

# **Don't Call People 'Rapists': On the Social Contribution Injustice of Punishment<sup>1</sup>**

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Abstract: We wrong a person as a social being when we deny him minimally adequate opportunities to contribute socially to other people's survival and wellbeing. We can call this kind of wrong *social contribution injustice*. In the morally fraught domain of criminal justice, we perpetrate this injustice in many ways, including in our tendency to see people who have committed offences as social threats. One way that we exhibit this tendency in our use of classificatory terms such as 'murderer' and 'rapist' that essentialise people's wrongdoing. We also engage in more concrete, material forms of social contribution injustice when we give people criminal records they can never spend, impose punishments that stretch or sever their social bonds, and deny them support when they are trying to reintegrate after punishment. We also do social contribution injustice to the dependents and affiliates of many of the people we punish. Much of this injustice is contingent on our practices, policies, and general attitudes toward offending.

Keywords: social injustice, social rights, social contribution, social needs, punishment, crime, imprisonment,

## **Introduction**

We wrong a person when we disregard or attack his social needs.<sup>2</sup> First, we wrong him when we deny him minimally adequate access to decent social contact and inclusion.<sup>3</sup> Second, we wrong him when we prevent him from cultivating and sustaining the social resources he needs to lead a socially integrated life. Third, we wrong him when we deny him minimally adequate opportunities to contribute socially to others' survival and wellbeing. This paper addresses each of these wrongs while focusing specifically on the third wrong, which I call *social contribution injustice*. The paper examines the phenomenon of social contribution injustice within one morally fraught area of social and political life, which is the criminal justice system.

The typical victims of social contribution injustice are people whom we deem to be socially useless, threatening, or deserving of censure. They include people who are vulnerable, dependent, young, old, newly settled, indigent, or otherwise disadvantaged. They include people who have severe physical or cognitive impairments. And, they include people who have been convicted of criminal offences.

In other writing, I have fleshed out an account of *social contribution injustice*.<sup>4</sup> Here, I briefly summarise my account (Section 2) before applying it to the realm of

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<sup>2</sup> Like most philosophers, I typically use 'she' as my gender-neutral pronoun of choice. In this paper, however, I use 'he' since the overwhelming majority of people who are suspected, arrested, charged, tried, convicted, punished, and incarcerated for criminal offences are male.

<sup>3</sup> Kimberley Brownlee, 'A Human Right against Social Deprivation', (2013) 63: 251 *Philos Quart* 199.

<sup>4</sup> Kimberley Brownlee, 'The Lonely Heart Breaks: On the Right to be a Social Contributor' (2016) XC *Proceedings of the Aristotelian Society Suppl. Vol. 27*.

criminal justice with the aim of exposing how our typical punishment practices do deep social wrongs, including social contribution injustices, to people who have committed offences. I focus first on the prejudicial attitudes that we have toward people who have committed offences. I highlight our tendency to use classificatory labels that reduce such persons' lives to their offences, labels such as 'offender', 'criminal', 'murderer', 'rapist', 'thief', 'sex offender', and so on (Section 3). Among other things, these status classifications make it hard for such people to see themselves as anything else, let alone as social contributors. I argue that we should not use such labels and should revise the attitudes that these labels reflect. I then outline various ways that we compromise such persons' social resources, most notably within prison (Section 4). Along the way, I consider briefly which social rights, if any, people temporarily or permanently forfeit when they commit a criminal offence (Section 5). Finally, I answer two objections, which are 1) that the corrective justice system is the place in which people who have offended make their social contributions; and 2) that some people genuinely are social threats, not contributors (Section 6).

Cashing out some of the wrongs we perpetuate in our criminal justice practices in terms of *social contribution injustice* exposes the ways that we dehumanise people who have committed offences by failing to acknowledge that they continue to be deeply social beings despite sometimes egregious, anti-social behaviour. It exposes the large-scale, dismissive ways that we continue to fail this group of vulnerable people, as we previously failed (and sometimes still do fail) people with disabilities, women, members of ethnic minorities, immigrants, children, people in poverty, and elderly people. More specifically, this paper highlights injustices that we perpetuate principally against men – as the segment of the population most likely to be subjected to lawful punishment – in undervaluing them as social contributors within families.

## Background

### Social Needs

In other writing, I have defended the following view of our fundamental social needs.<sup>5</sup> Having the abilities, means, and opportunities to be socially integrated is a constitutive part of a minimally decent human life. First, when we are babies and young children, we need highly intense, individualised, intimate associations with a small set of caregivers not only to ensure our brute survival, security, and core development, but also to enable us to cultivate the social abilities necessary to participate fully in social connections when we mature.<sup>6</sup> Next, in order to maintain human lives of minimal moral decency, we continue to need close personalised nurturing, modelling, and support from intimate associates as we grow to maturity, even though we are no longer utterly dependent on them for our survival and moment-to-moment wellbeing. Then, as we age, if we are lucky enough to live to an old age, we tend once more to need close care and contact. Indeed, sometimes we need total care in order to survive let alone sustain a social existence. These periods of

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<sup>5</sup> This section summarizes work developed in Brownlee (n 2); and Brownlee (n 3). I adopt here an interest theory of rights that stresses, among other things, the moral urgency of certain non-contingent, fundamental needs.

<sup>6</sup> I use the term 'intimate association' in a technical sense to pick out our typically associations with family and friends, and to distinguish those associations from 'collective associations' or 'expressive associations' such as teams, clubs, unions, and so on. For a defence of the close associative needs and rights of children, see S. Matthew Liao, *The Right to be Loved*. (OUP 2015); see also, Neil MacCormick, 'Children's Rights: A Test Case for Theories of Rights' in *Legal Right and Social Democracy* (OUP 1984), 154.

dependency that bookend our lives are not brief. We are infants and juveniles for close to two decades, and we are now living increasingly long lives as we age.

Between these bookends of dependency, many of us are competent adults, who view ourselves as generally self-sufficient and (at least partly) autonomous. But, of course, we need others' support and care when we are ill, incapacitated, injured or otherwise not self-sufficient. We need others' support and care when we face significant moments that render us temporarily dependent, such as giving birth, facing death, or grieving for the loss of a loved one. We need others' support and care when we are recovering from a traumatic event. We also need others' support when we are reintegrating after a life-redefining experience, which long-term incarceration certainly is. Finally, to different degrees and in different ways, we need other people to invest in our worthwhile projects, goals, and ambitions in order for those enterprises to be meaningful to us.<sup>7</sup> At least sometimes, we need other people to witness our efforts, hopefully empathise when we suffer and, ideally, share in our joy if we succeed.

