sentence. In 1870 the first annual conference of the American Prison Association, the National Congress of Penitentiary and Reformatory Discipline, met in Cincinnati. It was here that the ideological and logistical framework for the adult reformatory, the indeterminate sentence, and parole ripened and became internationally broadcast.

Warren Spaulding, secretary of the Massachusetts Board of Commissioners of Prisons staunchly promoted the use of incarceration only as a last resort. Thomas Mott Osborne, a warden, who in 1913 became the chairman of a commission for the reform of the penal system in New York state, was a renowned and devoted prison reformer and parole advocate. Other parole champions included, Charlton Lewis, a clergyman, and Samuel Barrows a penal reformer. Wardens from around the nation saw in parole a means to cultivate sentence uniformity and redress the frequent disparity in sentencing and the strife it created behind prison walls. They publicly supported and ardently campaigned for parole legislation.

Progressive reformers advocating for parole had very clear ideas about where and how offenders should live, particularly once reformed. Their convictions went beyond the prison walls and asserted that offenders could not learn how to live and act in the

barbaric and false atmosphere that was the prison. At first activists discussed and promoted ideas for proper parolee selection. Initially they advanced the means and 'scientific' methodology by which to determine *who* should be eligible for parole. Rather quickly issues relating to proper supervision were added to the parole movement's agenda and the reformer's rhetoric. American parole enthusiasts never warmed to the idea of police oversight (the standard in Britain and Ireland) so their answers to the questions of supervision revolved around professionals and respected community members. Furthermore, they were convinced that since these released ex-convicts were rehabilitated very little supervision would actually be necessary.

Penal reformers provided the justifications for parole but politicians, well aware of their prison management problem, were quick to tout the parole banner. They were likely attracted to the movement for very practical reasons though some probably embraced the breadth of the parole ideology. Regardless of their intent, there is no question that politicians, like reformers, believed a system of parole would bring much needed change to a floundering, ailing penal system. This group of educated, zealous penal reformers, practitioners on a mission, and politicians looking for solutions comprised the carriers of the parole movement.

Key Themes: Carriers

Holy Rollers, Credibles, Patrons, & Professionals -- Those who initiate and assemble the social change movement are religious, educated actors with access to power, means, & the penal system. They are not on the punishment end of the penal system nor will they, or those like them, be personally reached by changes to that system. These carriers are working benevolently to save, rescue, deliver, or heal the *other*. Their standing in society makes them credible to the host, they are legitimate from the start.

Membership Distribution: The Parole Movement

Inner Ring

This parole movement's principal leaders were Progressive Era activists who aimed to incorporate science, methodology, systematic structure, humanity, and productivity into the country's penal system. They tended to be highly educated professionals. Many were themselves practitioners in the punishment system (lawyers, psychologists, social workers, wardens). The criminal justice literature does not offer the level of detail about the origins of parole as it does on other movements. In the existing accounts men are almost exclusively associated with the dawn of parole but as many progressive reformers were women, and many women were involved in penal reform, it is more than likely that they too participated in galvanizing the movement. Participants at the core of the movement molded the ideology and practices at the heart of parole. They also worked to publicize their ideas and inspire support for the movement. Many went on to participate in the execution of parole once it was instituted. Examples include: Theodore Dwight, Enoch Wines, Warren Spaulding, Thomas Osborne, Charlton Lewis, and Samuel Barrows.

Middle Ring

Parole movement activists located in the middle ring of the participant distribution were, in Rothman's words, a "broad coalition." (2002, p. 44) "Concerned citizens, settlement house worker, criminologists, social workers, psychologists, and psychiatrists stood together with directors of charitable societies, judges, district attorneys, wardens, and superintendents." (2002, p. 44-45) He goes on to call this group "diverse" though

such a characterization is certainly a reach. These actors actually represent the movement's rather narrow base, a limited number of insiders (reformers and politicians), well acquainted with, and frequently retained by, the system. Their stake in the system was not personal so much as professional or paternalistic. Their participation in the movement included promoting, instituting, and participating in parole development and practices. This included joining assorted boards, running service agencies, serving on parole boards, courting political favor, and nourishing mechanisms for parole supervision. Movement activists sat on parole boards and prison societies, set up parole in the prisons they themselves ran, headed commissions that studied and supported parole, conducted evaluations, and wrote and publicized complementary reports. (Rothman, 1971; Rothman, 2002)

The first two rings of participants share many of the same members. Many of those responsible for generating and promoting the initial ideas of parole (the inner ring) were the very same activists involved in organizing and running the agencies that implemented and oversaw actual practices, driving the movement forward (the middle ring). Again, we see a distribution of actors that illustrates a close and strong connection between those with power and status in the host society and those advocating change. Though perhaps inspired by different motivating factors, politicians and criminal justice professionals (virtually all but the police supported parole) jumped on the parole bandwagon together to join penal reformers who were steadfastly working to temper, humanize, and 'scientifically' individualize the country's response to offenders.

Outer Ring

Prison's failings were widely known and disappointment was shared by much of

the nation. Yet, the parole movement was “unsuccessful in attracting a wide following.” (Rothman, 1971, p. 252) Participants came almost exclusively from either inside the penal system or from a pool of progressive reformers who were already committed social activists involved in a variety of benevolent campaigns. They were supported by politicians with a vested interest in a smooth running criminal justice system. Parole did not benefit from the sustenance of what Mauss terms “fair-weather friends.” This meant there was little attention paid by anyone, other than those deeply embedded in the movement, to the evolution and implementation of parole. “State after state passed ... parole legislation with little debate and no controversy. (Rothman, 2002, p. 44)

Key Themes: Membership Distribution

Insular & Limited -- Movement membership encompasses a small group of actors generally located in the two inner rings of the distribution. There is virtually no “interested public” participating in the movement and the outer ring of the distribution is thin or imperceptible.

Early Rhetoric: The Parole Movement

“In the beginning was the idea, and it was a bold and hopeful one. A number of students of deviant behavior, who for reasons of clarity we will simply call reformers, were convinced that they understood the complex causes of crime and were capable of designing a program to eradicate it. Their certainty is all the more striking for they did not minimize the difficulty of the challenge.”

(Rothman, 2002, p. 45)

Several emerging concepts and influential beliefs of the day provided the ideological frame and impetus for the parole movement. One was the growing confidence in, and fascination with, the scientific method. Another was the developing criminological theory of positivism, the conviction that criminal behavior is caused by external forces beyond our control. Beyond asserting that environment matters, this premise further suggested that people can be re-formed into law abiding productive citizens. Furthermore, the fears and distress associated with urban chaos were transferred to the prison. Incarceration was losing its social value and increasingly being viewed as harming. Together these ideas fostered a firm belief in the viability, and the merits of, an individualized response to offenders, a strong aversion to incapacitation, and a recommitment to community or informal social controls. It is from this base that the parole movement critiqued the status quo, constructed ideas about criminality, and promoted the innovations for which it fought.

Parole advocates asserted that “[t]he fixed sentence was retributive, crude, and unfair. (Rothman, 2002, p. 68) Disparate sentences, patently unjust, were prevalent, creating inmate resentment, management problems, and political backlash. Long sentences, they argued, were an expression of vengeance not justice. They were dehumanizing and did not address the individual offender or his/her specific needs or make-up. The prison itself became a prime target for reformers who called it an “artificial environment.” (Simon, 1993, p. 48) Prisons were “chaotic communities of the corrupt cut off from the organizing forces of the industrial community.” (Simon, 1993, p. 38) They bolstered the lines between inmates and citizens. The overcrowding was dangerous, harmful, and difficult for administrators. As prison labor was drastically reduced in the wake of political offensives reformers pointed out the danger and cruelty of idleness.

Progressive reformers were “anti-institutional in a very special way.” (Rothman, 2002, p. 12) They opposed the one size fits all quality of incarceration. As they believed in the impact of environment, they not only saw harm in the prison but virtue in the community atmosphere. Prison and the reformatory wanted to reform *away* from society but those in support of parole credited the community with reformative power. The ‘cured’ or ‘reformed’ inmate was being harmed and re-corrupted by their continued incarceration and therefore should be granted release. It was in civilization that he or she could be expected to act civilized. Many of these same arguments were used to promote probation as well.

Simon states that “a narrative of criminogenesis” was vital to the parole movement. (This is actually true of all penal movements. See chapter six for a richer discussion.) Those involved in the parole campaign did indeed adhere to very specific ideas about the origins of crime which in turn informed the design and timber of their response to it. One was conditioned to do crime they asserted. People do not act out of free will but rather factors all around them determine their behavior. This is precisely why the prison was so very dangerous. Chaos, idleness, and disorder were seen to produce criminal behavior. Thus by controlling or manipulating certain external factors it was believed that different and more desirable conduct could be produced. People can be literally re-formed and ‘cured’ of criminality. Well, not all people.

These root causes were understood to be highly individual and specific to each case. Therefore the solution or remedy should be equally discriminate. Reformers further accepted that there were those who could be saved and those who were lost causes. The ideology of parole held that some were worthy, others were not; there were those suitable for rehabilitation just as there were those incapable of reformation. Science, they claimed,

would help us to distinguish. For people of color this meant there was now a means to “scientifically assert that they were less fit” for civil society. (Pisciotta, 1994, p. 49) The emerging behavioral sciences were also believed to provide the tools to mold inmates for liberty and to determine their readiness. Those that had been assessed as properly adjusted, or rather decisively readjusted, would then be released from the harms of incarceration and free to enjoy and benefit from the community atmosphere.

Whereas “the pardon was a matter of grace and favor “[p]arole ... was, in theory, to be controlled by professionals using rational criteria.” (Friedman, 1993, p. 162) The reformers promoted parole as an individualized, scientific, humane means to reorder and repair the country’s criminal justice problems, particularly the defective punishment system. This new premise, they declared, rightly focused on the person not the crime. Expertise would allow for the proper selection of the appropriate parole candidates and those deemed ready would no longer be harmed by the toxic prison. The discipline of work and community life would help to maintain their reformation and, in turn, these connections would “bolster the community’s own forms of social control” which, due to rapid urbanization and immigration, were believed to be under siege.

(Simon, 1993, p. 34) “[P]romoters argued that [parole] could do a better job of reformation by placing the offender in direct contact with the community norms to which he would have to conform.” (Simon, 1993, p. 17)

At first parole and its champions focused on proper selection. Their aim was to develop an apparatus to answer the question of *who* should be eligible for conditional release. Soon their attention turned also to the issue of proper supervision for released parolees. Supervision was said to serve two important functions. On the one hand it provided benevolent yet rigorous support to sustain an offender’s rehabilitation and

correct behavior. On the other it provided the state a means by which it could keep track of released convicts who, without parole, were simply off the government's radar. Reformers however continually assured that oversight was hardly necessary as these were now upright citizens who earned their freedom. After all, *parole* comes from the French word *parole* meaning "word of honor." Because the plan was to reconnect offenders to the discipline of private labor, inmates had to show proof of a sponsor and evidence that they would be employed on the outside in order to be released. These private actors, activists claimed, were trustworthy as whereas the myriad of scandals had shown prison officials were not.

This was no soft or tolerant criminal justice practice parole advocates further claimed. Release did not come easy; it had to be earned by accumulating marks and working one's way through the classification system. One had to prove he or she was 'ready' for freedom. Furthermore, release was conditional and if someone 'misbehaved' they returned to a more controlling, restrictive environment. Parole would help foster control inside institutions and quell the rampant discontent associated with disparate sentences and idleness. Parole rhetoric maintained, for those clamoring for strict punishment, that the prison may remain harsh for those who deserve such treatment as long as we release those who did not. Incarceration would bring an offender "under control" and parole would then "normalize" him. (Simon, 1993, p. 48)

The movement's champions were "bold and hopeful." (Rothman, 2002, p. 44) So too was their message. They touted parole as *humanitarian* because it tempered the harms of protracted incapacitation; *practical* since it aided prison management, relieved overcrowding, and produced self-sufficiency; *fiscally sensible* in that it eased the tax burden and produced good workers; *productive* as it reduced recidivism, redressed

disparate sentencing, and reinforced right behavior; and *professional* because it relied on science as a blueprint. Parole, activists touted, is an equitable, trustworthy, scientific cure for an ailing, harmful system; a means by which reformed convicts could reclaim their dignity and be of use in society.

Key Themes: Early Rhetoric

Cruel & Ineffective Status Quo, Fresh Criminal Theory, Grandiose Claims -- Movement rhetoric decries the status quo as inhumane and ineffective, it incorporates a new “narrative of criminogenesis,” and proclaims extraordinary cure-all powers. The grandiose claims declare that the innovations will cure crime and generate a more cohesive society.

Repertoires: The Parole Movement

The parole movement’s strategies were not particularly varied and were comprised of traditional, non-confrontational means. The primary tactic was to push for legislation that would institute indeterminate sentencing and thus allow those selected as worthy a conditional early release. Reformers and parole advocates lobbied their politicians with great success and by 1900 twenty states had parole laws on the books. In 1902 Michigan adopted parole by constitutional amendment. Indeterminate sentencing fast became the mandatory punishment for all convicts. The campaign included letters and petitions to governors, legislatures, and officials in the penal system. Prison discipline societies, both local organizations and national associations, “publicized and supported” proposals to minimize prison terms. (Rothman, 1971, p. 244) Social service agencies, an important upshot of the larger Progressive movement, threw their efforts and support behind parole.

Changing the laws was not the only tactic. Activists also worked to develop and implement the actual procedures for selecting appropriate candidates for parole as well as the functional mechanisms to secure supervision once these offenders were set free. The latter were often quite moderate as these newly free citizens were not considered a criminal risk having been measured and found to be reformed. The ideology and justifications for parole were promoted publicly by legitimate community members including judges, commissioners, wardens, and well-known progressive reformers. "No group more enthusiastically supported the indeterminate sentence than prison wardens." (Rothman, 2002, p. 73) Anecdotal success stories and program evaluations, were publicly touted, both being considered meaningful scientific proof of parole's efficacy and viability. At conferences and in publications for criminal justice professionals parole was embraced and promoted. This approach, using 'evidence' to validate and legitimize ideas and practices, was a new tactic born of the era. Measures and methodology may have been crude and inexpert by today's standards but such 'science' had the power to dazzle and inspire confidence nonetheless.

Key Themes: Repertoires

Narrow, Non-Confrontational, & Practice Fixated -- The movement employs few means to forward its aims. These are exclusively traditional, non-confrontational avenues of social action such as generating legislation, promoting anecdotal successes, and lobbying. The chief tactic is the creation and administration of programs and practices that reflect or incorporate the movement's agenda. Program implementation quite literally dominates movement strategy.

Time to Ubiquity: The Parole Movement

1870 marked a critical juncture for progressive reformers with an eye toward criminal justice. The first national meeting of the American Prison Association was convened in Cincinnati Ohio and is an influential impetus for the surge of penal reform movements that follow including the adult reformatory, juvenile court, and parole. Thirty-four papers were presented to attendees from around the globe. The harms of long term incarceration, the indeterminate sentence, and the prospect of conditional release were central ideas for many of those in attendance. This conference not only served to circulate these innovative notions but helped to establish and give accreditation to a class of professional penologists who were fast becoming crime and punishment 'experts'. Though there were traces of parole early in the century and its roots can be found in the English ticket-of-leave system; it was at this conference that parole, its justifications and ideology, were widely discussed and promoted for the first time thus planting the seeds for the American parole movement to come.

The first "serious" proposal for parole materialized in California in 1887. (Simon, 1993, p. 36) Pennsylvania followed suit later that year. Massachusetts instituted parole in 1880, Ohio in 1884, Illinois in 1897, and New York in 1889. By 1900 some sort of parole law, be it for reformatory or prison inmates, existed in twenty states. In 1901 indeterminate sentencing became mandatory for *all* first time offenders in the state of New York. Michigan, in 1902, instituted a constitutional amendment officially incorporating parole into the whole of its criminal justice system.

The evolution of parole practices was not uniform. As statutes emerged some of their specifics varied. There were those that restricted eligibility and some that made parole absolutely mandatory. Differences regarding who had the authority to select or

grant parole were also common as were variations between the guidelines for selection and the conditions for release. Other elements marked by difference included the question of how far along the institutional classification or mark system an inmate had to be before parole was a possibility as well as the determination of who could be present or participate at the parole board interview. Yet, the speed at which parole took root is indisputable and so remarkable that almost every scholar makes a point of commenting on the rate at which it developed. Jonathan Simon notes the “swift spread of parole” (1993, p. 34) and further observes it was “adopted in a short time” (Simon, 1993, p. 36). David Rothman comments that “criminal justice assumed a new character within twenty years” and that “[t]his revolutionary change was accomplished with incredible speed” (2002, p. 44). Friedman affirms “it caught on” (1993, p. 161). The parole movement was fully institutionalized by the first decade of the twentieth century, less than 25 years after the first statute appeared on the books in 1887.

Parole boards were well entrenched by the start of the twentieth century but as the use of parole increased so did the various mechanisms required to facilitate its use. The massive bureaucracy that surrounded and supplemented parole formed a bit after the practice and its ideology were commonplace. In 1910 California created several distinct parole related employment positions including the parole officer, the assistant parole officer, and clerical workers to administrate the growing system. (Simon, 1993, p. 47) By the 1930s the parole universe was quite vast and included a legion of “field workers” who carried out multiple functions involving supervision, administration, and management. (Simon, 1993, p. 53)

Since its inception parole has moved in and out of the public’s favor and politicians’ support tends follows suit. Rothman sees parole as “the whipping boy for

the failures of law enforcement agencies to control or reduce crime.” (Rothman, 2002, p. 159) Nevertheless, since it was introduced, the practice of early release has never fully disappeared nor will it since the issues of prison overcrowding and the harms of incarceration are omnipresent. In prison cells today sit people serving sentences of zero to life who were sentenced under some of the nation’s first parole statutes. The fixed sentencing trend of the latter quarter of the twentieth century, fueled in part by parole antagonists, is currently under review creating an opportunity for yet another parole resurgence. The parole movement which began at the tail end of the nineteenth century was institutionalized, its leaders, practices, and ideology fully embraced, by the end of the first decade of the twentieth century. The impact and legacy of this progressive campaign remain evident today in virtually all avenues of the criminal justice system.

Key Themes: Time to Ubiquity

Rapid Institutionalization -- The ideas and practices introduced by the movement are usually ubiquitous within twenty-five years. Institutionalization occurs very quickly.

Outcome: The Parole Movement

The *outcome* determination conducted here is to assess the aftermath of the parole movement and to juxtapose it against the campaign’s original claims. Though parole originated as a component of the adult reformatory it quickly spread beyond that institution and evolved into a penal reform all its own. Each state’s parole system developed in its own idiosyncratic fashion. What follows is a review of the whole movement’s impact and may not reflect each and every locale.

What was replaced

In order for parole to take root fixed sentences had to be replaced with indeterminate ones. Eventually fixed sentences faded from use throughout the criminal justice system but never quite fully disappeared and have evolved into various related forms such as truth-in-sentencing (a policy in which all inmates must serve a substantial percentage of their original sentence) and mandatory minimums. Parole does require some type of early release mechanism which did not exist prior to this movement with the exception of two uncommon means of early release from long sentences, the pardon and commutation. In Illinois parole “tended to replace the pardon and commutation.” (Friedman, 1993, p. 305) This was true in most states as parole was less political and controversial able to operate on a much bigger scale. Furthermore, pardoning could prove “politically embarrassing” and time consuming. (Simon, 1993, p. 34)

Though this was not necessarily a stated intent parole replaced the prospect of unconditional and unsupervised release. Prior to the movement when convicts were set free there were no more government controls on them. Parole changed this forever. It is now customary for all released inmates to leave the prison with the expectation that government will continue to keep track of them and that they must comport with certain conditions. Parole, rather than replacing punishment practices simply added more to the mix. Progressive “innovations often became add-ons to the system, not replacements.” (Rothman, 2002, p. 12)

What was added

The country’s penal landscape was altered forever by the parole movement. Ideology and practices long associated with the punishment system can be traced directly

to this penal reform. Today's correctional vernacular is peppered with axioms and terms that first emerged with parole. The campaign served to cement the relationship between science and punishment, launching a system more preoccupied with the criminal him/herself than the crime. Vast discretion, a myriad of professionals, and layers of bureaucracy are part of its legacy. The power and legitimacy of correctional officials moved into the community and they have never left. Conditional release is a cornerstone of today's penal procedures and technical violation of such extralegal terms is the avenue by which tens of thousands end up in prison cells. "The indeterminate sentence and parole release may well have served to extend, not to curtail, state control over the offender." (Rothman 2002, p. 193)

As of today parole and its bureaucracy are quite complex. There are types of parole (mandatory, expiration, discretionary), parole boards, and a variety of procedures that vary from state to state. The practice of parole incorporates political appointments, hearings, examinations, interviews, inmate classification, and victim participation, all before someone is released while the supervision bureaucracy kicks in with its various conditions, meetings, revocation hearings, and due process procedures after release. The network of control was altogether expanded by the parole movement. Specific highlights include:

- Parole board - An appointed 'outside' group is accorded tremendous discretion and little oversight. They now hold the future of each inmate in their hands.
- Statewide release bureaucracy - An army of workers paid to assess eligibility and grant or deny parole.
- Statewide supervision bureaucracy - An army of workers paid to track, process, and revoke freedom.

- Conditional release - There is no longer such thing as a free man, freedom can now be revoked.
- Discretion for all -- Prison officials, parole board, parole officers are all endowed with new unfettered powers and a say in an individual's punishment (sentence length, conditions for release, revocation of freedom).
- Individualized classification - An inmate's status (inmate in-house classification) and release viability are based on discrete characteristics including behavior, gender, age, diagnosis, race, and ethnicity. Categories emerge: the fit and the unfit, the worthy and the unworthy, savable and hopeless.
- Diagnostic methodology - Inmate's behavior and mind are probed in order to determine if they are 'ready' for release.
- Mandatory employment - In order to be paroled one *must* have proof of work on the outside, a condition that is universal.
- Formal *community* supervision - Released convicts are now subject to oversight on the outside.
- Longer sentences - The indeterminate sentence is limitless, zero to life.
- Scientific racism - The means emerge to 'scientifically' assert that minorities are less 'fit' for civil society. (Pisciotta, 1994)
- Community involvement -- The community is now considered a formal correctional control agent and members are involved in release, supervision, and revocation.
- Extralegal regulations - Conditions for release are well beyond those of the community standards. (Simon, 1993, p. 57)
- Increased vulnerability - Parolee is subject to "limitless complaints" as conditions

are so broad. (Simon, 1993, p. 57)

Did it deliver on its aims

Parole was touted as a fiscally sound, humanitarian, professional, practical, productive remedy that would return reformed convicts to society as useful citizens. The projections for this “scientific” practice were rather lofty and what followed in the wake of this movement did not simply fall short of the exalted mark; parole actually failed to deliver on *any* of its primary aims. “Whatever the reasons for the survival of parole, they will not be found in the efficient or diligent administration of the system.” (Rothman, 2002, p. 162) Below is a review of some specific claims and how they fared:

- Shorten sentences -- The advent of parole actually increased sentence length. Parole worked against the poor and friendless, but more subtly.” (Friedman, 1993, p. 162)
- Resolve inequities -- Sentence disparity was not resolved and parole has proved to be nothing more than “a game of chance.” “[P]arole decisions remained arbitrary.” (Rothman, 2002, p. 176)
- Improve prison management -- Increased discretion and associated abuses meant parole actually “fostered inmate hostility.” (Pisciotta, 1994, p. 48)
- Contribute monies to the public coffers -- The various mechanisms needed to sustain parole have proved quite costly and post release employment is not steady, contributing little to the tax base.
- Individualized punishment -- individuation has not been delivered. “[T]he theory of parole decision-making bore little resemblance to practice.” The parole board is supposed to consider an inmate’s full record and conduct an interview, but in

actuality spends little time arriving at its decision and tends to act on recommendations from prison officials. (Pisciotta, 1994, pp. 47, 48)

- Reduce corruption -- Parole is said to trim the abuses and scandals associated with the prison but the power of correctional staff has actually increased and now extends beyond the prison walls. "Once again, reformers paid no attention to the possible dangers of reaching sentencing decision on a case-by-case basis."
(Rothman, 2002, p. 70)
- Scientifically root the practice -- Board "members usually had no particular qualification for the task, save perhaps their party loyalties." (Rothman, 2002, p. 162) "[T]he boards never announced in advance or formulated among themselves guidelines that would limit their discretion or rules under which they would operate." (Rothman, 2002, p. 176)
- Provide effective and supportive supervision -- "Parole supervision was "ineffective" ; supervisors were overworked from day one, the work was more policing than social work, and revocation proved arbitrary. (Pisciotta, 1994, p. 48) "[P]arole supervision was not merely unsatisfactory but grossly inadequate."
(Rothman, 2002, p. 176)
- Allow for early release -- Some people may have been released early but parole's legacy, besides longer sentences, was a means for freedom to be revoked. Early release has proved meaningless as conditions are so numerous that the majority of parolees return to prison.
- Lower recidivism - Recidivism increases as conditions for staying free are legion and extralegal; technical violations are rampant and parolees tend to return to prison.
- Foster self-sufficiency - Job sponsorship only meant one had a job it did not mean

one kept it. Offers were short-lived and monitoring was limited. (Simon, 1993, p. 51)

- Use employment as discipline -- Work did not sustain and reinforce rehabilitation. Jobs were often temporary. Also, at the dawn of parole there were available jobs but that changes with the times. Satisfying the work sponsorship requirement depends heavily on the country's economy as well as the public's feelings toward parolees. In today's climate, for example, this is very difficult and it is not good times for parolees seeking work. (Simon, 1993, p. 50)

Key Themes: Outcome

Aims Undelivered & Punishment Grown -- The movement does not deliver on its aims. Little, if anything, of the former system is truly replaced (ideas or practices) though much is added. In its wake there are more mechanisms for actual punishment, deeper government ingress into the lives and bodies of convicted offenders, and a wider pool of people are caught up in the penal system. The nation's network of control is considerably expanded by the movement's efforts. Punishment is grown.

The Score - The Parole Movement

There is no question that parole "caught on." (Friedman, 1993, p. 161) The most common method by which inmates left prison, once the twentieth century was underway, was and continues to be early release via parole. This is true around the country and by 1925 46 of the 48 states had parole laws on the books. (Friedman, 1993, p. 304) Even before the new century began these practices had typically moved beyond the reformatory and into all correctional institutions. Indeterminate sentencing laws came to dominate penal procedure and fixed sentences all but disappeared. Parole boards quickly

proliferated as did the bureaucracy responsible for administering all the many policies associated with parole, from tracking an inmate's behavior on the inside and ascertaining who ought to be released, to establishing conditions for freedom and managing supervision. Revocation too was extended throughout the penal system and many of those entering correctional institutions do so through this conduit to this day.

State after state, with little opposition, enacted parole legislation clearly illustrating society's approval of these new ideas and practices. Progressive reforms were said to give ailing correctional institutions "new legitimacy." (Rothman, 2002, p. 74) Parole ideology was widely embraced. It became commonplace to believe in the possibility of reformation, the discipline of work, and the power of science to determine who is reformed and when. The 'wisdom' of the behavioral sciences was received with open arms. The magnitude of what these specialists state about the human condition and the power of their expertise is unquestioned. Parole champions served on boards, held various positions within the punishment system including superintendent, psychologist, and warden. They headed-up commissions, conducted program evaluations, and served as the venerate voices of the movement. These reformers were undoubtedly respected, deemed legitimate by the host society. The parole movement, during its short career, made innumerable and significant material gains. Its participants, and the ideas they espoused, were widely embraced and forever changed the landscape of punishment.

This campaign manifested considerable success signifiers (gains, and legitimacy) and yet, the parole movement lengthened the very sentences it set out to shorten and made release so conditional that few have inhabited it for long. "[R]eformers hopes for parole were disappointed. ..." (Rothman, 2002, p. 177) By the time the parole movement winds down, the penal landscape is actually infected with a massive set of policies and

procedures that never did what they were supposed to and produced layers and dimensions of control never before conceived. The movement was a bust. Interestingly inmates immediately saw parole for what it was and condemned the system as unfair, capricious, and more controlling. (Pisciotta, 1994, p. 49) Alas, they were the only ones taking note. "Once again, reformers paid *no attention* to the possible dangers of reaching sentencing decisions on a case-by-case basis." (Rothman, 2002, p. 70, emphasis added) The new system's deficiencies and dangers were evident early on and scholars today are baffled by its endurance.

No sooner does one plunge into the realities of parole than the question of its persistence is further complicated, for one uncovers almost everywhere a dismal record of performance. Neither of the two essential tasks of parole, the fixing of prison release time or post-sentence supervision, was carried out with any degree of competence or skill. Amateurs on parole boards reached their decision hastily and almost unthinkingly, while overworked and undertrained parole officers did little more than keep a formal but useless file on the activities of their charges. Whatever the reasons for the survival of parole, they will not be found in the efficient or diligent administration of the system. (Rothman, 2002, p. 162)

Both contemporary historians and critics of the day decisively agree, the parole movement was a spectacular failure.

Key Themes: The Score

Dismal Success-- The campaign displays the markers of social movement success. These include evidence of literal gains or inroads for which the movement is directly responsible and a confirmation that both the actors and ideas associated with the movement attain legitimacy. Yet, despite these success indicators, there is no question that the movement is a failure.

