


1972

Deprivation of Privacy As a Functional Prerequisite: The Case of the Prison

Barry Schwartz

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Barry Schwartz, Deprivation of Privacy As a Functional Prerequisite: The Case of the Prison, 63 J. Crim. L. Criminology & Police Sci. 229 (1972)

This Symposium is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

DEPRIVATION OF PRIVACY AS A "FUNCTIONAL PREREQUISITE": THE CASE OF THE PRISON

BARRY SCHWARTZ*

Besides the loss of freedom, besides the forced labor, there is another torture in prison life, almost more terrible than any other—that is compulsory life in common.

I could never have imagined, for instance, how terrible and agonizing it would be never once for a single minute to be alone for the ten years of my imprisonment. At work to be always with a guard, at home with two hundred fellow prisoners; not once, not once alone!

FYODOR DOSTOEVSKY
The House of the Dead

Entitlement to privacy and its protection varies in scope and certitude from one social organization to another. A basic assumption in this analysis is that the prison is a place which allows very little of both. The sociological question then becomes "What accounts for attenuation of the right to privacy in prison and in what ways does deprivation enter into its organization and into the lives of its inmates?"

In addressing these questions our focus will be on the maximum security institutions¹ that have come to symbolize the "pains of imprisonment."² Although such places do not reflect the variation in organization of contemporary prisons, they do highlight the regimenting and custodial forms that are found to some degree in all of them. In these classic institutions we also find the most radical denial of privacy. In addition, the maximum security prison merits our attention because, to a greater extent than any other kind of institution, it sets in relief a distinctly modern form: the rational administration of human lives, to which the deprivation of autonomous withdrawal is functionally related.

* Assistant Professor of Sociology, the University of Chicago.

¹ This focus is mainly through the eyes of inmates themselves—or, more precisely, a non-random sample of that class of inmates which has recorded its experiences in writing. Autobiographical data naturally involve pitfalls, particularly in respect of systematization and representativeness of observation. But they do inform certified knowledge by portraying the color and nuances of prison life, features that are ignored or muted by more systematic data collection methods. Indeed, the unique value of autobiographical data rests on its very bias. For it may be assumed that the sensibilities tapped through autobiography are more acute and articulate than the impressions of the more representative but less perceptive persons on whom so much of the sociological literature depends.

² G. SYKES, *SOCIETY OF CAPTIVES* 63-83 (1966).

REGIMENTATION: MASS PROCESSING AND MASS STORAGE

Bureaucratic administration and privacy. The bureaucracy is notable for its purely technical superiority over other forms of organization with respect to speed, precision, and continuity in the administration of things and records. This instrument for the "discharge of business according to calculable rules and without regard for persons"³ has become a paradigm for ordering the lives of men in prisons. A way of regimenting work flow is there harnessed to the problem of regimenting people. This is possible because rational administration is a technique whose applicability is altogether independent of contents. It represents, so to speak, "pure means." Thus, just as things can be moved en masse through the different phases of a productive process, so men in batches can be moved according to an unambiguous time schedule through the sequence of points in a daily activity cycle. Similarly, while materials may be placed together in a stored inventory and their records safely packed into a systematic file, men can be stored together in such a way that the whereabouts of anyone is secure and continually known.

The interactional consequence of this arrangement in prisons is that inmates are almost continually in one another's presence or in sight of authorities. But co-presence is precisely that consequence which complicates employment of the bureaucratic model. That model causes trouble because, unlike the physical material of the factory or administrative bureaucracy, the objects of penal bureaucracy have selves which are oppressed by continual social contact and monitoring. This sense

³ Weber, *Bureaucracy*, in *FROM MAX WEBER* 25 (H. Gerth & C. Mills ed. 1958).

is related to the universal but distinctly non-rational assumption that "an ideal sphere lies around every human being . . . [which] cannot be penetrated, unless the personality value of the individual is thereby destroyed."⁴ If we endorse another assumption, advanced first by Durkheim⁵ and later by Shils,⁶ that the personal sphere is a sacred one, then its violation may be said to entail profanation—or, as it is put nowadays, a "mortification" of self.⁷ At question is how and why this comes about in the context of the prison.

The strictly legalistic account focuses on rights. It holds that by making a public nuisance of himself, the prisoner merits the investment of a special despised status that entails forfeiture of the right to a protective sphere of privacy. But this formulation does not take us far enough, for it raises rather than solves the problem of whether violation of privacy is purposively instrumental in stripping a convicted man of his dignity or whether his loss of dignity is occasioned, as a mere by-product, by a denial of privacy that is organizationally rather than penally grounded. In Tappan's words, "The deprivation of 'civil rights' may be conceived to be either an auxiliary punishment in itself or the incidental consequence of conviction

and sentence, not intended to be specifically punitive but merely protective of public interests and of official convenience."⁸ There is reason for us to emphasize the second of these conceptions. While loss of civil entitlements may legitimate invasion of an inmate's privacy, it does not account for the condition of this violation—which undermines the dignity of jailed *suspects* as well as *convicted* men and denies personal reserve in other non-penal but totally institutionalized settings. Suspension of the right to privacy thus derives from the social organization of prisons and not from the legal status of persons found in them.

Of course, the privacy of an imprisoned man may be violated in a manner that takes retributive account of his status. This is seen in many ways. For example, there is the rude, harshly indifferent demeanor of guards; the deliberate exposure of inmates for the sake of punishment or mere harassment; the ridiculing of inmates in connection with exposure of their past, their person, or even their correspondence;⁹ there is the humiliation of having to denude oneself before contemptuous overseers (who are today more often than not members of rival groups in the larger society). But however unbearable, and whatever part they play in the seething discontent of many of our prisoners, these degradational modes are not the source of deprivatization; they merely exploit that source. They represent, in other words, the consequences and not the sociological condition of inmate exposure, which is notable not in its retributive aspect but for its consistency with the affectively neutral imperative of efficiency "without regard for persons."

