

GHOSTS BEYOND OUR REALM
A neo-abolitionist analysis of prisoner
human rights and prison officer
occupational culture

DAVID GORDON SCOTT
B.A. (Hons) M.A. (with distinction)

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Dehumanisation, which marks not only those whose humanity has been stolen, but also (though in a different way) those who have stolen it, is a *distortion* of the vocation of becoming more fully human ... It is not those whose humanity is denied them who negate man, but those who denied that humanity (thus negating their own as well) ... As the oppressors dehumanise others and violate their rights, they themselves also become dehumanised ... No one can be authentically human while he [sic] prevents others from being so. (Friere, 1972: 20-1, 32, 58)

ABSTRACT

The aim of the thesis is to critically evaluate the influence of the Human Rights Act (1998) [HRA] on prison service policies and prison officer understandings of prisoner human rights, in the period from October 2000 to October 2005. Discourse analysis is used to structure the thesis, with the implementation of the HRA located within what Foucault (1972) has called a “discursive formation”: that is, the complex interrelationship between penology, law, penal policy, and occupational culture. Utilising a neo-abolitionist normative framework, the legitimacy of the current meanings of prisoner human rights are scrutinised, and an alternative promoted. It is argued that in the five year period under review, the HRA has been restrictively interpreted in domestic courts and effectively marginalised in penological discourses and prison service policies.

Focus then turns to an empirical study of prison officer occupational culture, conducted in one prison in the North West of England in 2002. The central finding is that in the original starting position of officer-prisoner relationships, prisoners are constructed as ghost like figures whose needs and sufferings are invisible to officers. Justified through psychic distancing, prisoners are othered and constructed as beyond the realm of humanity.

The failure of the HRA to institutionalise a human rights culture or expand upon previous meanings of prisoner rights, is located within the inherent double dehumanisation of prison work, populist penological discourses, the limitations of legal interpretation, carceral clawback, and a lack of political will. The thesis concludes with the promotion of an alternative positive rights agenda for citizens, and a call for alternative means of dealing with wrongdoers that recognises their shared humanity.

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Glossary of Abbreviations

AI	Appreciative Inquiry
C of E	Church of England
DG	Director General of the Prison Service
ECHR	European Convention on Human Rights
ECmHR	European Commission of Human Rights
ECtHR	European Court of Human Rights
HRA	<u>Human Rights Act (1998)</u>
HIV	Human Immuno-Deficiency Virus
NOMS	National Offender Management Service
PROP	Preservation of the Rights of Prisoners
RAP	Radical Alternatives to Prison

Introduction:

Sympathy for the devil

In our punitive times, for many people advocating or defending prisoner human rights is considered perverse, unnatural, abnormal, or simply wrong. Such an approach is endorsed by those who believe that prisoners have *no rights* or that their duties or *responsibilities transcend their rights*. Presented to us as the natural way of thinking, it is assumed that all talk on prisons and human rights should operate within such self evident, or taken for granted notions. In the current times, where authoritarian populism pertains (Hall, Critcher, Jefferson, Clarke & Roberts, 1978; Hall, 1988; Sim, 2000), and penal expansionism is the order of the day, this worldview has become so established that it is now almost considered to be common sense.¹

Legitimate claims for human rights, and empathy for human suffering, should apparently be restricted solely to the powerless victims of crime in the community. In conjunction a zero sum mentality (Hudson, 2003b) is naturalised, assuming that the promotion of the human and legal rights of prisoners must necessarily involve the rejection of the rights of victims. Rights have to be deserved or earned, and consequently, as prisons are inhabited by bad or evil people who deserve to be punished, whatever rights infringements occur behind prison walls are not of public interest or political concern.² The aim of this thesis

¹ In December 1992, only 14 years ago, the average daily prison population for England and Wales stood at 40,600. An unacceptably high number but by January 2006 the figure had almost doubled, standing at 77,400, equating to approximately 142 prisoners per 100,000 of the general population.

² Talk defending prisons for locking up the dangerous should be immediately dismissed. Prisons in England and Wales are filled with mentally ill, under-educated, abused, poor, homeless, young, disproportionately black, men who have committed relatively minor property offences. Women prisons share these characteristics, often to an even more pronounced degree. This hardly fits with the above

is to consider how prisoner human rights, and their subsequent denial or acknowledgment, is understood by one clearly defined and highly relevant group of people: prison officers.

The research question

The central question which the thesis seeks to answer is:

Utilising a neo-abolitionist perspective, critically evaluate the role recent human rights law and jurisprudence have performed in the institutionalisation of prisoner human rights in the prison officer occupational culture of one prison, and the implications of the findings for the prison service of England and Wales as a whole.

The main thesis question necessarily requires a consideration of the following six component questions:

1. What is neo-abolitionism and what are the other main penologies conceptualising prisoner human rights?
2. What is the meaning and scope of recent changes in human rights law, and what have been their relationships to the definitions, legal or otherwise, of prisoner rights?
3. How has the prison service in England and Wales interpreted prisoner rights in operational practices and policies, and how have such understandings been transmitted to prison staff?
4. What does a review of the literature tell us about the main roles and duties of the prison officer and, what have been identified as the dominant officer working personalities and occupational cultures?
5. Is there any evidence, through an empirical study of prison officers, that prisoner rights have been institutionalised in the occupational culture?
6. What potential blockages and neutralisations to the institutionalisation of human rights have been identified?

construction of the 'evil' offender. (For up to date statistics see the Social Exclusion Report, 2002). More plausible accounts explaining the role of the prison point to the symbolic functions of punishment (Mathiesen, 1974, 1990; Swaaningen, 1997; Hudson, 1996).

The period under consideration spans from the lead up to the implementation of the Human Rights Act (1998) [HRA] on the 2nd October 2000, to the announcement by the European Court of Human Rights [ECtHR] in *Hirst v United Kingdom* on the 6th October 2005 that the denial of prisoners' right to vote breached the European convention. The centerpiece of the study is an empirical analysis of the dominant constructions of prisoner rights in the prison officer occupational culture at one prison in the North West of England. The thesis provides an original contribution to the literature through a critical review of officer understanding and perception of the HRA and human rights jurisprudence, in the immediate aftermath of the *Ezeh and Connors* (2002) ruling challenging governor adjudications.

The thesis question asks for an investigation of the institutionalisation of *prisoner human rights*. This entails a concern with whether prisoners are being treated humanely in the dehumanising context of imprisonment, as opposed to merely a review of the state of the law and penal policies post the implementation of the HRA. To address this we need to consider a neo-abolitionist understanding of human rights.

Neo-abolitionism, human rights and the acknowledgment of human suffering

Rene van Swaaningen (1997: 234) provides the most succinct, yet also most powerful, basis for thinking about prisoner human rights: that is simply asking the question "are you suffering?" A neo-abolitionist prisoner human rights agenda is a partisan standpoint

conceived as a combination of the *acknowledgement* of the human suffering of prisoners, and their claims to legal rights, entitlements, and shared humanity (Cohen, 2001).

Human suffering arises through pains created by something being taken away. It is a means of ruining the mind, body and spirit and effectively denying claims to a full experience of humanity. Suffering breeds dehumanisation, always doing something negative to those who experience it. The sufferings of those confined in prison can be best understood as both an *absence* and a *presence*. It is an absence in that the suspension of the right to freedom leads to a loss of meaning, dignity, liberty, security, autonomy, and a devalued conception of self, resulting in a senseless waste of human life. But it is also a presence, an acute awareness of what was lost, of what once was, of what will not be, creating feelings of loneliness, hopelessness, guilt, depression, anxiety, fear, and distress. Sometimes unsharable and unspeakable, suffering the pains of confinement can take overt and collective forms or be experienced alone in silence.

Evidence of human suffering in prison is not in short supply. As Liebling (2004: 166) points out, all those who encounter disrespectful and punitive environments find the experience both “traumatic and damaging”. A key part of the everyday working life of prison officers is the experiencing of the physical manifestations of the suffering of others. Prison officers often deal with people who have undertaken extreme measures in response to the inherent pains of imprisonment. In any day, an officer may find themselves cutting down a prisoner who has successfully hung themselves; providing resuscitation to a suicide attempter; dealing with a person who has smeared their own

excrement over themselves or the cell walls and is refusing to wash, eat or drink; or encountering a person so distressed that they perpetually cut up their arms, their legs or neck, mutilate themselves, or attempt to burn themselves alive. More mundanely, but equally disturbingly, officers spend a great deal of time with people so demoralised and damaged by their experience of imprisonment and the outside world, that they have become apathetic and unable to cope with the harsh realities of life.

Neo-abolitionists argue that we should acknowledge prisoner *rights without reciprocity* (Swaaningen, 1997; Hudson, 2003b). Despite their marginalisation in mainstream penal debates and penal policies, abolitionist approaches, in various guises, have consistently placed the promotion and protection of prisoner rights at the centre of their analysis (Mathiesen, 1974; Sim, Scraton & Gordon, 1987; Carlen, 1990; Scraton, Sim & Skidmore 1991; Sim, 1994; Cohen, 1998). Rights and responsibilities are detached here, but in direct contrast to the privileging of responsibilities, prisoners are considered to have *inalienable* rights, irrespective of their behavior. Inalienable human rights cannot be invalidated through wrongs committed, so law breakers always retain the right to be treated with human dignity and respect (Porowski, 1991; Hudson, 2003a; 2003b).

This humanist approach to prisoner suffering and human rights is not without its critics. It has often been argued that natural, inalienable or 'human' rights are simply fictions without foundation (Douzinas, 2000). Critics of inalienable human rights have argued that the ideas determining the definitions of human rights merely reflect specific historical configurations, shaped by the social, economic, and cultural factors dominant in

that specific historical epoch.³ It is maintained that attempts to identify the *human essence* are shrouded in controversy, with much evidence from the past of exclusionary and partial definitions, justifying dehumanising practices against groups considered beyond the realms of humanity (Bauman, 1989).

Both of these concerns are important, but an acknowledgement of the social, political, and historical construction of the *content* of human rights, does not automatically mean that the *concept* of human rights and its political desirability should be abandoned. Indeed, there can be no basis for critiquing *dehumanisation* or human alienation, in prison or elsewhere, if we do not have in place a solid and positive sense that there are some human characteristics that must be promoted and protected. The recognition that our shared humanity exists independently of social, historical, and political constructions provides the baseline from which critical value judgements of the intolerable and inhuman can be located.

Humanism and the acknowledgement of offender suffering and shared humanity, are central to neo-abolitionist approaches to prisoner rights. Whereas penal abolitionism in the United Kingdom and the rest of Europe developed in the 1970s by making clear links with prisoner legal rights and support for the prison union and collective action (Mathiesen, 1974; Fitzgerald, 1977; Swaaningen, 1997), neo-abolitionism has been more focussed on promoting prisoner rights as *human* rights; that people in prison remain human beings. In terms of legal rights, emphasis has been on the importance of recognising the possible positive role procedural and substantive legal rights can play in

³ See Campbell (1983) for an excellent review of this discussion.

the fight against dehumanisation and the minimisation of suffering (Bauman, 1991, 1993, 1995; Swaaningen, 1997; Hudson, 2001).

Neo-abolitionists have also argued that human rights have moral and political utility, as they provide a dual function, both critiquing the infamies of the present and providing a means to promote latent visions of social justice. Talk of inalienable rights, gives us a language that can provide a shield to protect the powerless and vulnerable, through guaranteeing procedural safeguards and minimum legal standards, and a means of highlighting the stark and dehumanising and painful realities of imprisonment. Inalienable rights can also provide a sword that gives its bearers the opportunity to articulate hidden and radical visions of justice and shared humanity when conservative political cultures dominate (Bauman, 1991; Cohen, 1990/1998; Swaaningen, 1997; Douzinas 2000). In our time of “regressive modernisation” (Hall, 1988), talk of the inalienable rights of prisoners may prove to be an indispensable tool for progressive and humanitarian change.

The thesis is focused on the denial and acknowledgment of prisoner human rights by prison officers. Following Cohen (2001: x, xiii), *acknowledgement* is understood as occurring when an officer has knowledge of human suffering in prison; recognises the full reality of the pain and harm this information imparts; and identifies the personal implications of possessing such knowledge, leading ultimately to some form of action that attempts to mitigate or end the injuries inflicted upon their fellow humans. It means knowing the truth about the extent and forms of the pains of imprisonment, and doing

something about them. When this does not happen, when an officer sees or is aware of human suffering and legal rights abuses in prison but somehow is able to re-interpret or re-contextualise the implications, then the subsequent gap that develops between cognition of events, and possible action to alter the situation, is understood as *denial* (Ibid: 9).

Cohen (2001: 7-9) argues that there are three main ways in which people deny unwelcome knowledge of human suffering: literal denial, interpretive denial and implicatory denial. Strategies of 'literal denial' claim that there is no validity to assertions that human rights infringements occur in prisons in England and Wales. This approach is not very convincing, especially for those working in prison. A more plausible form of denial, perhaps, may be to give the act a different, less problematic explanation. Human rights abuses, when defined with a different [official] interpretative lens and framework, may appear to become less painful or normalised as a necessary evil.

A person banging their head against a cell door or wall is not in pain, or mentally ill, or making legitimate protest to their confinement, but becomes merely a pathetic wretch or inadequate seeking attention; those who self harm and [successfully] attempt suicide are merely making demands and behaving like spoilt children; those who smear excrement over themselves create their own degrading environment and should be held responsible for those conditions; eating a meal while another person urinates or defecates in the cell toilet is simply an unavoidable reality in times of overcrowding. In other words, what we see is a new meaning being imputed into the events, leading to "interpretative denial".

Cohen's third form of denial is to recognise the reality of human sufferings but to deny any personal implications arising from them. This entails utilising rationalisations to provide assurances that there was actually no need for us to have worried after all, and even if the incident was a rights infringement, there is nothing we can do to help anyway. It is this form of denial of human suffering that is the central dynamic of the thesis.

Techniques of denial and prisoner suffering

Cohen (2001: 60-61) looks to the criminological writings of Gresham Sykes & David Matza (1957) and their techniques of neutralisation, to provide a framework for understanding justifications of decision making processes when determining [in]action. For Sykes and Matza (1957), the techniques of neutralisation were used to break bonds, ties or constraints that might restrict deviant behaviour. Challenging the sub-cultural framework of essentialised differences that was influential at the time of writing, Sykes and Matza (1957) maintained that deviants were the same as everyone else, sharing the dominant ideas, values and morality of the wider culture. Deviance from such norms was only possible when neutralisations were used to justify their breach, without actually denying the legitimacy or validity of these values. Sykes and Matza (1957: 668) argued that,

the delinquent both has his cake and eats it too, for he remains committed to the dominant normative system and yet so qualifies its imperatives that violations are 'acceptable' if not 'right'.

The "techniques of neutralisation" can be used to illustrate the ways in which human rights abuses of prisoners may remain unacknowledged by prison officers (Cohen, 2001). Sykes and Matza (1957) highlighted five types of neutralisation. We shall briefly

consider each in turn, examining how they relate to rationalisations ignoring prisoner appeals to human rights.

1. Denial of Responsibility

This is where a person denies that they are fully or even partially responsible for human rights infringements they have witnessed or even undertaken. It was not their fault, it was an accident, or it was not intentional. It has nothing to do with them. The perpetrator, or observer, can somehow claim ignorance for dealing with the consequences and implications of the rights abuse. *Why should I be responsible for what happens to prisoners or if their human rights are protected or endangered? I am not a lawbreaker, a criminal. I would never have done that bad or evil behaviour. I am a responsible officer and they are irresponsible - they deserve to be punished. Why should I care? Evil and Bad people are sentenced to prison, good people are not.*

2. Denial of Injury

What happened to the prisoner did not really hurt. There was no or only limited damage caused. The action was harmless or the harm and suffering created by the behaviour was insignificant. *Prison is not harmful. It is a holiday camp - even prisoners say this. I don't care about conditions, HIV, rapes, suicides, overcrowding. It is an easy life. Prisoner rights cannot be infringed because they only have privileges. Prisoners don't even know or notice, they do not care anyway. They do not even want these rights! They are so inadequate we are actually doing them a favour.*

3. Denial of Victim

There is no identifiable victim of the action, or that the prisoner lost their claims to being a victim by precipitating the action or undertaking the offence that led to incarceration.

Prisoners can not be victims because they forfeited their right to be protected from harm when they broke the law. They deserve to be harmed! They should be assessed by different standards to law abiding citizens.

4. Condemnation of the Condemners

The person who is complaining should also be condemned or share the blame. They may be hypocrites, liars or not seen as a respectable person or an authority who can make such comments. As the popular saying goes, people in glass houses should not throw stones.

There are two categories relevant here: do-gooders and wrongdoers themselves.

A) Do-gooders, lefties or woolly liberals do not think about victims of crime - they are too soft on offenders. Anyone advocating prisoner rights cannot be taken seriously, as they do not take account of the real crime problem or the needs of those victimised.

B) The perpetrator should be condemned. Why are they in prison in the first place? They are beyond the pale. They should be abandoned after what they did. They do not deserve human rights.

5. Appeal to Higher Loyalties

That the harm was done to the prisoner was for the greater good and not for hedonistic reasons or self interest. The infringements of prisoner human rights are serving wider purposes, personal commitments, ties, bonds and beliefs. *We should think about the real*

victims of crime! If I'm going to help anyone it will be somebody who has been a victim. Did the prisoner think of the victim when they broke the law? What about the victim's rights!

In addition to these five neutralisations of prisoner suffering are two further forms of denial: denial of knowledge and moral indifference. Cohen (2001: 78-87) describes “denial of knowledge” as arising where one denies knowing about a human rights abuse at all. Rationalisations could include: I did not see, I did not notice, I did not know, it does not happen on my watch or it does not happen on my wing. Gradations of apparent knowledge of prisoner suffering occur when officers close their eyes, change shifts or location in the prison, refuse to name the problem as it really is, or recontextualise an event with different language. Prisoner human rights are relocated into a different moral and cognitive universe where if you see no evil, and hear no evil, there is *no* evil. Cohen's final technique of denial, “moral indifference” (Ibid: 98-101), occurs where prison officers are so committed to the human suffering taking place that there is nothing to be neutralised, as “there is no morally legitimate universe outside the ideology” (Ibid: 98). Morally indifferent prison officers believe that prison should be places of intense suffering, or prisoners have no legal rights. Nothing is seen as wrong if inalienable human rights are denied.

Sympathy for folk devils: for social justice and human rights

Strategies to cultivate acknowledgement have often entailed playing on people's emotions in an attempt to circumvent rationality, and go straight for the jugular of human

conscience (Cohen, 2001). The strategy aims to shock the person out of their comfortable existence, and motivate them to *do something, anything* about human suffering. Such a strategy may be a successful tool for some sufferers, but encounters problems when dealing with prisoners. Cohen (2001) reminds us that archetypal sufferers are portrayed as “innocent”, “vulnerable”, “blameless”, “defenceless” or “virtuous”. The closer the victim to such a positive construction, the more likely their rights infringements will be viewed sympathetically, and responded to appropriately.

Offenders and prisoners, unless they are confined on political grounds or there is overwhelming evidence of a miscarriage of justice, do not fit easily into the above categories. As Cohen (2001: 177) indicates, if victims “are not portrayed as completely blameless, then understanding and empathy are eroded”. Vulnerable, virtuous and dependent sufferers have human rights - we should help these particular people, not because the problems of intentional harm and suffering themselves are unacceptable, but because they *personally* do not deserve to suffer. These people should be saved, helped, freed, or supported as a result of their specific biographical backgrounds. These humans are the *most deserving* of our attention. They are the *most eligible* for support.

We must be sceptical of human rights agendas that become entirely dependent upon the empathetic construction of the victim, for if one is to be helped, one must first pass some kind of humanity test. Those who fail, and many prisoners will, are denied their inalienable rights. Indeed, it can be questioned whether such strategies are in fact promoting universal human rights at all. If the focus is upon the positive personal

attributes or not of the person, we are in danger of changing from proposing an authentic human rights agenda to one predicated on the empathetic construction of the sufferer.

In a similar vein Barbara Hudson (1998: 206) has raised important concerns in the sentencing of offenders and their pleas for mitigation. Some pleas based on an offenders' background may lead to lesser sentences, but the end result is not always just. Hudson problematises the creation of the "sympathetic self", where offenders can be categorized as either "deserving or undeserving". Such a strategy is again predicated on the empathetic construction of the offender. This is not the case for those perspectives rooted in social justice.

The principle of social justice does not depend on your moral awareness of people like you - but your readiness to extend the circle of recognition to unknown (and even unlikeable) people who are not at all like you. (Cohen. 2001: 183)

Social justice, shared humanity, solidarity with sufferers and social inclusion must be the dominant strategies for all human rights cases. We all do wrong, sometimes our wrongs are punished. The distribution and actual justifications of the deliberate infliction of pain should be our focus rather than strategies looking to the biography of the individual sufferer. The empathetic construction of sufferers creates a picture of the worthy, the deserving people, those who we should help, the principle of *more eligibility*.

Neo-abolitionism must follow Cohen when he argues, "I believe that unless 'negative imagery' is allowed to speak for itself, the universality of suffering will never be acknowledged" (Cohen, 2001: 185). Human rights cannot be built on the apparent

innocence, vulnerability or perfection of those subjected to suffering. Human life is too ambiguous, and such a construction too fragile and precarious to be sustained for long. Nobody is less or more worthy of human rights. Infringement of rights should not and must not be tolerated and human suffering, whoever the victim may be, fully acknowledged. Prisoner rights, and the promotion of the rights of those folk *devils* who have little public *sympathy*, provides an interesting illustration of the depth of commitment to universal human rights.

The prison as an inherent threat to prisoner human rights

It is much easier to identify what human rights are not, and what threatens rights, than provide a positive statement or manifesto (Swaaningen, 1997; Douzinas, 2000; Campbell, Ewing & Tompkins, 2001; Ewing & Gearty, 2001). What is certain is that any human rights agenda must always be more than simply a list of demands, that can be easily circumnavigated and re-interpreted (Cohen, 2001; Norrie, 2001). Prisoner human rights have been understood as the acknowledgement of prisoner suffering, legal rights and shared humanity. By its very nature imprisonment creates *inherent* threats to our human rights.

1. The prison is the negation of full humanity

Prisons are cruel, lonely, destructive, isolating spaces presenting a constant menace of abuse, maltreatment, and ultimately dehumanisation. Prisons are intended to waste life, to negate humanity and positive lived experiences. They breed anxiety and despair, creating *a sense of loss*, leading to unhappiness and longing. Imprisonment is brutal, isolating and humiliating and is an embodiment of intentional human suffering.

2. By its nature the act of confinement as the suspension of liberty is painful and will always create human suffering.

Imprisonment involves the suspension of the right to physical liberty. The deprivation of liberty will always be painful, and whatever the specific living conditions the act of confinement cannot be otherwise. Thomas Mathiesen (1986: 92) makes this point well.

Pains of imprisonment are structurally produced, they are part and parcel of the structure of prisons. Therefore, though concrete material circumstances and prison organisation may alleviate the pains, they cannot be abolished. Among the deprivations most difficult to alleviate are the deprivation of autonomy and the deprivation of security.

Here Mathiesen is clearly pointing to Gresham Sykes' (1958: 63-83) famous definition of the five structural pains of imprisonment: the deprivation of liberty; deprivation of goods and services; the deprivation of heterosexual relationships; the deprivation of autonomy; and the deprivation of security. Such systematic and unremitting challenges to self respect, personal safety, and other pre-requisites of humanity are endemic to the largely hidden world of the prison.

3. The act of imprisonment undermines human dignity, privacy, sense of the self and social constructions of the meaning of life.

It is hard to imagine what it is like to spend between 15-23 hours a day in a prison cell, or that when you leave you have only very limited choices, power or sense of personal responsibility – somebody else will open doors for you, tell you what to do, where to go, when to eat, work, sleep and perhaps even speak. This imagery presents us with a frightening picture of the tremendous emotional, physical and psychological toll imprisonment can have upon all those they entertain. Compounded by a profound lack of

privacy in the very architecture of the prison, and the prioritised demands of ‘security’, prison leaves some people shattered. The self comes under serious threat, undermined by a sense of futility that brings the meaning of life into question. Some prisoners will resist but for others there is the real danger of passivity, and as a result slipping into apathy, listlessness, lack of hope and powerlessness (Solzhenitsyn, 1963; Cohen and Taylor, 1981).

4. Prisons are rooted in physical force, violence and coercion.

The prison is a lawful “spatial matrix” created for the legitimate exercise of physical repression (Poulantzas 1978: 104). By nature, the prison is a form of *terror*, but conceived and justified as legal *terror*. The very existence of this specialist punitive space provides symbolic potency to the law and the agencies of the capitalist state (Hall, 1988). It legitimates degradation, physical force, reproduction of violence and the deliberate infliction of pain and suffering, as appropriate means of intervention in the social world in responding to social problems, harms and wrongs (de Haan 1991).

5. The term prisoner and the enforced isolation of confinement create a negative, stigmatised and dehumanised master status.

The exclusion of people through imprisonment is problematic as it creates a stigmatised and dehumanised “class of outcasts” (Hulsman, 1986). Prisons negate humanity through the application of the label of prisoner, constructing an othered and lesser master status. Following the insights of labelling theory (Becker, 1963), other potentially more positive aspects of the wrongdoer’s characteristics are subsumed beneath a criminal identity which is utilised to justify the suffering they are subjected to. Denying the prisoner full

personality and self, they are re-categorised and redefined with a negative terminology, reducing them to a one dimensional figure.

6. Imprisonment [further] damages prisoners making the acknowledgement of human rights post-imprisonment more unlikely.

Suffering through imprisonment damages prisoners, their quality of life and sense of well-being and does nothing to change the social contexts through which the wrongdoing was perpetrated. Imprisonment fails to deal with either deeply ingrained social problems on the outside, or help wrongdoers fulfill their rights in the community. In this sense prison debilitates (Mathiesen, 1990). *Disculturalisation* (Goffman, 1963) means the legacy of incarceration continues long after the sentence is spent. Imprisonment undermines human rights for individuals and society as a whole. It is an irrational policy response to 'crime' that creates problems, rather than solves them (Mathiesen, 1974; Foucault, 1977; de Haan, 1991).

To these **six inherent threats** can be added three more structural dangers of incarceration, which have characterised the actual role of imprisonment in England and Wales since the eighteenth century and before (Ignatieff, 1978):

1. In practice the prison is a 'total institution', creating a new world in which the confined become vulnerable to excessive pain caused by minor deprivations.

The prison place is a "total institution" (Goffman, 1963: 11), that is a living or working space where a significant number of like situated people are "cut off from the wider society for an appreciable period of time, [and] together lead an enclosed, formally administered round of life" (Ibid). Providing an all encompassing character, the prison

severely restricts social intercourse with those on the outside. A new dehumanising world is created within its walls, shaping the interests and meanings for those on the inside. Events, objects and interactions take on new significance, resulting in a distinct prison interpretive framework. Looking out from this gold fish bowl, things that may be considered minute on the outside are transformed, often taking on new meanings and significance for both officers and prisoners. Such degradations created through the minutiae of prison life include: the [poor] quality of the food, access to family and friends, telephones, visits, letters, work, education, practicing religion, legal advice, the fairness of disciplinary hearings and complaints procedures, or the attitudes and treatment of other prisoners towards prisoners or the staff who would guard them. Sufferings created through such denial are massively increased because of the wider structural deprivations of imprisonment.

2. In practice prisons are degrading physical plants starved of resources, leading to increased conflicts and ill health.

Prisons are poisonous human warehouses that in practice have been starved of resources, with acute deprivations fueling conflict between both prisoners and staff (Cavadino & Dignan, 2001). It is impossible to be unaffected by the very constraints of the physical structure of a prison, its drabness, smells, stale air, peeling paint, artificial light, ever-present security measures, locks, bars and the highly noticeable pained expressions on the faces of those contained within. In prisons in England and Wales today the cells and wings are unhealthy environments, sometimes even infested with rats or cockroaches as well as more mundane dirt, mould and excrement. They are inhospitable and unpleasant

places to live, work or visit and are deliberately intended to be so. Pain begets pain, increases human dissatisfaction, and undermines physical and mental health for all.

3. In practice prisons are lawless institutions.

One of the major contradictions of imprisonment is that the institutions devised to hold [subpopulations of working class] lawbreakers, are themselves largely lawless (Greenberg, and Stender, 1972; Glick, 1973; Wright, 1973; Mitford, 1974; Fitzgerald and Sim, 1982). Penal regimes are grounded in daily surveillance, discipline, discretion and unfairness, and conceived and practised as if they operate beyond the law. The negation of basic rights reflects structurally unequal power relations inherent in the penal system, where the denial of liberty actually turns into the confiscation of citizenship. Here the system of privileges operating in their place becomes just another mechanism of control.

Inmates are subject to a regime implying a fundamental lack of clear-cut rights, and a vast amount of discretion on the part of prison officials ... (Mathiesen, 1986: 92)

In prisons the rule of law, legal accountability and penal democracy are largely snuffed out by an insurmountable and intimidating autocratic culture rooted in discretion, secrecy, personal authority and control (Fitzgerald & Sim, 1979; Scraton et al, 1991; Carrabine, 2004). The exacerbation or mitigation of the inherent threats to humanity created through imprisonment today is operated through such a lens.

The role of the prison officer and the acknowledgment of prisoner human rights

This final concern takes us back to our main focus: how do prison officers respond when confronted with the suffering and claims to legal entitlements and shared humanity of

those they contain? Prison officers spend more time in prison than any other occupational group, and probably are inside longer than most prisoners. Imprisonment is painful and dehumanising for all it encompasses. Like prisoners, prison officers are often confronted with fear, mental tension, boredom, uncertainty, isolation and a sense of powerlessness; suffering low morale and expressing classic symptoms of alienation (Marx, 1964; Lombardo, 1989). In an ironic twist of fate, those who inflict pain are also inflicted; those who perform dehumanising tasks become themselves dehumanised.

Prison officers are front line troops, and their interactions and relationships with prisoners perform a key part in determining the depth of suffering imprisonment can impart. The kind of relationship that exists, close or distant, antagonistic or friendly, professional or personal between an officer and prisoner, provides one of the most significant aspects of prisoner lived experiences (Liebling and Price, 2001). How officers respond to prisoner requests, how they address prisoners, the amount of time they spend talking to them, the levels of respect and dignity they infer in these interactions, are all important in shaping their sense of self. Attitudes and stereotypes adopted by an officer influence understandings of their duty of care and responsibilities in ensuring the safety and well being of those in their custody. Commitment or neglect in protecting the mentally ill, restraining from using physical or verbal violence, preventing bullying or suicides, all indicate how seriously officers acknowledge or deny moral and legal principles, such as the right to life.

It would no longer be true to say that prison officers have been neglected in penological research. In recent years there has been a number of significant studies on prison officers in the USA (Kauffman, 1988; Lombardo, 1989) and in the UK (Liebling and Price, 2001; Crawley, 2004). This literature adds to a major historical analysis of prison officers (Thomas, 1972); unpublished PhD's (Colvin, 1977; Carter, 1995); Home Office and prison service staff surveys (Marsh, Dobbs, Monk & White 1985); prison officer autobiographies (Merrow-Smith 1962; Cronin, 1967; Keogh, 1982; Hallet, 1992; Yates, 1993; Merlo, 1995; Dickenson, 1998; Martin, 2003); undercover journalism (Conover, 2000); psychological experiments (Haney, Banks & Zimbardo, 1973); and empirical sociological studies on either a specific prison or prisons (Sykes, 1958; Morris and Morris, 1963; Jones and Cornes, 1977; Elliot and King, 1978; Jacobs, 1978; Scraton et al, 1991; Sparks, Bottoms & Hay, 1996; Carlen, 1998; Liebling, 2004) or the penal system as a whole (Hobhouse and Brockway, 1922; Elkin, 1957; Klare, 1960, 1973; Mitford, 1974; Fitzgerald and Sim, 1979, 1982; Stern, 1987).

Despite recent advances in the field of prison officer occupational culture, there remains considerable scope for the development of a critical analysis of prison officer occupational cultures and understandings of prisoner human rights. Though there are a number of important studies in the abolitionist tradition on prisoner rights exploring the experiences of prisoners (Mathiesen, 1974; Scraton et al, 1991), there is only limited critical research from this perspective on prison officers (Fitzgerald and Sim, 1979/1982). Most of the above research has then been undertaken from a perspective broadly sympathetic to that of the prison officer (Kauffman, 1988; Lombardo, 1989; Carter, 1995;

Crawley, 2004), or have adopted appreciative models of inquiry (Liebling and Price, 2001). Those studies that have highlighted concerns with either the role or culture of prison officers have remained within a liberal discourse locating the problems in the sphere of the prison itself or the criminal justice system (Klare, 1973; King and Elliot, 1978; Stern, 1987). The aim of this research project is to address this gap in the literature.

Chapter structure

Chapter one outlines the partisan standpoint adopted throughout the thesis and describes the research methodology used in the empirical research. Discussing the limitations of appreciative inquiry and highlighting the principles of critical, but partisan research, the chapter details the ethics and principles of the fieldwork undertaken, and highlights key incidents and problems encountered in the research process. Chapter two details the theoretical method and normative framework of the thesis. Discourse analysis is adopted to provide a coherent means of organising and describing materials (Foucault, 1980; Hall, 2001). The chapter highlights the importance of considering the way in which prisoner human rights are defined, interpreted, respected, or ignored in penology, law and penal policy and the implications for prison officer occupational culture. After providing a review of the literature on penal legitimacy, the chapter draws on the analytical and evaluative framework of neo-abolitionism to facilitate an interpretive lens for assessing the legitimacy of the overall findings (Swaaningen, 1997; Carlen, 2002).⁴

⁴ For neo-abolitionists the current use of the sanction of imprisonment entails a crisis of moral and political legitimacy. The differential exercise of penalties regarding social harms, the definitions of which largely reflect the deep divisions in the ownership of the social product, identifies the prison as a major strategy in the regulation and disciplining of the weak, vulnerable and disempowered. The prison has a profound political nature, the very existence of which is shaped by the configuration of wider socio-economic power relations.

Chapter three examines the main penologies shaping ways of thinking about prisoner human rights. Locating the discussion within the current socio-economic and political context, the chapter outlines the main principles of less eligibility, actuarialism, managerialism, welfare *through* punishment, liberal humanitarianism, and penal abolitionism. These six penologies provide the template for understanding how prison officers' conceptualise prisoner suffering in the empirical study. In the current period of relative economic stability and demand for labour, it is argued that the role of the prison has changed from a waste disposal depot to a recycling plant. Correctly managed prisons are conceived as an opportunity to inculcate the responsabilisation of prisoners to appease the legitimate consumers of the prison - victims. Chapter four investigates the development of prisoner rights jurisprudence in the United Kingdom domestic courts and appeals to the ECtHR at Strasbourg in the period from the 1970s to October 2005. The chapter focuses specifically on the HRA and domestic and European case law since October 2000. The chapter provides a context to the subsequent consideration of how prisoners' legal rights arising from the HRA have implications for the operation of existing prison service policies and practices.

Though there is a reservoir of potential meanings and definitions of prisoner human rights it is through official documents and publications, such as the annual report and accounts, prison service orders and instructions, prison rules and government legislation pertaining to imprisonment, that prison service priorities and directives are outlined and directly communicated to prison staff. Entailing the language, logic and subsequent

representations of penal realities, the manner in which the government and prison service have interpreted and circulated knowledges of prisoner human rights, and most recently the Human Rights Act (1998), performs as a key means for prison officers to grasp how seriously a particular initiative is being taken. Chapter five examines penal and government policies since 1990 and the manner in which the prison service responded to the HRA, pointing to the submergence of prisoner rights beneath the priorities of managerialism and neo-liberal responsabilisation strategies.

Chapter six entails a literature review of the main research on the role and function of prison officers and prison officer occupational cultures. Challenging the appreciative approach to prison officer research, the chapter argues that rather than peacekeeping, prison officers use their discretion to discard the rule of law and adopt patterned discriminatory working rules. The chapter provides a discussion of officer adaptations to the prison environment, and looks to highlight the strategies prison officers have adopted to psychologically survive the prison place and the implications this has for officer morality and the recognition/acknowledgement of prisoner humanity.

Building on the previous discussion, chapter seven discusses the rules structuring the different prison officer working personalities uncovered through the research: the careerist, the humanitarian, the disciplinarian, and the mortgage payer. Chapter eight details the manner in which prisoner relationships, suffering and perceptions of shared humanity are denied or acknowledged in the dominant occupational culture. Particular consideration is given to how strategies of resistance and neutralisations are engendered.

The conclusion utilises an alternative moral and political value judgement to provide a review of the legitimacy of prison officer understandings of prisoner rights. Here the depth of the institutionalisation or naturalisation of a rights culture and acknowledgement of prisoner sufferings or otherwise in the prison service is reviewed. The chapter then provides a discussion of the importance of acknowledging wrong doers' human rights beyond an empathetic construction of their biographies, and offers an alternative re-articulation of citizens' positive rights from a neo-abolitionist perspective.

Chapter One:

The partisan penologist: doing critical research in prison

The aims of this chapter are to detail the partisan standpoint of the researcher and outline the qualitative methodologies used in the fieldwork. The chapter starts with a discussion of the importance of adopting critical research values. This value base is detailed through a comparison with, and critique of, appreciative inquiry [AI]. Its significance is further emphasised through a discussion of objectivity and its links to the recognition of shared humanity. It is argued that political commitments should be tied to the acknowledgement of human suffering and partisanship expressed in solidarity with those at greatest risk of suffering and dehumanisation in prison – the prisoner. This is deemed to be the most effective means of addressing the underscoring human rights question of the thesis: do prison officers acknowledge the suffering and legal rights of prisoners? The focus then shifts towards the factors involved in influencing the design of the study. The experiences, problems, highs and lows of doing prison research are then detailed, illustrated with key incidents that arose during the fieldwork and documented in the prison journal. A review is then undertaken of the snowballing technique used to contact respondents, and an account of the social backgrounds of officers in the research sample. The chapter concludes with reflections on how the lessons drawn from the research experience, and insights of wider literature, can be used to inform the values of a partisan penologist.

Appreciative inquiry and research values

Values are involved in the selection of the problems we study; values are also involved in certain of the key conceptions we use in our formulation of these problems, and values affect the course of their solution. (Mills, 1959: 78)

In the thesis critical research values informed the research process. This is best approached through first identifying what they are not. In this section we consider the strengths and weaknesses of the alternative appreciative inquiry (AI) as a means of understanding prison officer discourses (Liebling & Price, 2001). AI is outlined and then a number of concerns about this methodology are raised and compared with critical research values. It is recognised throughout that, to fully appreciate the way in which critical research is conducted, consideration of the broader historical and political connections between individual experiences and social structures is required (Mills, 1959; Barton, Corteen, Scott & Whyte, 2006).

Appreciative Inquiry (AI) is intended to be a fair and inclusive research method that tells the “whole story” (Liebling et al., 2001: 162). It claims to provide a faithful or truthful account of the respondents’ positive achievements, survival strategies, and success stories, alongside their negative experiences. As the approach is future rather than present or past orientated, outcomes and methodology are intimately tied. Questioning is appreciative in that as a mode of inquiry, it wishes respondents to dwell on the *best* as well as the worst aspects of their prison experience. Interview questions focus on ‘prison values’ and are very specific. Answers are required to be evidenced by an example, illustration or story from the respondents’ actual experiences. AI claims to provide a more sensitive, nuanced

and instructive picture of the prison, and therefore more valuable approach than the traditional problem-orientated studies. The researcher should represent its subjects fairly, listen, empower and facilitate changes and foster mutual respect.

Importantly the research does not look to expose flaws in the prison, but rather to accentuate the positive and have an open dialogue about how to achieve good outcomes, secure compliance and treat people with respect. A key outcome is that the respondents will feel more valued, and thus have a more positive orientation towards their role, tapping into the dormant potential of officers. Through focusing on the positive, officers will find new meanings, fulfillment, energy, strength and job satisfaction, which will lead to better practice. It is an approach to organisational transformation that is,

based on strengths rather than weakness, on visions of what is possible rather than what is not possible. It identifies achievements and best memories, and through this technique, locates 'where energy is' in an organisation ... It is based on the establishment of familiarity and trust with a workgroup in the first instance, on the discovery of that organisation's best practices, memories and achievements. (Liebling et al., 2001: 162, 163)

Through the research process the respondents' knowledge is uncovered and then generalised to create an idealised vision of best possible practice; something that is just out of reach in the current circumstances. The newly energised officers can go and turn this vision, based partially on their own experiences, into a new reality. No new resources or widespread structural changes are necessarily required, for this approach is about transforming the individual and collective officers' private troubles through boosting morale, transforming the penal values held by officers, and by discovering and then

achieving, attainable positive goals in the prison. Such an approach is understandably very attractive and useful to the prison service and its managers.

As a methodology and qualitative piece of research, the principles of listening, respect and fairness in the interviewing process are welcomed. The approach could also be defended on ethical and political grounds, for it looks to give something back to the respondents and to transform negative penal environments. However these principles are not unique to AI, and as a potential method for independent prison research it has a number of serious drawbacks. Any kind of AI research would require massive access to be granted from the prison authorities, considerable funding and a large amount of time and other resources. Such research would require the explicit cooperation, and maybe even participation, of prison service managers. This can lead to problems. Perhaps most damningly the research can be used merely to support and justify the interests of the powerful and the capitalist state. The researcher may become a research technician gleaning knowledge, which can be used to further justify the status quo. Mills (1959: 193) puts it well when he argues,

[t]o *appeal* to the powerful, on the basis of any knowledge we now have, is utopian in the foolish sense of the term. Our relations with them are more likely to be only such relations as they find useful, which is to say we become technicians accepting their problems and aims, or ideologies promoting their prestige and authority.

The use of AI could be reduced to a human resources exercise to get better and more efficient outputs, rather than being tied to [critical research] values based on social justice. Questions can also be raised about its status as a method. It is both more and less than research: *more* because it looks to not just observe and discover, but also to change; and *less* because the reality may have to be distorted into a mythical positive construct in order

to achieve this. Accurate pictures of the lived experiences of those in the prison either manager, staff, or prisoner are unlikely to arise from such interventionist research.

A major claim of AI is that it provides a fuller account of the prison experience than critical research. Such a claim to *truth* though is compromised by both the approach and aims of the 'method'. In AI the reality of the situation is replaced by a projection of what could be, not what is: the mythical rather than real. This is not the whole story, but rather a reality that has been repackaged and reinvented. By necessary implication, AI cannot focus on the negative, for if it does so, future practice could be distorted so that worst practice is achieved. With clear Orwellian overtones, such a future orientation means that what is being presented as the present and past is not *what is*, but *what it could be*. But is this really then an accurate means of assessing the here and now? Research should uncover the real, the truth, whatever this looks like. Again, as Mills (1959: 67, 78) argues,

[a]ny style of empiricism involves a metaphysical choice – a choice as to what is most real ... One tries to get it straight, to make an adequate statement – if its gloomy, too bad; if it leads to hope, fine.

As a metaphysical choice, it seems more appropriate to allow the respondents to detail their stories, whether positive or negative, so that their construction of events and reality can be outlined and critically interrogated. There should be no great aim to change the prison *through the research process itself*. Independent findings might be negative or positive, but at least it is an account of peoples' actual lived experiences, which can then be used as evidence to inform changes if appropriate.

The actual future transformation that AI is trying to achieve through the manipulation of officers' past and present experiences can also be problematised. In this sense AI seems like a therapeutic and individualised means of building staff self esteem and morale. The aim is to ameliorate the negative and inherently dehumanising reality of imprisonment, without making any connections with the equally important transformations of inequitable power relations in the prison or in wider society, indicating a distinct lack of a 'criminological imagination' (Mills, 1959; Barton et al., 2006). AI looks to achieve consensual relationships so positive, functioning and morally performing prisons can pertain. But this structural functionalism fails to consider the inherent conflict, pains or inequitable power relations of imprisonment. It must be questioned if prisons, which overwhelmingly punish the poor and vulnerable, and deliberately inflict potentially deadly pains, can ever perform morally.

Whose side are we on?

The prison is a place of conflicting interests and values, and such realities must be acknowledged in the research process. For Howard Becker (1967), who famously asked the question "whose side are you on?" it is impossible to undertake neutral, objective and value free research. Becker (1967) argued that the researcher must choose a standpoint reflecting either the interests of the subordinate or superordinates of any given research context. Becker, and later Foucault (1972, 1980c), argued that there exists a "hierarchy of credibility" which legitimates the definers of reality and truth, de-legitimizing the voice of the disempowered (see chapter two). Implicit in Becker's work is the assumption that the [critical] researcher should adopt the standpoint of the underdog. However this position

has been questioned by one of the leading prison researchers and advocates of AI in the UK. Alison Liebling (2001), in a paper also entitled “whose side are we on”, argues that,

in my experience it *is* possible to take more than one side seriously, to find merit in more than one perspective, and to do this without causing outrage on the side of officials or prisoners ... why is it less acceptable to offer the same degree of appreciative understanding to those who manage prisons. Is it because they wield power? [Because] their voices are already legitimated? (Liebling, 2001: 473, 476)

Rather than identifying with the underdog we should have empathy for the subject, whoever it is, that we are researching. For Liebling (2001: 474), “research is after all, an act of human engagement”, and the fieldwork is more rewarding and fruitful if the researcher is prepared to show sympathy and understanding towards the respondent. This position looks to produce high quality research findings, and facilitates a positive experience for the respondent, but fails to consider the deeply divided roles and exercise of power between prisoner and staff in the penal context. To accept such a position unproblematically is a *political* decision, inevitably reflecting values and sympathies. Acknowledgement of standpoint and its consequences are given greatest clarity in the writings of Alvin Gouldner (1961, 1967). For Gouldner (1967: 35, 36) it is not the differential power relations that shape concern for the underdog, but rather their suffering.

The essential point about the underdog is that he [sic] suffers, and this suffering is naked and visible. It is this that makes and should make a compelling demand upon us. What makes his standpoint deserving of special consideration, what makes him particularly worthy of sympathy, is that he suffers ...

In prison, and elsewhere, it is not only the prisoner who suffers. It would be unfair to deny the suffering of prison staff, but the key variant in terms of attaching political commitment

to prisoner suffering, is that through the hierarchy of power relations the reality of subordinates suffering is *denied*.

[The] dominant conceptions of reality sustained and fostered by the managers of society have one common defect: they fail to grasp a very special type of reality, specifically the reality of the suffering of those beneath them. In failing to see this, what they also fail to see is that those beneath them are indeed very much like themselves, in their suffering as in other ways.

In the penal context, our political loyalties should be determined through an acknowledgment of those who suffer the most in prison: prisoners. In response to the question why is it less acceptable to have political and empathetic allegiances with prison officers and prison managers, the answer is not just that the prison staff have greater power, or that their voices are deemed more legitimate than prisoners. It is that they do not suffer the same extent as prisoners, and that they fail to identify or *acknowledge* the greater suffering of those below them. Partisanship then reflects a commitment to uncover the truth and acknowledge the inherent pains and suffering created through confinement. The question is not one of *more or less deserving*, but of *more suffering* (see introduction).

Though Gouldner (1967) shared with Becker (1967) the identification with the underdog, and the importance of legitimating the view from below, he questioned an uncritical acceptance of this position, arguing that a

sociological study from an underdog standpoint will be intellectually impaired without clarifying the grounds for the commitment. A commitment made on the basis of an unexamined ideology may allow us to feel a manly righteousness, but it leaves us blind. (Gouldner, 1967: 34)

This implies that the partisan penologist must be both an interpreter and legislator. It has been fashionable in recent years to prioritise interpretation and problematise the legislative

role of the academic (Bauman, 1987, 1992; Pavlich, 2000). We must be wary, or so the story goes, of legislating, of using our critical judgement, and we must learn to live without the alternative. The academic should act as an interpreter for social movements, legitimating and facilitating understandings of their experiences and assisting dialogue with other social groups.

Following Gouldner (1967), normative critical judgement and the alternative must not be abandoned, despite some well grounded concerns (Bauman, 1989, 1991). Prisoner movements are not necessarily or unproblematically bearers of truth. To be sure racist, homophobic and sexist beliefs should not be accepted or legitimated, and a mere translation of an individualised focus on “troubles” must be recognised as unlikely to solve problems. Critical researchers must not abdicate their moral and political responsibility to provide a normative critical judgement rooted in values of social justice, democratic accountability and human rights. The alternative should not be abandoned, for the point is not *just* to interpret the world. It is also to change it.

Access and the unique research context

I was informed by the acting governor that there were still a large number of fascists among his staff group. He then did a Nazi salute to indicate to me the views of some of his staff (*Initial meeting with acting governor of research prison, Journal entry 28th May 2002*).

The empirical research was carried out independently of the Prison Service. The first obstacle to the research was negotiating access. In early 2001 the then prison governor of the research prison was approached directly, and it was agreed that access would be allowed in the summer of 2002. Though by this time the original governor had been

replaced, the access was confirmed in writing in the months leading up to the fieldwork and final arrangements agreed in a meeting with the acting governor in May 2002. The acting governor became a negotiating gatekeeper, specifying the amount of time and what access and resources the prison would grant. Keys were neither requested nor offered. The research was undertaken between 30th July 2002 – September 12th 2002 and consisted of a six week unbroken spell in the prison. Access was allowed at weekends and early evenings/nights during this period.

The research prison was a severely overcrowded ‘authoritarian’ local prison in North West England, holding on average over 600 prisoners. The research took place in the immediate aftermath of the Additional Days Awarded [*Ezeh and Connors v United Kingdom*] ruling of the European Court of Human Rights [ECtHR] in July 2002, which led to changes in governors’ powers of adjudication and the almost immediate release of 900 prisoners and potential for compensation.

Arising from this was a heightened awareness of the implications of the disciplinary aspects of prisoners’ rights law, and the role of the ECtHR. This provided an excellent opportunity to undertake a unique case study of the way prison officers directly interpreted prisoner legal rights through human rights case laws and its role in the development of a rights culture within the prison, augmenting the subsequent analysis of messages sent to them by the prison service.

The research methods

The two qualitative methods adopted in the empirical study were observation and semi-structured interviews. Observations took place largely in the first two weeks, whilst the later four weeks were focused on semi-structured interviews. Observation was necessary for a number of reasons. It provided a useful source of information regarding the working of the prison and the attitudes of staff, and acted as a means of establishing the researcher's face in the prison. This was useful in making contacts and building relationships with prisoners, prison officers and other informants. Allowing for snowballing, informal contacts proved to be the central method of securing interviews with prison officers.

Observation also allowed the researcher the opportunity to learn the prison officer *idiolectic*, that is the language of officers, and helped to shape and fine tune the language used in the interviews to reduce misunderstandings. The two weeks talking and watching prison officers, other prison staff and prisoners helped to provide a clearer focus to the research, largely by listening and observing how officers imparted meanings into their role and interactions with prisoners.

