

Punishment, Just Because

An empirical enquiry into why we punish

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Master's thesis in Criminology
Department of Criminology and Sociology of Law
Faculty of Law

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Summary

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This thesis is an enquiry into why we punish. Though acknowledging that official legitimisation of punishment includes both absolute and relative theories of punishment, it is the starting point of this thesis that the retributivist, absolute theories are somewhat downplayed as the sole reason for formal punishment. It is therefore the main objective of this thesis to seek other reasonings through qualitative research interviews.

The interviews have been carried out among two groups of participants; those with some connection to punishment, and those who have been randomly picked amongst passers-by. Invariably the interviews have been of very different length and character, but the goal has been to ask one single question, to a number of people, leaving all the defining powers to them. The question has been “Why do we punish?”. The answers have been many.

Though utilitarian deterrence is mentioned across the board from the two participant groups in this thesis, many other reasons are given equal, if not more, importance by respondents.

Some such reasons pertain to our individual sensibilities and motivations of a personal nature, related to our agency and our sentiments. Some pertain to our cultural structures, and the way in which we can understand the retributive *or* restorative possibilities in our legal structure. Some answers can be classified as societal, and as fulfilling certain functions for society in a far greater extent than it might do for either the offender or the victim.

Within this delineation of society, structure and agent, several rationalities are uncovered and include portraying punishment as a means to an objective, as pure revenge, blatant retribution or even a way of punishing the poor and already misfortunate. In addition, there are some responses that in and of themselves illustrate the *manifest* and *latent functions* of punishment.

Many depicted harms caused by the way we punish, and these responses put reasons for punishment in a critical light, challenging the fact whether the positive consequences outweigh the negative.

The findings have been presented in quotes throughout the thesis. In an effort to analyse and understand the various reasonings behind punishment, all the findings are coupled with both criminological concepts and theory, as well as being placed in juxtaposition to possible implications derived from criminology and sociology of law.

One of the recurring themes in this thesis is the contrast of understanding and condemning, this has been coupled with different ways of analysing crime and deviance control, as well as scrutinising how punishment is being utilised as a means to change behaviour that is not illegal, but merely unwanted.

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One of the recurring themes in this thesis is the contrast of understanding and condemning, this has been coupled with different ways of analysing crime and deviance control. As well as scrutinising how punishment is utilised as a means to change behaviour that is not illegal, but merely unwanted, reflecting trends of punitiveness, neo-liberalism and risk-assessment.

Toward the end of the thesis I propose a suggestion to how it might be that we punish in spite of these implications, ramifications and harms. For this I utilise theory that originally was intended to understand and analyse deviant and antisocial behaviour in criminals.

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1 Introduction

1.1 On the concept of punishment

Punishment can be understood in many ways. Often different governments have some sort of definition of punishment that establishes the official understanding and limits of punishment, usually described in our penal codes, laws and various official documents and enquires. In Norwegian law this is most certainly the case. I however wish to examine punishment from the point of view of the everyman and I wish to report in a way that is easy to understand. Surely we regard punishment in a much broader sense than what is drawn up as official punishment and sanctions in the law, in legal documents or indeed in action plans against crime? In our day to day life though we may not use the word “punish”, but we use punishment in many other contexts than formal sanctions such as fines, restrictions and prison. In fact we informally, but never the less regularly, punish each other, our children and our pets. Sometimes we punish to condition, sometimes to send a message of what is right and wrong and sometimes just because we disagree.

All kinds of punishment are however reactions to something and usually follows some sort of an offence (Oxford English dictionary).

Whether formal or informal, punishment mirrors and springs out of the desire for our values and wishes are adhered to and respected. In social contexts behaviours that do not comply can be sanctioned in a plethora of manners. Anything from the critically raised eyebrow to the excluding withdrawal of friendship can, if administered by the right person, by the receiver be experienced as the harshest form of punishment ever sentenced (Christie 1982). A mechanism for controlling behaviour, self-regulation, socialisation and private life, informal social control and punishment are easily and frequently utilised (Engdahl 2011). Whether we are aware of it or not, various degrees of social control are so frequently utilised and is very much a part of everyday interaction, that we might hardly consider it to imply any sort of punishment at all. But is not the worst punishment

that which you receive from your peers and not from total strangers in a social setting (Christie 1982)?

Be that as it may, as I started with, punishment is not only a social tool for controlling and directing the behaviour and conduct of others, punishment is obviously also highly formalized and a means by which governments attempts to deal with deviance and undesired conduct.

Punishments defined and utilised informally and socially are obviously not identical to punishments defined and utilised by law. A raised eyebrow is more easily exacted compared to a non-refutable incarceration. Nevertheless rather different in nature as well as in execution they do seem similar in motivation and ultimate goals.

Though one can define punishment in differing ways I have chosen not to define punishment at all; in the sense that I have not constricted this thesis to either regard formal or informal punishment, nor to clarify which sanctions that fall in under the concept. Not defining punishment of course complicates the parameters of my research process on the offset; what exactly was the object of my enquiry? On the other hand defining punishment determines the boundaries of my research and utilization of theory and would constrict the participants to answer within the boundaries of the term; entirely defined by someone with a bias and outlook of a social scientist. Additionally, having an interest in jurisprudence and being a scholar of the Faculty of Law I would have a very particular definition of punishment indeed.

Therefore letting participants themselves define punishment and then further present the terms for justifying it would let them be more precise and nearer their own understandings and less bound by my influence.

1.2 Prior research

Studies of the concept of punishment have been conducted in several fields. In political and social sciences the Hobbesian notion pertaining to sovereign's right to punish in order for the state to function and as a prerequisite of civil society has been debated and discussed reflecting rights and obligations pertaining memberships in society (Hobbes 1651: 151-167). In critical criminology abolitionist voices have illustrated how punishment by confinement in prisons is brutal and harmful; or how punishment has been utilised as a tool for changing behaviours and increasingly implemented in neo-liberal societies where the incarceration of the poor has been increased in a significant manner (Mathiesen 2007, Johansen 2015, Wacquant 2009). And in an array of sciences the social functions of formal punishment has been examined and described as a tool that has been implemented in a manner that often far exceeds the behavioural effects (Garland 1990). Punishment has been looked at from psychological as well as philosophical disciplines and as such has been the object of research in an array of fields furthering both scrutiny and steps towards understanding the nature, aim and logic of the uses and functions of punishment. Therefore: ignoring contributions from other fields would be to amputate one's foundations for understanding punishment and to detach oneself from history and erroneously assume criminology and sociology of law as isolated and unrelated to the scientific world and other scientific disciplines. However, it is in criminology this thesis has its roots and its origin and it is mainly here it will find its theory and analysis. Though Hobbes and the political scientists I have studied do undertake criminological examinations of punishment it is not here I find my theory. At the precipice of starting my empirical data collection, that is to say interviews, I anticipated that the prior research I would utilise were works on the reaches of punishment: Norwegian criminal law, studies on social functions of punishment and comparative studies on punishment. Though not utilised in quite the same way I first presumed, reading the law and official governmental documents have given me a broader understanding to the fact that official reasonings for punishment is hardly singular or static and ever changing, often dependant on political trends and not jurisprudence and science (Ot. prp. nr.90 2003-2004, St. Meld. 37 2007-2008, Meld. St. 12 2014-2015, Straffeloven av 1902 §§1-48, Straffeloven av 2005 §§1-8). Social functions of punishment are thoroughly described in Vilhelm

Aubert's "Om straffens sosiale funksjon" which originally was his doctoral thesis (Aubert 1972). Historical reasonings on punishment are extensively portrayed in Ragnar Hauge's "Straffens begrunnelse" (Hauge 1996). These works of practitioners of law, sociologists of law and criminologists are the ones that have presented or problematized punishment in the way that has prompted me to seek the answer to the research questions of this thesis empirically. Apart from these theoretically founded inspirations I want to explain my fascination on the subject, and why I intend that any knowledge attained from this project should be reported plainly.

1.3 Background for this thesis

When I was a teenager I visited a museum near the Tower of London, exhibiting horrendous means of punishment and torture used on criminals. The wax figures displayed there recreated a number of terrible and horrifying punishments even a teenager with an affinity for the Addams family could not conjure up in her mind. The figurines were suspended in moments depicting their bodies receiving brutal punishment. They were subjected to clawing rats, burning and singeing, puncturing spikes, jabbing nails and both sharp and heavy blows. Their faces were twisted in agony and anguish. Every method of punishment was more spectacular than the other. Though at first ridiculously harsh it suddenly dawned on me that these were in fact the fates of criminals and outcasts of a not too distant past. And the thought that occurred to me after this, and that indeed never left me was this: How would future societies regard our ways of punishment? What obvious brutalities will they recoil from when seeing wax figurines in penitentiary situations from today's prisons? The most prudent question for me to attempt to answer in this regard would therefore be: why do we punish? I wish to answer the question by asking members of the Norwegian public and hope the answers don't reveal too many unforeseen implications. In any case if we punish too harshly it is a subject not only belonging to the realms of the academic, but to the everyman. If we are brutal in our civilised society it is the concern of us all.

1.4 Focus and limits

Works on punishment seen through the lens of paragraphs and of social functions have been carried out in many forms, and in several ways make up the understandings and foundations of this project, both directly and indirectly. Most of the interviewees *are* familiar with the most common official justifications of punishment being deterrence, in either a general or specific sense. Many findings of such works are discussed in newspapers and other populist media. Furthermore many have or have had dealings with punishment in some capacity, if only hypothetical or theoretical. With this in mind I wished to access the opinions of the Norwegian public directly and to discover their thoughts on why we punish. Consequently it will be a cross-section of their opinions on what indeed constitutes punishment and why we punish that I will base my findings on. As I have mentioned, asking my respondents to define punishment for themselves will give me invaluable insight in to how we think of punishment in a more colloquial sense and perhaps it will let some other reasonings than deterrence reach the surface.

1.4.1 Research question

What are some of the rationales for why we punish and how can criminological theories help us understand these reasonings and their implications?

1.4.2 Limits

The topic of punishment *is* endless and the limits of this thesis lie in working *solely* within the confines of the responses gathered through interviews and reflections with the participants.

This will of course give both my research and this project a very specific focus. I will exclude the current discourse as portrayed in media, I will exclude the newspaper articles and I will abandon an in-depth scrutiny of official documents and reports, though I will refer to some main points and understandings from the latter. Instead I will turn to what people say - the ones I meet on the street and the ones who responded to my information

notices and who in some extent have had dealings with punishment either in their work or in their lives; I hope it can provide a sort of cross section of the prevailing thoughts on punishment among the public, at this point in time.

1.5 Outline for this thesis

Thus far I have tried to introduce the topic and background for this project. In the next chapter I will account for the scientific method used in this master thesis, including the ethical guidelines and considerations I utilised. From chapter three and onwards I will present my empirical findings and analysis in a somewhat ordered manner - though this was not how the categories and typologies were uncovered or how they presented themselves in the research. To each finding I will connect and discuss theories or concepts from the social sciences, mainly from criminology and the sociology of law, along with this I will include possible implications. In chapter eight I present the responses that illustrate some of the harms that follow the use of punishment. This is followed by a chapter where the implications are gathered and analysed through criminological literature. The focus of these two chapters is to exemplify what can be classified as both *manifest* and *latent functions* of punishment; respectively foreseen and unforeseen consequences (Merton 1957: 60-69). In the final chapter I will draw up a proposition as to why we punish despite the harms that have been stated during this thesis. Finally I will offer a conclusion; a summation of what I have done and where to go now. At the very end of this thesis I will add the various appendixes. But first, what follows now is an account of the method I utilised in this project.

2 Method

2.1 The qualitative research process

Research in the social sciences is rarely, if ever, a straight forward operation and this project has been no different (Bryman 2012: 15). It is however always fruitful to have some sort of guideline to dictate ones to dos (Thagaard 2009: 48). I have taken this to heart and the research design and basis for this project is derived from Alan Bryman's account of the various stages of the social research process (Bryman 2012: 14). In this chapter I will describe the research design and method I chose for this project and describe and discuss the various ethical considerations and guidelines I have utilised. Additionally I will attempt to account for my own participation and role in the various stages but first I wish to say something about the scientific tradition and the sort of data I will be collecting.

2.2 Scientific theory and tradition

My main desire for this project has been to explore the various rationales and different ways of legitimising the use of punishment. Furthermore I wish to convey my findings in a straight forward and simple way eliminating the need for specialisation in the field. Some terminology will turn up all the same.

It first made sense that a meticulous analysis of legislative documents and action plans would be productive. Nevertheless, while certainly being able to reveal official intentions I would not gather any information that would reflect the thoughts and ideas of the public. To satisfyingly access this I saw it prudent to lay aside governmental documents and directly approach the public to gain a cross-section the public through qualitative interview. By abandoning the analysis of governmental documents I have through interviews strived towards attaining a closer and what we call more *emic* understanding, rather than a more distanced, *etic* understanding of the people's opinion on punishment (Kalleberg, Malnes & Engelstad 2009: 64). This scientific tradition allows an explorative mode which has been fruitful for gaining unexpected answers (Thagaard 2009: 16 and

Bryman 2012: 41). Also, by not defining categories and alternatives for responses I have followed an inductive approach by hoping that both typologies and concepts would present themselves in the empirical material and letting my use of theory be directed by this (Bryman 2012: 12, Thagaard 2009: 193). I have not been disappointed. On the other hand I have also gotten a myriad of answers that at first glance had little to do with penal punishment. This has nonetheless been indicative to me that the presumption that merely deterrence and incapacitation hardly can be our only motivations for punishment, penal or otherwise isn't that way off base.

2.3 Epistemological factors

A focus on the emic and inductive tradition, along with a rigid research design suggests that I believe I will obtain some sort of positivistic truth thus far hidden in the respondents, that I will extract using the right research methods (Bryman 2012: 27-34, Thagaard 2009: 87, Kvale & Brinkman 2012: 67-69). This is however not so, and this is an epistemological factor: I believe that any research interview, qualitative and quantitative is a sort of exercise in not only seeking the other's opinion, but also in admitting that the answers are somewhat constructed in the interview setting (ibid). The answers that make up the findings and analysis chapters are therefore the result of interviews and reflections between me and my participants and not some sort of axiomatic truth about what punishment is and why we punish.

2.4 Research design

To conduct the examination, I have chosen a very pragmatic research design that has functioned as instructions on how to complete this project, all designating different phases for different stages in the process (Kalleberg, Malnes & Engelstad 2009: 25). These phases have nevertheless been jumbled in both order and significance as is a tendency in even the best intended research (Bryman 2012: 15).

First I wrote an information notice that functioned as a research proposal, and sent it out to different groups of potential participants in hopes to recruit interviewees (Bryman 2012: 92-93 & appendixes 1, 2 & 3). The project was also registered at NSD the Norwegian Centre for Research Data, where a more detailed research proposal was submitted and after evaluation approved (appendix 5). Interviews were scheduled and carried out. All of the interviews were recorded, transcribed and then coded in the qualitative data software HyperRESEARCH and from there analytical categories were set up. I designated parallels from theory and criminological literature to each answer and commenced the process of writing up the findings. These were the main points in the design, but following this chapter I will give more in-depth accounts at the various sections for the sake of clarity and transparency. I will start with ethical considerations move on to how I found participants, then to the process of the interviewing, explain the interpreting analytic phase where I present and discuss my findings and finally demonstrate how I have done my outmost to ensure that the project is scientifically sound and follows scientific ideals. Also, for those not familiar with the form and design of the master thesis, I feel I must explain the following: the thesis is a documentation and examination of the craft of scientific engagement. In other words though it is a presentation of findings it is just as much a documentation of how the findings came about.

2.5 Ethical considerations

In all science there should at every single junction be made ethical considerations (Kvale & Brinkmann 2012: 79-81). This thesis has not been an exception. Some of these considerations are formalized in document form, others are conveyed less formally and some have been a part of the conduct and approach I have taken in every step of the research process. What follows is some of the considerations vital for this project.

2.5.1 Permissions

The first document I wrote to materialise the idea behind this thesis was a research proposal, this was converted to different information notices and sent to possible

participants. The information notices should provide an interviewee with sufficient information to grant informed consent for participation in any project (NESH 2006: 13, Bryman 2012: 92-93 & 138- 142 & 217, Kvale & Brinkmann 2012: 88-90, Thagaard 2009: 26). The contents of the research proposal was either conveyed by the document itself or orally in person to every single participant, a copy of the proposal is enclosed (appendixes 1, 2, 3 & 4). It was also sent to the NSD along with specification as to how the research was to be carried out practically. Registering the research project at NSD renders the proposal open for transparency, improvement and allows feedback on whether the principles for ethical research in academia are adhered to or not. Furthermore a registration of this kind is also a step towards securing that participants of research are protected from negative consequences by their partaking in research (NESH 2006: 12, Thagaard 2009: 28-30, Bryman 2012: 135-138). The approval and evaluations from NSD are also enclosed (appendix 5).

2.5.2 Participation

A premise for research in Norway is voluntary participation; in consideration to this contact information to myself and my supervisor was given every participant so they may exclude themselves or their children from the project after the interview has been carried out (NESH 2006: 13). Every participant was also in person or through the research proposal informed about the research process and in which way I would analyse every answer in hope of detecting categories from the social sciences. As all the answers are anonymized I ensure that every respondent's answers and contribution are confidential (NESH 2006: 18 Bryman 2012: 136-138 & 142, Kvale & Brinkmann 2012: 90-91, Thagaard 2009: 27).

2.5.3 Recorder

I used a password locked recorder for all of the interviews that also rendered the recordings illegible in case it was to fall in the wrong hands. This was mainly in consideration of those participants who were recognizable because of their professions or their criminal records. All recordings will be deleted in their entirety when the project is

ended. Of course I asked the participants whether I could record their answers and the recorder was always in plain view. Recording, as opposed to writing, was quicker, more efficient and let me focus on the participant and the conversation was allowed to flow more freely than if I had opted to write down the entire interaction (Bryman 2012: 482-487). However, when transcribing I did make notes of certain characteristics in the interviews that weren't evident on the recordings.