Alongside these social access needs, we have deep inclinations, indeed needs, to contribute socially to others' survival and wellbeing. These contribution needs are rooted partly in our need to be secure within our social group; contributing socially is one way that we can seek to cement our place within a group. For this and other reasons, we want to be able to reach out to other people for connection. We want other people to accept our bids for connection at least some of the time.<sup>8</sup> We also want to be someone on whom others can and do depend (at least in certain contexts and for certain purposes). These needs to contribute socially vary from person to person, can grow and diminish, and can be suppressed or corrupted. But, it is noteworthy that people who are socially isolated and who describe themselves as deeply lonely tend to be struck by the fact that no one *needs* them.<sup>9</sup>

In order to lead socially integrated lives marked by reciprocal investment, care and concern, we need both specific social resources and recognition from other people that we have these resources. As I have argued elsewhere, the resources that we need to participate in the world of social connections are:

- 1) *social abilities* to form and sustain social connections;
- 2) *social opportunities* to meet other people, to meet them again, and to form connections with them over time, and

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<sup>7</sup> John Rawls notes that '...unless our endeavors are appreciated by our associates it is impossible for us to maintain the conviction that they are worthwhile'. He adds that associative ties tend 'to reduce the likelihood of failure and...provide support against the sense of self-doubt when mishaps occur'. John Rawls, *A Theory of Justice* (Harvard University Press 1971), 441. I thank Tom Parr for highlighting these quotations.

<sup>8</sup> See Kimberley Brownlee, 'The Ethical Dilemmas of Sociability' (2016) 28: 1, *Utilitas*, 54, for discussion of the negative consequences for us individually and collectively in each of us refusing to associate with a particular person. For interesting discussions outside philosophy, see, among other things, R. Baumeister *et al*, 'The Need to Belong', (1995) 117 *Psychol Bull*, 497; M. Seligman, *Flourish* (Random House 2011); D. Ornish, *Love & Survival: The Scientific Basis for the Healing Power of Intimacy*. (HarperCollins 1998); as well as the work of John Gottman at the Gottman Institute.

<sup>9</sup> See, for instance, Sue Bourne, *The Age of Loneliness* (2016). Documentary aired on BBC One on 7 January 2016: <http://www.bbc.co.uk/programmes/b06vkh5>. Retrieved from BBC iPlayer: <http://www.bbc.co.uk/iplayer/episode/b06vkh5/sign/the-age-of-loneliness>.

3) *actual social connections*, which are valuable in themselves, but also can help us to form additional connections.<sup>10</sup>

We need society, the law, and individual people to recognise, first, that we can have and (hopefully) do have these social resources which are necessary to lead a socially integrated life, second, that we are capable of contributing to social connections, and, third, that we actually make social contributions when we do.

We meet our deep social needs – to access and contribute to social connections – through a variety of interactions and associations that differ in their strength, intimacy, and persistence. They include day to day exchanges with strangers and acquaintances, ordinary decent membership within a political community, membership in expressive and collective associations such as team, clubs, religious communities, parties, and unions, closer ties with family members and friends and, hopefully, intimate associations that include loving bonds, interdependent care and intimacy.

In order to be able to form and sustain such connections, we also need to have a meaningful degree of control over the range and number of our social connections. In short, we need some degree of associative freedom, including a degree of dissociative freedom, which persons are denied in prison, as I discuss below. I have shown in other work that, although this freedom to associate (and dissociate) is fundamentally important, it is both less expansive than we tend to assume and secondary in importance to our core, positive associative claim-rights.<sup>11</sup>

### **Social Injustice**

In the context of interpersonal, social connections, *social injustice* does not pertain principally to debates about unfair and fair distributions of socio-economic resources amongst citizens.<sup>12</sup> Instead, it pertains principally to violations of our fundamental rights to lead social lives in close proximity and relationship with other people. In relation to competent adults who are not experiencing a period of dependency, these rights can be framed largely, but not solely, in negative terms. Briefly, the familiar trinity of duties that governments and others have to respect, protect, and fulfil fundamental rights include, in this context, duties not to interfere with or deny people access to social opportunities to form connections, duties not to sever the social connections that people have already formed, duties not to allow third-parties to interfere with or sever those connections, and duties not to participate in practices that undermine people's social resources. In positive terms, the duties include duties to ensure that people have meaningful opportunities for ambient and intimate social connection, and duties to attend to institutional design to ensure that facilities and services help rather than hinder people in their efforts to form and sustain connections.<sup>13</sup>

Social injustice as a breach of these rights includes two sub-categories of injustice:

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<sup>10</sup> Brownlee (n 3), 28.

<sup>11</sup> See Kimberley Brownlee, 'Freedom of Association: It's Not What You Think' (2015) 35: 2 *Oxford J Legal Stud*, 267; and Brownlee, (n 7).

<sup>12</sup> Of course, material resources intersect with social resources; and unfair distributions of material resources can exacerbate people's difficulties in securing and sustaining social connections. I thank Jeff King and Tom Parr for pressing me to clarify this point.

<sup>13</sup> See Brownlee (n 7); Brownlee (n 10).

*Social access injustice* comprises the unjustified wrongs that deny a person access to the social resources he needs for safety, subsistence, and emotional stability, as well as the many things beyond that which make for a minimally decent human life.

*Social contribution injustice* comprises the unjustified wrongs that deny a person minimally adequate scope, opportunities, and recognition to contribute to social connections according to his abilities.

Social contribution injustice takes two forms:

*Compromising a Person's Social Resources:* This involves unjustly limiting a person in his development, maintenance, and use of those resources to make social contributions.

*Prejudice about a Person as a Social Contributor:* This involves unjustly misvaluing a person as a social contributor, typically, by not taking him seriously as a social contributor either in general or in a context where he should be taken seriously.<sup>14</sup>

The first form of social contribution injustice is largely behavioural. The second is largely attitudinal. But, the two are closely related.

The paradigm cases of social injustice are child neglect and child abuse. These are the deepest social wrongs we can do to a person, since they occur during the formative years of juvenile dependency. When we severely mistreat a child, we rob him not only of the social support, care, and investment he needs as a child, but also of the developmental conditions he needs to cultivate the skills to lead a healthy socially integrated life as an adult. Sometimes, a person can transcend a horrible upbringing, but often his life course is set by such an upbringing.<sup>15</sup> The data on offending rates and incarceration rates confirm that people who have endured abusive, chaotic, deprived, or otherwise challenging childhoods are overrepresented among the prison population relative to the general population. Some statistics presented by UK Minister of Justice Michael Gove include the following:

Three quarters of young [people who have offended] had an absent father, one third had an absent mother, two-fifths have been on the child protection register because they were at risk of abuse and neglect.<sup>16</sup>

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<sup>14</sup> Misvaluing can take either the form of illegitimately undervaluing someone or the form of illegitimately overvaluing that person, in the way, for example, that we continue to overvalue women as primary caregivers relative to men.

<sup>15</sup> As Michael Gove puts it, '...growing up in a home where love is absent or fleeting, violence is the norm and stability a dream is a poor preparation for adult life, for any life.' Michael Gove, 'The treasure in the heart of man - making prisons work', Address to the Prisoners' Learning Alliance, July 2015. Retrieved from: <https://www.gov.uk/government/speeches/the-treasure-in-the-heart-of-man-making-prisons-work>.

