

## A Most Vengeful Kind of Institution, by E.C. Theus-Roberts

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The pretext for prison is simple. Crime necessitates punishment. To mete out punishment there must be a time and place. Seeing as the guillotine has fallen decidedly out of favor (though, it may have been more humane than current justice.) Imprisonment for specified periods is the preferred method for addressing criminality today. State executions still occur with regularity in the United States and elsewhere, but incarceration is the overwhelming First, Second and Third World choice.

The United States relies on incarceration so much it has given rise to a phenomenon not seen anywhere else: Mass incarceration. The United States incarcerates roughly 600 people per 100,000, annually. The closest to that figure is Russia with over 400 per 100,000; and that says a lot.

The reason the United States has the ignominious honor of cradle of mass incarceration is that, unlike every other country, it uses imprisonment retributively.

Whether it be state sanctioned execution or many decades incarceration. The guiding epistemology is Deterrence Theory. Deterrence doctrines and adherents operate on the belief that if and when punishment is doled out, always in sufficiently severe terms, others will see the example and want to avoid a similar fate. That is, exemplar punishment to dissuade future wrongdoers and doing.

Elsewhere I discuss the doctrinal myopia and real world consequences of deterrence. Here, I only intend an examination, historical and current, into social perspectives on criminal justice, incarceration, criminality, and revenge. That being said, I still feel it prudent to state deterrence is a fallacious practice creating more harm than the original criminality it is supposed to curb.

Criminal justice in the United States descends directly from English common law. From witness swearing (a distant descendant of the trial by ordeal; apparently, the unjust could never correctly swear before God) to petit and grand juries (an answer to English versions of 'lettres de cache'). While some aspects have been assimilated, more modified, and many others seen as examples of what not to do. The old English prejudice against criminals has carried over unsullied; if anything, more entrenched and sophisticated in our day and age.

Law replaced vendetta and most vigilantism. Instead of an eye for an eye, people turned to the lawful courts which embodied government and authority. By means of social contract or convention the individual's prerogative to avenge a wrong was deposited in the hands of judicial officers, but the age-old vengeful thirst remained our own. This is why oh-so sophisticated and cultured 19th century French society indulged in a little pre-Leviticus bloodletting in the later half of the 1800's. A

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similar, if not the same, desire to be avenged motivates modern U.S. criminal law legislation and penal methodology.

When a particularly heinous or shocking crime occurs there is, unavoidably, a knee-jerk reaction. The cry goes up and politicians stand tall with new, harsh, more Draconian than Draco legal solutions in hand. Habitual and violent criminal sentence enhancers. Mandatory minimums and determinate sentences. Aggravators, special statutory crimes, cumulative sentencing, and more. Such is the case even for the more mundane crimes. Commit three felonies in California or Colorado and you very well might spend the rest of your natural life in a concrete box. Talk about an expensive joyride or Snickers candy bar.

Majority of laws on the criminal books today have less to do with stopping or preventing criminality as they do with avenging an injured party. Inproportionality is only the beginning. The proper logic undergirding society's use of imprisonment is to temporarily make society safer by removing the offender to an isolated confine so they may ponder upon their poor decision, learn their lesson, and make better choices next time. Under deterrence's influence the logic turns shades of "Alice in Blunderland." Current U.S. practice removes the 'penitent' from penitentiary and abandons any pretense

of "corrections." Can there be any lesson to learn once a person is condemned to 50, 80, 200-plus years incarceration? With people being mandated to serve fifty, seventy-five, eighty-five per cent of such lengthy sentences. Nobody can be compelled to rehabilitate if there is no hope for a tomorrow. It is no wonder the United States has an incarcerated population over 2.4 millions.

In all honesty, it is slightly sadistic when one's sense of justice relishes the thought of anybody spending the rest of their life confined to an 8x13 foot bathroom. Especially once you consider the hyper aggressive, violence-prone, oppressive environment normal to modern prisons in the United States. Though, when the objective is a metaphorical eye for an eye then "justice" can not be harsh enough. And, that is what U.S. justice encompasses - the paradoxical 'two wrongs make it right.' Concepts of the New Testament are still far off mirages.

