

Roundtable on the Future of Justice Policy

Examining Criminalization, Punitive Excess and the Courts in the United States: Implications for Justice Policy and Practice

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On the Conditions of Confinement

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A man who has experienced imprisonment finds that one of the most difficult things to achieve is some sense of objectivity regarding his physical state. This effect, essentially a limitation of the perception that is subjective, derives immediately from the actual imprisonment of the physical being. There is a certain degree of mental trauma inherent in this transition from a free, unconfined state to a confined state. This trauma will prove, at least during the initial stages of confinement, to be greater than the mental fortitude of the individual, or, more specifically, greater than the individual's immediate capacity to process this drastic change in environment. This shock is but the first of several conditions working in conjunction towards the ultimate goal of confinement – punishment and, insofar as it is, rehabilitation.

However, confinement, as we see it today, unfortunately, has veered well beyond the realm of punishment for the sake of rehabilitation, and has sunk into the congested mire that is punishment for the sake of punishment. Which leads us to the second condition – fear. When I say fear, I do not mean that frightened or terrified state which immediately comes to mind, but rather that fear of present or imminent danger to his well-being which all men possess. In the specific case of confinement, this “fear” will indicate to the individual that the imprisonment of his physical being is harmful, and, stemming from shock or in conjunction with the condition of shock, will lead the individual to assume that his confinement is no mere penalty or means of correction, but a punishment that is beyond what is fitting or proper. This is, in fact, a reality for many who are currently or formerly incarcerated, and has developed in the minds of those facing judgement before the law – and likewise in the minds of the public and those who bear witness to criminal proceedings – a sort of “a priori” fear that a punishment mandated by the agents of the law can never be accordingly just. That judgement at the discretion of men – who are by nature subjective and can never be truly impartial or unbiased – can only be unfit, improper, or, as proven in more than a few cases, cruel.

This inevitably leads us to the third condition – indignation. When an individual feels that what has happened to him is unjust, the natural and expected response is anger, hostility, and eventually, rancor. This is true even for those who have willfully committed an offense against the law, for theirs is a state of mind that justifies wrongdoing as either an act of necessity – as in the case of circumstance – or the consequence of a wrongdoing that was first acted upon them – as in the case of defiance or vengeance. It is only in rare instances, as in the case of delusion or mental-illness, that we will find no reason or insight into an individual's actions. Any investigation beyond what manner of illness or delusion has taken effect will prove unsatisfactory, as any conclusion from any other study is moot.

Despite the eternal debate of between what is right and wrong, or what is just and unjust, it remains irrefutable that the law itself is sovereign and we are its subjects. I will not go so far as Plato to say that we are slaves and law the master; but the very nature of mankind's evolution into civilization was facilitated by the institution of some form of government or another, and the ethical and moral standards of community. With these

instituted, the laws were also founded. So long as we are governed by law, it follows that we should abide by it, perhaps in the same manner in which we would abide by our God. Because if we should offend it, we should be punished accordingly lest we fall victim to anarchy and chaos, and revert to that bestial state in which nature reared us. It cannot be argued, then, that the law itself exists for any other reason than for the benefit of all men, as it is only through the establishment of law that all men are rendered equal and afforded equal liberties. Now, we come to the core of crime and punishment in contemporary society – perhaps in all history. In the words of Kant – and how fitting for the matter at hand – the law is not a “thing in itself,” and therefore can neither administer to itself nor pass judgement on its offenders. These tasks must be left to proxies, who can only ever administer according to their own education and experience, and who can only pass judgement according to their own beliefs, opinions, and preferences, rather than by any means of objective reason or pure knowledge. Even the most devout of priests may wander about, preaching the word of God and philosophizing of the Supreme Will, though he understands nothing of the true nature or essence of God, much less His will.

Consequently, we shall find here similar concerns raised under the prior condition, namely, that the judgement of men is questionable at best, and cannot be relied upon as an objective truth. Acknowledging this, and with it foremost in his mind, when a transgressor of the law is brought before a court to answer for his misdeed – remember, this is a court administered by men – he can neither look upon judge or jury as his equals, nor, once judgement is passed, can he consider his sentence, or punishment, as anything but unfair or unjust (except, perhaps, in the case of less serious offenses, or that of the aforementioned instance of delusion or mental-illness). In fact, the transgressor will be overcome by a feeling of utter inferiority and helplessness before these men, with the judge upon his lofty seat like mighty Minos and the jury in the stands like distant spectators in the Coliseum waiting for the moment when they shall at last signal “to die” or “to live.” For it is they who ultimately hold the man’s fate in their hands. Thus, in so fateful a circumstance as confinement for the purpose of punishment – I shall leave rehabilitation out of it, for now – and sequentially resultant of shock and fear – perhaps, I venture, justified by them – the advent of an “a posteriori” indignation will take hold. Indignation manifests in a hostile manner which is too often mistaken as inherently characteristic of all such prisoners, and eventually it will develop into a deep-seated bitterness.

