Romantic Outlaws, Beloved Prisons

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Notes

NOTES TO THE INTRODUCTION


NOTES TO CHAPTER I

2. Ibid., 562.
4. Ibid., 72-73.
7. Ibid., 147. For the rock as a symbol of the eternal, see M. L. von Franz, “The Process of Individuation,” in Man and His Symbols, ed. Carl Jung (Garden City, N.Y.: Doubleday, 1964), 209 (“man's innermost center is in a strange and special way akin to it. . . . In this sense the stone symbolizes what is perhaps the simplest and deepest experience—the experience of something eternal”).

10. Ibid., 339–40.

11. Ibid., 181 (emphasis in original).


13. Ibid., 2:87.


15. Ibid. For a discussion of the happy prison theme in Stendhal and other nineteenth-century French writers, see Victor Brombert, *The Romantic Prison: The French Tradition* (Princeton, N.J.: Princeton University Press, 1978), 62–87. In this fascinating book, Brombert explores a number of themes, focusing on the relationship between physical confinement and artistic freedom. In the concluding pages, however, he suggests that the Holocaust and the Soviet penal camps have changed the way we imagine prison, relegating the nineteenth-century motif to the “status of a reactionary anachronism.” He observes that the Romantics’ “dream of a happy prison has become hard to entertain in a world of penal colonies and extermination camps, in a world which makes us fear that somehow even our suffering can no longer be our refuge.”

Like Brombert, linguist Joseph Shipley assumes that the paradoxical image of prison as a refuge and a place of freedom has become difficult to maintain in the context of contemporary prison conditions. In discussing *kagh*, the Indo-European root of the word *jail*, Shipley quotes Richard Lovelace’s famous poem “To Althea, from prison” (1642), which reads as follows:

> Stone walls do not a prison make,  
> Nor iron bars a cage;  
> Minds innocent and quiet take  
> That for an hermitage,  
> If I have freedom in my love  
> And in my soul am free,  
> Angels alone, that soar above,  
> Enjoy such liberty.

Shipley comments: “There is little room for such feelings in the overcrowded prisons of today.” Joseph Shipley, *The Origins of English Words: A Discursive Dictionary of Indo-European Roots* (Baltimore: Johns Hopkins University Press, 1984), 153. By contrast, the present study demonstrates that the psychological sources of the attraction to prison are deeper than either Brombert or Shipley perceived, and that, in consequence, the theme of the happy prison has withstood the realities of the twentieth century’s particularly nightmarish forms of incarceration.
Notes to Chapter 1


17. Ibid., 199.


20. Ibid.


The situation I got myself into [in prison] was just perfect for me. For a long time prior to getting busted, I lived a very hectic life. Running around like crazy trying to make a lot of money and do a lot of things. . . . What I needed and what I always was aware of needing was some literary enrichment.

. . . After coming to Auburn, I started right from the beginning and went through the Myths, the Greek Classics and everything else from Cervantes to Dostoevsky, Tolstoi, and Balzac.


27. Ibid., 303.


29. Ibid., 372 (emphasis added).

Notes to Chapter 1


37. Immediately following the passage I have quoted, Dostoevsky writes: “It may be that his life before was miserable, that he never ate his fill and was compelled to work for his master from morn till night, while the work in the convict prison is easier, there’s enough bread, and better bread than he ever hoped to eat, let alone meat on holidays.” Ibid.

38. Wallach, *Light at Midnight*, 207. In our own society, the Depression-era movie *Modern Times* depicts Charlie Chaplin preferring life in jail to the difficulties of keeping a job outside. One inter-title describes Chaplin as “[h]appy in his comfortable cell.” When the sheriff tells him, “Well, you’re a free man,” Chaplin objects, “Can’t I stay a little longer? I’m so happy here.” After his release, Chaplin is characterized as “[d]etermined to go back to jail.” In an effort to get arrested he buys more food than he can pay for. The police do arrest him; however, Chaplin’s new acquaintance, Paulette, pushes him out of the van and back to the hardships of life outside prison. *Modern Times*, prod. Charles Chaplin, United Artists, 1936.


42. Ibid., 257.
43. See Edith Jacobson, "Observations on the Psychological Effect of Imprisonment on Female Political Prisoners," *Searchlights on Delinquency*, ed. Kurt Eisler (New York: International Universities Press, 1949), 341. Dr. Jacobson made all of her observations between 1935 and 1938 during her confinement in a Nazi State Penitentiary. By contrast with the concentration camps, the City and State Prisons at that time were not under the control of the Gestapo. Ibid., 342.
44. Ibid., 359, 363.
45. Ibid., 359.
46. Ibid., 359–60.
47. See ibid.
48. Ibid., 365.
50. Ibid., 238–39.
53. See ibid., 369.
55. Ibid., 137 (emphasis added).
56. Ibid., 132.
57. Ibid., 135.
58. Consider, for example, the following description of a love affair he has in prison: "But the beauty part is the shared laughter, I've never known that in a relationship before, it's novel and precious to me." Ibid., 195. See also ibid., 197.
60. Ibid.

**NOTES TO CHAPTER 2**

2. Ibid., 51.
4. Ibid., 100 (emphasis added).
5. Ibid., 89.
6. Ibid., 92.
8. Ibid., 7.
10. Ibid., 16.
11. Ibid., 372 (emphasis added).
12. Ibid., 369.
13. Ibid., 346.
15. Tamsin Fitzgerald, *Tamsin* (New York: Dial Press, 1973), 112 (emphasis added). Margaret Drabble expresses the same idea in her fictional work, *The Ice Age* (New York: Knopf, 1977). The protagonist, Anthony Keating, searches for a place where he will be protected from choice, eventually finding it in prison. See, e.g., ibid., 225 (“Yet again, he was going to have to decide what to do with his life. It was too exhausting. It was too much of an effort.... He wished profoundly that he was where Len Wincobank was [in prison], out of harm's way”).
Notes to Chapter 3


23. For the seminal discussion of the concept of the total institution, see Erving Goffman, *Asylums* (Garden City, N.Y.: Anchor Books, 1961). Goffman defines a total institution as "a place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life." Ibid., xiii.