Typical forms of bureaucratic disregard may be identified and analyzed in terms of what they do to those who are subjected to them.

Forced Exposure

The innumerable kinds of profanation effected by mass administration of persons causes us to look for a paradigm, an exemplary form of institutionalized exposure. Perhaps the most humiliating is that having to do with a man's most unique possession, his body. The prison's mass denudation

⁸ Tappan, *The Legal Rights of Prisoners*, 293 ANNALS OF THE AMERICAN ACADEMY OF POL. AND SOC. SCIENCE 109 (1954). For a more recent statement see Vogelman, *Prisoner Restrictions, Prisoner Rights*, 59 J. CRIM. L. C. & P. S. 386-96 (1968).

⁹ "In weekly shakedown of the cells," complains an inmate of a well-known penitentiary, "they read the mail and then they make derogatory remarks later about people mentioned in the letters." Chicago Tribune, Nov. 16, 1971, §1A, at 4.

⁴ Simmel, *Types of Social Relationships by Degrees of Reciprocal Knowledge of Their Participants*, in THE SOCIOLOGY OF GEORG SIMMEL 321 (K. Wolff ed. 1950).

⁵ Durkheim stated, "The human personality is a sacred thing; one does not violate it nor infringe its bounds. . . ." E. DURKHEIM, SOCIOLOGY AND PHILOSOPHY 37 (1953).

⁶ The modern version of the Durkheimian theme is advanced in Shils, *Privacy: Its Constitution and Vicissitudes*, 1970 CENTER FOR SOCIAL ORGANIZATION STUDIES 98. In his view, the sacredness or charisma of its "center" diffuses throughout the social order unto its very "periphery," so that each group member partakes of a measure of charisma and is entitled to deferential avoidance according to his proximity to central persons, roles and institutions. There is moreover a minimum of appreciation of privacy to which all persons are entitled:

Intrusions on privacy are baneful because they interfere with an individual in his disposition of what belongs to him. The 'social space' around an individual, the recollection of his past, his conversation, his body and its image, all belong to him. He does not acquire them through purchase or inheritance. He possesses them and is entitled to possess them by virtue of the charisma which is inherent in his existence as an individual soul—as we say nowadays, in his individuality—and which is inherent in his membership in the civil community. They belong to him by virtue of his humanity and civility.

Id. at 98. A similar point is noted in Benn, *Privacy, Freedom, and Respect for Persons*, in PRIVACY 1-26 (J. Pennock & J. Chapman ed. 1971). See also E. GOFFMAN, INTERACTION RITUAL 62-70 (1967).

⁷ E. GOFFMAN, ASYLUMS 14-35 (1961).

rituals exemplify (though by no means exhaust) the ways this valued possession can be transformed into an altogether neutral object. A concrete instance is found in the efficient manner one penitentiary currently welcomes its guests:

'Everybody strip bare-ass!' yelled the sergeant. We all stripped standing up and stuffed our belongings in the bags, which the old convict dragged off down the corridor.

After we had been standing bare-assed on the concrete for about half an hour the sergeant strutted down the corridor and unlocked the door. It was a large square-shaped room with shower heads jutting out from the walls at four-foot intervals. . . .

'In and out,' the fat sergeant shouted. 'Two minutes!'

There were about twenty shower heads. A man got under each one, and the rest stood milling about in the center of the room.

'*Everyone* in,' the sergeant screamed. 'Two men to a shower . . . three men to a shower. *Everyone* in.'

The rest of the men jammed into the space under the shower heads until all stood elbow to ass waiting for the water to come on.¹⁰

The two sources of degradation herein depicted correspond to the fact that social distance is instrumental to as well as affirmative of personal honor. One not only withholds himself from others by reason of his inherent dignity; he also maintains that dignity precisely because of his right to conceal actions and imperfections that would otherwise discredit the self that he publically presents. This is not a matter of hypocrisy; it is a matter of face.¹¹ Because it reveals a person's imperfections and makes them the focal point of attention, forced exposure contradicts the socially valued attributes the person claims for himself; it constitutes a painful loss of face—whose linkage to mass processing techniques is confirmed in another "reception" setting:

The grimy gang of new arrivals rushes toward the showers—a gallop of bare feet smacking on the tiles of the wide corridor. The first ones in run into the last of the group coming out, cleansed and ridiculous. Their physiques are grotesque: Men dredged up and thrown together by the accident of their misfortune are usually misshapen and ugly in the nude, deformed by their misery. They gesticulate, shiver, struggle with heaps of clothes.¹²

Humiliation is intensified when the inmate must expose himself before an audience rather than co-participants preoccupied with their own shame. Sinclair provides an example:

They searched Jurgis, leaving him only his money, which consisted of fifteen cents. Then they led him to a room and told him to strip for a bath; after which he had to walk down a long gallery, past the grated cell doors of the inmates of the jail. This was a great event to the latter—the daily review of the new arrivals, all stark naked, and many and diverting were the comments.¹³

An even more extreme form of abasement imposed by impersonal, rational processing is exposure of the body in undignified postures, such as those required to perform common bodily functions. Such needs are accommodated in many prison settings by open rows of toilets. But sometimes accommodation takes on in addition a very regimented form. A radical instance is found in the Chinese political prison:

