

Punishment & Society

<http://pun.sagepub.com/>

Empathy and punishment

Michelle Brown

Punishment & Society 2012 14: 383

DOI: 10.1177/1462474512452507

The online version of this article can be found at:

<http://pun.sagepub.com/content/14/4/383>

Published by:



<http://www.sagepublications.com>

Additional services and information for *Punishment & Society* can be found at:

Email Alerts: <http://pun.sagepub.com/cgi/alerts>

Subscriptions: <http://pun.sagepub.com/subscriptions>

Reprints: <http://www.sagepub.com/journalsReprints.nav>

Permissions: <http://www.sagepub.com/journalsPermissions.nav>

Citations: <http://pun.sagepub.com/content/14/4/383.refs.html>

>> [Version of Record](#) - Oct 9, 2012

[What is This?](#)

Empathy and punishment

Michelle Brown

University of Tennessee, USA

Punishment & Society

14(4) 383–401

© The Author(s) 2012

Reprints and permissions:

sagepub.co.uk/journalsPermissions.nav

DOI: 10.1177/1462474512452507

pun.sagepub.com



Abstract

With its foundations of injury, harm, and pain, the sociology of punishment is poised to give attention to the role of empathy at precisely those instances of social experience where human connection, understanding, and social knowing are destroyed, avoided, prohibited, or simply impossible. I explore this predicament through a specific case drawn from fieldwork in a geriatric prison, where institutional and intersubjective relations established by prison workers challenge empathic connections. The ‘graying’ of the prison population, one of mass incarceration’s unanticipated consequences, brings issues of pain, death, and dying to the fore. The majority of research to date on aging and dying in prison has had an important descriptive and policy orientation. There has been less of an emphasis upon the theoretical underpinnings of such a turn and the nature of intersubjective relations at the intersection of care and punishment. There have been no intensive ground-level analyses of aging in prison against the backdrop of mass incarceration in the contemporary era. This study seeks to fill that vacuum while offering a more complex understanding of the relevance and limits of empathy to the study of punishment.

Keywords

aging and illness, catastrophic penal institutions, catastrophic thinking, empathy, mass incarceration

Introduction

An examination of empathy affords a powerful site from which to rethink the fundamental commitments of social science broadly and the sociology of punishment specifically. In this pursuit, I take empathy to be a mode of sociality – a site

Corresponding author:

Michelle Brown, Department of Sociology, University of Tennessee, 901 McClung Tower, Knoxville, Tennessee, 37996-0490, USA.

Email: mbrow121@utk.edu

through which various dispositions, orientations, encounters, and actions materialize – or fail to materialize – amid specific sets of cultural conditions. Here, as philosopher Nancy Sherman (1998: 84) puts forth, empathy relates fundamentally to ‘explaining others’ behavior and communicating back that understanding,’ a project central to the social sciences, where ‘developing empathy is part of the perfection of our sociality’. And yet, as empathy researchers Jodi Halpern and Harvey Weinstein (2004: 564) argue, in efforts dedicated to social justice and reconstruction, ‘Too often, the rebuilding of relationships is relegated to low priority if it is considered at all.’ Thus, I am interested in the way in which a working elaboration of empathic encounters in everyday life may depend upon the concept of ‘failed’ empathy. I imagine empathy here as a problem of missed readings or flawed identification – one caught up in the mundane complexities of mutual understanding. I argue that in the everyday world at the site of injury – the place of crime and punishment – empathy occurs in a manner that is often incomplete in its totality, opaque in its social dimensions, and caught up in the force of positionality, thereby susceptible to projection, immersion, denial, and loss of self. This makes such contexts strategic sites for social and criminological research. With its foundations of injury, harm, and pain, the sociology of punishment in particular is poised to give attention to the role of empathy at precisely those instances of social experience where human connection, understanding, and social knowing are destroyed, avoided, prohibited, or simply impossible. I explore this predicament through a specific case drawn from fieldwork in a geriatric prison, where institutional and intersubjective relations established by prison workers challenge empathic connections.

Starting points for the study of empathy

A fundamental launching point for a social constructionist account of empathy necessitates an understanding of its practice as always a work in progress – in the majority of social encounters, experientially incomplete and partial. How various modalities of empathy are constituted in this field of encounter is a primary question. For instance, efforts to regard the other/alter from within the frame of perpetration, in a society that imprisons more persons than any other on the planet or in history for the purposes of crime control, sets in motion a particular kind of reading – one premised in judgment. The ability to incite an open read of others, an empathy that is curious, engaged, authentic, committed, flexible, and moved is a fundamental problem in such a context. For social scientists, this challenge is grounded in the relation between empathic exploration and social justice: the fact that our disciplinary commitments leave us fundamentally among those caught in the midst of unchosen relationships in contexts and conditions that are asymmetrical, stratified, and unfair – where the role of empathy in interpersonal communication, although a vast repository for the restoration of the social, is simultaneously fraught with mistakes, misfires, uncaring, undeserving, and impossible reads.

To understand the complexity of empathy's role, I focus on a processual, reflexive empathy that is not automatic, occasionalist, or inevitable but constitutive of the intersubjective within a normative framework (Houser, 2010). This account necessarily privileges empathy's relationship to vulnerability and suffering. In that effort and with attention to the law, a different kind of question emerges: What is the fraught nature of empathic encounter at the site of injury and harm? In defending itself against this very query, social sciences often imagine themselves as sites defined against the encroachment of the subjective, affective, and emotive. However, as sociolegal scholars have carefully demonstrated, the place of passions – anger, compassion, mercy, vengeance, and hatred – are central to the stories of crime, law, and punishment and the lives they shape (Bandes, 1999; Sarat and Hussain, 2006). Empathy serves often, in these discussions, as a medium or interlocutor for the articulation of these passions and their relationship to a sense of justice. In this capacity, it has both prosocial and negative proclivities that are valuable to work through in relationship to crime, law, and punishment.

