

2 Introduction

Preface

The following document and subsidiary documents presented here as appendices present a body of works in progress. They aim to present a fully fleshed out concept for the replacement of our outdated, ineffective and counterproductive criminal justice system and law enforcement mechanisms with community managed, best practices driven components which are designed from the start to improve the outcomes of unfortunate situations.

This concept is something I have labelled Positive-Cooperative Justice (PCJ) for various reasons which will become apparent upon further elaboration. At the end of the day, this not an idea I claim ownership of. It is up to the communities which adopt it what they want to call it. In my estimation, it is simply what real justice would look like. But the word justice by itself has been used to mean very different things, ranging from the restoration of balance (what is proposed here), to vengeance. The means for achieving balance themselves are also wide and varied, and so, it is necessary to distinguish one method from another and to put names to the concepts employed. Also it is important to clarify that what I am proposing is not merely Restorative Justice, though again, Restorative Justice would fit nicely within PCJ as a significant component. This set of proposals goes further than anything I have seen in relation to Restorative Justice, in that it seeks to replace all elements of criminal justice, to include a framework for other forms of restitution, a framework for employing best practices in the area of treatment,

and suggests structures for facilitating the day to day operations, funding, and management of the associated organizational framework.

What has prompted me to send these papers out now, instead of waiting until I am able to get them to a satisfactory level of completion, is the unfolding of recent events. The horrific death of George Floyd at the hands of Minneapolis police has among other things led to, for the first time in my memory, calls to "defund the police" finally being given some attention by the major press (though they have been voiced by many for decades). What defunding such institutions might look like could mean various things. This idea I have been working on for several years represents one such possibility. One which I have not heard spelled out elsewhere. And so, that is why now.

I had made an attempt to get this out in March of this year, as these issues were getting their peak of media attention. However, unfortunately that process got stalled due to reasons beyond my control, and the sole copy of this paper in its most up-to-date form did not make it to the person who was going to put it online for me. Meanwhile, due to the COVID-19 pandemic, my institution went into lockdown, and I am just now getting back to being able to make changes to this document and print new copies.

In any event, as discussed in greater detail in the proceeding pages, the thing I am calling here PCJ could be set up as a proof-of-concept pilot program in places that are ready for change. Various communities come to mind as being at that point wherein they are already fed up with business-as-usual policing, courts and cages.

PCJ would seek to replace each of the aforementioned components with ones which are community-centric, transparently operated, and best practices driven. The model of "policing," i.e. scanning the environment for deviations from some imposed order, would be replaced with social work, asking people in the community where the problems are and delivering what is needed to address those problems, and responding to emergencies as required, at the level appropriate to that specific emergency. Courts, which prescriptively pass sentence on crimes, which are treated in criminal law as acts against the state rather than the effected parties, would be replaced with mediation panels where all effected parties' grievances are addressed, and enforceable agreements for reconciliation could be forged. Jails and prisons would be replaced by walk-in localized, safe and inviting community centers where people could go for needed help, where there are a variety of services and safe places for a wide range of ongoing beneficial activities. Those facilities would be constructed and staffed such that they could also house the homeless, those in need of protection, and those from whom the rest of us might need protection—under objectively measurable criteria, for however long that can be demonstrably required, but not arbitrarily or in lieu of more practicable solutions.

The ideas proposed, while at first blush might strike one as idealistic, are each proven. They also each have better track records for solving the sorts of problems our law-enforcement systems are currently charged with handling. The main section of the paper, Positive-Cooperative Justice: A Practical Alternative to Fighting Fire with Fire, and its attached appendices go into a fair amount of detail on the research behind these claims.

It is clear to me that we are far overdue for something like PCJ. As I explain in the paper, if we are to claim we are a democratic country, then this is the sort of thing we need to be looking at. Our current criminal justice systems, from policing through the courts and into the prisons, is a vestige of our monarchist past. It is anti-democratic. Uniformed, armed representatives of the state can be good people at an individual level, but what the psychological impact of that uniform and gun are on both its wearer and the person over whom its authority is wielded cannot be made neutral. What is more, the sociological dynamics involved when a group in those uniforms come up against a group who is not, cannot be overlooked. These things were put in place because somebody in the past recognized the psycho-social effects they carried.

At the end of the day, we may decide we need some number of uniformed, armed (or even unarmed) tactical teams to deal with certain violent situations. That seems likely. However, to say that is what is needed to deal with a homeless person in need of shelter, a person with overdue parking tickets, or people's day-to-day-drama seems absurd, and too often process tragic. We need better ways to help regular people cope with and help each other, and we need professionals to de-escalate violent situations. We do not need a hammer for every job.

Preamble

The questions may arise in initial approach to this document, why a document that proposes a complete alternative to the existing criminal justice system is needed, and perhaps with a greater sense of discomfort, why the recommended

solution, herein labeled as PCJ, is being presented as a business solution, rather than for example, some set of legislative reforms.

