Social Cancers: Incarceration and Recidivism

by

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Crime is one of the most virulent and persisting social cancers known to humanity. As in medicine when treating a particularly aggressive disease, a comparable aggressivity is necessary when combatting social ills. Or, so goes the common belief. In response to criminality we have hit upon incarceration as the preferred remedy. The validation of a medical treatment rests in its results. Does the prescribed treatment stop the cancerous growth? Is the medicinal regimen benefitting and improving the patient's health or causing harm and deteriorating it further? Though such questions are more readily perceivable in the medical fields, they are no less easily identified in the body politic and social sphere. Incarceration, as remedial measure for crime, principally, is to be evaluated by recidivism, its societal, financial and interpersonal costs, social and individual effects.

In 1983 recidivism was at 63 percent,[1] meaning six out of every ten citizens released from prison were rearrested. During the same period the United States' expenditure on corrections by its states was near six billion dollars.[2] With just over 500.000 persons behind bars in the early 1980s[3] the results of incarceration on criminality could be termed "promising." On the whole, for a moderate cost, our criminal justice system was turning a modest profit. Incarcerat-

ion was attending to immediate safety concerns by removing criminals from society where their antisocial behavior created a danger. It also gave much needed attention to the long-term issues of recurring criminal behavior patterns. The then-regimen of incarceration was able to rehabilitate four out of every ten persons committed to its care. Fast-forward some forty years, the U.S. spends more than 80 billion on corrections, according to the Vera Institute of Justice, has the infamous honor of one-fourth the global population behind bars.[4] With 2.3 million imprisoned and counting[5] and a steady recidivism rate above 50 percent.[6] There exists an urgent necessity to re-evaluate our response to crime.

Colorado is an illustrative case study. Most national trends hold true in Colorado regards application and result. For example, in 2016 the U.S. Department of Education found budgetary allocations for corrections versus education were three times higher, with strong indications of an increase in the disparity. In Colorado the cost of an education, *per annum*, is $4.171 and $4.531, kindergarten thru highschool and post-secondary respectively.[7] Whereas the annual cost of incarceration per prisoner is almost quadruple the combined total of K-12 and post-secondary education at $36.892.[8] In fact, other than leading in juvenile offender life-sentencing

reform and the state's governor, Jared Polis, establishing a general sentencing reform task force. Colorado is par the course for incarceration according to Bureau of Justice Statistics' data.[9]

When quantifying incarceration from an inductive position, one must look beyond sentence length to include collateral consequences (i.e. post-conviction/-carceral sanctions, both formal and informal). Though Colorado does not rank among the top tenth for states with people serving life-terms of imprisonment.[10] It does rank high on that list and among the top twenty states for inordinate post-conviction collateral consequences.[11] Despite having a left-leaning legislature and executive Colorado's approach to penology is nonetheless in alignment with the historic national trend of "tough on crime" that came to predominance during and after the prison-building boom of the 1970s.[12] This philosophical underpinning, driving the state's criminal justice legislation, is transmuted to penal administration and discipline affecting the quality of incarceration.

For many the phrase 'quality of incarceration' is a bit of a head-scratcher. Quality of incarceration has little to nil to do with a prison's physical proportions or security capabilities. Rather the term relates to the substance of a prison sentence. This is by far the most important factorization left out

of or ignored in almost every legislative session, commission or committee report; almost every academic treatise and doctrinal stance on penology and criminology except, perhaps, as a minor footnote or the briefest of passing words grudgingly paid. An irrefutable fact is when offenders are subjected to a higher quality of incarceration a corresponding rise in rehabilitation and descension in recidivism occurs. That this is overlooked in general, often acknowledged only to be marginalized as insignificant, is indicative of how far afield our use of imprisonment has flown. What many prisoncrats view as "privileges" (e.g., pursuing post-secondary education, gaining job skills, fostering and maintaining familial ties) have been proven to facilitate more effective and long-lasting rehabilitation than current benchmarks of "successful incarceration." Normally, the measure of an offender's time in prison is gauged by the following:

1. How much misconduct they exhibited (including actual penal rule infractions, suspected misconduct, association with other offenders classified as disruptive, and any other observed behaviors an official may have deemed negative)?;

