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Revising Justice:

Punitory Thought and Action

in the Work of Atwood, Jordan, and Oates

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Abstract

This paper examines how contemporary literature contributes to the discussion of punitory justice. It uses close analysis of three contemporary novels, Margaret Atwood’s *The Heart Goes Last*, Hillary Jordan’s *When She Woke*, and Joyce Carol Oates’s *Carthage*, to deconstruct different conceptions of punitory justice. This analysis is framed and supported by relevant social science research on the concept of punitivity within criminal justice. Each section examines punitory justice at three levels: macro, where media messages and the predominant social conversation reside; meso, which involves penal policy and judicial process; and micro, which encompasses personal attitudes towards criminal justice. The first two chapters evaluate works by Atwood and Jordan, examining how their dystopian schemas of justice shed light on top-down and bottom-up processes of punitory justice in the real world. The third chapter uses a more realistic novel, Oates’s *Carthage*, to examine the ontological nature of punitory justice. It explores a variety of factors that give rise to and legitimize punitory justice, both at the personal level and within a broader cultural consensus. This chapter also discusses how both victim and perpetrator can come to stand in as metaphors to both represent and distract from broader social issues. As a whole, analysis of these three novels illuminate how current and common conceptualizations of justice have little to do with the actual act of transgression itself. Instead, justice emerges as a set of specific, conditioned responses to perceived threats, mediated by complex social, cultural, and emotive forces.
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“Good literature is disturbing in a way that history and social science writing frequently are not. Because it summons powerful emotions, it disconcerts and puzzles. It inspires distrust of conventional pieties and exacts a frequently painful confrontation with one’s own thoughts and intentions. Literary works...[require] us to see and to respond to many things that may be difficult to confront—and they make this process palatable by giving us pleasure in the very act of confrontation...Novel reading will not give us the whole story about social justice, but it can be a bridge both to a vision of justice and to the social enactment of that vision.”

- Martha Nussbaum

Poetic Justice: The Literary Imagination and Public Life
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Introduction:
Punitory Justice in the Spotlight

In the last few years, the American criminal justice system has garnered a significant amount of criticism within the mainstream media. Front-page news stories address high incarceration rates, especially within the African-American population, increasing reliance on the juvenile justice system in lieu of school, family, and community-mediated solutions, and frequent cases involving the deaths of unarmed minority citizens at the hands of police officers. At the core of these issues is the concept of punitory justice. Though rarely stated explicitly, punitory justice is at the root of conceptions that the current American justice system and societal understanding of and approach to crime is unduly harsh, repressive, and ridden with ethnoracial domination.

Punitory justice can be defined as focusing on retribution rather than rehabilitation. It involves support for policies that mandate harsh punishment, rather than addressing the underlying social issues that lead to crime (Ramirez 332). Punitory justice is associated with mass incarceration and the drastic expansion of the penal system, racial disparities in prisons, and disproportionate sentences through zero tolerance initiatives, mandatory minimum sentences, and three strikes laws. It is also linked to harsh prison conditions, such as solitary confinement, in lieu of access to employment training, education, and substance abuse and mental health treatment.

Punitory justice is often linked with the idea of punitive shift, a theory that holds that popular attitudes towards crime, as well as the American penal system itself, have become increasingly punitory over the last fifty years (Phelps 34-36). However, political
scientist Mark Ramirez notes that this punitive shift is aggregative over time, rather than
a distinct upward swing. He explains that “punitive sentiment is not deterministic, and the
public may be more open to alternative solutions to crime during certain periods—
something that is bolstered by recent support for prison reform by politicians across the
ideological spectrum” (356). Although the current criminal justice system and prevailing
attitudes of politicians and the general public indeed may be characterized by punitory
ideals, policies, and sentiments, I suggest that the national conversation currently exhibits
a high degree of awareness of this punitory bend, as well as the impetus and desire for
reform towards a less punitory ideal.

Although discussion of punitory justice has only relatively recently gained
traction in the mainstream media, punitivity has been a subject of academics study since
at least the mid-1990s. In 1994, sociologist Stanley Cohen published a groundbreaking
article, “The Punitive City: Notes on the Dispersal of Social Control.” In this article,
Cohen extended the locus of crime control from behind the walls of the prison to a
broader system of social control affecting the wider strata of society. In the process, he
offered a definition of “punitivity” that remains one of the most frequently cited today.
The SAGE Dictionary of Criminology uses Cohen’s definition as a “starting point” in its
entry on “Punitiveness,” stating that Cohen “suggests that the main attribute of a punitive
stance is that it involves the infliction of pain, harm, and suffering on individuals in a
coercive but impersonal manner by specialist, often legally empowered agencies”
(Matthews, “Punitiveness” 352). Another early contributor to the study of punitory
justice, criminologist Anthony Bottoms, coined the term “populist punitiveness” in a
1995 article on the philosophy of punishment. Bottoms claimed that populist
punitiveness, or a punitory mindset within the general public, is the main force shaping sentencing and penal policy (Matthews, “Myth” 176).

Subsequent to Cohen and Bottom’s work in the mid-1990s, a number of other researchers shifted attention towards notions of “punitiveness.” The study of punitory justice came into widespread use within the arena of criminology, as well as among social scientists in the fields of public policy, political science, sociology, and cultural studies. Scholars have used a number of terms to express concepts of punitory justice, including punitivity, penal populism, populist punitiveness, punitive shift, and punitive sentiment, among others. In this paper, as a means of differentiating from the multitude of proposed uses, I use the less common term “punitory,” as in punitory justice, thought, policy, or action, as a means of differentiating my own arguments from those of others. I refer only to these alternate terms when specifically referencing the research or writing of others, as a means of distinguishing between the many varied terms associated with punitivity and the variance in connotation associated with each.

Among academics, there is a general agreement that criminal justice is dominated by a punitory mindset and approach to policy (Matthews, “Myth” 175-6). However, this consensus dissolves with attempts to define and analyze the scope and validity of punitivity (Recasens 212). Criminologist Amadeu Recasens explains, “The focus of the problem changes depending on the type of analysis (criminal, legal, criminological or managerial…), of the pattern we choose, of the selected institution (justice, prison…) or of the actors involved (victims, offenders, women, youth…)” (212). Roger Matthews, a criminologist who is frequently cited in literature on punitivity, explains, “Although the term ‘punitiveness’ is widely used in the literature, there is little attempt to define or
deconstruct it. The consequence is that punitiveness remains a ‘thin’ and under-theorized concept” (“Myth” 178). In a direct response to this lack of definition, criminologists An Adriaenssen and Ivo Aertsen divide analysis of punitivity into three levels: micro, meso, and macro (93). The micro level involves study and consideration of individual attitudes towards crime and punishment. The meso level is where judicial processes are developed and enacted (the penal and judicial systems). The macro level encompasses media coverage, political discourse, and the broader social conversation. (Adriaenssen and Aertsen 93). These three levels are often analyzed according to a bifurcated approach towards the origins of punitivity, which Matthews terms the “top-down” and “bottom-up” views of punitivity (“Myth” 176).

Top-down views typically embody the vision of punitivity presented in Stanley Cohen’s “The Punitive City.” Such viewpoints focus on the state or penal system as a powerful coercive apparatus, one that pushes an agenda of punitory policy down to the populace as a measure of social control and political agenda setting. This paradigm illuminates a cycle in which politicians promote crime as a public issue and use the media to fan public fear and anxiety related to crime. Promoted issues are usually hot-button ones, such as drug use or a supposed increase in violent crime. Once sufficient public outcry has been generated, politicians then use this perceived “social demand” to appeal to a voting base—signing and supporting increasingly punitory law and policy (Larrauri and Varona 41). Such strategies often arise as a means to increase electoral support, but they can also take place at the behest of for-profit prison lobby groups (M. Cohen).

The top-down approach encompasses many different focus areas and methods of analysis (Recasens 212). Sociologist Michelle Phelps argues that punitivity in criminal
justice is largely a function of a government/penal system that values risk management, deterrence and incapacitation over rehabilitation or intervention (34). Michelle Alexander and Loic Wacquant ascribe key features of punitive justice as methods of controlling a minority population viewed as undesirable. Alexander, a civil rights lawyer and legal scholar, equates mass incarceration of people of color, particularly black men, as the “New Jim Crow.” In her book of the same name, she argues: “mass incarceration in the United States [has], in fact, emerged as a stunningly comprehensive and well-disguised system of racialized social control that functions in a manner strikingly similar to Jim Crow.” She goes on to explain:

Once you’re labeled a felon, the old forms of discrimination—employment discrimination, housing discrimination, denial of the right to vote, denial of educational opportunity, denial of food stamps and other public benefits, and exclusion from jury service—are suddenly legal. As a criminal, you have scarcely more rights, and arguably less respect, than a black man living in Alabama at the height of Jim Crow. We have not ended the racial caste in America; we have merely redesigned it.

Wacquant, a sociologist who specializes in ethnoracial domination, concurs with this assertion; equating prisons with a “judicial ghetto,” in which people of color are bound to the penal arm and systematically marginalized economically, socially, and legally (22).

Bottom-up approaches to punitive policy fall in line with Bottoms’ 1995 concept of “populist punitiveness,” later termed “penal populism.” In this paradigm, the public is seen as holding generally punitive views of crime. This punitive public is thought to influence and shape crime policy from below, as politicians respond to popular beliefs regarding crime, or use these beliefs to support their own purposes (Bottoms 40). Penal populism can be characterized by sentiments along the lines that politicians are “soft on crime,” prisons are “holiday camps,” and that overall sentencing is too lenient. As in the
top-down process of punitory justice, implementation of punitory policies at the behest of supposed public demand serves as a mechanism for politicians to widen their electoral base and gain approval ratings, while often, and at the same time, fulfilling other agendas regarding social control (Matthews, “Myth” 176).

Top-down and bottom-up punitory processes are not necessarily mutually exclusive. The two often converge in a circular, reflexive process. The key difference between the two approaches involves the main power dynamic at work. Top-down theories hold that the locus of power remains at the top, while the bottom-up hypothesis typically involves the idea of a shift in power from away from experts and into the hands of the general public. David Garland, a criminologist who has written extensively on punitory justice, explains that in the bottom-up interpretation, power is transferred from scholars and authorities in the fields of criminal justice, who tend to hold generally less punitive beliefs, to an anxious public with very little knowledge of the law and the realities of the criminal justice system (Garland, “Culture” 350). Often, this assumption of a generally punitory public is made based on the claims of a vocal minority, explains criminologist and noted expert on penal populism John Pratt. He enumerates:

An array of law and order lobby groups, the tabloid press, talkback radio hosts and callers, right-wing thinktanks, a few academics such as James Q. Wilson and some evangelizing police chiefs spreading the message of “zero tolerance” have become influential on government policy. As this has happened, so the influence of liberal elites—senior civil servants, academics, penal reform groups and judges who collectively make up the “criminal justice establishment”—has declined. We have become familiar with its effects—substantial rises in imprisonment and deteriorating prison conditions. (“Legitimacy”)

Notably, the media plays a large role in the way punitory beliefs are disseminated in both the top-down and bottom-up frameworks. Media serves as the conduit by which
information and opinion travels from policymakers to the public, and vice versa. As such, a number of researchers have examined possible correlations between exposure to media depiction of crime and higher rates of individual punitory thought (Mesko 141). Such links are typically associated with news programming and political messaging, but this relationship is also seen with fictional popular entertainment. One study notes that even non-political movies have an increased capability to affect political attitudes and opinions on public issues, by the very reason that they are apolitical in nature (Adkins and Castle 1242). Social science researchers Todd Adkins and Jeremiah Castle suggest that when viewing non-political films, viewers are not expecting to engage with political opinion or discourse on public issues, and are thus unprepared to think critically about the messages they are receiving.

Media frequently serves as the conduit through which the workings of the judiciary and penal system are translated to the public. For those that have limited experience with crime policy and judicial processes, media programming can serve as the dominant source of information (Dowler 109). Writes criminologist David Green, “When citizens lack direct experience of phenomena, as many citizens do with crime and punishment, they tend to rely on ‘stock stories’, collective wisdom and the mass media to fill in the gaps” (524). Such depictions often ignore “root causes”: social issues such as poverty or a lack of opportunity or education, in favor of “individualistic causal explanations of crime” (Ghandnoosh 6). Individualistic accounts of crime ignore broader social implications and view criminals as “people who made bad choices,” or even as “evil”: “once a criminal, always a criminal” (Maruna and King, “Once”). These opinions on criminality evoke much higher punitory responses than those that view offenders as
victims of social forces (Maruna and King, “Once”). Significantly, citizens that do have first-hand knowledge of the judicial system, especially African-Americans who have been disproportionately affected by punitory justice, typically register lower levels of punitory ideation (Ghandnoosh 6). The Sentencing Project, an advocacy group for criminal justice reform, explains, “Black Americans’ negative encounters with the criminal justice system and greater recognition of the root causes of crime temper their preference for punitive policies. White Americans, by contrast, have less frequent and more positive criminal justice contact” (Ghandnoosh 6).

For the most part, criminology research focusing on the interrelated nature of media and punitory thought tends to focus on television crime programming (news reports, “true crime” shows, entertainment dramas like CSI and Law and Order), with very little attention paid to fictional texts. For criminologists, literature tends to be subsumed by the more overt and quantifiable medium of television. One notable exception is criminologists Anna King and Shadd Maruna’s essay “The Function of Fiction for a Punitive Public,” which examines the link between consumption of movies and books in relation to punitory thought. Rather than coming to specific conclusions regarding any one genre impacting punitory attitudes, they instead purport that those who exhibit higher measures of punitivity tend to be drawn towards fiction with a clear moral turn—often crime fiction with clearly identified heroes and villains, and with a distinct delineation between right and wrong. King and Maruna note that such works often feature the struggle of a morally good “underdog” character and spur the reader to root for the “good guys [to] come out on top” (25). They discuss Stephen King’s Dark Tower series as an example of this type of literature. Set in a post-apocalyptic fantasy world, the
series follows a lone gunslinger as he attempts to save all of existence from an evil force (“Dark Tower”). King and Maruna state that the series presents “a prepackaged, coherent and moral universe on the cheap” (23). Conversely, King and Maruna found that those readers who register lower on the punitivity scale tended to favor “tales in which the structures and constraints of society are less determined,” often taking the form of stories about subversion, rebellion, and doing wrong in order to do right (26). Though King and Maruna do not mention specific literary examples for this type of story, they offer a scene from the film *The Sound of Music* as an example of “doing wrong to do right”—the scene in which a group of nuns sabotage Nazi officers’ vehicle in order to aid in the escape of the Von Trapp family (26).