2.5.4 My role as researcher and my position in the field

It behoves the scientist of the 21 century to contemplate and reflect over one's own position in the field as well as in regards to one's research and findings. As mentioned earlier, the qualitative research interview may not generate knowledge entirely detached from the setting in which it was procured or from the researcher who procured them (Thagaard 2009: 87, Kvale & Brinkman 2012: 67-69). The researcher will influence the participants, they will in turn influence responses in the researcher and one can claim that the knowledge procured is constructed (ibid). On the other hand this may very well be said about many types of data collection, but it will nonetheless require ethical consideration.

The first factor might be that, being born and raised in Scandinavia with obvious ancestry from the global south, there are a lot of factors that constitute my sense of identity as well as my cultural belonging that may cause some sort of conception of my prerequisite knowledge or perhaps lack thereof. At the same time, my way off regarding myself may not correspond to the sentiments of the participants and these sentiments need not correspond to one another. The research question I have chosen does to me not stand out as a topic typically hindered by my obvious ethnic background.

Yet there were a couple of factors that I hadn't considered as unusual or hindrances when talking to especially older participants and males that had been incarcerated. My Norwegian dialect from the west side of Oslo as well as the fact that I was assumed to be

a young adult “girl” led these certain participants to assume I had led a relatively short life of innocence, shielded from any knowledge of crime and punishment. When assuring the ones who explicitly voiced their concerns with my imagined youth and ignorance of the world that I had in fact worked with street gangs, at women’s shelters, with drug users, double diagnosed adults, prostitutes and even politicians I seemed to be accepted as one that may know something of the world after all!

On the other hand when it came to interviewing politicians I did meet a similar misconception. I did wonder whether their prim and proper answers perhaps were so because of the performativity when speaking about social issues and marginalised people to someone who potentially *could* criticise them with facts and numbers (Thagaard 2009: 105). Be that as it may, many times the politicians did reveal the true moral convictions of their opinions and as we agreed in the conversation following the interviews: some answers were in fact in total contradiction to other answers they had given in the very same sitting.

Also, me being a representative of the academic sphere it would not be implausible that some interviewees would wish that their convictions and political preferences would be well represented when talking to someone who, in the end, would report and analyse findings. Perhaps in some cases these views were not personally evoked opinions, but mere listings of someone else’s more organised and goal-oriented manifest.

There will in addition to these factors be other structural differences between the researcher and the participants than the examples I have given above that may be hard to account for and predict the significance of (Fangen 2010: 146). This being said, it is my opinion that the people who accepted my invitations to converse on the topic of punishment did so because they were comfortable enough to do so. Indeed many passers-by did not wish to partake and chose to decline. These did not stand out in any way as

ethnically, socio-economically or politically different to the ones who did participate. In addition I must add that I see no point in categorically dismissing the participants' responses as results of the structural differences that may or may not exist between us nor that the answers don't represent the many experiences and opinions of the participants (Thagaard 2009: 87).

I have no reason to think that the social interaction between myself and the interviewees have altered or developed the responses in any way that makes them invalid (ibid.). But I will discuss the replicability of this type of research in the section about scientific soundness. But first what follows is a presentation of the ones who partook in this project.

2.6 Participants

I have chosen my participants in two ways; randomly and selected (Bryman 2012: 190). The selected participants have been individuals with some relation to punishment through their situation or professional vocation. It seemed to me prisoners, convicts and children were or had been in someone else's charge and might as a consequence of having restrictions on autonomy, have opinions on punishment the general public might not. I also assumed the same could be presumed about police, prison guards, lawyers and judges.

2.6.1 Selected participants

The before mentioned information notices (appendix 1, 2 & 3) were sent out to the Police Department of Oslo, prison reintegration organisations, kinder garden managers, youth club leaders and prison guards, and posted on different social media platforms (facebook.com & underskog.no) in the hope that it would yield an interest for participating (Bryman 2012: 92).

The selected participants in this study include Norwegian and foreign prisoners in Norwegian prisons, formerly incarcerated individuals, solicitors, police, judges, politicians, criminologist and children in the care of their parents. In addition members of an after school youth club were also gathered and interviewed together. The total number of respondents among the selected participants was 25 of which 12 were from the youth club and two were four years old and were interviewed with their parents present. Of the selected participants two were prisoners, two were policemen active or retired, three were prison guards, two were lawyers of which one was a former Supreme Court judge, and the remaining three were politicians in the capital city. The kids from the youth club were between 8 and 12 years old.

2.6.2 Randomly selected participants

The second and biggest group of participants I felt should be randomly chosen and opportunistically approached in various locations in and around the country. This group I reckoned would presumably, and hopefully, include a multitude of occupations and backgrounds and enrich my emic approach (Kalleberg, Malnes & Engelstad 2009: 64). Everyone in this group albeit approached arbitrarily amongst passers-by, received the same respectful and ethical treatment as the rest of the participants in this project that is expected in scientific research in Norway (NESH). They were given a short oral rendition of the project and a written summary of the research proposal as well as the contact information of me and my supervisor (appendix 4).

Initially, and in the spirit of adhering to the strictest ethical guidelines, anyone over the age of 18 would give informed consent orally and would receive contact information to the institute, my supervisor and myself. However sometimes participants didn't want a piece of paper with any sort of information and the possibility to directly contact me or my supervisor would have to yield. Any retraction from the project would have to be made through contacting the university in Oslo and not directly contacting me. In the case of underage interviewees I decided permission to participate and informed consent should be given by their parents or guardians (Kvale & Brinkmann 2012: 86). However,

adolescents and potential interviewees between the ages of 13 and 18 are, at least in Norway prone to move in pairs and groups, seldom including any of their parents or guardians. Any form of permission from these would be cumbersome to the verge of unrealistic to obtain. As I asked every participant one single question and since I considered both my presentation of the research proposal and the interview question as non-sensitive I deemed the under-aged participants as mature enough to make an informed decision to give consent as well as to partake in my queries. As a result the underage participants were given the same contact information as the adult interviewees and a research proposal they could let their parents inspect if they wished it.

Every participant in this group was opportunistically approached in usually the high streets in the largest Norwegian cities and includes Oslo, Bergen, Trondheim and Kristiansand. Furthermore in hopes of getting a varied selection I visited smaller towns and provinces such as Ås, Vennesla, Fredrikstad, Lillestrøm and Lyngdal to not be accused of favouring the “urbanites” of Norway. The total number of respondents among the randomly selected participants was 50: ten in each major city and three in each of the smaller towns. In every instance I approached people in public places as the high streets or the main street in the town. I tried as a rule to approach people who were of varying ethnic origin and socio-economic class. The criteria, for discerning socio-economic background, were of course very dependent on my own frame of reference and opinions. They were based on the styling and selection of clothes, accessories and such, as well as the wornness and brand of shoes. This, I admit, is entirely based on external factors and could only somewhat be validated or dismissed by socio-economic dialects and accents. Many belonged to several groups and some were harder to place in a cultural or social context. In any way there were no major differences in the types of people I talked to, suffice it to say, I doubt any were exceedingly rich or poor.

2.6.3 The interviews

Since the two groups of participants were chosen rather differently it goes without saying that the types of interviews were quite differing in length and perhaps for that reason

depth, then again maybe not in depth as that may vary because of entirely different matters. After a rendition of the research proposal or a presentation of myself, I explained the ethical guidelines that I followed in the project (appendixes 4 & 5). I also explained that I wished to find out what the reasons for punishment are and that it was entirely up to each participant to define punishment as they wished. This formed the basis of the interviews and as it happened in many instances this was enough for many to grant or deny permission for further questioning. Once consenting to partake participants sometimes wanted first to know what my personal opinion was, I maintained that their answers were the ones that mattered to me. More often than not participants plunged into an explanation about what punishment meant to them personally, what it might mean culturally or how they personally felt it benefited society as a whole. Usually participants would refrain from both defining and explaining punishment and merely list the reasoning behind punishment as they understood it. My one and only real question was “Why do we punish?” My part in the interviews after the first question was posed was to ask follow up questions such as “in which way” and “can you elaborate”.

In addition to the interviews I had reflective conversations with three contributors and my supervisor. These musings took place either through personal messages and lasted the better part of a workday, or were casually conducted when the interviews were completed. Not necessarily providing new findings, the conversations were helpful in processing and discussing some of the points and findings.

Lastly I must say that the duration of the interviews varied substantially, the shortest were the one-lined answers, lasting only a couple of minutes and the longest about an hour in duration. Every interview was regardless of length recorded. After the interview I wrote down anything that I felt could have importance on the message of the participants. This included body language or whether they used sarcasm or expressed anything to the contrary to what they had said.

2.7 Interpreting the answers

The empirical data was mostly in Norwegian, in a few cases in English, Danish or Swedish. The quotes used to illustrate the typologies were translated to English only when writing up the report. All of the quotes I have used I have anonymised, but it should be said that though I have hand-picked which answers were selected as quotes the contents of each single quote reflect several other responses. In this way they are also representative of the participant groups as a whole.

Regarding the wording of the quotes, some of this will inevitably be lost in translation. Factors that may have given native speakers of Swedish, Danish or Norwegian a broader sense of the intended meaning might in the English translation be somewhat flat due to the difficulty of conveying dialectal ways of expression that are typical for certain regions. In addition I have opted to remove most of the regional slang and dialect in the original transcriptions as they also are hard to put into correct annotations. I am sure this could have been done in other ways than I have chosen to. All the same I have tried to convey the meaning of the statements to the best of my abilities. Since this inevitably is based on my personal experience of what each participant said in the interviews and not necessarily what they really meant I have enclosed a copy of some of the quotes in both the original tongue and in English to thusly document some of the translation work for those interested in examining these (appendix 6). This step towards transparency is also an attempt at achieving reliability and validity (Kvale & Brinkmann 2012: 246-252). Through presenting the statements as they are, and bearing in mind the point of epistemological considerations, the reader is able to make their own evaluations on my interpretations.

The task of extracting the findings from the interviews was not *entirely* a separate task. It was in this instance, as is usual in qualitative research interrelated and parallel to every step of the way, as one in an interviewing capacity cannot entirely separate one's impression of what is being said. However, when it came to analysing the interviews I did

have a very rigid way of going about it. I utilised a typical qualitative analysis where I sought to find different categories in the transcribed interviews that made up my empirical data (Bryman 2012: 575-578). The findings were coded in different criminological typologies in order to organise the information given by the interviewees (ibid: 568-570).

After each interview I transcribed the recordings as soon as possible and also made a note on whatever impressions I was left with regarding what I thought was relevant such as body language, intonation, pauses and emphasis made by the participant. In my findings I will display some of the quotes and how I arrived at the analysis that I did. Under each heading I will present one or several relevant quotes from the interviews. The quotes are presented in a cursive font and within citation marks. To the best of my abilities I will show how I have interpreted these statements in order to extract and analyse suitable typologies. In turn I will discuss these findings in light of criminological literature. This step is, as it goes without saying literally and figuratively up for interpretation.

2.8 Writing up - reporting

The final stage of this project has been the writing up of everything that has transpired. There are many ways of doing this and I have deliberately chosen my method of reporting after much deliberation.

When I was a student of political philosophy I read the Leviathan by Thomas Hobbes, the original version, from 1651. Our professor insisted we would take to the book and that we, after about a hundred pages, would stop finding the archaic wordings cumbersome and read as fluently and flowingly as usual. He was of course right; a hundred pages in we were all racing through the book faster than King Charles II's advisors. Hobbes had indeed written the whole thing in a very informal and colloquial language. Later in the course we read Nietzsche's Genealogy of Morality and the mad ramblings of the brilliant mind was hard to digest at first glance. Nietzsche had indeed not been colloquial. The contrast was astonishing.

After this harrowing experience I decided that I in my research would convey my thoughts, proceedings and findings in the most understandable and simple way I could muster. This type of reporting is in part a continuation of the Hobbesian tradition of not complicating things and hoping that “anyone” could get the gist of the writings. The process has been entirely academic, scientifically stringent and relentless, but the writing up and choice of wordings I have made, have both adhered to great Nils Christie’s opinion that if you are paid to think then you should convey your thoughts simply (Christie 2009).

2.8.1 Choice of language

During the course of this project I have debated whether to report in English or one of the Norwegian literary languages. On the one hand, all other parts of the project has mainly been conducted in Norwegian as most of the interviewees have spoken some sort of Norwegian dialect, with the rare exception of a few Swedish, Danish and English speaking participants. On the other hand, the choice of language seems to me a decision with political connotations both regarding English versus Norwegian and between the two main literary Norwegian languages. There seems in Norway to be an explicit wish for researchers and students to learn to academically express themselves, also in their mother tongue even if this not necessarily reflects the aspirations of all researchers.

As both English and Norwegian are my mother tongues I have no wish to promote one language over the other, but I see the need for more scientific literature, terminology and expression in the Norwegian languages. However, the English language is undoubtedly (more) international and the theme and nature of this thesis is entirely Nordic from conception and execution. It is in the distinguished tradition of the Oslo-school of criminological thought this thesis finds its origin. It is the Oslo-school of thought and the spirit of critical criminology that has moved me to pursue this academic branch at this time. Therefore, and because the contributions of the respondents and so much of the scientific criminological literature used and studied in this project are Norwegian, I have

decided to convey this to anyone willing to read and partake in my findings and studies, in English.

2.9 Personal pre-understanding

Having studied at Criminology and Sociology of Law at the University of Oslo I have been conditioned to be sceptical to any configuration or structure where power and subordination is involved. My starting point and personal pre-understanding is highly critical and normative, but, the aim of this project has been to gather and analyse not my own, but others' reasoning on punishment. Hence I find great continuance in challenging myself and the participants of these interviews into talking about punishment as something less than obvious, indisputable and self-evident. Opting for qualitative interviews seems to me an excellent way to pursue the possibility of gathering a plethora of responses and thoughts about punishment.

We are all people in the end and if this is a possibility we may be punishing in a way that is not say utilitarian but rather emotional. In any case we might want to re-evaluate the relationship between why we say we punish and how that punishment is carried out. Perhaps there is a discrepancy between these two things that can be rectified.

3 Findings and analysis

I will shortly present my findings, first the ones that can be organised in a couple of the most obvious dichotomised answers, namely relative and absolute theories on why we punish.

Official punishment in Norway is usually either legitimised through general or individual/specific deterrence (Andenæs 1996: 13, Hauge 1996:17&18, Slettan & Øie 1997: 13 -16). In some ways we like to think of it as though our justice system is void of vindictive thoughts of revenge and retribution, but this might be nothing more than sentiments of scholars of law and criminal justice (Andenæs 1996). Though maybe just an opinion it is nevertheless stated in several jurisprudence works and has on and off been a setting tone for the official discourse on punishment. On the other hand the Norwegian Supreme Court has in fact emphasised that the persons we punish should actually *feel* it as an evil (Rt. 1977 s.1207). However, in a proposal for the new criminal law it is stated that “Retribution cannot be the purpose of punishment” (Ot.prp. nr. 90 2003-2004: 77).

Be that as it may, we do recognise two main theories of punishment, nevertheless; these are the relative and absolute theories.

In the two following chapters they will be presented in all their simplicity primarily to give examples of these theories. Then I go on to demonstrate different levels of analysis while utilizing these two main theories of punishment.

All the while I will discuss the represented findings or so called empirical material in the light of what sort of implications this might have for the way in which we justify the use of punishment.

I wish to exemplify the respondents' answers with quotes, and with a very few exceptions I will refrain from connecting quotes to respondents and participant groups. Originally I planned to do this to protect the confidentiality of the respondents who currently are incarcerated, since I anticipated they might happen to say things out of anger or perhaps say things that may complicate their relations in prisons. However it turned out that I had to moderate my expectations. As the interviews progressed I noticed that the opinions of prisoners in no way were neither remarkably nor even slightly different from anyone else's. As a matter of fact, in this project only two groups of participants stood out from the crowd; criminologists because of their reluctance to give definitive answers and prison guards because of their willingness to do so.

What follows are the answers that all my respondents have given me through the interviews, to the simple question "why do we punish?"

4 Relative

As mentioned above, relative theories on punishment depict the use of punishment as a way of obtaining a certain goal, it is oriented *not* around causing harm or assigning blame, but to correct and change behaviour and conduct. This first quote is a good example of this:

*“Punishment is a means in which we make others see what they did was wrong... It’s what we do if we want to **stop** someone”*

Here punishment is used only because it is attributed a consequential effect (Duff 2001: 3, Giertsen 2012: 65, Hauge 1996: 17, Slettan & Øie 1997: 13). It implies that if the consequence of your actions is punishment you can be pretty sure that someone thinks what you have done is wrong, and that you are expected to self-regulate (Engdahl 2011). We use punishment instead of for instance explaining our view to *“make others see what they did was wrong”*. The quote points to a clear motivation of *hindering* the offender: *“It’s what we do if we want to **stop** someone”*. This can also be considered relative; the reasoning is not to inflict harm, but again to obtain a goal. Nevertheless, the significance here does not have any practical difference, but it does point to two ways of understanding punishment. Incapacitating the offender with a prison sentence, exclusion or deportation will temporarily stop the unwanted behaviour because the perpetrator is hindered by the punishment itself (St. Meld nr. 37 2007-2008: 19, Duff 2001: 5 & 6, Zimring & Hawkins 1995: 53-58). The implications here are of course apparent: what happens when the prisoner is released? If punishment by incapacitation is what stops the crime from being committed, what happens when the criminal is released, surely we should expect nothing short of a swift return to a life of crime. On the other hand maybe punishment in itself deters an individual to stop a life of crime or to never offend again. But then again if that were the case: every single person in prison would be there for the first and last time. Sadly this is not the case (Thorsen 2004, Skarðhammar 2002, Mathiesen 2007).

