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From the Punitive City to the Gated Community: Security and Segregation across the Social and Penal Landscape

BY MONA LYNCH*

INTRODUCTION

Just over twenty years ago, criminologist Stanley Cohen articulated his vision of a newly evolving penal world, “The Punitive City,”¹ which was distinguished by several elements: The dispersal and penetration of social control beyond prison walls; the blurring of spatial boundaries which mark the differences between inside and outside, freedom and captivity, imprisoned and released, and guilty and innocent; the emergence of corrections a continuum where intervention and control is finely graded to fit individual “need”; and the widening of the controllable population which resulted from fuzzier definitions of deviancy and normalcy. Cohen conceptualized his “punitive city” as a community built on finely graded social control mechanisms with few clear boundaries between classes and categories of citizens.

These representations of a new form of penal control were most apparent in the emerging revolution of what is euphemistically known as “community corrections” or community-based control. Community control ideology embraces the involvement of family, schools, peers, neighborhoods, the police, and an array of community professionals in keeping the criminal in line within the community, rather than isolated in a distinctly segregated penal institution. While Cohen doubted that these new community-based forms of intervention would replace the prison, he did indicate that prison incarceration rates would likely remain static, if not decline, as the prison became a last resort on the continuum of correction, rather than the first resort for penal intervention.²

Cohen’s imagined new “punitive city” was not the only expression of doubt about the role and purpose of segregated penal institutions dur-

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1. Stanley Cohen, *The Punitive City: Notes on the Dispersal of Social Control*, 3 CONTEMPORARY CRISES 339 (1979) [hereinafter Cohen, *The Punitive City*].

2. *Id.* at 343, 347.

ing that period. Beginning in the 1970s, the value and necessity of the prison was being broadly and fundamentally challenged by practitioners and theorists across the U.S and western Europe. Not only were the physical institutions and day-to-day institutional practices in the critical spotlight, but the very foundations upon which they rested, the philosophies, beliefs, and cultural tenets that told all of us why we punish and with what social aims were scrutinized and challenged. As criminologist Andrew Scull suggested at the time, the movement away from incarceration and toward "community corrections" involved a direct assault on the very intellectual foundations underlying the established systems of control.³ The rehabilitative mission was critiqued by those on both the left and the right of the political spectrum.⁴ It was coming to be seen as a failed experiment which denied the moral autonomy of criminal actors, allowed for oppressive institutional conditions under the guise of benevolence, and simply "didn't work".⁵

A range of theoretical work that has followed this transformative moment in penology, including Cohen's subsequent *Visions of Social Control*,⁶ and Feeley and Simon's conception of the new penology,⁷ suggests that this upheaval during the 1970s marks a fundamental shift in the nature of state punishment. In the new penal era, according to this line of analysis, the individual criminal as disciplinary subject is no longer a primary concern, and in its place an emphasis on controlling risky groups and populations with efficient, nontransformative methods has ascended.⁸ These theoretical works imply a similar, secondary place

3. ANDREW T. SCULL, *DECARCERATION: COMMUNITY TREATMENT AND THE DEVIANT: A RADICAL VIEW* (2d ed. 1984); Andrew T. Scull, *Community Corrections: Panacea, Progress or Pretence?*, in *THE POWER TO PUNISH: CONTEMPORARY PENALTY & SOCIAL ANALYSIS* (David Garland & Peter Young eds., 1983).

4. Craig Haney, *Riding the Punishment Wave: On the Origins of Our Devolving Standards of Decency*, 9 *HASTINGS WOMEN'S L.J.* 27 (1998); David Rothman, *More of the Same: American Criminal Justice Policies in the 1990s*, in *PUNISHMENT AND SOCIAL CONTROL: ESSAYS IN HONOR OF SHELDON L. MESSINGER* (Thomas G. Blomberg & Stanley Cohen eds., 1995).

5. FRANCIS A. ALLEN, *THE DECLINE OF THE REHABILITATIVE IDEAL: PENAL POLICY & SOCIAL PURPOSE* (1981); Daniel Krislov, *Ideology and American Crime Policy, 1966-1996: An Exploratory Essay*, in *THE CRIME CONUNDRUM: ESSAYS IN JUSTICE* (Lawrence Friedman & George Fisher eds., 1997); Robert Martinson, *What Works? Questions and Answers About Prison Reform*, 35 *PUB. INTEREST* 22 (1974); ALEXANDER W. PISCIOTTA, *BENEVOLENT REPRESSION: SOCIAL CONTROL AND THE AMERICAN REFORMATORY-PRISON MOVEMENT* (1994).

6. STANLEY COHEN, *VISIONS OF SOCIAL CONTROL: CRIME, PUNISHMENT, & CLASSIFICATION* (1985).

7. Malcolm Feeley & Jonathan Simon, *The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications*, 30 *CRIMINOLOGY* 449 (1992).

8. See also Anthony Bottoms, *Neglected Features of Contemporary Penal Systems*, in *THE POWER TO PUNISH* (David Garland & Peter Young eds., 1983); Kimberly Kempf-Leonard & Elicka S. L. Peterson, *Expanding Realms of the New Penology: The Advent of Actuarial Justice for Juveniles*, 2 *PUNISHMENT & SOC'Y* 66 (2000); JONATHAN SIMON, *POOR DISCIPLINE: PAROLE AND THE SOCIAL UNDERCLASS, 1890-1990* (1993) [hereinafter, SIMON, *POOR DISCIPLINE*].

for the prison in the era of dispersed actuarial social control. Because of its cost ineffectiveness prison should be used only as the final incapacitative tool for those who pose too great a risk in less secure settings. Further, given that the prison was ideologically founded and constructed to transform the mind and soul of the wrongdoer,⁹ the explicit abandonment of rehabilitation, and even deterrence, as primary penal goals would seem to portend its demise.

Yet what appears to have happened in the US (in particular, although not exclusively) is that this penological crisis and movement toward alternate criminal justice responses in no way lessened the reliance on prison as a central form of social control. Indeed, the explosion in the sheer numbers of people being imprisoned in this country, and in the rate at which people are imprisoned, actually began its upswing right around the time Cohen's piece on the Punitive City was published and the prison's credibility was being overtly challenged.

In this paper, I explore a potential (if partial) explanation for this somewhat ironic prison explosion by looking beyond the machinery of criminal justice, and analytically resituating the prison as a social institution within the broader socio-cultural landscape. The article begins by describing the transformation of the American prison itself over the past several decades from what was, at least in how it was explicitly idealized, an institution that aimed to reform its charges for the betterment of the inmates themselves as well as the broader society, to the current incarnation of the post-rehabilitative, security-oriented prison. Further, this article will illustrate how the underlying logic of the contemporary prison appears to inform many aspects of contemporary community life, which is a direct contrast to the projected course in which the language and elements of "community" were going to permeate and transform the penal realm. I specifically examine the rise of the "gated community" as a fitting exemplar of the segregative, security oriented society which analysts such as Gary Marx describe.¹⁰ This portion of the paper seeks to illustrate the parallels between "free" gated communities and the prison as an involuntary, no-frills gated community. The article concludes by analyzing what are suspected contributing factors in these social and spatial transformations, and discussing the theoretical impli-

9. MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* (1977); Krislov, *supra* note 5.

10. Gary Marx refers to this as the "maximum security society." Gary Marx, *The Engineering of Social Control: The Search for the Silver Bullet*, in *CRIME & INEQUALITY* (John Hagan & Ruth Peterson eds., 1995). For a discussion of the segregative elements of contemporary social and penal life, see JOCK YOUNG, *THE EXCLUSIVE SOCIETY: SOCIAL EXCLUSION, CRIME, & DIFFERENCE IN LATE MODERNITY* (1999).

cations of these changes and the fundamental impact of these new forms of security zone communities on contemporary social and civic life.