26. See ibid.

27. See Norman O. Brown, *Life against Death: The Psychoanalytical Meaning of History* (Middletown, Conn.: Wesleyan University Press, 1959), 284. Cf. Erich Fromm, *Escape from Freedom* (New York: H. Holt, 1941), passim. Fromm maintains that over the course of history people have been liberated from prejudices and limitations. Such liberations, however, have exacted a high price: loneliness and anxiety owing to the loss of a sense of belonging. These feelings, in turn, may give rise to the longing for a Fuehrer and sadomasochistic submission.

NOTES TO CHAPTER 3


2. Literally, "chthonic" means "in or under the earth," "dwelling or reigning in the underworld," or "relating to infernal deities or spirits." *Webster’s Third New International Dictionary* (1981) (unabridged), s.v. "chthonic."


6. Ibid., 211.

12. Ibid., 162.
13. Ibid., 199.
16. Telephone interview with Professor James Jacobs, author of *Stateville* and Director, Center for Research in Crime and Justice, NYU Law School (23 June 1987).
18. Ibid., 201–2 (emphasis added).
20. Eleanor Blau, “Poet Rebuilds Life in U.S. after Soviet Prison Term,” *New York Times*, 24 March 1987, sec. C, p. 13. Compare Chekhov’s exulting words after his 1890 sojourn on the island of Sakhalin, which the Russian government had selected as the place of exile for its most dangerous criminals: “I am so filled with joy and satisfaction that it would not bother me in the least if I succumbed to paralysis or departed this world by way of dysentery. I can say: *I have lived!* I *have had everything I want!* I have been in Hell, which is Sakhalin, and in Paradise, which is the island of Ceylon!” Letter to Leontiev-Schieflov, quoted in Robert Payne, introduction to *The Island: A Journey to Sakhalin*, by Anton Chekhov (New York: Washington Square Press, 1967), xxxiv. Before undertaking this journey, Chekhov had been suffering from a severe depression over the death of his brother Nikolay. Ibid., xii–xiii.
23. See, e.g., Romans 5:3–5 (“tribulation worketh patience; and patience, experience; and experience, hope: And hope maketh not ashamed; because the love of God is shed abroad in our hearts by the Holy Ghost which is given unto us”).


NOTES TO CHAPTER 4


16. See ibid.

NOTES TO CHAPTER 5

1. Cf. Dickens, *Little Dorrit*, 22 (“But I bear those monotonous walls no ill-will now,” said Mr. Meagles. ‘One always begins to forgive a place as soon as it’s left behind; I dare say a prisoner begins to relent towards his prison, after he is let
out’ ”). See also Tolstoy, War and Peace, 1123 (“All Pierre’s daydreams now turned on the time when he would be free. Yet subsequently, and for the rest of his life, he thought and spoke with enthusiasm of that month of captivity”).

2. Braly, False Starts, 211.

3. Ibid., 213, 364.


5. Flynn, Tales for My Brothers’ Keepers, 20.


7. It may be objected that political prisoners and common criminals are very different, the former breaking the law out of idealistic conviction, the latter out of necessity, passion, or antisocial personality disorder. I have ignored this distinction in this study for a simple reason; namely, that I did not find a difference between the political prisoners and the common criminals with respect to their affirmative images of prison. Indeed, one of the surprising findings of this study is precisely the similarity of themes in the two groups. For each of the positive carceral images delineated in Part One, we find examples from both types of prisoner.

8. Kenneth Lamott, review of False Starts, by Malcolm Braly, New York Times Book Review, 29 February 1976, 7. Consider also the observation of Joan Shapiro, M.D., a forensic psychiatrist who treated prisoners at Canon City Prison, Colorado. She was astonished to find that the prisoners felt cared for in prison. (Personal communication, 10 May 1987).

9. See Alexander and Healy, Roots of Crime, 54 (“Analyst: ‘It is rather interesting that deep down the jail has some attraction for you, although consciously you don’t like it at all, but this infantile longing for the mother is somehow satisfied in the prison, inasmuch as you don’t have to care for yourself’ ”). See also ibid., 52, 67–68.

10. The findings of the late British psychoanalyst D. W. Winnicott are consistent with this thesis. Based on his clinical work with delinquents, Winnicott maintains that the antisocial tendency, with stealing at its core, reflects a hopeful search for “that amount of environmental stability that will stand the strain resulting from impulsive behavior.” D. Winnicott, Deprivation and Delinquency (London: Tavistock Publications, 1984), 125. For an example of a murderer with some degree of attraction to imprisonment, see Ann Oberkirch, “Psychotherapy of a Murderer: Excerpts,” American Journal of Psychotherapy 39 (1985): 505.
NOTES TO CHAPTER 6

1. Some scholars would include restraint, or incapacitation, among the traditional rationales of punishment. This theory states that we are justified in punishing offenders by isolating them from society to prevent their committing further crimes while they are being punished. I omit discussion of restraint theory from the text because the argument of this study has little application to it. The positive meanings of incarceration cannot alter the fact that someone physically constrained will be unable to commit new crimes against society while he is confined.


   These heavy walls to me had grown
   A hermitage—and all my own!
   and half I felt as they were come
   To tear me from a second home: . . .
   My very chains and I grew friends,
   So much a long communion tends
   To make us what we are;—even I
   Regain’d my freedom with a sigh.

