

**Fallacies of the FIRST STEP ACT
And the Flaws of Prison Reform**

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Remember those in prison as if you were their fellow prisoners, and
those who are mistreated as if you yourselves were suffering.

-Hebrews 13:3, NIV

Introduction

Statistics presents there currently are 180,000 persons incarcerated in federal prisons. Yet, the laws meant to create order unintentionally promotes chaos as a consequence of mass incarceration, lengthy confinement and mandatory minimums sentencing. Although prison sentences contain punishment, a question arises as to whether or not judgments and lack of rehabilitation becomes detrimental to the safety of society through creation of deficient human beings and dysfunctional citizens. One, the elongated imprisonment of people experiences counter-productivity where inmates fall farther behind in finances, social norms, and familial affairs. Next, family members suffer chaos in the absence of loved ones. Children grow up without complete parental wholeness. Also, spouses attempt to deal with budgets, maintaining the household, and the sense of emotional duress and mental angst during separations. Lastly, society suffers through its experiences of increased taxes, devalued property due to criminal behavior, greater police presence and inevitably the return to communities of non-reformed ex-convicts.

The plight of inmates, families and society has not gone unnoticed. Questions ask about the damage done by mass incarceration, lengthy sentences, mandatory minimums and lack of reform. Thus, communities, courts, citizens, Congress and Senators unified their voice to speak out for prison reform. Albeit, some attach themselves in opposition--a trend of politics to oppose anything rallied by the other side, even if they deem it the best course of **action**.

However, advocacy groups like the American Civil Liberties Union (ACLU), Families Against Mandatory Minimums (FAMM), National Association for Rational Sexual Offense Laws (NARSOL), and Arkansas Time After Time (ATAT) names just a few in chorus with pro-rehabilitation and pro-reform. Then, the reality of prison situations, so long overlooked, came to the attention of President Trump through his son-in-law and senior adviser, Jared Kushner (whose father served prison time). Finally, the President cast his lot in to support prison reform.

Theories abounded as to how to fix the problem. First, however, the problem had to be understood. Is the trouble found in mass incarceration, lengthy confinement and mandatory minimums? Understanding this answer leads to the question, "What is prison for?" Thus followed the debate addressing the motive behind incarceration. "Are they for keeping the public safe? Rehabilitating inmates? Purely for revenge?" (Lopez, 2019, p. 2). While the answers for the two former questions coincide with positive responses, the latter creates a disturbing reality. One may agree it feels like revenge when portions of society become targets of modern day witch hunts against any criminal--misdemeanor or felon-- or sex offenders, or minority. Cannot happen? American history reveals, from Salem to Jim Crow laws, a sad reality of prejudices. Continuing, Mr. Sessions, former attorney general, as a federal prosecutor and senator from Alabama pushed for harsher sentencing, "ordering prosecutors to pursue tough charges in criminal cases as one of his first major acts as attorney general" (Benner, 2019, para. 11). Thus brings the next question, "Does tough on crime approaches solve anything?" Although Mr. Sessions and other law enforcement officers, prosecutors, and politicians insists it works, statistics by opponents reveals another side of the debate:

In 2017, David Roodman of the Open Philanthropy Project offers, 'tough sentences hardly deter crime, and that while imprisoning people

temporarily stops them from committing crime outside prison walls, it also tends to increase their criminality after release. As a result, "tough on crime" initiatives can reduce crime in the short run but causes offsetting harm in the long run' (Lopez, op. cit., p. 4).

Lastly, missing from the equation is address of reform and prevention of recidivism. Criminal justice reform for public safety by rehabilitation of inmates cannot dismiss steps which prepare prisoners for release and for for co-existence among society.

