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BEYOND FREEDOM AND DIGNITY: ALEKSANDR SOLZHENITSYN AND THE AMERICAN GULAG

Ira P. Robbins*†

THE GULAG ARCHIPELAGO 1918-1956: AN EXPERIMENT IN LITERARY INVESTIGATION. VOLUME III. By *Aleksandr I. Solzhenitsyn*. Translated from the Russian by Harry Willetts. New York: Harper & Row. 1978. Pp. x, 558. \$16.95.

*"All archipelagoes are like all archipelagoes . . ."*¹

Woe unto those who have read *The Gulag Archipelago*,² for they shall never be the same again!³ They have followed in this masterwork the history of the Archipelago⁴ "from the crimson volleys which greeted its birth" (p. 494), to Stalin's summary punitive operations, when "heads were cut off for . . . less than a sigh" (p. 91), and where "retribution delayed was a gift from heaven each morning" (p. 324), to "the pink mists of rehabilitation" (p. 494).⁵ They have

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1. A. SOLZHENITSYN, THE GULAG ARCHIPELAGO 1918-1956: AN EXPERIMENT IN LITERARY INVESTIGATION. VOLUME II 204 (T. Whitney trans. 1975) [hereinafter cited as VOLUME II].

2. The work consists of three volumes: A. SOLZHENITSYN, THE GULAG ARCHIPELAGO 1918-1956: AN EXPERIMENT IN LITERARY INVESTIGATION. VOLUME I (T. Whitney trans. 1973) [hereinafter cited as VOLUME I]; VOLUME II; and A. SOLZHENITSYN, THE GULAG ARCHIPELAGO 1918-1956: AN EXPERIMENT IN LITERARY INVESTIGATION. VOLUME III (H. Willetts trans. 1978) [hereinafter cited by page number only].

3. As with M. EASTMAN, STALIN'S RUSSIA AND THE CRISIS OF SOCIALISM (1940), one would be hard pressed to read Solzhenitsyn without realizing that the worst things he says about Russia are true. *Accord, Conquest, Evolution of an Exile: Gulag Archipelago*, in SOLZHENITSYN: A COLLECTION OF CRITICAL ESSAYS 90, 95 (K. Feuer ed. 1976); Medvedev, *On Solzhenitsyn's Gulag Archipelago*, *id.* at 96 ("I think that few people would get up from reading this book the same as when they turned to its first page. In this respect, I can think of nothing in Russian or world literature to compare with [it]"). *The Gulag Archipelago* is "the greatest and most powerful single indictment of a political regime ever to be leveled in modern times." Kennan, *Between Earth and Hell*, N.Y. REV. OF BOOKS, March 21, 1974, at 3-4. Compare the effect of recent depictions of the German holocaust. *See, e.g.*, N.Y. Times, May 9, 1979, § A, at 12, col. 1; *id.*, Jan. 24, 1979, § A, at 2, col. 3.

4. The *image* . . . is that of one far-flung "country" with millions of "natives," consisting of an *archipelago* of islands, some as tiny as a detention cell in a railway station and others as vast as a large Western European country, contained within another country — the U.S.S.R. This archipelago is made up of the enormous network of penal institutions and all the rest of the web of machinery for police oppression and terror imposed throughout the author's period of reference on all Soviet life.

VOLUME I at 616 (translator's notes) (emphasis in original).

5. *See also* pp. 476, 479.

lived with Solzhenitsyn his life between two arrests⁶ and visited with him the house of the dead, through an epic that is at once a treatise on history, politics, philosophy, religion, psychology, anthropology, ethnography, sociology, criminology, and jurisprudence. But, fundamentally, it is an act of witness — to the other great holocaust of our century,⁷ to the human condition in all its suffering — that has caused Solzhenitsyn to conclude that “nowhere on the planet, nowhere in history, was there a regime more vicious, more bloodthirsty . . . than the Bolshevik, the self-styled Soviet regime” (p. 28).⁸ And this bloodthirsty State, this “infamous Leviathan” (p. 118), smothering able bodies and sensitive souls by “savagely mutilating their lives” (p. 394), made bloodsuckers of its people — in the Corrective Labor Camps they became bloodsucking parasites, living at the expense of others (p. 232); in exile they became bloodsucking henchmen, “squeeze[ing] their neighbors dry” (p. 352); and in prisoners’ occasional noble escapes they became — quite literally — bloodsuckers, sucking the blood of dead horses (p. 195), gophers, and jerboas (pp. 197-98), and, yes, even the blood of their compatriots (p. 202), in order to survive. From the dedication of the first volume — “. . . to all those who did not live to tell it”⁹ — to the conclusion of the third — “[t]here is no law” (p. 525) — Solzhenitsyn relates the searing account of Soviet tyranny in a fiery blend of history and polemic that burns if not the page then certainly the reader’s conscience.

In Volume I, Solzhenitsyn documented Lenin’s establishment of institutionalized terror through arrest and interrogation,¹⁰ making vivid the horror of those who were awakened by a sudden knock at the door in the middle of the night. He traced the development of the punitive legal system and mapped out the nationwide expansion of the Archipelago under Stalin, when successive waves of prisoners (victims of enforced collectivization of the peasantry in 1929, of the

6. See note 49 *infra* and accompanying text.

7. This is not to disbelieve other recent periods of human misery; yet without a Solzhenitsyn to describe them they are often difficult to comprehend. See, e.g., N.Y. Times, May 10, 1979, § A, at 22, col. 1 (editorial entitled *The Chinese Gulag*); *id.*, May 7, 1979, § A, at 1, col. 1 (“It may be a tribute to the efficiency of its security apparatus that there has not yet been anyone like Aleksandr I. Solzhenitsyn to chart the dimensions of China’s gulag system”); *id.* § A, at 1, col. 2 (article about wall poster describing China’s political prisons). For a description of the recent revival of the labor camp system in China, see Wash. Post, June 1, 1980, § A, at 1, col. 4.

8. [N]o other regime on earth could compare with it either in the number of those it had done to death, in hardness, in the range of its ambitions, in its thoroughgoing and unmitigated totalitarianism — no, not even the regime of its pupil Hitler, which at that time blinded Western eyes to all else. [P. 28.]

9. VOLUME I at v. Solzhenitsyn continued: “And may they please forgive me for not having seen it all nor remembered it all, for not having divined all of it.” *Id.*

10. “[A] merciless *going over* [is] the easiest way for boneheads to get at the truth.” P. 217 (emphasis in original).

Great Purges of the 1930s, and of the postwar repatriation of prisoners of war and other Soviet captives in Germany) passed through the "island waterways" via "ships" (prison trains) to myriad "ports" (transit prisons).

Volume II resumed the recital of woes, with Solzhenitsyn continuing the high pitch of impatient indignation that permeated his earlier narrative. The subject was the "Destructive Labor Camps,"¹¹ the "meat grinder for unwanted millions."¹² In any one year under Stalin, ten to fifteen million men, women, and children were imprisoned in the vast extermination factories scattered across the nation. Prisoners were sent to special areas for no reason other than to conform to a schedule. The extended metaphor of the Archipelago was joined in this segment by the image that supported Solzhenitsyn's novel, *Cancer Ward*.¹³ Evoking his own experience of cancer, he perceived the cancer as a tumor that, in metastasizing, infected the whole nation with its poison.¹⁴ This disease contaminated the Soviet economy as well as its soul, with the *Gulag*¹⁵ slogan of "correction through labor" shrouding Stalin's plan to industrialize quickly and cheaply with the use of slave labor.¹⁶

Volume III takes us from the *zeks*¹⁷ forty years of Corrective Labor Camps to the *katorzhane*¹⁸ and political prisoners of the Special Labor Camps — providing a rare glimpse of those who were dubbed the "enemies of the people"¹⁹ — and, finally, to exile and the end of the Stalinist era.

Stalin's *katorga*,²⁰ the "polar death house" (p. 12),²¹ a "murder

11. As it became plain that "correction" was not for everyone, the slogan of "correction through labor," see note 82 *infra* and accompanying text, embodied in the Corrective Labor Camps, was translated into punishment. Hence the heading, "The *Destructive-Labor Camps*." See VOLUME II at 145 & Part III (emphasis in original).

12. VOLUME II at 630.

13. A. SOLZHENITSYN, *CANCER WARD* (N. Bethell & D. Burg trans. 1969).

14. See, e.g., VOLUME II at 632. See also Solzhenitsyn, *Misconceptions About Russia Are a Threat to America*, 58 FOREIGN AFF. 797 (1980).

15. This word is the acronym derived from *Glavnoe upravlenie lagerei*, Chief Administration of Corrective Labor Camps. See VOLUME I at 616, 638.

16. There was "much more 'labor' than 'correction.'" VOLUME II at 125.

17. *Zek*: "Prison slang for prisoner . . ." VOLUME I at 641 (glossary).

18. The standard English translation [of the word *katorga*] is "hard labor" or "penal servitude," and the Russian term derives from the Greek word for the forced labor of a slave chained to the oar of a galley. . . . [T]he word *katorga* . . . had come to stand for a specifically Tsarist type of punishment; it summoned to mind images of idealistic revolutionaries toiling in Siberian mines.

A person sentenced to *katorga* is a *katorzhanin* (masc.); the plural form is *katorzhane*. P. 530 (translator's notes). Solzhenitsyn adds that Stalin was the first of Russia's leaders "to understand the word *katorga* in its original [Greek] sense . . ." P. 9 n.1.

19. (Pp. 39, 54, 220, 221, 226, 483, 513.) See generally notes 84-87 *infra* and accompanying text.

20. See note 18 *supra*. See generally B. ROEDER, *KATORGA: AN ASPECT OF MODERN SLAVERY* (1958).

21. See generally R. CONQUEST, *KOLYMA: THE ARCTIC DEATH CAMPS* (1978).

camp" (p. 8), was "a compact, faceless organization of numbers, not people, psychologically divorced from the Motherland that bore it, having an entrance but no exit, devouring only enemies and producing only industrial goods and corpses" (p. 484).²² The lot in life of the *katorzhane* was "to work and to die" (p. 77).²³ And, Solzhenitsyn notes sarcastically, the doomed "responded nicely to this treatment . . ." (p. 77). In Spassk, for example, sixty to seventy people died every day in the summer of 1949, one hundred in winter (p. 64).²⁴ In Vorkuta, the first newly created forced labor camp, the initial 28,000 *katorzhane* all died within one year (p. 10). And in the degrading Dzhezkazan copper mines, a worker's lungs never held out for more than four months (p. 56). Although there were many similarities between the Corrective Labor Camps and these Special Labor Camps, some of the practices in the latter were unique — like shooting in the back of the head people whose hands had been tied (p. 18), or shooting straight into a marching column (p. 223),²⁵ or using dumdum bullets (banned by many countries as inhumane at the time), which "left craters in [their victims'] bodies, tore holes in their entrails and their jaws, mangled their extremities" (pp. 223-24), or beating prisoners with mallets through a layer of plywood, so as to leave no marks (p. 278), or, indeed, killing off whole "alphabets" (p. 33).²⁶

But sometimes death did not come so quickly — or so quietly. Solzhenitsyn asks: "Why did we in the camps, where we *did* realize what was going on, suffer hunger, bend our backs, put up with it all, instead of fighting back?"²⁷ There are two answers. First, there was no support from the outside, for the masses did *not* realize what was transpiring.²⁸ Without such help, escapes were an irrational act of

22. "*Katorga* descends from the judicial bench like the blade of a guillotine, stops short of beheading the prisoner but breaks his spine, shatters all hope there and then in the courtroom." P. 7. See generally A. SOLZHENITSYN, *ONE DAY IN THE LIFE OF IVAN DENISOVICH* (R. Parker trans. 1963).

23. "They were there to be destroyed . . ." P. 10.