5. See Braly, *False Starts*, 32.


Notes to Chapter 6

8. My research has turned up only one legal article on this subject. See Bruce Perry, "Escape from Freedom, Criminal Style: The Hidden Advantages of Being in Jail," *Journal of Psychiatry and Law* 12 (1984): 215-30 (examining the writings of Jack Abbott and Malcolm X and concluding that these two men preferred life in prison). Another article mentions in passing that punishment may induce criminal behavior, however, it does not discuss the appeal of incarceration in particular. See C. G. Schoenfeld, "Law and Unconscious Motivation," *Howard Law Journal* 8 (1962): 15 ("What is startling, however, is the realization that by punishing criminals beset by strong unconscious guilt feelings, the law may actually encourage—rather than discourage—the commission of crimes").

By contrast, many lawyers have written of the sometime attraction of capital punishment. For a partial summary of this research, see Daniel Glaser, "Capital Punishment—Deterrent or Stimulus to Murder? Our Unexamined Deaths and Penalties," *University of Toledo Law Review* 10 (1979): 325-27.

Without focusing on any particular form of punishment, a few psychoanalytic works broach the subject of punishment as an incentive to criminality. See, e.g., Sigmund Freud, "Some Character Types Met With in Psycho-Analytic Work," in *The Standard Edition of the Complete Psychological Works of Sigmund Freud* (London: The Hogarth Press and the Institute of Psycho-analysis), 14:332-33 (discussing "criminals from a sense of guilt"), and Freud, "Dostoevsky and Parricide," in ibid., 21:186-87 ("It is a fact that large groups of criminals want to be punished. Their superego demands it and so saves itself the necessity for inflicting the punishment itself").


13. See Oppenheimer, *The Rationale of Punishment*, 247 ("If we wish to remain on solid ground we shall have to avow that punishment means the infliction of evil upon the offender, and that it ceases to be punishment when it ceases to be an evil").


16. Ibid.

17. See, e.g., Francis A. Allen, “The Decline of the Rehabilitative Ideal in American Criminal Justice,” *Cleveland State Law Review* 27 (1978): 148 (“When I speak of the rehabilitative ideal I refer to the notion that the sanctions of the criminal law should or must be employed to achieve fundamental changes in the character, personalities, and attitudes of connected offenders, not only in the interest of the social defense, but also in the interest of the well-being of the offender himself”).


24. Ibid.


27. See, e.g., Hirsch, “From Pillory to Penitentiary,” 1256.

28. See, e.g., Oppenheimer, *Rationale of Punishment*, 242 (“The curative view of punishment according to which its infliction serves to dry up the spring of evil in the soul of the offender, either for the ultimate good of society or for the benefit of the criminal alone”) (emphasis added).

**NOTE TO THE EPILOGUE TO PART ONE**

NOTES TO THE PROLOGUE TO PART TWO


3. Eric Hobsbawm, Bandits (New York: Delacorte Press, 1969), 13. Based on the lives or legends of such outlaws as Robin Hood (England), Diego Corrientes (Spain), Janosik (Poland and Slovakia), Mandrin (France), and Stenka Razin (Russia), Hobsbawm delineated nine characteristic features of the social bandit:

First, the noble robber begins his career of outlawry not by crime, but as the victim of injustice, or through being persecuted by the authorities for some act which they, but not the custom of his people, consider criminal.

Second, he "rights wrongs."

Third, he "takes from the rich to give to the poor."

Fourth, he "never kills but in self-defense or just revenge."

Fifth, if he survives, he returns to his people as an honourable citizen and member of the community. Indeed, he never actually leaves the community.

Sixth, he is admired, helped and supported by his people.

Seventh, he dies invariably and only through treason, since no decent member of the community would help the authorities against him.

Eighth, he is—at least in theory—invisible and invulnerable.
Ninth, he is not the enemy of the king or emperor, who is the fountain of justice, but only of the local gentry, clergy or other oppressors.

Ibid., 35–36.


7. Ibid., 196. For scholarly attempts to explain the love of the criminal in the United States in particular, see Robert K. Merton, “Social Structure and Anomie,” in *Social Theory and Social Structure* (New York: Free Press, 1968), 195–96 (suggesting that Americans’ admiration for white-collar criminals flows from a “cultural structure in which the sacrosanct goal virtually consecrates the means”); Alexander and Healy, *Roots of Crime*, 282–83 (implying that the “heroic exhibitionistic evaluation of criminal deeds in America” has its roots in the American individualistic ethos, coupled with the absence of opportunities to express one’s individuality); Richard White, “Outlaw Gangs of the Middle Border: American Social Bandits,” *The Western Historical Quarterly* 12 (1981): 387, 397, 402–406 (arguing that in postwar Missouri and Oklahoma in the 1890s bandits were admired because they embodied masculine virtues in a context where belief in public law enforcement had been eroded).

For an imprisoned criminal’s attempt to account for what he calls the “cult of the rogue” among the American public, see Emmett Dalton, *When the Daltons Rode* (Garden City, N.Y.: Doubleday, Doran, 1931), 276–77 (suggesting that the criminal represents the common person’s fight against authority, wealth, and pretension).


NOTES TO CHAPTER 7


2. Ibid., 201 (emphasis added).


8. My interpretation here is consistent with the analysis of vicarious punishment in J. C. Flugel's psychoanalytic work, Man, Morals and Society (New York: International Universities Press, 1985), 164–74. As Johnson points out, the parents' denunciation of their children may also be an expression of hostile impulses toward the children. See Johnson, “Sanctions for Superego Lacunae,” 228.