On December 21, 2018 President Trump signed into law the **Formerly Incarcerated Reentry [to] Society Transformed Safely Transitioning Every Person ACT** (First Step Act) as a vehicle to deal with making the public safe through rehabilitation of prisoners. The goal rests in elimination or reduction of recidivism. Therefore the aim focuses on sentence reform. Yet, inmates must participate in programming in order to take advantage of reduced incarceration through extended stays at halfway houses and home confinement. FAMM (2019) in an article entitled "Frequently Asked Questions, offers:

The First Step Act (S. 756) is a comprehensive criminal justice reform law that reforms some federal mandatory sentencing laws as well as some aspects of the federal prison system. At the core of the Act is a new system that allows some federally incarcerated individuals to earn time credits by completing rehabilitative programming. The individuals considered by the BOP [Bureau of Prisons] to have low or minimum risk of reoffending can earn 15 days of credits for each 30 days of programming completed; medium- and high-risk individuals can earn 10 days of credit for each 30 days of programming completed. Some prisoners... can redeem their earned time credits for additional time in halfway houses, home confinements, or supervised release at the end of their sentences (p. 1).

One truth remains for a large majority of the inmate population--each will one day be released back into society. How will they return? Will they be better or bitter? In summary, the First Step Act attempts at the release of reformed and safer citizens. Yet, a warning should be surveyed in that there exists fallacies in the Act's approach towards the problem of mass incarceration, lengthy confinement, mandatory minimum sentencing and lack of rehabilitation. Some flaws presented within this writing composition includes fallacies of the Act, debate concerning the humanity of inmates, hurdles of prison reform, limitations of programming and post-conviction release, and some prisoner just do not want to be rehabilitated.

Fallacies of the First Step Act

The First Step Act is a positive move in the right direction for criminal justice reform, public safety and prisoner rehabilitation. At least the intention is good. However, some hiccups arise in comparing the theory of the law with reality of incarceration. While the remainder of this composition surveys other flaws, here stands a presentation of a specific look into the fallacies of the Act. First, a definement of the motive behind the Act rests in the idea of recidivism and reoffending by released individuals. The goal remains to prevent re-engaging in more crime upon release. Thus, exists rehabilitative programming and other incentives (e.g., earned credit time). However, a look at the ACT in light of these goals moved FARM (2019) in their article Summary: First Step Act (under the paragraph Areas for Future Improvement), to reveal the problem of receiving earn time credit as not matching statistics about who is more likely to reoffend: The bill gives time credit for completing rehabilitative programs to minimum- and low-risk prisoners who are less likely to reoffend, not to higher risk prisoners more likely to reoffend and in need of incentives to complete programs (point 3).

A second deficiency within the Act rests in the lack of necessary assistance for post-release living. While one cannot deny the value of reform, Marie Gottschalk (2019) explains the Act aims more at catching people-doing wrong than ensuring receipt of housing, healthcare, and other support needed for successful returns back into their communities (p. 2). All too often inmates are release jobless, homeless, penniless, without friends or family, and without a support network. While the incentive to participate in programming dangles ideas of early release from prison one important fact remains in that there are not enough halfway houses under contract with the BOP. Thus there exists limited bed spaces in halfway houses for all the eligible and qualified inmates under the ACT.

A third fallacy rests in who actually qualifies for earn time credit and the rewards that will be available. For instance, denied is anyone with a conviction of violence--gun charges, murder, arson, assault and all sex offenses. Another category includes any who trafficked or manufactured certain drugs and/or lead a drug organization. Some of the drugs listed include heroin, fentanyl, and methamphetamine. Continuing, a third category covers treason. Fourth, white collar crimes and blue collar crimes find inclusion, not limited to just computer fraud, robbery with use of a controlled substance, any crime against or producing nuclear material, and illegal immigration. Also, District of Columbia offenders housed in federal prison find themselves exempt from qualifying for earn time credit. Lastly, activities within prison may also hinder rights to these privileges, including rioting in prison, and any serving life sentences. Considering the long list one may wonder, "Who exactly does qualify?" Perhaps here lies the point--the First Step Act was signed with such exclusions of qualifying that Congress, the Senate and the President only appear to advocate prison reform with no real likelihood it will include any criminals.

Humanity of the Incarcerated

Review of the First Step Act, as well as other approaches to criminal justice reform seems to lack consideration for the human-side of the inmate. Language consistently implies prisoners as objects, of test subjects and of mathematical algorithms to figure out. Incarcerate persons find themselves criticized for being like computer programs that just will not run as expected. Thus, a challenge arises in reform efforts that will "enhance public safety while minimizing social and economic costs and maintaining a fair criminal justice system that treats everyone--including people who are imprisoned--with dignity" (Gottschalk, op. cit., p. 1). However, prisoners are not excused for acting in non-human forms. While some inmates find ways to become appropriate, others purposely engage in antisocial acts. Then, a third class of the incarcerated includes those individuals that do not know how to act due to mental deficiencies. Thus, a challenge to understanding criminal tendency as either "nature" or "nurtured" behavior.