By-and-large, fictional texts tend drastically to be under-examined in the context of punitory attitudes within the criminology and social sciences literature. The same can also be said for examinations of punitory justice with the literary discipline. Punitory justice, in and of itself, has also not yet emerged as a construct for critical analysis. Analysis of justice in fiction tends to focus on broader conceptualizations and universal themes related to the nature of guilt and punishment, revenge and retribution, or more specific social justice issues addressed within the parameters of a given work of fiction, such as the death penalty, racial discrimination, or an overarching penal state. But because the novel form allows for the presentation of complex and nuanced treatment of multi-dimensional issues, it is an excellent medium through which to explore punitory justice across both broad (macro, meso) and narrow (micro) spectrums.

Literature enjoys a rich tradition of discussing social issues and politics, and the medium has long been regarded as an important tool for in-depth and nuanced
consideration of polarizing social issues. While literature, especially genre fiction, includes its fair share of punitory-oriented drama, a number of authors within the literary arena are producing progressively more works that revise the familiar justice tale. Such works upend the familiar narrative arcs of crime and punishment and provide a medium through which the complexities of punitory justice can be explored in closer detail. These authors grant heightened attention to such complex topics as the processes that give rise to punitory thought and action and the subjective nature of guilt and innocence.

As punitory justice increasingly comes under public scrutiny, works of “justice re-visioning” are an indispensable vehicle through which to examine punitory thought and action and the nature of criminal justice. As a bookseller, I have seen how literature can help individuals and groups of people outside of academia think critically about important social issues and deconstruct blunt and less nuanced forms of messaging. Reading literature, and ensuing discussion in book clubs, social discourse, and Internet conversation, can help complicate conversations that might otherwise be dominated by messages carrying punitory agendas. Literature has a vital function as a form of political and social discourse, helping readers to consider carefully questions such as: How can we as Americans ensure that our justice system treats those who commit crimes impartially, regardless of race, gender or socioeconomic status? Does the power to punish serve the purpose for which it was intended, or is power abused in the name of public protection? As readers and citizens, are our personal and public attitudes towards justice fair and objective, or are they biased by emotion? Can compassion, and the possibility for redemption, be a part of the administration of justice?
Considering both the current visibility of punitory justice, as well as the absence of critical analysis regarding the topic in literature, in the chapters that follow I examine how contemporary North American fiction can serve as a vehicle to deconstruct (rather than reinforce) punitory justice, through analysis of three contemporary North American novels: Margaret Atwood’s *The Heart Goes Last*, Hillary Jordan’s *When She Woke*, and Joyce Carol Oates’s *Carthage*. Rather than support genre clichés and familiar crime and punishment narratives, each novel engenders the reader with a broader understanding of the scope of the issues from the macro to micro level. In the process, these works enable readers to cultivate balanced and informed viewpoints in relation to crime and punishment. With publication dates ranging from 2011-2015, these novels provide stirring examples of the way public discourse is currently shifting to embrace discourse on punitory justice.

Both Atwood and Jordan use a dystopian framework to depict future worlds dominated by punitory justice. I analyze these works to examine how punitory justice functions systemically, looking at the macro, meso and micro levels that appear within both a top-down (Atwood) and bottom-up (Jordan) approach. Unlike Atwood and Jordan’s dystopian vision, Oates works within a present-day, realistic framework to address the subjective nature of assigning blame in the wake of tragedy. Using Oates’ *Carthage*, I explore contributing factors towards punitory attitudes, including fear-based approaches to justice and the desire for retribution, through the “justice re-visioning” framework. This construction blurs the lines between guilt and innocence, and treats justice as a complicated moral area rather than something to be defined by the letter of the law. Finally, I touch on the complicated process of finding non-punitory paradigms
for justice. Ultimately, through analysis of punitory justice from the top-down and bottom-up approaches, as well as across macro, meso and micro levels, within the works of Atwood, Jordan, and Oates, a re-visioning of justice occurs in which “justice” has less to do with the actual punishment of transgression. Instead, “justice” emerges as a set of conditioned responses to perceived threats and the people/groups associated with these threats. Ultimately, my analysis reveals an understanding of punitory justice in which crime perception and policy is informed by conditioning instead of by the actual act of crime itself.
Chapter One: Top-down Punitory Justice in Margaret Atwood’s The Heart Goes Last

Mass Incarceration and the Dystopian Tradition

With 2.2 million people currently incarcerated, the United States has the highest total prison population in the world. This number is nearly double that of the next highest country, China. (World Prison Brief). What this means is that roughly 1 out of every 110 adults in the U.S. is currently held in a federal, state, or local jail. In addition, 1 out of every 35 adults are under some form of correctional control, whether imprisonment, parole, or probation (ACLU). This has not always been the case. In the last 40 years, it is estimated that the U.S. prison population has risen over 400% (ACLU). Given such alarming statistics, one could easily imagine a future in which the majority of Americans could have at least some involvement with the criminal justice system. In The Heart Goes Last, Margaret Atwood imagines an extreme version of such a scenario: a dystopian “model community” in which every citizen plays a dual role of community member and prisoner. In the novel, mass incarceration and the for-profit prison model are exaggerated into a social paradigm where society exists within the penumbra of the prison, instead of the penal system operating as a separate entity from everyday life.

Dystopian literature enjoys a long literary tradition of social and political critique, from Aldous Huxley’s Brave New World to George Orwell’s 1984. As a literary construct, the dystopian vision exaggerates a familiar social or political ill to create a bleak vision of the future. In The Dystopian Impulse in Modern Literature, literary scholar Keith Booker explains, “dystopian fictions provide fresh perspectives on
problematic social and political practices that might otherwise be taken for granted or considered natural and inevitable” (19). Dystopias are linked to their namesake, utopias, but function as a converse of the utopian ideal. Typically, the social/political solutions depicted in dystopian works were originally intended to create a utopian-eque result. But, in practice, these solutions have created something closer to a nightmare than a perfect world. The guiding premise of the dystopian vision is a demonstration that “what one person considers an ideal dream might to another person seem a nightmare” (Booker 3).

Although dystopian works are often confused with the science fiction or fantasy genres, they are more closely associated with the real world than that of the imaginary (Booker 19). Rather than depicting an alternate reality or distant planet, dystopian works embody a possible future direction for present-day society. Margaret Atwood has stated on many occasions that her dystopian novels are not fantasy, but a meditation on what could happen in the future if we continue on a certain present track. She writes, “I don’t put things in those kinds of books that are far off from the real world. Just a couple different decisions and we’d be there.” (Atwood, “Paulson Interview”). In Moving Targets: Writing with Intent 1982-2004, Atwood explains the process she took in undertaking another of her dystopian novels, Oryx and Crake:

It invents nothing we haven’t already invented or started to invent. Every novel begins with a what if, and then sets forth its axioms. The what if of Oryx and Crake is simply, What if we continue down the road we’re already on? How slippery is the slope? What are our saving graces? Who’s got the will to stop us? (330)

Although these what ifs are presented in the context of Oryx and Crake, they also resonate with The Heart Goes Last. In an interview focusing on The Heart Goes Last, Atwood addresses some of the more specific what ifs that inform this novel: “Well, let's
just say that in this novel, we have a prison for profit scheme. It's a little nicer than the prison for profit schemes we already have, but with any prison for profit scheme, the problem is keeping it full…” (Atwood, “Rehm Interview”). The Heart Goes Last solves the issue of how to maintain prison capacity through a system in which every citizen also serves as an inmate. Participants in the Positron Project are afforded a peaceful, middle-class existence in the town of Consilience, with the neighboring Positron Prison sustaining the town’s economy. The caveat to enjoying suburban life in Consilience is that each resident “does time” as a prison inmate every other month.

The novel centers on Stan and Charmaine, a married couple that sign up for the Project. Stan serves in opposition to and as a critic of the system; he provides a vehicle for the reader to consider the implications of the Project from an outsider’s perspective. Charmaine, from the get-go, is a tacit participant. She is easily seduced by the rhetoric and promises of the Project—“the bath towels clinched the deal” (34). As a character, Charmaine embodies the manner by which a top-down process of punitory justice is filtered down to the individual level. In The Guardian, reviewer John Harrison elaborates:

Charmaine proves to be “really good at believing” the corporate line. She loves Consilience, the prison town, with its 50s aesthetic “chosen because that was the decade in which most people had self-identified as being happy,” even though one of her duties is to perform euthanasia on misfits. Stan, more of a skeptic, runs the prison chicken farm.

Stan and Charmaine join the Project voluntarily; they have not been sentenced to the prison or the Project itself. “If you signed up, it would be of your own free will” explains Atwood (Heart 33). But how does the Project entice its subjects to participate willingly in a system in which “no one has committed a crime, but everyone has somehow been
The answer is a complex top-down process, in which the Project capitalizes on an unstable social and economic climate to create a perception of need for its peculiarly punitive solution.

The Politics of Fear: Positron and the War on Drugs

Within the social-scientific literature, top-down models of punitive justice hold that punitive approaches originate at the highest level, with politicians and policy makers. These high-level actors use available communication platforms to transmit punitive agendas, generating public arousal and fear in relation to public issues. In turn, the public then lends support for punitive policies as methods of dealing with these issues. This process can create concern where none existed previously, but it can also capitalize on and amplify existing anxieties to create a heightened response. One notable real-world example of this cycle (and one in which public concern was almost entirely created by top-level policymakers) was the widespread concern over drug use in the late 1980s, which led to far-reaching punitive policies still in place today.

Although drug use had actually been on the decline since the late 1970s, the percentage of Americans who viewed drug abuse as the nation’s most important issue rose from 3% to 64% in just three short years, from 1986-89 (Beckett 425). Sociologist and legal scholar Katherine Beckett attributes this rise to political agenda setting, which combined state and media initiatives to bring the threat of drugs to the forefront (425). Sociologist Theodore Sasson, author of *Crime Talk: How Americans Construct a Social Problem*, explains, “trends in popular concern about drugs match trends in sponsorship of
the issue by political elites but not trends in actual abuse” (3). Though initially introduced by conservatives, the so-called drug problem amassed widespread concern, enough to become a bipartisan issue (which serves to highlight the reflexive nature of top-down and bottom-up processes, discussed in more detail in the next chapter). By 1986, both Republicans and Democrats supported the highly punitory Anti-Drug Abuse Act. The act was notable for its steep 100-1 crack-to-powder cocaine sentencing disparity and pointedly targeted at African-American drug users (Lassiter 138). Along with several similar sentencing policies enacted during this same time period, the act is credited as a key factor in the dramatic expansion of the American penal system in the last few decades. Features of this expansion include an explosion in the total prison population, including the disproportionately high rate of African-American incarceration, and a drastic increase in government funding to creation and maintenance of prisons (Lassiter 138; Garland, “Penality” 478).

Likewise, in *The Heart Goes Last*, a similar top-down process occurs, though in this case substituting corporate actors in place of political ones. Leaders of Project serve in lieu of a government, as Atwood insinuates that government leaders have been effectively bought or bribed into giving the Project free rein. The Project is totalitarian in nature. Citizens are not allowed democratic freedoms, such as the right to vote. Nevertheless, the Project relies on the “voluntary” cooperation and participation of the citizens. This cooperation is achieved as Project leaders capitalize on existing social turmoil to create a popular discourse framed around anxiety and fear, similar to the process that occurred in the 1980s drug scare. Project leaders then exploit this anxiety to push their particularly punitory agenda, in this case a society dominated by penal control.
At the outset of the novel, the reader learns that certain parts of the country have been hit by a significant economic recession. Atwood explains in an interview, “there has been a 2008-style economic collapse in Stan’s and Charmaine’s part of the country, the Detroit-like part. A lot of people lost their houses in that financial meltdown and a lot of businesses closed, and it’s ongoing” (Atwood, “Paulson Interview”). Stan and Charmaine are living inside their “third-hand Honda,” fearful of carjacking or worse (Atwood, “Heart” 3). The Project offers not just an escape, but also a solution: a world in which participants can “help solve the nation’s problems of joblessness and crime while solving [their] own!” (Atwood, “Heart” 26).

Though the Project’s solution is highly punitive, it appears preferable to the alternative. The Project Head, Ed, explains to Stan and Charmaine during the recruiting process, “it’s a festering scrap heap, out beyond the Consilience gates. People are starving. Scavenging, pilfering, dumpster-diving. Is that any way for a human being to live?” (33). This statement positions the town of Consilience and the Project itself as representative of civilization. Strong word choices in festering, starving, and scavenging imply that those who opt to stay outside of the walls are reduced to an animalistic existence. This is further reiterated by the notion that this is no “way for a human being to live” (33). Here, Ed capitalizes on Stan and Charmaine’s anxiety at their precarious position in a downtrodden society, inflating the issue to one of civilization versus a primitive struggle for survival. Ed then presents a solution that, while overtly punitive, nonetheless appears the better option. Project participants may lose some previous freedoms, but this loss is presented as small price to pay for “human” civilization and
security. Ed warns: “you can’t eat your so-called individual liberties, and the human spirit pays no bills” (38).

It seems unlikely that a person would voluntarily place him or herself under carceral control. In this scenario, though, living under the penal arm seems a better option to the looming insecurity of the outside world. “I feel so safe,” sighs Charmaine as she signs the contract for the Project (36). Atwood explains this concept of giving up liberty for security in an interview: “I think history has shown that when people feel really frightened, they will choose options that provide safety, or that they think provide safety, and they will give up some of their freedoms in return” (Atwood, “Paulson Interview”). But this fear that Atwood discusses (exemplified in both The Heart Goes Last and the 1980s drug scare), did not arise organically or spontaneously, but was carefully cultivated as a means of supporting specific goals. This occurs at the macro level through framing, at the meso level through specific punitory policies, and the micro level in changing individual attitudes.

Framing: Financial Crisis To Systems Breakdown

At the macro level, inhabiting the political discourse, media messages, and public conversation, both the drug crisis of the 1980s and the Positron Project use a process of framing in order to arouse public sentiment. Framing can be described as a systematic process by which the issue at hand is subverted into another—often one that feeds more directly into an emotional base. Sociologists David Altheide and Christopher Schneider explain the frame as “the particular perspective one uses to bracket or mark off something
as one thing rather than another” (53). They explain that the frame marks off particular issues and separates them from different interpretations, as in the case of designating drug abuse as a criminal rather than public health issue (52).

