



STATUS MANAGEMENT: A Theory of Punishment and Rehabilitation

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I . Introduction

The violation of group norms is an age-old phenomenon, and efforts to deal with such violations are equally ancient. In modern societies the phenomenon takes the form primarily of crime. Around it have grown a variety of legislative, enforcement, and correctional institutions. Our present interest concerns the latter.

Traditionally, the rationale for the apprehension and punishment of those who commit crimes has been provided by one or more of three major theories. (We will use “punishment” to refer to any or all correctional system programs including incarceration, parole, work-release, diversion, et cetera.) The first of these is the Deterrence Theory, which affirms that the point (and justification) of punishment is to deter potential criminals from the commission of crimes. The second is the Rehabilitation Theory which affirms that incarceration and punishment are justified because (or to the extent that) such treatment rehabilitates the criminal into a law abiding citizen. The third is the Retribution Theory, which affirms that criminal *should* be punished, irrespective of whether the punishment has any practical or instrumental value, e.g. in deterrence or rehabilitation. As to why they should be punished, an earlier view is “because they deserve it” and a later view {Day 1978} is that the State owes it to both the criminal and the law abiding citizens because the State has an obligation to its citizens to see to it that a condition of justice prevails.

Traditionally, deterrence and rehabilitation have been the generally accepted bases for the punishment of criminal activities {Silberman 1978}. However each of these theories has lost its major force in recent years. Both theories provide a purely instrumental rationale. That is, punishment is justified because it is instrumental in producing a desired effect, i.e., deterrence or rehabilitation. It follows from such theories that if punishment does not have these effects it is not justified. The major thrust of recent empirical evidence is that in general, punishment does not deter or rehabilitate {Mastinson, et al. 1976}. In the face of these findings there remains

special pleading for special programs of either sort, but there is no longer the earlier wide acceptance of either theory. There is some consolation in the thought that at least the convicted criminals are not committing crimes during the time they are incarcerated, but even this is undermined by evidence suggesting that incarceration fosters later crime.

Retribution Theory has not been a generally acceptable rationale. Objections have taken the form of saying in one way or another that although the motivation to punish the criminal is understandable in individual persons, it is an ignoble motivation (hatred, revenge, etc.) and therefore unjustified as an action by the State. Even such formulations as that of J. P. Day {Day 1978} which deny that revenge (or hatred, etc.) are involved, have not achieved wide acceptance.

At the present time there is no generally accepted theory of punishment in this country and there is no general confidence that our correctional institutions have either a rational basis or a sufficient social value to warrant their continuance, except that no acceptable alternatives are to be found, either. It does not appear that an adequate rationale will be one which is grounded merely in the technical instrumentalities of our criminal justice system. Rather, it appears that there is a compelling rationale couched in more fundamental terms which reflect the logic of persons and groups. The major aim of the present paper is to present this rationale and an illustrative example.

The general conceptualization on which the rationale is based is the Status Dynamic Model within Descriptive Psychology {Osorio, 1978a, 1969/1978b}. The specific theory of punishment to which it gives rise was initially designated as the Degradation–Accreditation Theory. For convenience, although the earlier title is more accurate, we now refer to it as the Status Management Theory. The Status Management Theory accomplishes some of the aims of both the Rehabilitation and Retribution theories.

The central tenet of the Status Management Theory is that (a) our criminal justice institutions exist to perform two indispensable

functions which would otherwise be performed in other ways, and (b) those functions are (1) to make rational changes in the status of individuals within society, and (2) to manage the implications and consequences of those changes. This statement, of course, requires explanation.

II. Basic Concepts

For any social group, or community, each member has, at any given time, relationships of various sorts to other members of the community and a particular place, or status, in the community. A person's status in the community reflects the relationships he has to other members. Although in most communities there are many different statuses (ultimately, each person has a unique status), statuses and the corresponding persons may be classified in various ways.

One type of classification is of central interest here, namely one which distinguishes between (a) what one might call full membership in the community and (b) various forms and degrees of limited membership. The difference between full membership, or full standing, and limited membership, or limited standing corresponds to a difference in eligibilities. A person who is fully and simply a member of the community, is one who is maximally eligible to participate in the social practices and activities of the community.