In the cultural context of the West, empathy's naturalized beneficence takes on heightened expression. For that very reason, it is important to start with some of the negative underpinnings of empathic formulations. Because empathy often implies choosing a side, a favoring of one who is more closely like one's self or whose feelings seem more urgent and immediate than others, it may culminate in a narrow perspective that is partisan and inconsistent with the equality of law. Empathy may align with violence and vengeance and thus requires judgments about the proper place of emotion and identification in social life and jurisprudence. It may occur in excess – one might empathize too much with another and, in the process, either withdraw or lose a sense of self, prompting a return to self-concern and the neglect of another. In the case of crime and punishment, such alignments are acutely problematic as loss of self is often the foundation for a dangerous form of aggressive solidarity and excessive rage in response to perpetrators that does little to support the kind of clear-headed deliberation needed for recovery of victims and offenders alike (Garland, 2001, 2005). In the midst of the projection or loss of self, empathy may easily cross into something else, an emotional irrationality that is naturalized and justified in the name of victims, even as it profoundly devalues real experiences of victimization (and, often, on the part of the empath, unexperienced) vulnerability. Finally, empathy can arise from unworthy motives. Empathy does not prevent one from taking pleasure in another's pain – the infamous invocation of *schadenfreude* – the kind of dangerous formation that always lies in wait in the easily corrupted relationships between jailors and prisoners, police and suspects, interrogators and the tortured. Perhaps most insidiously, empathic knowledge may enable one to manipulate another for one's own ends – an everyday practice that allows the pursuit of self-interest, manipulation, and deception. Even in its most well-intentioned formations, empathy risks facilitating patronizing, even colonizing, benevolence. The history of prison reform efforts is nothing if not the story of the formation of power through the 'conscience and convenience' of middle class world views, a wicked past of paternalism,

arrogance, and violation (Rafter, 1985; Rothman, 1980). In short, justice settings are rife with failures of empathy and thus breeding grounds for fear, mistrust, stereotypes, feelings of betrayal, discrimination, pressure, and potential violence.

One formidable challenge, then, for the sociology of punishment is the cultivation of good judgment and deliberative decision making, the fostering of an 'empathetic understanding' that does *not* 'all too quickly become incipient moral judgment' (Sherman, 1998: 90). In crime and punishment encounters, empathy materializes across a risky, complex horizon of possibilities, largely overlooked and yet expressing the potential to remind us that over the language of rights, reason, and individualism, first and foremost, law in society is most often about the way that humans find themselves in the midst of unchosen relationships, sites with little room for shared feeling or emotional attunement, that, nonetheless, impose a social and ethical responsibility on the individual and the collective.

An empathically attuned approach to law must, then, give attention to the generative power of a truly imaginative empathy with multiple, culturally contingent meanings. This labor begins in the realm of partiality: there can be no totalizing definition of empathy. More significantly, one can perhaps never fully experience empathy except in its incompleteness as a worthy but aspirational ideal. As anthropologist C Jason Throop (2008: 421) writes,

our own capacity to develop cultural and historical understanding is arguably predicated on these capacities at cultivating an openness to, and thus approximating, but, never reaching the subjective stance of another, who is forever removed from, and yet constituted within, our own individual sphere of awareness.

Because the definitions and understandings of empathy we work with are generally positioned in the realm of the abstract, then empathy 'in the field' and 'on the ground' may require alternative dimensions in its articulation. These limits are particularly apparent in the way in which in social contexts empathy takes on an effort-full, work-oriented, processual aspect, manifesting as the *attempt* by one self-aware self to comprehend non-judgmentally the positive and negative experiences of another self. As social psychologist Lauren Wispé (1987: 19) presents one conceptualization of the term, it is 'the self that feels itself striving, yielding, overcoming obstacles'. Here, one perpetually engages in an effort to fill in the other's stream of consciousness, an inevitably fragmented process, with hits and misses. In fact, quite often, individuals most likely express understanding, with both parties believing in the nature of their understanding, when they are feeling quite different things. Ultimately, any notion of empathic accuracy may depend upon an ongoing dialogue within the intersubjective encounter, where follow-up and auto-correction allow for better perspective taking (Halpern, 2001). In this incomplete effort, reflexive potentiality is critical. Anthropologist Renato Rosaldo (1989 [1984]: 8) famously argues in his widely cited 'Grief and a headhunter's rage' that 'All interpretations [of other people's lives] are provisional; they are made by positioned subjects who are prepared to know certain things and not others', a conclusion he

achieved only in the aftermath of his wife's untimely death in the field and his consequent encounter with a deeply personal and irrational grief.¹ In contexts of injury and vulnerability, empathy provides the possibility, but no guarantee, for understanding for *both* parties, including emotions often unclearly understood by either. Over time and with practice, the durability of social understanding may grow toward a hard-earned maturity and mode of acknowledgment. But what is to be made of empathy at the moment of its undoing? Of its very impossibility? How is the spark of 'curiosity', interest, care, and regard disappeared and, in the rare case, instantiated – in the very moment that individuals seek to turn away, are repulsed, or simply indifferent?