In the case of the 1980s drug crisis, political leaders employed a framing process to present the drug problem as a criminal issue rather than as a social or public health issue (Beckett 427). According to Beckett, “this definition is important, as it implies that a certain kind of ‘solution’ (increased law enforcement rather than job creation, drug treatment, or educational programs) is appropriate” (427). In The Heart Goes Last, a similar framing process occurs. The Project repackages the recession to frame it as a problem of crime and general social disruption, not an economic issue. Project Head Ed explains that the area is plagued by a 40% unemployment rate. Instead of associating this statistic with the economic realities of such a high unemployment rate, Ed translates this problem into social, not economic terms. “That’s a recipe for systems breakdown, right there” he explains. “For anarchy, for chaos, for the senseless destruction of property, for so-called revolution, which means looting and gang rule and warlords and mass rape, and the terrorization of the weak and helpless” (38). This depiction moves any possible solution away from fiscal policy towards a social response. In such a desperate scenario, the only solution is one that will restore the social order—economic revitalization itself is insignificant.

Ed uses the words chaos, destruction, looting, gang rule, rape, and terrorization, to buttress his “anarchic” vision of society (38). He then juxtaposes this depiction of “systems breakdown” against a façade of “positivity,” a recurring motif associated with the Project. The reader encounters repetitive use of words such as cheerful, happy, nice,
morale, and smiling in relation to the Project. Even the name “Positron” is meant to evoke “positivity.” Ed explains, “The Upstate Correctional Institute was dingy and boring. They’d come up with ‘Positron’…As a word, it just sounded very, well, positive. And positivity was what was needed to solve our current problems” (41). In the same vein as highlighting the anarchic elements of “systems breakdown,” the focus on positivity/happiness helps to move the conversation away from the economic/financial crisis towards the realm of the social.

Ed elaborates on the use of “positivity” to sell this particular frame. He states: “People were starved for hope, ready to swallow anything uplifting” (41). Project participants are even willing to “swallow” a highly punitory solution if it is presented as a socially “uplifting” one. Charmaine endorses this concept as she explains:

The whole point of Consilience is for things to run smoothly, with happy citizens, or are they inmates? Both to be honest. Because citizens were always a bit like inmates and inmates were always a bit like citizens, so Consilience and Positron have only made it official. Anyway, the point is the greatest happiness all around. (145)

Charmaine’s use of smoothly, happy, and happiness indicate that, although this solution may indeed be punitory, blurring the lines between citizen and inmate, it nonetheless speaks to the social issue at hand. It serves in the pursuit of “happiness”—as Ed terms it, “a meaningful life” (42). Through the process of framing, the issue comes across as social in nature. In turn, the desired solution by necessity must be social: one that seeks to restore the prevailing social order perceived as having been destroyed.
Solving Systems Breakdown: Moral Custodians

The Project’s solution to the framed issue of “systems breakdown” plays out at the meso level, where specific policies are implemented. Since the Project leaders have used framing to deem the underlying economic crisis insignificant in comparison to the broader social issue, they are now free to put forth their social, rather than economic solution. This type of solution focuses, as Garland mentions, “on the effects of crime…rather than its causes” (“Culture” 348). In the case of The Heart Goes Last, the Project functions as a means to control unwanted, deviant behavior that has arisen as a result of the economic collapse.

Even though Project participants are only required to spend every other month as an inmate of Positron Prison, the Project regulates everyday life in the town of Consilience in much the same manner as behind prison walls. These regulations recreate many of the conditions that mark the real-word penal system itself. As in real-world prisons, work duties are assigned rather than applied for. Housing is doled out, from physical accommodations themselves to roommate assignments for unmarried people. Citizens are under constant surveillance from closed-circuit video recording. All communication is monitored and controlled. News from the outside world is restricted and entertainment is limited. Atwood explains, “To avoid overexcitement, there is no pornography or undue violence, and no rock or hip-hop. However, there is no limitation on string quartets, Bing Crosby, Doris Day, the Mills brothers, or show tunes from vintage Hollywood musicals” (43). Although real-world prisons may not uphold a full 1950s theme, prisons are still notorious for censorship of written material, despite Supreme Court rulings intended to allow literacy access (Losowsky). Prohibited material
often includes books on race or civil rights, prisoner’s rights, any book that could be considered sexually suggestive, including medical texts, even works by Shakespeare (Watson et al.).

This social control enacted by the Project is highly punitory. However, a social solution need not be punitory per se. Such a solution could alternatively involve an increase in social services, unemployment benefits, educational opportunities, etc. The Project could represent a non-punitory social solution if it were limited to a model community centered on self-sufficiency. The addendum of the prison element to the Project not only changes the sphere in which such a solution operates, but effectively co-opts the elements of this solution into an overarching punitory frame. This solution is targeted to combat what Project Head Ed deems “systems breakdown” (38). “That’s a recipe for systems breakdown, right there” he tells the new recruits. Sociologist Theodore Sasson terms this type of scenario a “social breakdown” framing of crime (55).

According to Sasson, this framework involves rapid change of some form seen as “destroying the prevailing normative order.” In this perception, community and family are viewed as unable to regulate individual conduct as they did in the past (55). Ed illustrates this concept when he says, “it’s beyond a problem. It’s more like a looming collapse. Is their once-beautiful region, their once-beautiful country, doomed to be a wasteland of poverty and debris?” (39).

A solution for social breakdown speaks to a need to reconstitute the “normative order” and reestablish a vision of “moral authority.” This is seen in the Project’s intense regulation of the trappings of everyday life. The “social breakdown” frame is also frequently associated with nostalgia for the past (Sasson 84). Often this past nostalgia
hearkens back to the era before the supposed social and moral permissiveness of the 1960s and ‘70s (Sasson 59). Consilience’s 1950s theme helps to evoke this sense of nostalgia. Ed explains, “The ‘50s was chosen for the visual and audio aspects, because that was the decade in which most people had self identified as being happy” (41). The Project as a solution for social breakdown promises a return to an idealized past and a return to the traditional values associated with that time period.

Social breakdown frameworks can also include a racialized element, in which a return to the normative order is associated with a return to white, heteronormative values. Although Atwood does not make specific mentions of race, the novel implies that the “normative order” the Project attempts to project is synonymous with “whiteness.” The only mentions of people of color take place outside the walls of Consilience—the town’s inhabitants seem to be largely white. The reader can infer that “undesirable” elements within the town are those that may involve any sort of racial cast, from the skin color of inhabitants to “hip hop music.”

Through this type of social breakdown framing, a solution perceived as viable does not need to address the change itself (in this case economic), only address the sense of social breakdown and related social anxiety that has resulted from the change. Rather than regulation of fiscal policy or economic conditions, the Project regulates conduct, behavior, social interaction, and the overall social makeup. Beyond providing a sense of mere economic stability, the Project, in effect, serves as the moral custodian of its members.
Optimizing Social Control: Poultry Production as a Metaphor for Frame and Solution

Throughout *The Heart Goes Last*, the prison’s poultry facility serves as a running metaphor for the Project itself. The Project is even depicted as an egg during the orientation process. Atwood writes, “Consilience is the white, Positron is the yolk, and together they make the whole egg” (42). Stan, the skeptic, is responsible for maintaining the egg counting software, as well as general care of the chickens themselves. As Stan describes his chicken-tending duties, the reader learns that the chickens “live in wire cages but are let out for a run twice a day, which is supposed to improve their morale” (66). The chickens are akin to the Project participants, who live inside prison cells but are let out every other month, ostensibly to maintain “morale” among the citizen/inmates.

Inside the chicken facility, “heating and light are run by a computer inside a little shed” (66). In this sentence, the reader learns that the environment is not allowed to function naturally, but is instead regulated and controlled by an outside influence. While heating and light can be considered basic environmental elements, they can also be viewed metaphorically. It is significant that Atwood uses the word “heat,” rather than “temperature.” The choice of “heat” connotes emotion, passion, and level of arousal. The citizen/inmates are not allowed any sort of entertainment that would inflame passions through depiction of violence or sexuality; their “heat” level is controlled. Even the Project-run exercise program is focused on yoga videos, with instructions on how to cultivate a calming “yogic breath” (116).

Likewise, just as the computer runs “heating,” “light” is also controlled. Management of light implies more than control over the overall brightness or dimness of
the area. It implicates command over what can be seen or not seen, or the way the situation is presented or framed. This allows for manipulation of the way this information is then perceived and interpreted. Just as the relative availability or lack of light can affect the appearance of shape, size, contour or prominence of an object like a feeding trough, conceptions of social issues can also be largely dependent on the way they are illuminated. Through strategically spotlighting issues, conceptions of criminality and opinion regarding the relative threat level of a given issue are developed and reinforced. For example, in the case of the 1980s drug crisis, the so-called issue was only considered as problematic once politicians “shed light upon it.” Notably, while this problematic depiction, in practice, specifically and disproportionately targeted people of color, this reality was strategically obscured amid concerns of “inner city” crime and degeneracy. This obfuscation allowed for a systematic process of blanket criminalization of African American men. Likewise, in *The Heart Goes Last*, this regulation of “light” outlines for the Project participants exactly what the issue at hand is (social breakdown and associated crime) the ideal solution (social control and value restoration) and the means through which this will be enacted (punitive policy).

This means, or process, is illustrated as Stan’s chicken-maintenance scene continues: “The eggs are collected via ingenious chutes and funnels” (66). At the Project level, a similar process of funneling and channeling takes place. Social behavior is channeled into what is considered the appropriate (and productive) areas. These areas just so happen to align with the 1950s motif: knitting, gardening, cooking, and laundry for the women, woodworking and lawn maintenance for the men. Information is likewise funneled to participants through Project-run television broadcast. The only “news” comes
in the form of televised Town Meetings, which put a heavy emphasis on the positivity theme. Stan explains, “The Town Meeting is to let everyone know how well the Consilience/Positron experiment is doing…Pep talks, Zing ratings, helpful feedback. Admonishments kept to a minimum, a few new rules added in at the end” (79).

With such an “ingenious” system in place (heat/arousal regulation, light control/framing, and channeling of behavior and information), Stan explains: “the system’s running fine now” (66). When the Project is functioning the way it is intended, the “broken social structure” is replaced by a new, wholly artificial and controllable social system, which purportedly solves the criminality associated with the social breakdown frame. This is accentuated in the broadcasted Town Meeting presentations, which always juxtapose egg production against violence: “Violent incidences are down for the third time in a row says a small guy in a tight suit, and let’s keep that arrow moving: shot of a graph. Egg production is up again. Another graph, then a shot of eggs rolling down a chute and an automatic counter registering each egg with a digitized number” (116-7). Thus, when the system is working, social control is optimized, and accordingly, violence and any associated criminality is kept in check.

Internalization: Charmaine and the Talking Head

This frame, and its associated solution, reaches beyond the macro and meso levels, into the micro, or personal level. In a top-down process, macro-level forces eventually make their mark on individual attitudes and perceptions. In turn, these personal convictions function to support policy at the meso level and contribute to the
macro-level social discourse. To better understand this process, it is useful to examine the pivotal moment when passive spectatorship becomes active involvement. At this juncture, participants cease to be acted upon, or spectators of a larger judicial or penal process, and instead become critical cogs in the wheel of punitivity. This is powerfully depicted in the scene in which Charmaine reports to her own job assignment.

As Chief Medications Administrator, Charmaine is responsible for carrying out the “Special Procedure.” In the Procedure, misfits, criminals, and other undesirable elements are euthanized, essentially executed by lethal injection. When Charmaine arrives to fulfill her duty, she must first check in at a reception desk. Upon arrival, Charmaine explains: “There’s no receptionist in the flesh at the desk, only a head box, but least there’s a head in the box. Or a canned image of a head. Whether it’s live or not is anyone’s guess” (68). At the start of the passage, the lack of receptionist signals that this meeting is impersonal, bureaucratic. In addition, the reader is confronted with the perplexing image of a “Head Box.” Later in the novel, this Head Box is explained as a video screen showing the image of a person’s head. However, in this section, Atwood’s wording significantly skirts around this basic information. Combined with the lack of “receptionist in the flesh,” Atwood’s construction of the Head Box signifies that Charmaine is not meeting a personal actor, a face or representative. Instead, she is meeting the Head, the top-level brain where this system originates. She is meeting the system itself.

The fact that the “head” is described as inside of a “box,” rather than on a screen is also significant. The reference to “box” points away from the full surface of the screen. Instead, it evokes the contour or outline. The Box becomes a frame surrounding the
Head. Just as the Head represents the system/solution, the Box represents the frame by which this system/solution is presented. Say sociologists Altheide and Schneider, “Frames are like the border around a picture that separates it from the wall and from other possibilities” (51). The Head Box delineates “what will be discussed, how it will be discussed, and above all, how it will not be discussed…” (Altheide and Schneider 52). In this sense, the Box indicates the way the issue is presented: boxed off and compartmentalized into a very specific, very punitory paradigm.

After Charmaine’s somewhat startling encounter with the Head Box, Atwood moves on to describe her interaction with it. Charmaine’s first words to the Head Box are, “Could I have the key, please?” (68). Charmaine has been presented at the macro level with a problem (social breakdown), and a potential meso-level solution (social control). Now, she is voicing her active support of this solution. The key gives her access to the room where the Procedure will be carried out. It is also the “key” to solving the problem of criminality—literally embodied in the condemned man waiting inside the Procedure room. Alternatively, in the real world outside the microcosm of the Project, Charmaine could have voiced her support through participation in the broader social conversation. She could also have done so by voting for a particular political candidate campaigning on a platform that relates to the target issue frame/solution, such as a presidential candidate in the 1980s that promised to get “tough on drugs” or “tough on crime.”

When Charmaine asks for the key, she signals her willingness to accept the “box,” the framed issue that is presented, and the “head” inside, or the bureaucratic solution to this perceived threat. She also is accepting actively the specific punitory action that this
solution entails, the Procedure. From acceptance, the next critical step is involvement. This is where Charmaine leaves her role as spectator and transitions into active participant. “‘Log in please,’ says the head, smiling” (68). Although Charmaine has yet to complete the actual Procedure, the act of logging in signals the turning point where she shifts from onlooker to actor. Beyond simply logging in her code, she is entering herself as a participant within the system. Charmaine is now complicit in this top-down mechanism of punitory justice. She is now a contributor, a key component that feeds and sustains the higher-level systems operations.