The status which carries with it this range of eligibilities also carries with it a corresponding set of responsibilities/obligations with respect to other members. Accordingly, when a person demonstrates that he is unable or unwilling to carry out these responsibilities the expectation of others in regard to his behavior are reduced. Correspondingly, his eligibilities are also reduced. In the simplest case the loss in eligibility directly mirrors the default in responsibility. For example, one who tells lies is no longer listened to; one who cheats is not allowed to play, or no one does business with him any more; one who drives recklessly is no longer allowed

to drive; and so forth. In other cases there is simply a rough quantitative correspondence between the seriousness of the default and the amount of reduction in eligibility. The limiting case here is a total reduction in eligibility, which may be accomplished, e.g., by expelling the transgressor or putting him to death.

The reduction in the behavioral/social eligibilities of the transgressor constitutes a qualitative and quantitative limitation in his possibilities of participation in the community. Once it has occurred, the limitation remains in force until it is reversed or undone. Normally this is not done until and unless the transgressor demonstrates that he is once more willing and able to carry out his common responsibilities. In general, then, the group response to the violation of its requirements for membership is in principle a matter of changing and monitoring the status of violators in a way which is rationally responsive to both the necessities of the group and the limitations and potentials of human beings.

A more systematic formulation of such considerations, both in individual relationships and in social/political relationships, is provided by the emerging discipline of Status Dynamics {Ossorio, 1969/1978b, 1971/1978c, 1980}. Of interest here are three definitions and their elaborations:

1. A person's status is his place within a network of personal, social, and other relationships. The concept of status may be used wherever an individual can be placed within a domain in which involves various individuals and their interrelationships. For example, a person may be said to have a status within his family, in his job setting, in a circle of friends, in his church setting, in a civic, organizational or national setting, and so forth . A person's status determines (in a logical, not casual sense) his possibilities (and impossibilities) for behaving. This is why it is a fundamental concept.
2. A person's status is subject to change. He may acquire new eligibilities, or behavior potential and he may lose eligibilities, or behavior potential. Of interest here are the status changes which are brought about by other persons and which reflect

changes in what they are willing to do with the person or how they are willing to count what he does. Status changes which correspond to decreased eligibilities, i.e., to lessened behavioral possibilities, are designated as *degradations*. Status changes which correspond to increased behavioral possibilities, are designated as *accreditations*. Status changes which may involve either increases or decreases in eligibilities or both are designated as *status assignments*. Likewise when we wish to refer to a specification or change in the status assigned to a given person by another person without implying anything about what elements of degradation or accreditation are involved, we speak of *status assignments*.

3. A person assigns statuses to himself as well as to other people. These status assignments may be in limited context or they may be global status assignments. A person's self concept is essentially his formulation of his behavioral possibilities, and this corresponds to his global, or real world, status.
4. In general, different statuses call for different treatment. Knowing a person's status or assigning him a status carries with it the knowledge of how it makes sense to treat him.

The concept of degradation has been systematically formulated by Garfinkel {Garfinkel 1967} in a discussion of the formal conditions for a successful degradation ceremony. As paraphrased by Ossorio {Ossorio 1978a}, a successful degradation ceremony has the following elements.

1. There is a community of people having a set of values such that adherence to those values is a necessary condition for being in good standing in the community, i.e., for being purely and simply "one of us."
2. Three members of the community are involved: namely, a Perpetrator, a Denouncer, and (some number of) Witnesses.
3. The Denouncer and the Witness act as representatives of the community in two senses:

- a. They themselves are in good standing, act as members in good standing
 - b. They act in the interest of the community and not in their private interest.
4. The Denouncer describes the Perpetrator to the Witness as having committed a certain Act. If necessary, the Denouncer redescribes the Act in such a way that the incompatibility of the Act with the community values follows logically.
 5. The Denouncer presents a case for judging that the Perpetrator's engaging in the Act (as redescribed) is a genuine expression of his character and is not to be excused or explained away by reference to accident, extraordinary circumstances, atypical states of mind, etc.

The logic of the successful degradation ceremony is that the Denouncer has shown that one of the necessary conditions for the Perpetrator to be in good standing in the community has been violated. Further, he has ruled out the possibility of acceptable exceptions. As a result, he has shown that the perpetrator is not, and never really was "one of us." The assent of the witness marks it as an action by the community rather than a merely personal one.