Nevertheless, incapacitating punishment is according to the statement far from some sort of infliction of harm, it is merely a tool for how to deal with crime and criminals; it is a form of crime control (St. Meld. 37: 19). Not even this is in conflict with official reasons for punishing; the belief is that incapacitating can stop the criminal by itself or by deterring specifically (ibid). In any case, individual deterrence is easier to argue both for and against. Of course spuriousity as a factor also here, as in any other attempt to display causal links, but in this regard we can look at recidivism and we can point to improvements or declines in life quality and crime rates for the once incarcerated.

Another typical answer that I designate to this category of relative punishment is epitomised in the next quote from an astounded gentleman who looked at me in the most incredulous way:

*“Why do you think?! Why do you ask?! **Why** we punish? Well everyone would, it... it would, the whole thing... It would be mayhem wouldn't it?!”*

The answer to the question is a no-brainer for the respondent, clearly mayhem would commence if it were not for general deterrence as an aspect of punishment. It is not necessarily true, but is not necessarily that farfetched either. Though it is impossible to prove the effects of general deterrence as an effective preventive measure even Christie, an advocate of the limits of punishment, was of the idea that without it there would be “nothing” to hold us in place (Christie 1982: 30). But of course Christie speaks here of punishment not as something given and constant, and the question that arises is how severe does a punishment need to be in order for it to be effective when following this logic. Nevertheless it might not be accurate to attribute punishment with such potency that it is the only thing stopping us from engaging in criminal activity. Nor might it be accurate to attribute people with so little morals and such ruthless entrepreneurial spirit that nothing holds us back from breaking the law but merely the threat of punishment. The

notion of a rational and calculating criminal is of course by no means unheard of, nor is it dismissed, but as crime has many explanations so does abiding by the law.

Notwithstanding, these quotes clearly show a logic and reasoning that involves a specific *goal* and *purpose* for the use of punishment.

On that note, some may argue that purpose and goal are far from the same thing; however the participants of this project have made no delineation of this kind (Kinander 2013). I will not discuss any difference between the two as it seems to have no bearing on the participant's sensibilities or rational when answering my question on why we punish. But I will say this; though not necessarily differentiated between by the everyman, or at least not by the participants in this project, I believe official justification of punishment should discern the difference between on the one hand what the use of punishment derives of or springs out of and on the other hand what it aspires to do. If there are limits to pain it behoves us to be conscious in what way we execute it, how we motivate it and to what end we wish to implement it (Christie 1982, Kinander 2013)

The previous quotes are some of the typical answers that reflect the utilitarian (useful) means to a goal orientation that characterise the consequential relative theories of punishment. Though common and asserted by many in this project as valid reasons to punish, we shall leave this topic for a while to look at a distinctive and opposed view that was asserted just as often, if not more. Some of these are illustrated in the next section.

5 Absolute

The absolute theory is opposed to the rationalities of consequentialism and is of a more retributive orientation, allowing us to indeed acknowledge some sort of vindictive thought (Duff 2001: 3, Giertsen 2012: 65, Hauge 1996: 17, Slettan & Øie 1997: 13).

“Well duuuuh, we punish to punish!”

The answer is to the point and leaves very little room for interpretation. In any case, here is my interpretation: This is punishment for punishment alone. When we justify punishment in this manner, not for any sort of consequence other than to inflict pain and punishment our reasons can be classified as belonging to the realm of retribution, and retribution belongs in law and criminology to the absolute theories on punishment (Slettan & Øie 1997: 13, Andenæs 1996: 13, Hauge 1996: 17, Giertsen 2012: 65). There need not be any fancier understanding than the one stated above; we punish to punish, so that the person or persons we punish will feel it not as a reward but as an evil (Rt. 1977: 1207, Andenæs 1996: 11, Andenæs 2004:10, Hauge 1996: 15). The implications of this rationale are obvious; the rationale behind the statement follows the logic of the kindergarten playground. Furthermore, the validity of the concept of general deterrence as deterring is in fact impossible to prove or even measure with any sort of accuracy (Andenæs 1982, Mathiesen 2007: 87-92).

Though not necessarily the sole grounds to why we punish, the apparent need and wish that punishment should cause some harm and indeed be felt can perhaps constitute a *part* of why we punish (ibid). This sort of retribution certainly was a frequent answer and one found in every group of respondent. The next quote is similar:

“Gosh, well we punish to hurt whoever hurt us don’t we?! We punish to retribute, what more do you wanna know?”

Retribution is explicit in this quote. But something else of the nature of punishment becomes explicit, we punish not out of the blue, but as a consequence that we “...*hurt whoever hurt us...*”. Punishment is a *reaction* to some prior action: a reactive action, therefore it cannot precede an undesirable act, but it follows one (Oxford English dictionary & Mee Ertzeid 2005). This participant is also adamant, but not alone in saying that there wasn’t more to be said about the topic; the use of punishment seems to be a given, it is obvious, the participant feels there is nothing more to say than that punishment is retributive and hurts, but only because someone hurt us or others first.

With these examples of both consequential and retributive explanations to why we punish, I wish to introduce some further perspectives to understand and analyse these and the other statements gathered.

6 Levels of analysis

When punishing it is conceivable that we definitely reveal some of our understandings not only of crime as a whole but our understandings of the ones who have committed the crimes as well (Hauge 2001: 11-19). In the social sciences we like to talk about our ways of understanding actions and thoughts as levels of analysis according to different social factors (ibid). When trying to sort out the reasons for why we punish, whether relative or absolute it can be fruitful to think along the same lines of understanding; differentiating between what punishment means on a personal level to the individual (agent), what it means in a cultural way (structural) and what it means in a social way (societal) (Aakvaag 2008: 30, Giertsen 2003:162).

As will become apparent by the differing size of the chapters, the answers given in this project tend to have been more varied and complex when it comes to punishment on a social level than on a personal level. Presently I will proceed with using the different levels of understanding or analysis on the findings; first the ones that show the bigger picture and then I will move inwards:

6.1 Society

To show how punishment can be understood with regards to what it means on a societal level I wish start by returning to the very first quote:

*“Punishment is a means in which we make others see what they did was wrong... It’s what we do if we want to **stop** someone”*

In addition to the analysis above (5.) there is something more underlying in this statement that indicates how we regard punishment, offenders and ourselves. Firstly, punishment is our tool against wrongdoers. There might be other means to do this, but for society it is one of the alternatives. Secondly, if we claim that punishment is the most *effective* tool

however, we classify wrongdoers as offenders who cannot efficiently be reached or influenced by any other means but punishment. Thirdly, regarding ourselves, we can wonder what this point reveals about us as a society. Well, if punishment has a communicative effect, the question that arises is whether diverse modern societies with expertise and knowledge, science and logistics aren't better equipped to convey this message in better ways; convincing people to reassess their actions rationally or psychologically. Perhaps the next quote makes my point clearer:

*“If we wanted to teach we would teach... if we wanted to... If we wanted to help we **would** help... if we thought they [criminals] were sick we **would** heal. We **don't!** We... **choose to punish!**”*

The reason why I find this quote interesting to discuss is the fact that Norway is a welfare society, with a plethora of ways to aid and help, if we so choose to. Therefore, if we then deliberately *choose* to punish such as the participant states above, instead of aiding is it not fair to say that we indeed mainly punish to retribute (Rt. 1977: 1207, Andenæs1996: 11, Andenæs 2004: 10, Hauge 1996: 15)? On the other hand it is possible that the fear of retribution is deterring in itself. Conversely, in prison there are social and educational facilities in place, but then again not all that are punished go to jail (St. Meld. 37).

Admittedly, if punishment has its basis in retribution as the participant hints at, then it does seem incompatible with the ideals of the welfare state. And if this is the case I believe that we are dealing with an Orwellian doublethink; the ability to hold something to be true and at the same time hold the opposite or incompatible also to be true (Orwell 1949). *“We... choose to punish!”*. Well we certainly have the means to teach, help and heal. So why don't we? I believe that at the root of answering this question there is a dichotomising of sentiments and opinions, a parting of ways in which our sensibilities or perchance the limits of our abilities get the better of us. This dichotomy is sharply divided

into cases were we at times *understand* and on the other hand, at times *condemn*. Understanding and condemning are not compatible and there must surely be some implications if we allow ourselves to do both at the same time.

“...*If we wanted to teach we would teach*” is a valid argument that supports the idea of us indulging in the sentiments of condemning. Perhaps informal previous penal regimes have focused on rehabilitation and learning but they have also used rehabilitation with no set time limit, which seriously jeopardises the security under the law (Hauge 1996: 241-272, Johansen 2015: 134-139). For this different reasons, also because the juxtaposition of punishing and teaching in the same arena proved not to be that fruitful, rehabilitation in prisons was given up as a bad job (Galtung 1959, Hauge 1996: 241-272, Borch 2002: 6, Mathiesen 2007: 61). This was the sentiments of the age and many advocated the cease of rehabilitation in prisons. On the other hand times have changed and it is not impossible that we know more about learning and rehabilitation now that could enable us to go about things differently this time around. Nevertheless, in prisons many are given the chance to partake in welfare programs that offer hands-on help in reintegrating the prisoners into society when released. Arguably there are always factors such as the fact that some are always incarcerated with short sentences leaving too little time to make an impact and other factors that inevitably complicates matters.

Some have also pointed out the fact that those prisoners who handle rehabilitation badly and now fall out of programs are even more stigmatised. The focus on individual responsibility and have a rooted basis in cognitive behavioural therapy, a condition that inevitably is not a one size fits all approach (Nilsson 2013: 37 & 38). Participation in this sort of rehabilitation is closely linked with risk-assessment; a condition it is easier to fail for the most troubled inmates (ibid: 28-32). Admittedly, there is little that suggests anything to the contrary that the compatibleness of *prisons* and *learning* has proven futile for many groups of incarcerated (Galtung 1959, Hauge 1996: 241-272, Borch 2002: 6, Mathiesen 2007: 61). That being said we now also know enough about the process of

learning and rehabilitation to dismiss *punishment* as a way of teaching and implementing change.

Trained and specialised by vocation, formal controllers and in extension formal punishers do not have any other ties to the offender than that of being executors of justice or punishment - a relation that in and of itself doesn't require nor constitute the best basis for understanding the offender as much more than an offender (Balvig 1995: 163, Christie 2007a: 30). In contrast *informal* controllers: you and I have, if nothing else, a better sense of who the perpetrator is outside the crime situation and might therefore be better equipped to offer understanding to circumstances (ibid, Aubert 1972: 158). A state cannot take the place of the *social bonds* one has with friends and family and cannot apply the same pressure that actually leads to change and desistance of crime in the same way (Aubert 1972: 156-164, Gottfredson & Hirschi 2014: 249).

Be that as it may, the respondent's point is that if "*we wanted to help*" we would indeed do so and it is the aim of any welfare society to help understand and aid, indeed we might be doing some of this already, but the case is not the same for everyone. Additionally, factors like which social class you are born into, what cultural and economic affinities you have should in theory have little to no bearing in regards to "what you can achieve and who you can become" (Hogg & Abrams 1988: 54). This is what we call the theory of social mobility, and to put it very simply it states that if you aren't satisfied with your lot in life it is possible to achieve another more advantageous status, more so now than in premodern times (ibid). The point of the welfare society is linked to this suggestion and is premised - not as a goal, but as an effect - to being *able to enable* anyone to achieve anything to the best of their abilities, and ensure that if not fulfilling this brilliant potential by giving everyone the same opportunities, it is *probably not* society's fault. With this in mind it does not become so inconceivable that also we in welfare states have the ability to condemn. How can society be expected to refrain from condemning and rather turn to understanding any person who has had so many legal means and possibilities before them

and yet forsaken these and turned to illegal means? And as in the case of rehabilitation programs in prison: How can we not suppose that the ones dropping out of the programs are not troubled but hopeless? I believe that the matter of why our understanding is limited is a matter of great complexity that I certainly cannot answer wholly, but I shall try to elaborate on the subject later in this chapter and with some other clues given to me by my participants in the chapter of agents (6.3). But for now I put forward that surely punishment on a societal level is not only motivated by condemnation that facilitates retribution. Certainly a much less emotional sentiment and logic is illustrated here:

“We punish because if we don’t criminals will take over the world! Ha-ha! If nothing had any consequences crime would kill us all! Hah!”

In addition to being nicely rooted in a relative theory of punishment this quote shows that the goal of using punishment is crime control. Punishment is one of the ways of controlling crime because otherwise: “criminals will take over the world!!”. It might be a bit exaggerated, but it is not invalid for that reason, at least not from the stand point of governmental policy. A slightly more toned down interpretation of this claim is that a society without punishment is a society without crime control: where crime takes over, flourishes and thrives. In turn a society that uses punishment produces a state where crime is in check and where it is controlled. However by this logic more punishment leads to less crime. But rhetorically, if one punished more would one not have created more crime as punishment never is employed without a preceding crime (Mee Ertzeid 2005).

The second part also has elements of crime control to it: *“If nothing had any consequences crime would kill us all! Hah!”*. As mentioned earlier even Christie who lectured on the limits of penal punishment as deterrence had something to say about consequences of actions, he said that *“it is obvious that punishment directs action”* (Christie 1982: 30). But he also specified that one implication of punishment, such as that

dispensed in the formal arena of the courts, by default never is and never can be *immediate* (ibid). The question to answer then is: do we have any reason to think punishment reduces crime if it is not immediately dispensed? I will not indulge in using metaphors and analogies, but I can think of many circumstances where a delayed punishment not only would be futile, but also ludicrous. Some participants reported that they themselves or family members had been to prison. The sentence had taken years to be executed and meanwhile they had ceased their lives of crime and actually felt that their lives were going in the right direction thanks to social welfare efforts, education and housing. To me it seemed punishment had no positive effect in these matters other than to satisfy a societal need to *dispense* punishment - whether to harm or with the intention, if not effect, to deter.

*“My nephew is in prison now for something he did several years ago, while waiting for his court proceedings he sobered up, got nice and clean and started a non-profit organisation. He got a job and he finally got his own flat. Now he’s in jail, he rents out his flat and his dad oversees that the tenants pay their bills and tend to the house. If it wasn’t his house... he’d lose his **home** wouldn’t he? If it wasn’t for his dad the tenants **could** do as they pleased, I’m not saying they would... He lost his job though”*

Indeed if an offender has moved on, and by other reasons and factors been deterred from further crimes, what use is it for society that he or she is sent to prison; would not a fine with sensible down payments be better if one wanted actions to have consequences (Hauge 1996: 15)? As it is, the respondents have already given evidence that there are other factors than deterrence when we punish. There are many theories on why people stop committing crimes, sometimes in the course of their lives people simply grow out of criminal behaviour (Laub & Sampson 2014: 547).

Factors such as maturity and development effects individuals to desist with crime because of what we in criminological theory call ageing-out (ibid: 548 & 550, Carlsson 2012: 11). In other cases, people additionally create a series of meaningful relationships and social bonds which acts as turning points in their lives in a structural way similar to the example from the quote (Laub & Sampson 2014: 545, Hirschi 1969). “... *he sobered up, got nice and clean and started a non-profit organisation. He got a job and he finally got his own flat*”: All of these ties have the potential to enable people to gradually be more connected to a life without crime. And perhaps just as significant: to a life with a group of people around them that so much more efficiently than formal controllers and punishment can informally control their behaviour, both through expectancies and social control (ibid: 545, Aubert 1972: 156-164, Gottfredson & Hirschi 2014: 249, Christie 1982: 28).

These elements are by the participant clearly significant in turning over a new leaf. The theories in themselves also include an existential note, namely that of choice (Laub & Sampson 2014: 547-549, Carlsson 2012: 12). However none of the respondents did at any point talk about choosing a life, whether in crime or not, and nor did this respondent. If we look at the quote there are simply external factors and the nephews own efforts that turned things around for him. So why do we punish if it is too late to make an impact and when there is little to suggest that it is punishment that makes us desist from crime (Mathiesen 2007: 87)? Perhaps in cases like this there is a need for some sort of scape goat in the sense that we need to assign blame. The next quote answers the question, but has quite a few different parts to it:

*“Oooh! We punish to make ourselves feel better. To show what’s right and wrong... We punish in order to reward ourselves. That’s wrong, **this** is right. We are good, you are bad!”*

The first point being that we punish to make ourselves feel better. Already there is delineation between *us* and the *punished*; we don't punish to make the offender feel better, we do it for our own sake. Another striking element to this is that any consideration to the victim is missing. If the statement is true punishment is merely a way of meeting a societal and emotional need when a crime has been committed. Or maybe I am interpreting the answer wrongly, maybe we *need* to punish to make ourselves feel better and, as the participant says, to "*reward ourselves*" for abiding by the rules. Durkheim insisted that in a convent community there would still be outsiders because communities have to make distinctions to know who we are, what makes this group of people a community and because someone always will be outsiders, not by design, but by default (Durkheim 1964: 68- 69). Perhaps the reason for punishment has a societal characteristic that reasonably enough belongs more in the realm of the social than in the judicial if the needs of both the victim and the perpetrator takes the backseat to our societal needs (ibid).