Given the relatively limited amount of time spent in the prison setting, the numbers intended to be researched, and the ability for respondents to have input into the research process, semi-structured interviews were deemed to be the most qualitative method available.¹ The semi-structured approach allowed for some consistency in the findings and allowed the development of a clear focus. Interviews can be used to glean two kinds of data: knowledge and subjectivities/discourses. To acquire knowledge requires clear and

¹ This method also allows comparative studies to be undertaken in the future.

specific questioning with the findings determined by the answers given. Gleaning knowledge was clearly part of the research, but the aim of the thesis was to uncover prison officer understandings of prisoner suffering and acknowledgement of their legal rights and shared humanity. This did not require specific answers but the ability to tease out and appreciate a particular way of understanding or interpreting the world.

The central and six component questions have implications for the kinds of questions asked in the interviews, but it became important to differentiate between theory questions and interview questions. The interview questions/topics were an attempt to formulate a workable and understandable line of questioning that the informants could understand. This entailed using the officer idiolect and attempting to formulate questions which avoid some abstract or academic language. At times it was not appropriate to make explicit links to the theory questions in the interviews themselves. The actual interview questions adopted provided an excellent way to illustrate further elements of officer beliefs, notably the institutionalisation of less eligibility and the use of the techniques of denial.

In attempting to adopt the prison officer idiolect it became evident that there was no clear language of rights or acknowledgement of prisoner suffering. Prison officers were very relaxed and happy to talk about themselves, their views, experiences, hardship and suffering. The whole atmosphere of the interviews became tense, and the contributions shorter and less detailed, when I started to make interventions about the apparently more abstract human rights of prisoners. Despite using the officer idiolect it became apparent that officers were hostile to “abstract” and “silly questions on human rights”, and that staff

knowledge and understandings of prisoner legal rights was exceptionally limited. After identifying the problem, the main solution to get round this was developing 'interview questions' which were on specific rights, such as the right to food, health and education, and to see how prison officers responded to these concerns (see appendix one).

Doing prison research

The fieldwork began on the 30th July 2002, and it became obvious very soon that the research was going to involve long periods of waiting: waiting at the gate, waiting in the security office to receive clearance, waiting to be shown around the prison, and as the fieldwork unfolded, waiting to be moved around the wings to meet officers, waiting on the wings for prison officers to talk, waiting while officers undertook other duties. I tried to use this time wisely by capitalising on often understandable delays by observing interactions, dialogue and striking up impromptu conversations. Whilst it was inevitable that my presence did impact on the dynamics of the prison setting and officer interaction, I was careful to minimise this where possible. I witnessed much by keeping a low profile and making as few demands on officer time as possible. Particularly in the first few days I tried to say little, and listen a lot.

Observations largely included sitting in the portacabins on the wings with staff, or even by myself; watching how staff interacted with prisoners and how they performed their jobs; or following staff around whilst they undertook their normal functions on their wing or through the prison. Walking with officers as they checked 'locks bolts and bars' provided

a good chance to talk and listen. I was invited to sit and chat with a large number of officers in reception, the first night centre, in the security offices, and also met with many officers for tea and food on the wing or in the staff canteen.

Discussions with staff in the first week or so centred largely on the ADA ruling and the anxiety of prison officers was palpable. The message they received about prisoner human rights from this change in the law was loud and clear, and almost universal in application: the courts were against them and the government did not care. There was little, if any, consideration of the principles of due process, legal guarantees or justice that underscored the judgment. In this sense evidence pointed to how recent human rights law was actually counterproductive, at least in the short term, in developing greater awareness of prisoner suffering and a rights culture despite improving prisoner procedural safeguards.

After each day I wrote up my experiences and perceptions of the prison in a journal.² I have given below an extract of part of my feelings and experiences from the first day.

I instantly felt like I was in a very male and white environment ... The woman principal officer I spoke to on E2 [then the hospital wing] was helpful and I have negotiated access later in the research. I was introduced by a male senior officer who said to me “she is the one who must be obeyed” and at the end of the meeting when the same senior officer returned to escort me to the central office he said [laughing] “did she use the whip” [both comments were made deliberately in earshot of the PO]... I spoke to an operational grade support [OGS] and she talked to me about how she had been sexually harassed but didn’t want to do an interview. She was very shy and timid ... [Name] said that she had had to speak to her superiors to stop the bullying. Some of the officers [also OGS] on the same shift, whom I suspect were the main protagonists, made a point of

² Most data and reflections on the prison were written up in a prison journal which had contributions dated from 28th May to September 12th. These reflections were useful in terms of developing a picture of the prison and dominant prison officer working personality, and provided a useful memory aid for further critical reflections after the research had been completed.

coming up to me and saying that [name] found it difficult to take a joke.
(Journal entry 30th July 2002)

There was some hostility to the research and my presence in the prison at first, and considerable concern that I was doing the research at all. I was often told that I should really be looking at officer human rights. One prison officer said on the first day “are you really interested in prisoner rights or is it just a job you have to do?” (Journal entry 30th July 2002). Initial hostility came from only a small but significant number of staff, epitomised in the attitude of one experienced prison officer. I was warned by administrative staff that I might have problems with this officer on the first day, and was introduced to this ‘notorious’ man in the first week. As soon as the officer saw me he would come out with a tirade of abuse that would last a couple of minutes and go bellowing around the wing in a strong Scottish accent: “Ooh I’m a child abuser and I have the human right to hurt and harm little kids ... I have a right to beat up old grannies and take their pensions I have a right to rob banks ... Fucken rights. They don’t deserve any rights” (Journal entry 3rd August 2002).

The ritualistic rant was to continue every time I saw this officer for a further three weeks, and only ended after I had completed interviewing the officer. This badly damaged person eventually described his marriage breakup and deep cynicism towards both prisoners and management, “I don’t want to talk about these bastards they just bring me down” (personal interview with the officer). I quickly gathered an appreciation of just how radical and ‘unnatural’ human rights talk was in this prison. For example, I detailed how “one officer

promised to take me around the stables [prisoners cells] tomorrow” (Journal entry 30th July 2002).

I observed and wrote up four distinct incidents in the first two weeks of the study, which give an indication of some of the personal troubles within the prison.

On the hospital wing this morning and the prisoners confined there are largely mentally ill. I was hanging about the portacabin in the middle of the wing trying to informally talk to the officers. [Name] from the works unit had come over to sort out some lights. He is a rather large overweight man. One of the prisoners was verbally abusive and said to him “you’re nothing but a big fat cunt”. [Name] went up to him, grabbed the [rather small] prisoner by the throat and raising him from the ground said “what did you say! I’m going to rip your fucken head open”. At this point [name – a senior prison officer] ran up to [name - workman] and said “look he’s mentally ill, let him go he’s mentally ill!!” and physically intervened to release the prisoner. (Journal entry 5th August 2002)

Was with [name] going round doing the VDT’s [voluntary drug tests] ... The physical conditions in DDU [drug dependency unit] were appalling. Officers referred to it as the “dungeon” as it was underground. It felt very cold and even in the officers’ mess there was paint peeling off the walls. [Name] showed me a cell in the far left corner near to where his office was. It had mould growing in it. Prisoners were stood about watching a Bond film [Goldeneye] on one small television on the wing looking totally dejected and miserable ... we went onto A wing and into a “prisoner’s stable” where the two officers took a urine sample. I was also present... [Name] said “were not doing anything wrong, there is no infringement of rights here, were just taking the piss out of prisoners” [Laughter]. (Journal entry 7th August 2002)

Spent most of this afternoon with [name]. He is a very experienced prison officer. Went round the ‘pads’ and he told me a few funny anecdotes ... seemed like a perfectly nice guy and spent all day saying exactly what I think he thought I wanted to hear. Then at around 4.00pm he got a note from one of the governors complaining about how litter had been thrown out of cell windows. I was waiting in the office [central portacabin] and whilst he was just outside the door I overheard him tell a couple of the prisoners that he wanted them to find out who was throwing the litter out and then “persuade” them not to do it again. “Be discrete, but if you see anyone on the 5’s [fifth floor of A wing]

who are throwing stuff out of windows, just sort them out". He then indicated with his fist being placed into his hands what he meant. The two [quite young] prisoners then laughed and the three started to walk away from the portacabin. "Some of you cons are alright, but some are right cunts (and what sounded like dickheads) ..." as he went out of my hearing. (Journal entry 9th August 2002)

I was in the segregation unit this morning setting up an interview with [name]. The chaplain [a former nurse] and a member of the BoV [Board of Visitors, now called the Independent Monitoring Board] and three members of staff. The BoV man was telling me how much he liked and trusted the boys [officers], when we heard a number of large banging noises and a prisoner screaming. In the segregation unit office there was CCTV coverage of all the cells and we were all able to watch as the prisoner ran up to the cell door and bang it with his head. The prisoner repeated this process a few times and it was becoming clear that his head was now bleeding. The prisoner then had some kind of epileptic fit where he fell to the cell floor and began vomiting and shaking uncontrollably. The officers entered the cell, a few minutes later he calmed down and the doctor was called. What had looked to me like an obvious case of a prisoner in considerable suffering and pain was not considered this way by the expert panel in the segregation unit office. The problem prisoner was apparently just pretending. He "recovered too quickly" according to the chaplain; he was "just seeking attention and being childish" was the doctor's opinion. The incident had been successfully reinterpreted and the prisoner's suffering denied. The reality of the event was re-cast as another illustration of this prisoner's problematic behaviour. (Journal entry 12th August 2002)

Recording of observations made in the research prison were written up each evening and I also tried to make inconspicuous notes whilst in the prison. This was made more difficult given that there were no toilets on the wings. I only used this private place to record notes once, as I had to be escorted to and from the toilet by a member of staff. As I wished to be as little inconvenience as possible so that officers would feel more willing to participate later in interviews, this strategy was abandoned.

Snowballing: the research sample

The first two weeks of the fieldwork also provided an excellent opportunity to informally meet prison officers and to see who would be prepared to talk to me in a formal interview setting. Interviews lasted between 1 to 2 hours, with the average interview taking approximately 1 hour 15 minutes. The interviews were either recorded on tape or written up during the interview. Each interview was fully transcribed for writing up purposes.

The prison officers who were interviewed in this study were predominantly white men aged between thirty and fifty, who had more than ten years in the prison service and had worked for a significant amount of time at the research prison. The officers interviewed were very much part of the fixtures and fittings of this penal establishment and their views reflected deeply ingrained and long standing occupational cultures. In the summer of 2002 there were 196 prison officers, 183 men (93.4%) and 13 women (6.6%) working at the prison. In total 38 prison officers were interviewed, amounting to approximately one fifth of the total population at that time. Nineteen of the officers were from the basic grade, either residential or discipline staff, fourteen were senior prison officers and five principal officers. Thirty six of the officers were men and two were women.

The ethnic background of the officers was fairly homogenous with all those interviewed defining themselves as either "white", "English", "British" or "C of E". The prison officers interviewed had considerable work and life experience. Twelve officers were aged between 31-40, a further fourteen between 41-50, and twelve officers were 50 or over. The average length of service was 18 years. The lowest time spent working as a prison officer

was ten years with the longest 31 years. The average length of time spent working at the research prison was 10 years, with length of service ranging from 3 – 28 years. The social backgrounds of the officers were working class with generally low educational attainments before entry to the service. Eleven officers had at one time served in the armed forces or merchant navy. Thirteen officers gave other non-military occupations and fourteen of the officers did not give a previous occupation at all, indicating either the undesirability of previous work or were direct entry (see appendix two).

Though individual officer biographies are shaped markedly by their experiences in both their private and public worlds, the research focussed exclusively on the prison life. Therefore no data were gleaned on marital status, children or other significant relationships. Though officer talk of their private world was frequent, it was dominated by concerns regarding the implications their job had upon their private lives rather than vice versa. Indeed there was stark evidence of the manner in which the prison environment was clearly damaging officer health. Plagued by staff sickness, during the six week research period, on average 30 of the 196 officers were off on short or long term sick leave. In a heavily overcrowded prison increased workloads, reduced leave opportunities and the abandonment of a commitment to training, were starting to take their toll.

Other informants

A large number of other officers, occupational groups and prisoners were engaged in casual conversations throughout the six weeks, totaling 125 informants in all.³ Every informant was promised anonymity and therefore names of individual officers are not disclosed. I

³ See appendix two.

held conversations with a further twenty seven other prison officers, mainly in the first two weeks of the research (Journal entries 30th July-12th August 2002). I also spoke with other occupational cultures in the prison, and whenever possible I would have informal chats with prisoners. I found prisoners provided many useful insights and when on the wing and no staff were available I would casually chat with prisoners. I recorded speaking to twenty prisoners in total. The most detailed conversations were held in one of the workshops with a group of six prisoners, a very detailed conversation with two 'listeners' in their cell, and shared a coffee on more than one occasion with the two chapel orderlies (Journal entries 8th, 12th, 19th August; 2nd September 2002). These prisoners were happy to correct or confirm my conceptions of the prison, and their contribution to my understanding was significant. I quickly perceived a deep divide between staff and prisoners believing that "there appears to be two social worlds, one for prisoners and one for staff" (Journal entry 2nd August 2002).

A further 30 members of staff were interviewed in the prison, including chaplains, governors, health care staff, psychologists, instructors and teachers and I documented speaking to a further ten other staff in detail in my journal (personal interviews and journal entries, August - September 2002). The discussions with non-prison officers provided a useful context to determining the contours of the prison officer cultures, and also provided interesting stories and observations of the officers, which helped to clarify my understandings. For example one of the education staff claimed that prisoners were not allowed a change of clothes when it was raining, and so could go weeks without a change if the weather was bad, and that prisoners on one wing were denied showers because of the

mass number of prisoners and limited number of showers. This hearsay however was never confirmed (Journal entry 6th August 2002).

The interview process

It was essential that all the subjects involved in the study were aware of what the research aims were, and that I had obtained their informed consent. Despite some initial hostility and mistrust from officers, I began to get the reputation as “counsellor to the prison” (Journal entry 18th August 2002). This reputation was based on the perception that in the interviews I was listening to staff complaints. The interview approach was based on a ‘receptive’ model that was largely passive. I wanted the officers to feel comfortable to say exactly what they wanted, and I did not want to really indicate whether I agreed or disagreed with their comments. In this sense, I assumed that if I gave them enough rope I would uncover their true feelings, even if the interview schedule was impaired somewhat by this. In agreement with Liebling (2001), I felt that a rapport interview, looking to build a relationship with the subject, was the most effective strategy to get the best and most reliable findings possible. I felt this would increase trust and lead to a more honest account of the prison reality.

Whilst empathy was important in the interview process – officers told me of great anxieties, nervous breakdowns, marriage breakdowns – I could not fully identify with many of the officers contributions. I found much of what officers said problematic, but tried to withhold judgement in the interview process itself, reserving this for later critical reflection. Whilst I had worked out an interview schedule, interventions were based on

close listening. I tried to both look like I was listening, showing encouragement, being supportive and active in the interviews, and *actually listening* at the same time, so that I could follow up interesting comments officers were saying.

Interviews were often hijacked by officers who were quite happy to talk, and had much to say, about the prison and their experiences.⁴ In the interview schedule, the first issue discussed was staff perceptions of the prison and their own human rights. This was originally intended to be a means of establishing a good rapport with staff, and to demonstrate to officers that the research was more than just a discussion of their attitudes towards prisoners. However staff would spend a considerable amount of time on this issue of "staff rights". Unexpectedly this proved to be extremely useful, opening up new avenues in the research for theorising denial and prison dehumanisation. The focus on 'staff rights' also meant that in officer networks, the word of mouth appraisals of the interviews were that I was looking into both staff and prisoner issues, and this both improved cooperation and led to a higher than anticipated number of volunteers, given the duration of the fieldwork.

Research findings are only as good as the framing of the interventions and focus of the fieldwork and interviews. The semi-structured interviews had direct, open and indirect questions/interventions. Active participation by officers was built on as the interviews developed, and I was able to alter the order of questions and even include newer questions

⁴ The research interviews and observations were restricted to the public realm of the prison. Though invited to do so, I did not socialise with any prison staff. It is likely that this would have been an opportunity missed in terms of gaining greater trust and perhaps more revealing details of the prison officers' interpretive framework. However by not building any loyalties to the staff in the research prison the ability to critique was not personally compromised.

as both my understandings grew of the officers. The importance of using the staff idiolect, and the best ways to transform theory questions into more suitable interview questions, became increasingly obvious as the interviews progressed. The best interviews had the most limited interventions from the researcher. Whilst the interviews had a broadly similar structure, I learned from my interviewing experience and allowed for the schedule to evolve. Towards the end of the interviews I recognised I was now getting a number of very similar statements from officers indicating a number of officer adaptations (see chapter seven). Though this made it harder to look as interested, the schedule was uncovering a clear picture of the dominant and subjugated prison officer positions.

Though I endeavoured to ensure that all prison officers really wanted to be involved, especially as it was seen as a “skive” or “a bit of therapy”, the very first respondent proved at times reluctant to have his voice heard. Claiming to be happy for the interview to be recorded, and very relaxed when answering early questions on staff issues, the officer subtly placed a piece of paper over the tape recorder when discussing prisoners. This piece of sabotage was repeated after I had subtly removed the paper a few minutes later. Rather than continue to ‘play the game’, the interview concluded with the paper over its speaker, with the researcher making written notes. Part of the interview was badly muffled, and I ensured in all following interviews that I would make notes if officers were uncomfortable with the tape recorder, and ensured that the tape recorder speakers remained unhindered.⁵

⁵ There is a further ethical concern here regarding whether the respondent was indicating through such behaviour that they no longer wished to be interviewed.

Who really suffers? reflections on critical research methods and values

[F]irst, [we have] an over riding obligation to honest intellectual enquiry itself (however sceptical, provisional, irrelevant and unrealistic); second, a political commitment to social justice, and third (and potentially conflicting with both), the pressing and immediate demands for short-term humanitarian help. We have to appease these three voracious gods. (Cohen, 1998: 122)

The research experience above and the critical literature indicate that there are eight key principles, commitments or critical research values which should shape the prison research experience.

1. Privileged Position

The researcher in prison always has a privileged position. They have greater choices and freedom than all they observe. They have chosen to come to prison and can leave easily. Such self awareness is essential in determining how the research was undertaken, and also will have impacted on how the researcher was treated in the research setting by prison officers, prisoners and other staff. In a very white and male world, I benefited from being white and a man. The evenings and weekends worked were an attempt to gain credibility with officers and to show that I was prepared to be uncomfortable to gain the research material (King, 2000). Whilst I did not get into the mind of officers the experience provided the tools to relate to how prison officers constructed their meaning and their social world. Such openness from staff may not be forthcoming to all researchers.

2. Truth

The research must be rooted in values which promote honesty, integrity and accuracy. The research is an attempt to uncover truth, real experiences, whatever the shape or form. The

research must include an acknowledgement of hostile findings, to admit if things go wrong, or if findings are not as anticipated or fit with the hypothesis. The picture uncovered in the research must be the true picture of the respondents' lived realities, whatever the researcher standpoint and whether it provides a positive or negative account of that reality. I have attempted to provide a portrayal of prison life that is a reflection of officers' lived realities. The question should be 'does the respondent recognise and relate to the findings'?

3. Independence

The research must be independent at least in terms of how the research program is formulated and executed if not also in funding. The aims and focus of the research must also be independently determined. The researcher should not be merely a technician of the state justifying or evaluating existing policies. This research benefited from independence because officers were more prepared to participate, but equally importantly, there was freedom in the way which the fieldwork could be interpreted. There was no state agency requiring quick fix answers, or pressurising the shape of the focus or findings.

4. Critical Judgement

The aim of the research should not be reconciliation, to justify state practices, improve human resources management or some further utilitarian goal. Nor must it be to uncritically reproduce or condone dominant discourses or naturalise their position. Researchers must retain the right to *judge* findings based on criteria of critical research values and 'critical principles'.

5. Critical Principles

Whilst undertaking the fieldwork, and in particular during the interviews, it was easy to become immersed within the officers world and moral universe. I tried to understand their position and offer some kind of empathy on a human level for those being interviewed. Once the fieldwork was completed I was more able to reflect on the research experience and, utilising memories, the prison journal and the transcripts of interviews, it was possible to use my critical judgement to analyse and theorise the findings. I did not therefore uncritically accept the interpretive framework of the subjects but rather looked to compare this with my partisan neo-abolitionist principles. Here the critical researcher uses their criminological imagination, with anti-democratic, unaccountable, unjust, exploitative and abusive practices judged and exposed.

6. Relevance

The research must in some way be relevant to the lived experiences of sufferers here and now. Examination of prison officers was deemed important because of their role in shaping prisoners' experiences. The research must engage in an independent dialogue with the powerful and be used to uncover exploitation and/or empower those who are suffering. The researcher must engage in a manner in which the findings and processes adopted can be used as a valuable tool for changing social structures, or providing the platform for new meanings and interpretive frameworks for subjugated groups.

7. [Radical] Alternatives

Research must be contextualised within wider social and political contexts and make connections with wider structural issues. Critical researchers must not just interpret the world. By necessity change may include immediate humanitarian interventions, but sight must not be lost of wider radical transformations in the name of social justice.

8. Partisan Standpoint

Finally, research cannot be objective, neutral or value free. The values of the researcher will always have an impact on the research process. The researcher must be prepared to confess their standpoint, openly acknowledging a partisan position. However, “confession may be good for the soul, but it is no tonic for the mind” (Gouldner, 1967: 54) for, as Gouldner (1967) warns, partisanship must not lead to complacency or righteousness. It would be a mistake to assume that acknowledgement itself is enough to achieve objectivity. Awareness of the speaking positions, background and interpretive framework place the research project into context. More important are the means through which such acknowledgment is used to shape the methodology and interventions in the field. Prison researchers must recognise both their privileged and partisan position, either for or against its subjects. Research will always be partisan, but whilst the reasons for undertaking the research will be diverse, the critical research values that underscore fieldwork should remain the same: independence, an honest attempt to provide a reflection of reality, a willingness to expose inhumanity by the powerful and to link the uncovering of any private troubles with public issues. This partisan research is on the side of sufferers, specifically highlighting the denial of suffering of those who suffer the most in prison - prisoners.

Chapter Two:

Penal truth, power and legitimacy: what is sayable about prisoner human rights?

The aims of this chapter are to outline the method adopted to organise and structure the thesis, and to sketch out the normative framework assessing the legitimacy of the prison officer culture. In so doing the chapter provides an overview of the main principles of Foucault's (1972, 1980c) discourse analysis, elucidating the means of describing the rules and structures governing prison officer interpretive frameworks. The chapter then provides a review of the literature on penal legitimacy, before outlining the neo-abolitionist framework used to evaluate officer understandings of prisoner rights. Here it is argued that a normative lens assessing current penal performance must be predicated upon adherence to mechanisms of legal accountability, democracy, commitments to social justice, and respect for inalienable human rights. The chapter concludes with an account of how the synthesis of discourse analysis and neo-abolitionism informs carceral clawback and the implications of this approach for subsequent chapters.

Penal truth and the formation of discourses

The thesis deploys the analysis of discourses as devised in the writings of Michel Foucault (1972, 1980c), as a means of uncovering the frames of interpretation of prisoner human rights across a number of inter-related discourses. The term discourse refers to the way in which language shapes our conceptions and interpretations of reality. Correspondingly, speech acts and cognitions regarding objects, experiences or actions only make sense within the pre-established structures and rules of language - a discourse

– and any meanings that are attributed to such things, cannot be constituted outside of it. In other words it is only through a discourse that the external world can attain meaning, and such meanings are defined and understood within the confines and limits of that particular discourse. The way that we think about something, the way that we talk about events, and the way that we act can only be understood through, and is shaped by, the language deployed in the discourse's interpretive context. Such an assertion may appear to deny external reality, but as Laclau and Mouffe (2001: 108) argue,

[t]he fact that every object is constituted as an object of discourse has nothing to do with whether there is a world external to thought ... What is denied is not that ... objects exist externally to thought, but the rather different assertion that they could constitute themselves as objects outside any discursive condition of emergence.

Discourses cannot comprise of individual, isolated or inconsistent utterances or beliefs and are not something that can be examined in and of themselves. Discourses can only be detected through what they produce, such as a grouping of assertions or utterances relating to an object, and these interrelated statements must all adhere to a set of shared meanings and values. Importantly, discursive structures can be analysed to *describe* social constructions of the real.

Using Foucault's method (1972: 42), the formation of a discourse on prisoner human rights first requires "*grids of specification*" so that statements can be related to each other and systematic interpretations can be formulated. A discourse must make sense, follow certain rules and resonate with the bearers' logic. Foucault's archaeological analysis of discourse uncovers such rules. As a discourse is a highly regulated grouping of statements on a specific topic, it is possible to identify through these grids the "law of

existence of statements” (Foucault, 1991a: 59) specific to, and shaped by, the rules internal to the discourse itself. Discourse analysis can uncover the rules, structures and techniques governing the form of, and limits to, what is sayable about prisoners and human rights.

For Foucault (1972: 41) a discourse also needs “*surfaces of emergence*”. The systematic and sanctioned statements of a discourse referring to prisoner human rights will emerge across a number of what Foucault called “institutional sites” (Ibid: 51): penological, legal, governmental and occupational. Foucault (1972: 31) named the inter-relationship between different institutional sites as a “discursive formation”. He puts it this way,

One might say then that a discursive formation is defined (as far as its objects are concerned, at least) if one can establish such a group; if one can show how any particular object of discourse finds in it its place and law of emergence; if one can show that it may give birth simultaneously or successively to mutually exclusive objects, without having to modify itself. (Ibid: 44)

Understanding the mechanisms of any one institutional site or practice in a given discursive formation commands an analysis of all other interrelated sites. Adopting this method to uncover the rules shaping the construction of prisoner human rights by prison officers requires, by necessity, analysis of such constructions in penology, law and penal policy. As each of the discourses in the discursive formation impacts upon the other, any changes within one discourse will have consequences for the rest of the group. The introduction of the Human Rights Act (1998) [HRA], and the case law arising from it between October 2000 - October 2005 can be understood as a new surface of emergence. Subsequent interpretations of the HRA within the discursive formation by other

institutional sites are of considerable importance for officer meanings, understandings and practices.

Foucault (1972: 155, 200) reminds us that within any given discursive formation there will be contradictions and a diversity of positions that can be occupied.

A discursive formation is not therefore, an ideal, continuous, smooth text that runs beneath the multiplicity of contradictions, and resolves them in the calm unity of coherent thought ... It is rather a space of multiple dimensions; a set of different oppositions whose level and roles must be described ... [It is] possible for men, within the same discursive practice, to speak of different objects, to have contrary opinions and to make contradictory choices.

The central task of the thesis is to identify, describe and evaluate how prison officers locate prisoners within their moral universe and subsequent arising denials or acknowledgment of their legal rights, human suffering and shared humanity. It should be anticipated that an analysis of rules and structures governing such constructions in penological, legal, government policies and occupational cultures will uncover competing and contradictory interpretive lenses as well as overlap, consistency and complimentary frameworks. Individual officers within prisons and across the penal estate have a choice in positioning themselves in relation to the different penological, legal and official discourses, and it is highly likely that a number of different variations on the meanings of prisoner human rights pertain (Carrabine, 2004; Liebling, 2004).

A discourse on prisoner human rights also requires the presence of "*authorities of delimitation*" (Foucault, 1972: 41), such as the legal profession, senior civil servants or respected bearers of an occupational orientation, so that particular meanings of events

and knowledges can be successfully authorised, and a true version of the relationship between what it is to be a prisoner and the scope of application of human rights can be established. The key to understanding the role of authorities of delimitation is through grasping the complex relationship between penal power, knowledge and the production of truths. Foucault (1977; 1980a: 39) argued that power is a relational concept dispersed throughout the social body that “reaches into the very grain of individuals, touches their bodies and inserts itself into their actions and attitudes, their discourses, learning processes and everyday lives”.¹ Power is also productive: it produces knowledge.

Knowledge is not objectively or impartially fashioned. Rather, knowledge is created or produced through the exercise of power; what Foucault described as the power/knowledge axis. Established in each society is a “regime of truth” (Foucault, 1980c: 133). That is the political, economic and institutional mechanisms and procedures that originate, regulate, circulate and distribute statements pertaining to provide accurate description of reality. It is through such a regime that distinctions between true and false statements are made.

The regime of truth is exclusionary in that it creates narrow confines proscribing what is deemed as worthy of attention, limiting the field of the discursive. Only certain ways of thinking are considered appropriate, and the discursive structure both *rules in* and *rules out* certain ways of talking, thinking or interpreting events. Further what becomes constructed as the legitimate knowledge of any event, object or meaning is linked with

¹ Power is not something that can be possessed, but flows between people, empowering and disempowering the same person at different times, and in different circumstances.

hierarchies of credibility and power. For knowledge to be utilised the knower must establish a right to speak, as the authority of a statement is linked to the status of the speaker. The apparent truthfulness of a statement on prisoner human rights is therefore only possible through the privileging of certain knowledge, speaking positions and ways of interpreting the world at the exclusion or marginalisation of others. Not all voices are heard, and not all speakers are viewed with the same standing, or subsequently invested with the ability to provide a legitimate interpretation of events and circumstances. It is not just what is said about prisoner rights that are important, it is who says it and who is listened too – the authorities of delimitation.

Despite there being an apparent plurality of meanings and perceived realities, one interpretation acquires dominance. Erstwhile discourses are displaced or excluded and an ascendant or hegemonic discourse² shapes the lens through which penal authorities define the real and the 'truth'. Presenting itself as an all encompassing means of making sense of the world, the hegemonic interpretive framework provides a cultural script laying down the conventions, codes, and representations to be followed. Other ways of interpreting the world continue to exist, but the hegemonic understanding becomes the obvious, 'common sense' way of thinking, setting out legitimate knowledge and the "difference between what one could say correctly at one period (under the rules of grammar and logic) and what is actually said" (Foucault, 1991a: 63).

² Hegemony entails offering a convincing moral, political, or intellectual worldview that can provide cultural and ideological leadership.

A “penal truth” (Sim, 1994) excludes the subjugated voices of prisoners and places greatest emphasis on those in the highest position of power within the prison service hierarchy, government and judiciary. The views of prisoners cannot in this sense provide the truth, but the Director General, Home Office Ministers, Judges, high ranking civil servants, and in the context of individual prisons, the No. 1 Governor, can and do so. It is their words that are given most prestige, which consequently set the boundaries of the sayable.

The long term consequences for the “truth” and hegemonic meanings imputed within talk of prisoner human rights, as conceived by those currently in positions of power, should not be underestimated. Each statement by the authorities of delimitation map out both its present usage and, as each statement leads on to further statements, lays the parameters of what can be said in the future. Such statements are both instrumental in the production and reproduction of power relations. In other words they perform a central role in how “penal truths” are institutionalised.

Key aspects of Foucauldian discourse analysis

The above discussion dictates that a Foucauldian discourse analysis describing the hegemonic interpretations of prisoner human rights and subsequent institutionalisation in prison officer occupational cultures must necessarily entail the following six criteria (Foucault, 1980; Hall, 2001; Kendall and Wickham, 1999):

1. A discussion of the “grids of specification”, that is the rules and structures of the interpretive frameworks shared understanding and systematic interpretations of prisoner human rights.

2. A focus on a specific “institutional site” which personifies a discourse’s constitution of subject positions, in this case an empirical study of prison officers.
3. A review of the relationships between the sayable and the visible in the discursive formation (penological, legal and penal policy) on the meanings inferred by talk on the human rights of prisoners.
4. An examination of any new “surfaces of emergence”: the manner in which the Human Rights Act (1998) is a new surface of emergence, and how it is interpreted by prison service hierarchy and consequent impact on officer cultures.
5. How the knowledge embodies authority. A review of the establishment of “penal truths” through authorities of delimitation such as official statements by members of the prison service hierarchy, policy makers, judiciary and Home Office.
6. How these rules are repeatable and how the discourse is institutionalised. A description of the techniques deployed to maintain perceived validity of the hegemonic discourse.

Discourse analysis provides a useful *description*: it tells us about the *how*. But it does not explain *why*, and can provide no means for assessing the rightness or wrongness of officer constructions of prisoner human rights. Foucault’s method therefore needs to be augmented with a further set of principles, through which the validity of prison officer discourses can be *evaluated*. To do this we need to consider the main penological accounts of penal legitimacy.

Penal legitimacy and the power to punish

The claims of penal authorities to legitimacy, are predicated upon the current distribution and application of punishment successfully attaining political validity, and a sense of moral rightfulness in a given society, leading to acquiescence, obedience, and consent from both those imprisoned and the general public (Beetham, 2000; Carrabine, 2004). Failure to attain such moral or political validity can be assessed in two ways: as creating a

legitimacy deficit or a leading to a crisis of penal legitimacy (Beetham, 1991; Fitzgerald and Sim, 1979).

The prison service in England and Wales can be considered to be suffering from a *legitimacy deficit* when the absence of legitimacy is believed to derive from weak justifications for its current aims, objectives and or stated purposes; if it appears to be inadequate in terms of fulfilling its desired goals and stated intentions; or if the authority of those who apply penal power is significantly undermined. Needless to say a legitimacy deficit is merely a shortfall that can be addressed through strengthening authority; redefining goals so that they are achievable, such as focusing on outputs rather than outcomes; or supplanting old aims and objectives with alternative but not necessarily new ones.

By contrast the current appliance of the power to punish can be considered to be illegitimate when it is claimed to create too many inherent infringements of human rights; dehumanising penal regimes and brutalisation are considered endemic to operational practice; it inevitably exceeds certain tolerable pain thresholds; or is believed to be entirely misapplied or inappropriately punishes certain categories of harm or wrongdoers (Fitzgerald & Sim, 1982; Hulsman, 1986; Scraton et al., 1991; Swaaningen, 1997; Carlen, 2002). This *crisis of penal legitimacy* implies that the most appropriate solution is the *de-legitimation* of the penal system as it is currently constituted, as the problems are so profound that minor tinkering cannot re-adjust the current failings, or justify the existing application of power. It is from understandings derived from these two

approaches to the absence of legitimacy, that penological studies have debated the existence, depth and possible responses to the current penal crises (Scott, 2006c).

In his impressive “genealogical” account of the Strangeways disturbances from the 1st-25th April 1990, Eamonn Carrabine (2004, 2005a, 2005b) powerfully argues that under the current system, the exercise of penal power is crippled by chronic legitimacy deficits. Following the insights of Emile Durkheim, especially his work on ritualism, Carrabine (2004) rejects the idea that penal order is rested upon normative justifications, widespread consent or internalised beliefs by prisoners that prisons are legitimate. Rather it is through the mundane routinisation of repetitive conduct and the dull compulsion of rituals that stabilise existing power relations. Prisons run through manipulation and, where that fails, order maintenance relies upon coercion. Prisoners have no commitment to the validity of the governance of penal authorities, and largely perceive the current penal order as inevitable, unalterable or beyond their powers to change. For Carrabine (2005b) prisoners become fatalistic, simply pragmatically accepting the status quo of prison regimes, facilities and lines of authority unless or until circumstances conspire for change. Pointing to a crisis of consent, authority, and legitimacy, Carrabine (2004) provides an important analysis of how penal order *normally* exists without the approval of prisoners yet with the absence of collective resistance.

The argument made by Carrabine is unequivocal – prisons, as they currently operate, are not legitimate institutions and make no concerted efforts to be legitimate. This account of penal ritualism has great analytical purchase in explaining why and when penal

disorders do or do not occur, but Carrabine's approach cannot explain why so much emphasis is actually placed upon fostering *beliefs* in penal legitimacy by penal authorities, why some prisoners do acquiesce, or why imprisonment is considered by some to be a legitimate sanction. His position cannot provide us with any means for constructing an alternative counter-hegemonic normative framework for responding to wrongdoing, or for assessing the appropriateness of the distribution of state punishments or the practices of their agents (Scott, 2006b). To do this requires a consideration of the construction of penal legitimacy in belief systems and discourses.

One of the most widely cited thinkers on legitimacy is the German sociologist Max Weber. For Weber (1948) people obeyed rules because they accepted the *authority* of their rulers. Consequently if people believed someone had legitimate authority, bestowed through the law, customs, traditions or personal charisma, then their exercise of power was legitimate. Legitimacy is conceived as a *belief in legitimacy* and for as long as people *believe* power relations to be legitimate, then they are. The exercise of penal power is just and valid so long as those who exercise it have authority derived from the rule of law or personal leadership (Jacobs, 1978).

The Weberian position on the relationship between the law and legitimacy still remains highly influential and is reflected in liberal democratic theories of the state. Here the legitimate and democratically accountable exercise of capitalist state power is through the principle of legality, premised upon the ideal of the impartial enforcement of transparent and clearly defined rules expressing due process. Through such adherence the enforcers

of law find their actions are necessarily restrained, arbitrary powers checked, and avenues of redress and protection opened to those subject to their rule. From this perspective the legitimacy of the actions of the prison service is determined by whether they conform to the prison legislation, rules and other legally binding regulations (Jacobs, 1978; Barak-Glantz, 1981; Whitty, Murphy & Livingstone, 2001; Livingstone, Owen & MacDonald, 2003).

Undoubtedly, for state power to be legitimate it must follow the law, but to be simply lawful cannot imply that such an action automatically infers legitimacy. Legality is part of legitimacy, but it cannot constitute legitimacy alone. Bad laws or unjust rules and regulations are not open to critique in such a formulation, and ultimately the Weberian approach only provides a highly descriptive account of legitimacy, denying political and moral normative judgements or extra-legal rational criteria stipulating the rightness or not of a given form of governance. Damningly, the enforcement of a prison officer's *personal authority* in day to day working practices also cannot be problematised through the Weberian framework. For one leading critic, Weber's influence on studies of legitimacy has "been an almost unqualified disaster" (Beetham, 1991: 8).

According to David Beetham (1991: 11), a "given power relationship is not legitimate because people believe in its legitimacy, but because it can be *justified in terms of* their beliefs". By this Beetham implies that penal legitimacy should be assessed on how closely penal realities conform to the standards, norms, values and expectations of the general public. Using the method of immanent critique, the legitimate application of

penal power should reflect the expectations of offenders, alongside that of the wider populist opinion. Here, following Weber, Beetham argues that sociological studies of legitimacy must *not* be based on any external norm creating principles or universal criteria promoting alternative moral or political interpretive frameworks. For Beetham (1991: 15) social scientists should assess (1) if the application of power adheres to the established rules and law, (2) that these laws follow the beliefs of both the powerful and the subordinated, and (3) that there is evidence of active consent on the part of the subordinate populations. If the exercise of penal power adheres to these three criteria then it should be considered legitimate.

Beetham's understanding of legitimacy has been adopted by a number of liberal humanitarian penologists looking to enhance the conditions of imprisonment and/or its capabilities as a special place that can address offending behaviour (Woolf, 1991; Sparks et al., 1996; Liebling, 2004; Carrabine, 2004). For example, the Woolf Report (1991), points to how the prison service failed in its endeavour to convince prisoners that they were being treated fairly and justly. Contra to Carrabine (2004), for Woolf (1991) prisoners' widespread sense of injustice was indicative of a lack of penal legitimacy, and was a significant factor leading to the major disorder at Strangeways and elsewhere in 1990. Further, Sparks et al., (1996: 89) argue penal legitimacy is dependent upon prisons meeting "commonly expected standards" such as fair procedures, consistent outcomes, decent living conditions, services, and activities. Legitimacy is also dependent upon "the quality of behaviour of officials," including prison officers. Here criteria for the legitimacy of prison officer working personalities are assessed on their adherence to the

principle of legality, so long as the content of the laws reflect public beliefs and the active consensual support by prisoners and the public alike. The legitimate construction and definition of prisoner legal rights are predicated upon what the law stipulates, again so long as consistent with public beliefs and prisoner active consent.

Assessing the legitimacy of prison officer working personalities on prisoner human rights this way though does encounter a number of major limitations. The creation of law is not democratic but shaped largely by the interests of the executive and interpreted through the judiciary. It therefore may not reflect the public's beliefs or consent; legal interpretations of prisoner's rights have been historically conservative, reflecting the interests of the prison service; the public have very negative perceptions of prison officers, who are *expected* to be brutal people dehumanising prisoners; there is often public resistance to mechanisms of penal democracy, leading to the marginalisation of the voice of the prisoner; and populist penological constructions and political discourses of prisoners' rights are highly restrictive, often effectively erasing claims to human rights. Two further, and potentially more damaging critiques, are expanded upon below: (1) that this approach cannot account for the "third dimension of power" (Lukes, 2005) or how certain issues become mystified through hegemony and (2) a commitment to legality is not in itself enough to ensure the protection of a person's shared humanity or acknowledgement of their human suffering in prison.

Also of importance to recent penological studies has been Beetham's account of the breakdown of consensus and the absence of legitimacy. Beetham (1991) argues that in

societies without legitimacy, rule is only possible through incentives and sanctions and must be operated through reliance upon either coercion or manipulation. Drawing remarkable parallels with classic and contemporary sociological studies on how penal power is exercised in a society of captives (Sykes, 1958; Carrabine, 2004), Beetham (1991: 28) argues that such highly dysfunctional environments are not very efficient or effective.

The collapse of authority where legitimacy is eroded, and coercive force is insufficient to maintain power on its own, provides only the most dramatic evidence for the significance of legitimacy to the obedience of subordinates. Less dramatic, but equally important, is the effect a lack of legitimacy has on the *degree* of cooperation, and the *quality* of performance, that can be secured from them, and therefore the ability of the powerful to achieve goals other than simply the maintenance of their position. Where the powerful have to concentrate most of their efforts on maintaining order, they are less able to achieve other goals; their power is to that extent less effective.

In her recent account of penal legitimacy, Alison Liebling (2004) has looked to tackle problems arising from the conflict between prisoners, officers and managers and their implications for effective and efficient penal performance. Liebling (2004) maintains that the “moral performance” of a prison can be measured, leading to the uncovering of shared ‘moral standards’ that could be accepted across the penal spectrum. Liebling (2004) argues that penal regimes, which adhere to the shared beliefs of prisoners, staff and the general public, follow the rule of law and show evidence of a consensus, are *morally legitimate* institutions. Attempting to expand upon managerial discourses of legitimacy, defined merely in terms of outputs and performance indicators, Liebling (2004) argues that through the Measurement of the Quality of Prison Life surveys [MQPL], a new penal consensus can be fostered.

Arising from this consensus will be more moral, humane, efficient and effective prisons and better means of highlighting the *legitimacy deficits* of those prisons which fail to attain the appropriate moral performance. Through finding improved moral grounds for the compliance of subordinates, in this case prisoners, prison authorities can improve the *quality of prisoner compliance*, resulting in enhanced order, stability, effectiveness and legitimacy. For Liebling (2004) increased moral performance is intended to induce prisoner acquiescence and create the opportunity to use prison for instrumentalist aims of reducing re-offending.

By following this path Liebling (2004) becomes what Antonio Gramsci (1971) referred to as both a “traditional intellectual” (university academic) and “organic intellectual” (inculcator for the powerful), as her criteria for ‘moral performance’ serves the interests and wishes of the repressive apparatus of the capitalist state. The endeavour to construct a new moral consensus simply provides the tools to further naturalise existing penal power relations. In short, Liebling’s attempt to facilitate a new shared world view that can operate within the existing punitive priorities of the prison service appears to fit all of the hallmarks of a hegemonic project. Significantly, such a conception also influences the appreciative research methodology used to glean knowledges of prison officers.

The above contributions from Woolf (1991), Sparks et al., (1996), and Liebling (2004) follow Beetham (1991) in correctly identifying that penal legitimacy cannot be secured merely through the rule of law. Yet such an analysis is clearly flawed, ignoring the wider

moral and political questions challenging the basis and deployment of imprisonment and the insidious nature of power and its interests (Sim, 1994; Lukes, 2005). Though political legitimacy has traditionally been rooted in the state's monopoly of legitimate violence and its power to imprison offenders within a given territory (Weber, 1948), the deployment of "authoritarian populism" in recent years as a means of informing penal policies, and creating a law and order consensus, cannot be problematised within such an analytical framework (Hall et al., 1978; Hall, 1988). Significantly, under the Thatcherite settlement, calls for increasing state intervention, forms of prison regimes and the curtailment of citizens' rights and liberties are justified in the name and the *interests of the people*, not the capitalist state (Hall, 1980; Beetham, 1991; Pratt, 2002; Carlen, 2002).

The above constructions of consent also fail to take account of how the interests of the powerless are shaped by hegemony (Gramsci, 1971, Lukes, 2005). Power, it would seem, "is at its most effective when least observable" (Lukes, 2005: 1), and can exclude certain ways of thinking or acting. What may appear to be consensus may actually serve the interests of the rulers rather than the ruled, and may lead to the subjugation of certain ways of interpreting the real and acknowledging *the truth*. This can lead then to prisoners accepting certain penal realities and definitions of legal rights which fail to adequately protect their shared humanity. Perhaps worst of all, these penological approaches follow Beetham (1991) in creating a false distinction between moral philosophy and social science. Yet, and providing a heavy body-blow to the credibility of such studies, the purported distinction between sociological and philosophical approaches was something even Beetham (1991: 244) himself admits he was unable to maintain in practice.

So the work of normative philosophy and that of social science can, neither one, proceed in isolation from the other ... I set out at the beginning of this book to write a social-scientific account, and ended up perforce in providing a philosophical one.

So much then for Beetham's abandonment of a normative assessment of penal legitimacy. As Gramsci (1971) famously argued, all people are philosophers and therefore rather than reduce questions of penal legitimacy to its existing constructions by prisoners, staff, general public and politicians, the validity of prisons, and the actions and beliefs of their agents, require the adoption of moral and political normative value judgements.

A neo-abolitionist normative framework

Neo-abolitionism is a modernist project grounded in the synthesis of Symbolic Interactionism, Neo-Marxism and the commitment to a non-punitive rationale for responding to wrongdoing (Swaaningen, 1997). Rooted in the objective standards or normative principles of *legal accountability, democracy, human rights, and social justice*, neo-abolitionism deepens and expands upon the previous discussion, but places concerns around the exercise of penal power, the rule of law, definitions of 'crime', punitiveness and the construction of consent within their political and social and economic contexts.

1. Legal Accountability

In the day to day running of the prison, Carrabine's (2004) insistence on the normalcy of the absence of a consensus or duty to obey among those incarcerated appears correct. But if the maintenance of penal order is based upon manipulation, persuasion, coercion or

the enforcement of personal authority, the very place designed to uphold law becomes characterised by the negation of law (Glick, 1973; Fitzgerald & Sim, 1979). It is clear that the actions of penal authorities must not be placed above the rule of law and beyond procedural restraints. Any legitimate response to wrongdoing must be rooted therefore in the rule of law, legal accountability, legal safeguards and legal guarantees (Swaaningen, 1997).

2. Democracy

It is also clear that the legitimate exercise of power must be democratic and reflect a genuine consensus of those subjected to its exercise. The voices of all, perpetrators, victims and bystanders, should be heard and wrongdoers allowed active participation in the decision making process. However legal practices rooted in an authoritarian democratic consensus and the upholding of bad laws that degrade and dehumanise citizens cannot be deemed legitimate. An understanding of hegemony guards against any straightforward embrace of populist opinion (Hall, 1980). A consensus is socially constructed, privileging certain ways of interpreting the world. Neo-abolitionism points to the need to provide plausible alternative ways of approaching the truth and the formulation of alternative realities which can facilitate greater justice for all.

The legitimacy of state punishments and its agents must therefore be located within the social, economic and political contours of advanced capitalism, patriarchies, and neo-colonialism, and the arising inequitable distribution of the social product. Talk of legitimacy must be linked to how these contexts shape which social harms are

criminalised, and which groups are consequently subject to penalisation (Fitzgerald & Sim, 1979). The almost exclusive focus by law enforcement agencies on the criminality and subsequent punishment of the “sub-proletariat” (Hall et al., 1978), highlight the political illegitimacy of the current exercise of penal power and use of imprisonment. A penal system that overwhelmingly punishes the poor and marginalised and reinforces inequities, can hardly be considered democratic and must be understood as experiencing a profound *crisis of political legitimacy* (Sim, 1987).

3. Social Justice

The principles of social justice promote greater equity in the *distribution* of the social product, just outcomes for conflicts and recognition of wrongdoers’ shared humanity (Hudson, 1993; Cohen, 2001). The baseline for assessing constructions of prisoner human rights is rooted in the full acknowledgment of humans shared vulnerability to suffering through the dehumanisation inherent in penal regimes. Prisoner suffering is challenged because those confined are *recognised* as fellow human beings.

4. Inalienable Human Rights

Alongside these macro political questions, neo-abolitionism challenges the naturalisation of the prison, the moral rightfulness of deliberately inflicting pain and the validity of imposing further harm in response to a harm already done. Any evaluation of penal practices, procedures, and policies must consider the validity of the denial of their citizenship rights. Neo-abolitionism looks to human rights to promote visions of social

inclusion, and facilitate alternative way of understanding the meanings and definition of wrongdoing and possible responses.

Promoting humanitarian values and radical alternatives to current means of governmental sovereignty and political economy, neo-abolitionists look to assess understandings of human rights through the normative demands of legal and democratic accountability alongside, and crucially *in balance* with, the promotion of greater social justice.

Carceral clawback

The synthesis of Foucault's discourse analysis with neo-abolitionism provides an effective means of describing and evaluating the existing discursive formation on prisoner human rights. As established earlier, discourses define conceptions of the real and are rule governed. They shape and constitute meanings providing coherent interpretive contexts or world views. Where discourse analysis and the above normative critique of penal legitimacy perhaps fuse most effectively is in the writings of Pat Carlen (2002) and her arguments around "carceral clawback".

Numerous liberal humanitarians, anti-prison activists and penal pressure groups have highlighted the inadequacies of the penal system (see chapter three). On both political and moral grounds the prison has been confronted with significant threats to its legitimacy, yet in the last thirty years imprisonment has continued not only to function but also expand at an alarming rate. Despite sustained criticism of its dehumanising realities, the prison service has been able to effectively erase or neutralise critique leveled

against it. For Carlen (2002) this defensive “logical necessity” of carceral clawback has taken two forms: the recontextualisation of critical discourses and the transformation of humanitarian penal reforms.

To deflect focus from its flaws, the prison service has attempted to *incorporate* the language of critique into its own official penal discourses. Burton and Carlen (1979: 95) maintain that in remedying such “legitimacy deficits” common sense and official discourses must renew or guarantee the authority of the capitalist state and its agencies by performing closure to debate and erasing contesting or critical approaches (Pratt and Gilligan, 2004; Scraton, 2004). Discourses are constituted through authorities of delimitation which establish regimes of truth. As penal authorities monopolise credible speaking positions on the “truth” of imprisonment, they are able to obscure prisoner sufferings and imprisonments’ inherent threats to our humanity. The truths from below, peoples real and very disturbing and dehumanising experiences of incarceration, become subjugated knowledges denied authority or value.

Penal authorities act as guardians of prison talk, performing a significant function in shaping the meaning and content of the language deployed regarding the prison. In this sense discourses not only set the interpretive boundaries of knowledge, but through doing so, aim to “allay, suspend, and close off popular doubt” (Burton and Carlen, 1979: 13). Through discursive struggles, authorities of delimitation attain hegemony and consequently establish penal legitimacy. The recontextualisation of rights language through the official interpretive framework or worldview, excludes certain ways of

thinking about human rights, and their connections with socio-economic contexts and actual functions of imprisonment, whilst giving the impression that such concerns are on the prison service agenda.