A Graphic Overview

What follows is a table that lays out each BPR and encapsulates the findings investigated throughout the chapter. This simple illustration shows what the discussion verified: that the movements display similar characteristics and express the same profile, termed here the 'Regressive Reform Profile' or the RRP. Furthermore, the table confirms the existence of a regressive social movement type (a movement that has all the markers of success yet is a failure, ultimately growing the very host it aimed to significantly alter) and starkly illustrates that each of these BPRs match its determinants. These movements do not simply share an outcome or classification but, the table demonstrates, truly embody a uniform structure. A key to terms and phrases can be found on the page succeeding the table.

Table 5.1

	<u>The Prison</u>	<u>The Reformatory</u>	<u>Parole</u>
<u>Conditions of the Host</u>	Bounded & Disappointing Punishment System	Bounded & Disappointing Punishment System	Bounded & Disappointing Punishment System
<u>Carriers</u>	Holy Rollers, Credibles, Patrons, & Professionals	Holy Rollers, Credibles, Patrons, & Professionals	Holy Rollers, Credibles, Patrons, & Professionals
<u>Membership Distribution</u>	Insular & Limited	Insular & Limited	Insular & Limited
<u>Early Rhetoric</u>	Cruel & Ineffective Status Quo, Fresh Criminal Theory, & Grandiose Claims	Cruel & Ineffective Status Quo, Fresh Criminal Theory, & Grandiose Claims	Cruel & Ineffective Status Quo, Fresh Criminal Theory, & Grandiose Claims
<u>Repertoires</u>	Narrow, Non-Confrontational, & Practice Fixated	Narrow, Non-Confrontational, & Practice Fixated	Narrow, Non-Confrontational, & Practice Fixated
<u>Time to Ubiquity</u>	Rapid Institutionalization	Rapid Institutionalization	Rapid Institutionalization
<u>Outcome</u>	Aims Undelivered & Punishment Grown	Aims Undelivered & Punishment Grown	Aims Undelivered & Punishment Grown
<u>The Score</u>	Dismal Success	Dismal Success	Dismal Success

KEY

Bounded & Disappointing Punishment System -- A penal system in which the boundaries are fixed (who is caught in the net and what is done to them is constant) and one that inspires disappointment, either because it does not "cure," resolve, or fix the problem of crime and criminality, or does not meet the social norms of decency regarding the treatment of human beings.

Holy Rollers, Credibles, Patrons, & Professionals -- Those who initiate and assemble the social change movement are religious, educated actors with access to power, means, & the penal system. They are not on the punishment end of the penal system nor will they, or those like them, be personally reached by changes to that system. These carriers are working benevolently to save, rescue, deliver, or heal the *other*. Their standing in society makes them credible to the host, they are legitimate from the start.

Insular & Limited -- Movement membership encompasses a small group of actors generally located in the two inner rings of the distribution. There is virtually no "interested public" participating in the movement and the outer ring of the distribution is thin or imperceptible.

Cruel & Ineffective Status Quo, Fresh Criminal Theory, Grandiose Claims -- Movement rhetoric decries the status quo as inhumane and ineffective, it incorporates a new "narrative of criminogenesis," and proclaims extraordinary cure-all powers. The grandiose claims declare that the innovations will cure crime and generate a more cohesive society.

Narrow, Non-Confrontational, & Practice Fixated -- The movement employs few means to forward its aims. These are exclusively traditional, non-confrontational avenues of social action such as generating legislation, promoting anecdotal successes, and lobbying. The chief tactic is the creation and administration of programs and practices that reflect or incorporate the movement's agenda. Program implementation quite literally dominates movement strategy.

Rapid Institutionalization -- The ideas and practices introduced by the movement are usually ubiquitous within twenty-five years. Institutionalization occurs very quickly.

Aims Undelivered & Punishment Grown -- The movement does not deliver on its aims. Little, if anything, of the former system is truly replaced (ideas or practices) though much is added. In its wake there are more mechanisms for actual punishment, deeper government ingress into the lives and bodies of convicted offenders, and a wider pool of people are caught up in the penal system. The nation's network of control is considerably expanded by the movement's efforts. Punishment is grown.

Dismal Success-- The campaign displays the markers of social movement success. These include evidence of literal gains or inroads for which the movement is directly responsible and a confirmation that both the actors and ideas associated with the movement attain legitimacy. Yet, despite these success indicators, there is no question that the movement is a failure.

Wrap-Up

The preceding comparative analysis was an examination of eight social movement characteristics across three benevolent penal reform movements, the penitentiary, the adult reformatory, and parole. The particular elements investigated were *conditions of the host society; carriers; membership distribution; early rhetoric; repertoires; time to ubiquity; outcome; and the score*. All data was mined from respected secondary sources. This exercise illustrated the regressive nature of each campaign and demonstrated that the movements share a profile, further confirming that a repetitive cycle is at play. The shared disposition, charted here, is termed the Regressive Reform Profile. This chapter reveals, and the table clearly illustrates, just how parallel, across time and agendas, these movements and their properties remain. I submit that there is a direct relationship between the Regressive Reform Profile and why these movements come to fail as they do, why the change they deliver is regressive rather than progressive. The following chapter will discuss in detail how each of the qualities found in the Regressive Reform Profile contributes to, or facilitates, this distinct and highly problematic outcome. Chapter six will also address why these movements unfold as they do, why the cycle is repeated, and what might be done differently to alter the grave and surely unwelcome, though as of yet inescapable, regressive outcome. The study objective is to address and account for a profoundly static penal landscape, one in which concerted efforts at social change can not make much headway except in the direction they aim to abandon.

Part II (chapters seven through nine) of the study examines the latest benevolent penal campaign, the restorative justice movement. The manifestation of the eight social movement characteristics in this evolving social change movement are chronicled using primary data. They are then compared to chapter five's findings to determine if this still

developing BPR is expressing the qualities of a regressive movement. Is the cycle coming around again? By applying the analyses spelled out in the following chapter we should be able to redirect and restructure a not yet fully realized regressive movement and alter the dismal outcome it is seemingly poised to repeat.

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Chapter 6

Discussion:

How Each RRP Characteristic Contributes to a Regressive Course

One cannot help but conclude this history with an acute nervousness about all social panaceas. Proposals that promise the most grandiose consequences often legitimate the most unsatisfactory developments. And one also grows wary about taking reform programs at face value; arrangements designed for the best of motives may have disastrous results. But the difficult problem is to review these events without falling into a deep cynicism; After all, one could argue, the more there was change, the more things remained the same; in this case [prison], they may have grown a bit worse.

-- David J. Rothman, *The Discovery of the Asylum* p. 295

This quote aptly captures how most criminal justice scholars view reform. Certainly the previous chapter's assessment of three benevolent campaigns, dismal successes all, conforms with this sentiment. It is tempting to feel only despair when thinking of penal reform and it is easy to lose all hope regarding substantive social change. But if we can figure out how it is that these efforts actually go awry then there will be no place for cynicism. Such an analysis will instead provide the key to actively avoiding these too often repeated undesirable, and harmful ends, ends which, until now, have proved inescapable. This 'regressive' course that penal reform is seemingly stuck in is not an accident nor is it certain. How then does it happen? Rothman appears, in the above quote, to be saying it is a veiled mystery and out of our hands. In a later work he fingers an actual culprit, logistics. The problem, he asserts, is a "conscience" that gives way to "convenience." (2002) These answers, not without merit, are too vague and simplistic. They leave us with little to work with and suggest an inevitability; as if

criminal justice is a doomed realm in which change simply can not be realized. There must be more to the story and it makes sense to look carefully at the movement itself and not just what it produced. By marking and identifying where and how these movements come to regress we can forge a new path and leave the old pattern behind once and for all.

The last chapter, a comparative analysis, began this pursuit. It examined eight social movement characteristics across three benevolent penal reform movements, the penitentiary, the adult reformatory, and parole. The findings illustrated the regressive nature of each individual campaign and demonstrated that the elements--*conditions of the host society; carriers; membership distribution; early rhetoric; repertoires; time to ubiquity; outcome; and the score*--manifest similarly in each of the movements. Therefore these movements share a profile which has been named the Regressive Reform Profile. This chapter will analyze these findings in greater detail in particular exploring the relationship between the properties of the RRP and the distinctive evolution and outcome these movements share. What follows is a discussion of the specific qualities comprising the RRP and how each contributes to, or facilitates, regression. "What constitutes the special character of the study of social movements is ... its relation to the analysis of change and social conflict." (Gusfield, 1970, p. 8) The analysis will address why these movements unfold as they do, why the cycle is repeated, and what might be done differently to register an alternate, hopefully *progressive*, course.

A note on timing: it is not relevant to the present study when and at exactly what point during a regressive movement's career that these characteristics develop as they do. In fact, it likely varies. What does matter is that these properties are consistently present in each benevolent penal reform. The discussion therefore focuses on how and why these distinct manifestations are responsible for the regressive course

these movements travel. The analysis shows, in particular, that the composition of the movement's carriers, the distinct membership distribution, the limited repertoire, and the speed at which such movements institutionalize nourish a campaign poised to enrich and expand the host while failing to deliver on its stated aims. For the purposes of clarity each element is explored individually though it is likely that they operate in tandem.

CONDITIONS OF THE HOST SOCIETY

Findings

Bounded & Disappointing Punishment System -- A penal system in which the boundaries are fixed (who is caught in the net and what is done to them is constant) and one that inspires disappointment, either because it does not 'cure,' resolve, or fix the problem of crime and criminality, or does not meet the social norms of decency regarding the treatment of human beings.

Discussion

This aspect of the RRP, *conditions of the host society*, serves primarily as a baseline measure. The primary purpose of chronicling this characteristic is to be able to compare each movement's outcome to the lay of the land prior to the campaign and thereby ascertain whether punishment and control were indeed grown by the movement. This proved to be the case for all three benevolent penal reform movements. Punishment at the start of each movement was contained and specific. By their end, control had been extended and deepened.

Host conditions did not compel these movements toward a regressive end. To be certain, the subsequent profile characteristics have been shaped by the host conditions to some degree but not enough to comfortably lay the responsibility for their problematic

outcome at the host's feet. Each BPR rose from a somewhat different landscape. There are some shared qualities but there is enough variance in the conditions (as demonstrated in chapter five) to suggest that if the host had categorically impacted the movement's structure (and the other profile dimensions) then there would not have been so much symmetry. If political opportunities and constraints are situationally determined and are directly responsible for what type of movement emerges, as many social movement scholars suggest, then this would hold true for strategies, rhetoric, and more. Yet, this study found that three distinct penal movements, across time and against different backdrops, were of the same type with each evolving and behaving in a remarkably similar manner. This strongly indicates that something is afoot. This finding of multiple parallel properties, further supports the assertion that the movements themselves have contributed to the repetitive regressive outcome and that environmental factors were not and are not the sole or even primary cause of said outcome.

Perhaps then there is a crisis or precipitating event that sets the stage for a regressive movement to unfold. Is there a moment in which the campaign's destiny is sown? Each of these reforms were born at a time of what is commonly referred to as "penal crisis." Though the term, penal crisis is often used in criminal justice discourse, it can be misleading. It is not a time of extreme emergency so much as a state of profound dissatisfaction and a prevailing, though contradictory, sense of urgency regarding the next step. It could be argued that punishment is always disappointing and that the system (at least for the last two hundred years) is in a terminal state of crisis. The term does not connote a singular incident which evokes a response, though it does suggest that the host is conceivably open to change. This readiness may be why these movements have institutionalized so quickly but it does not account for why they have failed so

spectacularly. Many movements born from “crisis” succeed (women’s suffrage, labor, civil rights, gay liberation). “[I]nstitutional abuses need not spark change, that is, unless they are perceived in novel ways.” (Rothman, 2002, p. 45) It is not the crisis or a single event that launches these movements or, more importantly, predicates their regressive course. The seeds for regression do not lie in the host conditions. We must look further to uncover the responsible elements.

CARRIERS

Findings

Holy Rollers, Credibles, Patrons, & Professionals -- Those who initiate and assemble the social change movement are religious, educated actors with access to power, means, & the penal system. They are not on the punishment end of the penal system nor will they, or those like them, be personally reached by changes to that system. These carriers are working benevolently to save, rescue, deliver, or heal the *other*. Their standing in society makes them credible to the host, they are legitimate from the start.

Discussion

A similar cast of characters has championed each of the movements. These actors have often been motivated by faith, come from inside the penal system, been well connected politically, had access to money, and worked as benevolent patrons for a specified *other*. Carriers, as previously noted, are those who initiate and assemble the social change movement, not necessarily those who lead or direct its course. They are however responsible for launching the campaign and no doubt bear some accountability for its design and outcome. How, or why, then does this constellation of carriers create or set the stage for a regressive movement?

It is not uncommon for those driven by faith to engage in social activism and their

track record is peppered with successes, perhaps the most famous being the Civil Rights movement. Why then should the religiosity of these carriers be of issue? How might it relate to a failed regressive outcome? The country's criminal justice system grew from a faith-based premise in which crime was equated with sin and we have, I submit, never traveled far from this postulate. Those continuing to subscribe to a religious doctrine remain rooted in traditional long-standing principles regarding crime and punishment. These include shame, guilt, and redemption and a simple dichotomous view of people, or behaviors, as either good or bad. While loving the offender, or proposing mercy instead of revenge, may seem radical or fresh, the ideological foundation remains unchanged. Any new ideas, practices, or systems these carriers assert are still rooted in these enduring notions which means they are poised to replicate and thus further entrench them. There will not be substantive penal change unless we are willing to unseat or challenge these underlying axioms.

These carriers accept the society's basic tenets which helps them gain respectability for their efforts but limits the outcome possibilities. Alas, this is not so new an idea as social movement scholars assert that conforming to social standards is a hallmark of reform movements and distinguishes such efforts from revolutionary campaigns. (Blumer, 1951; Smelser, 1962; Mauss, 1975) Keep in mind regression is much more than mere duplication - it is an amplification. The problem here is that these actors understand themselves to be challenging the foundation of the system and understand themselves to be proposing radically alternative ideas and values. This problem is especially acute in the restorative justice movement (see chapter nine). Unable, or unwilling, to see how they are rooted in prevailing ideology, and they forward it. Faith-based actors can be revolutionary (there are plenty of examples, from Malcolm

X to Operation Rescue's Randall Terry); but when it comes to criminal justice we do not see the faithful spearheading these movements assert truly radical ideals. It appears that religious tenets themselves offer, even demand, a continued adherence to the status quo's perceptions of crime and punishment. "The master's tools will never dismantle the master's house." (Lorde, 1984, p. 112) This alone does not set the stage for regression but it does play a role.

Perhaps it is not merely the religiosity of the carriers but religiosity in conjunction with their charitable patronage that is the problem. These movement initiators never include anyone from the punished classes, even as the punished population grows with each wave of benevolent reform. The people who assemble BPRs are working for those who they perceive either as unable to work for themselves or as incapable of knowing what is in their best interests (an imperialistic posture that may be uniquely American occurring in other national social movements such as the pro-life movement, ecological movements, PETA , etc... a discussion for another time). This patronizing stance is disturbing on its face but deeper examination indicates it may be especially dangerous. Since they are removed, in spirit and in practice, from that which they forward they are unable to see the potential damage looming in what they propose. The theories and practices associated with the campaign do not apply to those devising them so they do not see the condescending and imperious bias that they embody. Consider parole. It was a schema that inmates understood from the outset to be a new mechanism of control and persecution and obviously not the great liberator its champions claimed it to be. Yet, those earnestly touting it were convinced of its power to equalize and temper punishment.

This dynamic is a continuing reiteration of an enduring criminal justice principle,

an us-them dichotomy that serves to keep offenders in a class by themselves and to cordon off punishment from the rest of society. This split, socially constructed and now maintained by popular opinion and policy, is reinforced by each wave of social action that is not fueled, at least in part, by those directly affected by penal policy. The notion of benevolence is perilous and sets a course for regression. It contains within it an intrinsic power differential, the suggestion however subtle, of domination, which then steers these movements from their genesis in a controlling direction. Often it is faith that demands benevolence and so the two are intertwined. These do-gooders are convinced their aims are virtuous, often viewing themselves as working for social justice along with penal reform. Alas, carriers acting as patrons, fueled by benevolence and righteousness, help to lay the groundwork for an expanded network of control.

To say that these carriers are credible is to comment on their social status. These are people who are upstanding citizens who hold jobs or titles that automatically elicit respect and stature. Some are clergy or hold political appointments, or both. They tend to be well-connected with access to both power and money. These movement champions are usually quite educated and deeply rooted in the establishment even as they come to challenge it. They are well versed in the status quo, use its language, and know how it works. All this fosters regression.

Those who initiate these BPR movements, thanks to their station, already enjoy legitimacy in the eyes of the host. The ideas they advance may be unappealing or contrary but they themselves are not. Such legitimacy likely contributes to the speed and 'successes' these carriers encounter when they set out to effect change. Recall that these movements institutionalize rapidly. With plenty of access to power the carriers are able to institute certain changes in policy and practice, rather quickly. They do not have to

spend years trying to gain the ear of the host. They have it from the start. They enter easily into negotiations with the host and in turn there is little need for contention on the part of the movement actors. Furthermore, these actors are well integrated socially and have quite a bit to lose should they ruffle too many of the wrong feathers. This delicate situation may be why lobbying and program building become the primary tactics employed by these movements. Carriers can not afford to compromise their standing with strategies that would be too radical or combative. (to understand why such limited and singular tactics are problematic see repertoires discussion) Without a contentious relationship between the host and movement, the dialectic between co-optation and repression, said to be the force that propels social change movements through their life course, is governed by the host. As the carriers are part and parcel of the host there is little need for repression. Co-optation is smooth and quick setting the stage for a regressive outcome.

Finally, many BPR carriers come from inside the penal system. These are professionals connected to the system in a variety of ways. They may be wardens, psychologists, or social workers. They sit on boards and head commissions. Not only do such relationships afford access to power and legitimacy but they also foster an investment in the system. These actors are likely to be rooted in the underlying premise of the system and disinterested in altering the foundation in any way. They have a vested interest in the status quo. It is not unusual for some of these movement carriers to be drawn to the movement's ideology as a practical solution to logistical problems. For example, parole held the promise of better prison management and the adult reformatory was supposed to quiet the public's increasing frustration with prisons. These actors are not initiating the movement in the hope of instituting substantive penal change but with

an eye toward solving their professional problems or in the case of doctors and scientists to test drive their pet intellectual projects. While this may not cultivate regression it does compromise the movement's career as some of its carriers are professionals overly focused on a practical rather than progressive agenda. Generating the movement is part of their job and they are not going to organize their way out of work.

So, a movement with carriers that are holy rollers, credibles, patrons, and professionals is poised for a regressive course and should be watched. This constellation of carriers is a red flag but not a state of affairs guaranteed to drive a movement to grow, instead of alter, the host. The carriers are not movement leaders though there is often cross over. Carriers are only one division of a movement's participants and they usually do not bear full responsibility for a movement's trajectory. However, there is a serious problem with the membership distribution comprising these movements - a condition that may allow for an over reliance on, or exaggerated importance of, the carriers.

MEMBERSHIP DISTRIBUTION

Findings

Insular & Limited -- Movement membership encompasses a small group of actors generally located in the two inner rings of the distribution. There is virtually no "interested public" participating in the movement and the outer ring of the distribution is thin or imperceptible.

Discussion

These BPR movements share a common membership distribution; one characterized by a great deal of crossover between the two rather narrow inner rings and a very thin or imperceptible outer one (see chapter four for a detailed discussion of the

Mauss membership distribution model). In the Mauss model the outer ring denotes the public that cares about the movement, its 'fair weather friends.' Why does it matter that these BPR movements have virtually no interested public? These participants provide two critical functions in an effective social change movement: *leverage* and an *internal eye*. Without these actors the movement is rendered relatively powerless against the host society and likely to go in an unintended direction. Furthermore, the *insularity* that distinguishes the inner two rings results in what may be termed an insider movement. A campaign in which the bulk of the participants are vested in the status quo fosters an atmosphere of limited strategies and critique, one antithetical to substantive change.

This unique group of movement actors does not have the drive (as insiders) or the power (no outer ring) for contentious or radical action. There is no oversight to ensure the movement delivers on its intentions and as a result gains are added but nothing is replaced. The arrangement of participants found in these movements is highly problematic and, for a variety of reasons marked and discussed below, is a significant contributor to their regressive outcome.

Leverage

No social change movement presents a threat unless it yields some power. The power may never actually be exercised but its presence must be obvious and credible. Power is leveraged and the opposing party must concede or bear the brunt of its influence; this is how the movement make gains against the claims of another. For example, workers leverage labor, constituencies their votes, and disruption of all sorts is a popular maneuver (pro-lifers block clinics, antiwar demonstrators stop traffic and business, students do not attend class, etc.). The claim here is that a movement's power

is represented by the interested public, the outer ring of the membership distribution. Without this the movement has very little power to leverage as it negotiates. The host does not have to make concessions of substance and the movement's demands are not likely to get far. In the co-optation--repression dialectic the host need not give the movement much to pacify it as there is not much of a roar to keep in check. In the dissected BPRs this meant that the movements took whatever they were offered. They did not hold out for gains absolutely or more closely in line with the purity of their stated ideology and aims. They could not as they had little muscle to flex.

A weak stance, the consequence of not having an interested public, has many repercussions that lead to a regressive outcome. The movement's impotence in negotiations is directly responsible for a punishment net that widens and an expanded system of control. The host gives up nothing and the movement does not have to power to demand that it does. Instead the campaign is pacified by being allowed to simply employ its ideas in a realm defined by the host. The host offers up a new or ignored population (juveniles, women, misdemeanants) to the movement who has no leverage to hold out for the population already caught up in the penal net. Nothing is replaced or displaced. The host only allows the movement to *add* to the landscape. Holdouts are easily neutralized. The movement has no juice to instigate let alone sustain contentious action, the manner by which successful movements realize gains that truly override the claims of another. An overpowering host also contributes to the rapid pace of institutionalization. The movement sells out early in its career. Programs or practices are instituted quickly but with little support and often in a hostile atmosphere where resources are paltry. In movements where there is no outer ring gains are added, though they are ultimately greatly shaped by the host, and nothing is supplanted. Therefore, no

substantive change is realized and the host is not only reinforced but uses the movement's ideas and momentum to invigorate itself.

For example, the reformatory movement's ideology strongly asserted that structures were to be built like cottages and work was to be meaningful as well as stimulating. Yet, as reformatories were being built these demands were not heeded and the movement had little recourse but to try again in another state. Reformatory after reformatory was built without cottages and with no meaningful work plan. It was not long before a whole new dimension of punishment was added to the system and the network of control expanded. Thomas Eddy, a key carrier and prison movement participant (active in both the inner and middle rings), had conflict with the Board of Inspectors who were putting financial concerns before the aim of reformation. He had no power behind him and was easily pushed off of the Board. (Colvin, 1997, p. 63)

Each BPR came of age during a time of widespread dissatisfaction with the penal practices of the day. Therefore there was opportunity to mobilize an interested public. In some of the cases the masses were bewitched or enamored with the new practice but this should not be confused with active participation in a movement. We will see in the repertoires discussion that cultivating an interested public was not a strategic part of any of these movements. This suggests that they thought they did not need an active interested public. This was short-sided. Lack of an outer participant ring greatly contributed to their failure.

Internal eye

The interested public fulfills another critical function within a social movement, these actors keep their eyes on the movement. Without this third ring no one is assessing

or critiquing the movement from the inside. In Mauss' model these are the participants that send checks to the organizations in the middle ring, can be counted on to vote, turn up at a march, sign a petition, and spread the word. Their interest is therefore vital and must be sustained. The claim here is that these participants' personal commitment endures only if the movement retains whatever cultivated their interest in the first place. Should the campaign deviate from its aims or shift its direction those on the outer ring will fight back or leave. In the absence of an interested public, leadership can make a questionable deal or the campaign take a turn far from its primary aims with no check. There is no one to withhold the money, register a complaint, or demand the movement stay true.

Movements with no outer ring, like the BPRs in this study, are more likely to veer far from the purity of their intentions. Moreover, they are likely to do it without noticing, not realizing it until it is too late to be undone. With little power to leverage, the compromises these movements make come early, are substantial, and lean in the host's favor; and without a critical eye these concessions are unseen, uninterrupted, and, most importantly, untamed. In these movement, decisions, tactics, and actions are managed in a small vacuum. Gains are implemented with no oversight and when they stray from initial intent there is no outcry. "There was little discernible public opposition to the decline in penitentiary organization." (Rothman, 1971, p. 252) Swift or total co-optation by the host goes unchallenged by movement participants. It happens fast because those who can be bought off are accessed easily and quickly and suffer no immediate consequences for compromises that may be against the campaign's ultimate interests. A weak or thin outer ring sets a movement up to travel a course far from its intent. The interested public acts as a sentry and without the scrutiny and vigilance their attention

provides the road toward regression is nourished.

Insularity

These movements are comprised of a rather limited group of participants. There is a great deal of overlap between the two inner rings and virtually no outer ring whatsoever. As many of the small cadre of actors participating in these movements are also the carriers we see further evidence of an extremely restricted and narrow membership pool. How might this affect the campaign's outcome? The consequences of this insular distribution are not unlike the problems cited in the carriers discussion. Movement participants are disproportionately "professionals" with a stake in good host relations and no stake in substantive change. Without a distinct separate and ideologically focused inner ring and without the oversight of an interested public we see a predominance of movement members eager to participate in practices and averse to risk. These folks have legitimacy from the start. They share the ideology of the host society and have a vested interest in the status quo. These actors can be bought off easily with a few programs and co-optation comes early and smoothly. The movement is pacified early as participants have too much to lose to engage in contentious tactics. Furthermore, close bed fellows reduces critique or internal dialogue and limits strategies.

These movements are not driven or lead by outsiders (prisoners, the punished classes) nor is this constituency's interests even represented. BPRs are movements comprised of professionals and insiders. This has always been the case, as Colvin writes, "many of the designers of the Pennsylvania model had gained their knowledge of prisons as administrators of the Walnut Street Jail." (1997, p. 84) Such a body will never be interested in or responsible for meaningful change. They have too much to lose should

the system truly be altered. They reflect, reassert, and represent the bedrock principles of the society. Rothman discusses how progressives ignored the problematic outcome of an alliance between system administrators and reformers. (2002) He notes how this kind of relationship fosters failure more than this, however, it actually may cultivate increased punishment. Not only is a radical outcome unlikely but a regressive one probable. However fresh and innovative these actors understand their ideas to be they remain rooted in reactionary ideology regarding crime and justice. With that as their foundation any practices they develop will actually grow and deepen the punishment system. A narrow membership distribution with an insular insider base unknowingly drives the movement toward regression.

EARLY RHETORIC

Findings

Cruel & Ineffective Status Quo, Fresh Criminal Theory, Grandiose Claims -- Movement rhetoric decries the status quo as inhumane and ineffective, it incorporates a new “narrative of criminogenesis,” and proclaims extraordinary cure-all powers. The grandiose claims declare that the innovations will cure crime and generate a more cohesive society.

Discussion

Noticing the similarities among various reform movements’ claims and critiques is what sparked this study in the first place. The rhetoric of each campaign is remarkably analogous even as each effort seeks to debunk the previous one. These movements always harp on the ineffectiveness of the status quo (crime is still rampant and offenders go on to offend again) and then supplement this argument with sobering commentary on the inhumanity of the day’s penal practices. The movement’s fresh ideas are always

touted as a cure-all and are designed in accordance with a new “narrative of criminogenesis,” to use Jonathan Simon’s magnificent phrase, also asserted by the movement. (1993, p.103) Very well, BPRs share a rhetoric, but how might this relate to their like outcomes? The discussion below will address how each dimension of the rhetorical campaign does, or does not, contribute to regression. The fact that each movement supports and touts a new criminological theory is most to blame.

Critique of the Status Quo

A campaign that asserts that the status quo is ineffective is not paving the way toward regression. It is not likely that this aspect of the rhetoric contributes to movement failure but it does set a high bar for success. It also frames the discussion by focusing on productivity. Implicit to a complaint about effectiveness is a statement about what the system ought to be delivering the standard by which the movement’s efforts will be judged. In each case the critique includes a condemnation of how poorly the current practices deter crime or cure or reform criminals. By default they are then suggesting that these are the aims of a yet to be realized punishment system, a tall order but not necessarily a set up for expanding the host.

Another constant refrain found in BPR rhetoric is the inhumanity, the cruelty, perpetrated by the existing system. There is a vigorous complaint against the physical and mental harm resulting from the existing practices. This does not seem to lead to regression but it is a problematic and somewhat short-sided strategy. One that has backfired before. When abolitionists were fighting the death penalty on the grounds of its barbarity and how damaging it was to the public who watched such a spectacle all the host needed to do to quiet these outcries was to move capital punishment indoors. In our

time the host's responses to this persistent grievance has been to simply develop more "civil" or clean means of execution. The point here being that to declare a practice inhumane is not to say it must be eradicated but rather allows for that practice, if made humane, to endure. This is not an effective strategy for abolishing certain procedures or practices and so it may be, in a small way, responsible for why these movements never actually replace anything but rather add to the system.