13. Ibid., 135–36.


17. Ibid., xv-xvi.

18. See W. Hogarth, A Harlot's Progress, plate 3 (1732).


21. Ibid., 336.

Notes to Chapter 8


2. See Bruno Bettelheim, The Uses of Enchantment: The Meaning and Importance of Fairy Tales (New York: Vintage Books, 1989), 69 (“So the typical fairy-tale splitting of the mother into a good [usually dead] mother and an evil stepmother serves the child well. It is not only a means of preserving an internal all-good
mother when the real mother is not all-good, but it also permits anger at this bad 'stepmother' without endangering the goodwill of the true mother, who is viewed as a different person").


4. Ibid., 132.

5. Ibid.


7. Ibid., 75.

8. Ibid., 67.

9. Ibid., 75.


11. Ibid., 116. The film version, even more than the book, highlights the noncriminals' delight in supposing that Tom has illegally escaped from prison. See *The Grapes of Wrath*, prod. Darryl F. Zanuck, Twentieth Century-Fox Film Corp., 1940.


15. Ibid., 134.

16. Ibid., 181–82.

17. Ibid., 190–91.

18. Ibid., 191.

19. Ibid., 482.


30. Ibid.


35. Ibid. (emphasis added).


37. Psychoanalysts employ the term *resistance* to describe patients’ opposition to becoming aware of their unconscious mental processes. I have refrained from employing this word here, because its use is typically confined to the analytic situation. For a general psychoanalytic discussion of the difficulties of knowing oneself, see Philip Rieff, *Freud: The Mind of the Moralist* (Garden City, N.Y.: Doubleday, 1961), 71–112.

Psychoanalysis is not, of course, alone in emphasizing how painful it is for human beings to confront the truth about themselves. Consider, for example, the New Testament expression of this idea in *Luke* 6:41: “And why beholdest thou the
mote that is in thy brother's eye, but perceivest not the beam that is in thine own eye?"

38. For example, it was Carmen's freedom from moral and legal scruples that attracted soprano Jessye Norman to her. Asked why she had departed from her usual repertoire to sing Carmen, Ms. Norman replied, "I enjoy having this character who will do whatever is necessary to get what she wants." Jessye Norman Sings "Carmen" (WPBA television broadcast, 20 November 1989).


40. For an explanation of the connection between the anal zone and the struggle over autonomy, see Erik Erikson, Childhood and Society (New York: W. W. Norton, 1963), 81-82. See also Ruth Munroe, Schools of Psychoanalytic Thought: An Exposition, Critique and Attempt at Integration (New York: Holt, Rinehart and Winston, 1955), 197 (discussing children whose "inner determination tends to develop in opposition to the outside world").


42. Schiller, The Robbers, in Works, act 1, sc. 2.


44. Merimee, Colomba and Carmen, 53 (emphasis added).


46. Quoted in Hibbert, Highwaymen, 115.


48. Ibid., 184.

49. Quoted in Hibbert, Highwaymen, 120.


51. Hibbert, Highwaymen, 116, 117.
Notes to Chapter 8

52. The example from the *Daily Chronicle* and the one from *Vogue* are both taken from the *Oxford English Dictionary*, vol. 7, 233.


56. Ibid., 76, 77.

57. Ibid., 90.

58. Ibid., 109.

59. Ibid., 260.


68. Ibid., 3.3.64-67.

69. Ibid.


Notes to Chapter 8

73. Ibid.
75. Ibid., 339.
77. Ibid., 391-92.
79. Ibid., 184.
82. Ibid.
83. Ibid.
84. Ibid., 463.
86. Ibid., 95.
88. Ibid., 72.
89. Ibid.
90. Ibid.
91. In British slang, nark means stool pigeon.
94. Schiller, The Robbers, in Works, act 1, sc. 2.
95. Ibid.
96. Ibid.
97. Arthur Conan Doyle, "The Adventure of the Final Problem," in The
Notes to Chapter 8


98. Ibid.
99. Ibid.
100. Ibid., 326.

102. Ibid.


105. See ibid., 382.

106. For an analysis of Porfiry’s relationship with Raskolnikov that highlights Porfiry’s fascination with the criminal and willingness to acknowledge his similarity to him, see Richard Weisberg, “Comparative Law in Comparative Literature: The Figure of the ‘Examining Magistrate’ in Dostoevski and Camus,” Rutgers Law Review 29 (1976): 244-48.


108. See ibid., 78.

109. See ibid.


112. Rothstein, Narcissistic Pursuit of Perfection, 45.


114. Merimee, Colomba and Carmen, 7 (emphasis added).

115. Stevenson, Kidnapped, 66.


117. Similarly, in the Hitchcock film To Catch a Thief, Francine Simpson plainly wants to believe that John Robie has reverted to his former profession of jewelry thief. In her eyes, she implies, he would cut a more glamorous figure as an
active criminal than as a reformed one. To Catch a Thief, prod. Alfred Hitchcock, Paramount Pictures Corporation, 1954.

118. Fitzgerald, The Great Gatsby, 60, 49.


120. Ibid., 15 (emphasis added).

121. Ibid., 18.

122. See, e.g., ibid., 11, 197; cf. 187–88.

123. Ibid., 43, 51, 63, 74.

124. Ibid., 76.


126. See ibid., 279.

127. Lev Tolstoi, Resurrection (Moscow: Foreign Language Publishing House, 1899). For another example of the criminal-as-stranger theme, consider Albert Camus’s novel The Stranger (New York: Vintage Books, 1954), in which the protagonist, Meursault, unlawfully kills an Arab. Following the crime, Meursault is tried and convicted on legal irrelevancies—aspects of his character that make Meursault seem a stranger or foreigner in his society (for instance, that he did not cry at his mother’s funeral and that he does not believe in God). For an analysis of Meursault’s estrangement that focuses on his inability to use words, see Richard Weisberg, The Failure of the Word (New Haven, Conn.: Yale University Press, 1984), 115–23.