2. Whether any programs - therapeutic, court-ordered, or corrections certified (i.e. evidence-based programs approved by the corrections industry) - were completed?;

3. Length of sentence remaining; and,

4. Likelihood of recidivism based on the above-mentioned and other industry recognized, predictive criminogenic factors.

These have been the guiding lights for qualifying the effectivity of incarceration since the early 1970s. Even then, when penology was more liberal-minded and rehabilitative programs more abundant, both independent and industry sponsored programs, incarceration was deterrence directed. The 1980s saw drastic reductions in funding and receptivity towards rehabilitation and what Reaganites sneeringly termed 'humanizing.' The came the 1990s with their superpredator theories, transition of the 1980s war on drugs to a 1990s war on crime, incorrigibility of criminals and total incapacitation. Enter the 21st century which ushered in a perceptible drop in crime rates leading to a loss of appetite and loosening of the reigns of the Penal Institution. In the following twenty-two years came a succession of methamphetamine and opiod crises, rashes of home-grown terrorism normalized in school and other mass shootings, youth and overall criminal incidence sky-rocketing. In each successive event and period we have stripped more and more from an already

emaciated corrections budget while heaping astronomical amounts on punitive measures, and the all-important pursuit of "tough on crime." Yet, as I stated earlier, the U.S. spends roughly 80 billion dollars annually on incarceration, corrections, more on law enforcement and criminal justice, and recidivism is steadfast, resting above fifty percent.

Prior to the Coronavirus pandemic and subsequent endemic, Colorado operated more than twenty penal facilities and enjoyed a corrections budget inching close to one billion dollars.[13] Many of Colorado's recent changes in penology and corrections budgetary allocations date back as recently as the late, former executive director, Tom Clements, and are consequences of his murder by a former prisoner. Noted above, other, even more recent, changes in criminal justice - sentencing laws and practices specifically - correspond national attention garnered by the egregiously disproportionate and excessive 110-year sentence of imprisonment handed down to Rogel Aguilera-Mederos for his role in causing a multi-fatality, highway pile-up. Despite all these reforms, related initiatives, and a staggering budget the quality of incarceration has not changed. Colorado, like almost every state, whether blue or red, follows what Marie Gottschalk calls the "non, non, nons" approach[14]

– i.e. nonserious, nonviolent, nonsexual – and former U.S. Attorney General William J. Barr's incapacitative model advanced in the early 1990s.[15]

Part of the reason quality of incarceration has languished and prisoncrats have been so truculently opposed to abandoning or wholeheartedly endeavoring the pursuit of a more efficacious treatment of crime is "folk psychology."[16] Folk psychology "encompasses all ordinary, nonprofessional, "implicit theories about a variety of human attributes,"[17] including bases for predictions about human thought and behavior."[18] In terse words, for criminal justice folk psychology means "belief in [a] person's ability to change directly informs punitive response to criminal acts."[19] Regarding crime the folk perspective translates to a certain conviction that a criminal's actions demonstrate their true character, adult lawbreakers do not change, and past criminality is an accurate and reliable predictor of future dangers a criminal may present for the common-weal. This is the "categorically criminal" and the principal concern for incapacitative doctrines, a form of societal exclusion more expansive than mere exile. Because of long entrenched folk prejudices U.S. criminal justice often results in perdurable social exclusion,[20] verging on permanent when including collateral consequences, due to the inexplicable lengths of

sentences to imprisonment.[21] In fact, the U.S. has more citizens serving life or virtual life sentences than some countries have people in prison altogether.[22] This folksy outlook generally provokes a doubling down on tough on crime, an intensification of punitive measures in and out of prisons, harsher conditions for the incarcerated, and dissociative treatment of recalcitrant prisoners, i.e. "the incorrigibles."

