An 'Opportunistic Interpretation' of Bentham's *Panopticon writings*

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In line with Bentham, who states that no one deserves punishment, not even the offender, this article argues for the development goal of criminal justice systems genuinely to achieve 'justice' for the greatest good of society and the offender. To this end, this article offers an 'opportunistic interpretation' of Bentham's Panopticon writings.

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Every positive value has its price in negative terms... the genius of Einstein leads to Hiroshima.

~ Pablo Picasso (1881 – 1973)

1. Introduction

Prisons are many things: institutions of state power, economic enterprises, production centres of lower classes, and an embodiment of individual responsibilities to living in a community. But prisons are also places where large proportions of the human race live parts of their lives, shape their worldviews, engage in negotiations and interact with other human beings, as well as state authorities.[1] Prisons are integral to every country's criminal justice system. They are crucial for upholding the rule of law by providing sanctions for serious wrongdoing and, it is hoped by legislators, by helping to ensure that alleged offenders are brought to 'justice'.[2]

Simply put, 'criminal justice' is achieved through the enforcement of a country's penal laws, including punishment through imprisonment.[3] Achieving criminal justice through imprisonment however does not mean that prisoners experience 'justice' in terms of good humane health, hygiene and accommodation conditions, and opportunities to obtain assistance and help with rehabilitation.[4] Due to the abysmal prison conditions in many developing countries, including overcrowding, prisoner-on-prisoner violence, lack of medical care, guard

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[1] C. Aguirre, 'Prisons in Modernising Latin America'. In I. Brown & F. Dikötter, *Cultures of Confinement. A History of the Prison in Africa, Asia and Latin America,* Hurst Publications, London, 2007, p. 14.
[2] Ibid.
[3] B. Hudson, *Understanding Justice. An Introduction to ideas, perspectives and controversies in modern penal theory.* 2nd edition, Open University Press, Buckingham and Philadelphia, 2003, p. 100.
[4] F. Dikötter, 'The Prison in the World'. In Brown & Dikötter, *Cultures of Confinement*, p. 1.

abuse and corruption[5], imprisonment may do more harm than 'justice'; transforming the offender into the victim of the legal system.[6] In order to improve the conditions of punishment and imprisonment, policymakers must mainly focus on institutional practices.[7] As a result, philosophical discussions are rather removed from the realities of penal practice.[8] And yet, to establish humane prison conditions on morally justifiable grounds, penal practice, and thus penology, must be informed by an understanding of normative philosophical theories.[9]

In particular, the normative philosophical theory of 'utilitarianism' is useful for penology. This is because utilitarianism combines moral and political philosophy, in that it is concerned both with defining 'the good' and establishing a basis for the role of government and thus a state's political obligations.[10] The utilitarian 'good' is no abstract metaphysical property, such as harmony with God's will, rather it is human happiness.[11] According to utilitarian philosophy, governments must promote human happiness, minimizing human suffering.

The English jurist and philosopher Jeremy Bentham (1748-1832) uniquely connected utilitarianism to penology in laying out a plan for a prison prototype: the 'Panopticon'. The Panopticon is an idea in architecture, never realised, describing a new mode of obtaining power 'of mind over mind'.[12] In line with utilitarian philosophy, through punishment, the Panopticon is to contribute to the greatest good of the greatest number.[13] Still, to Bentham,[14] '[p]unishment is mischief: all punishment […] is an evil'. Notwithstanding Bentham's remarkable intention to advance penology through philosophy and vice versa, the Panopticon has suffered neglect in scholarship as the historian Gertrude Himmelfarb[15] [16] laments: '[n]ot only historians and biographers but even legal and penal commentators seem to be unfamiliar with some of the most important features of Bentham's plan'.

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[5] Human Rights Watch, 'World Report 2010', Human Rights Watch Print, New York, Washington, London, Brussels, 2010, p. 485.

[6] M. Schönteich, 'Pre-trial detention and human rights In Africa'. In J. Sarkin, *Human Rights in African Prisons*, HSRC Press, Capetown, 2010, p. 105.

[7] R.A. Duff & D. Garland, *A Reader on Punishment,* Oxford University Press, 1995, p. 2.

[8] Ibid.

[9] Ibid.

[10] Hudson, *Understanding Justice*, p. 18.

[11] Ibid.

[12] J. Bentham, *An Introduction to the Principles of Morals and Legislation*, Prometheus Books, Buffalo, [1791]1988, p. 31.

[13] Hudson, *Understanding Justice*, p. 18.

[14] *IPML*, p. 170.

[15] It shall be noted that despite her notable contribution to communicating Bentham's ideas, opposing this article's argument, to Himmelfarb, the Panopticon is the "precursor of totalitarianism". In J. Semple, *Bentham's prison*, Clarendon Press, Oxford, 1993, p. 4.