<sup>16</sup> In the UK, there are 2 million lone parent households with dependent children, 90% of which have single mothers. In total, there are 27 million households in the UK, which means that, across the general population, 7% of children in households have an absent parent. (Data from 2015.) The Office for National Statistics. Retrieved from: <http://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/bulletins/familiesandhouseholds/2015-11-05#lone-parents>.

- 41% of prisoners observed domestic violence as a child.
- 24% of prisoners were taken into care as children. That compares with just 2% of the general population.
- 42% of those leaving prison had been expelled from school when children compared to 2% of general population.
- 47% have no school qualifications at all - not one single GCSE - this compares to 15% of the working age general population.
- Between 20 and 30% of prisoners have learning difficulties or disabilities and 64% have used Class A drugs.<sup>17</sup> [This compares with 15% of the general population who have used Class A drugs.]<sup>18</sup>

I assume that similar, if not more striking, statistics are to be found other Anglo-American criminal justice systems such as the United States.

Our common-sense attitudes toward children also include prejudices about them as social beings. We tend to view children as socially needy rather than as socially contributing, even though, at the same time, we actively make use of their social contributions. Children tend to be the social glue that holds families together. In addition to making countless bids for connection, children often contribute by caring for younger siblings, orchestrating household social events such as meals, and being companions to aging or incapacitated family members. Indeed, sometimes, older children are the primary caregivers of both younger and older family members, an event that is more likely to occur in families where one parent is absent, as in the case where a parent is incarcerated.

Other examples of social injustice come in our knowing, if not wilful, neglect of many elderly people who require some support to sustain a socially integrated life. In allowing people to be neglected, we make a judgement as a community that their social resources are not sufficiently valuable to be worth accessing. We do a more specific form of social contribution injustice to elderly people and others who require home health care when we provide these services through many different care professionals. In doing this, we force these recipients of physical care repeatedly to start over socially, with the result that both care givers and care receivers are denied opportunities to be meaningful in each other's lives by giving and receiving trust, being mutually invested witnesses to each other's efforts, trials, and tribulations, and sharing in each other's experiences over time.

Another kind of social contribution injustice comes in judging certain people as socially valuable in general, but as not valuable in an important social sphere in which they are in fact social contributors. For instance, we continue to undervalue fathers as needed primary caregivers for their children, a prejudice that is exacerbated in the context of criminal justice (as I show below).

These examples highlight both the behavioural injustices and the attitudinal injustices that we tend to do to people whom we deem to be socially unimportant.<sup>19</sup> In

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<sup>17</sup> Gove (n 13).

<sup>18</sup> Home Office, *Drug Misuse Declared: Findings from the 2011 to 2012 Crime Survey for England and Wales* (CSEW) (2nd ed 2012). Retrieved from: <https://www.gov.uk/government/publications/drug-misuse-declared-findings-from-the-2011-to-2012-crime-survey-for-england-and-wales-csew-second-edition/drug-misuse-declared-findings-from-the-2011-to-2012-crime-survey-for-england-and-wales-csew-second-edition>.

<sup>19</sup> See Miranda Fricker, *Epistemic Injustice* (OUP 2007), for a discussion of related injustices including testimonial injustice, where the knowledge and understanding a person might contribute is unjustly discounted or devalued.

what follows, I expose the ways that we perpetrate these injustices – including, notably, social contribution injustice – against people who have committed criminal offences.

Before proceeding, let me bracket one important issue, which is whether criminal justice and punishment are *by nature* practices that perpetuate social injustice in general and social contribution injustice in particular.<sup>20</sup> I shall not answer this question. Instead, I shall focus on the particular kinds of punishments that we tend to use in Anglo-American systems, notably long-term incarceration, temporary segregation in isolation, long-term solitary confinement (used in the US, Australia, and Canada, for example),<sup>21</sup> and indeed execution (in the US), as well as the kinds of attitudes that we tend to adopt in Anglo-American societies toward people who have been convicted of criminal wrongdoing.

Let me start by reflecting on our attitudes – our prejudices – toward people who have committed offences since these attitudes feed into and off of the ways that we treat such people when we punish them. I will then identify specific ways that we compromise these people’s social resources, most vividly, but by no means exclusively, in our prisons.

## **Prejudices toward People Who Have Committed Crimes**

### **The Language We Use**

In many domains, we have learned to be attentive to the language that we use to describe people, recognising that our language reflects, and fuels, specific perceptions of people. Thankfully, we no longer refer to people as ‘autistics’, or ‘handicaps’, or ‘retards’. We no longer speak of ‘the disabled’, ‘the poor’ or the ‘undeserving poor’. We no longer speak of married women as ‘a man’s better half’ or ‘the Missus’. Instead, we speak of ‘people who have autism’, ‘people who are living in poverty’, and ‘married women’. If we’re sufficiently attentive to our language, we do not even refer to people with disabilities as ‘disabled people’, but as ‘people with disabilities’.

Essentialist language is often disrespectful since it, first, reduces a person’s identity to a feature, trait, or act that ostensibly sums up the core of who he is and, second, often highlights a feature that historically (and sometimes still presently) carries a stigma. The first part brings the risk of inaccuracy and misunderstanding. The second part brings the whiff of prejudice. Both make it likely that we will act in

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<sup>20</sup> There is a substantial literature on equity, justice, and ‘social deprivation’ where the latter term refers to poverty, not interpersonal social deprivation. See, for instance, Martha C Nussbaum, ‘Equity and Mercy’ (1993) 22: 2 *Philos Public Aff* 83; Victor Tadros, ‘Poverty and Criminal Responsibility’ (2009) 43 *J. of Value Inquiry* 391; Barbara Hudson, ‘Mitigation for Socially Deprived Offenders’ in Andrew Ashworth and Andrew von Hirsch (eds), *Principled Sentencing* (Hart 1998); Antony Duff, *Punishment, Communication and Community*. (OUP 2001), ch. 5.; Nicola Lacey, *State Punishment*. (Routledge 1994); J. Q. Whitman, *Harsh Justice: Criminal Punishment and the Widening Divide between America and Europe*. (OUP 2005); Antony Duff, ‘Punishment, Dignity, and Degradation’, (2005) 25: 1 *Oxford J of Legal Stud*, 141.