All this plays a determinative role in why Colorado and so many middle of the pack departments of corrections stray little from the 40 years old penology pattern: provide less, demand more. Prisoners today face a severe paucity of rehabilitative options, institutionally or independently; the latter, in many instances, though "available" are neither fiscally supported nor encouraged by equal recognition as are institutional programs and, therefore, rarely feasible. Primary fiscal concerns are illustrated in the alimentation of prisoners. The cheapest foods, frequently labelled "not for human consumption", spoiled, or badly prepared are served with a passing glance at proper portions or necessary macro-nutrient intake in favor of supplying a total caloric count diet that includes zero value foods (e.g., sugar, Margine, salt, drink mixes) towards its sum total goal. In general, penal conditions and treatment of prisoners is just this side of

explicable to avoid public outrage and permit criminal justice proponents to avoid guilty consciences. On the demanding side of this equation are too many things of note. Obviously, among these is the consistent stripping of funding for in-prison rehabilitative initiatives for other, less positively impactful programs and policy developments such as Colorado's Violence Reduction Program and replacing Administrative Segregation with Management Control Units or expanding in-prison prosecutions. Prisons demand more robust budgets, clamoring about out of control prisoner violence and threats to penal personnel, and safety of facilities and offenders. Applying the folk viewpoint summarized above, legislators allocate more and more to state corrections budgets despite ever-growing evidence of the persistent failure of these in-prison remedies; and, the same folk-myopia affects criminal justice in society. For example, Colorado's Mandatory sentencing guidelines for 'crime(s) of violence' mean a person can be sentenced for a cumulative life term without killing anyone. "Truth in sentencing" practices demand convicts serve 75-100 percent of their sentence. Which, in the case of a twenty year old with a minor criminal history sentenced to eighty years, to quote Jill Wine-Banks,[23] means "his life is over." Such is the reality of prison — the death of a person insofar as

citizenship and personhood are concerned – civiliter mortuus.

This is a large, if not overwhelming, part of why incarceration fails more often than not. A reticence to venture beyond the "non, non, nons", commit to substantial and qualitative reforms, invest in meaningful rehabilitative programs and study not based in political posturing translates to an offensive eighty billion wasted on corrections, of which only $67 million[24] is dedicated to re-entry services, 2.4 million people behind bars and, recidivism rates, more or less, unchanged when one accounts for population growth. Although it seemed intuitive, more, longer incarceration has a "minimal"[25] effect on recidivism. Still, even the paltry sums destined for re-entry services yearly exceeds what is directed towards quality of incarceration. While states like California, New York and New Jersey have experimented along a "non, non, nosn" approach resulting in double digit reductions in prison populations and crime rates (Colorado is among those states that have achieved similar reductions though, in Colorado's case, to a lesser magnitude).[26] But crime rates, prison population reductions and sentencing guidelines do not explain incarceration nor why it continuously fails although we shell evermore resources in to it. To quote the National

Research Council:

"The best single proximate explanation of the rise in incarceration is not rising crime rates, but the policy choices made by legislators to greatly increase the use of imprisonment as a response to crime."[27]

As unsuccessful as developmental criminology has been in its predictive prowess using static factors to foretell long-term reoffending. Its failures have conducted more lucid and elastic minds to quality of incarceration.[28] Consequentialism and retributivism are the core principles of modern penology; i.e. "Punishment Theory," the 'just deserts' perspective influenced by folk psychology.[29] At the center of successful incarceration are humanity and dignity.[30] Or, as Judge Warren H. Young succinctly observed in Barnes v. Government of the Virgin Islands, 415 F. Supp. 1218, "it makes absolutely no sense to confine a person under conditions which increase the likelihood of future confinement." Halden prison in Norway is an instructive lesson in making Judge Young's sentiment reality. Closer to home a few states have to a lesser extent than their Norwegian counterparts experienced burgeoning enlightenment. This unveiling has birthed a 21st century renaissance of logic in public

safety and criminal justice, ironically titled "smart on crime."

In states like California, Arizona, New York "smart on crime" inside penitentiaries has seen a painstakingly slow, heavily contested transition from folk-based insistences on punitive and coercive methodologies of control despite negative consequences and being devoid substantiating outcomes. Exploring "smart on crime" and evidence-based options has led many states, especially these three, to turn attentions, resources and efforts to improving quality of life. For people incarcerated quality of life is not merely the breadth of amenities and privileges made available. In states seeking to improve their quality of incarceration, education is a common aspect, which for those incarcerated determines their immediate and future quality of life. For clarification purposes, by 'education,' here I intimate the variegated services, programs, and initiatives intended to teach, develop, and broaden horizons. These could be vocational, sociological or psychological, life skills, parenting, among others and not simply scholastic.