To the first question, in surveying some of the literature on the subjects of how our current criminal justice system fails to meet the needs of both the individuals directly affected by its workings and society as a whole, the author has observed a general lack of concrete suggestions about what could be done to fully remedy or replace this broken system. There are a great many suggestions in the literature about what could be done to better prevent crime, such as improved education and the elimination of poverty. There are also ideas about how the justice system itself might be re-worked or smoothed out around its many rough or tattered edges to make it feel like it is doing something functional. Some of the ideas out there also call for the abolition of prisons and even law enforcement, but in the author's reading seem to fall short of fully spelling out a comprehensive alternative that would meet the various needs that the Criminal Justice System purports to address. Or, if they have that, then they fail to lay out practicable means to reach such ends.

Contrary to these discussions, runs a body of literature and portion of public discourse that argues either for not improving the current system or doubling down on many of the aspects of that system which reformers and abolitionist challenge as dysfunctional. This body of literature falls short of illuminating concrete reasons which might be compelling to those who know better, instead relying on quasi-philosophical arguments, or ones which mask these in pseudo-scientific reasoning, and which only serve to reinforce prejudices, misconceptions and perpetuate myths. This body of work seems mainly designed to confuse the

central and legitimate issues raised by that work which relies on science or appeals to the basic human impulse to want to improve that which is broken. The motivations behind the writing of this strain of literature are several, one is pretty clearly to resist industry change, and must in some way root back to business interests. Another may in fact be rooted in honestly arrived at beliefs. Whatever the case, this sort of material begins with and then builds upon assumptions which ring true when left untested- primarily that punishment corrects bad behavior, that threats of punishment deter it, or that some people are just so bad that there is no humanity left in them and therefore they should be either destroyed or hid away permanently-propositions which prove false when put to thorough testing. Using these bits of misinformation as though they were factual, this sort of media go on to explain the best ways (often relying on unchallenged, supposedly expert opinions) the best way to deal with these (non) facts.

It is clear that this oppositional or apologist strain of discourse appeals to certain ideological points of view and in many cases rests on emotional arguments or prejudicial-if not uninterested-concern for truth. That said, I do not want to get off on the wrong foot with those who have found themselves compelled by such argumentation. I simply ask that for this analysis, we try to look at the facts and what complete evaluation of the available facts and examination of the results of various methods is able to tell us does and does not work, and try to keep an open mind to any challenges raised here in relation to what the reader may have been previously immersed in in terms of information.

Some of what I discuss here goes very strongly against the popular view of things as they stand. To that end, I also encourage my fellow reform-minded people to

consider how difficult it might be for people who have been conditioned to think one way for their entire lives to take on a starkly different point of view, and try to find ways to approach this which do not deepen the divisions. It has been interesting to me to discover over the years of working on these ideas and discussing them, that actually perhaps some of those who are most willing to stop and really think over this information and shift their opinions in reaction to that information, is people who work for the prison system, perhaps because they get to see first-hand, how poorly the tactics they were taught in training work in application.

In contrast to many other works in the area of justice reform, the author will also make little attempt to work on the basic human sympathies that many would insist are central to the idea of the proper treatment of those who the criminal justice system exists to intervene upon. While there are many good points to be raised surrounding the ethical treatment and basic human rights which are largely denied to prisoners, those who raise these concerns typically seems to provoke emotional reaction against themselves, when brought up to those who tend to subscribe to the ideas of just deserts and the sentiments underlying the bases for punitive or even vengeful responses to harms done by one person to another.

While every effort will be made to convince those already in favor of justice reform to adopt the cause of PCJ as their framework for reform, it is of equal importance to recruit those who have traditionally been resistant to such ideas, and therefore, the arguments made within this paper against the punitive system and in favor of alternatives will focus entirely on the pragmatic. As some would point out that forgiveness is for the person doing the forgiving (because it frees

that person from the bonds of carrying around anger or even hatred), not for the person who is forgiven. Similarly, giving good treatment to those who have caused the worst sorts of harm, especially towards people we care about, is not something we would do only because we strive to be kind, or if we were naive about human behavior, or human nature, rather, it is something we will do if we are intelligent enough to rise above our desires for retribution in consideration of our greater needs for safety and care to reduce our opportunities for wanting revenge. Simply put, by treating criminals like human beings, instead of criminals, we increase the likelihood of them acting like human beings and not criminals. That is better for everyone. We will do these things if we are wise and forward thinking, and we are able to recognize that our current strategy is neither of these things. Plainly, we will do these things if we want better security, because as satisfying as some people might find it to punish those who have done wrong, it does not typically work out to make those who have been punished want to do better. Also, it is good to be kind, especially to those we are wont to find detestable.

