

Superpower Reflections: It's Ugly Down Here *Charles Huckelbury*

No more fiendish punishment could be devised, were such a thing physically possible, than that one should be turned loose in society and remain absolutely unnoticed by all the members thereof.

– William James

A CASUAL DEATH

Tom Ferris died last month, and no one knew. Worse yet, no one cared.

Three of us were walking back after breakfast at 8:20 when the hearse arrived, a black, sombre interloper that seemed out of place, even in here where death is common. Prison is odd like that; the walls constrain each death just as they constrain each life, so we are unaccustomed to such intrusions. Anything from outside is other and subject to immediate examination and analysis, as if the prison's own immune system suddenly recognizes a virus and responds accordingly. The prisoners then function as B cells and alert the rest of the body to the presence of an invader. So it was with the hearse that had come to collect Tom's body.

I could not stop to watch the hearse back toward the steps that led up to the infirmary. Movement inside prison has to be constant. No loitering or assembly is permitted for fear we might plan something nefarious, but for one of us, the rules no longer applied; all movement had ceased forever. So the three of us took one last look over our shoulders, collectively wondered whose body was making the final exit, and then went back to our cells to wait for 7:00 count to clear so we could go lift weights. The hearse and its inanimate cargo vanished as effectively as if plucked from the earth like Elijah.

The sun rose as usual that morning, first turning the eastern sky into a remarkable canvas of salmon and purple, forcing death and other unpleasantries into the remote recesses of our minds. We went to work or work out, depending on our schedules and job assignments. We speculated about lunch and the possibility of any leftovers from the previous night's meal. Someone complained about Kool-Aid being substituted for orange juice at breakfast. Nobody mentioned the hearse, and by 11:30, the mystery passenger had suffered a philosophical as well as an existential death.

Maybe it is a form of self-defence, this refusal to acknowledge death, for those who have never outgrown their adolescent immortality. Few of us, no

matter how perilous our lives in the real world or in here, admit our own appointment with the end of life. To our knowledge, we are the only species whose members are aware of their own mortality, yet we ignore it until an illness or accident forces us to stare it in the face. Until then, it is always someone else doing the dying.

The denial is problematic for two reasons. One, it removes constraints where there should be some, as verified by the disturbing tendency of today's children to shoot each other and anyone else who happens along. The first-grade killer who shot his classmate to death in Michigan thought that homicide was an effective way to settle a disagreement. The thirteen-year-old honour student in Florida who killed his favourite teacher on the last day of class said later that he "wasn't thinking clearly" when he aimed the pistol and pulled the trigger. The two young killers who opened fire on their classmates in Arkansas two years ago likewise had no conceptual feel for the finality of death. The blood and dying were no more real than a Saturday morning cartoon. That same night, one of the shooters cried himself to sleep in his detention cell, asking for his mother and pleading to go home. None of these killers could initially understand that shooting people is not a video game, after which you put down your weapon and simply resume your life. The victims die in earnest.

The second consequence of this refusal to acknowledge death is related to the first, but is more troubling. By refusing to grasp the significance of death, one tends to dismiss the sanctity and the precariousness of life, which naturally leads to the depersonalization of selected people. That is, without some sense of their inevitable loss, we never come to appreciate the intrinsic value of the life of the man or woman with whom we might have a relationship, no matter how casual. This was my offence against the man whose body went into the hearse. As I will describe, even before his death, he had ceased to exist for me, and I certainly recognized no kinship with what lay zipped into a rubber bag.

The day following the hearse's visit, a clerk identified Tommy Ferris for me. Sure, I remembered Tommy: a tall guy, maybe forty, black hair running to grey and bald, and a little longer than I prefer it. He lived in C-Block I, first division. He and I talked occasionally when the weather was nice. We were not friends, but we knew each other as well as men in prison can know each other. I do not recall much of the conversations, if he talked about his family, his plans and hopes – all the things that men in prison usually keep private if they are smart. But Tommy was not your typical hustler and did not know how to keep his personal life hidden. I vaguely remember something about a

child, possibly a boy, who Tom wanted to see again. Now I wonder if my memory would have been sharper had I known he was dying. For dying he certainly was while we talked in the warm October sun.

It shames me now that Tommy is dead to admit that I never missed him. Prison generates that kind of apathy; someone is always leaving, and no one keeps in touch, regardless of the empty promises made at the gate on the day of parole. So you learn to shrug off absences and get on with whatever demands are current. I did not know how much time Tom had done or even what his particular crime was. He was, like most prisoners, basically anonymous, a face like any other, someone to talk to while we waited for chow. So when he disappeared, I unconsciously assumed he had been paroled or transferred to another unit or maybe been tossed into the hole, now euphemistically called the Special Housing Unit. At that point, he ceased being a human being to the rest of us.

But the real shock came when I learned that Tommy had died of AIDS. I knew about the disease, of course, and I had even seen other men die of it, usually wasted, desiccated husks with hollow eyes, emptied of life long before the body finally surrendered. Tommy showed no symptoms, at least none that I noticed. No drastic weight loss. No Kaposi's sarcoma. No thrush. Then again, maybe I was not looking because Tom was not the "type" I would have expected to contract AIDS. My three stereotypes for being HIV positive were being black or Hispanic, being gay, and being a drug user, in no particular hierarchy. Tommy was white and probably middle class. He did not look like he used drugs and did not appear to be gay. Since he did not overtly satisfy my personal litmus test, I never suspected, and he never divulged, that the disease was killing him. He simply packed his property one day and went to the infirmary to die.