The case

In the everyday life of a reactive criminal justice system, empathy most often materializes as a possibility in the aftermath of harm done, meaning that whatever form empathic knowledge takes, it often develops in contexts of pain, confusion, and humiliation as victims and perpetrators attempt to make sense of their now different lives. These positions raise fundamental questions about how an empathic stance can be constructed and maintained at the moment of the failure of understanding. In the aftermath of crime and punishment, both victims and perpetrators will have numerous reasons to promote and hinder understanding of themselves, often fearing how others, particularly those in power, will use intimate knowledge against them and their already maligned subject positions. This kind of isolating behavior is part of the basic sociology of imprisonment and its fundamental 'us v them' hierarchical power structure. These kinds of 'empathic divides' are not unusual in criminal justice contexts, where class and race are powerful solvents in intersubjective relations (Lynch and Haney, 2011). Nonetheless, for those who punish (citizens, judges, jurors, attorneys, and prison workers), questions about the nature of care and understanding are present at every decision-making point in a culture that has long merged rehabilitation and retribution. Research shows that perspective taking and mind reading in such contexts take place amid complex 'hidden landscapes of intention, motivation, and desire' (Hollan and Throop, 2008: 387; Mattingly, 2008). Do people who care for others, out of professional or civic necessity, become better empathizers or worse? Do deprivation and vulnerability in punitive care contexts lead to increased empathy or aversive distancing? In this section, I explore the manner in which the crisis of mass incarceration in the United States has led to strange convergences in empathic encounters amid the institutionalization of the ill and aging by focusing upon how prison workers, who must administer care in custody contexts, run up against and actively construct the limits of empathy.

The sociolegal context for mass incarceration of the ill and aging

As studies have found, 'the fastest-growing prison subgroup is men age fifty years and older, of whom 85% have multiple chronic health conditions' (Loeb and

Steffensmeier, 2006: 269). Ohio estimates that inmates age 50 and older will represent close to 25 percent of its general population by the year 2025. Parallel predictions are made across state systems. Health conditions have been the grounds for recent federal court intervention in the largest single prison system in the world, the state of California. In this way, mass incarceration serves as a portal into the aging revolution that follows baby boom demographics (by 2030, one in five people will be age 65 or older – growing to 70 million) and social response to illness, death, and dying – what many experts are referring to as the USA's 'health care death spiral' (Anno et al., 2004; Chiu, 2010).

The majority of research to date on aging in prison has had an important descriptive and policy orientation (Aday, 2003; Sparks and Crawley, 2005a, 2005b, 2006). As well, a series of art exhibits have foregrounded the rise of aging, death, and dying in prison settings (Levine, 2000; Waselchuk, 2010). There has been less of an emphasis upon the theoretical underpinnings of such a turn, the relationship between aging and imprisonment to other types of carceral formations across society, and the nature of intersubjective relations at the intersection of care and punishment. There have been no intensive ground-level analyses of this phenomenon in the contemporary era. This study seeks to fill that vacuum, building from data drawn from interviews with 75 prisoners, staff and administrators across the Ohio prison system, half of which took place at a prison designated to confine the aging and ill, supplemented with others taken at facilities across the state prison system. Observational data were drawn from over 250 hours in the institution across a period of three years, observing different units and departments within the facility. Participants were drawn from a cross-section of prisoners and prison staff with an emphasis upon medical and mental health staff, including nurses, physicians, psychologists, social workers, and counselors. In order to situate the interpretations and meanings of aging and illness more broadly in this specialized setting, staff without medical expertise were included in the sample, including frontline correctional officers, case unit managers, teachers, recreation staff, program specialists, execution team members, the deputy warden and warden. The outcome is framed as an ethnographic account in which we see the extension of penalty into broader configurations of vulnerability against the complex failure of empathy.

My research site is nestled in the ridges of south-eastern Ohio, situated in the rural landscape bordering Appalachia, a correctional facility that houses roughly 500 inmates. The average age of prisoners confined at the facility, a former tuberculosis hospital with cramped offices and limited space, is 62. The facility's uniqueness is apparent the minute the sally port doors close behind you. Inmates move slowly through hallways, many with canes, walkers or in wheelchairs. Medical lines are long. And there is a certain sedentariness to the library, dorms, recreation areas, and prison yard. In the dormitories, bunks line the tiers with many men sleeping or resting, some with oxygen tanks beside their beds. The facility's website points to its unusual character in its mission statement: to provide 'quality programming for an aging offender population, so they may become productive and

respectful citizens upon their return to society'. The state's emergent geriatric hub, this facility was identified as cutting edge by national media, politicians, and social scientists (none of whom did site visits) largely in connection with two events. The first was the publication of a state report, titled 'Older offenders: The Ohio initiative' (Ohio Department of Rehabilitation and Correction, 1997), that achieved widespread attention. My observations and interviews, occurring 10 years after the report, found that many of the document's recommendations had not been met at the time of my research, including the establishment of a second institution within the state specifically for the housing of older male offenders, separate housing pods for older offenders across the state system, and plans for expanded programming, new medical equipment, and specialized furniture (hospital beds, walkers, and wheelchairs). The second event that garnered the facility a good deal of publicity was a class action lawsuit on behalf of Ohio's 45,000 prisoners, launched by Rodney Fussell, an inmate who had been denied treatment for Hepatitis C and was fighting what had become, without treatment, irreversible liver disease. The case centered upon a violation of the eighth amendment, with claims that deliberate indifference and denial of treatment constituted cruel and unusual punishment. In October 2005, the Ohio Justice and Policy Center announced that it had negotiated a settlement that called for the state of Ohio to hire approximately 300 new, licensed medical staff, including 21 new physicians, to implement improved quality control measures, and to revise all medical policies and protocols. This kind of legal outcome serves as an example of how claims to citizenship and rights in an unlikely setting for recognition are achieved; however, on the ground, the settlement's implementation was complicated and misdirected, resulting in a variety of unanticipated consequences, including the frustration of prisoner-staff relations.