The statement "*We are good, you are bad*" can certainly give this impression and it does seem akin to the opposition of understanding or condemning. Furthermore it sends a message about our identities; both for the perpetrator and society, but perhaps it also functions as a sort of collective disclaimer. Let me explain, and forgive me if I take the scenic route. Civil society may not necessarily be the "ultimate" way of "setting up shop", but if we aren't to find our inner Waldens and live in harmony with nature a welfare society is reasonably smart way of organising things (Thoreau 1854). A government seeking to control the behaviour of citizens in a modern welfare society have at their disposal departments, municipal agencies and national directorates. Far from having to *force* citizens to comply with desired "good" behaviours and conduct such societies facilitates this by means of research, recommendations and guidelines through these various governmental entities (Foucault 1982: 790). The production and conveyance of knowledge along with the authority of being scientific and meticulous hints to the possibility of attainable success; follow the government's recommendations and become a success (ibid)! A government with this sort ability has a power that lies within the act of being an authority that people will comply with in their quest for being the best they can

be; an ideal that furthermore voluntarily does what it has been told (Foucault 1982: 790, Garland 1997: 175, Neumann 2003: 10). The knowledge produced and dispensed by the state in this regard will help even the most wretched and “bad” attain wholesomeness, not forcefully, mind you, but as if the government was a shepherd (Foucault 1982: 783). This is Foucault’s famous take on phenomena that are called governmentality and pastoral power (ibid). The way in which a government nudges and pastorally leads us towards “green pastures” of success is not only crucial to understand the reasoning of why blame is easier to attribute to the *individual*, but it also helps us understand why we have trouble understanding the sometimes detestable actions of the individual that does not, in spite *all* the help and possibilities, behave properly (Foucault 1982). This individualisation goes beyond understanding or condemning and the exclamation “*We are good, you are bad!*” may in the light of Foucault’s theory be understood on a societal level. If there is a problem it is easier to direct blame at the individual and to problematize the person and not the majority (Grue 2014). By designating blame to the “bad” individual and not to the “good” society we can certainly punish more effectively as we need not round up every health and social worker, teacher or caretaker that at some point were responsible for larger or smaller parts of the upbringing or development of the individual. In this way we need not abandon any part or representative of the system no matter how small.

But is it fair to say that by “letting the others off the hook” that we abandon the individual to his or her destiny to the penal system? Not entirely: The social scientist Christian Borch would argue that late modern society puts personal status and affinities aside to offer help to both parties in a legal dispute. By extension some effort is always put in every citizen accused of an offence before stating that we were “good” and that the perpetrator was “bad”. Borch borrows his point from the criminologist Garland: society has a two-pronged effort against crime. In accordance to ideals of the welfare state the way to eliminate crime and the need to punish is to focus on the individual (Borch 2002: 4). The first step is in fact to individualise the problem and then to seek to assimilate the perpetrator through help, aid and rehabilitation (ibid: 5). The second thing to do is to take a step back and take a good hard look at society and actively improve conditions and

inequalities surrounding every one of us (ibid). These two prongs or efforts are dubbed *welfare penalism* and can be said to attempt to bridge the gap between understanding and condemning; between the “us and them”; the majority and the minority; the normal and the deviant - all while eliminating crime (Borch 2002: 5).

However, sociologist and criminologist Jock Young would argue that the late modern society does hold that “we” are good and that the perpetrator is “bad”, but not before repairing measures have taken place. Although according to him our attempts *wholly* individualises the problem. The late modern society - that is society after the Second World War - deals with deviants in one of two ways. Young is of the opinion that we have become less understanding and in fact more excluding; the respondent’s statement certainly bears witness to this perception (Young 1999a: 387 Young 1999b:56). Young’s metaphor for late modern society’s handling of the issue is dubbed “the bulimic society” (Young 1999a: 388, Young 1999b: 56). Young thought that simpler societies made more of an effort to assimilate deviants back into society; to gobble up their deviants as it were and exhibit what we call an *anthropophagic* approach towards them (ibid). While modern societies, on the other hand, throw them up in an *anthropoemic* fashion; expelling deviants (ibid). The late modern society, Young suggested, did a bit of both, characterising them as *bulimic*. On the one hand we seek to assist deviants with enforced efforts to assimilate them back into society (ibid). In other words the ones we feel we can’t help we punish with imprisonment or place outside society in institutions for the incurable (Young 1999a: 388, Young 1999b:56). The ones we manage to aid or those who simply act in alignment with society’s wishes and aspirations are welcomed back into the fold (ibid). In my opinion the next quote illustrates this opposition of wishes and law perfectly:

“We punish to change people’s actions you know...so they are more in accordance to what society wants! ...Hookers in the high street? Well let’s fucking criminalise them! Oh wait... that would be fucking criminalising the poor? My God then we’ll show how we

fucked these women worse than the bastards who fuck them for money. Er... hang on, hang on... Let's criminalise the bastards instead, nobody sympathises with those fucking losers. Society is happy; we don't want no hookers in our streets, at least not in the fucking high street."

Here punishment is given a consequential quality; it is society's tool for changing "people's actions in accordance to what society wants". This way of legitimising punishment emphasises how punishment is necessary in achieving society's goals and dreams - well, in any case it is a common belief that this is one of the reasons we punish (Aubert 1972: 91). Conversely, if punishment is a learning tool to "change people's actions" it is arguably not a very effective one. Psychologically it is through interaction with others we learn how to behave (Cohen 1979: 356, Akers et. Al 1979, Woolfolk 2010). Attributing punishment with pedagogical powers is in opposition with what we know about socialisation and learning (Woolfolk 2010). Learning is widely thought of as something one does in interaction with others and not in the solitude of, say, a prison (Sykes & Matza 2014: 222). In fact, though not all are in agreement about this, the learning thought to take place in prisons is the acquiring of socially undesirable knowledge enabling convicts not only exchange war stories but also to specialize their illegitimate skills, pushing them further into the penal system (Roxell 2007: 166, Clemmer 1940: 294-320, McCorkle & Korn 1954: 88-98, Sutherland & Cressey 1960). This process of acquiring illegitimate re-education and further becoming more a part of the culture of the incarcerated is coined by Clemmer as the process of "prisonization" and renders the offender even less capable of re-entering society (Clemmer 1940: 294-318).

The participant's example: "*Hookers in the high street? Well let's fucking criminalise them!*" is presumably in reference to the Norwegian criminalisation of soliciting prostitution. Frequent news reports attested to the nuisance of Nigerian female prostitutes in the high street and for years politicians were apparently at a loss because criminalising the prostitutes could have been regarded, as the participant says: as criminalising the poor.

But another point he makes is that we already are to blame as these women already have been dealt a bad hand by society. I understand the participant's point to be that surely a society with good conditions and few socio-economic inequalities would hardly see prostitutes in the streets, perhaps in the escort business or the brothels, but the need for street prostitution would surely be unnecessary. This assigning of meek social condition as a prerequisite of crime is not unheard of in criminological theory, not even in a more equal welfare society (Hauge 2001: 14 & 121, Hauge 1996: 177). The Mertonian premise that we all live in a society with the same ideals and that some turn to crime to achieve these goals because they lack any legitimate ways of obtaining what we all aspire to have, is also an example of how crime occurs in this perspective (Merton 1938, Hauge 2001: 67-68). Criminalising and punishing the poor would then, according to the participant draw attention to poverty and failure caused by society. Criminalising the customers however would not create victims that were financially deprived. "*Let's criminalise the bastards instead, nobody sympathises with those fucking losers*" suggests that criminalising customers would be to criminalise someone society already frowns upon and whose actions are even less understood to the degree that they themselves are, as the participant says, regarded without sympathy. On the other hand one question that arises because of this is: do we really discern between those we consider deviant and actually order them hierarchically? Though not decided in any referendum or town meeting, the answer is probably yes. Nils Christie pointed out that we do so *even* in circumstances where someone has been victimized of crime; arranging the credibility and sympathy of victims according to how worthy we find them on account of whether or not we accept victims as eligibly innocent enough (Christie: 1986). Conversely, I would not instinctively consider criminalising customers of sexual favours any way of sparing sellers of sexual favours. The two are so intertwined that criminalising the actions of one would obviously have consequences for the other.

Nevertheless, the participant's point is that there might be somewhat of a reluctance to criminalise the poor. The vociferous debate about the flow of Nigerian women to Scandinavia in the mid to late noughties was a longwinded one perhaps in *part* because of

this sort of reluctance. On the one hand these particular women were considered a nuisance, I say this mainly because the debate never really concerned itself with for instance the many prostitutes from other countries who never worked in the high street, but most definitely were visible and apparently selling sexual favours in the red light district of Oslo before the criminalisation in 2009 (Skilbrei et al. 2006). On the other hand these particular Nigerian women's difficulties in gaining access to work in either the legitimate labour markets or even in the illegitimate brothels and so called "indoor" and escort market did confirm that there at the very least was a socio-economic gap between the majority in Scandinavian societies and these women (ibid).

Still, the back and fro of "*Hookers in the high street? Well let's fucking criminalise them!*" has another dimension to it, a dimension that has moral connotations. For one thing the prostitutes referred to in the first statement are not criminal and should not be punished if we follow the logic of punishment; that penal punishment requires an initial breach of the law (Mee Ertzeid 2005, OED). However, they are *in* the high street and by the sarcastic tone of the participant it is their presence in the main tourist street in Oslo that doesn't seem desirable. Putting other factors aside; the core of the problem is that they are in the high street. The next statement suggests a solution to the problem: let us "*criminalise them*".

Criminal activity can warrant punishment but will, conversely, in the process potentially create new criminals when people suddenly become criminalised for doing what they always have done because a law is passed that penalises their actions. On the one hand criminalisation might have the potential *threat* of general deterrence through punishment. On the other hand perhaps it also gives the rest of us a license to condemn actions that once were provoking, but now are illegal. Thus giving us a "legitimate" reason to exclude people in a more demonising way than when it wasn't a concern of the criminal justice system (Young 1999a: 387). Their presence denounced and disliked to begin with, the women may face an exclusion that only increases through turning the social problem into

a judicial problem, making them easier to demonise and perhaps also making the women easier to marginalise (ibid). Another way of looking at this is that the act of tying punishment to the actions of these women can be highly stigmatising. The implication, or to say it plainly, the problem, with this is that labelling someone as deviant might push the person further into deviancy, placing them in an ostracized position far from the ideals of a civilised welfare society (Hauge 2001: 100).

Furthermore, prostitution being referred to as “the oldest trade” and largely considered a social problem has been criminalised several times in the past apparently without eliminating the phenomenon, suggesting that punishment might not be a solution. Another implication of this way of reacting is that criminalisation of social phenomena can become a cementation of the already unjust and unequal social order in society (Zedner 2004: 7, Durkheim 1969:76). If prostitution really is the oldest trade is it really a social problem or is it a social phenomenon? In some way the participant suggests that prostitutes are a social phenomenon and that prostitutes in the high street are a social problem. We should in any case be more aware of how we define different phenomena and what elements are present as they evolve to be labelled as problems, especially so when we connect punishment to our solutions and what once merely existed in the social realm is promptly placed in the judicial (Järvinen 2001: 71, Spector & Kitsuse 1977: 5).

The participant stresses that “*We punish to change people’s actions you know...so they are more in accordance to what society wants!*”. In the example of punishing the act of buying sex it doesn’t really matter whether people still buy sexual favours or if people still find themselves in predicaments where they turn to selling sex in the streets. What matters, as the participant gives the impression of, is that even if the problem still exists, it has moved to a less visible place hence becoming more in accordance to what society wants. Thus we seem to opt to use the threat of punishment to redirect unwanted behaviour, even when we recognise the behaviour as symptomatic of a larger problem. In short we can be blamed for using the treat of punishment to avoid dealing with the

problem.

This way of using punishment and penalisation is very much in opposition to the notion of punishing the illegal and not the inconvenient. With all of these examples in mind as possible reasons for why we punish the question of punishing the poor stands out as not being wholly addressed. A social scientist by the name of Loïc Wacquant is of the opinion that our societies not only excludes the poor as Young said, but indeed punishes the poor. It is fair to say that however inexperienced with street prostitution one is I am sure very few would disagree with the claim that as far as the sex industry goes street workers are among the less well-off. The initial wish to punish the street workers for their presence can through the works of Wacquant be understood as a political response to the problem as opposed to a social response. As their actions weren't criminal, prosecuting the women could not be classified as being a response to rising criminal activity (Wacquant 2009). As it were the women were not criminalised, but many were said deported because of missing papers and the customers who were criminalised were given fines.

This example and indeed, as shown throughout in this chapter, some of the reasonings behind punishment is to direct behaviour towards a conduct more in line with our values and aspirations as a society and not to adamantly stop criminal behaviour (Christie 2000: 184, Garland 1990). This notion is very similar to the definitions of social control and in many ways punishment can be seen as the ultimate social control (Janowitz 1991: 74). In opposition to the notion of pastoral power that Foucault presented the use of fines and deportations can be understood as a *net widening* of increased penal measures deployed by the government in an effort to redirect our actions (Johansen 2015: 55, Cohen 1979: 346). Coined by Stanley Cohen, net widening offers a theory of the trends and practices that depicts our time, it certainly fits the participant's description of wanting to change behaviour through punishment. The metaphor of an increasingly finer meshed net is also used to explain how several less severe circumstances are penalised and sought redirected (Johansen 2015: 55 & 64, Cohen 1979: 346-349). This strengthening of the penal

measures is in Wacquant's opinion a way of managing the poor, and in a welfare state it is also a symptom of the crafting of a neo-liberal state that entails a dismantling of the social state (Wacquant 2001a: 404, Wacquant 2010). The neo-liberal state being a society that focuses on economic freedom through deregulating the economic systems, dismantle bureaucratic entities and privatising public service institutions (Wacquant 2010, Johansen 2015: 86-92). If we shift our focus back to patterns of social control however, the neo-liberal state is characterised by net *widening*, but also the net becoming finer *meshed* (Cohen 1979: 346). The adjustment of social control's reaches and inclusions are clearly not definitive and static. The ways in which we punish does indeed differ across borders and across time. The next chapter will focus on the structural and cultural ways in which we punish.

6.2 Structure

Our penal system is an alternative; it is not the set way in which everyone punishes. The way *we* punish could easily have surmised other customs, other traditions and other ways of being carried out.

*"The only reason we punish is because we don't kill... Anymore ha-ha! We punish in **this** way because we've stopped doing it ourselves, no more bloodshed in the streets. Courts you know... courts and people in frocks... [that] is how we sort it out. It wasn't always like this!"*

Killing most certainly was a way in which early Norwegians punished or sought to find revenge or retribution. The journey from *that* to the particular way in which we now punish has not been an apparent one.

The legal structure in place in Norway, now at the beginning of the 21st century is a result of how we punished in the 20th century which in turn derives from the way we did it in the

19th century, and so on. The point is our way of going about it is a result of years of social, cultural, religious and historical influences and understandings and ideals (Garland 1990: 80).

In Norway the criminal justice system is built up of hierarchic courts with the district courts (tingretter) at the bottom followed by the appeals courts (lagmannsretter) and at the top the supreme courts (høyesteretts kjæremålsrett and høyesterett) (domstol.no, Hennum 2006: 22).

Civil cases are usually presented at a conciliation board prior to ending up in the courts and the courts are themselves complemented by specialized courts such as the labour court etc. (domstol.no).

In addition we have family welfare centres as well as mediation councils introduced by Nils Christie, inspired by the restorative mediation movements in the 1980s (Nylund 2014: 105, Christie 1977: 113-132). It is clear that in our society a dispute, civil or criminal has the potential to pass through a system of experts with a certain set of tools and abilities that will resolve the issue in the juridical sense (Hennum 2006). It is a part of our structure. This much is apparent when the participant says “*no more bloodshed in the streets*”. An entire structure allows conflicts to go through a complete process with escalating severity and appellant courts if need be, where violence no longer is the prevailing means to punishing an offender. It seems very neat and tidy doesn't it? Avoiding bloodshed and allowing learned people in “frocks” to do the talking, representing us and resolving the case, patting our backs saying “congratulations” or in a worst case scenario something to the extent of “better luck next time”.

It seems very clean. Some argue this structure is too clean, too distanced and too judicial and not organic enough (Christie 1977: 113). In the courts our quarrels, conflicts and disputes are formalised almost in a laboratory-like sterile fashion, the wording and description of the deeds explained in juridical terms (ibid: 117).

On the other hand we no longer have the need to take matters into our own hands: “*The only reason we punish is because we don’t kill*”. It was said jovially, but the truth is our Viking ancestors’ infamous blood revenge was not an idea reserved ancient times and ancient folks, so very many have had a sense of justice were the biblical eye for an eye really was, or perhaps still is, prevailing. After war and in combination with civil turmoil there are a number of instances where killings in the streets have been the way of the vigilante – or the mob – in order to restore justice. In fact before late modernity retribution, vindication and indeed justice was something that belonged to those with affinities that aided them in this (Borch 2002). The structure of the justice system will for better or worse remove conflicts from the involved parties and insert mediators either judicial or social (Christie 1977).

“We punish to convey our resentment in a civil fashion”

From this I interpret that punishment is a communicative tool and a means to convey our sentiments about something in an ordered and civil manner. This statement was not followed by any more explanations and as the respondent was approached on the street there might have been more to the reasoning behind. On the other hand, every single participant was asked why we punish and this was the participant’s answer. When the wave of community based conciliation and mediation councils were gaining popularity it was the aspect of restorative justice as opposed to the punitive justice that was at the heart of the movement (Nylund 2014: 105). Mediation councils have in some countries even made their way to handling cases of sexual violence in an effort to further civility and understanding, reducing pain and to constructively give the offender an insight to the damages he or she has caused (konfliktraad.dk). This approach is in line with the research

proposing to deal with violence in a civil fashion that includes, and hopefully might produce, understanding and desistance (Hennum & Paul 2007: 214).

Both the courts and mediation councils are perhaps more civil than taking to the streets and - as in the prior example - killing. In the aftermath of the Second World War there were quite a few examples of people taking matters into their own hands. Every single one of the incidents from that point in time is tragic and graphic. I shall not list all of them here, but to illustrate the conveyance of collective resentment that can ensue when formal punishment seems absent, I shall take an example from Norway. During the occupation of Norway in the Second World War, German soldiers fathered more than ten thousand “war children” with Norwegian women (Borgersrud 2005: 71, Ericsson & Simonsen 2005: 45).

