

Who Does Justice Fail?

Part One ~ The Offender

By Dusty Turner

'Corrections', as it refers to the department of state and federal institutions that hold people who have been convicted of committing crimes, is an Orwellian term. Just as the Ministry of Peace in his famous book was the institution that promoted war, so too is the "Department of Corrections" an organized infrastructure created to warehouse and, likely inadvertently, further damage its humans. What exactly is being corrected? A thorough understanding of this subject would require a study on the history of the penitentiary and of Western Civilization's crime and punishment in general.

To be fair, I must preface this series by recognizing those honest and hardworking agents of the Department of Corrections (DOC) and the Criminal Justice System (CJS), employed by a Hydra so large and lumbering that it virtually has its own gravitational pull. Bucking the status quo as an employee of the system, trying to swim against the current, is not likely to help one's career. You cannot imagine the number of motivated young men and women who come into corrections with a spirit and ambition to make a real difference in the lives of offenders. How long do you reckon they remain so? Unfortunately, those who don't change such an attitude are marked for termination, or incessant harassment to the ends of resignation. Indeed, the turnover rate for correctional officers in the Virginia's DOC is 27% with over 700 vacant positions. No one can say with a straight face that our CJS and its burgeoning prisons (oops! I meant "Correctional Centers") are peachy keen.

I have read countless books and articles concerning, and have objectively contemplated on, the concept and history of Justice. (Does this alone, by providing a time and place to read, study and contemplate, monk-like, help prove the effectiveness of the correctional environment? No, not only is my whole life an exception to the rule, but corrections connotes something more than allowing periodic opportunities for self improvement by intrinsically motivated characters.) Has justice ever been, or can it ever be, perfect? Is it an adversarial zero sum game of only winners and losers? It seems to me that the outcomes of the whole criminal justice process often produces only losers.

Since justice - and let us not forget its inverse, injustice - is obviously important to me and is such a broad topic I've decided to attempt a series of articles to cover some of its catharses and malignancies. My chief credentials for such a subject, aside from that mentioned above, comes by way of a nearly 23 year total immersion in the incarcerated environment and by living amongst thousands of humans on the wrong side of the system. Additionally, I have taken victim oriented courses and co-developed an offender rehabilitation program. Although the most important stakeholder of any offense is the one directly harmed, due to my intimate familiarity I decided to cover the offender first.

Confucians believe the first victim in any criminal offense is the offender him or herself, because by acting without benevolence they have defiled their dignity and very nature. Perhaps the reader can appreciate such sentiments, however, this idea cannot occupy space in the West. Oh, we are certainly concerned about offenders, indeed they are the center focus of the CJS. When a crime occurs we want to know what happened, who did it and how we can punish them. The retribution satiates our lust for vengeance. It make us feel better to witness the suffering of people we perceive as wrongdoers, does it not? It gives us a sense of victory and vindication, of satisfaction and superiority. Wow, how proud we must feel! Within the CJS, victim's needs are secondary, tertiary, or - more commonly - not taken into consideration whatsoever.

Perhaps the CJS believes, as if the Hydra has an autonomous consciousness, that the only thing victims need or want is retribution. We will touch on the preconditions for victim healing along with their rights later in the series, and it is true that the system has been slowly evolving in its recognition that victims of crime are more than mere tools to convict and punish offenders. Yet, can we rightfully say this is progress and evolution of the CJS when, in reality, it is largely a return to an earlier understanding of justice? "Primitive" justice was concerned, first and foremost, with who was harmed, how can they be restored and who should be responsible for the restoration. Retribution, craving offender suffering, was reserved for those whom conventional justice failed. This victim-centered, restorative form of justice is so old that it just seems new and progressive.

In America today, justice is typically measured by how many months or years of his or her life that an offender spends in prison. Confinement in connection with justice has become part of our worldview. Regardless how each of us may feel about contemporary constructs of punishment, which we will also explore later in this series, prison confinement is the status quo. In this installment let's first explore the human experience of punishment and how it is helping or hurting people.