In Charmaine’s interaction with the Head Box, the reader witnesses the three layers of punitory justice converge. The Head represents the dominant power structure and its motivations, in this case revenue through a prison-for-profit scheme. The Head uses a punitory system to achieve this aim, and validates this punitory system through a process of framing. The Box represents the framing mechanism that delineates the current economic issue as a problem needing a social/criminal response. The Box/frame legitimizes the function of punitory policy in achieving this response. Through the Box, the issue is repackaged to Charmaine, the individual. The message sent through the Box impacts Charmaine’s personal viewpoint regarding both the issue and the necessity of the punitory response. In turn, Charmaine presents individual, micro-level support for the meso-level system, and the macro-level social discourse that calls for such a system.

Although this is a clear example of a top-down process of punitory justice, even a top-down system as clearly demarcated as this one contains some bottom-up elements. As Charmaine internalizes these punitory conceptions, she is able to provide a measure of bottom-up style support for punitory policy. This construction is seen in the real-world
example of the War on Drugs. As the general public began to acknowledge the threat of drugs put forth by conservative politicians, popular sentiment from below put pressure on Democratic leaders who were not part of the initial Tough on Drugs/Crime agenda. This popular support led to eventual bipartisan backing of the Republican-originated agenda, illustrating the complex interplay between top-down and bottom up processes. In the next chapter, I examine the mechanisms of bottom-up punitory justice in greater detail, showing the upward process by which punitory policy builds off of populist sentiment, rather than arising at the behest of specific political agendas.
Jordan’s Dystopian Vision: Punishment by the People

Atwood’s dystopia depicts a system in which a top-down process expands penal control to enforce an overarching system of punitory justice on society. In *When She Woke*, Hillary Jordan creates the opposite paradigm. Rather than imagining an authoritarian government that imposes a punitory system of justice on the public-at-large, Jordan narrates a penal system that is essentially divorced from governmental control and rests in the hands of the people. Liz Smith describes the novel in *The Huffington Post* as:

> A tale of the not-very-distant future, after economic collapse and a catastrophic pandemic, where criminals are “chromed” (tinted) in accordance to their crimes—yellow, blue, and most disastrously, red—for murder. The story follows a woman, Hannah, tinted red, and how she manages to live in a world where she cannot escape her sin.

Some reviewers have criticized *When She Woke* for what they view as a heavy-handed approach to current social themes. Reviewers nonetheless point out the importance of the subject matter. Writes Jan Stuart in *The New York Times*, “If *When She Woke* sometimes seems like a stunt, it’s a stunt with very sharp teeth.” Along the lines of Atwood, Jordan herself describes this novel as a speculation on a possible future given the state of affairs in the United States today. She states in an interview:

> The main influence on the book was not anyone else’s bleak future, but our own troubling present…dystopia [is] written in response to current events or trends, extrapolates a grim vision of where they might lead us and asks, Do we really want to go there?…WSW is also a response to the trend towards punishment and stigmatization (and away from rehabilitation) in our criminal justice system [and] government incursions into the privacy of individuals in the name of national security. (Jordan, “Lawless Interview”)
Jordan examines a number of polarizing issues in this novel, including the intersection of faith and politics, fundamentalism, and women’s rights. Since this paper focuses on punitory justice, for the purpose of illustrating this argument, I restrict analysis to aspects of the novel that relate to punishment and stigmatization, specifically found in Jordan’s invented “melachroming” system of criminal justice. With melachroming, convicted criminals do not serve out their sentence in a prison. Instead, their skin is dyed a color that corresponds to their crime, and they are then released back into society. There, convicts essentially serve a sentence imprisoned by popular opinion, with the public able to carry out whatever brand of justice they deem fit. Such tactics range from overt discrimination, barring “Chromes” from housing, employment, and patronizing businesses, to more insidious harassment, violence, and execution. After receiving her sentence, the protagonist, Hannah, enters society as a “Red,” and reflects, “‘I’m free’…though she knew the notion was absurd; she was anything but. She was trapped in the hideous red body…Wherever she went, she’d be a target” (145).

In When She Woke, a global pandemic has left large numbers of women infertile and raised serious concerns about maintaining population levels. In addition, the United States faces significant economic challenges after a Second Great Depression. As a result, a “Great Reckoning,” has occurred in politics, bringing the highly conservative Trinity party to the political forefront. This government has implemented melachroming as a means of reallocating resources to public works and social services. Melachroming can also be considered as a means of maintaining population levels in free society. Although Jordan does not mention this as a specific motivation, the reader can extrapolate that if the future United States in When She Woke has the same total prison population as
present-day United States, melachroming could release approximately 2.2 million people into the general population (World Prison Brief stat.).

Bottom-Up Punitory Justice: Power to the People and the California Three Strikes Law

A number of critics, as well as Jordan herself, have described *When She Woke* as a depiction of the ways tyrannical government policies interfere in the private lives of citizens, a scenario that appears more in line with a top-down interpretation of punitory justice. While this analysis contains validity, it misses the underlying populist elements at work, especially in regards to the melachroming system of criminal justice depicted in the novel. *When She Woke* depicts a society in which a punitory system is placed *into the hands of* the general public. This is in contrast with *The Heart Goes Last*, where a punitory system is *imposed on* the general populace. In *When She Woke*, instead of the government imposing justice through a prison system, the penal arm has been extended to become a function of everyday society.

The bottom-up process of punitory justice is also commonly termed “punitive populism” or “penal populism.” According to the *Encyclopedia of Theoretical Criminology*:

Punitive populism refers to the idea that public support for more severe criminal justice policies (most specifically incarceration) has become a primary driver of policy making, as well as of political election cycles, with the result of increasingly harsh punishments regardless of their ability to reduce crime or redress its known correlates. (Wood)
Bottom-up explanations of punitory justice hold that punitory policies originate within a punitory-minded public fearful of crime or more generalized threats to the social or moral order. This punitory public sees politicians and the penal system as “soft on crime” and unresponsive to public needs and desires. The public also tends to lack confidence in the government’s ability to control crime effectively (Wood). Public opinions are disseminated through available information channels, such as popular media, talk radio, and public opinion surveys, as well as projected through lobbying groups and other methods of political influence. In turn, popular opinion comes to affect official positions regarding crime policy. Ultimately, explains criminologist John Pratt, a “relationship is forged between politicians and those claiming to speak for ‘ordinary people.’” The policies that arise out of this relationship are “designed not only to control crime through more punitive sanctions but also to ‘rebalance the criminal justice system’—to take penal power away from criminal justice elites and return it to ‘the people’” (Pratt, “Legitimacy”).

Penal populism is commonly associated with the preponderance of victim’s rights groups using emotional appeals and fear-based rhetoric to exert pressure on politicians to pass particularly punitory laws. Often these laws would not have been enacted had they gone through the normal channels (Pratt, Penal 19). Such laws are often tied to the particular victim in name, for example Megan’s Law, Jessica’s Law, or the Jacob Wetterling Act (Pratt, Penal 18). California’s notorious Three Strikes Law is frequently cited as an example of penal populism. Until 2012, the law imposed a mandatory sentence of 25 years for a “third-strike” felony, even for a non-serious crime (“Three Strikes”). The ballot initiative for this law received widespread popular support after
Mike Reynolds (whose daughter was murdered in a “third-strike” felony), campaigned heavily for then-governor Wilson to sign the bill into law (Pratt, Penal 19). Pratt explains that, given the emotional appeal of the issue and its popularity among citizens, the governor would have lost a fair amount of electoral support had he refused to sign (Penal 19). The law is considered a result of penal populism as it directly responds to popular fears about repeat offenders, while circumventing the typical process by which such legislation would have been reviewed and advised by academic criminologists or those in the civil service sector (Pratt, Penal 19).

The California Three Strikes law had far-reaching implications beyond the issues it claimed to address. Rather than targeting the third-strike murderers, rapists, and child molesters that it purported to punish, in practice the law more commonly served to impose life sentences on non-violent offenders for minor crimes. Stanford Law School reports that over half of prisoners sentenced under the law committed non-violent crimes, with life sentences given for “offenses including stealing one dollar in loose change from a parked car, possessing less than a gram of narcotics, and attempting to break into a soup kitchen” (“Three Strikes”). The law was amended in 2012 to distinguish between serious and non-serious offenses. As a result, over 1,000 prisoners were released from custody in the first eight months, with a notably low recidivism rate of only 2% (“Three Strikes”). This repeal took place at the hands of voters in a ballot initiative, and came on the heels of widespread publicity of cases involving life sentences for non-serious offenses, with a commonly-cited example being a man who was given a life sentence for stealing a pair of socks (Sankin). As with its implementation, the repeal of the law can be considered a case of populist politics, though in this case serving a non-punitory agenda.
The system of melachroming in *When She Woke* serves a similar aim of shifting penal power to “the people.” This happens in a very literal sense in the novel, as the power to punish is transferred from the state to the public-at-large. Like the top-down process of punitory justice seen in *The Heart Goes Last*, bottom-up punitory justice is a causal and interdependent process, involving a complex interplay between micro, macro, and meso-level forces. But unlike the top-down paradigm, which presents punitory thought as originating at the highest levels, bottom-up punitory justice starts with the assumption that the public holds generally punitory attitudes regarding crime and crime policy. This public attitude then travels upward to shape policy decisions. Because of this fundamental assumption, it makes sense to begin an examination of the three levels at work in the bottom-up process at the micro, or personal level.

The People’s Court: Melachroming and the New Jim Crow

*When She Woke* is a modern version of Nathaniel Hawthorne’s *The Scarlet Letter*. Both Hawthorne’s Hester Prynne and Jordan’s Hannah Payne are marked by the color red and forced to bear the shame of their transgressions publicly. Yet the actual scarlet badge or red-hued skin is not punishment in and of itself. Instead, punishment results from the social response to the visual symbol of wrongdoing. Essentially, Hannah and Hester are both punished by public reaction at the micro level, through discrimination, ostracism, and even violence, rather than a formal penal system.

Jordan’s melachroming system, like the scarlet letter of Hannah Payne’s literary predecessor, presupposes the fact that individual members of society possess a sufficient
punitive ideation, enough so that chroming serves as a punishment, not just an affront to 
vanity. If the prevailing social attitude involved sympathy for, or acceptance of Chromes, 
melachroming would only serve as a means of physical distinction, not as a punishment. 
Since the application of punishment is left to the citizenry themselves, public 
participation is the key to ensuring that melachroming functions as a truly punitive 
system of justice. Although crimes are still tried in a legal court, sentencing is handed 
down within the court of public opinion.

Often, these punishments take form of publically sanctioned violence. Says 
Hannah; “I’m familiar with the survival rate for female Reds” (202). The more grievous 
felons, the Reds and Blues “tended not to survive long once they were released. Some 
committed suicide, but most simply disappeared. Their bodies turned up in dumpsters and 
rivers, stabbed or shot and strangled” (7-8). Members of the general populace 
sporadically commit attacks on Chromes. Frequently, however, these attacks come at the 
hands of organized vigilante groups reminiscent of the Klu Klux Klan. The most 
notorious of these groups, the Fist of Christ is considered:

The most brutal and feared vigilante group in Texas, known to be 
responsible for the deaths of dozens of Chromes and the beating and 
torture of hundreds more…The members wore flesh-colored rubber 
masks. Each struck a single blow…Each had the power when his turn 
came to maim, kill or let live, at his sole discretion” (155).

The group’s activities receive not just tacit acceptance, but widespread popular support. 
Hannah notes hearing many of her peers “defend and even champion their activities, 
saying, ‘Somebody needs to take out the garbage’” (155).

Punishment also takes the form of stigmatization and discrimination against 
Chromes, especially for the majority Chromes without material resources and
connections. “Seventy-five percent of Chromes come from the lower classes,” writes Jordan (208). These lower-class Chromes face significant housing and employment discrimination. “It was notoriously difficult for Chromes to find housing outside the ghettos where they clustered,” explains Jordan (42). Hannah is fired from her job as soon as her employer discovers her Chrome status. “Her services were no longer required” (166). Discrimination also occurs in more subtle forms. “I think you’ll find the world ain’t such a friendly place for a Chrome” a guard tells Hannah on her initial release from the melachroming facility (68). His proclamation is proved correct immediately. The cabdriver that arrives to shuttle Hannah home attempts to charge her an exorbitant fee: the three hundred dollars that all convicts are given upon release. “Ain’t many cabs’ll even pick up a Chrome,” he tells her when she protests (69). Later in the narrative, when Hannah seeks shelter from the rain in front of a store, the owner tells her, “Stay dry someplace else. Chromes are bad for business” (150). Jordan explains that this is an accepted fact of life for Chromes: “NO CHROMES ALLOWED signs were commonplace” (164). These examples are strikingly similar to both post- and pre-Civil Rights era racial discrimination in the United States. In an overt nod to Jim Crow laws, Jordan describes Hannah and Kayla, another Chrome, getting on a public bus. “Their fellow passengers’ eyes were hard and unwelcoming, herding them to the rear” (ital. added, 185).

Many of the ways Chromes are treated in the novel bear striking parallels to civil rights lawyer Michelle Alexander’s description of the American penal system as the “New Jim Crow.” Startlingly apropos to Jordan’s premise, Alexander explains:

Rather than rely on race, we use our criminal justice system to label people of color “criminals” and then engage in all the practices we
supposedly left behind. Today it is perfectly legal to discriminate against criminals in nearly all the ways that it was once legal to discriminate against African Americans.

Although some readers might object to this comparison, offering the fact that criminals are not relegated to the backs of buses or lynched at the hands of the KKK, such differences should by no means distract from the very real similarities between Jim Crow and our current treatment of convicted criminals. In many areas, discrimination and disenfranchisement for convicted criminals is just the same as it was fifty years ago for people of color. Alexander lists the specific forms of discrimination faced by prisoners upon release: housing, employment, educational opportunity, social services such as food stamps, and the right to vote or serve on a jury—all prime features of Jim Crow politics. This discrimination overwhelmingly affects people of color. Blacks and Latinos make up a staggering 58% of the prison population, compared to just 38% of the total population (Ghandnoosh). Says Alexander, “We have not ended racial caste in America; we have merely redesigned it.”