Dying was not a personal choice, but the way Tommy chose to die was: privately and without the fanfare and bathos too often displayed at such times. He did not eat a last meal with the guys and then say good-bye; he left when the snow was still deep without leaving a track to show where he was going or, more significantly, where he had been.

That was when the air was chilly and the nights memorable, before everything bloomed again and transformed the valley in front of the prison into a lush green carpet. Summer is on the wane now, but the sun is still sending the temperatures into the high seventies this afternoon. Most of the guys are out playing handball or basketball or just trying to get an extra coat of tan to

fend off winter's pallor that is on the way. None of them are thinking about Tommy Ferris and his last ride out of here. It seems callous somehow to stuff his death someplace inside and then slam the door shut, especially since Tommy was one of us for a while. To know him and then dismiss him diminishes each of us, exactly as Donne described it in his *Meditations*.

Tommy Ferris was not extraordinary. He won no prizes for academic or professional excellence. He did not make a difference in a lot of lives, and most people would consider him a loser simply because he was a convicted felon. But to someone he was a son, maybe a husband or father, and to that extent he needs to be remembered. Because somewhere out there, someone is stopping at his grave on a day much like this one, only the songbirds are a little strident and the blooming flowers a trifle discordant. There are no sounds of a rubber ball being slapped against grey concrete or curses screamed at opponents and partners alike where Tommy is now. The only obscenity is the fading memory of a man whose features continue to shrink like the curling edges of an old snapshot.

DOWN THE RABBIT HOLE

For thy good deeds will be thine enemy.

— Dante Alighieri¹

One of the fundamental mysteries about doing time is the manner in which prison operations deviate from traditional businesses, most radically in customer relations. Most companies and corporations out there in the real world do their best to make their public places the most pleasant, a practice that is designed to eliminate unnecessary animosity and encourage a more user-friendly environment. Even the most racist organizations and the most unregenerate polluters, for example, smile and offer polite conversation when addressing citizens in either the public or the private sector. And we need not touch on the hypocrisy of those in elected office to understand the lengths to which some people will go to maintain an image. Not so in the looking-glass world of prison procedures.

¹ *The Inferno*, Canto XV, lxiv, translated by Dorothy Sayers. New York: Penguin Books, 1949.

I am speaking here specifically about behaviour within visiting facilities, although public intercourse between prison staff and civilians is not limited to that location. I chose the visiting room because it is where the majority of interaction occurs between prison guards and the people who pay their salaries. Logic dictates that prison employees should do their best to promote public support, the same way that legitimate businesses relate to honest citizens to facilitate their goals. After all, one of the guards' most common complaints deals with how egregiously their jobs are undervalued and underpaid.

If a group of individuals, therefore, happens to be engaged in an attempt to convince their employers that they deserve a raise and a finer appreciation for what they do, then it does not take a rocket scientist to determine that courtesy and understanding toward those employers would go a long way toward making that wish reality. That is, guards should, from a position of self-interest alone, make it their business to be unfailingly polite to members of the public they encounter in prison visiting rooms, even if those same guards lack the philosophical depth that would inform their behaviour and prompt them to treat people courteously as a matter of course. Instead, it usually appears that staff intentionally antagonize and insult the men and women coming into prison to visit loved ones, presumably because they are coming to see convicted felons and must therefore be substandard themselves.

But another possibility suggests itself. Perhaps it is the need to exercise newly discovered authority, the kind that derives from an essentially powerless existence outside the walls, compensated for by the sudden ability to issue orders to over one thousand people. To use the military analogy that prison guards habitually adopt, it is the psychological equivalent of putting a PFC in command of a battalion. More seasoned guards quickly get over this kind of head trip, but the young rookies, the ones just discovering the power of the uniform and badge, have a disturbing habit of stalking visiting rooms looking for trouble, arms akimbo in the traditional gunfighter's stance, as if they were bona fide cops walking a beat somewhere in the inner city and expecting sniper fire at any second. How else to account for such insulting behaviour as hovering over a table, glowering at a visitor, and demanding that a seventy-year-old woman sitting across the table from her grandson take her hands out of her lap and put them in plain sight?

On a personal level, I recently received a disciplinary report (DR) at the conclusion of my visit for exceeding the two-kiss limit, one at the start of the visit and one at the end. A stern-looking guard approached me as if I had just

robbed a bank and gunned down a dozen hostages and demanded my identification tag (prisoners must wear them prominently displayed). I handed it over, wondering what I had done. I usually know the reason for being written a DR. Off went the guard to fill out the usual forms. When he returned my ID, he told me he had observed me violating rule "number x," "paragraph y," of the pertinent policy and procedure directive, *viz.*, I kissed my wife more times than was allowed. I objected because I always remember how many times I kiss my wife, and we are careful to comply with all the inane rules in the visiting room. But no, the guard was certain that he observed me engaged in the following flagrant behaviour: I held my wife's hand and then raised it to my lips and kissed the back of it. I had no choice but to plead guilty on the spot, confessing to the guard that I just did not know what had come over me at the time of my offence. He never realized how trivial, how intrusive, how utterly absurd his actions were. All he wanted was to write someone a disciplinary report, and I happened to be that person on that particular day. And like the memory of his first lover, perhaps years hence, the initial thrill of writing that first DR will fondly recall our interlude in the visiting room.

