

# Penal subjectivities: Developing a theoretical framework for penal consciousness

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## Abstract

This article develops a new theoretical framework, penal consciousness, that examines the ways in which prisoners orient to and make meaning of their punishment. Penal consciousness identifies the processes from which penalty emerges by simultaneously privileging the subjective consciousness of individual prisoners and locating this consciousness within the structure of the larger carceral system. In doing so, the penal consciousness framework moves beyond the limited, objective view of punishment as legal sanction to a more expansive view of penalty that privileges subjectivity and meaning. From the inductive analysis of 80 qualitative interviews with prisoners, two dimensions of punishment emerged as key to understanding penalty: salience and severity. Findings reveal that severity of punishment is predicated on the level of abstraction at which punishment is experienced, while salience of punishment is determined by the “punishment gap” between an individual’s expectations and experiences of punishment. By examining punishment as the nexus between the objective and the subjective, the penal consciousness framework enables punishment as it is understood by prisoners to differ markedly from what is conceived of as punishment by lawmakers, but at the same time to be contingent upon it. This allows punishment to be examined in situ rather than in its ideal, articulated, or abstract form—an important advancement from conventional understandings of punishment.

## Keywords

corrections, penal consciousness, punishment gap

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The “punitive turn” is an often-used phrase that describes the swinging of the criminal justice pendulum from the rehabilitative ideals of the 1960s back to a newly revitalized zeal for retributive justice. Scholarly discussion of where the punitive turn has landed us evokes many images: the increasingly surveilled and securitized nature of life in a “late modern” society (Garland, 2001), a public characterized by “populist punitiveness” (Bottoms, 1995), a criminal justice system that has ceded power to politically minded prosecutors who are ever responsive to public cries for harsh punishment, and a swollen correctional system that has forsaken rehabilitative programming in favor of increasingly austere prison conditions. Regardless of the particular imagery, the overall sense that one gets from the punitive turn is of a regressive shift toward unmitigated harshness in our country’s treatment of offenders.

Just how punitive the United States has become, however, is an empirical question that has only been partially addressed. The objective indicators of penal harshness described above—increased surveillance, populist punitiveness, expansive prosecutorial power, and bare bones conditions of confinement for ever larger numbers of US residents—have all been documented empirically. Indeed, there are many more that one could add to this list: towering incarceration rates, the proliferation of “tough on crime” sentences to match “tough on crime” sentiment, and increasingly harsh treatment of juveniles and the mentally ill in the criminal justice system. This list could go on for quite some time. To what degree these characteristics of the current penal landscape translate to harshness of punishment overall, however, merits a fuller treatment of the nature of harshness than what is afforded by objective indicators alone.

The crucial element missing from our consideration of penal harshness is the role of subjectivity in punishment, specifically the subjectivity of those who are being punished. Punishment is not just something that is done—it is something that is done *to* people and experienced *by* people. And the subjectivity of the people who are punished matters. In *Discipline and Punish*, Foucault (1977) describes the ways in which the carceral system, through the very disciplinary techniques employed to produce docile bodies, also produces individualized subjectivities. In so doing, Foucault tracks the historical transformation of punishment as one of quality rather than one necessarily of quantity. One year after the publication of *Discipline and Punish*, Grabosky (1978: 103) built implicitly on these observations, noting that: “The task of delineating the concept of penal severity is a difficult one, for the degree of suffering which an individual experiences at the hands of sanctioning agents is essentially subjective.” He went on to conclude that: “A more rigorous treatment of the subjectivity of punishment must await further developments in conceptualization and measurement” (1978: 104). More than two decades after Grabosky’s call to research this phenomenon, that is precisely what I seek to do. The penal consciousness theoretical framework developed in this article offers a way to more fully understand the contours of punishment as it is lived and experienced by those whose lives are shaped most by it. This framework complicates our understanding of where the

punitive turn has landed us by developing a nuanced view of the current state of penal harshness in the USA.

## Review of the literature

### *The micro-level realities of punishment*

In addition to macro-level indicators of harshness of punishment, there exists a rich body of scholarship that documents and analyzes the micro-level detail of the prison environment. In the foundational works of Clemmer (1958), Giallombardo (1966), Irwin and Cressey (1962), Sykes (1958), and Toch (1977), among others, prison life has been described in rich detail. Of particular importance to the early literature on punishment is Gresham Sykes' *The Society of Captives*. In this book, Sykes (1958: 63) uncovers the "meaning of imprisonment for the prisoners" by examining the largely adverse effects that the institutional environment has on them. Specifically, Sykes (1958: 64) details five discrete ways in which prisoners are exposed to the "pains of imprisonment"—through the deprivation of liberty, goods and services, heterosexual relationships, autonomy, and safety—and argues that deprivations in these five areas "can be just as painful as the physical maltreatment which they have replaced".

Shortly after Sykes' *Society of Captives*, Goffman (1961) examined the power of total institutions to orchestrate a very specific type of deprivation: the loss of self. Goffman (1961) described the dramatic reconfiguring of one's sense of self that occurs upon admission to prison: the mortification of one's original self and the creation of a new, institutionalized self constructed and bounded by the total institution. Goffman's (1961: 43) work demonstrates that the institutionalizing power a total institution exerts over inmates can become a profoundly punitive power as well—a power that lies in the institution's ability to

disrupt or defile precisely those actions that in civil society have the role of attesting to the actor and those in his presence that he has some command over his world—that he is a person with "adult" self-determination, autonomy, and freedom of action.

In recent years, several scholars have continued, in the vein of Sykes and Goffman, to examine the intricate contours of daily prison life. This body of work provides insight into prisoners' lived experiences with a range of phenomena in the era of penal harshness. Much of this scholarship implicates the on-the-ground experience and enactment of punishment, expanding the battery of punishments to which prisoners are exposed to include such things as frustration and guilt over severed ties with dependent children (Bloom and Chesney-Lind, 2000; Pogrebin and Dodge, 2001), "institutional thoughtlessness" (Crawley, 2005), "unremitting loneliness" (Johnson and McGunigall-Smith, 2008: 337), the absence of respect and fairness (Liebling, 2011), and the pains of uncertainty and indeterminacy, psychological assessment, and self-government (Crewe, 2011).