Alexander’s analysis of the New Jim Crow in penal politics leans more towards a systemic analysis, focusing directly on law and public policy and an overall top-down system of social control directed towards people of color. In When She Woke, this system of outright and explicit discrimination is more endemic, stemming less from law and public policy than from direct action at the hands of the populace. Unlike present-day America, the society depicted in the novel does not contain any outright laws that specifically discriminate against Chromes in terms of employment, education, housing and the like, simply a general social consensus. Technically, “discrimination against Chromes was illegal in municipal buildings. In fact, it was illegal in any building open to
the public, but the law was rarely enforced” (164). In Jordan’s narration, the state does not need to implement the types of discriminatory laws and practices we see today, such as real world requirements that job applicants disclose criminal convictions (“Criminal Records”), or eligibility restrictions to financial aid and student loans for convicted criminals (“Students”), as these discriminatory practices are implemented by the general public. Here, individual punitory ideations across the social spectrum are high enough to create a distinctly punitory society that manages actively to punish without state impetus.

To understand how such a system functions on a deeper level, the reader must ask more than if the public-at-large holds a high enough degree of punitory ideation to enforce such a form of justice. The reader must also consider why this would be the case. The answer to this question involves significant analysis at the macro level, at which the broader cultural consensus, media messages, and predominant social discourse takes place. As these messages inform, feed, and sustain personal attitudes towards crime and justice, they are the key forces behind punitory populism.

Media as Scaffold: Chrome TV

In *The Scarlett Letter*, the town fathers display Hannah’s namesake, Hester Prynne, on the public scaffold as a means of publicizing her transgression. In *When She Woke*, the media serves as a figurative scaffold at the macro level, playing an influential role in stigmatizing those convicted of crimes and creating a line of demarcation between “honest” citizens and “criminals.” Jordan explains in an interview: “Hester is made to stand on a scaffold in front of the whole community and exhibit the mark of her shame.
So what, I asked myself, would the futuristic equivalent of a scaffold be? Reality TV, of course, only in a more sinister form” (Jordan “Volkenannt Interview”).

In *When She Woke*, newly chromed convicts spend a month in solitary confinement on the “Chrome ward,” where they are filmed continuously. Clips of this confinement period are then broadcast to the public in a bizarre form of “reality TV.” The Chrome ward television broadcast serves as a means of exhibition, but this exhibition is more for the benefit of society than a method of punishment for most criminals. A majority of Chromes never even make the broadcast. This is explained early in the novel:

> Although the feed from each cell was continuous and the broadcasts were live, they didn’t show every inmate all the time, but rather, shuffled among them at the discretion of the editors and producers. Hannah knew she was just one of thousands they had to choose from in the central time zone alone. (9)

Punishment for the majority of Chromes takes the form of the shattered lives they return to after the brief period of confinement. Hannah describes her mother’s reaction after her conviction: “How disgusted she’d looked, as if she’d smelled something foul” (76). Chromes return to a society that treats them with this same disgust Hannah’s mother shows, as well as suspicion, fear, and rejection. When Hannah purchases a fast-food meal, “The pimply teenager behind the counter handed her the bag gingerly, careful not to touch her” (170). As a Red, Hannah is thrust into a world where “life would be precarious” (170). She illuminates the reality of this precarious existence: “The fact of her solitude struck her then, bludgeoning her with its absoluteness. She was lost to everyone who’d ever loved her, and they to her” (170).

The Chrome ward broadcast, Chrome TV, is a key mechanism in ensuring Chromes are treated as second-class citizens. Chrome TV presents a mediated frame of
criminal behavior marked by sensationalism, humiliation, and depersonalization. As with most television crime shows and mass media news coverage, Chrome TV grants the most attention to the more sensational criminals, “Reds [murderers] and other felons more than Yellows [misdemeanors]” (9). Criminologist David Green elucidates on this aspect of media reporting in the real world, stating, “The news values that govern whether or not a [crime] event is deemed newsworthy tend to stress novelty, simplification, and titillation” (524). Green also explains that “news coverage of complex and emotive issues such as crime and punishment distorts, oversimplifies and sensationalizes” (524). In the novel, in addition to the more violent crimes, producers also give increased airtime to Chromes who exhibit the most disturbance: odd behaviors, protest, and any outward manifestations of suffering. Jordan elaborates: “If you were one of the really entertaining ones—if you spoke in tongues or had conversations with imaginary people, if you screamed for mercy or had fits or scraped your skin raw trying to get the color off…you could be bumped up to the national show” (9).

In effect, Chrome TV broadcasts the most frightening crimes (murder/felonies), the most depraved or insane criminals (“conversations with imaginary people”), and the least civilized, most animalistic behavior, (clawing at one’s own skin). This serves the purpose of distorting the overall severity of crime in general, as well as sensationalizing and stigmatizing those who commit them. Thus, Chromes become “preposterous, capering objects of ridicule, barely recognizable as human beings” (103). Citizens are then primed for how to react when encountering Chromes in everyday life. Chromes cease to be members of the peer group, instead relegated to an excluded caste—social and moral deviants who do not abide by the rules and conventions that make up the social
contract. In this manner, the media serves as the scaffold by which the criminal is held up as an outsider, while society itself functions as the gallows by which they are hung.

**Society as Gallows: Honest Citizens vs. Chromes**

Media messages, like those spread through the Chrome broadcast, are not simply disseminated to a passive audience. As these messages enter the public sphere, promoted themes gain traction and resonance, becoming part of collective opinion and broader social discourse that remains long after the initial message has disappeared from the screen. Media can be considered a thread in an interwoven tapestry of macro-level forces that work together to shape and reinforce individual punitory attitudes. Writes sociologist Theodore Sasson:

> In constructing accounts of public issues, [people] draw upon the resources at their disposal including popular wisdom, their personal experiences, and bits of media discourse. To assemble this raw material into coherent and meaningful accounts, they select from the range of interpretive frameworks available in the culture for making meaning on the issue at hand. (9-10)

Essentially, individual punitory thought does not arise organically, but is informed and influenced by available “interpretive frameworks.” These frameworks include entertainment and media messages, but also the narratives that people are exposed to within their peer groups, homes and communities. In this sense, the way that everyday citizens think about crime is both influenced by and in turn influences broader collective thinking.

In *When She Woke*, collective thought, or broader interpretative frameworks, involve a steep distinction between two social groups: Chromes and “honest citizens.” Hannah explains her own pre-conviction views:

> She remembered how she used to feel when she worked in the soup kitchen, putting trays of food into the hands of its ragged supplicants, people who stank of
poverty and desperation, whose eyes avoided hers. How she’d pitied them, those poor people. How generous, how virtuous she’d felt helping them. (73)

In this passage, key wording alerts the reader to the sharp divide between the “virtuous” and the dregs of society. Jordan employs the words ragged, stank, desperation, and fallen. Such wording illuminates the divide between this underclass and regular citizens. In such a system, with justice enforced by the people, for the people, participation is made that much easier by clearly delineating the moral superiority of those intended to carry out said justice. The preceding passage drives this point home with the final sentence: “Them—people totally unlike herself and her family, people who had fallen to a place she would never, ever go.” (73). Chromes are depicted as unlike honest citizens—unworthy and undeserving of the same treatment, privilege, and protection.

When Hannah becomes a Red, this depiction becomes a stark reality. She wonders: “Was this her future then, to sit on public benches, shoveling food in her mouth like a starved animal and waiting for some violence to befall her?” (171). With this remark, Hannah epitomizes the new reality of her life as a Red. She is now relegated to the public sphere, “public benches” rather than a private home and the accumulation of material wealth that mark the functioning middle class. “Shoveling food” implies a furtive action; Hannah no longer enjoys access to even the basic sustenance of life. The most telling phrase, however, is the mention of “like an animal.” In this sense, Hannah has ceased to belong to the peer group, the community and society as a whole. As a Chrome, she is not just an outsider. By losing her ability to participate within society, she has essentially lost her humanity. She has become one of those “preposterous, capering objects of ridicule, barely recognizable as human beings” (102). Through apparent
rejection of the moral and ethical codes that bind together the social framework, Chromes are no longer seen as entitled to the benefits that such a framework entails.

**Justification: A Moral Economy**

In addition to a framework that emphasizes stigma and fear of a dangerous caste of outsiders, the melachroming system also uses a framework that blends economics with the notion of moral worth. The novel shows a future United States that is financially strapped in the wake of a major depression. Melachroming is viewed as a means of reallocating scant resources away from an expansive penal system, toward what is perceived as the greater social good. Hannah explains:

> How else, after the Second Great Depression, to relieve the financially crippled federal and state governments of the prohibitive cost of housing millions of prisoners? And why should precious tax dollars be wasted on criminals when honest citizens were going hungry, schools were failing, roads and bridges were crumbling. (208-9)

This passage presents penal policy as prohibitively expensive. There is also a deeper implication: citizens who commit crimes are not just social delinquents, but also economic delinquents, making claim to resources that should instead be allocated to “honest citizens.” Writes Pratt:

> Penal populism speaks to the way in which criminals and prisoners are thought to have been favored at the expense of crime victims in particular and the law-abiding public in general. It feeds on expressions of anger, disenchantment and disillusionment with the criminal justice establishment. *(Penal 12)*

According to this interpretative framework, Chromes should not be favored over the “law-abiding public.” This is seen in the novel’s re-allocation of funding away from the penal system as a whole. But it also speaks to specific post-conviction disenfranchisement as well as less explicit social prejudice in the form of job and housing discrimination for Chromes (similar to the United States today). The general social
consensus is that Chromes are undeserving of any slices of the communal pie that should instead serve “honest citizens.” According to Hannah, “while the sight of a Chrome sleeping in the street or standing in line at the soup kitchen had often stirred her pity, she’d always accepted its necessity and the justice of it” (ital. added, 208). In this depiction, allotting resources only to those who accept, rather than reject, the social contract, enacts “justice.” Such a view of justice equates moral worth with economic worth: “honest citizens” possess moral worth, and are thus entitled to economic benefits and participation. Chromes are not “honest citizens” and thus are not seen as economically deserving. As a result of this reasoning, removal of economic benefit through access to employment, and by extension, food and shelter, becomes a method of “justice,” not an unintended byproduct.

The framework of Chromes as a dangerous underclass lacking economic worth pits the interest of the “honest citizen” against the interest of the criminal, whether in economic terms or the overall preservation of the moral order. Through media depictions and the broader social consensus, these frameworks in turn inform and influence personal opinions regarding crime, criminals, and the administration of justice. It is not that Hannah, the Payne family, and their friends and neighbors have a naturally punitory view of crime, to where “the sight of a Chrome sleeping in the street or standing in line at the soup kitchen” or the brutal activities of anti-Chrome vigilante groups automatically are both “necessary” and “just,” (208). Instead, they have been conditioned to feel this way through media depictions and the more generalized social discourse. Their personal viewpoints are shaped by macro-level dialogue, to where, as Hannah explains, “Even
when they’d injected her, there hadn’t been a shred of doubt in her mind that she deserved her punishment” (208).

Populist Ventriloquism: The Silent Majority

The media and other public platforms play another role as well. In addition to shaping individual attitudes and collective understanding of an issue, they also disseminate what is believed to be the popular opinion. A key tenet of bottom-up punitive justice is that a public generally assumed as punitive influences public policy. However, populist belief does not necessarily need to involve majority opinion to become a vehicle in a bottom-up process of punitive justice. Majority opinion can also function as a perception rather than existing as fact. Matthews discusses what he calls “populist ventriloquism,” in which vocal minorities purport to speak for a silent majority, who, in reality, may not share the same views (“Myth”189). This view does not necessarily consider punitive public sentiment as belonging to individual actors, but rather as “ideologies held by particular groups in contrast to those of elites or policy makers” (Wood). Pratt gives examples of these ventriloquists: talk-radio hosts, law and order groups, conservative think tanks, and officials in law enforcement spreading “zero tolerance” messages (“Legitimacy”).

It is important to note this aspect of penal populism to avoid making sweeping generalizations about the novel, or about society as a whole. It is not that everyone in Hannah’s world supports melachroming and its attendant discrimination and vigilante violence. Simply put, those that do favor such an approach are simply in control of the
pulpit. And in politics, policy creation does not necessarily respond to the actual will of
the people, but the will of the loudest and most influential.

Essentially, the media and other macro-level information channels serve a two-
fold purpose. In one sense, they help direct the flow of information down to the micro, or
individual level, shaping and providing frames of reference for individual attitudes. But
on the other side, they also spread these individual attitudes (or the loudest
representations of them) upwards to the highest level, influencing policy creation and the
administration of such policy at the meso level. As a result, such messages tell individual
people and social groups how to understand and treat criminals, as seen in Jordan’s
invented melachroming system. But they also tell those in charge of policy decisions that
punitive policies like melachroming are indeed at the behest of public request.

Policy and Purpose: Good Intentions Have Punitory Results

At the meso level, at which policy is implemented, Jordan’s system of
melachroming is essentially a populist one, in which crime control is relinquished from
the hands of the state and instead placed into the hands of the people. Pratt explains that
policies arising out of penal populism “become a way of ensuring that policy in this
sphere is more reflective of the public will than the values of the criminal justice
establishment” (Penal 14). In When She Woke, the populace (or those that presume to
speak for the public) is assumed both to desire the autonomy to deal with crime outside of
governmental authority and possess the ability to do a better job than the government in
managing crime. As a result, the melachroming system is not only presented as a means
of unburdening the government of the crippling cost of punitory justice, but is also perceived as the preferable option for justice administration. As Jordan explains, the former penal state (implied as the current U.S. criminal justice system) had been “a patent and abject failure” (208). Jordan describes the penal system pre-melachroming as “disintegrating and filled to bursting, the vast majority of their inmates living in conditions so horrific as to be unconstitutional. Rape, murder, disease and abuse of prisoners by guards were endemic. Meanwhile, recidivism increased with every passing year” (208).