After the successful degradation the Perpetrator has a new standing which corresponds to having a more restricted set of possibilities for acting in the community. The new standing reflects the kind and degree of transgression involved in the Act.

Degradation ceremonies require three statuses, but only in the standard, or paradigmatic, case do they require three distinct persons. In other Uses a single person may serve in two of the statuses or even in all three. Again, only in the paradigmatic case is degradation accomplished by an overt, explicit ceremony. In derivative cases it may be accomplished informally, person to person, or fully in private, and it may be done implicitly and overtly rather than explicitly and overtly. The full range of these various possibilities will not be of central interest here.

Of course, not every attempted degradation is successful. There are various possible defenses, which can be relatively simply associated with the elements of the successful degradation ceremony, and these defenses may be successful.

1. The “Perpetrator” may argue that in fact the community has no such value as the Denouncer is appealing to.
2. Or he may claim that the value appealed to is not a necessary condition for being in good standing. In either case he may argue that no relevant violation has occurred which calls for an attempted degradation, hence there is no call for anyone to be in the positions of Denouncer, Perpetrator, and Witness. Such defenses are common in civil liberty or “right to dissent” cases.
3. The “Perpetrator” may challenge the standing of the Denouncer or Witness or both. (a) He may challenge their standing in the community, hence their fitness to serve as Denouncer and Witness. (b) He may accuse them of ulterior personal motives which disqualify them as representatives of the community. Charges of systematic bias against particular groups exemplify this kind of defense. So do charges of conflicts of interest.
4. The “Perpetrator” may deny having committed the Act at all (“I was home in bed at the time”; “I have never told him that”). Or he may admit to the act but deny that the redescription applies (“Yes, I killed him, but it wasn’t murder”; “Yes, I ran, but not to escape arrest”).
5. Finally, the Perpetrator may admit to the Act as redescribed but deny that committing the act was a genuine expression of his character. (“I wasn’t myself”; “I was overcome by anger (or fear, etc)”; “It was just a wild impulse”; “I didn’t really consider what I was doing.”) The “character” type of defense is of particular interest to us. How can a person demonstrate to the community that a transgression was not a genuine expression of his character and that he really does hold the community values and is capable of upholding them?

One such defense which is often successful is for the Perpetrator to make restitution. In this case he renounces whatever advantage would otherwise accrue to him by virtue of the transgression (he gives up his ill-gotten gains) and compensates the victim (if there is one) for his loss. Of course, restitution is not a compelling character defense if it is not done (a) voluntarily, and (b) prior to being apprehended.

The logic of restitution lies in two related basic psychological principles.

1. If a person has a reason to do something he will do it, unless he has a stronger reason to do something else.
2. If a person values A over B, and if he has an opportunity to choose either A or B but not both, then, other things being equal, he will choose A over B.

In the case of restitution, the Perpetrator values being a member in good standing more than he values the gains which stem from his transgression. Under these conditions he has a stronger reason to make restitution than to retain his ill-gotten gains. Conversely, the fact that he makes restitution is evidence of this motivational priority, hence it serves as a character defense. To be sure, there is still the issue of whether the Perpetrator really holds the values of the community or whether he merely upholds them for the sake of the various benefits of being a member in good standing. However, in many cases of interest upholding the community values is considered sufficient.

Of course, restitution is not a general solution to the character defense problem, since it is only possible under special circumstances. It is not possible, for example, if the victim has been killed or irreparably harmed, or if the stolen money has been spent or the stolen silver melted down, or if the transgressor is apprehended before he has a chance to make voluntary restitution.

The general solution is provided by penance. There are two classic forms of penance.

In the first case, which we may designate as *Punishment*, the Perpetrator voluntarily subjects himself to a condition of exceptional pain, suffering and/or deprivation as a condition of regaining full status. Again, the logic is provided by the two psychological principles noted above. Whatever the punishment may consist of in detail, it is something which, by common consent, the Perpetrator has a very strong reason to avoid. Under these conditions, choosing to accept the punishment rather than lose his standing in the community demonstrates that retaining his standing in the community has a very high motivational priority for him — enough to outweigh a choice which he has a strong reason to make, i. e., to avoid the punishment.