<sup>21</sup> Canadian Prime Minister Justin Trudeau has mandated that the Canadian Minister of Justice implement a series of recommendations to ban the use of long-term solitary confinement in all federal prisons. See Sean Fine and Patrick White, ‘Trudeau calls for ban on long-term solitary confinement in federal prisons’, *The Globe and Mail* 13 November 2015. Retrieved from: <http://www.theglobeandmail.com/news/national/trudeau-calls-for-implementation-of-ashley-smith-inquest-recommendations/article27256251/>

ways consonant with inaccurate and prejudicial perceptions, that is, in ways that are patronising, demeaning, and potentially harmful.<sup>22</sup>

Concerning inaccuracy, essentialist language can be innocuous or laudatory in itself: the terms ‘wife’ and ‘mother’ have positive connotations. But, even that language can be morally problematic when it hides salient information and, thereby, leads to both inaccurate descriptions and misunderstanding, such as in the case where the person to whom the terms ‘wife’ and ‘mother’ are applied is 11 years-old. In that case, those terms give an indefensibly misleading picture of who this person is and the circumstances in which she lives.

Concerning prejudice, our tendency in the past to use essentialist language in domains such as disability is now viewed as evidence of ignorance and disrespect, and sometimes downright bigotry. It is notable, therefore, that, in contrast with our conscientious shift away from essentialist language in other domains, we continue to use it in criminal justice practice to refer to people who have committed offences. In ordinary speech, we label these people as ‘criminals’, ‘crooks’, ‘felons’, and ‘common criminals’. All of these terms are essentialist status classifications. It is true that the noun ‘criminal’, as defined in the *Oxford English Dictionary* (OED), has two distinct senses: (a) A person guilty or convicted of a crime; (b) A person with a tendency to commit crime. Only the second of these senses identifies a disposition to offend, but its essentialist connotations seep into all uses of the term ‘criminal’.

Scholars and legislators who are more careful with their terminology use the less loaded, but nonetheless classificatory term ‘offender’, which is defined in the OED as: 1) A person who offends, who infringes a rule or regulation; a transgressor or sinner, as well as a person who gives offence, displeases, or causes resentment, upset, etc. and as 2) A person who breaks the law, one who commits an offence.

In heartening rhetoric, Michael Gove lectured in July 2015 to the Prisoners’ Learning Alliance on ‘The treasure in the heart of man - making prisons work’, stating that:

Our streets will not be safer, our children will not be properly protected and our future will not be more secure unless we change the way we treat offenders and offenders then change their lives for the better. There is a treasure, if only you can find it, in the heart of every man, said Churchill. It is in that spirit we will work.<sup>23</sup>

Yet, unsurprisingly, as this quote confirms, Gove refers to people who have committed offences by the essentialist label of ‘offenders’.<sup>24</sup>

In addition to these broad classificatory terms, we have a host of subtler generic taxonomies, which we apply to people who have committed particular types of offences. In ordinary speech, we refer to such people as ‘murderers’, ‘rapists’, ‘thieves’, ‘psychopaths’, ‘serial killers’, and so on. Even reputable, language-conscious newspapers such as *The New York Times* and *The Guardian* have headlines such as ‘To Catch a Rapist’, ‘Rapist who came to UK with fake ID jailed for ‘sadistic’ sex attacks’, and ‘How not to Raise a Rapist’.

Similarly, we refer to people who are suspected of committing a crime as ‘suspects’ rather than as ‘people suspected of committing a crime’. This identifies the person with the suspected offence and puts some pressure on our commitment to the

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<sup>22</sup> I thank Adrian Blau for stressing this point.

<sup>23</sup> Gove (n 13).

<sup>24</sup> We do not tend to describe people who have committed regulatory offences as ‘offenders’.

presumption of innocence. (Indeed, historically, a person suspected of committing a crime was referred to as a ‘criminal’, i.e. ‘the criminal in the dock’.<sup>25</sup>) Thankfully, the term ‘suspect’ temporally constrained; the person who carries this label does not keep it for life. But, the person who is convicted of a criminal offence carries the official label ‘offender’, as well as all other unofficial labels, for a long time, sometimes for life.

In a related vein, Nicola Lacey observes that we have a host of classificatory labels for people who are suspected or convicted of criminal wrongs that pertain to the particular social and political challenges that we are facing as a society today. We describe these people with such bad-apple terms as ‘terrorist’, ‘sex offender’, ‘irregular migrant’, ‘anti-social youth’, and ‘paedophile’.<sup>26</sup> Sample *New York Times* and *Guardian* headlines on these themes include: ‘Sex Offender Village’, ‘Sex offenders gain right to appeal against registration’, and ‘Why giving polygraph tests to sex offenders is a terrible idea’.

This appeal to character as probative or constitutive of guilt has been prominent at other times in history, Lacey notes, such as in the Victorian Era, where political and social anxieties led to the rise of various status classifications. The ostensible ‘bad apples’ then included the ‘fallen woman’, the ‘inebriate’, and the ‘feeble-minded’. Lacey suggests that we tend as a society to resort to these kinds of short cut approaches to identifying criminal responsibility when our society is confronting particularly pressing perceived or genuine security risks.

That may be true for our specific buffet of bad-apple labels, but our general selection of bad-apple labels remains on prominent display in our everyday language even when our society is not gripped by genuine or induced anxieties.

Given our conscientious awakening to the importance of language in other domains such as disability, why do we still speak of people who have committed criminal offences in essentialist terms? In asking this question, I do not cast doubt on the seriousness of the acts that lead people to be convicted of crimes. Rather, I wonder whether we respond acceptably by describing such people in the terms just noted.

One reason that we continue to use essentialist language in criminal justice might be that people convicted of offences are less politically empowered and hence less able to advocate that we collectively undergo a process of awareness-raising and self-re-education about the language we use to describe them.<sup>27</sup>

A second, ostensible reason might be that, whereas the other socially salient groups noted above are not blameworthy or liable for the traits and experiences by which they came to be labelled, people who have committed crimes are responsible, blameworthy, and liable for their conduct and, hence, are not treated with prejudice when they are classified by that conduct.

But, of course, moral blameworthiness, criminal responsibility, and criminal liability do not always coincide. In cases of strict liability, people are held to account even though they are not culpable and not thought to be culpable for the offence. Conversely, in cases where people are morally blameworthy for actions that do not properly fall within the scope of the law, such as infidelity, they are not held to account by the law and so not formally branded with the classificatory status of ‘offender’.

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<sup>25</sup> See *The Oxford English Dictionary* (current online edition).

<sup>26</sup> Nicola Lacey, ‘The Resurgence of Character: Responsibility in the Context of Criminalisation’ in Antony Duff and Stuart Green (eds) *Philosophical Foundations of Criminal Law* (OUP 2011), ch 8.

<sup>27</sup> In many jurisdictions, people who are incarcerated are politically powerless; they are often denied the rights to vote, to work and to stand for office; they are segregated from society in a ‘repellent’ institution.

Also, even when moral blameworthiness and criminal liability do coincide, there is invariably more to each person's story than the simple fact that he committed a criminal offence for which he is both morally blameworthy and criminally liable.<sup>28</sup>

Moreover, some of the people who are members of the social groups mentioned above such as people with disabilities, are indeed responsible for the properties by which we no longer classify them. The reckless surfer who sustains a traumatic spinal injury while testing out rough waters, and the football star who becomes severely cognitively impaired after repeatedly continuing to play with a concussion, are responsible to some extent at least for having the disability by which we now recognise it would be derogatory to classify them.