For Carlen (2002), humanitarian penal reforms are undermined by the privileging of security and the ascendancy of managerialism which, between them, now dominate the penal landscape. Penal hegemony is only then fractured by positive humanitarian reforms, such as those promoting rehabilitation, that can be channelled to provide greater legitimacy to penal institutions (Mathiesen, 1974). As a result those reforms that are accepted may merely lead to further penal expansion, and consequently further overcrowding and its long list of consequences.³

Carlen (2002) identifies three models of penal reform, scandal driven, prison legitimating reform and principled reform. Scandal driven reforms⁴ arise in the wake of a public disgrace likely to provoke a public outcry and erode punitiveness. The prison service accepts responsibility for the problem, looking to implement new policies or change organisational structures and cultures deemed culpable. Whilst memories of the scandal remain, such policies figure high on the political agenda, but as recollections fade it becomes increasingly likely that prison security will be reasserted and the gap between policy and implementation will grow.

³ Described as a 'cancer' by Woolf (1991) disruptions can include two or more people sharing cells made for one; increased stress levels among prisoners and staff and potentially also more conflict; reductions in time out of cells and reduced association because of lack of educational, recreational and employment opportunities; poorer health care and other welfare services because of increased demand; and over subscribed treatment and rehabilitation programmes.

⁴ Such reforms have emerged through, for example, the increased visibility of prison officer violent and brutalising practices, serious prisoner disturbances, or alarm around controversial, racially motivated and self inflicted deaths in custody.

Prison legitimating reforms⁵ are responses to long term official criticism, and the main objective is to reassert the legitimacy of the system through deploying strategies which provide lip service to change but no substantive improvements in prisoners' lived realities. Again the sustainability of such reforms may be low but, if successful, the new legitimate prison may encourage further penal expansion.

The third approach to penal reform identified by Carlen (2002) is principled reform. This ideal type entails the attempt to change prisons based on a set of coherent principles, and is associated with liberal humanitarian reforms and human rights law. Principled reforms aim to implement a set of organisational and cultural changes that allow the prison to operate in a way consistent with the given moral framework. In the ideal case, the prison service will accept its responsibilities and implement new policies rooted in the given doctrine. Given the requirements of security and the maintenance of order, the sustainability of such reforms is likely to be low. Carceral clawback is highly probable in terms of mutating principles into a cloak of legitimacy (Norrie, 2001). For Carlen (2002) unless such principles are tied to penal abolition then security demands and further penal expansionism are likely to win out.

Truth, power, and legitimacy

The chapter provided an outline of the method deployed to organise and structure the thesis and describe the prison officer occupational culture. It then reviewed the literature

⁵ Examples include concerns over the prison conditions from government agencies such as the HM Chief Inspector of Prisons or failures regarding key aims of the service such as high recidivism rates.

on penal legitimacy, pointing to the need to adopt a neo-abolitionist normative interpretive framework. The evaluative criteria selected to assess prison officer recognition of prisoner shared humanity are rooted in the principles of legal accountability, democracy, social justice and inalienable human rights. The synthesis of neo-abolitionism and discourse analysis also informed an understanding of the ways in which humanitarian reforms have been co-opted, clawed back, or had the original meaning and principles subverted through recontextualisation.

It has been argued that prison officer occupational culture operates within a given discursive formation and that the meanings and interpretations of those sites, which comprise this group, overlap and inter-relate, albeit in a rather contradictory manner. A number of questions arise from this chapter: what are the meanings and content of prisoner human rights within the legal, policy, and penological discourses? How have human rights laws been relayed to prison officers in such discourses? Which key authorities are in privileged speaking positions in the existing 'regimes of truth'? How do they *name* the problem of human suffering and inherent threats to rights created through imprisonment? Do they name the problem at all? How are humanitarian reforms manipulated, co-opted, and re-contextualised through official discourses to add greater legitimacy to the prison service? How might the HRA be subjected to carceral clawback?

The aims of subsequent chapters are to identify the rules governing the interpretation of prison human rights in penology, law, policy and occupational culture and to uncover how they (inconsistently) shape the meaning, understanding and "penal truths" of

prisoner human rights and suffering in prison. Particular focus is given to the HRA and the way in which it may have disrupted previously settled meanings. Here it becomes crucial to analyse the messages that have they been sent to officers through the law and the prison service, particularly regarding the reforms undertaken in response to the HRA. This approach can help us to understand how such changes have been conceived by prison officers.

Despite talk of the social construction of “penal truths” and the adoption of discourse analysis to describe and organise the chapter structure, the intention has not been to drift into “intellectual denial” (Cohen, 2001: 280). Enlightenment and humanist commitments to truth, and exposure of lies, provide the platform for the subsequent evaluation of the legitimacy of prison officer recognition of prisoner suffering. There is a truth from below on dehumanising penal realities. The ultimate question is whether this truth is denied or acknowledged.

Chapter Three:

Penological discourses on prisoner human rights

Prison officer interpretations of the meaning and relevance of human rights in their daily interactions with prisoners do not exist in a vacuum. Rather they are related to other interconnected ways of thinking about human rights within a given historic period. The aim of this chapter is to identify and critically assess the six most clearly articulated penological approaches to prisoner human rights in England and Wales today: less eligibility; actuarialism; managerialism; welfare *through* punishment; liberal humanitarian; and penal abolitionism. To ascertain which of these accounts is likely to exert greatest influence these penologies are located within the political context of an unrelenting drift towards a dispersed, but profoundly authoritarian, capitalist state (Hall, et al., 1978; Poulantzas, 1978; Clarke and Newman, 1997). Overall the chapter provides a means of connecting macro social, economic and political constructions of human rights, with understandings and meanings within the micro prison officer occupational cultures. The chapter concludes with a discussion of the implications of the six penologies for the denial and acknowledgement of prisoner suffering by prison officers.

The socio-economic and political context: from welfare to punishment

In the period from the late 1940s until the early 1970s, a social democratic political consensus rooted in Modern Liberal principles of social equality, solidarity, and social justice, informed social and penal policies in England and Wales. Acknowledging the role of capitalism in creating social anxieties, unemployment, poverty and other

hardships, and promoting an interventionist state to ameliorate its worst excesses, social democratic governance was operated through a “penal-welfare state” (Garland, 1985). Governmental sovereignty was tied to political and social integration, whilst social democratic political economy utilised Keynesian ideas of high taxation and state spending, in an attempt to tame the capitalist tiger through formally regulating supply and demand.

The accumulation of internal organic contradictions and tensions in the post-war decades was exacerbated in the 1970s by a global economic and domestic fiscal crisis, laying bare the long term structural weaknesses of the British economy. Marking a profound rupture in the capitalist state’s moral authority and mechanisms for the production of consent, the deeply ingrained incongruity between the egalitarian and redistributive language of social democracy, and the actual disciplinary functions of the penal-welfare complex, saw the state come to be experienced as the “enemy of the people” (Hall, 1988: 50). This crisis of hegemony signaled

the coming of Iron Times ... [where] class domination will be exercised, in such moments, through the modification in the mode of hegemony; and one of the principal ways in which this is registered is in terms of a tilt in the operation of the state away from consent towards the pole of coercion. (Hall et al., 1978: 21)

These iron times became synonymous with the stewardship of an iron lady – Margaret Thatcher. Transforming governmental sovereignty and political economy, Thatcher privileged neo-liberal monetarist policies, the free market and privatisation. Responsibilisation and regulation strategies in the 1980s and 1990s facilitated the “rolling in” of state welfare provision through the “rolling out” of state power, albeit in a new

dispersed form (Clarke and Newman, 1997: 31). The ascendancy of a subtler form of “governance-at-a-distance” (Rose, 1996), allowed the capitalist state to devolve its responsibility for successfully providing collective security, whilst promoting the active engagement of non-state agencies, private organisations, and “active citizens” (Garland 1996, 2000, 2001). Public services were to be regulated from a distance, allowing the capitalist state to present itself as an impartial arbitrator trying to provide the best provision possible for consumers, but removing its responsibility for problems.

With its hands now tied in terms of economic policies, the capitalist state demonstrates its potency, and governmental sovereignty, with an all too willingness to punish harshly those offenders who are caught and convicted (Gamble, 1988, Garland, 2001; Hudson 2003b). Stuart Hall (1980, 1988) has referred to this new form of governance as “authoritarian populism”. The authoritarian state retains most of the official representative institutions of government, but has the ability to assemble around it active and widespread consent. Hall explains that Thatcherism re-articulated the acute economic and structural crises confronting Britain, in terms of crises of individual self discipline, the collapse of the moral order, and the undermining of the rule of law. Orchestrated through the media and politicians, calls for discipline and moral regulation from below dovetailed with the shift towards greater coercive authority and reliance upon the repressive apparatus of the capitalist state.

The Thatcherite legacy has been, with some significant adaptations, adopted by New Labour governments since 1997. Punishing those who are deemed to cause us our

greatest social anxieties is still considered to be a legitimate way to spend taxes, but not so welfare expenditure, to help those people in greatest need. It is within this drift towards a de-regulated and dispersed, but increasingly coercive and punitive state, that the influence of the following six penological interpretive frameworks in present times must be understood.

The doctrine of less eligibility

Perhaps the most durable penological approach to prisoner rights and conditions is the doctrine of less eligibility. Enshrined in the 1832 *Royal Commission on the Poor Law* it has become the “leitmotiv of all prison administration down to the present time” (Rusche and Kirchheimer, 2003: 94). Maintaining that prisoners, through their criminality, have forfeited their claims to be treated as humanely as other law-abiding citizens, less eligibility highlights the offenders’ *moral* deficiencies, blackening their name and politically validating the claim that human rights should remain at the prison gate, to be regained only upon release. Expressed through the general living conditions of prison and penal discipline, the doctrine of less eligibility in effect transfers the basic premises of neo-liberalism into the realm of punishment. Predicated on the assumption that there exists a universal free, rational and calculating subject, infused with an individual sense of responsibility, criminal activity is understood as a free choice that is based upon weighing up the potential benefits and costs of such behaviour. The logic behind this generic sense of severity is firmly rooted in the utilitarian calculus that to deter the rational offender requires the pain of punishment to outweigh the pleasures derived from the crime. Pointing to the balancing of the scales of pain and pleasure it is assumed that

if prison is painful, if it really hurts, the cognitive response of the offender will be to restrain from such pleasurable activity. Harsh and punitive regimes will in-still moral fibre, discipline and backbone into the criminal, thus eradicating the individual deficiencies that were major factors for their offence.

It is considered that the rational [poor] actor will only want to avoid the pains of imprisonment so long as prisoners are not “so eligible as the situation of the independent labourer of the lowest classes” (Rusche and Kirchheimer, 2003: 94). Indeed

[n]o reform program has been willing to abandon the principle that the living standards of the prisoner must be depressed in order to retain the deterrent effects of punishment. (Ibid: 159)

The application of the doctrine of less eligibility therefore ensures that the upper margin of prison conditions are guaranteed not to rise above the worst material conditions in society as a whole, and that in times of social hardships the rigours of penal discipline become more severe to prevent weakening its deterrent effect. In recent years, the doctrine of less eligibility has not prevented prisoners from having access to the welfare provision and support, such as education, employment and health care, though it has dictated that these are delivered at an inferior standard to those services on the outside. Further, while it is undeniable prison conditions have in many ways got better, any improvements must be understood within the relative standard of living of society as a whole.

Through its interpretive lens, prison conditions and prisoner human rights are predicated on certain understandings of human worth and value, themselves intimately linked with the value of labour and subsequent living conditions for the working class. Rusche (1933) argues that in capitalist market societies human life is deemed more valuable in times when there are shortages in the labour force. Consequently, in periods when economic circumstances change for the worse and there is surplus labour to the requirements of the market, or if the actual or potential productive capacities of the individual are only limited, then the human life of the offender depreciates in value. "The value of a human being is therefore the value of his [sic] labour" (Melossi, 2003: xxvii). The success of claims to *human* rights vary therefore depending upon economic circumstances.

Less eligibility gains appeal by tapping into already existing cultures and mythologies around "respectability", hard work, family values, self reliance and personal responsibility. Those who adhere to such principles are perceived as the very essence of Englishness, the 'us'. This is diametrically opposed to the 'them', the criminal, the ill-disciplined and the lazy, who present a threat to the natural and respectable existence of the English way of life. In the naturalised or common sense response, the call is for those in positions of authority to provide even greater discipline and control of those not adhering to respectable 'English' characteristics, thus providing legitimacy to mechanisms of marginalization and social exclusion (Hall et al., 1978).

The offender is sent to prison *for* punishment, as “prison works”, allegedly, by demonstrating that crime does not (Murray, 1997). Austere penal regimes are conceived as having a dual function of deterring crime and other immoral behaviours, and ensuring that prison is not considered a viable alternative to participation in a competitive labour market. This logic leads to the double punishment of not only depriving prisoners of their liberty, but also subjecting them to greater psychological distress created through surviving [or not] intentionally physically dehumanising and alienating regimes (Sim, 1990).

The implications of this discourse are highly disturbing. The label of ‘prisoner’ leads to human beings becoming constructed as *beyond the realms* of our understanding or moral universe. They are *ghost* like figures, whose needs and suffering are invisible, portrayed as rats, rodents, animals. Yet by

[d]efining the other as vermin harnesses the deeply entrenched fears, revulsion and disgust... But also, and more seminally, it places the Other at an enormous mental distance at which moral rights are no longer visible. Having been stripped of humanity and redefined as vermin, the other is no more an object of moral evaluation. (Bauman, 1991: 48)

We cannot relate to these “suitable enemies”, comprehend their actions or the motivations underpinning them, or even conceptualise them as sharing our notion of humanity. Convicted lawbreakers are psychically distanced and appeals to their similarity with deserving and respectable people are denied. Rather a negative construction of essentialised otherness becomes their individual or group status. The immoral and unrespectable poor – the subproletariat – are held morally responsible for

their dire poverty and the criminality that arises from this condition. Criminals are constructed as a breed apart, rationally choosing crime. A “negative reputation” (Scruton and Chadwick, 1987), discrediting victims of suffering from appeals to our sympathy, time and attention, is successfully applied (see introduction). Claims to human rights have been negated through the crime and thus not considered justly deserved or legitimate. These ghosts beyond our realm are thus defined as having no legitimate claims to inalienable rights at all.

Actuarialism and risk

Recent penological literature (Simon, 1987, 1993; Feeley and Simon, 1992, 1994; Garland 2001; Hudson 2003b; Kempshall, 2003) has charted the rise to prominence of actuarial justice and risk discourses. Actuarialism derives its meaning from the indemnity business and works through the systematic analysis of the statistical distribution of criminal behaviours in a given population. Through this logic security, public protection and crime prevention are maintained through insuring society against the risk of crime. Its effectiveness in terms of predicting and preventing future crimes is dependent upon the aggregation of criminal characteristics and the subsequent use of techniques to identify those who most closely fit criminal risk profiles. Insurance against future risks through statistical models, based on aggregate population, provides a new and objective means for the measurement of social phenomena. These positivistic methods allow for the calculation of the potential risks of future dangers so the rational actor can make responsible and prudent choices to avoid such harms. In this sense crime becomes

understood as a risk to be calculated by both the offender and the potential victim. It is an accident that can be avoided if appropriate precautions are taken.

Actuarialism undermines the moral and political dimensions of individuals, as their crime is not punished on the basis of their responsibility for the harm created, but through the scientific analysis of the offenders' background and personal characteristics in comparison with the distribution of such factors in the population as a whole. This entirely removes individuals from the crime control equation (Simon, 1987). The goal of imprisonment is neither an attempt to transform the offenders' soul nor alter the social context in which the crime occurred but confined to the selective incapacitation of [potential] offenders in low cost "no-frills" prisons (Feeley & Simon, 1994).

The current punitive political trajectory has seen a gradual development from the risk management of the subproletariat to their risk control (Hudson, 2003b; Clear and Cadora, 2001). Risk management accepted risks and, rather than attempting to eliminate them entirely, acknowledged that there must be a collective form of managing and pooling risks. It allowed for the possibility that mistakes could be made in risk assessments, and that individuals might be falsely predicted as being involved in future criminal activity. Risk control by contrast, is a refusal of risk and, rather than managing risks, is aimed at their prevention in the first instance. It sees the end of the acknowledgement of "false positives" as now the criteria of accuracy is judged solely on the correspondence between risk profiles and individual characteristics. High risk offenders are to be contained, and any future risks they may or may not engage in are thus avoided entirely. Through the

entrenchment of “categorical suspicion” (Hudson, 2003b: 61), criminalisation becomes more closely linked to the group the offender belongs rather than the actual offence committed. Instead of simply suspending the rights of high risk offenders, the exclusion of the subproletariat is conceived as more permanent where the “route from the fortress to the wilderness is one-way” (Hudson, 2003b: 76). Thus in all senses of the term experiencing a civil death, the prisoner’s legal rights are completely revoked.

Without denying the existence of the actuarialism, or the increasing tendency to frame problems through the lens of risk, a number of assumptions about its current form and development are open to debate.¹ Feeley and Simon (1992, 1994) argued that actuarialism has only recently emerged and is amorphous, lacking an articulate ideology and transcending political discourses of the right or left. Yet there is considerable evidence to indicate that its logic emerged in the time of early capitalism and is highly consistent with the principles of capitalist accumulation (Rigakos and Hadden, 2001). Given this, and that its current influence on both sides of the Atlantic has been tied to right wing political settlements, it would be a mistake to consider actuarial discourses as independent of political changes. Additionally the claim that risk has transcended “normalisation” (Foucault, 1977), with criminal justice practices now focusing exclusively on the development of techniques to classify and manage groupings of offenders sorted by their projected levels of dangerousness, appears inconsistent with the development of penal polices in the UK in the last ten years.

¹ See for example HM Government (2006) and its promotion of actuarial controls.

The philosophy underscoring the post-normalisation thesis also appears vulnerable to critique. For Simon (1993) the links between labour, discipline and punishment have been eroded, leading to the creation of a new permanently excluded social group, an underclass, which has no functional ties with the process of capitalist production or accumulation. The underclass are considered to form a dangerous toxic waste unable to effectively consume or contribute to the capitalist market, and socially and politically constructed as an inherently pathological, ghettoised aggregate population, that can no longer be integrated into society. It is increasingly clear though, that through the deskilling of labour and the degradation of work in capitalist economies, even those people with limited educational investment or those who are ghettoised in the so-called underclass, have opportunities to escape partially in times of economic boom (Braverman, 1999; Melossi and Pavarini, 1981).

Actuarialism and the development of risk as a key interpretive framework have clear implications for prisoner human and legal rights. Their logic transcends due process rights and successfully denies prisoners' claims to shared humanity. Categorical suspicion and the aim to punish the [potential] offender instead of the offence committed, threaten basic legal safeguards, limiting the application and scope of the criminal law. Further, its justification of imprisonment merely as a means of toxic waste disposal can only lead to greater neglect, dehumanisation and human suffering. A persons' humanity is in effect obliterated, and fate determined by risk profiles reflecting profound inequities in race, class, gender, sexuality and age. The actuarial denials of individual agency and responsibility lead to an attendant denial of individual human rights. A pure application

of this discourse would lead only to inhumane and dilapidated prison conditions filled to the brim with poor, vulnerable and needy people whose legal rights have been removed irreversibly, and whose suffering is negated through the logic of civil death.

Managerialism and the illusion of rights

Managerialism has rapidly become the “new liberal discourse on crime” (Sasson, 2000: 250). The most recent prison service initiatives on the surface appear to be promoting humanitarian reforms and recognising the rights of prisoners (Bryans & Jones 2001). These developments are however cloaked within, and legitimated by, a managerialist ethos where prison standards, audits, targets and indicators, are primarily concerned with improving prison service performance, reducing costs and providing comparative data (HM Prison Service, 2002a, 2002b, 2005a). Any improvements in the experiences of prisoners created by such developments must be understood within these parameters, as opposed to a commitment to the concern for the well-being of those confined.

The promotion of prison standards and the measurement of performance are not motivated by humanitarian concerns to ameliorate degrading prison conditions, or reduce suffering, but by the rationalisations for formal auditable criteria that can be measured and compared to other parts of the service, or even with competitors in the market.² Knitted to Thatcherite logic, and presented as giving the public greater choice and individualised freedoms, managerial reforms provide the lynchpin for the move towards a more minimal state and the dispersal and refocusing of welfare services. Yet whilst managerialism may succeed in avoiding the political pitfalls of less eligibility, the

² See HM Government (2006) and discussion of NOMS in chapter five.

resulting erasure of humanity leaves only an empty and soulless iron cage at the core of this approach.

The managerial calculus promises autonomy, entrepreneurship and innovation, prioritising cost effectiveness, service efficiency and value for money whilst at the same time apparently guaranteeing quality services and products. Promising new flexible and responsive services that can better address the needs of service users, managerialism privileged new rational purposes, goals, mission statements and visions for the prison and the promotion of new methods to enhance its performance. Under the guise of new public managerialism, the prison service developed strategic business plans, targets for monitoring achievement, and the commissioning of reviews and reports to measure progress and provide evidence of value for money.

Through core business rationalisations the managerial framework limits the purpose and scope of the prison identifying and prioritising its central activities. This focus allows inessential, non-core activities to be legitimately abandoned, narrowing the criteria upon which penal performance and efficiency are evaluated. It has become a penal truism that unless an activity is defined as a core business and measured through Key Performance Indicators or Targets, it is unlikely to be done. Importantly managerialism is framed through a pre-occupation with organisational design that is pragmatic and orientated towards action and change, means rather than ends. It is focussed on how best to manage current resources, and budget allocations to meet strategic and performance targets, than wider social problems, which are largely excluded from calculations. Policy

developments are reduced to the criminal justice system itself, with reforms linked with improved inter-agency co-operation and joined up services, to ease the flow of managerial decisions.

The deployment of explicit Key Performance Target and Indicators as the main means of measuring organisational accomplishments has resulted in the publication of outputs in league tables to illustrate comparative performance (HM Prison Service, 2005d). Underscoring this is the ever-present threat of market testing for failing prisons, spurred on by the belief that competition, “contestability” and privatisation provide the most appropriate catalyst for penal innovation and improved services for consumers. If prisons remain ineffective, the solution is to replace the provider, conveniently insulating the capitalist state from critique.

Underscoring the logic of managerialism is the neo-liberal privileging of the consumer. Here the free, rational, empowered and self disciplined self-governing neo-liberal subject is morally responsible for the good or bad choices they make, and thus for minimising or maximising potential risks. When bad things happen blame falls squarely on the flawed consumers shoulders. Further, consumers have only a certain set of entitlements and expectations detailed in compacts or contracts, as opposed to citizens with their rights and responsibilities. Yet through talk of contracts, compacts and choices the political nature of imprisonment is hidden. The prisoner is constructed purely as a customer, whilst the broader context of social injustice is ignored. Prisons are regarded as merely providing services, like any other provider of consumer goods and it is the quality of these

commodities that are evaluated, not the wider concerns around their role in deliberately inflicting pain upon the subproletariat or the extent and depth of human suffering.

In short, managerialism can be considered as working within the terrain laid down by the Thatcherite transformations of the welfare-penal state. As such, it conforms to current political realities, retaining a number of the assumptions and problems of neo-conservatism and neo-liberal penalty. Managerial inspired penal reforms can only ever provide the illusion of rights (Sim, 1994, Clarke and Newman, 1997). Managerial forms of accountability and transparency become merely “an organisational ritual, a dramaturgical performance” (Power, 1997: 141), providing an account of the prison service performance, but one that does not actually hold anybody to account.

The managerial work ethic prioritises loyalty to the organisation, with obedience to fulfilling the budget and core business of the service. The calculus underscoring these forms of “morality”, effectively removes the human subject from the equation. Indeed, the compartmentalisation of managerialist ethos provides a narrow construction of humanity and a person’s needs. The *responsibility* for outcomes, as opposed to process (bureaucracy) or outputs (managerial) is removed. The focus is on lowering overheads, making things better, quicker and more effective. This emphasis on cost however brings with it a loss in the significance of value, at least in human terms. It simply provides a new sanitised rationale that allows for distance, indifference and denial. Through this logic, prisoner claims to inalienable rights and sense of shared humanity, inevitably fall upon deaf ears.

Welfare through punishment

Highly consistent with certain aspects of the doctrine of less eligibility, actuarialism, managerialism, and neo-liberal political economy and governmental sovereignty in times of economic growth, is welfare *through* punishment. Welfare *through* punishment expresses New Labour's evangelical mission to turn the prison into a *special place*, working to "rescue or save" the unrespectable poor from the underclass (Faulkner, 2001: 103). Originating from a distinctly communitarian political vision, prioritising self discipline, individual responsibilities and mutual obligations, the prison is conceived as an expensive way of making people better.

Effectively managed prisons are presented as a major opportunity to reduce the likelihood of re-offending, and to bring home prisoners' responsibilities. Without rejecting the goals of deterrence and incapacitation, rehabilitation is tied into wider utilitarian goals of crime reduction, and advocated as one of the primary ends of imprisonment. The welfare role of imprisonment however takes on new significance as it operates within a context of a declining commitment to social insurance and a greater push towards the criminalisation and penalisation of the powerless.

In short, the welfare *through* punishment penology promises to protect consumers by facilitating re-entry into the labour market of effectively responsabilised, trained and disciplined offenders, whilst also identifying, targeting, and subjecting to more intense forms of penalisation those perceived as a risk through either their dangerous or

persistent behaviour. In so doing, this promotes “normalisation” (Foucault, 1977); it privileges the market and privatisation as the best means through which effective and efficient management and responsabilisation of prisoners can reduce re-offending; and locates victims and broader society as the *real* consumers of the criminal justice business.

It is understood that the value of human life is intimately tied to the current value of labour. The investment in human potential thus appears more politically viable in times of economic stability and growth. In other words when capitalist accumulation is restricted by shortages in supply to the labour market the reserve army of labour soaked up by the prison can be tapped into as a useful resource (Melossi and Pavarini, 1981; Melossi, 2003; Rusche and Kirchheimer 2003). Imprisonment can thus act as a means of social discipline and integration to normalise the offender (Foucault 1977). Through reform or rehabilitation, the prison provides an opportunity for resettling prisoners back into the community, in an improved condition to undertake their normal roles in everyday life.³ Work is considered an essential part of a persons ‘normal’ activity, and an effective means to cure laziness, instil moral backbone or simply use up time and energy that may otherwise be channelled into lawbreaking (Mathiesen, 1990; Simon, 1993). Prisons can provide through their educational and work-based training initiatives, basic enough skills for successful reintegration into the labour market.

The prison is conceived like a new poor- or work-house, in which the non-productive subproletarian can be trained to be a potentially valuable commodity, given the skills,

³ Under normalisation the prison also acts as classificatory mechanism identifying and separating those who can be successfully helped from those offenders who should be considered as inherently criminal requiring further interventions or long term incapacitation (Foucault, 1977; Cohen, 1985).

discipline and work ethic needed for employment. The focus on rehabilitation is rooted in a “what works” agenda promoting offender behaviour programmes designed to challenge offenders’ defective cognitive skills.⁴ In these treatment programmes offenders are assumed to possess significant agency and required to actively challenge inadequacies and then choose to appropriately transform their incorrect reasoning through their responsible self governance (Andrews and Bonta, 1998; Ross, Antonowicz & Dhaliwal, 1995).

Embodying both social authoritarianism and free-market individualism, the interpretive framework championing what works presents a repressive form of governmental technology promoting self policing and individual responsibility as the key to successful citizenship. The ‘what works’ agenda cloaks the authoritarian nature of imprisonment within an apparently humane and benevolent face thus facilitating penal legitimacy. However, like previous rehabilitative initiatives, it fails to account for either the constraints of the punitive environment it operates within, or the determining structural contexts shaping prisoners’ social circumstances and choices.

The obfuscation of social inequalities and mechanisms of coercion and subjugation are reinforced by its moralisation of individualised blameworthiness, creating a logic whereby prisoners are ‘othered’ as cognitively different to law abiding citizens. The idea that crime can be cured is based on notions of either individual or social pathologies

⁴ This now dominates accredited offender behaviour programmes in our penal system. Current accredited programmes include: R&R (Reasoning and Rehabilitation); ETS (Enhanced Thinking Skills); MORE (Making Offenders Rethink Everything); CALM (controlling anger and learning to manage it); CSCP (Cognitive self-change Programme); and the SOTP (Sex Offender Treatment Programme) which now has 4 programmes.

presenting the offender as diseased and punishment as cure. It can be experienced as patronising, infantilising, indeterminate in length and as negating the offender's moral agency. Further, not only does imprisonment fail to rehabilitate and reduce re-offending, it is likely that it does the exact reverse and debilitates those confined within (Mathiesen, 1990). For those that the behaviour programmes fail, this stigma is combined with a redefinition as potentially dangerous or beyond help. For these and other pathologised prisoners only increased security, discipline, control and other punitive sanctions are now deemed suitable (Kendall, 2002).

To be most effective in achieving the twin goals of the public protection and reducing re-offending requires an improved business performance and a better managed and joined-up criminal justice system. Sound bites resound around evidence-based research, new technology, innovative programmes, risk assessments, benchmarking, contestability and the golden fleece of tackling recidivism rates. *Welfare through* punishment ultimately promotes the re-emergence of treatment and training philosophy, neo-liberal style. Like managerialism, the market and penal privatisation are seen as saviours of failing penal regimes, antidotes to two hundred years and more of unsuccessful penal reforms.

Welfare through punishment promotes customer services and the responsabilisation of the prisoner, and in so doing it erases the prisoner as a human agent with rights, confirming that the prison as a place for reducing crime and punishments pursued for wider utilitarian interests. Prisons are not to serve the needs of prisoners but to achieve goals which meet the requirements of victims, witnesses and its other legitimate consumer, the

general public. In short the “whole programme amounts to a modernising and rebalancing of the entire criminal justice system in favour of victims and the community” (Blair, 2004: 5-6). Prisons reduce the burden of the tax payer and protect the real customers of the criminal justice business from dangerous and persistent offenders. Standards are to be set and met so that genuine customers feel safe and feel like they experience a high level of service.

The limitations of welfare *through* punishment are immediately apparent. Procedural rights of the accused are virtually irrelevant. Notions of “justice” are reduced to improved conviction rates and reduced costs.⁵ Any sense of prisoner entitlement, rights, conditions or claims to humanity are intimately tied to their ability or potential to provide a productive form of labour in a capitalist economy where demand outstrips supply. The individual human suffering of prisoners and its acknowledgement are inconsequential to wider utilitarian aims. A reversal of fortune, it can be assumed, may lead to a return of its sister doctrine, less eligibility. Worryingly the contraction of welfare provision may mean that in times of economic decline, given the limited welfare support for those respectable and responsible people in need in the community, may lead to political pressure for a long-term suppression of prisoner welfare and their legal and human rights.

In becoming the primary or first contact with many social services, we are confronted with the horrible spectre of prisons and their correctional partners operating as a buffer

⁵ There would appear here to be the development of a ‘justice gap’ (Hudson, 2003a, 2003b). The definition and meanings of justice are reduced to the successful conviction of offenders, the efficient operation of the criminal justice system and cost effectiveness. This focus on ‘outputs’ removes the term ‘justice’ from its wider socio-economic and political context or any notion of socially just outcomes or distributions of social goods.

system between the poor, vulnerable and needy and welfare support, ensuring that attempts at social integration for those at society's extremities are available only *after* they have been embroiled in the process of criminalisation and penalisation. It is highly significant that the current focus on rehabilitation in the discourse of welfare *through* punishment is shaped by the absence of a "penal-welfare complex" (Garland, 1985). Prisons still incarcerate the poor but imprisonment as a means of regulation not only transcends public welfare, but takes its place. Yet those in need of welfare should always be conceived *beyond* punishment.

Liberal humanitarians and the social contract

Constituting a diverse field of liberal, radical pluralist and Fabian socialist penologists and penal pressure groups (Ryan, 1978, 1996),⁶ humanitarian discourses share a commitment to decent prison conditions, the acknowledgment of prisoners procedural and due process legal rights, and consider imprisonment as merely a suspension of offender liberties. Humanitarians are often reluctant advocates of the prison, unable to conceive of responses to social harms that do not rely upon this detestable solution. Arguing from a reductionist platform, humanitarians call for greater penal accountability and democracy, arguing that imprisonment should be restricted for serious crimes only (Rutherford, 1986). Though attention is sometimes directed towards social problems, such as poverty or racism, reform of the criminal justice system has normally been their central focus (Stern, 1989).

⁶ See for example Cavdino and Dignan, (2001), Stern, (1987, 1998), Coyle, (2003), Matthews and Francis (1996) and the liberal penal pressure groups the Howard League for Penal Reform and the Prison Reform Trust.

High levels of prison populations and inadequate living conditions are understood as political and policy choices and the aim of penal reform is to create greater scepticism about the benefits of prison and muster the political will to change (Rutherford, 1986; Stern, 1989). Humanitarians have generally restricted demands for penal transformation in order to maintain their acceptable status as critics of the penal system and thus keep the ear and the pen of those in political and penal authority (Ryan, 1978, 2003).

Punishment is conceived as intimately tied with the suspension of the offender's normal legal rights (Foucault, 1977). Logically this premise has three requirements. First, citizens of a given state have and are normally allowed to exercise certain rights. Second, the exercise of these rights is contingent upon law abiding behaviour. Third, certain rights can be forfeited and legitimately removed through the law by authorities with the power to punish, for a given period of time. If citizenship is the possession of rights, then punishment is defined by their loss. The specific application of punishment revolve around which rights can be considered to be legitimately suspended, for which 'crimes', for what period, and on what philosophical grounds. For humanitarians the ultimate legitimate expression of state punishment is limited to the suspension of the right to liberty, achieved through the physical confines of the prison.

Following the Paterson dictum, people are sent to prison *as* punishment, not *for* punishment. The legitimate expression of state power *is* the suspension of offender liberty for the duration of the prison sentence. The prisoner therefore retains all citizenship rights except those expressly taken away or by necessary implication of the

act of confinement. The legal rights considered as being retained by the prisoner are largely negative rights and freedoms. This liberal philosophy regarding the protection of the residual rights of the offender is largely consistent with the progressive legal discourses on rights that have developed since the 1970s (see chapter four).

Human rights are largely conceived in procedural terms, but substantive rights are also promoted, such as the campaign for legally enforceable minimum prison standards (Home Office, 1979; Casale and Plotnikoff, 1990; Loucks, 2000). Along with pressure groups such as the Howard League and the Penal Reform Trust, humanitarians have consistently acknowledged prisoner legal rights in domestic, European and international law. Unsurprisingly they are the most enthusiastic advocates of the Human Rights Act (1998) [HRA]. Legal rights and responsibilities are understood as a unity or based on a *social contract*. Under this interpretation prisoners are given clear responsibilities, but it is only through meeting given duties and behaving responsibly that they can then be endowed with certain stipulated rights or legitimate expectations (Woolf, 1991; Morgan, 1994; HM Government, 2006).

Humanitarian reformers, especially the Howard League, have adopted a proactive stance to the HRA, maintaining that legal battles provide an important means through which policies can be contested and also contribute towards an informed public engagement with the penal system. It is believed that legal rights strategies can communicate a moral message to criminal justice workers and decision makers and lead to an evolution of penal policy (Valier, 2004). The law provides prisoners with a platform for constructive

dialogue with penal authorities, and even the threat of legal challenges can realign micro power relations between prisoners and staff, reminding officers that they *may* be held legally accountable for their actions (McEvoy, 2001: 166, 177).

The humanitarians' close connection with current human rights laws has advantages, but also certain dangers and limitations. Despite the potential of legal rights as a means of protecting prisoners, and contradicting the logic of punishment, the ability of prisoner human rights to achieve such purposes are predicated upon their definition, content and interpretation. If these remain limited or simply reflect existing penal values and principles, they will inevitably fail to either protect prisoners or challenge inhumanity. Rights talk must not be subservient to the needs of imprisonment or the priorities of its administrators. On the contrary, the response to 'crime' and social harms must be consistent with our basic human rights.

Some humanitarians have looked to expand existing legal discourses on prisoner rights. The early work of Genevra Richardson provides the most sophisticated liberal approach to positive legal rights in prisoners. Richardson (1985a) argues that it is legitimate for the state to suspend certain legal rights, but that prisoners retain all remaining general rights of citizenship. Significantly, Richardson (1985a) also argues this alteration of the existing legal relationship between prisoner and the state, resulting in the prisoner's exceptional and involuntary dependence, implies that prisoners should be entitled to additional "special rights". In other words, through the sentence of imprisonment some legal rights are suspended, but others are *created*. Therefore,

[t]he ideal regime ... would both specify the precise restrictions imposed on a prisoner's general and specific rights and the exact scope of those that remain, and would vest additional special, often positive, rights in [prisoner's] against the prison administration. (Richardson 1985a: 28)

The "special positive rights" created through incarceration should oblige penal authorities to provide prisoners with adequate food, clothes, living conditions, medical and recreational facilities, and, on a strictly voluntary basis, therapeutic and psychiatric treatments, employment, education and vocational training facilities. For Richardson (1984) such special positive rights must be legally enforceable, if prisoners are to going to be able to successfully assert their claims.

In Richardson's approach to positive rights, the moral legitimacy of imprisonment is unquestioned, unproblematically accepting the normalcy and naturalness of the prison, and the suspension of the right to liberty as a basis for punishment. The application of the penal sanction in an inequitable society is not considered, leaving the analysis of human rights in prison dislocated from their social, economic and political contexts. Wider concerns about the provision of health care, education, leisure facilities as a *universal* human right of citizenship are transformed into "rights in prisoners" created through the *special dependency* of imprisonment. This focus on special rights may be counterproductive in the current political climate. In a capitalist state which disregards human rights and punishes the poor, the prison as a supplier of welfare is hardly desirable, especially when failures abound in the provision of welfare on the outside. In this sense the logic of the Richardson position not only fails to effectively challenge welfare *through* punishment, it actually supports it.

Penal abolitionism

There are many consistencies between humanitarian and abolitionist approaches to prisoner human rights. Both are linked to the penal lobby, promote due process rights, provide critiques of the suspension of rights and call for a positive rights agenda. However, penal abolitionists have looked to deepen their commitment to human rights through questioning the role and function of the prison in advanced capitalist societies, and to question the necessity of human suffering in prison. Abolitionists have been concerned with both the micro realities of imprisonment, such as the lived experiences of prisoners, the inherent brutalities and dehumanisation of the prison life and the unfettered discretion of prison officers, alongside a concern with the broader macro socio-economic contexts through which both social harms are understood and defined as 'crime', and the legitimacy of the current focus, and indeed existence of, the process of penalisation. Abolitionists also differ through their commitment to promoting a radical alternative to existing penal realities and its rationale (de Haan, 1991).

Abolitionist discourses on prisoner rights were originally grounded in the calls for legal rights by prisoners themselves (Mathiesen, 1974; Fitzgerald, 1977; Ryan, 2003). They have engaged with prisoners rights through radical pressure groups, such as Radical Alternatives to Prison, INQUEST and Women In Prison and through active participation in prisoner social movements that organised mass collectivised peaceful protests. Prisoner collective resistance have largely been struggles for better conditions and procedural rights, reflected for example in the demands and manifesto of the first prisoner

union in the UK, the Preservation of the Rights of Prisoners [PROP]. First and foremost an organisation of prisoners and ex-prisoners, PROP's statement of intent declared that it had been formed to "preserve, protect and extend the rights of prisoners" (cited in Fitzgerald, 1977: 137) while its "CHARTER OF RIGHTS" listed some 26 demands "arising out of the common situation of British prisoners" (Ibid: 138). On both sides of the Atlantic prisoner rights claims have included: decent living conditions, freedom from physical abuse, proper health care and diets, access to activities such as work, religion and recreation, the right to vote, outside contact with family and friends, due process rights, legal representation, access to the courts, media and appropriate reading materials (Fitzgerald, 1977; American Friends Service Committee, 1971).

Marxist abolitionist Thomas Mathiesen (1974: 14) argued that the main aim of any prisoners' movement must be that of attaining "*the competing contradiction*", for this was the only way to avoid being either "co-opted" by the state, and thus adding to penal legitimacy, or being defined out as "irrelevant", and therefore unable to contribute. For Mathiesen (1980) the competing contradiction was competitive in that it was relevant to the material conditions of the confined, and a contradiction, in that it was in opposition to the broader goals of the penal system. Human rights provide both of these elements. Human rights offer concrete, easily understandable and practical advantages on an everyday and immediate level, whilst they are contradictions in that they also provide an alternative philosophy. As punishment and imprisonment are conceived through the loss of rights, specifically as the suspension of liberty and other citizenship rights, then an uncompromising advocacy of prisoner inalienable human rights to citizenship, despite

the limitations of legal discourses, provides an important and direct challenge to the logic of punishment itself. Unlike the liberal humanitarian approach, which allow for certain rights to be legitimately removed, an abolitionist logic questions whether the suspensions of liberty can ever be deemed legitimate, providing a contradiction to the very idea of imprisonment.

Abolitionists have recognised that the law is neither “innocent” nor “evil” (Sim et al., 1987; Kerruish, 1991) and that the rule of law can be both emancipatory and conservative: a means of protection and coercion, a mechanism for establishing democratic freedoms and legitimating terror and repression. Whilst rooted in the position that the criminal justice system operates to “regulate the conflict inherent within social relations of production and reproduction” (Scraton, 1987: ix) abolitionists have recognised the contradictory nature of the state and remain sceptical of its chameleon like nature. As Cohen (1998: 106) argues rather than conceiving the law in “repressive terms or as a mere reflection of class interest” we should have a “nuanced appreciation of the rule of law as a historical victory of democratic legality over arbitrary power”. This double-edged sword that the state wields can consequently also provide a protective shield to the powerless (Cohen, 1994). The aim of penal interventions has been to challenge and exploit the contradictory nature of both the law and the state and bring about reforms which will have a positive impact on the concrete everyday existence of marginalized and excluded groups (Sim et al., 1987).

Neo-abolitionism and prisoner human rights

The above discussion has outlined the rules and structures of the six main penological doctrines and traditions on prisoner human rights. These broader interpretive frameworks, given various levels of exposure in civil society, provide the frames of reference shaping the ends of imprisonment, but also the contours of the legal, policy and occupational cultures in the discursive formation. Current political realities have been shaped by the Thatcherite settlement, which prioritises neo-liberal political economy and where governmental sovereignty relies upon a strong, potent and authoritarian state that can ensure security. This breeds a social, economic and political context that fuels a penology that denies prisoner legal and human rights. The doctrine of less eligibility, actuarialism and managerialism all erase prisoner humanity, whilst welfare *through* punishment, a strange hybrid of all three, has gained ascendancy in a time of [relative] economic stability.

Liberal humanitarian penology and abolitionism offer us alternatives that acknowledge prisoner human rights. Humanitarian social contract approach's acceptance of the suspension of legal rights and the current political terrain provide major limitations here, whilst its attempts to expand the law through positive rights appear politically dangerous in a time of welfare retrenchment on the outside. Abolitionists perhaps provide the most hope for challenging current political priorities and acknowledging the human and legal rights of prisoners. The competing contradiction provides a powerful case for the promotion of rights, and it is through a discussion of recent developments in the

abolitionist tradition regarding shared humanity, positive rights and legal guaranteeism that I wish to conclude.

Rene van Swaaningen (1997) persuasively argues that legal guarantees can protect the human rights of citizens who break the law from arbitrary state interventions or extra-judicial punishments in the community whilst also ensuring appropriate redress for victims. Legal guaranteeism is predicated on a politically independent application of the rule of law, securing citizens' rights through formal legal procedures and strict legal definitions outlining when the state can intervene regarding 'crimes' or problematic behaviours, and when it cannot. Current formulations of rights reflect existing power relations and have been defined from above. Human rights must first and foremost be a means of critiquing the infamies of the present, and to do so rights must be freed from institutional and definitional restraints that blunt their ability to critique inhumanity, and protect human dignity and self-respect. A genuine prisoner rights agenda must recreate space for rights as criticism rather than technical compliance. Radical rearticulations are more likely to develop if current legal rights are problematised or questioned, rather than considered as ends in themselves.

Neo-abolitionists have provided an alternative positive rights agenda. Avoiding the pitfalls of the Richardson thesis described above, neo-abolitionists look to emphasise the rights of prisoners through advocating the positive general rights of citizens. The focus must not be on the special rights of the prisoner: one should not have to be placed in an abnormal environment that is prison to achieve these special entitlements. Prisoners

should have positive rights because *all citizens should have positive rights* and prisoners, despite their confinement, remain citizens. Such positive legal rights are linked with visions of social justice, welfare and human need and a society rooted in the equitable distribution of wealth and power. The solution to our penal crisis resides in the provision of positive life experiences and opportunities for all in society, and a starting point is awareness of the need to oppose the decline of welfare provision through the Thatcherite political settlement.

Alongside this, and most relevant to prison officers, is the recognition and acknowledgement of shared humanity. The fight against dehumanisation, unnecessary human suffering and the infringement of humanity, both inside and outside of the prison, must be central to a prisoner human rights agenda. Connections between citizenship, imprisonment and positive rights should not be detached from the wider social context. The only way to avoid the marginalisation and ghettoisation of prisoner rights is to reconnect them with wider human rights discourses. The right to health care, education, decent living conditions and a safe working environment should not be suspended through punishment, neither through an inability to pay for them privately. It is not just that the state should not suspend human rights, rather the organisation of production and distribution of resources should allow for their positive provision. This ultimately involves radical socialist political and policy transformations challenging the dominant forms of governmental sovereignty and political economy (Marx, 1964).

The best way to protect and ensure the safety and security of citizens and undermine welfare *through* punishment is to ensure that the rule of law is upheld and that there is a socially just, democratic and accountable distribution of the social product combined with the radical reduction, if not virtual end, to the use of imprisonment as a means of responding to wrongdoing.

Chapter Four:

The politics of prisoner legal rights

Are prisoner human rights protected through the law? What are the contours of the reasoning adopted to secure these rights? Is the Human Rights Act (1998) [HRA] now central to establishing the legal rights of prisoners? What are the prospects of further developments of human rights jurisprudence for prisoners and as means of progressive penal reform?

The chapter provides a definition of prisoners' legal rights, and then a brief discussion of the foundational approach to the successful development of judicial reasoning on prisoner rights in England and Wales in the last thirty years. It then moves on to outline the development of the most progressive line of logic in legal discourses in England and Wales post HRA, whilst pointing also to a number of contradictory and conservative judgements in the domestic courts. The continued importance of the European Court of Human Rights [ECtHR] and the principle of proportionality are reviewed, to highlight both their role as the most progressive line of reasoning in delineating and protecting prisoner legal rights, and in detailing comparative judgements to highlight the conservative nature of domestic legal discourses.

The most progressive domestic and European discourses are then assessed using the insights of anti-foundationalism, evaluating future prospects for penal reform by considering the criteria for success and failure in existing legal cases. The chapter

concludes with a brief discussion of alternative, radical rearticulations of prisoner human rights from a neo-abolitionist standpoint.

The HRA and the development of prisoners' legal rights

The focus of this chapter is exclusively on the legal rights of prisoners and such a term requires clarification. First it is important to distinguish a claim to a legal right from the declaration of a liberty. An individual can declare an act as a liberty when there is no obligation on that person to refrain from such behaviour; in such a claim there is no correlative duty imposed on another to act or abstain on the petitioners' behalf. To claim a right, on the other hand, is to make an assertion of a duty on another that entails either an act of *performance* or *forbearance* on the other's part. Whereas a liberty is atomised and implies individual freedom, a right is founded in relationships with others. An assertion is a legal right when the claim is protected and sanctioned through the law. Consequently prisoners' legal rights can be understood as those legally enforceable claims requiring the accomplishment or restraint of certain actions on the part of the prison service.

Whilst coming to such a definition is relatively straightforward, determining the content and interpretation of such rights in prisoners has proved to be much more controversial (Richardson, 1984). Indeed even the very acknowledgment that prisoners possess some legal rights has been highly contested. For example, up until the 1970s prisoners were considered to possess only privileges, and once the gate closed behind them were viewed as being beyond normal legal remedies. The policies of penal administrators were

uncritically supported or condoned by a highly conservative, non-interventionist legal discourse with a self imposed deference to the executive.¹ Whilst some cases were successful,² prisons were left to themselves, becoming lawless and discretionary institutions where the use of arbitrary powers by staff could go largely unchecked. The rules of the prison were vague and unspecific, with prisoners unaware of their content and unable to ensure their impartial application. The court's hands were constitutionally tied and a blind eye turned towards the brutal realities of imprisonment.

Following the impact on judicial reasoning of the *Golder* and *St Germain* cases, it is clear that there has been a significant change in the contours of legal discourses on prisoners' legal status. In the last thirty years, as a direct result of the intervention of the domestic and European courts, the entire prison disciplinary system, release procedures, legal correspondence and procedures relating to inter-prison transfers and security classification have been overhauled. In *Golder v United Kingdom* (1975), the ECtHR held for the first time that a policy of a member state's prison department, in this instance regarding legal correspondence, breached articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) [ECHR].³ Through the *Golder* decision it was established that the ECHR was applicable to the prison setting, and opened up the way for further successful appeals to convention rights. An equally

¹ The two most well cited illustrations of this conservative discourse are *Arbon v Anderson* (1943) *Becker v Home Office* (1972).

² See for example *Ellis v Home Office* (1953), which reaffirmed the common law duty of care.

³ The Council of Europe introduced the ECHR in the belief that in its member countries there was a sufficiently "common heritage of political traditions, ideals and freedoms, and the rule of law" allowing governments "to take the first steps for the collective enforcement of certain rights stated in the Universal Declaration" (Council of Europe, 1950). Never envisaged as providing a platform for radical transformations or to actually improve people's lived realities in the West, white masculinist bourgeois assumptions are reflected in the rights protected, as is the assumption that imprisonment epitomises the normal and humane form of punishment in Western capitalist democracies.

important ruling was made in the third of the *St Germain* (1977-79) cases following disturbances at Hull prison in 1976, where the domestic courts⁴ granted “certiorari”⁵ to the prisoner applicant’s following a failure of Hull Board of Visitors to observe natural justice in their disciplinary hearings.⁶ In consequence prisoners could no longer be considered beyond the remit of domestic legal jurisdiction simply through the fact of their incarceration. *St Germain* provided the first step in the current most progressive common law reasoning, which holds that “the rights of a citizen, however circumscribed by a penal sentence or otherwise must always be the concern of the courts unless their jurisdiction is clearly excluded by some statutory provision” (Lord Justice Shaw, 1979, in *St Germain* cited in Livingstone et al., 2003: 77).