[16] G. Himmelfarb, *Victorian Minds*, Weidenfeld and Nicolson, London, 1968, p. 95.

In establishing a dialogue between philosophy and penology, this article argues in line with Bentham - who states that no one deserves punishment, not even the offender[17] - for the development goal of criminal justice systems to genuinely achieve 'justice' for the greatest good of society *and* the offender.[18] To this end, this article offers an 'opportunistic interpretation' of Bentham's *Panopticon writings*.[19]

Section 2 gives the background and context to the analysis by explaining Bentham's Panopticon plan. Building on the plan's proposed benefits, section 3 translates Bentham's propositions into two categories: (1) 'Economy and Health', and (2) 'Morality and Publicity'. The two categories are examined with regards to the reality of criminal justice systems in developing countries, thus stressing obstacles to Bentham's ideas. These are further highlighted by an interlude of philosophical variations. After presenting a wealth of obstacles, section 4 takes a counter position. It advances opportunities of Bentham's theory for criminal justice systems in developing countries. For this purpose, the section takes over the categorisation employed in section 3; thus directly contrasting obstacles to opportunities. Section 5 concludes and gives recommendations for sustaining the opportunities which become apparent in Bentham's *Panopticon writings*; for a genuine nexus between justice and development.

2. The origins and development of Bentham's Panopticon Plan

In 1786, Jeremy Bentham visited his brother Samuel, who was involved in several industrial projects in Krichev, White Russia. Samuel told Jeremy about his vision of a circular building at the hub of a larger compound, allowing for only a few managers to oversee a large workforce.[20] Bentham became obsessed with this idea.[21] As the 'dutiful, even deferential son' followed his father's wish for a career in law, it suggests itself that Bentham transferred the idea into penology.[22] In a series of letters to his father and two lengthy postscripts, Bentham[23] describes his architectonic prison prototype, the Panopticon, coined as a neologism by combining the ancient Greek words παν, 'pan', all, and οπτικό, 'optiko', belonging to seeing.

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[17] M. Bozovic, *Jeremy Bentham: The Panopticon Writings*, Verso, London and New York, 1998, p. 6.
[18] P. Smith, *Punishment and Culture*, The University of Chicago Press, 2008, p. 89.
[19] J. Bentham, [1789]1998. In M. Bozovic, *Jeremy Bentham: The Panopticon Writings*.
[20] J. Semple, *Bentham's prison*, Clarendon Press, Oxford, 1993, pp. 270-271.
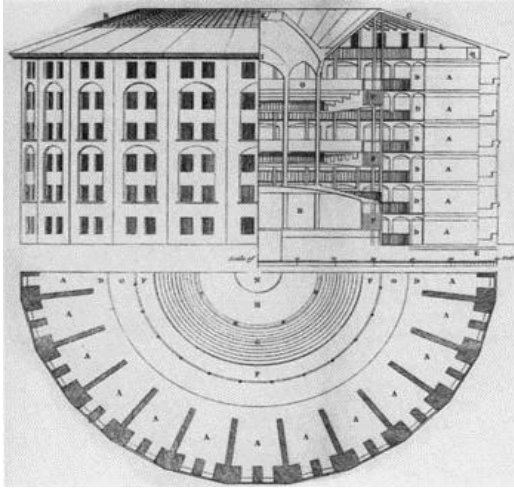[21] Ibid., p. 1.
[22] Ibid., p. 21.
[23] *IPML.*

Image 1. *The Panopticon Plan.*
In J. Bentham, *The Works of Jeremy Bentham*, vol. 4, 1791, pp. 172-173.

As image 1 illustrates, at the Panopticon's periphery, Bentham envisages a circular building, at its center an inspection tower pierced with wide windows opening to the inner side of the ring.[24] [25] The peripheric building is composed of cells, arranged in a concentric circle around the central inspection tower.[26] Each cell has two windows, one on the inside corresponding to the windows of the tower, and one on the outside allowing light to cross the cell from one end to the other.[27]

The inspector can observe, at any time, the prisoners in their back-lit cells, but owing to a system of blinds in the inspection tower, the prisoners are unable to see him.[28] This architectonic design allows the inspector to oversee all inmates while they never know when and if they are being watched.[29]

While to Bentham the Panopticon was an embodiment of his utilitarian philosophy, his prison plan has been interpreted otherwise. Foremost, Michel Foucault built on Bentham's Panopticon writings, introducing him as the scholarly master of universal control.[30] [31] According to O'Farrell[32] this lead to the easy equation 'Bentham = Panopticon = oppressive totalising society of surveillance'.

Quite the contrary however, Bentham[33] opens the very first letter with a list of benefits obtained from his inspection house:

> '*Morals reformed - health preserved - industry invigorated - instruction diffused - public burthens lightened - Economy seated, as it were, upon a rock - the gordian knot of the Poor Laws not cut, but untied – all by a simple idea in architecture!*'

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[24] *IPML*, pp. 35-41.