An aspect of their isolation regimen which is especially onerous is the arrangement for the elimination of urine and feces. The 'slop jar' that is usually present in Russian cells is often absent in China. It is a Chinese custom to allow defecation and urination only at one or two specified times each day—usually in the morning after breakfast. The prisoner is hustled from his cell by a guard, double-timed down a long corridor, and given approximately two minutes to squat over an open Chinese latrine and attend to all his wants. The haste and the public scrutiny are especially difficult for women to tolerate. If the prisoners cannot complete their action in about two minutes, they are abruptly dragged away and back to their cells.¹⁴

The body's exposure moreover renders it susceptible to physical as well as visual exploitation. As one ex-convict puts it:

The young prisoner, who in lieu of a shortage of passive homosexuals might face advances himself, is well advised to acquire a good degree of modesty about his body. He should dress and undress quickly, and not hang around the shower room, but shower with dispatch, preferably when the shower room is least crowded. If he does not mind his ass, somebody else will.¹⁵

¹³ U. SINCLAIR, *THE JUNGLE* 158 (1905).

¹⁴ Hinkle & Wolff, *Communist Interrogation and Indoctrination of Enemies of the State*, 76 A.M.A. ARCHIVES OF NEUROLOGY AND PSYCHIATRY 153 (1956).

¹⁵ H. LEVY & D. MILLER, *GOING TO JAIL* 148 (1971). Another form of physical exploitation is the forced

¹⁰ J. GRISWOLD, *AN EYE FOR AN EYE* 11–12 (1970).

¹¹ E. GOFFMAN, *supra* note 6, at 5–45.

¹² V. SERGE, *MEN IN PRISONS* 16 (1969).

Such considerations as these demonstrate the way deprivatization is grounded in the regimental process (timed activity in blocks); in so doing they confirm the interactional grounding of the self. The dignity that an individual claims for himself may serve as the very condition of interaction in civil life, with its characteristic mutual protection of face and correspondingly sharp differentiation of public and private life. But this mode of interaction is inconsistent with rational men-management in prison. There a man's monopoly on his self and the denial of its use or inspection by others is an entitlement that has no place. Consequently, interaction can there exude but one nuance, namely, indiscretion, tactlessness and the vulgarity that is natural to those who have ceased to be mindful of their own and others' sphere of personal reserve.¹⁶

Forced Spectatorship

A prisoner is mortified and vulgarized not only by having to continually expose himself as he is moved and stored in the company of others; he is also defiled by being subject to *their* exposure. This distinction requires an amendment to the notion of "information control" which, as used by Goffman,¹⁷ refers to the manner in which individuals, by the selective granting and withholding of facts about themselves, supervise the impressions they make upon others. This usage is too restricted, for the individual must also shield himself against noxious information elicited by others. The prisoner is therefore profaned because he cannot keep himself uninstructed; he is contaminated by the

medical examination, administered in blocks. E. WAL-LACH, *LIGHT AT MIDNIGHT* 244-45 (1967), provides an example from a Russian labor camp:

'Ready everyone? Let's go spread our legs.' Hilde was waiting for us.

'I'm not going,' I said in disgust. . . .

'Come on Erica,' Irma said. 'There is no way out out of this.'

In the hall of the dispensary, waiting in line, I felt like throwing up. The door to the examination room was open. Nadja, the sanitation officer, sat at a table, checking off the names. The Hippopotamus, the shapeless, sullen, female doctor, stood in the middle of the room like a prize fighter, her sleeves rolled up to the elbow, her right hand in a glove. Five girls crowded in line before the jack, one was on it, on her back, her legs up. Without a word, Hippo went up, pushed her right arm into the girl, pressed on the stomach with her left, called something to Nadja, and pulled out. 'Next!' she barked as she held her right hand for one second under the dribble of a cold water nail. The whole procedure had taken no more than one minute.

¹⁶ Schwartz, *The Social Psychology of Privacy*, 73 *Am. J. of Soc.* 749 (1968).

¹⁷ E. GOFFMAN, *STIGMA* 41-104 (1963).

receipt as well as the transmission of demeaning information. In Van den Haag's words, his privacy is invaded because he is *compelled* to sense or participate in the activities of others.¹⁸ A sample of this kind of exposure is found in one of our larger prisons' "night storage" sections.

Even in your cell you had to live without privacy. . . . The constant hubbub made letter-writing difficult: prisoners in the tier shouting, laughing, screaming from cell-to-cell—like the monkey house in the zoo—and that in competition with the blare coming over the PA system, which was used more often for piping in commercial radio programs than for announcements.

[T]he wierdest sounds in the world come out of the prison at night . . . the snores, the nightmares, the groaning and the sighs, the talkers in their sleep who could be arguing their case in court, fighting with their wives, selling door to door. So turning off the PA system and snapping off the lights at taps is an empty gesture; the hubbub continues pretty much as before.¹⁹

Exposure to others may take interactional as well as auditory forms. This occurs when individuals are stored in one another's physical presence in common dormitories or cells. This most common form of community, the very act of living together, becomes unnatural when the supportive, oppositional form of periodic separateness is denied.²⁰ Serge's lamentations on this subject are exemplary:

Three men are brought together in a cell by chance. Whatever their differences, they must tolerate each other; relentless intimacy twenty-four hours a day. Rare is the day when at least one of them is not depressed. Irritable or gloomy, at odds with himself, he exudes a sort of invisible poison. You pity him. You suffer with him. You hate him. You catch his disease. . . . The presence of a slob fills the cell with snoring, spitting, belching—nauseating smells and filthy gestures.