Which brings us to the fourth, and most detrimental, of the conditions of confinement – resignation. At this stage, the individual will, of necessity if he hopes to retain some semblance of sanity, find himself in one of two mind-states – spite or despair. Should he succumb to the former, he will become prone to belligerence and conduct himself in a manner even more aggressive than before, especially towards any figure of authority, as an errant child who feels he is being wrongly chastised may lash out against his guardians. Should he succumb to the latter state, the man will find that depression has become his most faithful companion and he will no doubt immerse himself in it, seeking solace in its solitary depths. Both of these states of mind are quite clearly indicative of resignation. The increase of hostility and desire for confrontation is a reaction against the onset of hopelessness, as the individual is impacted by the prior conditions of fear and indignation, and imagines that he must prove, especially to himself, that he is not at all helpless and can retain some form of control by means of violence in the threat of violence. Contrarily, the decline into a state of despair is the man’s acceptance that he is, in fact, helpless under the circumstances, as there is nothing within his immediate power that can alleviate them. Bereft of action, he will begin to lose hope, and, instead of reacting violently, he can only stumble upon that base emotion which offers comfort in the acknowledgement of his suffering – self-pity.

It is here that we shall have reached a crossroads, of sorts. The condition of resignation is one with lingering and often devastating effects that usher us into a deeper understanding of the two prevailing factors of confinement itself – isolation and time.

By the condition of isolation, I do not mean the complete and utter separation of the individual from all modes of human contact. Rather, I mean a separation from those forms of human interaction that constitute normalcy, or, more specifically, those which the man was accustomed to prior to confinement. Such is the fragile state of the human mind that, once deprived of that which it is most familiar with, any new thing may be perceived as alien, harmful, or even sinister. When we speak in terms of imprisonment, this effect is amplified to the greatest degree, for the deprivation of freedom is essentially the deprivation of life as the man knew it.

We may also consider isolation, under the terms of confinement, as a sort of banishment from a civilized society into one which is primitive, inasmuch as the individual is removed from the sole benefits of civilization – namely, equal liberties, social status, and social interaction. He is placed under conditions of a degenerate, primitive kind – namely, prohibitions, loss of social status, and restricted interaction. For if society itself is a product of civilization, then the absence of society – or rather, that concept of society which is widely accepted as the norm – is a product of degeneration, and therefore a regression to a former, primitive state. Thus, isolated, a man will, by instincts inherent in his upbringing and experience in civilized society, either seek to reclaim that sense of community in whatever capacity it remains within his new existence; or if the prior conditions of shock, fear, indignation, and resignation have worked to debilitating effect, the man will further attempt to isolate himself beyond what external restrictions have been imposed upon him and deny any form of interaction whatsoever. Just as a hermit may shut himself away in a cave both high and deep, the man hopes to avoid the encounter of a single person. In either event, the effects of isolation will prove similar; in the former, the man will be limited to interactions with other individuals like himself, who also suffer under the same conditions of confinement. Or he is limited to figures of authority who are seen as abstract figures, is under constant supervision, and has occasional, yet often unavoidable, contact with other prisoners. Both of these scenarios constitute interactions not of a “normal” kind, but of a kind that is only fitting under the circumstances and, though they are unnatural, seem to be natural; thus, what is initially abnormal may be rendered normal under abnormal conditions.

Now that we have gained some insight into this particular form of isolation, we must now seek some understanding of time as it relates to confinement – specifically, the condition of stasis. We have established the mental and physical states of the prisoner insofar as they relate to the conditions of confinement; however, the condition of stasis alone is neither relatable to or indicative of either the mental or physical state. This “stasis” is only brought about by the prior condition of isolation, and not a definitive effect of the individual’s thought or being, but rather an effect of the environment itself. Many may argue that this is quite impossible, that the passage of time can neither be stopped, nor slowed, nor altered in any capacity, and that any such differentiation in the nature of time itself can only be a product of individual perception. To arguments along these lines, I must cede to some extent, though I will answer as follows:

