



Reality Challenged Theories of Punishment

Synopsized by Dr. Thomas A. Lifvendahl

From a lecture by:

[Dr. Robert Weisberg](#)

Stanford Law School

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This was a lecture given by Dr. Weisberg to describe current research on the nature of Mass Incarceration; a term used to describe the current skewed nature of the huge correctional population of the United States. This presentation was designed for a legal audience and was both technical and highly academic in nature. In order to help the lay reader better understand some of the underlying concepts it is useful to define the following:

Retributive Justice:

A concept of justice that is “concerned with when and why punishment is justified” (Audi, p. 395) and argues that punishment for criminal offenses requires one consider incarceration as a rectifying activity to correct the disequilibrium imposed on society by an unlawful act. It postulated that “just punishment” must be proportionate to the magnitude of harm suffered by society.

Utilitarianism:

Utilitarianism is “a moral theory that an action is morally right if and only if it produces at least as much good... as any alternative act” (Audi, p. 824). This concept of justice focuses not on retribution but on deterring the offender from future criminal behavior. In essence, what is the utility of punishment as a means of convincing individuals to alter their criminal behavior for the betterment of society?

Lecture Content

Dr. Weisberg opened his lecture by using a “thought experiment”. Citing voluminous statistical information, he noted that the current correctional system has incarcerated the highest proportion of American citizens in our history. This experiment centered on challenging the legal community to evaluate what is the “right” level of incarcerating individuals to meet societal needs. Determining that level is presently open to rigorous debate and made imperative by the fact that imprisonment in the United States is six times greater than Europe. Mass incarceration at historic levels!

Noting that imprisonment demographics fall disproportionately on minority populations; Dr. Weisberg argued that a new and disturbing “norm” of life is forming. For many African American males (age 35 and possessing no high school diploma) having “served time” is normal. Of further import is that fact that increasing incarceration numbers are not linked to criminal activity. Weisberg described that fact that crime rose through the 1950’s, peaked in the 1980’s, and has declined through to the present day. Incarceration has not. It has continued to rise with no diminishment in numbers into the foreseeable future. Significantly, this trend cannot be sustained.

What explains this phenomenon? One could argue that:

1. Increased numbers of incarcerated individual lowers the number of potential criminals acting out on society. They are locked up. The problem is that the huge number of locked up people has only led to a 20 to 25% reduction in crime...not cost effective.
2. Varied politically driven approaches to crime reduction (mandatory sentencing, being “tough on crime”) have led to unintended consequences...a prison population too large to sustain.
3. Governmental policy has allowed the prison population to grow without concern for injury to others...Reckless Indifference.
4. Given a conspiratorial frame of mind, pulling large numbers of marginally employable citizens out of society for varied crimes diminishes the dysfunctional labor pool...a “laudable activity” in a depressed economy.

Dr. Weisberg noted that there is no correlation between rates of crime and economic condition. Interestingly prison populations (statistically unemployed individuals) are not included in national unemployment information. In addition, the consequences of incarceration to the employability of the prisoner are not fully appreciated by the general populace. Aggregated data shows that there is a 30% reduction in wages earned by prisoners on the “outside” and that this inability to earn increases the likelihood that the felon will be recycled into the system again.

What then is the purpose of punishment? Currently society seems to demand retribution; a primal reaction to the perception that felons are let off too easily. This ontological stance begs counter argument that tends to focus on providing flexible means for linking sentencing to societal utility (benefit to all). In essence he argues that if one believes that the current system is dysfunctional; than one must consider alternatives to the present system.

Dr. Weisberg contended that “selective incapacitation”; the use of electronic and other means to limit personal freedom without locking an individual up provides a means of tracking and constraining behavior. The driver for instituting all these methodologies for imprisonment alternatives is cost containment. Openness to alternatives to the present system is in varied stages of consideration.

Summary

In summary, Dr. Weisberg believes we need to ask, “*How are humans improved*”? Do activities presently promulgated on prison populations make one a “better” person? He proposes that corrections and the legal community consider revamping prison rules and regulations in ways that benchmark (my words) desired behavior upon re-entry into society. We need to seriously consider how one can utilize prison time to truly change moral/ethical behavior.

Quoting Dr. Weisberg, prison is a “lousy place to rehabilitate”. I would argue that it has become the default mental health hospital (a view raised in subsequent questions after the lecture), a place to house felon misfits deemed unemployable by general society, and an expanding business opportunity (privatization) that is both morally and economically unsustainable. Given the inclinations of Milwaukee’s Restorative Justice community and the concerns of the Milwaukee Commission on Police Community Relations let the debate over mass incarceration expand beyond the legal community and encompass all stakeholders...our community can brook no less.

References

Audi, R. (1995). Gen. Ed. *The Cambridge Dictionary of Philosophy*. New York, NY: Cambridge University Press.