New Criminological Narrative

Each wave of benevolent reform is strongly associated with a new narrative of criminogenesis. This component of the rhetoric represents and reflects an important dual function of the movement ideology: it influences other aspects of the rhetoric as well as shapes the practices the movement espouses. Certainly it makes sense for a penal reform to attach itself to a theory about the origins of crime yet this relationship appears to be rather hazardous. Upon inspection, the new narrative appears to act as an effective means to grow the host in each of these cases.

As new ideas about criminology come into vogue (either because of timing or the credibility of their promoters) they are quickly adopted. However, instead of replacing a previous theory, as is usually the intention of the theorists and reformers, they are added to what has become a growing litany. What we see here is what Nancy Ordover first described in *American Eugenics* as "additive causation." (2003) Each new explanation addressing the cause of crime is added to those already woven into the society and actualized by its policy. The list of causes simply grows as nothing is ever dropped from the list, and no one cause is ever truly abandoned. As the catalogue of criminal theory grows so too mounts the policies, institutions, and grounds for punishment.

As a consequence of this there are ever more ways to be identified as a criminal and therefore the penal net widens. For example, the adult reformatory movement and its corresponding criminogenic narrative called for a focus on and fixation with, the first time offender, someone not too far gone and thus reformable, a classification never before identified. Up pops policy and practice to target this criminal subset newly marked for specialized punishment. The reformatory was built especially for the first timer. Subsequent waves of reform help create new types of offenders (e.g., juveniles, fallen woman, drug addict) and sometimes spawning fresh categories of crimes (e.g., status offense, non-violent offenses) thus serving to expand the list of crimes and criminals.

Furthermore, as causes are added, ways to exercise jurisdiction over the newly named criminal or criminalized behavior also emerge. They do not replace any practices but become appendages to an entrenched system that does not change but grows with each new theory. The parole movement named the category of the reformed convict and so systems designed to identify, select, and release him/her developed. Those excluded from the new narrative become further embedded in the punishment system, labeled by default, for example incorrigibles (not first timers) or lost causes (not reformed). The society turns away from such groups but continues to punish them and these “criminals” are buried under each new layer of control.

A regressive social change movement is one that grows the host. Additional causes of crime help to widen the penal net and foster new mechanisms of punishment. By embracing a new narrative of criminogenesis each wave of benevolent reform sets a course for expanding the network of control.

Grandiose Claims

These movements share grand hyperbolic claims. Not only do they tout a practice's ability to stop all crime but usually further suggest it has the power to make good citizens and bring about a more cohesive society. Perhaps in a Durkheimian sense such claims carry some weight but no penal practice, however innovative, will result in civil peace. Certainly all movements must overstate their capability in the interest of generating excitement and mobilizing participants. The big problem here is that these high aims become the standard by which these movements are judged, setting the stage for near certain failure. Moreover the zeal for movement capability may be why these movements ultimately employ so few tactics (see repertoire discussion). These campaigns are often fueled entirely by faith in a good idea. No matter how extraordinary that idea, faith alone will never be enough to deliver the promised change.

These movements spin their propaganda so as to be all things to all people: a humane practice, a cost efficient practice, a harsh practice. “[N]aysayers did not and could not dampen enthusiasm for the reforms. The Progressives had too many ready answers.” (Rothman, 2002, p. 81) In the interest of pacifying those who are attached to the status quo the movement never truly veers far from prevailing values. In practice rhetoric tends to embrace the language and definitions of the established penal landscape and does not submit an alternate paradigm. This is in direct contrast to movement claims of innovation, of radicalness. These movements initially present themselves as value-oriented movements, committed to unseating fundamental social principles and delivering substantive change. In fact, thanks to their membership composition and limited, conformist strategies they are ultimately norm-oriented, poised only to effect changes to rules, norms, and laws thus leaving the underlying culture intact. This explains, in part,

why they fail and why they can never deliver meaningful change.

TIME TO UBIQUITY

Findings

Rapid Institutionalization -- The ideas and practices introduced by the movement are usually ubiquitous within twenty-five years. Institutionalization occurs very quickly.

Discussion

These movements examined here institutionalize very quickly. Several factors encourage this tempo. As previously noted the carriers are well connected, powerful, and enjoy legitimacy from the start of the campaign. Widespread dissatisfaction with the status of punishment makes the host receptive but perhaps the leading cause of rapid institutionalization is the concentrated reliance on creating practices. Whatever the various causes, the breakneck pace at which these movements become part of the establishment contributes to their regressive outcomes.

New practices and corresponding theories, first exercised in just a handful of locales, become ubiquitous in a few short years. These movements institutionalize so fast that they have little time for self-evaluation or correction, no time to revamp or expand tactical choices, minimal opportunity to explore or tinker with implementation, and a short span during which movement ideals can mature. There are successful movements that may appear to have sprung up and delivered change overnight but in such cases it is likely that years of nuanced groundwork was taking place. The recent events in Ukraine are an example of such a phenomenon. There is no grassroots foundation upon which these BPRs are building. They emerge and reach ubiquity in record time leaving little room to direct and control movement gains.

It is said that the force advancing a movement through its various stages is the interaction between the movement itself and the host society in which it is acting. This dialectic involves a give and take between repression and co-optation. These movements move so quickly that it appears as if this exchange is rather one sided, barely a dialectic at all. There is, thanks to several movement properties, little force coming from the movement and little time to nourish any as the host overpowers and dominates every exchange between the two. An examination of this distinct evolution indicates that rapid institutionalization serves to restrict a movement's options thereby undermining its aims and further heightening the host's already substantial advantages. Co-optation is fast, complete, and almost entirely dictated by the host.

This situation may mirror the chicken-egg conundrum. It is not clear whether the membership distribution, carrier composition, and corresponding limited repertoire produce rapid institutionalization or if the speed is what shapes the limited strategies and character of the campaign's participants. In either case, the significance remains. A speedy progression does not simply affect the odds of failing. Rapid institutionalization breeds a regressive social change movement.

REPERTOIRE

Findings

Narrow, Non-Confrontational, & Practice Fixated -- The movement employs few means to forward its aims. These are exclusively traditional, non-confrontational avenues of social action such as generating legislation, promoting anecdotal successes, and lobbying. The chief tactic is the creation and administration of programs and practices that reflect or incorporate the movement's agenda. Program implementation quite literally dominates movement strategy.

Discussion

Scholars commonly assert that to be an actor in a social movement is a choice, rational or otherwise. Action is not an accident. (McAdam, Tarrow, & Tilly, 1996) This line of reasoning focuses on an individual's personal participation in a movement. Accordingly it follows that a movement's repertoire, the strategies it employs, is also a choice, though perhaps not made with conscious intent. Yes, options are no doubt shaped somewhat by the society and likely to be limited by moral norms, legal restraints, finances, politics, and opportunities, along with several other logistical factors. Nevertheless, it is striking that findings have revealed that these movements exercised virtually identical tactics. Equally remarkable is that not one of the movements was considered much of a success by the time it waned. Perhaps then these tactics bear some responsibility for the outcomes of these campaigns.

SM theorists believe that collective action is "embedded" in communities and social networks. (McAdam, Tarrow, & Tilly, 1996, p. 25) This may account for why BPR actors come from the same sectors of the society (Holy Rollers, Credibles, Patrons, and Professionals) but it does not account for why they keep using the same narrow range of tactics or why they do not use a more radical approach. Coming from inside the system does not preclude revolutionary action or goals, (consider the Vietnam veterans against the war). The regressive movements in this study were found to rely on traditional and non-confrontational civic action, in particular lobbying and generating new legislation. Moreover, their strategic plans were almost exclusively dedicated to creating and instituting programming and practices. Again we see the conundrum of collective action claiming to be value oriented (targeting fundamentals and creating new culture) but exercising behavior that is the epitome of a norm oriented social movement (changing only

social rules and arrangements). Yet, these movements do not simply deliver normative change or fail to achieve their aims. They unwittingly serve to enhance the very host they were passionately working to transform. The analysis below will explain why this circumscribed repertoire is imperfect and how it comes to foster regression.

By concentrating almost exclusively on creating and administering programming these movements effectively set the stage to grow the host. By inserting procedures and practices into a deeply embedded system their efforts inadvertently act as a streamlined way to append the penal landscape. This is really a case of putting the cart before horse. It feeds and develops rather than dismantles and supplants. The base that these new practices are set upon, and quickly take root in, is the one already in place. No foundation is laid nor building blocks established for cultural change. No new values are circulated. No part of the campaign actively works to unseat any existing punishments or till fresh ground in which to plant the new practices. Reformers bank on a shift from existent practices their own blueprint that never materializes. Why would it? No system subverts itself. It may however, gladly make way for new practices steered by insiders and rooted in many of the same founding principles. The fresh practices these activists work so hard to institute conversely, and efficiently amplify punishment. The end result, in a word, is regression.

This tactic has another drawback. In no time at all the practices themselves take over. The movement becomes all about implementing and managing specific programming while the original intent, effecting substantive change to the penal landscape, fades into memory. Moreover, the practices themselves veer from the movement's stated aims as practical concerns quickly override most ideological principles, what Rothman describes as "convenience" over "conscience." (2002) For example, security and control

superseded repentance inside the penitentiary early in the movement's career. "The fine points of a reform plan became irrelevant to security requirements." (Rothman, 2002, p. 247)

Whether due to the speed at which institutionalization unfolds or thanks to the movement's membership distribution evaluation is virtually nonexistent. So, not only does the movement concentrate chiefly on developing and administering "innovations" but the actual implementation and effectiveness of what they are instituting are hardly explored. This huge blind spot results in the proliferation of practices whose design and application, never assessed against movement claims and goals, exhibit little resemblance to movement rhetoric. What's more, no one seems to have noticed. "The founders had not anticipated the extent of these developments." (Rothman, 2002, p. 247) In state after state these new programs are woven into the punishment system. By the time failure is obvious it is too late and a larger more complex system of punishment is well in place. This new landscape is actually harder to unseat and alter than the one found at the start of the social change movement. Yet, each subsequent movement directs its focus almost entirely on instituting practices. As Rothman observed when discussing parole "once again, reformers paid *no attention* to the possible dangers" (Rothman, 2002, p. 70, emphasis added)

The traditional, non-confrontational, and ultimately rather limited nature of these repertoires help to diminish the effectiveness of these BPR movements and operate to reduce the likelihood of success though they may not contribute directly to a regressive outcome. By exercising timid means, (lobbying, formal meetings with politicians, public speaking), these campaigns curtail their muscle. Diplomacy certainly has its place in social change movements, and this may help to foster legitimacy and account for how

easily movement actors and ideology are embraced by the host. These movements employ a repertoire that never presents much of a threat on any front. The movements may refrain from contentious action due to membership composition or weak leveraging power but these qualities alone do not explain the overall lack of conscious strategy and the continued use of means that have proved ineffective in the past.

Movements that effect bedrock meaningful change practice careful planning, exercise ingenuity, exploit the conditions in which they emerge, and respond to unfolding events. In contrast these BPRs share a woefully uninspired tactical arsenal. Their tired and limited amalgam suggests that participants do not accept the magnitude of their goals or respect just how entrenched the punishment system actually is. There appears to be no sense of past failures and no understanding of the formidableness of the endeavor they have embraced. In each case there is little evidence of strategic planning at all, no consideration of the best or most effective way to forward that movement's specific aims given the campaign's context. The movement's rhetoric or spin does respond to surroundings but its strategies do not. Though insiders, the activists appear to be wasting their intimate knowledge of the system. The unconsidered repertoire gives off an air of carelessness and naiveté.

It is acknowledged that repertoires lose their juice yet BPRs continue to rely on them over and over again. (McAdam, Tarrow, & Tilly, 1996, p. 23) Each movement zealously uses anecdotes to support their cause. Each appears to be banking on a good idea, a handful of success stories, new legislation, and a fresh procedure to substantially alter a mammoth system. In each, participants hand off the movement early on to those running the new programs, fail to keep their eyes on development, and opt out of long term planning. This blind repetition connotes a disregard for the context and aims of

individual movements. According to Crossley, social movements are “a source of creativity” and yet the repertoires seen here are devoid of invention even if the campaign’s ideas and claims are original (and often they are). (Crossley, 2002, p. 4)

There is an entire subset of SM literature devoted to political opportunity structures, “the formal organizations of government and public politics, authorities’ facilitation and repression of claim-makings by challenging groups, and the presence of potential allies, rivals, or enemies significantly affect any polity’s patterns of contention.” (McAdam, Tarrow, & Tilly, 1996, p. 24) Yet each and every BPR seems to have ignored this written and ready record. The regressive movements in the present study share a remarkably repetitive, unimaginative, and slim collection of tactics. It is highly likely that these movements are missing out on a range of possible steps leading toward their aim. Pains to expand or sustain movement membership are minimal at best. There is no effort to lay fresh ground upon which to build a new vision, no drive to alter the underlying ideas, definitions, or language regarding crime and punishment, no assessment along the way, and no long term strategic planning. These movements do not capitalize on or seek strategic opportunity nor do they take into account the barriers and obstacles in their way. What we see here is a diluted and problematic repertoire.

OUTCOME

Findings

Aims Undelivered & Punishment Grown -- The movement does not deliver on its aims. Little, if anything, of the former system is truly replaced (ideas or practices) though much is added. In its wake there are more mechanisms for actual punishment, deeper government ingress into the lives and bodies of convicted offenders, and a wider pool of people are caught up in the penal system. The nation’s network of control is considerably expanded by the movement’s efforts. Punishment is grown.

Discussion

Outcome is a term that refers to practical, intellectual, and cultural changes in the wake of the movement. The BPRs in this study exhibit a similar outcome set: not much, if anything, is supplanted, claims are not realized, and, the penal landscape is dramatically expanded thanks solely to movement efforts and corresponding gains. These results are what render these movements *regressive* social change movements rather than just mere failures (i.e. social movements that do not deliver). The consequences are more far-ranging than simply an expanded network of control. The punishment system is more deeply rooted with each cycle, more intractable larger and tougher to refashion. Cynicism too grows with each cycle. While these campaigns do actually effect change, their accomplishments are entirely counter to their stated direction, progressive intent. They are regressive. Whether the previous profile characteristics are evident this type of outcome qualifies a social movement as regressive.

BPR rhetoric substantially raises penal expectations but the campaign ultimately fails to deliver much on its promises. This abysmal track record then serves to propel cynicism to new heights (recall that discontent was widespread at the start of each movement) and perhaps even fosters a renewed reactionary attachment to the original ideas of the host. The response to Martinson's 1974 report on rehabilitation is a wonderful example. After it chronicled the limited power and efficacy of programs dedicated to rehabilitation, "nothing works" became the new penal mantra and circumspection regarding reformation turned into incredulity. In the wake of a failed BPR lie the seeds of a backlash against benevolence and mercy. This may account for why many of these movements are followed by a spike in punitive policies. Interestingly punitive reforms (capital punishment, three-strikes, the war on drugs) are also unlikely to

deliver much success but their gains are far more easily dismantled. It may be that the crushing disappointment that comes from unfulfilled raised expectations is channeled into dismantling the inroads of these punitive reform movements (for example, stripping mandatory minimums from the books).

BPRs do cultivate substantial cultural change. Though the zeitgeist may be marked by a renewed attachment to host ideals a whole new set of criminological theories and punitive practices are now in place. Each campaign expands the set of ideas used to account for criminal behavior changing the way the society thinks about offenders and punishment. New language seeps quickly into the whole of society as do various beliefs about those who perpetrate crime. In short, the ideological landscape is transformed. Terms, ideas, and practices first introduced by the movement go from novel to commonplace and permeate other institutions. To this day, deterrence, classification systems, and positivism continue to be put to use in schools, factories, and child-rearing. A strange contradiction emerges whereby ideas are discredited by a movement's failures even as they are increasingly embraced by the larger society. This kind of acceptance is evidence of the tremendous legitimacy enjoyed by each movement, another important success marker. The culture is forever changed by the movement in unintended ways.

The landscape described above is what can be witnessed as regression unfolds. Even though this performance is repeated movement actors don't see it coming. Each subsequent BPR wave 'surprisingly' results in tremendous gains and legitimacy that nurture and grow the host while delivering various cultural changes entirely counter to the movements plan.

THE SCORE

Dismal Success-- The campaign displays the markers of social movement success. These include evidence of literal gains or inroads for which the movement is directly responsible and a confirmation that both the actors and ideas associated with the movement attain legitimacy. Yet, despite these success indicators, there is no question that the movement is a failure.

Discussion

One would expect a failed movement to manifest few success signifiers but according to Gamson's model these movements attain "full-response" as their participants and ideas enjoy large-scale legitimacy and the campaign's efforts result in significant gains. (Gamson, 2003) In Gamson's framework, this is as successful as a movement might hope to be and yet these movements are far from effective with regard to their aims. What is notable about these regressive movements is that they display all the markers of a successful social change movement but are undeniable failures. This 'score' is unique to regressive movements and is a distinguishing characteristic of their profile. In such cases gains are actually losses. As these movements realize new practices and programs, as their ideology is embraced, punishment increases, the system's inhumanity expands and an increasing number of people become subject to the punitive arm of the state. Legitimacy, the other key marker of success, is a curse for these movements. Participants tend to be insiders who have a valuable stake in the status quo, a position that informs their choice of timid tactics. While their access to power and their respectability allows for early gains, in the end this easy legitimacy works against the aims of the movement. It fosters swift and easy implementation of programming while discouraging contentious action. Even as the welcoming host invites movement actors in, it is not really courting substantive change.

Movements frequently blame faulty implementation for their failures. This narrative seeks to preserve the integrity and value of the campaign's ideology and innovations while explaining its fatal shortcomings. In the case of the penitentiary, reformers refused to find any fault with their creation, complaining instead that the inmates who ended up in these new institutions were too far gone to repent. In the case of parole, reformers suggested that boards were not choosing candidates correctly and that post-release programs within the larger society were not doing the job of keeping parolees on the straight and narrow. Corrupt administrators and underfunding are other popular rationalizations that point the finger at defective application. Citing implementation is a flawed explanation for a number of reasons. First, movement participants themselves have often been in charge of instituting or overseeing the new practices. Second, they have made little effort to assess implementation and have pushed hard to quickly expand the use of their untested procedures. Third, these actors have been quick to abandon their ideals allowing the host to direct and alter their plans before they can be enacted. Finally, these movements have never incorporated internal scrutiny and have evolved without attention to their stated directives. If indeed implementation has been the problem substantial responsibility still lies with the movement and not the host.

After initial gains carriers often turn their attention to a new focus. The Tappans, who were critical to the rise of the prison, shifted their benevolent empire toward schools well before their penal work was done. The actors in these movements do not stick around to finish the work they start. Perhaps it is due to this that there is little uproar at initial failings or wrong turns as the movement matures. There is no force from within the collective evaluating movement progress. What we do continually see is that very little is said by participants in response to unfolding developments. Sometimes an individual

actor may leave a board in a huff or demand an inquiry but for the most part these movements progress, or rather regress, under the radar. By the time everyone agrees the campaign is a failure (which isn't too long after institutionalization) all that is left is cynicism and nonspecific critiques. The reformers, the activists, the champions who so believed and fought for the cause abandon these regressive campaigns early on- perhaps another reason the host has so much power in the development of these movements.

Whatever the exact reason cited for failure, reformers never seem to view the innovation itself nor any choices made by movement actors as part of the problem. There is no self-assessment and new movements never attempt to identify where and how prior campaigns went astray. The evolution of regressive movements suggests that gains and legitimacy are not always the path to success or for that matter the earmarks of success. Yet, each new wave eagerly and deliberately prioritizes both.

Wrap-Up

We can not afford to mount campaign after campaign along the same trajectory, as reformers continue to do, with the expectation that change will come. The analysis above explores and illustrates how certain characteristics consistently found in the Regressive Reform Profile facilitate the unique, repetitive, and highly problematic outcome expressed by benevolent penal reforms, as regressive social change movements. In particular, it is evident that the composition of the movement's carriers, the distinct membership distribution, the limited repertoire, and the speed at which such movements institutionalize nourish a campaign poised to enrich and expand the host while failing to deliver on its stated aims. It is difficult to say which attribute is the most responsible or to delineate the order in which the attributes develop. (Does one lead to another?).

More likely, it is the dynamic interplay of these various profile characteristics that come together to foster regression. No single or lone acting quality generates a regressive course.

An examination of the structure of these failed movements reveals why substantive change is hard to come by and why the cycle of regression continues to be repeated. The findings explain why at its core, the penal landscape remains static transformed only in terms of scale and the kind of punishment rendered. Most importantly, the investigation shows that penal reform is not inherently doomed or controlled by some unaccountable force or concentrated conspiracy to administer outrageous and dangerous failure. Regression is not inevitable. We need not be resolved, as so many criminal justice scholars contend, to penal stasis.

There are many factors influencing collective action that a movement has little or no control over, including a wide array of external pressures from the economy to government action, but there is considerable power, more than many may realize, inside the movement. It makes no sense to lay blame exclusively at the door of the host or the environment at large for these movements' failings, especially considering the fact that these campaigns experienced virtually no repression and exerted tremendous influence. It is good news to find out that specific factors from inside these movements are contributing to their undesired outcomes. This is actually a domain participants command. It is clear that within any given social change movement choices are made all the time. They can be made with intent or by default. They can be appraised and maneuvered or neglected. History shows benevolent reformers barely attend to their movements. If activists hope to implement substantive change they must be focused, mindful, and strategic in their efforts.

Our system is not particularly efficient or effective at controlling the “dangerous classes” nor has it found a fiscally sound way to police them. Yet, controlling and policing are often the reasons cited when explaining an ever-expanding punishment system in which change is devoured and neutralized. Keep in mind these campaigns did not initially or specifically target racial minorities as they were routinely deemed incapable of reforming or conforming to the standards of middle-class (read white and protestant) society. They were deemed below the norm by virtue of biology. There was no possibility of reintegration for these populations. The fact that they were swept up in, and ultimately harshly controlled by these waves of reform was ‘accidental’ as were, it seems, all the deleterious effects of the campaigns.

No doubt some agendas have been served by our invariable punishment system, but this is not why it remains so deeply lodged. This study shows that there has never really been much of a struggle against the status quo. It is therefore impossible to reliably assess just how fiercely the host might fight back or how easily it might actually succumb. The reasons for various campaigns’ consistently weak performances and antithetical fruits lie within each movement’s structure and the actions repeatedly exercised by it’s participants (not to mention the options left unexercised). In the realm of punishment it appears that activists underestimate the weight of what they aim to unseat, ignore the past, and bank on the power of a good or righteous idea. Benevolent penal reforms, as they have evolved to date, effectively feed the punishment system. In order to increase the likelihood of effecting meaningful change, a BPR must employ a conscious eye and complex of strategies that take the missteps of previous campaigns into account.

Reformers should be leery of easy gains and effortless legitimacy. Cultivating a

diversified and larger participant base would expand membership distribution and allow for greater leverage, and encourage internal oversight. This would then allow the movement to withhold compromise on critical issues and remain truer to its ideology. Benefits (with regard to ideology, the development of practices, and the recognition of co-optation) of including people directly impacted by punishment in the movement's ranks would be tremendous. Their personal stake would fuel and shape a campaign in ways no other actor could. Such movements should explore the strategies of successful social change movements as well as exercise creativity when generating tactics. In fact, it would behoove these movements to forgo instituting new practices and concentrate on establishing a new cultural foundation in which a fresh or reconstructed punishment system could take root. If collective action truly aims to effect a paradigm shift (regardless of scale), activists must lay down the tactics of norm-oriented movements (a focus on rules and laws) and pick up the strategies of a value-oriented campaign, tactics that target fundamental aspects of the society in order to truly alter the culture of punishment.

Social movement scholars assert that it is "difficult (if not impossible) to predict" what type of social movement will begin to percolate and when. (Mauss, 1975, p. 41) There is ample discussion in the literature as to whether social change movements are part of the natural order of societies or whether they are extraordinary events brought about by a particular set of circumstances. (Killian, 1964; Mauss, 1975) Either way, this study shows that if certain characteristics are evident as a movement unfolds it is more likely to regress than effect any change in the direction it desires. Such an outcome is likely, as this is what has happened historically in movements with comparable features and, as the analysis in this chapter highlights, these ingredients are highly effective means toward

regression. This is to say that while we may not be able to predict when a movement will arise we *can* make predictions about its probable evolution and outcomes based on its composition and the past performances of similarly structured campaigns.

Do each of the regressive profile characteristics need to be present to confidently figure that a regressive movement is afoot? It is premature to say. Does the presence of these elements mean there will absolutely be a regressive outcome? This too is difficult to confirm. The number of RRP elements that must be present to drive regression remains unknown. It is safe to suggest however that a movement exhibiting a regressive profile, at least in part, undercuts its chances of delivering the change it is after and is in jeopardy of repeating the performances of past BPRs, namely, growing the host. This begs the question, are only BPRs regressive? Probably not. Though this question can only be answered by another study, it is more likely than not that regressive movements can be found in any realm of social action, not just collective action targeting punishment. Must the campaign be benevolent? Again, probably not, although the fact that the carriers and participants are not directly impacted by movement gains may contribute to unwanted ends, this factor alone does not regression make. It may be that regressive movements are an American phenomenon, yet another question for further study.

What can be said at this juncture is that there are social change movements that do worse than just fail. These efforts actually bolster and augment the very entity they are working to substantially alter. Such campaigns, which ironically and distinctively have all the markers of successful movements, have been named regressive by this study. Furthermore, this class of collective action shares certain qualities and structural components that serve to foster and drive their unique course and produce their unwanted outcome. This configuration of elements has been named the Regressive Reform Profile

(RRP). Can a movement alter its trajectory once it has embarked on a regressive course?

The findings here suggest that if a movement catches itself before regression and institutionalization are fully realized and then modifies certain qualities, such as membership distribution and chosen repertoire, it can redirect the projected outcome of growing the host.

The strength of our punishment institutions can be gauged by how difficult they are to change. Concerted, organized, well-intended efforts to alter the system have produced the opposite effect. They contributed to its very expansion, deepening its roots and strengthening its reach and power. This is why a system that inspires dissatisfaction, disgust, and regret has remained relatively static. Yet, the stasis is not due to a sturdy impenetrable system or combative forces, but rather to squandered opportunity, misspent energies, and misdirected struggle.

If there is any hope of affecting change in the penal arena, and I believe there is, we must look at how change has been thwarted in the past. We must recognize that we have been caught in a repeated cycle of failure that shows no sign of abating on its own. To get out of this rut that deepens with each go around, reformers must actively control and shape the movements they generate.

Part II of this study (chapters seven through nine), explores whether the latest wave of benevolent penal reform, restorative justice, is exhibiting any features of the regressive reform profile and therefore poised to deliver a repeat performance. Chapter seven examines the restorative justice literature and appraises the prevailing thoughts on this new campaign. Chapter eight maps out the methodology used to garner data on the movement. Chapter nine illustrates how each of the eight social movement characteristics

identified in this study are manifesting in the still nascent restorative justice movement. The findings are followed by a discussion that addresses the question of whether or not the regressive cycle is coming around again.

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Part II -- Chapters 7 - 9

We must not only be clear in our minds as to the kind of organization we must have and the kind of work we must do; we must also draw up a definite plan or organisation that will enable us to set to work to build it from all sides.

-- V. I. Lenin, *What is to be done?* (1901)

Chapter 7

Restorative Justice Literature Review

Part II of this study explores whether the latest wave of benevolent penal reform, restorative justice, is exhibiting any of the characteristics of the Regressive Reform Profile. If so, it would appear that this current effort is unfolding like its benevolent predecessors and that the regressive cycle is coming around again. This chapter examines the restorative justice literature and appraises prevailing academic thoughts on this new campaign. Chapter eight maps out the methodology used to gather data on the campaign. Chapter nine illustrates how each of the eight social movement characteristics identified and employed throughout the study are manifesting in the still evolving restorative justice movement and then answers the critical question: Is a repeat performance underway?

Restorative justice is an emerging innovative approach directed toward resolving and responding to criminal events. There is no definitive definition of restorative justice nor consensus on what, exactly, it means. The term itself is often attributed to Howard Zehr. (1990) To some it is an ancient practice to which we must return and to others an original, fresh tack to face an age old problem. There are those who see it as but one expression of community justice and others who would place it in a category all its own. A variety of practices fall under its rubric, including victim-offender mediation, healing circles, family group conferencing, reparation boards, and victim-offender reconciliation programs. (Leena, 2000) Despite the definition's unsettled state, restorative justice is a bit like pornography, people know it when they see it. Practitioners and theorists alike agree on the basic tenets integral to restorative justice. Without question it is said to be a non-punishing perspective in which victims' rights, informal social control, reconciliation, mediation, restitution, community participation, and reintegration are central ideals.

Personal responsibility and becoming whole again are recurrent themes. (Zehr, 1990; Van Ness, 1997) Restorative justice is a “benevolent reform.” The initial rumblings of this latest penal innovation date back about twenty five years but advocates and critics alike would agree that as of the last five or ten years a movement’s been gaining steam. Retributive fever may be breaking.