24. "Neither crutches nor even a missing arm was any obstacle to work in Spassk. One of Chechev's ideas: putting four one-armed men to carry a stretcher (two of them left-armed, two of them right-armed)." P. 62.

25. "Why do they shoot? . . . Because one man has the arbitrary power to kill or not to kill another." P. 223.

26. The reference is to the practice, borrowed from the Nazis, of substituting letters and numbers for a prisoner's name. See pp. 10, 58. See also note 62 *infra*; A. SOLZHENITSYN, *THE FIRST CIRCLE* 5-6 (T. Whitney trans. 1968).

27. P. 93 (emphasis in original).

28. The whole system of oppression elaborated in [Stalin's] reign was based on keeping malcontents apart, preventing them from reading each other's eyes and discovering how many of them there were; instilling it into all of them, even into the most dissatisfied, that no one was dissatisfied except for a few doomed individuals, blindly vicious and spiritually bankrupt.
P. 231.

defiance that “led nowhere” (p. 76), a “proud means of suicide” (p. 75).²⁹ Second, some people *did* retaliate — with protests, work and hunger strikes, the assassination of informers,³⁰ mutinies, and, occasionally, escapes. Through the particularly gripping tale of Georgi Tenno, a “committed escaper” (p. 125) for whom freedom was “[a] whole day in the taiga without chains” (p. 126), Solzhenitsyn presents a primer on escape, in theory and practice.³¹ When captured, prisoners were, of course, subjected to lengthy and unmerciful beatings.³² Yet thoughts of escape to freedom, in one form or another, nevertheless absorbed many souls, leading in one instance to 3000 men simultaneously swearing off both food and work, to protest arbitrary punishment and treatment “much worse than dogs” (p. 268).³³ At Kengir, in Kazakstan, where the prisoners took their wages in bullets (p. 287), 8000 prisoners — common and political criminals alike — joined in the biggest mutiny in the annals of the Archipelago, liberating the camp for forty days.³⁴ The revolt, however, turned ultimately to massacre, with more than 700 prisoners killed.³⁵

The experience of the camps reflected a history of disillusionment and despair, of dashed hopes and shattered promises,³⁶ of “brooding tension” (p. 326) and “pigheaded credulity” (p. 437), a history that followed prisoners even into exile. Still living in tattered

“So long as there is no independent public opinion in our country, there is no guarantee that the extermination of millions and millions for no good reason will not happen again, that it will not begin any night — perhaps this very night.” P. 92. *See also* note 71 *infra*.

29. “Anyone who has sampled the camps, who *knows* them, may very well [choose suicide.]” P. 447 (emphasis in original). *See also* p. 459 (many of the “rehabilitated” prisoners found life after their release to be quite unpleasant); VOLUME II at 601 (questioning why there were in fact so few suicides).

30. “[M]urder . . . became *the rule*, became a normal occurrence. ‘Anybody been killed today?’ prisoners would ask each other when they went to wash or collect their morning rations. In this cruel sport the prisoner’s ear heard the subterranean gong of justice.” P. 236 (emphasis in original).

31. “[T]he theory of escape — it is very simple. You do it any way you can. If you get away — that shows you know your theory. If you’re caught — you haven’t yet mastered it.” P. 139. *See also* Chapter 8 (entitled *Escapes — Morale and Mechanics*).

32. “That’s how the world is arranged: *they* can take anyone’s freedom from him, without a qualm. If we want to take back the freedom which is our birthright — they make us pay with our lives and the lives of all whom we meet on the way.” P. 178 (emphasis in original). *See also* note 165 *infra*.

33. “A dog has only one number on his collar; we have four. Dogs are fed on meat; we’re fed on fishbones. A dog doesn’t get put in the cooler! A dog doesn’t get shot at from watch-towers! Dogs don’t get *twenty-fivers* [twenty-five year sentences] pinned on them!” P. 268 (quoting another prisoner) (emphasis in original).

34. “Our little island had experienced an earthquake — and ceased to belong to the Archipelago.” P. 275.

35. *See generally* Chapter 12 (entitled *The Forty Days of Kengir*).

36. “All that the downtrodden can do is go on hoping. After every disappointment they must find fresh reason for hope.” P. 298.

rags, being fed tattered truths,³⁷ the prisoners were released from the camps, but not from surveillance. It was an awkward time. The exile's future was little more certain than that of a transported prisoner. Both were pawns in Stalin's "Great Game of Patience" (p. 348) to eradicate the unwanted. Exile was only "a prolongation of the prisoner's . . . fatalistic routine" (p. 407), the exiled only literally a part of society — a society that needed them for its own nourishment. Only because the regime could not engineer the elimination of all of the prisoners at once were they "condemned to inactivity,"³⁸ to emptiness, to hopelessness, dragged off to the taiga to a banishment that was no more than "a temporary pen to hold sheep marked for slaughter" (p. 349).

But that was not the worst of it. Exile embraced as well the forcible resettlement and indiscriminate extirpation of whole peoples. The villainous assault on the peasantry, for example, which began in 1929 with the compilation of murder lists, confiscations, and deportations, was goaded by a decision of the Central Committee of the Communist Party in January 1930, declaring that "[t]he Party is justified in shifting from a policy of restricting the exploiting tendencies of the kulaks [peasants] to a policy of liquidating the kulaks as a class" (p. 351). People were imprisoned in droves like human cattle — hundreds of thousands of old men, women, and children included — and carted off to be dumped "like dung onto the frostbound soil of the Archipelago" (p. 391), in remote and wild regions. The vortex of the "sewage disposal system"³⁹ was so neat and uniform, to satisfy the master plan of Stalin — the "villain" (p. 421), the "cannibal" (p. 489), the "godfather" (p. 518),⁴⁰ the "Generalissimo" (p. 391), the "Great Evildoer" (p. 368), the "Great Butcher" (p. 368),⁴¹ the "Great Murderer" (p. 368) — to impress the peasants into collectivization programs,⁴² or simply to exterminate them.⁴³ One of Solzhenitsyn's

37. "The prolonged absence of any free exchange of information within a country opens up a gulf of incomprehension between whole groups of the population, between millions and millions." P. 475. "It has always been impossible to learn the truth about anything in our country — now, and always, and from the beginning." VOLUME I at 92 n.48. "Everything is steeped in lies and *everybody knows it* . . ." A. SOLZHENITSYN, LETTER TO SOVIET LEADERS 46 (H. Sternberg trans. 1974) (emphasis in original). See also N.Y. Times, Feb. 11, 1979, § 6 (Magazine), at 38; *id.*, Jan. 10, 1979, § A, at 2, col. 3; *id.*, March 5, 1979, § A, at 1, col. 3.

38. P. 339 (quoting another prisoner).

39. This term is used throughout *The Gulag Archipelago*; see especially VOLUME I at chapter 2 (entitled *The History of Our Sewage Disposal System*). See also A. SOLZHENITSYN, *supra* note 26, at 379.

40. VOLUME II at 236.

41. See also p. 261.

42. "[T]he most important thing . . . was not to dekulakize, but to force the peasants into the kolkhoz [commune]. Without frightening them to death there was no way of taking back the land which the Revolution had given them, and planting them on that same land as serfs." P. 355. See also A. SOLZHENITSYN, *supra* note 26, at 109.

43. "No Genghis Khan ever destroyed so many peasants as our glorious Organs, under the

many telling vignettes recounts the Vasyugan tragedy of 1930, in which

10,000 families (60,000-70,000 people, as families then went) passed through Tomsk [in western Siberia] and from there were driven farther, at first on foot, down the Tom although it was winter, then along the Ob, then upstream along the Vasyugan — still over the ice. (The inhabitants of villages on the route were ordered out afterward to pick up the bodies of adults and children.) In the upper reaches of the Vasyugan and the Tara they were marooned on patches of firm ground in the marshes. *No food or tools were left for them.* The roads were impassable, and there was no way through to the world outside, except for two brushwood paths . . . Machine-gunners manned barriers on both paths and let no one through from the death camp. They started dying like flies. Desperate people came out to the barriers begging to be let through, and were shot on the spot . . .

They died off — every one of them. [P. 363.]⁴⁴

And yet, despite the State's "frankly murderous intent" (p. 369), the watchful eye of the secret police, the betrayal by informers, the continual struggle to earn bread for one's children, and the arbitrary assignment of roles in life's theater of absurdity,⁴⁵ people did survive. Like Solzhenitsyn, many who had been "exiled *in perpetuity*"⁴⁶ were released following the Voroshilov and Adenauer amnesties (pp. 437-43) and the fall of Lavrenti Beria — Stalin's partner in crime, the "Supreme Patron, the Viceroy of the Archipelago" (p. 280).⁴⁷

leadership of the Party." P. 363.

44. Solzhenitsyn continued: "We are told that there was at least an inquiry into the business, and even that one man was shot. I am not much inclined to believe it. But even if it is so — the ratio is an acceptable one! . . . For one of ours — a thousand of yours! For sixty thousand of yours — one of ours!" P. 363.

45. The examples of Kafkaesque life — and death — in the *Gulag* are countless. Two will suffice. See notes 48, 53 & 97 *infra* and accompanying text; note 122 *infra*. Said the chairman of the exiled Solzhenitsyn's local consumer cooperative, who sought to increase productivity: "[L]isten. According to the latest findings of medical science, nobody needs eight hours' sleep. Four hours are absolutely adequate! So these are my orders: you'll start work at seven A.M., finish at two A.M.; one hour's break for dinner and one for supper." P. 426. Solzhenitsyn added: "As far as I could tell, not one of us was amused rather than awed by this stupefying outburst." *Id.*

Once released, a prisoner had "nothing concrete to show for [his] past except the *Certificate*. A small sheet of paper, 12 centimeters by 18. Declaring the living 'rehabilitated' and the dead 'dead.' The date of disease there is no way of checking. Death occurred at — a big capital 'Z' (meaning 'in prison'). Cause of death — you can leaf through a hundred of them and find the same 'disease of the day.'" P. 452 (emphasis in original). See note 83 *infra*. Solzhenitsyn continued: "[A]n unsuspecting girl [was asked] to show . . . all forty cards in a batch. On every one the same liver complaint had been entered in the same handwriting! . . . And then there was this sort of thing: 'Your husband . . . died before he could be brought to trial, and cannot therefore be rehabilitated.'" P. 452 n.3.

46. P. 412 (emphasis in original).

47. Beria was the head of Stalin's internal security apparatus between 1938 and 1953. See p. 538.

"[L]o and behold, they were *rehabilitated*."⁴⁸ But release was not the end; it was only the period separating arrests.⁴⁹ Solzhenitsyn speculated that it would have been nice to hear that which would never be said — the truth — by the plenipotentiary committee that had been established to discharge exiles:

"Brothers! We have been sent by the Supreme Soviet to beg your forgiveness. For years and decades you have languished here, though you are guilty of nothing, while we gathered in ceremonial halls under cut-glass chandeliers with never a thought for you. We submissively confirmed the cannibal's inhuman decrees, every one of them, we are accomplices in his murders. Accept our belated repentance, if you can. The gates are open, and you are free. Out there on the airstrip, planes are landing with medicines, food, and warm clothing. There are doctors on board." [Pp. 489-90.]

But release, of course, was not to be the finish to all of the crimes committed in the name of the State. Instead, the commission merely mopped up "the trail of Stalin's vomit" (p. 490).⁵⁰ The rulers had changed, but the Archipelago yet remained. There were still many millions of prisoners — "helpless victims of perverted justice: swept in simply to keep the system operating and well fed" (p. 494). It is, however, critical to remember the relationship between the Archipelago and the State: "*that particular* political regime could not survive without [the Archipelago]. If it disbanded the Archipelago, it would cease to exist itself" (p. 494).⁵¹ This, perhaps, is Solzhenitsyn's most pressing point, seen firsthand by this great chronicler unequalled in our time.