A DERAILED DEMISE OF THE PRISON

As noted above, all of the deep doubts openly expressed about the penal institution's purpose and function did not add up to the "death" of the prison but instead coincided with an unprecedented expansion of its use in the United States. Specifically, between 1930 and 1975, the annual prison incarceration rate in the United States was generally fairly stable, varying between the low nineties to a high of about one-hundred-nineteen (in 1961) per one-hundred thousand population.¹¹ The incarceration rate began its steady and consistent climb upwards in 1976, and by 1998 the overall national rate had more than tripled in two decades to four-hundred-sixty-one per one-hundred-thousand.¹² At the end of the 20th century, there were in excess of 1.3 million people housed in state and federal prisons in the United States, which was about 1 million more than were incarcerated just two decades earlier.¹³ When those imprisoned at the local level, in county jails and juvenile facilities are added into the count, there were more than 2,000,000 incarcerated people in the U.S. by year-end 1999.¹⁴ This imprisonment explosion cannot be explained away by rising crime rates. The rate of incarceration per 1000 index crimes has also nearly quadrupled in two decades, suggesting the growth was due in large part to changing crime control policy.¹⁵

Besides the growth in the rate and sheer number of people imprisoned over the past several decades, there have been several other notable transformations in the use of prisons in the United States over the same period. First, the racial and ethnic composition of the incarcerated population underwent significant change. The percentage of minorities relative to whites in prison, and relative to their percentage in the general population, especially of African-Americans, grew significantly from 1960 through the 1990s, with the sharpest increase beginning around 1980.¹⁶ Indeed, the incarceration rate for African-American men has

11. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS, 1997 (1998).

12. ALLEN BECK & CHRISTOPHER MUMOLA, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS BULLETIN: PRISONERS IN 1998 (1999).

13. ALLEN BECK, U.S. DEP'T OF JUSTICE, PRISONERS IN 1999 (Aug. 2000); BECK & MUMOLA, *supra* note 12.

14. BECK, *supra* note 13.

15. BECK & MUMOLA, *supra* note 12.

16. BECK & MUMOLA, *supra* note 12; Sheila Maxwell, *Conservative Sanctioning and Correctional Innovations in the United States: An Examination of Recent Trends*, 27 INT'L J. OF THE SOC. OF LAW 401 (1999); Michael Tonry, *Racial Politics, Racial Disparities, and the War on Crime*, 40 CRIME & DELINQUENCY 475 (1994) [hereinafter, Tonry, *Racial Politics*]; MICHAEL

increased so dramatically that it has literally reshaped the social structure of entire urban communities over the past twenty years.¹⁷

Second, the kinds of offenders who occupy American prisons are increasingly non-violent offenders, despite the political rhetoric that would suggest otherwise. Drug offenders in particular have made up a disproportionate percentage of the population growth over the past 2 decades, and a disproportionate number of those who are sent to prison have been African American, not white, drug offenders.¹⁸

Third, life inside institutional walls has been transformed over the same general period at facilities across the country. The emphasis on incapacitation rather than on rehabilitation in the broader criminal justice sphere has meant that prisons are becoming mere containment sites of varying security levels, with fewer resources devoted to traditional rehabilitative activities.¹⁹ The proliferation of “super-max” prisons in the United States, with their hallmark features of extreme isolation combined with high-tech, high-level security, are just one telling example of contemporary life behind bars. Thus, institutional life itself has undergone a dramatic qualitative shift that coincides with the changes in population demographics and numbers.

If one looks at the state of California, which lays claim to one of the most populous prison systems in the country, the incredible growth of the system is also demonstrated in numbers and rates of incarceration over the last two decades. The incarceration rate in the end of the 1978 was about 95/100,000 with an institutional population of around 21,000 inmates. Twenty years later, the rate was nearly five times higher at 481 per 100,000 and a total institutional population stood at 163,000.²⁰ The growth is also evident in the physical expansion of California’s system. Twenty-one of thirty-three prisons in use in the state, or two-thirds of all operating prisons, have been built since 1982, at a cost of about 5.3 billion dollars. The Department of Corrections now accounts for just over seven percent of the entire state budget, up from about two point

TONRY, *MALIGN NEGLECT: RACE, CRIME AND PUNISHMENT IN AMERICA* (1995) [hereinafter, TONRY, *MALIGN NEGLECT*].

17. NAT’L CRIMINAL JUSTICE COMMISSION, *THE REAL WAR ON CRIME* (Steven Donziger ed., 1996); Marc Mauer, *Racial Disparities in Prison Getting Worse in the 1990s*, 8 *OVERCROWDED TIMES* 8 (1997); MARC MAUER, *RACE TO INCARCERATE* (1999); JEROME MILLER, *SEARCH AND DESTROY: AFRICAN-AMERICAN MALES IN THE CRIMINAL JUSTICE SYSTEM* (1996).

18. Tonry, *Racial Politics*, *supra* note 16. TONRY, *MALIGN NEGLECT*, *supra* note 16.

19. *See, e.g.*, Haney, *supra* note 4; CHRISTIAN PARENTI, *LOCKDOWN AMERICA: POLICE & PRISONS IN THE AGE OF CRISIS* (1999); James Robertson, *Houses of the Dead: Warehouse Prisons, Paradigm Change, & the Supreme Court*, 34 *HOUS. L. REV.* 1003 (1997).

20. CALIFORNIA DEP’T OF CORRECTIONS, *CALIFORNIA PRISONERS AND PAROLEES 1997 & 1998* (1999), available at <http://www.cdc.state.ca.us/pdf/CalPris9798elect.pdf>. (last visited Feb. 12, 2001).

nine percent in 1980.²¹

A number of criminal justice scholars have begun to examine why this expansion has occurred, especially directly on the heels of the deep cynicism broadly expressed about the prison's utility and necessity. Perhaps the two most prominent categories of explanations for the huge growth can be characterized as economic/structural and political/cultural. For instance, Ted Chiricos and Miriam DeLone address the seemingly Marxist paradox of prison expansion in a time of economic prosperity. The researchers have demonstrated that this contemporary period does indeed have a significant surplus labor population despite appearances to the contrary, and that this population size is positively correlated to use of imprisonment.²² A number of scholars have also linked the vast economic restructuring brought on by post-industrial market changes and general economic globalization over the past several decades to the growth of the prison "industrial complex" especially as directed at non-Whites.²³

In terms of the role of politics and issue frames, Katherine Beckett has illustrated how crime as political capital, particularly in the Reagan-Bush years, in concert with media attention to state-shaped crime issues, contributed to the expansion of imprisonment as a primary criminal justice policy, especially at the federal level.²⁴ Indeed, a number of researchers have pointed to the mass media's role in at least fueling, if not creating, panic over crime which can only be remediated through harsh penal policies (e.g., Scheingold's explication of the "myth of crime and punishment,"²⁵ Irwin and Austin's examination of the interplay between economics, politics and media that has contributed to America's "imprisonment binge";²⁶ Chiricos's analysis of the media-hyped cocaine panic in the 1980s which spawned harsh federal mandatory minimum statutes,²⁷ and Surette's description of the media

21. California Dep't of Corrections, CDC Facts (3d Quarter 2001), at <http://www.cdc.state.ca.us/factsht.htm> (last visited Nov. 10, 2001).

22. Theodore A. Chiricos & Miriam DeLone, *Labor Surplus & Punishment: A Review and Assessment of Theory & Evidence*, 39 SOC. PROBS. 421 (1992); see also Dario Melossi, *Gazette of Morality and Social Whip: Punishment, Hegemony, & the Case of the USA 1970-1992*, 2 SOC. & LEGAL STUD. 259 (1993).