The resentment felt by members of the public towards these women stretched far beyond raised eyebrows and name calling. Though the women’s actions – and pregnancies for that matter - weren’t illegal public outrage for having slept with the enemy was overwhelming (Borgersrud 2005: 72, Ericsson & Simonsen 2005:45-48). The sensibilities and sentiments of the otherwise peaceful Norwegian society were so trespassed and enraged that mobs of people attacked the women, shaved off their hair, harassed them and froze them out of their communities Johansen 2006: 89). This unofficial punishing became the stepping stone for official and systematic punishing, deportations and marginalisation that the women and their children had to face (Borgersrud 2005, Johansen 2006, Ericsson & Simonsen 2005).

6.3 Agent

On the one hand when we in official reasoning of punishment, by and large, omit or downplay the need for revenge and retribution we indirectly suppose that these factors do not influence the way in which we punish. On the other hand when we look at the ways in which we have punished in the past and acknowledge that our current criminal justice structure is based upon the foundations of this, it is plausible that there might be some

remnants in our system that may not be entirely void of retribution. Perhaps there is a way of understanding how things escalated when punishing the Norwegian women and children from the previous example. As Durkheim says: “Between the punishment of today and yesterday, there is no chasm...” (Durkheim 1969: 87). The act of punishing, however potentially systematic and structured in our modern societies with our bureaucratic transactions; serving of papers and meticulous registering of communication at every procedural step *is* personal according to the participants. This view, though none of the respondents put it this way, is what we in the social sciences call methodological individualism: The social structure that is the penal system is according to this rhetoric an offspring of the actions of individuals (Aakvaag 2008: 115). A simpler way of putting it is that if we did not punish individually, we would not punish collectively either. Perhaps if there was not such an overwhelming resentment towards the women after the Second World War there would not have been such systematic implementations set in place to punish them and their children.

*“We... **feel**... we feel we **have** to punish... it is almost ingrained in us as individuals. No matter what: prison, bracelet, death sentence... kicking your ass... people punish”*

That the inclination to punish is ingrained in us and motivates us *personally* is the claim of this and many other participants. I understand this statement in a way that emphasises that it matters very little whether punishment is dispensed neatly and constructively or not. What matters is that we need to punish and indeed we fulfill that need by any means necessary. The process of punishing is not merely a procedure of events that leads its own life and reaches fruition in the legal system; it is a set of consequences conceived and set in motion because of our internal need (Hauge 1996: 19). Sure, once set in motion the act of seeking punishment for someone’s actions will follow a certain set of procedures. But the initial desire, the spark that lights the fuse is the feeling that “*we have to punish*” - an individual need, without which no legal dealings would take place. And as many pointed out without which we would not have a legal system at all:

“Punishment in the legal system is an extension of sulking”

Sulking is certainly not the first thing that comes to my mind when I think of the solemnness of a courtroom. However the point might be that if the need for punishment, the ability to feel offended and the sentiments sulking did not exist, nor would the courts. Because perhaps the courts are a way of distancing ourselves from the messiness of punishment in the same way that using the word “deterrence” distances us from for instance all the emotional and social reasonings behind punishment that have surfaced here (Christie 2007a: 13). But is it accurate to say that it is our sensibilities tied to sulking that drives us when we punish? Surely other needs and functions are sought fulfilled on a personal level in the legal arena of mediation councils and courtrooms! On the other hand, would we in fact seek to punish, if there had not been a fruitful way of going about it? Would our litigiousness exist if the legal system did not? Most of my participants hold fast to the notion that the wish to punish is something natural, an almost animalistic part of us; *“a part of our makeup”* as one answered. Certainly a part of being alive is to watch out for our own interests and our own needs, and so it seems is punishing from this next viewpoint:

“It’s a way of sticking up for oneself when someone does you wrong, man”

Here there is little to suggest any priority of fulfilling anyone else’s needs. Punishment is the reaction one turns to when someone offends us. The statement gives no clues to the nature and severity of punishment, only that it reconstitutes the self that has been compromised by someone else. Far from the logic of retribution the driving force in this statement is restoration, as in the mediation councils. The next quote is an elaboration (from another participant in company of the first).

“You want to see things put right so you both can go on. You want revenge because you need it for your own self. To feel like you stick up for yourself. And then you can sort of pick up where you left, you know? ... I don’t know. ... You punish to allow people who have stepped out of line a chance to pay their dues so you can continue to be friends”

Here retribution enters, but not only are our needs met, the notion of making amends on a personal and practical level seems to be a key point in justifying punishment. In every way consequentialist, as the reasoning here is that in some cases punishment is a prerequisite for returning things to the way they were. With some sort of retribution of the pain there can also be a continuation of the relationship as the relationship was before; punishment here stands out as a way of making amends and paying one’s dues. Also here there are parallels to be drawn to the intended methods of restoration in the same way that the mediation councils operate; in an attempt to bridge the gap between the two parties and to offer consolidation and repair (Nylund 2014: 105, Christie 1977: 113-132). Sometimes however, punishment does not have to evoke personal feelings in us; it is employed because of other factors:

“We punish because we personally don’t identify with the sad bastards. We punish Sean Kevin for doing drugs and needing heroin, not Aunt Ingrid for stuffing her face with cake and needing insulin”

Perhaps this statement is an extension of the before-mentioned sense of identity, but it also resembles the divide between understanding and condemning. Clearly the participant feels that eating cake while diabetic is comparable to a heroin addiction, I will not combat this view, but I will attempt to highlight the components of the statement.

Going back to the ranking of worthiness that I derived from Christies “ideal victim”, not only is the cake munching aunt a much less stigmatised persona than the heavy drug using Sean Kevin. But “Sean Kevin” is furthermore a “suitable enemy”, a term freely translated

from Christie and Bruun's book on the war on drugs and Norwegian drug policy originally from 1984 (*Den gode fiende*) (Christie & Bruun 2002: 56-59).

There are several reasons for this and criminology offers ways to understand how this distinction can have taken place. For one thing, though obesity and weight related problems and diseases such as diabetes aren't exactly celebrated, they are not stigmatised in the same ostracising way that drug addiction is. For another, when it comes to heroin specifically, the Nordic countries viewed the substance as a wonderfully healing pharmaceutical that only *evolved* to a societal problem that was criminalised and punished most severely (Frantzen, Gotfredsen & von der Recke 2008: 10). Indeed the name heroin is in fact derived from "Hero" and only in connection to criminalisation and illegal use was it so firmly condemned and despised as it is now (ibid: 8-10).

However, since then despite different governmental stances on various substances it has been claimed that drugs are the biggest transnational threats we face (Träskman 1995: 146). In the 1950s drugs in the Nordic countries was not a political nor a criminal issue, in fact it was a subject confined to the doctor's office involving the patient and the general practitioner much like the prescribing and regulating of insulin is now and in the same way not considered harmful when taken according to the doctor's orders (Ødegård 2011: 4). The transition from being regarded as healing and aiding pharmaceutical products to plummeting in esteem and becoming hard drugs brought with it a shift in how we not only regard the substance, but how we regard the ones who use them (ibid.). Therefore the stark differences in how we both identify with and regard Aunt Ingrid and Sean Kevin in some extent has to do with the transference of the issue from a medicinal to a moral issue (Giertsen 2006).

And of course, in a late modern society where so many governmental entities produce knowledge through science and careful testing and comprehensive qualitative and quantitative interviewing, citizens have no reason to doubt the substance's demonising

characteristics. Criminalising actions becomes the most natural step forward and at the same time it gives the impression that the actions of drug users *surely* have to be terribly wrong (Giertsen 2006: 8). Particularly in Norway the punishment rate and severity of punishing drug related offences has increased explosively from the 1960s (Christie & Bruun 2002, Christie 2000: 59, SSB, Giertsen 2006, Ødegård 2011). The impression that this should be a wrongdoing from the governments side might be a common misconception by the public that “where there is smoke there must be fire” (Giertsen 2006: 8). With this in mind I suppose it might be easier for us, at least in Norway, to identify more both with the Norwegian government and with Aunt Ingrid.

“We punish because we personally don’t identify with the sad bastards” the participant claimed. Giertsen elaborates what punishing and penalisation can contribute to in regards to identity and identifying. She does this very much comparably to the example of the potential stigmatising and labelling penalisation would have done to the prostitutes in the high street, drug users are through criminalisation pushed further from mainstream society and marginalised (Hauge 2001: 100). Giertsen’s proposal is that punishment itself paints drug use as a very serious act that should be frowned upon, and that in extension drug users themselves are not only immoral, but - even more severely - they are judged as unworthy of compassion, respect or even common decency (Giertsen 2006: 8). And similarly to the case of the street walkers, we as a society are given a licence to condemn and demonise them to the extent that our excluding of these people seem to us both warranted and almost natural (Young 1999a: 387).

From the perspective of a welfare society, where we certainly assume that we apply our compassion and understanding before condemning it is difficult to wholly believe this is possible when stigmatising and labelling essentialises people in a way that obscures any other qualities. Perhaps the participant recognises that it might be because of penal consequences that drug users suffer poor conditions, have a lack of resources and very limited access to the benefits of mainstream society (Giertsen 2006: 8). When dismissed

and looked down upon by society to the extent that even “social workers harass and discriminate” them it is likely that criminalisation hinders us from recognising the very differing and advantageous lifestyles we enjoy in comparison to these people (ibid).

This difficulty in understanding and identifying with drug users has another side to it; namely how drug users view themselves because of criminalisation. What does it do to a person to be labelled and demonised? Psychology and other cognitive and social sciences agree that the ways in which we regard ourselves are in part contingent on external factors (Goffman 1967: 127). Goffman went as far as saying that our personalities develop and form solely within the confines and contingencies of different social systems; or to put it more plainly, our personalities are formed by ourselves as individuals and by our surroundings (ibid). The ways in which people act towards us and the way in which they regard us surely has bearing on how we regard ourselves and indeed how we conduct ourselves and designates the arenas in which we operate (Prieur & Sestoft 2006: 39). The implications here are obvious: the parameters for conduct diminish participation and in extension the drug user’s self-appraisal and esteem. This construction of habitat for socialisation is what the French and Germans called *habitus* (ibid: 38). The thing with *habitus* as Bourdieu uses it is that outward directions and structuring of how one is to conduct oneself also leaves a lasting impression on how one regards oneself (ibid: 39).

So what of Aunt Ingrid, her need for medicine is only necessary because of her inclination to excessively eat cake while being unable to process or digest it without risking both her physical wellbeing and her life. She will not lose medication if she eats more cake. Where her destructive actions comparatively easily can be rectified with a syringe of insulin, acquiring this substance is not criminalised. Not being criminalised perhaps she is protected from judgement and harassment. Aunt Ingrid’s actions are clearly connected to her medical diagnosis – so also is the case of the drug users. The consequences of her actions are very different.

As in the example of the nephew who had moved on in life but still faced punishment through incarceration, Aunt Ingrid need not face this. She will not face losing her job and income, her home and her social network nor freedom. She will not lose medication if she eats more cake. Sean Kevin on the other hand, can at any given moment lose all of these things because what he does is criminal. Retaining these bonds and resources Aunt Ingrid is permitted an otherwise normal life. And though her affinity for excessive amounts of cake might be far from idolised or applauded, her ties to mainstream society keeps our regard of her nuanced and we are able to attribute her with other more redeeming qualities in several other arenas. Her affliction, although I am sure it is a great concern of hers, is not her *only* concern and she need not fear the disapproval from everyone she meets. Her habitus is not stifling and constricted and her access to interaction is relatively uncompromised.

This is of course in sharp contrast to Sean Kevin who easier is viewed as one that has failed and whom it is difficult to rationalise the actions of. For us he stands out as a deviant who involves himself in criminal behaviour at great risk for getting caught, and *if* caught will be at great risk of losing all that ties him to a chance of a decent life. How indeed can we condone, understand and identify with this? Giertsen proposes we can't, that we because of Sean Kevin's label as a criminal, we aren't able to discern his other qualities; we cannot comprehend why on earth he started using drugs, why he can't seem to stop nor can we acknowledge that so many of the situations and ailments he suffers is in fact not from his drug use, but from the penalisation of it (Giertsen 2006: 8).

Furthermore, and of course I say this rhetorically, if he is harassed or badly treated, who is he -the criminal- to complain about the situation? (Giertsen 2006, Duff 2001: 14). There are of course some that would take my deflection more literally and regard crime as a sort of Hobbesian breach of the civil contract. By committing crime criminals forfeit the consideration and protection of society. In some ways committing criminal acts is associated with entailing a sort disregard for other's well-being that reciprocally nullifies

other's obligation to regard the criminal's well-being (Duff 2001:15, Morris 1991: 64 & 72).

I cannot here account for what sets the drug addict apart from the cake addict in this example, but the next quote might shed light on why some are criminalised and some not.

“We punish because we feel entitled and we punish those who are beneath us. No really I mean it. Your no-good unemployed druggie neighbour pees on your tomato plants? ... Get the bastard! Monsanto hijacks farming... destroys biological diversity? Mah! Don't worry about that it's just part of industry!”

Side-effects of industry are often regarded as acceptable even if they do destroy both local and global ecological systems in an irreparable way (Dybing 2012: 274-275). Perhaps this stems from the attitude that when it comes to modern advances humans are entitled to whatever resources are available and that nature, environment and such abstract entities are to be used (ibid). On the other hand the sense of entitlement might have its origins in a well-established concept from eco-global criminology, namely speciesism (Sollund 2012: 93). Referring to a distinctly segregated way of assigning worth and significance, speciesism designates humans at the top and other animals subsequently below us in a ranked and discriminatory manner in regards to rights and privileges (ibid). Clearly akin to other discriminating outlooks perhaps we do place ourselves beneath the big corporation, but above the local drug user when ascertaining who we seek to punish.

On the other hand “nature” might be so abstract and in a sense belonging to no one it might be easier to claim ownership and take offence in regards to the damaged property; when someone relieves themselves on your piece of nature, the tomato plant, the situation is no longer abstract.

Obviously in much the same way as punishment has several functions for society it has functions for us as individual agents. In this chapter punishment is portrayed as having a very personal origin. The need to punish whoever offends our core sensibilities is here depicted as something that we collectively find reprehensible but only because we feel and experience it individually or can relate to the offence on a personal level.

With this personal perspective in mind I want to present a point of view that draws from a nuance that is easily overlooked.

7 Moral or social motivation, or are they the same?

At a symposium I attended one of the panel members was incarcerated for a killing he committed in the heat of the moment when he walked in on his girlfriend being raped.

Ever since the dreadful incident he had whole heartedly agreed with the court that he *should* be punished for his actions; he had taken a life, even if he hadn't meant to. There was nothing he could do to bring the person back and he agreed that for this he must be punished. However in the verdict the judge had proclaimed that general deterrence was the main reason for punishing him. The panel member's sentiment was that this statement was a sort of punishment in and by itself: in his view the verdict was now to have a solely social motivation as opposed to a moral one. His point of view was that by arguing for general deterrence the sentence was given a social reason and he was essentially reduced to be punished to set an example to others (Schaanning 2013: 192). If on the other hand the argument for convicting was given a moral reason he would be punished to atone for his reprehensible actions. This he said would have been no more than he deserved.

There was a brief moment of silence while the audience and the other panel members attempted to process what he had said. This made me think of a hard held belief of one of my respondents, (not present at the symposium):

"Punishing is our moral obligation as a society! We only punish those who deserve it"

Durkheim would of course say that this statement reveals the real motivation for punishment. In this participant's exclamation punishment is not given effects or consequences, it is not even given an absolute motivation. Punishment is first and foremost our "*moral obligation*", whether or not punishing will have an effect or if it is exacted merely to cause pain is of little or no matter to the participant. In my opinion

Durkheim would classify this reasoning as a social reason as punishment is inept at changing behaviour and stopping crime (Durkheim 1973:162). Durkheim's opinion and indeed the rationale behind the participant's quote can be categorised as belonging to the absolute theories of punishment because the ability to change behaviour or indeed be a means to an end is void (ibid). The panel member's point is exactly this, in his opinion punishment will not change, neither his nor general behaviour, and punishing with the goal of deterring others was redundantly needless. However punishing because his actions were deplorable and morally despicable was more than acceptable to him because his actions weren't in coherence with morality.

Though Durkheim meant that the moral in fact is a social concept, the panel member marks a distinction between the two as they are not synonyms. His emphasis on his punishment's lacking moral connotations can nevertheless be separated from a very present social function.

But returning to the quote, as I pointed out in the chapter about punishment in late modernity my point here is similar. I understand the statement as indicating that when someone has been victimized it is "*our moral obligation as a society*" to stand beside the victim; that is why we have the structure of the penal system in place so that the offender need not face retribution or restoration alone.

The philosopher Immanuel Kant was convinced that if a society was to punish it should *always* and *only* do this for moral reasons. Bear with me, I will explain. In agreement with the panel member, it is my opinion that he would condone a verdict backed by retribution, and not by such a social reason as deterrence (Kant 1992: 158-159, Hauge 1996: 134-135). His point, originally from 1797 and not formed by the late modern state's obligations, is that when breaking the law one *deserves* punishment and retribution. He proposes that this deservedness in itself and only by itself warrants and justifies

punishment - not for any social functions or societal concerns; anything of the sort would be downright immoral (ibid). The respondent's perception that society has an obligation to punish encompasses Kant's own stress on this point. In Kant's own words, this is what we call a "categorical imperative"; something so important that we simply must carry it out without exceptions (Kant 1992: 161, Hauge 1996: 135).

If someone is to be punished they should deserve the punishment; however I do not think that the need for deterring society in any way has the same sort of urgency (Schaanning 2009: 25).