In the second case, which we will designate as *Pledging*, the demonstration is accomplished by virtue of successfully undertaking not to repeat the transgression during a substantial period of time. The compellingness of the demonstration involves both a psychological and a statistical aspect. The psychological aspect again is provided by the two principles above. The nonrepetition of the transgression provides evidence that in the ordinary course of events the Perpetrator did not have reason enough to transgress. This alone is not prime evidence of motivational priority. The demonstration depends on the argument that in the ordinary course of events the temptation to transgress occurs with substantial frequency. Given this, the fact that the Perpetrator never transgresses is good evidence that he does uphold the relevant community value. (The statistical argument is, “If upholding the relevant community value were not a high priority, what is the likelihood that, given repeated opportunities to give something else a higher priority, the Perpetrator would always decide in favor of upholding the relevant community value ?”).

As in the case of restitution, there is a residual issue of whether the Perpetrator really holds the relevant community value to a high degree or whether he merely is willing to uphold it for the sake of the various benefits which go with being a member in good standing.

In general, a community in which there is no “way back” following a transgression has a very different character from one in which there is such a way. Most communities are of the latter sort. In such communities it is a matter of considerable significance to the members that there are some “ways back” to good standing and it is a matter of considerable significance what those ways are, for every member is a potential Perpetrator.

Just as there are degradation ceremonies, there are accreditation ceremonies. The conditions for successful accreditation have a close relation to the conditions for successful degradation. They may be summarized as follows.

1. There is a community of persons having a set of values such that adherence to those values is a necessary condition for being in good standing.
2. Three persons in three statuses are involved. These are the *Accreditor*, the *Candidate*, and the *Witness*.
3. The Accreditor and the Witness act as representatives of the community, and they do so in two senses.
 - a. They are members in good standing and act in that capacity.
 - b. They act in the interest of the community and not out of any private interest.
4. The Accreditor describes the Candidate to the Witness(es) as having committed certain acts. If necessary, he redescribes the acts in such a way that it follows logically that the acts are expressions of the essential community values.
5. The Accreditor presents whatever case needs to be made to the effect that the acts, as redescribed, are genuine expressions of the Candidate’s character rather than, say, the result of luck, chance, accident, ulterior motivation, deception, theft, et cetera.

6. The Candidate signifies his willingness to participate as a member of the community.

The effect of a successful accreditation ceremony is to increase the Candidate's behavioral possibilities within the community.

As in the case of degradation, the public, explicit accreditation ceremony is merely the paradigmatic case. Other cases of accreditation may require less than three persons though they will still require three statuses. Likewise, accreditation may be accomplished informally, person to person, or in private, and it may be accomplished implicitly and covertly. The case described above involves the induction of a person into a community. This would fit, for example, becoming a citizen or joining a religious, business, professional or avocational organization. Other cases, which will be of primary interest here, are those in which the Candidate is already a member of the community but has his status raised. This would fit, for example, graduating from school, receiving a driver's license, moving from apprentice to journeyman, or regaining full standing after having been previously degraded.

III. The Criminal Justice System

The analysis of degradation and accreditation provides a basis for understanding the components of the modern criminal justice system as rational institutions. It also suggest some explanations of the ineffectiveness of these institutions as they are presently functioning and provides some guidelines for greater effectiveness.

A. Criminal law may be regarded as a more or less implicit codification of certain of the values of the community the adherence to which is a necessary condition for maintaining full standing in the community. It is explicitly a codification of those Acts which will be taken as violations of those values. Many of the problems with the laws stem from the fact that in general neither the relevant values nor their violations can be equated to any given set of Acts

except (a) approximately, for practical purposes (b) within a social context which is specified both in general and in detail. This is why old laws may become obsolete and new laws are needed. It is also why often the writer of a law is tempted to put it in more general form (in order to approximate the community value more closely), which then leads to problems of vagueness and interpretation. (For example, Pornography laws are classically subject to these difficulties.)

Other criminal justice institutions are designed to deal with violations of those values which are codified in the criminal statutes.

B. The primary function of the police as law enforcers (vs peacekeeping) is to serve as Denouncer/Witness. It is the function of the police officer to determine whether a violative Act, i.e., a crime, has apparently taken place and whether some identifiable “perpetrator” apparently has committed the Act.

The police officer will normally look for and assemble evidence concerning the commission of a crime and the perpetrator of it. Often the evidence will include the testimony of a victim who also serves as a Denouncer.