It is usually the young ones, those not even born when I started this sentence twenty-seven years ago, who are the worst offenders. They come out of their training "academy" (forgive them, Plato) with the boot-camp attitude and the swagger that goes with it, which makes me wonder what the hell the instructors tell these people. The techniques must rival those of Parris Island's introduction to the United States Marine Corps, because they indoctrinate relatively callow young men who are primarily out of shape, with minimal educational achievements and minor employment skills, transforming them in a matter of weeks into naïve young men who are still primarily out of shape with little educational achievements and minor employment skills. Upon graduation, however, they become tyrants, haunting the prison corridors and yard as if they were bulletproof, the *soi disant* moral and intellectual superiors of the men and women they guard. The process resembles a perverse alchemical reaction, a transmutation of gold into base metal, as it were. And of course, the first duty station before and after the academy is usually the visiting room.

Certainly I understand the necessity for moderating new guards' exposure to the prisoner population. After all, they are still learning their jobs and need to be in the least challenging positions until they are more familiar with the way the game is played. But it makes little sense from a public relations perspective to pump them up with all the psychobabble the academy uses to fill their heads, make them think they are conjoined clones of Rambo and Robocop,

and then turn them loose in a benign environment where men want only to be left alone for a few hours with their families. If the guards think I deserve it, then they can tear up my cell, feed me swill, deny me adequate health care, curse me, beat me, even kill me, but no way should they be permitted to bring that attitude into the visiting areas and subject innocent men and women to their law-and-order fantasies – fantasies cultivated and promoted by far too much exposure to television cop shows and the propaganda purveyed by the various departments of corrections.

Perhaps the most graphic example of this kind of attitude – and its limits – was recently observed on national television during the “Survivor” program. The premise of the show is to put eight people together in the Australian outback, provide them with only rudimentary amenities, and then have them interact. The group’s members periodically vote to expel one of their numbers, the goal being to survive those votes and be the lone contestant at the episode’s conclusion, thus winning the prize money. It is television at its absolute nadir, but it attracts a wide audience. (No surprise there.) One recent contestant was a female prison guard from here in New Hampshire. She immediately alienated the other contestants with her belligerent attitude and was the first contestant voted off the show – unanimously – so it is not only prisoners who recognize specific personality traits endemic to prison guards in general. Her experience should have served as a reality check, because she clearly had not learned that her authority inside prison was totally artificial and that any influence she might have stopped at the prison’s gates. But human nature being what it is, she probably still does not understand why the other contestants expelled her.²

As a prisoner, I long ago surrendered any expectation of courteous treatment at the hands of my keepers; the current political climate prevents them from viewing me as anything more than an animal, and they have to denigrate me in their eyes if they are to perform their work effectively. I am accustomed to society’s avenging angels, men and women with an agenda that includes making my time as difficult as possible. I made the choice to violate society’s laws, and I expect to pay the price for that choice. That does not mean, however, that my family should suffer the same indignities, callous treatment, and flagrant disrespect simply because they have the misfortune to love me and want to visit. They deserve the respect accorded men and women who have no

² As an aside, each contestant could bring with her or him one personal item; our participant brought eyeliner. *C’est plus qu’un crime, c’est une lâcheté.*

connection to the criminal justice system at any level. Indeed, were it not for our families' salaries and the taxes paid on them, my keepers would still be looking for work in other unskilled positions, so I do not think it is too much to ask that visitors be treated respectfully.

What to do about the attitude? To begin with, pair the rookies with seasoned guards, men for whom enforcing rules is part of the job, not a quest for the Holy Grail, and certainly not a ticket for public ridicule on a television show. Guards immediately out of their academy lack the ability and the desire to discriminate between behaviours that violate the rules and those that might do so. More experienced guards can provide the guidance necessary and facilitate on-the-job growth that will make the prison a less stressful environment for everyone. The rookie who demanded that the grandmother put her hands in plain sight would have been wiser to observe the woman if he thought she were trying to pass something. If she had, that would be the time to take action; if not, leave her the hell alone instead of insulting her. As it turned out, he flexed his badge's muscles and created two enemies, the prisoner and his grandmother. Perhaps the rookie did not care (a deleterious attitude in itself), but if that kind of behaviour becomes systemic, it poisons the prison atmosphere and makes everyone's job more dangerous and confrontational.

The visiting room is the one isolated place where we can be with our families and loved ones. No one but a prisoner understands the importance of these few hours, but it should not take a quantum leap to extend fundamental decency to the men and women enduring the psychological trauma of metal detectors, suspicion, and pat searches for a few brief minutes with their loved ones. It is no less than they deserve, and who knows? It might subsequently keep prison guards in one of the upper levels of Hell, rather than having Minos³ consign them to the lower rings where the fires are hotter and the punishments more vigorous.

GLASS HOUSES

No government is legitimate that does not show equal concern for the fate of all those citizens over whom it claims dominion.

– Ronald Dworkin⁴

³ *The Inferno*, *supra* note 1.

⁴ Ronald Dworkin, *Sovereign Virtue, The Theory and Practice of Equality* (Cambridge, Mass.: Harvard University Press, 2000).