Expressions of restorative justice are springing up in a variety of venues from universities to local churches, from death row to traffic court, from the east coast to the west, and throughout the criminal justice system on the local, state, and federal level. Minnesota, Vermont, Iowa, Ohio, Missouri, Wisconsin, Wyoming, and Idaho are just some of the states whose departments of corrections have restorative justice mandates. Both the National Institute of Justice and the Office of Juvenile Justice and Delinquency Prevention devote considerable resources to the topic. The University of Minnesota and Fresno State University have centers for peacemaking and a variety of faiths, including the Quakers, Mennonites, and Jews participate in restorative justice practices. Practitioner publications like *Corrections Today* and *Federal Probation* are responding with increasing coverage. Mainstream media and the popular press, including the *New York Times*, *The Boston Globe*, *USA Today*, *America*, *The Progressive*, *Christianity Today*, *The Massachusetts Review*, *Tikkun*, and *Spectrum* have picked up on the action and articles are on the rise. Another telltale sign of the legitimization and relevance of this topic is that it is becoming standard in criminal justice curricula. (Smith-Cunnien, Susan, & Parilla, 2001)

Scholarly literature addressing restorative justice, while still limited, has been blossoming as of late. In a 1997 annotated bibliography half of the over 500 entries were from the previous five years. (McCold) A substantial percentage of the work is

international in scope. New Zealand and Australia are perhaps the best known locales but Papua New Guinea, Canada, Italy, Germany, Scotland, Austria, France, Norway, Japan, England and the Netherlands are all experimenting with and inquiring about restorative justice. As this study focuses solely on the United States, the following discussion will look closely only at literature that is directed likewise.

Restorative justice is one of the hottest topics in penology today, within both academic circles and the apparatus of criminal justice. According to a recent survey just about every state has implemented some form of restorative justice in their legal programs and policies. (Kaleidoscope of Justice, 2004) Perhaps one significant sign of this contemporary reform having arrived is that Oprah Winfrey featured this alternate justice paradigm both in her magazine (Goodwin, 2004) and on her television show. (airdate Oct. 25th, 2004, see oprah.com) It is indeed a social change campaign and is being referred to as such by activists and scholars alike. (Daly, 2002; Johnstone, 2003; Walgrave, 2003) There is no question, a restorative justice movement is afoot.

THE LITERATURE - A SURVEY

Same Cast of Characters & Growing Fast

One of the first notable aspects of restorative justice literature is that a considerable percentage of the work is produced by a small handful of scholars. Certain names -- Zehr, Bazemore, Schiff, Pranis, Van Ness, Coates, Sullivan, Hudson, McCold, Strang, Galaway, and Umbreit -- are so pervasive that they've become synonymous with restorative justice. These are people who are true believers in restorative justice and write to champion its cause and discuss their experiences with the practice itself. The

dominance, the near monopoly, held by these authors is beginning to give way. The increased focus on the topic has opened the door for new voices, champions and critics alike, and they are joining the discussion. What used to be the domain of a steadfast marginalized few is now moving its way to the main.

The past five to ten years have shown a tremendous surge in publications addressing the issue be they books, journal articles, magazines, newsletters, or conference papers. This increased interest further suggests a movement is on the rise. Currently in the City University of New York library system there are 60 books with restorative justice as their subject and these cover only the twelve year period from 1992 to 2004. There has been a swell in textbooks addressing restorative justice and the topic is now regularly included in the criminal justice curricula. (Bazemore & Schiff, 2001; Braithwaite, 2002; Coates, Kalani, & Umbreit, 2002; Galaway & Hudson, 1996; McLaughlin, Fergusson, Hughes, & Westmarland, 2003; Van Ness & Strong, 1997) Gerry Johnstone's 2003 book *A Restorative Justice Reader* is a comprehensive volume designed for both scholars and the classroom.

The Journal *Contemporary Justice Review* celebrated its seventh birthday in 2004. Though its full title reveals a wide scope --criminal, social, and restorative justice -- it has become a scholarly forum for discussion, debate, reflection, and promotion of restorative justice issues and practices. The publication continues to print many articles on restorative justice each year and has already had two issues entirely devoted to restorative justice. (Volumes 1 and 7) and is recognized as a major marketplace of restorative justice ideas. "CRJ has emerged as the world's leading scholarly journal devoted to restorative justice." (McCold, 2004, p. 143) All this is to say nothing of restorative justice conferences. There is an annual international restorative justice conference and at criminal

justice conferences panel after panel in recent years address restorative justice.

Restorative justice literature is growing quickly.

Define, Develop, & Promote

Quite a bit of what is written, even within scholarly circles, simply champions the restorative justice cause. These types of articles and books mount intellectual and philosophical arguments for a penal shift and identify restorative justice as the next 'right' step, the way out of our current quagmire. Sometimes they focus on the current penal crisis and its harms while attesting to how restorative justice will avoid inflicting damage and better redress criminal events. (Van Ness & Strong, 1997; Zehr, 1990) Some claim this "new" premise is rather an old one revisited. They mount support by pointing to biblical, religious, or indigenous roots. (Colson, 2001; Van Ness, 1993) Still others aim to document what *exactly* restorative justice is, positing it as a totally alternate paradigm. These serve to introduce and explain both the theory and practice. (Braithwaite, 2002; Wozniak, 2000) There is also a growing body of work that spells out how to develop or implement such programming, suggesting guidelines and practical answers to logistical questions. (Dyck, 2000; Strang & Braithwaite, 2000) Then there are publications devoted exclusively to developing and shaping restorative justice theory. (McCold, 2000; Barak, 2000; Walgrave, 2000)

Another substantial subset of writings on restorative justice discusses how, and if, it is a good fit with certain specific offenses or groups of offenders. These in effect are writings that serve to further define and promote, or discredit, restorative justice by examining its viability and usefulness in certain specific circumstances. These discussions are comprised of both empirical studies and theoretical discourse, sometimes combining

the two. Examples include work that explores whether this approach is a better way to deal with certain crimes, such as domestic violence, substance abuse, and drunk driving, (Martin, 1999; Fulkerson, 2001) or certain offenders, such as vandals, juveniles, inmates, or batterers since its design calls for community involvement and a non-punitive response to the actor. (Fraleley, 2001; Braithwaite, 2001; Pranis, 1998; McKendy, 1997; Presser & Gaarder, 2000) Others consider restorative justice in light of a larger subgroup such as lower level crime or misdemeanants. There are articles that discuss the viability and functional practicality of this type of programming and philosophy, particularly with regard to violent more dangerous crime. (Hudson, 1998; Umbreit, Bradshaw, & Coates, 1999) Much of the restorative justice literature (and practice) centers around juveniles, often seen as a distinct class of offenders regardless of offense. (Bazemore & Umbreit, 1995; Bazemore, 1999; Walgrave, 1995) They are a popular crowd with which to try out this new penal practice. Even the theoretical discourse is prone to directing itself toward this subgroup. This study will not look firsthand at programs dealing with underage offenders but will speak to this trend. It is important to recognize the appeal of, and focus on, this population and to investigate what the impact of this fixation might be on the system and on juveniles themselves.

On the one hand, restorative justice literature merely reflects what is happening on the ground. A great many articles discuss programs already up and running and a majority of these, internationally as well as nationally, deal with juveniles. (van der Laan, 1992; Bullock, 1992; Seyko, 2001) On the other hand, the nature of restorative justice ideology, its feel-good-community-oriented-informal-non-punitive-alternative-to-incarceration empathetic vibe fits well with how we say we want to view and deal with young people. It is already agreed upon that juveniles warrant supervision and

community involvement, and identifying their “community” is often thought to be less complex than it is for adults. We feel conflicted over sending this population to prison, partly because we hold them less responsible but also because we think that they can still be molded into good citizens. Therefore more programmatic and experimental leeway is allowed with juvenile offenders though this is also due in no small part to fewer constitutional constraints. This question, why are juveniles over-represented in restorative justice theory and practice, is not as simple as it may seem. It is highly relevant with regard to the movement’s evolution and strategies. (Chapter nine will address this issue further). It is sufficient at this juncture to note that though much of the restorative justice literature deals with juveniles, it does not question why this population is paramount, above others, or what this might mean for restorative justice or youthful offenders.

Another set of relatively recent publications can also be classified as promotional in nature. These are manuals, books, and articles designed to educate professionals on restorative justice principles and practices so that they may implement them in their work. These writings operate secondarily as tools to turn interested neophytes into restorative justice professionals. (Dyck, 2000) Much of what qualifies as restorative justice literature is intellectual sport and advertising.

Empirical Studies

Not all the literature is theoretical or philosophical. Empirical studies are slowly emerging and their relatively small numbers likely reflect the newness of the practice. There is an obstacle to this type of inquiry. Traditional criminal justice measures of program success do not necessarily apply to restorative justice. Recidivism is a long-

standing, though problematic, benchmark used to determine a practice's efficacy and social value but many feel it does not suit a restorative context. Scholars are still debating which variables to measure and how to measure them. Questions are murky and answers elusive when it comes to evaluating restorative justice. Just what would a successful restorative justice outcome be? What would 'able' restorative practices achieve? Does one look at whether or not an offender feels more integrated into the community post program participation? Would this be significant only if set against a baseline measure? How can values expressing victim wholeness, community participation, or the taking of responsibility be ascertained? Entire sessions at criminal justice conferences are dedicated to these complex questions of program evaluation. There are thinkers devoted to this issue and sophisticated, thoughtful research designs are materializing and slowly being put to use. (Leena, 2003)

Some studies investigate participant satisfaction, including both offenders and crime victims. They tend to report that both parties prefer this new practice to traditional criminal justice mechanisms. There are studies that focus only on victims and show that restorative justice offers them much more opportunity to heal. (Bazemore, 1999; Umbreit, Coates & Roberts, 2000) Others follow offenders after the practice, looking beyond whether they break the law to other factors including job performance or family relationships. (Gavazzi, Yarcheck, Wasserman & Patridge, 2000) Questions of program implementation and evaluation are rarely studied. Overall empirical restorative justice studies are very localized, tend to look at small scale pilot programs, or are single case studies. (Brookes, 1998; Coates, Umbreit, & Vos, 2003; Pranis, 1998; Helfgott, 2000; Neimeyer & Schior, 1996; Alaska Judicial Council, 1992; Umbreit, Lewis, & Burns, 2003) Some efforts look at efficacy with regard to a specific, distinct population such as

juveniles or inmates. (Walgrave, 2003; Alder, 2003; Fraley, 2001; Karp, Sweet, Kirshenbaum, & Bazemore 2004) Others focus on individual offenses such as sexual and racial violence. (Hudson, 2003; Fulkerson, 2001) A few offer comparisons. (Bazemore & Umbreit, 2003) Many empirical studies are site specific and may say more about the locality than the restorative practices under discussion. (Morris & Maxwell, 2003; Moore, O'Connell, 2003)

Due at least in part to the practice's infancy, longitudinal studies have not yet been conducted which means there is no data on the long term impact of a restorative justice approach. Overall there is limited empirical research appraising the practice of restorative justice particularly here in the United States. In general, studies are not large, representative, or sophisticated. It is not prudent to generalize from this body of work and though many do, it does not actually tell us very much. Nevertheless, an overwhelming volume of positive 'evidence' in restorative justice's favor has been reported, much of it anecdotal. The word on the academic street is that restorative justice "works," though what is meant by "works" is often undefined or differently construed.

International & Overly Broad in Scope

It is clear from the literature that scholars and reformers alike conceive of restorative justice as an international phenomenon. (Galaway & Hudson, 1996; Sullivan and Tiftt, 2001) *Contemporary Justice Review* has been cited as the "world's" restorative justice journal. (McCold, 2004, emphasis added) However, the journal's theoretical and empirical discourse, while placing a priority on community and asserting an international movement, does not mark distinctions between locales. This is a glaring omission. Does it mean to communicate that restorative justice's applicability is

constant, unchanged no matter the county and country? Likewise, Johnstone's *Restorative Justice Reader* is a remarkably comprehensive and detailed volume and yet it does not identify or address the significance of place. There is a flip side. Consider writings that focus exclusively on restorative justice in a specific country. (Walgrave, 2003) Though these authors include locales they fail to consider, or even mention the relevance of findings to other settings.

The United States in particular is underrepresented in restorative justice literature. It is not examined as a unique or specific venue. In many respects, the most critical being race, scale, and religion, this country is like no other when it comes to punishment. Penal reforms play out differently in the United States than they do in Europe or New Zealand. It seems problematic to make comparisons between Maori tradition and twenty-first century American life, though restorative justice scholars do. (Van Ness, 1997; Zehr, 1990; Umbreit, Coates, & Roberts, 2000; Braithwaite, 2002) Place is not categorically discussed in restorative justice discourse.

Critiques

Until recently, critiques of restorative justice had been relatively limited in both scope and number. In the past few years a sudden surge of academic critical commentary has appeared on the scene. The content of this type of inquiry is becoming much more sophisticated and more and more scholars are joining the discussion. Initially almost all restorative justice criticism, particularly particularly criticism coming out of the United States, addressed questions of law and rights. (Ashworth, 1993) These concerns, still being voiced, include apprehension about moving toward a system that operates outside the structures and constraints of a traditional legal model. Criminal law's standing in a

restorative justice model is uncertain. There is no obvious place for due process and there is no mechanism to ensure that offenders' rights are protected. Some critics object to the possibility that the concept of rights does not apply at all in a restorative paradigm. The lack of intrinsic boundaries is a serious issue. Even among restorative justice theorists the definitions of harms and prioritization of goals vary wildly. Critics see potential scenarios wherein extremely vulnerable offenders will be at the mercy of a State with a poor track record of protecting their interests. Another cause for worry, they argue, is profound inequality. Actors who have committed the same wrong will likely be expected to amend their offense in two totally divergent ways as resolution depends in a large part on the wants of the individual victim or community participants. Experiences, they object, will be so individualized that any sense of symmetry or continuity will be lost. It is entirely unclear how fairness, prejudice, and bias will be addressed in the restorative model. Even as the critical discourse expands, these important issues remain on the table.

In the past few years, thanks to a rush of articles and books, the scope of critical inquiry has been dramatically broadened. (Daly, 2002; Daly & Immarigeon, 1998; Clear, 2004; Walgrave, 2003; Levrant, 1999; Johnstone, 2003; McLaughlin et al, 2003; von Hirsch et al, 2003) A more varied series of penetrating questions are now being put to restorative justice and the honeymoon phase may be waning. Conversations have become much more complex and debate within restorative justice circles is growing. Critiques now cover a host of issues and discussions between scholarly advocates and skeptics, thinkers and practitioners, and reformers and bystanders are going on in the literature. Today critical discourse addresses whether or not restorative justice should replace or become integrated with traditional criminal justice practices; how to define restorative justice; where and how social injustice intersects with restorative justice; the role of the

state; the relationship between community and restorative justice; and the problems between theory and practice. Furthermore, the dichotomy between retributive and restorative justice that movement carriers continually assert is being challenged. Is restorative justice an alternative to punishment (as the movement claims) or just an alternative punishment? (Johnstone, 2003; Daly, 2002; Duff, 2003) Annalise Acorn's book, *Compulsory Compassion*, is entirely dedicated to spelling out "conceptual flaws" in the core ideas of restorative justice. (2004) It is evident that critical inquiry will continue to emerge. This study is part of that trend.

Restorative Justice in Context: Developmental Problems

There are a series of fairly recent influential articles that place restorative justice in a historical context. Their authors dare to ask questions about the restorative justice movement in light of past trends. These standout critiques are the ones most relevant to this study which builds upon the groundwork they have laid.

In 1999 *Crime and Delinquency* published the first article of its kind to address developmental questions central to the restorative justice movement. Levrant, Cullen, Fulton, & Wozniak asked if restorative justice will be another case of benevolence "corrupted." A legitimate concern. Unfortunately, the piece was quite general and did not specify how or where benevolence becomes corrupted. The article remains important because it acknowledged a long-standing pattern of well meaning organized efforts that yield disturbing, contrary results. Furthermore, these authors recognized a similarity between restorative justice and previous benevolent campaigns. In their contribution to Johnstone's book, they again expressed concerns that this latest wave will develop "conservatively" and ultimately produce an undesired outcome like collective penal action

of the past. Their worry is that the movement will be distorted. (2003)

Boyes-Watson, in a 1999 *Journal of Contemporary Justice* article, raised the issue of net-widening, focusing her attention on the consequences of professionalization and state-run penal practices. Boyes-Watson noted that in the past “good intentions” have “gone awry.” She worried that the restorative justice movement might lose “fundamental values” as the state began to emerge as a primary sponsor of restorative justice programming. A paradigm that relies on community in a culture with weak community ties, she noted, is poised for trouble. This penetrating article cut through a mass of zealous enthusiasm to ask some very important questions about this nascent social change campaign. Though primarily concerned with the development of restorative justice practices and not the movement itself, Boyes-Watson examined the origins of common pitfalls and offered some concrete proposals on how to circumvent them. In particular she identified certain restorative practices, sentencing circles, as being better at creating a balanced partnership between professionals and the community.

Early in 2002, a provocative critical analysis of the restorative justice movement by Kathleen Daly was published in *Punishment & Society*. The article, ‘Restorative Justice: The real story’, is exceptional. It marked the start of a more honest and demanding look at restorative justice and called into question many “myths” strongly associated with this developing justice paradigm. Daly demonstrated how restorative justice is using fictitious, overly-simplified stories to mount its campaign and build the movement. While carefully illustrating and debunking these myths she discussed how this can hurt the reform’s potential and compromise its goals. In short, she called the movement to task, and demanded more, better, of it. In the Johnstone book Daly again tells “the real story” of restorative justice and reminds us to beware of a movement

promising “nirvana.” (2003)

Lode Walgrave, a restorative justice enthusiast is also worried about all the unbridled enthusiasm and noted that “[p]aradoxically, one could even say that the most important threat to restorative justice is the enthusiasm with which it is being accepted.” (2003, p. ix) Walgrave listed a series of problems associated with passionate devotion from poor implementation and “overestimation” to conceptual confusion. He called for restorative justice to “reposition” itself now that it has a clear sense of what it is and what it hopes to do.

In a thoughtful retort to McCold’s critique of their marrying of restorative justice to community justice Gordon Bazemore and Mara Schiff make a point of identifying what they see as the movement’s “real enemies.” (2004) This list of threats is valuable and speaks specifically to strategy issues of program and practice development including the risks of joining with other social change movements and the challenge of working with a system devoted to deterrence and incapacitation. Bazemore and Schiff failed to address the ways in which certain strategies have led to unwelcome outcomes in the past and whether the restorative justice movement is currently employing any problematic tactics.

In a 2004 special issue of *Contemporary Justice Review*, Todd Clear wrote of his concerns for restorative justice given the failures of movements past. He noted that “good intentions do not matter” as we have seen previous well meaning campaigns “backfire.” True enough, each of the concerned scholars discussed here are wise to be worried. The lessons of history are obvious in many respects. Good reforms turn very, very bad. On this all can agree, and it is meaningful that these thinkers have been daring enough to point this out to enthusiasts eagerly engaged in yet another wave of penal reform. These scholars raise some key issues and their work should not be ignored but

the language they use -- “backfire”, “lose values”, “corruption”, “co-optation”, “go awry”, “state wins out”, “subvert”-- suggests that the forces effecting a campaign’s outcome are either unexplainable, unavoidable, or are beyond a movement’s control.

The articles and books summed up here do not identify *how* it is that movements go so wrong. They fail to note *specifically* what restorative justice reformers ought to look out for. Movement failure in these texts is a mysterious and indiscriminate phenomenon and it is unclear if the authors think it can be avoided, interrupted, or redirected. These scholars send out a warning but offer no counsel. This unfortunately plays into the cynicism regarding substantive change that is pervasive in criminal justice literature. No invisible force dooms penal reform movements. They do not arbitrarily “go awry.” Their failures are not random, as the identical cycle has been repeated many times. It is not simply a case of the system taking over. The state does not just “win out,” as Boyes-Watson fears. Rather, tactical choices on the movement’s part allow for the state to dominate the dialectic between the two. Furthermore, (as the discussion in chapter six carefully spells out) the co-optation that she and others dread, is thanks in large part to the campaigns’ mild and limited strategies, in particular a fixation on practice development, and lean membership distributions in which insiders are over-represented. Levrant and his co-authors fear corruption but do not say where this corruption originates. These authors are suspicious of all the enthusiasm surrounding restorative justice yet passion alone does not result in unwelcome outcomes. They do not specify the exact perils and seem to be suggesting the movement would fare better if it did not inspire excitement. As the analysis in chapter six explains, zeal becomes a problem when it overtakes tactical planning, drives practice building above all else, and speeds up institutionalization. A social change movement does not naturally backfire and its

outcome is not entirely in the hands of the host society. The evolution of a penal reform campaign is not an enigma.

None of the important critiques penned to date clearly state whether or not the restorative justice movement is *already* moving in the direction of past efforts. This study differs dramatically from the existing literature in that it assesses the current state of the restorative justice movement and juxtaposes it, in concrete ways, against the very problematic evolution of past benevolent failures. In this way we can learn if *indeed* restorative justice is traveling a regressive course. This study, unlike other critiques, also accounts for *how* it is that good reforms come to such objectionable ends. If detected, these exact dangers can be dodged and the movement reshaped. It is in this vein that restorative justice reformers can be party to a movement more likely to deliver on its aims.

What is Missing in the Literature & How this Study Fills the Gaps

While the restorative justice literature pool is growing, some key issues remain underexplored or ignored. A discourse that addresses the specifics of place, in particular the United States is absent. Most restorative justice literature either deals with countries other than the United States or groups localities without explicating any substantive differentiation. Issues of race, religion, and scale make the United States a unique venue with regard to punishment. It is the most religious democracy, grows more heterogeneous by the day, and punishes at a rate not common elsewhere. The social movements explored in Part I of this study did not evolve in the United States as they did in Europe (a subject in need of further study). Their trajectory of growing punishment was confined to the United States. There is absolutely no reason to expect that restorative justice will

evolve the same the world over, no matter how cohesive the movement. Restorative justice may be an international phenomenon but the United States is unquestionably a unique environment. Discussion and research pertaining specifically to the United States is critical to any meaningful exploration or understanding of how the restorative campaign will mature here. Therefore, this study deliberately looks at the evolution and manifestation of the *American* restorative justice movement.

Scholars are not specifically discussing the religious undercurrent prevalent in the restorative justice movement. This religiosity is particularly evident in the United States but even those from other countries speak of restorative justice in reverent tones and use a language of faith or magic. Rooting a penal reform in a religious framework can be highly problematic. Therefore, this study includes an exploration of the meaning and consequences of religion's prevalence in the movement.

Daly, Levrant, Clear, Walgrave, and Boyes-Watson notwithstanding there is not much in the way of critical analysis on the restorative justice *movement*. Critiques tend to concentrate on the evolution of restorative practices and theory neglecting to examine or consider the campaign as an entity itself. Reformers, activists, and scholars are not addressing issues of movement organizing, development, or tactics. Questions of strategy and design focus on programming or ideological issues such as definitions, terms, and theory. There is no discussion of campaign strategies or of participant recruitment; no practical blueprint for realizing substantive social change. Clear (2004) notes that McCold's (2004) concerns are "less pragmatic than they are ideological." (McCold is worried about the restorative justice/community justice relationship). This appears to be true, not just of McCold but of virtually all of the restorative justice scholars, suggesting that even though most of the people involved with restorative justice refer to it as a

“movement,” they are not really embracing or treating it as if it is one.

While some scholars have asserted concerns given past benevolent failures, no one is articulating precisely *how* or *why* reforms go bad leaving activists in the restorative justice movement without any practical advice. Without pinpointing the source of trouble there is no method for escaping the feared outcome. Those that are worried are not looking carefully at the movement except to say ‘watch out’ and seem to place all the onus on the host society or the penal system. This does not leave much room for action or hope. Activists can never control the host. Their aim is to change the system not to be forever subjected to it. However entrenched, our punishment system can not be patently intractable. The very nature of social change movements is to produce change in an inhospitable environment. If the reasons for penal reform failure lie entirely beyond our control, as these scholars appear to be suggesting; if growing punishment is inevitable, despair is the only option. In contrast, this study moves beyond mere warnings and fear-based speculation.

Wrap-Up

This study first recognized that benevolent penal reform campaigns exhibit a unique, repetitive, and highly detrimental evolution and outcome unrepresented in the current social movement typology. Therefore a new type of social change movement, *regressive*, was typed. This model incorporates the unusual fruits of these movements, the markers of a success coupled with an unbridled failure that expanded the very thing reformers aimed to tame and diminish. Merely designating an original type of social movement is not enough to help stave off a now familiar and unwelcome reform cycle. By reviewing the career of past benevolent penal reform movements a profile, the

Regressive Reform Profile (RRP), was constructed. The RRP identified several characteristics endemic to these campaigns which allowed for an analysis exploring exactly *how* it is these movements come to regress. The discussion accounted for how the particular features common to regressive movements facilitate their unique outcomes. The profile also afforded the opportunity to assess whether a campaign is on track to produce a regressive outcome.

Accordingly, Part Two of the study turns its attention to the latest wave of benevolent reform, restorative justice to determine whether a repeat performance is underway. Furthermore, by identifying the properties responsible for regression the study provides direction on how to avoid, interrupt, or lessen the probability of an unwanted outcome. The restorative justice movement, if poised for regression, can reshape itself and redirect its heading. Chapter eight details the methodology used to collect data on the restorative justice movement. Chapter nine chronicles the findings, juxtaposes them against past movements to determine if this latest wave is exhibiting a RRP, and discusses whether or not a new cycle of regressive reform is underway. It includes practical suggestions for reformers determined to affect change. Clear noted that “structure.... matters more than... feelings or thoughts.” (2004, p. 69) Indeed, it is not the structure of the *ideas* but the structure of the *movement* itself matters most.

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Chapter 8
Methodology:
Gathering Data on the Restorative Justice Movement

Design Overview

Part II of this study asks if the latest benevolent penal reform campaign, the restorative justice movement, is exhibiting elements of the Regressive Reform Profile (RRP) and thus evolving in a fashion similar to that of its predecessors. To answer this question the researcher took measure of the specific set of social movement characteristics identified and defined in Chapter four. In order to conduct the assessment data was gathered from two key sources (1) written material pertaining to restorative justice (much of which was reviewed in chapter seven) and, perhaps more importantly, (2) field work -- participant observation of restorative justice practices and programs around the nation including interviews with reformers.

First hand observation of restorative practices in action was vital to this study. As where the earlier movements peaked long ago the restorative justice movement is still approaching its zenith. There is virtually no discussion in the existing literature of where this movement's parameters lie. Definitions remain fluid or vague. There is no consensus regarding what is, or is definitely not, a restorative justice program or practice nor is it altogether clear who is part of the movement. Since the goal of this study is to get a feel for the movement's evolution thus far and to uncover the manifestation of specific movement characteristics it was evident that field work would yield the most valid and reliable results. It would have been impossible, for example, to glean from the restorative justice literature who the movement's participants are, let alone evaluate how they are distributed. The movement's strategies, its repertoire, would also have been only

partially revealed if the study relied exclusively on written sources. Field work also enhanced the study's insight into the nature and scope of the movement's rhetoric. The literature was important, but not sufficient. In order to get as broad and detailed a picture of the movement as possible the study had to include what has been happening on the ground in the movement's name as it unfolds.

The elements to be surveyed were delineated prior to gathering the data. The researcher looked specifically to gauge the condition and manifestation of the following: **conditions of the host society** (the sociopolitical landscape from which the benevolent penal reform movement is born); **carriers** (those who initiate and assemble the social change movement); **membership distribution** (the arrangement of those participating in the social movement); **early rhetoric** (the rhetoric at the *start* of movement -- a review of the movement's ideology, objectives, demands, claims, and critiques of status quo as the movement rises and comes into prominence); **repertoires** (the initial and primary ways and means by which a movement forwards its aims, its tactical and strategic stance); **time to ubiquity** (how quickly the movement becomes institutionalized); **outcome** (what the penal landscape looks like at the movement's decline), and **the score** (an appraisal of traditional social movement (SM) success markers, gains and legitimacy, and an accounting of whether or not the movement was considered a failure in its day).

Since the current restorative justice movement is still mounting steam, not all of the characteristics could be accounted for. For example, it is impossible to assess the movement's outcome as it has yet to be realized. Again, the goal was to uncover specific social movement properties *not* to mine information about individual programs or evaluate individual restorative practices. Ultimately, the aim was to determine whether the movement's evolution, up to the present time, indicates a possible repeat regressive

performance. Findings are presented and discussed in chapter nine.

Selecting a Sample -- Methodological Design & Criteria

In a relatively short amount of time a multitude of restorative justice programs have materialized. An exact number is hard to pin down. Lists of restorative justice programs do exist (see for example the directory of Victim-Offender mediation programs prepared by the Center for Restorative Justice and Peacemaking) but they are not updated with any regularity nor are they appraised for inclusiveness. These programs develop and close shop without notice. What's more, restorative justice practices, in many locales, exist within the traditional criminal justice framework and are not always found in distinct programs. Restorative justice practitioners and activists are not always associated with one particular program. There is not, at this time, a centralized organization or system cataloging the breadth of restorative justice information, programs, practitioners, or practices. Therefore present-day program rosters, while helpful, are not entirely reliable nor necessarily representative. Furthermore, the variety and approach of restorative justice programs vary widely. There is actually scant detailed information on just how many people and places understand themselves to be participating in the restorative justice movement. After all, as its advocates routinely assert, restorative justice is not a practice or program but a set of principles that should be used to guide and inform our responses to criminal conflicts. (Zehr, 1990; Van Ness, 1997)

Initially the sheer volume and chaotic nature of the potential data pool appeared unruly and overwhelming. It was therefore vital to develop a structured design that would be manageable *and* allow the researcher to cast as wide a net as possible. The aim was to gather a sample, however small, that would accurately capture the scope of the

movement and reveal a representative picture of the dimensions and qualities of the restorative justice movement at large. To do this a restorative justice typology was created. In studying restorative justice there emerged several distinct ideological and logistical orientations that result in differently framed practices and programs. At first glance, it seemed that three categories would be sufficient to capture these various approaches: academic, religious, and civic. However, early in the investigation it became clear that “civic” was too broad a demarcation and that it should be split in two. The typology was reconfigured into four categories: academic, religious, government, and community programs. This restorative justice classification is the first of its kind.