23. See Ruth Gilmore, *Globalisation and United States Prison Growth: From Military Keynesianism to Post-Keynesian Militarism*, 40 RACE & CLASS 171 (1998-1999).

24. KATHERINE BECKETT, *MAKING CRIME PAY: LAW & ORDER IN CONTEMPORARY AMERICAN POLITICS* (1997).

25. STUART A. SCHEINGOLD, *THE POLITICS OF LAW & ORDER: STREET CRIME & PUBLIC POLICY* (1984).

26. JOHN IRWIN & JAMES AUSTIN, *IT'S ABOUT TIME: AMERICA'S IMPRISONMENT BINGE* (3d. 2000).

27. Ted Chiricos, *The Media, Moral Panics, & the Politics of Crime Control*, in *THE CRIMINAL JUSTICE SYSTEM: POLITICS & POLICIES* (George F. Cole & Marc G. Gertz eds., 1998).

influence in California's Three Strikes 1990s lawmaking frenzy,²⁸ to name a few.)

Several theorists have also grappled with the process by which this penal punitiveness has been put into popular and political language.²⁹ Dario Melossi describes what he calls the "changing hegemonic vocabulary of punitive motive" which flowed from society's elites to the populace during the period of 1970-1992. During this period, the instrumental value of punishment was in essence translated into a form of moral language adopted and acted upon by politicians and the public.³⁰ Jonathan Simon has suggested that what he calls, "governing through crime" in which elected officials substitute punitive crime control rhetoric and new penological policy-making in the place of substantive governance, accounts in part for the changing penal practices.³¹

There is also, as described above, an important and growing body of work that places the incarceration boom squarely within the political realm, and illuminates the changing role of crime control/penal policy in state and federal politics and governance. Thus far, though, the prison explosion has generally been most extensively documented in terms of its extent, its practical consequences, and its policy implications.³² Indeed, there are some underlying social and cultural changes that seem to have contributed to this prison explosion, especially in regard to its changing qualitative features, which have been less fully explored. In particular, one of the links in the process which should be addressed is how the prison itself has transformed in meaning so that it could conceptually "fit the bill" in the new post-rehabilitative era. Given its precarious position just twenty-five years ago, one could easily have imagined a new (or retro) set of punitive penal strategies emerging from the confluence of punitive crime and punishment politics, growing concern with risk management, and skepticism about the function of penal intervention, which would have subsumed the prison's role.

PRISONS AS UNDERCLASS "LIFESTYLE COMMUNITIES"

The first aspect of the changing social meaning of the prison has to do with the understanding of its very function as a populated social

28. Ray Surette, *News from Nowhere, Policy to Follow*, in *THREE STRIKES & YOU'RE OUT: VENGEANCE AS PUBLIC POLICY* (David Shichor & Dale Sechrist eds., 1996).

29. See, e.g., DAVID GARLAND, *PUNISHMENT & MODERN SOCIETY: A STUDY IN SOCIAL THEORY* (1990).

30. Melossi, *supra* note 22, at 269.

31. Jonathan Simon, *Governing Through Crime*, in *THE CRIME CONUNDRUM: ESSAYS IN JUSTICE* (Lawrence Friedman & George Fisher eds., 1997).

32. See, e.g., ELLIOTT CURRIE, *CRIME AND PUNISHMENT IN AMERICA* (1998); IRWIN & AUSTIN, *supra* note 26; TONRY, *MALIGN NEGLECT*, *supra* note 16.

space. Where the prison has traditionally been understood as an institution of transformation, in which the goals of training, fixing, and rehabilitating were primary, at least rhetorically, thus analogous in some ways to the school or the factory,³³ it is now better understood as a place to be for those sentenced; thus a form of residence. While the prison was founded and firmly rooted in a rehabilitative tradition, its very nature, as well as its social and cultural place in the larger social sphere, has been fundamentally reconstructed in recent years. Prisons today are explicitly justified primarily (although not exclusively) as being useful for incapacitation, and perhaps a bit of retribution.³⁴ As a result, the contemporary prison need only function as a holding place where the primary obligation to the residents is the famed "three hots and a cot," and the central obligation to the larger community is simply to keep convicted persons out of sight and behind bars. The label that aptly captures this shift in the role of the prison from a place that reforms to an incapacitative residence is one that is applied with more and more frequency to penal institutions—the warehouse prison.³⁵

That the prison is thought of in these terms, by the public, politicians, academics, and practitioners alike, is evident in a number of small but telling ways. First, there is the ascension of a strain of criminological theories explaining criminality as a form of lifestyle or career.³⁶ As David Garland suggests, the contemporary offender is "no longer [viewed as] the poorly socialized misfit in need of assistance, but instead an implicit, opportunistic consumer."³⁷ Thus, for instance, the "new criminologies of everyday life"³⁸ exemplified by Felson and Cohen's routine activities theory presupposes that crime is committed by a rational actor who will only choose such behavior when the rewards are greater than the costs.³⁹

33. See, e.g., DARIO MELOSSI & MASSIMO PAVARINI, *THE PRISON AND THE FACTORY: ORIGINS OF THE PENITENTIARY SYSTEM* (Glynis Cousin trans., 1981).

34. Kathleen Auerhahn, *Selective Incapacitation & the Problem of Prediction*, 37 *CRIMINOLOGY* 703 (1999).

35. Robertson, *supra* note 19; Jonathan Simon, *From the Big House to the Warehouse*, 2 *PUNISHMENT & SOC.* 213 (2000); Hans Toch, *Warehouses for People?*, 478 *ANNALS AM. ACAD. POL. & SOC. SCI.* 58 (1985).

36. Billy J. Slaton, *Inmates' and Officers' Adlerian Lifestyle Personality Attributes and Anger* (1999) (unpublished Ph.D. dissertation) (on file with author); GLENN D. WALTERS, *THE CRIMINAL LIFESTYLE: PATTERNS OF SERIOUS CRIMINAL CONDUCT* (1990); Thomas White & Glenn Walters, *Lifestyle Criminality and the Psychology of Disresponsibility*, 33 *INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY* 257 (1989).

37. David Garland, *The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society*, 36 *BRIT. J. OF CRIMINOLOGY* 445 (1996) [hereinafter, Garland, *Limits of the Sovereign State*].

38. David Garland, *The Commonplace and the Catastrophic: Interpretations of Crime in Late Modernity*, 3 *THEORETICAL CRIMINOLOGY* 353, 353 (1999).

39. See, e.g., Lawrence Cohen & Marcus Felson, *Social Change and Crime Rate Trends: A*

Implicit in this understanding of criminality, of course, is that a criminal "career" is a matter of individual choice and personal preference. Thus, the most appropriate intervention is mere preventive containment, since the only reform that would work to get the criminal straight is a change in lifestyle choice. Indeed, one of the few transformative programs within correctional settings that is currently popular is a series of classes offered to correctional populations about changing their lifestyle choices, along with other "cognitive" adjustment programs!⁴⁰

It follows, then, that those who go to prison may be seen as opting for that as their lifestyle community. One hears the assumption that convicts choose to go to prison sounded in a variety of venues. My own fieldwork on parole field supervision demonstrated that parole agents and hearing officers sometimes explicitly justified returns to prison as the choice of the wayward parolee.⁴¹ In the public and political realms, recent demands for tougher institutional conditions such as removing weight equipment, limiting television access, smoking bans, clothing and grooming restrictions are implicitly and explicitly justified on the need to lessen the appeal of the "country club" prison for would-be felons. Some prisons have even begun to charge rent to inmates for their stays, ranging from \$10-60 a day. This language also extends to the market end of contemporary prisons, as illustrated in the ad campaigns for correctional products. For instance, DLR prison architectural firm, which frequently advertises in the correctional trade periodical, *Corrections Today*, uses the ad copy "Providing Accommodations for Selected Guests," above a photograph of a jailed man's torso with his hands extending through the bars, and a cigarette dangling between his fingers, in one of its display advertisement campaigns.⁴²

Institutions themselves appear to be increasingly operating purely as self-contained communities, with fewer connections with, and obligations to, the larger community. For example, Jonathan Simon has demonstrated how corrections in California increasingly operates in terms of internally defined efficiency and accountability goals. The internal goals are employed rather than the previously dominant externally defined goals which linked correctional success to offenders' post-

Routine Activities Approach, 44 AM. SOC. REV. 588 (1979) (the routine activities hypothesis was articulated early on); see also MARCUS FELSON, *CRIME AND EVERYDAY LIFE* (2d ed. 1998).