Despite the demise of the Evil Empire, or perhaps because of it, the United States maintains its sanctimonious posture as the world's moral arbiter, consistently pointing an accusing finger at regimes in China, Iraq, and North Korea, for example, for their disreputable practices in areas from religious and ethnic persecution to the mistreatment and summary execution of convicted felons. Indeed, the United States continues to embrace its role eagerly as the only surviving superpower, arrogating to itself the privilege – and the right – to lecture every other country on their moral disintegration. If we emerged victorious from the Cold War, then by definition our *zeitgeist* and vision must be superior to all others. And certainly this country's ten-trillion-dollar economy and nuclear arsenal should be potent enough firepower to command global fealty. Human rights, however, has become the weapon of choice, wielded when other forms of diplomatic intervention fail to achieve the desired goal of emulating America's putative treatment of its own citizens – including its prisoners. And, as the attempted impeachment of former President Bill Clinton graphically disclosed, members of Congress are hardly reticent about stepping into the pulpit to cast the first stone, either domestically or internationally. Often, as was the case with Senator Trent Lott (Republican-Mississippi), shunning any quarrel with biblical citations, from which the United States purports to gain its moral authority.

In the process of lecturing the rest of the world, the United States never fails to tout its own righteous superiority when criticizing those less-cooperative heads of state. One notes, however, that the criticism is preferential; it is directed only at those regimes with interests perceived as inimical to the United States, whereas authoritarian governments in Saudi Arabia and pre-Mandela South Africa provoke/d not a whisper of criticism inside the Beltway. This pontifical stance also deflects criticism from those whose moral and legal transgressions continue to make national headlines. Still, in a paradox that would make Zeno proud, the raised voices in Washington blithely offer themselves as ethical paradigms for lesser mortals.

So it was with no small sense of irony that the United States was recently voted off the United Nations Human Rights Commission, the fifty-three-member body that makes recommendations for the promotion and protection of human rights throughout the world.⁵ To better understand the nature of the vote and

⁵ In a fit of pique, the U.S. House of Representatives immediately voted to withhold payment of dues that were already in arrears until the U.S. is restored to its place on the

the political climate that produced it, an examination of the history of this particular Commission is necessary, a history that is more than a fascinating study illuminating the United States' position on human rights, both before and after the recent elections; it bears directly on the question of how those rights fare in this country.⁶

Eleanor Roosevelt was a delegate to the first session of the UN General Assembly in London in January 1946. As might be expected, Mrs. Roosevelt was a champion of human rights in both developed and undeveloped countries, echoing the sentiments and declared purpose of the UN charter approved the previous year in San Francisco. Indeed, she was a motivating force behind both the UN charter and the Universal Declaration of Human Rights that followed in 1948.⁷ The question of implementation, however, the same question that has proven historically problematic in areas as culturally disparate as Rwanda and the former Yugoslavia, quickly arose in London.

At that session, the British strongly urged that any human rights conventions to come out of the assembly include a provision for binding implementation, coercive if necessary. Mrs. Roosevelt resisted this sort of compulsion, fearing – correctly, as it turned out – opposition by the United States. Having lived in the White House for Franklin Delano Roosevelt's three complete terms and part of his fourth, she knew very well how self-interest could overrule ethical imperatives, and it was already apparent that nation-states always act with their own interest as the paramount concern, whether dealing with external threats or internal opposition.

The language of the UN charter, specifically Article 2(7), supported this cynicism by precluding UN intervention “in matters which are essentially within the domestic jurisdiction of any state.”⁸ In other words, all any country had to do to avoid UN intervention was to claim “domestic jurisdiction” and accuse the General Assembly of meddling where it had no business, similar to the tactic China uses today when the subject of human rights is broached, whether

Commission, ignoring the minor detail that extortion in most countries is hardly considered morally salubrious.

⁶ One would think, in literary terms, that the sheer embarrassment of the recent vote would rival that had the Reverend Arthur Dimmsdale been caught *flagrante delicto* with Hester Prynne and subsequently ridden out of town on a rail.

⁷ Brian Urquhart, “Mrs. Roosevelt’s Revolution,” *The New York Review*, April 26, 2001, pp. 32–34.

⁸ *Ibid.*, p. 32.

in suppressing groups like the Falun Gong or harvesting and selling organs from executed criminals.

But China and other “rogue states” (in the current idiom) are not the only ones to adopt the shield of national sovereignty to defend internal oppression. The United States has also rejected criticism by groups such as Amnesty International and Human Rights Watch for the abuses committed on its own territory, specifically in the areas of capital punishment (including execution of minor and mentally incompetent defendants), systematic torture inside prisons, police brutality, and the use of stun weapons, under the rubric that such matters fall within the country’s domestic jurisdiction and are therefore not subject to international scrutiny or intervention. This tactic follows a historical pattern of championing human rights abroad while conducting business as usual, including resorting to the recognized violations mentioned above, within our own borders.⁹

Returning to the recent UN election, four candidates were up for the three seats for the Western Europe and Others Group: France, Austria, Sweden, and the US Voting members, doubtlessly tired of the United States’ hypocritical platitudes, clearly thought that it was time for a breath of fresh air, opting for a last-place finish for the United States when the votes were counted. Acting U.S. Ambassador James Cunningham observed, “We’re very disappointed [but] this won’t at all, of course, affect our commitment to human rights issues.”¹⁰ Bureaucrats and politicians naturally adopt reassuring attitudes in the face of disappointing election results, but Cunningham’s response begs a larger question: What of the human rights violations taking place in this country, those same violations that perhaps prompted the Human Rights Commission to exclude the United States from its deliberative body?