[25] In D. Kaplan, *Readings in the Philosophy of Technology*, Rowman and Littlefield Publishers Lanham, Boulder, New York, Toronto and Oxford, 2005, p. 359. From M. Foucault, *Discipline and Punish: The Birth of the Prison*, Pantheon, New York, 1977, trans. Alan Sheridan, originally published in French as *Surveiller et Punir*.

[26] Ibid.

[27] Ibid.

[28] Ibid.

[29] Ibid.

[30] A. Brunon-Ernst, *Beyond Foucault: New Perspectives on Bentham's Panopticon*, Ashgate Publishing, 2012, p. 34.

[31] C. Laval, 'From *Discipline and Punish* to the *Birth of Biopolitics*'. In Brunon-Ernst, *Beyond Foucault*, p. 44.

[32] C. O'Farrell, 'Foreword'. In Brunon-Ernst, *Beyond Foucault*, p. xi.

[33] J. Bentham, [1789]1998. In Bozovic, *Jeremy Bentham: The Panopticon Writings*, p. 31.

'Simple' in theory, as Bentham puts it, the implementation of such an idea may not be easy in practice. An investigation of criminal justice reality in developing countries shows why.

3. Criminal Justice Reality in Developing Countries

To explain why Bentham's plan may not be 'simple', this section translates Bentham's utilitarian Panopticon theory to the reality of developing countries. To this end, this section categorises the above quote into (1) Economy and Health, and (2) Morality and Publicity; and tests criminal justice reality in developing countries against these two categories. To be clear, the emphasis on prisons in developing countries does not mean to single them out as pariahs. Also so called developed countries still have a long way to go if they are to learn from 'opportunistically interpreted' Benthamite principles.

3.1. Economy and Health

Saving the regard due to life, health, bodily ease, proper instruction and future provision, economy ought to be in every point of management the prevalent consideration.[34]

As the above statement by Bentham implies, the health of a country's economy and the health of its people are related. When looking into World Bank statistics,[35] one finds that by the end of the last century, of more than US$29 trillion of global Gross Domestic Product (GDP), only about US$6 trillion, was generated in developing countries, even though they account for about 85 percent of the world population. Thus, it may not come as a surprise that the health conditions in developing countries' prisons are rather abysmal. In South African prisons, the prevalence of HIV/AIDS infection is estimated to be at 40 percent, twice the average South African rate of infection.[36] Cholera affects prisoners particularly in Zambia and Malawi.[37] The 2005 Tuberculosis incidence rate for state prison inmates in Rio de Janeiro, Brazil, was 35 times higher than in the general population.[38] In Thailand, the restricting annual budget of US$150 million spent on prison health care works out to US$3.50 per prisoner annually. This results in limited access to healthcare, which is especially needed for the 25 per cent of the Thai prison population who are HIV-positive.[39] When comparing the death rates of prisons in

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[34] J. Bentham *[1774-1775]1843,* in J. Bowring (ed.), *The Works of Jeremy Bentham*, vol. 4., Tait, Edinburgh, 1843, p. 143.

[35] The World Bank, *Beyond Economic Growth. An Introduction to Sustainable* Development, The World Bank, Washington, 2004, p. 24.

[36] J. Sarkin, *Human Rights in African Prisons*, HSRC Press, Capetown, 2010, p. 19.

[37] Human Rights Watch, 'World Report 2010', Human Rights Watch Print, New York, Washington, London, Brussels, 2010, p. 486.

[38] V. Diuana, B. Larouze & B. Sanchez, 'Tuberculosis behind bars in developing countries: a hidden shame to public health', *Transactions of the Royal Society of Tropical Medicine and Hygiene*, *108*, p. 841.

[39] D. Wilson et al., 'HIV Prevention, Care, and Treatment in Two Prisons in Thailand.' *PLoS Medicine*, *4*(6):e204, 2007.

developing and developed countries,[40] one finds that in Malawi's Zomba Prison, an average 1 in 20 prisoners dies during incarceration, in the United States, it is 1 in 330 prisoners.[41]

Running prisons is expensive since costs per prisoner are exorbitant and escalate annually.[42] As a study by the United Nations East Asia and Far East Institute (UNAFEI)[43] shows, developing countries' governments have other priority sectors than the improvement of prison conditions, such as poverty alleviation, education, and drinking water. Priority sectors may also be determined by external forces, as the national budgets of many developing countries depend not only on internal resources but also on foreign investment.[44] In light of the constrained budget for the improvement of prison conditions, Stone Korshak,[45] managing editor and publisher of *The Rio Times*, bluntly notes, 'let's face it, incarceration is a wealthy society's solution to punishment'.