Most notable among the recent empirical research on punishment in prisons are Crewe's (2009, 2011) work in the United Kingdom and Kruttschnitt and Gartner's (2004) work in the United States. Crewe (2009: 449) argues that shifts in the organization of power and exercise of authority in prisons have "created new weights and burdens, particularly around issues of powerlessness, autonomy, insecurity and the meeting of personal needs". He notes that "instead of brutalizing, destroying and denying the self, it grips, harnesses, and appropriates it for its own project" (2009: 449). In addition to being experienced in terms of weight, Crewe argues that these new forms of punishment have become increasingly "tight". Punishment characterized by tightness is enacted in a way that "does not so much weigh down on prisoners and suppress them as wrap them up [and] smother them" (Crewe, 2011: 522). Thus, with "tightness" and "weight", Crewe has shed light on the composition of punishment as well as its content.

In *Marking Time in the Golden State*, Kruttschnitt and Gartner (2004) use the backdrop of the punitive turn to explain variation in the macro-level penal ideologies and practices as well as the micro-level institutional contexts that shape women's lived experiences of punishment. Their approach is simultaneously historical and cross-sectional, allowing meaningful comparisons to be made over time and across settings. Kruttschnitt and Gartner's main findings with regard to punishment present a nuanced picture: the types and extent of punishment experienced by female prisoners—including loss of autonomy and self-identity, severed ties with family, and the coercive control of correctional staff—are contingent upon both the macro-structure of the penal regime and the particularities of the micro-level environment.

The unique examination of the nature of punishment by contemporary scholars such as Crewe, Kruttschnitt, and Gartner has reinvigorated the study of the pains of imprisonment and broadened the scope of inquiry into the enactment and experience of punishment on the ground. The findings presented here advance this line of inquiry in an innovative way: they examine the ways in which prisoners orient to and make meaning of punishment as it operates on the ground in order to develop a middle range, empirically grounded theory (Merton, 1968) of variation in punishment that complicates the existing macro-level view of penal harshness.

### *Legal consciousness as inspiration for penal consciousness*

The penal consciousness theoretical framework developed in this article draws inspiration from Ewick and Silbey's (1998) work on legal consciousness. Designed to more fully capture legality as it operates in everyday life, the legal consciousness framework relies upon the ways in which people "interpret and make sense of the law" (Ewick and Silbey, 1998: 17)—in other words, their legal consciousness—as an indicator of what legality is. Legality, according to Ewick and Silbey (1998: 22), refers to "the meanings, sources of authority, and cultural practices that are commonly recognized as legal, regardless of who employs them or for what ends". The distinction between law and legality becomes pivotal in this

article, which explores the concept of penalty as related to, but distinct from, conventional understandings of punishment.

I use the concept of legal consciousness heuristically to develop the new concept of penal consciousness—a concept centered around penalty rather than legality. I define penalty here as that which is experienced as punishment and perceived to be imparted by the criminal justice system or its actors, regardless of whether it is intended as punishment and/or is approved or acknowledged by the penal system. This conceptualization complements Garland's (1990: 17) definition of penalty as "the network of laws, processes, discourses, representations and institutions which make up the penal realm", but expands it to allow for the subjectivity of those who are punished. This allows for a sufficient breadth of phenomena to fall under the rubric of penalty to gain a fuller understanding of that which is experienced as punishment, rather than merely that which is designed or intended as punishment. The incorporation of subjectivity enables us to explore the potential for penalty as it is understood by prisoners to differ markedly from what is conceived of as punishment by lawmakers—but at the same time to be contingent upon it. The gap between "punishment on the books" and "punishment in action" that emerges from the data mirrors findings in the legal consciousness literature that document a similar gap with regard to law, and has implications for the theoretical understandings of the current state of punishment in the USA.

## **Research methods and data**

### *Research sites and sampling*

The analyses presented here are drawn from a larger study of penal consciousness across prison settings. The research site for this study consists of three correctional facilities operated by the Ohio Department of Rehabilitation and Correction. Facilities were chosen based on security level, geographic proximity, and housing unit design in order to ensure maximal variation along sampling dimensions for the larger study, as well as maximal comparability between prison populations. The sampling frame for this research consists of male and female medium security prisoners living in celled housing units. Stratified random sampling was used to draw a representative sample of 80 prisoners from qualified housing units.

### *Data*

The site selection and sampling strategies employed were designed to gather data from respondents who are both comparable to and distinct from one another in ways believed to be relevant to experiences of punishment, as well as fairly representative of a population of people who have had extensive experiences with punishment. Data for this study consist primarily of in-person interview data collected during June and August of 2010; interview data were supplemented with official data on demographic and sentence-related characteristics and fieldnotes taken

throughout the duration of the project. All interviews were strictly confidential; pseudonyms are used throughout this article to refer to participants. The participation rate for the study was high (96 percent), with only three respondents declining to be interviewed. The total sample for this study is 80 prisoners, with the sample evenly split between males and females. All interviews were audio recorded. Interviews averaged one hour and six minutes. The shortest interview was 21 minutes and the longest lasted just over two hours. The variability in interview duration was a product of the semi-structured nature of the interviews, as well as variation among individuals in terms of experience with punishment and desire to discuss personal experiences with a relative stranger.