During the brief and fortunate visits I have had with family and friends over the years, I would often be queried concerning fellow inmates, "What's he in here for?" My lack of curiosity or concern would strike them as odd. One might assume that this question would be foremost when a prisoner meets another, but why should it be so? When you are introduced to someone, is the worse act they ever committed your first curiosity, or do you judge them by their character? Think about the worst thing you've ever done, perhaps you wouldn't want to be defined by this either. In the DOC, one will find incarcerated offenders who are dishonorable and others who are honorable, some psychopathic and others compassionate, truthful and deceitful, greedy and generous, ignorant and intelligent, strong and weak, slothful and disciplined, lost and found. Easier said, one will find...people.

Judges of the CJS are authorized to inflict harm in your name. Because of the social contract, you implicitly agree with this right to punish and, according to the

retributive rationale, the infliction of pain is an end in itself. This human must be punished, because he or she deserves it, period. This is fantastic conflict resolution role modeling! If someone slaps you on the cheek, smite him on the other. Although, intentionally inflicting pain is generally considered evil by most civilized folks, if its done in the spirit of punishment by authorized professionals whom we empower, then we're okay with it.

However, what does prison as a form of punishment entail? What always accompanies a prison sentence are additional, extra-legal, forms of harm. Some DOC administrators believe that "merely" depriving people of their liberty is insufficiently painful and, therefore, there must be an additional, intentional infliction of harm during the imprisonment as well. People sent to prisons are sometimes raped and physically and emotionally assaulted, usually by other prisoners, but sometimes by guards as well. The prison experience differs vastly depending on one's age, race, ethnicity, sexual orientation, maturity, psychological and physical strength and stature. A prisoner's limited property is often destroyed and he or she is subject to a multitude of daily sufferings. Some of these are the general result of attempting to institutionalize human beings and others are the result of the whims of individual staff members and the surrounding inmate population. I'm not sure which part of "corrections" these are; how these additional attendant forms of punishment are supposed to help offenders become better people once they are freed. It may do us well to remember that approximately 92% of people incarcerated are going to be released back into the community.

Corrections, is supposed to serve the people as being more than a house of pain. Notably, its threat of pain is also meant to deter crime, the DOC is designed to incapacitate the wrongdoer and (No snickering!) it is responsible for rehabilitating the offender as well. You've got to hand it to them, at least they do a really good job keeping the offender incapacitated. Its difficult to measure the effectiveness of prison being a deterrent of criminal behavior, but relative to ALL other nations, America's crime and incarceration statistics are absolutely horrible. This suggests that we are either the worst people on the planet, or our system is flawed. Our true recidivism numbers, that is, counting all those who are locked back up for any reason (an indication of rehabilitative ineffectiveness), is over 60%.

"If you can't do the time, don't do the crime!"

A forward looking model of justice should consider what is best for society, not simply what a wrongdoer "deserves." Does your community, your neighborhood, "deserve" to assimilate an ex-offender who has been morally, spiritually and psychologically damaged by years of suffering in the prison environment? Just a heads up, he or she is a two to one favorite for returning to the house of pain within three years of release. Let's examine a few of the known effects of incarceration upon human beings, then we'll lay out some of what is sorely absent.

Society has become gradually uncomfortable with inflicting physical harm on

offenders. The prospect of spending years in a concrete box, however, inspires the contemporary offender to yearn for the good old days of flogging, branding, whipping, cutting off limbs, the stocks, etc. Depending on the length of incarceration, the level of coping skills prior to it, along with a few other factors, offenders can expect to emerge from the DOC with "Institutionalized Personality Traits." These are the psychological results of enduring an oppressive environment that demands a passive compliance of authority and acceptance of severely restricted acts of daily living. By giving humans numbers, standardized clothing and limited personal space and possessions, in conjunction with the absolute extirpation of autonomy, the entire institutional setting is structured to dehumanize. The inmate becomes conditioned to the severe limitations of honest thoughts, feelings and self-expression, and the repression of personal lifestyle preferences. PTSD is common in many DOC inmates, accompanied by a host of ill effects. One of which is a general paranoia and reduced capacity to trust others caused by the constant fear of abuse from correctional staff and other inmates.