Aggravating and encouraging the spread of communicable diseases is the problem of overcrowding. In a Madagascan prison, more than 20,000 prisoners are squeezed into a space initially intended for 12,000 prisoners.[46] In some Brazilian lockups, where large parts of the country's 180,000 detainees are held, overcrowding is so acute, that prisoners tie themselves to the prison-bars to sleep.[47] But overcrowding is not only an issue of space, it also dehumanises prisoners, minimises their supervision, burdens prison staff and detracts from acceptable levels of hygiene, sanitation and nutrition.[48] Therefore, as Kofi Annan states, 'until the problem of overcrowding is resolved, efforts to improve other aspects of prison reform are unlikely to have any meaningful impact'.[49]

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[40] The situation is nowhere near as dire as in developing countries, but in developed countries too conditions are 'scandalous'. By way of example, in England and Wales, 'slopping out' was only abolished in 1996. It is still practice in Scotland and Ireland. M. Rogan, *Prison Policy in Ireland*, Routledge, London, 2011.

[41] Sarkin, *Human Rights in African Prisons*, p. 18.

[42] Ibid., p. 19.

[43] S.D. Tamani et al., 'Practical Measure to improve prison conditions'. United Nations Asia and Far East Institute (UNAFEI). Resource Material Series No. 57; 115th International Training Course, 2011, p. 406. Accessed at http://www.unafei.or.jp/english/pdf/PDF_rms/no57/57-28.pdf, on 9 January 2014.

[44] Ibid.

[45] S. Korshak, 'Developing Jails', *The Rio Times*, 8 June 2010. Accessed at
 http://riotimesonline.com/brazil-news/opinion-editorial/editorial/developing-jails/# on 9 January 2014.

[46] Human Rights Watch, 'World Report 2010', Human Rights Watch Print, New York, Washington, London, Brussels, 2010, p. 487.

[47] Ibid.

[48] Sarkin, *Human Rights in African Prisons*, p. 16.

[49] cited in Sarkin, *Human Rights in African Prisons*, p. 18.

3.2. Morality and Publicity

The greatest happiness of the greatest number is the foundation of morals and legislation[50].
Publicity is the very soul of justice.[51]

Morality is here understood as 'just' prison governance meaning that the offender's human dignity is recognised and respected. This relates both to the manner in which offenders are treated in person and, the opportunities that they are afforded to re-orientate their future lives. 'Moral' prison governance is to a large extent determined by the existence of an enabling policy framework and the extent to which prison management is able to implement these policies on a day-to-day basis.[52] The degree of 'transparency', 'accountability' and 'ethics', despite these concepts controversial natures, further conditions 'moral' prison governance; attributes ascribed to a state's 'publicity'.[53]

There is no universal agreement on the model of best prison governance practice. [54]However several international policy instruments such as the 'Standard Minimum Rules for the Treatment of Prisoners' (SMR)[55] provide guidance on the treatment of offenders and consequently indicate appropriate management outcomes. Establishing inspection and reporting systems is considered key to successfully securing the effectiveness of the legislation regarding prison conditions (SMR rule 55). However, in the global south, according to Human Rights Watch (HRW),[56] information on prisons is hard to obtain. This is partly due to the fact that prisons are usually run by authoritarian regimes.[57] The authoritarian regime in Sudan is one example of where the prison service operates with almost no reliable information on the prison population or its own staff.[58] Accordingly, prison administration, especially in many African countries, tends to be associated with the military or police, and so a sense of authoritarian control and discipline pervades prison culture.[59] As UNAFEI[60] finds,

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[50] J. Bentham, *The Commonplace Book, [1774-1775]*1843, in J. Bowring (ed.), *The Works of Jeremy Bentham*, vol. 10., Tait, Edinburgh, 1843, p. 142.
[51] Ibid., p. 316.
[52] C. Tapscott, 'Challenges to good prison governance in Africa', 2010. In Sarkin, *Human Rights in African Prisons*, pp. 67-68.
[53] Ibid.
[54] Ibid., p. 68
[55] United Nations, 'Standard Minimum Rules for the Treatment of Prisoners.' Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. Accessed at http://www.refworld.org/docid/3ae6b36e8.html on 9 January 2014.
[56] Human Rights Watch, 'World Report 2010.'.
[57] S.D. Tamani et al., 'Practical Measure to improve prison conditions'. United Nations Asia and Far East Institute (UNAFEI). Resource Material Series No. 57; 115th International Training Course, 2011, p. 406. Accessed at http://www.unafei.or.jp/english/pdf/PDF_rms/no57/57-28.pdf, on 9 January 2014.
2011:396)
[58] Sarkin, *Human Rights in African Prisons*, pp. 32-34.
[59] Ibid., p. 21
[60] Tamani et al., 'Practical Measure to improve prison conditions', p. 396.