The stock response of Washington apologists is, “What violations?” What violations indeed. Timothy McVeigh committed the worst act of domestic terrorism in this country’s history in response to the government’s siege of the Branch Davidian’s compound in Waco, Texas.¹¹ Blame has been passed back

⁹ The two conventions that followed the Universal Declaration of Human Rights dealt with 1) political and civil rights and 2) economic, social, and cultural rights. Both were finally concluded in 1966, but the former not ratified by the U.S. until 1992, while the latter is still pending in the U.S. Congress although ratified by China on February 28, 2001.

¹⁰ Manchester (New Hampshire) *Union Leader* (May 4, 2001), A4.

¹¹ As I write on May 11, 2000, the FBI has just admitted to “misplacing” 3,200 pages of documents requested by McVeigh’s attorney at trial.

and forth so many times that one fact tends to get lost in the shuffle, namely that the United States waged an illegal war against its own citizens. Prior to the catastrophe at Waco, the United States became a signatory to an international treaty banning the use of CS gas¹² on the battlefield. The United States was thus enjoined from using this particular weapon in any armed conflict during the exercise of its interests abroad or even against an invading army. Yet, the government used tanks as a delivery system for CS gas against a civilian population that its representatives knew included unarmed, non-combatant women and children, all of whom died in the assault. Yes, the government claims, the result was a tragedy, but certainly an isolated incident and not remotely similar to the institutionalized deprivation of human rights manifested by, say, China in Tiannamen Square.

Isolated incident? One is reminded of former President Clinton's testimony before the grand jury during the Monica Lewinsky debacle: that depends on what your definition of "isolated" is. The country's largest city (New York) sees four police officers fire forty-one shots at an innocent man who was attempting to produce identification.¹³ The country's second-largest city (Los Angeles) has one entire division of its police force implicated in perjury, homicide, planting evidence, stealing evidence, and framing innocent people.¹⁴ Entire cities in three states have reached consent decrees with the federal government after being sued for repeated violations of, yes, human rights by their police departments. The Governor of Illinois has issued a moratorium on capital punishment after thirteen men on death row were subsequently proven

¹² CS, which stands for 0-chlorobenzalmalononitrile, is a white solid powder usually mixed with a dispersal agent, like methylene chloride, which carries the particles through the air. Physical effects of this tear gas are felt almost immediately. They are: severe burning in the eyes, involuntary closing of the eyes, copious tearing, extreme burning in the nose, tendency to breathe through the mouth, extreme burning in the throat, coughing, consciousness of pain, holding of breath, breathing and heart rate slows down, blood pressure rises, circulation on the periphery of the body shuts down. In some cases there can be mucus secretion, nausea, and vomiting, also burning sensations on the body in places touched by the hands. Recovery quickly follows after an affected person is immersed in fresh air.

¹³ This refers to the case of Amadou Diallo. See *JPP*, Vol. 11, Huckelbury's article "Life and Death in America: The Killing of Amadou Diallo."

¹⁴ The Los Angeles Police Department Rampart Division was investigated in 2000 for up to 3,000 prosecuted cases that were alleged to have been tainted by police corruption involving stolen drugs and frame-ups. See <http://citizensforjustice.org/LAPD/>.

not guilty, the victims of police officers' perjury and prosecutorial misconduct.¹⁵ Riots were recently touched off in Cincinnati, Ohio, after a white police officer shot and killed a nineteen-year-old black youth who was wanted on a series of traffic warrants.¹⁶ More recently, a news helicopter captured the Philadelphia police (again) beating and kicking a suspect after a car chase.¹⁷ Apparently, the taping of the Rodney King incident in Los Angeles did not make a lasting impression on police anywhere. Isolated? The practices proceed uninterrupted from one coast to the other.

More disturbing is the imprimatur given to police by the judicial system. The United States Supreme Court, Justice Souter writing for the majority, this year approved the practice in Texas of arresting a woman for not wearing a safety belt.¹⁸ The woman was pulled from her car, handcuffed, and taken to jail. Her two children in the car with her were taken into protective custody until their mother could post bond and retrieve them – not for armed robbery, not for homicide, not for drug trafficking, but for not wearing a safety belt. This recent case illustrates the lamentable certainty that the original protections of the Constitution against unreasonable search and seizure have been so eviscerated by the Supreme Court, usually with Justice O'Connor leading the van, that the rights are now little more than hollow shells, crippled remnants of what the Founders intended, thus giving impetus to all those "isolated" incidents the government ostensibly regrets.

But what happens to defendants who are fortunate enough to survive arrest in the United States? Sadly, they are often victimized in the same type of "isolated" incidents that plague the world beyond prison walls. Frank Lee Smith spent fourteen years on Florida's death row for the rape and murder of an eight-year-old girl before he finally succumbed to cancer on January 30 of last year. Eleven months after he died, the DNA test he had requested exonerated

¹⁵ See the Governor's press release on this issue at www.state.il.us/gov/press/00/Jan/morat.htm.

¹⁶ This refers to the April 7, 2001 shooting of nineteen-year-old Timothy Thomas in Cincinnati, Ohio by a police officer in pursuit. Citizens rioted for three days before a state of emergency was declared. See www.thenewamerican.com/contact/alert.htm.