40. Glenn Walters, *Short-term Outcome of Inmates Participating in the Lifestyle Change Program*, 26 CRIM. JUST. & BEHAV. 322 (1999).

41. Mona Lynch, *Rehabilitation as Rhetoric: The Reformable Individual in Contemporary Parole Discourse & Practices*, 2 PUNISHMENT & SOC'Y 41 (2000).

42. For one example of this advertisement, see DLR Group Advertisement, 59 CORRECTIONS TODAY 168 (Apr. 1997).

sentence law abiding behavior in the community.⁴³ I have found on my visits to institutions in California that prison representatives explicitly describe the prison as a “little city”, offering a lengthy narrative about how the prison functions like a self-contained community. The guides on these institutional tours present the main activities that go on behind the gates as ones that simply serve to keep the place functioning smoothly. For instance, they explain where bedding and clothes are laundered, how meals are handled, how to make enough coffee for so many residents, and how to move people through the institution without threatening security. Inmate jobs are generally described in terms of their functionality within the institution, not as skill building or otherwise for the rehabilitation of the inmate, as they might be under a rehabilitative model. Even the cells are referred to as “houses” by inmates and staff alike. Those in the business of corrections products can be found to have adopted the same language in their sales pitches, as is illustrated in a long running display advertisement campaign used by KLN Steel Products Company. In it, several photographs of steel bunks, tables, stools, and lockers are featured below the ad copy: “Furniture for Every Room in the House.”⁴⁴

If the prison is better understood as a form of residential community rather than as a reformatory, understanding its proliferation may lie in examining the qualitative shifts in residential communities during the same period. First, examining the notion of community, especially as articulated by Cohen, will illuminate where his (and his contemporaries’) vision of the new correctional community failed to be realized.⁴⁵ In Cohen’s imaginary punitive city that appeared on the horizon, criminal deviants intermingled with middle-class law abiding folks, living together, working together, learning together. This kind of diversified community which could be imagined at that time no longer seems so plausible. The potential for all kinds of mixed communities after the Civil Rights revolution of the 1950s, 60s, and 70s appeared to nearly vanish by the 1980s.

A number of scholars have demonstrated the persistence and intractability of race and class segregation in communities across the nation over the last two decades, although its form has changed in shape, given the explicit prohibitions against residential and other forms of discrimination that were the product of the Civil Rights era litigation and legislation.⁴⁶ Gregory Squires documents how policies which favor free

43. SIMON, POOR DISCIPLINE, *supra* note 8.

44. For an example of this advertisement, see KLN Steel Products Co. Advertisement, 59 CORRECTIONS TODAY 28 (Dec. 1997).

45. Cohen, *The Punitive City*, *supra* note 1.

46. Nancy Denton, *Are African-Americans Still Hyper-Segregated?*, in RESIDENTIAL

market control of housing have contributed to the solidification of residential segregation. This segregation has occurred despite laws prohibiting outright discrimination in providing mortgages and in selling and leasing residential properties. Residential areas in many regions are becoming increasingly homogenized, rather than diversified, on a number of dimensions in the post-Civil Rights era.⁴⁷ Generally, market forces have become the proxy by which the entrenched racial and class segregation of the pre-Civil Rights period has been allowed to persist.

Perhaps the most striking development along these lines in recent years, and the one most relevant to the subject of this paper, has been the rise of “gated communities”. In many ways, these developments, which are planned residential communities of varying sizes and distinguished by their use of gates and barriers to control who may enter into their space, represent the cardinal point on a continuum of segregated residential security zones that has as its opposite end-point the new “warehouse” prison.

According to urban planning scholars Edward Blakely and Mary Snyder, gated communities began to surge in number beginning in the early 1980s.⁴⁸ By the mid-1970s there were about two-thousand five hundred of such residential communities and by the mid-1990s, there were about twenty thousand gated communities containing more than three million housing units.⁴⁹ Blakely and Snyder suggest that the rate of building gated communities exceeds that of non-gated planned residential developments in a number of areas. This means there will be a continuation of gated community growth for at least some time.⁵⁰

Gated communities have several defining features. First and foremost, as just noted, they are marked by physical boundaries—walls and gates—which define the space within as private and closed to all but residents and authorized visitors. Second, those within tend to be similar to each other. Residents are homogenized by economics—each community is generally built to aim for a particular piece of the market in terms of pricing. The executive developments do not include the modestly

APARTHEID: THE AMERICAN LEGACY (Robert Bullard, J. Eugene Grigsby, & Charles Lee eds., 1994); WILLIAM GOLDSMITH & EDWARD BLAKELY, *SEPARATE SOCIETIES: POVERTY & INEQUALITY IN U.S. CITIES* (1992); DOUGLAS MASSEY & NANCY DENTON, *AMERICAN APARTHEID: SEGREGATION & THE MAKING OF THE UNDERCLASS* (1993); GREGORY SQUIRES, *CAPITAL AND COMMUNITIES IN BLACK & WHITE: THE INTERSECTION OF RACE, CLASS, & UNEVEN DEVELOPMENT* (1994); WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, & PUBLIC POLICY* (1987).

47. SQUIRES, *supra* note 46.

48. EDWARD BLAKELY & MARY SNYDER, *FORTRESS AMERICA: GATED COMMUNITIES IN THE UNITED STATES* (1997) [hereinafter, BLAKELY & SNYDER, *FORTRESS AMERICA*].

49. *Id.*

50. *Id.*

priced two bedroom home; the pricing of units within a development ensures that economically similar buyers will become neighbors.⁵¹ In fact, in some of the larger developments, there are gates within gates that protect the highest-end residents from even their more modest neighbors.⁵² Residents of gated communities also tend to be relatively racially homogeneous—generally, white, as observed by Blakely and Snyder in their visits to such communities across the country. As they point out, this is one by-product of the design. “The segregation that gated communities represent is intentionally economic, but race and class are closely correlated attributes in our society.”⁵³ Finally, the proliferation of gated communities is driven in significant part by residents’ concern for security, anxieties about crime and other social problems, and a desire to be with similar people.⁵⁴

If we look at the prison as another form of gated community or residential security zone, albeit involuntary and state-run,⁵⁵ its growth over the past couple of decades is less puzzling. First, it is within the current cultural language to understand criminals as consumers of prison as a lifestyle community. For instance, criminologist Mark Fleisher, addressing a lay audience in USA Today magazine, frames “lifestyle criminals”’ use of prison in just these kinds of terms. “To [these criminals], prisons are sanctuaries that deliver social, medical, and recreational services. . . Prison is stable and offers plenty of food, a clean bed, recreation, and access medical and dental services. Social life in prison is good, too. Some inmates continue criminal activity, such as drug dealing, while others just ‘lay up’ and enjoy the safety and pleasures of not having to hustle for money and food every day.”⁵⁶

In justifying the toughening of prison conditions in California prisons in the late 1990s, former Governor Wilson’s spokesman argued, “We got into the position. . .of providing a rather comfortable lifestyle in prison—We should not allow prisoners to ride roughshod over the pris-

51. *Id.*

52. For example, the DC Ranch development in Scottsdale, Arizona, described in further detail below, the highest-end “neighborhoods” have added layers and technologies of security which keep out even other DC Ranch residents unless invited in.

