

A Most Vengeful Institution

by

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The pretext for prison is simple. Crime necessitates punishment. To mete out punishment there must be a time and place. Seeing as the guillotine has decidedly fallen out of favor (though, it might be more humane than our current institutions). Imprisonment for specified periods is the preferred method for addressing criminality. State-sanctioned executions still occur with regularity in the United States (U.S.) and elsewhere, but incarceration is the overwhelming First, Second, and Third World choice.

The U.S. relies on incarceration to such an extent that it has given rise to a phenomenon not seen anywhere else: Mass incarceration. The U.S. incarcerates roughly 600-700 people per 100,000. The closest to that figure is Russia, with over 400; and that says a lot. Reason the U.S. has the dubious honor of "cradle of mass incarceration" is that, unlike every other country, it uses imprisonment in retribution.

The guiding epistemology is deterrence. Deterrence doctrines and theorists function on the belief that if and when punishment is meted out, always in sufficiently severe terms, others will see the example and want to avoid a similar fate. That is, exemplary punishment to dissuade future wrong-doing and -doers. Whether by state-sanctioned executions or decades incarcerated.

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Elsewhere I discuss the doctrinal myopia and actual consequences of deterrence (see, "Fallacies" in the American Prison Writing Archive; available online). Here, I only intend a brief examination into historical and current social perspectives on criminal justice, incarceration, criminality, and revenge. This being said, I still believe it prudent to state deterrence is a fallacious practice that creates more harm than the original criminality it is supposed to curb.

U.S. criminal justice descends directly from English common law. From witness swearing (a distant relative of the trial by ordeal; apparently, the unjust could never correctly swear before God) to petit and grand juries (an answer to English versions of the French 'lettres de caché'). While some aspects have been assimilated, more modified, and many others viewed as examples of what not to do. The Old World prejudice against criminals has carried over undiminished, if anything, more entrenched and sophisticated in our day and age.

Law replaced vendettas and most vigilantism. Instead of an eye for an eye, people turned to the lawful courts which embodied government. By means of social contract, or convention, the individual's privilege to avenge a wrong was deposited in the hands of judicial officers, but the age-old vengeful thirst

remained our own. It is because of this, so very sophisticated 19th century French society indulged in a little pre-Levitical bloodletting in the latter half of the 1800s. A similar, if not the same, desire to be avenged motivates U.S. criminal law legislation and penal operations today.

Whenever a particularly heinous or shocking crime is committed there is an unavoidable "knee-jerk reaction." The cry goes up and politicians stand tall with new, harsher, more draconian than Draco legal answers in hand. Habitual and violent criminal sentence enhancers, Mandatory minimums and determinate sentences.

Aggravators, special statutory offenses, cumulative sentencing, and more. Such is the consequence even for more mundane crimes. Commit three felonies in California or Colorado and you very well may spend the rest of your natural life in a concrete box. Talk about an expensive joyride or Snickers® candy bar.

Majority of laws on the criminal books today have less to do with 'stopping' or 'preventing' criminality as they do with avenging an injured party. Improporationality is only the beginning. The proper logic undergirding society's use of imprisonment is to, temporarily, make society safer by the immediate removal of an offender to isolated confines so they may ponder upon their poor

decision, learn their lesson, and make better choices next time; thus, providing for society's future security. Though, under deterrence's influence the logic turns shades of "Alice in Wonderland." Current U.S. practices remove the 'penitent' from "penitentiary" and abandon any pretense of "corrections." Can there be any lesson to learn once a person is condemned to 50, 80, 200-plus years incarceration? With people being mandated to serve fifty, seventy-five, even eighty-five per cent of such lengthy sentences. It is no wonder why the U.S. has an incarcerated population over 2.4 million. Nobody can be compelled to rehabilitate if there is no hope for tomorrow.

In all honesty, it is slightly sadistic when one's "sense of justice" relishes the thought of anybody spending the rest of their life confined to an 8' x 13' bathroom. Especially once you consider the hyper-aggressive, violence-prone, oppressive environments habitual in modern U.S. prisons. Although, when the objective is a metaphorical eye for an eye. Then, "justice" can never be harsh enough. And that is what U.S. justice encompasses, the paradoxical two wrongs make a right. Concepts of the New Testament are still far off mirages.