Changing the language that we use to describe people who have committed offences is only one step – but an important step – in overcoming our prejudices against such people. Other concrete steps we must take relate to the specific punishments we impose.

Once a person commits a crime, it does become a feature of his life-story. But, how much should it define who he is? Some punishment practices, such as life imprisonment without parole and execution, imply that the act or acts in question define the person so completely that he is irredeemable, beyond the pale, incapable of change. This is a heavy, and I believe indefensible, judgment to make of any human being. Bracketing the fact that Avishai Margalit uses language that I am challenging, Margalit observes credibly on this point that:

Even if there are noticeable differences among people in their ability to change, they are deserving of respect for the very possibility of changing. Even the worst criminals are worthy of basic human respect because of the possibility that they may radically reevaluate their past lives and, if they are given the opportunity, may live the rest of their lives in a worthy manner ... Even though it is likely that she will continue living this way, this likelihood should not be turned into a presumption, because in principle an evildoer has the capacity to change and repent. This capacity implies that she deserves basic respect as a human being who should not be 'given up on', precisely because there is a chance, no matter how small, that she will repent.<sup>29</sup>

In more modest ways, other punishments also convey the view that a person who has committed a (certain kind of) offence is irredeemable or, at least, forever under suspicion. In some jurisdictions, if a person is given a prison sentence of four or more years, he then has a criminal record that he can never spend, but must always disclose on employment applications, volunteering applications, insurance papers, education courses, and immigration papers. In societies like ours that heavily stigmatise past

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<sup>28</sup> Psychology studies indicate that we are more lenient in our judgment of a person for his offence when we know the details of his story. See, for example, Mike Hough and Julian V. Roberts, 'Sentencing trends in Britain: Public knowledge and public opinion', (1999) 1: 1 *Punishment and Society* 11; Julian V. Roberts *et al* (eds. *Penal Populism and Public Opinion: Lessons from Five Countries* (OUP 2003); and Sam Cuthbertson, 'Analytical Summary 2013: Analysis of complete "You be the Judge" website experiences' (2013), Ministry of Justice. Retrieved from: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/203006/Analysis\\_of\\_complete\\_You\\_be\\_the\\_Judge\\_website\\_experiences\\_\\_web\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/203006/Analysis_of_complete_You_be_the_Judge_website_experiences__web_.pdf). I thank Andrew Neilson for highlighting this point.

<sup>29</sup> Avishai Margalit, *The Decent Society*. Cambridge: Harvard University Press, 70-75. Cited in Tasioulas, John (2006), 'Punishment and Repentance' (1996) 81 *Philosophy*, 279. Cited also in Kimberley Brownlee, *Conscience and Conviction* (OUP 2012), 36.

offending, he might as well wear a scarlet letter A on his chest that casts him permanently in the role of a social threat and, consequently, all but denies him access to many areas of social life.<sup>30</sup> Of course, this is a contingent consequence. If we viewed past criminal records with less aversion, the requirement to disclose one would not have such an isolating effect.

A critic might still ask: Is it not morally acceptable that *sometimes* a person be judged, and classified, by a single act? In the opening paragraph of his novel *How to be Good*, Nick Hornby's protagonist, Dr Katie Carr, reflects on this question as follows:

...Even though I am, apparently, and to my immense surprise, the kind of person who tells her husband that she doesn't want to be married to him anymore, I really didn't think that I was the kind of person to say so in a car park, on a mobile phone. That particular self-assessment will now have to be revised, clearly. I can describe myself as the kind of person who doesn't forget names, for example, because I have remembered names thousands of times and forgotten them only once or twice. But for the majority of people, marriage ending conversations happen only once, if at all. If you choose to conduct yours on a mobile phone in a Leeds car park, then you cannot really claim it is unrepresentative, in the same way that Lee Harvey Oswald couldn't really claim that shooting presidents wasn't like him at all. Sometimes we have to be judged by our one-offs.<sup>31</sup>

While entertaining, the conclusion of the passage is debatable. First, we can only make sense of statements like 'that act is wholly out of character' if a given one-off action does not fit with the person's previous behaviour, general disposition, tendencies, preferences, commitments, and values. If proposing to divorce her husband by mobile phone from a car park is out of keeping with Katie Carr's character, then it's irrelevant that moments in which to act this way haven't arisen often in her life. Even in the case of a horrible crime (though not, perhaps, in the case of a premeditated, carefully orchestrated crime), the act also could be entirely out of keeping the person's overall character.<sup>32</sup>

Of course, the problem is that much offending is not 'out of character' in the sense of being a one-off. Many people who commit criminal offences go on to reoffend. Indeed, consider the following statistics noted by Michael Gove:

45% of adult prisoners re-offend within one year of release. For those prisoners serving shorter sentences - those of less than twelve months - the

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<sup>30</sup> For an analysis of the horrific impact on children's lives when they are put on the sex-offender registry, see Sarah Stillman, 'The List: When juveniles are found guilty of sexual misconduct, the sex-offender registry can be a life sentence.' *The New Yorker*, 14 March 2016:

<http://www.newyorker.com/magazine/2016/03/14/when-kids-are-accused-of-sex-crimes>. I thank Avia Pasternak for highlighting this article.

<sup>31</sup> Nick Hornby, *How to be Good*. (Viking 2001) 1. I thank John Gardner for directing me to this passage.

<sup>32</sup> A critic might argue that a horrible crime, even if it is unpremeditated, must have a partly constitutive impact on a person's character. Put differently, we would be troubled by a person who dismissed his commission of a horrible crime as 'out of character'. I thank an anonymous referee for highlighting this challenge. In reply, his viewing a horrible crime as out of character does not entail that he dismisses it. A person might well react to his crime with disbelief and horror, and the reason for his disbelief and horror is that the act is out of character. Until he did it, he had every reason to believe he would not act in such a way.

figure rises to 58%. And, saddest of all, more than two-thirds of offenders under the age of 18 re-offend within twelve months of release.<sup>33</sup>

Recidivism might seem to suggest that the persons' criminal conduct becomes part of a pattern of behaviour (that often increases in seriousness over time), and such a pattern is evidence of a certain disposition. In other words, the conduct might seem to reflect some solidifying of personality that tracks the person's broader behavioural tendencies, attitudes, and beliefs.

When a person displays what seems to be a disposition to offend, would it be prejudicial to apply an essentialist status classification to him that reflects that disposition? Would it be prejudicial to require him to declare that criminal record for the rest of his life?