Studies[31] have proven empirically individuals partaking in **any** educational program while incarcerated were 43 percent less likely to return to prison. A Los Angeles Times article[32] cites persuasive evidence

for expansion of in-prison, college-level education programs, especially when participants in post-secondary education in Arizona achieved a recidivism rate of only ten percent.[33] Although education's edifying effect on individual prisoners and benefits for society are irrefutable, in this same Los Angeles Times piece, so too are the illogical folk arguments relied upon to persist in error. Which explains why California and Colorado share in their official stances on in-prison education, embracing it as "an important form of rehabilitation," while in practice "the reality is far different."[34] New York stands out among the states desiring to resuscitate the rehabilitation component inherent in corrections. Former governor, Andrew Cuomo, allocated more than seven million dollars for local colleges, specifically, to provide in-prison classes. In recent years California has begun meaningful exercise of its official line on rehabilitation through education, partnering with The Last Mile at San Quentin Prison to offer coding experience. Colorado has made some advances in this area as well, but only in so far as a traditional "non, non, nons" ideology permits.

More attention needs to be paid to in-prison education and not only for its recidivism-reducing effects. According to a 2009 piece in The New York Times ten percent of all dropouts are in a jail

or prison.[35] In itself this is not so terrible until one learns that in a Special Report the Bureau of Justice statistics found 59 percent of federal prisoners and 75 percent of state offenders are highschool dropouts. With 2.4 millions behind bars the figure is more than half those predicted to graduate in 2021. But, matters get worse because, while only 19.1 percent of college graduates recidivate, more than 60 percent of those who failed to graduate highschool return to prison.[36] Clearly high recidivism is causally linked with lower education levels in a vicious cycle. Low education limits employability, hindering attainment of legitimate subsistence leading to criminality and abuse of intoxicants which, in turn, brings a person to prison. A criminal record further diminishes employment prospects. While years of incarceration spent "meditating" on offenses instead of gaining skills and capacities necessary for reintegration as a contributing member of society leaves returning ex-prisoners socially, technologically, educationally retarded and in tenuous standing with worse prospects than those faced before entering the care of corrections.

Quoting Kathleen Bender: "Education can be a gateway to social and economic mobility." Yet, only 35 percent of state prisons provide college-level academic programs and these only service a lamentable six

percent of the entire U.S. penal population, according to Vera Institute of Justice. The concluding words of "Incarceration and Crime"[37] speak directly to the subject of social cancers:

"During the last 30 years of incarceration growth, we have learned a great deal about the financial and social costs and limited effectiveness of incarceration on crime rates... Increasing incarceration while ignoring more effective approaches will impose a heavy burden upon courts, corrections and communities, while providing a marginal impact on crime. Policymakers should assess these dynamics and adopt balanced crime control policies that provide appropriate resources and support for programming, treatment, and community support."

Despite releasing roughly 700.000 prisoners annually,[38] with the effects of collateral consequences,[39] a quality of incarceration detrimental at best and destructive at its very worse. Over 400.000 find themselves back in custody, prisoners anew. More damning is that our behind bars population continues to grow. Accounting for failed re-entries, it means we incarcerate more than 300.000 citizens per year. Worst of all, these new admissions and re-cidivates continue even when national crime rates descend, and show zero indications of diminishing. As such, incarceration has become a social cancer in its

own right instead of a curative for the social ill that is crime. Were legislators and prisoncrats doctors they would be violating the hippocratic oath, daily, by persisting in a treat that exacerbates and worsens the patient's - the body politic and society - condition. Are public servants so different from doctors in their responsibility to others? The devil is in the details. Only when we cease viewing criminal justice through Mozartian-tinted glasses (i.e. in terms of vengeance) will our Penal Institution result in something approaching justice and be capable of serving the best interests of society and our future.

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