In 1945, at the age of twenty-six and while serving as a decorated artillery officer in the Red Army, Solzhenitsyn was arrested and "taken through [the corridors of the Lubyanka] with shaven skull, hungry, sleepless, buttonless, hands behind [his] back" (pp. 443-44), for having made some unflattering remarks about Stalin in intercepted private letters to a friend. He was sentenced in absentia under the notorious Article 58 of the Criminal Code ("organized gangsterism," "crimes against the state"),⁵² and spent nearly eight years in the prisons and Arctic concentration camps of *Gulag*, and

48. P. 439 (emphasis in original). According to Party bosses, "*[f]ar too many were rehabilitated!*" P. 451 (emphasis in original).

49. That was the nature of the blueprint for the regime. "If arrest is like the swift touch of frost on a liquid surface, release is the uncertain half-thaw between two frosts. . . . Because in this country, whenever someone is released, somewhere an arrest must follow." P. 445. "A life belt thrown between two islands — splash your way from camp to camp! . . ." P. 446. In another sense, release was "arrest all over again, the same sort of punishing transition from state to state, shattering your breast, the structure of your life and your ideas, and promising nothing in return." P. 445.

50. "This was no way to lay new moral foundations for our society." P. 490.

51. See also p. 477 (stating that the Archipelago is necessary to the Soviet state and closely akin to it).

52. See generally VOLUME I at 60-68; VOLUME II at 293-303; VOLUME III *passim*; Weis-

three more in exile before he was "rehabilitated" in 1957 when the authorities retroactively determined that he had, in fact, committed no offense at all.⁵³ It was thus as a *zek* and later as a persecuted enemy of the people⁵⁴ that Solzhenitsyn gazed inward. "[T]he day when I deliberately let myself sink to the bottom and felt it firm under my feet — the hard, rocky bottom which is the same for all — was the beginning of the most important years in my life, the years which put the finishing touches to my character" (p. 98).⁵⁵ Prison thus cauterized his soul,⁵⁶ allowing him to probe his restless mind for "extended and important thoughts,"⁵⁷ to ponder matters deeper than camp prejudices, intrigues, and schemes,⁵⁸ until nothing remained for him to do but write about what he had assimilated.⁵⁹ The personal escape that writing provided⁶⁰ gave him happiness and freedom, a sense of "blissfully heightened awareness" (p. 440); it was his means of preserving his sanity, of purifying his visions, of saving himself "for a different struggle later on" (p. 432).⁶¹

The experience of writing in prison and in the camps itself reveals much about official attitudes toward prisoners in particular and life more generally. Paper was scarce and punishment swift for prisoners caught writing. "You aren't here to remember things!" (p.

berg, *Solzhenitsyn's View of Soviet Law in The First Circle*, 41 U. CHI. L. REV. 417 (1974) (the full text of Article 58 appears at 435-38). See also A. SOLZHENITSYN, *supra* note 22, at 52.

53. See SOLZHENITSYN: A DOCUMENTARY RECORD 3-5 (L. Labedz ed. 1971) (decision of the Supreme Court of the U.S.S.R.). See also D. BURG & G. FEIFER, *SOLZHENITSYN: A BIOGRAPHY* (1972).

54. Solzhenitsyn now lives in permanent and involuntary exile in the United States.

55. He continued: "From then onward there seem to have been no upheavals in my life, and I have been faithful to the views and habits acquired at that time." P. 98. Prison was Solzhenitsyn's "spiritual birthplace," p. 454, a place where "a secret part of [his] soul will remain . . . forever." *Id.* See note 62 *infra*. "Bless you, prison, for having been in my life!" VOLUME II at 617 (emphasis in original). See also N.Y. Times, Oct. 10, 1979, § B, at 2, col. 1.

56. See VOLUME II at 392.

57. VOLUME II at 607.

58. In order to think about that which is important, Solzhenitsyn suggests that "[p]erhaps we need to be jailed more often!" P. 457. "Life behind bars has given us [*zeks*] a new measure for men and for things." P. 462. "The greatest of disasters may overtake a man in the best of places, and the greatest happiness may seek him out in the worst." P. 412. A fellow *zek* wrote: "I learned in a harsh school what others can never know. . . ." P. 117 n.11. Another added in poetic form:

The soul must suffer first, to know

The perfect bliss of paradise. . . .

P. 106.

59. "Prison released in me the ability to write . . ." P. 37.

60. "[A]ll this time I was making my own long and distant escape journey, and this was something the warders could not discover when they counted heads." P. 104.

61. I realized that I was not the only one, that I was party to a great secret, a secret maturing in other lonely breasts like mine on the scattered islands of the Archipelago, to reveal itself in years to come, perhaps when we were dead, and to merge into the Russian literature of the future.

P. 104. See also A. SOLZHENITSYN, *THE OAK AND THE CALF* (H. Willetts trans. 1980).

102)⁶² was the theory. Solzhenitsyn would write some dozen lines at a time, refine them, memorize them, then burn the paper. Once a month he would recite all that he had written. He turned to the poetic form, the genre easiest to commit to memory. While in one transit prison, he observed some Lithuanian Catholics making rosaries for prison use from colored beads of dried bread pellets. To mark the meter of his verse, in order to better retain it, Solzhenitsyn, too, had one made. ("I joined them and said that I, too, wanted to say my prayers with a rosary but that in my particular religion I needed one hundred beads in a ring . . . , that every tenth bead must be cubic, . . . and that the fiftieth and the hundredth beads must be distinguishable at a touch. [They] were amazed by my religious zeal . . ." (p. 100).⁶³) By the time he was released, he had memorized some 12,000 lines of original verse, including his epic poem, *Prussian Nights*,⁶⁴ its form dictated by necessity.⁶⁵

The fascicles of *The Gulag Archipelago* also were born in suppression. But, affirms Solzhenitsyn, "[t]he jerkiness of the book, its imperfections, are the true mark of our persecuted literature" (p. 527). Never once having seen the whole manuscript together (pp. 526, 528),⁶⁶ he urges us to "[t]ake the book for what it is" (p. 527). And so we must: It is a tour de force both in its conception and its execution; it is an act of witness unparalleled in its magnitude;⁶⁷ it is a mandatory guide for the conscience of our civilization; it is a study of prisons, prisoners, suppression, repression, oppression, rebellion, revolution, exile, and death, both physical and spiritual. But most of all, *The Gulag Archipelago* is a legend of life and humanity, of dignity and hope, of freedom and truth. It does precisely what

62. But remember he does!:

Each year on the anniversary of my arrest I organize myself a "zek's day": in the morning I cut off 650 grams of bread, put two lumps of sugar in a cup and pour hot water on them. For lunch I ask them to make me some broth and a ladleful of thin mush. And how quickly I get back to my old form: by the end of the day I am already picking up crumbs to put in my mouth, and licking the bowl. The old sensations start up vividly.

I had also brought out with me, and still keep, my number patches. . . . In some homes they will be shown to you like holy relics.

P. 461. See also p. 527 (recalling the hundredth anniversary of the invention of barbed wire).

63. I never afterward parted with this marvelous present of theirs; I fingered and counted my beads inside my wide mittens — at work line-up, on the march to and from work, at all waiting times; I could do it standing up, and freezing cold was no hindrance. I carried it safely through the search points, in the padding of my mittens, where it could not be felt. The warders found it on various occasions, but supposed that it was for praying and let me keep it.

Pp. 100-01.

64. A. SOLZHENITSYN, *PRUSSIAN NIGHTS: A POEM* (R. Conquest trans. 1977).

65. Another concentration camp inhabitant had retained 20,000 lines! See p. 106. "No longer burdened with frivolous and superfluous knowledge, a prisoner's memory is astonishingly capacious, and can expand indefinitely." P. 99. See also A. SOLZHENITSYN, *supra* note 61.

66. See generally O. CARLISLE, *SOLZHENITSYN AND THE SECRET CIRCLE* (1978).

67. See note 3 *supra*.

Solzhenitsyn intended it to do: to fight against untruth, against a regime that is hostile to mankind.

Contrary to Solzhenitsyn's fears,⁶⁸ *Gulag* is a warning to West as well as East.⁶⁹ He has prosecuted the case "for mute Russia"⁷⁰ before the court of public opinion.⁷¹ We can — and we must — take cognizance of the result, and apply it to our own experience.

At the outset, although some critics would consider any comparison between the Soviet and American prison systems to be an "idea that even Stalin would find amusing,"⁷² many similarities do exist. American cases and commentary, in fact, have not missed the analogy to *Gulag*.⁷³ Each system, for example, is fraught with depriva-

68. All you freedom-loving "left-wing" thinkers in the West! You left laborites! You progressive American, German, and French students! As far as you are concerned, none of this amounts to much. As far as you are concerned, this whole book of mine is a waste of effort. You may suddenly understand it all someday — but only when you *yourselves* hear "hands behind your back there!" and step ashore on our Archipelago. P. 518 (emphasis in original). See also VOLUME II at 147. For the experiences of an American in the Soviet prison system, see A. DOLGUN, *ALEXANDER DOLGUN'S STORY: AN AMERICAN IN THE GULAG* (1975).

69. This may not have been a major theme of *The Gulag Archipelago*, see Stratman, *Political and Lumpen Prisoners, the Question of Compliance, and Socioliterary Investigation*, 27 STAN. L. REV. 1629, 1637-38 (1975), but such a point clearly was made in Solzhenitsyn's now-renowned 1978 Harvard commencement speech: "The split in the world is less terrible than the similarity of the disease plaguing its main sections." See NEWSWEEK, Dec. 25, 1978, at 72. See also Solzhenitsyn, *Misconceptions About Russia Are a Threat to America*, 58 FOREIGN AFF. 797 (1980).

70. VOLUME II at 317. "[T]he writer is a teacher of the people And a greater writer . . . is, so to speak, a second government [of his country]." A. SOLZHENITSYN, *supra* note 26, at 415.

71. Public opinion is "the greatest of social forces." P. 80. See also pp. 291, 513; note 28 *supra*.

72. N.Y. Times, Feb. 10, 1978, § A, at 24, col. 3 (Letter to the Editor) ("And he almost never smiled"). See also TIME, Feb. 21, 1977, at 29: "To compare Russia's pervasive totalitarian system with the abridgments of freedom that occur in the United States is, of course, nonsense." Many Russians, no doubt, would agree. For example, Edoard Kuznetsov, a recently released Soviet dissident, said on his arrival in this country: "[T]oday, we are here in a country which for more than 200 years has been a symbol of freedom." N.Y. Times, April 29, 1979, § A, at 1, col. 1. But, for present purposes, part of the question is whether in practice the nation has lived up to this ideal. See notes 160-61 *infra* and accompanying text. See generally Agursky, *Contemporary Socioeconomic Systems and Their Future Prospects*, in FROM UNDER THE RUBBLE 66, 75-76 (A. Solzhenitsyn ed., A. Brock *et al.* trans. 1975):

A man who has been accustomed to breathing fresh air all his life does not notice it, and never realizes what a blessing it is. . . . A man who has grown up in a democratic society and who takes the basic freedoms as much for granted as the air he breathes is in much the same position. People who have grown up under democracy do not value it highly enough. Yet there are weighty reasons for their dissatisfaction with this society.