No character in the novel seems to embody an overt admiration for Meursault; however, his creator, Camus, exhibits a sympathy and regard for him. Camus chooses to write the novel in the first person, thereby allowing the reader to enter the criminal’s mind. Moreover, as I have already indicated, he portrays Meursault as a victim of injustice. Richard Posner interprets Camus’ portrait of Meursault as an admiring one, for he protests that The Stranger has “little . . . to do with law” and “much . . . to do with a form of neoromanticism in which criminals are made heroes.” Richard Posner, Law and Literature (Cambridge, Mass.: Harvard University Press, 1988), 90.

NOTES TO CHAPTER 9

Notes to Chapter 9

Press, 1985), xvi. In practice, women were allowed to work as prostitutes provided they registered with the police and abided by the regulations affecting them. Ibid. If arrested for a violation of the rules, they could be imprisoned without trial on the curious theory that by registering with the police they had put themselves "outside the law." Ibid., 6–7.

3. Ibid., 238.
4. Ibid., 244–45.
5. Ibid., 246.

7. Ibid., 23.
8. Ibid., 24.
9. Ibid., 42–43.
10. Ibid., 307.
11. Ibid.
12. Ibid., 308.
13. Ibid., 322.

15. See Munroe, Schools of Psychoanalytic Thought, 261 ("The power of the repressed impulses is seen in the exaggeration of the opposite tendencies. Excessive tendencies in one direction—the 'virtues to a fault' of common parlance—typically (i.e., not always but very often) represent a buttressing of the repression of unacceptable, impulses of contrary nature"). For general discussions of reaction-formation, see ibid., 251–54, and Fenichel, Psychoanalytic Theory of Neurosis, 151–53.

16. Dickens, Great Expectations, 322.
17. Ibid., 253.


19. For an interesting analysis of Pip's criminal guilt that is different from, yet compatible with, my interpretation, see Julian Moynahan, "The Hero's Guilt: The Case of Great Expectations," Essays in Criticism 10 (January 1960): 60–79 (arguing that Pip is associated with violent aggressiveness through his surrogates, the sadistic Orlick and Drummle).
Notes to Chapter 9


21. Ibid., 38.

22. Ibid., 39.


27. Ibid., 506.

28. Ibid., 507.

29. Ibid., 413.

30. Ibid., 414.


32. Ibid., act 2, lines 30–33.

33. Ibid., act 3, lines 414–18.

34. Ibid., act 3, lines 424–25.

35. Ibid., act 3, line 434.

36. Ibid., act 3, lines 544–46.

37. Ibid., act 3, lines 624–25.

38. *Webster’s New International Dictionary of the English Language*, 2d ed., unabridged, s.v. “gallows.” The first meaning is now obsolete; the second is slang.


42. Ibid., 1107.

43. Ibid., 1107–8.

NOTES TO THE CONCLUSION TO PART TWO


2. Ruth Eissler suggests that society, needing criminals as scapegoats, ensures the criminals’ existence in two ways: (1) by seducing individuals into lives of crime, and (2) by interfering with measures to prevent delinquency. See ibid., 295.


NOTES TO THE PROLOGUE TO PART THREE

(referring to the "supreme importance of metaphor both in poetry and prose"); Owen Barfield, "Poetic Diction and Legal Fiction," in _The Rediscovery of Meaning and Other Essays_ (Middletown, Conn.: Wesleyan University Press, 1977), 45 ("But figurative expression is found everywhere; its roots descend very deep ... into the nature ... of language itself"); C. S. Lewis, "Bluspels and Flalansferes: A Semantic Nightmare," in _Rehabilitations_ (Freeport, N.Y.: Books for Libraries Press, 1972), 135–58 passim (arguing that metaphors are necessary for meaning, which is the precondition of truth or falsehood); John M. Murry, "Metaphor," in _Countries of the Mind_ (London: Oxford University Press, 1931), 1 ("Metaphor is as ultimate as speech itself, and speech as ultimate as thought").

2. See, e.g., Barfield, "Poetic Diction and Legal Fiction," 63. More specifically, Judge Cardozo warned, "Metaphors in law are to be narrowly watched, for starting as devices to liberate thought, they end often by enslaving it." _Berkey v. Third Ave. Ry. Co._, 155 N.E. 58, 61 (N.Y. 1926).

3. I have uncovered only one legal article that touches on the metaphor of filth in criminal justice. See Peter Linebaugh, "(Marxist) Social History and (Conservative) Legal History: A Reply to Professor Langbein," _New York University Law Review_ 60 (1985): 212. In a section of his article entitled "Garbage," Linebaugh addresses Professor John Langbein's claim that in eighteenth-century England, "the criminal justice system occupies a place not much more central than the garbage collection system." Ibid., 238. Linebaugh responds that the comparison between garbage collection and criminal justice is indeed apt, for prisons and courts were located near the ditch that carried sewage through London to the Thames River. Moreover, crime prevention, like garbage collection, was a basic function of government. In contrast to Langbein's belittling intent, Linebaugh argues that the metaphor actually highlights the importance of criminal justice in eighteenth-century England. At that time and place, when sewage was nearly omnipresent, the disposal of filth was hardly a trivial concern. Ibid., 238–42.


