

VINDICTIVE JUSTICE: AMERICA'S PURSUIT OF PUNISHMENT

Thesis Proposal

Presented to the Honors Committee of

McMurry University

In Partial Fulfillment of the Requirements for

Undergraduate Departmental Honors in Sociology

By

Jennifer Wells

October 2010

Vindictive Incarceration: America's Pursuit of Punishment

Like all habitual patterns of social action, the structures of modern punishment have created a sense of their own inevitability and of the necessary rightness of the status quo. Our taken-for-granted ways of punishing have relieved us of the need for thinking deeply about punishment and what little thinking we are led to do is guided along certain narrowly formulated channels. Thus we are led to discuss penal policy in ways which assume the current institutional framework, rather than question it.... David Garland

At the start of the new millennium, the Department of Justice (2010) reported that America became the world's leading imprisonment nation surpassing the staggering figure of over two million incarcerated prisoners. David Garland (1990: 3), along with other sociologists and criminologists bared, witness to the radical execution of punitive American justice over several decades. America kicked into the harsh, punishment oriented auto-pilot alluded to in the quote by Garland, and presently finds the American criminal justice system on the brink of collapse. Why is the American justice system about to implode on itself? Does it matter?

For decades America has operated under the belief that severe prison sentences and colossal numbers of prisoners served as the best way to punish the accused in society. Only twenty-five years ago one in every three hundred Americans served time within the criminal justice system. Today, one in every one hundred Americans find themselves incarcerated at some point in their lives. Not only are the numbers up, but so is the cost to tax payers as the total bill for the justice system reaches more than 60 billion dollars a year (Pew Research Center 2008: 3). Now anyone, regardless of ideological persuasion, is forced to face the aftermath of years of harsh, automated, assembly-line justice. Although the events and the consequent problems America presently faces started around forty years, today society sits on the verge of a precipice. Put simply, there are more prisoners than the American justice system is capable of funding, housing, reforming, monitoring, and most frighteningly controlling. Despite the evidence that harsh, punitive punishment created and confounded the issues above, America

continues to push for the relentless practices of these types of punishments. Reform acts as the rope providing America with the last hope before the fall.

The purpose of this thesis is to examine the American pursuit of punishment through the “thinking deeply” approach suggested by Garland (1990: 3). The following research questions guide this thesis: How did America come to this point? Why are America’s laws so relentless? What really happens behind bars? What happens when prisoners get out? Can the system be fixed? The intent of this thesis is to provide a format in which these queries are examined through several sources of combined literature. Essentially, the thesis will analyze, discuss, and synthesize the criminology literature in order to reach answers to many issues surrounding America’s penal system. Suggested reform ideas stemming from the answers to those questions then follow. This thesis proposal will continue with an overview of the expected chapters and proposed timeline.

Chapter One: Punitive America and How We Got Here

“*Our* traditions of authority—really, our traditions of opposition to authority—have given us a criminal justice system long on degradation and short on mercy. This may be the way we want it” (Whitman 2003: 207). Chapter one covers three main topics. The first of these addresses the question: what is really happening in America’s justice system? Massive overcrowding and examples of the harshest punishments indicative of the American penal system are discussed in David Shichor’s (2006) book, *The Meaning and Nature of Punishment*, and *Incapacitation: Penal Confinement and the Restraint of Crime*, by Franklin Zimring and Gordon Hawkins (1995). There are important aspects of the predicament America finds itself in, because they illustrate where America currently stands statistically. The United States’

predicament will then stand in comparison to a select few other developed countries. These countries will include three developed nations Michael Tonry (2004) utilizes in his work, *Thinking about Crime*. James Whitman (2003) provides an in depth look into the historical path America took in order to reach this point in his book, *Harsh Justice: Criminal Punishment and the Widening Divide between America and Europe*. The first two topics are intended to trace the history of American punishment with a comparative approach. The final topic included in the introduction scrutinizes the past thirty to forty years of harsh, punitive mentality which led to the crisis of overcrowding, underfunding, and chaos. This topic serves to answer the question regarding how America arrived at this crossroad, of collapse or reform, from a historical and comparative perspective. The expected completion date for chapter one is November 15, 2010.

Chapter Two: Blood Lust: Harsh Legislation and Overzealous Punishment

Chapter two identifies some of the specific pieces of legislation currently utilized by the American justice system. The chapter also addresses the racial, economic, educational, and gender disparities found in prisons across the country, specifically drawing on, *Punishment and Inequality in America*, by Bruce Western (2006), and *Our Punitive Society: Race, Class, Gender and Punishment in America*, by Randall Sheldon (2010). With the monumental number of people in prison, disparities are evident in every aspect, but no more so than in the legislation targeting certain groups.