The example of drug users in Norway is a perfect illustration of someone who by society's norms both does and don't "deserve" punishment (Giertsen). In one setting drug users are being "pathologised"; given a diagnosis, a patient status and prescribed medicine. In another setting their actions are criminalised and potentially punished for what the diagnosis is based on. It can be argued that drug users can appear to be criminalised perhaps solely because we morally disapprove.

In my understanding Kant and many with him would not condone this sort of punishment of drug use. Punishment was in his opinion not to be utilised in order to satisfy our moral outrage however personal - or consensually agreed upon. Indeed only when civil rights are violated should punishment and penal consequences be used - not merely by violations on moral principles alone (Hauge 1996: 128). Sadly, drug users serve as a potentially deterring instance where criminalisation has caused irreparable harms (Giertsen 2006: 8). It is my firm belief that the aspect of harm is a delicate issue that we should approach with greater reverence. When criminalising, both the act and consequences of criminalising must not exceed the harms of that which is being criminalised (Frantzen, Gotfredsen & von der Recke 2008: 10).

So much can be said about harms caused by criminalisation, especially the harms of formal punishment which is so much more systematically documented than the effects of private informal punishment. In the following chapter we will look closer at the aspects of harm that seemed prudent for my participants to address.

8 Harms

“We punish to punish people who already are damaged to begin with... the ones with pebbles in their shoes!” [In Norwegian: “sten i skoene” an expression referring to people who are in a disadvantageous situation to begin with]

In several of the quotes above we have already seen how there are opinions and experiences that suggest that we may be punishing the poor. Here we will shift our focus a little: *“We punish to punish people who already are damaged to begin with...”*. It is a sad sentiment indeed both because of the vindictiveness in itself and because of the damage that is present to begin with. When we look further and examine the research done in prisons there is a definite ring of accuracy to this exclamation. Not only is the prison population largely made up by people with socio-economic difficulties while they are in prison, many were before incarceration in a very poor state regarding concerns of medical, financial and social matters (Clemmer 1940, Wheeler 1961, Skarðhammar 2002, Skarðhammar 2003, Thorsen 2004). When released from prison they are if possible even less eligible and even less equipped to enter the mainstream society in which they always have been in the liminality of (ibid). Apart from not having a stellar CV or being shortlisted for job interviews to begin with, the stigma of having been sentenced for a crime and additionally for having been incarcerated interplay in a most unfavourable way when a prisoner is released (ibid). Having paid ones dues so to speak seems to have little relevance when the individual’s starting point didn’t amount to very much on its own (Skarðhammar 2003:52). Luckily there are some companies who explicitly try to break down prejudices concerning punished individuals and welcome them into the workforce providing them with skill, work experience and a new chance. There are also governmental and non-profit organisations and similar efforts that work for reintegrating prisoners and that provide support and hands-on assistance. But the debate concerning legitimisation of using prisons as punishment is however very much relevant when research, prisoners and statistics bear witness to the poor conditions and diminished prospects of prisoners, enhanced only further by stigmatising and labelling after serving a prison sentence (Becker 1973, Mathiesen 1990, Skarðhammar 2002, Skarðhammar 2003).

“I’ve been to prison, I can tell you why we punish... we punish because we don’t know better. What happens in there is an unnatural... ..perverse social system. So sick, you know?-The way two people interact?” [Shakes his head]

It is hard to argue against a claim that the social system in prison is skewed and unnatural; maybe even perverse, as is emphasised here. The social environment that constitutes the prison system is *constructed*, in the sense that it is not something that develops by itself in any given social setting and it is not found in any other situation than in a detention setting. Hardly distinct because of its seclusion from rest of society; nuns, monks, ideological and spiritual communities often are secluded, but are so usually in their pursuit or worship of a common goal. And while many convents and ashrams and the likes have their own social orders that indeed are constructed and askew, the element of detention and imprisonment creates a very unsymmetrical and peculiar basis for relations to evolve.

There are several strains and pulls that interplay and potentially designate the form of relational conduct in the penitentiary environment. The most distinct and opposite relations in prison has to be that of the guards and the prisoners (Ugelvik 2011: 133). Skewed, and for obvious reasons tied to very diverging capacities for power, the prison guard is the authority to follow and the prisoner is the one to follow (ibid). However, there are many variants of how other relations in prisons also are quite in divergence to one another. In his ethnographical study in a Norwegian prison Thomas Ugelvik demonstrates ways to further sort these two main groups in smaller subsequent units. Also within these subgroups there are factors that influence the interactions. Even if these differences in power relations are far less obvious and not as diametrical and profound as the one between prisoner and prison guard, factors such as ethnicity, crime, status and has the potential to act as attributes and disadvantages that may influence interaction (ibid: 133-158). The ones who are dominated often develop strategies and counter ideologies to

resist the domination and cope with the repression (Scott 1990). The next quote sheds more light on the subject:

*“It is... you **against** them and you become juvenile when you retaliate. And... you, I don’t know you become garbage when you stand there... tail between your legs. As if you’ve done something wrong... and ask for permission to take a shower”.*

Also in Ugelvik’s study simple tasks such as showering are transformed from being something mundane into becoming a sort of privilege that the prisoners have to request and be granted permission for (Ugelvik 2011: 134). The participant speaks of three contrasting feelings. Firstly, he speaks of being childish when reacting to being controlled or dominated; the reaction being some sort of retaliation. Secondly, he speaks of feeling like garbage. Thirdly, he speaks of feeling shameful as if he has done something wrong when awaiting the answer to request for a chance to wash himself. These three feelings are not feelings of empowerment and can very well be experienced as *pains and humiliations* (Sykes 1958: 63-83, McCorkle & Korn 1954: 88-98). Not being able to decide when to shower, if at all, being part of that decision is one of the pains of imprisonment; the prisoner is in direct deprivation of his autonomy (ibid). These harms are hard to categorise as latent or manifest functions as they clearly are directly derived from being incarcerated.

Outside prison walls our reactions to offences can be dealt with in a manner of ways; we can scoff, we can talk back, we can avoid and we can leave. The normal ways of reacting aren’t that readily available in prison (Goffman 1967: 33). Often to cope with these and similarly degrading feelings, prisoners report how they utilise survival techniques and self-affirming countermeasures that inevitably give them a sense of agency even if they are confined in a system where they are constricted and controlled (Lauesen 1999, Goffman 1967, Ugelvik 2011). Rearranging one’s designated prison cell, preparing one’s

own food, name calling and refusing to talk can be some of the ways in which one can react and reconstitute oneself for one's own sake (ibid). Another criminological way of understanding these reactions to punishers is to see the prisoners' actions as *rejecting their rejecters* (McCorkle & Korn 1954: 88-98). But it is easy to think of these countermeasures and techniques as similar to each other, and when the participant uses the parallel of becoming juvenile we might forget other aspects:

“Hell I’ve been there [in prison] for a long time. It does something to you. To who you think you are... but then the women and men that work there... Well it helps because they’re not exactly bright. So you can’t take their stupidity personally. But it really has to do with who you are and how you rationalize their brutality”

This statement has many parts to it but I wish to present it as it was presented to me because broken up it gives the impression of a more morose and personal narrative than the one I experienced. Granted, the participant is acutely aware of what prison can do to a person, but put together like this the statements appears as it did to me that this was something that the participant observed and could testify to, but which didn't affect him in quite the same way. In this quote prisons are given a formative ability that goes beyond stigma and labelling in the outside world, it also goes beyond the construction and employment of techniques -even if it does involve them as well. This formative ability penetrates the self-regard as well as one's feeling and opinion of identity: *“It does something to you. To who you think you are...”*. Not an uncommon response by prisoners in surveys and studies, and it seems the parameters of actions are not only constricting and shaping externally but also internally (Cohen & Taylor 1981: 157, 176 & 187). This does not mean that the hierarchical struggles or displays of power have a *determined* effects and results. As in life in general *“it really has to do with who you are and how you rationalize their brutality”*.

One of the great tendencies of studying subjects is the fallacy of assuming that people are alike (Cohen & Taylor 1981: 159). *“But then the women and men that work there. Well it helps because they’re not exactly bright. So you can’t take their stupidity personally”*.

This highlights the point of the prison population not being one great big mass of identical homogenous people (ibid). It also amplifies the astounding, but often overlooked difference in how who **you** are, your capabilities and your sense of self all play an important part in how each individual in prison, as in any other situation, copes with your surroundings (Cohen & Taylor 1981: 159). This testimony bears witness of coping skills and of a repositioning narrative that places the prison guards below the prisoner regardless of the guards’ actual or fictional dimness (Ugelvik 2011: 134, Lauesen 1999).

However, in regards to the last part of the statement concerning the behaviour of the guards: *“their brutality”*, the next quote is to the point and rather describing

*“...it was like living with the Dursleys, they didn’t harm you, but they were partly scared and partly compensating for it and acting tough. Some were just... really distant. **That’s** a really humiliating feeling. I guess we punish because there has to be a reaction... but we don’t really know how to do it.”*

Also this participant speaks from personal experience. He compares prison to living with the Dursley family from the Harry Potter books by J. K. Rowling. In the books as well as in prison there is for this participant no love lost. No physical violence occurred in the books, but the protagonist was confined to a very small place, had severe restrictions when it came to socialisation, clothing, food and freedom (Rowling 1997 & 1998). This sort of punishment, that the prisoner shares that he was subjected to, is what we categorise as negative punishment, which means that the punishment implies removing benefits as opposed to positive punishment that imply harm being added (Akers 2014: 143, Woolfolk 2010). The prison guards, like the Dursleys, exhibited both fear and

overcompensating toughness.

For this participant and former prisoner it was this coldness or distance that led to a feeling of great humiliation. Being intentionally distant is a quite passive aggressive way of showing dismay in any social setting, but in prison, when the scarce contact you have with people, is with someone who is distant, there is no wonder that the participant felt humiliated (McCorkle & Korn 1954: 88-98). To me it seemed that the participant felt that this experience and feeling needed to be shared in order for him to say that he agreed with the premise that one should punish, but that the way in which we do it is not the way it should be done. The flipside of this statement is what might this exhibition of coldness do to the prison guards who behave in such a distant manner?

A former teacher at a prison said the following:

“Prison guards are the only ones who are thoroughly convinced that punishment is deterring. Believing anything that ludicrous is retarding. Because you know it’s wrong, but you have to do your job. It produces a sense of entitlement. Makes them cold towards the inmates... That must harden them and make them cynical”.

It is tempting to compare this statement to the realm of Harry Potter, but I shall refrain from making further comparisons. The participant has a grim outlook on the social and emotional abilities of prison guards, but at the same time she mitigates their portrayed coldness with moderating conditions that almost *deterministically* sets them up to become cynical. Believing one of the core premises for one’s vocation is not that unfounded, not even if it does come in conflict with other hard held notions and understandings. It may seem that according to this former prison worker that prison guards hold several rationales to be true at the same time and that this causes some internal dissent in them. Possibly a

return to the previously mentioned double-think the phenomenon seems to contribute to cause an unnatural way of conduct according to this observation (Orwell 1949). The fact is that the behaviour and antisocial conduct of the prison guards may very well be *their* coping mechanisms. As handlers of punishment perhaps the need to distance oneself is a premise to executing the job (Christie 2007a: 13). While this statement gives the impression that the ones who need to distance themselves from the act of punishing are prison guards, the next statement encompasses us all:

“We punish because we don’t know what the hell we are doing. It’s like the abattoir... out of sight out of mind ha-ha! We put them out of sight so we won’t see what we do to them. Prison guards are stuck there too though... and prolonged exposure to the system where they themselves seldom if ever have a say... That’s not good for anyone, you know”

From this perspective it is society that is the one doing the distancing. *“like the abattoir... out of sight out of mind”*. Well, we have built some rather secluding walls, the question prompted by this participant’s take on the matter is: are the walls there to keep the prisoners within inside or are they there to keep them out of sight? Perhaps we do a bit of both: the walls keep them in, and out of sight. And conversely, is it fair to consign people to handle the dispensing of punishment in this way? Should prison guards be alone in this environment that so easily can cause friction? There have been made enquiring studies exploring prison guards’ work conditions and threat of physical violence (Hammerlin & Kristoffersen 2001). This was hardly the concern of any of my participants though, but there was a certain amount of sympathy for their predicament.

“Prison guards are stuck there too though [... in a] system where they themselves seldom, if ever, have a say...”

In Ugelvik's prison ethnography he suggests that though markedly different from the prisoners in most ways, prison guards are connected to the prisoners, in that also they must follow orders and do as they are told (Ugelvik 2011). There was some agreement about this among participants with prison experience in my selection, but there were also some abhorrently contrary opinions.

“We punish to retaliate and we let the meanest most narrow-minded idiots do it. Prison guards think of us as animals and they treat us like that as well. I'm telling you, it's true! They think they're better than us.”

This statement is obviously from someone who has been incarcerated. The opinion is not unique, as there have been many studies showing the psychological effects on prison guards and how they alienate themselves from prisoners. Inevitably looking down on them and expressing this in different ways. Of course the famous, or should I say infamous, Stanford Prison Experiment is a psychological experiment that highlight these steps and implications in a thorough fashion (Zimbardo 2008). I will not be analysing it here, in a criminological way, but suffice it to say, the study tries to account for dynamics in the relationship between prisoner and prison guard that ultimately have dire consequences that some have dubbed evil (ibid).

Through interviews of prison guards in Norwegian concentration camps directly proceeding after the Second World War, Nils Christie wrote his work “The Banality of Evil” in it he uncovers a series of distancing mechanisms or ways of thinking about the prisoners that made the guards not feel empathetic toward them (Christie 2007b). Both these examples are of course extreme and I am not proposing that the participant's experiences are indicative of prison life in Norway, but this is however a feeling expressed by many in this project. I do not think it should be dismissed on the mere fact that many consider the Norwegian penal system as a relatively human system.

On the other hand, whether or not negative punishment as the one endured in prison or at the Dursleys is human or not is an entire debate that I shall refrain from entering here. The harms of isolation and being cut off from society is one that is very hard to simulate in research. The addition of feeling like one is treated as an inferior cannot be easy to handle when one has nowhere to go. *“Prison guards think of us as animals and they treat us like that as well”*. I am not sure what is being referred to here, but the opinion of the participant is very clear. There is in prison a brutality against prisoners that people would not submit people to endure. A powerful observation made by Christie was that the brutality that from the prison guards was rationalised away, because the prisoners in their minds were not humanised (2007b: 5). Perhaps the participant’s experiences are akin to the results of this type of distancing.

Bearing in mind what one prison guard told me when I asked the question *“why do we punish?”* The answer did not express feelings of superiority:

“We punish because we don’t know what to do with people who behave badly. They’re good, really, you know. Just have to treat them with respect and care.”

Neither absolute nor relative in a productive sort of way, this reason for punishing gives the impression that there aren’t any good alternatives to handling deviant criminal behaviour; the solution is incapacitation. The prison guard seemed eager for me to acknowledge prisoner’s true nature: *“They’re good, really, you know. Just have to treat them with respect and care”*. This certainly provides a contrast to the understandings and experiences of the last participant. In a way this quote might also confirm the habitus presumption that actions are formed within the social parameters of how others perceive and react to you (Prieur & Sestoft 2006: 39). However, in my interviews this is not a quote that sums up the sentiments and statements of any of the prison guards in this particular project.

I present this statement as an opinion shared by some, but contrast it with the following statement from a former prison guard that is more representative in my data collection and who arguably thinks differently. There have been many social scientists who have interviewed guards who convey and display affection and respect for the prisoners and who show attention and compassion by offering them help and support (Fredwall 2015, Grøvdal 2001). Suffice it to say, this reflects only the participants that I came across and *may* not represent any other prison guard than the ones I encountered. Here is one statement from a prison guard in this project:

“They are like kids, you know. They eat the worst food imaginable and act like spoiled brats if they don’t get their way. They’re really not the brightest bunch... we have to lock them up though. Some of them are just loco”

The first part *“They are like kids, you know”* resonates with the previous statement from the prisoner who described his own behaviour and tactics as juvenile. However there is little that suggests that this particular prison guard has any insight to why prisoners sometimes *“are like kids”* and resort to juvenile behaviour. This leads me to think that as prison guard it might sometimes be difficult to see how one’s mandate is endowed with an enormous amount of decisional power. This might have some very serious consequences for the way guards act towards prisoners. It might also give the guards a false understanding of the effect their actions can have. If the prisoners in the first place only act in a juvenile manner because they try *to reject their rejecters*, condemning their behaviour and dismissing it as juvenile and not recognising it as a survival technique, might only further more rejection from prison guards and the need for more counter-rejection from the prisoners (McCorkle & Korn 1954: 88-98). The statement *“They’re really not the brightest bunch...”* seems to indicate the possibility for this.

In addition this prison guard offers another dimension to the view of the prisoner: “*we have to lock them up though. Some of them are just loco*”, expresses a need to punish by incapacitation because some members of the prison population are “loco”. In some way this part of the quote might highlight why some prison guards in their own opinion may feel justified in speaking about and regarding prisoners in a derogatory manner.

Nevertheless, this may have some dire consequences for the daily interaction for both parties. And furthermore, for how both prisoners and guards conduct themselves around each other and how this might have bearing on how both parties think of themselves (Priour & Sestoft 2006: 39).

I have sorted this statement under the harms chapter because I do not believe that it is productive to demonise the majority of people that you meet in a workday. My point is that one of the harms of punishing is that we create a brand of experts that experience a severely distorted version of the people they are set to guard, merely because of their close proximity to the ones being punished. As one respondent said “*It’s like the abattoir... out of sight out of mind*”. The rest of us are spared the to and fro of rejecting and counter rejecting, we are also spared taking a stance to what really goes on when prisons are closed matrixes of their own.

9 Implications

Throughout this thesis I have presented my findings alongside criminological theory, research and literature in hopes to shed light on how we can understand and analyse the various reasonings better. In addition I have sought to problematise the statements by pointing out some possible implications from a scientific standpoint.