Jordan’s society replaces the old system for a community-oriented approach, one that is not only more cost-effective, but is also presumed to be “a more humane means of punishment” (208). Unfortunately, this community-oriented approach is also intensely punitory, not just in general treatment and discrimination against Chromes, but in many of the targeted structures meant to take up the slack in the absence of the formal penal establishment. After her release from the Chrome ward, Hannah does a brief stint at the Straight Path Center, a halfway house/rehabilitation clinic for female Chromes. The center promises a “path to redemption,” but employs intense shaming and humiliation as a means of achieving this “redemption.” The center’s rules require each new penitent to enter the facility naked, where they are then paraded in front of the rest of the residents. In various “enlightenment sessions,” a bizarre form of group therapy, assorted “enlighteners” psychologically degrade the women. Hannah quickly leaves the center after a mentally fragile woman is berated to the point that she “crumpled to the floor and began to keen—strangled, guttural cries like the mewling of a dying animal. They were
the most terrible sounds Hannah had ever heard….They were all crying now, all except the enlightener, who was looking down, grimly triumphant at Anne-Marie” (141).

Although much of my analysis at the micro and macro levels focuses on the inherent punitory element within Jordan’s depiction of melachroming specifically, and real-world penal populism more generally, often such systems are originally intended as non-punitory solutions. Simply ascribing policies that arise out of punitive populism to a generally punitory public misses the complexity of the process. As seen in *When She Woke*, populist punitivity can encompass a much broader conceptualization that the system itself needs reform, even a reform *away* from punitory policy. In the real world, efforts to decrease recidivism and offer alternatives to long prison sentences often take the form of boot camps and reform centers (like the Straight Path Center in *When She Woke*), public shaming and stigmatization, and increase in the use of parole and probation. Such initiatives are often promoted as non-punitory alternatives in that they are community-based solutions, but the application of these policies takes on a punitory tone in many cases. The stringent rules associated with parole and probation can create a revolving door back into the prison system (Garland, “Penalty” 478). Garland explains, “violations of parole license has become a major basis for imprisonment, with states such as California attributing most inmates received into custody to this source” (“Penalty” 478). Parole systems often focus heavily on drug testing as a means of control, without providing any actual means of treatment and support (Feeley and Simon 462). Boot camps have become popular as a means of “providing discipline and pride” to low-level youth offenders. However, as legal scholars Malcolm Feeley and Jonathan Simon note, such programs are patently unhelpful, “as though physical fitness could fill the gap left
by the weakening of families, schools, neighborhoods, and other social organizations in the inner city” (463).

How do such initiatives, originally intended as alternatives to punitive sentencing, actually become cases-in-point for punitive populism? Matthews explains that measures seen as non-punitive can often function as a punitive response through “widening the net” of the crime control system, or the “formalization of previously informal sanctions” (“Myth” 180). As Matthews explains, these informal systems of justice can “ultimately serve to expand and enhance the existing system of crime control…the use of ‘non-punitive’ measures may, of course, involve the expression of more punitive responses (“Myth” 180). This is indeed the case in When She Woke. Moving the application of justice from the hands of the law to the hands of the people “widens the net of the criminal justice.” As a result, a system intended, in theory, to be more humane and less punitive has, in practice, taken the form of an extremely punitive response to criminal justice.

Top-Down vs. Bottom Up: Complicating the Theory

In many ways, Atwood’s The Heart Goes Last provides a relatively clear-cut example of what social theorists name as top-down punitivity. Although the same process can be applied to examine the workings of penal populism in When She Woke, Jordan’s novel helpfully complicates theories of bottom-up punitivity. Melachroming can be interpreted as a system of crime control with distinctly populist elements, but the narrative also complicates the causal nature of the process. Rather than a strict example
of bottom-up punitory justice, melachroming serves as a correction to the binary between the two causal descriptions in social science.

One way to look at the issue is that melachroming seeks to rebalance the criminal justice system by transferring the balance of power away from more formalized structures into the hands of the people, thus “widening the net” of the criminal justice system. But the implementation and application of the melachroming system also involves some top-down elements. Melachroming, with its attendant frames regarding economic cost of crime and moral worth, could just as easily have been pushed downwards onto the public as a political maneuver. Jordan does not give much background regarding the political events surrounding melachroming’s implementation. However, Jordan makes readers aware that in the wake of both the depression and pandemic, the highly conservative Trinity party became the dominant political power after a massive political upheaval. In a top-down process, the introduction of melachroming could have served as a means of bolstering support for the party. Conversely, in a bottom-up theory, melachroming could very well have arisen at the behest of a vocal minority of pundits, influential religious leaders, mass media, and the like, that tapped into and fanned the fears of an anxious public following these economic and public health crises.

Both of these arguments have validity, and trying to identify one or the other as the “true” process obscures analysis of the many complex forces in play. Matthews explains the need to go beyond bifurcated analyses of crime policy, stating: “We need to look at the growing array of agencies and institutions as part of an increasingly complex network of crime control with a diverse range of strategies, rather than just reduce to punitivity or populism” (“Myth” 196). Ultimately, both of these frameworks are useful in
seeking overall understanding of the elements at play within systems of punitory justice. Strictly to say that punitivity originates solely at the top or bottom, at the macro or micro level, ignores the reflexive nature of cultural beliefs, values, and opinions, in which many disparate viewpoints come together to feed, reinforce, multiply, and magnify one another. Even David Garland, one of the foremost criminologists associated with penal populism, states that arguing over causality is counter-productive. He discusses high-profile populist theories introduced by himself and legal scholar Jonathan Simon, as well as the top-down interpretations dealing with racialized control put forward by Loic Wacquant and Michelle Alexander, explaining:

As interpretation of America’s contemporary penal landscape, each of these accounts has power and plausibility...But considered from the point of view of the field as a whole, their competing claims seem complementary rather than mutually exclusive, and their...differences more a matter of emphasis than of kind. (“Penality” 482)

In the end, punitory justice can be explained by both top-down and bottom-up interpretations. Both interpretations have great value in examining how punitory forms of criminal justice occur, where punitory thought resides, and the ways each of the macro, meso, and micro spheres play a role in shaping one another. However, to focus exclusively on the how neglects the equally important why. In the next chapter, I turn to this aspect of punitivity, and use Oates’s Carthage to examine such questions as: 1) Why do we, as individuals and as a society possess the drive/need for justice? and 2) Why has justice come to be synonymously equated with punishment?
Chapter Three: Justice Re-Visioning in Joyce Carol Oates’s *Carthage*

Subverting the Familiar Crime and Punishment Narrative

The previous two chapters explored the processes by which punitivity shapes crime policy through an examination of dystopian literature. This genre is useful for isolating and magnifying certain processes and systems related to punitory justice. However, this approach has some limitations. The focus on processes and systems can obscure more personal, emotive details and complexities present in everyday reality. Moving beyond analysis of processes within the speculative dystopias of Atwood and Jordan, this chapter examines justice in a more personal manner within the real-world context presented in Joyce Carol Oates’s novel *Carthage*.

In traditional fictional renderings of justice, plotlines typically rely on clear examples of right and wrong, with narrative arcs that entail the eventual triumph of justice by a fair and balanced authority structure (King and Maruna, “Function” 23). As Winfried Fluck, professor of American Studies, explains:

> In American popular culture, the narrative usually follows a predictable sequence of transgression and punishment, not because of the writer's lack of creativity, but because of the narrative’s function in the search for individual justice” (32).
This “search for individual justice” is a way to create order and meaning out of the complicated process of justice. Richard Sparks, author of *Television and the Drama of Crime* explains, “it may be that the audience turns to crime fiction precisely in consolation for the messy inconclusiveness of the process of justice in the world and its obdurate failure to conform to morally or aesthetically satisfying patterns” (24). Oates’s approach to justice, however, belies this convention. In a style of writing that I term “justice re-visioning,” she avoids the standard narrative arc of crime and punishment and embraces Sparks’ “messy inconclusiveness” of justice (24). As a justice re-visioning novel, *Carthage* subverts the familiar rendition of justice, calling the reader to question assumptions and preconceived ideas on innocence, guilt, punishment, and the dubious prospect of assigning blame. This chapter uses a close analysis of *Carthage* to examine how conceptualizations of victim and perpetrator, as well as the desire for revenge, lead to a punitory mindset in which “justice” is synonymous with “punishment.”

*Carthage* does not lend well to neat categorization. The narration inhabits the perspective of a number of different characters, includes three distinct story arcs, and involves a number of plot twists that effectively upend the narrative arc. The basic crux of the novel revolves around a suspected crime in the small town of Carthage, New York. Dwight Garner explains in his *New York Times* review:

The plot in “Carthage” pivots around Cressida [Mayfield]’s disappearance; she is perhaps the victim of a rape and murder. Much of the evidence points to her sister’s fiancé, a decorated Iraq war veteran with apparent post-traumatic stress disorder named Brett Kincaid.

Cressida’s disappearance is the focus of a media maelstrom, with both local and national reporters converging on the Mayfield family and the town itself. Several months after Cressida goes missing, Brett Kincaid confesses to the crime, though Oates presents the
confession as somewhat suspect in its veracity. Oates’s narration follows the members of the Mayfield family: parents Zeno and Arlette, and sister Juliet. The reader witnesses the range of emotions the Mayfields experience as a result of the tragedy, both in the immediate aftermath of Cressida’s disappearance and in what might be called a literary post-mortem years after the fact. Oates herself describes the novel as “ontological.” She explains in an interview: “Is this girl actually missing or did she just run away? Has she been kidnapped or murdered? Where is she?” (Oates, “Grose Interview”).

Zeno’s Retribution: Just Deserts vs. Revenge

Cressida’s father, Zeno Mayfield, inhabits a prominent role at the forefront of the narrative. Zeno exhibits the most vocally punitory reaction to Cressida’s murder and the toll it has taken on the family. However, Zeno represents more than just a stock punitory character: a morally good hero intent on “evening the score” by making the villain “pay for his crime.” Oates carefully constructs Zeno’s character to dramatize the manner in which tragedy can evoke a punitory response, even in the most fair-minded. Zeno showcases how a punitory response can arise out of grief, trauma, and emotional anguish.

Zeno is portrayed as highly empathetic and charitable, two attributes indicative of a less punitory approach to crime and justice. He has served two terms as mayor of Carthage, in which “It was a quasi-secret that Mayor Mayfield had written personal checks for a number of endangered projects—parks and recreation maintenance, Little League softball, the Black River Community Walk-In Clinic” (Carthage 33). As a lawyer, he is willing to take on difficult, often unpopular cases. Early in his career, Zeno
was the target of public outcry for defending “a high school biology teacher who’d been suspended from his job for having taught Darwinian evolutionary theory to the exclusion of ‘creationism.’” (35). From the novel’s outset, Zeno is depicted as rational and trustworthy. “In any public gathering Zeno Mayfield presented himself as the most reasonable of men: a man you could trust” (13). Here, Oates’s construction implies that “reasonableness” is at the root of Zeno’s trustworthiness. Zeno is a self-described political liberal, and he is also highly literate, with a passion for philosophy and ethics. Through careful character building, pre-tragedy Zeno can be viewed as representative of justice that enacts “retribution through just deserts.” This type of justice is associated with due process of the law, proportionality and fairness (Gerber and Jackson 62).

However, “none of the Mayfields had guessed at the toxic after-life of a violent crime” (421). Zeno Mayfield’s moderate, liberal, and fair-minded approach to justice is called into question when his own daughter becomes a victim. Writes Oates, “Some might have wished for Kincaid to be sentenced to death. But Zeno was not one of these. For Zeno didn’t believe in the death penalty. Even for the vicious, brutal murderer of his daughter” (436). In this passage, Oates does not say that Zeno eschews the death penalty for Kincaid out of any feelings of clemency for the man himself. By contrast, “Even for the vicious, brutal murder” almost implies justification for such a punishment. Instead, Zeno simply does not “believe” in capital punishment. As a man of principle, “even” in such a case, he cannot renounce his previous stance on such a contentious issue. As a legal professional, capital punishment is an issue that Zeno would have considered in depth, and likely come to a stronger and more thought-out rationale for his stance than the average person. Here, Zeno’s belief is more than just opinion, but a strong moral
conviction. The reader gets the impression that Zeno, in fact, wishes he did “believe” in capital punishment. He would then be free to advocate for its application to Kincaid without abandoning what he is and what he stands for, a “civilized” “Officer of the Court” (454).

Zeno is also unhappy with Kincaid’s relatively short sentence, viewing it as a “weak indictment” (436). This is in spite of his understanding of both the case and the intricacies of the justice system. Search teams never located Cressida’s body, so there is no concrete evidence pointing to the fact that she has been murdered. Zeno’s legal expertise also makes him aware that the key evidence used to incriminate Kincaid is an unreliable confession. Writes Oates:

As a lawyer, Zeno knew: there remained the prevailing question of the corporal’s confession through seven hours of police interrogation, with no lawyer present. How authentic was this confession? Had it been coerced?…He’d been allowed to examine the videotapes not all of which were entirely coherent, audible. (436-7)

Notwithstanding the questionable evidence, Zeno is still convinced of Kincaid’s culpability in the alleged crime. “Zeno had no doubt. Kincaid was guilty,” writes Oates (436). This conviction of guilt leaves Zeno displeased with Kincaid’s sentence, even though the facts of the case do not merit a harsher punishment under the law. “No doubt, Kincaid should be sentenced to prison for a long time,” says Zeno. Oates continues, “Fifteen to twenty years meant eligibility for parole in seven years. Zeno knew this, and Zeno was sickened by the knowledge.” (436). This reaction can be described as intensely punitory, as it advocates that punishment should be applied independently of the facts involved in the case. Zeno expresses a desire for a punishment that is appropriate from an emotional standpoint, but that goes beyond the stipulations of the law.
As a complex character, however, Zeno also possesses a measure of self-awareness regarding his punitory feelings. He explains, “Laws had been invented to stem the primitive passion for revenge but the feeling of outrage, the wish to exact blood-revenge, is not easily quelled” (454). In this sentence, fair and proportional application of justice through the legal channels (retribution as just deserts) dissolves in the face of grief, in favor of what Zeno calls “blood-revenge.” This “blood-revenge” is what social scientists Monica Gerber and Jonathan Jackson deem “retribution as revenge,” in which punishment serves “not just to get even (to restore balance) but also to retaliate” (Gerber and Jackson 63). Although Zeno is portrayed as a moderate and fair man, in the case of personal tragedy, with close emotional involvement with the crime, the application of law only provides retribution as just deserts, not the revenge he seeks. Zeno states: “The unbearable fact was that his daughter had been murdered—but he’d been too weak to take revenge. Of course: too civilized. ‘Officer of the court’” (454).