The ability of the judiciary to provide an effective means of delineating prisoner rights has been given further impetus with the enactment of the HRA on October 2nd 2000. Intended to give greater effect to the rights protected in the ECHR, the purposes of the HRA essentially revolve around enforcing state compliance with convention rights, through giving the courts restricted powers to invalidate legislation. There are two key elements of the ECHR which are central to the operation of the HRA: the content and status of convention rights, and the principles regarding interpretation and restriction.

⁴ ‘Domestic courts’ refers to the courts of England and Wales

⁵ Certiorari (to be informed) is a remedy to quash the decision of a public body if it has acted ultra vires (beyond its powers) or made an error of law.

⁶ Interestingly, the court came to this conclusion with the firm belief that the prisoners involved in the petition were “dangerous”, “unreliable”, “untrustworthy” or “difficult” and that, despite the procedural irregularities, the right decision had actually been reached.

There are three kinds of legal rights in the ECHR: absolute, special, and qualified rights (Starmer, 2001). Absolute rights are the most strongly protected and cannot be derogated from even in times of war or other public emergencies.⁷ Special rights can be derogated or restricted in times of war and other public emergencies, but unless expressly provided for in the article itself, interference cannot be justified in terms of the public interest.⁸ Qualified rights can be derogated from in times of war and other public emergencies, and interference can be justified in terms of public interest. Qualified rights are constantly involved in a balancing act and are most vulnerable to circumvention. Though the provisions of such articles appear at first to provide cast iron legal guarantees they are vulnerable to “clawback clauses” (Higgins, 1982) where conditions within the article allow for circumvention.⁹ For example Article 8, which asserts that a public authority cannot interfere with the exercise of the right to privacy, adds

except as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. (Article 8 (2))

The HRA allows for the domestic courts to consider the jurisprudence of the ECtHR and ECmHR in their reasoning but are not bound to its decisions as the ECHR is a *living instrument*.¹⁰ Further the HRA positively obliges states to “secure” convention rights

⁷There are four such rights in the ECHR: the right to life (art 2), prohibition of torture and inhuman and degrading treatment (art 3), prohibition of slavery (art 4(1)) and no punishment without law (art 7).

⁸ There are three special rights: right to liberty and security (art 5), right to fair trial (art 6), and the right to marry (art 12).

⁹ There are four qualified rights: the right to family and private life (art 8), freedom of thought (art 9), freedom of expression (art 10) and freedom of association (art 11).

¹⁰ The ECHR is considered a *living instrument* which must be interpreted in the light of present day conditions removing the obligation of binding precedent. As a result, a dynamic and evolutionary approach may be taken to the interpretation of the articles and, provided appropriate legal reasoning is followed, courts can depart from previous decisions.

requiring public authorities to take positive measures or action to prevent the breach of individual rights.

The most potentially significant principle for domestic judicial reasoning is the *doctrine of proportionality*. This doctrine is concerned with attaining a fair balance between meeting the demands of the community, or the general interest as it is sometimes referred to, and the requirement to protect individual fundamental rights. Proportionality is the basis of human rights legal reasoning in the ECtHR and has four central elements (Fordham and de la Mare, 2001: 29): (1) Any restriction of a covenant right must be considered to be *legitimate*, that is that the curtailment of the right is done in pursuit of a legitimate aim. Legitimacy is closely tied to the principle of legality and for any restriction to be lawful it must be established in domestic law and the provision must both be accessible and foreseeable. (2) The restriction must be *suitable* to the legitimate aim pursued. That is that consideration should be given to ensure that the measures being adopted are actually intended to meet the objective that criteria of legitimacy claimed. (3) The restriction must be considered to be an absolute *necessity* and that no other means could be adopted in their place. Thus there should be the least interference with the right as possible.¹¹ (4) Finally do the *ends justify the means*? Is the restriction “necessary in a democratic society”¹² and this implies that to justify a restriction there must be a “strong

¹¹This entails five considerations: (1) Have sufficient reasons been given for interference? (2) Is there an equally effective but less restrictive alternative? (3) Has the decision making process taken account of the interests of those affected? (4) Are there sufficient procedures and safeguards against abuse of the restrictions? (5) Does the restriction destroy the very essence of the right?

¹²The interpretation of ‘necessity’ and legality are crucial here but there is hope that greater reliance on the ECHR interpretation as “pressing social need” under the doctrine of proportionality will start to have greater influence on domestic cases (Fitzgerald, 2003).

and pressing social need” (Fitzgerald, 2003:2) outweighing normal adherence to convention rights.¹³

Humanitarian penal reform groups, such as the Howard League for Penal Reform, have considered the introduction of the HRA as an opportunity to challenge punitive penal policies in a regressive political culture. To be sure, optimism in such a strategy is not entirely unfounded. For example, in *R (on the application of the Howard League for Penal Reform) v Home Secretary* (2002) the administrative court held that though the Children Act (1989) did not impose positive obligations on the prison service, the duties that a local authority would owe to a child under sections 17 or 47 were not removed because the child was placed in a Young Offender Institution [YOI]. Thus though these obligations and responsibilities to the child were tempered by restrictions necessary to the requirements of incarceration, it was held that the 1989 Act did apply to children in YOI's.

It is maintained that as judicial confidence grows post HRA, the domestic courts will provide even further gains for prisoners and act as an effective means of penal accountability¹⁴ (Livingstone et al., 2003). Legal discourse as a means of progressive

¹³ There is one further principle. Controversially the ECHR allows room for discretion in the interpretation of convention rights between different nations. The domestic courts are given privilege in assessing the necessity of restrictions placed upon convention rights because they have direct and continuous contact with “vital forces” of that given state. This *doctrine of the margin of appreciation* reaffirms the idea that the ECHR has only a subsidiary role to perform in national governance.

¹⁴ The judgement in *R v Deputy Governor of HMP Parkhurst ex parte Hague* (1991) removed the last impediment to full judicial supervision of the prison, entitling prisoners to now bring before the courts any claim of ‘unlawful action’ by the prison authorities. The new judicial approach began when domestic courts started to venture verdicts in favour of prisoners regarding the application of the principle of natural justice to administrative penal decisions. ‘Natural justice’ follows the reasoning of the common law doctrine that

penal reform has perhaps never had so many hopes invested in it. Though it is clear that the traditional non-interventionist “hands off” days are over, the extent, motivation and implications of the transformation in legal discourses are open to debate.

We should not ignore the manner through which political and legal discourses have historically shaped the definitions of human rights. Sight must not be lost of how present legal rights reflect as much, if not more, the interests of those in the positions to define them, as those they pertain to defend. HRA rights are highly restrictive, limiting the scope of both what we understand as human and inhuman and in so doing, rights are vulnerable to becoming static and easily negotiable. Overly restrictive definitions of prisoner legal rights can be co-opted by the state as a mechanism for providing greater authority to its representatives or institutions, including the penal system. It is debatable whether even if widely adopted HRA reasoning and jurisprudence, would provide a sustained critique of penal establishments. Equally plausibly, the HRA may well be used to provide a new cloak of legitimacy, playing

an important legitimating role, for now it will be possible to argue that the system is not just good because ‘we say so’ but because it has undergone a rigorous human rights audit, and, baring problems at the edge, been pronounced fair. This will be possible even though no substantial changes have been made to the system as a whole. (Norrie, 2001: 275)

Such an outcome could act as an obstacle to real change by neutralising the impact of rights as critique. The judiciary operate within given socio-economic and political contexts. In advanced capitalist societies basic social relations operate through a hybridity of interdependent contexts regarding production, reproduction, and neo-

powers which affect citizens’ rights must be exercised fairly using just procedures and due process - a principle established in the important ruling of *Ridge v Baldwin* (1963).

colonialism (Scruton and Chadwick, 1991; Smith, 1998). Legal discourses are shaped by these contexts and perform a role in their reproduction and it is impossible to understand law outside of current alienating, exploitative and disempowering social fault lines.¹⁵ Indeed as part of the state apparatus performing their functions within the current political and structural contexts, the judiciary cannot be considered independent, neutral, and impartial adjudicators. For Griffiths (1997: 343),

[t]he principal function of the judiciary is to support the institutions of government as established by law. To expect a judge to advocate radical change is absurd. The confusion arises when it is pretended that judges are somehow neutral in the conflicts between those who challenge existing institutions and those who control those institutions.

Judges are concerned with protecting and conserving those values, institutions, interests, and relationships that society is founded upon. The judiciary look to enforce rules that reflect what each judge considers to be in the public interest. In this sense judges are politically “parasitic” (Griffiths, 1997: 342) concerned to preserve and protect the existing political, economic, and legal order. Unsurprisingly the judiciary are naturally sympathetic to those institutions that uphold and enforce the law, such as prison administrators (Richardson, 1985a). It is clear that optimism and zeal for penal transformations through the courts must be qualified.

The politics of prisoner rights can be best illustrated through the consideration of the rulings and reasoning of the courts. Legal reasoning reflects and reproduces a particular understanding of the real, and the foundational approach to judicial reasoning is

¹⁵ Ironically the law has functioned to protect both marginalised groups and the very social, political and economic mechanisms that have created their marginalisation. Legal discourses ameliorate, emancipate and limit arbitrary powers yet also justify or are complicit in the operation of coercive, authoritarian and repressive institutions. The law has played neither an inherently “evil” or “innocent” (Kerrusih 1991: 3) role in the continuation of social injustices.

predicated on the assumption that one logical and objective line of argument, based on principles and rules, can be followed in every case. Facts are objectively considered, doubts removed, and the convincing chain of reasoning turned into a concrete and essentialised legal truth.

What this position negates is the political context of adjudication, the subjective and ideological basis of the judge, and the indeterminacy and contradictions within existing legal discourses. To produce the “correct” outcome in a case the “plastic substance” (Kennedy, 2002: 209) of legal rights reasoning, rules and principles are manipulated to fit with the political direction, inclinations, commitments and interpretive framework of the judge. Judges *creatively* apply the law by determining the most important facts of the case and the logic of reasoning adopted to reach judgement.¹⁶ This patterned discretion allows for judges to strategically input, exploit, or generate meanings within the case that constructs a line of reasoning consistent with their own position and policies (Baumgartner, 1992). It is within this context that the current two most progressive legal discourses on prisoner rights, the principles of proportionality and legality, must be located.

¹⁶ Such judicial creativity and discretion arises from determining the similarities and differences in the case which influence the legal precedents, rules and principles relied upon in judgement. This sense of judgement and the patterning of decisions are detailed in chapter six (see Baumgartner, 1992).

Progressive legal discourses in the courts of England and Wales

The most advanced form of judicial reasoning in the domestic courts is based upon an application of the rule of law to penal administration.¹⁷ This principle of legality is rooted in the approach that prison authorities must act within the boundaries of the relevant statutes and rules. The authority of penal administrators is derived largely but not exclusively from the Prison Act (1952); a statutory framework which confers massive discretionary and arbitrary powers upon penal officials, and is essentially enabling legislation outlining who is legally empowered to perform which duties regarding the operation and management of the prisons. Section 47 provides for the Home Secretary to make rules for the regulation and management of prisons and the resulting Prison Rules (1999)¹⁸ outline the procedures, policy objectives and obligations of the prison authorities.¹⁹ The logic shaping the legality principle is that the prison authority is only permitted to place restrictions on prisoners' fundamental rights, where such restrictions are mandated in primary legislation. Should an action be beyond what the law allows, it is deemed to be ultra vires.²⁰ Importantly this approach holds that instead of a measure being deemed unjustified by reference to the traditional common law standard of "abuse

¹⁷ There are three broad strategies that can be utilised in the domestic courts in the development of prisoners' legal rights: the rule of law [legality], prison as a public body and prisoners' human rights. See Whitty et al (2001) for a detailed discussion.

¹⁸ As amended in 2002 following the *Ezeh and Connors* judgement. See Loucks (2000) for the most recent overview and commentary on the 1999 prison rules and Zellick (1981) for a clear breakdown highlighting the different sections and intentions of the prison rules.

¹⁹ However they do not invest prisoners with a charter of rights and, if breached, cannot be used to make a claim under the private law. In the words of Lord Denning in the infamous *Becker v Home office* (1972) ruling "the prison rules are regulatory directions only. Even if they are not observed, they do not give rise to a cause of action". Lord Denning, who took great exception to this "vexatious litigant", held in favour of the Home Office going on to argue that should credence be given to "actions by disgruntled prisoners, the governor's life would be made intolerable". The legal status of rules, and other prison service directives, has become less significant since the introduction of the HRA and breaches are now justiciable.

²⁰ Prior to the HRA such adjudications primarily utilised the common law doctrine of ultra vires where an administrative decision was to be considered on the grounds of its rationality, reasonableness and whether it was within its legal powers.

of power”, the restriction of the right is unjustified and unlawful if the public body exceeds this legally defined limit.

The current basis of the legality principle can be found in Lord Wilberforce’s definitive statement in *Raymond v Honey* on prisoners’ residual rights where he stated that a prisoner “retains all civil rights which are not taken away expressly or by necessary implication” (1982, cited in Creighton, King & Arnott, 2005: 9). Though this statement contains a number of ambiguities, specifically what an ordinary person’s “civil rights” actually entail, and which rights are removed through the potentially elastic concept of a “necessary implication”, this line of reasoning justifies the removal of only those rights that are specifically related to the nature and legal functioning of imprisonment (Richardson, 1984). This line of reasoning, largely enshrining of prisoners’ absolute legal right to legal access, advice and correspondence was further embedded in the rulings of *Leech (No 2)* (1994), *Simms* (2000) and *Daly* (2001).

R v Home Secretary ex parte Leech (No 2) (1994) revolved around the powers given to governors under rule 33 (3) of the 1964 prison rules. Prison governors could read every letter from a prisoner, including those between a prisoner and lawyer unless legal proceedings had already begun, and could stop any such correspondence considered to be objectionable. In judgement, Lord Justice Steyn held that section 47 (1) of the Prison Act (1952), did not expressly authorise interference with the unimpeded access to legal advice. Further the ruling clarified that the test upon which the necessity of the restrictions of prisoners’ rights should be based is whether there is a “self evident and

pressing need” and that any permitted violation must be the minimal sufficient to meet that need. The legality principle was relied upon by Lord Steyn once again in *R v Home Secretary ex p Simms and O’Brien* (2000). Significantly in *Simms* the claim concerned the limits placed on prisoners’ access to journalists. Lord Steyn stated that there were a number of topics which prisoners should not be allowed access to the media about, such as to publish pornography, vent hate speech or more controversially “a debate on the economy or on political issues”. Lord Steyn (cited in Livingstone et al., 2003: 274) held that,

[i]n these respects the prisoner’s right to free speech is outweighed by deprivation of liberty by the sentence of the court, and the need for discipline and control in prison (ibid).

However, the claim to free speech in *Simms* was “qualitatively of a very different order” as it concerned whether prisoners “have been properly convicted” (cited ibid), and thus should be interpreted differently. Lord Steyn pointed to the need for access to journalists, because they provided an essential safety valve protecting the legitimacy of the prisoners’ conviction, and highlighting miscarriages of justice. Illustrating the confines of the legality discourse, and the subjectivity in determining the crucial facts of the case, the *Simms* ruling was successful only because it can be related specifically to access to the courts and to the legality of the sanction of imprisonment.

The emphasis on access to the courts as the most protected legal right was further reinforced in *R (Daly) v Home Secretary* (2001). This case, decided under the HRA, is central to the most progressive domestic judicial line of reasoning. *Daly* involved a

challenge to the legality of the prison service policy which excluded prisoners whilst prison staff searched their cells, personal belongings, and potentially also their legal correspondence. The court found that the policy was an infringement of the *common law right* to the confidentiality of privileged legal correspondence. For Lord Bingham (in *Daly* cited in Livingstone et al., 2003: 22) imprisonment,

does not wholly deprive the persons confined of all rights enjoyed by other citizens. Some rights, perhaps in an attenuated or qualified form, survive the making of the [custodial] order. And it may well be that the importance of such surviving rights is enhanced by the loss or partial loss of others rights. Among the rights which, in part at least, survive are three important rights, closely related but free standing, each of them calling for appropriate legal protection: the right of access to a court; the right of access to legal advice, and the right to communicate confidentially with a legal adviser under the seal of legal privilege. Such rights may be curtailed only by clear and express words, and then only to the extent reasonably necessary to meet the ends which justify the curtailment.

As justification, the Home Office maintained that the searching of cells in the presence of the prisoner created risks of intimidation, relaxed security, and disclosure of searching methods and thus, the absence of the prisoner should be enforced. For Lord Bingham (2001 in *Daly*, cited *ibid*: 186),

it must be recognised that the prison population includes a core of dangerous, disruptive and manipulative prisoners, hostile to authority and ready to exploit for their own advantage any concessions granted to them. Any search policy must accommodate this inescapable fact.

Yet Lord Bingham (cited *ibid*) also reasoned that though any prisoner,

who attempts to intimidate or disrupt a search of his cell, or whose past conduct shows that he is likely to do so, may properly be excluded even while his privileged correspondence is examined so as to ensure the efficacy of the search ... no justification is shown for routinely excluding all prisoners, whether intimidatory or disruptive or not, while that part of the search is conducted.

The court held that the policy did not amount to “a necessary and proper response to the acknowledged need to maintain security, order, and discipline in prisons and prevent crime” (cited *ibid*).²¹ Importantly *Daly* was decided on the common law principle of legality, though it is clear that the same decision would have been reached had the court applied the convention principle of proportionality. What *Daly* implies is that the common law continues to retain its full force under the HRA limiting, if not entirely negating, some possible progressive implications of the HRA. The principle of legality, which underscores this discourse, remains highly restrictive giving little space for delineating new rights in prisoners. Further though the principle of legality can highlight inadequacies in the legal framework, it is not invested with the power to change them. Consequently, adherence to bad prison laws and rules are unchallenged, leaving the ability to define the contours of regulations and legitimate discretion within the hands of the prison authorities.²²

²¹ The ruling makes it clear that all infringements, such as blanket bans justified as essential to meeting the requirements of security or order, must be considered in terms of their legitimate aim and if the policy fulfils this aim with the minimal necessary interference with a prisoners’ convention rights. However *Daly* still leaves much room for judicial discretion and whilst it allows for the placing of procedural safeguards and the removal of the blanket ban, prisoners may still be excluded from searches should in the individual circumstances the prison authorities provide appropriate justifications.

²² A further and consistent strategy has been to approach prison as public body. As virtually all decisions taken in the prison likely to lead to claims of a breach of prisoner’s rights are taken with regard to prison rules or the Prison Act (1952), they fall within the jurisdiction of judicial review. The public body strategy considers the prison to be equivalent to other state institutions and consequently falls under the same administrative rules, principles and judicial jurisdiction. The decisions and actions of prison authorities therefore should be judged on the same criteria and legal norms as any other public institution. Whilst accepting the legitimacy of the suspension of the right to liberty this strategy places the onus on the prison authorities to justify any further restrictions placed on prisoners through their confinement. The strategy of ‘prison as public body’ has led to successful claims from prisoners regarding their legitimate expectations. This strategy is however primarily focussed on providing remedies as opposed to investing prisoners with legally enforceable rights.

Further judicial reasoning in the domestic courts is far from consistent and a number of recent rulings point to the contradictory, subjective and creative nature of adjudication. In *R (P and Q) v Home Secretary* (2001) two women prisoners applied for a judicial review to challenge the timing of a mother's separation from her child in a prison mother and baby unit. The petition was initially unsuccessful, but Lord Phillips reasoned that penal policies on mother and baby units should promote the welfare of the child, and that any interference with the child's family life must be justified with reference to article 8 (2) of the ECHR. It was held that the current policy of 18 months was too rigid and that the prison service must allow for a more flexible timescale. What is significant here is that whilst the legal discourse is couched in ECHR language, the central concern and reasoning is concerned exclusively with the child. It was the rights, needs, and overall welfare of the children that determined the policy outcome, not the rights of the imprisoned mothers.

Perhaps the most notable recent contradictory judgement is *R (Mellor) v Home Secretary* (2002). In *Mellor* a serving prisoner wished to have a child with his wife by artificial insemination. Making a strong claim that when he was released his wife may be too old to safely give birth, the prisoner's petition was unsuccessful as it was held that imprisonment by necessary implication removes the opportunity for prisoners to conceive unless on temporary release. *Mellor* also demonstrates a conservative if not regressive reasoning, with the ruling upholding the view of a paternalistic state legitimately preventing the birth of child, when it is apparent that s/he would knowingly be brought up in a one parent family.

Progressive legal discourses in the European Court of Human Rights

The HRA is intended to give further effect to the ECHR though, as detailed above, the domestic courts have so far proved reluctant to fully apply the principle of proportionality, preferring instead to adopt the consistent but more conservative principle of legality. This has resulted in a conflict between the interpretation of the ECHR in domestic and Strasbourg courts. This tension is most apparent in the four main areas of success for prisoners since the introduction of the HRA: sentencing tariffs, governor adjudications, effective inquiry into deaths in prison and democratic participation.

The ECtHR has a strong tradition regarding prisoner release procedures. In the cases of *Weeks v United Kingdom* (1988),²³ *Thynne, Wilson and Gunnell v United Kingdom* (1991),²⁴ *Wynne v United Kingdom* (1994) and *Hussain and Singh v United Kingdom* (1996),²⁵ a strong jurisprudence emphasising the judicialisation of release procedures has been established. The most significant recent ruling is *Stafford v United Kingdom* (2002). When in 1996 the Home Secretary rejected the Parole Boards recommendation for his release, Mr Stafford petitioned for a judicial review of the decision. After unsuccessful hearings in the domestic courts the case went to Strasbourg. Here the ECtHR reasoned that the continuing role of the Home Secretary in determining the tariff of a prisoner could not be reconciled with the required standards of independence,

²³ It was held that the decision to recall discretionary life sentence prisoners released on license must be subject to judicial procedure.

²⁴ Following this decision a judicial hearing was required to determine the release of discretionary lifers on grounds regarding their "continuing dangerousness".

²⁵ It was held there should be greater judicial control regarding release of indeterminate sentenced prisoners.

fairness, and openness embedded in the separation of powers between the executive and the judiciary.

Though the reasoning in *Stafford* was directly applied by the House of Lords in *R (Anderson) v Home Secretary* (2002),²⁶ this can be directly contrasted with the more conservative rulings in the domestic courts pre-*Anderson*. In *R v Home Secretary ex p Lichniak and Pyrah* (2002) the court of appeal rejected the argument that mandatory life sentences were arbitrary and disproportionate and thus incompatible with Articles 3 & 5 of the ECHR. Similarly in *R v Home Secretary ex p Hindley* (2001), involving a politically controversial petitioner, the judiciary once again showed deference to the executive rather than engaging in the development of a human rights discourse.²⁷

The role of governors' adjudications regarding additional days awarded was considered before the introduction of the HRA to be an area of vulnerability to legal challenge (Brown, 1999a, 1999b).²⁸ However in *R (Greenfield) v Home Secretary* (2002) the adjudication system was deemed convention compliant, albeit with limited judicial controls. The court of appeal in *R (Carroll, Greenfield and Al Hasan) v Home Secretary*

²⁶ *Stafford* established that under Article 5 (4) post-tariff mandatory lifers were entitled for a review of their suitability for release. In *Anderson* the seven law lords unanimously held that under Article 6 that the Home Secretary's power to determine convicted murders tariff was incompatible with the HRA. Consequently section 29 of the Crime (Sentences) Act 1997 was also incompatible and so a declaration of incompatibility was made under section 4 of the HRA.

²⁷ However as a result of the earlier case of *R v Home Secretary ex p Thompson and Venables* (1997) the power to set the tariffs in children's cases was transferred to the Lord Chief Justice in March 2000. In this case the trial judge initially recommended a tariff of eight years which was increased to ten years by the Lord Chief Justice. After a flood of petitions, the Home Secretary increased the tariff to 15 years. It was held that it was unfair and illegal to take into account the petitions.

²⁸ Governors were allowed to impose 42 additional days of imprisonment as a disciplinary punishment and the crux of the issue concerned the question of if these proceedings could be considered as being of a criminal nature. If this was found to be the case then the ADA adjudications would fall within the procedural safeguards of Article 6 of the ECHR.

(2002), hearing the cases of 3 prisoners,²⁹ dismissed the petitioners' claim that as the punishments kept the recipients in prison for longer than the original intentions of the courts, such proceedings must be criminal in nature, Lord Woolf reasoning that ADA's did not add greater days to the prison sentence but rather simply postponed the prisoners release on licence.

Later in the same year it was held in *Ezeh and Connors v United Kingdom* (2002)³⁰ that governors' power to add extra days to a prisoner's sentence in disciplinary hearings was not consistent with Article 6 (1) of the ECHR.³¹ At their respective adjudications Ezeh had been found guilty of using threatening words and Connors guilty of assault. Ezeh received a punishment of 42 added days and Connors one of seven added days. Both prisoners had been refused requests for legal representation by the governors hearing their cases. Though the charges were relatively minor and could not clearly be described as being of a "criminal character", the ECtHR considered that as the prisoners were being detained beyond the date they would have been released as the result of proceedings unconnected to their original conviction, the severity of a potential penalty belonged to the realm of criminal charges because as a result of the nature its execution it was "appreciably detrimental" to the prisoners. The UK government conceded that governors

²⁹ Mr Greenfield, who had been 'awarded' 21 days for using an illicit substance; Mr Carroll whose punishment entailed two additional days, 19 days stoppage of earnings and 10 days cellular confinement for disobeying a lawful order; and Mr Al-Hasan whose punishment had included loss of privileges and stoppage of earnings for 19 days.

³⁰ The government appealed the decision but it was upheld in the grand chamber of the ECtHR in November 2003.

³¹ The decision in *Ezeh and Connors* in July 2002 resulted in the immediate release of 900 prisoners who were serving under ADA rulings since the enactment of the Human Rights Act in October 2000. The decision may also have opened the possibility for compensation claims from prisoners. The government appealed the decision but it was upheld in 2003

could not be considered an independent and impartial tribunal as understood in the meaning of article 6 (1) of the ECHR.³²

A third area of successful judicial intervention in UK prisons has concerned the positive obligations to fulfil Article 2 of the convention: the right to life. The Strasbourg court has held that the prison service is under a positive obligation to protect prisoners' lives from accidents, prisoner or prison officer violence or neglect. In *Keenan v United Kingdom* (2001) the ECtHR held that article 2 obligations extended to a duty to prevent suicides when authorities were aware of a "real and immediate risk" to life. This positive obligation was further elaborated in *Edwards v United Kingdom* (2002), where the parents of Christopher Edwards, who was murdered by another prisoner in HMP Chelmsford, petitioned the ECtHR (Edwards & Edwards, 2005). Both prisoners suffered from mental illnesses and the ECtHR held that, given the failure of the prison service to appreciate the vulnerability of Mr Edwards and the potential dangerousness of the murderer, they had breached Article 2.

In *Edwards* it was established that Article 2 also entailed a procedural right that a sufficiently effective inquiry must be undertaken into a prisoner's death. Here it was stated that any investigation into a death in prison custody must be public, prompt, and independent; capable of determining liability and those responsible, and that it must involve the victim's family in the investigative procedure. Yet once again the domestic courts have been reluctant to embrace convention obligations. In the initial ruling of the

³² Following this decision independent adjudicators have been introduced to whom charges are referred to if the governor believes that the offence under consideration may be serious enough to warrant the awarding of additional days.

court of appeal in *R (Amin and Middleton) v Home Secretary* (2002), which arose after the tragic murder of Zahid Mubarak by his racist “pad mate” Robert Stewart, a public inquiry was denied to the family. However the House of Lords, ruling in 2003, overturned this decision and reaffirmed the principles of effective inquiry, resulting in the currently ongoing Keith Inquiry, expected to report April 2006.

One further area of successful petitions to the ECtHR, that have initially failed in the domestic courts post the HRA, has been in terms of democratic participation in elections. Though the domestic case, *R (Pearson) v Home Secretary* (2001) was unsuccessful the opposite decision was reached in *Hirst v United Kingdom [no 2]* (2004) with the ECtHR holding that prisoners should not be denied the vote. After appeal, on the 6th October 2005 the ECtHR re-affirmed this position, and the broader principle that prisoners retained all legal rights except those expressly taken away.

The four examples above highlight how the reasoning adopted by the Strasbourg court is clearly much more progressive than domestic courts, despite both being charged with interpreting the same convention. Notwithstanding the similarities between reasoning based on the principles of proportionality and legality, the differences are clearly also of some significance in outcomes.

The contours of progressive legal activism: a success story?

Prisoner claims have been successful in both the domestic courts and the ECtHR where they have focussed on procedural rights and especially around quasi-judicial matters such

as discipline. Cases have been most successful when they fall within an area of traditional judicial intervention, such as legal advice and access, release and discipline, raise concerns regarding natural justice, due process or procedural issues or aim to provide greater transparency in the decision making process of penal administrators. Importantly, these points concern the greater judicialisation of penal power, and in effect regard functions that have traditionally and constitutionally been considered the role of the judiciary. Much remains regarding those imprisoned that lies beyond considerations of natural justice and fairness of processes. Even jurisprudence arising through this positive obligation, has once again not focused on the dehumanising and debilitating psychological trauma imprisonment can induce in those confined. Rather, the ECHR jurisprudence has focused on safeguarding the *procedural* right of effective enquiry to uncover the truth surrounding the death.³³

When securing the right to prisoner legal contacts and access to the courts, the most successful strategy has been to construct claims around the rule of law. The principle of legality fails to provide a strong commitment acknowledging prisoner shared humanity and the vulnerability of human suffering, or a deep concern for their lived realities whilst within or beyond prison walls. Once again *prisoner human rights* jurisprudence is absent.

³³ Procedures governing release raise key constitutional questions regarding the role of the executive and judiciary. Consequently when searching for explanations for success in this area it should be noted that legal reasoning has been primarily concerned with the legitimacy and fairness of the process of decision making rather than the outcomes in individual cases for prisoners. It is not the decision that is under scrutiny, but rather who made it and its constitutional legitimacy. This is welcomed and is of course a central requirement to any democratically accountable means of enquiry, but it should not be forgotten that the discovery of the facts, evidence and truth is regarded as one of the most legitimate and key constitutional functions of the courts themselves (Richardson, 1993).

The right to legal access is most consistent with the approach looking to legitimate the judicialisation of penal administration. Whilst some of the above rulings demonstrate the applicability of the courts in scrutinising penal authorities, and the possibility of further interventions, the confines of the discourse dictate that this will only be of significance for those interventions which also share its particular procedural frame of reference. Perhaps of most significance to prisoners themselves, procedural safeguards protecting the right of access to the courts does not have great significance in terms of how the courts will reason when considering substantive issues such as living conditions, health care, education, or working environment and opportunities.

When we ask the question what absolute rights are invested in prisoners the answer is still fairly brief. Prisoners in England and Wales have the *absolute right* to commence legal proceedings at an impartial and independent tribunal and must be allowed uninhibited access to legal advice whether through legal visits or correspondence.

This limited interpretation of the content of prisoner legal rights can be seen in both domestic and ECHR jurisprudence. Other possible avenues have been successfully closed down. Whilst it could be assumed that Article 3 of the convention prohibiting torture, inhuman and degrading treatment would be central to prisoner rights jurisprudence the reverse is perhaps more true. Petitions to the ECmHR and the ECtHR on article 3 have been spectacularly unsuccessful. Two British cases illustrate this well: *Hilton v United Kingdom* (1981) and *McFeeley v United Kingdom* (1981). Though

Hilton was reduced to an almost “animal” state as his health deteriorated through confinement and that McFeeley and his other political prisoner petitioners were reduced to covering their naked bodies and their cells with their own excrement, the ECtHR did not find the penal authorities in breach of article 3.³⁴

Despite progress in other areas of prison law, as yet prison conditions and other substantive rights in prisoners continue to remain either neglected or marginalised within legal discourses. Many of the criticisms levelled at the prison in the early 1970s have not been silenced by the greater activism of the courts. Staff neglect, assaults, inadequate treatments, facilities and inappropriate allocations of resources all continue; in-cell toilets have created new problems whilst the massive increase in the prison population has led to deteriorations in food, exercise, education, work, and cell occupancy levels. The ECtHR seems no more prepared to confront these challenges today than thirty years ago, and whilst the domestic courts could probably go much further to develop substantive rights jurisprudence there is little indication that such a prospect is imminent.

The limitations of legal discourses

The problems of staff resources, administrative convenience [and] ... the public interest in the smooth running of the prison system [are] commonly accorded greater weight than the interests of individual inmates ... There is a marked reluctance to recognise rights in prisoners in any form which would enhance the courts' potential as an overseer of prison conditions (Richardson, 1985b: 48, 52).

³⁴ ECmHR and ECtHR jurisprudence on prison conditions is also remarkably limited. Whilst the expansion of the Council of Europe and consequently the ability of the court to consider more problematic prison conditions in Eastern Europe may lead to developments in this area but given the low threshold of the margin of appreciation it is unlikely to have a transformative impact on prisons in England and Wales.

The convention, itself the embodiment of the common traditions and values of capitalist liberal democracies in Europe, has been interpreted in domestic courts as consistent with the principle of legality. Where prisoners' claims have failed - the most common outcome - the domestic courts in both private and public law have often justified their decisions through submitting to the arguments that such a restriction is required because of the necessary implications, or by showing support for the convenience of those administering imprisonment. Prison authorities have been considered to continue to hold the public interest, and have maintained the courts sympathy in judgements regarding interference with convention rights in terms of their requirements for discretionary decision making, or that the restriction is necessary on the grounds of prison security, order, the needs of victims of crime, the prevention of crime and even administrative convenience (Griffiths, 1997; Richardson, 1984).

If the case involves a power of the penal authorities that is beyond the remit of the constitutionally defined limits of the courts, the judiciary has been reluctant to intervene. On the grounds of public interest the courts have shown no wish to inhibit the running of the prisons and have accepted that constitutionally and legally appropriate discretionary decision making by administrators is fundamental to this. In the words of Lord Woolf (2001 in *P & Q*) "[i]t is not for the courts to run the prison". The judiciary has no wish to *be seen* to make penal policy, despite its inevitability in practice. Rather the judges would prefer to be regarded as performing merely supervisory and interpretive functions. Making administrative decisions regarding the prison is beyond their constitutional function and probably also their professional competence.

The politics of prisoner human rights

In both the domestic courts and the ECtHR prisoners have successfully asserted their rights and have become increasingly willing to use litigation as a means of individual redress, consequently providing a larger role for the courts as a mechanism of penal accountability. There is undoubtedly now a commitment to the policing of decision making in the prison, and to ensuring that prison authorities act within their legal powers. In direct contrast to the rulings in *Arbon v Anderson* (1949) and *Becker v Home Office* (1972) the decisions in cases such as *Leech (No 2)* (1994), *Ex p Simms and O'Brien* (2000) and *Daly* (2001) confirm that the courts are now much more willing to look more closely at the Prison Service's procedures and decision making processes. However, law has proved to be a fairly blunt instrument regarding the protection of prisoners' human rights. Judgements have been tied to the political persuasions of the judiciary rather than the neutral and impartial application of the law and there has developed a number of different legal discourses competing within a complex, inconsistent and contradictory texture of prison law. Rather than rooted in one set of unified legal rules or principles the prison law is like a "patchwork quilt" (Savellos & Galvin 2001) interwoven with progressive and conservative interpretations of prisoner's rights. To be sure, not all judges have shared the same interpretive framework and political, cultural, economic, legal, social, historical, personal, and moral values, have shaped the reasoning adopted. But judicial discretion has allowed judges room to manoeuvre and for the courts to move beyond their constitutional restraints and actually shape prison law as they see fit.

This is very different to witnessing a commitment to upholding the notion that prisoners have legal rights that can be asserted against such authorities, or that could be used to restrict the exercise of penal authorities' powers. The key to understanding prisoner rights lies in the legal strategy and means of reasoning [sometimes] adopted in determining the ruling. The courts have merely established their jurisdiction over the prison, and expressed a desire to see that prisons operated as functioning lawful bureaucracies that met their legislative and operational goals. This all diminishes the ability of prisoners to hold to account the decisions and actions of those under whose authority they are placed. Where the court has struck down discretionary powers and reasserted the principles of 'natural justice' it has done so within a very restricted set of penal practices. In this sense it is important to recognise that cases refer to procedures and not substantive outcomes in the prison context. This does not bode well for hopes that legal discourses will provide a vehicle for progressive penal reforms.

It remains possible that there could be an expansion and wider application of the two currently most progressive legal discourses, the principles of legality and proportionality, in judicial reasoning on prisons. Long term limitations on understandings of prisoner rights may be inherent in the manner in which HRA and ECHR have been conceived (Campbell, et al., 2001), but the adoption of proportionality in domestic courts would at least entail progress. Whilst the continued struggle for prisoners' legal rights, and their contingent gains, should not be underestimated nor neglected, it must be recognised that there is unlikely to be a radical transformation of prisons through the courts unless there is a concomitant change in current conservative judicial attitudes (Griffiths, 1997).

Further the continued use of imprisonment and its consequences are unlikely to be considered as a threat to democracy in the courts in the near future, despite its massive escalation.

In the next five to ten years it will become clear just how deeply human rights jurisprudence will be develop based on ECHR principles in the domestic courts. The legality principle may sideline the development of a genuine human rights legal reasoning that takes steps towards recognising substantive and positive rights in prisoners or, more optimistically, a more radical [re]interpretation of convention rights regarding prison conditions in the Strasbourg court may provide further stimulus to domestic interpretation.

Certainly the HRA and ECHR are living instruments. Prisoner rights jurisprudence can be developed that can make a further substantial impact on prisoners' lived realities. The domestic courts and the ECtHR must grasp the nettle and recognise that no human being should have to live the appalling circumstances that many prisoners find themselves in today. This takes us further than the principle of proportionality: it brings us to an understanding of legitimacy which goes beyond merely legality; an understanding of pressing social needs rooted in principles where it is deemed necessity to meet the demands of social justice; where the margin of judicial appreciation should be on ensuring genuine accountability rather than facilitating administrative discretion; where an adherence to the values and principles of democracy deepens and expands upon the discursive framework of capitalist liberal democracy; and through the placing of positive

legal obligations and responsibilities on the powerful, which goes beyond merely the protection of procedurally based civil and political rights of citizens. These radically alternative rearticulations of the content and interpretation of legal rights discourses are the politics of prisoner human rights.

Chapter Five:

Managing the responsible prisoner: penal policy and the marginalisation of the Human Rights Act (1998)

This chapter outlines the interpretation of prisoner human rights in penal policy in England and Wales in the period from 1990 – 2005. Breaking this down into three distinct periods, 1990-1993, 1993-1997, and 1997-2005, the chapter examines the constructions of prisoner human rights in government and prison services policies and official documents. The focus then turns to prison service talk on human rights laws in the period immediately leading up to, and the five years after, the implementation of the HRA in October 2000.

Finding that prisoner rights have in effect been marginalised, ignored or used as a means of legitimating existing practices, the discussion turns to an analysis of the deployment of the decency agenda and as a replacement discourse. Detailing how this stands in place of policy commitments to protecting and developing legal rights and highlighting limitations when compared to a genuine human rights agenda, it becomes clear the message sent to officers is that prisoner human rights have very low operational priority. The chapter concludes with a summary and an account of the possible implications such a construction of prisoner rights has for officer occupational cultures.

1990-1993 – The responsibilities and justice paradigm

Penal policy in the early 1990s was shaped by a liberal-managerial consensus that tied together humanitarian and managerial penologies with the political priorities of neo-liberalism. This synthesis is referred to here as the *responsibilities and justice paradigm*. This approach reflected a bifurcated policy that understood prisons as expensive, ineffective and counterproductive. Imprisonment should be reserved only for the most serious wrongdoers such as violent or sex offenders, whilst lower risk or ordinary offenders should receive more lenient measures in the community (Bottoms, 1977; Hudson, 1993). Underpinning both the green paper *Punishment, custody and community*, and the white paper, *Crime, justice and protecting the public*, was the suggestion that “nobody now regards imprisonment, in itself, as an effective means of reform for most offenders”, with the white paper famously going on to assert that imprisonment was “an expensive means of making bad people worse” (HMSO, 1990b: page 6, para 2.7).

Culminating in the 1991 Criminal Justice Act, these developments marked a significant shift in penal policy towards a more pragmatic response to the spiralling prison population, putting forward a new sentencing framework placing emphasis on proportionality,¹ just deserts, retribution, incapacitation, and protecting the public. It was maintained that as prisons have a deformative impact on the minds and outlook of those they contain, they cannot be places of special mission to reform or rehabilitate offenders. Prisons were first and foremost custodial institutions, where the top priority was to safely contain prisoners and treat them as humanely as possible (King and Morgan, 1980).

¹ This use of the term proportionality should be differentiated from that human rights law. Here it refers to the sentence being proportionate to the offence committed.

The highpoint of the influence of the responsibilities and justice paradigm came with the inquiry into the disturbances at Manchester Prison in April 1990 by Lord Justice Woolf (1991).² In his report Woolf (1991) insisted that offenders should not leave prison embittered or disaffected as the result of an *unjust* experience. Woolf (1991) pointed to the obligations on the prison service to contain prisoners humanely, and meet the requirements stipulated in the prison service statement of purpose.³ Looking towards a vision of imprisonment rooted in a balance of “security, control and justice” (Ibid: para 1.148), Woolf promoted an understanding of “justice” that encapsulated

fairness *and* due process; looking after prisoners with humanity *and* minimising the “negative effects” of imprisonment which makes offending more likely; preparing the prisoner with skills he or she will be able to use on release *and* what has elsewhere been referred to as the “normalisation” of prison standards. (Morgan, 1997: 63)

For Woolf a just prison could not be a place that makes offenders worse, but rather one that encourages self-respect and a sense of personal responsibility. This was to be achieved through facilitating greater opportunities for prisoners to make meaningful choices. But prisoners

must be held accountable for those choices. Prisoners must come to recognise that it is for them to make positive use of their sentence. They should have responsibility for how they serve their sentence and for how they will live after release. It is right that the prison service should provide every opportunity for prisoners to exercise that responsibility. The prison service must also ensure that those who do

² Prisoners had taken control of large sections of the prison from 1st – 25th April 1990 and throughout this month there were disturbances at a number of other prisons. The second part of the report was co-authored with the then Chief Inspector Prisons Judge Tumin. For a critical discussion see Carrabine (2004).

³ The HM Prison Service Statement of Purpose states that the “prison service serves the public by keeping in custody those committed by the courts. Our duty is to look after them with humanity and help them to lead law-abiding lives in custody and after release”.

not do so in a constructive and cooperative way are held responsible for this as well. (Woolf, 1991: para 14.14)

The emphasis on choice by the responsible prisoner was founded upon the construction of the offender as a [flawed] consumer expected to learn how to demonstrate responsible judgement.⁴ Such responsible choices could only be made if the worst aspects of prison life were dramatically reduced or eradicated. To make decisions meaningful, prisoners must know that there are consequences - both positive and negative - to their choices. Conditions, standards and a sense of justice were to follow from this, with enhanced regimes and earned privileges for those prisoners who made responsible decisions. Commitments to improving prison conditions, developing penal standards and facilitating just prisons, were inextricably linked to prisoner "compacts" or "contracts", setting out prisoner "expectations" and responsibilities alongside those expected by the prison in return. As Woolf (1991: para 14.5) made clear, through the social contract

we are not seeking to achieve more comfortable surroundings, greater luxuries or increased privileges *for prisoners for their own sakes*. *To think that would be to fundamentally misconceive the argument*. We are seeking to ensure that a prisoner serves his sentence in a way which is consistent with the purpose behind the courts decision to take away his liberty and his freedom of movement, while ensuring he is treated with humanity and justice. (emphasis added)

Woolf (1991) argued that prisoner humanity could best be promoted through legitimate expectations; a concept in public law invoking redress by judicial review that circumvents appeals to private law rights (Richardson, 1994). Legitimate or normal expectations were never intended to give prisoners legal entitlements or safeguards, but were conceived to act as a "stepping stone" (Morgan, 1992: 20) to an accredited code of

⁴ It is worth noting that Woolf (1991) did not focus upon women prisoners (Sim, 1994).

standards that could form the basis for new prison rules. Tactically avoiding a commitment to prisoner legal rights, Woolf produced a reform agenda that appeased liberal critics of the prison, whilst also working within certain axioms of “penal truth”. His main aims had been to restore the authority and stability of the prison, restricting his analysis to administrative questions, and offering minor adjustments and revisions to the aims, policies, and procedures of the prison service. In so doing, rather than forging a path that lead to greater justice, Woolf merely provided a new veil of legitimacy over the prison’s hideously ugly reality (Sparks, 1994; Sim, 1994).

Denying the legitimacy of interpreting penal developments within determining structural contexts, Woolf effectively penalised irresponsibility, defining it as if it were a unitary and unproblematic concept associated only with criminalised lawbreakers. Imputing the logic of managerialism and neo-liberal responsabilisation strategies, he denied that claims to legal rights and humane living conditions are inalienable, postulating rather that they are dependent upon a person’s compliance with contractual obligations, or justified in terms of their utility in facilitating crime reduction and the fulfillment of broader criminal justice goals (Sim, 1994).⁵

The vast majority of Woolf’s recommendations were accepted as official government policy in the Home Office (1991) white paper *Custody, Care & Justice*. This document stipulated that prisons must comply with “international human rights obligations” (Ibid: para 1.34), and that prisoners should be treated with humanity, dignity and respect and

⁵ For continued influence of social contract theories, see Social Exclusion Report (2002) and HM Government (2006) and their plans to introduce ‘going straight contracts’ for prisoners.

housed within “decent but not lavish conditions” (Ibid: para 6.1). Further, the white paper made it clear that daily routines must be perceived as “fair, reasonable, predictable and humane” (Ibid: para 2.4), with moves towards ensuring justice as due process through effective grievance and complaints procedures.

The long term ascendancy of the responsibilities and justice paradigm appeared secure in 1991 when Home Secretary Kenneth Baker claimed that the Woolf Report would provide the blue print for penal policies for the next twenty five years (Player & Jenkins, 1994). Certainly the fusion of this liberal humanitarian discourse with managerialism provided the platform for a time of significant change. Following the recommendations of Lygo (1991), the prison service became an ‘executive agency’ of the Home Office on the 1st April 1993. The *Framework Document* and *Corporate Plan* (both published 1993), detailed the new organisational structure and priorities of the prison service. Significantly, as the managerial revolution got into full swing,⁶ once again official penal discourse mooted a partial commitment to prisoners’ rights.

The *Corporate Plan* (HM Prison Service, 1993b) talked the language of Woolf, stating that the service’s main aims should be to find the “right balance between security and control and justice and humanity”. More boldly, it also contained a remarkably unequivocal commitment to “safeguarding and promoting prisoners’ rights and ensuring the due process of law” (Ibid: 4). This was to be attained through meeting legal obligations derived from statutes, prison rules and the ECHR and by abiding with other

⁶ Prison service operations are shaped by Key Performance Indicators [KPI] and Key Performance Targets [KPT] determined by Service Delivery Agreements, whilst ‘failing’ prisons are under the constant threat of market testing and privatisation.

international instruments such as the European prison rules, the UN standard minimum rules for the treatment of prisoners, and the European Convention for the prevention of torture and inhumane or degrading treatment. Additionally, there was a commitment to develop a code of standards and provide regimes with “decent conditions and meeting prisoners’ needs” (Ibid: 17).

Though once again this discussion of rights was predicated on increased prisoner choices and responsibilities as a means of addressing their offending behaviour, in hindsight it can be commended for at least naming prisoner rights, justice and humanity among its goals. References were only sparse and definitions and interpretations far from desirable, yet the responsibilities and justice paradigm proved to be the pinnacle of the prison service’s commitment to prisoner legal rights in the recent era. Whereas managerialism and the notions of the responsible prisoner, compacts, prison standards and regimes rooted in incentives and privileges prospered, within two years of the publication the humanitarian policies and focus of the Woolf Report had been snubbed out in a right wing backlash.

1993-1997: Prison works

Capturing the slogan “prison works” in his speech to the Conservative party conference in October 1993, new Home Secretary Michael Howard signalled a return to the Thatcherite law and order agenda of the 1980s. Claiming imprisonment could be justified through deterrence and incapacitation alone, Howard seduced the punitive constituency and neo-liberal lobby with calls for existing prison “holiday camps” to be

replaced with tough and austere penal regimes, combined with the promise of fiscal restraints through further privatisation.⁷ In September 1994 security returned to the top of this new punitive agenda, when the escape of six prisoners from Whitemoor Special Security Unit created a political scandal. The resulting report by Sir John Woodcock (1994) claimed that the escapes had occurred because both prison officers and security had been fatally undermined; advocating that the central test for future penal policy and practice should be whether a new initiative either added or detracted from *security*.

As a result of the Woodcock report a new inquiry was commissioned to conduct a wider review of security procedures. Its terms of reference though were altered by a further politically embarrassing escape, this time from Parkhurst Prison by 3 prisoners on 3rd January 1995. Headed by General Sir John Learmont, Woolf's security, control and justice were replaced in the penal lexicon with "custody, care and control" which, like Woodcock, prioritised security⁸ above all else. Securing prisoners' custody⁹ now became the core business of the prison service and the "bedrock" of penal regimes (Prison Service, 2004f). For Learmont (1995: para 3.39), prisons should protect the public and deter potential offenders by keeping those sent to them by the courts in custody; care for prisoners by providing *opportunities* for them to learn from their mistakes, developing

⁷ The 27 recommendations introduced by Howard at the conference included the introduction of Mandatory Drug Tests, restrictions on bail and cautioning, more community service orders, and six new private jails (Cavadino and Dignan, 2001).

⁸ The prison service (2004f) highlight how there are four different components to the term security: *physical security*, such as walls, bars, locks and CCTV; *security procedures* including roll calls and cell searches; *assessment procedures* around security categorisation and *intelligence gathering* such as developing relationships with prisoners through "dynamic security" (Dunbar, 1985).

⁹ There were no escapes by Category A prisoners between 1995 and time of writing in 2005

family ties and making redress; and to control prisoners through inducements based on both incentives and sanctions, and better training of prison officers.

The government response to the Woodcock and Learmont recommendations was swift and decisive. Millions were invested to improve security, operational practices were subordinated to the demands of security and wide ranging restrictive and punitive policies, such as the removal of phone cards, restrictions of temporary release and the development of the incentives and earned privileges scheme were legitimated. The highly objectionable visions of Learmont, Woodcock and Howard now shaped the contours of imprisonment with the prison service cautiously committed to achieving the “right balance between security, control and positive regimes for prisoners” (Tilt, 1996: 3). The new austere regimes were interpreted by staff as really meaning “give prisoners nothing” (Quinn, 1999: 7), slipping back to the old certainties before Woolf.