73. See, e.g., *United States ex rel. Schuster v. Vincent*, 524 F.2d 153, 154 (2d Cir. 1975) (Kaufman, C.J.) (inmate unjustifiably languished in state confinement for more than three decades, apparently because of efforts to expose prison corruption) ("Although we are reasonably certain that the shocking story revealed in *The Gulag Archipelago* could not take place in this country, the facts of [this] case are reminiscent of Solzhenitsyn's treatise") (footnote omitted); *Lieggi v. Immigration & Naturalization Serv.*, 389 F. Supp. 12, 19-20 (N.D. Ill. 1975) (first-offense marijuana conviction used as basis for deportation of alien who had lived in United States for twelve years, who was sole source of support for family, and who had maintained steady employment, constituted cruel and unusual punishment) (counsel claimed that

tions of freedom, dignity, human appearance, family, clothing, and

deportation would not only punish petitioner, but also destroy his American family, citing *Gulag*, *revd. without opinion*, 529 F.2d 530 (7th Cir.), *cert. denied*, 429 U.S. 839 (1976); *Wilson v. Beame*, 380 F. Supp. 1232, 1236 (E.D.N.Y. 1974) (pretrial detainees alleged lack of due process in assigning them to administrative segregation, as well as treatment differing from that given to other inmates) ("There is no place in this country for any form of Gulag Archipelago"); *In re Andrea B.*, 94 Misc. 2d 919, 926, 405 N.Y.S.2d 977, 982 (Fam. Ct. 1978) (evidence inadequate to warrant continued psychiatric hospitalization of minor) ("Viewed against the present-day dark backdrop of the showpiece 'trials', 'gulags' and psychiatric hospitalization of political dissidents in totalitarian regimes, the core concept of *Powell v. Alabama*, [287 U.S. 45 (1932) (right to counsel)] stands out in bold relief"); *State v. Ochoa*, 23 Ariz. App. 510, 534 P.2d 441, (Ct. App. 1975), *revd.*, 112 Ariz. 582, 544 P.2d 1097 (Sup. Ct. 1976) (law enforcement agents cannot stop automobiles for routine license and registration checks without any indication that a statute has been violated) ("Any other holding would raise a specter over this state potentially as forboding as Solzhenitsyn's 'Gulag Archipelago'"); *Commonwealth v. Devine*, 233 Pa. Super. Ct. 99, 110, 334 A.2d 725, 730-31 (1975) (Van der Voort, J., dissenting) (reversing conviction for unlawful possession of marijuana because evidence was not sufficient to establish probable cause for the issuance of a search warrant) ("It is true that upon reading the book, *The Gulag Archipelago* by Aleksandr I. Solzhenitsyn, one learns of the horrors of unbridled searches." But here, in reaction, "we have gone overboard . . . in paralyzing law enforcement"); *N. MORRIS & G. HAWKINS*, LETTER TO THE PRESIDENT ON CRIME CONTROL 66 (1977) (considering, *inter alia*, the race of our prisoners, if the pattern continues "we would have built a different but no less terrible Gulag Archipelago"); *Jacobs, Stratification and Conflict Among Prison Inmates*, 66 J. CRIM. L. & C. 476, 476 (1976); Nagel, *An American Archipelago: The United States Bureau of Prisons*, Address to General Session of National Institute on Crime and Delinquency (June 25, 1974).

Solzhenitsyn's other works also have by their great moral force influenced a broad range of areas of American life, including its prisons. See, e.g., *Laird v. Tatum*, 408 U.S. 1, 28, 37-38 (1972) (Douglas, J., dissenting) (claim that Army surveillance of lawful civilian activity chilled exercise of first amendment freedoms; held, no justiciable controversy) ("This case involves a cancer in our body politic. It is a measure of the disease which afflicts us") (citing statements of Solzhenitsyn on surveillance); *Byrne v. Karalexis*, 396 U.S. 976, 980 (1969) (Douglas, J., dissenting) (motion for stay of temporary injunction against movie, *I Am Curious (Yellow)*, granted conditionally) ("we cannot be faithful to our constitutional mandate and allow any form or shadow of censorship over speech and press") (citing and quoting a letter of Aleksandr Solzhenitsyn to the Russian Writers' Union, on occasion of his expulsion, dated Nov. 2, 1969: "It is time to remember that the first thing we belong to is humanity. And humanity is separated from the animal world by thought and speech, and they should naturally be free. If they are fettered, we go back to being animals." See SATURDAY REVIEW, Dec. 13, 1969, at 70, 72); *American Sec. Council Educ. Foundation v. FCC*, 607 F.2d 438, 474 n.73 (D.C. Cir. 1979) (Wilkey, J., dissenting) (free speech on the airwaves) (citing and quoting Solzhenitsyn's 1978 Harvard commencement speech); *Collin v. Smith*, 578 F.2d 1197, 1210 (7th Cir.) (Wood, J., concurring) (action by members of National Socialist Party of America seeking declaration of unconstitutionality of three village ordinances restricting demonstrations; held, for plaintiffs) ("It may . . . be well to remember that often 'words die away,' and flow off like water — leaving no taste, no color, no smell, not a trace.' Any exception, however, to the First Amendment which we might be tempted to fashion for these particular persuasive circumstances would not 'die away.' It would remain a dangerous and unmanageable precedent in our free and open society") (quoting Solzhenitsyn's 1972 Nobel Lecture, *cert. denied*, 439 U.S. 916 (1978); *Minarcini v. Strongsville City School Dist.*, 541 F.2d 577, 581 (6th Cir. 1976) (*inter alia*, quoting a minority school board report recommending that Solzhenitsyn's *One Day in the Life of Ivan Denisovich* be purchased as a supplemental reader for the high school social studies program, "in the interest of a balanced program"); *United States ex rel. Wolfish v. Levi*, 439 F. Supp. 114, 152 (S.D.N.Y. 1977), (systemic challenge to conditions of confinement for pretrial detainees) ("We all are, or ought to be, aware enough of past and present concentration camps to know that [affording only] crumbs and scraps [to prisoners is] enough to evoke propensities toward bestiality and mutual exploitation") (citing *Ivan Denisovich*); *affd. in part, revd. and remanded in part*, 573 F.2d 118 (2d Cir. 1978), *revd. sub nom. Bell v. Wolfish*, 441 U.S. 520 (1979); *People v. Law*, 40 Cal. App. 3d 69, 85 n.16, 114 Cal. Rptr. 708, 719 n.16 (1974) (quoting

food. There is harassment, psychological and physical brutality, inadequate compensation for work performed, atrocious medical treatment, retaliation against those who seek redress,⁷⁴ and the ever-present threat of being transferred elsewhere. Prison officials, both Russian and American, typically are undertrained and underqualified, and often are arrogant, autocratic, malicious, ignorant, and self-guarding. A “densely ringed stockade of privations and punishments . . .” (p. 497) (among other restraints) chastens those who complain of corruption. In the Gulag and in American prisons inmates routinely suffer the indignity of cell and body searches, and are impelled to escape or even to suicide, in order to avoid the harsh realities of their existence. In addition, many American prisons are plagued by “rampant violence and [a] jungle atmosphere”⁷⁵ and otherwise have been found to be “unfit for human habitation.”⁷⁶ Moreover, in both countries an elaborate system of censorship⁷⁷ and widespread overcrowding⁷⁸ aggravate all these ills. No less a figure than Chief Judge Irving R. Kaufman has generalized:

When the history of our criminal justice system is chronicled, no doubt one of its most sobering pages will describe the sad state of this nation’s prisons and jails. Whether it be in filthy, narrow cells of an Alabama penitentiary or in overcrowded dormitories in a Bronx house of detention, we have quartered individuals . . . under [inhuman and barbaric] conditions that shock the conscience of civilized men.⁷⁹

Assuredly, we are dealing with a continuum; American prisons

Solzhenitsyn’s *The First Circle* on voiceprint identification, or “phonoscopy”); SEC “no-action letter” issued to The Proctor & Gamble Company, July 28, 1977 (citing “the heroic Aleksandr Solzhenitsyn,” along with Jefferson, Voltaire, and Mill, on “the importance of free speech to a free society”).

After having been given a guided tour of *Gulag*, one American judge wrote that it was “an intelligent, farsighted humane administration from top to bottom,” see VOLUME II at 147, and that “[i]n serving out his term of punishment the prisoner retains a feeling of dignity.” *Id.* Solzhenitsyn responded: “Oh, fortunate New York State, to have such a perspicacious jackass for a judge!” *Id.* See also note 68 *supra*.

74. See, e.g., *Smartt v. Avery*, 370 F.2d 788 (6th Cir. 1967) (invalidating a state parole board regulation that assessed an additional year of incarceration before consideration of parole for prisoners who had unsuccessfully filed habeas corpus petitions).

75. *Pugh v. Locke*, 406 F. Supp. 318, 325 (M.D. Ala. 1976) (documenting conditions in the Alabama prison system), *modified and aff’d. sub nom. Newman v. Alabama*, 559 F.2d 283 (5th Cir. 1977), *rev’d. in part sub nom. Alabama v. Pugh*, 438 U.S. 781 (1978) (per curiam).

76. 406 F. Supp. at 323.

77. This includes not only deprivations regarding correspondence, but also those related to receipt of packages and publications, access to reading and writing materials, visitation, and religion. *But see* Kuznetsov, *A Soviet Reply to 5 U.S. Writers*, N.Y. Times, Sept. 8, 1979, § A, at 21, col. 2 (letter of chairman of Moscow branch of Soviet Writers’ Union).

78. “The camp, which had started . . . in tents, now had a stone jailhouse — which, however, was only half-built and so always badly overcrowded: prisoners sentenced to the hole had to wait in line for a month or even two. . . . Queuing for the hole!” P. 71. See also p. 8.

79. *Wolfish v. Levi*, 573 F.2d 118, 120 (2d Cir. 1978) (Kaufman, C.J.), *rev’d. sub nom. Bell v. Wolfish*, 441 U.S. 520 (1979). Although the Supreme Court reversed the lower courts, Justice Rehnquist, for the majority, nevertheless noted “[t]he deplorable conditions and draconian restrictions of some of our Nation’s prisons” 441 U.S. at 562.

are not the Gulag.⁸⁰ But differences in degree should not blind us to the striking similarities.⁸¹ For example, the Soviet plan, as described by Solzhenitsyn, was more methodical, more purposeful, charted on a more definite course than are American prisons. The Marxist plan declared that "the *one and only* means of correcting offenders . . . was not solitary contemplation, not repentance, and not languishing . . . — but productive labor."⁸² In contrast, the American federal and state systems characteristically are not so theoretically oriented, perhaps only because we do not know what the goals ought to be. But even on this point scholars have noted that — before it acquired its humanitarian underpinnings — parole in this country was rooted in brutal but productive slave labor, as well as in religious, ethnic, and racial prejudice.⁸³

Another distinction, less clear than we might like to believe, concerns the types of crime for which people are arrested and imprisoned. In the Soviet Union, writes Solzhenitsyn, many persons were confined for being "socially harmful" (pp. 228, 340)⁸⁴ — "simply for believing in God, or simply for desiring truth, or simply for love of justice. Or indeed for nothing at all" (p. 220). They were, to put it briefly (albeit not simply), political criminals.⁸⁵ However harmless

80. See p. 99 n.1 ("Everything is relative"); VOLUME II at 236 ("Nothing is ever equal, by and large, in life"); VOLUME II at 252 ("All classifications in this world lack sharp boundaries, and all transitions are gradual"). See also text at note 158 *infra*.

81. See, e.g., Goldstein, *Presumption of Innocence: New High Court Questions*, N.Y. Times, June 9, 1979, § 1, at 10, col. 3.

82. VOLUME II at 143 (emphasis in original). This labor included, for example, "quarrying stone for roadmaking in the polar blizzards of Norilsk [with ten minutes allowed] for a warm-up once in the course of a twelve-hour shift." P. 8. Though pitiless, this was nevertheless efficient, and a rational means toward the system's end:

To organize the *whole* national economy on the lines of the postal service, so that the technicians, foremen, bookkeepers as well as *all* officials, shall receive salaries no higher than "a workingman's wage," all under the control and leadership of the armed proletariat — this is our immediate aim. It is such a state, standing on such an economic foundation, that we need.