All interviews were semi-structured. I began each interview with open-ended questions designed to elicit information about carceral experiences without specifically referencing punishment. The goal of this segment of the interview was to elicit general thoughts and feelings about prison without specifically broaching the topic of punishment. The next series of questions was tailored more specifically toward penalty. This portion of the interview included questions that explicitly prompted respondents to describe their punishment, while still allowing them to determine the extent and place of penalty in their lives. During the course of the interviews, I made clear to respondents that punishment was to be conceived in the broadest possible terms, according to criteria that were meaningful for each individual. Punishment was operationalized during interviews as “whatever punishment means to you” or “whatever feels like punishment”. In the latter portion of each interview, I inquired about the meaning attached to punishment by the respondents; the nature, extent, and duration of their punishment; the actors and circumstances involved in their punishment; and the relativity of their punishment.

This loose interview structure was designed to allow prisoners to discuss punishment on their own terms and at their own pace. This was done in an attempt to ensure that my own preconceptions about punishment did not constrain prisoners’ conceptualizations of punishment or accounts of their experiences of punishment, but perhaps more importantly, to minimize the effects of my status—as a non-prisoner and an academic researcher whose privilege enabled her to arrange for the movement of prisoners within institutional walls and then exit the prison at the close of each day—on the course of prisoners’ narratives. As is always the case with qualitative research, the positionality of the researcher is paramount in the consideration of the data collected. In this study in particular, issues of power are intimately linked to understanding the subjective experience of punishment. I was made acutely aware of this very point during one interview in which a prisoner noted—only half in jest—that her punishment on that particular day was being told to report to the warden’s office to be interviewed by me. Other respondents, in contrast, expressed sincere appreciation for having the opportunity to give voice to their punishment as they saw it, rather than as it was defined by the state, through this study. These two contrasting perspectives throw into stark relief not only my power within prison walls, but also the very real effects of that power on the prisoners whom I was interviewing.

## Method of analysis

Data analysis followed the iterative process that often characterizes grounded theory in particular, and qualitative research more generally (Emerson et al., 1995). During data collection, I took extensive fieldnotes on any interactions and observations relevant to the study of life and punishment in a carceral facility. After data collection was complete, I used open coding to identify themes apparent in the prisoners' narratives through line-by-line analysis. Once initial memos were written and links between themes became clearer, I returned to the full body of data to begin focused coding. Focused coding helped me to ensure that the themes that emerged from the initial subset of the data were both relevant to and appropriately configured for the full set of data. Focused coding followed a similar line-by-line process to that of open coding, but applied the specific codes that had been identified as important to the theoretical framework. In the paragraphs below, I present the content and structure of these themes and demonstrate how they develop a framework for penal consciousness.

## Findings

### *Content of punishment and level of abstraction*

The 80 prisoners interviewed for this study described an array of experiences with and understandings of penalty, including diverse consideration of what does and does not constitute punishment. Some of the punishments described by prisoners were relatively circumscribed, hinging on the presence or absence of concrete, material things, while others were symbolic and experienced as wide-reaching in both their scope and impact—differences that I refer to as variations in the *level of abstraction*. Because punishment is examined here as a subjective phenomenon based in part on objective conditions, it is important to draw a distinction between these two parts: the objective and the subjective. The objective component, which I call the *punitive referent*, is the object, event, or condition being experienced as punishing. Punishment, in contrast, is determined by the prisoner's subjective assessment of why the punitive referent is, in fact, punishing. The content of an individual's punishment depends not on the punitive referent itself, but rather lies in her subjective understanding of the punishment. More simply, punishment is what a prisoner makes of a punitive referent.

The simple example of a broken microwave can illustrate not only the relationship between punitive referents and punishment, but also the varying levels of abstraction at which punishment can be experienced. If a prisoner described a broken microwave as punishment because it results in lukewarm coffee, she experiences this punishment as concrete (a lack of hot coffee). If the same broken microwave is punishing because it represents one less daily action that she can do for herself, then the punitive nature lies in the symbol rather than the material, rendering the punishment symbolic (loss of autonomy). Because the same punitive

referent can be subjectively construed in myriad ways, the line between concrete and symbolic punishment is often fuzzy. Moreover, prisoners frequently discussed the two types in tandem, with a single punitive referent experienced as simultaneously concrete and symbolic punishment.

*Concrete punishment: Unmet daily needs.* The array of concrete punishments experienced and described by prisoners was quite diverse. These punishments included the denial of appropriate hygiene and personal grooming products, the breakdown of amenities (e.g. microwaves, televisions, and recreation equipment), the removal of privileges such as tending to one's own garden plot or training a dog, and the imposition of administrative sanctions such as disciplinary tickets, "early bed" and "cell isolation". The most commonly cited concrete punishments, however, were those that left prisoners with a sense that their basic needs were going unmet. These punishments fell into three broad categories: medical neglect or mistreatment; inadequate or unhealthy food; and the inability to pay for necessities that were not provided by the prison.

Prisoners who experienced prison medical care—or lack thereof—as punishment often provided accounts of long waits to see a doctor, prescription medications that failed to treat their ailments, and being brushed off by medical staff who were overworked, apathetic, or simply incompetent. The medical ailments that prisoners described ranged from relatively minor (skin rashes and headaches) to potentially life-threatening (deep vein thrombosis and epilepsy). Regardless of the severity of their medical conditions, most prisoners felt that their medical needs were not being taken with the seriousness they warranted, and were not being treated accordingly. In fact, many prisoners explicitly noted that the lack of adequate medical treatment was an intentional form of punishment imposed by prison staff. Cherise, a black woman in her mid-50s serving a life sentence for murder, discussed at length a recurring skin condition that presented itself over a year ago. She explained that her ailment has gone untreated because the prison has no investment in her well-being, despite its responsibility toward her as a ward of the state. When asked if this lack of medical attention was part of her punishment, Cherise replied:

I'm gettin' punished again, because for real, they don't really care. I've seen a lot of people die up in here. They don't really care. I'm just an inmate. I'm just a number. When I die, they'll put somebody else in my bed.

For Cherise, what began as a concrete punishment—the persistence of a skin rash that left her physically uncomfortable—took on a symbolic quality as she became increasingly aware of prison staff's disregard for her welfare. This elevation of punishment from concrete to symbolic was quite common, especially with regard to unmet medical or other physical needs.