Pardon the pun, but the jury is still out. There stands three views about the foundation of humanity concerning the imprisoned: 1) those who advocate inmates are "born that way" (nature), 2) others who insists criminals are the product of the environment (nurture), and 3) some hold criminal behavior as a result of both of the first two views. First, a summary of "nature" beliefs, or determinism. This approach presents human will rests in heredity, natural law, and predestination. It states that if one is born a criminal there is nothing he or she can do about it--at least the drive behind it. Thus, no amount of aversion, Transactional Analysis therapy, or prison time can result in rehabilitation. This theory, while voiced, hardly finds useage against inmates. It is included here to present the view does exist.

The second belief of behaviorism reviews "nurture", where a person is thought of as a blank slate learning by life experiences--good or bad. "If

we were to investigate such events and their backgrounds more closely, we might be able to do more to prevent crime than we do now with our indignation and moralizing" (Miller, 1983, p. 177). The same principle of "nurture" applies throughout Proverbs of the Holy Bible. "Train up a child in the way he should go, and when he is old he will not turn from it" (Prov. 22:6). Of course, these words are general, since all human beings have free will and may choose for oneself the path each will walk. This includes one tainted by negative experiences but still chooses to shun criminal behavior. Instead he or she becomes a productive member of society. "Freud and most behaviorist have held to the cause-and-effect phenomenon seen in all the universe also holds true for human beings, that whatever happens today can theoretically be understood in terms of what has happened in the past" (Harris, 1967, p. 65). Lastly, a third theory finds definement through author B.F. Skinner (1974), writing in About Behaviorism, "A scientific analysis of behavior must, I believe, assume that a person's behavior is controlled by his genetic **and** environmental histories rather than by the person himself" (p. 189, emphasis mine). Yet, inmates are not excused from accepting responsibility for his or her own acts. In summary, Skinner (1974) presents determinism and freedom of choice remain part of the humanity of the incarcerated.

Hurdles of Prison Reform

The First Step Act promises rehabilitative programming to prepare prisoners for reentry back into society. Yet several hurdles must be navigated for this to become successful. The first hurdle asks, "What programs are deemed 'rehabilitative'?" It becomes hard to phantom exactly what courses are being plotted that will reform the humanity--nature, mind, heart, and will--of the convicted persons. Formerly at the Federal Medical Center in Lexington, KY programs have been offered (e.g., Incarceration on Both Sides of the Fence. This four-week program met one hours a week and only covered participants'

introductions, stating one goal for release, and receiving the course certificates. Thus, "What is rehabilitative in these type of programs?"). Another example rests in AA/NA, where at no time were the 12-Steps present and no sponsors partnered. Several other programs could be cited, but the point is made. There exists, however, courses on Financial Peace, Money Smart, and Job Club (which studies What Color is Your Parachute?). Perhaps these will become paradigm for future rehabilitative programming.

A second hurdle concerns activation of incentives of the Act. Although signed by President Trump on December 21, 2018, the earn time credit and restoration of the full 54 days a year of good time credit does not begin immediately. (Before the Act, inmates only received 47 days of good time credit.) The Act reads, specifically in Section 102 (b) (2)--the amendments made by this subsection shall take effect beginning on the date that the Attorney General completes and releases the risk and needs assessment system under subchapter D of Chapter 229 of title 18, United State Code, as addressed by Section 101 (a) of this Act. FAMM (2019), in Frequently Asked Questions, clarifies--"The DOJ has seven months from the signing into law to finalize and release... the risk assessment tool, which gauges an inmates risk of reoffense; After, the BOP gets six months for application of the assessment" (p.2). Also, the rehabilitative programming has two years to be created (ibid.). Therefore, mathematically, one sees three years before the First Step Act becomes actualized.