The dovetailing of managerialism and responsabilisation strategies with the prison works vision was clearly illustrated with the introduction in 1994 of the *Operating Standards* (HM Prison Service 1994a).¹⁰ Much awaited by humanitarian and liberal penal reformers after the promise of Woolf (1991), this document explained that the aim of the prison service was to

balance the needs of security, control, and discipline within prisons, with decent but austere conditions, active and demanding regimes, and a fair and just system for dealing with prisoners’ problems and grievances. (ibid: ii)

¹⁰ In 1994 the Prison Service Audit Unit was also established. Though the first audit in 1995 looked exclusively at security procedures, in 1996 operational standards audits began and in 1999 were renamed as performance standards (HM Prison Service, 2002)

Standards were “conditional upon prisoners complying with the obligations placed upon them”. Prisoners must “cooperate”, show “good behaviour” and “respect”, all of which would be spelt out in their compacts (ibid). Responsibilisation was to be further “reinforced” through sentence planning, and systems of discipline and control. Additionally,

[a]ccess to facilities will increasingly be dependent on behaviour and the willingness to demonstrate responsibility and self-discipline. Certain standards represent certain privileges which may have to be earned, and may not necessarily be granted to all prisoners at all times. (ibid)

Conceived in a language of responsibilities and privileges, *Operating Standards* were highly consistent with this period’s other major policy development, the Incentives and Earned Privileges Scheme [IEP]. Delivered through compacts, the IEP was to provide a sufficiently attractive incentive or reward scheme that would allow prisoners to earn privileges or further entitlements. Espoused first by Woolf (1991) and adopted as policy in the *1994-7 Corporate Plan* (HM Prison Service, 1994b), compacts were intended to detail the “opportunities” available to prisoners and the concomitant “obligations” and “responsibilities” that they must deliver in return. In June 1995 the national framework for implementation was formally set out in Prison Service Instruction to Governors 74/95 (HM Prison Service, 1995),¹¹ which established a three tier system comprising of basic, standard, and enhanced regimes.

¹¹ As evidence of malpractice became evident IG 74/95 (HM Prison Service, 1995) was later cancelled and replaced by Prison Service Order 4000 (HM Prison Service, 2000e). See Bottoms (2003) for an excellent discussion of development of the IEP.

The IEP was predicated upon the principles of rational choice theory, and it was anticipated that prisoner compliance with IEP criteria would facilitate greater responsibility and hard work. Additionally it was hoped that in combination with mandatory drug tests and greater security, the IEP would create more orderly, disciplined, and controlled environments and also encourage a prisoner's smooth progression through their sentence (HM Prison Service, 2000e; Bottoms, 2003).

The tiered system of conditions was tied to voluntary compacts that had no legal status and so prisoners had no legal means of redress or protection should the prison fail to meet its terms and conditions in the contract. Like the wider implications of less eligibility, the IEP not only offered no incentive to policy makers to facilitate more rights, its rationale actually requires the opposite. Though it is mandatory that the basic regime complies with "natural justice and the legal entitlements of prisoners" (HM Prison Service 2000e: 16), the predication of the IEP upon a rational choice of better behaviour = better conditions places an additional pressure to keep the basic, legal entitlements depressed so that an alteration in the level of conditions will actually be an incentive to facilitate responsible behaviour, order and discipline.

Described as a policy of rewards and sanctions, the rewards and incentives were sparse whilst the basic regime was widely perceived as punitive and sub-standard. More disturbingly, in practice the IEP was manipulated by basic grade officers to deal with prisoners' irresponsible behaviour, becoming an "unofficial disciplinary system"

(Jopling, 2003: 422), that was operated in an unaccountable, subjective, inconsistent, and arbitrary manner (Bottoms, 2003:151).

In the period 1993-1997, the earlier promotion of justice and humanity were noticeable by their absence, submerged beneath neo-liberal principles of opportunities and responsibilities, compacts, the priorities of discipline and security, and the language of incentives and privileges. As in the pre-Woolf era, prisoner rights were firmly beached at the prison gate.

1997 onwards: making prisons work

On 1 May 1997 'New' Labour won the general election. Successfully distancing itself from its traditional image of being soft on crime, the party followed the lead of Tony Blair (1993: 27) claiming now to be "tough on crime, and tough on the causes of crime", convincing a sceptical public they had accepted the populist Tory law and order agenda (Ryan, 2003). With hindsight it is clear that New Labour genuinely embraced at least some aspects of the previous administration's thinking, with many striking continuities in public and penal policy (Hall, 1998; Sim, 2000).

Though placing the incorporation of the European Convention of Human Rights into UK law as one of the main priorities of its first term in office (1997-2001), and thus promising to herald a new era in the acknowledgement of prisoner human rights, New Labour governance in fact brought home the revolution in the management of offenders and organisation of correctional services that had begun in the 1980s. Without entirely

denying the claims of their Tory predecessors, Home Secretaries Straw, Blunkett and Clarke have invested enormous confidence in the belief that, if used in conjunction with community penalties, the prison could become a special place to “normalise” and responsabilise offenders through the “what works” agenda (Foucault, 1977; Raynor and Robinson, 2005).

The swing in fortunes for rehabilitation was set in motion when Jack Straw (1997, cited in HMCIP, 1998: 19) announced to the Prison Reform Trust that through “constructive regimes ... we believe prisons can be made to work as one element in a radical and coherent strategy to protect the public by reducing crime”. Attempts to implement what works in the prison and probation services were initially cloaked within open ended talk of evaluating existing rehabilitative initiatives and regimes. This potentially progressive *questioning* of “what works?” in prison, was quickly transformed into an *assertion* of “what works” for offenders (Robinson, 2001). In practical terms this has involved the mass accrediting of individualised cognitive behavioural programmes, now officially sanctioned as working, or at least can be made to work, to reduce re-offending (Ross et al., 1986; Kendall, 2002; Robinson, 2005). What works has walked hand in hand with a resurgence of criminological positivism, in the form of crime science, and an increased trust in psychological knowledges and their bearer’s expertise (Andrews and Bonta, 1998). Such developments have fuelled an almost evangelical commitment and confidence that prisons *can* work (Sim, 2005).¹²

¹² For further review of ‘what works’ see the discussion of welfare *through* punishment.

The most influential assertions of the “what works” agenda can be found in the Halliday Report (2001) *Making Punishments Work*. Halliday (2001: ii) argued that the best prospect for achieving the dual aims of public protection and reducing re-offending was through providing rehabilitation within an “appropriate punitive envelope”. Correctional sentences should be based upon perceived risks of future dangerousness or persistency, with those scoring high on such actuarial calculations requiring “more intensive efforts to reform and rehabilitate which become possible within a more intrusive and punitive sentence” (Ibid: 13). Reminiscent of the debates on bifurcation in the early 1990s, the intention was to divert low and medium risk offenders away from prison into the community, and to use the prison as a space where concentrated efforts could be made to categorise and challenge high risk offenders.

Halliday recommended the virtual abolishment of short term prison sentences; longer and more intrusive prison sentences for high risk recidivists to be followed by community supervision; greater focus on utilising what works initiatives in prison to reduce re-offending; greater co-operation and integration between the prison and probation services; the augmenting of proportionality and justice deserts with the persistency principle in sentencing rationale; and a transformation in the application of community punishments. His proposals were accepted by the government in the white paper *Justice for All* (2002) and the resulting 2003 Criminal Justice Act.

It is probable that the toughening of community sanctions and their overlap with imprisonment will entail merely the blurring of the boundaries between prison and the

community, and an expansion of the carceral continuum (Foucault, 1977; Cohen, 1985). Unlikely to bring either more justice or protect the public, a bifurcated strategy rooted in the persistency principle will create only greater discriminatory outcomes, lead to net widening, probably just catch petty and minor offenders, and expand the penal gaze further onto those from impoverished or minority ethnic communities. All the evidence indicates that convicted persistent offenders are very rarely the most dangerous people in a society, but they are often its poorest (Justice, 2001).

Despite these changes in emphasis, New Labour penal policies continue to reflect the priorities of neo-liberal responsibilities and opportunities. Indeed effectively managed prisons are perceived as a major opportunity that should be profited upon. In the words of Tony Blair (2002: 3)

[w]e are failing to capitalise on the opportunity prison provides to stop people offending for good ... We need to make sure that a prison sentence punishes the offender, but also provides the maximum opportunity for reducing the likelihood of re-offending ... And above all, prisoners must have the consequences of their actions and their responsibilities brought home to them.

Such a commitment is validated as a means of relieving the burden of tax payers, as well as providing the appropriate measure for protecting the new legitimate customers of the criminal justice business – victims and the general public (Social Exclusion Unit, 2002, Home Office, 2004).

Expressed desires to improve prisoners' skills and address offending behaviour, [re]settle prisoners, facilitate social inclusion and effectively manage offenders through the

seamless administration of sentence planning, all appeared to indicate that a major overhaul of the organisation of correctional services was required. On the 6th January 2004 the Carter Review, *Managing Offenders, Reducing Crime: a new approach* was published leading to the creation of the National Offender Management Service [NOMS] on the 1st June 2004. For Carter (2004: 1) the “silos” that existed between the correctional services needed to be broken down to ensure a better focus on the management of offenders. Organisational reforms, rooted in the principles espoused since Halliday, were intended to facilitate the appropriate end-to-end case management, co-ordination, and delivery of existing services.

The prison service remains an executive agency of the Home Office, with NOMS providing an umbrella organisation for private prisons, public sector prisons and the probation service. Carter (2004) also introduced the concept of “contestability”, intended to encourage the privatisation of rehabilitative services in both the community and the prison.¹³ In future if a prison should fail to work in reducing re-offending, the problems will not be identified as the broader structural contexts shaping the prisoner’s agency and choices, but the combination of a problematic prisoner with failings on the part of the delivery of rehabilitative programmes.

Comparative measurements, already existing through prison service key performance targets, indicators, and internal audits take on even greater significance under NOMS. Retaining legitimacy as purchaser of services but placing responsibility for failure in the

¹³ See HM Government (2006) for most recent statement on the implementation of NOMS, ‘contestability’ and ‘going straight contracts’ for prisoners.

hands of those who deliver them, contestability and performance monitoring creates the final building block of the managerial revolution. By identifying and testing failing prisons in a competitive market, governments can avoid damaging critique by simply replacing the failed providers of correctional services with others deemed more efficient, effective, or economic in the management of the responsabilisation of offenders.

The making prisons work agenda reignites the penological priorities of welfare *through* punishment. Building on reforms over the previous two decades, prison service polices aiming to protect the public and reduce re-offending, privilege responsibilities and managerial performance above conceptions of prisoner shared humanity and legal rights. It is within this policy context that the implementation of the HRA by the prison service must be understood.

Prisoners' rights come home?

The much trumpeted Human Rights Act (1998) [HRA] received royal assent on the 9th November 1998 and came into force on the 2nd October 2000. Though the HRA was the centrepiece to the New Labour government's commitment to citizenship, political freedoms and the fostering of a claimed "*human rights culture*", from its inception the rights contained were portrayed as conditional upon responsibilities.¹⁴

[T]he truth is that rights have to be offset by responsibilities and obligations. There can and should be no rights without responsibilities and our responsibilities should precede our rights ... I want to see developed a much clearer understanding among Britain's people and

¹⁴ Incorporating the European Convention on Human Rights (ECHR) into UK law the HRA allowed all citizens, including prisoners, who believed their human rights had been violated the opportunity to bring their case before a domestic court. For further details see chapter four.

institutions that rights and responsibilities have properly to be balanced – freedoms by obligations and duties. (Straw, 1998)

Yet under this vision, the potentially exclusionary sanctions that faced relatively powerless citizens who failed to discharge their responsibilities, was not correspondingly applied to the powerful capitalist state and its agents. The subjugation of rights beneath responsibilities was part of a wider plan to foster a communitarian *responsibilities culture*, clearly evident in the spirit of minimalism adopted by the government towards the HRA. In the words of Andrew Ashworth (2002: 4,100),

the unspoken attitude of some seems to be that, if we have to have the convention, we should confine its influence as narrowly as possible ... [The] government ... is sailing as close to the wind as possible, rather than promoting the spirit of the Convention.

Thus the implementation of the HRA by the prison service must also be understood within a wider governmental context of responsabilisation and minimalism. Here it is assessed in three ways: (1) changes to prison service policies as a means of preparation; (2) the level of training and information given to prison staff; and (3) its discursive context: the approach to the HRA and the spirit through which reforms were anticipated in prison service talk.¹⁵

Prison service policies and operational practices altered little prior to the implementation of the HRA. As part of preparations a coordinated internal review of policies examining

¹⁵ The delineation of the boundaries placed around the human rights act in official penal discourse has four broad sources: (a) The writings by senior and other prison service personnel intended to discuss the implications of the HRA through authorized prison service mouthpieces such as the *Prison Service Journal*; (b) specific comments by senior administrators such as Martin Narey in public forums such as broadsheet newspapers; (c) prison service publications written specifically on the implications of human rights; and (d) general prison service publications such as the *annual report and accounts*. For the purposes of clarity these sources are examined together within specific themes raised by 'prison service talk' at the cusp of implementation.

possible areas of vulnerability was undertaken by the Prisoner Administration Group and the Legal Advisers Branch and as a result question marks were raised over strip-searching and the use of strip cells.¹⁶ Consequently it was decided that for prisoners identified as being at risk of suicide and self-injury their use should be discontinued as they seemed “likely to be challenged under article 3 of the ECHR, which protects citizens from ‘torture or inhuman and degrading treatment or punishment’” (PSI 27/2000). Further, a new vocabulary, clearer lines of reasoning for decision making and policy documents were suggested for prison administrators and a number of references to “proportionality” were carefully inserted into the prison rules to avoid commitments to additional prisoner entitlements (Loucks, 2000; Pickering, 2000; Sanderson, 2000). Less obvious policy changes included new procedures for mother and baby units; changes to the under 18 women’s estate; the appointments in September 1999 of Maqaood Ahmed as the first Muslim Advisor and Judy Clements as the first Race Equality Advisor; the launch of RESPOND in February 1999 to promote racial equality and the formation of RESPECT (Cheney, Dickson, Fitzpatrick & Uglow, 1999; HM Prison Service 2000a).

Very little pro-active training was undertaken by the prison service in the lead up to the HRA and what was commenced was largely directed towards key operational and policy staff. There were conferences for governors and those at headquarters and seminars held for senior headquarters staff in the summer of 1999. Additionally there were presentations at area meetings for area managers and governors and general guidance on

¹⁶ Strip and silent cells are used to monitor disruptive or uncooperative prisoners who, stripped of their ordinary clothes and given to wear only a canvas tunic and shorts, are placed in cells containing a reinforced sleeping bag, a mattress and sometimes cardboard furnishings. Silent cells are very similar but have padded doors and reinforced walls to contain any noise the prisoner makes.

implementation was given to all prisons and units combined with a commitment that induction training for all new staff would cover human rights. Yet, and most significantly for this study, there was *no training* for existing prison officers. *The Human Rights Act: HM Prison Service Information Pack*¹⁷ was given to all prison service personnel, and an edition of the *Prison Service Journal* in 2000 included a copy of *The European Convention/HRA*. In addition, the Prison Reform Trust/HM Prison Service (2000) joint publication the *HRA GUIDE*, discussing convention rights and some possible questions, was made available for prison officers. The focus of training was almost exclusively upon procedures and decision making, while the implications of the HRA were presented to prison officers as being essentially the province of governors and senior administrators, and consequently as *irrelevant* to their working practices and relationships with prisoners.

This apparent complacency and neglect in policy, operations and training in a service whose regimes daily threaten human rights neatly coincided with the contours of official penal discourse on the management of the responsible prisoner. As the HRA was being implemented five calm and reassuring messages regarding its interpretation were being sent to prison staff, which help explain the overall response.

1. *Don't Panic. The prison service considers its policies to be sound and largely compliant with the principles of the Human Rights Act. There is nothing new here*

¹⁷ The official prison service brochure on the HRA, *The Human Rights Act: HM Prison Service Information Pack*, contained the following pamphlets: *The Human Rights Act: what does it mean for the service?*; *Human Rights Act: Core Guidance For Public Authorities*; *The Human Rights Act & The Prison Service*; *Human Rights Act: A suggested approach to decision making*; *Human Rights Act: Theory and Background*; *The Human Rights Act & the European Convention on Human Rights: glossary*; *Putting Rights into public service: the human rights act 1998*. One of the pamphlets when unfolded becomes a poster that could be displayed on the wall.

and rather than fear the HRA prison service staff should use it as an opportunity to fulfil the prison service's aims.

“We have no doubt that the Prison Service will master the act” (Sanderson, 2000: 4). The implementation of the HRA was greeted with great confidence by senior officials and administrators in the prison service. The heavy use of, and occasional victory of, the European Convention by UK prisoners since the 1970s had led to the assumption that virtually all those aspects of prison service policy and operational practice that could be successfully challenged in the domestic courts through the principles of the ECHR had already been exhausted at Strasbourg (Pickering, 2000; Sanderson, 2000). Further, through legal challenges in both the domestic and European courts, the prison service had great experience of the conservative nature of the interpretation of prisoners' rights by judges. They had been given no evidence to suggest any significant change in the politics of the judiciary post HRA. Further, in advance of 2nd October the prison service undertook a major review of policies and practices boldly concluding that the prison service was now “broadly compliant” (PSI 60/2000). Correctly anticipating the framework of judicial reasoning, the Director General [DG] had this to say.

In developing our policies we already take account of human rights and will continue to do so; and if the courts find that practices are unlawful under the Act we shall respond. But we are not going to panic ... We have been carrying out an audit of our practices. So far we have found none which need to be changed. If we find policies which need to be changed we will issue new guidance. (Martin Narey, in *The Guardian* 12 May 2000)

Arising from this were public reassurances that there was nothing to fear from the HRA for it was not asking for a new “commitment” to care for prisoners (Narey, 2000d: 1). The HRA was “simply the language of the prison service mission statement and

statement of vision and values ... reconstructed into other words”, and an “opportunity” if not the “vehicle” to turn these ideals “into practice” (Shaw, 1999: 12). Prison officers “should not be scared of it”, rather they “should welcome it” (op cit).

2. *Prisoners will probably ‘abuse’ the HRA so familiarity with the new vocabulary and compliance to prison service HQ guidelines is the best form of protection for staff. HQ and policy staff will ensure that you have the appropriate guidance.*

It was considered catastrophic if prison officers were embarrassed or had their authority undermined by the jail house lawyer. In an attempt to protect themselves against such prisoners, prison officers must know what the act expects of them and “know enough not to be ambushed by a prisoner who has been mugging up on the Convention” (Sanderson, 2000: 42). The Prison Admin Group in an article in the *Prison Service Journal* (Sanderson, 2000), made it clear that prison service expected all staff to become familiar and act to comply with the main articles of the convention. There was however different expectations for different occupational grades. Prison officers were obliged to ensure that their actions were compliant. To do so they must closely follow the interpretation of the HRA laid out in Instructions and Orders.

If staff try to second guess instructions, based upon their interpretation of the Convention, the result will be unfairness and inconsistency, and a greater risk of challenge. (ibid)

Consequently the major implications of the HRA were considered to apply to senior staff and administrators.

[I]t is important that ECHR [the Convention] becomes an explicit part of the Service’s approach to policy formulation and decision making and that its rights inform both processes. (PSI 60/2000)

It was the policy makers who had the key responsibility for compliance, as they shaped other staff member's "decision making" through the prison rules, PSIs and PSOs. Above all others, it was HQ personnel and prison Governors who must be prepared to use the "new vocabulary" of proportionality; be able to apply its test to appropriately justify decision making processes;¹⁸ and thus be able to successfully demonstrate compliance to convention principles. This was construed by the prison service as the necessity of ensuring that the actions and policies were prescribed in law. Yet there was still reassurance. It was really all just a matter of "common sense" (ibid).

This may all seem a deeply complex process. It is, though, arguably little more than common sense and probably a rationalization of current decision and policy making processes. (Pickering, 2000: 49)

3. *You have the prison service's full support and we will resist. Any member of staff following prison service procedures will be vigorously defended from future challenges.*

Historically the prison service's approach to prisoners' legal rights has been one of heavy resistance, fighting even hopeless cases, such as the recent ECHR ruling on the right of prisoners to vote, through all possible means of appeal (Hirst, 2005). There is no evidence this reactive culture has altered. Though legal reasoning is to be monitored, and when it is obvious that cases would be defeated changes made in anticipation, the prevailing attitude was one that all existing policies and practices meet HRA requirements

¹⁸Sanderson (2000: 42) puts it this way: "We will need to ask ourselves a series of structured questions:

- Does our proposed course of action interfere with a convention right?
- If so, does the convention allow us to do so in these circumstances?
- If so, is there a legal basis for that interference, for example, a statute or a prison rule?
- If so, is the interference proportionate? Are we using a sledgehammer to crack a nut? Could we achieve the same end in less intrusive ways?"

until proved otherwise through the courts (Sanderson, 2000).¹⁹ Challenges were expected and some even predicted but when faced with them “we will defend current practices and policy unless there are clear and good reasons to the contrary” (Pickering, 2000: 49). Policies “have been devised to be ECHR proof and will be *defended rigorously* in the event of any challenge” (Ibid, emphasis added). Whilst legal changes must be adopted, the spirit of a human rights culture certainly did not. The prison service was not to be a lamb and lie down and wait for its slaughter, rather it would offer full support to staff prepared to rigorously resist.

The prison service operates under mandatory instructions. The prison service will support anyone operating in accordance with instructions. (HM Prison Service, 2000: 1)

Rather than openly acknowledge that prisoners had legitimate claims to rights, the approach of the prison service was to emphasise how prison staff would be defended against trouble making prison litigants who might turn the HRA into a weapon.

4. *Overall it will pretty much be business as usual. The legislation should be understood as working towards the enhancement of existing practices whereby prisoner responsibilities are not just prioritised above their rights, but where the prison service should be proactive as an inculcator of responsibilities.*

In a number of key statements the introduction of the HRA was contextualised as being involved in a balancing act with the responsibility of the prison service to protect the general public (Pickering, 2000; Sanderson, 2000). In short, it was the

¹⁹ For one commentator the HRA has become a barometer serving as a “tool against complacency” (Levenson, 2000b: 13) rather than an opportunity to improve prison standards.

government's objective to promote a culture of rights and responsibilities throughout our society. The act will make people *more aware of the rights they already have* but also balances these with responsibilities to others. (Prison Service 2000: 1, emphasis added)

In a mutated interpretation of the HRA, the new act was not to be perceived as a means of creating *new* rights in prisoners, but rather was a means of educating them by highlighting what rights and *responsibilities* they already possessed. The key role of the prison service in this process was to continue with its current function of helping prisoners accept the responsibilities that they owed to society. The HRA was thus construed in official penal discourse as validating existing prison service strategies of responsabilisation.

5. *Furthermore, there are hidden benefits. By showing at least 'lip service' to the HRA it may help us to demonstrate that in the UK we have a healthy and legitimate prison service on the world stage.*

The HRA should then be welcomed by the prison service as it may have much to offer. For the then DG Martin Narey, (2002b: 26), the most "important" aspect of the HRA was that "prisoners can use the Act to challenge us". Not to allow so would be "very unhealthy", leading to possible comparisons with other less legitimate penal systems around the world which deny such democratic "freedom" (Ibid). The HRA was constructed in official discourse as prison service friendly and a means of adding greater legitimacy to its already existing penal policies and operational practices. It was no threat and could bring hidden bonuses. However a discourse stipulating how the HRA might actually be one means of recognising prisoners' legitimate claims to citizenship, and that

a persons' legal rights stretch beyond the prison gate and into the prison itself is sorely missing.

There is an even more obvious absence. Despite the hype surrounding the HRA, its implementation was given virtually no prominence in prison service literature, especially in the *Annual Report & Accounts*. Remarkably the HRA only merits nine lines of text in the 2000-2001 report. This is largely descriptive and written in a defiant but defensive manner.

The prison service's view has been that it complies with the principles of the ECHR already, having been subject to numerous proceedings at Strasbourg, and that it does not need to modify its policies. However there have been some challenges already and more are certain to follow. (Prison Service, 2001: 14)

In "The Year In View" the introduction of the HRA in October 2000 is not mentioned, with the only reference in this section being a fleeting remark that the HMCIP must now take the HRA into account during inspections. Similar absences can also be found in annual reports published from 1998-2005. For example in the 2005 annual report (HM Prison Service 2005a: 41) there is only **one** reference to prisoners' rights, tied specifically to the introduction of the Disability Discrimination Act (1995).

This absence can be seen to be tied with a sense of hostility. Tony Blair (2004: 6) castigates the old principles of penal policy which "seemed to think only about the rights of the accused". New Labour's vision places the "law abiding" and responsabilised citizen at the heart of their policies looking to provide a "cultural change to improve customer service" (Home Office, 2004c: 28-9). Penal policy is aimed at transforming

prisoners for the interests of others in the community. In the Home Office Report *Cutting Crime, Delivering Justice*, justice is detached from procedural or substantive factors shaping life experiences and redefined as improved conviction rates and reduced costs. Effectively undermining due process rights, Blunkett, Falconer & Goldsmith, (2004: 8) argue “we will encourage the guilty to admit their guilt early rather than drag out proceedings to trial”.²⁰ It is apparent that in official penal discourse the HRA as a means of transforming prison culture and promoting prisoners legal rights never even got the chance to get started.

Decency: a replacement discourse?

A language of rights is not very developed in prisons. The decency agenda has proved to be a convenient replacement discourse post implementation of the HRA. Attempting to elucidate a new value base or morality rooted in humanitarian and managerial penal sensibilities, the decency agenda looks to foster a more humane penal culture by expanding upon, and rearticulating the new found purpose and reform ethic created through the managerial revolution (Liebling, 2004). Decency, the initiative of Martin Narey (DG 1999-2003) and Phil Wheatley (DG 2003 - onwards),

is intended to run like a golden thread through all aspects of the service’s work. Decency means treatment within the law, delivering promised standards, providing fit and proper facilities, giving prompt attention to prisoners’ concerns and protecting them from harm. It means providing prisoners with a regime that gives variety and helps them to rehabilitate. It means fair and consistent treatment by staff. (HM Prison Service, 2003b: 29)

²⁰ See discussion of ‘justice gap’ in the account of welfare *through* punishment in chapter three.

Decency appears to have four broad meanings: physical conditions and regime facilities; staff-prisoner relationships; lawfulness; and crucially, whatever the most damaging critique raised at the time is, implying that decency can vary as the prison service lurches from crisis to crisis.

The term decency has been construed as simply meaning decent living conditions.²¹ In practice this has meant that no parts of prisons should be dirty, prisoners should have access to showers, and that prisoners and staff should live in a safe, decent, and healthy environment. This has also been extended to indicate rehabilitative regime activities, such as access to education, employment and time out of cells (Narey, 2001) and positive staff-prisoner relationships (HM Prison Service, 2005b). Prisoners should be treated by prison officers how they would like to be treated themselves (Prison and Probation Ombudsman, 2003) or like a member of their family.

The Service can be more confident that we are delivering imprisonment humanely and decently to a standard that I would regard as acceptable if a member of my own family had the misfortune to be locked up. It is this practical test which I think is the touchstone of decency. (Wheatley, 2004: 13)

The decency agenda also includes a commitment to prisoners being treated with dignity and respect and care taken in the use of language, including where possible referring to prisoners by first names, and using terms such as “serving meals” in place of “feeding time” (Narey, 1999, 2001).

²¹ Liebling (2004: 477-8) argues “the word means, literally, ‘not indecent’, or ‘fit and appropriate’. In the prison context it can mean as little as ‘reasonable basic conditions’ or a more aspirational concern with respect and hope”.

The prison service is dedicated to treating prisoners with decency in a caring and secure environment. This is a very important area of our work and requires our staff develop positive relationships with prisoners. We believe that by treating people with decency, they will be more likely to go on to live useful and law abiding lives that will benefit them as individuals and society as a whole ... We are committed to ensuring that staff, prisoners and all those visiting prisons or have dealings with the prison service are treated fairly and lawfully irrespective of their race, colour, religion, sex or sexual orientation. (Prison Service, 2004d: 1)

Then there is a commitment through decency to deliver regimes that treat prisoners “lawfully” (Wheatley, 2003: 112), rooted in fairness and the fulfillment of prisoners’ legal entitlement as detailed in the courts. This aspect implies a commitment to legality and lawful prisons and thus is consistent with the dominant form of legal reasoning in the UK courts. Further “no one should be punished outside the rules or be subject to unauthorised and unlawful force” (HM Prison Service, 2005a: 17) though its focus on fairness and minimum standards also looks to incorporate the law with the principles of security and order.

At various different times, since the term decency re-entered the penal lexicon, it has been used as a means of absorbing critique. The two current high profile aspects of the decency agenda are around the harms of prisoner suicides and racism (HM Prison Service, 2005a), though it has also included in recent years prisoner violence and assaults, the availability and problem of illicit substance usage, and overcrowding (Narey, 2000; NOMS, 2005a). The 2005 *Annual Report and Accounts* (HM Prison Service, 2005a: 17) defines the problems around suicide awareness and a reduction in suicides in prison as “the duty to protect prisoners from harm” and this is closely associated with a

commitment to fair treatment and racial equality. There is also evidence of the acknowledgement of institutional racism and policies banning the membership of racist organisations.

We have to start with the acceptance that the prison service is an institutionally racist organisation, which reflects an institutionally racist white society. We have to add to this, our knowledge that there are pockets of blatant and malicious racism within the Service. It is time to face up to these things. (Narey, 2001a)

The most recent definitions of the decency agenda (HM Prison Service, 2005a: 17), and its commitment to provide a “reasonable quality of life and humane and acceptable treatment”, seems to be tapping into the liberal humanitarian discourse of humane containment and just deserts (King and Morgan, 1980). Sharing the same strengths and weakness of this penology, and the responsibilities and justice paradigm of the early 1990s, the decency agenda is also vulnerable to critique through the vagaries of its language and its lack of enforceability. Further, and like Woolf’s (1991) commitment to legitimate expectations, decency acts in direct competition to calls for prisoners’ legal and human rights.

Liebling (2004: 477-8) defends decency because it “is arguably acceptable to most prison staff” who are “more comfortable with this word than with related terms like ‘justice’, ‘humanity’, and perhaps especially, the term liberal”. However, we must question whether decency does indeed provide a more acceptable humanist-managerial hybrid than the responsibility and justice paradigms’ commitment to humanity and justice in the early 1990s. Finally there is actually nothing new in the decency initiative, at best

entailing the putting of “old wine in new bottles”, at worst performing a key role in re-legitimising the prison (Carlen, 2002a, 2002b).

The irrelevance of human rights?

In penal policies since 1990 there has been no clear commitment to prisoner legal or human rights. Rights have been either omitted or transcended by the all pervasive managerialism and neo-liberal responsibilities and opportunities penologies. Despite continuities we have witnessed three configurations over this short period. The responsibilities and justice paradigm shaped official penal discourse from 1990-1993 and was based upon a humanitarian-managerial synthesis that recognised prison was a place that can only make bad people worse. Responding to the most prolonged prison disturbance in British penal history, its leading proponent Lord Justice Woolf (1991), promoted humanity, justice and legitimate expectations for prisoners, but predicated commitments to decent conditions upon a social contractual understanding of prisoners as consumers who must learn to make responsible choices. Subordinating rights beneath responsibilities, Woolf’s humanitarian reforms were scandal led (Carlen, 2002a).

Through informing the introduction of the prison as a next steps agency in 1993, the responsibilities and justice paradigm was trumped by the return to prominence of penal policies rooted in less eligibility from 1993-1997. Security, austerity and privileges became the sound bites of Michael Howard’s prison works movement, where talk of humanity, justice and rights disappeared from prison talk. The pendulum has swung back more towards the humanitarian principles of the responsibilities and justice paradigm

since 1997, but there is more than just a linguistic resemblance between “what works” and “prison works”. Avoiding the terrain of less eligibility, this agenda feeds into the wider and equally disturbing penology of welfare *through* punishment. Prisons, in conjunction with community penalties, are to manage and responsabilise offenders for wider utilitarian goals. The major reforms introduced by Halliday (2001) and Carter (2004) have further realised the logic of privatisation and removed potential failures of rehabilitative initiatives from the responsibilities of the capitalist state.

It is within this context that the prison service implemented the Human Rights Act (1998) [HRA]. The construction of HRA principles in prison service talk has been one of re-legitimation, with occasionally some small segments of acknowledgement. The claim, when pushed, is that the prison service is compliant with the HRA, but given that the HRA was largely greeted with official silence or disguised as actually a green light for its role in the responsabilisation of prisoners, it has hardly been at the top of the agenda. The more positive aspects of human rights have been effectively neutralised by being channeled through the decency agenda. These non-enforceable claims to protecting the prisoners’ humanity, working within the managerial framework, have been the order of the day. This endeavor provides evidence of the carceral clawback of progress that legal activists have made in the courts, removing the wind from the sails.

In the newly joined up criminal justice business revolution, the rights of offenders have been marginalised at the expense of victims and witnesses, the *real* customers of the criminal justice business. The utilitarian emphasis on crime reduction through treatment

and training neo-liberal style, and the continued, though now less obvious, focus on discipline and punishment through incapacitation and deterrence, means that in a time of great organisation change the HRA has become simply a minor sideshow. In the current political climate it seems likely that it will quickly be passed by, forgotten, or deemed as irrelevant in prison service and NOMS hierarchy and rank and file alike. Despite its occasional impact through inconvenient procedural changes brought about by prisoner litigation, in just over five years after its introduction, the HRA is in serious danger of becoming almost completely buried under priorities focusing on the management and responsabilisation of offenders.

The prison service sent a clear message to prison officers about prisoner legal and human rights: they are not important, either in terms of everyday operational practices or in the wider orientations and goals of the service. When assessing the understandings of prisoner rights by prison officers, and the possibilities of cultural change in the organisation as a whole, the lack of clear guidance and leadership from the prison service undoubtedly has had a detrimental effect. Without effective communication prioritising the shared humanity of those confined, it is likely that other penologies informing officer worldviews and means of psychological survival will have taken precedence.

Chapter Six:

The Caretakers of Punishment

There are now a wide range of penological sources documenting the role and occupational cultures of prison officers in England and Wales. This chapter provides a review of this literature, providing a background analysis to the empirical finding detailed in chapters seven and eight. The chapter starts by providing an account of the current role of the prison officer, moving on to consider how prison officers maintain penal order and enforce the prison rules. The discussion then outlines the role played by officers' extra-legal judgements and the patterning of discretion. This is followed by an overview of the literature on prison officer working personalities, and a brief discussion of the different officer typologies. The review then discusses prison officer moral universes and their relevance to prisoner-officer relationships and constructions of prisoner human rights. The chapter concludes with a summary and discussion and its implications for the empirical study.

The role and function of prison officers

There are 24,000 prison officers working in 128¹ public sector prisons in England and Wales. The role has a three tier hierarchy of basic, senior and principal officers, with approximately 19,000 on the basic grade. The typical prison officer is a white working class man, aged between 30-40, who has between 5-10 years service (Liebling and Price,

¹ There are 139 prisons in total in England and Wales. 128 are public sector prisons and 11 are private sector prisons (Noms, 2005a).

2001: 19). In recent years prison officers have had diverse employment backgrounds,² with the literature indicating that most have drifted into prison work, motivated largely by the promise of job security and/or disenchantment with previous civilian employment³ (Morris and Morris, 1963; Lombardo, 1989). Both historical and contemporary surveys of officers have found “depressingly little evidence” (Jones & Cornes, 1977: 187) that they joined the service because they were interested in helping offenders (Kauffman, 1988; Liebling and Price, 2001; Crawley, 2004).

The role of the modern prison officer has a relatively short history, stretching back only 80 years or so since the dissolution of the separate system, where “warders” had restricted communication with prisoners and were forbidden to develop any kind of personal relationship. In 1922 talking was permitted, leading to major reforms of operational practices, including increased prisoner association and a new focus on rehabilitation.⁴ Met largely with hostility by prison officers, these changes created role conflict, organisational confusion, and an “alienated” workforce, compounded by problems arising through diminishing control and increasing task difficulty (Thomas, 1972).

² This can be contrasted to the historical links between the armed forces and prison work. Hobhouse & Brockway (1922) pointed out that nearly half of all prison officers at the end of the nineteenth century had had military or naval service whilst Jones and Cornes (1977: 159) found that over 71% of their sample had completed military service. Both Morris and Morris (1963:78) and Jones and Cornes (1977) found that one of the primary reasons for becoming a prison officer was the extension of the military service experience through the hope of prison work being an equally structured and disciplined environment.

³ For example 56.4% of Jones and Cornes (1977: 165) sample gave security of employment as the main reason they joined.

⁴ In 1921 there was the change of name from prison warder to prison officer.

The current functions of prison officers also militate against any constructive interaction with prisoners. Justifications of talk are often rooted in the principles of "dynamic security", whereby conversations with prisoners are used as a means of surveillance for the maintenance of order (Dunbar, 1985).⁵ Combined with the wider duty of prison officers to pass any information given to them by prisoners on to their superiors, there can only ever arise limited "confidentiality and trust" (Fitzgerald & Sim, 1982: 135).

The introduction of accredited programmes in the late 1990s has seen a small, but significant, number of officers directly involved in offender behaviour programmes.⁶ Notwithstanding, most officers continue to work either on residential wings, the reception, visits, segregation units, or security and operations teams in the prison. The daily duties of the residential officer are largely mundane, such as unlocking prisoners, checking locks, bolts and bars, carrying out roll checks, dealing with prisoner requests or disciplinary offences, serving meals, supplying toilet rolls, changing the laundry, delivering the post, playing pool, watching television, reading the newspaper, talking with officers and prisoners, or drinking tea. There are times of frantic activity (mornings, lunch, association), and even times of danger (such as putting out a fire in a cell, dealing with a fight or uprising), but the day of a prison officer is mainly interspersed with monotonous routines and long hours of boredom. Its excitement is often compared to

⁵ Introduced in the mid 1980s, the theory behind dynamic security was to encourage officers to actively engage with prisoners so that they can be aware of and in control of prisoner activity. The devil makes use of idle hands but if officers could direct and provide active supervision rather than simply observe prisoners through a passive form of surveillance such activity may decrease subversive prisoner activity and possibly also help the prisoner deal with offending behaviour. This form of security could only work if officers are prepared to mix and talk with prisoners and encourage them to undertake purposeful activity.

⁶ Some prison officers have more specialist functions, such as drug testing, suicide awareness, public education programmes such as 'Prison Me, No Way', or offender behaviour programmes such as R & R; Calm or the SOTP. The numbers working in each of these roles varies across the penal estate. See chapters three and six for discussion of the 'what works agenda' and rehabilitation in prison.

that of “watching paint dry” (Lombardo, 1989; Fitzgerald and Sim, 1982; Crawley, 2000). This is especially true at weekends, when there is no work or education and few other activities to occupy either prisoners or staff.⁷

Prisons have similarities with other mass residential homes, and it would not be unfair to equate the performance of many of the prison officers’ domestic functions with that of a caretaker. Direct comparisons though, have only limited purchase as the officers’ role is conceived within a punitive orientation, looking to enforce order through hierarchies of disciplinary power, observation, and control. For clarity of analysis the custodial tasks of the caretakers of punishment can be broken down into four different functions: *security*, *supervision*, *service*, and *policing*.⁸

Security, alongside control and containment, is the main priority of prison work. The prison guard is essentially there to prevent escapes and undertake errands, such as head counts or cell and individual searching. The *supervision* function involves officers ensuring that prisoners are doing the right thing, in the right place, at the right time, and are appropriately escorted through the prison for work, education, religion, visits and so on and so forth. This task also implies the more insidious charge of surveillance and the gleaning of knowledge. *Service* entails both dealing with the mundane realities of prison life, such as serving food, sorting out the laundry or dealing with prisoners’ requests, and a more human or relational aspect, such as identifying destructive behaviours or trying to

⁷ To pass the time some officers will find assignments to do or create a daily routine as a means of managing their day, others will manipulate their shift to avoid contact with prisoners, whilst others still may tell jokes, stories or reminisce about interesting characters at the jail or past dangerous or exciting incidents to anyone prepared to listen (Lombardo, 1989; Crawley, 2000).

⁸ I have based these four categories on those of (Lombardo, 1989: 61-66).

mitigate harm and human suffering through help, support and counselling (Lombardo, 1989).

The *policing* function necessitates the *maintenance of order*, such as preventing fights, bullying, drug dealing, gambling and other actions which threaten the stability and existing status quo, and the *enforcement of rules*, which may involve the detection of rule breaking, the writing of reports and involvement in governor adjudications, or other disciplinary proceedings. Like their police service counterparts, prison officers represent the public face of the service; have greatest contact with its charges; have the powers of a constable; require some form of acquiescence from those they police; and place discretion at the heart of their role.

Policing in a *custodial* context, characterised by an unpleasant physical plant and long periods of time spent with the same people, inevitably leads either to increased opportunities for developing more positive relationships with those policed, or for greater conflict, enmity, or estrangement. The brutalising and negative experience of imprisonment lowers morale, with the more modest aim of the *absence of trouble* (Liebling and Price, 2001), replacing the wider policing principle of a “sense of mission” (Reiner, 2002).

Maintaining order, enforcing rules?

Undertaking the policing function may seem relatively straight forward, for in appearance the prison is a place of law, rules, standards and procedures, with the cards unevenly

staked in favour of the custodians. Officers have three obvious strategies at their disposal to secure a dominant position over prisoners, and effectively police the prison: legal authority, coercion, and personal authority. *Legal authority* is rooted in a commitment to the principle of legality, and the legitimate exercise of certain powers arising as a consequence of holding current office. In its most pure form officers must be obeyed because they represent and uphold the letter of the law. Rule led decisions, if applied openly, consistently and dispassionately can be rooted in principles such as equality and treating like cases alike. Ensuring a rigid enforcement of both entitlements and sanctions, commands reflect prison legislation, prison service orders, instructions and, most significantly, the Prison Rules (1999). However, a strict and consistent adherence to the rule of law over a long period of time has proved in practice to be very difficult, if not impossible, for prison officers. For Skolnick (1966: 6), policing practices in the USA necessarily transcend the rule of law because of the wider commitment to order maintenance.

The police in democratic society are required to maintain order and to do so under the rule of law. As functionaries charged with maintaining order, they are part of the bureaucracy. The ideology of democratic bureaucracy emphasises initiative rather than disciplined adherence to rules and regulations. By contrast, the rule of law emphasises the rights of individual citizens and constraints upon the initiative of legal officials. This tension between the operational consequences of ideas of order, efficiency, and initiative, on the one hand, and legality, on the other, constitutes the principle problem of the police as a democratic legal organization.

For Poulantzas (1978) the activities of the repressive agents of the capitalist state can and do stretch beyond, against, or without reference to law. Omissions and loopholes are written into legal regulations, allowing for their subversion and if necessary blatant

transgression. The comprehensive nature of the Prison Rules allows for the justification of almost any action a prison officer may take, so much so that prisoners often complain that there are “too many silly rules” (Livingstone et al., 2003: 546). Full application would prove highly oppressive and so, for bureaucratic, practical or control reasons, the rules are only selectively applied, perhaps sometimes merely manipulated, to provide a cloak of legitimacy on the decision making process (Carrabine, 2004). The interesting question now becomes which rules are applied, for whom, and when. Poulantzas (1978: 84) points to the answer when he argues that agents of the state, such as prison officers, privilege the maintenance of the existing order and in the last instance act to protect

the higher interests of the State (raison d’Etat) – which strictly speaking, entails both that legality is always compensated by illegalities ‘on the side’, and that state illegality is always inscribed in the legality which it institutes.

In practice prison officers encounter conflicts between how prisoners should be treated under the law and acknowledgement of their legal entitlements, and what they perceive is required to ensure that penal order is upheld (Scruton et al., 1991). Actions that breach at least the spirit if not also the letter of the law, or exploit legal oversights, are defended through appeals that they are necessary for the preservation of order and discipline. When such circumstances pertain, the prison becomes a lawless institution where decisions on prisoners’ real life experiences and circumstances are not determined by law, but in the micro world of the personal relationship between themselves and the officers involved (Sykes, 1958; Mitford, 1974; Fitzgerald & Sim, 1979; Kauffman, 1988).

In some situations the maintenance of order is underscored by a reliance on *coercion*, cultures of violence or the mechanism of fear (Poulantzas, 1978; Scraton et al., 1991),⁹ Coercion is operationalised when obedience is to be secured through the threat or use of sanctions, whether they be legal or formal sanctions, such as the use of segregation of disciplinary punishments; informal non-violent sanctions, such as interpersonal hostility or deliberate neglect; or informal violent sanctions, performed either blatantly or when an opportunity arises such as during a control and restraint (Kaufmann, 1988: 62-68).¹⁰ The strategy of coercion has been perceived as a successful means to check the blatant disobedience of a small number of miscalcitrants (Sykes 1958), and may even be considered to be effective in achieving the temporary compliance of many (Morris and Morris, 1963).

Sole reliance on coercion is likely to be rejected by prison officers on a number of pragmatic grounds. Kaufmann (1988: 69-70) argues coercion is inefficient and counterproductive. It can only be directed at individual compliance, and so is largely impotent as a strategy to gain the necessary obedience of the prison population. Further coercion requires constant escalation and must be sustained over a long period of time. Given that this entails physical and psychological costs on both victim and perpetrator, many staff may be unwilling to use the scale and extent of violence necessary for it to be effective. In the end such action breeds only further resentment, violence and discontent

⁹ There is considerable evidence of penal order predicated upon coercion. HMP Wormwood Scrubs was described in such terms in 2002 by the HMCIP.

¹⁰ This discussion must be contextualized within the more generic term 'force'. Force, which can be defined as the "stripping an individual of the choice between compliance and non-compliance" (Kaufmann, 1988:59) is an inherent part of all kinds of imprisonment as the very act of enforced physical confinement places certain restrictions upon the prisoner's mobility and subsequent capacity for resistance. Through the very nature of the prison, prisoners are vulnerable to have the will of others forced upon them.

and prisoners may try to get their revenge against violent officers. Coercion can provide no resolution to the initial dispute and cannot provide closure. As Sykes (1958: 49-50) points out,

the ability of the officials to physically coerce their captives into the path of compliance is something of an illusion as far as the day-to-day activities of the prison are concerned and may be of doubtful value in moments of crisis.

It seems likely that the adoption of coercion as a means of maintaining order is dependent upon the effective dehumanisation and necessary psychic distancing of the population confined, and the institutionalisation of an authoritarian culture. Such circumstances may vary between prisons and among occupational cultures (Liebling, 2004; Carrabine, 2004).

If legal authority and coercion are inoperable, or perceived as undesirable, officers may look to enforce their personal authority. *Personal authority* is predicated on the principle that those commanded accept that the desires being expressed by the prison officers are legitimate and possess the moral compulsion to obey such desires automatically. Weber (1948: 79) famously pointed to how the charismatic activities of individuals, indexed through their personal qualities of leadership or extraordinary personal gifts of grace, could command obedience.

Liebling & Price (2001; 2003) argue that personal authority is the most significant strategy in the maintenance of penal order. They point to the mutual dependence between prison officers and prisoners, and the need of agreement from both parties if there is to be the creation of balance, consensus and an orderly daily life in the prison.

The lack of physical distance between officers and prisoners, some of whom will undertake formal duties such as library staff, hotplate servers, or orderlies, and the structural requirement for reciprocity and good will just to “get through the day”, ensure that officers will privilege personal authority above legality and coercion in their struggle to keep order.

[P]rison officers under-enforce rules, but many still enforce their authority ... Prison officers reach a solution to the situation in front of them that does not necessarily draw upon rules at all. (Liebling & Price, 2001: 134)

In so doing prison officers perform the delicate art of *peacekeeping* (Liebling and Price, 2001: 2). Peace is accomplished and re-accomplished through the diligent and skilled building of relationships with prisoners through talk and the under-use of the officer’s powers. Specifically, Liebling and Price (2001: 9) tie the performance of peacekeeping with an officer exercising power through their personal or “legitimate authority”. The prison is conceived as potentially being a moral environment of peace, consensus, prospering *positive relationships*, where power is exercised through a combination of officer personal authority and prisoner-staff negotiations (Liebling and Price, 2001; 2003, Liebling, 2004).

It is clear that some officers clearly do attempt to develop “rights relationships” with prisoners (Liebling and Price, 2001; Crawley, 2004).¹¹ But given that security, order and control are the primary goals of the prison service, and that positive relationships are

¹¹ Policy initiatives have also included the development of the personal officer scheme, where a group of prisoners have a named officer whom they can liaise with. The success of this scheme in practice however, especially in local prisons, is relatively poor.

considered by some officers to be social work like, when positive relationships do develop they are often justified through notions such as dynamic security.

In contrast to the appreciative approach, much of the literature points to the rareness of peacekeeping, balanced negotiations and positive relationships in prison. The exigencies of the officers' broader functions reinforce existing hierarchies of power, status and control and undermine relationships (Fitzgerald and Sim, 1979). Personal authority appears also to be linked to officer self-esteem and the instilling of a deference obligation in prisoners to secure acquiescence. Sykes and Clark (1975: 103) have documented how police officers operate with what they call an "asymmetrical status norm". Here officers' relations with civilians are governed by the idea that the general public should demonstrate deference. For a positive interaction to arise, civilians must acknowledge this asymmetrical status, giving the officer a certain amount of respect for the position held. Prison officers also expect prisoners to recognise their superior status and treat them with a slightly elevated form of respect (Sykes & Clark, 1975; Sykes & Brent, 1983). Deference may be an important aspect of prison officer self-esteem (Carter, 1995).

Goffman (1963) explains why such a "deference obligation" is important in other ways. To effectively run a complex total institution requires deferential and pliant prisoners, so officers need to obtain initial cooperativeness from them as soon as they arrive. Early interactions may involve obedience tests being set by officers, or if a prisoner is strong and resists, a will-breaking contest may take place to smash the prisoner down. Attempts

to grind down prisoners leads to acquiescence through defeating the subjugated in power struggles (Gaventa, 1980; Lukes, 2005). Powerlessness becomes accumulative, and the more you lose the harder it is to find the will to fight back and effectively resist, as you anticipate your opponent will automatically succeed. For Goffman (1963: 83-6), supervisory staff in total institutions develop theories of prisoner 'human nature' in which

if the new inmate can be made to show extreme deference to staff immediately upon arrival, he will thereafter be manageable – that in submitting to these initial demands, his resistance or spirit is somehow broken. (Ibid: 85)

Thus it is likely that prison officers are not peace-keeping (Liebling and Price, 2001), but trying to ensure that prisoners know their place. By operating beyond the rule of law they are, in short, attempting to secure prisoner acquiescence and establish their control over prisoners. It is much easier to just get through the day with as little incident as possible if you work with compliant and deferential prisoners. Notwithstanding, Gresham Sykes (1958: 47) identifies the widespread lack of personal authority as the key deficit in prison officers' exercise of power.

[P]ower must be based on something other than internalised morality and the custodians find themselves confronting men (sic) who must be forced, bribed, or cajoled into compliance.

In many cases order in prison is shored up through what have been described as "corruptions" (Sykes, 1958) or "accommodations" (Sparks et al., 1996). Where the prisoner cannot be ordered, officers may try to persuade the prisoner by means of rational argument alone; appeal to the prisoner's self interest through inducements and promises of a reward (prized job, extra privileges) or through negotiations and use of an informal reward system; or manipulate compliance by learning to 'con the cons'. In current penal

practices then, the relationship between the maintenance of order and the rule of law is far from harmonious (Scruton et al., 1991).