Law and empathy in everyday life at a geriatric prison

As a result of the settlement, the facility where I was conducting research was allowed to acquire a staff of 15 nurses, a full-time physician, and a part-time nurse practitioner in the medical department. The assistant health care administrator described daily life in the aftermath of Fussell as one in which a larger staff, with less training, dealt with constant inmate requests and were in constant interaction with the department of rehabilitation and correction, university, and nearby medical centers as well as other departments within the facility, including custody, mental health, and administration. Close proximity in working quarters, chronic demands by inmates, and new changes in staffing and procedure had created in some contexts confusion and frustration as well as stressed interpersonal dynamics. Staff members were often angry and resentful, arguing that there was too much change with no direction. There were numerous personality conflicts that led to problems in sharing information. The facility workforce faced high levels of stress, illness, and burnout with administrators largely functioning in a perpetual mediator role. Importantly, no hospice, palliative, or end-of-life care training was

prioritized in the settlement or the revision of medical protocol. The facility's health care administrator described the impacts upon staff in this blunt manner:

They're bitter. Bitter. They're very angry people who get a very sick sense of humor to survive this environment. Some people get very cruel and take their frustrations out on those that they see less than them. That's very difficult for me. It...to watch it...really borders on abusiveness and...because the laws and rules have changed [a post-Fussell reference], it's created more anger for the staff and they don't have a way to release it except by drinking. They can't do drugs. They might get tested. So they drink.

Such a setting, by sheer institutional function and the aggravation of law on the ground, is a site where care exists at a vortex of suspicion and workers feel fundamentally distracted from what they perceive to be their 'real' job. The absence of training, resources, and pathways to understanding pain, aging, death and dying are apparent in an example shared again by the facility's health care administrator:

They were sending a man back to us that needs daily or every other day treatment for his cancer and he's on morphine injections. Well, we don't have morphine here and we don't have the resources for him to get that treatment so we're fighting to keep him up there [other facility] so that he gets what he needs. A person on morphine, you don't transport them. That's a good example of the frustration: he's been released back to you. No, we, we're not equipped. We don't have morphine here and we may not be able to get it here. So — hospital [other facility] has the hospice area and his family's trying to get him released as a dying inmate. They have a program where they can do that. We don't. So almost daily something like that comes up where we get interrupted and we have to stop everything and focus on that.

A reflection of harsher and longer prison sentences, the war on drugs, and the politicization of crime (what criminologists label 'irrational' crime policy), the 'graying' of the US prison system as the mass incarcerated move into old age remains yet another unanticipated consequence of the US imprisonment binge, a new phenomenon for prisons who are unprepared by and large. As states scramble to reallocate prison budgets in concert with the delivery of medical services, at the cost of \$60–70,000 per year per inmate (as opposed to \$27,000 for general population), a multiplicity of factors converge in troubling ways for those entrusted to the State (Anno et al., 2004). Aging and ill prisoners are subject to accelerated signs of aging and deterioration, a reduction in human interaction and tendency to withdraw; few connections to family or friends; high levels of stress and chronic disease, including arthritis, hypertension, heart problems, ulcer disease, prostate problems, incontinence, sensory impairment, impaired flexibility, ambulation, and general mobility, decreased sensory acuity, muscle mass loss, respiratory illnesses, cardiovascular disease, strokes, Alzheimer's, and cancer. They fare equally poorly in mental health, suffering high rates of depression, eating disorders, loneliness,

alienation, confusion, and suicide. They face complex fears of release, illness, death, and dying.

Everyday life in these contexts centers fundamentally upon how to read the other as staff spend the work day interpreting prisoner demeanor, behavior, and degree of illness. A key site for empathic understanding, such a possibility often devolves into a *responsibilization of the other* in a manner that devalues the complexity of the real. Efforts to place one's self in the shoes of another generally occur through the lenses of desert and a second person attribution of rationality. For example, as one nurse comments, 'You committed this crime. You've lived your life this way and now you're sick and in prison. That's not my problem.' Illness becomes a key site from which to make the self accountable. These are sites where exclusion and illness are made to appear self-generated even as they pass through the institutions of prisons, family, education, economy, and health care systems. This responsibility discourse is internalized by prisoners and staff in a manner that is neither self-empowering nor attuned to agency but rather acts to foreclose the very real structural constraints of individual lives. Free will and institutional structure, consequently, intersect in a manner which makes choice a very fuzzy concept (Rhodes, 2004) and benevolent empathy a non-desirable quality – in fact, something from which to distance one's self.

This responsibilization is further complicated by an institutional exacerbation of needs. The fundamental finding of prison sociology is that prisoners grow more dependent while incarcerated due to what it means to be imprisoned within a total institution (Goffman, 1961; Sykes, 1958). Such processes result in the reduction of inmates to the status of child-like dependence. As one nurse told me,

It's probably not a good way to look at things but to me, most of these guys are just like kids. You know, I can relate to my kids: they whine, they fuss, you know, they cry if they don't get their way, and the majority of the guys are the same way. You've got whiners. You've got chronic complainers. They're down here whinin' after this, whinin' after that. Nothin', nothin' you do's good enough and then it gets really frustrating and it's not just me personally. We all run into that.

The inability to see this structuring of dependence is one of the clear findings of an organizational literature that points at a profound masking effect in social service bureaucracies (Goffman, 1961; Lipsky, 1983), one with ramifications for the provision of care in hospitals, nursing homes, assisted living environments, and other total institution settings. This phenomenon is compounded in a custodial and punitive context centered upon illness and aging and, thus, defined by *need*: the need for special physical accommodations in a relatively inflexible physical environment; need for special programs in a setting where special privileges are disdained as counterproductive to discipline and orderliness; greater need for peace, quiet, and privacy in mass living settings; help in coping with the fast pace, noise, and confusion of modern life in a bureaucratic framework designed for managing aggregate numbers of people. In short, these are environments of scarcity where

deep resources are needed. The Unit Management Administrator described the predicament this way:

The kind of problems we face daily is offenders may not be able to tie their shoes. They may not be able to button buttons. They may not be able to get to chow and be able to carry their meal to the table. They may actually have to have someone carry it out because they own some type of cane, or walker, or wheelchair. So, the problems that we face daily are very unique. It's very demanding. It can be very stressful at times. The inmates are a very needy population. They are quick to come to your office two and three times a day trying to resolve a problem that, you know, is just not similar to a problem that you would face in another facility.