A third hurdle to overcome concerns finances. Prisons cost money. Staff costs money. Material for reform programs cost money. Lopez, (2019) reports the Prison Policy Initiative suggest actual cost of incarceration in 2017 covered a staggering \$182 billion (p. 4). While the intention behind the Act means to free up finances by reducing prison populations through cutting down returns, reality shows some flaws. First, many sentenced inmates are waiting

for bed spaces to become available in overcrowded "warehouse" prisons. Second, although arrests are in decline since the mid-1990s mandatory minimums resulting in lengthy confinements cause the shortages of available beds. Lastly, a look into sources for budgeting reform finds, "The First Step Act... legislation explicitly channels any money saved by reducing the prison population to law enforcement, the Bureau of Prisons and the latest front in the endless drug wars" (Gottschalk, op. cit., p. 3). One concern--if money saved by reducing prison population goes to law enforcement would not this lead to more arrests and increased prison populations? Also, concerning budgets, where will funds come from? While designating \$75 million annually for the next five years President Trump only allowed \$14 million in 2019.

It appears that the same bureaucrats that fought the First Step Act at every opportunity are trying to starve it to death, through the budget process--this is the 'Empire Strikes Back', said Pat Nolan, director of the American Conservative Union Foundation's Center for Criminal Justice Reform (George, 2019, para. 3).

Limitations of Programming and Post-Conviction Release

A majority of incarcerated persons will be released and hopefully will attempt to become productive members of society. During incarceration opportunities exist for one to better prepare for reentry. For instance, colleges and universities offer distant learning educational degrees. However, these cost money and unless one has funds or Pelt Grants (which has not been released for inmate use by the government) educational rehabilitation experiences limitations.

The First Step Act addresses the need for programs to assist transition back to life among free-society. However, limitations rest in programs available that can fulfill the definition of rehabilitative. Also, concerning programs, some simply become avoided by inmates. Case in point, a course

entitled "Victim Impact" witnessed low turn outs because prisoners refused to admit their crime victimized anyone, or because of pride, or peer-pressure, or keeping up a "bad-boy" reputation. Programs avoided cannot rehabilitate anyone.

The residential drug abuse program (RDAP) remains one of the most successful rehabilitations in the BOP. "It works," offers FAMM (2019) in Summary: First Step Act, "because it gives a one-year reduction to those who complete it" (para. Areas for Future Improvement, point 4). However, six flaws of the RDAP exists. First, logically speaking, if success is determined by amount of time inmate reduce their sentence and not on "rehabilitation" then all reform programs have to do is offer years off a sentence to be hailed as productive. Second, the RDAP has a 5,000-person waiting list. This reveals delays in participation of the 9-month course. Fault three--who qualifies for entrance? RDAP prioritizes participation to those individuals with drug offenses within the year of arrest/conviction. Therefore, non-drug related crimes, or outdated drug abuses causes secondary consideration. Continuing limitations, fourth--who qualifies for the year off? Any person with a violent offense--gun charges, arson, and **all** sexual offenses--bar reward. A fifth concern rests in those not qualified for the time off and their attitude toward enrollment. RDAP witnesses drop outs and refusals to participate by inmates who find out they do not qualify for time off their sentences. Lastly, concerning rehabilitation, RDAP may present tools for managing drug addictions, empathy, and taking ownership but what about resumés, job skills, money management, and other reentry necessities? (These same limits exists in the Sex Offender Treatment Program, with the exception of qualifying for a year off their sentences.)

Another limitation rests in the outcome, or objective, of the program. Can programs teach, train and benefit the incarcerated? Marie Gottschalk (2019) doubts there exists a positive result of reform. "It is well-established

that even the best educational, vocational, substance abuse and other programs have only a modest impact on lowering the unemployment and recidivism rates of former prisoners" (p. 3). Defending, she clarifies that skill deficiency and antisocial behavior comes as a result of incarceration, which erodes social skills and stigmatizes the ex-convict (ibid.). Can inmates be reformed? Or are they, by nature, doomed to repeat cycles of abuse and criminal behavior regardless of reform programming? If one considers Gottschalk's informative statements as applied to "free-society", then one may ask why go to college or post-graduation school if the best education has only a slight impact on lowering unemployment?