¹⁷ The video, filmed from an ABC NEWS affiliate's helicopter in July 2001, showed a group of Philadelphia police dragging thirty-year-old Thomas Jones from a car and then beating and kicking him.

¹⁸ *Atwater v. Lago Vista* (99-1408) 195 F.3d 242.

him of the murder. Prosecutor Carolyn McCann's only comment was that she was "very upset" by the test's results.¹⁹

Mark Bailey fared even worse. He was a prisoner in the Escambia County (Florida) Jail when he was beaten to death by jail guards. Judge David Ackerman ruled that his death was a homicide caused by excessive force of the guards, but prosecutor Curtis Golden refused to bring charges. He claimed that his investigation could not determine who inflicted Bailey's fatal injuries – or where or when.²⁰

Finally, also in Florida, the Department of Corrections has implemented "maximum management" at the Florida State Prison in preparation for construction of its new supermax prison. This type of confinement involves depriving prisoners of all personal property, visits, and books, except for religious material. Men and women on maximum management status will be allowed out of their cells only once every thirty days for exercise in a dog run, with the time as yet to be determined. They will receive no commissary except stamps, but, in a truly Kafkaesque twist, they will not be permitted to purchase either paper or envelopes. Finally, there will be no human contact whatsoever, either with guards or other prisoners. Variations on this theme have been common practice at the prison's Q-Wing for decades, procedures that human-rights groups have repeatedly described as cruel and unusual punishment.²¹

These examples in a single state are doubtless a few of those "isolated incidents," the ones that stubbornly persist despite the disclaimers by public officials. They are also, according to the United States' interpretation, within the purview of Article 2(7) of the UN charter, the section that permits member countries to ignore external criticism as a violation of "domestic jurisdiction." At first blush, the comparison with what the United States says versus what it does appears to be nothing but the hypocrisy its citizens have come to expect from their elected representatives. But there is a very real danger at work, one that blinds the more fundamental and reactionary elements – the ones who now control the government – to the flaws of the criminal justice system in general and prison systems in particular. For them, it is as if America must be viewed in its prelapsarian²² form, flawless in both conception and operation,

¹⁹ *Florida Prison Legal Perspectives* 7(2), p. 6.

²⁰ *Ibid.*, p. 7.

²¹ *Ibid.*, p. 20.

²² Of or relating to the period before the fall of Adam and Eve (editor).

instead of a modern oligarchy run for and by self-interested individuals for whom human rights mean the accumulation of wealth and power at the expense of everyone else.

Perhaps the most graphic example of this cultural myopia is the statement by President George W. Bush following the revelation that the FBI had withheld over 3,000 pages of documented evidence in the case against Timothy McVeigh, convicted and sentenced to death for the bombing of the Murrah Building in Oklahoma City. After first applauding the revelation as evidence that the judicial system in the United States does work, Bush went on to say that Timothy McVeigh should be thankful to be living in America. Think about that for a moment. The President of the United States, an individual who oversaw the executions of 152 people during his term as Governor of Texas, and the elected head of the very government that killed the aforesaid Timothy McVeigh, had the temerity to lecture the death-row prisoner about how lucky he was to be living in the country that is doing its very best to execute him. And the patriots all nod in unison.

Make no mistake. McVeigh committed a horrendous crime, one that argues persuasively for capital punishment, and I suppose that he could have fared worse by committing murder in, say, Afghanistan or Zimbabwe, where his rights would have been given very short shrift, after which he would have been immediately executed, probably in some heinous fashion. Then again, he could have committed his murders in Canada, Britain, Australia, Italy, France, Germany, Sweden, Norway, Belgium – well, the list of countries where he would have fared more humanely is extensive. So it is a bit of a conundrum why Bush would extol America's inept federal law enforcement and its disturbing propensity to kill convicted felons to the point where those undergoing execution should be grateful for the experience.

But of course America's elected representatives tend to sound hopelessly naïve about the intrinsic decency of today's Republic, irrespective of how corrupted government and its enforcement arm have become since the Founders first laid down their precepts. It is this Panglossian²³ view that tends to aggravate our global partners, who can see that the emperor is wearing no clothes.

By way of comparison, in the view of many others in the international community, "[T]he United States is an unhappy and unsuccessful society,

²³ Blindly or naively optimistic (editor).

riddled with racial tensions, uncaring for its poor, incapable of sustaining stable families, and addicted to coping with its problems by incarceration and execution,"²⁴ which, of course, precisely explains the recent vote. As long as the United States continues to address its social problems by using the twin tools of incarceration and execution, as long as it ignores the fundamental needs of its poor and undereducated, as long as it denies health care to the most needy, the more it must expect international outrage when Uncle Sam's apologists step up to lecture on human rights.

For now, all the United States can do is "strut and fret its hour upon the stage" and threaten non-payment of accounts due, tactics that are already familiar to observers with experience in emerging or undeveloped countries – or with the more tawdry financial institutions. The sole surviving superpower should present a better example if it expects to lead the rest of the world into the 21st century, and a better example would begin by not only ceasing the petulant response to the recent vote but practicing what its representatives preach with respect to human rights. Only then will the United States deserve a seat on the Human Rights Committee, for as Thomas Jefferson observed in the *Declaration*, government has a responsibility to secure and protect the rights of every citizen, including those with no electoral power and those it holds in chains. Anything less is simply shameful and, to extend the Shakespeare, "a tale told by an idiot, full of sound and fury," and signifying nothing but a stunning arrogance.