On the ground, this plays out in the ways that aging and ill prisoners are simultaneously frightened of, anxious about, and acutely dependent upon prison staff. On the one hand, prisoners experience a deep skepticism about medical staff, including a chronic fear of manipulation, deception, and denial. They hide their 'real feelings' about life in the facility. On the other hand, each day depends upon making medical claims heard to the only human resources available. These complex formations of self/agency, identity, and ordinary resistance, fundamental to the sociology of the prison and the project of exclusion, are viewed by workers as 'acting out' – and each of these encounters centers around medical claims. As one nurse exclaimed,

These guys' minds just don't work like normal people and they don't appreciate anything. The first thing out of most of 'ems mouths is, 'What am I gonna get out of this?' or 'I'm gonna sue you,' so you don't go home feelin' like you accomplished anything or helped anybody.

Such a cycle leads in a vicious circle to further severing of the social: attention itself – those moments when one human being notices and responds to another – the moment of empathic possibility – is administered, 'guarded', and applied sparingly. The useful individual and 'good' prisoner is the non-problem/non-person, conceived of not as a product of human interaction/contact but of an isolation from interaction, requests or needs, resulting in a subject without autonomy or the very deliberative skills one will need on the outside. Prisoners become more withdrawn and alienated in many cases, aware that knowledge of themselves may be used by staff and other prisoners to hurt or embarrass them. Others 'spin' identities, quickly shifting from one approach to the next, in order to create claims with persuasive appeal to a nonresponsive staff. They may argue, flatter, cajole, or sulk staff into feeling their needs, itself a complex empathic effort to read the minds of workers. In this complex environment, where ill will and mistrust are assumed to be pervasive, where knowledge of others may be intrusive, manipulative, or used as an attack, everyone works hard to conceal knowledge of themselves. Here, identity works as protection, with individuals masking selves in order to negotiate the

failed, dysfunctional spaces of custody and care. Empathic engagements then are largely disciplinary, where self-sufficiency and emotional control are both points of social control and resistance, always privileging individualized efforts over social or political action.

In this way, insidiously, strategies to care converge with both intended and unintended strategies to make people suffer, an inclusion built upon institutionalized and structural patterns of exclusion, shielded from visibility by institutional and state logics internalized by prison workers and prisoners. Here, circuits of care run up against institutionally generated forms of exclusion. Refusals by staff to acknowledge prisoners take the form of deadly silences (disregard of prisoner claims) or a proliferation of words (chronic prisoner claims) that drown out silences that are too difficult to bear. Entropy in conjunction with this kind of deadly will can lead to a lethality in language and the normalization and routinization of emergency. In this environment, staff are habitually predisposed to fail to recognize life and death moments as such. In a disturbing conversation that was remarkably similar to many others I had with medical staff, one nurse argued,

I'm not here to listen to you bellyache. You're an inmate. That's just too bad. But, if you have a serious problem that needs addressed, I'm the man. If you, if you're dyin', stuff like that; emergency type situations. We don't have that many of 'em but when we do it gets kind of exciting for a change. But you know, the whinin' and cryin' about somethin' that's just ridiculous that you normally would not spend money to go to the doctor for, I, I don't go out of my way to fix that problem. 'I'm constipated.' Well, you know, it's not an emergency.

The comment reflects an inability to see the chain of relationships in illness that mark emergency as a chronic context in settings of need (for instance, constipation as a side-effect of medication, a marker of other more serious forms of illness, a natural component of the dying process, or an unnecessary discomfort in most care settings that doctors will seek to remedy). Rather, a dehumanizing discourse materializes, evident here in the words of the Activity Therapist: 'It's annoying... Inmates approach you like you're a piece of cheese and they're the rat. As soon as you walk in the gate, they want something – constantly all day.'

Such contexts ultimately descend into settings where work and life are drained of meaning, with missed mandates expressed in what is perceived as 'not my job', rather than precisely the most meaningful component of what one does. One nurse told me plainly,

the fact that you do see them over and over and over... it gets really aggravating. You know, you can take care of a few things but, it's more a palliative type thing and that gets old. It really gets old. Just like workin' in a nursing home on the outside. You see the same sick people all the time and it doesn't really seem to make a whole lot of difference.

Another nurse told me, 'I'd say 90% of what I do is dealin' with an inmate. I mean, sometimes just talking.' The inability to recognize the force of the social and the intersubjective in these accounts as the primary space of encounter, upon which their profession rests, is a routine formation. The mental health supervisor eloquently articulated the manner in which the fundamentals of the job – the interpersonal necessities of care – are framed by the staff as daily distractions:

I can't think of a day when I did what I planned to do at the beginning of it. The tyranny of the urgent takes you away from tasks that are maybe just as important, in some ways more important in terms of overall planning. There are just issues with individual and administrative channels. If a person is suicidal or very depressed, that person just has to be dealt with at that time and you can't put it off.

The very grounds for the everyday practice of justice then, 'the tyranny of the urgent', is located in the development, or more precisely, the failure to develop, an ability to read empathically a variety of complex, non-crime or punishment related problems, contexts, and needs.