Each does his business in front of the other two. But perhaps the worst intimacy is not that of bodies. It is not being able to be alone with yourself. Not being able to remove your face from the prying glance of others. Betraying, with every tic, at every moment, the secret of an obtusely disturbed inner life.²¹

¹⁸ Van Den Haag, *On Privacy*, in *PRIVACY* 152 (J. Pennock & J. Chapman ed. 1971).

¹⁹ I. ZIMMERMAN, *PUNISHMENT WITHOUT CRIME* 152-53 (1964).

²⁰ For a more complete discussion of the tension management functions of privacy, see Schwartz, *supra* note 16, at 741-52.

²¹ V. SERGE, *supra* note 12, at 53-54.

The oppression of forced relationships was perhaps most pronounced among southern work forces, where prisoners were not merely locked into one another's presence but bound physically (during sleep, at least) to one another by chains, whose jingling racket made the slightest movement, the most otherwise inconspicuous muscular twitch, a public gesture.²²

Besides purely interactional stress, deprivatization may entail moral defilement. We refer here to contamination through contact with a profane being, a kind of exposure that brings the individual into a forced social relationship with despised persons who are normally kept away by conventional distancing practices. However, selective association in accordance with honorific (as opposed to instrumental) criteria is inconsistent with strictly rational men-management. The complaint of an anti-Semite illustrates the unhappy unions so efficiently created:

Another warden came up with a pair of handcuffs and coupled me to the little Jew, who moaned softly to himself in Yiddish. . . .

Suddenly, the awful thought occurred to me that I might have to share a cell with the little Jew and I was seized with panic. The thought obsessed me to the exclusion of all else.²³

Violation of collective privacy. Moral defilement may occur in reference to groups as well as individuals. For example, the imposed intimacies and associations of the prison, along with its regimented "life style," extends beyond its walls to desecrate what are often prisoners' most sacred possessions: those who live and wait for them on the outside. Visits from these people are a technical bother, imposed by some irrational, irresistible humanistic impulse. To satisfy administrative efficiency, visits are often molded to the bureaucratic imperative by being scheduled and conducted in blocks. In few other contexts do suffocating closeness and utter isolation so perfectly coincide. The following (nineteenth century French) arrangement is neither historically nor culturally unique:

To have an interview with his kinsfolk the prisoner is introduced, together with four other prisoners, into a small dark coop. . . . His kinsfolk are introduced into another coop opposite, also covered with iron bars, and separated from the former by a passage three feet wide. . . . Each coop receives at

once five prisoners; while in the opposite coop some fifteen men, women, and children—the kinsfolk of the five prisoners—are squeezed. The interviews hardly last for more than fifteen or twenty minutes; all speak at once, hasten to speak, and amidst the clamour of voices, each of which is raised louder and louder, one soon must cry with all his strength to be heard. After a few minutes of such exercise, my wife and myself were voiceless, and were compelled simply to look at each other without speaking. . . . She used to leave the reception hall saying that such a visit was a real torture.²⁴

In this way, a group's boundaries may be violated, the principle of its exclusive intimacy mocked, its very existence rendered insignificant and ridiculous. Members thereby become common to one another. The specific and incomparable features of a social relationship are destroyed by violation of its collective privacy. In the words of a recent military prisoner:

Whether at the farm camp or in the penitentiary, the visiting room is crowded with adults and children. Husband and wife grow apart because they are undergoing profound changes—especially if they are young—and they never have the time nor the right atmosphere to communicate what is happening inside one another. . . . The only consolation that current visiting practices in Federal prisons bring is the opportunity for the inmate and his family to renew their faith in the existence of one another. Otherwise, visiting, as surely as imprisonment itself, functions to destroy family ties.²⁵

ELEMENTARY FORMS OF INTRUSION

Up to now, we have dwelled upon "coincidental" aspects of exposure, which are so designated because they embody *in their pure form* no surveillant intent on the part of care-takers but occur merely as a by-product of regimented, mass activities. Being a "residual" part of those activities, coincidental exposures are in no way instrumental to the goals of the organization itself. This form is to be distinguished from "programmed invasions of privacy" (otherwise known as "surveillance"), which are carefully planned and executed by institutional officials. Though often founded empirically, these two forms are analytically distinct, with their difference based on contrasting contributions to the organization as a

²² This arrangement is hilariously depicted in L. ELDER, CEREMONIES IN DARK OLD MEN 123 (1965).

²³ A. H. SMITH, EIGHTEEN MONTHS 14, 17 (1954).

²⁴ P. KROPOTKIN, IN RUSSIAN AND FRENCH PRISONS 270-71 (1971).

²⁵ H. LEVY & D. MILLER, *supra* note 15, at 48-49.

whole. Whereas the function of coincidental exposures is manifestly neutral with respect to organizational goals, the programmed kind are not only instrumental but absolutely essential to their achievement. The latter are thus explicitly purposive rather than residual in nature.