Law may be transcended when in conflict with order; it may be selectively enforced, utilised as a means of legitimation, or rejected in favour of non-legal practices steeped in either coercion or inducements. For Hawkins (1976: 154) any further efforts to introduce law into the prison world will not only fail to eliminate officer situational discretionary powers, but also make the life of prisoners “infinitely more rigidly controlled, circumscribed, and oppressive than it currently is”. All this implies prison officers currently make judgements untied from the rule of law, and highlights the importance of understanding the factors shaping officer decision making.

The myth of discretion and prison officer working rules

The exercise of discretion refers to a freedom to make a choice determining what action [or inaction] should be taken in a particular situation. Its use by law enforcers has been justified through claims that decision making is always highly subjective; words have no settled meaning and are always re-interpreted; the law is ambiguous, too rigid or unclear; there are no two situations which are the same; it provides flexibility, mercy or can facilitate equitable solutions and greater justice (Kinsey, Lea & Young, 1986; Liebling & Price, 2001; Gelsthorpe & Padfield, 2003).

In practice the actual application of discretion is fraught with danger: it distances decision making from procedures, standards and transparent lines of reasoning, and may lead to

the unfavourable treatment of identifiable groups through prejudice or discrimination; it presents the beholder of an office with a license for abuse of power and position and corruption; it is accumulative; and leads to disparity of outcomes, with people in similar circumstances being treated differently. For some it is “hypocritical and insidious to operate with a vague law and to use its vagueness as a screen to conceal the other motives and practices of a discretionary system” (The American Friends Service Committee, 1971: 129).

The merciful aspects of discretion are only humane for those who “gain the sympathy of the system or to those who have the power to merit special favour” (Ibid: 135), justifying an empathetic understanding and response to wrongdoers, rather than one rooted in the principles of social justice and human rights (Cohen, 2001; Hudson, 1998). Though the complete removal of decision making using personal judgement would require a highly burdensome if not impossible legislative task of proscribing rules for every possible turn of events, requiring constant updating and modification to complex and changing circumstances, “unnecessary discretion” must be challenged and, where possible, removed (Davis, 1969).

If the truth be known, the exercise of discretion is not an unconstrained *freedom to choose* at all, but rather entails the *structuring of decisions* based upon non-legal criteria that lead to *patterned and predictable outcomes*. M. P. Baumgartner (1992: 129) persuasively argues that discretion is not an individual but collective enterprise, with its *rules* determining the sequence of decisions, precedents, and understandings of the

'natural' way of responding in certain situations. Indeed the predictability or patterning of discretionary decisions has led a number of authors to question if such a concept is not simply *mythical* (Hawkins, 1992; Baumgartner, 1992). In short "the use of rules involves discretion, while the use of discretion involves rules" (Hawkins, 1992:12).

The Policy Studies Institute (1983), writing about police officers in London, identified three forms of patterned discretionary rules shaping law enforcers' day to day behaviour: *presentational rules* – which are used to present the acceptable face of their role; *inhibiting rules* – factors which they must take into account as their breach may lead to problems or criticism from the general public and *working rules* – what the law enforcer actually does, the principles which actually inform and guide the officer's role. Through the patterning of discretion, prison officers also then develop their own informal working rules. These internal organisational and occupational factors may become more important than legal rules to guide their action and judgement. Skolnicks' (1966) conception of the police officer as a "craftsman" (sic) rather than as a legal actor, for example, captures this well.

The point is not so much that discretionary judgements are always inferior or more problematic than those judgements utilising legal reasoning, indeed the opposite may be true, but that in operational practice the choice prison officers have is to pattern outcomes of decisions based on legal rules and procedures, or produce other similarly predictable outcomes based upon alternative social and organisational rules. The nature of these social rules may or may not have an implicit or explicit discriminatory rationale, but it

certainly will be one that is not open to public scrutiny or mechanisms of democratic accountability.

Prison officer occupational culture

Prison officer working personalities arise as a result of an officer's shared experiences and social situation with other colleagues, leading to the development of a common way of interpreting actions and events. Collectively, working personalities create an occupational culture. The common beliefs, norms and values or way of life of a prison officer occupational culture are formed through each officer internalising "the walk, the talk, the posture, jargon, [and] mindset" of a particular working style (Crawley, 2004: 84). Occupational cultures are transmitted through telling of myths, socialisation by experienced officer conduits, the everyday officer lived realities, and naturalised in the common patterns of daily routines, rituals and attitudes. This interpretive framework informs "the way we do things round here", determining the construction of what is, and what is not, proper prison work (Holdaway, 1983; Sparks et al., 1996).

For Skolnick (1966: 42) though the strength of such "cognitive lenses" varied between [police] officers, they are built on the same foundations and are operated through the same environment, implying a homogenous working personality. This assumption has been contested with regard to prison officers. The literature indicates that a multiplicity of staff personalities can co-exist in any given prison, each shaped by its historically contingent evolution, folklores, memories, identities, and the specificity of the dominant culture and practices of a particular establishment, or even wing (King and Elliot, 1978;

Kauffman, 1988; Carter, 1995; Liebling & Price, 2001; Crawley, 2004; Liebling, 2004; Carrabine, 2004). It is necessary then to speak of working *personalities* of prison officers, with the dominant grouping creating the occupational *culture*.

Like in police work, danger would appear to be a highly significant factor in the formation of officer working personalities (Skolnick, 1966). All the evidence indicates that the ties that bind officers are to a large extent shaped by assessments of the extent the prison is a dangerous environment. When prisoners are understood as presenting a clear and present danger to officer physical or psychological survival, it is more likely that the occupational orientation will prioritise mutual trust, and close working practices, to effectively ward off such menaces. Yet these are phantom menaces, and the construction of the prison as a perilous place is largely mythical. Prison work is not, statistically speaking, very dangerous at all. Officially recorded assaults in recent years on prison officers are remarkably low (HM Prison Service, 2005a), and during the past sixty years only two prison officers in England and Wales have been murdered on duty, one in 1948 and the other in 1965. The occupational death and personal injury rate is lower than for the police, and very much less than many civilian jobs, particularly construction workers (Stern, 1987; Sim, 2000, 2004).

In these perceived dangerous environments it is deemed problematic to show weakness or an inability to cope (Crawley, 2000). Sensitivity, understanding and compassion must be repressed, as should anxiety, stress and depression, or whatever the prison officer is actually feeling. Officers, who are men, must express themselves in ways which are

consistent with 'hegemonic masculinity' (Sim, 1994b). One manifestation of this is the outside image of a strong, authoritative and unflappable officer in complete control of the situation. Prison officers should be brave, fearless, and be able to manage their emotions effectively. Male prison officers in particular cannot, so to speak, let their guard down, perhaps for fear of the consequences of appearing weak and vulnerable in a destructive place, where such people are mercilessly preyed upon.¹²

If the sense of danger is successfully embedded, dominant working personalities are often characterised by suspiciousness,¹³ personal loyalties, and commitments to group solidarity (Colvin, 1977; Carter, 1996; Liebling and Price, 2001; Carrabine, 2004). Officers who feel frightened, misunderstood, lonely or insecure may tap into their immediate work relationships as a major resource for emotional support (Kaufmann, 1988; Colvin, 1977).¹⁴ This being said, officer solidarity cannot be assumed and does not always paste over the everyday conflicts between prison officers (Lombardo, 1989; Crawley, 2004). Alongside danger, Colvin (1977) argues that officer solidarity may also be determined by the nature of the prison regime and its traditions; the level of

¹² Humour is very important to prison officers as a means of communicating. In their rather bleak and brutalising nightmarish world it should not be too surprising that day to day banter and practical jokes are also rather warped, twisted, or 'sick'. In some cases this may be an attempt to provide an effective coping strategy for psychological distress. Yet such applied humour, that is humour used for hidden or veiled purposes, is not just used in tragic or disturbing circumstances, such as in cases of self harm or suicides. It also acts as an informal mechanism of control to establish or maintain hierarchies of power or to keep prisoners in their perceived subordinate place (Crawley, 2000, 2004).

¹³ Suspiciousness refers to a constant awareness of surroundings and possibilities of trouble or danger.

¹⁴ The clearest discussion of prison officer solidarity can be found in Kaufmann (1988:85-112) who points to the evolution of an officer's code based on allegiances to fellow officers. The code prioritises the necessity of always helping colleagues in danger, principally in response to the alarm bell; not putting other officers into dangerous situations; never "ratting" on other officers, especially to outsiders or management; not criticising other officers in the presence of prisoners; always supporting their colleagues in a dispute with prisoners, which in some situations may include helping to undertake informal physically coercive sanctions.

organisation within the staff group; and how developed contacts are between officers and those on the outside. One commissioned survey found

there exists a general syndrome among staff and among officers in particular that their lines of authority are badly attenuated, that no-one cares, and that the average prison officer is too vulnerable and isolated. (Marsh et al., 1985: 60)

Such occupational isolation has many facets. By the very nature of their role, prison officers are in conflict with their charges. They are holding people in a place they find painful and do not want to be. Social workers, psychologists and other 'do-gooders' have been perceived as threats to security and control and undermining officer work and managers as ambivalent to officer working realities (Colvin, 1977). Many studies have also pointed to how officers feel that they are disliked by the general public, who they believe do not understand their role (Colvin, 1977; Carter, 1996; Crawley, 2000). In short, from the officer's point of view, 'nobody cares' about their plight except other officers.

Officer solidarity and other social constructions of *sameness* in the working personalities can be sharply contrasted with the cultural accent stressing prison officer *differences* with prisoners. For many prison officers there is a clear 'us' and 'them' relationship with prisoners. There are exceptions, but with the adoption of a punitive mindset this may be inevitable. Relationships are based upon an "antagonistic stereotype", and Goffman (1963: 18, 19) argues that conceptions of human nature essentialising differences or otherness between staff and prisoners are common.

Each grouping tends to conceive of the other in terms of narrow hostile stereotypes, staff often seeing inmates as bitter, secretive and

untrustworthy, while inmates often see staff as condescending, highhanded and mean. Staff tend to feel superior and righteous; inmates tend, in some ways at least, to feel inferior, weak, blameworthy and guilty... Even talk across the boundaries may be conducted in a specialised tone of voice.

One of the main components of this world view is the perception that prisoners will manipulate staff, and that they must consequently place barriers between themselves and their charges. It may also portray prisoners as ill-disciplined individuals who require privileges and sanctions not legal rights to correct their individual faults.

Many prison officers are actively discouraged from empathising with prisoners - highly significant given they share much in terms of their social, educational and demographic backgrounds, and will do their time together in close physical proximity (Kaufmann, 1988). The likeness between the two groups in a context of keeper and kept clearly raises problems, with at least one commentator arguing that similarities "feel very threatening" to officers leading to an unconscious need to extenuate differences (Klare, 1973: 38). Morris and Morris (1968: 100) in their study of Pentonville argued that to the prison officer the "prisoner tends to be the expression of his own worst self rather than a wholly distinct social species", as a "layabout" rather than a hard working artisan. Differences are reduced to a moral and pragmatic discourse tying lawbreaking and subsequent incarceration with individual pathologies, grounded in personal weakness, disrespectability, ill-discipline and irresponsibility (Hall et al., 1978).

The construction of prisoners' as 'bad' people has one further implication: it provides a perfect foil to the positive 'good' self-identity of the prison officer. For Klare (1960,

1973) prison officers are at the bottom of the social hierarchy working in dreadful conditions, and need to be compensated psychologically through contrast with inferior prisoners. The greater the moral condemnation of the prisoner, the more apparent the moral superiority of the officer. As Klare (1960: 38) argues,

to take a little badness from the prisoners, it seemed to them as if a little goodness were being taken away from themselves. Without reactionary intent, many of these decent men and women tended to feel that reform would undermine their security.

Attempts to humanise the prisoner or reduce social disapproval creates great anxiety among prison officers. The bad, threatening and negative status of the prisoners serves the interests of staff well. It is perhaps unsurprising that prison officers have been considered to hold "conservative" (Colvin, 1977: 217) attitudes, adopting negative and punitive utilitarian justifications for their role such as deterrence, and denying prisoner human and legal rights.

Working personalities and the occupational culture

Environmental factors alone cannot explain how a certain cognitive lens is conceived or adopted but they remain highly significant in explaining why certain ways of thinking appear more plausible than others to prison officers. The literature points to four main working personalities in the prisons of England and Wales: careerist, humanitarian, authoritarian, and alienated.

Careerist

King & Elliot (1977: 269) describe the central motivation of this working orientation as “making a career”. Officers expect to be promoted through the ranks of the service and will look to develop positive relationships with managers. Officers are keen to use their initiative and take responsibility for decision-making, embracing the official thinking, whatever it may be at that time. Their role and functions are determined largely by concerns with giving the right impression to their superiors, and “the prospect of making a career within the prison system” (Ibid: 269). We may anticipate that such a working personality today would involve officers promoting managerial goals and priorities.

Humanitarian

This working style is rooted in acknowledging the prisoners’ shared humanity, human suffering, and ensuring that prisoners are treated as human beings. The literature appears to indicate that there are two strands to the humanitarian working personality: one which looks to emphasise the bureaucratic and procedural aspects of the role, and a second which emphasises the possibilities of rehabilitation.

1. Humanitarian Bureaucrat

Various identified in the literature as the “bureaucratic-lawful” (Barak-Glantz, 1981), “liberal” (Reynaud, 1994), “weathermen” (Carter, 1995), “professional” (Gilbert, 1997), or “bureaucratic” (Carrabine, 2004), the ‘humanitarian bureaucrat’ working personality prioritises the *human service* role above that of policing. Prison life is organised through a codified bureaucracy, administration, and the rule of law. Prison officers are de-

militarised, working within a human services framework valuing fairness, impartiality and the consistent application of the rules (Lombardo, 1989). It is the law, and not individual governors or prison officers with great charisma and authority that govern the prison. It is acknowledged that prisoners have legal rights not privileges and have open to them formal lines of accountability and redress for grievances. Penal discipline is operated through due process, formal disciplinary proceedings, and the judicialisation of power (Whitty et al., 2001).

The humanitarian bureaucrat has a more open, calm and easy going working personality and is able to empathise with the prisoners and view them as the 'same' (Gilbert, 1997). Though coercion is not ruled out, these officers would rather utilise non-demeaning behaviours and gain co-operation through compliance and co-operation. Officers are prepared to be flexible and make positive exceptions as a means of facilitating mercy and helping prisoners. They recognised that prisoners have "bad days, forget things or may not be aware of a rule" (Carter, 1995: 221), and may give extra privileges than the rules permit. The use of judgement is viewed positively with discretion patterned in a way which is more humanitarian and progressive than the rule of law.¹⁵

¹⁵ It is significant that discretion is portrayed as more positive and progressive than rule following (see especially Gilbert, 1997). This position may appear more appropriate if the interpretive framework or patterning of discretion (Baumgartner, 1992) by prison officers is more humanitarian than the rule of law. Certainly in two of the studies, Carter (1995) and King and Elliot (1978), the dominant groupings were humanitarian. However problems arise when different adaptations are dominant, for example the disciplinarian. For Kaufmann (1988) the 'functionaries' were the dominant occupational discourse whose interpretive lens was far from superior to that guaranteed through the rule of law (see also discussions in Crawley, 2004; Liebling and Price, 2001; Carrabine, 2004; Jacobs, 1977).

2. Humanitarian Therapist

Described in the literature as “implementing rule 1” (King and Elliot, 1978), “reciprocator” (Gilbert, 1997), “therapeutic” (Genders and Player, 1994; Whitty et al., 2001; Livingstone et al., 2003) and “professional” (Carrabine, 2004), this working personality gives greatest emphasis to the rehabilitative functions of prison officers. There is much greater focus on intermediate treatment and acceptance of the role of experts, professionals, and medical practitioners. Officers promote the treatment and training ideology (King and Elliot, 1978) and social work orientations to their role and believe they can educate or cure prisoner problems (Gilbert, 1997). The humanitarian therapist looks to help the prisoners, develop positive relationships and is prepared to negotiate with prisoner leaders to maintain peace and order.

*Authoritarian*¹⁶

Identified variously in the literature as “enforcers” (Gilbert, 1997), “black and whiter” (Carter, 1995), “negatively detached” (King and Elliot, 1978), “paramilitary bureaucrats” (DiIulio, 1987) or “authoritarian” (Carrabine, 2004), in this working personality power is

¹⁶ The authoritarian officer is linked to the literature on the authoritarian prison. In principle, basic grade officers should be an efficient paramilitary unit, tightly controlled through rigid and hierarchical forms of discipline. There is no space for unfettered discretion, staff initiative or any other “special talents”. The appropriately managed and disciplined prison officer should follow rules and guidance from above, and act by the book, interpreting situations by following “a manageable number of simple operational rules. Theirs would be a tight, stable, uniform routine of monitoring inmate movement, frisking inmates, searching cells and so on” (DiIulio, 1987:239). Historically, in such prisons officers have limited interactions with prisoners, and are essentially only “key carriers” ensuring that the orders of their superiors are carried out (Reynaud, 1994:24). Though established in the separate and silent systems in the nineteenth and early twentieth century across Europe and North America (Thomas, 1972; Ignatieff, 1978), a number of commentators have pointed to problems in its long term application (Kauffman, 1988; Carter, 1995). Jacobs (1978:37), in his empirical study of the collapse of the authoritarian regime at *Stateville* in the USA in the 1950s, points out that in practice a tension existed between a highly disciplined and paramilitary regime running to quite specific rules and regulations, and the informalism and arbitrariness that arose through particularistic relationships, affiliations and the differential application of the prison rules. This cut through the organisation, and for prison officers promotion and even job security was dependent on the favours and benevolence of the governors.

firmly centralised and is exercised through the autocratic rule, charismatic leadership and personal authority of prison officers and governors, as opposed to the rule of law (Barak-Glantz, 1981; Jacobs, 1978). Authoritarian working personalities are predicated on the maintenance of order, security, discipline, and control. Officers are disciplinarians who are motivated by uncovering and enforcing prison discipline, through applying the letter of the prison rules and other regulations in a rigid and inflexible manner. The impact of the regime upon prisoners is highly damaging and dehumanising (Haney et al., 1973).

Conditions are kept austere and basic, with only limited emphasis on association, education, work, or recreational activities. Officers do not wish to undertake the "soft" social work roles and rehabilitation is downgraded or non-existent (Gilbert, 1997). The prisoner is conceived as other and inferior to officers. There is little or no empathy with the prisoners' condition and psychic distance is effectively established. When seen, the prisoner should be clean, quiet, neatly dressed, punctual, respectful, and orderly. Prisons should be tidy, strict and disciplined, habituating prisoner responsibilities.

Discipline may become so strict that adherence to all rules is impossible. Inevitably innumerable exceptions are made for the prison to function, resulting in the "arbitrary and capricious" application of the rules (Jacobs, 1978: 22). The prison operates as a military regime where rules take on significance beyond law. Breached rules are censured from above to assert personal authority rather than to protect infringements of rights. Prisoners only have privileges, rules are selectively enforced, and a mechanism of fear established. Prisoners become aware that they could be potentially found guilty of a multitude of

violations, at any time, and at the whim of their overlords (Mitford, 1974; Poulantzas, 1978; Cohen, 2001). Authoritarian working personalities condone prisoner ignorance of the rules, are instinctively hostile to legal intervention or rights, and highly resistant to processes of democratic accountability.

The literature indicates that a continuum operates ranging from ideal types of coercive officers (Jacobs, 1978; Barak-Glantz, 1981; DiIulio, 1987) down to relations that manifest themselves in firm but fair codes of conduct (Carrabine, 2004). The authoritarian officer may be highly oppressive, use aggression, or rely on coercive force to ensure the “running [of] a tight nick” (ibid: 103). Or violence may be specialised, with a heavy mob of “big, burly men” with provocative reputations, becoming the “key men” should “trouble arise” (King and Elliot, 1978: 267; Kauffman, 1988). Likewise in these “screws nicks” (Carrabine, 2004: 103), run on “militaristic lines”, relations may not necessarily be rooted in a “coercive and divisive us versus them” mentality at all, but run through acquiescence created through officer personal authority and firm control. Finally, in its weakest sense, the personal authority backed by “arbitrary coercion and relentless supervision”, control and order of the authoritarian officer could be maintained in combination with a reliance upon corruptions and “a meaningful reward system” (Jacobs, 1978: 43).

Alienated

The concept of alienation describes the devastating effects on the physical and mental states of human beings under capitalist modes of production. For Marx (1964), human

nature is created through a historically specific dialectical interplay between human biology, culture, and physical environment. Emancipated labour, Marx argued, was the actualisation of the self through which humans could freely develop their physical and spiritual energies and find fulfilment. Humans needed to work but under current material and historical conditions, i.e. the commodification and exploitation of labour through capitalism, alongside the realities of neo-colonial exploitation and the subjugation of women in the home and workplace through patriarchies, alienation inevitably arises (Jagger, 1983).

Rather than humans developing their inherent potential through labour, under capitalism 'man' (sic) is impoverished and burnt out through productive activity, decreasing fulfilment, sense of meaning and control, and overall diminishing quality of life. Marx conceived of alienation broadly as denoting (1) the estrangement of the worker from the product of their labour, as any work undertaken belongs to somebody else; (2) the creation of self alienation as work cannot satisfy intrinsic human needs, leaving labourers unfulfilled, empty, and dissatisfied; (3) the performance of menial and derisory tasks destroy the potential and desire for creativity, resulting in a dehumanised existence; and (4) the extinguishing of communal natures and perpetuating of greater *social distance* as 'man' (sic) becomes alienated from other people.

There is evidence of alienation in a number of studies on prison officers (Thomas, 1972; Kaufmann, 1988; Lombardo, 1989; Carter, 1995). The profoundly alienated prison officer working personality is characterised by increased social distance with their

colleagues, prisoners and managers, and increasing dissatisfaction at the menial tasks undertaken (Marx, 1964). The dehumanisation through the capitalist division of labour takes place *within* a further dehumanising context of deliberately intending to inflict pain. We may expect that for the caretakers of punishment, alienation is doubly isolating, painful and dehumanising (Lombardo, 1989). The literature points to two closely related adaptations to prison officer alienation.

Alienated Burn Outs

Described in the literature as “marking time” (King and Elliot, 1978) “burn outs” (Kauffman, 1988), “easy lifers”, (Carter, 1995), and “avoiders” (Gilbert, 1997), the alienated burn out working personality is characterised by minimum work, officer interaction and prisoner contacts, and a commitment to just get by. Officers are looking for an easy ride and to avoid confrontation or coercion (Gilbert, 1997). They have no great attachment to their role, or the wider claimed roles of imprisonment. They have no interest in prisoners needs, and are just going through the motions and daily routines marking their time (King & Elliot, 1978). These officers are often isolated. They are profoundly alienated and struggle to survive psychologically in prison. Though alienation is a factor for all officers the alienated burnouts are “charred remains of men” (Kauffman, 1988: 256) unable to cope with the demands of the job.

Alienated Functionaries

A further adaptation that avoids some of the anguish of burn out is what Kaufmann (1988) has referred to as “functionaries”. This working style allows officers to go into a

profound state of denial about the realities of imprisonment (Cohen, 2001). Characterised by a sense of moral indifference and ambivalence, the functionary successfully constructs a new penal reality through successfully distancing, either physically or psychologically, prisoners and fellow officers. Whilst still gleaning the benefits of officer solidarity by paying lip service to the dominant officer occupational culture, these officers will look to disguise their true feelings to cope emotionally. In a very brutal prison environment Kauffman (1988: 246) argues that in her study,

[w]hatever they felt inside, officers believed they had to adopt a cold, indifferent exterior, jesting about blood on the walls or testicles on the floor, sitting by a mutilated corpse nonchalantly drinking, laughing about an inmate suicide.

These officers have no mission and did not find their work rewarding. They hold the job because they need the money. These officers have ceased to care about anything other than their pay checks and their own personal well-being.

Evolutionary arguments

A number of studies on prison officers have argued that their working personalities *evolve* as a direct result of the *environmental* factors shaping prison life (Carter, 1995; Kaufmann, 1988). The evolutionary argument remains attractive, especially to those sympathetic to the officers' plight, as it highlights that for them psychological survival is dependent upon adapting to the pains and brutal realities of imprisonment. Kaufmann (1988) maintains she found both primary and secondary types of prison officer adaptations. There were three primary officer types: *pollyannas*, who held positive attitudes to both prisoners and staff; *white hats*, who were sympathetic to prisoners but negative to staff; and *hard asses* who prioritised coercion and were negative towards

prisoners but positive to staff. These broadly reflect the humanitarian and authoritarian working styles detailed above, but for Kauffman (1988) none of these original styles were sustainable in the long term.

In the hostile and polarised prison environment pollyannas floundered; white hats who had deviated too far from officer loyalties were cut adrift and left to fend for themselves, and “hard asses” found that “payback was motherfucker” and suffered severe retaliation from prisoners. For Kauffman (1988) prison officers would either be forced to leave the service, or become alienated, suffering *burn out* and thus experiencing the full horrors of prison or becoming morally anesthetised *functionaries*.

Environmental factors are undoubtedly very important, yet an exclusive focus on them remains inadequate as it fails to make connections with wider structural contexts. Though it is highly likely that certain understandings of prisoners gain greater plausibility even ascendancy through officer’s personal experiences of the pains of imprisonment, the frames of interpretation adopted are present beyond the prison walls. Circumstances arising in the working environment may conspire to lead some officers down a particular path, but it would be a mistake to tie the four working personalities discussed above exclusively with their working arrangements, or to conceive them necessarily in an evolutionary manner (King and Eliot, 1978; Kauffman, 1988; Carter, 1995; Gilbert, 1997; Crawley, 2004; Carrabine, 2004). Careerist, humanitarian and authoritarian working personalities dovetail with wider penological discourses, whilst alienation is not unique to prison work, rather it characterises capitalist divisions of labour.

Prison officers and their moral universe

By its very nature prison work is brutalising and dehumanising and this is inevitably felt by prison officers, and all those exposed to such an environment. In many prisons there is a strong occupational ethos emphasising officer distance and detachment (Kauffman, 1988; Crawley, 2004; Carrabine, 2004; Liebling, 2004). For some this may be a means of establishing a professional detachment enabling them to undertake the work. For others it may be a defensive mechanism for coping, a means of psychological survival. Officers may become detached as a way of doing their time. Detachment may develop through the fear that prisoners will view signs of familiarity or sympathy as a weakness, and attempt to manipulate the officer. As Crawley (2004: 105) suggests, some officers consider that the best defence against such vulnerabilities is to increase their social distance from prisoners.

The context of inter-personal relationships in total institutions are shaped by a distinct construction of reality, which appears to have conceptions of norms, standards of respect and morality which are different to the outside world. The two most detailed studies of prison officers to consider questions of officer occupational morality, and the consequences for the manner in which prisoners claims to human rights are understood, can be found in Colvin (1977) and Kaufmann (1988). Colvin (1977: 139-145) argues that neutralisations are embedded in the formal structures of imprisonment. For Colvin (1977: 139) it is a "short step" from enshrining the principles of punishment through the suspension of rights and the denial of certain liberties to denying prisoners "the status of

persons entitled to make any moral claims upon the staff". Through its very foundations imprisonment creates a special occupational morality which permits digression from the moral framework utilised in everyday life. Prisoners are set apart from other human beings by their very status as prisoner. Officer conceptions of prison humanity,

rationalises activity, provides a subtle means of maintaining social distance from inmates and a stereotyped view of them, and justifies the treatment accorded them. (Goffman, 1963: 84)

Colvin (1977: 143-5) explains how coercive behaviour against prisoners by prison officers is seen as justified within the boundaries of the prison context. In other words, breaches of conventional morality can be justified because they take place either within the prison itself, or because it was directed against prisoners because of their personality.

At other times, however, they [relied] on all inclusive and damning categorisations of the inmate population as they [revelled] in talking about violence and [defended] themselves absolutely against any conceivable accusation of fault. (Ibid: 143)

Utilising the insights of Sykes and Matza (1957), Colvin (1977) explains that officers still held a sense of conventional morality, but within the prison they were able to neutralise their commitment. In this sense officers have a different conception of morality for how to deal with people who are in prison compared to those people on the outside. There is also evidence of moral confusion and contradictions. Officers had rationalised morality into clearly two separate moral spheres which allowed the demarcations in occupational norms and values from those adopted in everyday life. This allowed the prison officer to conceive of himself as an ordinary human being who was reacting to the moral context of imprisonment. To maintain a positive conception of [her or him] self, and to somehow

also overcome this potentially disturbing split in behaviour, the officer also considered how he could maintain certain aspects of his ordinary morality within the prison situation.

Consequently the officer may consider

acting reasonably towards his charges, taking an interest in their well being, and treating them with civility. Yet he also learns to value methods of control which involve the ruthless disregard of the personal feelings of his charges. (Ibid: 145)

Kauffman (1988: 222) also found evidence of techniques of neutralisation for the morality used by prison officers, who

attempted to neutralise their own feelings of guilt by regarding prisons as separate moral realms with their own distinct set of moral standards or by viewing inmates as individuals outside the protection of moral laws.

However she argues that in some cases this has gone further, leading to "moral indifference" (Cohen, 2001). Kaufmann (1988) uncovered three ways in which prison officers attempted to justify their actions: neutralisations, lesser breeds and emotional detachment. Like Colvin (1977) Kaufmann (1988) found that prison officers attempted to overcome inhibitions or neutralised the guilt of their brutalisation of prisoners by constructing the prison world as a separate moral realm. However Kaufmann found that this technique was difficult to sustain as "actions appropriate to only one realm are susceptible to judgments emanating from the other" (Ibid: 130). A more successful technique was to position the prisoners as a class of individuals *beyond* claims of conventional morality.

Prisoners, by their *very status as prisoner*, had lost all claims to moral evaluation thus removing all moral obligations from officers that were owed to normal men and women. Prisoners were less eligible than other human beings, effectively dehumanised as a breed apart, the “scum of the earth” (ibid: 231) to be treated like animals (see chapter three). If both of the rationalisations had failed by themselves, a third and final tactic of psychological survival was to adopt complete emotional shutdown. Officers could become “disassociated, non-emotional, non-caring unconcerned”, becoming immune to the suffering of prisoners.

This social production of moral indifference was explained in Kaufmann’s study as the result of working in one of the most extreme and brutal prison regimes imaginable. It is a purely evolutionary and environmental account. Confronted with extreme situations, officers were forced to turn a blind or disinterested eye to events as a means of survival. Moral indifference as a technique of denial was sanctioned, with prisoners dehumanised and left to live a brutal and potentially deadly daily existence. Nothing was seen as wrong with extreme prisoner suffering. No moral qualms needed to be neutralised (Cohen, 2001).

The rules and structures of prison officer occupational cultures

Prison officers have a caretaker role, ensuring the pains of imprisonment are delivered. This role can analytically be broken down into security, supervision, service, and policing functions. How officers prioritise these tasks, and specifically the undertaking of their policing role, give us a clear indication of their recognition of prisoner legal and human

rights. Policing necessarily entails the maintenance of order and the enforcement of rules, but it is clear in the literature that the former is privileged above the latter. Legal authority and coercion are subsumed beneath the preferred strategy of order maintenance: personal authority. Sometimes justified through the notion of “peacekeeping”, a more frequent use of officer personal authority is in the subjugation of prisoners to ensure deference and resulting acquiescence. This strategy may prove to be unsuccessful at times, forcing officers to persuade and manipulate prisoners where necessary.

Prison officers operate within a context of *double dehumanisation*. First, they experience alienation as it arises through the division of labour in capitalist societies, destroying a human beings creative potential. Second, prison officers are the caretaker of punishments, and through negating the humanity of others, they also negate their *own* humanity. Undoubtedly officers suffer through their dehumanising work, yet do escape some of the dangers to humanity that imprisonment creates for those confined. It is perhaps testimony to the extreme inhumanity of incarceration that when we ask the question, ‘who suffers the most in prison’, the answer is *not* the prison officer.

How officers “just get through the day” in these lawless institutions inevitably leads to questions regarding how they exert their authority, which rules they apply, for whom, and when. Such judgements are patterned. Concern must focus on the interpretive frameworks structuring the working rules and personalities of prison officers and their subsequent institutionalisation in operational practices. We must uncover if prison officer discretion reproduces wider social stereotypes of ‘race’, class, and gender through

basing assessments of the moral character of prisoners upon already existing political and socio-economic constructions of respectability, status and social distance (Baumgartner, 1992). The utilisation of such macro stereotypes provides a medium to structure prison officer day-to-day decisions in a manner that [re]creates patterned discriminatory outcomes at the micro level.

Collective prison officer working personalities, lead to the creation of occupational cultures, that is, certain ways of life and frames for interpreting events and meaning. There are a number of factors which impact upon officer working personalities, with constructions of the sense of danger and prisoner difference being particularly important, leading to antagonistic stereotypes and notions of prisoner inferiority. Indeed such constructions of prisoner badness again feed into prison officer status and sense of worth. Overall the focus on *differences* is significant because it cloaks prison officers from the stark reality that society punishes people just like them, and leads to constructions of psychic distance necessary to undertake their dehumanising functions. It may be anticipated, then, that any talk of prisoners' human rights will present a direct challenge to many prison officer occupational discourses.

The literature indicates that a number of occupational cultures exist in any given prison at one time. The four officer adaptations most clearly identified in the literature were the careerist, humanitarian, authoritarian, and alienated working personalities. It is important to consider the extent these are present in the research prison and how these rules structure officer understandings of prisoner suffering and legal rights. Approaches to officer cultures have largely retained an exclusive focus on evolutionary and

environmental factors in creating prison officer working personalities. This provides only a partial account. Occupational cultures and prisoner human rights must to be understood in their socio-economic, political, penological, legal and policy contexts. This understanding returns us to our wider aim of examining the institutionalisation of the acknowledgment of prisoner suffering in prison officer occupational cultures. This requires a consideration of the manner in which prison officer moral universes are constituted. Physical and psychic distancing, detachment and the neutralisation or moral indifference by officers towards prisoner suffering are brought into sharp relief. Questions then must be asked about the invisibility of prisoner's suffering and how this is justified through morally distancing prisoners as ghosts beyond our realm.

Chapter Seven:

The authoritarian officer? Prison officer working personalities

I think it used to be a question of switching on into a certain mode as you walked through the [prison] gates, and then, when you went out, you would switch off and be your normal self again. I remember in the first two or three years of the job, when my fortnight summer leave came around, half way through my wife would say to me, 'you've changed – you are back to your old self again'. She could not explain what it was, and I could not see it myself. But over the years that stops happening, because you actually become a different person. Talking to the lads generally, I do not think we are nice people. Prison does not change you for the better. Instead of switching on and switching off, we do it subconsciously. You become that same person all of the time. (Interview 32)

This is the first of two chapters evaluating research on prison officers undertaken at a local prison in England from July – September 2002. The chapter outlines the rules and structures governing four prison officer working personalities. For authenticity I have adopted the titles commonly used by prison officers, other staff and prisoners when referring to these working personalities: careerist; humanitarian; disciplinarian and mortgage payer. This discussion provides the context for the subsequent chapter looking at how the most influential working personality shaped officer denial and acknowledgement of prisoner suffering and legal rights.

The careerist

Two principal officers [PO] from the sample could be described as having a careerist working personality. The careerists had relatively positive orientations to their working environment and prisoners, but were marginalised within the occupational group.

Indicating a commitment to legal rights and humanitarian regimes, the careerists' overriding loyalty was clearly to managerial reforms and their superiors.

1. Prison as a career

The careerists were officers looking to get promoted as quickly as possible. Their current role was considered to be just one step on the ladder. Careerists hoped to become governor grades, and were merely serving their time as prison officers as effectively as possible. Both careerists in the research sample were POs but not all the POs interviewed fitted into this mould. The two careerists were in positions of management and embraced the role enthusiastically. There was little criticism of management decisions or personnel. Indeed quite the reverse appeared to be the case with praise for one of the officer's superiors. "I have got a fantastic boss and a really good job and I love my work" (Interview 19). There was also the adoption of management speak at times. Statements like "I think in the end we need to have more focus on joined up services" (Interview 34) or "our customer is the inmate" (Interview, 19) and even talk of a "performance culture" and decency (ibid) were not uncommon.

The two officers spoke of meeting key performance indicators and targets, improving the quality of the regime and concern about the prison's position in the league tables.

We need to deliver on our KPI's and KPTS. Unless we actually achieve our KPTS we are seen as a non-performing prison. I think as a manager it's a good tool because officers know that if we don't perform we drop down the league table. I think the whole system could work but it needs to be looked at better integrated, and we need to decide as a service which way we want to go. But I do think it is fair to say the new initiatives we are bringing in are quality initiatives not quantity initiatives. (Interview 34)

The careerists looked to embrace new initiatives and directives from above, perhaps because they hoped that their performance would be rewarded with promotion. One of the officers was involved in internal audits and standards but gave a clear impression that his commitment to the current role was instrumental. Referring to the need to ensure that his “face fitted”, one officer stated:

as a manager I think you have to play the game. You have got to ensure that you move with the times, you have got to know what is going on, and you have got to play the game. (Interview 34)

2. Internally isolated

This working personality was met with considerable officer hostility from colleagues. The careerists most heavily criticised by officers were those who had entered the service on graduate entry schemes. One principal officer stated that such “careerists” would be seen “running around trying to impress the governor, but they just don’t really know what this job is all about ... we are promoting the wrong kind of people” (Interview 26). The two PO’s interviewed had little interaction or social contact with their peers, and were not based on the wings. The careerists promoted an individualised discourse undermining officer loyalty, codes of solidarity or empathy with colleagues. The careerists felt that “lazy” and “ill-disciplined” (Interview 19) prison officers used mythical horror stories to avoid work and prolonged contact with prisoners.

3. Prison as a safe environment with a sense of mission.

The two careerists were very critical of other prison officers and the myths spread about the dangers of imprisonment.

You may hear terrible stories about prison but if you actually look at the amount of times that happens it is so rare. You can spend years and years at the job. Come to work, go home, and nothing ever happens. I've worked in the segregation unit and in that time we only had about 2 or 3 incidents of any note. All the times when week upon week it's just boring and mundane, well all that gets forgotten. I don't believe that we live in a harsh or black environment. (Interview 19)

Careerists had a reasonably positive appraisal of the prison and found their job a positive experience. The two officers interviewed had the benefit of being invested in, for example through training programmes and the existing prison regime worked or was working for them as well as they for it. They had amicable relationships with their managers and believed that if they used their initiative and responsibility that they would go far in the prison service hierarchy.

Personally, I think the job has become easier. I go back 12 years from which I first joined the job; I enjoy it as much today as I did then. I am not one of these people who turns up 'oh not another day at work', I enjoy it, I am very fortunate ... I am not a cynic, I can see an end product coming out, you know. (Interview 34)

4. Physical distance from prisoners

The two careerists were protected from the brutalisation and demoralisation experienced by the majority of prison officers in the prison, as they had developed specialist posts in the prison. One of the principle officers was now primarily involved with resettlement programmes and spent much of his time working outside the prison. He worked closely with other criminal justice agencies and civilian employers in the community, but seemed to have little interest in working closely with prisoners. The other PO had no direct contact with prisoners and was based in the administrators building.

5. A humanitarian ethos acknowledging legal rights and shared humanity

Careerists had a humanitarian ethos, promoting the rehabilitation of offenders and a commitment to the government goals to utilise the prison as a special place to reduce re-offending. Such talk reflected existing management commitments to the responsabilisation of prisoners, and neither officer undertook rehabilitative roles.

I think that the concept of the prisoner losing his liberty, losing his life sort of thing, finished a long time ago. It's a case now that we provide decent conditions for prisoners. We should treat them decently; we should treat them like human beings, because that is the only way that they are going to change their attitude. Don't get me wrong; there will be a minority that will never ever change. I am well aware of that – but 60% of prisoners there will not take a lot of helping. We can make a big impact on their life. (Interview 19)

Existing prisoner rights were not disputed and it was accepted that prisoners should be treated to certain standards and receive their legal entitlements. “If it is laid down in black and white what they're entitled to they should have it. There is nothing wrong with that” (Interview, 19). There was no concern expressed regarding the ADA ruling announced just before the research was undertaken.

The Humanitarian

Seven officers, six of whom were senior officers, described themselves as “humanitarians”, though were often referred to by other staff as “care bears”. Only two women were interviewed and both were part of this occupational orientation. Humanitarians were marginalised in an authoritarian prison but treated prisoners with humanity and acknowledged their legal rights.

1. Professional carers who embraced the decency agenda

The humanitarian officers were friendly, open and operated through inclusionary stereotypes. Prison work was positive and rewarding and welcomed outside scrutiny. Humanitarians looked for support and acknowledgement from management and those on the outside. They understood the term "professionalism" to involve the duty of care and a commitment to help prisoners. Humanitarians embraced the decency agenda, and talked of developing positive relationships with prisoners and treating them with humanity.

I find myself listening to human beings talking about experiences rather than prisoners. We should look upon them as if they are members of our own family and treating them as though they are our fathers and relatives because that's one way that staff immediately see a way of justifying the humanitarian role. If the prison officer treats somebody the way he expects to have his brother or son treated in prison then it makes them look on prisons in a different light. It does actually work, but it's a matter of how long for, before they forget and go back to the old culture of them and us and calling them shit bags and a different class of person who will never change, and are stuck in a parallel world of crime and immorality. The bottom line is that you are employed by the prison service to be a professional and to use professional standards of decency, regardless of your own personal opinions. (Interview 5)

The acknowledgement of the inherent dignity of prisoners and use of non-demeaning language and attitudes when addressing prisoners seemed fairly common among humanitarians, but there was considerable disagreement over another aspect of the decency agenda, the use of first names.

Everyone should be treated with the same level of decency. But they are not your friend. You've got to have that gap. Once you start talking to them on first name terms you're into a conversational environment. You could be sat on a bench, or in the pub, but there are no barriers then, and they will manipulate. (Interview 21)

Whilst one humanitarian believed it was “political correctness gone mad” (Interview 11) and was “not a new initiative at all” another officer saw the use of prisoners’ first names as a “way of challenging the staff culture here” (Interview 105).

2. Scepticism of managerialism

Humanitarians had a general dislike for managerialism. There was some mistrust of management, and recognition of bad management decisions,

It’s just a load of paperwork that takes you away from your regular job, just to prove you’ve done the job in the first place. There needs to be another way rather than tying people’s time up by going round ticking boxes. Maybe if the money that’s being spent on getting them to go round checking things that obviously have been done was spent on actually improving the prison facilities it’d give these guys more chance for rehabilitation. (Interview 21)

Concern was directed at the irrationality of policies making the situation worse rather than better. As one officer put it, “if prisoners have got a problem I might want to spend time with them but I’ve also got this audit tray” (Interview 21).

The upshot of that is, that he is then back behind his door, possibly on his own, nobody to talk to, that mole hill becomes a mountain to him, and the next thing he has self harmed or attempted suicide, purely and simply because my boss says I have got to do this within that time scale, rather than me saying, “okay blokes, I will sit down and let’s talk about your problem”. At the end of the day, we do try and look after these people and I get very frustrated when I can’t do that. It angers me really, you know. (Interview 37)

3. Internal isolation but some solidarity

Humanitarians were relatively marginalised in the research prison. They experienced hostility from other members of staff who seemed to believe that they were “outsiders”, not proper prison officers.

Yesterday another officer criticized me ... he even suggested that I shouldn't be wearing the uniform, that I should be wearing civilian clothes. That's how he viewed my position, not as a prison officer anymore. I explained to him that wearing the uniform and being a humanitarian were very much tied in together and that I wouldn't renounce the uniform because that would take me away from the prison officers and perhaps reinforce a traditional view of prison officers as disciplinarians. (Interview 5)

This could lead to isolation, and officers avoiding contact with some of their colleagues. Despite their marginalised status it would be unfair to portray this group as completely isolated in the prison as their work was recognised through promotion to senior grades. Humanitarians made connections with other prison officers and other occupational grades, especially those on the health care wing. But humanitarians were shot through with contradictions, with some officers in this grouping appearing to share a diluted commitment to less eligibility and celebrating the existing patriarchy, while others tried to challenge machismo and dehumanisation.

4. Shared humanity and positive relationships

Underscoring the humanitarian discourse was a commitment to prisoners' shared humanity. Breaking down the 'us and them' scenario the humanitarian officer looked to treat all prisoners the same with the recognition that prisoners were not necessarily that different from themselves.

You've got to treat all the prisoners the same. We've got to be professional about it ... You've got to treat everyone exactly the same. (Interview 21)

For one officer this meant also allowing “greater empathy with the shared human condition of prisoners” (Interview 5), whilst another could clearly see the pains of imprisonment faced by prisoners.

I go up on the wings and I can feel it when I am talking to the prisoners, I can feel that those prisoners have been neglected. I can tell with the questions they ask, they come with these questions, lots of them, and they are all little short questions that take two minutes to go and find an answer. It’s a bad thing in a prison when prisoners start to feel their requests are being totally ignored. (Interview 37)

Officer-prisoner interactions were considered “normal” and officers were prepared to have a laugh and joke with the prisoners, being prepared to allow for prisoners to deviate from their own conceptions of morality. This does not necessarily imply close or deep relationships but that prisoners are responded to as fellow human beings. Officers are not morally indifferent to prisoners’ experiences and are upset when prisoners harm themselves or commit suicide.

Some officers really do care, and whenever we lose a prisoner it really does have an adverse effect on staff. They feel as if they’ve failed that person, and “if only”. It’s not just that that person was a prisoner, he was a human being. (Interview 11)

The humanitarian had a commitment to prisoner rehabilitation but also a sense of scepticism. It was not a simple refraction of the official discourse of the “what works” agenda but rather a commitment to “helping prisoners to come to terms with their own problems” (Interview, 30), and improve prisoner living conditions and standards.

5. Close physical and psychic proximity and the acknowledgement of rights

The humanitarian officers worked on the wing and in close physical proximity with prisoners. The humanitarian also had a sense of close psychic proximity with the prisoners and was able to break down barriers and a sense of distance. They also accepted the need for prisoners to have legal and human rights and prison standards. Prisoners should have what the law stipulates is their entitlement and that decision-making should reflect the law and the prison rules. Alongside this was an understanding of prisons that broadly reflects the penological discourse of normalisation. Prisoners should be kept in “a normal environment” (Interview 9) without “pandering to their every need”. Further,

prisoners aren't in here to be punished. They're being punished by being in here. They've offended against society, and society has sent them away till they learn to behave themselves. They take their liberty off them, but that's the only rights they take off them. Everything else they have still got to a degree. It should be a set degree. It should be less than it is outside; otherwise you've not lost anything. (Interview 21)

Despite some contradictions it was recognised that prisoners' have

a right to be kept in clean decent conditions. A right to be employed if they can, because we're limited as to what we can do for them here. A right to healthcare. The same as on the outside, with doctors, opticians and dentists and that. (Interview 11)

Additionally the acknowledgement of prisoners' rights was seen as helping to meet wider humanitarian goals.

I'm not a prison officer who's frightened or concerned about prisoners to have a set of rights written down that they can carry around with them in a little pocket book. Because if we're supposed to be moving towards a position where the prison fulfils and makes sure that those rights are in place, then prisoners won't have any need to take out the book to wave it and complain, and that prisons will be seen as healthy,

humanitarian places and that prisoners will be released back into society in a better frame of mind than when they were taken in. (Interview 5)

One officer even provided an inversion of the doctrine of less eligibility. "Conditions in prison are better than a good majority get outside. That doesn't mean we are going the wrong way, its just society needs to catch up a bit" (Interview, 30). However a number of humanitarians were unhappy about the possible implications of changes in the ADA brought about in the *Ezeh and Connors* ruling. It was commonly felt that their interests had been sacrificed in a government ploy to free up new prison places.

The Disciplinarian

Of the 38 interviewed, 23 officers closely identified with an authoritarian working personality, using self-referential terms or being labeled as "Dinosaurs", "Traditional officers", or most commonly, "Disciplinarian officers". Disciplinarians were highly experienced men who aimed to use their knowledge to provide a safe and controlled environment for themselves, other staff, and prisoners. Control, authority, discipline, and respect were central components of this, the dominant occupational discourse. The disciplinarians' world-view was constructed through essentialised dichotomies concerning the definitions of 'same' and the 'other'. Such a narrow construction of humanity inevitably led to a trust deficiency breeding insecurities, cynicism and suspicion of the other. This was compounded by the perception of working in a dangerous environment that placed officers at risks not equally shared or understood by the general public. Further the believed requirement of presenting a macho image of

toughness created problems in devising emotional and coping strategies adding to the perception of a deserving but relatively isolated occupation.

1. Dangerousness

The disciplinarian maintained that prisoners presented a serious danger and constant risk to staff in terms of violence either because of their physical capacities or uncertain and unpredictable behaviour.

When you're a prison officer, everything can be at a low level of stress and then something will kick off, something goes wrong, there's a confrontation, then its over and you're back down again. There is a constant up and down thing that makes it so dangerous. (Interview 14)

In the days after the ADA ruling the notion of dangerousness and talk of prisoner assaults reached a crescendo.

Strasbourg has sent signals to the inmates that they are bomb proof. That whatever they do it is basically tough on us. It's been reported in various newspapers that has been a huge percentage increase in the number of assaults, and incidents of indiscipline specifically because of that ruling. That does not make me happy in my work, knowing that I can be assaulted, badly assaulted and there is no deterrent for that to stop. (Interview 33)

But officers also felt that there were other hidden or less visible threats from prisoners that undermined "staff rights". One officer detailed concerns regarding the spread of contagious diseases.

What about my rights! We're not entitled to know about HIV positive prisoners. I should be entitled to know if they've got HIV. I go home at night and associate with my family not knowing what I might be contaminated with. The first thing my little lad does to me when I walk through the door is he runs over to me and he wants me to pick him up, and I have to say 'Hold on a minute, I'll just get changed first.' So I have to treat everyone in here as if they've got HIV or

Aids, which is wrong. We're dealing with people that will scratch, use syringes and the government is putting me in danger. I'm not saying that they should walk round with a big cross on their heads, it should be confidential. They're endangering me, my family, our lives and it's not something that I can stand for. That's why a lot of staff won't go near them unless they've got gloves on and that. You have to treat them all as if they have it. The government is putting me in a situation where me, the wife, and my kids are in danger. That's an infringement of our rights and it can't be right, surely. (Interview 4)

It is worth noting at this point that there are no recorded incidents of prison officers contracting HIV from a prisoner in England and Wales. However the portrayal of the prison as a dangerous environment fed the need to erase risks and provide a safer, secure and controlled environment.

2. Trust deficiency, insecurity and a sense of injustice

There was a clear lack of trust among disciplinarians of people outside of their occupational group. This manifested itself in officer suspicion and cynicism. As one officer put it "you are not as trusting as you used to be" (Interview 32).