V. LENIN, *STATE AND REVOLUTION* 44 (International Publishers ed. 1943) (emphasis in original).

83. See, e.g., Chaneles, *On the Origin of Parole in the United States*, 1 OFFENDER REHAB. 319 (1977). The United States, too, was plagued by its equivalent of the "disease *du jour*" syndrome, see note 45 *supra*, when, for example — because the deaths resulting from forced labor on the Erie Canal in subzero weather were becoming difficult to explain — a new New York State law was enacted in 1820 exempting deaths of prisoners from coroners' inquests. See *id.* at 320-21. For the analogous Chinese experience in building the 2400 mile Great Wall — costing the lives of about a million slave laborers — see TIME, Jan. 1, 1979, at 29.

84. See also VOLUME I at 86, 290. See generally H. BERMAN, *SOVIET CRIMINAL LAW AND PROCEDURE* (1972); V. CHALIDZE, *CRIMINAL RUSSIA* (1977); R. CONQUEST, *JUSTICE AND THE LEGAL SYSTEM IN THE U.S.S.R.* 72-109 (1968); J. HAZARD, I. SHAPIRO & P. MAGGS, *THE SOVIET LEGAL SYSTEM* 134-57 (rev. ed. 1969); Sakharov, *On the Conception of the Causes of Crime in Socialist Society*, 15 *SOVIET L. & GOVT.* 37 (1977); N.Y. Times, March 6, 1978, § 1, at 1, col. 3; *id.*, March 5, 1978, § 1, at 1, col. 3.

85. "[E]ven a tailor who stuck a needle in a newspaper could get Article 58." P. 514. Or even "a gift of bread and water could be a political crime." P. 161. See note 52 *supra*.

by other standards, they threatened the economic and political viability of the regime. Because of the nature of the political order in Russia, such criminals became not only "enemies of the people," a term used throughout *Gulag*,⁸⁶ but also of the ultimate goodness of man.⁸⁷

What underlies these statements, however, is the political nature of *all* crime: a crime is a violation of a rule established by a politically constituted government.⁸⁸ All acts presumably represent particular values of the prevailing social power.⁸⁹ If there were no such rules and values, there would be no crime,⁹⁰ just as, to Solzhenitsyn, "[i]f there were no executioners, there would be no executions!" (p. 225).⁹¹ Thus, in this broad sense, virtually every society in recorded history — including the United States — has had political criminals. But even in a narrower sense this country has had its lot of political criminals and political prisoners — persons who shared the "common characteristic that at a certain time in their lives they were placed on trial because of behaviour found reprehensible by the political elite of their day . . .,"⁹² or whose sentences were "based upon extraneous political considerations having no legitimate or legal connection with the crime charged against them."⁹³

86. See note 19 *supra*.

87. "[W]ho were these enemies? . . . Where were they hiding? Show us just one! . . . 'Enemies,' they say, and all is explained. In the Middle Ages it was 'devils.'" P. 513.

88. See, e.g., Stratman, *supra* note 69, at 1639.

89. See generally L. PROAL, *POLITICAL CRIME* (1898); S. SCHAFER, *THEORIES IN CRIMINOLOGY* (1969); T. SELLIN, *CULTURE CONFLICT AND CRIME* (1938); Schafer, *The Concept of the Political Criminal*, 62 J. CRIM. L.C. & P.S. 380 (1971). "[A]n act is criminal when it offends strong and defined states of the collective conscience." E. DURKHEIM, *THE DIVISION OF LABOUR IN SOCIETY* 80 (1933).

90. "[W]e must not say that an action shocks the common conscience because it is criminal, but rather that it is criminal because it shocks the common conscience." E. DURKHEIM, *supra* note 89, at 81. See E. DURKHEIM, *THE RULES OF SOCIOLOGICAL METHOD* 66, 67, 70 (1938):

What is normal, simply, is the existence of criminality, provided that it attains and does not exceed, for each social type, a certain level

. . . . To classify crime among the phenomena of normal sociology is not to say merely that it is an inevitable, although regrettable phenomenon, due to the incorrigible wickedness of men; it is to affirm that it is a factor in public health, an integral part of all healthy societies. . . .

. . . . Crime is, then, necessary; it is bound up with the fundamental conditions of all social life, and by that very fact it is useful, because these conditions of which it is a part are themselves indispensable to the normal evolution of morality and law.

91. See, e.g., *THE OXFORD DICTIONARY OF ENGLISH PROVERBS* 447 (3d ed. 1970) ("The more laws, the more offenders").

92. McConnell, *Political Trials East and West*, 40 SASK. L. REV. 131 (1976) (discussing the trials of Julius and Ethel Rosenberg, Cardinal Mindszenty, Daniel and Philip Berrigan, Angela Davis, Aleksandr Solzhenitsyn, and mentioning the trials of Socrates, Charles I, and Patty Hearst). See also C. GOODELL, *POLITICAL PRISONERS IN AMERICA* (1973).

93. McConnell, *supra* note 92, at 133 (quoting Emanuel Bloch, counsel to the Rosenbergs, after sentencing). See generally Child, *Concepts of Political Prisonerhood*, 1 NEW ENG. J. PRISON L. 1 (1974).

Furthermore, the scheme for enforcing the system of criminal laws also plays a large part in producing political criminals. In the Soviet Union, "[i]t was clear to our jailers and to us that justice, length of sentence, formal documentation, had nothing to do with [a case]; the point was that once we had been declared enemies, the state would ever after assert the right of the stronger and trample us, crush us, squash us, until the day we died" (p. 407).⁹⁴ Judges were "not at all interested in the substance of the case, in the truth" (p. 516).⁹⁵ The legal system, whose laws even had retroactive effect when "[they] itche[d] to apply . . . to persons already in custody" (p. 522), was clairvoyant as well as "infallible."⁹⁶ In one astonishing example, Solzhenitsyn relates the incident of a newspaper article dated December 27, 1961, reporting the trial of some Estonian war criminals at Tartu:

The writer describe[d] the questioning of witnesses, the exhibits before the court, the cross-examination of one defendant ("the murderer cynically answered"), the reactions of the public, the prosecutor's speech. [The article] further reporte[d] that the sentence of death was passed. All of these things, indeed, occurred *exactly as described* — but not till January 16, 1962 . . . , by which time the journal was already in print and on sale. [P. 523 n.11.]⁹⁷

The licentious system provided neither for notice of charges nor for a tape recorded or stenographic transcription of the trial,⁹⁸ and it dele-

94. When defendant M.I. Brodovsky complained that forged documents were being used against him, "they barked back at him: 'The law will crush you, smash you, destroy you!'" P. 517 (emphasis in original). "And we were so used to it, it had become so much part of us, that no other state of affairs would have seemed normal either to the regime or to us." P. 407.

95. See also p. 519. Compare the following statement of an American prisoner: "Justice, itself an elusive abstraction, is a fiction. It assumes an air of reality only because the majority of people in this country live their lives without being required to seek justice. The unfortunate ones who seek justice find that it exists only in the minds of the judges." Larsen, *A Prisoner Looks at Writ-Writing*, 56 CALIF. L. REV. 343, 343 (1968).

96. [Our hulking brute of a judicial system] is so strong and so sure of itself only because it never reconsiders its decisions, because every officer of the court can lay about him as he pleases in the certainty that no one will ever correct him. . . . We will cover up for him! Protect him! Form a wall around him! We are the Law — and that is what Law is for.

What is the good of beginning an investigation and then not bringing charges? Does this not mean that the interrogator's work is wasted? What is the good of a hearing without a conviction? Wouldn't the people's court be letting the investigating officer down and wasting his time? What does it mean when an oblast [province] court overturns the decision of a people's court? It means that the higher court has added another botched job to the oblast's record. . . . *Once begun*, as the result of a denunciation, let's say, an *investigation* must end without fail in a conviction, *which cannot possibly be quashed*. Above all — don't let one another down! . . . In return they will see that you come to no harm.

Pp. 520-21 (emphasis in original).

97. "The trial had been postponed, and the journal had not been warned. The journalist concerned got one year's forced labor." P. 523 n.11. On the predetermined character of the Soviet legal system, see, e.g., M. BEGIN, *WHITE KNIGHTS; THE STORY OF A PRISONER IN RUSSIA* (1957).

98. "Only what the judge confirms will remain on record, will have happened in court. While things that we have heard with our own ears vanish like smoke — they never happened at all!" P. 521.

gated broad authority to the lowliest of functionaries. Judicial review, too, was a "phantom process" (p. 250);⁹⁹ judges answered only to that "shiny black visage of truth — the telephone This oracle will never fail you, as long as you do what it says" (p. 521).¹⁰⁰

During the thirty-eight years of Solzhenitsyn's saga, and the twelve additional years until the completion of the book, nothing changed. From arrest, to prison, to Corrective Labor Camp, to *katorga*, to Special Labor Camp, to exile, to release, the legal system had been so twisted and abused that "Draco, Solon, and Justinian the lawgivers would have burst with indignation!" (p. 439). "For us rights, laws, even the human being himself, are nothing . . ." (p. 447). Even today, the "vessel of Soviet Law" (p. 524) in all its majesty sails through the charted seas of the Archipelago.¹⁰¹ Still there are trials under catch-all laws against "the dissemination of anti-Soviet propaganda" or "hooliganism."¹⁰² Still there are illegal and contrived proceedings, many held in secret (p. 515),¹⁰³ against defendants who already have served many months of pretrial detention. Still there is exile to Siberia¹⁰⁴ or confinement in mental institutions in which one can be harassed in dozens of ways, many brutal — including forced feeding with boiling liquids (p. 500 n.10).¹⁰⁵ Still there is a frightening fate for the families of political

99. See also note 96 *supra*. "[T]here are no courts of appeal, no proper channels and due procedures through which a malignant, a corrupt, a soul-searingly unjust verdict can be undone," pp. 524-25, "because the judicial caste might collapse." P. 519. See also p. 116 n.8:

It is said that when Janos was rehabilitated after Stalin's death, curiosity prompted him to ask for a copy of the sentence in Hungarian, so that he could find out just why he had spent nine years in prison. But he was afraid to do so. "They may wonder what I want to do with it. . . ."

"Suppose somebody was suddenly declared free and removed: how could we be sure that he was not on his way to be shot, or to another prison, or to be sentenced afresh?" P. 250.

100. "Endure and flourish, O noble company of judges! We exist for you! Not you for us! May justice be a thick-piled carpet beneath your feet. If all goes well with you, then all is well!" P. 521.

101. [It] is ready for the sharpest turn. If orders come tomorrow to put millions inside again for their way of thinking, or to deport whole peoples (the same peoples as before, or others) or rebellious towns, or to pin four numbers on prisoners again — its mighty hull will scarcely tremble, its stem will not buckle.

P. 524.

102. See, e.g., TIME, Feb. 21, 1977, at 22-23.

103. "We no longer try people in closed courts, as under Stalin, we no longer try them in absentia, we try them semi-publicly (that is to say, in the presence of a semi-public)." P. 515.

104. See, e.g., TIME, Feb. 21, 1977, at 20; N.Y. Times, March 26, 1979, § A, at 15, col. 1; *id.*, April 30, 1978, § E, at 3, col. 1. See also *id.*, April 28, 1979, § A, at 1, cols. 5 & 6.