Academic These programs are developed and/or run by scholars. They are commonly funded by grants and usually associated with a university or college.

Religious These programs are formally linked to faith-based organizations, more often than not churches. Those who develop and/or run these programs cite faith as the force that shapes their restorative work. Funding is secured from private donations, grants, and foundations.

Government These programs are born of local, state, or national departments of corrections or other branches of the traditional criminal justice system. Those in charge of either creating or managing these programs are often criminal justice professionals long employed by the system. Funding is provided by the public coffers, grants, and foundations.

Community These programs are generated by the work of social change community activists and are generally located within the community itself. Funding comes from a variety of sources. Formal associations (police departments, congregations, schools), if any, vary.

Three programs from each category were selected for an inclusive, organized, and manageable inquiry into the restorative justice movement. For a program to qualify for a particular category it must *primarily* present as such, which is to say, that at least the decision-making organ, mission statement, iconography (such as letterhead & web site imagery), and policies must be clearly driven by a community, government, religious, or academic core even if components of the other types are evident. Some overlap is unavoidable, especially since any program must secure the support of local government to gain access to victims and offenders. Nevertheless delineation is possible and appropriate. These four categories are sufficiently exhaustive and exclusive. It is the essence of the program that determines its classification.

Gathering the Sample

In order to gather a sample of twelve sites, (three from each category) introductory letters were sent to thirty-six different restorative justice sites, nine in each of the above mentioned category. A deliberately weighted sampling unit was used to pull together the initial study population. There was a concerted effort to include sites from around the country in order to control for the possibility of concentration in a singular geographical location. In addition, the researcher targeted long-standing programs (in operation for multiple years); those handling multiple cases (not the odd one or two a year, but sites with restorative justice systems in place); and settings or organizations that, though not directly involved in administering or conducting restorative justice practices per se, are active in forwarding the agenda or ideology of restorative justice (e.g. training, promotion, or research) and may thereby be considered sites of movement activity. If the first round of letters did not yield a sufficient sample a second round was

to be sent. This proved unnecessary, as the first mailing produced a full study sample.

Phone calls to program directors, to whom the letters were addressed, followed. These calls addressed specific information regarding study participation. In particular it was made clear that the researcher wanted direct, firsthand access, either through observation or participation or both, to that site's practices. Participation additionally was to include one-on-one interviews with those responsible for overseeing the organization and those who could recount the site's history and its initial development, and discuss current strategies, and practices. The scope of inquiry and interview questions were to focus on the participants' thoughts regarding the restorative justice movement in the United States. Proceedings were not to be taped and all data was to be recorded through field notes only. Also, the study's aim of assessing the state of the restorative justice *movement*, in particular looking to evaluate specific movement properties, was reiterated and exhaustively explained so participants understood this was not an exploration of their specific program or procedures. The plan was to spend considerable time at each site. Interestingly, each site expressed intense interest and was willing to grant the researcher full access. The phone calls proved critical as some sites were not in practice what they claimed to be and this helped to narrow the list of possible study sites.

The researcher was able to cull a sample which met some but not all of the study's original sample aims. There was some geographical clumping (many of the sites were in Midwestern states) though this was due more to financial and logistical restraints than issues related to access or site identification. Moreover, it proved easier to pinpoint sites in some categories than others. For two of the earmarked types, academic and religious programs, it was quite difficult to find organizations or programs that were actually

involved in some sort of restorative justice activity. This is ironic as almost all initial searches (via internet search engines and academic publications) for restorative justice (programs, practices, information) turned up religious or academic sites. In practice many sites that met the typology criteria on paper were not actually doing much at all. Upon investigation the restorative rhetoric or claims proved perfunctory, translating into little more than a sentence in a brochure. While this is noteworthy, inclusion of these venues in the study would have been meaningless. As a result, only two sites from each of these two categories made it to the final study sample. In contrast, there were a great many sites to choose from in the government and community categories. Considering the purpose of the study, to glean as full a picture of the restorative justice movement as possible, a total sample size of less than twelve seemed unreliable. To maximize study validity the researcher decided it was more important to have a sample size of at least twelve sites than a uniform number of sites across all types. Therefore the final study sample included a total of thirteen sites, two academic, two religious, four government, and five community.

Research did not begin until all thirteen were identified and written consent from each had been secured. All confidentiality and informed consent mandates associated with conducting research involving human subjects was honored. IRB approval was granted before the sample was selected.

For six months, from September 2003 to February 2004, research was conducted at each of the thirteen sites. Data was collected through participant observation and one-on-one interviews. At each site considerable time, in some cases weeks, was spent surveying how that particular restorative justice program or organization expresses itself. Research included an investigation of that site's written material (manuals, promotional

tools, handouts, etc.), its propaganda, funding sources, and participants. It also encompassed observation of, and in many cases, participation in, that site's services be they case resolution or training. Interviews with program directors, volunteers, past program participants, restorative justice pundits and practitioners were also conducted. No crime victims or offenders currently involved in resolving their particular criminal event were interviewed. No programs were told which others were participating in the study. All programs and individuals that participated in the study have been given code names. All identifying characteristics have been withheld. Again, the purpose was to chronicle the manifestation of pre-identified social movement characteristics in order to take stock of the restorative justice movement.

Chapter nine will present and analyze the restorative justice data, specifically addressing whether or not the movement is exhibiting a regressive reform profile and if indeed a repeat performance is underway. Though interviews were critical to this study the subsequent analysis (chapter nine) will not employ the use of many quotations. This is because the focus of inquiry is the restorative justice *movement* itself and the RRP characteristics and not participants' thoughts or perceptions of the movement. Participant-observation was key to gathering such data but interviews were important in particular in collecting information about the history and evolution of restorative activity at each site.

The Sample

The final study sample included thirteen sites, two academic, two religious, four government, and five community. Individual programs have been coded and identified as follows.

Community Programs

C-1 -- Countywide nonprofit restorative justice program located in a rural county of a Midwestern state. County population is under 30,000. The program is involved in multiple direct services including victim/offender conferencing, victim impact panels, teen courts. It maintains relationships with other county programs including the school system. There are paid staff members and a legion of volunteers. (site = C-1; interviews = C-1P)

C-2 = Countywide nonprofit restorative justice program located in a Midwestern state. County population is under 75,000. Program is primarily involved in victim/offender conferencing and handles a relatively small case load. There are paid staff and volunteers. (Site = C-2; Interviews =C-2M; C-2T)

C-3 = Community nonprofit restorative justice program located in a large city of a Plains state. This program operates inside correctional facilities throughout the entire state. The state houses under 5,000 inmates in over 10 correctional institutions. Work is primarily with offenders. There is paid staff, a small cadre of volunteers, and an active board of directors. (Site = C-3; Interviews = C-3J)

C-4 = Community organization, in a city in a Western state. City population is over 75,000. Program operates in partnership with other local organizations both public and private. It provides direct service via victim/offender/community conferencing. There

are paid staff and volunteers. (Site = C-4; Interviews = C-4B; C-4E)

C-5 = Community organization located in a large city in a Western state. Program work focuses on the entire state which has a population under 5 million. Primarily provides support services including trainings and education to locales looking institute restorative justice. Distributes substantial volume of materials. There are paid staff, volunteers, and an active board of directors. (Site = C-5; Interviews = C-5A)

Government Programs

G-1 = A state funded program in a maximum security prison in the Midwest. The institution houses over 1,000 inmates though it was built to hold just over 700. The restorative justice component operates within a larger long-standing inmate program. Volunteers, both professionals in the field and lay people, come into the facility and work specifically on restorative issues with each entering cohort. (Site = G-1; Interviews = G-1G; G-1H; G-1J)

G-2 = City funded program out of the prosecutor's office in a major city in a Midwestern state. City population is just under 600,000. Program is involved in providing direct services such as resolving cases through conferencing as well as spearheading and participating in outreach and educational programming. There is a paid staff and a small core of highly trained volunteers. (Site = G-2; Interviews = G-2D)

G-3 = Federally funded national program that ran a multiyear restorative justice initiative.

The program is designed to provide training and technical assistance to corrections departments and facilities around the country. (Site = G-3; Interviews = G-3M)

G-4 = County program run out of the probation department of a small city in one of the Western states. City population is around 100,000. The program resolves individual cases that meet certain criteria. There is a paid staff and core of highly trained volunteers. (Site = G-4; Interviews = G-4R; G-4J)

Academic Programs

A-1 = A program that operates out of a law school at a major public university in a Midwestern state. State population is over 5 million. School is located in a major urban center. Students and professors conduct victim-offender conferencing throughout the state. (Site = A-1; Interviews = A -1P)

A-2 = A center housed in a private university in a Western state. School is located in a major city with a population under 1 million. Degrees in restorative justice are offered. Center publishes and distributes restorative justice materials, conducts outreach, and holds conferences. It works closely with local volunteer organization that conducts victim-offender reconciliation for the city. Organizes and leads multiple parties interested in effecting change in local criminal justice system. Several full-time paid employees. (Site = A-2; Interviews = A-2R; A-2D)

Religious/Faith-Based Programs

R-1 = National faith-based organization with its office in a Southern State. Focuses primarily on outreach, education, and public policy. Provides assistance to those interested in instituting restorative practices. Small staff. Funded by private donors and grants. (Site = R-1; Interviews = R-1P)

R-2 = Faith-based privately run program in a Southern state. Conducts multi-week courses inside correctional facilities around the state. Funding is from private donors, foundations, grants, and Christian congregations. Large volunteer pool and core small staff. (Site = R-2; Interviews = R-2J; R-2G; R-2K)

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Chapter 9

RJ Findings: Is a Repeat Performance Underway?

Chapter seven reviewed restorative justice literature. This chapter, incorporating both considerable field work and written material, will explore the campaign's expression with regard to eight social movement characteristics. The purpose of this survey is to affirm or negate the hypothesis, the contention that a repeat performance is underway and that the restorative justice movement is evolving like the benevolent penal reforms that came before it and is headed for a similar *regressive* outcome. This concern has been articulated by scholars and activists alike but no one has determined its validity. This study will provide a concrete answer. Moreover, if restorative justice is found to be traveling this unwelcome course then the findings in Part I provide the means to redirect a movement toward a more desirable end.

To review, the social movement (SM) characteristics are **conditions of the host society** (the sociopolitical landscape from which the benevolent penal reform movement emerges); **carriers** (those who initiate and assemble the social change movement); **membership distribution** (the arrangement of those participating in the social movement); **early rhetoric** (the rhetoric at the *start* of movement -- expressing ideology, objectives, demands, claims, and critiques of status quo as the movement rises and comes into prominence); **repertoires** (the initial and primary ways and means by which a movement forwards its aims and its tactical and strategic stance); **time to ubiquity** (how quickly the movement becomes institutionalized); **outcome** (what the penal landscape looks like at the movement's decline); and **the score** (an appraisal of traditional SM success markers, gains, and legitimacy and an accounting of whether or not the movement is considered a failure in its day).

First, the findings for each of the above properties will be spelled out in detail. Second, the restorative justice findings will be juxtaposed against those of the other benevolent penal reforms (BPRs) in table format to facilitate easy comparison between current and past campaigns. Next, this graphic illustration will show that a repeat performance is underway. To find in favor of the hypothesis, sufficient elements of the RRP had to be found. One or two expressions of the regressive course was not be enough to affirm its presence. Since the movement is still mounting steam there was no expectation that all the components would be discovered. Rather, a substantive number of the predetermined characteristics and conditions, a robust articulation of the profile, had to be found to state positively that the restorative justice campaign in the United States is advancing along a regressive path. Indeed that was found. Lastly, the chapter addresses whether restorative justice is doomed to repeat the BPR cycle or if there is the possibility of rerouting this still evolving movement. The discussion gives specific directives as to what actions, tactics, and measures movement actors might want to embrace in order to deliver an outcome closer to their aims.

THE RESTORATIVE JUSTICE MOVEMENT

This is a movement in which practices came first and ideology followed. In the beginning, the late 1970s and early 80s, there was no language or theoretical discourse differentiating or chronicling the development of an alternative justice paradigm. There were simply a few people trying, out of frustration or due to a calling, some new practices in the name of criminal justice. Early activists might say that they were in fact responding to the unhealed parties and harm created by criminal events rather than the

events themselves. These “early adapters,” as respondent R-1P called them, began bringing victims and offenders together and developing programs from which to organize and conduct these meetings. These Victim-Offender Reconciliation Programs (VORPs) would come to indicate the emergence of a new penal reform campaign and they continue to be associated with restorative justice. During these early years there was not much interest in restorative justice and in the words of someone who was a part of the first VORP “the same 20 people were involved and talking about it.” (A-2D) The actual phrase “restorative justice” is usually attributed to Howard Zehr who, in a 1985 pamphlet, created the first integrated model of restorative justice. (Marshall, 2003) Tony F. Marshall credits Barnett’s 1977 article in *Ethics* in which he used the term to refer to mediation between victims and offenders. Regardless of when it was named or who named it, a penal reform movement was on the horizon. (2003)

There appears to be an unqualified consensus both in the literature and on the ground that indeed a social change movement is underway one referred to as such by academics, activists, journalists and politicians the world over. Restorative justice is an international movement represented in a multitude of countries including Australia, Japan, the United States, Canada, and Italy. In conducting my field work all but one of the twenty-one people (R-2J) interviewed said they felt a part of a social change movement. Fifteen stated emphatically that they believed themselves to be involved and connected to an extended restorative justice movement. One, C-2M, said the possibility of a movement “is there” and another, G-3M, said he/she was “not sure.” It is interesting to note that not one interviewee referred to the movement as *international*, characterizing it instead as a local and national campaign. At least with regard to restorative justice, many activists in this country view the United States as a separate and distinct setting.

Furthermore, those on the front lines understand the movement to be “growing and growing” (A-1P), to be “huge”(C-4E), and to be unlike other penal reforms “as it challenges justice on its face” (G-3M).

The movement draws inspiration from a wide array of traditions. The most frequently identified sources are indigenous cultures from around the world including the Maori, First Nations, and Judeo-Christian ideals of justice. The forgiveness component is considered especially Christian. These are not the only origins and restorative justice is an idea associated with a variety of theoretical schools within the discipline of criminal justice (i.e., peacemaking, abolitionism, feminist criminology, conflict resolution, control theory). Many say that the movement was able to take root thanks in part to other sociological developments in particular the victims’ rights movement, community policing, and the dispute resolution or mediation movement.

Restorative justice is not a singular idea or an individual practice but rather a set of principles that provide a framework for understanding issues of crime, justice, and social harms. It is by way of this altered “lens” (Zehr, 1990) that responses, practices, and processes are constructed. According to the tenets of restorative justice there are three key ‘stakeholders’ -- the victim, the offender, and the community -- who ought to be involved in the restorative process. Crime is viewed as a conflict rather than an illegal transgression, it is a “violation of people and relationships” that “creates obligations.” Restorative justice calls for putting things “right” through “inclusive, collaborative processes and consensual outcomes.” (Zehr, 2002, p. 26) Touted as an alternative paradigm, restorative justice is often presented in direct opposition to retribution though this binary schema is now under dispute. (Daly, 2002; Walgrave, 2003) Restorative processes and concepts continue to develop and become more “refined” alongside one

another. (Marshall, 2003) A wide variety of practices have been generated in the name of restorative justice including VORP, victim-offender mediation (VOM), family group counseling, sentencing circles, restitution programs, and victim panels. The restorative justice movement (its proponents declare) is not a campaign to institute a certain kind of program or mandate certain procedures but one interested in reframing the way we look at and respond to crime and those affected by it.

On more than one occasion interviewees made reference to tensions between scholars and reformers. They distinguished between those who are writing about restorative justice (scholars) and those that are practicing restorative justice (reformers). Though in reality each group is aiming to induce reform this differentiation was commonly found in both camps. 'Practitioners' asserted that scholars were "too pure" and that "they don't get how it really is" while 'scholars' noted that many a restorative justice practitioner and program were not *really* restorative in that they were veering too far from RJ doctrine. These differences reveal the importance of not relying exclusively on written material to gather data on the restorative justice movement. Conducting field work was critical, lest scholars be the only movement actors telling the restorative justice story. Objective observation was key in order that the subjective perspective of movement participants, regardless of their station, not skew the findings. The result is a survey that captures a full breadth and some specific details regarding the expression and evolution of the restorative justice movement.

Conditions of the Host Society - The Restorative Justice Movement

The last quarter of the 20th century has been remarkable in many respects.

Perhaps the most obvious development has been the rush of technological advancement changing the everyday lives of most Americans. Personal computers, thought of as science fiction thirty short years ago, are ubiquitous at work, schools, and in the home. The internet, 'the information superhighway, has allowed for fast easy access to a tremendous volume of data and many would say is shrinking the world around us. Surveillance of all kinds from cell phone cameras and hidden video to employers reviewing e-mail correspondence has dramatically altered and diminished the realm of private space. The media has more mediums than ever before and the pace of information dissemination, often with news being delivered in real time, is astounding.

In the 1980s the emergence of crack, a cheap highly addictive stimulant, turns many urban neighborhoods into war zones as drug dealers fought for turf. Weapons, particularly powerful firearms, came to be widely available and prevalent on the streets. Crime surges throughout the 70's, 80's and early 90's followed by striking declines that return the crime rate nationally, and in most cities, to that of the late 60s. Manufacturing jobs move overseas in record numbers, union membership and influence decline, and service sector jobs are on the rise. In the mid 1980s HIV is identified. It is associated with pathologized populations deemed unsympathetic. Public policy is subsequently driven by a social agenda and not the interests of public health. The dissolution of the USSR means increasingly visible immigration from former eastern bloc countries. Changing demographics due to immigration and other factors mean Caucasians are no longer in the majority in some locales. Backlash ensues. Policing becomes highly 'scientific' with crime mapping, forensics, surveillance mechanisms, profiling, and systematized use of data. Punishment also incorporates technology with home confinement, specialized equipment to search, subdue, and track inmates, parolees, and

probationers.

During this period there is an ideological swing to the right, renewing the imperatives of individualism, small government, free market economy. Reaganomics and deregulation infuse corporations and private industry with new vigor and tremendous autonomy. Christian fundamentalism proves to be a powerful influence on the social and political landscapes. Political and public support for the welfare state erodes along with the social safety net. Racial and ethnic diversity become valued ideals, rhetorically, while in practice desegregation efforts such as affirmative action face significant setbacks in the courts and at the polls. The general *weltanschauung* regarding crime is fear and as for punishment, cynicism and just deserts, the tougher the better reign. No more inmate coddling or passing the buck onto society or a rotten childhood. Crime victims become a voice in the national debate. Positivism retains some currency but the prevailing theories on crime concentrate on concepts of personal responsibility and individual control. Rational man and deterrence make a comeback. Although Attica and a prisoner's rights movement brought significant changes to the nation's prisons retributivism is revitalized and shapes criminal justice policy on all fronts.

Issues of crime and punishment move to the front burner and remain in the foreground. The media identifies, and capitalizes on, a seemingly insatiable public appetite for all things criminal justice. If it bleeds it leads on the nightly news and on the country's front pages. Television programming is overrun with shows centered on crime and justice. Politicians find the topic to be a highly effect campaign theme as long as they promise to get tough. They deliver on their promises by ushering in local and national legislation mandating truth-in-sentencing, three-strikes laws, and sexual predator statutes. Each of these translate to longer prison terms and a reduction of parole and early release.

A 'war on drugs' is declared and as a result the country spends unprecedented resources on interdiction. Stiff mandatory sentencing accompanies the litany of new local and federal drug charges. The death penalty makes a comeback and state executions, virtually nonexistent in the 70s, become so common in some states that they do not warrant front page coverage. Juveniles are treated as adults resulting in children as young as twelve being tried for murder and housed in adult correctional facilities when convicted. Educational, vocational, psychological, and recreational prison programs dramatically decline as being tough on crime translates into harsh punishment, stark facilities, and supermax classification. This has been an era of punitive fever.

The latter part of the 20th century gives rise to the single greatest boom in prison construction the country has ever known. "More than 40 percent of state prisons in operation today were opened in the last 25 years. The number of such facilities has jumped from 592 in 1974 to 1,023 in 2000."

(<http://www.wsws.org/articles/2004/may2004/pris-m13.shtml>) Though incarceration rates had been steady for three quarters of the century the numbers start to rise considerably in the 1970s and have not stopped soaring. With over two million people behind bars the United States has become the country to incarcerate the highest percentage of its citizens. (<http://www.wsws.org/articles/2004/may2004/pris-m13.shtml>) According to the Bureau of Justice Statistics incapacitation is not distributed equally with 3,405 black male prisoners per 100,000 black males in the United States in prison, compared to 1,231 Hispanic male inmates per 100,000 Hispanic males and 465 white male inmates per 100,000 white males. (Bureau of Justice Statistics). The fiscal consequences of this punishment policy are profound with "[s]tate correctional expenditures increas[ing] 145% in 2001 constant dollars from \$15.6 billion in FY 1986 to

38.2 billion in FY 2001. (<http://www.ojp.usdoj.gov/bjs/abstract/spe01.htm>) Private prisons have become big business as states try to control the cost of punishment by contracting out to the lowest bidder. Prisons bring the promise of economic bounty as towns and counties jockey to be the site of the next correctional facility. There are political consequences as well. Correction officers' unions are growing along with their power as they contribute to political campaigns, locally, regionally, and nationally.

According to some the retributive tide may be ebbing. The recent moratorium on executions in Illinois is cited as evidence. The death penalty itself is again under attack with national debates about age, mental retardation, and innocence. The nation is revisiting whether juveniles should be considered as culpable as adults are. Bare institutions and harsh long-term punishments are being questioned and found by many to be inhumane, purposeless, damaging, and generally over the top. There is a growing voice calling for prisons to incorporate rehabilitative agendas and offer more programming. Early release is making a comeback. A new catch phrase can be heard from both politicians and scholars declaring that we've been tough on crime now let's get smart about crime. The restorative justice movement may be a part of this trend.

Key Themes: Conditions of the Host

Bounded & Disappointing Punishment System -- A penal system in which the boundaries are fixed (who is caught in the net and what is done to them is constant) and one that inspires disappointment, either because it does not 'cure,' resolve, or fix the problem of crime and criminality, or does not meet the social norms of decency regarding the treatment of human beings.

Carriers

The restorative justice movement is young and at this juncture all the parties who laid the social foundation and support for the campaign are not yet readily visible, and may well not be until after the movement wanes. Restorative justice, unlike parole, is not established by introducing legislation nor is it predicated on the construction of a distinct institution like the penitentiary or adult reformatory. Restorative practices, which cover a wide range of territory (practically and geographically) are not organized into a complete record. Tracking this movement back to its earliest actors is not a simple task. Several authors have chronicled the movement's history but this information, while helpful, tends to be broad and general and rarely concentrates on the United States. (Sullivan & Tift, 2001; Marshall, 2003) Nevertheless there is a firm consensus on the contributions of some key people without whom it is impossible to imagine restorative justice getting off the ground in the United States.

These activists fall into two categories, the practitioners and the idea people, with ample crossover between the two. The restorative justice movement was first marked by new practices, in the beginning these tended to be VORPs, which fueled the development of theoretical principles -- made public at conferences and in publications (pamphlets, articles, books)-- which in turn continue to shape, expand, and evolve restorative processes. Early restorative practices almost exclusively involved bringing together victims and offenders for dialogue and are said to have emerged due to frustrations with the traditional criminal justice system. Criminal justice practitioners, it is said, realized that the needs of victims, in particular, were not being addressed. The courts were overloaded and fierce retribution was not returning law-abiding citizens to the streets. (Marshall, 2003) The benevolence and mercy that restorative champions espouse is not

solely or even primarily for the offender (as was the case with previous BPRs). The humanitarian nature of restorative justice is touted as advantageous for all 'stakeholders' but the first and most valued recipient is the long neglected crime victim. Early practitioners are not usually named but it is known that VORPs were starting to pop up in the late 1970s and early 1980s in places as far apart as Minnesota and California. The very first 'official' victim-offender reconciliation project in the United States is identified as a 1978 program in Elkart, Indiana which was a replication of a Canadian program that had begun its work four years earlier. (Zehr, 1990)

There are those who would say God, the bible, or "native" traditions are the true carriers of restorative justice, that the seeds of restorative ideology and practice can be found in these sources. Indeed there is no question that this movement originated with the faithful. It is impossible to read or hear about restorative justice and not hear the name Howard Zehr. He is an undisputed patriarch of the movement and a committed Mennonite. Zehr has a PH.D. from Rutgers and was the first white graduate of Morehouse College. (<http://www.emu.edu/humanresources/personnel/bios/zehrh.html>) For 19 years he was the director of the National Criminal Justice Office of Mennonite Central Committee (MCC). It is from this professional position that he began his restorative work. With the publication of a 1985 pamphlet (published by the MCC), *Retributive Justice, Restorative Justice*, Zehr became the first person to put forth an "integrated restorative justice model" and he is often credited with coining the term "restorative justice." (Marshall, 2003, p. 40) His 1990 book *Changing Lenses*, which opens with the acknowledgment that "[t]his book has emerged from experience," was a watershed event for the movement and it is virtually impossible to find someone involved with restorative justice who has not read it. (199, p. 11) Zehr's faith is part and parcel

of his commitment to criminal justice reform and he has made it clear that this is what led him to a restorative approach. “Whether the thrust of the Bible is on retribution or restoration is not a marginal issue.” (Zehr, 1990, p. 157) Howard Zehr as a practitioner, educator, and thinker is perhaps the movement’s most influential carrier. Whether inspiring or inspired by Zehr the Mennonites have created and distributed an extraordinary amount of material on restorative justice and the church and its congregations play a role in the campaign’s birth. Many historians assert that the penitentiary is a Quaker reform. We may yet see restorative justice come to be known as a Mennonite innovation.

“Zehr’s work was widely influential among the growing cohort of *converts* to [restorative] ideas.” (Marshall, 2003, p. 40, emphasis added) In the United States one such follower, who would prove critical to the emergence of the American restorative justice movement, was Mark Umbreit professor and founding director of the Center for Restorative Justice and Peacemaking at the University of Minnesota. In the late 1970s, under Zehr’s leadership, Umbreit helped to develop the country’s first VORP in Indiana. Today the Center for Restorative Justice and Peacemaking, housed in the school of social work, provides technical assistance, training, and research for people the world over interested in restorative justice practice and principles. For over two decades Umbreit has also acted as a consultant for the Department of Justice in the United States. Mark Umbreit has authored countless articles and books on restorative justice and remains a tireless advocate, traveling the globe to deliver papers, give talks, educate, train, and guide restorative practices. His name has become synonymous with restorative justice inside and outside the academy.

There are a handful of other actors associated with the dawn of the movement.

John Braithwaite's widely read book *Crime, Shame, and Reintegration* made a strong impression on the evolution and articulation of restorative ideology and practice. (1989) Of particular note is his concept of "reintegrative shaming" a call for the community to simultaneously embrace offenders and communicate unambiguous disappointment with their actions. This proposal was considered instructional and viewed as compatible with a restorative approach to crime and justice. While the idea of shame remains controversial, inside and outside the movement, Braithwaite's contributions should not be underestimated. Though the bulk of his efforts are rooted in another continent, Braithwaite is a scholar, educator, policy maker, and restorative practitioner in Australia (which has a strong and vigorous restorative justice movement) his work has had a significant impact on the American restorative campaign. His main premise, that social control is most effective and meaningful if it is located in the community, is an idea at the heart of restorative justice.

In 1980 Daniel Van Ness, a devout Christian, was running a law practice out of his church. By that time Charles Colson, former Nixon White House attorney and convicted felon, had found God (in prison) and created Prison Fellowship Ministries (PFM) an evangelical ministry that tended to inmates around the country. That same year these two men met at a meeting organized by PFM in response to a large-scale prison riot in New Mexico. By 1981 Van Ness had changed his vocation and committed himself to working for penal reform, taking a lobbying and organizing job with Prison Fellowship. Shortly thereafter he met Howard Zehr and Mark Umbreit who turned him onto restorative justice. Since that time Daniel Van Ness, who remains at PFM to this day, has devoted his efforts to this alternative justice paradigm. In the early 1980s Prison Fellowship began an initiative to explore public policy consistent with biblical justice.

They concluded that restorative justice was just such an approach. Together and individually Daniel Van Ness, Charles Colson, and Prison Fellowship Ministries have advocated, published, organized, and participated extensively in the restorative justice movement for over 20 years. While some may take issue with Prison Fellowship's zealous religiosity and the way that it shapes their expression of restorative justice, there is no denying that this organization and its leaders, Van Ness among them, are responsible, in part, for carrying the movement.