The lack of adequate medical care experienced by Cherise and many others was exacerbated by "heart healthy" diets that seemed to be a contradiction in terms. Reportedly high in sodium and starch, devoid of fresh fruits and vegetables, and



processed nearly beyond recognition, the food served in the chow hall was one of the most often cited concrete punishments—not just for its low nutritional value, but also in terms of quality and portion. Kate, a 30-year-old white woman serving 30 years, described the food served to the prisoners as “the shit they use to make Alpo—you know, dog food”. By comparing her diet with that of a domesticated animal, Kate also elevated her punishment from the concrete to the symbolic; the “Alpo” served to prisoners not only left them with pangs of hunger and longings for fresh food, but also situated them lower on the food chain than other human beings.

To mitigate the concrete deprivations of insufficient meals, prisoners supplemented the meals served at the chow hall with foodstuffs purchased at the commissary. Limits on the amount that can be purchased on a given day, scheduling problems that prohibit frequent shopping, and the use of “commissary restriction” as an administrative sanction often ensured that prisoners relied mainly, if not solely, on food served in the chow hall. Exacerbating these constraints, many prisoners reported punishments that were financial in nature. Such punishment included the limited amount of “state pay” received by indigent prisoners (15 dollars per month) and the inflated cost of phone calls and goods available for purchase from prison vendors. For prisoners who bemoaned the concrete punishment that a lack of money engendered, such punishments were generally experienced as little more than an annoyance or inconvenience. For them, the concrete punishment of indigence was experienced alongside, but separate from, other concrete and symbolic punishments. In contrast, prisoners who experienced these financial restrictions as simultaneously concrete and symbolic found them far more difficult to bear. Dana, a black woman in her late 30s who has witnessed the steady increase in institutional cost of living during her three years in prison, expressed this sentiment:

You know, they give us 15 dollars a month that we live on. That never goes up, but yet the price of the commissary is steady rising every time you turn around. So I'm just like “Wow, you guys are really making this really hard.” And I understand [prison] is supposed to be a punishment, you know? But by God, it's like, we're still human, you know?

Here, Dana illustrates the seamlessness with which concrete punishments can interact with symbolic punishments. Rather than elevating a concrete punishment to the symbolic level, as Cherise and Kate did, Dana went on to describe a layering effect whereby small, concrete punishments are heaped upon the overarching, symbolic punishments that come with being incarcerated. Many prisoners experienced a similar interaction between concrete and symbolic punishment. Fatima, a woman in her late 30s who is serving 15 years for robbery, described it as “punishment on top of punishment”, as though simply “being in prison” or “doing time” was a base punishment on which individual, concrete punishments could be piled.

*Symbolic punishment: Loss of freedom.* Like Dana and Fatima, nearly all prisoners interviewed agreed that simply being in prison—with its attendant deprivations, losses, and stressors—was a large part of what their punishment was. Among the numerous symbolic punishments experienced as integral to prison life, three types of loss loomed largest: the losses of autonomy, self, and personhood. These three types of loss can be understood as varying degrees on a continuum of the loss of freedom. Loss of autonomy is characterized by a lack of self-determination and freedom of choice. Loss of self goes one step further to eradicate not only the freedom of personal choice, but also the freedom of personal identification—the qualities and attributes that make someone an individual. The most complete loss of freedom is the loss of personhood, which includes not only the loss of oneself as an individual, but the loss of oneself as a human being at all. Loss of personhood renders prisoners subhuman, one of many faceless objects of punishment.

At its essence, the equation of prison with punishment most often came down to a loss of freedom in one of these three forms. Rashid, who at 30 years old has already served nearly half of a 20-year sentence for manslaughter, expressed this sentiment by contrasting the freedoms that I (as a researcher and a non-prisoner) enjoyed and the freedoms he was denied:

Whenever a person has their freedom taken away, [if] that's not punishment enough, then I don't know what is. You know? Just not bein' able to be in society. Not bein' able to do the things that *you* do, experience the things that you can experience in the free world . . . I don't care about all the other things that happen in prison, I just care about not havin' my freedom.

While Rashid viewed his loss of freedom broadly, focusing on the larger implications of his symbolic punishment, for many prisoners it was the “little things” that mattered most—the concrete punishments that were translated into the symbolic. Many prisoners discussed the way that the “small things” or the “little freedoms” like choosing your own clothes took on increased importance once they were taken away. Alma, a 30-year-old woman serving 15 years to life for murder, described the importance of these little things, even in what she considered to be a relatively comfortable prison:

This [prison] is not as rough as other places, but it's punishment enough. You, you don't, you don't get the privileges that you do when you're at home, you know? And, you start appreciatin' the small things, even if it's just goin' to the grocery store and pickin' up a bag of ice for a barbeque. And, that alone is punishment. You know, not bein' able to sit on your front porch at night and enjoy the air for summer. That's punishment. You know? Every little thing.

The loss of autonomy described by Alma was frequently discussed by prisoners as the result of a prison system that strictly regulated prisoners' lives and left little room for self-determination. Demitria, a black woman in her mid-50s who was nearly

finished with a 25-year sentence, explained: “I don’t have a choice in what clothes I wear. Or who wore ’em before me. So yeah, it’s a punishment from life itself.” For Demitria, “life itself” is comprised of making small, personal choices that include what to wear and when to eat. The regularity with which these small decisions were made for prisoners, automatically and without regard to their desires, left many prisoners feeling the full weight of the deadening prison routine. This routine structured their lives and left little room for personal agency, instead substituting control, coercion, and outside determination for the freedoms they desired.