When a possible or apparent Perpetrator has been identified the officer may take actions which change the civil status of the perpetrator from that of a citizen in full standing to that of an Accused. Given the complexity of the body of relevant law, and the variety of options open to him, the officer’s decision is often not a simple one, and various ways of codifying the relevant considerations have been attempted.

In one of the most recent efforts of this kind, in the First Judicial District of Colorado, a series of arrest standards have been developed. These arrest standards specify the several alternatives to arrest and approximately 30 conditions which provide reasons for or against taking each alternative. For example, two conditions which counterindicate incarceration are (a) Hostile victim or witness and (b) Personal relation of victim and accused.

C. The status changes initiated by the police officer are provisional and will be reversed if no further action is taken. It is the function of the Prosecutor's office to make a formal Denouncement or to elect an alternative course of action. The function of formal denouncement calls for (1) good evidence, (2) the ability to redescribe effectively, (3) an effective information flow among police, prosecutor, and courts, and (4) the ability to conduct investigations and build cases. The prosecutor makes the decision as to whether or not the "Perpetrator" qualifies for denouncement and if so, for what and in what way.

Just as the police officer has alternatives to arrest, the prosecutor generally has alternatives to filing and prosecuting a charge. Most of the alternatives are designated as "diversion programs."

D. When a charge is filed and prosecuted, the prosecutor clearly serves as the Denouncer. Just as clearly, the judge and/or the jury serve as the Witnesses. Classically, the charge to the members of the jury is that they act as representatives of the community and without personal bias. Jurors are selected from members in good standing in the community and prospective jurors may be rejected for cause if it appears that they will not be able to act without personal bias.

In the paradigmatic degradation ceremony the assent of the Witness marked the ceremony as an action by the community. In a court trial, the same result is accomplished when the judge or jury assents to the prosecutor's denunciation.

E. In a court trial in which the Perpetrator has been convicted it is the function of the judge to specify the kind and degree of degradation which is to be suffered by the Perpetrator. Similarly, in the case where the prosecutor elects a diversion program rather than a court trial it may be the prosecutor's function to determine the kind and degree of degradation, if only through the choice of diversion possibilities.

In the foregoing we have seen how the operation of the criminal justice system works to accomplish the function of degradation in those cases in which the community value and its violations are specified in the criminal statutes. The criminal justice system is an institutionalized form for conducting an attempted degradation, allowing for the various defenses, evaluating the balance of accusation and defense, and acting on the outcome.

Although problems arise in these connections, they tend to be practical and professional problems rather than fundamental ones. In contrast, it appears that the more basic difficulties in the result of criminal justice system functioning lie in the other aspect, i.e. accreditation. The difficulties discussed initially have to do with the fact that incarceration, parole and other system programs apparently do not demonstrably deter or rehabilitate sufficiently to sustain the traditional rationales for incarceration and other forms of treatment of citizens convicted of criminal acts.

Certain points need to be made in this regard.

- A. Incarceration is ambiguous. As a significant deprivation, it has some of the features required by the “Punishment” form of penance. However, it does not have the crucial feature of being voluntary. Moreover, it does not qualify as restitution, either. Thus, the notion that a person who has “served his time” has also “paid his debt to society” and therefore ought to be accepted back into society automatically is simply mistaken, and citizens who look askance at the ex-convict are not simply bigoted.
- B. The traditional notion of parole is equally ambiguous. It has many of the characteristics of the “Pledge” form of penance, but it is lacking significantly in the personal commitment, or promissory, aspect, since eligibility for parole is primarily a matter of law or administrative decision rather than something initiated by a personal commitment. Further, the monitoring of the parolee’s activities is typically insufficient to distinguish between upholding the community values and failing or refusing to do so. The notion that the convicted criminal earns his eligibility

for parole by serving a certain amount of “good time” resembles the statistical rationale of the “Pledge.” However, “good time” in prison does not qualify as a job sample of being a good citizen in that society, so that neither the motivational nor the statistical arguments really apply.