As recent as the 20th century exile was still en vogue in European countries, South America

and Russia. Few members of the EU (European Union) sentence people to more than 25 years imprisonment. None have a death penalty. And then, there is the U.S.: no exile, favors decades-long incarceration and zero inhibitions toward state-sanctioned murder. What sets the U.S. apart is its internalization of deterrence.

One of the key factors in any deterrent theory is impersonalization which adds additional distancing from the target of deterrence created by a pre-existing detachment. When we concern ourselves with wrongs to be avenged there is an instinctual alienation: them and us. Deterrence takes that natural human distinction to its furthest reaches in "criminal" and beyond to its culmination in "prisoner." This is necessary for deterrence. It operates by expanding centuries-worth of conditioned prejudices regarding crime, criminals, and the like to such an extreme that society feels confident in laws severe enough to make Draco blush while solving nothing of crime. For all the deterrence ideations and methodologies being employed throughout the U.S. one would think the U.S. would have a serenely low crime rate. That would be the case if deterrence theories actually worked. They certainly did not pan out in Athens. Even Zycurgus saw the writing on the wall. For the U.S., the writing is behind its walls; i.e. within its prisons.

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The U.S. incarcerates more people than any other country in the entire world. Yearly, more than two million are actively imprisoned or incarcerated. Add to this figure more than six and a half millions under some form of state supervision or conditional liberty. Then, you also must take into account those disenfranchised consequence of criminal prosecutions resulting in convictions. Calculating all of these the figure climbs to more than 30 millions, or about ten per cent the total U.S. continental population. It is the ~~over~~-confident reliance on incarceration and disenfranchisement of all those convicted that's most problematic.

Troubling is not the recourse to incarceration itself. Rather it is the erroneous conviction that by mere incarceration in deplorable debasement and through longer and longer sentences to said imprisonment. The social ill that is criminality will be rectified. It is not needed to read Dickens to learn about the detriments of long, drawn out incarceration.

Today, docu-dramas, biographies, auto biographies, films, plays, satires - sources documenting mass incarceration's ills proliferate. Fact is, modern incarceration tends to either worsen or break an individual more regularly than reform. Such was the case in Eastern State Penitentiary which serves as the blueprint for modern penology today.

The idea that with sufficient punishment an individual can be made to behave is horrifying. That deterrence adherents wholeheartedly subscribe to it is something worse. Deterrence carried to its fullest extent, coupled with our retributive understanding of justice, is a license to sadism. As such, U.S. "justice" does not cease once sentences are passed and punishments decided. It continues into the penitentiary where prison-coats seek to "maximize hardship to discourage recidivism." In layman terms, make living in a concrete box, isolated from society, separated from family and loved ones, relegated to nonpersonhood, and with few illusions of liberty, or anything approaching autonomy, more unpalatable than it already is.

The punitive mentalities that help to create this penny penal existence extend to convicts returning to society. Disenfranchisement is an extension of deterrence. Ex-prisoners and all those who escaped imprisonment following criminal convictions are duly stripped of the most definitive rights and guarantees inalienable to citizenship. Considering our retributive streak, deterrence-related alienation, and the judiciary's validation, declaring all prisoners "civilitas mortuus." It only seems logical that a convicted criminal should continue in a comparable state of dead citizenship. Our sense of justice is quite long-termed and quasi-permanent. The crea-

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entails of criminal, convict, prisoner, ex-prisoner are

usually irrevocable.

In the U.S., our comprehension of justice proceeds from a desire to be revenged. Ensuring sufficiently severe punishment begins in the drafting of laws and sanctions goes into penal administration, conditional liberty, state supervision and finally, "returning" to society in a properly debased state. In short, U.S. society's concept of justice has little to do with righting a wrong. Its concern is on punishing the offending party. As the foregoing demonstrates, following a deterrent logic, no degree of severity in punishing is too much.