Somewhat paradoxically, a condition that exacerbated the loss of freedom engendered by the highly structured prison setting was the frequently described atmosphere of inconsistency and arbitrariness in the prisons—the very opposite of a deadening routine. Despite the rigid constraints and contingencies of carceral facilities, some prisoners emphasized inconsistency as a pervasive and enduring condition of prison life—more so than structure or regulation. As Rachel, a white woman in her late 20s who has served 10 years of a 25 year sentence, put it: “The only consistency of this place is the inconsistency.” This inconsistency was most frequently discussed with regard to staff expectations and application of rules, both across staff members and over time. Prisoners noted that staff inconsistency created a stressful atmosphere—one in which prisoners never quite knew how to behave or what to expect.

Despite the apparent incongruity between an environment described as alternately inflexible and inconsistent, the collision of these two conditions has grave implications for the curtailing of freedom. Precisely because prisoners were regularly denied autonomy and self-determination, when opportunities arose for them to make small decisions about their actions, they were left ill-equipped to make choices that would preclude negative consequences. In these situations, prisoners were faced with a dilemma: after being denied self-determination at almost every turn, they were suddenly expected to not only govern their own behavior, but to do so in a way that pleased prison staff. In such instances, the “freedom” to make decisions for oneself is really only freedom on its face; the implicit understanding that prisoners were expected to make the “correct” choice constrains self-determination in a less blatant, but no less powerful, way.

Beyond a loss of self-determination, many prisoners felt a loss of self completely. Quite a few prisoners discussed the deindividuating effect that it had on their sense of self to be “just a number” walking around in one of many identical uniforms and regarded as interchangeable parts of an aggregate rather than discrete individuals. Aliyah, a 35-year-old black woman who has served seven years of her 50-plus year sentence, described the loss of personhood she experienced upon her arrival at prison: “I was human before I came here. You know what I’m sayin’? . . . You just treat me like I’m nothing.” To counteract this dehumanization, Aliyah emphasized the importance of small personal touches like lip gloss and unique hairstyles:

We do the best we can to keep up here because it makes us feel good. That’s all we have. ‘Cause, everybody dresses alike. You cut our heads off, all you have is a bunch of

bodies walkin' around. But, our hair, a little make-up, and little stuff, that's our only way of . . . havin' our own individuality still.

Here, Aliyah implicates the entire continuum of loss of freedom: autonomy; self; and personhood. For Aliyah, having even a tiny degree of self-determination helps her to retain her individuality, which in turn affirms her sense of herself as a human being. In this way, "little things" like lip gloss and hairstyles help to mitigate the symbolic punishments that she feels bearing down on her as she serves her time.

*Symbolic punishment: Loss of family.* Another key way that prisoners reported maintaining their sense of self was through contact with their family. Unfortunately, the physical and emotional distance between prisoners and their loved ones was a prominent—and often severe—form of punishment. For instance, after discussing at length the numerous drawbacks of being in prison, Aliyah pointed out that being separated from her children was the worst part of her punishment:

The hardest thing for me is just bein' away from my children . . . That's the thing that brings me down, not bein' there for my kids. And, that's the punishment that I feel that I get. That's the biggest thing of everything—that the most important parts and things in my life have been stripped from me.

Another type of loss of family—one that could not be eased by release from prison—was the loss of a loved one due to illness or death. Darnell, a black man in his late 20s who experienced the death of his mother while serving a relatively short sentence, discussed the effect that it will have on him even after his release:

Damn, I come home to no mom, so that's gonna really hurt . . . Bein' here, you already can't see no family, you already far from home, you can't see people like you want to see'em. But, that's gonna be the hard[est] . . . That's punishment within itself.

Darnell's description of "punishment within itself" illustrates another one of the many ways that the relationship between various punishments is conceptualized by prisoners. In fact, very few prisoners interviewed described a single, unified punishment that they experienced while incarcerated. More often, their narratives wove together numerous, diverse punishments conceptualized in intricate relation to one another. Regardless of the array of punishments experienced or the relationship between them, however, it is clear that prisoners experience symbolic punishments as more severe than concrete punishments.

### *Severity of punishment*

*Relationship of severity to level of abstraction.* Severity of punishment refers to the intensity or magnitude of punishment as it is experienced by the prisoner—a fairly straightforward measure of penal harshness. Severity exists on a continuum,

ranging from extremely low to almost unbearably high. While severity is informed in part by the content of punishment as it is perceived by the prisoner, content alone does not dictate severity. In fact, severity of punishment hinges not on *what* punishment is, but on *how punishing* it is—an interpretation based in large part on the degree to which a concrete punitive referent is seen as representative of a larger, symbolic punishment. As a result, assessments of severity exist independent of the punitive referent itself, but highly dependent on the level of abstraction at which punishment is experienced.

Of the punishments described in the previous section, those experienced by prisoners as particularly severe were the punishments that were representative of larger losses or injustices. Poor medical treatment and awful food were far more severe for their symbolism of prison staff's refusal to acknowledge prisoners' humanity. The rigidity of prison life and the occasional instances in which this structure broke down were more difficult to bear for the loss of self-determination and autonomy they evoked. Physical distance from family and the prohibitively expensive nature of phone calls from inside prison were more severe because of the emotional distance they created between prisoners and their loved ones. In contrast, punishments that were experienced as purely concrete tended to be lower in severity. In these instances, prisoners described their disgust at the quality of prison food, the discomfort of frequent headaches, and the frustration of not being able to tend to their garden plot as punishment, but not punishment of the most severe variety. In fact, punishments that were described as exclusively concrete—without any accompanying elevation to a symbolic level—tended to be lowest in severity.

*Low severity punishment.* Low severity of punishment was often evident in the language prisoners used to discuss their experience of punishment and the emotions surrounding it. Concrete punishments were described as frustrating, aggravating, and even maddening at times—but they were seldom discussed with the vehemence, anger, or crushing despair that frequently characterized symbolic punishments. For instance, Josie, a white woman in her mid-30s, described her concrete punishments as relatively low in severity. She explained her dismay at the loss of gardening and crafts privileges as a “headache” and something that “has a negative impact” on the prisoners in her housing unit. Although Josie experienced punishment that was both symbolic and concrete, there was great divergence between the severity of each type, with concrete punishments assessed as lower in severity.