I would say that a member of staff, in order to survive in the prison, has to become hardened to a degree. You end up suspicious of people. When I go for a pint I stand with my back to the corner so I can see everybody in the pub. That's perhaps a sad reflection, but unfortunately it's a fact of life. (Interview 20)

Some disciplinarians viewed management decisions with suspicion, believing that they were part of a hidden agenda to keep officers more responsible and under control. They were often concerned that recent managerial reforms were "not there to help the prisoners, but to make staff more accountable. It is so that we can say that somebody has

done something" (Interview 26). Some officers also considered that their views and experience had been ignored.

You're still reeling from one initiative before you get to the next one. There's not enough time to adapt and to change things. I mean people tend to look at why certain initiatives have failed and they blame those who are on the ground for not implementing them properly, putting up barriers to certain things, but in many cases it is not that. If they'd have gone to the people and said 'Look, this needs doing chaps. Any way round it?' they could have gained from the wealth of experience and knowledge of the staff. They just aren't appreciated and there's a great element of mistrust. There's always a hidden agenda and there always has been. (Interview 6)

Disciplinarians were cynical and reluctant to embrace change. As one officer stated "we have seen them come and go – this change will not work and will be replaced by something else that will not work" (Interview 26). Cynicism was evident in the many reactions to the ADA ruling. It was widely felt that the government had sold the prison officers down the river as "this added days' farce is just a ploy to reduce prison numbers" (Interview 1).

Disciplinarians also held a very negative picture of their current role and working conditions, portraying themselves as demoralised and insecure individuals with low self-esteem. Officers used the following terms to sum up their experiences and feelings about themselves and their treatment:

"Bitter", "resentful", "tired" "under-valued", "undermined", "exhausted", "stressed out", "demoralized", "under appreciated", "burnt out", "powerless", "threatened", "fearful", "sold out", "betrayed", "fed up", "misunderstood", "de-motivated", "unstable", "edgy".

Drawing major parallels with the concept of alienation discussed below, the plight of the disciplinarian is clearly not a happy one. Officers felt also that they were misunderstood and misrepresented in media and popular discourses as “mindless thugs” (Interview 35). “They just don’t know. I don’t think people outside listen to us, because we’re the forgotten service. People forget about us” (Interview 18). The prison officer was “under siege, under threat, under-valued” (ibid).

Disciplinarians believed that they were the good, vulnerable, but respectable victim doing an important and socially valuable job, deserving public support and sympathy but failing to receive recognition. This sense of “staff injustice” was representative of anxieties that manifested through a focus on the miniature of prison life, such as access to toilets, inadequate working conditions, overtime, staff shortages, physical safety and health and safety. There was also concern about the high number of staff off work through “stress” related incidents.

People get very stressed, very tired, and they feel, I think, undervalued. That under-valuation of staff leads to people being more reluctant to take on extra work, motivation decreases, and that snowballs into a dangerous situation really. (Interview 33)

As one prison officer argued, “all the shit lands on us because we’re at the bottom of the pile. We’ve basically become cannon fodder” (Interview 4).

When you first come in you’re convinced that you can change things, you really feel like a knight in shining white armour. Things happen, you get conned, and you learn through a natural progression how far you will go, but then you start to protect yourself. This is where staff may appear to be detached, but they aren’t. It’s just a case of ‘that’s how far I’ll go, and I won’t go any further.’ You can’t take too much on board because it spills into your home life. Staff are never completely

detached. They just get to a point where they have to step back a bit.
(Interview 11)

3. Pragmatic instrumentalism

Disciplinarians had a pragmatic or practical orientation, and common sense was generally straightforward, taking things at face value. Importantly the disciplinarian did not appear to have any major motivation or inclination to see harm perpetrated against prisoners, or for them to harm themselves. Prison officers just wanted to get on with their job safely. "Staff don't want trouble – just want to get through the day" (Interview 13). This pragmatism also fed into a sense of instrumentalism in determining commitment to prison work and implied only a very limited sense of mission, if at all, among a number of these officers.

4. External and internal isolation

Disciplinarians believed that external bodies largely created problems, interfering in things they could not understand, sometimes reaching illogical decisions. Given the recent ADA ruling, this ire was focused on the European Court of Human Rights. One officer stated "I have been in the prison service for 18 years and this is the worst decision I have ever known" (Interview 23).

We've been let down. It's pathetic, absolutely pathetic, I mean what does that say they think of us? They can't think a great deal of us. There's a saying now that it's only a matter of time before we're all in the exercise yard and the prisoners are supervising us. That's how it's going.
(Interview 4)

The disciplinarians' isolation was internal in two ways. First there was a sense of separation and enforced isolation from prisoners (discussed below) and second there was

isolation from other prison workers. Hostility to other occupations in the prison was especially pronounced in relation to managers. As one officer put it, "It's us, them and them. Senior management, inmates and then us, it is like we're getting attacked from two areas" (Interview 10). Staff felt very let down by management and their hostility was palpable. "There are some people in the prison who I don't respect because they don't bother about me, so why should I bother about them. I don't mean prisoners, I mean the managers, but that's life" (Ibid).

Most of the officers will stick together. When you get a vastly increased workload and it is the senior management who are continually push, push, push all the time, there is this wedge that is driven between senior management and us. (Interview 33)

On the outside the source of the officers' private troubles were primarily directed towards the government, the ECHR, the media and "do-gooders".

5. Officer solidarity

There was a strong sense of loyalty and solidarity among disciplinarians. Many had a circle of friends determined by their place of work. There was out of work socialising, and the creation of meaningful relationships with colleagues at the prison. Though some officers felt that those they worked with were problematic - for example one Principal Officer talked about a "culture of doing little or no work" but that "nobody in management has the guts to get rid of these lazy bastards" (Interview 36) - such a position did not detract from the wider sense of solidarity. Whilst weakening prison officer bonds this did not appear to be as significant as the other pressures identifying the 'same' or creating a sense of occupational insecurity.

We all know what that feels like, so it does become a bit like an extended family with the prison staff. It's your mates that keep you going. (Interview 12)

Through such solidarity there was a strong occupational identity, and to those who belonged to that group, friendship. This embodied a shared interpretive framework and shared enmity towards common enemies, reinforcing feelings of security and safety. Problematically this notion of the 'us' was drawn very narrowly.

6. Intolerance of differences

Disciplinarian officer intolerance was evident among their interactions with women and minority ethnics/black officers and prisoners. The women officers who were involved in informal conversations, and the two women interviewed, pointed to their negative experience in the jail, or the experiences of other women who had been subjected to some form of harassment. Male officers made only infrequent reference to their female colleagues. This silence speaks volumes. Anecdotal evidence indicated that women officers were subjected to teasing and other forms of sexual harassment, and it was them who were seen as a problem if they complained. "The female staff have more rights than us by using their gender. You have to have equal opportunities but I just don't like to see it abused" (Interview 3). Women officers were also expected to perform roles that male officers would consider to be feminine or not proper prison work.

Only one serving prison officer at the prison during the research was from a minority ethnic group (Asian) but did not volunteer to be formally interviewed. There were a number of blatantly racist remarks made by officers in informal conversations, though

most officers used terms like "ethnics" or "coloureds" in the interviews. A number of officers believed that the "race card" (Interview 3) was abused to gain advantages over white people allowing "them to get more than their fair share" (Interview 12). Black and Asian British prisoners were perceived as having more rights than the majority of prisoners. Such tension was also reflected in attitudes toward non-white prison officers.

I'll be completely utterly racist at this point, and some people would openly say that I was. If you were to go into one of our magazines relating to 'Respond', you would see predominantly coloured [sic] members of staff. The race relations officers in most prisons are usually coloured staff. My view in that is you teach a prison officer to be a good prison officer. If they're up to the mark and they're good at their job, that then opens the field to do any other specialisations. We have, over the years reached a stage where it is unfair on some of the staff because they didn't want to go down this road. Mr Jones is Asian, therefore he is the race relations officer, whether he wants to be or not. (Interview 20)

One officer wished to distinguish between their private thoughts and professional conduct.

Officers may have their own private thoughts, but professionally they're not racist. I think the black and Asian people have been jumping on the bandwagon, and they've been trying to make staff's life hell. You've only got to say 'no' to them and you're a racist. (Interview 11)

As opposed to equality there is evidence that the disciplinarians' treatment of Asian and African-Caribbean prisoners, staff, and women was based upon discriminatory stereotypes reflecting suspicion and sometimes hostility.

7. Resistance

Resistance was deeply embedded in the disciplinarian officer's working personality. There was evidence of a number of recent policy initiatives that officers had successfully

resisted when they considered these to be a threat or impinged on the officers' role. One of these was the introduction of name badges for officers.

The badges were a bone of contention between officers and management for years to the point that when they were introduced here we encouraged prison officers not to wear them, partly because of fears of identification but also because it was seen as a form of control by management. We still don't wear badges, though we now have identification by way of collar or shoulder numbers and by identity cards being visible with names on. (Interview 5)

A further bone of contention and means of resistance was the key performance indicators and targets. The KPI's were considered to be "meaningless garbage", a "waste of paper" and that the "tick boxes" were used as a "management tool" (Interview 35).

KPI's are a bag of shit to me. They don't mean anything. It's a governor's problem. It's all to do with their pay structure, their performance. I'm not interested in it because it's all about them saying they're doing their job right, and they're not doing their job right. (Interview 4)

The disciplinarians did not consider themselves to be "paper shovers" (Interview 13) and were concerned that the "cracking figures" sent to headquarters were made up. If the officers knew the statistics were wrong this could create "bad blood" between themselves and management. One officer claimed that "anybody can make up statistics" (Interview 29) whilst a principal officer similarly stated "people just make them up because it is good for their career" (Interview 23).

8. Machismo

A macho sense of toughness, physicality, and invulnerability exemplified the disciplinarian working personality. This false machismo persona provided protection through a refusal to emotionally acknowledge or dwell on the sometimes horrific reality of prison life.

Prisoners are superb at reading people, as soon as the inmates see a chink in your armour, they'll rip it wide open. You have to have what it takes to get on in the job. If you haven't then maybe you just need to think about getting a new job. (Interview 21)

This false front of a desensitised and depersonalised working persona of invincibility appeared to be a means of ensuring personal safety and self esteem. A number of disciplinarians pointed to how this "cloak of invincibility" (Interview 9) was becoming harder to maintain. Some prison officers in the interviews talked about very intimate details; how they had had nervous breakdowns, were on the edge, or just simply could not cope with the job, and felt that they could not or would not, tell this to their colleagues. Restrictions on what is sayable between officers about their own lives and working experiences, highlights the inherent vulnerability of hegemonic masculinities.

This is a macho world. It shouldn't be a macho world, but it is. This often leads to problems for staff. They just don't tell you when there is a problem until it is too late – kaboom. (Interview 38)

9. Control and prisoner deference

Disciplinarians focused upon security, discipline and control as the central functions of their caretaking role. They enforced personal authority, intimidated prisoners who resisted, and ensured they always maintained a sense of control in the performance of their duties. Officers who did not conform to such an orientation were soft or weak and were perceived in hostile terms of as a danger to themselves and others. Coercive force was an option to be relied upon should other informal means of control falter.

10. Identities tied to prisoners and zero sum mentality on rights

Disciplinarian working identities were tied very closely to prisoners. Staff compared and contrasted themselves relative to the essential characteristics of prisoners, and in particular staff self perception was predicated on difference, a dichotomy of deserving and undeserving. Staff perceived themselves as good, moral, respectable, law abiding, "front line troops" deserving sympathy and support. Prisons were hellish, and officers were suffering for wider society. Prisoners, on the other hand were bad, immoral, unrespectable and undeserving. For them, prison was not painful and there was no acknowledgment of their suffering. Prisoners were demanding children in need of discipline. Penal regimes should be more austere, disciplined and harsher.

Disciplinarians felt that their rights had been neglected to the benefit of prisoners, whose needs came before staff and this was seen as problematic.

Everything is done for inmate rights, things they are and aren't allowed to have, whatever, and then bend over backwards to make sure that occurs. If it involves staff with leave and working conditions, no one's interested. That's why staff become very anti things, because they're changing it for one half and not the other. (Interview 9)

The advocacy of prisoner rights was perceived as a challenge to their rights and thus if you gave to prisoners, you were at the same time directly taking away from staff. This insecurity reflected a zero-sum mentality underscoring a strong sense of hostility to prisoners' rights from most prison officers. The two were intimately tied together. Officers believed that

every time they seem to bring something in we seem to lose so much by it. So I think, if you're sentenced to prison you should lose a lot of your rights, you certainly shouldn't be gaining more rights. That's the whole idea of it. (Interview 14)

The notion of "desert" was central to staff conceptions of justice and rights. The real problems of the prison were *staff problems* because prisoners deserved to be in prison while the good officer was doing a respectable job on behalf of society. Consequently more rights for the undeserving and less eligible prisoners, the less rights the deserving and respectable prison officer had.

The prisoners have got more rights than the staff at the moment I think. When they introduce new rights for prisoners they make it more difficult for us. I know they've been put in place for the prisoners' protection but they forget that sometimes the people we are looking after are using and abusing them. So where's the protection for the moral person looking after someone who possibly doesn't deserve as many. (Interview 22)

Prison officers found the relatively straightforward questions regarding "prisoners' rights" as difficult. Interestingly though this was not considered a problem regarding questions on "staff rights". Human Rights were perceived as very radical and the officers' pragmatism led to opposition to discussion of issues around "abstract things", and "alien thinking" (personal interview 14) such as human rights. This implied how deeply embedded or naturalised the denial of rights was in the disciplinarian officers' common sense.

Mortgage payer

Six officers interviewed had "burnt out" or "mortgage payers" working personalities and epitomised the most extreme notions of "alienated labour" (Marx, 1964). The mortgage

payers shared many similarities with the disciplinarians, including their embrace of the doctrine of less eligibility, but their sense of alienation and exposure to the pains of the dehumanising prison experience were much more pronounced. This may indicate that when things go wrong disciplinarian officers may feel it necessary to re-adapt their approach into that of the “mortgage payer”. However, as the time spent with the officers was relatively brief such a hypothesis can be neither accepted nor rejected here. One thing is certain, those officers who do experience severe emotional fatigue and alienation, are also the victims of the prison system and the wider capitalist mode of production.

1. Alienation

The mortgage payer officers were not just insecure. They were also profoundly unhappy. There was a clear lack of meaning invested in the work simply selling labour for the best return they can get. The result was a trade off between the financial rewards and the intrinsic gratification from the labour, as one officer stated: “you’ve got no job satisfaction whatever” (Interview 31). Another officer stated “I’m very tired. This job really tires you” (Interview 17).

Staff on the landing just seem to come in on autopilot, go through the motions of doing it and come out. I think that is why probably the morale is so low because you don’t have the fulfillment you used to have. You used to come in and go home feeling ‘I’ve made a difference today’ , but now I don’t feel as if I have made a difference because I haven’t had time to sit down with these guys and have a chat to them and things like that. (Interview 28)

All staff start keen. You are on a real high, but then you gradually work yourself down. You have good and bad days, highs and lows, but you are normally down near the bottom. (Interview 25)

The experience of alienation appeared to shape both their work and private lives. The job was seen as damaging them, and personal relationships outside of the prison. Some of the officers had to learn how to survive psychologically by “keeping something back “. If an officer did not, they would “be a cabbage by the end of the day” (Interview 18).

You give it all up in here and you'd be hell to live with (laughs). I don't mind being hell to work with, but I don't want to be hell to live with.

2. Primacy of Cash Nexus

Deepening the disciplinarians' instrumentalist approach the mortgage payer prioritised being paid. “I'll just take my money. Do the job and go.’ And that's what's happened to a lot of the staff” (Interview 18). Motivation for work was closely linked to the cash nexus and the extrinsic economic rewards. For mortgage payers the job was a “distraction to their primary aim of accumulating money in the bank” (Interview 12). They were not interested in promotion (as opposed to “careerists”). Promotion would lead to greater responsibilities with only limited gratification through the cash nexus.

I used to volunteer to do stuff, but not now. I want to see the cash going into my bank first. The only thing I'm loyal to is that account at the end of the month. It's the state of the job now, I just keep thinking of the cash. I've only another 12 years before my mortgage is paid. (Interview 12)

3. Lack of Mission

The very nature of the work provides only a limited sense of achievement. Prison officers generally have no protection from the harsh human failures of the criminal justice system and especially imprisonment. Unsurprisingly then there was a profound

lack of mission in the officer culture. As one officer put it “we constantly see our failures, we never see our successes” (Interview 12).

4. Boredom and feeling of powerlessness

The job was plagued with “times of frantic activity” such as when food was being served, association or when prisoners were leaving or returning to the wing and “times when there is nothing to do” (Interview 26). In contrast to the myth of dangerousness officers seemed to describe times of great boredom and feelings of alienation, times of detachment and demoralisation inevitably undermining a commitment to the welfare of the prisoners. Though staff found their work could be “unpredictable” and full of risks, it was also “repetitive”, “routine”, “dull”, and “undemanding”. Whilst prison officers have a number of skills, they largely constructed their labour as “unskilled”, their role as “restrictive” and lacking “autonomy” or “choice” (personal interviews).

The mortgage payer felt powerless, both in terms of autonomy in the workplace, and in dealings with prisoners and managers. Mortgage payers were bitter, resentful and angry.

They were also quick to blame others and were very disillusioned with their role.

The job is on its arse. The job is crap now. It's not a job. We're glorified bell boys. We're at the bottom of the ladder. Above us is the inmates, then you've got the teachers and education, then on top of that there's the governors. The job really is crap. Some people think “you miserable git”. But I'm just common. (Interview 12)

5. Negative relationships

The mortgage payers found nearly every task burdensome and experienced aspects of internal isolation. They were negative towards management, prisoners and often other

officers. Coping with the psychological pains of imprisonment therefore could be tenuous. However some of the mortgage payers had some "mates who helped pull them through" (Interview 12) but their sense of loyalty to the prison and fellow officers was limited. Overall negativity became most pronounced in relationships with prisoners.

The most of them are just pathetic now. It pisses me off. It's all this 'I want! I want!' It's like dealing with your kids. You're dealing with selfish adults and that's it. If they weren't so selfish they wouldn't be in prison. That's what they're in for, for being selfish. Robbing and thieving instead of going out and getting a job. But then again why should they. They don't have to do much to get by. If I had a choice I'd probably come back as a criminal in my next life, because it's a piss easy life. Especially with all this human rights. 'Excuse me. I'd like to make a complaint. It wasn't actually hot enough when I got back to my cell.' Then you'll get some silly slap arse filling in papers, saying that they'll see to it. (Interview 12)

The mortgage payer saw no intrinsic value, whether in terms of human relationships, surveillance, or dynamic security of developing pro-longed interactions with prisoners. They demonstrated a high level of resistance to any forms of helping prisoners or responding to their requests. The "mortgage payer" looked to do the minimum and would "sit and read the newspaper" on the wing, or "skive off, have a chat with other officers and drink tea" and this grouping exemplified the general notion of prisoner 'invisibility' and lack of quality relationships or meaningful communication. However there was evidence of concern and resistance to the most extreme elements of this working persona from within the staff cohort generally and some of those interviewed.

It's like your supposed to just stand there and don't talk. Whenever I speak to anybody it's like 'why are you speaking to him?' They think that you shouldn't do something if it means you have to get off your backside. You should do it if he's entitled. If he's not entitled then you get up, tell him he's not entitled, and sit back down. They're quite happy to ignore it or not do anything about it but that's part of the culture. (Interview 9)

Senior staff and Principal Officers sometimes referred to mortgage payers as “lazy bastards” (Ibid) and a number of other officers’ interviews pointed to the importance of communicating with prisoners on more pragmatic grounds as the “prison is safer for us and easier to run that way”. This all added to the sense of isolation these officers experienced.

6. Moral indifference to prisoner legal rights and sufferings

Of all the officers interviewed those with the greatest hostility to prisoners’ rights were the mortgage payers. Perhaps their sense of isolation and rejection further reinforced the culture found earlier among the disciplinarians. Whilst the aggressive promotion of less eligibility seemed to characterize the disciplinarian for the mortgage payer there is a different sense of moral indifference to be found here. Distance and detachment shaped this working orientation but more because of loss of interest than successful dehumanisation strategies.

A lot of the staff are losing interest in the job. And when officers start losing interest that’s when prisoners’ human rights will start losing out. Because the staff just won’t be bothered. (Interview 18)

The authoritarian prison officer?

The above discussion has provided a description of the four prison officer working personalities in the research prison. Through the interviews two careerist; seven humanitarian, six mortgage payers and twenty three disciplinarian officers were identified. The careerist and humanitarian officers were the most successful in terms of promotion in the prison and acknowledged prisoner shared humanity, albeit perhaps for

different reasons. The mortgage payer working personality was profoundly alienated and relationships, especially those with prisoners, were characterised by moral indifference. The mortgage payer working personality was a more dehumanised variation of the disciplinarian. The disciplinarian officer, drawing many parallels with the authoritarian officer personality documented in chapter six, was the dominant working personality in the prison and collectively constituted the hegemonic prison officer occupational culture. It is to the understandings of prison shared humanity, acknowledgment of suffering and fulfillment of legal rights by disciplinarian that we now turn.

Chapter Eight

Creating ghosts in the penal machine: The institutionalisation of less eligibility and the denial of prisoner suffering

What are the rules governing the disciplinarians' relationships with prisoners and constructions of their human rights? What role does the doctrine of less eligibility perform in the denial of prisoner suffering? In what ways do officers distance prisoners and rationalise dehumanising treatment? The chapter focuses upon the disciplinarian working personality and how this persona impacts upon understandings of the working environment, and prisoner claims to human rights. It is argued that prisoners are constructed as *ghost* like; that is their experiences, needs, and realities become invisible in the eyes of prison officers. This inability to relate to prisoners sustained a false hierarchy of status and respect, naturalising the law-abiding officer as inherently more deserving, when compared to their unrespectable charges. Psychic distance and detachment was justified through a base-line construction that all prisoners were inherently lesser beings. Prisoners were successfully othered, conceived as essentially different, and *beyond the realm* of our shared humanity.

The chapter opens with an account of the institutionalisation of less eligibility within the prison officer occupational culture. Focus then turns to an analysis of micro-power relations, examining the means through which existing hierarchies of power were reproduced, and how prisoner deference was secured through enforcing personal authority. The chapter then moves on to examine the way disciplinarians created a

sense of professional detachment from prisoners, emphasising differences between themselves and prisoners, leading to increased psychic distance. The disciplinarians' rationalisations denying prisoner suffering, legal rights and shared humanity are then detailed alongside evidence of partial acknowledgments from officers of the inherent threats prison presents to a human beings' inalienable rights.

Institutionalisation of less eligibility

The disciplinarian working personality was rooted in a false dichotomy emphasising sameness and otherness. The definition of the 'same', or the 'us', was highly restricted, referring largely to other white male prison officers, fostering strong bonds of trust, loyalty, and solidarity. Prison officers were the "respectable victims" of the pains of imprisonment. The contours of the same were also shaped and defined by otherness, expressed in a profound and deep hostility and intolerance of difference. In this binary opposition the prisoner, but also some 'soft' prison officers, inspectors, and management were 'othered'. In day to day working practices otherness was most clearly expressed in the construction of the less eligible prisoner. Prison officers described prisoners as:

"Selfish", "pathetic", "childlike", "untrustworthy", "ill-disciplined", "irresponsible", "bad bastards", "overly demanding", "inadequate", "dangerous", "layabouts", "toe-rags", "needy", "druggies", "contagious", "scum", "poor copers", "manipulators", "wasters", "users".

We can see how prisoners are constructed sometimes as vulnerable, sometimes a threat, sometimes with pity, sometimes undeserving, but always as lesser. For officers human rights were not ascribed. They had to be achieved, and prisoners have by default failed

the test. Prisoners were considered to range from the "pathetic", "manipulative" and "inadequate" to the "selfish", "bad" and "sophisticated" rational actor who was culpable, blameworthy, and had a clear choice between obeying the law or breaking it. Prisoners were considered as people who would do "anything for attention or their own way when someone else has said no to them". Attempting to commit suicide from this perspective was "just another way to get someone to say yes" (Interview 21).

Prisoners are the kind of people who have come to a point where they are so selfish, they're not really interested in anybody else but themselves, and they can take up so much time. We do have some really sad individuals in here now, more so now with the heroin users. I think this makes them less human. They don't respect themselves. They won't do anything for themselves. (Interview 22)

Some disciplinarians felt that prisons were now delivering "above the standard of the lowest standards that are out there" (Interview 37). This created a lot of officer anger as some "good and respectable people are more worse off than people in prison" (ibid). Prisoners should have less entitlement than those on the outside but it was widely felt by disciplinarians that at the moment "they're getting too many rights in prison, rather than not enough" (Interview 37).

They get every care that they need. They get far in excess of what most law abiding people get, and I think they get more than adequate human rights. (Interview 31)

A number of officers articulated almost classic re-statements regarding the restrictions that less eligibility places on improving prison conditions.

When you break a law you end up with more rights than I've got. It just seems a little unfair. It'll come to a head when they're wanting more and more, and they've got so many human rights that you'll not even be able to lock them up. Prison should be a place that you don't want to come back to. Prison now for some of them is a place for 'time

out'. So where's the best place to be? It's in here isn't it - 3 good meals a day, association, the gym. They've got everything. It's really a safe haven. Prison should be a place so bad that you don't want to come back. While they're here lets get some discipline back into them instead of just sitting around watching television all day. It's wasteful. They are just laughing at us. It is just a waste of money. The money that's going in compared to the benefits that are coming out, I just don't think it is worth it. It'd be better spent on things like hospitals for people that have done something good. (Interview 22)

Criminals were seen as rational actors, who straightforwardly choose crime, and by default, prison. Rational actors would be deterred by prison, but prisoners took the potential pains and pleasures as part of that choice to break the law in the first instance. Under this utilitarian philosophy prisoners had choices and could if they desired learn to behave in a law-abiding fashion. They just lacked moral fibre. Prisons should discipline with the calculus of the "carrot and the stick" being the most popular metaphor adopted by prison officers. Prisons must be much more than simply the loss of their freedom.

What you've got to do is look at why they're here in the first place. There's got to be deterrence, you've not to make it into a holiday camp. I think we are turning that way but eventually it'll all turn again. It'll go back to more austere conditions. I'd certainly like to see a regime that is stronger, where we've got more power over them while they're in prison, where we really can take something away. (Interview 14)

If you don't like the hotel, don't book in. We all have an option, you've got to say NO when temptation has been put in front of us. Prison is supposed to be a deterrent but a lot of these people are habitual criminals and imprisonment is an occupational hazard. There are a lot of lads in here and it doesn't bother them one iota being in prison, it really isn't a problem. The human rights issue, yeah great, I am all for it, but you have also got to remember that people in here have violated other peoples' human rights, a damn site worse that what we are violating theirs. (Interview 8)

The disciplinarian officer identity was so closely tied to that of the prisoner, and this in turn is linked so closely to the construction of an ineligible, inferior and undeserving prisoner, any attempts to facilitate prisoners' rights was perceived as a direct attack on prison officer status and identity. Resistance to prisoner rights was deeply ingrained in the psyche of the prison officers. A major talking point and focus of staff hostility and occupational insecurity revolved around the European Court of Human Rights ruling in *Ezeh & Connors v United Kingdom* regarding governors' powers to "award" additional days [ADA] decided in July 2002. Staff believed again that giving to prisoners was taking away from staff:

I think our human rights have been infringed by the new thing from Brussels [sic] about the added days. We've no protection now under the disciplinary code because nothing can happen to any prisoners. (Interview 10)

It also reflected the wider misunderstandings of outside bodies that made bad decisions supporting prisoners, not staff. As one officer put it, "basically you get shafted" (Interview 13). "Nobody bothers about us, but they do care about them" (Interview 31).

The problem with human rights now is that it's gone so far that the issues have been clouded. The legalities have taken over from what's actually sensible. (Interview 20)

For disciplinarians the prison was perceived as a place of punishment and prisoners should have less rights than those on the outside, though some of the officers still believed prisoners had some limited entitlements. As one officer put it "we don't deliberately do things against peoples' human rights" (Interview 13). Further a few disciplinarian officers felt that the new managerial initiatives prevented them from

spending more time with prisoners. "If you do spend the whole day talking to them, being 'decent' it's not going to show up in the figures, it'll just look like you've been shooting the breeze all day" (Interview 13). Their claims to vestiges of humanity still remained but clung by a thread. Such entitlements were however linked to prisoner behaviour and self discipline and tied to officer perceptions of control.

If he's a good lad he gets more rights than what he's entitled to, even though the governors say 'you shouldn't be doing this. You shouldn't be doing that.' But, we're all human. (Interview 14)

Many disciplinarians however considered that prisoners had forfeited their 'human rights' through their crime. "A lot of people seem to think that their rights stop at the gate. I don't know how it'd be accepted in here. "If the public only knew", you hear that quite a bit in here" (Interview 15). Prison thus involved the suspension of citizens' rights but for many officers the balance appeared to be moving too much in favour of prisoners.

No-one can dispute your human rights until you end up in prison, and then at that point you've forfeited a little bit. You've got to give up the element of doing exactly what you want when you want because you are in custody. People expect those who misbehave to be punished, whether its retribution, deterrence or whatever. However I think they've lost the plot and they're giving people in custody far too much. (Interview 6)

The prisoners have got too many rights. The only difference between us and them at the minute is we go home at the end of the day. If they want something they just smash a cell up and keep whinging long enough and then they'll get it. You should just let them get on with it. If you trash your cell then you live in it. But oh no, put them in a new cell, give them a new TV. They've just got far too many rights. Once they've committed that crime outside they shouldn't even really come into the human rights issue. By committing that crime and going to court, whether it's a miscarriage of justice or not, they come into jail and they take the consequences. (Interview 4)

Less eligibility provided the penological logic for the denial of prisoner legal rights and suffering in prison and was institutionalised within the occupational culture. Less eligibility informed how officers treated prisoners and developed relationships with prisoners on a day to day basis.

Enforcing personal authority

Greater security, discipline, control, and respect were central to the disciplinarians' interpretation of their working practices. Disciplinarians believed that the more control they had the safer, more secure and "better" the prison. Their primary role was that of security, and security meant "maintaining control" (Interview 6). One officer's description of his role didn't sound too different to that of a zoo keeper.

The main priorities are to keep them in here so they don't escape. Treat them as fairly as you can, so long as they're alright with you. The main thing is to come in do the job and if you haven't got assaulted in the meantime you've had a good day. Just to keep them safe, fed, watered, and cleaned out. Just basic *human* rights really. (Interview 15, emphasis added)

Disciplinarians believed that "the main part of security is trying to put some discipline into them" (Interview 14). Indeed discipline, in different situations, acted as a relational term or an interchangeable phrase with both security and control. The problem of crime was closely tied with a lack of discipline. The erosion of discipline and decline in certain moral values, were perceived by many officers to be "part of a sign of a breakdown of society" (Interview 6). The disciplining of prisoners was therefore an important part in both protecting society and asserting an officer's control

in the prison. "If you've no discipline then you've no control, and that's what we're losing" (Interview 31).

There's a problem with discipline. I know people that are all for bringing back hanging and birching them as well [laughs]. I used to get a slap from my teacher, I'd go home, tell me dad and he'd give me a slap as well. You don't have to go over the top and beat them up [children], but if you just give them a tap they know. They stop. (Interview 27)

This lack of discipline or disciplinary controls was considered to be undermining the officers' respect and authority and making their job more difficult (Interview 13). Officers wanted to have complete control, but suffered from an apparent "crisis of authority" (Fitzgerald and Sim, 1979). The enforcement of personal authority, discipline, and control were primarily achieved in the prison in three non-coercive ways: use of names, privileges, and humour. Officers could also rely upon manipulation, persuasion and other forms of negotiation to attain order or use coercion or physical violence, but these strategies were employed less frequently.

How prison officers and prisoners address each other illustrates the way relationships are structured and current hierarchies of power reproduced. The legitimate terms for prison officers when referring to prisoners included: Nick Names (Smithy, Jonesy); Second Names (Smith, Jones); 1st names; Prison Number; "Dicks", "dickheads", "cunts", "bollocks", and "wanker". The legitimate terms for prisoners when referring to staff were "Boss", "Officer", "Mr", and "Sir". The form of address becomes an effective means of institutionalising lesser eligibility, and of asserting superiority and control, through constructing distance and emphasising differences, informally maintaining a psychic divide between the two groups. Disciplinarians provided

explanations of why the names used were important. "There's got to be a gap, once you go over that, you're knackered" (Interview 21). There was considerable concern from officers over the decency agenda and Martin Narey's call for officers to use prisoners' first names.

I think it's bollocks. There is a line between an inmate and a prison officer. I've always known it as you call them by their last name or nickname and they call you boss. You can't become a friend of an inmate. There's a line that's drawn between staff and inmates, for their and our own good, as in they may be seen as an informer or they could put officers under pressure for smuggling and the like. You do get inmates that come in and say 'alright mate', and we tell them straight away 'We're not your mate. Its either Boss, or Mr, you know what I mean? You have to keep a distance. You might think its petty, but that's in general how the prison staff feel. There is a line that you don't cross, but they want us to call them by first names. I don't know if the managers want us to cross that line, to be best buddies with them, put our arms round them. Do they want that? (Interview 15)

To call a prisoner by their first name then appeared to imply friendship, undermining their position of authority and control. Officers believed they must ensure that they maintained a sense of toughness as a means of self protection from prisoners. "You must not trust them", as they would "see it as a sign of weakness and they will twist it" (Interview 31).

I'm not here to make friends with them. They call me Boss, I call them Smith or whatever. If they're a bag of shit with me I'll be a bag of shit with them. That's just what life's like. (Interview 4)

The use of names was a crucial tool in maintaining existing power relations. It implied "respect" and was a way of showing gratification or deference to "superiors". Using the first name was to "assume a submissive role" (Interview 13) which failed to address the perceived roots of prisoners' behaviour – ill discipline, and could be "quite

dangerous for us too, because above all else you have to keep control for security's sake, and you have to have a bit of discipline".

If you reduce the discipline on the wing you increase the physical risk towards staff and prisoners. I'm not going to be calling a drug dealer, whose a bully, whose threatening people, by his first name. I'm afraid one doesn't seem to go with the other. (Interview 20)

For the disciplinarian the title Mr implied respect. The lesser prisoners had lost this through their crime. To deserve the name Mr, a prisoner had to *earn* respect and decency from officers. For one officer "if you want these human rights you've got to be human, so really, not to have done the kinds of things these people have done" (Interview 22).

They lost the right to be called Mr. as soon as they got convicted of an offence and put in prison. I see many prisoners that I've locked up and I call them Mr. outside these gates. But I'll be buggered if I'm calling them Mr in here. They've lost that right. As far as I'm concerned they are a number and a surname. (Interview 29)

The giving of automatic respect was something officers felt would not be reciprocated and this negative perception shaped their approach to prisoners overall. "You don't get much respect off them. All I want is that little bit of respect off them" (Interview 32).

I think you find that in the service a lot of that comes down to how the prisoner responds to you. If the prisoner asks questions politely you deal with that problem immediately as you feel compelled to by the way they've approached you. You treat as you find. If someone's is continually aggressive, a nuisance, or always questioning you, it's almost as if you make it more difficult for them to get what they want. You think, 'You called me all these names yesterday, and you think you can come back to me today and get everything you want.' That's just the basic form of staff rehabilitation for prisoners. You're not going to the swimming tomorrow because you've not been good today. If you don't behave yourself you can go to the back of the queue. Whether that's right or wrong is a different issue. That's the human response, I think. (Interview 13)

- . Prisoner respect then infers deference and an appearance of control. It also fed into the false hierarchy that officers had created. They deserved respect from prisoners because they were prison officers. Prisoners did not, at least in the first instance, because they *were* prisoners.

I have got a line and I'm pretty strict about it. I've got no problem with the inmates. They know if they make me get angry then it's their fault and if they don't apologise, then that'll be me. I won't bother with them. You treat me like I'm your servant, or an idiot, you'll get nothing. But if you treat me with respect, then I'll respond. (Interview 22)

Prisoner obedience, deference and respect were ingrained in officer-prisoner relationships. Prisoners had privileges that could be withdrawn if they breached these rules of engagement (Interview 3). The disciplinarians' approach was based upon a reciprocal process rooted in notions of respect.

To treat some people with decency when you're not getting treated decently back is asking a lot. If they don't play the ball game I'm not going to treat anybody decent, no matter who they are. I think a lot of the old school staff, and there's a lot of them here, speak to prisoners as if they're something stuck on the bottom of their shoe. (Interview 14)

Prisoners whose behaviour was perceived as manipulative, aggressive, selfish, obnoxious, or demanding would be dealt with through sanctions, or simply have all requests they made ignored.

If you come to me and call me an obscene horrible name behind your door, you will get nothing. So yeah, it works both ways, you treat me fairly and you'll get what you are entitled to, but probably more back. It's a very standard thing, it's a bit like bringing up a child really – your daughter gives you grief saying I want, I want, and the chances are they won't get. 'Please may I' – okay I'll think about it – it's as simple as that. (Interview 33)

From the research it is clear that relationships between prisoners and officers normally remained shallow.

We have a laugh and a joke with them, we'll see them on the wing, visits, association, but we never get to know them in any depth, there just isn't the close personal contact. (Interview 11)

Disciplinarians looked to enforce their personal authority and the asymmetrical deference norm in officer-prisoner relationships. Calling prisoners by their first names was perceived as a means of eroding one important means of maintaining existing power relations and control. The perceived legitimate terms used to address prisoners were impersonal, and often derogatory or demeaning, whilst those to be used for officers automatically implied respect.

A second strand to the disciplinarians' enforcement of personal authority was the patterning of discretion and decision making based upon the allocation or withholding of prisoner entitlements. Conceived as privileges, prisoner entitlements and legal rights were either denied or acknowledged dependent upon prisoner behaviour. Entitlements were achieved rather than legally ascribed, and the decision to grant or refuse prisoner requests was central to the disciplinarians' power base. Officers were very keen to keep as much negotiating or bargaining power as possible, as they believed this made the job workable. "You have to build a good working relationship. That's where all the discretion, grey areas and that come in. The prisoners know whom to approach" (Interview 21). Flexibility of judgement allowed officers to effectively manage their

interactions with prisoners. Prisoners generally were “not to be trusted” but “how flexible you are depends on the attitude of the inmates” (Interview 3).

If they come at me shouting and cursing they'll get abuse back. If you take someone up to the governor every time they swear at you, then no one will respect you. But if you just tell them to fuck off, they can understand, and they'll respect that more. I've always followed that really. I try and deal with things myself instead of having to keep pestering the governor. Most things you can deal with yourself if you just stand and face them. I do try and use my judgement. (Interview 27)

The connection of the decision making process to “the mood of the day” (Interview 104) by both officers and prisoners, implied that the allocation of privileges was not based upon neither legal nor arbitrary criteria. Rather decision making was patterned, based upon rules revolving around securing deference, respect, and obedience.

You can't treat them all equal, you don't, you should do but you know there's one that doesn't like you and one does, so you are not going to go out of your way to give the one that doesn't like you more. But you are definitely going to give the other more. You go out of your way to make life difficult for them – get them transferred onto another wing without television. Sorry state of affairs but it happens. (Interview 32)

Privileges were a key tool in maintaining control and both privileges and officer authority were intimately tied to acquiring prisoner deference. “If a prisoner treats me with respect, then I will treat him with respect” (Interview 1). Disciplinarians did not assume that prisoners would be automatically respectful. They were prepared to test prisoners' respect.

The best way to find out truly about a prisoner is to say no to them. That's what I tend to do just to try and find out what they're like. If you say yes all the time they're going to be as nice as pie to you, so you knock them back at first and then you get to know how they're like. You can go back afterwards and say ‘I've had a think about it and, go on, it's OK, you can have it.’ I find that's better than just bending over backwards for them like some people do. (Interview 4)

. Probably the main area of contention was that officers often found that “prisoners get confused between their rights and privileges” (Interview 3). Human rights laws and legal entitlement were seen as a potential obstacle to the enforcement of personal authority and the current working rules regarding the allocation of privileges. Only rarely was there a complete denial of all prisoner rights. Most common was the argument that rights should be suppressed to the very minimum to allow officers flexibility in application.

I believe that they have got basic rights, and that is right and proper. They should be allowed basic things like showers everyday, access to clean clothes everyday, healthcare, good food, exercise and that there has to be a certain amount of contact between prison and their home life. Those are standard issues. I have no problem with that whatsoever. The rest as far as I am concerned should be earned. They should not be so hard that they can't achieve that, because you then have competition between the people who are readily able to achieve it and those whose illiteracy or whatever is a little bit slower. Every inmate should be able to earn privileges accordingly. (Interview 33)

The disciplined, submissive and deferential prisoner should receive their basic entitlements, privileges, or rights, and officers were happy to do so. For those prisoners who were ill-disciplined and disrespectful, and importantly this was the assumption that characterised officer conceptions of prisoners per se, officers had the ability to deny “privileges”.

As far as their rights go, they should be very limited. The better they behave in jail the more rights they should have. The more they perform and create like an arse their rights should go out the window. I've very little sympathy for many prisoners in here. There is the odd one who in your own opinion has been roughly dealt with. But as far as most prisoners go, they shouldn't have a great deal of rights. (Interview 4)

Prisoners had to deserve, or earn the right, to be treated humanely. Disciplinarians believed that additional rights could be given to those prisoners who demonstrate that they accept their subjugated position or occasionally for those prisoners who were in trouble, such as “giving an extra phone call for a prisoner experiencing a family crisis” (Interview 14). Those prisoners who resist or “try to abuse the system” (Interview 9) should have only the most limited of entitlements.

The promotion of legal rights went to the heart of the officer strategies for maintaining control and authority. Officer anxieties over human rights were further exacerbated by the ADA ruling in July 2002, reacting with great hostility to what they believed removed “another carrot” (Interview 8) from the officer’s repertoire. If current means of ensuring personal authority were undermined, a number of officers believed this would result in increased prisoner resistance, violence and perhaps large scale riots. Human rights law was understood as challenging one of the basic core components of the officers’ role, and was widely condemned.

Since the abolition of the awarded days discipline has been eroded, it’s irked staff greatly that inmates who have been placed on report previously, and have lost time for serious offences, i.e. escape, assaults on staff, serious drug offences in prison, serious acts of indiscipline, have now got those days back. Those that haven’t have been compensated. So realistically you’re looking at giving a prisoner a financial reward for thumping an officer, which really goes against the grain. It’s a total role reversal. They run the nick now because they know that there’s nothing we can do about it. They literally scoff at you and say ‘Want to take days off me, ha!’ All that will happen now is that they will lose a couple of association periods and that’s it. (Interview 31)

The withholding of prisoner entitlements through privileges was given its clearest endorsement in the application of the incentives and earned privileges scheme [IEPS].

Often referred to as “snakes and ladders”, the IEPs were considered by disciplinarians to work best when adopted as a means of maintaining control and disciplining prisoners. “On B wing when we first started it a lot of people were giving warnings out like confetti” (Interview 27). In the early days of the scheme “there were quite a few examples of staff giving people 3 warnings within 10 minutes, or 3 similar warnings to do with the same incident” (Interview 19).

We were running the IEP as we thought it should be run. If people were doing things wrong you’d say ‘Don’t put them on report, just give them warnings.’ So we ended up giving them warnings. Three of them and they ended up on basic. So then the governor intervenes and says ‘Why the bloody hell have you got 12 basics on B wing?’ So he starts picking up the history cards and reading them. And then it’s not a case of ‘why are these prisoners behaving badly?’ it’s ‘why are these officers giving them warnings?’ They picked out one person in particular and put him on extended probation. So staff were really aggrieved about that and said ‘Well sod it.’ And now they don’t bother putting people on basic. It’s more or less collapsed on its feet. (Interview 15)

To counter this abuse of the IEP new rules were brought in to ensure that only an SO or a PO could issue the final warning. As a result many disciplinarians felt that the potential of the IEP as a means of discipline, that part of the “stick” of deterrence, had been removed.

Now, unless they’re absolute toe rags, they will receive standard or even enhanced regime. It’s very seldom now that you’ll see an inmate on basic regime, because it’s just frowned upon. Management don’t want people on basic regime, it doesn’t look good, immaterial of the discipline side it doesn’t look good. (Interview 31)

Rather than having only “the cream of the cream” (Interview 15) on enhanced it now contained many prisoners who were not considered to deserve such a position.

I think humans respond to the carrot and stick, we all do, we all like praise for doing something right, and we all need to know when we have done something wrong. It used to be your whiter than white inmates who used to be on enhanced, it was a goal for them to strive to. I think because we have made standards such a wide spread thing now, I think it's lost its impact. (Interview 8)

Tapping into less eligibility disciplinarian officers felt that IEP could be used to reinforce the utilitarian deterrent thesis.

We could expand on it and have something that is really austere. At the moment there's only basic but if you want it to work you've got to make it shine at one end and hurt at the other. I don't think we've got it right yet. (Interview 14)

Some officers believed that the "carrot" or rewards available to prisoners also may not be enough

There's going to be a few sit ins, because they know nothing much can happen. So they will lose 'association' so they will be banged up in their cell with a telly, I mean there's nothing for them down here really, apart from coming out for a shower and a game of pool, so they have not that much to lose and they know it. (Interview 32)

The disciplinarian was also cynical of the IEPs as it could not really address the discipline problem. Prisoners would manipulate the system being only well behaved to benefit from the IEP scheme.

A lot of these guys are wise and worldly, and they know that all they have to do is be Mr nice guy to get all this. But we're not stupid. We've been doing this job too long to be sucked in by this. We know that once the doors shut they're still playing their little games, bullying and all the rest of it. It's the bright ones that work their way up the ladders. (Interview 14)

The denial of privileges and the adoption of terms of address were not the only clearly discernable means of officers maintaining their control and personal authority.

Officer–prisoner interactions were biased in favour of the prison officer and reinforced the existing power relations. One clear example of this was the way in which ‘jokes’ were inequitably distributed between the two groups, reinforcing superiority and inferiority.

Many officers openly admitted that humour or banter was a means of psychological survival in a dehumanising environment and probably has a part to play in reinforcing officer solidarity. Their “absolutely sick” sense of humour prevented them from “going crackers” (Interview 29).

You’ve got to have a sense of humour in this job because if you didn’t you’d just crack up under the pressure of the job and the type of person that you’re dealing with. (Interview 31)

The horrors of imprisonment and the dehumanising lived realities for both prisoners and officers required an “escape valve” or release. Given that the realities of imprisonment are so “warped”, it should perhaps come as no surprise that the humour arising in this environment closely reflect this. As one officer put it you had to “laugh in the face of tragedy” (Interview 37).

If you can’t get on with other people and take a joke, then you’ve got to be asking yourself if this is the job you should be in. You know that there’s going to be suicides, you know you’ll be dealing with criminals, so its not going to be easy, but you’ve got to deal with it. There’s things that have made me a bit hard. When they die now, I’m cold about it. When they’re dead they’re dead. (Interview 22)

It was apparent that to a greater or lesser extent all staff were subjected to the warped prison humour.

There's no one in here who's safe. I mean someone's dad died a bit back and as he was going off, someone said 'oh, you'll not be needing your butties then' although it sounds bad, it wasn't bad, it helped the other officer a bit. He were like 'oh bloody hell, take the bloody butties'. It's just taken for granted. I mean outside people would think 'god that's sick' but in here it seems to be officers' humour that's all taken for granted. (Interview 32)

The rationalisations for the sick humour as a means of psychological survival could also be used to justify more problematic uses of jokes. The "sick sense of humour" could be a means of justifying sexual harassment and the bullying of women officers, or could be offensive to managers and outsiders alike if taken too far. This hidden and insidious use of the humour was also an important way of controlling and disempowering prisoners.

Prison officers appeared to have the apparent monopoly of the use of humour. Prisoners were subjected to ridicule and degrading and humiliating experiences "for a laugh", whilst officers maintained a position of control and superiority. Officers remained the jokers and joke tellers, whilst prisoners were the subject of their humour. A good joke was when the officers found it funny, irrespective of the objects feelings.

Officers defended their humour as a useful tactic in maintaining control and defusing difficult situations. "Quite often you can deflate a serious situation just by talking or having a bit of a crack" (Interview 31).

If someone gives you a hard time and you come back with a one liner, its better than disciplining the guy, because then they just look like a dickhead in front of their mates. (Interview 27)

Prisoners had also been subjected to practical jokes. There were numerous examples given by officers of the tricks they had played on prisoners. Two are given below.

The favourite one I've seen done is when you go to the cell door and there used to be a little lip on the cell door. What you do is get a bottle of lemon and lime and stand by the door so they can see your face and pour this lemon and lime underneath the door. They'd be going absolutely ape inside because they wouldn't realise that it were pop coming through not something else (laughs a lot). Stuff like that. There were this lad a few years ago. He kept whinging in the morning that he wasn't getting any mail, and he kept asking about the fact he wasn't getting any mail. So we decided to write a few letter ourselves. The stuff we put inside it was absolutely bananas, but he eventually saw the funny side of it (laughing again). (Interview 15)

Prison humour is very warped. It's weird. And the prisoners know it themselves. For example the number one cleaner has just put in for his Home Detention Curfew Order. Now we knew this so we went into his cell with two bits of rubber gloves filled with tea, and we hid them. He did his HDC form with one of the other officers, and he walked out. 10 minutes later we said, 'Right. We're going to give you a cell search.' And these things dropped out of his drawer his heart just stopped when these two things fell on the floor. We were using them as false VDT tests. And his face was a picture. And we just cracked up, and he was off. Oh he says, how we laughed. But that's the sense of humour. We find it funny, and he does now. But at the time, it wasn't. It can be a bit cruel, the sense of humour. But, if it wasn't for that, we couldn't do the job. (Interview 18)

Prison humour, whether in the form of the sick joke after a tragedy, the practical joke on a prisoner, or the deliberate put down, reflected an insensitivity to the vulnerable, sometimes also exploiting and degrading the victim. In some situations prison humour may be an attempt to establish connections with prisoners, or even a genuinely amusing incident that can be shared by all participants, but when placed in the context of the structuring of relationships in prison, officer humour provided another useful tool in the armoury of the officers in upholding personal authority and control.

Psychic distance and professionalism detachment

Disciplinarians othered prisoners' needs and claims to shared humanity. Building on the construction of the essentialised and lesser prisoner, the othering of prisoners can be understood through the creation of professional detachment and psychic distance. The disciplinarian officer, at least initially, would adopt a particular form of "professional" universal distance when dealing with prisoners. In principle this is potentially a positive development and consistent with a commitment to inalienable human rights. It is clear that many officers intended to treat all prisoners in a similar manner. "No matter what my feelings are I have to treat people the same. I don't have a problem with that" (Interview 13).

If you get too involved you worry about the people you're locking up. You've got to treat all the prisoners the same, and try not to be affected by what they've done to end up in here. Otherwise it affects the way you work, and we've got to be professional about it. You've got to treat everyone exactly the same. (Interview 21)

Officers did not look into the backgrounds of cases of individual prisoners, so it would be irrelevant in terms of the prisoner's treatment if the prisoner had been incarcerated for burglary, fraud, murder, or sexual abuse. Disciplinarians pointed out how if they had looked at a prisoner's offence it might impact upon their judgements and subsequent treatment.