53. BLAKELY & SNYDER, *FORTRESS AMERICA*, *supra* note 48, at 153. See also Edward Blakely & Mary Snyder, *Forting Up: Gated Communities in the United States*, 15 J. ARCHITECTURAL & PLAN. RES. 61 (1998).

54. *Id.*; Brooke Warrick & Toni Alexander, *Changing Consumer Preferences*, in ADRIENNE SCHMITZ & LLOYD BOOKOUT, *TRENDS AND INNOVATIONS IN MASTER-PLANNED COMMUNITIES* (Toni Alexander et al. eds., 1998).

55. *Cf.* Garland, *Limits of the Sovereign State*, *supra* note 37, on how the lines between public and private domains in the business of crime control and punishment are being increasingly blurred in the late modern period.

56. Mark Fleisher, *Can We Break the Pattern of the Criminal Lifestyle?*, USA TODAY MAG., May 1997, at 30.

ons. They're not there to be entertained and catered to."⁵⁷ Louisiana state legislator Troy Hebert justified his bills to limit television and smoking in prisons, quaintly entitled the "Party is Over" package, on similar grounds. "It should be a prison; it is not a hotel you are going to when you go to jail. . . . Inmates now just lie around and watch baseball games and soap operas."⁵⁸ He added that some prisoners have it better in jail than at home "with three meals a day, clean sheets and TV".⁵⁹ In the case of prisons, the public is also at least conceived as willing consumers of the product of prisons. As the California Department of Corrections boasts on their official website, beginning in 1981, California voters, "enthusiastically supported separate bond issues totaling more than two billion dollars" to support the "most ambitious prison construction program in the world."⁶⁰

One can make the analogy between prisons and gated communities fairly easily. First, like the free gated community, the prison is also first and foremost marked by physical boundaries—walls and gates—that define the space inside as inaccessible to all but the residents, staff, and authorized visitors. Second, prisons are relatively homogeneous in population, in terms of the constellation of their demographics. A 1991 national survey of American prisoners indicated that over eighty-five percent had an annual income under \$25,000 prior to imprisonment (seventy percent of total had an income below \$15,000);⁶¹ most prisoners are men who range in age from twenty to forty, and two-thirds are racial minorities, primarily African-American, who by 1997 constituted

57. Dan Morain, *More Inmate Privileges Fall in Get-Tough Drive; Prisons: Weightlifting Gear is Being Removed and Some Lawbooks May Be Next - Critics Fear Tensions Will Rise*, L.A. TIMES, Feb. 9, 1998, at A1.

58. Ed Anderson, *Strict Curb on TV Urged for Inmates; Restriction on Smoking Sought, Too*, TIMES-PICAYUNE, Mar. 25, 1997, at A2. For examples of this kind of backlash to the "coddled, lifestyle criminal," see Rupert Cornwell, *United States: Prisons get Tough with "Coddled" Cons; Chain Gangs, Bills for Services Part of New Approach*, OTTAWA CITIZEN, Mar. 14, 1995, at C16; William Claiborne, *New Look for California Inmates: Crackdown Designed to Create "More Discipline and Respect,"* WASH. POST, Dec. 21, 1997, at A3; David Foster, *Prison Weightlifting Perks Weigh on Legislators' Minds; Crime: Some Lawmakers Contend That Allowing Inmates to Bulk up Makes them More Dangerous Criminals*, L.A. TIMES, June 4, 1995, at B3; Steve Lipsher, *Prisons in Colorado Not Posh Hotels: It's a Grim Life at Super Max*, DENVER POST, Jan. 1, 1995, at C1; Kevin Murphy, *Bill Would Reduce Prisoner Privileges: Missouri's Inmates Would Have to Earn TV and Recreation Time Under New Legislation*, KANSAS CITY STAR, Jan. 29, 1997, at C1; Sherry Tuell, *Legislators Seek to Eliminate TV, Weights from Prison*, HOUSTON CHRONICLE, Mar. 15, 1995, at A22.

59. See Ed Anderson, *Strict Curb on TV Urged for Inmates; Restriction on Smoking Sought, Too*, TIMES-PICAYUNE, Mar. 25, 1997, at A2.

60. California Dep't of Corr., *New Construction*, at <http://www.cdc.state.ca.us/program/avision/construct.htm>. (last checked Jan. 1, 2001).

61. ALLEN BECK ET. AL., U.S. DEP'T OF JUST., *SURVEY OF STATE PRISON INMATES*, 1991 (May 1993).

nearly half of the state and federal prison population.⁶² And, as several researchers have illustrated, the proliferation of prison is explicitly justified by concerns for security, and is offered as a remedy to quell anxieties about crime and other social problems.⁶³ Further, research on racial attitudes and opinion on punishment indicates that public support for punitive crime control policies is negatively correlated with support for integrationist policies and positively associated with negative racial stereotyping by whites.⁶⁴

Finally, the explosion of the post-rehabilitative “warehouse” prison, and the proliferation of gated communities follow a distinctly similar regional pattern, in addition to being contemporaneous in development. In particular, the Sunbelt and the Southwest regions—states like Florida, Texas, Arizona, Nevada, and California, particularly Southern California—have been the site of the most rapid development of both forms of the “gated community”. These states have been at the forefront of prison building, including the construction of post-rehabilitative “super-max” units, and in the escalation of imprisonment rates in the past twenty or so years.⁶⁵ They are also the same ones that have the highest concentration of gated developments.⁶⁶

Dana Young has even suggested that gated communities might be best viewed as nearly synonymous with prisons, in that they “represent a trend more concerned with regulating and controlling the residents within its gates and demoralizing relatively powerless groups outside its walls than with reducing the overall amount of avoidable social deprivation.”⁶⁷ She goes on to conclude, “[p]erhaps common interest developments are ironically closer to functioning like prisons rather than like the idyllic Edens they seek to emulate. The epitome of a gated community is surely a prison.”⁶⁸ Arguably, there is a profound and fundamental difference between prisons and gated communities. Namely, with prisons, people are fenced in against their will by the state, and in the other, residents pay a premium price in private transactions to fence others out.

62. BECK & MUMOLA, *supra* note 12.

63. BECKETT, *supra* note 24; Haney, *supra* note 4.

64. See, e.g., Steven Cohn et. al., *Punitive Attitudes Toward Criminals: Racial Consensus or Racial Conflict?*, 38 SOC. PROB. 287 (1991); Jon Hurwitz & Mark Peffley, *Public Perceptions of Race and Crime: The Role of Racial Stereotypes*, 41 AM. J. POL. SCI. 375 (1997); see also Benjamin Steiner, *The Consciousness of Crime and Punishment: Race, Political Narrative, and Lawmaking in the War on Drugs* (unpublished manuscript) (on file with author).

65. Roy King, *The Rise and Rise of Supermax: An American Solution in Search of a Problem?*, in PUNISHMENT & SOCIETY 163 (1999). BECK & MUMOLA, *supra* note 12; BUREAU OF JUSTICE STATISTICS, *supra* note 11.

66. BLAKELY & SNYDER, *FORTRESS AMERICA* *supra* note 48.

67. Dana Young, *The Laws of Community: The Normative Implications of Crime, Common Interest Developments, and “Celebration,”* 9 HASTINGS WOMEN’S L.J. 121, 133 (1998).