While some prisoners used the mild negative language of stress, annoyance, and aggravation to describe their punishment, others characterized their lives in prison in surprisingly positive terms. For these prisoners, positive aspects of the prison as a relatively comfortable place to live resulted in times when their punishment was less severe. Latasha, who has been in prison for almost 10 years, described her housing unit of three years as almost idyllic: “It’s just, it’s peaceful. They call it the retirement home.” Michael, a man about Latasha’s age, but serving a much shorter sentence, described his prison as a “nice penitentiary” and commented on the “beautiful” visiting facilities where prisoners can “sit right next to their people”.

Michael's experience of punishment was not entirely low in severity, however. Tellingly, this was the most positive language used by Michael during the entire interview, as he routinely expressed strong contempt for his fellow prisoners, the correctional officers, his family, and even himself.

The complex interplay between concrete punishment, symbolic punishment, and other ameliorating factors resulted in experiences of severity that varied widely both within and across individuals. Unsurprisingly, attributions of low severity were frequently expressed in tandem with concrete punishments. Perhaps more unexpected was the frequency with which prisoners expressed an attenuation of the severity of their symbolic punishments that resulted from the juxtaposition of positive aspects of prison life (e.g. gardening privileges and pleasant visiting rooms) with the harsh punishment they experienced. Whether due to minimally severe, concrete punishments, or non-punitive factors that tempered the severity of their symbolic punishment, assessments of punishment as low in severity were common among prisoners.

*High severity punishment.* At the opposite end of the spectrum is punishment that is experienced as high in severity. Cherise articulated this type of experience quite simply: "I wouldn't wish this on my worst enemy." Sarah, a white woman in her mid-40s who is serving 30 years to life for aggravated murder, summed it up in response to one of the first questions of the interview:

Interviewer: What would you say it's like to be in prison? What's it like for you?

Sarah: Terrible. Horrible. Awful. I feel like I'm being legally held hostage and I can't get help . . . It's humiliating. It's dehumanizing . . . I just scream for help and can't get any. You know, it's like the justice system just doesn't care. I think what hurts the most is you see the Sarah McLachlan commercials where all the animals are in these horrible, abusive situations, and they're in cages, and people cry out for help and they send tons of money to run to the assistance of these animals. Yet, you have people locked up in cages, who don't belong there, and nobody's coming and running to our assistance. It's like you care more about the animals in this country.

Sarah, a self-declared "Mrs Mom", described herself as a very "conventional" woman by middle-class, white standards. For Sarah, the most severe punishments were the symbolic punishments of loss of self (the stripping of her conventional "Mrs Mom" persona) and loss of personhood (the degradation that rendered her less worthy than a dog in a crate). While Sarah's lamenting of the degradation and dehumanization that she experienced in prison indicated despair more than anger, Aliyah experienced similar punishments as infuriating. Aliyah's use of strong, negative language to describe her punishment at the hands of the state belied her otherwise cheerful demeanor. The narrative of prison life that she told was punctuated by lengthy tirades against the prison system—tirades that revealed the vitriol boiling just beneath the surface of an otherwise good-natured interview.

Some prisoners described their symbolic punishment as particularly severe because it is so intractable, contending that even “citizens” on the outside have no power over the punishment that prisoners receive in such an “evil place”. According to Malcolm, a black man in his mid-30s serving 30 years to life for aggravated murder:

I can holler for help all I want, you know? And, it's not, who's gonna help me? You know? There's nothin'—you, you're a citizen, and I'm tellin' you this. I can prove it to you—there's nothing you can do to help me.

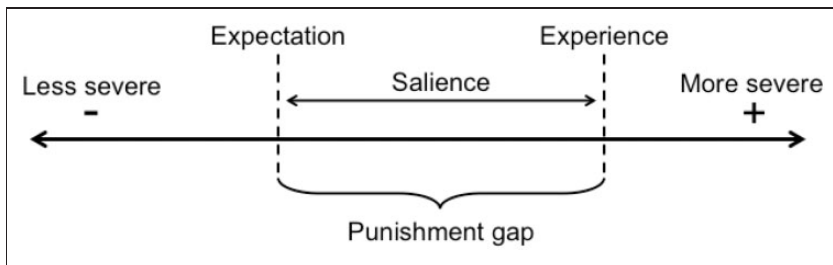
Unlike Malcolm, for whom severe punishment was a constant, other prisoners experienced a great deal of fluctuation in the severity of their punishment. For some, this meant the difference between days that were terrible and those that were merely bad. Jerry explained that: “There are no good days in prison. There are bad days and worse days.”

Whether experienced as a constant state of pain and loss, or a rollercoaster of “bad days and worse days”, high severity was most often linked to some form of symbolic punishment. Unlike prisoners who experienced an attenuation of severity by positive aspects of prison life, prisoners who reported their punishment as high in severity reported no such ameliorating factors. Many prisoners echoed Travis' sentiment that “you're punishin' me beyond the limitations of punishment. Because I'm already bein' punished [here]”. In these instances, severe symbolic punishment created angry, desperate individuals who either pushed against the system or found themselves being beaten down by it. The degree to which this punishment dominated their lives, however, rests with the second dimension of punishment: salience.

### *Salience of punishment and the punishment gap*

Salience of punishment—the second measure of penal harshness—refers to the prominence of punishment in a prisoner's life. While severity measures the intensity of punishment, salience reflects the degree to which punishment has infiltrated and permeated one's everyday life. Similar to severity, salience ranges from extremely low to strikingly high, and exists independent of the content of punishment. Although it is intuitive to think that punishments that are higher in severity will necessarily be higher in salience, the relationship between these two measures of harshness is not quite so straightforward. The data reveal that salience of punishment is related to severity of punishment in a complex way—a relationship that hinges upon prisoners' expectations of punishment. The experience of punishment is structured, like any phenomenon in the social world, by the collision of expectation and reality. More specifically, the salience of punishment is shaped largely by the distance between the punishment that a prisoner *expects* and the punishment she *experiences*—a distance that I call the punishment gap.