As small scale programs and individual practitioners began to bring victims and offenders together Howard Zehr, Mark Umbreit, John Braithwaite, and Daniel Van Ness began to put a face, language, ideology on this emerging justice paradigm. Institutions, such as the Mennonite Church, PFM, and the University of Minnesota, supported these innovators and advanced their work. Some reformers were fueled by faith and some by practical concerns about a dysfunctional system, though oftentimes times both. These highly educated reformers, many of whom were criminal justice professionals and educators, set the stage and laid the foundation for what would come to be known as the restorative justice movement. In every interview conducted for this study respondents cited at least one of the men mentioned above. Usually their work was seen as integral, if not to the development of a specific site, then at least to the education of local activists about the details of a restorative agenda. These carriers believed deeply in the promise of a restorative approach to crime and punishment and each one continues to participate in what has become a bona fide movement.

Key Themes: Carriers

Holy Rollers, Credibles, Patrons, & Professionals -- Those who initiate and assemble the social change movement are religious, educated actors with access to power, means, and

the penal system. They are not on the punishment end of the penal system nor will they, or those like them, be personally reached by changes to that system. These carriers are working benevolently to save, rescue, deliver, or heal the *other*. Their standing in society makes them credible to the host, they are legitimate from the start.

Membership Distribution - The Restorative Justice Movement

Inner Ring

The principal leaders of the restorative justice movement in the United States are scholars, criminal justice professionals (lawyers, district attorneys, social workers, psychologists, corrections-probation-parole officers), and religious reformers. Whether their passion is informed by intellect, faith, or civic duty, movement actors at this level of participation ardently believe in restorative justice and earnestly aim to cultivate a justice system rooted in healing, consensus, humanity, and an obligation to making things right. While the carriers are predominantly male, there are a handful of women at the core of the campaign.

As the directors, volunteers, and participants at each site recounted the origins and history of their particular program, the same handful of names was mentioned. Though the form of contact varied (videos, conferences, publications, or direct trainings) the work of Zehr, Umbreit, Kittle, and Bazemore in particular was credited with seeding many sites of restorative justice practices around the country. These inner ring participants have also generated the seminal ideological and theoretical doctrines associated with the movement. Most participants at the core of the movement have been directly involved in the practice of restorative justice as well as promoting the paradigm through publishing, public speaking (at universities, houses of worship, town halls,

conferences), trainings, and logistical assistance. Examples include Howard Zehr, Daniel Van Ness, Mark Umbreit, Gordon Bazemore, Mara Schiff, Ron Claassen, and Bruce Kittle.

Middle Ring

Restorative justice activists located in the middle ring of the participant distribution form a somewhat narrow federation with a great deal of contact with the inner ring. Numerous criminal justice professionals can be found participating at this level including judges, district attorneys, wardens, probation officers, and social workers. Some of these actors participate in restorative justice as part of their work (G-4R, C-4E, G-2D, G-3M) and others do so as volunteers or on the sly, quietly organizing and supporting programs behind the scenes as was the case with C-1P, C-2M, and G-1J. Government sponsored criminal justice agencies -- Department of Corrections, Office of Juvenile Justice and Delinquency Prevention, National Institute of Corrections, Department of Justice -- have also come to participate in and support the restorative justice movement. There are individuals operating on their own who are taken with the idea (having been exposed thanks to the work of the inner ring) and have organized locally to build programs in their geographic area (C-5A, A-2R, A-2D, A-1P, G-2D, C-3J). The number of movement actors involved in training, a level of movement participation located in the middle ring, is on the rise because as the movement becomes more formalized the need for uniform practices and certified practitioners increases. Another key group of participants are the volunteers who are essential players in most restorative justice processes. The ideology calls for a community presence and it is most often volunteers who fill this role. Crime victims, said to be at the heart of a restorative justice

approach, are also becoming more active in the movement (this is the first benevolent penal reform in which crime victims are a meaningful and distinct constituency). Some programs (R-2) are directed by survivors of crime (R-2J) but more often than not these actors are volunteers who are either giving voice to the experiences of crime victims, participating in the resolution of their individual case, or testifying on behalf of restorative justice at conferences or community groups.

A substantial number of formal organizations have arisen to support, forward, and conduct restorative justice. We see in the expanding middle ring the growing professionalization of restorative justice. With the help of the NIC, OJJDP, the Mennonite Central Committee, and PFM the work of the movement's principle leaders continues to be disseminated. There are countless restorative justice Web sites, a mounting stack of publications, and speakers taking the message around the country. Restorative justice actors tend to be people who have earned stature easily -- educators, the faithful, professionals, and/or crime victims. As such, movement participants are increasingly well-connected and engaged in alliances with power elite. The American Bar Association endorsed the paradigm in 1994 (2000b). The director of C-1 sits on local boards to nurture and maintain "connections to powerful people who embrace restorative justice." R-1 is a program that specifically targets politicians and is designed to capitalize on personal political connections and savvy. The first course of action C-5 took was to pull together a conference expressly targeting DAs, judges, attorneys, probation and parole officers, and noted community activists.

This close knit ring represents the movement's base, a rather limited number of insiders who are well acquainted with, and frequently retained by, the traditional criminal justice system. Of the 13 sites examined in this survey several had multiple

organizational heads. Seven are run by criminal justice professionals (attorneys, probation officers, judges, prosecutors, or judicial aids); four are headed up by educators with doctorates; one is run by a former politician; two are directed by ex-convicts; eight have a select core of highly trained community volunteers (usually from local congregations and civic organizations) participating in case after case; and two are run by crime victims. According to Mauss the middle ring is made up of *active* movement participants, often people of influence, who provide a movement with legitimacy and acceptance. They are also usually willing to compromise. The bulk of actors participating in the restorative justice movement fall easily into this category. This level of movement participation is thriving and continues to grow though it is characterized by an insularity. Most restorative justice actors are separated by very few degrees of separation. Moreover, they resemble one another with regard to education, professional experience, and level of access to the traditional criminal justice system. These actors are not only advocates of restorative justice, but tend to be the very same people building, directing, and managing the innovations they champion.

Outer Ring

Dissatisfaction with the current criminal justice system is rampant. If asked the average individual on the street (if there is such a person) is likely to voice a litany of grievances. Yet, the restorative justice movement with its staunch believers and champions of status still has not captivated the general public. Only a little over half of the programs surveyed here had been featured in their local media. Only one program, C-4, was sufficiently integrated into the community to the extent that people outside the program were aware of its existence. In the other locations residents appeared to know of

the program only if they were directly involved. In Mauss' model, the *outer ring* denotes the public that cares about the movement, its 'fair weather friends.' This is a social change movement without much of a discernible third ring. The money that supports the movement comes almost exclusively from government and foundation grants; and actual participants in the restorative justice movement come almost exclusively from either inside the penal system or from a pool of faithful and/or educated reformers many of whom were already living lives of active civic participation.

Key Themes: Membership Distribution

Insular & Limited -- Movement membership encompasses a small group of actors generally located in the two inner rings of the distribution. There is virtually no "interested public" participating in the movement and the outer ring of the distribution is thin or imperceptible.

Early Rhetoric - The Restorative Justice Movement

It is difficult to narrow down a select set of contemporary ideological premises that gave rise to or are currently fueling the restorative justice movement. There are those of us who see the campaign as part of a larger wave of religious revivalism now underway. Sullivan and Tifft suggest the roots lie in the social movements of the 60s and 70s including the Civil Rights and prisoner's rights movements. (2001, pp. 16-17) Many scholars and reformers alike see the victims rights movement as integral to the emergence of restorative justice. Community justice and community policing are also commonly mentioned. (Clear and Karp, 1999; Clear, 2004; Bazemore & Schiff, 2004) Zehr, Van Ness, and Colson, among others, identify the bible and Judeo-Christian thought as the

source of restorative justice ideals. Indigenous traditions and native cultures from around the world are also credited. Though there is no real consensus on the origins of restorative justice ideology, the movement has clearly articulated a set of principles, rooted in its own distinct doctrine. These principles shape the way the movement critiques the status quo, informs its ideas about crime and justice, and molds the innovations for which it fights.

Restorative justice advocates have few nice words for the current punishment system. Much of the literature, particularly the earlier work, concentrates on its failings in order to set the stage for a new approach. The system is critiqued from all angles and found wanting on all fronts. It is assessed as an ineffectual and inhumane method of resolving a criminal event and is said to fall short of achieving any type of justice. Retribution with its core ideal of revenge is deemed dangerous. Ultimately restorative rhetoric claims that retribution fails to address the profound suffering that accompanies a criminal event. Long prison terms are said to be inhumane, cultivating more harm than they could ever relieve. The system, from the courts to correctional facilities, are overwhelmed and barely able to handle the never-ending rush of cases. Furthermore, the public has abdicated any role or responsibility in the realms of public safety and criminal justice. Those who champion restorative justice maintain that this abstention can not possibly be in our interest.

Restorative justice enthusiasts point out that crime victims are left in the dust. Their pain and their individual needs are inconsequential to our present-day justice system, where the state is the 'objective' injured party, and the true injury from the event is never addressed let alone healed. The state, they say, has stolen the conflict from its rightful owners, the people directly harmed by the criminal act. They point out that

little is actually demanded of offenders and their behavior is rarely changed by the punishment experience. The adversarial system pits them against society rather than placing them within it where they belong. This alienation fosters future antisocial behavior and so in some sense the system cultivates crime and further compromises social cohesion. Moreover, as it operates now the criminal justice system nurses self-absorption on the part of offenders as they fight to win their cases or secure the best deals possible. No one is compelled to think of others while doing time. Restorative justice reformers also point out that the community's role in our system of crime and punishment is purely symbolic. The community gains almost nothing from the experience. Any harms it may have incurred are unresolved, any responsibility it may bear is unexplored, and any role it might play in diminishing future crime is disregarded. Sooner or later the system returns inmates unchanged or further damaged to communities still suffering and ill prepared for their arrival. In sum our justice system is a failure for victims, offenders, and the community.

Restorative justice rhetoric does contribute in some sense to a narrative of criminality (as other benevolent penal reforms have) but more importantly includes fresh ideas regarding the criminal event and justice itself. These latter two issues figure much more prominently in restorative justice and the problem of how someone comes to commit a crime is of lesser import. First, restorative justice asserts that crime is violation of people and relationships not of the law. An offense is not really a crime at all but rather a ruptured relationship in need of healing. This new accounting of a criminal event then leads restorative justice to formulate, or reconstruct, a "starkly different criteria" for justice. (Boyes-Watson, 1999) Criminal activity produces harm and creates obligations and if they are addressed justice is realized. The harm is first against the victim but also

against the community and the obligation is on the offender but also on the community. These three 'stakeholders,' (victim, offender, and community), participate actively in the resolution.

(Zehr, 2002, p. 33) Restorative justice demands that these parties ask: Who has been hurt? What are their needs? Whose obligations are these? (Zehr, 2002, p. 21) In restorative justice crime is a 'conflict' and justice is making things 'right'.

Restorative justice also explores criminality but rather than generate or build on a whole new theory of why people commit crime this new justice paradigm reframes the status and understanding of those who transgress. Offenders, through a restorative lens, are viewed as people who made bad decisions not a distinct class known as 'criminals.' Their status as citizens and full human beings should not be diminished by their actions which is not to say that their behavior is acceptable or will go unadmonished. They should be guaranteed equal standing and partnership as resolutions are generated. Restorative justice also recognizes that the alienation fostered and perpetuated by the current criminal justice system exacerbates criminality. Therefore, a system that values and nourishes reintegration will reduce crime. This movement's narrative of criminogenesis is sort of an anti-criminality since restorative justice is not centered on the law, rights, or guilt. Restorative justice aims to address the causes of crime by creating a system that will advance respect, responsibility, and connections. However, first and foremost this movement is centered around an entirely new *justice* paradigm.

The campaign's rhetoric suggests that the movement and its ideas have tremendous capability and legitimacy. Restorative justice is touted as a humane, civil, righteous approach to crime and justice. This "alternative justice paradigm," as it is commonly referred to, is frequently positioned as in direct opposition to a retributive

(read: bad, inhumane, ineffectual) model. (Marshall, 2003; Sullivan and Tifft, 2001; Zehr, 1990) Many champions boast of restorative justice's power to 'transform' not only our beliefs but social arrangements themselves. (Sullivan & Tifft, 2001, p 179) It is said to be revolutionary in concept, ambition, and operation. Champions often promote restorative justice as 'pure,' 'true,' and 'honest' because it is they say how justice is realized by indigenous people and in the bible. This new set of principles is universal, its advocates assert, and can be applied to all conflicts. Hence restorative justice is much more than a penal reform but a whole new way of living together. It is "as ancient as mankind." (Coates, Umbreit, Vol 6 issue 3)

Restorative justice demands "constructive responses." (Boyes-Watson, 1999) It calls for processes that honor the needs of victims so as to restore, empower, and support them. Practices must also support offenders while fostering an understanding and acceptance of their wrongdoing. The process must further help them to carry out their obligations (Zehr, 2002, p. 40) There must be a meaningful role for the community in the response to criminal events. Practices are designed to "put key decisions into the hands of those most affected by crime, make justice more healing... and, reduce the likelihood of future offenses." (Zehr, 2002, p. 37) This is to be done through collaboration and consensual outcomes. Restorative justice also demands attention to the unintended consequences of its actions unlike the traditional criminal justice system which delivers harm (ie long sentences, solitary confinement, etc.) without thought or accountability .

To get a sense of what practitioners and movement participants say about restorative justice (the rhetoric on the ground) each interviewee was asked to describe restorative justice in their own words. The answers were consistent with what the

literature espouses and illustrates a consensus regarding the sentiment used to express both the nature of restorative justice. Restorative justice is “a talking movement about love, humanity, and honesty.” (C-2T) It “fits” with the human condition and natural law. “A different way of life,” restorative justice is “an operating system.” (R-1P) It is “bigger than a program, there is a spiritual dimension to all this.” It is “systemic change.” (R-1P) Restorative justice is “a spiritual journey” that involves “healing and magic.” (G-1J) It is a “set of principles” and a practice in which “participants are surrounded by “a circle of love.” (G-2D) “Restorative justice asks that we rethink conflict and justice.” (G-3M) Restorative justice elevates victims to “their rightful place.” (C-3J) Restorative justice addresses harm as it “addresses the offender as a person”. (C-4E) “Restorative justice is respect.” (C-4B) “RJ is an active process. It is the only thing that gives something concrete to the victim.” (C-2T) RJ is “community driven” and “systemic change.” (C-5A) RJ is “uniformly meaningful for victims.” “It takes a load off.” Its “value does not lie in the offenders response but in the practice of the victim saying their piece.” (A-1P)

The movement’s rhetoric positions restorative justice as a righteous frame on which to build a holistic justice system. This alternative paradigm is presented as a respectful, humane approach to crime and justice that will deliver healing for victims, demand accountability from offenders, reconnect the community, and cultivate informal social controls. It is a schema, champions say, for making “peace” on crime.

Key Themes: Early Rhetoric

Cruel & Ineffective Status Quo, Fresh Criminal Theory, Grandiose Claims -- Movement rhetoric decries the status quo as inhumane and ineffective, it incorporates a new “narrative of criminogenesis,” and proclaims extraordinary cure-all powers. The grandiose

claims declare that the innovations will cure crime and generate a more cohesive society.

Repertoires - The Restorative Justice Movement

It appears that the restorative justice movement is devoted almost exclusively to a two pronged strategy. First there is a commitment to creating and sustaining direct service programs. (C-1; C-2; C-3; C-4; G-1; G-2; G-4; A-1; R-2) The history at each site reveals that a substantial amount of strategizing, organizing, and groundwork was necessary to bring these programs into being. In many cases it took several years of raising money (mostly private and government grants) and genial cajoling (to get the system to hand over cases) to finally put restorative practices in place. The politicking usually involved finding a sympathetic power-holder who helped to loosen the system's reins and allow access. The vast majority of these programs focus on low-level crimes (nonviolent felonies and misdemeanors) and/or juvenile offenders. Although considerable effort was involved in mounting these programs, the tactics were not confrontational and it appears that activists made few demands on the existing system. They took what they could get because they were, and continue to be, driven by a singular priority, instituting practices. As the respondent C-1P stated, and many restorative justice activists seem to agree, "service delivery is key" and programming is the "bottom line."

The second prong is a dedication to training and supplying technical assistance. This is becoming an increasingly common type of activity among restorative justice champions. (C-5; G-2; G-3; A-2; R-1) Activists provide tools and leadership to people and agencies interested in becoming involved in restorative justice. Usually these efforts

are undertaken to aid in the creation of restorative programming and to propagate restorative practices. For example, people are instructed on how to conduct a victim-offender conference, educated on restorative justice theory, or given the logistical and tactical support to set up an actual program in their area. Established trainers may travel to the interested parties or initiates may come to them for training. Either way, what we see on the ground is an ongoing trend toward professionalization with trainings by restorative justice “experts.” It is interesting to note that several interviewees (practitioners) pointed out how “easy” and “uncomplicated” restorative justice really is. One went on to point out that “contrary to what academics say it is not labor intensive.” (A-1P) Nevertheless, restorative justice ‘advisers’ understand themselves to be doing the important work of advancing an understanding of the movement’s principles, values, and practices.

Some sites are engaged in both creating and sustaining direct service programs and training and technical support. Some activists pursue other tactics that augment and supplement these primary goals. Most sites publish and distribute written materials including pamphlets, newsletters, and in some cases (C-2, G-3, C-4, C-3) manuals. Materials, for the most part self-promotional, are not strategically distributed (though C-5 conscientiously added politicians, community activists, and leaders to their extensive mailing list). Outreach campaigns, which are common, are *exclusively* designed to enlist volunteers. Organizing and conducting and attending conferences are viewed as effective ways to connect movement participants, disseminate information, and reach potential enthusiasts. Restorative justice activists also sit on local and national boards, teach, hold office, and lobby for change. Each class of action represents a traditional approach to making normative change and none would be considered confrontational. Thus far the

restorative justice movement, though aiming for a paradigm shift, does not engage in contentious tactics or radical action.

For the most part, instituting restorative justice has not required fresh legislation. On occasion new statutes have been necessary but usually only to legally allow the system to employ 'alternative' processes. In these cases the activists trying to institute restorative practices lobby to introduce new laws as part of the groundwork required to mount the program. Other movement activists are also involved in lobbying but these efforts are typically focused on either securing funding or getting the traditional criminal justice system to back down and allow restorative justice programs access to criminal offenders. Certain organizations concentrate more extensively on lobbying than others (R-1, G-4, G-2). Activists employing this approach state that the need to "have someone in power to make it happen." (G-4R) This tactical choice resembles the movement's overall approach which centers on access and connections, change from the inside out.

Because this study concentrates on sites with some type of programming, there may be a bias toward finding practice-focused activists. Keep in mind however that these movement actors are not engaged in other tactics. Activists are not eliciting movement participation beyond helping to create and sustain restorative practices nor are they working to dismantle the current system or educate the public at large. It is interesting to note that a tremendous amount of planning and effort, often over a period of years, was needed to create these programs. These activists are spending a lot of energy, intellect, time, and money almost exclusively to generate restorative practices.

The restorative justice movement is still on the rise and so perhaps it is premature to determine that this limited range of tactics will be its sole strategy set. However, when activists were asked about future objectives their answers forecasted simply more of the

same. Goals centered on expanding the volunteer base, raising more money, and increasing the volume and types of cases. The future was said to be about making more and bigger programs. There was no mention of any other tactics to foster or support movement development.

One way the movement has generated enthusiasm for programming is by touting 'evidence' of restorative justice's power. There is more reliance on anecdotes (with grand results) than most champions would care to admit. The stories are compelling and no doubt they are truthful but 'scientific proof' they are not. Methodological studies are slowly emerging (focused exclusively on the efficacy of restorative justice) but they are small scale and specific and only a handful of programs have an assessment component (G-2, G-4, R-2, C-1, C-2). For the most part program evaluations are not sophisticated. They tend to review short-term recidivism rates and usually include some simple measurement of participant satisfaction. Nevertheless, activists confidently wield testimonials when peddling restorative justice.

This movement, like BPRs of the past, has compiled a repertoire centered almost entirely on creating and instituting restorative practices. Though a handful of other tactics are employed (training, lobbying, public speaking, publishing) they are used as a means to facilitate the primary aim of making programs that conduct practices. Activists are working hard but within in a narrow and very traditional realm of action. We see a reliance on change from the inside with some sites, (G-4), overtly keeping a low profile in order to avoid the attention of any unsympathetic parties who might make trouble or obstruct the program's service delivery. Contentious measures are not welcome. Each site mentioned difficulties when soliciting the traditional criminal justice system for cases. Yet, not one of the programs was aiming to rectify or even address this issue. This social

change movement is devoted to its one-track plan and is not exhibiting creativity or sensitivity to the actual obstacles in its path. There is no talk of garnering wider public support, no efforts to reduce the use of current justice practices, no demands made on the system,. The only groundwork being laid is for programming. It is clear that restorative justice reformers are driven. “The passion and sustained engagement” reminds C-4B of her days in the Civil Rights movement. Again we see a reliance on the power of a good idea rather than a strategic plan to institute change.

Key Themes: Repertoires

Narrow, Non-Confrontational, & Practice Fixated -- The movement employs few means to forward its aims. These are exclusively traditional, non-confrontational avenues of social action such as generating legislation, promoting anecdotal successes, and lobbying. The chief tactic is the creation and administration of programs and practices that reflect or incorporate the movement’s agenda. Program implementation quite literally dominates movement strategy.

Time to Ubiquity - The Restorative Justice Movement

This movement, like most, is not developing in a linear fashion. Some states and their criminal justice actors have been more enthusiastic and adopted restorative justice quicker than others. It is in fact difficult to pinpoint when the restorative justice movement in the United States began. The point of origin is not as obvious as it is with past BPRs. There is not a tide-turning piece of legislation or an institution that was built to mark the dawn of the campaign. This penal reform is also moving slower than those in the past.

The very first ‘official’ victim-offender reconciliation project in the United States

is identified as a 1978 program in Elkart, Indiana. (Zehr, 1990) For many years, throughout the 1980s, only a handful of people knew about and maintained an interest in restorative justice. These activists remained committed and slowly mounted programs and spread the word. Zehr's *Changing Lenses*, a book that effectively explained and positioned restorative justice, was first published in 1990. In mid-1990s The National Institute of Corrections and the Department of Justice released a restorative justice video, reflecting a substantial interest on the part of these agencies. It was shown all over the country. Speculation by various reformers is that about 30,000 people saw it. This episode, according to many restorative reformers, marked an informal turning point in the American Restorative Justice Movement. In 1994 the National Institute of Corrections began a five year restorative justice initiative in response to what it saw as an increasingly prevalent idea and practice. This federal agency was responding to a widespread *professional*, and not *public*, interest in restorative justice.

By the spring of 2004 virtually every state in the country had implemented some form of restorative justice, be it policy or specific practice. (Kaleidoscope of Justice, 2004) The alternative justice paradigm has moved "from the margins towards the center of justice issues." (Boyes-Watson, 1999, p. 261) Though restorative justice can be found around the country and federal justice agencies are decidedly onboard, it would be incorrect to suggest that the movement is institutionalized. The scale at which programs operate is still quite tiny particularly in contrast to the volume of offenders the country processes each year. Restorative practices themselves may not yet be ubiquitous in practice but by now restorative lexicon and ideology are. "The language of restorative justice can be heard within even conventional discussions on crime and punishment." (Boyes-Watson, 1999, p. 261) The departments of corrections in many states have

designated restorative justice point people and all the national justice agencies (DOJ, NIC, OJJDP, NIJ) direct resources toward researching, creating, and implementing restorative processes.

It is safe to say that as of this writing restorative justice has not infiltrated the society at large. It is unclear how many people outside of criminal justice circles have heard about restorative justice. This may be changing. On October 25th, 2004, the Oprah Winfrey Show devoted an entire hour to restorative justice. The focus was on victim-offender conferencing and highlighted individual and community experiences with the practice. There also was an article in the April 2004 issue of *O, The Oprah Magazine*. It is interesting to note that though the show was clearly about restorative justice its online archive lists the episode as “coming face-to-face with your attacker.” There are links to sites addressing forgiveness but the actual phrase *restorative justice* is nowhere to be found. (www.oprah.com) Nevertheless, Oprah reaches an audience of millions and her efforts may help to forward the movement’s agenda.

Some argue that the movement has peaked and its pace is now slowing. (C-3J, G-3M) This is difficult to measure and there are several indicators contradicting this premise, suggesting that the movement is actually picking up speed. The volume of recent publications and the prevalence of contemporary restorative justice conferences does imply a mounting momentum. Mark Umbreit (a key movement carrier) recently remarked in a talk at John Jay College that the movement is moving “quicker” than many, himself included, expected. Lode Walgrave notes that twenty years ago restorative justice was “barely known” and now it is a “central issue” and “unavoidable theme.” (2003, pvii) Yet, despite evidence of a recent boom, this movement is moving more slowly than past benevolent penal reforms.

Though restorative justice is not fully institutionalized it does appear to have taken root on a small scale. The phrase and its accompanying principles are routinely incorporated into the justice system. Programs continue to emerge and grow. Adopting restorative justice ideology, at least on paper, helps to secure funding (Walgrave, 2003; Bazemore & Schiff, 2004; McCold, 2004; A-2D, G-2D) There is no guarantee of total institutionalization. The movement could disappear only to be revived some time in the future or simply fade away. Money is tight right now and economics can fuel a new idea or crush it. All the same, the rush of recent activity does not seem to be waning and there is no denying that restorative justice has “made its way into criminal justice agenda.” (Sullivan & Tifft, p. vii). It is more than likely that the campaign’s career is not yet over.

Key Themes: Time to Ubiquity

Small Scale Institutionalization & Recent Boom -- The ideas and practices are not yet ubiquitous but the language is becoming universal. The traditional criminal justice system, nationwide, has incorporated restorative justice albeit on a small scale. The general public is not yet aware of the movement but that may be about to change. Restorative justice ideology is consistently spreading and no longer marginalized. The past few years have seen an escalation in movement activity accompanied, or fueled by, greater public exposure, willingness, and interest.

Outcome - The Restorative Justice Movement

The restorative justice campaign has not yet realized full institutionalization let alone reached the final stage (demise) in a social movement’s life course. It is too early to make a full appraisal of its outcome. This being said, it is still possible to assess the movement’s contributions thus far. There have been years of movement activity and an

evaluation of this kind can substantiate inferences about the direction the movement is headed and help formulate projections about the movement's ultimate outcome. Restorative justice has not evolved at the same pace or in the exact same manner around the country, but an examination of the campaign's impact up to this point and its contribution to the American penal landscape is certainly appropriate. The movement's aims will also be juxtaposed against what it is actually delivering.

There may be restorative justice enthusiasts who would take issue with any comparison between two such different justice systems. They may be right but the comparison here is not between restorative justice and the traditional criminal justice approach but rather between this movement's stated goals and actual outcomes. The purpose here is to look at whether the outcome of this movement will embody the principles and aims of the movement or if, like those that came before it, it will serve to expand and deepen the very system it aims to supplant or significantly tame.

What is being replaced?

Restorative justice enthusiasts do not agree on whether restorative practices should replace, be woven into, or operate alongside our current justice system. Most contend that a restorative approach should be the first course of action but they debate whether or not the bulk of our current criminal justice practices should be altogether abandoned. It is common to hear these reformers denounce prison as overused and further suggest that many offenders (and victims and communities) would fare far better with an alternate punishment. They also assert that when it comes to restorative justice there are an infinite number of possible practices (as long as they adhere to the founding principles) including cases in which a restorative system might work to help heal the

victims while locking up the offender.

Nonetheless, even restorative justice activists would admit that the movement has not replaced much at all. Several of the study sites involved operate as add-on programs (G-1, A-1, R-2, C-3) inside the prison walls with felons who have already been through the traditional system. All the sites involved in direct service that process cases in lieu of the traditional criminal justice process (C-1, C-2, C-4, G-2, G-4) concentrate solely on low level crimes (misdemeanors and nonviolent felonies) and a quite a few handle far more juvenile offenders than adults. It is worthwhile to keep in mind that the volume of cases that these programs process is very, very small compared to the number of cases moving through the system. Even in the locales where there is a restorative option exists as a true alternative, a great many variables must be in place for one's case to be 'adjudicated' in a restorative manner. First, program staff must learn about the case and be allowed access. Second, the victim must be willing. Third, the offender must be willing. Finally, whoever is in charge on the program's end decides whether the case and the attendant parties are good candidates for a restorative resolution. However, if a consensus among all participants is not realized or if a judge is unwilling to sign off on the resolution, the case will be returned to the courts for a traditional conclusion.

Restorative justice has made the most meaningful inroads (with regard to replacing practices) in the arena of juvenile justice. Nevertheless, the scale of American prosecutions being what it is, the movement has failed to supplant one justice paradigm for another. Furthermore, it is not clear how the cases now adjudicated (if 'adjudicated' applies) in a restorative manner would have been processed otherwise. The specifics of what has been replaced are unknown.

What is being added?