I expect that it is neither essential nor *necessarily* probably true of most people that they will commit crimes regardless of their upbringing, income, social conditions, education, or experiences. Conditions matter, as the above statistics on childhood mistreatment indicate. In other words, the people who tend to offend are those who tend to live in conditions in which many of us would be likely to offend if they were our conditions. (Related to this, statistics indicate that people tend to grow out of crime; the usual pattern criminal behaviour peaks in the person's (or the man's) early twenties, and then tends to tail off as they age.<sup>34</sup>)

But, for a few people, it might indeed be probable (or inevitable) that they will offend regardless of their conditions. If they live long enough to grow into self-directing agents, they will most likely engage in behaviour that our society has criminalised. (This idea invokes a stronger notion of *essentialism* than that deployed above: not only is the person deemed to be irredeemably an 'offender' in virtue of what he did (or will do), but he is deemed to be, by nature, an 'offender', i.e. someone who in all likelihood will engage in offending and re-offending regardless of his conditions.)

Admittedly, some people do seem impervious to change, such as Leroy Hendricks who was convicted of 14 counts of child molestation, who reportedly declared he would molest children again if released, and who was eventually given a civil commitment on the ground of mental abnormality.<sup>35</sup>

For these persons, if there be such persons, a life-long record and an essentialist label might not reflect a prejudicial judgement of their dispositions. But, the record and the label would still bring injustice with them for two reasons. First, crime-related labels tend to occlude all other identities that people might have such as 'mother', 'father', 'spouse', 'child', 'caregiver', 'teacher', 'nurse', and so on. Second, if indeed people are unable to change because of mental illness, for example, then crime-related labels and records would be unjust, as they would imply a level of self-control that those people do not have. For these reasons, we should not apply crime-related essentialist labels or life-long records to people even if the labels do not inaccurately characterise their dispositions.

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<sup>33</sup> Gove (n 13).

<sup>34</sup> I thank an anonymous referee for highlighting this point. For relevant references, see UK Ministry of Justice Report on *Transforming Rehabilitation* (2014). Retrieved from: <https://www.gov.uk/government/publications/transforming-rehabilitation-a-summary-of-evidence-on-reducing-reoffending>.

<sup>35</sup> See *Kansas v. Hendricks* (1997) USSC 521 U.S. 346. I thank Walter Sinnott-Armstrong for highlighting this case.

Furthermore, even if we were to do no injustice to the person himself by labelling him by his offences, there are other good reasons – some of which are justice-related – not to do it.

First, according to research cited in the UK Ministry of Justice Report *Transforming Rehabilitation* (2014), a person is more likely to desist from crime if he does not identify with being an ‘offender’ or ‘criminal’, where *desistance* is understood as the process by which a person who is engaged in a sustained pattern of offending gives up crime:

People with criminal records who do not define themselves purely as ‘offenders’ but see themselves as basically good people who made a mistake may find it easier to desist.<sup>36</sup>

Through our essentialist approaches to crime and punishment, we may be setting up the very conditions for people to become ‘the *kind* of person who does x’.

Second, as a society, we might benefit from dropping our essentialist approaches regardless of their impact on people’s conduct and attitudes toward their own offending, since we might then be less resentful, harsh, and hateful toward people who commit crimes.

Third, since we cannot engineer a system of labelling in criminal justice that is sufficiently accurate that it ensures that we only apply essentialist labels to people to whom we would thereby do no injustice, we should dispense with essentialist labels all together.<sup>37</sup>

Fourth, relatedly, philosophers have long distinguished between making correct judgements and appropriately expressing those correct judgements.<sup>38</sup> If we opted for non-essentialist approaches in criminal justice, we would engage not so much in a deception or noble lie as an optimistic, charitable, friendly, cautious, humble, and respectful gesture that leaves open genuine prospects for redemption, repair, and restoration, whereby a person may *genuinely* disown and disavow the conduct for which he was convicted. Much suffering is endured both by the people who commit crimes and by their families.<sup>39</sup> We needn’t add to it by branding them (for life) with a reductive, stigmatised classificatory status. There is some evidence of progress in this regard in the recent shift in the United States away from describing people as ‘ex-offenders’ and ‘ex-cons’, to describing them as ‘returning citizens’.<sup>40</sup>

Two final points on essential language are worth making. First, undoubtedly, sometimes people who have been the subjects of derogatory essentialist terms can take charge of those terms and reconceive of them in ways that remove their stigmatising sting. The essentialist term *queer* is one such example. But, other terms, such as *criminal*, *crook*, *offender*, and *sex offender* are not co-optable in that way because, roughly, they track wrongdoing; these are not labels that a person usually can, or should wish to, co-opt and redefine so as to wear proudly. Second, related to this, when we publicly apply a stigmatising label to a person that he cannot reconceive or abandon,

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<sup>36</sup> UK Ministry of Justice (n 31).

<sup>37</sup> I thank Laura Valentini for highlighting this point.

<sup>38</sup> I thank John Gardner for highlighting this point.

<sup>39</sup> See, for example, William Bülow, ‘The Harms Beyond Imprisonment: Do We Have Special Moral Obligations Towards the Families and Children of Prisoners?’ (2014) 17 *Ethical Theory and Moral Practice*, 775.

<sup>40</sup> Although this language is less loaded than that of ‘ex-con’, it nonetheless mis-describes people who have spent time in prison since they have not left the society; they remain very much under its control as institutionalised and utterly dependent persons. I thank Jeffrey Howard for noting this point.

we deny him the ability to shape how he is perceived, to define for himself, if not for others, who he is.

### **The People We Incarcerate**

Before exploring the details of some of our punishment practices, notably our approaches to incarceration, let me make one further comment on our prejudicial attitudes toward people who offend, which is made vivid by prison population statistics.

According to the Howard League for Penal Reform, as of Friday 22 January 2016, 85,260 people are being held in prison or young offender institutions in England and Wales. Of that population, 81,443 are male and, 3,817 are female: women represent 4.5% of the prison population. The Howard League also states that ‘The child custody population at the end of November 2015 was 991. This a decrease of 9 since the last month and a fall of 64 compared to the same point last year. There are 37 girls in custody.’<sup>41</sup>

According to the US Bureau of Justice Statistics, by the end of 2014, there were over 1,500,000 people in federal prisons. Of that, 7% were women, i.e. 105,000.

Given that Anglo-American prison sentences are often lengthy and highly repellent – prisons tend to repel outsiders – these prison statistics may expose a societal prejudice against men as social contributors. Specifically, the fact that we are willing to lock up people – mostly men – for extended periods in these repellent institutions regardless of the negative impact on them, their families, friends, and dependents may reflect a general, societal judgement about men, or certainly about men who have committed crimes, as social contributors. As noted at the outset, we continue to devalue men within family settings anyway, and consequently we tend to locate their recognised opportunities to contribute in public, political, and economic settings. When a man offends and thereby shows that he is not abiding by the norms of those public settings, he loses his footing to show that he is a meaningful social contributor in other spheres such as his family.<sup>42</sup>

We exhibit a similar, indeed stronger prejudice toward young black men, who are overrepresented among the prison population, and who endure multiple, intersecting forms of discrimination and disadvantage. These include, first, the prejudicial judgement that young black men do not contribute as much as they should either within families or within the more public spheres in which men are viewed as key contributors and, second, the suspicion that young black men are actively socially threatening.