While coincidental exposure involves "horizontal visibility," whereby peers are reciprocally open to one another's observation, programmed invasions of privacy introduce a "vertical" dimension characterized by unilateral observation by superordinates. Programmed invasions of privacy moreover do not replace but are normally superimposed upon coincidental forms.²⁶

CUSTODY VS. PRIVACY

The condition of programmed intrusion is to be found in the orientation of its subjects. When there is official confidence in their commitment to the goals and orderly operation of the system, inmates may be left to themselves. However, when obedience and loyalty cannot be taken for granted overseers are compelled to exercise continual rather than periodic surveillance.²⁷ The latter case finds

²⁶ But this superimposition, presupposing the principle of rational methods of people-processing and storage, is historically unique. For example, the Pennsylvania System which prevailed in the early nineteenth century as the first model of penitentiary organization, was based upon the non-compromised principle of absolute (auditory and visual as well as physical) segregation of prisoners. Here visibility was vertically structured so that inmate privacy was subject to violation by superordinates only. Even Auburn's "silent system"—the first regression from the Pennsylvania ideal—allowed inmates to come into one another's presence only during working hours; at all other times prisoners dwelled in their private cells. Though they have persisted in certain parts of the world, these pre-modern forms are from a contemporary standpoint distinctly irrational in organization, for, besides driving prisoners mad, they sacrifice a substantial measure of cost-efficiency, attainable through mass processing and mass storage. For an authoritative summary regarding these early penitentiary systems see H. BARNES & N. TEE-TERS, *NEW HORIZONS IN CRIMINOLOGY* 335-47 (1959).

²⁷ This is not to say that surveillance is uniquely determined by inmate attitudes and orientations. In L. LAWES, *TWENTY THOUSAND YEARS IN SING SING* (1932), for example, the author describes the 1843 counter reformation at Sing Sing. The newly elected state administration, which had looked askance at the "laxity" caused by earlier reforms, tightened things up by fresh appointments. "The method of constant supervision in those days," writes Lawes, "is impressive." "Not for a moment was the prisoner permitted to stray from the vigilant eye of the guard or keeper. Every gesture was regulated. Every movement keenly watched. The 'cat' hovered over the prison with hungry eyes, ready to descend at the least provocation. Prisoners were checked and rechecked, watched, warned, and punished for the slightest violation of the rules." *Id.* at 76-77.

its most pronounced exemplar in the prison, for here presence as well as compliance is problematic. Radical attenuation of privacy in prison may thus be subsumed under the general rule that where membership and participation in an organization is involuntary, social order must be coercively maintained; individual conformity can then be ensured only by means of surveillance.²⁸

Dominant features of prison surveillance programs may be described.

First there is the problem of "boundary maintenance" or defense against intrusion of foreign matter that could prove subversive to prison security. Means of dealing with this problem find their functional equivalent in the customs inspections that safeguard collective integrity at the expense of the individual's. An instance from an early twentieth century French prison is exemplary:

Two or three hulking guards strut out in front of a line of naked men. 'Open your mouth! Bend over! . . . More . . . lower, dammit, you jerk, lower! . . . legs apart . . . come on . . . Next man forward!' A fat thumb prods the inside of a suspicious jaw. A guard with a crumpled *kepi* inspects the rear end of a tough-looking mug who has been put over the bar; the bar is designed to make you bend over in such a manner that any object hidden in the anus is supposed to be revealed. . . .²⁹

The custody orientation negates privacy in innumerable other ways. These include such purposive intrusions as periodic headcounts, nightly checks, inspections or shakedowns of prisoners' living areas and belongings. Whatever tends to disturb visibility is forbidden. Behavior within the cell itself may be strictly regulated; variation in cell conduct would only create "static," which makes information gathering more difficult. The home is therefore designed to be a public rather than a private place. For example, in one classic setting

A camp bed . . . is folded in the morning at a signal. Even in case of illness, it is absolutely forbidden to lie down during the day without the doctor's permission. . . . Inside the Judas, the spy-hole, an eye whose metallic blinking is heard every

²⁸ A. ETZIONI, *A COMPARATIVE ANALYSIS OF COMPLEX ORGANIZATION* 14 (1961). See also Kelman, *Processes of Opinion Change*, 25 *PUBLIC OPINION QUARTERLY* 57-78 (1971).

²⁹ V. SERGE, *supra* note 12, at 15-16. (Not even incumbents of sacred statuses are exempt from this desecrating procedure. See, e.g., P. BERRIGAN, *PRISON JOURNALS OF A PRIEST REVOLUTIONARY* 36 (1967).)

hour when the guards make their rounds. . . . Whistling, humming, talking to yourself out loud, making any noise, is forbidden.³⁰

Furthermore, prisoners must continually hold themselves open for monitoring—sometimes even when asleep. Thus, a rule in one state penitentiary reads: "When the lights go out at the designated hour go to bed at once and remain quiet. . . . Sleep with the head uncovered to enable the officer to see you."³¹ Similarly, in contemporary federal and military prisons inmates must participate in the violation of their own privacy by assigning power of attorney to the warden and his representatives, giving them the right to censor their mail. (Refusal to sign means forfeiture of the right to receive and send letters.)³²

Incidentally, just as lack of privacy during visits banalizes a prisoner's relationship with his family, mail censorship (justified as security against escape and dissemination of information about other prisoners), by prohibiting communication about anything but the most innocuous details of prison life, reduces a social bond and its members to the level of inanity. Some nineteenth century French prisons showed themselves to be less hypocritical about the whole matter by allowing inmates to communicate with the outside only by signing their names to a printed form!³³

But other sources of subversion must be anticipated. In context of the climate of distrust that prevails in most security-oriented prisons, inmates may not be expected to even go to the toilet without causing trouble. For this reason toilets in cells (many with attached sinks for washing) are typically in full view of guards. The following instance contradicts those who would interpret this arrangement as a mere architectural convenience:

As soon as the room was in darkness, I threw back the covers and tiptoed over to the toilet in the corner. I had painfully waited until I could have the dark concealment from a piercing eye at the spy hole in the door. That little aperture was the very last invasion of my privacy and rights, and filled me with resentment. Suddenly a light

flashed on and remained until I had finished my business and returned to my bed.³⁴