The previous chapter was solely dedicated to deal with some of the harms of punishment. Though other findings in this thesis *might* be more nuanced these particular findings have not put the way we as a society handle punishment in a very good light. Nonetheless I do not believe we deliberately choose to inflict harm in the way that we might do. My notion is that the reasonings and rationalities behind punishment can be legitimised by what we call the *manifest functions* of punishment (Merton 1957: 60-69). The harms that we have looked at and the implications that are consequences are what we call *latent functions* of punishment (ibid). I do not think we are fully aware of the *latent functions* that are the unintended consequences of punishment either in informally nor formally. When it comes to formal punishment I do believe our inattentiveness comes from our faith in our government to handle the punishing for us and trust that they manage it in a respectable manner (Finstad 2003).

If the respondent's sentiments are anything to go by, there are many pointers that suggest that punishment entails a few too many implications that we should not speak more colloquially about it. I wish to return to some of the implications and see if we can detect any factors that can aid us in the quest of unveiling more explanations to why we punish.

If we in a welfare society indeed do punish the poor, there are arguably some obvious deficiencies and serious implications firstly in how we criminalise actions and secondly how we discern criminals that we *prosecute*. I have discussed the process of

criminalisation above, so let's turn to how we discern "prosecutorial" criminals; the ones who break the law and are punished for it.

The Norwegian social scientist Liv Finstad coined a term that offers a very hands-on answer to this discernment. The term very accurately describes a sort of policer's eye, "*Politiblikket*", that offers an explanation to how visible factors and indicators allow police to hone in on certain types of crime (Finstad 2003: 25). The crime that is noticed by law enforcement is of course the sort of crime that becomes well documented as a nuisance and, as we saw earlier, a societal way of dealing with nuisance is to criminalise the problem. The policer's eye catches the visible criminals as well as the ones who are perhaps not criminal, but deviant. Though not surprising, the eye is totally inept at finding killers, rapists, environmental or economical felons; however the policer's eye can easily seek out the scruffy, the poor, the drug users and those with minority complexion (ibid). Or in other words, as hinted at previously, the policer's eye is stellar at sighting the crimes and criminals that show up in the statistics, rendering crime statistics a reflection of police priorities and not trends and upswings in crime (ibid: 23, Høigård 1997: 72). The actions of the most visible individuals need not be in breach of a particular law or paragraph. Conversely, keeping your car running while parked is an offence for which one can be fined. But who has ever served time for waking up the neighbourhood with their running engine even if it is against the law?

Perhaps actions are attributed more than just concurrence with the law or not. In fact, perhaps the issue is that we feel we are so very unlike the ones we punish, because we cannot comprehend their actions or motivations, since they are not in alinement with the mainstream or hegemonic way of conducting oneself. In addition I believe there has to be an element of relatability for us to refrain from punishing. To quickly use an example from earlier in a very simplified way: we cannot relate to urinating on someone else's vegetable crop, but we can relate to industry. This suggests that when we punish the poor we might be doing it without premeditation; not with malicious intent.

Criminological theories on conflict and differences emphasise not on differences themselves, but on systematic and hierarchical divergence in power, whether it is distinguished by gender, race or class (Hauge 2001: 117). If the things we criminalise are the things which fall outside the majority's way of life and conduct, the process of criminalisation might be a matter of power. "And any system, social or otherwise, that has the power to criminalise will not criminalise itself" (Høigård 2003: 189).

As discussed in the main part of this thesis the use of punishment potentially, and sadly quite commonly, has major ramifications for the ones punished. But the consequences go beyond this as well, albeit in a much less personal way. When Society punishes the weak and the poor it implies that society itself tarnishes its own image of the benevolent, caring society that a welfare state aspires, or in fact claims, to be.

Some would argue that the loss of being characterised as a benevolent society is a loss better handled by a neo-liberal society (Wacquant 2001b). Not necessarily *because of* liberal government, but certainly *with* liberal government there has been an unmistakable trend of increased punitiveness (Garland 2001: 142). Just the last three and a half decades we have had two noticeable liberalistic upswings. This has among other things implied the exacting of more and harsher punishment, more police and an explosive growth in private policing entrepreneurs (Johansen 2015: 59-64). Perhaps the focus on individuality and personal responsibility of liberalism, in this country, has the implication of erroneously assuming that we all have the same footing and foundation in life because of the vastly improved possibilities offered by the welfare state. Perhaps with this in mind it is easier to see why mainstream society underestimates the social and economic differences between us, as well as ignoring the varying access and availability members of society have to facilities and resources. If true it would offer an explanation to why liberal governments is more desensitised to socio-economic needs and have opted to enforce the punitive system, but perhaps not why it dismantles the welfare system (Wacquant 2001, Wacquant 2001b, Johansen 2015)

When punitiveness is the regulatory line in which a government approaches social control and order it is not surprising that people's agency and opinions are influenced. The role of how structures influences peoples agency is one of the major topics in social science and might offer explanations to how the way we sort our surrounding and how we act can be understood to be in alignment within these defining outlooks and systems and structures (Aakvaag 2008: 30).

Though not in any way representative to prison guards in general, the prison guards in this thesis have shown signs of outstanding desensitisation. Whether a coping-skill or not, perhaps this seeming nonchalance is symptomatic of something more serious; a delineation and othering of a lot of people with unfortunate and unfavourable starting points (Clemmer 1940, Wheeler 1961, Becker 1973, Mathiesen 1990, Skarðhammar 2002, Skarðhammar 2003, Thorsen 2004). However this might be an occupational hazard that comes with being so immersed in, like a participant said, a "*perverse social system*".

On the other hand this sort of derogatory outlook on certain perpetrators is not unheard of and I dare say not entirely uncommon. At the before mentioned symposium, a member of the audience exasperatedly and sarcastically asked "who cares about the offender!?". More or less finished with my data collection at that point in time, and having had transcribed every single word uttered in every single interview, I very much wanted to turn to him and say "Quite a few actually". My findings are of course not in any way conclusive; such is nature of scientific enquiry, but my finding do at the very least offer a cross-section of the opinions of *some* people around the country.

Many participants were as a matter of fact concerned with the well-being of offenders – albeit for various reasons. Firstly, no one wanted there to be exacted so much harm that offenders became released back into society with a sense of bitterness and vengeance. Secondly, none of the participants *wanted* to cause the offenders harm making us, as one

participant said “*one who stoops to the level of wanting an eye for an eye*”. Thirdly, and finally, there was a reluctance to add to the apparent unfavourable situation that so many of the most often prosecuted offenders already found themselves in. Incidentally, the care and compassion for offenders was not a patronising attribution of low faculties. In fact the participants who uttered sentiments of compassion for offenders acknowledged that their impression was that many offenders have limited availability to legitimate life choices and strategies. This last point is the very essence of Robert Merton’s proposition to why people commit crimes. When members of society share common ideals, goals and aspirations, some will probably lack legitimate ways of obtaining these and as a consequence a selection of possibilities arise for them (Merton 1938, Hauge 2001: 67-68). Possibilities include rejecting the ideals, improving one’s means and attempting to achieve them, but also, for some, illegitimate ways to obtain the goals becomes a possibility (ibid). That which for the majority can seem deviant and incomprehensible, is for some a valid choice and for others it is what presents itself as the only option (ibid).

The elaborations here have thus far concerned themselves with society and the offender. Let’s move on to implications regarding the victims. When it comes to this part my participants have not had very much to say. Probably they would have if I had directly asked them, but it is remarkable that victims weren’t at the forefronts of their minds. This does of course not reflect the various efforts that are in place to support and aid victims through the Norwegian penal system, but it suggests that for my particular selection this has not been the focus regarding punishment.

In recent years, there has been a shift in the focus on why we punish regarding victims. One of these changes regards how restoration for the victim for a long time had a less significant place in criminal justice than it has now. Another has to do with which actions were classified as harms and which were classified as crimes. This may partly be because of the surge of punitiveness in connection to the neo-liberal framework, and partly, because of social awareness and massive social activism, certain actions that earlier were

tabooed to even talk about have been addressed and criminalised. Examples of this are domestic violence and sexual offences, both of which became relevant topics for official discourse because of the women liberation movement (Paul & Hennum 2007: 206, Gottfredson 1990: 156). Phenomena that previously were regarded as domestic or private issues were highlighted as serious crimes and were attached with a threat of punishment. Also penal codes and laws have gradually become more punitive, to reflect a sort of attribution of value designated to the victim (regjeringen.no).

There are of course major implications to attaching value to victims through punishment in this manner, as punishment by this logic potentially becomes more retributive. For instance sexual and domestic violence cases in the U.K. spurred a drastic increase in women being arrested for showing contempt of court. The women's spouses were charged for sexually or otherwise violently assaulting them, and if convicted they would leave their families with one income and one adult to manage affairs, and when released from prison, the women would be in danger of being assaulted in the same manner again (Chesney-Lind & Rodriguez 1983: 47-65). Several women, hesitant to contribute to incarcerating their husbands and setting themselves up for the impending consequences thereof, refused to bear witness to their husband's assault and kept quiet during the trials and were thus charged with showing contempt of court (ibid).

As we now have seen through differing reasons for punishment and the various implications and harms presented alongside, the increase of use of punishment may quite often come with unintentional effects and damages.

Some of the effects of utilizing punishment as a social tool are as we have seen especially harmful to society, victim and offender. When it comes to harms on the offender - and alas in the example of battered women - I believe there is a brutality in the way we punish that cannot be explained by the criminological theory that we have looked at thus far. As a

further attempt at understanding why we still punish in the instances where punishment causes more harm than good I will now put forward a suggestion or proposal of what possibly takes place when we ignore harms and follow through in the same punitive trajectory.

10 Punishment despite implications and harms

As exemplified throughout this thesis, punishment and criminalisation of actions and people has the potential to severely marginalise and stigmatise people. As stated previously I do not believe that we as a society knowingly nor maliciously cause harm, and I do think that when we are made aware of some of the brutality of punishing, we might distance ourselves and legitimise the reasons for punishment in the most rational of ways.

In my opinion the first step, if distancing ourselves, which of course we do without reflection, is that we might be doing a risk-assessment of the offender. Risk-assessing has certainly been said to be the new penal tradition that has taken over from the previously mentioned welfare penalism and neo-liberal punitiveness (Borch 2002: 12, Beck 2001).

When we for instance, read about a crime we automatically assess the information given in the article and personally ascertain for ourselves how we feel about the situation. When we speak to others about it we often exchange opinions on how dangerous the offender is. In other words we categorise offenders in accordance to our sentiments and evaluations of dangerousness. The sociologist Spitzer has a very alarming typology for the sorted groups, in his opinion we differ between those we label as social junk and those we label as social dynamite (Spitzer 1975). The ones we disregard in this instance are the ones we sort as social junk. The ones we “dangerize” or make out to be dangerous and assess with danger and risk, are the ones we think of as social dynamite (Spitzer 1975, Lianos & Douglas 2000). However, what these two groups have in common is the issue that we have touched on a couple of times already in this thesis, namely being a nuisance to the majority (Spitzer 1975). I believe that we socially feel umbraged and threatened by the perceived dangerousness of the ones who make up the social dynamite. I propose that the social discontent we feel, whether it is unease or outrage or something in between, needs a moral solution. Here we touch down on the nuance brought to our attention by the before mentioned panel member; the social need to punish should have a moral reasoning, it

should be morally imperative that we punish.

Young in fact argues that it is this risk-assessing or *actuarial way* of crime control, that in combination with the demonising of deviants that have contributed to the way we punish and employ social control today (Young 1999a: 387).

What first had its origins in our perplexity and fear is in my proposed opinion linked to an individualisation of the dissent; these people pose a danger and it is our moral obligation to address the problem. The ones we attribute with an element of danger and the ones we assess with risk must be handled. When our perceived safety is at risk we tend to accept that we label people. I believe that this rationalisation leads to a moral panic as to what should be done with these perceivably dangerous individuals (Cohen 2000).

A moral panic is when a phenomenon is dramatically constructed or perceived as something that poses a risk or danger to us (ibid: 19-21). When concern rises there are, as “luck” would have it, often moral entrepreneurs who both present themselves as the keepers of keys to solve the problem, and as moral guardians that offer legitimisation for both our concerns and our wishes to address the matter (Becker 1973: 150-158). What sets the events and dynamic of a moral panic apart from other states of panic, is that the initial problem is so dramatized and exaggerated that the moral justification of addressing it usually leads its own life and entails harshly unproportioned reactions compared to what is necessary (Cohen 2000:19-26).

The answer to the problem of these dangerous individuals that first got our attention is to put them in prison, a measure that as in any moral panic entails much more severe reactions than necessary (Mathiesen 1994: 46).

Throughout the process of “dangerization” and risk-thinking I believe we might be distancing ourselves from the criminals. And I believe we may legitimise these severe reactions and the brutality of confining them, removing them from their families and children and depriving them of autonomy.

For this sort of distancing to take place, and for justifying that we inflict such disproportionate harm, I propose that there are some techniques of neutralisation in play.

Though theories on techniques of neutralisation are applied in attempts to explain why people commit crimes I am convinced we can extract some of the main points from their delinquent context and utilise them to understand our own convictions (Sykes & Matza 2014: 222-228).

To begin with, one of the techniques of neutralisation involves a *denial of responsibility* (ibid: 225). In our advanced society where experts brought forth, and ministries are founded to handle the logistics of our structure, there is a commonly held opinion that the government will handle anything regarding national concerns (Finstad 2003). Our trust in that the government will do this in a sensible manner can be understood through the pastoral power and authority that government encompasses (Foucault 1982). This delegation of responsibility does of course make sense when we consider that the government’s authority in addition to being democratically based is funded and regulated by our tax money. Our negation of accountability as it were *can* be understood accordingly: We pay good money for someone to do the job!

Secondly, there is the element of *denial of injury* (Sykes & Matza 2014: 226). This step is quite self-explanatory, we are of the opinion that our “behaviour does not really cause any great harm” (ibid). That we delegate the task of punishing to various governmental

ministries and expert committees can surely be the proper way to avoid harm and injury from befalling offenders. Attributing government with valid authority, as in the last instance, is just as relevant here; a knowledgeable government will exact productive and necessary measures, surely, it will not inflict injury.

Thirdly and lastly, when these two rationalising and neutralising factors are in play, they may lay the optimal ground work for us to deny that the offender can be a victim (Sykes & Matza 2014: 226). This *denial of the victim* encompasses a transformation wherein the offenders' actions make them deserving of whatever should befall them (ibid). This is in many ways what we brushed on earlier in the thesis, about the criminal forfeiting consideration because his or her own disregard towards others (Morris 1991: 64 & 72). This would, I presume certainly resonate with the opinions of the gentleman who uttered "*who cares about the offender?*".

11 Conclusion

It has been the objective of this thesis to uncover and access some of the rationales for why we punish, and to show how criminological theories can aid us in understanding some of these reasonings and their implications. My method of enquiry has been to use qualitative research interviews, and leave the defining powers to the participants. This has entailed that my role as researcher has not been to validate or contradict the statements made, but to utilise criminology and sociology of law to shed light on the responses. It has also resulted in many different answers that highlight aspects I would not have foreseen; for instance, that we not only punish the criminal; we punish the misfortunate.

My aspiration to let the participants define punishment for themselves has been twofold: I have anticipated differing definitions in accordance to each participant's background, life and experiences, and to their own understandings of the word and thus the concept of punishment. I anticipated wrongly.

There have been very few discrepancies in the understandings of punishment; very different people have given very similar answers.

Reasonings have included the use of punishment as a tool for self-regulation, general deterrence, incapacitation and revenge. These have fallen in under the relative theories for punishment. As a contrast, reasons have also included absolute theories of punishment, exemplified by the need to hurt, to expel as opposed to assimilate and the use of punishment to retribute. Clear parallels to the penal trends in punitiveness and late modern society can be derived from these answers, and the theory of the bulimic society has had an obvious place in understanding the duality of the society that both dismisses and incorporates deviants.

Ways of distancing ourselves, and labelling deviants through criminalisation and punishment, have been an underlying theme through this thesis. And this has helped illustrate how punishment is being used as a way of dealing with different social phenomena, as in the instance of street prostitution. In addition, punishment and criminalisation can possibly have contributed to construct and create social problems, for instance as in the example of drug users.

Answers have also pointed to the concept of punishment being connected to power and hierarchic differences in society. In this view punishment is used against those beneath us socio-economically, but as shown through the concept of the policer's eye, with a strong focus on those *visibly* unlike us.

Structurally, the respondents have said that we punish merely because there is a fruitful way to go about it, because an entire system is in place for processing complaints and dispensing punishment. We are given a suggestion that points to how the individual acts within the structure, but also an answer as to how an entire structure is built on the needs and wants of the agent. In this thesis it is mainly within the structural level that we have found issues pertaining to the victim. Elsewhere in this thesis, and indeed in this project, the victim has almost been totally overlooked as a topic. In most of the responses there has been an omission of the victim in a way that has portrayed punishment as more of a social and political issue. Not necessarily depicting the situation for victims of crime in reality, it was all the same surprising that so few respondents addressed them in any significant way.

In addition to this, reasons for punishment have been portrayed by my participants as having a very personal and individual origin. On the one hand it was stated that we all have internal needs to punish when someone has wronged us. This need is presented as something ingrained in us on a basic level. On the other hand, this need is not necessarily

vindictive; assuredly, sometimes the need is oriented towards being retributive, but other times punishment is restorative in the sense that it is what is needed for us to move on.

We have also seen examples that occasionally it is *what* is criminal that matters when we punish, while other times the use of punishment is contingent on *perceived* harm. In the instance of environmental damage, according to the participant here, there were no repercussions. When it comes to undesired behaviour however, punishment can be, and has been, utilised to get rid of the problem, and as with the street prostitutes, not necessarily in a direct way.