Our prejudicial attitudes about the social contribution potential of people who have committed crimes come out in our concrete, behavioural forms of social contribution injustice. I shall turn to those now, focusing on incarceration, as it presents the most vivid examples of social contribution injustice.

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<sup>41</sup> Statistics provided by the Howard League for Penal Reform. Accessed at: <http://www.howardleague.org/weekly-prison-watch/>

<sup>42</sup> For a discussion of a related issue under the heading of ‘hormonal inequality’, see Philippe van Parijs, ‘Four Puzzles on Gender Equality’ (2015) 3 *Law, Ethics, and Philosophy* (forthcoming). Parijs says: ‘Consider the fact that young men are massively overrepresented among perpetrators of violent crimes (partly against women, but to a large extent against other men), and hence...also among prison inmates. Here again, the hormonal story is not implausible...Has an [historical] advantage not thereby be turned into a disadvantage? Can it not be said that men are handicapped relative to women because of their greater propensity to end up in jail as a result of acts they would not have committed had they been women?’

## Compromising People's Social Resources

In his speech, 'The Treasure in the Heart of Man', Michael Gove made an obvious observation that is nonetheless worth highlighting:

While individuals are in custody the state is responsible for every aspect of their welfare. We can determine who prisoners see, how they eat, wash and sleep. We can decide how they spend their day, what influences they are exposed to, what expectations we will hold them to, what they can watch, read and hear, what behaviour is rewarded and what actions punished, who we expect them to admire and what we hope they will aspire to.<sup>43</sup>

In short, people in prison are rendered utterly, or near utterly, dependent.

The following is an indicative list of the kinds of social harms that we often do to people in prison, which compromise their social resources and deny them social contribution opportunities. In the next section, I consider which rights, including social rights, persons might forfeit through serious wrongdoing. For now, I shall stipulate that, since the things listed below are among the most serious injuries we can do to people as social beings, these are genuine social wrongs against incarcerated people, rather than goods to which these people have forfeited their rights claims.

a) *Juvenile Detention*: Putting a child in any institutional setting, let alone a prison, robs him of needed social resources both in the present and in the future. Institutional settings deny children the close, personalised contact, nurturing, and care they require in order to develop well. In holding a child in custody, we as a society convey a prejudicial judgement about that child's present and future social contribution potential.

b) *No Privacy*: In many, ordinary prison settings in Anglo-American systems, people have little or no privacy. They have no control over their living space. Someone can walk into their cell at any moment. Moreover, they have little or no control over their living arrangements or their cellmates, who may be psychologically unwell. Also, they must perform all of their private functions in the presence of those cellmates. Although freedom of dissociation is lexically secondary to positive associative claim rights, it is nonetheless fundamentally important, and is disregarded in these kinds of forced living arrangements.

c) *Lack of Decent Social Opportunities*: Ordinary prison conditions may give people social contribution opportunities, but such conditions often do not give them *decent* social contribution opportunities. In both segregating and overcrowded prisons, people may well be systematically denied conditions conducive to cultivating decent social connections marked by joint narratives, mutual investment, and trusting relations.

d) *Grieving*: Segregating persons from their families can have numerous effects on their social connections. Among other things, it can complicate, if not compromise, the process of grieving. When a person is in prison, his family may not stay close to him to grieve together for the loss of a parent, spouse, child, or sibling. The person in prison may not be able to help or support his family. He cannot know whether he might have saved the person who died or eased their pain as they died; he cannot be present with the person when they die. Logistically, he may not be able to

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<sup>43</sup> Gove (n 13).

attend the funeral: permission to attend may be denied, especially if it requires an escort to make an overnight stay.

e) *Solitary Confinement and Execution*: Solitary confinement conditions vary but, typically, they risk the erosion of a person's basic abilities to lead a socially integrated life. They also convey a prejudicial judgment that the person is not, and possibly never again can be, a social contributor. Instead, he is a social threat or nonentity. The same prejudicial judgment is made categorically when a person is executed.

Not all prisons are like those just described. Weekend prisons, prisons that allow for conjugal visits and family stays, prisons that have norms of etiquette that require officials to address people formally differ significantly from the kinds of institutions just described. In the settings just described, we positively deny people who have offended the space to honour whatever moral responsibilities they have to play their part in ensuring that certain others' social needs are met; specifically, we prevent them from discharging duties they have to care for dependents and affiliates.<sup>44</sup>

### **Which Rights are Forfeited in Prison?**

An important, perennial question is: which rights does a person legitimately forfeit when he engages in serious wrongdoing? If a person forfeits rights other than his freedom of movement, do those forfeited rights include his social rights even though this denies him meaningful ways to show that he's interested in reintegrating, that he can assume responsibilities, and that he can be someone on whom others could depend? Is it legitimate to curtail a person's social contribution opportunities, and his social resources in general, in prison? Is it legitimate to deny a person any meaningful control over his associations in prison?

Some of these questions I have answered in other work where I have explained why our basic social rights, notably the right against social deprivation, cannot be denied to us as a legitimate form of punishment; in brief, they are both too fundamental and preconditions for the meaningful exercise of many other rights.<sup>45</sup> My claim here is that, even if a person who is sentenced to prison were to forfeit all of the rights outlined in the discussion above (which in my view he could not do), that would not settle the issue since those rights are not the only rights at stake when a person is incarcerated.

First, we must consider the social impact of prison on indirect victims. Social contribution injustice wrongs not only its direct victim, but also the particular people – notably children and other dependents – and non-human animals who would otherwise benefit from that person's use of his social resources as well as the wider community that would otherwise enjoy the ripple effects of a person's and his associates' social contributions to each other.<sup>46</sup>

Second, we must consider the residual impact of prison on the person's rights *upon release*, in a spirit akin to *jus post bellum*, which is the responsibility of victorious parties even when their *ad bellum* cause was just and their *in bello* behaviour legitimate.

Segregation both into prison and within prison threatens, stretches, and breaks social bonds. The longer that a person stays in prison the more likely it is that his social bonds will deteriorate or break, since his friends and family members (if he has

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<sup>44</sup> I thank Jeffrey Howard for highlighting this issue.

<sup>45</sup> Brownlee (n 3); Brownlee (n 2).

<sup>46</sup> Brownlee (n 3).

them) may die, move or abandon him. This is noteworthy not only in itself, but also for its impact on him when he is released, because lacking accommodation, employment, a non-criminal social group, and family are all factors correlated with re-offending.

To take rehabilitation seriously, our society must invest in the post-prison transition. This means doing more than requiring that a person report regularly to the police or his parole officer. It means helping him to set up a new social network: helping him in those initial days and months to secure a home and a supportive, law-abiding group.<sup>47</sup> These provisions are vital to mitigate the damage done to his social connections during his time in prison.