The particular metaphor comparing filth to evil has been addressed in some works of literary criticism. See, e.g., Victor Brombert, _Victor Hugo and the Visionary Novel_ (Cambridge, Mass.: Harvard University Press, 1984), 112–35 passim (dis-

4. According to the latest figures from the United States Department of Justice, 1.2 million persons were held in local jails or in state or federal prisons in 1991. See U.S. Department of Justice, Correctional Populations in the United States, 1991 (Washington, D.C.: U.S. Department of Justice, 1993), 1.11.


6. Thus, Judge Richard Posner cites our “exceptionally severe criminal punishments (many for intrinsically minor, esoteric, or archaic offenses)” as one of the factors making the United States “one of the most penal of the civilized nations . . . a disturbing state of affairs.” Review of Hitler’s Justice: The Courts of the Third Reich, by Ingo Muller, The New Republic 204 (1991): 42. On a more specific level, Judge Harold Greene recently declared the Federal Sentencing Guidelines unconstitutional as applied to a defendant in a drug case. The defendant had been convicted of possessing about one-fourth of an ounce of heroin and cocaine—an offense requiring thirty-years’ imprisonment, according to the Guidelines. Sentencing the defendant to ten years in prison, Judge Greene observed that the mandated sentence was “grossly out of proportion to the seriousness” of the crime. He added, “We cannot allow justice and rationality to become casualties of a war on drugs being waged with Draconian, politically expedient sentences.” Michael York, “Judge Rejects Federal Sentencing Guidelines; Mandatory 30-Year Imprisonment for Repeat Drug Offender Called Unconstitutional,” Washington Post, 30 April 1993, sec. D, p. 5.

7. For the idea of feces as an artistic creation, consider the following incident:
"[A] three-year-old boy . . . came into the parental bedroom carrying a chamber pot containing three turds: one large, one middle-sized, and one small . . . ; the boy exclaimed with great joy, ‘Look, I’ve made a daddy, a mommy, and a me!’" Leonard Shengold, *Halo in the Sky: Observations on Anality and Defense* (New York: Guilford Press, 1988), 46. See also ibid., 47 (quoting a letter in which Gustave Flaubert jubilantly looks forward to his future creative writing with the words, “[T]hen the shitting: and the shit had better be good!”).

For the notion of excrement as a gift, see Freud, "On Transformations of Instincts Exemplified in Anal Erotism," in *The Standard Edition*, 17 (1955): 130 (describing feces as “the infant’s first gift, a part of his body which he will give up only on persuasion by someone he loves”).

As this quotation implies, excrement can also signify wealth. To a child, feces are “a very precious substance.” Fenichel, *The Psychoanalytic Theory of Neurosis*, 281. Indeed, feces may be considered the prototypical possession, being “actually outside [the body] but symbolically inside.” Ibid. Cf. N. Brown, *Life against Death*, 293 (“Possessions are worthless to the body unless animated by the fantasy that they are excrement”).

**Notes to Chapter 10**


6. Ibid.


11. Ibid., act 3, sc. 2.
15. Ibid.
16. Ibid., act 4, sc. 1.
17. Ibid., act 3, sc. 5.
18. Ibid., act 4, sc. 1.
19. Ibid.
21. Ibid., 2.
25. Ibid.
26. Ibid.
27. Ibid.
28. Ibid.
29. Ibid., 5.
31. Ibid., 393. Likewise, the distinguished anthropologist Mary Douglas believes that realistic concerns cannot explain our attitudes toward dirt. She writes: "Nor do our ideas about disease account for the range of our behaviour in cleaning or avoiding dirt. In chasing dirt,... we are positively reordering our environment, making it conform to an idea." Mary Douglas, *Purity and Danger* (London: Frederick A. Praeger, 1966), 2.
Journal 103 (1993): 323 (discussing gypsies' view that bodily products emanating from the top half of the body are clean; only products emerging from the lower half of the body are considered polluting).


35. Ibid.


38. Ibid., 175.


41. Ibid., 535.

42. See, e.g., ibid., 575, 585.

43. Ibid., 617.


47. Ibid.

48. Ibid.


52. Ibid., 8.


59. Ibid., 14.


61. Ibid.


64. *Ephesians* 5:2 (King James); *Ephesians* 5:2 (Revised Standard Version).


66. Ibid., 783 n. 2.

67. Ibid., 225.

68. Ibid., 98. For an analysis of the theme of filth in *The Brothers Karamazov*, see Gary S. Morson, “Verbal Pollution in *The Brothers Karamazov*,” in *Critical Essays*, passim.


70. Ibid., 132, 407.


72. For a discussion of children’s attraction to anal things, see Ruth Munroe, *Schools of Psychoanalytic Thought*, 194–96.


75. Munroe, *Schools of Psychoanalytic Thought*, 252.


77. For discussions of cleanliness and orderliness as components of the obsessive character, see Karl Abraham, “Contributions to the Theory of the Anal


86. Ibid., act 5, sc. 1.


88. Munroe, *Schools of Psychoanalytic Thought*, 257.


90. See Kubie, “The Fantasy of Dirt,” 416 (“That which is dirty will make one sick, and sickness and dirt become synonymous”).


93. Dickens, *Great Expectations*, 204.

94. Ibid., 200.

Notes to Chapter 10


98. See *Genesis* 4:16.

99. See *Matthew* 25:32–33; *The Interpreter's Bible* 7:563.


103. Ibid. In primitive societies, persons to whom taboos apply are sometimes considered polluted, at other times, sacred. Ibid.; Mary Douglas, “Taboo,” *New Society* 3 (1964): 24. So also criminals are considered unclean, and they, too, are sometimes viewed as holy. Thus, in Greek mythology, Prometheus stole fire from the gods and became, by the same act, the savior of mankind. Likewise, according to Christian theology, Christ was convicted of crimes under Roman law; in the act of being punished, he redeemed the sins of humanity. Even the ordinary criminal was, in Dostoevsky’s view, “almost a Redeemer, who ... had taken on himself the guilt which must else have been borne by others.” Sigmund Freud, “Dostoevsky and Parricide,” in *The Standard Edition*, 21:190. See also Philip Rieff, *Freud: The Mind of the Moralist* (Garden City, N.Y.: Doubleday, 1961), 303–5 (discussing the “ethical criminal”).