A significant number of restorative justice programs operate as add-on programs. Offenders long convicted may meet with victims well after the offense has occurred. There are programs in which victims come into correctional institutions and testify to their experiences. In some cases participating in a restorative practice of some kind is added on to the terms of an offender's parole or probation requirements. It is unknown if the restorative replacement is more or less punitive and controlling than the traditional justice course. Whether restorative processes are actually added on or are operating in the stead of more traditional practices, they introduce new elements to the criminal justice landscape that contain the very real possibilities of expanding the network of control and growing punishment. Notable examples include the following:

- Expanding the number of players involved in the justice process -- Crime victims and community members are becoming additional players in the justice process as venues create a variety of opportunities for their participation. Restorative justice also calls for participation from the people in the offender's life. *How this may expand control* -- The movement's intent may be to replace one set of actors with another but to date this has not been a prevailing development. An offender must now, in addition to meeting the justice system's demands, respond to the expectations and needs of new players (including the victim and his/her family and loved ones, the community, whoever stands with the offender, etc.) as must the judge, the DA, the jury, and the defense.
- Broadening the purview of 'justice' -- Justice is now understood to be comprised

of making victims whole, satisfying the community, showing empathy, and meeting an added set of specified obligations. *How this may expand control* -- This new narrative of justice may be intended to replace one of guilt and punishment but in practice it is being added to the mix. In the interest of 'true' justice they system may delve deeper into the offender's 'soul' and psyche in order to repair relationships and restore him/her.

- Criminalizing extralegal conflict -- "We've been grabbing more conflict and criminalizing it. We should reduce control as risk is reduced but RJ doesn't tend to do this." (G-3M) *How this may expand control* -- As restorative practices concentrate on low level crime or other incidents that the current criminal justice system will allow them to address, conflict that may not have been criminalized (e.g. fights at school, motorists arguing, petty vandalism) is being labeled as more serious so as to 'experiment' with it. Here too, restorative practices may be more invasive and controlling than what would have happened had the traditional system been the response.
- Heightening the power and influence of crime victims -- Victims' needs, in this paradigm, determine punishment. *How this may expand control* -- Restorative justice does not identify clear boundaries regarding resolutions between victims and offenders. The movement does not address the desire for vengeance and is promoting a justice system that does not incorporate due process or legal rights.
- Raising the bar of 'proper' behavior -- Restorative justice does not center on

criminal behavior but on the action of “making things right.” *How this may expand control* -- Not unlike parole, which opened the door to reprimanding offenders for extralegal behavior, restorative justice can subject offenders to further restraint, control, and labeling if they are disinterested or incapable of participating at the level demanded.

- Extending the reach of the justice system -- Many restorative justice programs target teachers and principals in the interest of bringing restorative practices into schools. (At a conference sponsored by A-2 over a third of attendees were from a school systems and not the justice system; G-2D has a stated initiative to develop restorative justice in local schools). *How this may expand control* -- While restorative justice may employ a different interpretation of justice, it is still operates from within the criminal justice system even as it reaches out toward other social institutions (schools, families, the workplace). It remains difficult for enthusiasts to get access to criminal offenders and they are eager to spread the good word wherever they can.
- Marginalizing classes of offenses and offenders -- Though the rhetoric states that restorative justice holds possibilities for all classes of offenses and offenders, there are crimes and populations completely shut out of the practices at this time. Domestic violence is virtually untouched in practice and child abusers and victims of child abuse remain unwelcome in most restorative justice programs. *How this may expand control* -- Restorative justice is trumpeted as being for “everyone” but certain populations are in practice shut out leaving them more open to

marginalization and vilification. If they are not part of the 'universal' in a universally applicable process this is de facto dehumanization.¹

- Fetishizing juveniles -- Restorative justice has targeted juveniles, offering more programming for young offenders than any other population. *How this may expand control* -- Juveniles already inhabit a less legally protected status within the justice system as they are classified as a more vulnerable, special population. They are subject to a mercurial public that views them as both victims who are more reachable than adults and animals beyond repair. It is interesting to note that the restorative justice movement is seen as holding special promise for juvenile offenders but juvenile victims, unless victimized by another juvenile, are locked out of the practices. Furthermore, adult offenders who harm juveniles are rejected altogether by restorative justice.
- Widening the net -- As of now restorative justice practices concentrate on low level crimes. *How this may expand control* -- It is quite possible that these cases are being handled in a more controlling and punitive manner than what would have transpired under the guise of the traditional criminal justice system. People who would barely register on today's criminal justice radar are front and center in the restorative justice movement. The practice gathers information and keeps tabs on someone who may have gotten off with a fine or a warning. They are now in the criminal justice net forever.
- Growing existing systems -- Reformers are developing and implementing

¹ "Domestic violence scares me." (C-4B)

restorative practices by creating programs that associate with, and link to, the existing web of criminal justice programs (probation, prisons, DA offices). *How this may expand control* -- These pieces of the system become bigger and gain power by enlarging their sphere of action. A whole new layer of bureaucracy and professionals join the system.

- Cultivating new avenues for abuse of power - Restorative justice does not address bedrock inequalities and power differentials. It has no mechanism for dealing with racism, classism, economic violence, or sexism. *How this may expand control* -- With no deliberate action on these issues new practices and processes will create fresh means for racism and other abuses of power to be acted out. Without an attempt to dismantle institutionalized power imbalances, fail-safe inequities will fill the void.

Is it delivering on its aims?

It is too soon to fairly assess whether or not the restorative justice movement is delivering on its promises. Like all movements its objectives are more grand than the campaign could ever realize. It is worth noting that scholars are already pointing out “exaggerated claims.” (Morris & Maxwell, 2003, p. 360; Daly, 2003) Nevertheless, ‘successful’ movements do manage to achieve some of what they propose. This early accounting was intended to explore what the movement is genuinely accomplishing (on the ground) in light of its stated goals. Below is a review of some key specific aims and how they faring at this point in the campaign:

- Introduce a new justice paradigm -- The practices and programs associated with the movement are being *added* to the existing criminal justice system. The framework for understanding and responding to a criminal event remains unchanged. Crime is still cast as a violation of law. The state still “owns” and the conflict and drives the resolution. Not much of the the ‘old’ paradigm is being replaced and what is being introduced folds quite easily into the existing paradigm. Long-standing language, definitions, and structures remain intact providing the base on which restorative practices are built. A paradigm shift is not afoot.
- Level the field -- Restorative justice calls for all parties (victim, offender, community) to be afforded respect and equality. Yet, in practice the movement has not responded to the inequities and socialization that people bring with them to the restorative table. Theorists and practitioners alike fail to address race, class, or gender issues (a common complaint of the people interviewed for this study - see the discussion section later in this chapter). While some scholars have questioned whether restorative justice is suggesting reintegration of offenders into an inequitable social structure, as of yet no one has developed an approach (in practice or theory) to handle the inequities and prejudices we bring to the restorative justice dialogue. Furthermore, as restorative practices are being folded into the existing criminal justice framework, these power dynamics are being replicated and reinforced, not altered.
- Center justice on the needs of victims -- Restorative justice is said to be a victim-centered justice paradigm. In practice there are many programs with little (R-2; A-

2; G-4) or no victim participation (R-1; G-3; C-5; C-3). Victims with the heaviest burdens are locked out of most restorative practices as these tend to focus on low-level crime. Victims/survivors that do come to participate in a restorative event often do so well after the crime has occurred sometimes years after the crime has been processed. The value restorative justice holds for offenders and public safety are often the key selling points touted by reformers. Many crime victims see restorative justice as an offender-focused, soft, or easier *punishment* and oppose it. In many respects the movement is evolving without the participation of and commitment to crime victims, the very people said to be at its core.

- Return conflict to its 'rightful' owners -- Restorative justice is said to include *all* those with a 'true' stake in the criminal event and its outcome (community, victim, offender). Not only are victims often absent from the process (see above) but so too is the community (R-1; R-2; A-1; G-3; G-1; C-5; C-3). The community presence, when included, is most often represented by a handful of specially 'trained' volunteers who participate in case after case (C-1; C-2; C-4; G-2; G-4), often as stand ins for victims. In other cases community participation is perfunctory, serving only to observe a conference between the two main parties (victim and offender). The community on the whole is not particularly active in restorative practices, programs, or the movement.
- Identify harms & pinpoint obligations -- Restorative justice demands that we ask what and whose obligations are generated by a crime/conflict. Yet, the answer appears to consistently recognize obligations *only* on the part of the offender. In

theory restorative justice constructs a way for communities and society to review what it perceives as transgression and examine the reasons transgression occurs. The process is said to exact participation on the part of multiple parties who each must explore their roles in creating and resolving the event. In practice this does not appear to be taking place. Resolutions are to be sought through 'active consensus' but the only clear unanimity seems to be a tacit adherence to the current paradigm's interpretation of offense, harm, and responsibility. At each and every study site obligations fell *solely* to the offender. There was no discussion of economics, jobs, the lack of drug treatment or other social services. Communities are not stepping up with regard to obligations either to an individual offender or future crime control efforts beyond specific deterrence. Nor is anyone asking whether certain offenses ought to be viewed as criminal (i.e., prostitution, drug possession, so-called victimless crimes). All presently criminalized behavior retains its status as an offense. This means the act is already deemed harmful even when the process finds itself stretching to identify either a victim or name the harm caused by the act. Rather than question whether an act is actually harmful participants weave creative stories to explain where the pre-prescribed harm lies. For example, at G-4 a young man who was busted for possession of marijuana participated in a restorative panel in lieu of going to court. During the resolution process the volunteers repeatedly made the point that young people are seduced into drug use and that communities (not their community or the young man's, but communities in general) are severely damaged by drugs. This offender was clearly expected to embrace this definition of harm and express contrition for the named social damage. He was not charged with selling, the drugs were for personal use,

and this person was succeeding at school. Restorative justice begs an honest dialogue regarding harm and obligation but this is not what what we are witnessing.

- Reflect a set of principles -- Advocates aver that restorative justice is not one particular program. All it asks is that any response to a criminal event be dictated by a set of core ideals (a changed lens). In theory restorative justice insists upon an individualized, creative, and free understanding of the conflict to be addressed, the parties who ought to be involved, and the resolution to make things right. In practice this 'new' justice lens is employing the perspectives of the old one, holding fast to its social arrangements and convictions regarding crime and punishment. Program replication is fast becoming the norm and practices are more likely to readily several key restorative principles than struggle to meet them all.

Key Themes: Outcome

Wavering on Aims & Risking Growing Punishment -- The movement is not staying true to its agenda. It is faltering, not being co-opted but by selling out or abandoning its aims. Little, if anything, is truly being replaced and the stage is set for much to be added. Mechanisms for deeper government ingress into the lives and bodies of convicted offenders are being introduced and a widening pool of people are being subjected to more intensive processes. Substantive change is not underway and the nation's network of control may be considerably expanded by the movement's efforts.

The Score

It is too early to tally up this movement. It has yet to fully institutionalize and is in fact still mounting steam. Nevertheless, it is worthwhile to examine its score at this

point in its career to get a sense of the direction in which it is headed. Let us look at whether there are any success markers (gains and legitimacy) or indications of failure.

The movement has achieved sundry gains. Enthusiasm and funding for the restorative approach to justice is intensifying. Restorative practices can be found in every state as well as at the federal level. Criminal justice discourse is directing more attention toward restorative justice with more and more scholars joining in the discussion and a recent rise in related publications. Gains are not deep enough at this time to suggest that substantive change is underway nor is the scale of these inroads particularly meaningful given the dimensions of the current criminal justice system. However, gains are such that restorative justice is no longer situated on the margins of criminal justice.

The ideas and actors associated with the restorative justice movement are faring even better than the practices. Reformers and theorists alike are winning the attention, respect, and trust of universities, city agencies, and the the criminal justice system itself. They are gaining access to decision makers and as the credibility of their ideas grows so does the influence of their voices. Restorative justice is now a standard part of the criminal justice curriculum. Politicians and actors throughout the criminal justice system are familiar with the terms and ideology associated with the movement.

This movement is making an impression on the penal landscape (culturally and logistically) and expresses some success signifiers at this time. It is certainly premature to label the restorative justice movement a failure. Yet, this study has demonstrated that the campaign is not delivering on its claims, but is administering ideas and practices that could expand the network of control. This set of circumstances is guiding restorative justice along the course charted by past 'failed' movements. All indicators point to a repeat regressive performance.

Key Themes: The Score

Tentative Successes & Salient Failings-- This campaign is already exhibiting some key markers of movement success. There are signs of literal gains and confirmation that both the actors and ideas associated with the movement are attaining legitimacy. Yet, despite these accomplishments there is preliminary evidence that the movement is not coming off as planned and is unfolding similarly to past failed campaigns.

Findings as they Relate to Program Typology & Validity

This study devised a program typology: *academic, religious, government, and community* (see chapter eight for a fuller discussion) in order capture the fullest possible articulation of the restorative justice movement. The findings did not indicate any significant differences across type with regard to the eight social movement characteristics. Though the four categories (academic, community, government, and religious) are rooted in different orientations they each demonstrated like expressions of the various movement properties. They emerge from the same host conditions, share carriers, display an equally limited membership distribution, articulate indistinguishable rhetoric, employ an identically narrow range of non-confrontational repertoire, evolve at a comparable rate, deliver congruous outcomes, and ultimately share the same score. This level of consistency affirms that restorative justice is a single widespread movement. Furthermore, such congruity adds to the validity and significance of the findings.

A Graphic Overview

What follows is a table that encapsulates this chapter's findings and juxtaposes it against the data regarding the three previous benevolent penal reform campaigns (laid out in a table in chapter five). Laying the movements out alongside one another in a simple graphic manner allows for a sound comparison and facilitates an effective way to affirm or negate the hypothesis, that a repeat performance is underway. At issue is whether the restorative justice movement is evolving like the benevolent penal reforms that came before it and thus headed for a similar *regressive* outcome. The table starkly illustrates that this latest campaign *is* exhibiting a robust expression (sharing multiple like features) of the Regressive Reform Profile and the study finds in favor of the hypothesis. Each of these movements embody a uniform structure. A discussion elaborating the details of this repeat performance and its regressive course follows the table. The chapter closes with deliberation on why restorative justice is unique, whether the movement is doomed, and what if anything can be done to redirect its present course.

Table 9.1

	<i>Restorative Justice</i>	The Prison	The Reformatory	Parole
<u>Conditions of the Host</u>	<i>Bounded & Disappointing Punishment System</i>	Bounded & Disappointing Punishment System	Bounded & Disappointing Punishment System	Bounded & Disappointing Punishment System
<u>Carriers</u>	<i>Holy Rollers, Credibles, Patrons, & Professionals</i>	Holy Rollers, Credibles, Patrons, & Professionals	Holy Rollers, Credibles, Patrons, & Professionals	Holy Rollers, Credibles, Patrons, & Professionals
<u>Membership Distribution</u>	<i>Insular & Limited</i>	Insular & Limited	Insular & Limited	Insular & Limited
<u>Early Rhetoric</u>	<i>Cruel & Ineffective Status Quo, Fresh Criminal Theory, & Grandiose Claims</i>	Cruel & Ineffective Status Quo, Fresh Criminal Theory, & Grandiose Claims	Cruel & Ineffective Status Quo, Fresh Criminal Theory, & Grandiose Claims	Cruel & Ineffective Status Quo, Fresh Criminal Theory, & Grandiose Claims
<u>Repertoires</u>	<i>Narrow, Non-Confrontational, & Practice Fixated</i>	Narrow, Non-Confrontational, & Practice Fixated	Narrow, Non-Confrontational, & Practice Fixated	Narrow, Non-Confrontational, & Practice Fixated
<u>Time to Ubiquity</u>	<i>Small Scale Institutionalization & Recent Boom</i>	Small Scale Institutionalization & Recent Boom	Small Scale Institutionalization & Recent Boom	Small Scale Institutionalization & Recent Boom
<u>Outcome</u>	<i>Wavering on Aims & Risking Growing Punishment</i>	Undelivered Aims & Punishment Grown	Undelivered Aims & Punishment Grown	Undelivered Aims & Punishment Grown
<u>The Score</u>	<i>Tentative Successes & Salient Failings</i>	Dismal Success	Dismal Success	Dismal Success

Is a Repeat Performance Underway?

Yes. The hypothesis, that a repeat performance is underway, is firmly supported by the data. The evidence confirms that this still emerging campaign is evolving as past benevolent penal reforms and shows that the restorative justice movement is manifesting a vast majority of the elements associated with a regressive social change movement. With these properties well in place restorative justice is headed on the path to regression and poised to grow the very punishment system it is aiming to substantially temper.

This is not to say that restorative justice has failed to bring about *any* change in accordance with its agenda or that all it has delivered is more punishment. In any locale where a program operates there are people who have been profoundly 'healed' by the restorative justice experience. Crime victims speak of "getting their life back" thanks to restorative practices and offenders describe the transformative power of empathy and undertake 'making things right.' This too binds the present reform to those that came before it. It is likely that the penitentiary deterred several people (it still may), parole resulted in some significantly shortened sentences, and the reformatory no doubt reformed a few souls. This study does not question the viability of restorative justice principles or cast dispersions on their power. The purpose here is to examine the potency and effectiveness of a *total* campaign and to specifically uncover why these social change movements, whatever small successes they may have achieved, managed in the big picture to fail in such a detrimental way. This is the necessary first step toward effecting the substantive change we want.

Details, Details, Details

Is the restorative justice movement really *identical* to past benevolent penal reform campaigns? It is certainly true that the individual elements may express some variance but they are absolutely analogous in their essence. Restorative justice shares the principal features that lead to regression and is poised for a repeat performance (see chapter six for an explanation as to how regression is facilitated).

A general overview of firsthand observations from each site reveals some troubling all-round trends. There is no talk of strategy beyond how an individual program might expand its reach. Reformers are not engaged in thought, discussion, or action aimed at reaching their long-term agenda (though they frequently speak of it) or avoiding missteps (easily identified by the activists and discussed later in this chapter). Though movement participants show tremendous ingenuity, energy, and commitment they focus on very limited objectives, primarily the creation of direct service or training programs. There is virtually no program assessment though 'success' and 'effectiveness' are commonly asserted. The scale at which programs operate is remarkably small and more often than not restorative practices are added on to existing criminal justice mechanisms. Though 'community' figures paramount in restorative justice ideology in practice this piece is frequently missing. Again we see a cadre of hardworking, creative, well-meaning, earnest activists whose efforts are likely to yield results far from their intent and clash dramatically with their stated aims. The restorative justice movement is fueled by true believers, banking almost solely on the power of a good idea, who are actually building a movement that mirrors the structure of past failed campaigns. It is highly probable that it will deliver an analogous outcome. What follows are some specific examples of how this movement's expression of the RRP is setting up restorative justice to become a regressive

social change movement.

Carriers

The carriers of the restorative justice movement are not as well connected or as monied as earlier benevolent penal reformers. Nevertheless, they are for the most part highly educated and faithful, two features that accord status and legitimacy in today's United States. In the eyes of the host, these champions are no less credible than the carriers of past BPRs. They are as deeply rooted in the establishment and as well versed in the status quo as their predecessors. The same insider status that fueled regression in the past is likely to do so here.

At first glance it may not seem that restorative justice champions are necessarily aiming their benevolence toward an "other" like the way patronizing actors in earlier benevolent campaigns did. Yet, they are. What is different here is that the sympathetic mark is not just the weak, mishandled, damaged *offender* but also, and more importantly, the mistreated, forgotten, injured crime *victim* and the *community* too long ignored by the system. Each of these 'stakeholders' are the beneficiaries of the restorative agenda. While to some extent crime victims, offenders, and community activists are involved in the larger movement the carriers absolutely position themselves as the bearers of mercy and humanitarianism acting on the behalf of others. They are not first person actors in the sense of workers agitating for labor reform, women demanding emancipation, African-Americans fighting for their vote, or queers insisting on equal rights. The flavor of paternalism that led past benevolent movements astray is firmly embedded in the restorative justice movement.

This movement is being built on a foundation of faith. Virtually all of the

movement's carriers (Howard Zehr, Mark Umbreit, Daniel Van Ness) identify their religiosity as driving them toward a restorative justice lens. They all name their faith as the fuel that compels them to participate in the movement. The bible is consistently cited by carriers as support for the legitimacy and virtue of a restorative approach to justice. Though only two programs were typed as religious well over half of the programs make reference to the role that God and faith play in a restorative model (C-3, C-4, G-1, G-2, G-4, A-1, A-2, R-1, R-2). Such references include prayers before a process begins (G-1), an expectation or 'suggestion' that attending services 'supports' the offender (G-4), and the omnipresent assumption that all those involved believe in a God (C-3, C-4, G-1, G-2, G-4, A-2, R-1, R-2). Reformers think they are expressing pluralism by embracing 'spirituality' rather than a stated religion per se but customarily there is no recognition of the nonbeliever and volunteers are most often recruited from church congregations.² Only one program (C-1) has consciously addressed the issue and mandates that all community volunteers remove or cover religious symbols they might otherwise display. This program also disallowed such symbols in the places where cases were actually resolved.

By rooting its agenda in a Judeo-Christian framework and thereby planting itself in conservative soil the restorative justice movement is circumscribing its possibilities. It may make the message more palatable, help gain access, and foster legitimacy but historically religiosity mixed with benevolence has proved a toxic mix. Those who subscribe to a religious doctrine remain attached to traditional long-standing principles regarding crime and punishment. Restorative principles ask participants and adherents to review what constitutes a crime and specifically identify the harm in each circumstance. Nevertheless, participant-observation verified that this does not actually happen. Universally, traditional views prevail and the language used in restorative practices

² "Faith and life are one." (A-2R)

mirrors that of the current criminal justice system. Offenders are 'good' people who made 'bad' choices, they are 'guilty but can 'redeem' themselves by taking 'responsibility' and 'paying back' what they 'owe'. Once the theory is put in practice, established ideology dominates because it has not been unseated. As long as this movement remains steadfast in its religiosity the criminal justice system's ideological foundation will remain unchanged and no new paradigm will take root. The movement will not deliver on its goals.

Membership Distribution

As was demonstrated earlier in this chapter restorative justice, like BPRs of the past, has virtually no outer ring. As of yet, there is no 'interested public' involved in the restorative justice campaign. The consequences of this membership distribution (discussed at length in chapter six) are already being felt. No outer ring means the movement has little leverage with which to pressure the host. Virtually all restorative justice theorists and practitioners would agree that restorative justice has the most to offer victims and offenders involved in serious crimes and yet across the board no jurisdiction will allow programs to tackle such events. Because they have no leverage programs take whatever and whoever the system hands them and this tends to be misdemeanors, juveniles, and low level crimes. Though most of the people I spoke with voiced frustration at their restricted access they did not talk about making demands or holding out till they got what they wanted. One program (R-2) does insist on a set of preconditions before they will conduct their course. It is interesting to note that though the DOC initially balked, they did give in on each and every demand. R-2 successfully negotiated a ban on corrections officers in the room, private space, permission for inmates

to keep materials in their cells, and permission for inmates to meet with one another after program hours. The point is that as these BPR campaigns evolve, and restorative justice is apparently no exception, they are not aggressively co-opted so much as they hand their movement over without a fight. Furthermore, without an internal eye, another key function of the outer ring, there is no one to demand that the movement stay true to its ideals. This movement is selling out and can not blame the host for winning or even controlling the negotiations.

The restorative justice movement is busy bolstering its middle ring. Trainings are on the rise and a legion of 'professional' restorative practitioners are emerging as more and more programs come on the scene. Professionalization of the movement means a campaign of insiders who have too much to lose if the system truly changes and too much on the line to engage in contentious negotiations. These are activists with their own agendas. Though the restorative justice movement has concentrated on breeding professionals, many front-line practitioners suggest that little training is actually needed to conduct or oversee restorative practices. Contrary to what "intellectuals and academics" say restorative justice is not time consuming or labor intensive (C-1P). I heard this same sentiment again and again as practitioners stated that the practice is intuitive, easy, and natural not something that has to be taught.

When asked about future goals, movement activists never identified building public support as a priority though growing the trained volunteer base was almost always mentioned.³ At this stage in the movement no one is working to organize, stimulate, or foster an interested public. Restorative justice is fast becoming a movement driven by

³ "I'd like to see, locally, an expansion of the victims' role in workshops; an increase in the number of workshops; a contract with DOC to do in-house, probation, and parole programs; to offer workshops and support groups one to two years before and after release (i.e. anger management, belonging, taking the bus, etc. ...); and PSA's on tv about the program and community resources for victims and offenders." (C-3J)

criminal justice insiders with two closely woven inner rings of participants and no public support. This make-up will dramatically affect strategy, vision, and outcome.

Early Rhetoric

The rhetoric of the restorative justice movement sounds a lot like the benevolent campaigns of the past. The movement claims to be after substantive value-oriented change, aiming to unseat fundamental social principles. Present-day justice is proclaimed inhumane and ineffective while the new ideology is said to produce a grand outcome, namely a more cohesive and peaceful society. The problems associated with this rhetorical frame is discussed at length in chapter six. What this campaign introduces are new narratives of both crime and justice. Restorative justice may not add to the litany of criminological theory but in its own way it is expanding the theoretical foundation of criminal justice. By doing so it is likely to expand the network of control. Restorative justice maintains that a criminal event is a violation of people and relationships that creates obligations and justice requires that all stakeholders come together and make things right. Despite their claims these new narratives do not replace other constructs. They simply expand the purview of the criminal justice system. A transgression is no longer a mere violation of law, but a criminal act and a violation of relationships. Justice was a determination of guilt and the imposition of punishment but now it must also include the active participation of multiple parties, restoration, reintegration, and the healing of harms. Restorative justice does not change the stakes it ups the ante. We see more actors and more objectives added to a system already weighed down by its responsibilities. The network of control could be greatly expanded.

Repertoires

Like past campaigns the restorative justice movement is employing norm-oriented tactics (changing only social rules and arrangements) even as it espouses value-oriented goals.⁴ The serious problems associated with such a narrow program-fixated strategy were discussed at length in chapter six. Particular to this campaign are reformers that state a clear and specific agenda and articulate an explicit set of concerns but whose actions correspond to neither. Even the programs they work so hard to build -- and the movement concentrates almost exclusively on this goal -- do not conform to activists' ideology or rhetoric.

More than half of the people interviewed for this study said restorative justice should *replace* the traditional criminal justice system and everyone thought at the very least it should be the *first* option for *all* criminal events with current practices operating as a back-up or last resort. Restorative options should be available, they further asserted, no matter the nature of the criminal or the offense. None of the movement's tactics however reflect this thinking. Programs willingly excommunicate serious offenses and classes of offenders. All programs except one (R-2) had a strong reluctance to deal with those accused or convicted of domestic violence or child abuse. Many had policies forbidding their participation. Virtually all the programs that resolved cases in lieu of the current system's practices addressed *only* misdemeanors and nonviolent felonies. The majority of restorative justice programs are available exclusively for juvenile offenders.

When asked about these contradictions the most common answer was that the system finds this (restorative justice exclusively for low level crimes and juveniles) easier to accept. Remember, no one held out for what they wanted, no one made demands, no

⁴ "We are chipping away at it but if I looked at the big picture I'd have no hope." (R-2J)

one employed contentious tactics. This is not a matter of the system calling the shots but rather the movement conceding early in the game. The system is barely being pushed. It is impossible to know how much ground it might yield or how many of its aims the movement might be able to realize. Reformers, theorists, and practitioners may clamor for systemic change and a paradigm shift but they all participate in tactics that fly in the face of these goals. This movement should not worry about co-optation or repression but selling out.

Reformers do not present as naive and when asked had some very serious worries about the movement's future. Each of the movement activists interviewed recited a litany of concerns. One common fear was that careerism, bureaucratization, and professionalization will come to dominate and neutralize the campaign. Another was that participants will accept limitations and lose sight of the movement's agenda to implement "systemic change." In particular many voiced a worry that restorative justice will not be universally available and that adults and serious will be excluded. Activists are nervous that campaign will lose focus and give only "lip service" to restorative ideals. There is widespread fear that restorative justice will become "just a program" instead of "a way of thinking," and that it has already been reduced to an effective way to get funding, a buzzword. Several of the interviewees acknowledged that other good ideas had gone bad and expressed anxiety about what that might mean for restorative justice. Other common refrains included distress that the movement would claim success too early, become all about the offender, be co-opted, or turn punitive. One person noted that the movement is "without leadership" and worried about where it was headed without steadfast direction. Perhaps the most troubling concern, voiced by only a handful of movement participants, is that they do not see restorative justice theorists or practitioners addressing the issue of

race. Almost all RJ *practitioners* in this study were white. In contrast the people caught up in the criminal justice net are disproportionately people of color. They went on to state that they do not see gender, class, or scale being addressed either. They observed that everyone comes to the restorative process as socialized beings and that restorative justice must deal with this. So far, they note, it has not.

It is interesting to note that reformers are articulating these concerns independent of one another. It is likely that activists named these issues not because they fear them arising in the future but because they already see them developing. Study findings do show that to some degree each of these concerns is indeed already coming to fruition, not at each site but certainly movementwide. Yet findings also indicate that no one is acting to slow the evolution or lessen the impact of these 'potential' problems. There is no strategy or intent to specifically combat or target them. Without a clear and definite agenda these various concerns, all of which point to a reinforced host and a seriously compromised movement, can not be overcome.