In order to accomplish the revelation of this subject there are three key sentencing issues to illustrate where disparities and huge prison numbers arise from. California's Three Strikes legislation focuses on the danger and results of a "one-size-fits-all" approach to justice. In an attempt to rid society of dangerous repeat offenders, California implemented the Three Strikes

legislation, in which any criminal convicted of a felony or serious misdemeanor faces a mandatory, lengthened prison sentence. The 100-to-1 law regards legislation that enforces the same sentencing protocol for 100 grams of cocaine and 1 gram of crack cocaine. This law looks into both the economic and racial disparities, as several researchers provide evidence that poor minorities are drastically affected (Western 2006; Sheldon 2010). Both of the previously mentioned books in the chapter cover instances and statistics on this subject. Finally, the Pew Research Center (2008) report, *One in 100*, provides statistical support of the resulting repercussions of America's aggressive attack on crime. A few of these statistics will include data on the number of prisoners serving time for particular crimes, prisoner background (race, age, economic status, etc.), and the number of cases the courts face in regard to different types of crimes. All of these empirical data demonstrate the complete picture of how sentencing plays a major role in the problems facing America's justice system. The expected completion date for chapter two is December 15, 2010.

Chapter Three: See No Evil: America's Blindside Behind Bars

This chapter's first goal is to shed light on the reality of what occurs in the prison system. By the second half of the millennium, "The daily count of prisoners in the United States has surpassed 2.2 million. Over the course of a year, 13.5 million people spend time in jail or prison" (Gibbons and Katzenbach 2006: 11). One of the main ideas dealt with in this chapter looks closely into the lack of funding for overloaded prisoner programs due to overcrowding. Drug counseling, educational opportunities, and vocational training are the three areas of focus regarding options for prisoners while locked away from society. Another focus centers on the reality of daily life for prisoners. This includes the drug culture, gangs, and practiced

institutional radicalization as analyzed in *Confronting Confinement: A Report of the Commission on Safety and Abuse in America's Prisons*, by John Gibbons and Nicholas Katzenbach (2006).

Rape represents another silenced problem for the prison system. *The National Prison Rape Elimination Council Report* (Commission 2009) provides information and statistics on the violence perpetrated behind bars. One observation found, "Idleness and the stress of living in crowded conditions often lead to conflict. Meaningful activities will not end sexual abuse, but they are part of the solution. It is critical that lawmakers tackle the problem of overcrowding" (Commission 2009: 9). Why does it matter if prisoners suffer cruelty while locked up? Other topics addressed in the two reports are prisoner's medical expenses and the mental and physical scars prisoners eventually carry back into society.

The last focus of this chapter will analyze the difference between the time a prisoner is sentenced to and the reality of the actual amount of time served. One of the main questions will center on the meaning of a "life" sentence. Two articles from the *New York Times* by Adam Liptak (2009), "To More Inmates, Life Term Means Dying Behind Bars", and, "Serving Life, With No Chance of Redemption," represent the problems associated with housing prisoners for many years, without the chance to overcome their crimes. This is another one of the catch 22 situations found within American prisons. The projected completion date for chapter three is January 15, 2011.

Chapter Four: What Next? Release, Probation, and Parole

Chapter four addresses the true meaning of release in terms of probation, parole, or completion of the sentence. The idea that criminals will eventually get out of prison does not typically occur to those who fought so zealously to put them there. *Hard Time: Ex-Offenders*

Returning Home after Prison, by Joan Petersilia (2003), reveals the staggering number of prisoners released back into society. “More than 600,000 people- 1,600 a day- were released in 2003, a number nearly equal to the population of Washington, D.C., and greater than the state of Wyoming.... Just 7 percent of all inmates are serving sentences of death or life without parole, and only a fraction of inmates- about 3,000 each year- die in prison. Thus, 93 percent of all inmates eventually return home” (Petersilia 2003: 1). Petersilia’s research also looks at who is coming back into the community and the uphill battle they face.