105. See, e.g., TIME, Feb. 21, 1977, at 23. "The tube is often jammed into the mouth by breaking the patient's teeth." *Id.* Sometimes, instructions are given to "fix" a particular prisoner, "so he will come out an idiot." *Id.* "Psychiatrists in the Soviet Union plainly tell you that having different political views is reason enough to be considered insane." N.Y. Times, May 1, 1979, § A, at 6, col. 6 (statement of Valentyn Moroz, recently released Soviet dissident). See generally AMNESTY INTERNATIONAL, PRISONERS OF CONSCIENCE IN THE U.S.S.R.: THEIR TREATMENT AND CONDITION (1980); S. BLOCH & P. REDDAWAY, PSYCHIATRIC TERROR: HOW SOVIET PSYCHIATRY IS USED TO SUPPRESS DISSSENT (1977); V. BUKOVSKY, TO BUILD A

prisoners.¹⁰⁶

Consider, for example, the case of Anatoly Shcharansky, an obscure scientist who has been brought to prominence only by the Soviet Union's actions against him, in a classic frame-up¹⁰⁷ marking the first time since the Stalin era that a treason charge had been used for such a blatant political purpose.¹⁰⁸ Shcharansky was arrested on March 15, 1977, without official charges having been brought. His only indictment was an article in *Izvestia* accusing him of being a subversive element.¹⁰⁹ The arrest had been triggered, according to one source, by his "audacity to take seriously the Soviet Union's legal obligations under the Helsinki Accords,"¹¹⁰ including recognition of the right to emigrate freely.¹¹¹ Another source added that Shcharansky was arrested "because he spoke the truth, and had the temerity to speak it in perfect English."¹¹² His incommunicado detention lasted for more than a year, with the final six months resulting from a special, secret decree of the President of the Supreme

CASTLE: MY LIFE AS A DISSENER (1979); H. FIRESIDE, SOVIET PSYCHOPRISONS (1979); L. PLYUSHCH, HISTORY'S CARNIVAL: A DISSIDENT'S AUTOBIOGRAPHY (1979); Comment, *Soviet Abuse of Psychiatric Commitment: An International Human Rights Issue*, 9 CAL. W. INTL. L.J. 629 (1979); Reich, *Grigorenko Gets a Second Opinion*, N.Y. Times, May 13, 1979, § 6 (Magazine), at 18; *id.*, April 29, 1979, § A, at 30, col. 4.

106. See, e.g., TIME, Feb. 21, 1977, at 30 (article by Natalya Solzhenitsyn, wife of Aleksandr Solzhenitsyn); N.Y. Times, Jan. 30, 1978, § A, at 8, col. 1. Still, too, there is religious persecution. See, e.g., TIME, May 21, 1979, at 83; N.Y. Times, April 14, 1979, § A, at 5, col. 2; *id.*, March 25, 1979, § A, at 5, col. 1; *id.*, March 19, 1979, § B, at 8, col. 4; *id.*, March 1, 1979, § A, at 13, col. 1.

107. See N.Y. Times, July 23, 1978, § 7 (Magazine), at 18. See also *id.*, July 20, 1978, § A, at 20, col. 4 (Letter to the Editor from Margaret Mead). For descriptions of other notorious frame-ups, see R. CONQUEST, THE GREAT TERROR (1968).

108. On Stalin's "show trials," involving bureaucratic terror imposed under the guise of the rule of law, see generally A. KOESTLER, DARKNESS AT NOON (1941); Reston, *Those Moscow "Trials"*, N.Y. Times, June 30, 1978, § A, at 27, col. 1.

109. See *Proceedings of the Ad Hoc Commission on Justice for Anatoly Shcharansky*, quoted in Dershowitz, *The Case of Anatoly Shcharansky*, 6 HUMAN RIGHTS 245, 253 (1977) [hereinafter cited as *Proceedings*].

110. Dershowitz, *The Case of Anatoly Shcharansky*, 6 HUMAN RIGHTS 245, 245 (1977). See generally Conference on Security and Cooperation in Europe: Final Act, Aug. 1, 1975, reprinted in U.S. DEPT. OF STATE, DEPT. STATE BULL., No. 1888, at 323 (1975); Goldberg, *Human Rights and the Belgrade Meeting*, 30 HASTINGS L.J. 249 (1978); Robertson, *The Helsinki Agreement and Human Rights*, 53 NOTRE DAME LAW. 34 (1977); Christian Science Monitor, Mar. 8, 1979, at 6, col. 1; N.Y. Times, Mar. 13, 1979, § A, at 18, col. 4.

111. See generally Chalidze, *The Right of a Convicted Citizen to Leave His Country*, 8 HARV. C.R.-C.L. L. REV. 1 (1973). See also Berman, *The Right of a Convicted Citizen to Emigrate: A Comment on the Essay by V. N. Chalidze*, 8 HARV. C.R.-C.L. L. REV. 15 (1973).

On the difficulties faced by Russians traveling in their own country, see Shipler, *Making It — Russian Style*, N.Y. Times, Feb. 11, 1979, § 6 (Magazine), at 38, 41; *id.*, Jan. 9, 1979, § A, at 3, col. 1. On the current status of emigration in the Soviet Union, see N.Y. Times, June 1, 1979, § A, at 6, col. 2; *id.*, May 30, 1979, § A, at 4, col. 3; *id.*, May 29, 1979, § A, at 3, col. 4; *id.*, May 22, 1979, § A, at 8, col. 3; *Id.*, May 18, 1979, § A, at 1, col. 3; *id.*, April 4, 1979, § A, at 1, col. 1.

112. Dershowitz, *supra* note 110, at 246. See also *Proceedings*, *supra* note 109, at 277.

Soviet, that applied only to Shcharansky.¹¹³ Lawyers who had agreed to represent him immediately lost their security clearances.¹¹⁴ "The striking thing [was] that many Soviet attorneys indicated they would represent Shcharansky if he were prepared to plead guilty and simply seek the mercy of the court."¹¹⁵ But this occurred even before the investigators had concluded that any charges were to be brought!¹¹⁶ After he had rejected the government-chosen attorney, he and fellow dissident Aleksandr Ginzburg chose attorney Dina Kaminskaya to represent them. She then was promptly disbarred for her vigorous defense of several other dissenters, and herself forced into exile.¹¹⁷ So, Shcharansky conducted his own defense. After a five-day trial, during which entry to the courtroom was blocked to all but a selected few¹¹⁸ — his mother and a United States official not among them¹¹⁹ — and in which he frequently was interrupted by the judge, prohibited from calling defense witnesses, and forbidden to cross-examine government witnesses, Shcharansky concluded his case: "To my wife and my people, I can only say, 'Next year in Jerusalem.' To this court, which decided my fate in advance, I say nothing."¹²⁰ The court found him guilty, and sentenced him to thirteen years in prison at a hard labor camp.¹²¹

Still there is no law, no "objective legal standard."¹²² Still the

113. See *Resolution of Deans and Law Professors on Behalf of Anatoly Shcharansky*, quoted in Dershowitz, *The Case of Anatoly Shcharansky*, 6 HUMAN RIGHTS 245, 285 (1977).

114. See *Proceedings*, *supra* note 109, at 272.

115. *Id.* (statement of Alan Dershowitz).

116. See *id.* See also note 96 *supra*.

117. See TIME, July 24, 1978, at 28. Kaminskaya since has been deported; she now lives in the United States. See N.Y. Times, Sept. 3, 1979, § A, at 4, col. 3.

118. See TIME, July 24, 1978, at 25. See also note 103 *supra*.

119. See TIME, July 24, 1978, at 25.

120. See *id.* at 31. Compare F. KAFKA, *THE TRIAL* 57 (W. & E. Muir trans. 1937): "[T]here can be no doubt that behind all the actions of this court of justice, . . . behind my arrest and today's interrogation, there is a great organization at work."

121. See TIME, July 24, 1978, at 24. Aleksandr Ginzburg, who had formerly served a five-year prison term for circulating "anti-Soviet propaganda" after gathering data for a book on the 1966 trial of writers Andrei Sinyavsky and Yuli Daniel (both of whom had been sentenced to terms of hard labor), see TIME, Feb. 14, 1977, at 30, was sentenced to eight years of hard labor on similar charges. When the judge asked Ginzburg the routine question, "What is your nationality?," he insolently replied, "Zeka" (prisoner). See TIME, July 24, 1978, at 26; note 145 *infra*. Underlying the charge against Ginzburg was his administration of a fund, consisting of the proceeds of *The Gulag Archipelago*, to assist political prisoners and their families.

To the present, Shcharansky has been unable to enjoy regular visits with his family. See N.Y. Times, Jan. 13, 1979, § A, at 6, col. 2. See also *id.*, Aug. 9, 1979, § B, at 18, col. 1. The same is true of Ginzburg. See N.Y. Times, June 3, 1979, § A, at 36, col. 1.

122. N.Y. Times, June 9, 1978, § A, at 8, col. 3 (from Solzhenitsyn's Harvard commencement speech). See also A. SOLZHENITSYN, *supra* note 26, at 30 ("[T]he [Soviet] Criminal Code [is] elastic"); N.Y. Times, April 28, 1979, § A, at 21, col. 3 ("There is no justice") (statement of Arina Ginzburg, wife of Aleksandr Ginzburg, referring to the fact that, although several dissidents recently were released from prison and allowed to emigrate, many others still remained). See generally A. SOLZHENITSYN, *supra* note 61. The recently released Soviet dissidents were exchanged for other Soviet citizens who had been imprisoned in the United States. Another

Soviet Union is a nation in which it has been abundantly demonstrated that "glittering generalities can lead to unworkable policies."¹²³ "The Archipelago was, the Archipelago remains, the Archipelago will stand forever!" (p. 505).¹²⁴ Thus, with sarcastic understatement, Solzhenitsyn declares: "The Law in our country, in its might and its flexibility, is unlike anything called 'law' elsewhere on earth" (p. 522). Perhaps so. But certainly it is not for a lack of competition for this singular recognition.¹²⁵ Although few in this country would compare to Russia's the violence, brutality, and unfairness of our criminal processes — for admittedly there is a considerable difference between a systemic policy of oppression and a tangled skein of individual abuses, though they may be too numerous to mention¹²⁶ — the problem goes much deeper than this.

Initially, with some matters there are only two degrees — right and wrong. "To taste the sea," relates Solzhenitsyn, "all one needs is one gulp."¹²⁷ In both the Soviet Union and the United States there are many departures from the way human beings — even criminals — could, and should, be treated.¹²⁸ No matter what the country, virgin rights once compromised are irremediably vitiated. Moreover, again we are dealing with the nature of crime in our society.¹²⁹ And, beyond the fine lines and unclear demarcations of the concept, and apart from the particular acts of particular individuals, without any doubt we have created a nation of political criminals in yet another mien, for it is the unequal distribution of wealth in our society

Soviet dissident had been expelled from Russia in exchange for a *Chilean* Communist leader. This prompted the statement that in Russia "[t]hey don't . . . know either how to jail or release you properly." V. BUKOVSKY, *supra* note 105, at 76.

123. Christopher, *Human Rights: Principle and Realism*, 64 A.B.A.J. 198, 198 (1978). "[T]hey . . . always take a sledge hammer to crack a nut." P. 503.

124. "The same people who were working there then work there still[!!!] . . ." P. 474 (emphasis and brackets in original; footnote omitted). See generally AMNESTY INTERNATIONAL, PRISONERS OF CONSCIENCE IN THE U.S.S.R.: THEIR TREATMENT AND CONDITION (1980). See also VOLUME I at x. On the recent exile of Andrei Sakharov, one of the Soviet Union's most respected and outspoken dissidents, see, e.g., Washington Post, Jan. 23, 1980, § A, at 1, col. 1.

125. See, e.g., note 7 *supra*.

126. See, e.g., ROUGH JUSTICE: PERSPECTIVES ON LOWER CRIMINAL COURTS (J. Robertson ed. 1974); M. SIKES, THE ADMINISTRATION OF INJUSTICE (1975).