Retribution as revenge occurs within the law also, as part of sanctioned legal proceedings, as well as outside of it. Gerber and Jackson associate retribution as revenge with “Harsh treatment of criminal offenders—both in terms of the process of assigning punishment and punishment itself.” (63). Law enforcement’s harsh treatment of Kincaid during the investigation, including their immediate presumption of his guilt and the possibly coerced confession, are cases in point of retribution as revenge occurring within the legal system. Zeno’s wish for a longer sentence, and possibly even the death penalty, if he “believed” in it, is another example of retribution as revenge leading to harsh treatment of offenders within a legal capacity.
Oates’s initial character building of Zeno as representative of the “just deserts” brand of justice is an important foreground to his later punitory desire for justice as revenge. Were Zeno to embody a clear philosophy of justice as revenge throughout the story, the reader would not have the same opportunity to examine and question this vision of justice and may instead tacitly accept retribution as revenge as necessary and just. Through Oates’s nuanced depiction of Zeno, the reader comes to feel that punitory ideation is not necessarily an innate characteristic, but also can be situationally dependent or a learned response. For Zeno, punitivity does not arise out of lack of knowledge or rigid thinking, but is an understandable reaction to trauma and grief. Ultimately, Zeno Mayfield’s self-aware transformation exemplifies how retribution as revenge can lead to and legitimize punitory justice.

Justifying Punitory Ends: Primary, Secondary and Metaphoric Victims

The role of the victim is a crucial aspect in conceptualizing responses to crime, especially when that response is a punitory one. The Oxford English Dictionary offers the following as a definition for crime: “An act or omission constituting an offense (usually a grave one) against an individual or the state and punishable by law” (ital added). Thus, crime involves more than just the breaking of a law or code; it is inextricably linked with the fundamental concept that this transgression has resulted (or could result) in harm to another, whether that other is a person, group, or society more generally. Victims can be categorized as primary or secondary (indirect). The specific individual harmed by the
crime event itself is considered the primary victim. Family members or other people who are close to the primary victim function as secondary victims, due to emotional distress resulting from harm done to the primary victim. (Riggs and Kilpatrick). In *Carthage*, Cressida serves as the primary victim, with the rest of the Mayfield family fulfilling the role of secondary victims. Zeno sums this up in simple terms: “The *Mayfields* were the victims. The murderer was *Kincaid*” (ital. Oates, 421).

Zeno exhibits the most punitory response of the immediate family. He is also the one that feels the sense of victimization most strongly. Zeno blames Kincaid not only for Cressida’s death, but also for the ensuing deterioration of the family structure. “He’d lost his other daughter too. As if the corporal had murdered both daughters,” writes Oates (421). When Zeno finds out that his wife, Arlette, has breast cancer, Oates writes, “Zeno was sick with fury anew, at Kincaid. Who’d killed his daughter, and was now killing his wife” (439). By extending victim status from Cressida, as an individual, to the Mayfields, collectively, Kincaid becomes responsible for injury done to all, even for those events like Arlette’s cancer, that are technically unrelated to Cressida’s murder. This perception fuels Zeno’s punitory ideation towards Kincaid. It legitimizes the intense anger that he feels and his desire for harsh treatment of Kincaid (either within the law or as “blood revenge”), regardless of whether the severity of such punishment is proportional to the actual crime itself.

Just as Zeno extends victimhood from Cressida herself to the secondary victims of the Mayfield family, Cressida serves as a metaphoric victim of larger social groups. As a young woman who was (allegedly) the victim of a violent attack, Cressida also stands in as a symbolic victim of exploitation and violence against women and children. Cressida’s
artwork is used for a promotional poster for a battered-women’s shelter bearing the slogan “Violence begins in the home. Take care” (445). Cressida’s mother, Arlette, ascribes Cressida’s death to “male violence,” rather than Brett Kincaid (446). Arlette publicly states that “she didn’t…blame the young man…so much as she blamed the ‘sick, violent, cruel, and heartless consumer culture’ in which young girls were used as advertising commodities, to sell products” (446-7). Cressida is also depicted as a victim of child violence, not as a (young) adult victim of sexual assault, despite the fact that she was nineteen at the time of her disappearance and had completed a full year of college. Oates describes her as “petite, child-sized. Except for her frizzed hair like a dark aureole about her head you might mistake her for a twelve-year-old boy” (54). Both of Cressida’s parents express this sentiment: “She isn’t really an adult. She is a child. For all her pose of maturity, a child” (84). The media depicts Cressida in a similar fashion. As a result, Kincaid spends a full year in solitary confinement as a protective measure while serving his prison sentence. “The publicity had been such, some of the inmates would have the impression that Brett Kincaid had raped and murdered a child, and his life in the general population would be at risk” (393) writes Oates. These passages dramatize how Cressida is not just a victim of violence enacted by Kincaid, but a symbol of violence against women and girls, and the even more horrific act of sexual abuse against children.

In such renditions, victim status serves as a method for organizing a broader narrative regarding the rationale for justice, especially the more punitory forms of justice. Media, advocacy groups, politicians, and law enforcement often use the concept of the victim as a symbol or rallying cry by which to promote or publicize a given issue and stir up support for a punitory response (often a populist one) to said issue (Garland, “Culture”)
When this occurs, the concept of “victim” serves as a conceptual entity in many ways distinct and separate from the actual experience of the crime event itself. David Garland explains, “The crime victim is no longer an unfortunate citizen who has been on the receiving end of a criminal harm…The victim is now…a representative character, whose experience is taken to be common and collective, rather than individual and atypical” (Garland, “Culture 351). In this process, the specifics of the particular crime event are subverted in favor of a more generalized view of a broader issue. Sociologist Joseph Davis further explains this process, stating, “The victim is a type to whom particular characteristics are assigned and around which interpretations are organized. Victimization is an interactional, discursive process by which victim status is designated; being a victim is not simply an objective fact about some persons or groups” (530). The objective fact that Cressida is a 19-year old young woman is subverted into assigned childlike characteristics, and Cressida comes to represent larger fears revolving around domestic violence and child abuse.

It is important to note that this process is not problematic by nature or necessarily something to be condemned, or that it by default leads to punitory thought and actions. The shelter’s use of Cressida’s story as part of a publicity campaign is an excellent example of victim appropriation for positive, non-punitory ends. Just because a symbol is employed in service of a cause does not cast judgment on the redeeming value and motivations of the cause. Simply, it is important to note this process in order better to understand those cases in which metaphoric victimization leads to punitory punishment, as in the case of Kincaid’s year long stay in solitary confinement. In the real world, punitory applications of this process can be seen in highly punitory laws named for or
rationalized by specific victims (Garland “Culture” 351). An excellent example of this process is the California Three Strikes Law discussed in Chapter 2, which was passed in the name of murder victims 12-year-old Polly Klaas and 18-year-old Kimber Reynolds (Skelton).

**Values Under Siege: Missing White Girl Syndrome**

In the novel, Cressida’s disappearance and alleged rape and murder became a high-profile case in the press, especially the tabloid news. An uncritical assessment of Cressida’s disappearance tells a familiar narrative: a teenage girl or young woman goes missing, presumably a tragic victim of violent crime, in turn exposing the threat that lurks beyond every suburban doorway. According to sociologist Barry Glassner:

> From the point of view of journalists and editors an ideal crime story—that is, the sort that deserves major play and is sure to hold readers’ and viewers’ attention—has several elements that distinguish it from other acts of violence. The victims are innocent, likable people; the perpetrator is an uncaring brute. Details of the crime, while shocking, are easy to relay. (24)

Oates’s depiction of the media reaction to Cressida’s case is very similar to media attention to real-world cases like those of Natalee Holloway and Holly Bobo. Both young women were close in age to nineteen-year-old Cressida, at eighteen and twenty years old respectively at the times of their disappearance. Like Cressida, both women were white and hailed from upper middle-class families. And, as in the case of *Carthage*, Holloway and Bobo claimed often-excessive national media attention for sustained periods of time, despite the lack of new developments in their cases. Also similar to Cressida, both young women were presumed deceased and likely murdered, though only Bobo’s body ever was recovered, four years after her initial disappearance.
Significantly, while media outlets prominently featured Holloway and Bobo for long periods of time, a number very similar cases involving disappearance of young women received virtually no media attention during the very same time span. A crucial difference between Holloway and Bobo and these unseen victims was race. Cases involving black or Latino victims simply do not receive the same attention as their white counterparts (Liebler 550). Robin Barton, a journalist who contributes to the Center on Media, Crime, and Justice states: “There are as many as 100,000 active missing persons cases in the United States at any given time. If you went solely by what you read in the media, you’d probably assume that most of these cases involve pretty white women.”

The phenomenon of the media’s intense focus on these women has been dubbed “Missing White Woman Syndrome” (alternately “Girl”). The term explains the tendency of media coverage to focus on young, white, and pretty women and girls, who also tend to hail from the middle or upper class, to the exclusion of women/children of color or of lower socio-economic status, and even men of any race (Liebler 549). Cressida received the press attention that she did because she fit the profile of an ideal victim from a media standpoint: a young, intelligent white girl, a gifted student, from a locally-famous, well-off family. This type of story rests on a fear-based premise that anyone like Cressida, a bright young woman from a small community, representing quintessential American values, could be the next victim.

Missing White Girl syndrome evokes a sense of fear that the “girl next door” is at risk. It brings the threat to the home front, with the corresponding assumption that the home front is one that embodies white, middle-class America. In an op-ed for the Washington Post, Eugene Robinson explains, “It's the meta-narrative of something seen
as precious and delicate being snatched away, defiled, destroyed by evil forces that lurk in the shadows, just outside the bedroom window. It's whiteness under siege. It's innocence and optimism crushed by cruel reality. It's a flower smashed by a rock.”

Missing White Girl Syndrome depicts a threat not just to girls like Cressida/Natalee/Holly, but to that home front they represent: middle-class, heteronormative, white cultural values. At risk are not just women/girls, but the social order itself. Oates carefully depicts this paradigm in the following passage describing the night Cressida disappeared:

> The pumpkin-colored Formica counters were freshly wiped and the dishwasher was still warm from having been set into motion…with her usual cheery efficiency Juliet had helped Arlette clean up after the dinner party…an evening that would come to acquire, in Arlette’s memory, the distinction of being the last such evening of her life. (68)

This passage embodies the hallmarks of the normative, modern family. Nothing evokes the epitome of suburbanization more than *Formica* and *dishwashers*. The modern family is *efficient* in its pursuit of middle-class status designators (material affluence, education, job skills), but is also cozy, congenial, a bastion of warmth and care. Oates uses the words *pumpkin-colored*, *cheery*, *freshly*, and *warm* to set this stage. When Arlette says this is “the last such evening of her life,” it is not that she will never comfortably tidy the kitchen after a dinner party again. Instead, it is that this sense of normativity has been shattered by the violence done to Cressida.

**Perpetrator as Metaphor: Summer People and the Crazed Veteran**
Violence is embodied not only in the figure of Brett Kincaid, but what Kincaid represents. Just as Cressida can be seen as representative of a larger victim group and the overarching social order, the perpetrator of the crime also stands in for broader social concerns. In his explanation of “an ideal crime story,” Glassner mentions that, in addition to a “likeable” victim and “uncaring brute” of a perpetrator, the crime stories that claim such widespread attention often, “have social significance, bespeaking an underlying societal crisis” (24).

Such a “societal crisis” is at work in regards to Cressida’s disappearance. The small community of Carthage, in the remote Adirondack region of upstate New York, is host to a large annual influx of summer tourism. The townspeople believe that these tourists bring with them the vice and violence that plague larger cities. “Summer people. Campers, pickup trucks. Biker’s gangs. In the night, on even a quiet residential street like Cumberland, you could hear the sneering roar of motorcycles in the distance” (63), writes Oates. Though Oates does not mention race explicitly, a careful reader is left wondering if there is a racial undercurrent to division between the town and the ubiquitous “summer people.”

Oates’s language evokes a sense of small-town (and possibly predominantly white?) values under siege. “Quiet, residential street” is paired against “sneering roar of motorcycles.” The reader is given the sense that the bikers “sneer” at the rules, values, and social order of the town. Gerber and Jackson explain, “through crime, criminal offenders [are seen to] take advantage, assume superiority, and show disrespect for the victim and society” (65). Oates elaborates, “At the lakes…there were ‘incidents’ each summer. Fights, assaults, break-ins, vandalism, arson, rapes, murders” (63). Among the
more ubiquitous “summer people,” the Hells Angels (a notorious biker gang) are often blamed for these “incidents,” as well as distributing hard drugs including methamphetamine. In the several-month interval between Cressida’s disappearance and Kincaid’s arrest, local gossip and media speculation frequently tie Cressida’s disappearance to the group.

Eventually, with Brett Kincaid’s confession and arrest, suspicion shifts away from the Hells Angels. However, the underlying sense of a threat to the social order does not dissipate. In the eyes of both citizens and media, the most likely perpetrator is one that is an everyday menace to the rules and values of the community. Even though Kincaid, a lifelong resident of Carthage, is neither one of these “summer people” nor a member of the Hells Angels, he serves as an example of how outside forces can affect and transform the community. Kincaid frequents the lakeside bars heavily patronized by “summer people,” exhibiting a tacit association with these “outsiders.” He also exhibits vices associated with the “summer people.” He takes “a half-dozen prescription pills daily” (49) and persists in heavy alcohol use despite known interactions with these medications.

Kincaid also represents the impact of a larger societal crisis than the vice-prone and unruly “summer people.” As a star high-school athlete turned war-hero, Kincaid should have been a local success story. But the Kincaid who returned home from war does not fulfill the image of what a war hero should look like. Kincaid’s face has been badly burned. “The ears, the scalp, the forehead, the lids of the eyes. The throat beneath the jaw...” writes Oates (19). He is physically disabled and has difficulty walking. He also suffers from severe PTSD. Kincaid is taken in for questioning in the immediate aftermath of Cressida’s disappearance, and the interviewing officer states:
Kincaid had seemed dazed, uncertain of his surroundings. He’d smelled strongly of vomit even after he’d been allowed to wash up. His eyes were bloodshot and his skin-grafted face made him look like “something freaky” in a horror movie…You’d never guess…he’s only twenty-six years old. You’d never guess he’d been a good-looking kid not so long ago. “Jesus! A ‘war hero.’” (49)

Oates’s prose brings to mind a frightening, Frankenstein-eque creation. As one character mentions, a “monster.” The media seizes on this depiction of Kincaid. Upon release from questioning, “TV cameras picked up, in lurid and unsparing detail, the scarred and flushed mannequin-face and the small stitched-looking mouth” (105). The implication is that just as Kincaid’s body has been affected by the war, so too is his mind. He is not just physically grotesque, but mentally deranged enough to be capable of committing as horrific an act as raping and murdering a young girl.