Looking at the reality of life on probation and parole provides a different perspective to the idea of harsh punishment even after time served. Punitive thinking follows the idea that people who commit crimes deserve harsh punishment and bold restrictions among society in order to keep Americans safe. The main focus of this topic will fall on the restrictions, protocol, and recidivism rates associated with both probation and parole and the actual effects on those released. “Invisible Punishment: The Collateral Consequences of Mass Incarceration,” by Jeremy Travis, and “What Works in Prisoner Reentry? Reviewing and Questioning the Evidence,” by Petersilia, both explore the complexity and double edged sword America’s justice system places on those said to have repaid their debt to society. Basically, these two studies show the struggles faced by ex-offenders to rejoin society and possibly change their lives for the better. This chapter also examines the complications of monetary retribution and debt as a part of the probationary or parole process. Another aspect of the chapter looks at the effects of felony registration and “check the box” legislation on criminals once they are released. The fact that ex-offenders must declare themselves as convicted felons on applications severely limits opportunities to avoid falling back into the criminal lifestyle. Finally, the chapter will illuminate the true nature of the recidivism cycle, and why it is so challenging to overcome through both

Travis and Petersilia's respective works. The projected completion date for chapter four is February 15, 2011.

Chapter Five: Fix It: Reforming the System

This chapter relies on the individual interpretation of the works of several criminologists and sociologists in order to find possible solutions to the problems forty years in the making. Basically, it will offer several ideas about how to reform each of previous chapters including sentencing, incarceration, and release. The paper comes full circle to show cause and effect, as well as possible reformations that could be implemented in order to restore control and efficiency to the American justice system. David Garland's (1990: 3) original quote about the depth to which America's criminal justice system will find a new platform as "thinking deeply" about questions directly regarding the American penal system are finally analyzed. Although these solutions cannot be directly tested, they can be argued as theoretically plausible ideas. The expected completion date for chapter five is March 1, 2011.

REFERENCES

- Beckett, Katherine and Theodore Sasson. 2000. *The Politics of Injustice: Crime and Justice in America*. Thousand Oaks: Pine Forge Press.
- Clear, Todd. 2010. "2009 Presidential Address to the American Society of Criminology." *Criminology*.
- Commission, National Prison Rape Elimination. 2009. "Executive Summary Report."
- Death Penalty Information Center. 2010. *Facts about the Death Penalty*. Washington, D.C.
- Department of Justice, United States. 2010. Retrieved September 25, 2010 (<http://www.justice.gov/>).
- Federal Bureau of Investigation. 2010. "Uniform Crime Report." Retrieved September 25, 2010 (<http://www.fbi.gov/ucr/publicationschedule.htm>).
- Hawkins, Gordon and Franklin E. Zimring. 1995. *Incapacitation: Penal Confinement and the Restraint of Crime*. New York: Oxford University Press.
- Garland, David. 2001. *The Culture of Control: Crime and Social Order in Contemporary Society*. Chicago: University of Chicago Press.
- Garland, David. 1990. *Punishment and Modern Society*. Oxford: Oxford University Press.
- Gibbons, John and Nicholas Katzenbach. 2006. *Confronting Confinement: A Report of the Commission on Safety and Abuse in America's Prisons*.
- Liptak, Adam. 2009. "Right and Left Join Forces on Criminal Justice." *New York Times*.
- Liptak, Adam. 2005. "Serving Life, With No Chance of Redemption." *New York Times*.
- Liptak, Adam. 2005. "To More Inmates, Life Term Means Dying Behind Bars." *New York Times*.

- Perkinson, Robert. 2010. *Texas Tough: The Rise of America's Prison Empire*. New York: Metropolitan Books.
- Petersilia, Joan. 2003. *Hard Time: Ex-Offenders Returning Home After Prison*. New York: Oxford University Press.
- Petersilia, Joan. 2003. *What Works in Prisoner Reentry? Reviewing and Questioning the Evidence*. New York: Oxford University Press.
- Pew Research Center. 2008. *One in 100: Behind Bars in America*.
- Shelden, Randall G. 2010. *Our Punitive Society: Race, Class, Gender and Punishment in America*. Long Grove: Waveland Press.
- Shichor, David. 2006. *The Meaning and Nature of Punishment*. Long Grove: Waveland Press.
- Tonry, Michael. 2004. *Thinking about Crime: Sense and Sensibility in American Penal Culture*. New York: Oxford University Press.
- Travis, Jeremy. 2002. "Invisible Punishment: The Collateral Consequences of Mass Imprisonment." Washington, D.C.: Urban Institute.
- Western, Bruce. 2006. *Punishment and Inequality in America*. New York: Russell Sage Foundation.
- Whitman, James Q. 2003. *Harsh Justice: Criminal Punishment and the Widening Divide between America and Europe*. New York: Oxford University Press.