108. Ibid., book 1, lines 71–74.


Notes to Chapter II

1. See Robert Hughes, *The Fatal Shore* (New York: Alfred A. Knopf, 1987), 611 n. 2. I am indebted to *The Fatal Shore* for awakening my interest in Australian history. This beautifully crafted book, while not explicitly psychoanalytic, provides the kind of material that the psychoanalytically oriented interpreter requires.


3. Ibid.

4. Ibid.


6. See ibid., 40–42.


8. See ibid., 76, 81–82.


10. Alan Frost, *Convicts and Empire* (Melbourne and New York: Oxford University Press, 1980), 182. In significant language, Frost also observes, “The rag and bone shop of Australia’s beginning was perhaps not so foul as we have for so long supposed.” Ibid., 135.


15. Ibid., 57.


17. Ibid., 57.


24. Mundy, Our Antipodes, 3:112.
26. The Times, 18 December 1846, quoted in Morrell, British Colonial Policy, 396 (emphasis added).
31. Hughes, Fatal Shore, 556.
33. Morrell, British Colonial Policy, 393 (quoting Latrobe’s report to Grey, 31 May 1847).
34. Lansbury, Arcady in Australia, 164 (emphasis added).
35. See Mundy, Our Antipodes, 1:105; Sturma, Vice in a Vicious Society, 20.
36. Mundy, Our Antipodes, 3:112.
39. Quarterly Review 27 (1818), quoted in Shaw, Convicts and the Colonies, 143.
41. This follows from the principle of psychic determinism: "In the mind, as in physical nature about us, nothing happens by chance." Brenner, An Elementary Textbook of Psychoanalysis, 2. Much of traditional literary criticism presupposes that the author's choice of metaphors provides insight into the author's mind. For a rare explicit acknowledgment of this assumption, see Spurgeon, Shakespeare's Imagery, 4: "In the case of a poet, I suggest it is chiefly through his images that he, to some extent unconsciously, 'gives himself away.'"

42. Lewis, "Bluspels and Flalansferes," 141.

43. Ibid.

44. Hughes, Fatal Shore, 285.

45. Chaplain Johnson, who witnessed the disembarkation of the Second Fleet, wrote that the prisoners were "covered, almost, with their own nastiness." Shaw, Convicts and the Colonies, 108. After the exceedingly high death rate on the Second Fleet, authorities attempted to improve conditions; nevertheless, missionaries on later ships described the "loathsomeness," "perfect darkness," and "dreary darkness" of the convicts' habitation. Ibid., 111.

46. For a detailed discussion of repression, see Munroe, Schools of Psychoanalytic Thought, 245–49.

47. See Jack Novick and Kerry Kelly, "Projection and Externalization," in The Psychoanalytic Study of the Child 25 (1970): 81 (defining externalization as "those processes which lead to the subjective allocation of inner phenomena to the outer world").


50. Ibid. This language recalls the prison to which the fallen angels were banished in Paradise Lost:

As far remov'd from God and light of Heav'n  
As from the center thrice to th' utmost Pole.  
—Milton, Paradise Lost, book 1, lines 73–74


53. See Hughes, *Fatal Shore*, 160 (“[M]any early convicts, up to the end of the Napoleonic Wars, went on board the ‘Bay Ships’ for small, often ridiculously slight, offenses”). Whether the people transported to Australia were serious criminals or only trivial offenders has been the subject of much debate. On the one hand, many Australians maintain that the convicts were basically innocent victims of harsh laws—poachers who needed food for starving children, for example, or oppressed political prisoners. On the other hand, historians have increasingly come to reject this view, especially as regards the later period. See, e.g., ibid., 158–60, 163; Shaw, *Convicts and the Colonies*, 146–65.

54. See Novick and Kelly, “Projection and Externalization,” 69, 89.

55. Ibid.

56. Ibid., 88–89.


58. See ibid., 47, 69.

59. See ibid., 47, 68–69.

60. See Hibbert, *Highwaymen*, 65, 103.

61. See ibid., 23.


64. Hughes, *Fatal Shore*, 137 (emphasis in original).


67. See ibid., 91.


69. This punishment replicates that of Prometheus, who stole fire from the gods and gave it to man. For this crime, Zeus had Prometheus seized and chained “with iron bonds” to a “friendless rock” at the outer regions of the earth. Aeschylus, *Prometheus Bound*, in *World Drama*, ed. Barrett H. Clark (New York: Dover Publications, 1933), 11–19.


Notes to Chapter II

72. See Hughes, Fatal Shore, 508.
73. See Barry, Alexander Maconochie, 146.


77. See Donald Greene, The Age of Exuberance: Backgrounds to Eighteenth-Century English Literature (New York: Random House, 1970), 93. (Eighteenth-century English writers were “writing for an audience thoroughly indoctrinated from childhood onward, with the King James Bible, the Book of Common Prayer, the Articles, the Creeds, and Catechism”).

78. Eric Auerbach, Mimesis: The Representation of Reality in Western Literature (New York: Doubleday, 1953), 151 (writing about the Mystere D’Adam, a twelfth-century Christmas play based on the story in Genesis).

79. 1st Corinthians 15:22. Cf. Romans 5:12 (“[S]in came into the world through one man, and death through sin”).