'if the political system is more democratic, then the government is more likely to listen to the voices of the human rights activists and give due priority to the improvement of prison conditions'.

With few means to draw public attention to the abuse of their rights, prisoners frequently resort to hunger strikes, self-mutilation, rioting, and other forms of protest. Arguably, the most extreme incidents took place in Kazakhstan and Venezuela in 1999. In Kazak prisons, dozens of inmates slashed open their own stomachs protesting against inhumane conditions of confinement.[61] Venezuelan prisoners held in a remote jungle facility, took part in what they called a 'blood strike', cutting their arms and legs to raise awareness for their wish to be accommodated closer to their families.[62]

Thus, the public's tendency to ignore prison abuses is reinforced by government secrecy. HRW[63] observes that the public is primarily concerned about keeping prisoners locked up; which Sarkin[64] calls '[l]ock them up and throw away the key mentality.' In Cuba and China, this led to barring the International Committee of the Red Cross from providing humanitarian relief to prisoners.[65] Paradoxical to their economic situation, such mentality may contribute to establishing more closely regulated prisons. Hence, in developing countries, the focus is often not on rehabilitation and reintegration, but on punishment and detention. Lacking reintegration measures enforces recidivism which is in turn, as some sort of vicious cycle in the system, burdensome regarding monetary and societal costs.[66]

In light of the reality in developing countries' criminal justice systems, to some policymakers, Bentham's utilitarian vision of the 'good' may be insignificant. Interestingly, Bentham's ideas, appropriated across borders when modernising elites dispersed around the globe identified with the Enlightenment concepts of law and government,[67] also conflict with those of other philosophers such as Michel Foucault[68] and Emile Durkheim.[69]

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[61] Human Rights Watch, 'World Report 2010', p. 488.
[62] Ibid.
[63] Ibid., p. 485.
[64] Sarkin, *Human Rights in African Prisons*, p. 4.
[65] Human Rights Watch, 'World Report 2010', p. 485.
[66] Sarkin, *Human Rights in African Prisons*, p. 21.
[67] F. Dikötter, 'The Prison in the World'. In Brown & Dikötter, *Cultures of Confinement*, p. 5.
[68] M. Foucault, *Discipline and Punish. The Birth of the Prison*, Pantheon, New York, 1977, trans. Alan Sheridan. Originally published in French as *Surveiller et Punir*, 1975.
[69] E. Durkheim, *The division of labour in society*, The Free Press of Glencoe, New York, 1960.

Philosophical Variations

Michel Foucault (1926-1984)

The Panopticon was brought to the attention of the wider public[70] in 1975 by the philosopher Michel Foucault as 'Panopticism' with his writings on *Discipline and Punishment.* To Foucault, the Panopticon presents the intellectual blueprint for a new modality of power and the theoretical emblem for a modern 'surveillance society'. He finds the Panoptic techniques of body management, categorization and regimentation reflected in the supervision mechanisms of modern social institutions such as schools, factories, and hospitals as witnessed by the widespread installation of closed-circuit television (CCTV). [71] [72]

Surely, surveillance and discipline are pivotal to the Panopticon's functioning and Foucault's ideas are useful guidelines for evaluating the effect of CCTV on crime reduction for instance.[73] But Foucault's account overreaches Bentham's.[74] As Foucault interprets the Panopticon writings for his intellectual purposes, he ultimately tends to neglect the complex, historically and culturally inflected aspects of Bentham's proposal.[75] As argued by Smith,[76] Foucault 'does not develop specific insights into how disciplinary ideas might be shaped, motivated, and tempered by cultural, political and economic forces'. In other words, Foucault's simplification of the Panopticon writings is not adequate for analysing actual prison conditions because the mode of punishment is influenced by a multiplicity of interrelated factors, not merely by instrumental reason.

Emile Durkheim (1858-1917)

Contra Foucault, the social philosopher Emile Durkheim insists that punishment is never fully rational, but is an emotional reaction. Durkheim sees criminal law and systems of punishment as some sort of 'speech act' of society talking to itself about its moral identity, rules and values.[77] Since crime enables society to express itself, it is functional. In particular, according to Durkheim, crime functions positively as it encourages social change and helps to sustain

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[70] Pivotal was also George Orwell's *1984*. Orwell's 'Panopticism' contradicts this article's argument presenting a dystopia antithetical to civil society. G. Orwell, *Nineteen Eighty-Four,* Penguin Books, London, 1949.

[71] Bauman refers to such control of society through electronic devices as 'postpanoptic'. Bauman, Z. (1991). *Modernity and Ambivalence.* Cambridge and Oxford: Polity Press. Z. Bauman, *Modernity and the Holocaust*, Cornell University Press, 2001.

[72] M. Foucault, [1977]2005. In Kaplan, *Readings in the Philosophy of Technology.* pp. 359-373.