A closer examination of the nature of empathy in such a context demonstrates that it materializes at times as a patronizing benevolence but more often, the pleasure or pure indifference in the pain of another. It is as well a site from which to imagine the criminal as moral other in a manner that reinforces one's own 'virtuous' empathy, through the lenses of just desert. Perhaps a different and more complex possibility is that these are sites where the protection of the self is privileged by workers over the costs of slipping into the shoes of another, in this case, shoes from which one would prefer not to see – those of sick and dying prisoners – by shutting off any bridging connection. Alternatively, in a state of immersion, some actors become depressingly paralyzed through over-identification and the inability to respond in a meaningful way. One nurse insisted,

I believe that what ODRC [Ohio Department of Rehabilitation and Correction] needs is a nursing home facility. And I don't think the proper level of care and the most efficient and economical level of care can be given these folks without that kind of setting. We're not prepared to give it. If we were converted and had even a nursing home, a ward, or a unit that was staffed as a nursing home facility it would require more staff and it would really require a restatement and reworking of uh, the whole institution's mission. That's very difficult and not likely.

In such contexts, empathic possibilities are perennially closed off through futility. Nowhere does this sense of failure and meaninglessness manifest more compellingly than in discussions of reentry. Criminologists have long considered the process of reentering society to be the most critical point (outside of arrest) in the entire criminal justice process. Only recently has it garnered much attention however in the way of research. Although the heart of institutional missions in today's

prison system, carrying much political capital, reentry concerns are still largely abstract commitments, bound up with rhetoric more than practice. As a term, it captures the foundational relations between offenders and society – the necessity of support and accountability in restoration and reintegration. In practice, there is no viable relationship formation at reentry. Compare these two accounts of what is needed at the moment of reentry:

We get things together for them to make sure how they're leaving, how they're going home, whether it be friends or family, of if they're gonna take the bus. We contact the bus for them – find out how much it's going to cost them to get home. (Sergeant/Counselor)

All the assistance you could possibly imagine for – like a newborn baby coming back into the world. (Prisoner)

In the language of the institution, reentry is, as it has long been, a bus ticket, whereas the prisoner likens it to the moment of birth. Of course, a more futile and insidious reality runs through these accounts. The health care administrator offered a complex account of the failure of reentry efforts in relation to those who are aging or ill:

My perspective is that their punishment is to be here and it's our job to give them opportunities. They may not take them, but to provide more opportunities for them to be able to express themselves 'cause if they're sitting here not releasing or processing that stuff that got them here, and their grief about being here, and their grief about not having a family growing up, and the grief about their abuse, and the grief about what they've done and the repercussions of that, and if they don't have places to look at that, then we're sending out the same angry or angrier people whose only coping mechanism is to go back to drugs and alcohol because they don't have any other resources. I think we're far from doing what we need to be doing even, even in the new move for reentry. I think it's really important that they're providing resources in the community. They forgot this population because they're set in their 60s, and 70s, and 80s. They're not gonna go out and go to work. So, what's gonna happen with them? And, we have more and more of them coming in as the baby boomer population is evolving. What are we going to do to provide resources for these men, some who have been in prison for 20, 30 years? They don't know what a Wal-Mart is. They don't know how to work a computer. They don't know how to set up a TV that is all electronic now with all the buttons and what are we doing to help them get ready for that. Nothing, in my perception.

This futility, however, was often mirrored in a kind of professional depression or, worse, failure of the future. One correctional officer told me, with feeling,

It's a depressing job because, you know, these guys, a lot of these guys never gonna leave these walls. I have seen people die here. So they're gonna go to a cemetery that

nobody will ever visit. It might get mowed, but nobody will ever visit. Nobody will ever buy a headstone. So, it's . . . it's depressing. It's a depressing atmosphere and you try to make the best of it when you're here.

Note in his conclusion, the second person uses an interesting discursive maneuver through which to work through his own pain – not that of the other, turning away from the unbearable realities of prisoners. The activity therapist administrator put it far more starkly:

If you don't get it the first 60 years of your life, well then what? I don't think there's much help if you're 70 years old. Get your GED? Get out and work? At this age, there's not much help if you haven't done it for yourself by now. I don't think any program in the world's gonna help you. Just give 'em welfare or social security.

Catastrophic thinking, catastrophic institutions

In this context, biopolitical insecurities converge dangerously with penalty and empathic failures in images of futurelessness. In the formation of what is called 'penal harm medicine and health care', we witness deliberate indifference in the disregard of serious and treatable suffering, which then leads to the normalization of preventable suffering and death behind bars (Clear, 1994). In such contexts – in the face of complex whole person needs, physical, emotional, psychological, and so on – pharmaceuticalization is the primary first avenue of recourse with medication (and largely anti-depressants, at that) as the answer to any and all prisoner problems. Here, we see the foundations for the patterning of the mass patient and his or her dying at the crux between abandonment and overmedication, a failure of empathic encounter. We run up against 'catastrophic penal institutions' in zones of lethal abandonment, where an incipient, totalizing, and apathetic moral judgment replaces the idealized right to a non-projected future (Fleury-Steiner, 2008).²

As Jodi Halpern (2001) puts it, autonomy depends upon an ability to see one's self as having agency – options – as a center of initiative and efficacy as opposed to concretized and catastrophic emotional and institutional states impervious to the idea of change as a possibility. This includes the ability to imagine valued goals for the future instead of being unshakably convinced that the future is hopeless and being capable of seeing one's self as implementing these goals. In spaces where empathy is so distinctly fragmented, conflicted, and, often, less than conscious, understanding is always elusive and uncertain and as historian Carolyn Dean (2004) argues, susceptible to exploitation – the arousal of the 'wrong' sort of empathy correlates: a patronizing and voyeuristic compassion, sympathy, or pity. With limited resources, in dysfunctional and punitive spaces, empathy may be a luxury that some simply cannot afford (Scheper-Hughes, 1993). The question nonetheless remains: how does society foster the development of empathic skills

and capabilities when actors are overwhelmed, cut off, and socialized to value and administer the severing of the social?