In some situations the prisoner is even denied the freedom to dispose of his bodily wastes in private. Thus, within some isolation units, toilets are flushed by a device along the wall outside. After seeing to his needs an inmate must signal the overseer, who inspects the contents of the commode through an opening before flushing. (In this way, the occupant is prevented from stuffing the bowl with sheets and clothing.) One prison went even further:

Across from the offices there are windows opening on the latrines, allowing the guards, without moving, to keep an eye on the squatting men. The latrines open onto narrow paved courtyards. The clean-up squad comes in there every day to empty the tanks in the hope of recovering forbidden objects. The perfection of jail! The administration even looks into your excrement.³⁵

In maximum security institutions custodial concerns reach a very high pitch during the time an inmate is visited by civilians. In going to meet a visitor the prisoner may first have to be stripped naked and searched; this procedure is generally repeated when the visit is over in order to ensure against exchange of contraband. Apprehension over security also gives rise to physical or normative barriers which prevent family members from touching or even approaching one another.³⁶ Moreover, it is well known that in many instances their conversations are taped.³⁷ This practice is said to be particularly common when a jailed inmate awaiting hearing or trial is visited by his attorney.³⁸

By finding nothing connected with his life that cannot be exposed and rendered general, the inmate may attribute no specific significance to his own being. The escape orientation can therefore express itself not only by the act of going over or under a wall but also by self-dispatch to another world through suicide. This contingency, which would imply an intolerable degree of inmate autonomy,³⁹ is one to which guards are especially sensitive:

³⁴H. BATTLE, *EVERY WALL SHALL FALL* 61-62 (1969).

³⁵V. SERGE, *supra* note 12, at 121.

³⁶An excellent example of the latter is found in A. SOLZHENITSYN, *THE FIRST CIRCLE* 190-93 (1968).

³⁷A. WESTIN, *PRIVACY AND FREEDOM* 130 (1970).

³⁸*Id.* at 130, 190, 204, 352.

³⁹*See, e.g.*, J. STEINER, *TREBLINKA* 81-83 (1968).

³⁰V. SERGE, *supra* note 12, at 31, 52.

³¹Wolfgang, *Rules for Inmates*, in *THE SOCIOLOGY OF PUNISHMENT AND CORRECTION* 89 (M. Wolfgang ed. 1962). Further discussion of privacy in connection with sleeping arrangements is found in Schwartz, *Notes on the Sociology of Sleep*, Soc. Q. 485-99 (1970).

³²*See* H. LEVY & D. MILLER, *supra* note 15, at 4.

³³*See* P. KROPOTKIN, *supra* note 24, at 319.

When they came by your cell around 5:00 A.M. you were supposed to move to let them know you were alive. And if by chance you were in a deep sleep—too sound to hear them on the early morning round—they'd reach in through the bars and grab a leg to see if you were still warm.⁴⁰

This kind of surveillance is especially intense on death row: "The guard watched me while I ate," writes a condemned man. "When I wrote letters the guard would pass me a pen [and] watch me use it."⁴¹ Here also continual illumination denies even the cover of darkness, a condition that periodically provides some measure of privacy in more conventional confinement. "Spotlights hung outside, aimed into each cell," writes another condemned man. "They were turned on every evening at sundown and remained lit until sunrise."⁴²

INFORMATION NETWORKS

Up to now we have dealt with surveillance only in terms of assessment of current activities of inmates. To maintain order, however, governors of penal institutions must not only know what a prisoner is doing; they must also know what he is going to do. For this, data to be projected into his future are required from the inmate's past. Also, such non-observable current behaviors (like intentions and plans secretly communicated to another) as evade the primary monitoring system must be uncovered by a secondary system, which takes the form of a comprehensive and well organized information network. Thus, just as we have described organizational arrangements that minimize audience segregation, so we must point to structural features of the prison which overcome the privacy ensured by dispersion and segregation of information.

Knowledge about prisoners flows along three kinds of channels. First, there are official operational contacts, exemplified by one staff member requesting and obtaining information about an in-

⁴⁰ See I. ZIMMERMAN, *supra* note 19, 161.

⁴¹ *Id.* at 96.

⁴² J. RESKO, *REPRIEVE* 20 (1956). The condemned are even denied the dignity of dying in private, for tradition requires that their agony be witnessed. The final horrifying contortions become a public spectacle. See I. ZIMMERMAN, *supra* note 19, at 121-22:

He was sitting in the chair; they were adjusting the electrode to his right leg. . . . They dropped the mask over his face—is it to spare the witnesses? Or is it to give you an illusion of privacy in your dying? Elliott made it strong. O'Loughlin's body strained forward against the straps, then slumped. The mouth sagged open; the mask doesn't hide your mouth.

mate from another. In civil society many of these contacts would be considered as unheard-of violations of the principle of privileged communication. For example, a caseworker might need to consult the physician in deciding on an inmate's job assignment—or the psychiatrist, in assessing whether or not a certain prisoner is likely to be a "trouble maker." As one inmate put it, "Privileged communication with a psychiatrist (or for that matter with any physician) is non-existent. . . . To confide in the prison psychiatrist is, essentially, to confide in the chief warden."⁴³ Secondly, prison administrators obtain information about inmates through an intelligence network manned by "stoolies" or "rats." Perhaps Leopold's is the most cogent testimony of its effectiveness:

The deputy explained to me. . . 'If you figure to do something and tell your best friend in here, that makes three of us that know it! For the moment his arithmetic stumped me a trifle, but I was to learn that it represented the sober truth.'⁴⁴

Thirdly, there are centralized contacts which are part of the standard administrative procedure. These include "exposure ceremonies." At one penitentiary, for instance, "as each shift comes to work, the day's new men are brought to the guard's room, their record and charge read to guards [in their presence], and then they are returned to their cells."⁴⁵ Also included are staff meetings where all overseers come together to pool information on an inmate. Or overseers might periodically receive questionnaires by which inmate performance in diverse respects is assessed and recorded.