[73] F. Dikötter, 'The Prison in the World'. In Brown & Dikötter, *Cultures of Confinement*, p. 9.

[74] Ibid.

[75] Smith, *Punishment and Culture*, p. 98.

[76] Ibid.

[77] Smith, *Punishment and Culture*, p. 17.

conformity and stability.[78] By encouraging social change, Durkheim means that crime can help introduce new ideas through which society develops. In terms of social cohesion, Durkheim refers to the way in which the sense of outrage produced by crime helps reinforcing values and beliefs in the majority of people.[79]

In line with utilitarian philosophy, punishment is thus rather a means to an end for society; in terms of the greatest happiness for the greatest number of people for Bentham, and an opportunity to progress for Durkheim. Understanding crime as functional in this sense however, makes reconciling Durkheim's and Bentham's philosophies difficult. As Durkheim describes crime as inherent to society, he argues that even if crime, as it might be known outside a convent, does not exist among the residents of the institution, still other forms of norm breaking and infractions will exist inside its walls. These will be elevated to a position similar to that of crimes more common outside the walls.[80] This clearly contradicts Bentham's intention to stop crime through appearances, example, and ultimately deterrence.[81] [82]

The philosophical variations on punishment and crime by Foucault and Durkheim, in addition to the elaboration on the criminal justice reality in developing countries, highlight the obstacles in operationalizing Bentham's Panopticon theory. Yet, contradictions from reality and philosophy itself to Bentham's Panopticon writings must not result in nihilism. In line with Bentham himself, who was less interested in distinguishing philosophy from reality, or between philosophies, than in exploring the effects of philosophies on reality,[83] the next section makes it clear how Bentham's Panopticon theory is in fact beneficial for the development of criminal justice systems when interpreted opportunistically.

4. The Panopticon Plan for Criminal *Justice* in Developing Countries

In embracing the core argument of this article - a dialogue between philosophy and penology facilitates the achievement of criminal *justice* for society as well as the individual offender - this section provides an opportunistic interpretation of Bentham's philosophy. It resumes the categories employed in section 3 and, by contrast, presents the most important opportunities of Bentham's theory for criminal *justice* in developing countries.

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[78] I. Marsh et al., *Theories of Crime*, Routledge, New York, 2006, p. 97.
[79] Ibid.
[80] W.T. Austin et al., *Criminological Thought. Pioneers Past and Present*, Macmillan Publishing Company, New York, 1990, p. 52.
[81] Bozovic, *Jeremy Bentham: The Panopticon Writings*, p. 7.
[82] Smith, *Punishment and Culture*, p. 100.
[83] Bozovic, *Jeremy Bentham: The Panopticon Writings*, p. 21.

4.1. Economy and Health

When engaging in an opportunistic interpretation of Bentham's *Panopticon* writings, it needs to be clear that his philosophy originates from an eighteenth century cultural cluster that attributed beneficial powers to laissez-faire capitalism.[84] And yet, Bentham was inspired by what Semple[85] calls a 'vision of great fortune'. To Bentham,[86] the Panopticon was economically efficient through contract management. It would allow fewer staff to be employed, thinner walls to be built, and better work rates to be accomplished. In the context of developing countries, a different form of punishment which costs less is appealing. This is because developing countries have little to gain by imprisoning large numbers of minor offenders: low levels of resources available for food and medical care increase the risk of disease and death, and prisoners themselves are unable to contribute maintaining their families.[87] Moreover, as section 3 made clear, economic progress advances sanitary and health conditions. Also Bentham underscores this. In his specification of sanitary facilities, he proposes for instance an earthen pipe for each cell, like a chimney pot, so that human excrement could disappear from view.[88]

Thus, in line with Bentham, an alternative model of punishment, which costs less than ordinary prisons and brings some benefit to a hard pressed community, is an attractive proposition for developing countries.[89] In this regard, the 'Zimbabwe Community Service Scheme', incentivized by a research study carried out in 1991 which concluded that 80 percent of the Zimbabwean prison population was serving sentences of six months or less, is a leading example.[90] Instead of being incarcerated, the offender works without payment in social institutions such as hospitals or schools. Evaluating the scheme by means of questionnaires showed that all the involved parties agreed on the scheme as an alternative to prisons because it reduced prison overcrowding, and was financially and socially rewarding.[91] Moves to introduce programs on the lines of the Zimbabwe scheme, thus exemplifying the value of Bentham's vision of an economically efficient system of punishment, are well advanced in Uganda, Malawi, Zambia, and Kenya, and under discussion in Burkina Faso, Congo-Brazzaville, the Central African Republic and Mali.[92]