The Brett Kincaid accused of the crime is no war hero. Instead, he fulfills the stock role of the “crazed veteran” often associated with the Vietnam War. War historian Kurt Piehler writes, “The crazed, unstable veteran ready to commit murder, rape, and other horrible deeds was a stock character and an important symbol of the conflict. No doubt, it reflected American ambivalence regarding the conflict and those who participated in it” (Piehler). Though the trope of the crazed veteran is commonly linked with the Vietnam War, this characterization continues to impact the way both media and society-at-large view veterans in the wake of the wars in Iraq and Afghanistan, particularly those veterans that do not conform to the idealized image of the young, clean-cut white male, free of physical disfigurement and outward signs of mental distress. After decades of viewing depictions of the crazed veteran in television, movies, and bestselling fiction, the characterization has become part of the American cultural
narrative regarding war, even with increased awareness and a more modern understanding of PTSD.

It is far simpler for both media and society to depict Kincaid according to the trope of the crazed veteran than as an individual in need of physical rehabilitation, psychiatric care, and other social services. The construction of the crazed veteran hides other conditions that are far more difficult to identify and manage, such as social policies that do not assist or protect veterans, and the subsequent impact on spouses and children. As Glassner so aptly describes media coverage in these situations:

Like the elephant that vanishes behind clouds of smoke on the magician’s stage, the larger cast of characters...[is] obscured amid melodramatic reporting... The coverage can leave the impression that it is not...social policies or collective irresponsibility that endanger many children in this country. (101)

It is easier to blame veterans who have, as Zeno says, “learned to kill in the wars and...brought their killing appetite home...a killing machine gone amuck” (459) than deal with the specter of “the barely-walking-wounded, the (visibly, invisibly) maimed, ‘disabled’” (459).

Just as prisons have become the dumping grounds for the mentally ill, punitory justice becomes a convenient option in dealing with veterans like Brett Kincaid. Such young men typically come from disadvantaged backgrounds. Oates writes that they enlisted, “Wanting to ‘serve’ the country—whose country?” (41). She continues, “Virtually no political leaders’ sons and daughters enlisted in the armed services. No college-educated young people. Already in 2002 you could figure that the war would be fought by an American underclass, overseen by the Defense Department” (41).
Punishment for non-conformity to the vision of the ideal war-hero, is far simpler and far less costly than addressing the endemic injustice inherent in a society that sends young, often minority and impoverished young men to war, then abandons them as soon as they return to make claims for the very social benefits they have served to protect. In turn, punitory justice serves as a way to alleviate social anxiety, to quell the fears that something could be inherently wrong with a society in which, “the veterans would be returned to civilian life, [like] litter on a beach when the great tide has gone out” (Oates, *Carthage* 459).

In this case, with the community and nation drawn in by the figurative bogeyman epitomized by Kincaid, there is no real need to address the social cost of war, the “litter on the beach” that Oates describes, only voyeurism at the sad spectacle of Brett Kincaid. The threat of the crazed veteran can be dealt with by law enforcement and the legal system, negating the need for direct action or to confront an uncomfortable and ugly truth. Through punitory justice, Kincaid can be effectively isolated as something monstrous, tossed away like trash on a beach, and hidden from the light of day.

Revising Justice: Who is the “real” victim?

Oates’s complicated rendering of characters and events forces the reader to revise their conceptions of guilt, innocence, and the validity of punishment. Her approach is dramatically different from the typical justice narrative, which tends to rely on stock characters in terms of victim and perpetrator as good and evil (King and Maruna, “Function”), as well as the standard narrative arc of transgression and punishment (Fluck
Kincaid initially appears to be the guilty party. However, partway through the novel, readers are given a chance to examine the situation from Kincaid’s perspective. Dan Chaon in the *Washington Post* describes fittingly this account as, “The scattered, free-associative thought process of a brain-injured veteran who is struggling to distinguish current interrogations from past ones, his fractured memories of the missing girl from his nightmarish remembrances of a girl he saw murdered in Iraq.” Although Kincaid’s first-person narrative does include a hazy confession to killing Cressida, the veracity of this “confession” is suspect. It is unclear whether Kincaid is speaking of Cressida or the murdered Iraqi woman. Immediately following Kincaid’s confession, the narration turns to Cressida. Oates reveals that Cressida was not raped or murdered. Instead, she ran away from home after an embarrassing encounter in which Kincaid rejected her romantic advances. This revelation serves as more than a dramatic plot twist. Instead, it upends effectively the reader’s conclusion of Kincaid’s guilt and allows for a sustained examination on guilt, blame, the nature of justice, and the American penal system. As more details surface, Kincaid emerges as the ultimate victim, convicted of a crime that never took place. The reader is then left to come to their own conclusions regarding Cressida’s guilt or innocence in allowing this to happen.

Although the reader becomes aware of Kincaid’s innocence halfway through the novel, this revelation does not take place for the characters until the final pages. Startlingly, uncomprehendingly to the rest of the Mayfield family, Cressida’s mother, Arlette, manages to forgive Kincaid early on, even as she is certain of his culpability in the crime. Arlette does not see Kincaid as “perpetrator;” only as another victim. Arlette explains, “What Brett did—he hadn’t meant to do. It was brave of him to confess such a
terrible thing. He can’t bring Cressida back but our anger at him can’t bring her back, either…He’s sick—he’s a victim, too. Both their young lives—destroyed. We must try to forgive him” (433). Arlette reframes the situation from a crime to a tragedy. In a letter to Kincaid, Arlette writes, “We were in the courtroom at the sentencing and it was then I felt so strongly, that you were of my family. Though I could not acknowledge it at that time. My heart was broken, I think—the loss of Cressida, that was also a loss of you” (399).

Predictably, the other characters find this forgiveness “insane” (469). Zeno tells Juliet, “Your mother isn’t thinking clearly. Your mother has suffered such a profound loss, her judgment has been affected” (469). The use of the word “judgment” serves a double purpose. On the surface, it appears that Zeno is referring to Arlette’s mental faculties. Yet “judgment” can also mean “the right or proper administering of justice,” and the “just or fair treatment to which a person is entitled” (Oxford English Dictionary). Arlette’s view of justice may indeed have been affected, but not in the sense Zeno implies. Her “judgment” has turned in favor of a system in which each person is entitled to fair treatment before the law and society. Even though Arlette believes that Kincaid is guilty, in her eyes, fair treatment and administration of justice involve consideration of and compassion for Kincaid as a victim in his own right, no less than Cressida. And this is what, in the end, Oates seems to hope for her readers: to affect their judgment. Judgment regarding punitory justice, casting blame, and the supposed demons that threaten the moral order and values held close. Oates does not create a moral imperative out of Arlette’s forgiveness, but merely offers her spectacular empathy as a small ray of hope into a desperate situation. Through Arlette, Oates demonstrates that to empathize or acknowledge suffering by the perpetrator of a crime does not reduce the acknowledgment
of suffering by the victim. Justice is not black and white, and does not need to be a binary matter of choosing sides. Justice can also be enacted in such a matter that treats not just the victims of crimes, but also those who commit them, with compassion, fairness, and even the chance for redemption.

A Final Note on Compassion

Although I have discussed compassion only in the context of Arlette’s forgiveness of Brett Kincaid, compassion is still a key part of the re-visioning of punitory justice. Sustained, critical examination of the nature and application of punishment allows space for compassion to play a role within both the conceptualization and application of justice. The act of criticizing punitory justice is also the act of holding compassion for those impacted by the application of such justice. Compassion follows naturally, and exists hand-in-hand, with a targeted attempt to reduce punitory thought and action in justice administration. Compassion does not eliminate punishment per se, but allows for it to be applied fairly and humanely, with empathy and the chance for redemption. Through re-visioning justice away from a punitory ideal, a method of justice emerges that is not synonymous with punishment, but admits and redresses harm done, to victims and perpetrators alike.
Conclusion: Challenging the Reader

In this paper, I set out to explore the ways that contemporary literature can contribute to the conversations surrounding punitory justice. Through a sustained analysis of Margaret Atwood’s *The Heart Goes Last*, Hillary Jordan’s *When She Woke*, and Joyce Carol Oates’s *Carthage*, I have examined the power of fictional texts to deconstruct, rather than reinforce, punitory messages. By subverting the familiar narratives of crime and punishment, each of these novelists challenge readers to closely examine features of punitory justice in the United States, as well as their own views and opinions. None of these novels encompass a clear moral trajectory, of right and wrong, good and evil, transgression and punishment. Instead, they lead the reader through the twists and turns of the moral landscape as a means of illuminating certain questions related to the nature of punishment and the administration of justice. Such works can alert readers to features of punitory justice that hide in plain sight in the surrounding environment, as well as personal, often subconscious, punitory ideations. As David Garland explains, punitory attitudes are not an ingrained facet of human nature, but rather part of a specific cultural practice. He writes:
Outrage and anger are the culture’s antidotes to fear and anxiety, and the open expression of these emotions is part of the consolation and therapy it offers. But these sentiments are quite specific ones, grounded in definite features of our social organization rather than in some timeless punitive instinct. They are conditioned, evoked, and channeled by the social routines and cultural practices of contemporary society and they are then taken up and articulated by the strategy of punitive segregation in particular ways as a result of specific political and cultural processes. (“Culture” 352)

These novels work to break down these “political and cultural processes” that lead to and reinforce punitive thought, action, and policy. They demonstrate the ways that punitive justice functions as a conditioned response. This response is informed less by the actual act of crime itself than by these social forces that dictate the proper and “just” manner of dealing with a perceived threat to the social order. All too often, this response is one that overwhelmingly equates justice with punishment, values the act of revenge over redemption, and uses punitive justice as methods of social control and racial domination.

In the first two chapters of this paper, I examined penal processes in the dystopian format utilized by Atwood and Jordan. I explored how this literary paradigm can magnify and hold to light certain features of our current penal landscape, including the varied sociopolitical processes that give rise to punitive policy. Both authors present a future in which punitive justice has come to dominate society as a whole. Atwood does this in a top-down schema, presenting a controlling and repressive authoritarian structure, which can be viewed as an extrapolation on the current state of mass incarceration and prison for profit. Jordan complicates this paradigm, presenting a future world in which penal authority has been essentially eradicated, and the penal arm has been extended to become a function of everyday life. In Jordan’s narration, the public has so internalized
messages regarding punishment and control that they are able to provide an overwhelmingly punitory means of punishment with virtually no state assistance.

Through both of these depictions, which magnify elements already present within our own society, the authors challenge readers to take a closer look at the function of penal control and the justice system. These functions can be systemic, in the form of the penal system and judicial processes themselves, or take the form of a cultural ideation that can be no less punitory, even those forms of “justice” that, at first glance, appear to be alternatives to punitory punishment. With this analysis of the top-down and bottom-up approaches to punitory justice, I use these novels to demonstrate that while the two processes may appear to exist as a binary, not only does each approach contain validity, but that the two are also intertwined and contain a certain reflexive nature. In practical application, top-down processes give rise to bottom-up support that justifies and sustains the paradigm, and vice versa. In the third chapter, I move beyond these models, to examine the social and emotive complexities that give rise to punitory justice, thought, and action. I also explore the way that Oates subverts the conventional understanding of justice through a re-visioning of the familiar narrative schemas of crime/punishment, punishment/forgiveness, good/evil, and victim/perpetrator.

As criticism of punitory justice becomes more prominent and vocal within social political discourse, now, more than ever, works such as these are important. As David Green asserts, “There is no time like the present to deepen the pool of ideational resources we draw on to understand and address crime and punishment” (531). The value
of these novels, as well as other works within the same canon, is that as each author illuminates key facets of punitory justice, she calls on the reader to question their own feelings, opinions, and knowledge regarding justice. Thus, works such as these “deepen the pool” of available resources with which to consider important issues related to justice and punishment.

Atwood and Jordan challenge the reader to re-examine the world around them, and features of punitory justice that exist at the meso level. Both authors present main characters that accept, and even defend, their society’s system of justice. This is seen in Charmaine’s complicit participation in the Positron Project and Hannah’s initial defense of melachroming, even as she herself is marked as Chrome. Charmaine’s choice is based on fear of the alternative: joblessness, homelessness, violence, and squalor. Hannah exhibits support for a system that, while distasteful, she truly believes to be the more humane option. These literary examples challenge the reader to dig deeper into the punitory structures they see and tacitly accept in the real world.

At the micro level, Oates asks readers to reconsider their own mindset and opinion through Zeno Mayfield’s character. Zeno represents the paradox by which even those who eschew punitory justice can still harbor an intensely punitory thought when faced with certain situations. Through Zeno, even people who might consider themselves liberal minded or well educated on public issues are called to question their own viewpoints and motivations. Readers are spurred to examine those critical junctures in their own lives where “outrage and anger” serve as an “antidote to fear and anxiety” (Green “Culture” 352), while even, and, at the same time, they profess to maintain non-punitory beliefs across other social issues, including in relation to justice.
At the macro level, all three authors call their readers to re-evaluate apparent and concealed punitory messages in the media and more generalized social discourse. Each novelist appeals to her audience to question the messages they may have accepted or internalized without question, due to their sheer prominence in contemporary culture. These works challenge directly, and provide an alternate rendering to, the ways that politicians, pundits, media sources, entertainment, and the like have framed public issues within the parameter of criminality. They cultivate attentiveness to the use of tropes and stock images, as well as the ways that crime victims and perpetrators can stand in for broader social concerns or symbols.

Novels like these help people to develop a heightened awareness of the issues that undergird common conceptualizations of crime: the complex social, economic, political factors that contribute to crime itself and the behavior and types of people society and the legal system deem “criminal.” Ultimately, through reading, contemplating, and discussing these types of works, readers are better able to understand and communicate the idea that punitory reactions to crime are conditioned, not innate, responses, ones that take place across a broad stratus of society and are informed by a myriad of complex and intertwined factors.
Bibliography