Harms and implications regarding both the manifest and latent functions of punishment have surfaced. Some of the manifest functions have been the loss of freedom, social contact and autonomy. Some of the latent functions, that is to say unforeseen consequences, have been the development of survival techniques used by prisoners in an effort to redeem themselves in their own eyes. Some have been how these perhaps essential techniques have had detrimental consequences for prisoners' participation in welfare and rehabilitation programs and might have further labelled and stigmatised them. Their rejection of rejecters bears testament to there being an unnatural social system in prison, which might occur from the skewed balance of power that inevitably is a part of the correctional system.

To further examine why we punish, I have offered conceivable ways of understanding how we maintain and persist to punish, despite the serious harms and implications that we are confronted with. As a possible solution I have proposed that we as a society and as individuals distance ourselves, by employing techniques of neutralisation and risk-assessments that render the ones exhibiting devious behaviour as someone dangerous. This neutralisation is in my opinion crucial to comprehending why it is problematic for us to recognise harms that befall offenders, as actual harms and not as mere consequences of

their actions.

Finally I wish to add a point that wasn't an object for this thesis, but which many nevertheless have stated. Among the people I have encountered in this project I have come across people with considerable sympathy for those who receive punishment. There have been utterings of compassion and sympathy and a desire for coming up with a better solution than isolating and reprimanding people. Those who have divulged such considerations have incidentally suggested solutions very similar to the mediation councils that already are somewhat in place.

If these sentiments reflect any of the feelings of the general public, which I have no intensions of dismissing and no ways of confirming, the question to my enquiry still stands.

So why do we punish? We punish for a lot of different reasons. Sometimes punishment is just, because it is a means to an end. Sometimes we punish just because.

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Appendix 1: Information notice

Wayback

Hei,

mitt navn er Nina Padmanabhan og jeg skriver en masteroppgave i kriminologi ved Universitetet i Oslo.

Jeg kontakter deg fordi jeg skriver om straff og ulike måter vi i Norge begrunner og "legitimerer" bruken av straff på. Jeg vil stille ett spørsmål; hvorfor straffer vi? Dette fordi jeg vil forsøke å trekke bruk av straff ut fra dets selvkclare posisjon i samfunnet som noe vi tar for gitt.

Jeg skal snakke med alt fra barnehagebarn til fengselsbetjenter og helt tilfeldige mennesker på gaten. Jeg vil svært gjerne snakke med tidligere innsatte og kontakter derfor deg i håp om at jeg kan få hjelp til å komme i kontakt med deres brukergruppe.

Arbeidet mitt er godkjent og følger alle etiske retningslinjer for samfunnsvitenskapelig forskning. Det er valgfritt å være med i oppgaven og alt anonymiseres, man kan også når som helst trekke seg.

Jeg håper du kan hjelpe meg, jeg kommer veldig gjerne innom og forteller mer enten direkte til deg eller til de potensielle deltagerne.

Beste hilsen,

Nina Padmanabhan



Appendix 2: Information notice police

Hei,

Mitt navn er Nina Padmanabhan og jeg tar for tiden en master i kriminologi ved Det juridiske fakultetet ved Universitetet i Oslo. I den forbindelse skal jeg skrive en masteroppgave om straff. Ønsket er å finne ut hva folk synes om straff og straffens begrunnelser gjennom intervjuer og samtaler.

Formål og bakgrunn

Formålet er å avdekke hva folk mener straff er, hvorfor vi straffer (enten som samfunn eller som individer) og hvorfor vi ikke straffer. Målet er altså å trekke straffen ut fra den selvklaare rolle den har i samfunnet og utfordre folk til å snakke om hva det er de mener straffens hensikt eller rettfærdiggjøring er. Straffebegrepet skal i oppgaven defineres ut fra hver enkelt av prosjektdeltagernes forståelser og bidrag, og kanskje det viser seg: ut fra deres ulike yrker, eller alder.

Utvalget

Utvalget består av en rekke mennesker på kryss og tvers i samfunnet og jeg håper også å intervju barn

Deltagelse i studien

Hvis du har fått denne forespørselen om deltagelse og vil være med i studien gir du meg beskjed og sa avtaler vi et tidspunkt for intervju, svarene dine vil anonymiseres, men du vil selv ha tilgang til svarene dine hvis du ønsker dette.

Spørsmålene

Spørsmålene i studien går på hva straff er og hvorfor vi straffer og hvorfor vi ikke straffer. Intervjuene vil ta ca. en halvtime å besvare, de kan foretas individuelt (ca. en halvtime) eller sammen med dine kolleger (ca. en time). Du velger selv hvilke spørsmål du vil svare på og du trenger ikke oppgi noen grunn til hvorfor du ikke vil svare. Svarene dine blir notert ned eller tatt opp på bånd ut fra hva du selv er mest komfortabel med. Svarene dine, eller datamaterialet, vil lagres på en passordbeskyttet enhet med krypteringsmulighet, slik at uvedkommende ikke får tilgang.

Frivillig deltagelse og informasjonen om deg

Du kan når som helst trekke deg fra dette prosjektet også etter at svarene dine er gitt, dersom du ønsker å trekke deg trenger du ikke oppgi noen grunn for dette. Alle svarene vil være anonymiserte og det er bare min veileder og jeg som har mulighet til å høre/se på det utarbeidede datamaterialet. Svarene dine vil bare bli brukt i forbindelse med masteroppgaven og vil som nevnt frem til det lagres på en passordbeskyttet enhet med krypteringsmulighet. Du vil ikke uten videre kunne gjenkjennes i studien og navnet ditt vil ikke brukes i oppgaven.

Prosjektet skal etter planen avsluttes i juli 2016, (oppgaven leveres inn i mai, evaluering, karaktersetting og muntlig eksamen skjer i juni/juli). Datamaterialet vil etter dette slettes.

Samtykke til deltagelse i studien vil innhentes muntlig for de over 18. Samtykke innhentes skriftlig av foreldre og foresatte hvis deres barn skal delta i prosjektet.

Barn

Når jeg snakker med barn har foreldre anledning til å være med, barnehageansatte, lærere, fritidshjemsansatte vil være tilstede under samtalene. Jeg skal selvsagt ikke snakke med barn om formell straff, men bare spørre dem hva de mener straff er og hvorfor man straffes. Jeg vil ikke legge føringer på spørsmålene, men la barna styre samtalen. Samtalen skal være lett og ledig og ikke dreie seg om alvorlige saker.

Dersom du ønsker å delta i studien og har spørsmål rundt dette, ta kontakt med meg på telefon [REDACTED], vil du snakke med min veileder, Hedda Giertsen kan du nå henne på [REDACTED]. Du kan også nå oss gjennom instituttet for kriminologi og rettssosiologi ved Universitetet i Oslo: Postboks 6706 St. Olavs plass 0130 OSLO

Beste hilsen,

Nina Padmanabhan
[REDACTED]

Appendix 3: Information notice children

Hei,

Mitt navn er Nina Padmanabhan og jeg tar for tilfellet en master i kriminologi ved Det juridiske fakultetet ved Universitetet i Oslo. I den forbindelse skal jeg skrive en masteroppgave om straff. Ønsket er å finne ut hva folk synes om straff og straffens virkeområde gjennom intervjuer og samtaler.

Formål og bakgrunn

Formålet er å avdekke hva folk mener straff er, hvorfor vi straffer (enten som samfunn eller som individer) og hvorfor vi ikke straffer. Målet er altså å trekke straffen ut fra den selvklaare rolle den har i samfunnet og utfordre folk til å snakke om hva det er de mener straffens hensikt eller rettferdiggjøring er. Straffebegrepet skal i oppgaven defineres ut fra hver enkelt av prosjektdeltagernes forståelser og bidrag, og kanskje det viser seg: ut fra deres ulike yrker, eller alder.

Utvalget

Utvalget trekkes tilfeldig ut fra de som melder interesse og skal bestå av en rekke mennesker fra ulike

Deltagelse i studien

Hvis du har fått denne forespørselen om deltagelse og vil være med i studien gir du meg beskjed og sa avtaler vi et tidspunkt for intervju, svarene dine vil anonymiseres, men du vil selv ha tilgang til svarene dine hvis du ønsker dette.

Spørsmålene

Spørsmålene i studien går på hva straff er og hvorfor vi straffer og hvorfor vi ikke straffer. Intervjuene vil ta ca. en halvtime å besvare, de kan foretas individuelt (ca. en halvtime) eller sammen med dine kolleger (ca. en time). Du velger selv hvilke spørsmål du vil svare på og du trenger ikke oppgi noen grunn til hvorfor du ikke vil svare. Svarene dine blir notert ned eller tatt opp på bånd ut fra hva du selv er mest komfortabel med. Svarene dine, eller datamaterialet, vil lagres på en passordbeskyttet enhet med krypteringsmulighet, slik at uvedkommende ikke får tilgang.

Frivillig deltagelse og informasjonen om deg

Du kan når som helst trekke deg fra dette prosjektet også etter at svarene dine er gitt, dersom du ønsker å trekke deg trenger du ikke oppgi noen grunn for dette. Alle svarene vil være anonymiserte og det er bare min veileder og jeg som har mulighet til å høre/se på det ubehandlede datamaterialet. Svarene dine vil anonymiseres og bli brukt i forbindelse med masteroppgaven og vil som nevnt frem til det lagres på en passordbeskyttet enhet med krypteringsmulighet. Du vil ikke uten videre kunne gjenkjennes i studien og navnet ditt vil ikke brukes i oppgaven.

Prosjektet skal etter planen avsluttes i juli 2016, (oppgaven leveres inn i mai, evaluering, karaktersetting og muntlig eksamen skjer i juni/juli). Datamaterialet vil etter dette slettes.

Samtykke til deltagelse i studien vil innhentes muntlig for de over 18. Samtykke innhentes

skriftlig av foreldre og foresatte hvis deres barn skal delta i prosjektet.

Dersom du ønsker å delta i studien og har spørsmål rundt dette, ta kontakt med meg på telefon [REDACTED] vil du snakke med min veileder, Hedda Giertsen kan du nå henne på [REDACTED] Du kan også nå oss gjennom instituttet for kriminologi og rettssosiologi ved Universitetet i Oslo: Postboks 6706 St. Olavs plass 0130 OSLO

Beste hilsen,

Nina Padmanabhan
[REDACTED]

Appendix 4: Oral rendition of information notice

Hi

My name is Nina Padmanabhan and I'm currently studying criminology at the University of Oslo.

Do you have a minute to spare to talk to be about punishment?

I'm trying to find out what some of the reasons for punishment is, and I want to ask just one question about it. You are free to answer as you like and define punishment as you like. All the answers are recorded but later, anonymised. If you want to withdraw your answer you can call me and do so. If you are not satisfied with the way I have conducted myself during this interview you can contact my supervisor at the University of Oslo. You can also choose to not answer the question or any of my follow up queries without explaining why.

Appendix 5: Approval from NSD

Norsk samfunnsvitenskapelig datatjeneste AS
NORWEGIAN SOCIAL SCIENCE DATA SERVICES



Harald Hårfages gate 29
N-5007 Bergen
Norway
Tel: +47-55 58 21 17
Fax: +47-55 58 96 50
nsd@nsd.uib.no
www.nsd.uib.no
Org nr. 985 321 884

Hedda Giertsen
Institutt for kriminologi og rettssosiologi Universitetet i Oslo
Postboks 6706 St. Olavs plass
0130 OSLO

Vår dato: 17.06.2015

Vår ref: 43364 / 3 / MHM

Deres dato:

Deres ref:

TILBAKEMELDING PÅ MELDING OM BEHANDLING AV PERSONOPPLYSNINGER

Vi viser til melding om behandling av personopplysninger, mottatt 05.05.2015. All nødvendig informasjon om prosjektet forelå i sin helhet 15.06.2015. Meldingen gjelder prosjektet:

43364	<i>Straff - hva skal det være godt for?</i>
<i>Behandlingsansvarlig</i>	<i>Universitetet i Oslo, ved institusjonens øverste leder</i>
<i>Daglig ansvarlig</i>	<i>Hedda Giertsen</i>
<i>Student</i>	<i>Nina Padmanabhan</i>

Personvernombudet har vurdert prosjektet, og finner at behandlingen av personopplysninger vil være regulert av § 7-27 i personopplysningsforskriften. Personvernombudet tilrår at prosjektet gjennomføres.

Personvernombudets tilråding forutsetter at prosjektet gjennomføres i tråd med opplysningene gitt i meldeskjemaet, korrespondanse med ombudet, ombudets kommentarer samt personopplysningsloven og helseregisterloven med forskrifter. Behandlingen av personopplysninger kan settes i gang.

Det gjøres oppmerksom på at det skal gis ny melding dersom behandlingen endres i forhold til de opplysninger som ligger til grunn for personvernombudets vurdering. Endringsmeldinger gis via et eget skjema, <http://www.nsd.uib.no/personvern/meldeplikt/skjema.html>. Det skal også gis melding etter tre år dersom prosjektet fortsatt pågår. Meldinger skal skje skriftlig til ombudet.

Personvernombudet har lagt ut opplysninger om prosjektet i en offentlig database, <http://pvo.nsd.no/prosjekt>.

Personvernombudet vil ved prosjektets avslutning, 01.08.2016, rette en henvendelse angående status for behandlingen av personopplysninger.

Vennlig hilsen

Katrine Utaaker Segadal

Marianne Høgetveit Myhren

Kontaktperson: Marianne Høgetveit Myhren tlf: 55 58 25 29

Vedlegg: Prosjektvurdering

Dokumentet er elektronisk produsert og godkjent ved NSDs rutiner for elektronisk godkjenning.

Avdelingskontorer / District Offices:

OSLO: NSD, Universitetet i Oslo, Postboks 1055 Blindern, 0316 Oslo. Tel: +47-22 85 52 11. nsd@uio.no

TRONDHEIM: NSD, Norges teknisk-naturvitenskapelige universitet, 7491 Trondheim. Tel: +47-73 59 19 07. kyrr.svarva@svt.ntnu.no

TROMSØ: NSD, SVF, Universitetet i Tromsø, 9037 Tromsø. Tel: +47-77 64 43 36. nsdmaa@svt.uit.no

Personvernombudet for forskning



Prosjektvurdering - Kommentar

Prosjektnr: 43364

FORMÅL

Meldingen gjelder et masterprosjekt, der formålet er å undersøke nærmere hva folk synes om straff og straffens virkeområde.

UTVALG

Utvalget består av barn, foreldre, LAR-ansatte, LAR-pasienter, politi, kriminologer, tidligere fengslede, politikere, tilfeldige folk på gaten.

INFORMASJON OG SAMTYKKE

Utvalget informeres skriftlig om prosjektet og samtykker til deltakelse. Informasjonsskrivet er godt utformet.

Vi minner om at når barn skal delta aktivt, er deltagelsen alltid frivillig for barnet, selv om de foresatte samtykker. Barnet bør få alderstilpasset informasjon om prosjektet, og det må sørges for at de forstår at deltakelse er frivillig og at de når som helst kan trekke seg dersom de ønsker det.

DATAINNSAMLING

Data samles inn ved intervju. Det behandles sensitive personopplysninger om strafferettslige forhold. Vi legger til grunn at dette gjelder deler av utvalget som er over 18 år.

DATASIKKERHET

Personvernombudet legger til grunn at student og veileder etterfølger Universitetet i Oslo sine interne rutiner for datasikkerhet. Dersom personopplysninger skal lagres på mobile enheter, bør opplysningene krypteres tilstrekkelig.

PROSJEKTSLUTT

Forventet prosjektslutt er 01.08.2016. Ifølge prosjektmeldingen skal innsamlede opplysninger da anonymiseres. Anonymisering innebærer å bearbeide datamaterialet slik at ingen enkeltpersoner kan gjenkjennes. Det gjøres ved å:

- slette direkte personopplysninger (som navn/koblingsnøkkel)
- slette/omskrive indirekte personopplysninger (identifiserende sammenstilling av bakgrunnsopplysninger som f.eks. bosted/arbeidssted, alder og kjønn)
- slette digitale lydopptak

Appendix 6: Quotes

*“Oooh! We punish to make **ourselves** feel better. To show what’s right and wrong... We punish in order to reward ourselves. That’s wrong **this** is right. We are good, you are bad!”*

“Oooh! Vi straffar för att vi skal må bättre **själv**. För att visa vad som är rätt och fel... Vi straffar därför att vi belönar oss själva. Det där är fel, detta är rätt. Vi är bra, du är illa”

*“Punishment is a means in which we make others see what they did was wrong... It’s what we do if we want to **stop** someone”*

“Straff er en måte å få andre til å se at det de gjorde var gæli... Det er det vi gjør hvis vi vil **stoppe** noen”

*“Why do you think?! Why do you ask! **Why** we punish? Well everyone would, it... it would, the whole thing... It would be mayhem wouldn’t it?!”*

“Hvorfor tror du!? Hvorfor spør du!? **Hvorfor** vi straffer? Assa alle ville jo, det... det ville, hele greia... Det ville blitt mayhem ville det ikke?!”

“Well duuuuh, we punish to punish!”

“Asså daaa, vi straffer jo for å straffe!”

“Gosh, well we punish to hurt whoever hurt us don’t we?! We punish to retribute, what more do you wanna know? ”

“Jøss, jo vi straffer for å skade den som skadet oss, gjør vi ikke!? Vi straffer for å hevne, hva meir lurer du på? ”

“We punish because if we don’t criminals will take over the world! Ha-ha! If nothing had any consequences crime would kill us all! Hah!”

“Vi straffer fordi hvis ikke ville dem kriminelle tatt over verden! Ha ha! Hvis ikke noe hadde hatt koneskvensa ville kriminaliteten tatt knekken på oss alle! Ha! ”

“Straff er en måte å vise andre at det de gjorde var gærnt og at de må holde opp”

“Punishment is a way in which we make others see what they did was wrong and that they must stop”