The internalized coping behavior that people acquire in order to survive this harshly punitive environment has a dual strategy: be actively aggressive with predatory inmates and passively aggressive with the guards. The DOC demands offender conformity to its rules (an extra pair of socks, for example, is "contraband"), but a learned submissiveness does not generally translate to a successful reentry. Rebelling is a typical response in an attempt to maintain some semblance of individuality, but will make his or her stay incredibly uncomfortable and will ruin any chance for parole - in those states where parole still exists. There is a third option for coping within the DOC: become devious. An incarcerated person can find ways to express individuality and personal freedom while upholding a facade of conformity. This "strategy," however, conditions the inmate to a culture that normalizes manipulation. The "Antisocial Personality Traits" that are formed include a tendency to challenge authority, break rules, and con and victimize others. These traits can be developed from preexisting symptoms as well as from psychological defense mechanisms in response to institutional coping. Additionally, the socially approved retribution and attendant, extra legal, penal harm endured in the DOC, generally leaves inmates angry and resentful towards, and unconnected with, society.

I have spent time in solitary confinement at 7 of the 9 DOC facilities that I have been housed, only one of those times was for actually breaking a rule. (In 1998, I was found to be in possession of a gallon of "wine," for which I spent around 15 days in the "hole.") "Social-Sensory Deprivation Syndrome" is caused by prolonged confinement, especially solitary confinement. The effects include issues you wouldn't want your neighbor to have, trust me. The more benign of which are out of control obsessive thinking and an inability to concentrate. Its the inability to control primitive desires and instincts, the repressed rage, and inability to anticipate logical consequences of behavior that are most concerning. Though many offenders were addicted to substances prior to incarceration, others develop "Reactive Substance Use Disorders" in prison or after release in an effort to cope with the above

mentioned and other symptoms. I really don't want to expound upon the DOC's black market of drugs (its a touchy subject), but having witnessed quite a few overdoses recently and seeing an amazing number of younger inmates completely addicted, suffice it to say there is a serious problem.

What's Missing?

I know that a lot of people assume that offenders spend much of their time in prison considering, even agonizing over, the harm they have caused to others and the wrong they have done. The reality, unfortunately, is quite different. For the CJS, accountability simply means offender punishment. There is no acknowledgment of the wrong and acceptance of responsibility, no facing up to what was done and recognition of obligation, nor an effort of contribution to the restoration of the well-being of the victim. Many incarcerated people don't even know the names of the people they victimized. Offenders are not given the opportunity to really understand the impact of their offending behavior and its far reaching effects. Instead, along every step of the process, the offender becomes preoccupied by his own self-interest and is forced into a cycle of self-focus. He is encouraged to plead not guilty even when his guilt is obvious, and if he later accepts a plea bargain its not to assume responsibility, but simply to take part in a bureaucratic process designed to move cases efficiently through the CJS.

The DOC provides plenty of time and encouragement for its wards to develop elaborate rationalizations for their actions and to divert blame from themselves to other people or circumstances. This is yet another coping mechanism so that offenders can live with their malevolent behavior. These fabrications are at no time challenged during their stint in the system. People who have harmed others need an opportunity to understand the real human cost of their deeds. They need to face up to what they have done and to whom they have done it. Many offenders have convinced themselves that they simply violated a rule of the faceless state, instead of violating a human being.

In general, offenders in the DOC are given little or no chance, opportunity, or encouragement to:

- correct what they have done and to make things right to the extent possible;
- deal with any guilt or shame;
- learn respect for others and their property;
- cope peacefully with frustration, resentment and rage;
- learn nonviolent patterns of behavior;
- escape the endemic hatred and violence;
- learn that they have the power and responsibility to make good choices;
- be considered people instead of animals or commodities;
- express true remorse and;
- be forgiven.

Finally, the reader may be curious as to where I, a DOC prisoner for over half of my

life on earth, fit in to these patterns. A few years ago, after a newspaper article was published describing my wrongful conviction, an online discussion was held. An ex-probation officer, whom I have never met, wrote that it really didn't matter if I was innocent at this point, because after this many years in the 'correctional' environment I was surely no longer fit for society. Wow! Again, I consider myself quite the anomaly behind the wire and I work daily to combat the negative influences, both upon myself and others. I was young when forced into these conditions, back in a more violent DOC era, but I have been fortunate to have what many others don't. I was very disciplined from my military experiences, I was able to defend myself and had a strong constitution with decent coping skills. Additionally, I have had a stalwart support system from my community of care. I'd like to think that I have managed to avoid much, though surely not all, of the psychological damage and Institutionalized Personality Traits. I do recognize that all of these findings are from my unique perspective and I welcome comments.

Look for part two coming soon.