The restorative justice movement's repertoire does not reflect the campaign's agenda or participant's legitimate and thoughtful concerns. This campaign is relying on a flawed blueprint. One interviewee (R-1P), quoting Matthew 10:16, stated "we must be wise as serpents and harmless as doves." Restorative justice activists do not appear to be succeeding at either. Their tactics, or lack thereof, are setting the movement up to repeat the regressive outcome of past campaigns and grow the punishment system.

Outcome

It is too early to emphatically assert the consequences of this movement but the evidence offers some indicators that should not be ignored. Little if anything is being

replaced and restorative justice practices are being added to the system. Elements are being introduced (e.g., an expanded number of players in the justice process, a focus on extralegal behaviors) that can too easily foster greater government authority while also considerably extending the criminal justice system. The movement is already failing to deliver on many of its aims abandoning them in the interest of small program-related gains. There are signs that the network of control is again being expanded and that punishment is growing. Furthermore, there is no type of organized response to missteps nor a strategy to preempt a regressive path. The movement is not doing anything to combat a repeat performance but it is exhibiting a great many of the characteristics associated with this unwanted outcome.

Every site in the study and much of their written material employs the same language and definitions as the traditional criminal justice system (i.e., crime, criminal, good, bad, harm, law-abiding, responsibility). Holding fast to these long-standing frames assures a continued separation between those on the inside from those on the outside; those who commit crime and those who do not (i.e. those who do not get caught). Crime continues to be segregated from all other behaviors. Obligation (a key concept in restorative justice) is still placed solely on the offender and we do not see communities stepping up to the plate. Restorative justice is supposed to open the door for society to look at its contributions toward the creation of criminal events, but in practice the community is asked to do little more than direct the proceedings or judge the fairness of the outcome. In cases that are resolved through restorative means emphasis continues to be on individuals who break the law and their obligation to control their behavior and conform. It is true that processes aim to meet the victims needs and in many cases succeed. Still there remains a hyper-focus on the offender who does not, as this observer

witnessed, share an equal status with everyone else sitting at the restorative table. Given the current manifestation of the movement, the interpretation of harm has not been particularly altered and restorative justice merely reinforces social norms regarding 'right' and 'wrong' (read: criminal and lawful as well as normal and deviant) behaviors.

On paper restorative justice appears to invite a community to revisit its laws, social policies, and practices to determine whether or not they are in line with restorative ideals. If found wanting then change may be in order. Sounds good (or at least different), but this aspect of the theory does not manifest in practice. In today's American restorative justice, the onus is on prostitutes to set off on the 'right' path rather than on the community to consider legalizing prostitution. This leads to another problem. Restorative justice is focused on the person not the crime. The ideology supports going beyond the realm of the offense to delve into an individual's life, relationships, heart, and soul to trigger empathy and stir responsible actions. This is not unprecedented.

Typically, 'benevolent' practices have been allowed deeper ingress than punitive ones and historically this has resulted in an expanded network of control creating more ways for the state to direct, impact, chronicle, and respond to an offender as well as enlarging the scope of behaviors under review. This latest wave seems no different. The offender who is not interested in meeting with a victim, discussing the events, or unwilling to meet their victim's needs faces new stigma and labeling. Such behavior while legal nevertheless becomes unacceptable and can easily be perceived as a further offense begging a harsher response. There is tremendous opportunity for restorative justice to grow punishment.

In concept, restorative justice is highly political. In practice it appears strangely apolitical. There are a few scholars asking about restorative justice's relationship to social

justice, but on the ground such questions are nonexistent. The movement's front lines are divorced from politics beyond criminal justice policy and in that arena they are mostly focused on gaining access to some offenders and to instituting some restorative programming. There is no participation in or discussion of economics, drugs, labor, welfare, education, or privilege. The campaign's demands do not match its champion's declarations that they are after a paradigm shift. Moreover, the movement's willingness to embrace and utilize the rhetoric and constructs of the status quo can only strengthen and reproduce the very justice paradigm these reformers so deplore.

The current relationship between restorative theory and practice does not foreshadow a promising movement outcome. Current implementation reveals that various programs and practitioners are neglecting key ideological principles. There are many programs that fail to include one or more of the key stakeholders deemed critical to the process (victim, offender, and community). As previously noted many populations of offenders and victims are simply locked out of the process entirely and they are not likely to get added to the mix as the movement develops. Perhaps more distressing is that the creative open-ended nature of restorative ideology is not being honored. There are no specific programs for crime victims in cases where no perpetrator is caught unless a victim seeks out ways to participate in an existing program. Across the board practitioners are extremely reluctant to contact crime victims cold. There is no such concern when targeting offenders. The theoretical premise of restorative justice positions it as an effective way to resolve conflict, yet it is not being applied to conflict directly in its path. Though programs exist in prisons there are no efforts to conduct restorative practices between inmates or between corrections officers and inmates. Restorative justice could be used in communities embroiled in racial hate, or between civilians and the

police. Currently if one or more of the parties do not want to participate the others lose the chance to do so as well. The campaign is so stuck in the status quo it is missing out on an array of possible applications and it is not correcting its missteps. This should not be mistaken, now or down the line, for co-optation. Deficient implementation is on the movement *not* the host society. This movement has conceded very early in its career before concession were necessarily demanded. Given all the current evidence the restorative justice movement's outcome looks bleak.

Score

The restorative justice movement is not yet institutionalized and is still getting off the ground in many respects. The jury is still out on restorative justice yet champions are already widely touting monumental successes. Activists speak of witnessing human transformation and profound healing thorough the restorative process. Programs present *limited* data of reduced criminality and victim satisfaction while maintaining it *proves* the campaign is delivering on its promises. The fact that practices are spreading and that restorative ideology has moved to the fore of criminal justice discourse are also cited as proof of a triumphant social change movement. Whatever 'successes' the movement may be able to point to it should be leery of overestimating their value and not misconstrue what they indicate. Gains alone are not sure signs of victory and legitimacy should not be mistaken for social transformation.

The campaign does not engage in strategic evaluation and does not appear to notice or respond to missteps or shortcomings of any kind (beyond the occasional debate in journals and at conferences). This study found some pointed failings including a shortage of change on a systemic level, widespread neglect of key principles, and the

failure to unseat existing criminal justice practices. It can not be in the movement's interest to ignore such sober findings. Past benevolent penal reforms were found to be replete with successes that lead directly to abject failure. The restorative justice movement is riding high on its tentative successes and disregarding its salient failings. These are early markers of regression. If its current course is not interrupted, is poised to be a dismal success.

Hopeless? Absolutely not.

The emerging restorative justice movement *is* headed on a regressive path but its future is not yet decided. For a variety of reasons this campaign is actually in a favorable position to alter its current trajectory. This study, having identified the problematic social movement characteristics that foster regression, provides tools for the movement to forge a different path. Furthermore the campaign has the good fortune to contain some unique features that make it very different than the benevolent campaigns that came before it. Though there is sound justification for concern so too is there a basis for optimism. It is not hopeless. This movement has some valuable assets that provide rich as yet unseized, opportunities.

- The restorative justice movement is still in the early stages of its life cycle a cycle that, despite a recent boom, is progressing slower than past penal reform campaigns. Theorists continue to fine tune the ideology and new activists are still getting turned on to the ideas. This pace is to the movement's benefit as rapidity has been shown to yield shortsightedness, restrict assessment, and shape strategy in detrimental ways. Only time will tell whether or not restorative justice becomes

as ubiquitous as past reforms but it continues to gain steam at a steady, manageable speed. This offers the movement time and space to respond to its missteps, recalculate strategies, and build a foundation that can sustain substantive change.

- Restorative justice is different. Past benevolent penal reforms focused exclusively on the offender. Restorative justice includes crime victims and the community. This expanded frame broadens possibilities. It has the chance to appeal to people who have hardened toward offenders. Widespread cultural change is more feasible given that restorative justice programs work closely with non-criminal justice community agencies and committed civic actors. This campaign has more theoretical and practical avenues than its predecessors with which to cultivate an interested public and expand the movement's limited insular membership. Restorative justice does not really require 'professionals,' does not need its own institution, and aims to offer something worthwhile to all those touched by crime. The ideas and principles integral to restorative justice are indeed fundamentally different from our current system. This reform, unlike say parole, truly provides the foundation for a paradigm shift.
- Restorative practices show genuine promise. Restorative justice creates not only the opportunity for a reduction in crime or recidivism but a means to respond to the breadth of devastation that follows a criminal event. This is particularly meaningful in the case of a serious crime where the lives of all those involved are forever altered. This study found many victims, people who have suffered unimaginable horrors, who were able to reclaim their lives and make peace with

what happened to them through the restorative process, an outcome they found unattainable through the traditional criminal justice system. It also found offenders who were moved toward personal change by the opportunity to repair the harm they inflicted. Our justice system is wanting, on that almost the whole country would agree. A restorative approach satisfies some key aspirations we continue to articulate when defining justice.

- Restorative justice inspires and satisfies those who take part in it. It is work that people enjoy doing and find meaningful. The district attorney who heads up G-2D was preparing to leave the DA's office owing to burn out only to find this new approach to justice remarkably revitalizing. People who participate in restorative justice be they crime victims, criminal justice professionals, community actors, or offenders tend to relish the experience and often recount a newfound sense of purpose. New practices and new ways of doing things often inspire fear and distrust. People worry about their skills and expertise becoming obsolete and their jobs disappearing. The campaign can only profit if people like the work and find the transition agreeable and restorative justice is making this happen. This affords the movement with the means and opportunity to solidify membership, tame resistance, and grow its ranks.
- Restorative justice ideology tends to elicit a positive audience response.⁵ When people hear about restorative justice they are routinely inquisitive and almost always ask for more information. The ideals of this alternate justice lens are usually well received and people from across the political spectrum are attracted to

⁵ "Folks are very supportive, interested, and say it seems great." (A-2D)

the ideology. Many of those interviewed mentioned that even though the political and logistical barriers to instituting restorative practices are pervasive they find that individuals within the criminal justice system and the community at large are eager to hear about more positive possibilities. Like past movements this current campaign emerges against a backdrop of widespread dissatisfaction. A public hunger for something new and an engaging ideology create the perfect formula for cultivating widespread support. This study found that the restorative justice movement does not currently have any long or short term plans to consciously curry public favor and build an army of support (see chapter six). The movement would do well to capitalize on this valuable opportunity.

- Restorative justice reformers, at least as individuals, are already involved in the evaluative process. Though activists are not *acting* on their specific concerns they are thinking about the campaign and its goals. While reflection is not going to fix the problem it is a prerequisite for altering the movement's current regressive trajectory. Independent of one another, champions of restorative justice are articulating shared concerns (many of which are indeed materializing). This is precisely the kind of opening from which solidarity and action could emerge.
- The restorative justice movement now has reliable data confirming it *is* traveling along the same course as past failed campaigns. It has been found to be exhibiting many of the same key problematic characteristics. Its current course suggests that the movement will *not* deliver on its intent and will ultimately grow the punishment system it is aiming to temper. By specifically pinpointing the features that lead to

regression this study has provided the restorative justice movement with means to reshape its structure and strategies in order to redirect its projected course.

Reformers no longer have to cross their fingers, wonder where they are going, and hope they do not fail.

Directives for the Restorative Justice Movement

This study uncovered the social movement characteristics that lead a campaign to regress, the Regressive Reform Profile, and deliver an unwelcome outcome. This phenomenon has occurred many times leaving the penal landscape larger and more punitive and its foundation more rooted. In particular findings show that a movement's carriers, strategy, membership distribution, and repertoire determine a campaign's course. The study further determined that the latest benevolent wave, restorative justice, is exhibiting the RRP and is poised to repeat past performances. It is too early to write the movement off but if it does not take action to redirect its course this social movement *will* come to be just another good reform gone bad. Restorative reformers want to institute substantive penal change but they are not headed in that direction. The current trajectory can be interrupted. What follows is a set of directives reformers should consider in the interest of forging an alternate, more promising, course:

Formulate a Conscious Plan

Restorative justice movement activists have a big objective, to nurture a paradigm shift, but not much of a plan to make it happen. Their's is a tall order and a worthwhile pursuit but a good idea and pure intention are not enough. These actors must unite and

bring a consciousness to what they do. The movement has not engaged in any long or short term planning to correspond with this impressive agenda. It should layout an extended strategy keeping its aims in mind. The campaign should capitalize on its assets, use its knowledge of the criminal justice system, hold out for what it wants, seize opportunities as they arise, and honor participant concerns. It must stop conceding key ideals and consider slowing everything further down till there is a foundation upon which to build the new paradigm. A sense of urgency is understandable, but historically an accelerated pace does not work in a campaign's favor and this movement's current direction is not promising. In order to redirect the present course the restorative justice movement must organize, strategize, revisit its tactics, and stay true to its agenda. This movement should take itself and its goals seriously.

Cultivate & Exercise a Diverse Repertoire

This movement is fixated on making programs and delivering direct restorative services. This strategy is remarkably limited for a campaign aiming to unseat a justice system that has been in place for hundreds of years. It has proved ineffective in the past and is no more likely to create substantive change in our present era. The restorative justice movement should abandon professionalization and, at least for the short term, stop creating programs. Reformers need to pave the way for change and cultivate widespread support before they build another program. They would do better to concentrate on education and consciousness raising than program building. It must dramatically and creatively expand the repertoire and consider focusing on laying a solid foundation upon which it can build a new paradigm. Tactics should directly relate to campaign goals. Reformers should work together and get their ideas out there. They

should begin to dismantle the public's fierce attachment to traditional criminal justice ideology and practices. The public may very well be ready to let go but they need something new to cling to. Contentious action may or may not suit the actors in this movement but if these activists want to deliver substantive change they must not continue to allow the host society to dominate negotiations.

Expand Membership Distribution

The restorative justice movement suffers from an insular and limited membership distribution. As of yet this campaign has no interested public. If it is interested in substantive change it needs to cultivate an outer ring and dramatically expand its membership. Right now restorative activists do not have the leverage they need to unseat a well entrenched system. An interested public will provide a sorely missing evaluative eye and help keep the movement on track. Right now no one is making any noise as reformers concede more than necessary. The insularity and insider status of the the current membership makes for timid and reluctant negotiations with the host. This movement must enlist the participation and support of those *directly* involved in crime and should not just see these parties as the needy beneficiaries of the campaign's agenda. Reformers should beware of the thickening middle ring lest they become a movement solely comprised of criminal justice insiders. Restorative justice is better situated to promote and sustain the development of an interested public than any benevolent penal reform before it. Its organic inclusion of crime victims and the community place it in an ideal position to grow and expand its membership.

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Conclusion

“We need not remain trapped in inherited answers.”

-- David J. Rothman *The Discovery of the Asylum*

On August 18, 2004 I heard a story on National Public Radio that revealed just how universal problematic reform movements are. The piece was about a recent study indicating that charter schools do not educate students as well as standard public schools in reading and math. As was to be expected, charter school advocates challenged the study design and opponents of such schools claimed to be validated by the findings and used them to call for an end to the reform. This appeared to be another example of a campaign that focused its strategy on building practice only to fall short of its aims and further embed and expand the status quo (in this case faulty education). I began to wonder if this was a regressive social change movement -- a promising fix that carries all the markers of success -- legitimacy and gains -- but does not deliver on its claims. In other words, a dismal success. Perhaps it is, except that growing the prevailing education system, even a mediocre one, is hardly the harming catastrophe that growing punishment is. This is not to say that a poor education system does not harm people or cost the society quite a bit down the road, but most students leave most schools being able to read and subtract. This can not be said of our punishment system. In fact, nothing that positive can be said about our punishment system.

As I write this conclusion, almost seven million Americans are under correctional supervision (prison, jail, probation, and parole). Most will be returned to its grip soon after their release. One powerful predictor of whether someone ends up in the criminal

justice system is whether they have a parent caught up in it and well over half of these 6.9 million people have children. Our punishment system does not work. It does not rehabilitate (recidivism hovers around eighty percent), it does not deliver justice (all crimes except homicide have clearance rates well below fifty percent), and it does not deter crime (it is not exactly clear what is responsible for the recent drop in crime but most would say new policing tactics rather than punishment are the cause -- others among us would point to a host of other causes including economics and the waning crack wars).

We can not afford to mount campaign after campaign along the same trajectory, as reformers continue to do, with the expectation that change will come. We can not continue to grow this system by scooping up more marks and expanding the penal landscape. We must figure out how to make substantive change. It is counterintuitive to believe the system simply can not be changed because movements are destined to fail (as many cynical scholars suggest). Furthermore, if we remain convinced (as so many seem to be) that change is impossible because it is constantly thwarted by the power elite, then we are left with nothing but despair and whining. To resign ourselves to the status quo is unacceptable. This dissertation is the start of what I hope will be a much larger challenge to what so far have been immovable positions.

This study came about from a personal belief in social change and a determination to avoid participation in a good reform that goes bad. I was attracted to restorative justice but given penal history worried about how the campaign was faring and what its ultimate impact might be. My goal was twofold: (1) to explain how collective action aimed at reducing and substantially altering the punishment system ultimately grows and embeds it and (2) to assess whether or not restorative justice is poised for a repeat performance.

By addressing the paradox of good reforms going very badly the study would ultimately account for why the United States remains stuck in a persistent and repetitive penal reform rut and suggest guideposts for a new path. In order to move forward we need to take a look back.

The Study

Part I

Part I begins with a review of the penal reform literature. The survey affirmed that punishment today looks much as it did two hundred years ago. Efforts to transform the system never really travel beyond the narrow confines of a retributive-rehabilitative rut. This well worn groove only grows deeper with each go around and scholars were found to be extremely accepting of this static penal landscape. They recognize and reify a tradition of good reforms going bad and remain cynical about the possibility of any real change. It was found that the trend in scholarship was to focus on one campaign at a time, even when chronicling how they grew punishment, thereby missing the opportunity to mark and explain patterns. Blame for poor performance was often laid at the feet of the society or attributed to a vague and mysterious force, an invisible conspiracy of sorts. The field was not speaking to how and why we remain stuck even in the face of widespread dissatisfaction and countless earnest campaigns attempting change. No one was found to be pursuing a way out of a paradox in which campaigns to temper or replace the punishment system serve to grow it. The study had to look to another discourse to find the tools with which to approach these issues.

Consequently, the study turned its eye to the social movements and collective behavior (CBSM) literature. This field focuses its attention on social change movements

sought and ultimately takes the values and practices of the host society to a whole new level.

The new social movement model was not enough. Though it is a useful tool for positioning these campaigns and juxtaposing them against with types of social movements it did not tell us much except that they were different. In order to better understand how these regressive movements operated other distinct characteristics needed to be identified. CBSM scholars have recognized a great many factors, both internal and external, that play into the outcome and evolution of social movements and SM organizations. The decision of which to use for this study was fairly clear cut. It was important to have enough to conduct a meaningful comparison and to effectively illustrate the character and quality of this new movement type. It was important to show as multidimensional a picture as possible (all the elements could not focus on just one aspect, membership for example, of a social movement). It was important that the elements represent or cover the full life span of the movement and not concentrate on one or another stage or omit any phase of the movement. A small and expressive set of eight features was chosen: conditions of the host society, carriers, membership distribution, early rhetoric, repertoires, time to ubiquity, outcome, and the score were to be used to explore and compare specific BPRs as well as account for their regressive nature. These were to be the building blocks of the **Regressive Reform Profile (RRP)**.

All the pieces were in place -- the movements chosen and the elements to look for isolated and defined. The comparative analysis came next. Using secondary data, multiple historical accounts of each movement, the manifestation of each of the eight features was chronicled. The findings for each element in each movement were boiled down and captured in short phrases that reflected the key themes. These were then

assembled into a table (see chapter five) to allow for a simple comparison across the three BPR movements. The graphic presentation of data clearly illustrated that every movement manifested each characteristic in an identical manner. These movements, as the study predicted, shared the exact same profile, the Regressive Reform Profile. The RRP demonstrated that these campaigns share much more than a uniform outcome. Three different social change movements across time, emerging from disparate backdrops, and with a set of different goals exhibited the same tactical choices, the same membership distribution, parallel rhetoric, a like pace, and a remarkably comparable cast of movement initiators. Such findings indicate that the unwelcome and complex regressive outcome these movements share is more likely traceable to the movements themselves and not the society, the times, or sundry other external factors.

Chapter six concentrated on exactly how each of the qualities of the RRP facilitate regression. The analysis illustrated how certain characteristics consistently found in the Regressive Reform Profile facilitate the unique, repetitive, and highly problematic outcome expressed by benevolent penal reforms as regressive social change movements. In particular, the discussion showed that carriers rooted in the status quo, the limited and insular membership distribution, the narrow and practice-fixated repertoire, and the speed at which such movements institutionalize nourish a campaign poised to enrich and expand the host, not deliver on its aims. The study demonstrated that the abundance of traditional success markers does not necessarily indicate a movement actuating its objectives. In fact, early legitimacy and gains may be disadvantageous. By examining the structure of these failed movements the study uncovered why substantive change is hard to come by and why the cycle of regression continues to be repeated. It is the structural and tactical manifestation of the movements themselves that propels them toward failure.

Part II

Now to restorative justice. Part I of this study accounted for why it is that substantive penal change is so hard to achieve. The next objective was to ascertain if the restorative justice movement was evolving as past benevolent penal reforms and exhibiting the RRP. The hypothesis posited that a repeat performance *was* underway.

A review of the literature found that restorative justice discourse has been growing in complexity and volume thanks in large part to a recent surge in publications and relatively recent attention to the movement. Much of what has been written artlessly champions restorative ideology though there is debate among committed adherents regarding theory and the purity of application. Empirical studies have been limited. Nevertheless restorative justice has enjoyed very good press and though most accounts have been anecdotal the restorative process continues to be touted as highly effective and satisfying. The campaign has usually been discussed as an international phenomenon. Scholars and reformers alike have failed to address the specifics of place, in particular ignoring the host of features (race, religiosity, scale) that make the U.S. distinct from every other democracy when it comes to punishment. The honeymoon phase may be waning. As of late, there has been a spate of serious critiques that raise sobering concerns about the evolution and practice of restorative justice. Some point directly to failures of the past. They raise the fear of a recurring failure but none address whether the movement is headed in an unwanted direction, how to ascertain if it is, or what might be done to avoid such an end. This study was undertaken in an attempt to fill some of these key gaps.

To go beyond the campaign's ideas and find out about the *movement* the study

would have to move beyond the literature. To accomplish this I visited thirteen sites, reviewed their materials, interviewed staff, volunteers, and participants, talked to pundits and practitioners, and in some instances participating in case resolution or trainings. The precise aim was to gauge the condition and manifestation of the study's pre-identified eight social movement characteristics. Study participants were found to be forthcoming and cooperative. They expressed terrific interest in the study's goals and eager to take part.

The research findings for each of the eight social movement characteristics were spelled out in detail and the restorative justice data was juxtaposed with that of the other BPRs in table form. No differences across program type were found. The table starkly illustrated that this still emerging campaign is exhibiting a robust expression (sharing multiple like features) of the Regressive Reform Profile and the study found in favor of the hypothesis. The evidence confirmed that restorative justice is evolving as past benevolent penal reforms, manifesting a majority of the elements associated with a regressive social change movement. With these properties well in place restorative justice is headed on the path to regression and poised to grow the very punishment system it is aiming to substantially temper.

Firsthand observation of the restorative justice movement revealed some troubling all-round trends. There is no talk of strategy beyond how an individual program might expand its reach. Reformers are not engaged in thought, discussion, or action aimed at reaching their long-term goals (though they frequently speak of them) or avoiding missteps (easily identified by the activists and discussed in chapter nine). Though movement participants show tremendous ingenuity, energy, and commitment they focus on very limited objectives, primarily the creation of direct service or training programs.

There is virtually no program assessment though 'success' and 'effectiveness' are commonly asserted. The scale at which programs operate is remarkably small and more often than not restorative practices are added on to existing criminal justice mechanisms. Though the 'community' figures paramount in restorative justice ideology, in practice this piece is frequently missing. Again we see a cadre of hardworking, creative, well-meaning, earnest activists whose efforts are likely to yield results far from their intent and clash dramatically with their stated agenda. The restorative justice movement is fueled by true believers, banking almost solely on the power of a good idea, who are actually building a movement that replicates the structure of past failed campaigns. Yet, restorative justice can break the typical BPR cycle. It has some unique assets it has yet to fully exploit (e.g., a focus on victims and communities as well as offenders, an opportunity for public involvement, a genuinely new paradigm, etc.). Furthermore, the campaign has yet to institutionalize. It is not too late for this social change movement to redirect its course.

The Bottom Line

This study explored a long standing penological conundrum -- good reforms go bad making substantive change virtually unattainable. It found that it is certain social movement characteristics (those that comprise the Regressive Reform Profile) that lead a campaign to regress and deliver an unwelcome outcome. The study further determined that the latest benevolent wave, restorative justice, is exhibiting the RRP and is therefore all but certain to deliver a repeat performance. Each of the movements in this study was found to have a uniform structure.

The regressive social movement phenomenon has occurred many times leaving the penal landscape larger and more punitive while further rooting its foundation. But penal

stasis is not inevitable and that we need not resign ourselves to a narrow retributive-rehabilitative rut and an ever expanding penal landscape. This study, by locating and naming the sources of regression, demonstrated that there are knowable factors contributing to the stasis. Once identified they can be managed, altered, or sidestepped altogether. The elements found to drive toward regression are coming from inside the campaign. Movements thwart themselves well before they present any real threat to the host. It is false for activists to contend that our system represses or disallows substantive change. The criminal justice system, America's punishment system, has never been subjected to much of a challenge.

While at first this analysis may not sound hopeful, these findings are actually very good news. These movements bear tremendous responsibility for their failings. Social change movements may have little control over the environment from which they emerge and they may be unable to direct the host with which they must negotiate but they have a great deal of control over their own structure, strategies, and action. Therefore, the fate of social change movements does not lie outside their control. There are many more options and opportunities they have yet to fully explore before they surrender to the host. Make no mistake, change will not come easy. A good idea, an eager public, or a spectacular environmental trigger will never be enough. America's punishment system is deeply entrenched. People have an extremely difficult time imagining an alternative system no matter how disgruntled they are. Decades of fear mongering has created an apprehensive public, holding gross misconceptions about which criminal acts are prevalent, who the victims are, and what 'type' of people break the law; but the system is not intractable.

Restorative justice reformers are determined and they are passionately committed. They are convinced they offer a better (more humane, more purposeful, more effective)

justice paradigm. They may be right but they are not making much headway. Many of the concerns raised by restorative practitioners have much in common with those taken up by this study. They are right to be worried. Retributivists, on the other hand, need not fear this latest wave of benevolent reform, it does not threaten to undermine the system in any way.

The future of restorative justice does not show much promise now, but its current trajectory can be interrupted. Penal reformers underestimate the challenge of what they aim to do. Campaigns must stop focusing on delivering individual practices. A value-oriented goal will never be realized using norm-oriented tactics. Strategies need to be conscious, varied, and in keeping with movement aims. To be effective a movement must start with a cogent plan and build a cultural foundation upon which a new system can be erected. It should cultivate an interested public so that it has leverage to combat the host and an internal eye to keep it on track. It must include in its ranks those most touched by crime and punishment. It must take care to replace and not add items to the litany of criminological theory. Such is the profile of a movement situated to command attention, challenge the status quo, and deliver substantive change.

Questions Raised by this Study & Areas for Further Inquiry

This study's findings pose as many questions as they answer. The marriage between the social movement collective behavior discourse and that of criminal justice opens many doors to new areas of research. One important avenue of inquiry would be to resolve whether regressive movements, campaigns that grow the host, can be found elsewhere or if they remain unique to the United States. It is true that the reform campaigns explored in this study developed differently on these shores. This study

maintains that the United States is a singular milieu when it comes to punishment and as such the restorative justice movement is evolving here in a distinct manner. It would be meaningful for a study to explore the evolution of the restorative justice movement around the globe. This would tell us a great deal about punishment, restorative justice, and the process of social change given distinct political and cultural backdrops. Such an inquiry would likely reveal still more elements that contribute to regression, perhaps uncovering external and environmental factors.

This study focused entirely on penal reforms. Finding out if regressive campaigns are found in arenas other than punishment would foster a richer understanding of the regressive phenomenon.

Punitive reforms appear on the surface to enjoy greater success than benevolent campaigns. It is also true that their gains are more easily dismantled. Why is this? By employing tactics similar to those utilized in this study, other researchers could trace the profile of punitive penal reforms and discover how these movements operate and what structure they embody. Benevolent penal reforms, such as community corrections or the emergence of the juvenile court system, could be charted to ascertain whether or not the RRP holds up. One could try to replicate the restorative justice findings. No matter which sites, activists, participants, or pundits are tapped for the survey, the RRP characteristics charted here should hold, provided an effort is made to be inclusive with regard to the breadth of the movement.

It would be extremely worthwhile to examine what prompts people to get involved in a penal reform movement, benevolent or punitive. A study of this kind could shed light on why the public remains rather detached from an institution that operates in their name. The findings could prove invaluable to reformers, organizers, and movement

builders especially given the importance of a membership that draws from a strong and reliable public. This study arrived at some disturbing conclusions regarding the American restorative justice movement. Further studies should continue to take stock of the campaign's development. We can not afford to wait for this movement to wane before dealing with its consequences.

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