Continuing, a short review ties prison reform with post-release. First, society, in general, notwithstanding advocates for reform, are concerned with the negative idea of prisoners being released. Quite frankly it terrifies them, especially those who are victims of crimes themselves. Labels like "convict", "dangerous", and "unable to change" actually comforts communities. Dr. Klein (1993) reveals each "label" eliminates the threats of uncertainty, ambiguity, and fear; allowing a threat to be identified, understood, and dismissible; therefore revealing society "norms" (pp. 8-10, 55). Sadly, the labeling and separation of sections (people) of society creates tension--not safety, and "may give rise to the burning of witches [or] enslavement of Africans" (ibid.). Even politician convey this essence by fighting against reform legislation, like the First Step Act. In light of these prejudices, what attitude can be expected by inmates? What motive exists to reform for a society which rejects them? Thus, a limitation emerges, concerned with post-release,

In Lexington, Kentucky, a HVAC company (Fayette Heating and Air) boasts that no person with a criminal record finds employment with the business. Also, any customer seeking "safe" (another label) technicians (e.g. plumbers, electricians, carpet cleaners, etc.) can go online to shop local companies

on Angie's List. This website presents non-felon friendly companies with employees who pass background checks. Lastly, companies that do advertise "felon-friendly" use excuses like "gaps in employment" to deny jobs to inmates returning to communities. Therefore, these examples reveal the struggles and limitations of finding employment upon release. Thus, what rehabilitative programming can be offered to prisoners to strengthen career choice if the career field rejects ex-convicts? Hence, post-release persons end up in minimum wage jobs while attempting to pay rent, buy clothes, and provide for self and family. "The low wages and joblessness among former prisoners are not simply the predictable result of skill deficiencies" (Gottschalk, op. cit., p. 3). Concluding, society and companies hold some responsibility to embrace and curb recidivism, and eliminating limitations found in prison reform ideology.

An interesting point, concerned with career choices, rests in actual jobs inmates may train for. Continuing along the same theme from above, there exists fields that do not allow felons to engage in work. Hospitals, some hotels jobs, and office administrator assistant careers represent just a few. Thus, limitations in types of careers limits reform programming offered by prisons. Also, limitations rests in the education level of inmates. College course require High School diplomas or a G.E.D. Lastly, what program materials will be needed will create limitations. For instance, say, if offering auto mechanical courses will gasoline or other flammable chemicals be allowed in prison compounds? Or tools that may be deemed "escape tools", will these cause limits of offered rehabilitative programming? In conclusion, limitations exists and while some jobs cannot be utilized by released prisoners for safety of the community, there exists incentives for companies to hire ex-convicts (i.e., tax-break incentives). This, education and availability ends limits.

Some Prisoners Just Do Not Want Reformed

It might appear odd to make the statement that prisoner do not want reformed. Yet that is the point to be made. Several inmates turn down the RDAP because they do not qualify for the year off. This emphasizes human-mentality of wanting something for nothing, or at as little cost to oneself. The First Step Act attempts to offer incentives of earn time credit, but the long list of those disqualified from reaping benefits creates a long list of inmates not willing to engage in reform. "The First Step Act establishes perverse incentive structure to produce more prisoners to participate in programs... referred to as privileges, not rights" (ibid., p.4). In conclusion, with no reason to participate, no rehabilitation will be accomplished. Yet, the First Step Act chooses to ignore reality to promote theories and myths.

Conclusion

No single approach can completely deal with criminal justice reform alone when the approach does not include each angle of prison, inmates, programming, society and post-release. Flaws appear in survey of the fallacies in the First Step Act. Behavioral, hurdles, limitations, and prisoners' attitudes must be considered. Yet, the BOP chooses a "crystal ball" method of prediction to reveal who may or might not reoffend. The new risk assessment tool follows the former system, which the BOP uses to place inmates into security levels. However, can it predict the one who has nothing upon release and yet finds a way to become productive? Or can it say for fact that one who has everything will not suffer setbacks and reoffend? Also, what about those that, by birth and nature, or "in their genes" (Neill, 2019, p. 66) are doomed to reoffend?

In conclusion, with much that could be said (but limited in time and space), The First Step Act cannot be easily critiqued without looking at why criminals exists. "Can knowledge of the underlying cause... bring about a change in the way justice is administered?" (Miller, 1983, p. 199); Or reform?