68. *Id.*

Nonetheless, as Young might suggest, this crucial distinction depends on the target resident's viewpoint of what can be seen as a similar set of underlying logics of security and segregation.

There is a point on the "residential security zone" continuum where this difference becomes blurred and turns on the fenced in/fenced out variable. Specifically, a growing trend in public housing is "gating" for security and crime control. In these developments, while the residents are nominally living there voluntarily, two aspects suggest that this type of gating is both the mid-point and turning point on the continuum suggested.

First, the gating decision is made by a state entity and imposed upon the residents, often with little or no input by them in the decision. Second, some of those living in these public housing gated communities express a sense of real confusion about whether the gates fence outsiders out or fence residents in. Residents in a recently "gated" DC housing project compared their experiences of having their housing development gated by the government to being jailed. As one resident put it, "We aren't animals. We don't need to be caged."⁶⁹

Finally, in Atlanta (among other cities), which has been at the forefront of gating public housing, residents of some communities are being subject to requirements that strongly resemble a criminal justice intervention. This is the case even though their only "offense" is poverty and a reliance on subsidized housing. Residents at some of these developments are subject to criminal records checks and are required to do community service. In addition, there are nightly curfews and limits imposed upon them by the Housing Authority regarding how long extended family and friends may visit in their homes. Some residents are required to carry ID cards to prove they belong, and can be evicted after two violations of these and other rules.⁷⁰ As one resident complained to a reporter about the litany of restrictions he lived under, "This is not a prison. People should be able to come and go as they please."⁷¹

The defining features, then, of these various forms of communities are the emphasis on security technology and boundary maintenance through the use of barriers to maintain variously defined segregated

69. BLAKELY & SNYDER, *FORTRESS AMERICA* *supra* note 48, at 102 (quoting Santiago O'Donnell, *More Than a Fence: 8-Foot Barrier Helped Cut Crime, Instill Hope at Potomac Gardens*, WASH. POST, Dec. 10, 1992, at DC1).

70. Chet Fuller, *Notes on Cities; Privacy a Price Willingly Paid for Safer Shelter*, ATLANTA J. & CONST., Jan. 15, 1996, at 7A; Hollis Towns, *Creating Secure Communities; Atlanta Plans Gates for Public Housing*, ATLANTA J. & CONST., July 16, 1997, at 6E; *see also* MIKE DAVIS, CITY OF QUARTZ (1990) (discussion of this trend in Los Angeles).

71. *See* Hollis Towns, *Creating Secure Communities; Atlanta Plans Gates for Public Housing*, ATLANTA J. & CONST., July 16, 1997, at 6E.

populations. At the "free" end, it tends to be the wealthiest who are shutting others out to maintain an "exclusive" environment, and at the other end, it is the poor and socially defined deviants who are fenced in.

GATES AND FENCES AS MECHANISMS FOR POST-CIVIL RIGHTS SEGREGATION

The question remains, why the expansion of both of these extreme forms of gated communities at this period in time? It does not appear to be happenstance that both occurred at the end of the Civil Rights revolution. Subsequent to the 1968 enactment of the Fair Housing Act⁷² and related civil rights legislation, both the free market and the state have contributed to the maintenance of social and spatial divisions that fall on racial, ethnic, and class lines through less open and direct means than those in practice up until that time. Although neither openly targets populations based on racial categories, both work in ways that result in racialized segregation. The marketers of gated communities promote the "exclusivity" of the community and promise "like-minded neighbors" as pitches to their potential customers.

The use of race restrictive covenants by private housing developments to ensure racial segregation dates back to the early part of the twentieth century. Once these explicit covenants were definitively deemed unenforceable in 1948, however, homeowner associations began to develop and enforce "race-neutral" restrictive covenants which continued to maintain racial, ethnic, and class segregation.⁷³ The homeowner association was created as a response to the loss of formal racial segregative mechanisms within private residential communities.

Under this model of privatized resident screening, association members and boards had the authority to determine and enforce "qualification" requirements designed for "preserving the character [and] . . . integrity" of the housing development, including occupancy density and other "lifestyle" restrictions.⁷⁴ While the most blatant forms of such screening were more effectively controlled by the Fair Housing Act, the increasing level of spatial, political, and governmental distance that community developers put between their developments and urban centers continued to ensure relative homogeneity within. The subsequent fortification of such residential communities with gates and barriers sim-

72. Fair Housing Act, 42 U.S.C. §§ 3601-3619 (1968).

73. EVAN MCKENZIE, *PRIVATOPIA: HOMEOWNER ASSOCIATIONS AND THE RISE OF RESIDENTIAL PRIVATE GOVERNMENT* (1994).

74. *Id.* at 78. Reginald Robinson also describes how nonverbal advertising messages are used as another indirect method in the housing market to maintain post-Civil Rights racial segregation. Reginald Robinson, *White Cultural Matrix and the Language of Nonverbal Advertising in Housing Segregation: Toward an Aggregate Theory of Liability*, 25 *CAP. U. L. REV.* 101 (1996).

ply added another layer to the privatized segregation.⁷⁵

For its part, the state invented the “war on crime”, then the “war on drugs” and most recently, the “war on gangs” all of which are currently waged with harsh criminal statutes that only thinly disguise the target populations.⁷⁶ Sociologist Katherine Beckett has meticulously documented that these crime wars are rooted in late 1960s-1970s political rhetoric that conflated race, poverty, and demands for civil rights with the dire threat of crime running rampant.⁷⁷ Perhaps the most well known of the war’s weapons are the federal mandatory minimum prison sentence requirements which punish crack cocaine and powder cocaine differently. So differently in fact, one would need to distribute 100 times more powder cocaine to receive the same sentence as a crack distributor under the statute.⁷⁸ It has been well documented that these highly discretionary laws (in terms of enforcement) are aimed primarily at non-white (particularly African- American) dealers of crack, despite a significant number of whites involved in the United States crack trade.⁷⁹

Loic Wacquant has explicitly made the connection between the end result of these state wars on “crime”—astronomical incarceration rates for African-Americans—and its socially segregative unspoken function. Wacquant persuasively argues that the prison began to supplant the ghetto in the 1970s as an “institution of forced confinement” for African-Americans.⁸⁰ He suggests that the “glaring and growing”⁸¹ racial disproportionality in contemporary American prisons is a function of the “extra-penological”⁸² role that it serves; namely, to segregate and subordinate an ethnically homogeneous and stigmatized population. Thus, in this reading of the prison explosion, timing is a critical clue. When ghettos could no longer completely contain marginalized populations, the prison with its literal walls and gates for containment became a

75. BLAKELY & SNYDER, *FORTRESS AMERICA*, *supra* note 48.

76. The government is also implicated in the housing end. Creating a free market housing policy plays a major role in maintaining segregation by economics, thereby ensuring some level of racial and ethnic segregation. SQUIRES, *supra* note 46.

77. BECKETT, *supra* note 24.

78. See 21 U.S.C. §§ 841(b)(1)(A)(ii), (iii) (1994).

79. See *United States v. Armstrong*, 517 U.S. 456 (1996), in which the Court invoked *McCleskey v. Kemp*’s nearly impossible to meet standard for finding that racial discrimination existed in the near exclusive prosecution of African-Americans by one California federal prosecutor’s office. See also Richard Dvorak, *Cracking The Code: “De-Coding” Colorblind Slurs During The Congressional Crack Cocaine Debates*, 5 MICH. J. RACE & L. 611 (2000); *CRACK IN AMERICA: DEMON DRUGS & SOCIAL JUSTICE* (Craig Reinerman & Harry Levine eds., 1997); Andrew Sacher, *Inequities Of The Drug War: Legislative Discrimination On The Cocaine Battlefield*, 19 CARDOZO L. REV. 1149 (1997).

