



Rights for All or Rights for None

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I. EXECUTIVE SUMMARY

As academics and activists have grown aware of the intersections of race, poverty, and incarceration, more and more people have begun to identify the specific flaws in the justice and prison systems, and alternative forms of justice. This brief will delve into the different ways the U.S. Justice System's retributive practices are flawed and disproportionately target marginalized people, and how these challenges can be addressed by policy implementation.

II. OVERVIEW

Angela Davis, a political activist that fought for the Black liberation movement, said "Prisons do not disappear social problems, they disappear human beings." Our carceral system is a surface remedy for societal troubles that have deep interpersonal, structural and institutional roots. Until the root of these societal troubles are addressed, prisons will continue to act as a place to hide away individuals victimized by societal inequalities while disguising the true state of racism and class-based discrimination in the U.S. The current court system is incredibly punitive - the U.S has five percent of the world's population, but twenty-five percent of the world's prisoners. This is the highest rate of human imprisonment of any society in the recorded history of the modern world (Karakatsanis 2019). Despite

significant strides made in addressing recidivism and securing rights for incarcerated people in counties like Santa Clara County, retribution is a foundational layer in the justice system that influences how prosecutors, judges, and policymakers approach criminal justice.

A. Relevance

Most academics and advocates writing about restorative justice first identify these key disparities within incarceration. In 2000, the incarceration rate of black men was six times that of the incarceration rate of white men and nearly three times that of Hispanic men (Levad 2013, 3). In addition, a study from 1997 found that at the time, "68 percent of prisoners had not completed high school, 53 percent earned less than \$1,000 in the month prior to their incarceration, and nearly one half were either unemployed or working only part-time prior to their arrest" demonstrating the significance of access to education and employment in criminogenic factors (Mauer, 2006, 178).

Crime does not occur in isolation. There are a number of factors that create a person who is willing to commit a crime, or someone who is convicted of a crime who shouldn't be. Trauma, poverty, abuse, and an unsympathetic justice system create the bloated incarceration rate we

see today. Taking into account the systems people are born into, the conflicts they see, and the economic conditions they grow up in reveals who will have everything and who will have nothing, and the process of their cognitive development. Factors such as racism and poverty greatly influence the risk factors that shape individuals, contributing to the pressure they develop under. These people, when placed into the high-pressure environment of a prison or jail, will not come out as productive and secure members of society.

III. HISTORY

A. Current Stances

The rise of retributive justice is a result of the emergence of heavy-handed War on Crime politics of the late 20th century, but it has not demonstrated any substantial effect on decreasing recidivism and preventing crime in the first place. Interpreting data on the effect of systems on incarceration/crime rates is quite nuanced and can be selectively deconstructed based on who is analyzing it. Contrary to punitive systems, advocates have begun to discuss the idea of restorative justice, which prioritizes offender-victim reconciliation and conferencing. It takes a multi-faceted, holistic perspective of crime, that addresses the nuance behind crime. There is a significant overlap in victims and offenders; most offenders were victims at some

point in their lives. Upbringing, risk factors, environment and community all create the person that goes on to be convicted of a crime. Proponents of restorative justice reason that the

post-conviction processes these individuals face take on the same holistic and nuanced approach.

While its integration is often limited by structural and institutional constraints within the criminal legal system, restorative justice offers meaningful possibilities for transforming public defense work through client-centered and community-based approaches.

Existing paradigms of justice have flaws contributing to the crises within the criminal legal system. Rehabilitative and restorative models focus on the crime as a symptom of the larger plethora of issues faced by offenders, retributive justice engages with offenders from a lens in which they chose to violate the law and in doing so undermined the authority of the state (Levad 2013, 9).

IV. POLICY PROBLEM

A. Stakeholders

In order to understand policy solutions to address the issue of overpolicing and incarceration, it is critical to understand the stakeholders, or people engaged in the criminal legal system in some shape or form, from law enforcement to the surrounding community.

Beyond the stakes that criminal offenders themselves have, a major stakeholder is law enforcement, from the police officers that make initial arrests, corrections officers in jails, and parole/probation officers. Changes in policy will affect the training they will receive or have already received, especially officers that work closely with offenders, like corrections or probation.

Another stakeholder is the attorneys and defense team working with individuals in the incarceration system, as well as the social workers and community providers that assist in cases of addiction, unstable housing, mental health issues, etc. Greater support for these services would allow community workers to better find ways to prevent crime, support the surrounding community, and integrate offenders back into their community easier.

A third significant stakeholder is the community of the offender, as communities are often the most directly impacted when there are higher levels of policing and incarceration. Structural issues in the community, like drug addiction, poverty, and gang violence, all play a role in the prevalence of crime, and conversely the community is also negatively impacted when people are incarcerated often and have to deal with the fallout of broken homes and what is left behind. The conditions that incarcerated people often come back in, whether it's trauma or being unable to transition back to everyday life further exacerbates the shared struggle of the surrounding community.

Finally, a stakeholder that stands to lose if restorative justice is incorporated into law enforcement and incarceration policy at a local and state level are for-profit prisons. For-profit prisons commodify the criminal justice system, monetizing incarceration and the resulting detriment to offenders and communities. For-profit prisons assign a new value to the functioning of criminal punishment in society, making it an endeavor that brings profits for

prison owners. A fundamental aspect of criminal justice is to serve the community and to keep the community safe, meaning that justice is something imposed, regulated, and served by the people (Appleman 2018). Monetizing this system takes away the link to community, bartering the lives of offenders for profit. The for-profit prison business model is inherently incompatible with restorative justice, which aims to reduce recidivism and incarceration and address root causes of crime, making this stakeholder an opponent for possible reformatory policy proposals.