FROM EVERY MOUNTAIN TOP

I'd trade all my tomorrows for one single yesterday.

– Janis Joplin, "Me and Bobby McGee"

Freedom is a concept that resonates distinctly in every American's ear. After all, the country was founded precisely because King George III abridged personal freedoms. Our national anthem is in part a salute to the "land of the free," and one of our contemporary holidays celebrates independence from that specific

²⁴ Alan Ryan summarizing philosopher John Gray's recent book in the *New York Review*, May 17, 2001, p. 55.

tyranny. Another, Memorial Day, reminds us of the extreme sacrifice often required to maintain the liberties to which we have grown accustomed and casually take for granted. The history of the United States is in fact a catalogue of the struggle for freedom, whether in brutal combat to abolish slavery or in, for example, the more current drive for universal suffrage and true equality under the law. The philosophy and dedication underpinning that struggle are a powerful testament to human ability to recognize and redress inequality, but at a more fundamental level, they are also an affirmation of freedom's pre-eminence in American social structure.

So sacrosanct is freedom's cachet that the country has not hesitated to go to war at home and abroad, either to secure or preserve it. The United States does not engage in warfare to prevent poverty and hunger. Neither does it commit its soldiers to combat the incidence of infant mortality or to extend reproductive choices to women in Third World nations. These issues are considered problems better addressed by local populations or through diplomatic channels at the United Nations. Instead, the country circumspectly goes to war to redress totalitarian excesses that circumscribe personal freedoms, at least in those countries hostile to America's interests. Saddam Hussein's attempted annexation of Kuwait and, more recently, the ethnic cleansing in Kosovo, prompted immediate responses because individual freedoms we are being trampled by avaricious dictators. The hypocritical treatment of the pre-Mandela South African government, of course, illustrates the selective nature of our geopolitical involvement. But this does not diminish the philosophical love affair the country has with the concept of personal freedom in general, an ideology whose European roots sprang to life with the *Magna Carta* and survived the tyranny of the British monarchy at its worst.

The influential British philosopher John Locke comes down to us as the undisputed champion of individual freedom, declaring that no man can be truly free until he secures the natural rights of life, liberty, and property.²⁵ Extending Locke's thesis, Thomas Jefferson's prose in the *Declaration of Independence* states dramatically that all human beings are entitled to the *natural* rights of life, *liberty*, and the pursuit of happiness" (my emphasis). Continuing the treatment of personal autonomy, one of the seminal phrases in the

²⁵ See John Locke (1952, orig. 1690), *The Second Treatise of Government*, edited by Thomas P. Peardon. New York: The Bobbs-Merrill Company, Inc.

Declaration bestows on a population the right to abolish any form of government that fails to secure freedom's gifts. This is a powerful statement, one that the Framers did not make lightly. Its significance is codified in the *Constitution* within the framework of the *Bill of Rights*, wherein Madison specifically prohibits the government from depriving its citizens of life or liberty without due process of law. Such an apotheosis would be instinctive for eighteenth-century scholars. As Thomas Paine observed in *The Crisis, No. 1*, "[I]t would be a strange thing indeed if so celestial an article as freedom should not be so highly rated."²⁶

It therefore comes as no small surprise that the loss of one's personal freedom is given such short shrift in American society today. I refer here to the singular custom of incarcerating men and women for decades under the most rudimentary conditions and then acting as if the removal from society alone were not an egregiously punitive act. I do not argue against incarceration as a social tool; sufficient proof exists to justify isolation of certain individuals for the safety of others. It is what happens within the context of incarceration that is disturbing and, more specifically, why the absolute loss of personal freedom fails in postmodern definitions of punishment.

For at least two decades, politicians and law enforcement personnel have waged a successful campaign to aggravate the conditions inside America's prisons, the rationale behind the move being that the prisons had previously become the functional equivalents of Club Med and did nothing to deter recidivism. Thus were born the concepts of supermax prisons, chain gangs, sensory deprivation chambers, passive and active restraints, and casual brutality. The focus shifted from the original Quaker concept of a penitentiary to a prison environment of unremitting physical and psychological discomfort. That is, the loss of one's freedom ceased to be seen as either sufficient or significant punishment, a historical reduction and philosophical digression that appear to have gone unnoticed.

The current correctional philosophy, if you will pardon the oxymoron, is one of strict punishment, not just in the removal of an individual from society but also in the nature of his or her treatment behind the walls. Rehabilitation is anathema, especially with Willie Horton as the poster boy for failed prison policies, and the *raison d'être* behind sending men and women to prison is not only to remove them from society but also to make their lives as miserable as

²⁶ Can be found at <http://libertyonline.hypermall.com/Paine/Crisis/Crisis-1.html>.

possible during their stays. What the current punitive stance ignores is the debilitating and dehumanizing effects of being cast out of society and forbidden contact with family and friends, of having one's choices prescriptively selected, of surrendering personal autonomy, all of which deny essentials that define us as human beings.

John Stuart Mill described the results of such an existence in his famous essay *On Liberty*: "He who lets the world, or his own portion of it, choose his plan of life for him has no need of any other faculty than the apeline one of imitation."²⁷ Prison philosophy, aided and abetted by a misinformed electorate, is therefore currently engaged in reducing human beings to the lowest common denominator without being aware of it – not through the treatment inside prisons, although that certainly plays a role, but rather in the removal of the humanizing and civilizing effects of society.