Unconscious,” in *Man and His Symbols*, ed. Carl Jung (Garden City, N.Y.: Doubleday, 1964), 89 (discussing the need for symbols to give meaning to life).


92. Ibid., 584–85.


95. Robert Hughes refers to Australia as a “jail of infinite space.” *Fatal Shore*, 596.

NOTES TO CHAPTER 12


6. This definition represents two scholars' attempt to summarize a number of statutes. See Dubin and Robinson, “Vagrancy Concept Reconsidered,” 109.


13. See ibid., passim. Foote quotes magistrates who repeatedly admonish vagrants to “[S]tay where you belong,” and “go back where you belong.” Ibid., 606.


Notes to Chapter 12


21. Ibid.


23. For descriptions of the “silent” and “separate” systems, see Barnes and Teeters, New Horizons in Criminology, 505-45; David J. Rothman, The Discovery of the Asylum (Boston: Little, Brown, 1971), 82-83. For a discussion of the hood that prisoners wore, see Negley K. Teeters and John D. Shearer, The Prison at Philadelphia (New York: Published for Temple University Publications by Columbia University Press, 1957), 75, 78.


25. See ibid., 533-34; Rothman, Discovery of the Asylum, 81.


27. Hibbert, Roots of Evil, 160.

28. Ibid.


During a visit to this prison in 1993, 60 Minutes correspondent Mike Wallace expressed his amazement in language that evokes Tocqueville and Beaumont's description of Auburn a century and a half earlier:

WALLACE: Do they mix with each, the—all the guys in this pod?
LT. DEINES: No they do not. Any communication they have is through the door. If they come out of their pods, they will come in contact with no other inmate. They can talk, but they have no physical contact.
WALLACE: Good God. And—and this can go on for years in here?
LT. DEINES: Depending on the circumstances of the case, it could go on for years.
WALLACE: There’s an eerie quality here, Al.
LT. DEINES: It’s different from—you get when you walk into most prisons, in the—in the old prisons. You don’t have the yelling and screaming.
WALLACE: Right.
LT. DEINES: It’s very quiet.
WALLACE: What goes on inside those cells? What goes on inside the minds of those people in there? I mean, in this silent, otherworldly atmosphere?

60 Minutes (CBS television broadcast, 12 September 1993).


33. New York Society of the Reformation of Juvenile Delinquents, 10th Annual Report (1835), 6–7, quoted in McCarthy and Carr, Juvenile Law and Its Processes, 28. According to Rothman, historians agree about the central features of the prisons, reformatories, and other asylums that arose in the nineteenth century. As he summarizes, “[A] ll the institutional routines were segmented into carefully defined blocks of time, scrupulously maintained and punctuated by bells. There was nothing casual or random about daily activities.” Rothman, Discovery of the Asylum, xxv.

34. See Fenichel, Psychoanalytic Theory of Neurosis, 284.


37. Ibid., 285.

38. See Eissler, “Scapegoats of Society,” 297; Aichhorn, Wayward Youth, 147.


40. Steven L. Schlossman, Love and the American Delinquent (Chicago: University of Chicago Press, 1977), 45. This passage recalls Dickens’s Oliver Twist, in which Oliver oscillates between a filthy city environment where he is a captive of Fagin’s thieving gang, and an idyllic country home where he is, temporarily at least, safe from the corrupting influence of criminals. See Dickens, Oliver Twist, 55–57, 237–39.


44. For a list of these cases, see the Appendix.


46. U.S. v. Corona, 551 F.2d 1386, 1388 (5th Cir. 1977).

47. Ibid., 1388.


51. See Volkmor v. U.S., 13 F.2d 594, 595 (6th Cir. 1926); Rogers v. State, 157 So.2d 13, 17–18 (Ala. 1963); Duque v. State, 498 So.2d 1334, 1337, 1339 (Fla.App. 2 Dist. 1986); Peterson v. State, 376 So.2d 1230, 1232, 1235 (Fla.App. 1979); People v. Nightengale, 523 N.E.2d 136, 141–42 (Ill.App. 1 Dist. 1988); State v. Young, 12 S.W. 879, 879, 884 (Mo. 1890).


Notes to the Conclusion to Part Three

61. Ibid., 1395 n.13.
64. *Oakland v. Detroit*, 866 F.2d 839, 843 n.3 (6th Cir. 1989).

**NOTES TO THE CONCLUSION TO PART THREE**

1. For this way of characterizing law, I am indebted to my late colleague, Donald Fyr. But see *Estin v. Estin*, 334 U.S. 541 (1948) (“But there are few areas of the law in black and white. The greys are dominant and even among them the shades are innumerable”). Walter Weyrauch has suggested that elite American law schools teach law as gray, whereas less prestigious law schools teach law as black and white. See Ekkehard Klausa, review of *Hierarchie der Ausbildungsstatten, Rechtsstudium und Recht in den Vereinigten Staaten*, by Walter Weyrauch, *American Journal of Comparative Law* 25 (1977): 167.


3. Aristotle used this example in discussing the importance of metaphor: “So we may speak of the wrong-doer as ‘making a mistake,’ or the erring man as ‘guilty of a wrong.’ We may say that the thief has merely ‘taken,’ or that he has ‘plundered.’” *The Rhetoric of Aristotle*, trans. Richard C. Jebb, ed. John E. Sandys (Cambridge, England: Cambridge University Press, 1909), 150.


5. Aristotle attributes three distinctive tenets to Socrates: “(a) virtue, moral excellence, is identical with knowledge . . . ; (b) vice, bad moral conduct, is therefore in all cases ignorance . . . ; (c) wrong-doing is therefore always involuntary, and there is really no such state of soul as . . . ‘moral weakness’ (*acrasia*), ‘knowing

**NOTES TO THE CONCLUSION**