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[84] Smith, *Punishment and Culture*, p. 101.
[85] Semple, *Bentham's prison*, p. 7.
[86] Bentham, [1789]1998. In M. Bozovic, *Jeremy Bentham: The Panopticon Writings*, pp. 45-48.
[87] V. Stern, 'Alternatives to prison in developing countries.' *Punishment and Society*, 1999, *1*(2), p. 238.
[88] *CB (WJB)*, p. 43.
[89] Ibid.
[90] Ibid., p. 232
[91] Ibid., p. 236
[92] Ibid., p. 238

4.2. Morality and Publicity

Bentham's aim is not only to have a maximally efficient institution but one which is at the same time morally justifiable. Inherent to his perception of morality, the most important imperative is the need to punish for maintaining social order and yet to remain humane; reflected by him speaking sensitively about the prisoner:

> 'Each cell is an island: - the inhabitants, shipwrecked mariners cast ashore it by the adverse blasts of fortune, indebted to each other for whatever share they are permitted to enjoy of society, the greatest of all comforts.'[93]

Thus, punishment for Bentham is more than a technique of control; it carries normative moral responsibilities. In order to fulfil these, 'laws of virtue' were to be maintained in the Panopticon.[94] Even though Bentham was non-religious, virtue means culturally required concessions to religion.[95] Sundays are reserved for religious and secular study in the Panopticon chapel, which Bentham describes as creative reward and relaxation.[96] Moreover, laws of virtue mean that women are to be housed in a separate part of the institution with female inspectors and yet more screens, blinds, and partitions serving the cause of modesty and protecting the virtue of the inmate herself.[97] Also the UN SMR states that women should be kept separate from men and guarded by other women (Rules 8(a) and (d)). In reality however, the conditions of detention for women do not adequately deal with 'women as women'.[98] Physical and psychological abuse of women is rather the norm than the exception. Findings from three prison surveys in Gauteng, South Africa, show that during 12 months of imprisonment, one in three women experiences physical violence, and 47 percent psychological abuse.[99] Since Bentham's moral principles are clearly opposed to the reality of imprisonment in developing countries, his utilitarian philosophy is a pertinent guideline towards the development goal of establishing humane prison conditions and eventually ensuring the enforcement of prisoners' human rights.

Simultaneously, the Panopticon design recognizes the conflicting role of the prison guards. Prison guards in developing countries are frequently criticized and targets of prison reform. Prison staff on low wages may find it hard to resist opportunities for corruption.[100] Yet, they obey secondary rules because they endow them with some sort of social status

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[93] *CB (WJB)*, p. 74.
[94] Ibid., p. 136.
[95] Smith, *Punishment and Culture*, p. 104.
[96] Bentham, [1789]1998. In M. Bozovic, *Jeremy Bentham: The Panopticon Writings*, pp. 97-100.
[97] *CB (WJB)*, p. 136.
[98] L. Vetten, 'The imprisonment of women in Africa'. In Sarkin, *Human Rights in African Prisons*, pp. 134-154.
[99] Ibid., p. 141.
[100] Stern, 'Alternatives to prison in developing countries', p. 238.

which may secure their living.[101] [102] In fact, they are often called down to irksome tasks, such as deporting prisoners, by superior jurisdiction, while their employment conditions do not differ much from the inmates', also being vulnerable to diseases for example.[103] In the Panopticon however, the guard's power over the prisoners derives from invisible omnipresence.

To overcome government secrecy, whether on inspectors or offenders, to Bentham, an open society needs to check on power.[104] The 'public eye' would ultimately prevent despotism and authoritarian control of information.[105] A study by the World Health Organisation (WHO) in 2004, shows that a check on power is crucial in reducing HIV transmission in prisons. This is because the prevention of HIV transmission is mostly hampered by governments denying the existence of injecting drug use and sexual intercourse rather than by a lack of evidence that key interventions work.[106] Far from being a closed institution, the Panopticon is to remain open to a witnessing civil society because, to Bentham, punishment needs to exercise a repulsive influence on the minds of bystanders, thus promoting publicity.[107] In line with Bentham's call for publicity, the UNAFEI study[108] reaches consensus that one of the major impediments to the improvement of prison conditions is the lack of disclosure of information to the public. The Zimbabwean community service scheme is again conducive. Since no money was available to create new public services, the scheme had to rely on resources and strengths already present in society. Therefore, informing the public and the actors involved and helping them understand the underlying principles of new policy directions is crucial for the scheme to function.[109]

In line with the organisation in Zimbabwe in a way that maximizes its inclusive qualities, the criminologist John Braithwaite[110] argues that restorative justice enables offenders as well as citizens through mediation to repair the social harm caused by crime. This is currently not the focus of developing countries' criminal justice apparatuses. Particularly, Braithwaite was the first to call for 'reintegrative shaming rituals' signifying wrongdoing and then welcoming the individual back into the community.[111] The result would

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[101] A. Jefferson, 'Prison officer training and practice in Nigeria'. *Punishment & Society*, 9(3), 2007, pp. 253-269.