The formation of a response perhaps begins in reimagining the intersubjective dynamics of empathy. As Douglas Hollan (2008: 487) writes,

The empathic work of understanding is often written about as if it depended solely on the emotional, imaginative, or mind reading capabilities of the empathizer. But if it is embedded in an intersubjective encounter that necessitates ongoing dialog for its accuracy, then it implicates the imaginative and emotional capacities of the person to be understood. When and how do people allow themselves to be understood? When and how do they resist understanding by others?

Institutional spaces that center upon the custody of the vulnerable are never going to provide the infrastructure for openness. One unavoidable demand of the empathic, then, is that it cultivate a capacity to look *at* when the impulse, undergirded by the social, political, and cultural, is to look *away*. As Jodi Halpern (2001: 134) writes, it is 'learning to endure against the impulse to flee from the emotional impact of others', precisely when something about their emotional state is either intolerable or pitiable. In such contexts, when the trappings of a general humanitarian concern fail, it is difficult to see individuals as centers of freedom and agency and not simply the victims of catastrophic forces, itself a mode of 'catastrophic thinking' (Halpern, 2001). This way of thinking is in many ways a barrier to any kind of self-reflection. In the choice to avoid the structural positions of vulnerable actors and their complex narratives of agency and constraint, there is also, of course, a loss of social thinking.

The question of how to stimulate such a compulsion to look amid intersubjective dynamics that are resistant to understanding is still largely a preliminary one.³ For criminology and the social sciences, the question of how and under what conditions actors will allow themselves to be moved by the distress of the other remains open. There are myriad cross-currents of emotional and social knowing in such encounters. As anthropologist Douglas Hollan (2008: 484) writes, 'People who have felt repeatedly violated, intruded on, deceived, or manipulated often find it very difficult to imagine being understood and recognized by others, no matter what the circumstances.' Against such stark obstacles to empathy, we must be painstaking in our engagements to understand on a day-to-day basis the events and routines that make up closed, marginalized worlds. We must 'learn to attend' to the ordinariness of social suffering by invoking an empathy that is 'a down-to-earth concept, grounded in practical action' (Wikan, 1992: 471). As Sherman (1998: 111) argues, 'empathetic understanding is not simply a mode of discerning the concrete particulars. It has a transformative element – to know what it is like to be someone else, where this knowledge is different from merely observing others, however finely.' This process may require, as Sherman (1998: 112) puts it, 'something of an immersion, where one can begin to make sense of a wider web of connections, though without losing oneself in another's psychic reality'. Insight may very well

arise from the moments in which there is a loss of mutuality of perspective, a failure of empathy.

Conclusion

Such findings are pertinent to a society like the United States that privileges both mass incarceration and the notion of a pure empathy as fundamentally benevolent at its foundations, evidence of our own innate altruism. From Durkheim to Nietzsche, there are specific conditions in which punishment becomes extreme and excessive: when the State is weak, legal institutions and protections are underdeveloped, sensibilities are blunted by class interests and racist ideologies, and, most specifically, when outgroups are regarded as less than fully human (Garland, 2005). Importantly, the social and civic commitments that prohibit these formations are always fundamentally frail and insecurity, racism, and vengeance are powerful solvents in which refined sensibilities and civic ideals may easily dissolve. In this regard, empathy plays a complex role: it is never simply a prosocial given but always a kind of labor and one where we risk interpersonal alignment that positions us in the realm of the intolerable amid troubling excesses. These ways of viewing others through the lenses of punishment are not disconnected from larger cultural failures of empathic engagements. For those with an eye toward a planetary future, criminology and empathy are central to the story of globalization, pitting tourists and cosmopolitans against refugees and undocumented migrants, citizens against the imprisoned. There may be irrevocable limits in our engagement, fundamental divides between the pain and suffering of victims, perpetrators, and citizens but this should always be an occasion for human disappointment and a further claim for acknowledgment. As Stanley Cavell (1997: 96) writes of the relationship of the social scientist to social suffering, 'Participation is doubtful... observation is complicitous.' That paradox must be retained in every effort.

Acknowledgements

This research was supported by a visiting fellowship at Indiana University's Poynter Center for the Study of Ethics and American Institutions where a team of interdisciplinary scholars funded by the University of Chicago (John Templeton Foundation) researched 'Virtuous Empathy: Scientific and Humanistic Investigations' from 2010 to 2012. The author would like to thank the members of the empathy project for their thoughtful comments and intellectual support, especially Richard Miller, John Bodnar, Fritz Breithaupt, Kevin Houser, and Jody Madeira. Also, this manuscript benefitted from insights and support provided by Leon Anderson, Ellen Dwyer, Carol Greenhouse, Micol Seigel, Khalil Muhammad, Judah Schept, and Cynthia Gwynne-Yaudes. Finally, thanks to the Ohio Department of Rehabilitation and Correction and Ohio University for support during the fieldwork phase; the reviewers and editors of *Punishment & Society* for constructive comments; and Ashley and Lynn Demyan who provided invaluable research assistance.

Notes

1. My thanks to my late colleague anthropologist Steve Rubinstein for introducing me to Rosaldo's work.
2. The lethal nature of this formation is reflected in a variety of criminological terms central to the modern era, including Foucault's (1977) 'carceral archipelago', Sparks and Crawley's (2005a, 2005b, 2006) 'zones of indeterminacy', Wacquant's (2008, 2009) 'carceral assistantial complex', and Simon's (2007) notion of 'governing through crime'.
3. A number of rudimentary sites for this kind of empathic exploration are emerging. The Project for Older Prisoners (POPS), the Inside-Out Prison Exchange Program, and the Innocence Project encourage these contexts by bringing students into close contact with penal populations. Similarly, art exhibits such as Lori Waselchuk's *Grace before Dying* capture empathic connections between prisoners.