All information thus obtained flows toward and is collated within a single repository, the case folder. Into this data bank are also filed biographical data, medical and psychological reports, photographs, written communications between inmates and staff, descriptions of many verbal transactions, frequency and nature of rule infractions, names of visitors and frequency of their visits, addressees of correspondence, confiscated letters, prison savings records, and all other observations of inmates' lives that are capable of transcription.

This flow of information from multiple sources toward a unique center is symbolic of the classic conception of mass surveillance, the panopticon, where from a central vantage point the activities

⁴³ H. LEVY & D. MILLER, *supra* note 15, at 103-04, 105.

⁴⁴ N. LEOPOLD, *LIFE PLUS NINETY NINE YEARS* 91 (1957).

⁴⁵ R. NEESE, *PRISON EXPOSURES* 46 (1959).

of all prisoners may be surveyed at will. This kind of architectural support has been relaxed in the construction of contemporary prisons, thanks to the availability of sophisticated electronic means. The eyes and ears of the overseer may now be replaced by the more efficient television camera and microphone.⁴⁶ Nevertheless, the panopticon principle continues to govern the flow of information, which remains centripetal in nature.

A NOTE ON DEPRIVATIZATION AND THE INMATE SUBCULTURE

It may be argued that while deprivatization is initially oppressive, inmates eventually accommodate themselves and learn to live with it. Ward and Kassebaum, however, provide data which show the opposite to be the case: as time passes, lack of privacy is increasingly designated as the most difficult aspect of adjustment to prison life.⁴⁷ This observation coincides with Glaser's, which shows most inmates to be oriented toward voluntary isolation rather than integration.⁴⁸

The continuing desire for privacy in the face of forced interaction may constitute one of the most important facets of the prison experience. This is a dilemma to which Bettelheim points in another totally institutionalized setting, the kibbutz. He suggests that persons who find themselves continually in the presence of others must repress the hostile feelings that inevitably emerge in normal interaction with them; otherwise, relationships would be in constant turmoil.⁴⁹ Moreover, repression may often involve a "reaction formation" through which a person exhibits compulsive, exaggerated solidarity with those whose presence he secretly wishes to avoid. Through this mechanism the very negation of privacy becomes its substitute.

⁴⁶ The capacity of impersonal surveillance is rather formidable, as is seen in a recent advertisement in one of the leading correctional journals:

Now you can tighten security, even if you are short of trained correctional officers. The patented Tri-Pan Closed-circuit TV system uses remote control to move the camera along a lateral track, besides panning and tilting to provide a clear view of cell interiors and corridors.

(Advertisement, 31 AM. J. CORR. 27 (Nov.-Dec. 1969). We can only point to the question of how electronic surveillance, by replacing pivotal figures in the prison, might affect its organization.

⁴⁷ D. WARD & G. KASSEBAUM, *WOMEN'S PRISON* 16 (1965).

⁴⁸ D. GLASER, *THE EFFECTIVENESS OF A PRISON AND PAROLE SYSTEM* 98 (1964).

⁴⁹ B. BETTELHEIM, *THE CHILDREN OF THE DREAM* 130-31 (1970).

In a social organization like the kibbutz, characterized by relative equality of statuses, compulsive solidarity might encompass superordinates as well as peers; however, where statuses are rigidly differentiated and their incumbents hostile to one another, feelings of unity are likely to have members of one's status group as their referent. This consideration, in conjunction with our earlier observation, helps explain the manifestly bizarre co-existence of two contradictory tenets within the "inmate code," namely, the well-known commands "Do your own time," and "Be loyal to your class, the cons."⁵⁰ The assumption that solidarity stands as a psychological alternative to its sociological antithesis, voluntary reserve, helps to make this contradiction intelligible.

It remains to say that inmate solidarity is more "mechanical" than "organic" in nature, tending to be based upon likenesses rather than interdependence of heterogeneous parts.⁵¹ Such a characteristic is conditioned by lack of privacy, according to the principle that differentiation, or the development of ego boundaries and maturation of idiosyncratic and/or creative inclinations, presupposes a substantial measure of voluntary withdrawal.⁵² This idea we suppose, informs the conception of the prison as a "homogenizing" (as opposed to "differentiating") setting which tends to level initial individual differences.⁵³

We have here, in any case, the condition of a vicious cycle. On the one hand, lack of privacy lends itself to the development of a homogeneous or compact oppositional subculture; on the other, solitary opposition toward administration and staff makes for increased surveillance and lessened

⁵⁰ Sykes & Messinger, *The Inmate Social System in THEORETICAL STUDIES IN SOCIAL ORGANIZATION OF THE PRISON* 8 (R. Cloward ed. 1960).

⁵¹ This is not to deny the very pronounced differentiation of roles within inmate subcultures. We mean to say that these roles tend to be united mainly by principles (the "inmate code") which are shared by their incumbents—as opposed to mutual dependence in respect of services, which is definitive of organic solidarity.

⁵² See Simmel, *Privacy is not an Isolated Freedom*, in *PRIVACY* 77 (J. Pennock & J. Chapman ed. 1971) where the author states: "Openness is almost inevitably linked to homogeneity. . . . To maintain a difference, a degree of isolation against the outside is necessary, thus reinforcing what boundaries exist against external influence."