The punishment gap reflects the reality that punishment is not experienced in a vacuum, but rather nestled among a lifetime of experiences and the meanings



**Figure 1.** The punishment gap.

attached to them. The relationship between the punishment gap and the perceived salience of punishment depends on the directionality of the gap—whether punishment is more or less severe than expected. Prisoners who experience their punishment as more severe than expected have a positive gap, which results in punishment that is high in salience. When the experience of punishment is less severe than expected, there is a negative gap, resulting in low salience punishment. The size of the gap between expectation and experience is indicative of the degree salience. Larger gaps indicate punishment that is higher in salience, while smaller gaps (or negative gaps) indicate punishment that is lower in salience. The punishment gap and its relation to severity and salience are depicted in Figure 1.

*Expectations based on vicarious knowledge.* The expectations of punishment that inform the punishment gap are not singularly determined. Expectations of punishment can be based on vicarious knowledge of prison, prior first-hand experiences with punishment, and even expectations of what punishment should or ought to be in an ideal sense. For prisoners serving their first term, ideas of what prison will be like factor strongly into the expectation of punishment. Many first-timers found that the actual experience of punishment deviated markedly from their expectations. Numerous respondents registered surprise upon arriving at prison that “it’s not like what you see on TV”. For instance, in response to the question, “What did it feel like the first time you were incarcerated?” Dave replied:

Shoo, like I’m about to die. Like I’m in a dungeon somewhere. You know, and I had heard, you know, I was, I was still goin’ by the stories of what jail was like. You know, that everybody got bread and water. You know, that I’m about to fight. I seen, when I was younger, I seen this movie called . . . Midnight Express. I think that’s what it’s called. About this guy in Turkey and he has a drug case, but he was stuck in a Turkish prison and it was real rough. And that’s what I was thinkin’ about . . . But, it wasn’t like that at all.

Many prisoners expressed surprise at the relative safety and comfort of prison compared to what were, in hindsight, naïve expectations about the perils of prison life. Dave in particular described a prison experience characterized not by severe



punishment, but rather by tedium and routine. For Dave, the stark mismatch between his expectations and his actual experiences resulted in a fairly large, negative punishment gap. This gap rendered his punishment low in salience, with other facets of daily life playing a more prominent role in his life than punishment.

*Expectations based on prior prison experience.* For prisoners who have done time before, or who have already served lengthy portions of their sentence, comparisons to prior experiences in prison loomed large. The comparative nature of punishment is particularly evident to prisoners who have served time at other institutions. One respondent explained that: “Every institution has their way of doin’ things... Including their way of punishin’.” Dale, who had done time in a Level III facility, explicitly addressed the different types of expectations that people might have about the Level II prison where he is serving time:

You might [have] somebody that just came from the street and come in here, and it’s like “Wow, this is intense”. But, you know, being in an intense, almost like a warzone [before]... , coming here is like being released from prison a little bit.

In prisoners who have not been in Level III institutions before, Dale saw a “blissful ignorance”:

They don’t know how bad it could be. A lot of’em, I hear a lot of complaining and grumbling about this place. And, it’s easy to buy into it. It’s easy because, I mean, it sucks being locked up. But, again, like I said at the beginning of it, comparatively speaking, this is nice. You know? It’s almost a shame that you can start here. It’s almost like you should probably start somewhere else and then you’ll appreciate what you have here.

As described by Dale, it is quite possible for prisoners to arrive at the same institution with divergent sets of expectations, and to experience punishment differently as a result. In line with Dale’s explanation, the negative punishment gap that he experienced—and the resulting low-salience punishment—stands in stark contrast to the punishment gap described to me by Rashid, a similarly situated prisoner. Both men based their expectations on first-hand knowledge of previous institutions of different security levels, but the specific configurations of their punishment gaps varied widely. The result is an individuality of expectation and experience that is manifest in different punishment gaps, and different levels of salience, for each prisoner.

*Expectations based on what should or ought to be.* Apart from expectations of what punishment *will* be like, most prisoners also have clear expectations about what their punishment *should* or *ought to* be like. A major factor influencing these expectations is the perceived fairness of their sentence or treatment in prison. Prisoners frequently assessed the fairness of their punishment by comparing their sentences

to those of other people with “worse” crimes than theirs. Those serving time for non-violent offenses often compared their crimes to murder; those convicted of murder compared their crimes to sex offenses or crimes against children; and those convicted of sex offenses or crimes against children juxtaposed their crimes with killing a police officer. Albert, who at 65 years old is serving a sentence of up to 230 years for multiple counts of rape against both minors and adults, discussed his punishment at the hands of the parole board:

So, when I saw the parole board, I thought, I was thinkin’, “Oh, they’ll probably give me five [more years].” They kept on talkin’, they gave me 10! The only other people that got 10 years at that hearing was two cop killers. They killed cops!

Prisoners who engaged in such comparisons generally experienced their punishment as far more severe than warranted, and therefore more severe than expected, resulting in a positive punishment gap and highly salient punishment.

### *Situating penal consciousness*

It is important to note that the penal consciousness theoretical framework laid out above was abstracted from a rich body of data on punishment, but is presented here as divorced from much of the empirical variation that characterizes social settings and actors. For the purposes of this article, the penal consciousness framework is presented as a general set of principles that operates independently of individual or institutional context. To the degree that these same principles apply to diverse groups of prisoners in numerous correctional settings, this is quite apt. Despite this, analyses not presented here did reveal patterns of variability that reflect the ways in which individual factors—including race, gender, and age—influence the penal consciousness framework (for more on this, see Sexton, 2012). More specifically, patterns were evident in the content of punishment described, the level of abstraction at which punitive referents were experienced, and the types of expectations informing the punishment gap, across gender, race, and age groups. These variations are the subject of forthcoming articles that explore the contingencies and complexities of the penal consciousness framework.