References

- Aday R (2003) *Aging Prisoners: Crisis in American Corrections*. Westport, CT: Praeger.
- Anno BJ, Graham C, Lawrence JE and Shansky R (2004) *Correctional Health Care: Addressing the Need of Elderly, Chronically Ill, and Terminally Ill Inmates*. Washington, DC: National Institute of Corrections, Department of Justice.
- Bandes SA (ed.) (1999) *The Passions of Law*. New York: New York University Press.
- Cavell S (1997) Comments on Veena Das's essay 'Language and body: Transactions in the construction of pain'. In: Kleinman A, Das V and Lock M (eds) *Social Suffering*. Berkeley, CA: University of California Press.
- Chiu T (2010) *It's about Time: Aging Prisoners, Increasing Costs, and Geriatric Release*. Washington, DC: VERA Institute of Justice.
- Clear TR (1994) *Harm in American Penology: Offenders, Victims, and their Communities*. Albany, NY: State University of New York Press.
- Dean CJ (2004) *The Fragility of Empathy after the Holocaust*. Ithaca, NY: Cornell University Press.
- Fleury-Steiner B (2008) *Dying Inside: The HIV/AIDS Ward at Limestone Prison*. Ann Arbor, MI: University of Michigan Press.
- Foucault M (1977) *Discipline and Punish: The Birth of the Prison*. New York: Pantheon Books.
- Garland D (ed.) (2001) *Mass Imprisonment: Social Causes and Consequences*. Los Angeles, CA: SAGE.
- Garland D (2005) Penal excess and surplus meaning: Public torture lynchings in twentieth-century America. *Law & Society Review* 39: 793–834.
- Goffman E (1961) *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates*. Garden City, NY: Anchor Books.
- Halpern J (2001) *From Detached Concern to Empathy: Humanizing Medical Practice*. New York: Oxford University Press.
- Halpern J and Weinstein HM (2004) Rehumanizing the other: Empathy and reconciliation. *Human Rights Quarterly* 26: 561–583.

- Hollan D (2008) Being there: On the imaginative aspects of understanding others and being understood. *Ethos* 36(4): 475–489.
- Hollan D and Throop CJ (2008) Whatever happened to empathy? Introduction. *Ethos* 36(4): 385–401.
- Houser K (2010) Persons as reasons: A model of ethical empathy. Unpublished manuscript, Bloomington, IN.
- Loeb SJ and Steffensmeier D (2006) Older male prisoners: Health status, self-efficacy beliefs, and health-promoting behaviors. *Journal of Correctional Health Care* 12(4): 269–278.
- Levine R (2000) *Prisoners of Age: The Alcatraz Exhibition*. Montreal: Synchronicity Productions.
- Lipsky M (1983) *Street-Level Bureaucracy: Dilemmas of the Individual in Public Service*. New York: Russell Sage Foundation.
- Lynch M and Haney C (2011) Mapping the racial bias of the white male capital juror: Jury composition and the ‘empathic divide’. *Law and Society Review* 45(1): 69–102.
- Mattingly C (2008) Reading minds and telling tales in a cultural borderland. *Ethos* 36(1): 136–154.
- Ohio Department of Rehabilitation and Correction (1997) Older offenders: The Ohio initiative. Available at: <http://www.drc.ohio.gov/web/planning.htm> (accessed 24 January 2009).
- Rafter NH (1985) *Partial Justice: Women in State Prisons, 1800–1935*. Boston, MA: Northeastern University Press.
- Rhodes LA (2004) *Total Confinement: Madness and Reason in the Maximum Security Prison*. Berkeley, CA: University of California Press.
- Rosaldo R (1989 [1984]) Grief and a headhunter’s rage: On the cultural force of emotions. In: *Culture and Truth: The Remaking of Social Analysis*. Boston, MA: Beacon.
- Rothman D (1980) *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America*. Boston, MA: Little, Brown.
- Sarat A and Hussain N (eds) (2006) *Forgiveness, Mercy, and Clemency*. Palo Alto, CA: Stanford University Press.
- Scheper-Hughes N (1993) *Death without Weeping: The Violence of Everyday Life in Brazil*. Berkeley, CA: University of California Press.
- Sherman N (1998) Empathy and imagination. *Midwest Studies in Philosophy* 22(1): 82–119.
- Simon J (2007) *Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear*. New York: Oxford University Press.
- Sparks R and Crawley E (2005a) Older men in prison: Survival, coping and identity. In: Liebling A and Maruna S (eds) *The Effects of Imprisonment*. Cullompton: Willan Publishing.
- Sparks R and Crawley E (2005b) Hidden injuries? Researching the experiences of older men in English prisons. *Howard Journal of Criminal Justice* 44(4): 345–356.

- Sparks R and Crawley E (2006) Is there life after imprisonment? How elderly men talk about imprisonment and release. *Criminology and Criminal Justice* 6(1): 61–80.
- Sykes GM (1958) *The Society of Captives: A Study of a Maximum Security Prison*. Princeton, NJ: Princeton University Press.
- Throop CJ (2008) On the problem of empathy: The case of Yap, Federated States of Micronesia. *Ethos* 36(4): 402–426.
- Wacquant L (2008) *Urban Outcasts: A Comparative Sociology of Advanced Marginality*. Cambridge: Polity Press.
- Wacquant L (2009) *Punishing the Poor: The Neoliberal Government of Social Insecurity*. Durham, NC: Duke University Press.
- Waselchuk L (2010) *Grace before Dying*. New York: Umbrage Editions.
- Wikan U (1992) Beyond the words: The power of resonance. *American Ethnologist* 19(3): 460–482.
- Wispé L (1987) History of the concept of empathy. In: Eisenberg N and Strayer J (eds) *Empathy and Its Development*. New York: Cambridge University Press.

Michelle Brown is faculty in the Department of Sociology and the Center for the Study of Social Justice at the University of Tennessee. She is the author of *The Culture of Punishment* (NYU Press, 2009) and co-author of *Criminology Goes to the Movies* (NYU Press, 2011).