B. Risks of Indifference

The protections that people get from the government, law enforcement and unjust imprisonment vary across time and jurisdiction, but the consistency of the oppression of poor people and people of color remains constant throughout our history. The concept of reform cannot be fleshed out without the consideration of these fundamental flaws that represent structural and institutional, perpetrated without restraint against the most vulnerable population: people charged or convicted of crimes.

The risk of indifference towards the rights of offenders is evidence in how constitutional rights become malleable through the coalition of police, prosecutors, and judges. There are a number of ways an individual's Miranda Rights can be disregarded; if they are questioned before being taken into custody, if the conditions for how the information is extracted from them doesn't trigger Miranda, or if police officers make vague,

unspecific promises of leniency (Cicchini 2012). Law enforcement can subtly undermine people's rights, and they are usually protected by the courts in every step of the way. Disregarding the rights of criminals has much broader consequences for society. A well-functioning society will protect the fundamental rights of its most marginalized, disenfranchised groups.

C. Nonpartisan Reasoning

There is substantial evidence that suggests that restorative justice is attractive to victims, offenders, and communities. Victims seem to value apology and restitution more than seeing offenders be punished (Nils et. al, 2012). People charged with crimes are oftentimes the most hated person in the courtroom. Few people have the patience to hear their stories, leaving them as perpetual offenders, rather than whole people with traumas of their own and likely a history of being a victim themselves.

Penal law considers life in a dichotomous way - black and white, guilt or not guilty. (Nils et. al, 2013, 18). A punitive justice system is not designed to consider the nuances of people's circumstances and the situations that lead them to commit a crime. This failure to attend to the particulars of a case is a deep-seated cause of why an overzealous criminal legal system leads to undue trauma and such a disproportionate level of incarceration considering our population size.

V. TRIED POLICY

The current model of the U.S. Justice System is based around retributive justice. Some advocates argue in favor of rehabilitative justice, which

focuses on therapy, vocational training, and education to reduce recidivism. As per its name, this model seeks to rehabilitate and integrate inmates into society. While rehabilitative justice is vital to reforming the criminal justice system, there are some aspects it lacks. The flaws of both punitive and rehabilitative models can be found in that they both attend to the needs of offenders, forgoing a well-rounded approach that considers the victims and the communities affected by the crime.

In addition, neither model prioritizes accountability within offenders. In rehabilitative models, offenders are often 'pathologized' so that their actions are seen as the result of their illness, not their own choices. While retributive frameworks recognize the 'free will' of offenders, the stakes are so high in our current court systems that offenders try to avoid admissions of guilt, especially in the antagonistic nature of courtroom procedures (Levad 2013, 10).

Policy changes, like giving inmates tablets and movie nights, and holistic public defense work can make a world of difference in a client's life. Initiatives like Defense Initiated Victim Outreach (DIVO), or mental health diversions, like two-year treatment programs that result in the dismissal of charges upon graduation have both seen success. AB 1810 allowed judges to grant pretrial diversion for defendants with diagnosed mental disorders, while other bills like SB 215 limited the qualifications of the new policy. New bills, like SB 1373, continue to be proposed to legitimize the pathway and keep it limited to only certain defendants.

In some counties, rehabilitative initiatives partner

prisons with community colleges to offer vocational training courses so that inmates can gain practical skills to help them find employment upon being released from custody.

VI. POLICY OPTIONS

Instating Victim-Offender Mediation (VOM) or Defense-Initiated Victim Outreach (DIVO)

These initiatives ignite dialogue between victims and offenders facilitated by trained community members. The purpose of this is to forge a path towards healing, both for the victim and the offender. VOM allows victims to meet offenders in safe and structured settings, with a goal of holding offenders directly responsible for their behavior. Similarly, DIVO has an intermediary not connected to the defense team to reach out to the victim and create a channel for victims to share their questions, needs, and perspectives to the defense side. They will then help create a restitution plan that holds offenders accountable as offenders will need to follow the plan and make amends to the fullest degree. This method is limited in that while it does hold offenders directly accountable for their actions, and centers the process around victims, not offenders, it doesn't address the structural issues explored earlier, from economic inequality to racism.

Establishing county to college collaboration initiatives.

Community colleges can collaborate with counties to provide vocational training in electrical basics, welding, automotive mechanics, culinary arts, communication studies and more. This policy has a number of implications in that it

would greatly benefit both inmates and their communities by creating steadier pathways to integration back into being productive members of society, as well as lowering recidivism rates. The limitations of this policy are that they place priority solely on rehabilitating offenders and not on the victims, which is a common issue among many rehabilitative policies.

Training correctional faculty in social work.

Law enforcement being trained in deescalation tactics and learning the same basic skills that social workers do allows them to build relationships between inmates and staff and create a safe environment through cordial interaction. In addition, creating additional requirements for law enforcement to learn about cultural competency and cultural responsiveness would mitigate some of the racial targeting many marginalized community members often face during arrest and throughout the conviction process. The limitations of this policy are in implementation; there is likely to be pushback among restructuring law enforcement training procedures substantially.

VII. CONCLUSIONS

Being in prison is highly detrimental to an individual's mental and physical health; it is a violent and volatile environment with an abundance of prison politics and altercations. Institutionalizing punitive measures into our legal systems, our policy, our culture and our belief systems creates a never-ending cycle where the same people are exploited and overpoliced.

Defending offenders is a highly contentious issue that has been difficult to reform in substantial

ways, as criminals are often not extending the rights and protections average citizens are. Policy solutions should, for this reason, aim to prioritize reintegration to society rather than retribution.

ACKNOWLEDGMENT

The Institute for Youth in Policy wishes to acknowledge Taylor Beljon-Regen, Patrick Pickren, Tiffany Li, Asher Cohen, Paul Kramer, and other contributors for developing and maintaining the Fellowship Program within the Institute.

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