127. VOLUME II at 7.

128. At the least, although the term may be difficult to define, see, e.g., COMPARATIVE HUMAN RIGHTS ix (R. Claude ed. 1976), "human rights" includes the right to be free from governmental violation of the integrity of the person; the right to the fulfillment of the vital needs of food, shelter, health care, and education; and the right to enjoy civil and political liberties. See generally G.A. Res. 217A, U.N. Doc. A/810, at 71-77 (1947) (Universal Declaration of Human Rights); Christopher, *supra* note 123, at 198-99; Cranston, *Human Rights, Real and Supposed*, in POLITICAL THEORY AND THE RIGHTS OF MAN 53 (D. Raphael ed. 1967). "[T]he legislative imperfections in the definition of human rights and freedoms and the lack of mechanism for implementation do not constitute a reason for denying their existence and the need for their legal protection." South West Africa Cases, Second Phase Judgment, [1966] I.C.J. 248, 290 (Tanaka, J., dissenting).

129. See notes 88-93 *supra* and accompanying text.

that gives rise to crime as we know it.¹³⁰ From unofficial suspicion through the formal criminal process,¹³¹ including arrest, trial, and sanction, we disproportionately segregate the poor from the rest of our people.¹³² Clearly, as Debs noted, “[p]overty populates the prison.”¹³³ The indigenous iniquity of the social and legal systems convicts people with impunity for being born into this unhappy world, and then punishes them for attempting to survive in it.¹³⁴ Compounding this economic — and racial¹³⁵ — stratification are more general vicious sociological circles involving education, employment, health care, and housing, as well as the calcified attitudes of those on the outside. Furthermore, on the inside, we have created a double punishment. Not only must inmates endure the terms of their imprisonment, but often they must do so under conditions that are so repulsive as to shock the stomach as well as the conscience.¹³⁶

130. See, e.g., A. DAVIS, *IF THEY COME IN THE MORNING* 27 (1971). See also V. LENIN, *supra* note 82, at 96-97; “Under capitalism, democracy is narrowed, crushed, curtailed, mutilated by all the conditions of wage-slavery, the poverty and misery of the masses.” Compare Bazelon, *The Morality of the Criminal Law*, 49 S. CAL. L. REV. 385 (1976), and Bazelon, *The Morality of the Criminal Law: A Rejoinder to Professor Morse*, 49 S. CAL. L. REV. 1269 (1976), with Morse, *The Twilight of Welfare Criminology: A Reply to Judge Bazelon*, 49 S. CAL. L. REV. 1247 (1976), and Morse, *The Twilight of Welfare Criminology: A Final Word*, 49 S. CAL. L. REV. 1275 (1976). See generally D. ROTHMAN, *THE DISCOVERY OF THE ASYLUM* 155-79 (1971); C. SILBERMAN, *CRIMINAL VIOLENCE, CRIMINAL JUSTICE* 87-116 (1978).

131. A fine word that — process! You can process a man for the next world, process a man for the cooler for twenty-four hours, and a chit for a pair of secondhand trousers may also be processed. But the door slams shut, the snake has gone, smiling enigmatically, leaving you to guess, to spend a month without sleep, to beat your head against the stones wondering how exactly they intend to process you. . . .

P. 273.

132. See, e.g., Ridenour, *Who Is a Political Prisoner?*, 1 BLACK L.J. 17 (1971). “[T]here are hundreds, perhaps thousands of political prisoners in the United States . . . I do think there are some people who are in prison [much] more because they are poor than because they are bad” N.Y. Times, July 13, 1978, § A, at 3, col. 6 (statement of Andrew Young, then chief United States representative to the United Nations). See also notes 153 & 156 *infra*. Not surprisingly, Moscow supported Young on this remark. N.Y. Times, July 16, 1978, § B, at 40, col. 5.

133. E. DEBS, *WALLS AND BARS* 138 (1927). See also *id.* at 23, 180-86. See generally J. REIMAN, *THE RICH GET RICHER AND THE POOR GET PRISON: IDEOLOGY, CLASS, AND CRIMINAL JUSTICE* (1979).

134. See, e.g., E. DEBS, *supra* note 133; K. MENNINGER, *THE CRIME OF PUNISHMENT* (1966); G. SHAW, *THE CRIME OF IMPRISONMENT* (1946).

135. See, e.g., I. BALBUS, *THE DIALECTICS OF LEGAL REPRESSION* (1973); A. DAVIS, *supra* note 130; C. GOODSELL, *supra* note 92, at 98-125; N. MORRIS & G. HAWKINS, *supra* note 73; C. SILBERMAN, *supra* note 130, at 117-65; W. Nagel, *supra* note 73; 8:4 HUMAN RIGHTS 5 (1980). For a recent study on the relationship between poverty, race, and crime, see N.Y. Times, March 11, 1979, § A, at 1, col. 3; *id.*, March 12, 1979, § A, at 1, col. 1; *id.*, March 13, 1979, § A, at 1, col. 2; *id.*, March 14, 1979, § A, at 1, col. 2. See also TIME, June 2, 1980, at 10-20; TIME, May 26, 1980, at 22.

136. See generally Robbins & Buser, *Punitive Conditions of Prison Confinement: An Analysis of Pugh v. Locke and Federal Court Supervision of State Penal Administration Under the Eighth Amendment*, 29 STAN. L. REV. 893 (1977). Chief Justice Burger has noted, in fact, that “[j]udicial findings of impermissible cruelty have been limited, for the most part, to offensive punishments devised without specific authority by prison officials, not by legislatures.” *Furman v. Georgia*, 408 U.S. 238, 384 (1972) (Burger, C.J., dissenting). Many of our jails are

Thus we have not merely political *criminals*, but political *prisoners* as well¹³⁷ — prisoners not all that far removed from Solzhenitsyn and his *zek* comrades.

Of course, the reasons for some of the similarities are evident. People are being punished for their commission of crimes, however defined. Their physical separation from their fellows occurs in every society. While this is not to deemphasize the many distinctions between the theories and practices of the various systems, when the similarities begin to cloud the differences we must seek to penetrate the political veil and scrutinize the individuals who make up the body politic, which itself is susceptible to all the ills to which its constituents are heir. With any incarceration,

a man is deprived of his native place; he lives with men with whom he has no wish to live; he wants to live with his family and friends, but cannot; he does not see his children growing up; he is deprived of his normal surroundings, his home, his belongings, right down to his wrist-watch; his name is disgraced . . . ; he is deprived of freedom of movement; denied as a rule even the possibility of working at his own trade; he feels the constant pressure of strangers, some of them hostile to him, [and] of other prisoners . . . ; [he is] denied the softening influence of the other sex (not to mention the physical deprivation); and even the medical attention he gets is incomparably poorer. [P. 497.]

These are plain facts. Throughout the droning monotony of their days, weeks, months, and years, prisoners cannot help but encounter the realities of institutional life — the sounds, the sights, the tastes, and the smells of prison, as well as the feel of compulsory life in common. But we should not overlook another plain fact: we have put them there. Their lives cannot totally be separated from our own.¹³⁸ Prisons merely epitomize the way people are controlled and repressed today;¹³⁹ they are a means to avoid concentration on the more fundamental problems of society.¹⁴⁰

It should, therefore, be surprising neither that prisoners resent

so overcrowded, so filthy, and so brutal, that "[t]hey grind the soul into dust." Rector, *Renewing the Law-Enforcement Agency*, N.Y. Times, Jan. 8, 1979, § A, at 21, col. 2. See note 79 *supra* and accompanying text. Perhaps not so ironically, the same issue of TIME that reported on Solzhenitsyn's recent advice to the West also reported on the most savage prison riot in American history. See TIME, Feb. 18, 1980, at 30, 48.

137. Amnesty International employs the term "prisoners of conscience" to include "men and women who are imprisoned anywhere for their beliefs, colour, ethnic origin, language, or religion . . ." AMNESTY INTERNATIONAL HANDBOOK 9 (1977).

138. See E. DEBS, *supra* note 133, at 11: "While there is a lower class I am in it; While there is a criminal element I am of it; While there's a soul in prison I am not free."

139. See, e.g., M. FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* (1977). "[T]he prison is simply a reflex of the sins which society commits against itself." E. DEBS, *supra* note 133, at 223. "The degree of civilization in a society can be judged by entering its prisons." F. DOSTOEVSKY, *THE HOUSE OF THE DEAD* 76 (C. Garnett trans. 1957).

140. See, e.g., TIME, Feb. 21, 1977, at 30 (article by Natalya Solzhenitsyn, wife of Aleksandr Solzhenitsyn); E. DEBS, *supra* note 133, at 138: "[P]overty is the crime, penalized by society which is responsible for the crime it penalizes."

their treatment and circumstances, nor that their reactions to and attitudes toward the government — whichever one it may be — are not anomalous. The more severe the sentence or conditions, for example, the greater the resolve against the State that imposes them. Further, not unlike Solzhenitsyn's "committed escaper" (p. 125),¹⁴¹ who "never for a minute doubts that a man cannot live behind bars" (p. 125), virtually every prisoner has an "urge to stop being a slave and an animal" (p. 97).¹⁴² It is only human to be outraged by injustice, particularly when that injustice begets a ruck of serfs who are unable to improve their lot.¹⁴³ And especially when what is essential to them is forbidden — whether it be religion, appearance, or just basic dignity¹⁴⁴ — the time may come when this race of prisoners¹⁴⁵ is transformed by its conscience and its consciousness, and propelled to seek a new truth and a new order — a time when they seethe with the spirit of revolt to purge themselves of oppressive forces.

These observations are not intended to portend that we are in the throes of revolution. But in a civilization in which true equality can be achieved only when there is no discrimination, no exploitation of man by man,¹⁴⁶ there necessarily will be nascent discontent with any system that is unfair and unjust to any measurable degree. One should not forget Attica, the most far-reaching expression of prisoner hopelessness and bitterness in our recent history, and the Report of the New York State Special Commission on Attica,¹⁴⁷ which cautioned us that "the elements for replication [of the 1971 riots] are all around us. Attica is every prison; and every prison is Attica."¹⁴⁸ If

141. See text at notes 30-31 *supra*.

142. See also McCarthy, *Jail Boom*, Washington Post, Feb. 15, 1980, § A, at 15, col. 1; N.Y. Times, Feb. 14, 1980, § A, at 26, col. 6 (Letter to the Editor).

143. Not every prisoner, of course, desires or is able to transcend his routine. Solzhenitsyn is outraged, for example, by "[t]he prisoner's irrational passion for shows, his ability to forget himself, his grief, and his humiliation for a scrap of nonsense, on film or live, insultingly showing that all's right with the world." P. 122. "Bread and circuses" were all that it took to keep most prisoners content most of the time. See p. 272. See also VOLUME II at 607-08.

144. See generally U.N. CHARTER preamble: "We the Peoples of the United Nations determined . . . to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small . . ." See also Machan, *Human Dignity and the Law*, 26 DE PAUL L. REV. 807 (1977); note 128 *supra* and accompanying text.

145. "I am proud to belong to this mighty race! We were not a race, but they made us one! They forged bonds between us, which we, in our timid and uncertain twilight, where every man is afraid of every other, could never have forged for ourselves." P. 462. See note 121 *supra*.

146. See, e.g., Kudryatsev, *The Truth About Human Rights*, 5 HUMAN RIGHTS 193 (1976).

147. NEW YORK STATE SPECIAL COMMISSION ON ATTICA, ATTICA: THE OFFICIAL REPORT (1972) [hereinafter cited as ATTICA]. See pp. 458-59.