The obvious explanation for such a cavalier disregard of freedom's value is, of course, that the men and women who vote for more restrictive measures in response to the political manoeuvring of their elected representatives have never had their own freedom abridged in such drastic fashion. They therefore have no idea of what the absence of choice in their lives would mean. A friend once asked me to describe what being in prison was like. Inwardly I smiled, because I could not possibly convey to him what the experience was. The best I could do was to suggest that on a Saturday morning of his choice he carry a mattress into his bathroom and stay there until Sunday evening. His wife could prepare any meal she wanted at any time, but my friend could not see his three daughters. The rule was that he could not leave the bathroom and could have no "visitors." He was to eat there, perform all bodily functions there, and sleep there the best way he could for roughly forty-eight hours. My friend was intelligent enough to recognize that what was on the surface a deceptive proposition would not be one he cared to test. Even so, contrary to popular opinion, confinement is not the most difficult part, at least with respect to the physical conditions.

Human beings are marvellously adaptive creatures, and our spirits are resilient to the point of being nearly impervious to whatever conditions we happen to be facing at a particular time. If the Jewish population of Europe could survive

²⁷ In *On Liberty and Other Essays* (1991), edited with an introduction by John Gray. New York: Oxford University Press Inc.

Isabella's pogroms and Hitler's Holocaust, then prison conditions in general have nothing new to threaten hardened inner-city men and women or the sociopaths who prey on society's weakest members. With few exceptions, convicts endure, primarily because harsh conditions evoke atavistic survival instincts. No matter how brutal the treatment, men and women will adjust, so that Spartan conditions and institutionalized brutality quickly reach a saturation point and then proceed along a line of diminishing returns.

What never leaves the convicts' minds, however, no matter how persistent the effort to submerge it, is the awareness that he or she does not walk freely, that a physical barrier exists between them and everything they hold dear. They can ignore heat, cold, marginal medical care, substandard food and clothing, even physical abuse, but they can never overcome the fundamental sense of loss, the loss of the ability to live a free life, to choose the direction their lives will take.

This is the loss that society in general cannot comprehend. Driving home after work, for example, a woman hears a song on the radio that reminds her of a specific time or place, and a smile plays around her mouth. A man kisses his wife good-bye in the morning and eases into commuter traffic, tacitly aware that he will see her again in approximately eight hours. These are simple things, but the things that make life human and worthwhile and make the struggle to pay the bills worth the effort.

For the convict, something as trivial as that same song brings memories crashing back to a specific time and place, poignant memories when she was free, in love with or loved by someone special. And unlike casual good-byes in the free world, farewells that automatically anticipate reunion, departures in prison visiting areas elicit anguish that cannot be approached by the most barbaric conditions or treatment, especially if the family is separated by thick glass prohibiting even one touch. How does bland food, indifferent medical care, and twenty-three-hour confinement compare to the inability to hold one's child or pull one's spouse close when the night turns cold? This is punishment in its most pristine form, undiluted and without the anodyne of psychological retreat that accompanies physical abuse. It is this failure to acknowledge, or even recognize, the penetratingly coercive nature of losing one's freedom that infects current philosophies on imprisonment. And therein lies the shame.

Freedom is the *sine qua non*²⁸ of human existence. Without it, as Mill observed, we are less than human and closer to our simian cousins. We revert

²⁸ An indispensable condition or necessity (editor).

to a state in which life is “solitary, poor, nasty, brutish, and short.”²⁹ For a society to ignore the destructive consequences of forcibly removing its members from the community is to disregard what it means to be human. We are, after all, social animals, as Aristotle observed. It is the loss of freedom, therefore, the torture of perpetual bereavement, that makes a prison sentence so terrible to comprehend and even more horrible to endure. It is not a vacation from a stressful life of overdue bills and recalcitrant children. Nor is it a laid-back existence punctuated by cable television and designer ice cream. It is the absolute denial of choice in an individual’s life, the condemnation of men and women to perpetual servitude, and the consequent establishment of an entire industry erected upon human suffering.

In his second inaugural address, Abraham Lincoln said, “It may seem strange that any men should dare to ask a just God’s assistance in wringing their bread from the sweat of other men’s faces.” In today’s environment, not only do men earn their living as overseers, but they also strive to make prison conditions as harsh as possible under the assumption that imprisonment itself is not actually punishment. Society tacitly underwrites that philosophy and in so doing besmirches the honour of the men and women who have consistently fought to keep this country free.

As I contemplate Veteran’s Day this year, I would urge the American public to rethink its policies of massive incarceration, not to the point of rescinding the laws that incarcerate men and women (that will not happen soon), but with the purpose of developing a finer appreciation for what it means for them to be free while others remain captives. Sadly, prisons remain an ugly necessity in a violent world, but that contingency should reinforce the realization that the very act of incarceration, of isolating someone from society, is indeed punishment of a form that valiant men and women have given their lives to keep from encroaching on this country’s sovereignty. If freedom is worth dying for, then assuredly it is a gift whose loss is not to be simply shrugged off as inconsequential.

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²⁹ Thomas Hobbes (1964, orig. 1651), *Leviathan*, edited with an introduction by Francis B. Randall. New York: Washington Square Press.

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