### **Discussion and conclusion**

The findings presented above form a theoretical framework that explores the patterned nature of punishment as it operates on the ground from the perspective of those who are being punished. The penal consciousness framework identifies the processes from which penalty emerges by simultaneously privileging the subjective consciousness of individual prisoners and locating this consciousness within the structure of the larger carceral system. This allows punishment to be examined *in situ* rather than in its ideal, articulated, or abstract form—an important advancement from conventional understandings of punishment. If penalty is to be

construed as “the whole *ensemble* of discourses and practices ranged around the penal question” (Simon and Sparks, 2013: 5, emphasis in original), then the penal consciousness framework allows prisoners a voice in determining the nature and extent of these discourses and practices in which they are irreversibly implicated, and in so doing, enables them to participate in the construction of penalty.

An understanding of the shape that penalty takes in prison, of course, reveals only a partial view of the penal landscape. Because the broad conceptualization of penalty employed here allows for punishment to exist quite apart from legal sanction, prisons represent only one of many possible sites of punishment. Consequently, it is crucial that our understandings of punishment not be limited to prisoners. It is beyond dispute that probationers and parolees are subject to legal punishment (Petersilia, 2003; Turnbull and Hannah-Moffat, 2009; Werth, 2012). Further, just as prisoners can construe as punishment circumstances and events outside the scope of their legal penalty, so too can others. Pre-trial or immigrant detainees who have yet to be convicted of a crime or legally sanctioned can still very much experience punishment (Bosworth, 2012; Miller and Guggenheim, 1990–1991; Thaler, 1978). Even those who are not under supervision of any kind can experience the effects of our criminal justice system as profoundly punitive (Feeley, 1992). Despite being inductively derived from the experiences and stories of prisoners, the utility of the penal consciousness framework is not limited to a prison setting. By providing us with the tools to examine a broad array of experiences of punishment in a systematic way, it can be used to map variation across individuals and contexts or over time, enriching our understanding of the fabric of punishment in the USA more broadly. The penal consciousness framework simultaneously provides an explanatory tool for the micro-level variations in punishment that have been richly documented elsewhere (e.g. Crawley, 2005; Crewe, 2011; Goffman, 1961; Kruttschnitt and Gartner, 2004; Liebling, 2011; Sykes, 1958), and serves to complicate the broader, macro-level explanations of punishment that currently dominate the penological theoretical landscape in the wake of the punitive turn (e.g. Garland, 1990, 2001; Simon, 2007; Whitman, 2005).

Macro-level theories have added a great deal to the punishment and society literature over the past half-century, providing invaluable insight into the course of punishment in the USA and beyond. These theoretical explanations all begin with the premise that punishment in the USA today is in some way harsher than in decades past. Indeed, a marked increase in penal harshness is the very phenomenon that they seek to explain. The penal consciousness theoretical framework both complements and problematizes these approaches by more fully examining the harshness—or relative lenience—of punishment as it takes shape in the institutions designed expressly for it. Through an examination of two subjective measures of penal harshness, severity and salience of punishment, penal consciousness allows us to examine the current composition of punishment in a very different way.

This shift from purely objective indicators of penal harshness to a constructionist perspective calls into question the very premise of the punitive turn. As evidenced by the analysis presented above, penal harshness in the United States is not

as uniform, nor as widespread, as many objective indicators would lead us to believe. The subjectivity that is paramount in the construction of punishment renders it an incredibly individualized phenomenon. No single prisoner's punishment is identical to another's, because each will have her own lived experiences and expectations. Similarly, no single prisoner's punishment can possibly be known before being experienced. When a prosecutor pursues a criminal charge or when a judge hands down a sentence, she knows only the penalty, not the punishment. If we accept the notion that punishment is inherently subjective, there are inevitable gaps between punishment as it is designed, punishment as it is enacted, and punishment as it is experienced. These gaps can be explained, at least in part, by the organizational structure of the criminal justice system. Hagan et al. (1979) describe the criminal justice system as a "loosely coupled organizational system" that lacks the often presupposed tight fit between structure and function. Loose coupling implies "entities (e.g., court subsystems) which are responsive to one another, while still maintaining independent identities and some evidence of physical and logical separateness" (Hagan et al., 1979: 508). The criminal justice system is loosely coupled in that it consists of numerous disparate agencies operating at various levels of governance, arrayed both hierarchically and laterally, working in conjunction with one another to various degrees and with varying effects. From this notion of loose coupling it logically follows that the penal mandates handed down at each level of the organizational chain, and the largely "ceremonial" (Hagan et al., 1979) rhetoric that guides them, might find themselves dramatically attenuated or reconfigured by the time they reach the ground.

This phenomenon is what sociolegal scholars have long referred to as the gap between "law on the books" and "law in action". In loosely coupled systems, "law in action" is generally operationalized at the level of practitioner. For the criminal justice system, this means that the bottom link in the organizational chain consists of the state actors who mete out or enforce punishment on the ground—in this case, prison staff. In contrast, the penal consciousness framework suggests an alternative, more complete, understanding of the organizational structure of punishment that affords prisoners a role in the enactment of punishment, and consequently in the consideration of the penal apparatus. Penal consciousness, and the penal subjectivities that it creates, shifts prisoners from being objects of punishment to being subjects with agency and power (albeit in limited amounts). More simply, penal consciousness creates penal subjects. Instead of being passive receptacles for punishment, prisoners are agents actively involved in the construction of penalty. With the inclusion of prisoners in the organizational structure, the criminal justice system becomes a far more loosely coupled system than ever before. The organizational ladder is not only extended vertically, but also spread out laterally at this lowest level, allowing for a new class of organizational actors to influence the shape of "punishment in action" as it moves largely independently of trends in "punishment on the books".

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