⁵³ See Wheeler, *The Structure of Formally Organized Socialization Settings*, in *SOCIALIZATION AFTER CHILDHOOD* 78 (O. Brim & S. Wheeler ed. 1966). The notion of prison as a "homogenizing setting" is qualified, but not contradicted, in Schwartz, *Pre-Institutional vs. Situational Influence in a Correctional Community*, 62 J. CRIM. L. C. & P. S. 532-42 (1971).

privacy. The very ordeal of deprivatization thus leads to a process which entails privacy-suppressing rather than privacy-amplifying reactions.

CONCLUSION

We have tried to show that the right to privacy is attenuated in prison by two structural obstacles, the technique of regimentation and the imperative of custody, which correspond to organizational means and ends respectively. We have also tried to demonstrate how these barriers to privacy enter into and de-humanize the lives of inmates. At question is whether the prisoner deserves something better, on the grounds of either his humanity or his citizenship. Neither the first (moral) nor the second (legal) ground can be herein informed. Rather, what is sociologically at stake in expansion of the right to privacy is its basis in and consequences for social organization.

That a protective private sphere should surround the individual is not an idea that prevails for its own sake. Social organizations can after all allow for only as much privacy as is compatible with their objectives and means. While the efficient operation of some groups require that members be insulated from observation, others, like maximum security prisons, cannot achieve their goals unless members are arranged in such a way as to be continually visible. Moreover, groups cannot leave it up to members to comply in making themselves available for monitoring; whatever its extent, lack of privacy must be built into the structure of the organization itself. This is to say that the right to privacy is never granted, appropriated or extended unless the organizational conditions for such grants, appropriations or extensions exist. Privacy can endure, then, only within a context of organizational (rather than normative) supports. Rights cannot be imposed upon a system built around the presupposition of their absence. Privacy is therefore non-negotiable, given a particular form of social organization. This means that degree of privacy is a *property* of that organization.⁵⁴

⁵⁴ This notion is succinctly expressed in Coser, *Insulation from Observability and Types of Social Conformity*, 26 AM. SOC. REV. 29 (1961), where the author states, "[Insulation from observability and access to it are . . . important structural elements in a . . . [social organization]." See also R. MERTON, SOCIAL THEORY AND SOCIAL STRUCTURE 343 (1964).

One shortcoming of this approach (and a limitation of the present paper) is that it tends to deflect attention away from the numerous strategies inmates use to privatize their existence. These include illegal accumu-

So phrased, however, this (functionalist) perspective deceptively resonates fatalism. It connotes the same pathos that during the 1950's and early 1960's permeated so much of the sociological literature on the prison.⁵⁵ But fatalism masks the fact that social structure is itself negotiable (despite its often not being subject to negotiation itself). Accordingly, by focusing on the solid, utilitarian basis of inmate visibility and exposure, functional theory helps pinpoint foci of and directions for change. In so doing, of course, that theory demands that we assess the price to be paid in expanding prisoners' right to privacy, which must entail contraction of collective rights to security and organizational efficiency.

But to be sensitized to the costs of change is not to be counseled against it. Thus, if highly efficient regimentation through mass processing and storage is inimical to the value of privacy, a measure of cost-efficiency may be candidly renounced in its favor. "Perhaps an ideal solution," writes Glaser, "involves single-room housing for inmates, away from a dayroom area with a means by which inmates can [open and] lock their rooms, even though the custodians also have master keys. . . ." ⁵⁶ Though more expensive than dormitory or cell-block living, this arrangement is employed in several institutions housing penitentiary-type inmates. It is one method of balancing the costs and benefits of privacy. Similarly, if the custody orientation encroaches too far upon the right to privacy, surveillant modes associated with it may be reconsidered, with costs related to violation of house rules and escapes accepted. Some institutions have taken steps in this direction by relaxing visiting codes (even unto conjugal visiting) and doing away with all forms of mail censorship. The minimum security concept also embodies this alternative. Finally, if collection and distribution of (mostly degrading and sometimes false) information about inmates unduly violates their privacy, its flow may be curtailed, with a minimum amount of data given to staff by privileged custodians and sanctions applied for both negligence and overinquisitive-

lation of private property, distinctive ways of wearing uniform apparel, staking claim to personal territory in diverse parts of the institution, etc. See especially E. GOFFMAN, *supra* note 7, 173-320.

⁵⁵ This tendency has been exemplified by Gresham Sykes in many of his influential writings and, in particular, in G. SYKES, SOCIETY OF CAPTIVES 130-34 (1966).

⁵⁶ D. GLASER, *supra* note 48, at 155.

ness. Once again, such self-restriction may entail a price in terms of the prison's capacity to fulfill its obligations.

Just as we attend to the costs of organizational change we must also stop to assess its benefits. While lessened surveillance places a great burden on trust, it may also build trust and obviate the tension and hostility that its absence entails. And while respect for an inmate's rights concerning his own body and his own past may impede custody and security, it may also promote the dignity that would make them less necessary. Finally, and perhaps most importantly, the provision of more private living space, while involving greater

expense, may reduce contact with and exposure to other inmates and so help shift the differential association and influence ratio in favor of the staff.⁵⁷

In brief, a corollary to the idea that oppositional inmate solidarity is in part a functional alternative to privacy is that privacy may serve as an alternative to solidarity. This is to say that when its benefits and costs are compared, expansion of the right to privacy may be in the interests of the prison as well as its prisoners. But this is an empirical question which we can do no more than raise.

⁵⁷ *Id.* at 150-51.