

Corruption Behind Bars - Crooks under the cover of law

The prison complex is the only industry rewarded for failing. When crime rates increase, which in part is caused by recidivism rates, prison officials receive more money to build. If the prison population stays high, officials have job security. Therefore, officials are not incentivized to make correctional facilities accomplish what they are supposed to: correct prisoners. In fact, some people have called prisons "Monster Factories." People often parole from prison worse than when they entered, which is caused at least in part by prison officials' lack of accountability.

Government agencies are supposed to hold themselves accountable through internal affairs or independent committees. These institutions investigate complaints to determine their validity, then mete out discipline if appropriate. Often individuals chosen for such positions formerly worked in the institutions they monitor. This sometimes creates bias, as the monitors feel a natural kinship and are reluctant to punish offending employees. Further, the monitoring organization may be in the same building as the institution they are monitoring, thus creating a potential conflict of interest. Who wants to work alongside people who have a vendetta against them? While all governments struggle with accountability, the problem is on steroids for those who work in the prison system for three reasons: prisoners are nearly powerless to hold staff accountable, prison staff have extreme bias towards those they oversee, and most of America do not sympathize with prisoners who are mistreated. However, America should care, as prison staff with unbridled power leads to higher crime rates.

First, a huge power disparity exists between prisoners and correctional staff. Since most incarcerated people lack both funds and knowledge to hold officials accountable, they rarely raise their complaints in the correct way or through the appropriate medium, such as judicial review, lawsuits, etc. Even when they do have this ability, fear of staff retaliation often deters such action. Prison officials have incredible power over prisoners, as staff can retaliate by simply transferring a prisoner, resulting in prisoners losing jobs, relationships, and property. Although retaliation is illegal, officials usually claim they needed bed space. They can also engage in more nefarious methods, such as breaking prisoner property (claiming they needed to search the item) or writing false misconduct tickets. Since hearings investigators often rubber stamp tickets that come across their desk, these tickets usually stick.

Currently, only federal courts remain open for inmates to challenge most misconduct tickets, as Michigan has prevented prisoner from seeking judicial review of class II and III tickets. MCL 791.255??? However, the federal courts do not want to question how state officials operate prisons, as the courts do not have expertise in managing prisons. *Procunier v. Martinez*, 416 U.S. 396, 404-5 (1974). Further, the courts require prisoners to achieve nearly impossible standards to win civil cases, and even when they do win, the courts often award them with nominal damages, i.e. \$1, which is a slap in the face. When people are prevented from lawfully airing grievances, they begin to exercise the only power they have: violence. When England refused to take the colonists' complaints seriously, the colonists declared war. While prisoners usually do not exercise this option, they sometimes declare war in their minds, and this is not good for anyone.

The second reason the government does not hold prison staff accountable involves their common cause to punish bad guys. This causes them to completely ignore many violations against prisoner rights, as reviewing officials believe that prisoners probably deserve whatever happens to them. Correctional staff are also extremely suspicious of every prisoner complaint. Even before investigating, they assume officers did nothing wrong. While prisoners sometimes lie in order to be transferred away from a predator or debt problem, most fear retaliation too much to file false reports for no reason. However, a few prisoners abusing the system should not deny all the ability to air their grievances.

The third reason prison officials are rarely held accountable involves America's embracement of retributive justice. This sentiment results in the public largely turning a blind eye to prisons, as the public assumes that whatever prison staff do is necessary to keep the "animals" under control. Since the 1970s, most Americans adopted a "nothing works" stance based on faulty academic journalism and the war on drugs. America has changed its stance a little over the past ten years, but lawmakers have failed to make substantive changes to the law. Although protesters cried out for criminal justice reform after George Floyd's death, their message was hijacked by ANTIFA, "defund the police," and a general concern about overall racial equality in America. As a result, it is questionable whether real prison reform will occur in the future, which means prisoners will continue to be mistreated without access to remedies that can protect their constitutional rights.

Mistreating prisoners results in significant consequences. When people are treated poorly, they become angry and resentful, which encourages them to treat others poorly. Poor living conditions, as well as prison staff's overly intrusive methods of maintaining "security," contribute to prison violence and negative attitudes toward authority. Security is the number excuse to exercise retributive practices (e.g. leaving on the lights all night, screaming over the intercom, unnecessary lockdowns, etc.). In contrast, treating people fairly encourages people to voluntarily comply with the law, as they view authorities as legitimate. See "American Policing at a Crossroads: Unsustainable Policies and the Procedural Justice Alternative," Schulhofer, Tyler, and Huq, **The Journal of Criminal Law and Criminology**, pg. 335-374, 344, 351 (2011).

Think about how many people viewed the COVID-19 restrictions Michigan Gov. Gretchen Whitmer and New York Gov. Cuomo made regarding visiting family over the holidays. Since people felt the restrictions as unfair, millions of normally law-abiding citizens completely ignored them. While these people will largely return to obeying the law, prisoners who are regularly subjected to unfair rules become steeped in an anti-authority culture. This does not automatically turn off after release. Thus, focusing on retribution directly sabotages rehabilitation. In contrast, research indicates that focusing on rehabilitation in a holistic manner works. For instance, BBC News found that Norway reduced its recidivism from 67% to 20% in 20 years by focusing on how prison staff treat prisoners. Rehabilitation is not obtained simply by offering educational programming but also by providing prosocial role models and a positive environment.

To create a system focused on rehabilitation, we need to strengthen our state employee accountability systems. More importantly, states need an independent prison oversight agency to conduct regular inspections of institutions and publically issue findings and recommendations. Michele Deitch in "The Need for Independent Prison Oversight in a Post PLRA World," 23 FED. SENT'G Rep. 236 (2012). Further, former prisoners should help this agency act as a think tank, as no one understands prison problems or potential solutions that prisoners need like those who have lived in prison. For the same reasons, the Michigan Department of Corrections' grievance procedure needs to be revamped to help prisoners improve the system from the inside. Grievance coordinators should use complaints to improve the system rather than viewing them as nuisances to be eliminated. Last, but not least, grievance

coordinators' offices should be moved outside of the prisons they oversee in order to reduce bias. These improvements will help balance the power between prisoners and staff, thus creating a safer and healthier environment for both.

Respectfully
Submitted,

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