80. Loic Wacquant, *The New “Peculiar Institution:” On the Prison as Surrogate Ghetto*, 4 THEORETICAL CRIMINOLOGY 377 (2000).

81. *Id.* at 378.

82. *Id.*

functional substitute.⁸³

The question remains as to how gates, barriers, and security hardware and software become an appropriate response to concerns about security and safety, fears of crime victimization, and anxieties about racial, cultural, and class differences. The changes described above did not just happen from a top down process, where state actors and/or private developers decided to impose a new regime to maintain race and class divisions. Rather, there has been an interactive transformative process that has occurred at multiple levels of society and culture to facilitate the acceptance and spread of this phenomenon. A major component of that transformative process (but by no means the only one), I suggest, has involved the successful mass commodification of both security and "community", in the form of products, technologies, amenities, and services. In turn, this commodification process agnosticized both state punishment and civil society.

Thus, the safe and secure lifestyle community is no longer something to be created through civic participation, but rather purchased as an amenity to one's residence. Additionally, protection against crime and other social ills is no longer a problem solved by human intervention in the form of rehabilitation or social/structural problem-solving. Rather it too can be purchased through the investment in sophisticated software and hardware that promises to incapacitate the problem population, or at least keep them out of the gated neighborhood. Consequently, these aspects of social life which have not always been thought of in terms of pure marketability have now been seized upon by myriad goods and service marketers in a manner that strips each of its underlying human values. Community responsibility is reduced to paying taxes and approving bond measures to fund the expanding prison industry, on the one hand, and paying homeowners fees and assessments to maintain gates and round-the-clock security patrols, on the other. Not surprisingly, there are hordes who are willing to pay.

The growth of security as a marketable commodity in the place of socially created forms of security has been documented in the form of private police and alarm systems.⁸⁴ The emerging literature on gated communities and other forms of exclusive communities also suggests

83. *Id.* This was also done in the post-Civil War South, with the invention of "Black Codes," chain gangs, convict leasing, and so on.

84. See Haney, *supra* note 4; see also NILS CHRISTIE, CRIME CONTROL AS INDUSTRY: TOWARDS GULGAS WESTERN STYLE (3d ed. 2001); Robert Lilly & Paul Knepper, *The Correctional-Commercial Complex*, 39 CRIME & DELINQ. 150 (1993); Ian Loader, *Consumer Culture & the Commodification of Policing & Security*, 33 SOCIOLOGY 373 (1999); Kenneth Tunnell, *Film at Eleven: Recent Developments in the Commodification of Crime*, 12 SOC. SPECTRUM 293 (1992).

that security, community and lifestyle are becoming products to be purchased, rather than social states that are created.⁸⁵ Further, the segregative goal of these social spaces is made evident in the sales pitches.

The private gated communities tend to sell both security and segregation more subtly. For example, Scottsdale, Arizona's Desert Mountain development's promotional package uses the descriptive adjectives "exclusive", "gated" and "serene" as single word selling points to describe the myriad amenities and features. The package boasts that this community that offers "members only exclusivity" and is "the envy of all, reserved for a few."⁸⁶ DC Ranch, also in Scottsdale, Arizona, which is made up of mostly gated "neighborhoods", except for the low-end developments (in the \$200,000 range) on the south side of the development, tells potential buyers in its promotional materials:

Of course, comfort in your surroundings is dependent on more than the design of your home and neighborhood. Accordingly, DC Ranch has taken a number of steps to heighten peace of mind and provide confidence in your community and its care. Private community patrols are provided on a twenty-four hours a day, seven days a week schedule by officers who are knowledgeable of, and attentive to, each neighborhood. If you happen to live in a gated area, microchip vehicle tags offer convenient access with no need to stop at the guard station. Residents simply push a button, or insert a card into a gate control mechanism. Also available is the advantage of advanced in-home security wiring, which provides for alarm monitoring and other services.⁸⁷

And there is at least one gated development currently under construction that makes explicit its primary emphasis on security as the theme of the community: Front Sight Master Planned Community outside of Las Vegas, Nevada, developed around firearm training, recreation, and protection.⁸⁸ The development is centered around a massive training facility, armory, live fire simulation training ranges, more than a dozen shooting ranges, a SWAT training tower, and an underground tun-

85. BLAKELY & SNYDER, *FORTRESS AMERICA*, *supra* note 48; Glenda Laws, *Embodiment & Emplacement: Identities, Representations & Landscape in Sun City Retirement Communities*, 40 *INT'L J. AGING & HUM. DEV.* 253 (1995).

86. Desert Mountain Properties promotional package/brochure (Aug. 1999), available at <http://www.desertmountain.com> (last checked Jan. 1, 2001).

87. DC Ranch promotional package/brochure (Jan. 2000), available at <http://www.dcranch.com> (last checked Jan. 1, 2001). DC Ranch's long term goal is near complete secession from the broader community for its residents. Their promotional materials also inform prospective buyers: "Clearly, the vision for DC Ranch, when fully realized, holds that residents will be able to fulfill nearly every need right here within the community." *Id.*

88. The plans, descriptions, photographs, and artist renderings for the residential community and training facility are available at <http://www.frontsight.com/facility.htm> (last checked Jan. 1, 2001).

nel network. Residents can partake in Uzi sub-machine gun classes, enroll in courses in how to shoot from moving vehicles, and receive low light gun-fight training.⁸⁹

The surrounding two hundred home residential development, protected by armed guards, includes plans for an on-site K-12 school, a shopping center to serve all the needs of the residents (including a firearms "pro shop"), a town arsenal, and an airstrip. The developer, who calls Front Sight "a Disneyland for gun lovers"⁹⁰ and "Uzi-land",⁹¹ offers free Uzi submachine guns to buyers who pay for their home sites up front.⁹² The developer also markets the place to potential buyers for its safety, "Wouldn't it be nice to live in the safest town in America? We won't have any crime at Front Sight, not with everyone trained in firearms."⁹³ He has even named the residential streets in the spirit of the theme; Second Amendment Drive is one of the addresses available.⁹⁴

Prison products are also more explicit in selling both segregation and security in their marketing campaigns aimed at corrections' managers. In fact some of the companies that sell to correctional markets also supply security products to high-end gated community developers.⁹⁵ A 1995 display advertisement for Robot Company's electronic security system is typical of the imagery and captioning used to sell to the prison market. The ad features a photograph of a convict climbing over low-tech institutional fencing, and the caption, "His dream is your worst nightmare."⁹⁶

Similar themes are used in both the Intelli-FLEX fencing and the First Defence company's ad campaigns. Intelli-FLEX features a close-up of a gruff convict behind the fencing, captioned by: "Intelli-FLEX: The really smart fence. It knows the difference between bad weather and

89. Tom Gorman, *A Planned Community for the Gun Enthusiast; Firearms: A Development Called Front Sight Would Include, Along with 1 Acre Home Sites, 12 Shooting Ranges, a Town Armory and a Web of Tunnels for Honing Shooting Skills*, L.A. TIMES, Dec. 13, 2000, at A3.

90. Editorial, *Did you miss: Home on the range: What we read in the LA Times: American gun lovers, says the Los Angeles Times, are Planning to Build a Town with a Difference: All its Citizens will be Armed and Ready to Shoot*, LONDON GUARDIAN, Jan. 5, 2001, at 15.

91. Nick Peters, *Gun Lovers Hit Bulls-eye in "Uzi-Land,"* SCOTLAND ON SUNDAY, May 14, 2000, at 21.

92. *Id.*

93. Greg Barrett, *Developer Plans Nevada Mecca for the Gun-toting*, USA TODAY, Apr. 18, 2000, at 6A.

94. Angie Wagner, *Home, Home on the Firing Range; Nevada Development Welcomes Gun Users*, BOSTON GLOBE, Apr. 26, 1999, at A3.