As recent as the 20th century, exile was still en vogue in eastern European countries, Russia, Spain, and Latin America. Few members of the EU (European Union) sentence people to more than 20 years imprisonment; none has a death penalty. And then, there is the United States: no exile, favors decades' long incarceration and zero inhibition toward state-sanctioned murder. What sets the United States apart is its internalization of deterrence.

One of the key factors in any deterrent theory

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is impersonalization; which adds further distancing from the target of deterrence created by pre-existing detachment. Whenever we concern ourselves with wrongs to be avenged there is an instinctual alienation: them and us. Deterrence takes that natural animal distinction to its farthest reaches in criminal and beyond to its culmination in prisoner. This is necessary for deterrence. It operates by expanding on centuries-worth of conditioned prejudices regarding crime, criminals, and the like to such an extent society feels utmost confidence in laws severe enough to make Deaco blush. For all the deterrence ideologies and methodologies being employed throughout the United States one would think it would have a serenely low crime rate. Such should be the case if deterrence theories actually worked. Deterrence certainly did not pan out in Athens. Even Zycurgus saw the writing on the wall. For the United States the writing is behind the walls; as in, within its penitentiaries.

The United States incarcerates more people than any country in the entire world. Yearly, more than 2 millions are actively imprisoned, detained, or incarcerated. Add to this figure more than  $6\frac{1}{2}$  millions under some form of state supervision or conditional liberty. Also taking into account those disenfranchised consequence of criminal prosecutions resulting in a convict

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ion. Considering all of these the figure climbs to more than 30 millions or about ten per cent the total population. It is the over-confident reliance on incarceration and disenfranchisement of all those convicted that are most problematic.

Troubling is not the recourse to incarceration itself. Rather, it is the erroneous conviction that by mere incarceration and through longer and longer sentences to said incarceration the social ill that is criminality will be rectified. It is not necessary to read Dickens to learn about the detriments of long drawn out incarceration. Today docudramas, biographies, autobiographies, films, plays - sources documenting mass incarceration's ills proliferate. Fact is modern imprisonment tends to either worsen or break an individual more regularly than reform. Such was the case in Eastern State Penitentiary which serves as the blueprint for modern penology today.

The idea that with enough punishment any individual can be made to behave is horrifying. That deterrence adherents whole-heartedly subscribe to it is something worse. Deterrence carried to its fullest extent, coupled with our retributive understanding of justice, is a license to sadism. U.S. justice does not cease once punishments are dictated and sentences passed. It continues into the penitentiary where prison-

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creats seek to "Maximize hardship to discourage recidivism." In layman's terms, make living in a concrete box, isolated from society, separated from family and loved ones, relegated to nonpersonhood, and with few illusions of liberty or anything approaching autonomy more unpalatable than it already is.

The retributive mentalities that help forge this penal existence extend to convicts returning to society. Disenfranchisement is an extension of deterrence. Ex-prisoners and all those who escaped imprisonment following convictions are duly stripped of the many determinative rights and guarantees inalienable to citizenship. Considering our retributive streak, deterrence-related alienation, and the Judiciary's validation, declaring all prisoners 'civiliter mortuus.' It only seems logical that a convicted criminal should continue in a comparable state of dead citizenship. Our sense of justice is quite long-termed and quasi-permanent. The credentials of criminal, convict, prisoner, ex-prisoner are generally irreversible.

In the United States, our comprehension of justice proceeds from a desire to be avenged. Ensuring sufficiently severe punishment begins in the drafting of laws and sanctions, goes into contemplations of penal administration, flows into conditional liberty, state supervision, and finally rests in "returning" convicts to society in a properly debased state. In short, U.S.

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society's concept of justice has little to do with righting a wrong. Its focus is on punishing the offending party. As the above demonstrates, following a deterrent logic, no degree of severity in punishment is too much.