148. ATTICA, *supra* note 147, at xii. See also T. WICKER, A TIME TO DIE (1975). For a recent report on a less drastic but nevertheless important prison disorder, see Wicker, *Catch-22 Behind Bars*, N.Y. Times, May 22, 1979, § A, at 19, col. 1. See also TIME, Feb. 18, 1980, at 30. Dumdum bullets were used both at Attica and in the *Gulag*. See ATTICA, *supra* note 147, at 352-56; text following note 25 *supra*.

revolution requires aims,¹⁴⁹ rebellion itself does not. And without doubt we have prisoners who feel so tired, so downtrodden, so oppressed, with so little to lose,¹⁵⁰ that rather than slavishly serve out their sentences they are prepared, if not zealous, to bleed in freedom's cause.¹⁵¹ As it did at Kengir, revolt can liberate the soul, even if only for a while.¹⁵² And like *Gulag*, it is not inconceivable that if we passively and unwittingly fail to appreciate our human and humane obligations, then we will be perceived to be the oppressors calmly sitting atop a hierarchy of guilt.¹⁵³

We must recognize the immediacy and the agony of the prison experience, the hurt and anger of people in cages — pariahs in their own society, systematically humiliated by their rulers.¹⁵⁴ How long shall we silently mark time before our doomed, nettled by their fate, decide that they have suffered the limits of human despair, and seek to shed their chains?¹⁵⁵ Perhaps the time is not yet ripe; but it may not be too distant.¹⁵⁶ And perhaps a time will also come for those on the outside to join in rebellion, for certainly many of the "free" are

149. See generally C. BRINTON, *THE ANATOMY OF REVOLUTION* (1938). See also V. LENIN, *supra* note 82, at 96. But cf. B.H. LÉVY, *BARBARISM WITH A HUMAN FACE* (1979) (revolution does no more than rearrange power).

150. "[Y]ou are strong only as long as you don't deprive people of *everything*. For a person you've taken *everything* from is no longer in your power. He's free all over again." A. SOLZHENITSYN, *supra* note 26, at 83 (emphasis in original).

151. "No one who has not experienced this transition can imagine what it is like!" P. 238. See also p. 235. See generally Sostre, *The New Prisoner*, in *PRISONERS' RIGHTS SOURCEBOOK: THEORY, LITIGATION, PRACTICE* 35 (M. Hermann & M. Haft eds. 1973); *TIME*, Feb. 18, 1980, at 30, 31 (reporting on recent New Mexico prison riot).

152. See notes 33-35 *supra* and accompanying text. "[W]e changed from crushed and isolated individuals into a powerful whole . . ." P. 347.

153. "Imprisonment as it exists today is a worse crime than any of those committed by its victims; for no single criminal can be as powerful for evil, or as unrestrained in its exercise, as an organized nation." G. SHAW, *supra* note 134, at 13. "Oh, the length of it! The length of the prisoners' bench with seats for *all* those who tormented and betrayed our people, if we could bring them all, from first to last, to account." P. 32 (emphasis in original).

154. See, e.g., Franklin, *Literature from Prisons*, *N.Y. Times*, Feb. 11, 1978, § A, at 21, col. 6.

155. This . . . is a phenomenon which has never been adequately studied: we do not know the law that governs sudden surges of mass emotion, in defiance of all reason. I felt this soaring emotion myself. I had only one more year of my sentence to serve. I might have been expected to feel nothing but dismay and vexation that I was dirtying my hands on a broil from which I should hardly escape without a new sentence. And yet I had no regrets.

P. 259. See also Holloway, *Prison Abolition or Destruction Is a Must!*, 45 *MISS. L.J.* 757 (1974).

156. The United States Supreme Court has very recently shown a lack of sensitivity to the poor, in an "[i]ll-conceived" decision, see *N.Y. Times*, May 28, 1979, § A, at 11, col. 2 (statement of Justice Marshall, "[i]n a rare public display of sarcasm, bitterness and pique at his Supreme Court colleagues," *id.*, § A, at 1, col. 1), severely restricting the rights of pretrial detainees. See *Bell v. Wolfish*, 441 U.S. 520, 583 (1979) (Stevens, J., dissenting) ("The fact that an individual may be unable to pay for a bail bond . . . is an insufficient reason for subjecting him to [indignity]"). Compare text at note 79 *supra*. See also H. PACKER, *THE LIMITS OF THE CRIMINAL SANCTION* 216 (1968); Goldstein, *Bail Is Different for Rich and Poor*, *N.Y. Times*, May 20, 1979, § E, at 7, col. 1.

no better off than those who are not.¹⁵⁷ These are sobering thoughts — ones that should cause us to beware, and to be aware as well.

“We must,” as Solzhenitsyn properly reminds us, “keep things in proportion” (p. 33).¹⁵⁸ To be sure, we are not now his *Gulag*. But neither are we More’s *Utopia*.¹⁵⁹ Though we pay lip service to the value of human rights and individual dignity,¹⁶⁰ we must eliminate the ambivalence in our rhetorical commitment to their full furtherance.¹⁶¹ More than anything else, we should become familiar with the plight and problems of individuals in our society,¹⁶² for Solzhenitsyn’s sisyphian statement of the human condition is as important for our own sake as it is for his.¹⁶³ At the very least, *The Gulag Archipelago* should leave us sensitive to this debasing era of human history, to the intractable character of inhumanity in the

157. “Prison life is not very different from real life — except that in prison the walls are closer.” N.Y. Times, Jan. 14, 1979, § D, at 17, col. 6 (quoting Malcolm Braly). See also Margolies, *A New Leaf*, Wall St. J., Oct. 1, 1975, at 1, col. 1. “Raise the living standards of prisoners? Can’t be done! Because the free people around the camp would be living *less well* than the zeks, which cannot be allowed.” Pp. 504-05 (emphasis in original). (*Zeks* could not receive parcels frequently, “[b]ecause this would have a bad effect on the warders . . .” P. 505). See also TIME, June 2, 1980, at 10-20; TIME, May 26, 1980, at 22.

158. See note 80 *supra*.

159. For one example of a prison system plagued by inertia and insensitivity, see Murton, *The Arkansas Effect*, N.Y. Times, Feb. 17, 1978, § A, at 27, col. 1.

160. See, e.g., Christopher, *Human Rights: Remarks on the Policy of the United States*, 2 LOY. L.A. INTL. & COMP. L. ANN. 1 (1979). Compare *Birnbaum v. United States*, 436 F. Supp. 967, 970 (E.D.N.Y. 1977) (three citizens whose letters had been opened by the government won suit for invasion of privacy) (“In this country we do not pay lip service to the value of human rights and individual dignity — we mean to live by our ideals. A primary role of the courts is to translate these noble sentiments into palpable reality”), *modified*, 588 F.2d 319 (1978), with *Bell v. Wolfish*, 441 U.S. 520 (1979), *discussed in* note 156 *supra*.

161. “Despite our domestic failures, we must conform to our principles rather than be judged by the level of our practice.” Ferguson, *International Human Rights*, HARV. L. SCH. BULL. 16, 45 (Winter 1979). “We must prove our greatness as a nation not by the vastness of our territory, not by the number of peoples under our tutelage, but by the grandeur of our actions.” P. 46. “There can be no double standards [concerning human rights].” Address by Secretary of State Henry Kissinger, United Nations General Assembly (Sept. 22, 1975). See generally A. SAKHAROV, *ALARM AND HOPE* (1978); Carey, *The United Nations’ Double Standard on Human Rights Complaints*, 60 AM. J. INTL. L. 792 (1966); Henkin, *Rights: American and Human*, 79 COLUM. L. REV. 405 (1979); Szasz, *The International Legal Aspects of the Human Rights Program of the United States*, 12 CORNELL INTL. L.J. 161 (1979); Vogelgesang, *Principle’s Price*, N.Y. Times, June 28, 1978, § A, at 23, col. 1. “The test of a society is not whether violations of human rights occasionally occur, but how they are dealt with by the authorities.” Freedman & Dershowitz, *Israeli Torture, They Said*, N.Y. Times, June 2, 1978, § A, at 23, col. 2.

162. “[T]he future of human rights is interdependent with the simultaneous growth of knowledge and commitment.” McDougal, Lasswell & Chen, *The Aggregate Interest in Shared Respect and Human Rights: The Harmonization of Public Order and Civic Order*, 23 N.Y.L.S. L. REV. 183, 251 (1977), reprinted in M. MCDUGAL, H. LASSWELL & L. CHEN, *HUMAN RIGHTS AND WORLD PUBLIC ORDER* 860 (1980). Further, the quest for human rights is “an unstoppable process.” N.Y. Times, May 12, 1979, § A, at 5, col. 1 (statement of Aleksandr Ginzburg).

163. “Every system either finds a way to develop or else collapses.” A. SOLZHENITSYN, *supra* note 37, at 58.

world, to the palpable truthfulness of general suffering, and constrain us to "transcend our [mortal] clay" (p. 477) and recognize the necessity to include with our regular diet of synthetic materialism a healthy dose of pure moral fiber to cleanse the system.¹⁶⁴ The self-regulating cybernetics of democratic capitalism simply are incapable of meeting all human needs.

Certainly crime must be prohibited. But crime and its punishment encompass a complex mass of acts, emotions, morals, and, unfortunately, ignorance. Among America's criminal justice systems, the only common denominator is that there is no common denominator. Until we can more accurately answer the questions of what acts should be declared deviant and what procedures should be employed to adjudge those who are accused, then our penal structure must always be viewed with critical circumspection. We should respect humans as humans, and not treat them like animals;¹⁶⁵ we should afford them the benefits of our evolving knowledge in all areas of study,¹⁶⁶ and avoid getting trapped by "inherited answers."¹⁶⁷ While we await some Hegelian heaven, in the Western spirit of inquiry¹⁶⁸ we must summon the courage to doubt our convictions¹⁶⁹ (literally as well as metaphorically), the courage to embrace the creative tension whence comes direction, the courage to stand in humility before ultimate truths.

164. "[P]olitical freedom is not what matters in the end. The goal of human evolution is not freedom for the sake of freedom. Nor is it the building of an ideal polity. What matter, of course, are the moral foundations of society." P. 89. Compare a recent statement by President Carter: "Our [human rights] policy is rooted in our moral values, which never change." Carter, *The President's Commencement Address at the University of Notre Dame*, 53 NOTRE DAME LAW. 9, 14 (1977). See also N.Y. Times, Dec. 8, 1978, § A, at 28, col. 1.

165. "Will we ever succeed . . . in giving free rein to the spirit that was breathed into us at birth, that spirit that distinguishes us from the animal world?" A. SOLZHENITSYN, WARNING TO THE WEST 146 (1976).

166. See generally *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958) (Warren, C.J.):

The basic concept underlying the Eighth Amendment is nothing less than the dignity of man. While the State has the power to punish, the Amendment stands to assure that this power be exercised within the limits of civilized standards. . . . The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.

See also note 90 *supra*. Although the Chief Justice was speaking only for a plurality (with Justices Black, Douglas, and Whittaker), a majority of the Court referred approvingly to these words in *Furman v. Georgia*, 408 U.S. 238 (1972). 408 U.S. at 242 (Douglas, J., concurring); 408 U.S. at 269-70 (Brennan, J., concurring); 408 U.S. at 306 n.1 (Stewart, J., concurring); 408 U.S. at 327 (Marshall, J., concurring); 408 U.S. at 409 (Blackmun, J., dissenting).

167. D. ROTHMAN, *supra* note 130, at 295. "An awareness of the causes and implications of past choices should encourage us to a greater experimentation with our own solutions." *Id.*

168. "Western civilization . . . is so dynamic and . . . inventive . . ." A. SOLZHENITSYN, *supra* note 37, at 23.

169. See, e.g., TIME, June 26, 1978, at 21 (comments of Daniel Boorstin, in reaction to Solzhenitsyn's Harvard commencement speech). Perhaps the pestilence of *Gulag* was "one of the innumerable penalties which we are continually paying, and will be paying for a long time yet, for the path we so hastily chose and have so stumblingly followed, with never a look back at our losses, never a cautious look ahead[.]" P. 12.

Yes, woe unto those who have read *The Gulag Archipelago*. But greater woe unto those who have not, to those who do not seek its guidance, to those who foster hate, prejudice, unfairness, and injustice. Woe unto all of us if we do not take heed. The fabric that is our civilization — woven as it is with very tenuous threads — is being stretched nearly to its limits. We must be wary, lest, like the Emperor, the roots of our society soon stand naked for all to see — a vast and barren human wasteland.