95. Interviews at the American Correctional Association "exhibit" show (trade show), Phoenix, AZ (Jan. 2000). Several of the perimeter protection systems sales representatives and one of the plumbing fixture company sales representatives reported that their products were also sold to the "high-end" residential market.

96. Robot Advertisement, 57 CORRECTIONS TODAY back of front cover (Feb. 1995).

a bad guy.”⁹⁷ First Defence features a picture of a convict helplessly dangling from the inwardly curved fence top, and the copy, “A design so effective they won’t get over it.”⁹⁸

The centrality of perimeter control to the segregative function of the warehouse prison is not limited to marketers of such products. Prisons in several jurisdictions have begun to install lethal electric fences around their facilities as the ultimate barrier to the free world.⁹⁹ These kinds of very expensive containment products, which the warehouse prison industry invests in heavily, explicitly articulate the underlying ethos of the contemporary gated community.¹⁰⁰

Investing in prisons, like investing in gated communities, literally buys boundaries to distinguish and secure differentiated lifestyle communities, both spatially and socially. So while there is recognized cynicism about the effects of imprisonment on those incarcerated, the contemporary commitment to prison asks for nothing more than containment of its residents. Thus the social anxieties about crime, difference, and social disorder that play a part in the desire for both can be quelled through the simple investment in walls, fences and gates.

THE MEANING OF GATES

The observations made here have been articulated by many, so I make no claim to originality in identifying the nature and shape of the racialized post-rehabilitative prison, the rise of the gated community, or the growing commodification process underlying both. The goal of this article was to simply pull these individual threads of social inquiry and analysis into a single narrative that might add to our theoretical understanding of the contemporary prison explosion.

It appears that there are multiple processes at work, including those that are political, cultural, economic, social psychological, and social structural. These processes have come together in this period in such a way that our punishment policies and practices are not only “volatile and

97. Intelli-FLEX advertisement, 59 CORRECTIONS TODAY 96 (Feb. 1997).

98. First DeFence promotional materials distributed at January 2000 American Correctional Association exhibit show (on file with author).

99. Bruce Finley, *Prison’s Perimeter Blasted as Inhumane*, DENVER POST, June 18, 1999, at B4; Kit Miniclier, *Owens Dedicates Sterling Prison Lethal Electric Fence Touted at Costly Facility*, DENVER POST, June 18, 1999, at B1; *Birds Are Shielded From Electric Prison Fences*, N.Y. TIMES, Apr. 13, 1998, at A19.

100. The fact that lethal fences have not completely proliferated in systems nationwide is likely due in large part to the extremely high up-front costs associated with them, rather than out of administrative concerns about such fences being inhumane. At the January 2000 American Correctional Association Winter Convention in Phoenix, a high level corrections administrator from Indiana told me that his department would love to install lethal fences, but did not have the budget to do so.

contradictory,"¹⁰¹ but also brutally punitive and deeply discriminatory. What this suggests for theoretical understanding of these phenomena, then, is that a) race and ethnicity in all their varied meanings are integral to understanding punishment in the United States; b) examinations of punishment processes like imprisonment often need to be imbedded within larger social and cultural processes;¹⁰² and c) the broader theoretical understandings of the "commodity culture"¹⁰³ can also give us insights into a state process like punishment.

Finally, while these late-modern developments are theoretically informative and suggest a profound change in the social, cultural, and political landscape, they also have a real and deep impact on the contemporary state of our civic life. Gregory Alexander has commented on the withdrawal for civic responsibility borne from the proliferation of "free" gated communities and related forms of private residential developments. Alexander suggests that, "the primary functions of the modern residential association are socially insulating rather than. . . connective. . . It does not seem too far-fetched, then, to characterize the incredible growth of these private residential governments as the enclosure movement of the late twentieth century in the United States."¹⁰⁴

Blakely and Snyder's empirical investigation of gated communities also confirms what we might suspect about such places. The residents tend to view those outside of the walls as outside of their concern, so express apathy about issues facing the surrounding communities.¹⁰⁵ Some gated communities have asked to withdraw from fiscal, political, and social involvement with the larger community, and have done so successfully in several instances.

California has at least 3 fully incorporated gated cities.¹⁰⁶ Places like DC Ranch in Scottsdale plan their own "public" schools on community grounds, as well as fire and police stations so residents will have still fewer reasons to go, in their words, "beyond the fence line."¹⁰⁷ Of

101. Pat O'Malley, *Volatile and Contradictory Punishment*, 3 THEORETICAL CRIMINOLOGY 175 (1999).

102. See DAVID GARLAND, *PUNISHMENT & MODERN SOCIETY*, *supra* note 29, for an excellent discussion of this point.

103. Pat O'Malley, *Containing our Excitement: Commodity Culture & the Crisis of Discipline*, 13 STUD. IN LAW, POL. & SOC. 159 (1993).

104. Gregory Alexander, *Civic Property*, 6 SOC. & LEGAL STUD. 217, 224-25 (1997). For more general discussions of the decline of civic life in this period, see Robert Putnam, *Bowling Alone: America's Declining Social Capital*, 6 J. DEMOCRACY 65 (1995), and JOCK YOUNG, *supra* note 10.

105. BLAKELY & SNYDER, *FORTRESS AMERICA*, *supra* note 48.

106. Ray Tessler & David Reyes, *Gated Communities are Latest to Seek Cityhood; Government: Leisure World and Coto De Caza Would Join Only Three Walled Towns in California*, L.A. TIMES, Jan. 25, 1999, at A1; see also DAVIS, *supra* note 70.

107. See *supra* note 88.

course, one outcome of this fiscal withdrawal by predominantly mid- to high income taxpayers means that those with fewer resources who remain in the communities outside the walls end up with fewer basic services and lower levels of assistance as urban tax bases shrink.

Prisons have also had their own impact on civic life. In many urban communities, the population of young men has been decimated by the imprisonment binge, contributing to a radical reshaping of family structures, social relations, and local economics. The communities that deal directly with these criminal justice casualties are the same that have been shut out of the economic prosperity enjoyed by a segment of the nation's population. Thus, these areas in many ways have become their own security zones—whether formally, as in those gated public housing, or through the civic and economic abandonment of whole sections of cities and towns where police aggressively patrol, roust, and arrest those left behind.

This is not to romanticize a time that never really was, in which socially, economically, and racially integrated communities were successfully created as the norm. However, what seems to be gone now is even the dream or vision of such communities, which is no doubt a by-product of the same factors that have driven the growth of gates and fences. Thus, we can now read Cohen's articulation of a coming "Punitive City" not with alarm over the blurring of distinctions between corrections and community as he predicted, but with a sense of loss (or at least nostalgia) over the now absent social elements embodied in both community and "corrections"¹⁰⁸ that undergirded his and others' writings of that time.

108. By this, I mean the basic underlying assumption under the traditional correctional or rehabilitative model that the prisoner/convict is a "complete" human being capable of redemption. See JOHN M. SLOOP, *THE CULTURAL PRISON: DISCOURSE, PRISONERS & PUNISHMENT* (1996). Sloop's book reports on his fascinating contextual analysis of popular journal depictions of the American prisoner from 1950-1993. He identifies the birth of a distinction between the "complete" prisoner, who was primarily portrayed as White and the "incomplete" prisoner, primarily portrayed as African-American. See also Biko Agozino, *Theorizing Otherness, the War on Drugs & Incarceration*, 4 *THEORETICAL CRIMINOLOGY* 359 (2000). Agozino implicates mainstream criminologists in the perpetuation of racial stereotypes about imprisoned African-Americans.