Isolation, under the terms of confinement, creates a microcosm of sorts, and within this specific microcosm, the concept of time holds an entirely different meaning from what is understood in the world at large. Although the established limitations of time remain, they are rendered secondary in light of a new limitation. This limitation is specific to this environment and universal to each and every individual who is imprisoned – namely, “length of sentence.” For whether a man must serve one year or thirty years, and though the normal passage of time remains an eternal aspect, it is an undeniable truth that the specific limitation of time that is an individual’s length of sentence can never pass until that very moment when he once more becomes a free man. Thus, so long as he remains confined, the normal limitations of time are of little consequence, as the abnormal limitation of his sentence will prove of greater consequence until he is no longer confined. Consider, for instance, the case of a man who returns home after twenty years of confinement. He will have aged, of course, and perhaps be a different man after so long, but his twenty years of imprisonment also constitute twenty years in which society has also aged and become different in his absence. Will he not have to reorient himself, then, if he wishes to live in this new society?

And is not this very act of reorientation proof, to some degree, that he was subject to the normal limitation of time while concurrently subject to the normal limitation of length of sentence, and, thus, in stasis? This further proves that the condition of stasis is neither related to or indicative of either the individual's mental or physical state. It is the sole result of external forces beyond his control, and not of either thought or sensation. We may safely conclude that stasis, under the terms of confinement, is an "a priori" condition produced by isolation.

At this point that we will discover that the condition of stasis has a twofold effect; either the individual will fall deeper into a state of utter stagnation, wherein his ultimate goal is merely to await the length of his sentence to run its course, or he will seek some manner in which to optimize his use of time, wherein he can attempt to live some semblance of a productive life until his length of sentence has ended. Which leads us to the final condition, the only one of which is absolutely within the individual's volition, and the only one in which he has a choice – "quality of life." For the sake of convenience and reference, I shall term it the condition of "existence."

To be clear, a state of stagnation does not necessarily mean that the individual is doing absolutely nothing during this time, but any action that does not induce some form of growth, maturity, learning, or rehabilitation may be considered stagnant. Such actions are not indicative of positive transformation, but instead limit the individual to an existence that remains the same as it ever was and, if continued, ever will be. Unfortunately, most cases of stagnation consist of cycles of violence and self-destructive behavior. Even more unfortunate is that the prior conditions of confinement – namely, shock, fear, indignation, resignation, isolation, and stasis, all working in conjunction – are conducive to stagnation. Thus, it only follows that an individual subjected to these conditions will most certainly find himself in such a state. Which raises the question: how, then, can anyone transition from this state of stagnation?

As mentioned previously, the condition of existence is one of volition, and, therefore, the answer cannot be given as a universal truth – as in the case of natural cause and effect. Nor is it an empirical deduction that may serve as a basis for study and scrutiny – as in the case of logic or syllogism. Rather, the condition of existence is an anomaly that is specifically conducive of an individual's state of mind. However, insight in this regard is not entirely beyond our reach; for it is under the preeminent conditions of isolation and stasis that an individual will be given an opportunity, with some acclimation to the four previous conditions – that is, if these have not worked to debilitating effect – for reflection and introspection. This gives rise to a sub-condition of existence, namely, enlightenment.

By "enlightenment" I do not mean an attainment of nirvana or the gaining of some comprehensive knowledge, but simply one that affords the individual some understanding of the self and what sort of life is proper according to his desires for his self. Again, as it falls under the condition of existence, we can reach no universal conclusion, but rather it will become apparent that it depends solely upon an individual's experience, disposition and, accordingly, desire, as to what an enlightened state will mean for the individual. However, this derivative aspect does not, in any way, encourage or facilitate its fruition. It remains for the individual to recognize that an elevated state of understanding is even necessary, and it is this simple recognition that proves the most difficult, requiring of the man not just a certain degree of knowledge and maturity, but also some separation from that which has proven to be man's greatest inhibition since time immemorial – pride. To have any hope of achieving enlightenment, as I have described it, one must first be willing to admit that he needs to be enlightened at all. Yet, if a man living in confinement and subject to its conditions denies that he requires any more understanding than he already has, he clearly indicates his pride and the need for him to be rid of it. If an individual is able to reach this state of enlightenment – the recognition of the need for some form of change if he

hopes to live a more productive life – he is capable of transitioning from the state of stagnation caused by the conditions of confinement and into the state which is, ideally, the sole purpose of confinement – rehabilitation.

Thus, we have gained much insight regarding the conditions of confinement, and with this matter concluded we must, of necessity, seek to gain some understanding of the nature of rehabilitation. To do this, however, we must first turn to understanding the most critical motivating factor along these lines – hope; specifically, in the case of a prisoner and due to the condition of resignation and the subsequent effects of stagnation – the recovery of hope.