For example, if a “Perpetrator” is sentenced to serve a term in prison and is released on parole after three years, the following has occurred. Perpetrator X has been removed from the community. He is placed in a community where to be “one of us” involves vigilance, realistic paranoia, fear, enrolling in a pecking order based on being the toughest, meanest “son of a bitch” to survive. The “Witness,” Parole Board, then reviews the individual not on the basis of what has the individual accomplished in terms of becoming one of us, but of how well he has maintained a low profile in a hostile community and how appropriate he has been within a limited environment. The person then is placed back in the community without being accredited. He is told, “Your term is over,” but he is not told, “You are now one of us.” The individual carries the label of “Ex-Con.” He is viewed without trust. Expectations arise for actions that transgress community values, and he is not given a normal place in the community. Statistics show he has problems with employment, relationships, and so on, and as a result is most likely to continue criminal behavior. In short, the Criminal Justice System successfully accomplished the degradation, not for the period of time given by the sentence, but for life, because there is no corresponding accreditation process for graduating from the status of “criminal.”

- C. Rehabilitation programs have focused primarily on developing job skills and on achieving job placements. However, although being employed and employable may in fact be essential for a person to participate fully in society, this issue is quite separate in principle from the question of how a person convicted of a crime regains his full status in the community.

- D. The primary “rehabilitation” problem is the problem of providing rational and practical ways for the citizens to regain full standing in the community. They must be rational in order to command the assent of the citizens who are in full standing, for if they do not assent they will not give the former criminal the status of “one of us.” They must be practical because if they are not they will not provide actual opportunities for the former criminal to make his way back. Thus it appears that the possibilities of genuine rehabilitation depend on the logic of the “character defense” described above (restitution, penance). The possibility of rehabilitation depends on the possibility that the criminal Act was not a genuine expression of the Perpetrator’s character or that the Perpetrator’s character changes so that it is now the case that a criminal Act would not be a genuine expression of it.

The foregoing considerations strongly suggest that if the criminal justice system is to be more than minimally effective, it must institutionalize the elements of accreditation as well as it has institutionalized the elements of degradation. To be sure, some limitations in this regard must be recognized. For example, it is no longer possible merely to exile those who reject the eligibility to be “one of us,” and the present paper does not address this problem. However, there is no reason to question that in principle the elements of accreditation can be effectively institutionalized. Rather than an abstract survey of possibilities, an actual example may be most pertinent.

The Jefferson County (Colorado) Adult Diversion Program is based on the rationale of degradation and accreditation and can serve as a paradigmatic example. Within the Adult Diversion Program penance, restitution and rehabilitation take place. The Adult Diversion Program reaccredits the person, defines steps to be taken to receive reaccreditation and monitors the process.

Eligibility is based on non-violent felony charges. The “Perpetrator,” meets with the Adult Diversion staff member,

“Denouncer,” where under strict rules of confidentiality the perpetrator describes his act of transgression and his standing in the community. The “Perpetrator” also states what he is willing to do for a definite period of time to regain his status of “being one of us.” What is required of him coupled with what he is willing to do is placed in a written contract. This contract includes such items as keeping a job, no drugs, going to school, restitution, preserving or attaining mental health, etc. The “Denouncer” redescribes the “Perpetrator’s” acts before a council of “Witnesses,” community representatives from criminal justice and the general community. The “Perpetrator” is questioned by the “Witnesses” to determine the level of willingness for penance or restitution. The Adult Diversion Program staff participate in the accreditation process by referral where abilities need to be developed and legitimizing and treating the individual as if he were one of us, but one who has to deal with the limitations that have prevented him from being recognized as one of us. Each success is reinforced. What he does towards earning his way to normalcy is treated as doing something that counts. The goal is to make the person himself the accreditor of such efforts, since that is essential to really *being* “one of us.”

At the termination of the program the individual appears before the “Witnesses” and is presented as being “one of us,” is congratulated as being “one of us.” The “Accreditor” is the Adult Diversion Staff person who cites all the ways in which the individual is now one of us, all the acts he has performed to become one of us. With successful accreditation, the person is now no longer on deferred prosecution status. He has officially been given the status of one of us. The recidivism rate for felony rearrests after 5 years of program operation and 765 participants is the incredible low rate of 1.5% for the 765 participants who completed the program successfully.

An example is only an example, of course. This example provides support for a view which regards the proper function of the criminal justice institutions to be the rational management of the status changes which are called for by the phenomenon of criminal activity. In addition to suggesting reasons why traditional

rehabilitation programs have substantially failed, this view offers a unifying and human approach which can be implemented in various ways in particular settings and circumstances with some expectation of success.

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