Personally, I never look at what a prisoner is in for, because if I do it might change the way I deal with them. If somebody's in for being a paedophile, murderer, or a shoplifter, I don't know. I'm not interested. He's a prisoner and I've got to look after him. (Interview 18)

Disciplinarians pointed to the importance of controlling their emotions and personal feelings once they had "put on the uniform" (Interview 20). This sense of emotional

detachment was the key aspect of prison officer professionalism. It was regarded as crucial to the effective operation of the role. One officer explained his reaction when he had discovered a prisoner's offence.

I'm not bothered particularly what their offences are, because you're better off not knowing sometimes. There was a bloke who was in who'd raped and murdered a 13 year old girl, and I knew that, and every time he started being a bit obnoxious I just wanted to punch him. So you're better off not knowing what they're in for sometimes. (Interview 27)

Officers applied a clear and patterned means of responding to prisoners in the first instance. The notion of professionalism provided an application of professional distance that inevitably led to negative outcomes for prisoners. For the disciplinarian, professional distance appeared to be rationalised though reducing physical and emotional contact with over-demanding prisoners.

You haven't time to deal with them all. I think, to a degree, you end up fobbing most of them off. You push them to one side a bit, you haven't enough time to deal with all the personal stuff. They do put apps in, but they seem to look for certain officers, because they know certain officers will do things. Say there's 10 officers on a landing, they know that 3 of them will do things for them, the other 7 they will not bother asking. It gets a bit like that sometimes. They have a lot of problems and they all see themselves as individuals, its like 'never mind me pad mate or all the rest of them, I want you to deal with my problem – my problem is most important'. And you get a lot of that pushed on you – have you done this, have you done that, when are you doing it? But you are a discipline officer at the end of the day and have your basic duty to perform. It's a shame but it is getting to the stage where you can't really get to know them as you used to. There's so much to do during the day. The barrier is getting wider and wider now. There isn't time for a chat any more now. The work is so demanding. (Interview 32)

A number of officers felt that prisoners were "literally in your face all day" leaving staff "mentally exhausted by that, if not physically" without the option to "just walk away" (Interview 14). Prisoners were perceived as irresponsible, over dependent,

selfish and very demanding. "They come out e'ffing and blinding, I want! I want ! I want!" (Interview 15). To some extent the distance was constructed as means of surviving the prison and the demands of the officer role.

The worst thing is that if you help someone word gets round that 'He's alright.' Then you get that many people coming to you and you take on that many problems, and then there's other staff. They're known as "No men", because whatever you ask them they say no. So nobody asks them for anything. You have a lot of people coming to you and that sometimes burns your head out. (Interview 15)

Contradictory to the statements made earlier, over a prolonged period of time prisoners were not actually treated the same. Despite a similar starting point, prisoners were receiving differing forms of support from staff. This was often tied to the amount of deference and respect that prisoners gave to the officer.

You might deal with one person's query and not someone else's. So you are treating them differently. You question which you're supposed to sort out, and you can't do it all. Sooner or later you tell them where to go and say 'Look, I can't do everything at once'. You can just get pissed off with it, basically, and you have to stop. You might end up doing something for one and not for another, but you can't do it for everyone. (Interview 15)

The term "professionalism" in practice means the creation of a negative distance and form of emotional detachment from prisoners. Prisoners are placed in a separate category to staff and non-prisoners. This allows for a universal application, but the category 'prisoner' is based upon the ideological construction of negative reputations. There are clear concerns regarding the means in which prisoners are treated in a manner that groups all prisoners as equally as risky as each other. It is not the individual assessment of a human being, for example around their potential dangerousness, but one which is applied to all prisoners by the very nature of their incarceration. It is the

dehumanising category of prisoner that is important. All prisoners are manipulative, all prisoners are a risk, all prisoners could be HIV+, and should be treated as if they actually are. The notion of detachment results from the institutionalisation of a universal negative reputation, with the end result being that prisoners are treated universally at a very low level. The dehumanised base may only be improved upon by the way in which prisoners react to staff.

The processes occurring are consistent with a notion of detachment engendered through othering. For one officer "sometimes you just have to fob people off" (Interview 13).

Sometimes you find you get more done by just saying 'Stuff it. I'm never going to get that done.' Then try and do it later when you feel clearer, instead of just looking at it and looking at it and stressing out. At the end of the day, if I know I've done everything that needed to be done that day, I don't bother getting stressed about stuff I haven't done. It's like these staff reports, they should have been done a month ago. I haven't even started them yet, and they won't get started. A lot of people are ill at the moment, so there are things that need doing. So it does get hectic, but stressful no. So long as you're not trying to achieve something that you can't achieve. You do what you can and then stop. (Interview 22)

Dehumanisation creeps into the officers' very psychic construction of their working personality. Prisoners "become a number in a prison uniform" (Interview 15) and this becomes their new master status. Prisoners are effectively depersonalised and placed at a distance.

I think also it's like building up a bit of a barrier as well, so the cons don't get to you so much, relieves the pressure a little bit. Like an outside shower if you will. (Interview 32)

The outcome is that through the label prisoner, a human being's needs are neglected and suffering denied legitimacy. Prisoners are not to be seen, nor heard where possible.

I always remember an old prison officer once said to me not long after I came here, 'always remember, happiness is door shaped' which basically meant that if the inmates were behind the door then we were happy. (Interview 8)

This IS the actual process and notion of professionalism. In the institutionalisation of less eligibility we see the reproduction of social divisions in society.

You have to keep perspective over everything. You have got to remember the people we are dealing with, they are society's failures. You have to remember that otherwise you couldn't do this job. You have to remember what you are dealing with. Everything that we do we must be violating human rights somewhere along the line, but on the other hand, they are not coming in here to be patted on the back. (Interview 8)

A negative construction of prisoners may have a number of consequences for how able a member of staff feels prepared to do a job, which is by definition negative, painful and damaging. The very nature of imprisonment is to take away all responsibility from prisoners, being one aspect of the "nanny state" that does create dependency, placing extreme demands and burdens on those prepared to address the needs of prisoners. The structuring of distance between prisoners and prison officers, allows for staff to detach themselves from the problems they encounter in prison. It allows the psychic distance for prisoners to ultimately be constructed as "ghosts". The notion of prisoners as lesser humans, dovetails within a dehumanised penal context that can justify the officers own profound sense of insecurity and their pains of imprisonment, consequently making invisible the suffering of prisoners. This indicates that certain elements of the occupational culture are imported into the prison (i.e. less eligibility) whilst others

(functions of staff, dehumanisation, psychological survival) arise from specific adaptations to the penal environment.

Rationalising difference and the techniques denial

The above constructions of the prisoner reflect the disciplinarians' moral universe and ability to effectively distance prisoners. Officers, whose self perception is one of a respectable person who upholds the law, can continue to maintain such a self image while performing actions that directly transcend such beliefs. The disciplinarian conceives the prison as a separate moral sphere in which it is possible to neutralise one group of human being's claims to lawful, decent treatment. Cohen (2001), building on the writings of Sykes and Matza (1957), has provided a powerful account of the way in which claims to rights and shared humanity are denied through techniques of neutralisation. Through specific rationalisations prison officers can remove themselves from the implications of prisoners' suffering whilst continuing to hold a commitment to wider moral values and principles. There was evidence of five techniques of denial utilised by prison officers to invisibilise the prisoners' painful experience of imprisonment and claims to human rights. These will now be discussed in turn.

1. Denial of responsibility

Prison officers denied that they were fully or even partially responsible for the ill treatments of prisoners. Prison was an "occupational hazard" determined by a rational choice made by "habitual criminals". In this sense even though imprisonment could be recognised as being painful, living conditions poor, services inadequate, this was the

responsibility of prisoners not officers. Prison was “a rod of their own making” (Interview 31). One officer sums this position up well: “people in here are society’s failures. I haven’t put them in. It was their crime that they committed that has put them in prison” (Interview 8).

2. Denial of injury

Many officers argued that prison was a soft option, that it didn’t really hurt prisoners. “Prisons are holiday camps” (Interview 21) a place where “if you can go without sex you can do prison life standing on your head” (Interview 31).

Well, what else could you give them, apart from conjugal rights, more visits? They’ve got everything else. You might as well not send them to prison anymore, really. You put a bar in visits, and another couple of beds in there and you’ve cracked it. You’d get the best of both worlds then. They wouldn’t have to deal with the crap out there, and they’d get the beer and the sex in here. They’d be in heaven. You wouldn’t be putting them in prison. You’d be putting them in Utopia. They’d have no responsibilities, but they’d be getting all the benefits of life. (Interview 22)

Prisoners were “demanding” and just looking to cause problems and make officers’ jobs more difficult. Prisoners pretended prison was more painful than it really was to get more privileges.

Sometimes prisoners will say ‘I’m going to slash my wrists’ as an excuse to get what they want. Someone who’s intent on committing suicide will do. Sometimes it’s just a cry for help, but we end up being too busy ticking boxes to sit down and talk to people. (Interview 6)

Prisoners’ claims to being bored were not considered by officers to be a genuine as they could go on educational courses. Prison conditions “were better than bed sits” as

prisoners had “their own toilet and wash facilities and three decent meals a day” (Interview 34). The *real* injured parties of imprisonment were the officers themselves.

They have no idea of how easy it is in prison. No idea at all. We keep throwing human rights at them, but when do we get anything back in return off these people. I think we’ve got to a level now where they’ve got enough. What else can we give them? It’s a prison. It’s meant to keep them away from society, at a decent standard, and I think they’ve got more than a decent standard. (Interview 31)

3. Denial of victim

A prisoner could not be a victim. Not only had the prisoners lost the rights to such a claim by criminal action, but prisoners were so debased that they lacked the ability or judgement to fully comprehend the prison experience and its inherent harms. The following phrases were common when describing officers’ treatment of prisoners:

“prisoners’ are relatively docile”, “they are out of their heads”, “they like what happens”, “they don’t know any different”, “they don’t want to be called by their first names”, “it’s the only language they understand”, “get too philosophical with them and they’ll all take the piss out of you”, “they never asked for half of this stuff [rights]”, “they’ve got everything they need”, “there are no complaints from prisoners about how they are treated”.

The lack of prisoner victimhood could arise through the prisoner being a drug taker, suffering mental illness or not being aware through cultural deprivation.

You are dealing with more people with psychological problems. You’ve been on E2 haven’t you? It’s the hospital wing. Formally F Wing, and still sometimes referred to by staff as ‘Fraggle Rock’. Some of them in there are ‘lights on but nobody in’ aren’t they? (Interview 27)

Prisoners did not have to be spoken to as human beings. “You say ‘I’m fucking telling you, you get your arse out of your bed’. But they understand that” (Interview 4).

4. Condemnation of condemners

Many disciplinarians believed that those on the outside did not fully understand the reality of prison life. In this sense the person who is complaining about the prison or calling for prisoners' rights should be condemned. "Do-gooders" sitting in "white towers" such as outside pressure groups, the ECtHR, and even prison service hierarchy were considered to be hypocrites or not seen as a suitable authority.

There is too much 'do-gooder' opinion that comes into this job, and these do-gooders don't come and do the job, they don't spend long enough in the jails to have an opinion. You've got to work in here everyday, every week, every month for x amount of years before you know what actually goes on. (Interview 4)

5. Appeal to higher loyalties

Officers would justify the denial of prisoners' human rights by arguing that a wider social utility is being performed through imprisonment. This often involved contrasting the offender with a more vulnerable or 'innocent' group of people who had been or were suffering. The elderly, the respectable poor, children and victims were the most common groups for whom prisoners' conditions were compared (Interview 2). One officer stated bluntly "human fucking rights! I'll give you human rights! What about victims' rights?" (Interview 24). Victims "have as much human rights if not more than the people who are in here" but whilst there was considerable resources utilised for prisoners victim issues were relatively ignored. "If we are going to do human rights, do it across the board, staff, inmates and the victims" (Interview 8).

Now prisoners' rights seem to be that everything is for them and nothing is for the victims. What we have to focus on now is not prisoners' rights. Because they've got a plethora of rights now, we've got to focus on victim issues. If a lot of the victims realised what was going on inside prisons I think an awful lot of them would really start protesting outside. (Interview 29)

Breaching the techniques of denial

Prison officer occupational cultures are formed through an amalgamation of the largest grouping of working personalities in the prison, in this case the disciplinarians. Their worldview was contested by other staff, specifically the humanitarian and careerist prison officers. Some disciplinarians also showed the ability to breach the techniques of denials and acknowledge prisoner suffering. Whilst there was clear evidence of detachment towards the lesser other, there was only limited evidence that staff were vindictive. Most anecdotal evidence, interviews and observations pointed to how staff tried to avoid confrontation with prisoners, only becoming physically involved if deemed absolutely necessary.

Though there was some evidence of officers being complicit in prisoner-on-prisoner bullying and one example of officers being involved in a scuffle with a prisoner (see chapter two), many staff believed they had a role in preventing such abuses. "We know the culture in prison means that that sort of stuff goes on behind closed doors, out of sight, but staff don't turn a blind eye to it" (Interview 9). Many officers wanted to do more to help prisoners and were frustrated because "we are not trained to deal with the problems that we confront" (Interview 25).

They want to talk to you, all of them, and you just can't, because you've got a job to do. So it's not cruelty or contempt, it's just the way the job's structured. And if you do spend the whole day talking to them, being 'decent' it's not going to show up in the figures, it'll just look like you've been shooting the breeze all day. (Interview 13)

Further, there is evidence that when officers were confronted with prisoners in danger they would risk their lives.

There was an incident this dinner time where a lad set fire to his own cell. Now the staff were on their break, but they gave it up to go and save this lad, and also to protect other prisoners. By going in the cell they'll have inhaled the smoke. When they go to the hospital to get these checked, the government will say why did you go in that cell when you know you should put SDBA kits on first and then go in. Do you wait to do that? Most staff don't think like that. They just run in without any apparent look to their own safety to save somebody else. But they will get abused for that because they've not followed procedures. If they'd have left him in there and he'd have died, they'd have been criticised for not going in. It makes staff wonder why they carry on doing things. (Interview 9)

As identified earlier, staff were able to acknowledge a number of conditions which they considered to be inhumane in the prison but these were primarily linked to physical conditions or emotional pressures which were experienced by staff. However, the following four examples demonstrated that disciplinarians could also recognise the problems confronting prisoners.

I think a lot of the human rights issues are common sense, they need 24 hour access to sanitation, but they are now eating their meals in the toilet you know. Because there are so many inmates nearly every cell, built as a single cell, is doubled. There are so many human rights issues – should a man have to sit on his bed and watch another man on the toilet? There is a vanity screen there but it doesn't really hide anything and then there are issues over the smell. You wouldn't want to do it. In theory you could walk down to the canteen, get your meal and get back and your pal would be sat on the loo. (Interview 8)

If we're going to talk about the physical conditions let's talk about the DDU. These are probably a group of prisoners who are as vulnerable as anybody. It is an unbearable situation down there. I think either the DDU should be condemned or made decent. Put these prisoners on another landing where there are better conditions for them. Whether it's self inflicted or not, they still have to get through that, the withdrawal and the after effects and so on. I'm not medically qualified so I don't know what we can do for them. You want to say just pull yourself together, but a lot of these just aren't mentally up to it. A lot of prisoners should be in a different sort of institution. It doesn't take Einstein to work it out if someone's setting fire to themselves or cutting themselves, this isn't the right place for him really, is it? (Interview 3)

I am all into letting people out of their cells because it doesn't do people any good rotting in their cell all day, but give them something to do. On association I can see why they do it, but it's mind numbing for them, there's one pool table, one table tennis table, maybe a table football and 80 lads out. So the stronger characters stay on the pool table all day, because that is the most popular one and your lads who are fairly weak will just sit there staring into space for 2 and a half hours – he's not gained anything from that whatsoever. (Interview 8)

We have a lot of mental prisoners, so much so that we are becoming more of a mental institution than a prison. Are they getting their human rights? It's not their fault that they are mental. They should be getting help. You can't apply punishment to someone who is mentally imbalanced because they don't understand. So who is that helping? You're not helping anyone. You're keeping them off the streets. We're not really doing anything for anyone. Inmates have to share cells with people who are mentally imbalanced. Then the problem becomes yours as a member of staff because you have to deal with it. It makes the job a lot harder. This is what's happening with the prisons. We're out of sight and out of mind. If people knew what we were having to deal with then they might appreciate us more. (Interview 7)

Creating Ghosts

The research prison was a 'screws' nick', an authoritarian prison, where power was firmly in the hands of officers. Many of the officers were very experienced and looked to maintain order and through the enforcement of their personal authority through an asymmetrical deference norm, in combination with manipulation, persuasion, coercion

and if all else failed, the mechanism of fear. The asymmetrical deference norm was a means of building officer respect, self esteem, and maintaining order and prisoner acquiescence.

For prison officers in the first instance prisoner suffering was *invisible*. Prisoners as a category are *othered*. Professional detachment created the *original starting position* for officer-prisoner relationships. The *label of prisoner* created otherness and provided a vehicle for establishing differences. The starting point for relationships or interactions with prisoners was rooted in a stereotype that *all* prisoners were lesser, and prisoners did not deserve to be treated as fellow humans. The fact that a person had been sent to prison automatically disqualified them from the status as a fellow human being. The doctrine of less eligibility was rooted in the construction of the negative and dehumanising reputation of the offender focusing upon their moral inadequacies and weaknesses. Prisoners were perceived as lesser, whether through personal weakness, immorality, or illness and denied all claims to shared humanity.

The negative construction of the prisoner as a lesser being provided an important sense of psychic distance that could justify their role and function in the deliberate infliction of harm, pain and suffering. Through their wider insecurities, dehumanisation and alienation, disciplinarians and some other prison staff were so preoccupied with their own misery they were unable to conceptualise that the very nature of imprisonment itself created many of the inadequacies of prisoners. The devastating implications of the pains and suffering of imprisonment were clear to disciplinarians in terms of how it

dehumanised officers, but such an understanding did not stretch far enough to encompass prisoners. In this way prisoners' needs and lived realities become almost ghost like in the daily penal regimes.

The original starting position could change if prisoners consistently showed officers respect for their personal authority. If they show deference they are considered as "good cons", and partially regain the status of 'human', but with certain conditions still attached. This indicates that human rights were not ascribed. The right to be treated as a human being had to be earned.

In the occupational culture prison officer identities were closely tied to those of prisoners. Talk of human rights or equality of status was very threatening to officers, for if you gave to prisoners, you were taking away from the respectable officer who was defending society from these people. Many officers tied their identities and sense of goodness with the prisoners' sense of badness, reinforcing solidarities and the 'us and them' antagonistic stereotype. Even the most developed relationships could never remove all barriers or develop on an equal footing of trust and respect. Prisoners are negatively constructed at a base universal level as selfish, inadequate, and manipulative people who could not behave appropriately in wider society and so, by default, had been incarcerated. The notion of the lesser prisoner appeared to have an important role in the psychological survival of officers. The prisoner in need of discipline and control sharply contrasted with the good and responsible officer, reinforcing a false moral hierarchy that shaped the contours of the officers' moral universe.

Disciplinarians appeared to accept wider claims to moral behaviour, but had developed rationalisations, the techniques of denial, to successfully neutralise prisoner human rights. Yet there was evidence that prisoners' invisibility was breached on occasion by disciplinarians, acknowledging some of the prisoners' claims to shared humanity and human rights. It is to an understanding of *why* ghosts are created in the penal machine that we turn to next.

Conclusion:

Bringing rights home - acknowledging human suffering and the positive rights of citizens

The thesis has examined the impact of the Human Rights Act (1998) [HRA] in shaping understandings of prisoner human rights in the prison service of England and Wales, and specifically its role in promoting a human rights culture among prison officers. The thesis is original in terms of its focus, the empirical study, its deployment of Foucault's discourse analysis, and its adoption of a partisan neo-abolitionist perspective to assess the legitimacy of the findings.

Foucault's discourse analysis identified the rules patterning the interpretive frameworks of prisoner human rights and the inter-connections between penologies of prisoner rights, human rights law, penal policies, and prison officer occupational cultures. Following Foucault (1972), the thesis examined the extent to which a change in one of these institutional sites, the law, led to a disruption of settled meanings of human rights across the other sites of the discursive formation.

The preceding analysis provided an account of the *interpretation* of the HRA and the *messages* being sent about its implications. The key finding was that despite the potential of the HRA to disrupt current meanings of prisoner [human] rights, in its first five years, the HRA has been manipulated, co-opted, and re-contextualised in the discursive formation to legitimise existing understandings and practices of the prison service. The

potential critique and spur for progressive reform of the HRA has been successfully absorbed - its meanings re-contextualised through processes of carceral clawback.

On the ground prison officers are faced with the brutal realities of imprisonment. The negation of humanity is structured within the prison's very existence. Prisons will always be painful and immoral places, undermining human dignity, respect, autonomy, security, meaning, and sense of self. In practice prisons are lawless institutions rooted in physical force, debilitating and damaging the health of those that live and work in them. All prisoners, by definition, remain vulnerable to dehumanisation through the negative stigma of the application of the label itself. Prison is all about suffering, and the caretakers of punishment ensure that the infliction of pain is effectively distributed.

Much of the prison officer culture can be understood as a human response to a situational context that just does not work – that prison is dehumanising and it is impossible to survive working day in day out performing the basic prison officer function without being affected by this work. The prison officer role is one which is rooted in negativity - creating or facilitating human pain, isolation and misery. The penal environment remains highly significant, but cannot alone explain why there exists a number of working personalities in prisons, which one will become hegemonic at a particular time, or how prison officers are able to justify their self perception as upholders of law whilst operating in a lawless institution.

The findings indicate that the denial of prisoner human rights and the institutionalisation of less eligibility in the prison officer culture were not effectively challenged by other sites in the discursive formation. In the prison the authorities of delimitation with greatest credibility were the experienced officers themselves. Their legitimate knowledge was embedded in an officer cohort focussed on running a tightly controlled nick through enforcing personal authority, the mechanism of fear, and the manipulation of privileges.

See no evil, hear no evil

Three inter-related ways of understanding the denial of prisoner human rights in the prison officer moral universe can be identified through the findings: neutralisations, lesser breeds and moral indifference, and emotional shut down. Cohen (2001) looked to the techniques of denial to explain why human suffering is denied rather than acknowledged. The techniques, incorporating denial of knowledge, moral indifference, and Sykes and Matza's (1957) techniques of neutralisation have been applied to the denial of the human suffering of those confined in prison by prison officers.

The techniques of neutralisation lead to the creation of the prison as a distinct moral realm or universe from the outside world. This creates a separate, situational occupational morality and understanding of humanity. Rationalisations of the different treatment for humans in the *prison world* allowed officers to breach legal rights and deny fellow human suffering. To avoid splitting, officers may transcend the occupational

morality and on occasion apply normal moral rules, leading to the partial acknowledgement of prisoner shared humanity.

Many prison officers could not acknowledge the genuine suffering of prisoners and their shared humanity. There was evidence of rationalisations used by officers to deny the implications of suffering in the prison place: denial of responsibility; denial of injury, denial of victim; condemnation of condemners, appeal to higher loyalties. It also became clear in the interviews and casual conversations with officers that there are moments when denials are breached and they acknowledge human suffering in prison. Officers talked of the problems of mental illness, physical conditions, and the waste of human life. It is difficult to ascertain if this was because officers had failed to construct their prison work as a separate moral universe, or if these officers needed to feel that their personalities were not split between the normal outside world and the prison.

For officers who move beyond the prison context and firmly entrench the notion that prisoners are lesser breeds then there is little to be neutralised. For morally indifferent officers who justify their actions through less eligibility, prisoners become ghosts beyond our realm who deserve to suffer. Here it is the prisoners themselves, and not just their presence in the prison world, that are to be effectively psychically distanced. In the research prison the doctrine of less eligibility, understanding prisoners to be inadequate deserving incarceration, was deemed the most plausible penology by officers. This penology remains credible only if the socio-economic contexts of imprisonment are denied, and then so, only as a tautology. The doctrine of less eligibility feeds the myth

that prisoners are the only 'criminals' in society, and that they are weak, inadequate people. Current penal policies incarcerate damaged and vulnerable people, and disculturalisation leads to the further deterioration of their coping skills. It is easy, though mistaken, to point to the damage created *through* incarceration as the cause *for* incarceration. Prisoners are not a breed apart, just those people who have been caught and processed by the criminal justice system. These are often people with great needs or demands that society has failed.

It has been established that prison officers need to deny human rights, and legal rights, to effectively undertake their role. They are locking up other human beings against their will which creates a conflict of interests between the keepers of the keys and the kept. It is much more difficult to inflict pain upon somebody who is perceived as an equal, undeserving of punishment, a friend, or the same as us. We must ask, can the caretakers of punishment as easily undertake their tasks negating and wasting human life for someone that is perceived as undeserving of such suffering? Because of the daily contact it is very hard, if not impossible for officers to create a sense of physical distance between themselves and prisoners. It seems likely that to effectively perform the tasks some form of distancing is necessary. Prisoners *must* then be psychically distanced, conceived as deserving of punishment, as bad people. To this extent the construction of distance that allows officers to create psychologically the manipulative, deserving, evil essentialised other is necessary to the very functioning of the prison officer.

Less eligibility helps focus attention away from this and onto the relative differences between the *good*, honest and deserving staff, and the lazy, *bad* and dishonest prisoners. Prison officer security seems to be undermined when suggestions of policies promoting sameness, such as human rights or shared humanity are proposed. The invisibility of prisoner suffering in the officer culture is transposed through a lens of a lesser prisoner, whose neglect can be justified through morally distancing themselves from such inadequates. Prison will always present an inherent threat, but how damaging this is for prisoners, and officers, depends on how officers approach their role. If prison staff did not have this sense of difference, this sense of lesser; if they could not create a rationale of difference, a rationale of denial of the similarities between themselves and prisoners, would prison staff be psychologically able to undertake their role? Could they contain individuals without reliance upon the dehumanisation of their captives?

It perhaps becomes less important to have a psychological rationale of denial for those staff working at a greater physical difference. They “have a different job to do”, and it impacts upon the manner in which they need to justify their everyday actions and role in the prison. In the prison bureaucracy, they are further removed from the delivery of pain, and can utilise other forms of distance as a means to deny prisoner rights. Without the punitive ideology of less eligibility officers would be constantly faced with the reality of inflicting pain and suffering upon people who come from similar backgrounds – people with whom they share much more than just their shared vulnerability to suffering. The detachment this creates makes invisible the pains of imprisonment of prisoners and gives the officer a means to cope with their own double dehumanisation.

A third and most profoundly dehumanised officer moral universe is one of complete emotional detachment or emotional shut down. Officers no longer care. The mortgage payers appeared to fall into the third category of emotional detachment whilst there appeared to be some overlap among the disciplinarian working personality between situational moralities and moral indifference. It may be helpful to see the different techniques not as in competition, but as acting as a sliding continuum between denial and partial acknowledgments. The political, penological, governmental, economic, and legal contexts, alongside the double dehumanisation of prison work and hierarchies of credibility in the staff cohort all impact on where officers may be located.

The research ultimately points to a notion of divide and rule in the prison experience. The differences between prison officers and prisoners are emphasized, as opposed to the recognition of what they actually have in common – human beings attempting to survive a dehumanising environment. Through this notion of a shared prison context, I am not inferring that there is not a great division between how staff/prisoners actually experience prison itself, but that they do share the same environment, and all experience harm and suffering because of it. But the emphasising of differences between the two groups, no matter how artificial, performs a key role in maintaining the penal machine.

The crises of penal legitimacy

In assessing the legitimacy of the current discursive formation on prisoner human rights and particularly what is sayable in prison officer occupational culture three possible

findings could be reached. Understandings of human rights in the occupational culture are legitimate, suffer from legitimacy deficits, or are illegitimate. It is argued below that the current discursive formation on prisoner human rights and distribution of penal power is morally and politically illegitimate requiring de-legitimation, with an alternative vision of dealing with wrongdoers advocated. A neo-abolitionist normative criterion promoting democracy, inalienable human rights, legal accountability and social justice, has been adopted to assess the legitimacy of the social distribution of punishments, the morality of the deliberate infliction of pain, and the functions of the caretakers of punishment.

1. Democracy: the crisis of political legitimacy

The current crisis of political legitimacy of imprisonment is fuelled by the incarceration of economically marginalised and disproportionately black and racialised young men for property offences. The process of criminalisation and penalisation in England and Wales today reflects the profound structural fault lines of an inequitable society leading to the key role of imprisonment as a means of performing a symbolic function of social control through punishing certain scapegoated subpopulations of the poor. The current penological and policy ascendancy of welfare *through* punishment denies claims to shared humanity and predicates human value upon labour value. Current definitions of harm and the application of the criminal label need to be de-legitimated and alternative democratic approaches to governmental sovereignty and political economy advocated.

2. Inalienable human rights: the crisis of moral legitimacy

The punitive rationale creates only further harm. It should be recognised that we all do wrong but that we disproportionately criminalise and penalise certain populations. The negative label and stigma is applied to these people and consequently they become merely one dimensional dehumanised beings defined by their crime and punishment. Prisons are inherently painful and threaten the human rights of prisoners and also those who work in them. Prison is a dehumanising context and this will always be the case. It is also clear that we need an alternative to the current symbolic role performed by punishment itself. We need more visibility, exposure of the daily degrading rituals and inhumanity of the prison and its long term consequences for individuals and society. We must breach denial and provide counter-factual evidence of the pain of confinement. We must think of how we can best respond to wrongdoing in ways that do not inherently threaten human rights. This analysis must go beyond the prison and the role of its caretakers.

Prison officers had no language of human rights. Indeed the occupational culture was hostile to human rights talk. Prison officers have become pre-occupied with their own needs as deserving and worthy servants of the capitalist state. Prison officers have not acknowledged their privileged position in the prison: in terms that they are paid, they have choices, they can go home at the end of the day. Prison officers have considerable power over prisoners: they can *recognise* the needs of prisoners and attempt to mitigate their pain or make the prisoners' experience even more disempowering, isolating, damaging, painful and dehumanising. The invisibility of prisoner suffering cannot be

deemed legitimate. The neo-abolitionist normative interpretive framework points to legitimacy as based in responding to fellow human beings in a way that acknowledges their human rights, that is with dignity and respect and recognises their suffering. This argument is based on principles promoting *discourses of tolerance*. The findings indicate that the prison officer occupational culture underscored widespread practices based upon *discourses of intolerance* and dehumanisation. On such grounds the dominant occupational discourse of prison officers must be condemned as illegitimate.

3. Legal accountability: the illegitimacy of personal authority

The use of privileges and personal authority to maintain control and the asymmetrical deference norm is rooted in discriminatory stereotypes, shaping officer relationships through judgements based upon individual conformity, rather than intrinsic human worth. Some officers prioritised mercy, or operated on stereotypes that are supportive and sympathetic to prisoners. Others operated on stereotypes that are biased, punitive and discriminatory. What unites both is that such a patterning of discretion transcends the rule of law and neither process is transparent or open to mechanisms of legal and democratic accountability. Any legitimate response dealing with wrongdoers must be both transparent, and rooted in law.

4. Social Justice: the illegitimacy of the interpretation and application of human rights laws

An infringement of prisoner rights under both the legal reasoning of proportionality and legality is currently justified through the rule of law. But legality in itself cannot imply

legitimacy. What is required is a radical rearticulation of the interpretation and content of prisoner human rights as positive rights. A positive right is a lawfully enforceable duty that entails an act of performance on the part of the State to ensure the equitable distribution of the social product for the protection and prosperity of human life. It promotes legally enforceable, socially just and democratically accountable forms of governmental sovereignty and political economy that meet human need. Here responsibilities are linked to the powerful, not the powerless, and ideas of legitimacy reflects the acknowledgement/recognition of shared humanity.

Towards a positive rights agenda for citizens

Human rights have clear political utility as a competing contradiction. The promotion of human rights strikes at the heart of the philosophy of punishment, the legitimate suspension of rights, liberties and freedoms, and is contradictory to the nature of imprisonment. Further, in a time when human rights are part of government and prison service language, notwithstanding the rather minimalist interpretation of content, the promotion of the *concept* of human rights and radical re-articulations of content remains competitive in the current political climate. Showing acute awareness of the regressive political culture neo-abolitionists have promoted the defensive role of rights as minimum legal guarantees and safeguards and identified the ability of rights to provide latent visions of social justice.

The starting point for this is the *recognition* of the shared humanity of wrong doers and their ability to feel pain and suffering in prison and elsewhere. We must acknowledge the

suffering of all whether we like them or not. It is not about solidarity with prisoners but solidarity with sufferers. When we are confronted with the human “face”, with clear evidence of suffering of other people we acknowledge as fellow humans, can we continue to punish and deliberately inflict suffering? Prisoners will never be easily defended as archetypal sufferers as many will be neither “innocent”, “blameless”, “defenceless” or “virtuous”. For a genuine human rights agenda we must allow negative imagery to speak for itself (Cohen, 2001). Prisoners’ rights as acknowledgement of suffering are best defended through generating counter-factual knowledge about the pains of imprisonment itself. This means undermining claims that prisons are easy or have some social utility. They are neither of these things.

Alternatives¹ must be grounded in social justice and inalienable rights rather than the sympathetic self. Here the talk is of sympathy for the devil, acknowledgement of the suffering of those who themselves have created suffering. Unpalatable perhaps for some, but this is what a human rights agenda must encapsulate. Following Swaaningen (1997) and Hudson (2003b) it seems that the challenge to neo-abolitionists is to rethink alternative means of dealing with wrongdoing that respects human dignity and replaces the symbolic function of punishment. This implies a principled approach to dealing with

¹ Training prison officers to recognise human suffering, shared humanity may have some positive impact but alone will falter. Ironically the notion of professionalism, i.e. that distance can actually be used to protect prisoners, if grounded in a humanitarian interpretive framework may provide countless benefits. This issue concerns offenders who have done particularly heinous crimes, where “professionalism” is adopted as a mechanism of avoiding the emotional response to certain crimes. Clearly part of the notion of human rights is setting a benchmark where, in cases where we do not have “sympathy for the devil”, we are creating a distance between the act and the actor, between the offence and the offender. However, unlike the culture that has been discussed above, which is rooted in notions of inferior differences and control, the rights culture calls for recognition of their inalienable rights, the right to be treated as a human being, with humanity and decency.

wrongdoers which, rather than supporting or justifying, actually undermines the moral and political legitimacy of current penal practices.

In terms of our understanding of 'crime' we should look to the contextualisation of social divisions, such as 'race', gender, sexuality and class, and their links with power and criminalisation (Scraton & Chadwick, 1991). To challenge the "techniques of neutralisation" we must continue to highlight the discrepancies between the criminalisation and punishment of crimes of the powerful and the powerless; the problem of conflating 'good' and 'evil' with good and bad people through the construction of a negative, dehumanised one dimensional caricature of the offender situated solely in the nature of her/his "crime"; and ultimately point to the universality of criminal activity and in the end the similarities between those inside and outside the prison walls. In short, whatever the perceived or actual differences between prisoners and non-prisoners, we must stress that we are all united by a common or shared humanity. To truly safeguard human rights in prison we must be critical, continue to ask difficult questions and highlight structural inequalities. We must learn to live with the inherent ambivalence of human society, highlighting both the need for legal guarantees and the contingency of imprisonment. We need political commitment to the acknowledgement of all sufferers, whatever they have done in the past, either good or bad.

The neo-liberal emphasis on the responsabilisation of the powerless and its negation to provide social security has been combined with a greater willingness to punish the subproletariat. In this context the aim must be to conceptualise a positive rights agenda

that is consistent with both those advocating strategies for a wider responsabilisation of the powerful, and thus obligations on the capitalist state to positively support a citizen (Swaaningen, 1997), and that this is done so in a manner which is consistent also with the abolitionist tradition of promoting an individual's residual or negative rights (Mitford, 1972). This double-barreled positive rights agenda must both challenge the suspension of the right to liberty and limit the legitimate powers of the state to punish and refocus state activity towards the welfare needs of its citizens. Perhaps the most effective way to do this is to firmly place the rights of prisoners on an equivalent basis to those of all citizens and to look for greater clarification and to strengthen the positive rights bestowed through citizenship (Brown, 2002). Positive rights cannot stand alone, but they must be a central part of any strategy wishing to produce an accountable, socially just and democratic society.

The liberal humanitarian principle of normalisation needs to be followed through (King and Morgan, 1980). It is not just the suspension of some rights through punishment which are problematic, but the suspension of a citizen's liberty that should be challenged. Therefore rather than follow the special positive rights agenda that inevitably naturalises the suspension of the right to liberty (Richardson, 1984; Morgan, 1994) the focus should be on strengthening the positive legal rights of citizens, imprisoned or otherwise. In this sense the positive rights of prisoners should be advocated, but only by following the trajectory of an abolitionist critique that goes to the heart of the assumptions regarding punishment as the suspension of rights. For liberal humanitarian penologists prison has

become a detestable solution that we cannot live without (Foucault, 1977). It remains detestable, but it is hardly a solution, and is something we *can* live without.

To be sure talk of rights can have no ethical content when the context they are applied to fails to challenge dehumanisation. A positive rights agenda for citizens is one which facilitates and acknowledges their humanity. This approach provides a useful platform from which to build an alternative vision of prisoners' human rights. As prisoners are deliberately placed in a disempowered and structurally vulnerable position, we have a corresponding and unreciprocated responsibility for them. It is ethically and politically essential that prisoners are treated with tolerance and respect; that they are responded to as human beings; that their needs and suffering do not go unheeded. In other words it means

adopting the Levinasian principle of responsibility before reciprocity: the fact that people's actions, beliefs or attitudes are reprehensible or beyond my comprehension does not mean that I do not have the responsibility to defend their rights. (Hudson, 2003b: 223)

I do not have to like, sympathise or empathise with a prisoner to acknowledge their shared humanity, or my responsibility for prisoners' collective wellbeing, socio-economic or otherwise (Cohen, 2001; Bauman, 1989). I may indeed dislike somebody intensely, but am still required to acknowledge their shared humanity, shared vulnerability to suffer and the pains they would encounter through experiencing penal hardship. This responsibility for advocating prisoner *human rights without reciprocity* leads to a commitment to the maintenance of human dignity and respect for those dealt with by the criminal 'justice' system, and the promotion of more appropriate means of

resolving disputes and responding to problematic behaviours. Such a responsibility for wrongdoers also necessitates a greater commitment to social justice, to a positive rights agenda, and to a commitment to respond to social problems with strategies that are rooted in social inclusion not exclusion. This takes us beyond the assumption that prison itself is a natural, legitimate or inevitable means of responding to harms.

Alternatives must be based on honest and integral research that appears relevant to those engaged in penological policy and practice and can both compete with and contradict the punitive rationale. Alternatives must be informed by a humanitarian commitment to the pains and human suffering that pertain in prison here and now and facilitate the acknowledgement of that suffering in its fullest sense. Finally, alternatives must be rooted in a commitment to the rule of law, democracy, penal accountability and social justice. It is through appeasing these “three voracious gods” (Cohen, 1998) that challenges to prison officer occupational cultures must be assessed and an alternative counter-hegemonic worldview articulated.

APPENDIX ONE:
PRESTON PRISON
SEMI-STRUCTURED INTERVIEW SCHEDULE

PART ONE: Staff Concerns

PART TWO: Definitions Of Prisoners' Rights

PART THREE: Specific Occupational Practices & Culture

PART FOUR: Responsibilities & Privileges

PART FIVE: State Policy & Prison Management

PART SIX: Human Rights Act (1998)

PART SEVEN: Changes & Rights Culture

PART EIGHT: Conditions / Prisoners' Rights Issues

PART NINE: Protecting Prisoners

PART TEN: Additional Staff Comments

TOPIC **TIME**

1. STAFF CONCERNS

Working Conditions

Working In Prison & 'Personal Cost'

Isolation / Boredom / Stress / Sickness

Relationships With Other Staff

2. DEFINITIONS, PERCEPTIONS, INTERPRETATIONS

Staff Definitions of Prisoners' Rights Issues

Perceptions Of Prisoners / Stereotypes / Individual

Techniques Of Neutralisation / Denial

Less Eligibility / Positive Rights

3. OCCUPATIONAL GRADE: PRISON OFFICERS

Priorities Of Prison Officer Role

Control / Security / Order / Surveillance

Prison Rules / Discretion

Defining Priorities On Wing / Landing

[Personal] Accountability / Support

'Duty Of Care'

Uses Of Humour [positive / negative]

Relationships With Prisoners / 'Moral Universe'

Good Practices: Humanity / Names / Personal Officer

Discipline of Staff / Prisoners

TOPIC **TIME**

4. RESPONSIBILITIES & PRIVILEGES

Responsible Prisoners / Listeners
Ascribed / Earned Respect
Incentives & Earned Privileges / Compacts
Control Issues

5. POLICY & PRISON MANAGEMENT

Key Performance Targets / Indicators
Prison Service Standards
Prison Service Orders / Governors Instructions
Efficiency / Economy / Effectiveness / Risk
Decency / Respect / Diversity

6. THE HUMAN RIGHTS ACT 1998

Training
Information about HRA
Perceptions
Implications: Changes In Working Practices / Culture

7. CHANGE & RIGHTS CULTURE: RESISTANCE OR ACCEPTANCE

Resistance / Acceptance Of Change
Power & Authority In Prison
Culture Of Rights / Culture Of Control
Introduction Of Further Prisoners' Rights

SEMI-STRUCTURE INTERVIEW SCHEDULE: PRISON OFFICERS

TOPIC **TIME**

8. CONDITIONS & SPECIFIC RIGHTS ISSUES*

Overcrowding / Physical Conditions
Prison Regime & Rights Infringements
Remand Prisoners
Vulnerable Prisoners / Poor Coping Prisoners
Suicide / Self Harm / HIV / Safety / Security
Mental Health / Health Care
Religion
Visits / Outside Links/ Communication
MDT's / Privacy / Treatment Programmes
Procedures / Adjudications / Punishments
Substantive Rights / Citizenship / Welfare Rights
Shared Humanity / Inherent Dignity / Respect
Experiences of Confined / Acts Of Resistance

9. PROTECTING PRISONERS

Prisoner suffering and hardship
Role Of Staff As Rights' Guardians
Chief Inspector / Prison Ombudsman /CPT
Board Of Visitors
Law / Courts /Accountability / Penal Democracy
Negotiated Regimes

10. ADDITIONAL STAFF COMMENTS

*Relates To Issues Raised In Interview

HUMAN RIGHTS ISSUES

Overcrowding

Physical Conditions

Prison Regime & Rights Infringements

MDT's / VDT's

Privacy

Safety

Security, Order & Control

Remand Prisoners

Vulnerable Prisoners / Poor Coping Prisoners

Mental Health / Health Care

Suicide / Self Harm

AIDS / HIV

Care & Custody

Religion

Visits / Outside Links

Communication

Treatment Programmes

Procedures / Adjudications / Fairness

Punishments

Substantive Rights

Citizenship

Welfare Rights

Shared Humanity / Inherent Dignity

Respect / Diversity / Respond

Experiences of Confined / Acts Of Resistance

(In)Justice

Suffering in prison

APPENDIX TWO:
PRISON OFFICER BACKGROUNDS AND RESEARCH INFORMANTS

1. Interviews Undertaken

Total Number of Interviews: 38
Prison Officers {residential / discipline}: 19
Senior Officers: 14
Principal Officers: 5
Total interviewed of overall prison officer population: 1/5

2. Age:

21-30: 0
31-40: 12
41-50: 14
50+ : 12

3. Gender:

Male: 36 Female: 2

4. Ethnic background:

'White' / 'English' / 'British' / 'C of E' – 38

5. Previous occupation:

Not Applicable: 14
Armed Forces: 11
Other: 13

6. Length of service:

Minimum: 10 years
Maximum 31 years
Average length of service: 18 years

7. Time served at prison under study:

Minimum: 3 years
Maximum: 28 years
Average time at prison: 10 years

8. Total number of prison officers working at prison

05/08/02 – 196 Prison officers
Male: 183 (93.4%) Female: 13 (6.6%)

9. Numbers absent at time of study

Sick: 30

10. Prisoner population at prison at time of study

Operational Capacity: 570 [increased to 664 in 2003]

TABLE 1: PRISON OFFICER SOCIAL BACKGROUNDS

Interview number and date	Grade of prison officer	A G E	Gender	Ethnic Back-ground	Previous occupation	Length of service	Length served at prison
[1] 12/08/02	Prison Officer	31-40	Male	'white English'	Transport Manager	12 years	9 years
[2] 12/08/02	Prison Officer	50+	Male	'White'	Armed Forces	13 years	8 years
[3] 13/08/02	Prison Officer	50+	Male	'white British'	Printer	13 years	11 years
[4] 16/08/02	Prison Officer	31-40	Male	'Brit'	N/A	11 years	8 years
[5] 12/08/02	Senior Officer	31-40	Male	'white / English'	Armed Forces	16 years	16 years
[6] 18/08/02	Senior Officer	41-50	Male	'white'	Armed Forces	17 years	12 years
[7] 14/08/02	Prison Officer	31-40	Male	'White'	N/A	15 years	12 years
[8] 14/08/02	Senior Officer	41-50	Male	'white / English'	Armed Forces	13 years	13 years
[9] 14/08/02	Prison Officer	31-40	Male	'white'	Armed Forces	10 years	9 years
[10] 16/08/02	Prison Officer	50+	Male	'white'	Engineering	28 years	28 years
[11] 16/08/02	Senior Officer	50+	Female	'white / euro'	N/A	25 years	10 years

[12] 22/08/02	Prison Officer	41- 50	Male	'white'	N/A	20 years	7 years
[13] 19/08/02	Senior Officer	50 +	Male	'White'	Armed Forces	24 years	24 years
[14] 19/08/02	Senior Officer	50 +	Male	'White'	Sales	16 years	3 years
[15] 19/08/02	Prison Officer	41- 50	Male	'White'	Farm Worker	13 years	10 years
[16] 20/08/02	Prison Officer	31- 40	Male	'British'	Engineer	14 years	10 years
[17] 20/08/02	Prison Officer	41- 50	Male	'British'	N/A	24 years	13 years
[18] 20/08/02	Prison Officer	41- 50	Male	'British'	Painter and Decorator	15 years	10 years
[19] 21/08/02	Principal Officer	41- 50	Male	'White'	Armed Forces	23 years	7 years
[20] 22/08/02	Senior Officer	50 +	Male	'W'	Armed Forces	26 years	12 years
[21] 23/08/02	Senior Officer	31- 40	Male	'British'	Lifeguard	17 years	5 years
[22] 23/08/02	Senior Officer	41- 50	Male	'White'	N/A	23 years	13 years
[23] 24/08/02	Principal Officer	41- 50	Male	'White'	N/A	24 years	14 years
[24] 24/08/02	Senior Officer	41- 50	Male	'White'	Armed Forces	27 years	10 years

[25] 25/08/02	Senior Officer	50 +	Male	'British'	N/A	22 years	8 years
[26] 25/08/02	Prison Officer	50 +	Male	'White / English'	Armed Forces	16 years	10 years
[27] 27/08/02	Prison Officer	41- 50	Male	'white'	N/A	20 years	6 years
[28] 27/08/02	Prison Officer	31- 40	Male	'British'	Salesman	14 years	12 years
[29] 27/08/02	Principal Officer	41- 50	Male	'White'	Glass Worker	13 years	13 years
[30] 28/08/02	Senior Officer	31- 40	Female	'White'	N/A	11 years	3 years
[31] 29/08/02	Prison Officer	50 +	Male	'British'	Armed Forces	24 years	10 years
[32] 30/08/02	Prison Officer	31- 40	Male	'British'	N/A	11 years	6 years
[33] 30/08/02	Prison Officer	41- 50	Male	'White/ British'	Local Government	16 years	7 years
[34] 4/09/02	Principal Officer	31- 40	Male	'C of E'	Chef	12 years	5 years
[35] 04/09/02	Prison Officer	31- 40	Male	'White British'	N/A	14 years	12 years
[36] 05/09/02	Principal Officer	50 +	Male	'British'	Engineer	31 years	4 years
[37] 06/09/02	Senior Officer	50 +	Male	'White'	N/A	31 years	26 years
[38] 06/09/02	Senior Officer	41- 50	Male	White	N/A	14 years	9 years

TABLE 2: PRISON OFFICER OCCUPATIONAL DISCOURSES

Number	Grade	<i>Discourse 1</i> Careerist (Managerial)	<i>Discourse 2</i> Humanitarian (Normalisation / Rehabilitation)	<i>Discourse 3</i> Disciplinarian (Authoritarian)	<i>Discourse 4</i> Mortgage Payer (Alienated)
[1]	Basic			*	
[2]	Basic			*	
[3]	Basic			*	
[4]	Basic			*	
[5]	Senior		*		
[6]	Senior		*		
[7]	Basic			*	
[8]	Senior				*
[9]	Basic		*		
[10]	Basic			*	
[11]	Senior		*		
[12]	Basic				*
[13]	Senior			*	
[14]	Senior			*	
[15]	Basic			*	
[16]	Basic			*	
[17]	Basic				*
[18]	Basic				*
[19]	Principal	*			
[20]	Senior			*	
[21]	Senior		*		
[22]	Senior			*	
[23]	Principal			*	
[24]	Senior			*	
[25]	Senior				*
[26]	Basic			*	
[27]	Basic			*	
[28]	Basic				*
[29]	Principal			*	
[30]	Senior		*		
[31]	Basic			*	
[32]	Basic			*	
[33]	Basic			*	
[34]	Principal	*			
[35]	Basic			*	
[36]	Principal			*	
[37]	Senior		*		
[38]	Senior			*	

1. Number of officers in Discourses 1-4 overall

Total Number: 38

1. Careerist: 2
2. Humanitarian: 7
3. Disciplinarian: 23
4. Mortgage Payer: 6

2. Breakdown of Basic Grade

Total Number: 19

1. Careerist: 0
2. Humanitarian: 1
3. Disciplinarian: 14
4. Mortgage Payer: 4

3. Breakdown of Senior Officers

Total Number: 14

1. Careerist: 0
2. Humanitarian: 6
3. Disciplinarian: 6
4. Mortgage Payer: 2

4. Breakdown of Principle Officers

Total Number: 5

1. Careerist: 2
2. Humanitarian: 0
3. Disciplinarian: 3
4. Mortgage Payer: 0

RESEARCH INFORMANTS

The research findings are based primarily on officer interviews and conversations with other officers. Other informants also contributed to the wider understanding but are only very rarely directly referred to in the thesis. For clarity a summary of the numbers of informants, as documented in a quantitative manner in the prison journal between July – September 2002, are reproduced below. ‘Interview’ here refers to a semi-structured interview undertaken on a one to one basis. ‘Conversation’ here indicates a much broader range of interactions from casual conversations and meetings to detailed discussions on the research topic that were not followed up with an interview.

1. Prison Officer Informants:

Interviewed: 38
Conversations: 27
Total: 65

2. Non- Prison Officer Staff Informants

Interviewed: 30
Conversation: 10
Total: 40

3. Prisoner Informants

Interviewed: 0
Conversation: 20
Total: 20

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