[102] Smith, *Punishment and Culture*, p. 103.

[103] A. Coyle, 'A Human Rights Approach to Prison Management. A Handbook for Prison Staff', 2nd edition, International Center for Prison Studies, King's College and Foreign Commonwealth Office, London, 2009, p. 30.

[104] Smith, *Punishment and Culture*, p. 104.

[105] In Semple, *Bentham's prison*, p. 269.

[106] World Health Organisation, 'Evidence for action on HIV/AIDS and injecting drug use. Policy Brief: reduction of HIV Transmission in Prisons', 2004. Accessed at http://www.hivpolicy.org/Library/HPP000225.pdf on 9 January 2014.

[107] Smith, *Punishment and Culture*, p. 100.

[108] Tamani et al., 'Practical Measure to improve prison conditions', p. 407.

[109] Stern, 'Alternatives to prison in developing countries', p. 238.

[110] J. Braithwaite, *Crime Shame and Reintegration*, Cambridge University Press, Cambridge, 1989.

[111] Smith, *Punishment and Culture*, p. 190.

be greater net moral integration.[112] For this emphasis on solidarity and morality, Braithwaite would also be reluctant to move Foucault or Durkheim to center stage, but rather advance Bentham's utilitarian philosophy embodied in the Panopticon.

5. Conclusions

Bentham's Panopticon plan shows a desire to connect criminal justice to the community, a wish to eliminate pollutions, create economic efficiency, and make punishment meaningful. Even though Bentham never built his inspection house, he created an enduring symbol of utilitarian philosophy. This article has attempted to decode this symbol with regards to several case examples from Zimbabwe, South Africa, Thailand, and elsewhere; and has shown that Bentham's Panopticon embraces lessons of economic efficiency, health conditions, morality and publicity. While Bentham's account offers useful guidelines towards the end of criminal *justice* in developing countries, ongoing challenges to sustain these remain.

As developing countries' budgets will not increase overnight, policymakers must focus on reducing costs in prisons, such as use of electricity, so that the surplus budget can be invested for improving prison facilities. Mechanisms to generate profits inside the prisons should be established, too. One way is to encourage self-sufficiency in the production of food stuffs through growing fruits and vegetables on prison property.[113] To overcome the shortage of resources for rehabilitation programs, rehabilitation processes should be documented. This way, the budget for programs can be targeted and prioritized.[114] In order to improve the accuracy and quality of prison condition information available to the mass media, a designated public relations office should be given such responsibility.[115] Further, prison authorities must guarantee job satisfaction for its personnel. A dissatisfied staff member may not provide an effective and efficient service, eventually leading to a lack of recognition for inmates' rights.[116]

Admittedly, albeit Bentham's humanitarian intention, penitentiaries may not be the best advertisement for a utilitarian philosophy. Yet, as Pablo Picasso[117] puts it, '[e]very positive value has its price in negative terms... the genius of Einstein leads to Hiroshima'. In this sense, if policymakers fail to acknowledge that values do not determine society, but

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[112] Ibid.
[113] Tamani et al., 'Practical Measure to improve prison conditions', p. 409.
[114] Ibid., p. 410.
[115] Ibid.
[116] Ibid., p. 411.
[117] P. Picasso, [1881-1973]2006. In A. Razeghi, *Hope. How Triumphant Leaders Create the future,* Jossey Bass, San Francisco, 2006, p. 51.

society determines values, prisons will continue to reflect the politics of an unequal world hindering any serious reforms towards genuine criminal *justice* in developing countries.

The 2010 'Dhaka Declaration on Reducing Overcrowding in Prisons in South Asia' for instance, goes some way towards promoting utilitarianism by noting that '[a]s imprisonment is a sanction […] of last resort, it shall only be used when the seriousness of the offence would make any other sanction or measure clearly inadequate' (element 1). This is in line with Bentham's utilitarian principle which allows imprisonment 'if it ought at all to be admitted, […] only […] in as far as it promises to exclude some greater evil'.[118] Furthermore, imprisonment as the 'last resort' interestingly reminds one of what Bentham calls an 'island' where the prisoner is 'shipwrecked'. Now, this apparent 'utilitarian trend' must be pursued to do *justice* to society and the offender. This necessarily means that governments, non-governmental and inter-governmental organisations such as Human Rights Watch and the United Nations must collectively foster a more open and well informed discussion about the current state of criminal justice systems in developing countries.

No doubt there are discrepancies between the declared goals of a practice and its operations, no doubt there are always latent objectives which officials are reluctant to publicise, no doubt philosophy works in ways that facts cannot because it simplifies as it explains. But any adequate analysis of penal practice will need to understand the normative rationales carried in philosophy, and any serious critique will have to articulate and defend normative arguments of its own.

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[118] *IPML*, p. 170.