The severing of a person's social bonds is salient not only for its effect on the person after release, but also for its effect on society as a whole. According to research cited in the report *Transforming Rehabilitation* (2014), numerous factors linked to desistance turn on having non-criminal social bonds.<sup>48</sup> One such factor is having something to give to others:

...[People who have offended] who find ways to contribute to society, their community or their families appear to be more successful at giving up crime. If these achievements are formally recognised, the effect may be even stronger.

If correct, this point about recognition is particularly noteworthy. It signals that, when we fail to acknowledge that people who have spent time in prison can be and are social contributors, we not only do them an injustice, but can make desistance more difficult for them. Another set of factors associated with desistance are family and intimate relationships:

There is evidence that forming strong and supportive intimate bonds with others appears to help desistance from crime, although more contemporary research is needed on this subject. Such relationships can reduce the amount of time spent in groups of same-age, same-sex friends (a known risk factor for young male offending). Strong partnerships and relationships with his or her children also provide an individual with something to lose if there is a return to prison. Living with non-offending parents can have the same sort of effect on ex-offenders who have returned to the family home. Finally, family and intimate attachments may give offenders a sense of purpose, meaning and direction. Individuals who devote themselves to raising their children or caring for elderly parents may find that crime and imprisonment are incompatible with such roles.

A third set of factors is hope and motivation:

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<sup>47</sup> Concerning accommodation, a 2015 report from the Australian Institute of Health and Welfare states that 31% of prisoners expect to be homeless upon release. (In the case of indigenous people, it is 38%.) See Australian Institute of Health and Welfare, 'The Health of Australia's Prisoners' (2015). Retrieved from: <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129553682>. In the UK, in 2012, two in five prisoners (37%) stated that they would need help to find a place to live after they were released. Of those, 84% reported needing a lot of help. See Kim Williams, Jennifer Poyser, and Kathryn Hopkins, 'Accommodation, homelessness and reoffending of prisoners: Results from the Surveying Prisoner Crime Reduction (SPCR) survey', (2012) Ministry of Justice. Retrieved from: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/278806/homelessn-ess-reoffending-prisoners.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278806/homelessn-ess-reoffending-prisoners.pdf).

<sup>48</sup> UK Ministry of Justice (n 31).

Research suggests that individuals who desist from crime are usually very motivated and confident that they can change their lives: offenders who clearly say they want to stop offending are the most likely to desist. The impact of these motivational factors has even been found in long-term studies up to ten years after release from prison.

A fourth factor is having a place within a non-criminal social group:

Those who feel connected to others in a (non-criminal) community are more likely to stay away from crime. Social networks that help desistance include extended family, mutual aid groups, clubs and cultural or religious groups.

A fifth factor is being believed in:

Research with desisters has identified that having someone believe in them is important and that desistance can be supported by interactions with others who communicate a belief that they can and will change, that they are good people, and that they have something to offer society or other people.<sup>49</sup>

All of these factors reinforce the claim of this paper that we are deeply social, that we wish to make social contributions, and that we are better able to establish or re-establish ourselves socially when we are given meaningful opportunities to contribute. Let me now address two possible objections to my account.

## **Objections**

### **The Corrective System as a Place to Contribute**

One possible objection is that the correction system itself is the avenue through which a person who has committed a serious offence makes his social contributions, namely, by being open to re-education, by being responsive to societal expectations, and by genuinely seeking to repair, repent, and reintegrate socially.

In reply, first, this objection feeds into and off of our prejudice about people who have committed offences, namely, that they are ‘offenders’ first and last, that their other identities have been suspended or eliminated, that they must reform themselves first, and then, once reformed, might seek again to contribute socially through the various roles they once held, if they are able.

Alternatives to long-term incarceration such as weekend prison, very short custodial sentences, non-custodial sentences such as fines, community service, and mandatory victim restitution, as well as non-punitive restorative justice, mediation, and healing rituals would allow people who have offended to retain some of their other social identities, and not to be ‘offenders’ first and last until they have somehow reformed themselves.

Second, if indeed we can view long-term incarceration as providing a person who has committed a crime with a forum through which to contribute socially, we can see it in this way only in a highly attenuated sense (at least in Anglo-American systems). Moreover, if we could legitimately see prison in this way, we could still not rest easy about the justness of our practices. It would only show that we do not

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<sup>49</sup> I shall bracket the problem of determining whether the supporter is sincere in their belief in the person who has offended. I thank Tom Parr for highlighting this problem.

compromise the person's social resources (i.e. abilities, opportunities, connections). It would not show that we do not exhibit prejudice toward the person as a potential social contributor in other contexts and forums.

### **Genuine Social Threats**

A second objection could be that our society is right to view at least some people who have committed crimes as social threats. The cause may well have to do with their being mistreated, but that does not alter the fact that they are permanently compromised in their social abilities and are regrettably genuinely 'intolerable'. Related to this, we ask too much of victims when we propose to regard the people who have deeply wronged them as full persons who do not deserve to be reduced to their offences and have their social bonds severed through our modes of punishment. Allowing the man who has raped a woman to return to his parents' home next door to her, allowing him to move freely and without social stigma, is too onerous for her, so the argument goes.

In reply, I do not deny that there are costs in abandoning some of the ways that we respond to people who have committed offences. But, as I have argued elsewhere, we can grant that we should temporarily change the ways that we relate to a person who has committed offences, in order to reorient his attention to his wrongdoing, without granting that these changes necessarily or even permissibly include denying him minimally adequate access to decent social contact, inclusion, and contribution opportunity.<sup>50</sup> The alternatives to long-term prison sentences noted above – such as weekend prison, short custodial sentences, non-custodial sentences, and non-punitive restorative justice measures – are all ways to signal that our relations with the person have temporarily changed, without denying him access to social connections.

Moreover, although we cannot guarantee that a person will make good social contributions, particularly if the evidence is that he has a disposition not to do so, we still have good reasons to ensure that his social resources are not compromised so as to enable him meaningful opportunities both *to try* to contribute and to learn from others how to contribute.<sup>51</sup>

### **Conclusion**

Briefly, by way of conclusion, this paper has shown that we engage in a form of social contribution injustice in our tendency to represent people who have committed offences as social threats. This tendency is reflected in our continuing use of classificatory terms that essentialise people's wrongdoing. In addition, we engage in a more concrete, visible form of social contribution injustice through many of our social arrangements within prisons, e.g. solitary confinement, lack of variety in contact, lack of decent contact, forced contact with the same one or two people not of one's choosing, non-repeated contact, and severed contact. We do social contribution injustice to indirect victims, and we do social contribution injustice to people upon release from prison. Much of this injustice is contingent on our practices, policies, and general attitudes toward offending.

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<sup>50</sup> Brownlee (n 3).

<sup>51</sup> Brownlee (n 3).

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