In the final analysis, the key points for any kind of justice system should be to do the following: a) prevent people from hurting each other, b) help those who have been harmed, c) make reasonable attempts to ensure that those who have wronged others in the past do not continue to do so, d) encourage those who have caused harms to make amends for the harms they have caused and take responsibility for the welfare of both themselves and whomever they come in contact with, and e) improve the outcomes of bad situations. The current justice system does not do well on any of these points, and completely ignores several of

them. This paper will detail how this is so, and give a general sense of how PCJ would address each of these elements.

The first goal of this paper is to evaluate the real and measurable concerns of those who argue that we need something like law enforcement and detention for dangerous people and evaluate these concerns in the light of their pragmatic aspects. The author agrees that there are problems with how many people treat other people which are worthy of community concern, and, in many cases, intervention, as well as resolution. However, as will be demonstrated throughout the first section of this paper, the peculiarities of the criminal justice system run contrary to the best practices in dealing with these problems, as demonstrated through observation, experimentation, and historical record. In short, those who favor reforms can reasonably do so on sound principles. They need not rely on idealistic or emotionally based arguments (and while these might be what are used by some proponents, sober analysis of the facts insists on both the utility and wisdom of reconsidering our entire approach to crime and punishment). In contrast, as will be demonstrated, those who insist on so-called tough on crime tactics, or those which aim to continue or build upon on existing law enforcement methods and solutions must do so in sharp contradiction to a substantial body of evidence which points to more effective ways of reaching any goal of in fact being, as they tend to claim, tough on crime. The more accurate label for this political position would be acting tough toward criminals, which is a sort of posturing which tends to provoke defiance, not cooperation, or penitence. This paradigm includes a component of labeling or even shaming of those who call for meaningful reforms as being supposedly soft on crime. It is the aim of this author

to demonstrate that providing those who have done serious harms with the means to increase their own sense of belonging to the greater community and skills to play a meaningful role in that community is anything but soft on crime, it is in fact the key component necessary toward eliciting the feelings of remorse which true retribution rest upon.

To the second point, it has been observed that the prison industry is in fact an industry and is permeated with business interests. While one might point to the privatization of various aspects of this arrangement that have developed over time, it could also be observed that as an enterprise, even under a purely state-owned and operated model, law enforcement is run like a business. It is in the worst sense of the term effectively a socialist endeavor in the sense that it is a state run industry. It employs people, it rests largely on a service model (i.e. in terms of responding to emergencies, managing people's behaviors, housing and so forth), in certain cases, it produces products and it requires various goods and services to operate. Even in its origin, one will find many examples that revolve around the protection of private interests by private security forces (Pinkerton National Detective Agency, 2014). Law enforcement has been adapted to the idea of serving and protecting the public good, but was never designed for this purpose.

The funds for this business model come mostly from taxpayers and the non-culpable relatives of those who come under the scrutiny, supervision or wrath of it. The profits go mainly to those who sell goods and services to this industry in the form of weapons, munitions, vehicles, land, facility construction and upkeep, detention hardware, uniforms, or those who are paid as employees or otherwise

compensated as political proponents of the same. This is a system that enriches few at the expense- all too often in the forms of lives, happiness, or loved ones lost-of the uncompensated masses. What we need, and as this paper will demonstrate, can have, if we develop the will, is the opposite of the above, a system of, by and for the People, one which enriches our communities at the expense of paying customers, who also gain some benefit in trade. However, this need not be an exclusive arrangement. The more future-oriented among those involved in the current arrangement could also benefit, with the rest of us.

While it would be ideal that we come together as a society to insist on meaningful changes which enrich our communities and are immune to profiteering, this seems to be an unlikely outcome of the current trajectory. The proposal contained herein centers on the facts of the situation as it stands today within our capitalistic economic system. In this light, any alternative to the existing punitive and policing standards employed under the umbrella of law enforcement, must compete with its entire constituency of business models. To that end, this paper will attempt to lay out a model that addresses the various problems in terms of its potentials to compete with and beat the prison

industrial model at both the street level and the level of industry itself.

Nonetheless, it is hoped that, rather than acting as a call to arms to engage in open conflict with the existing model, that the path suggested here will lead to a multi-layered set of win-win solutions, which can satisfy the needs of the public for safety, our communities for viability and wholeness, individuals for meaning and mental health, and for those who are currently in the business of selling goods and services to the existing institutions an opportunity to rethink their

offerings in order to provide solutions which are compatible with the greater good of society.

Approaches to Reading This Document

There are a few ways this material could be approached. For the affirmed abolitionist who just wants to see what I am suggesting that's different, you might jump straight to the Business Plan (Appendix 3); such reader might also go on to review the main body of the paper itself, as a source for reference and its other appendices for relevant data, in particular, surrounding both the effectiveness of various strategies toward promoting public safety and estimated cost comparisons between models.

I would ask that the more politically conservative reader might consider first what is being proposed in the affirmative, prior to evaluating the challenges raised against the existing model. To that end, such a reader might start with the section A Practical Alternative, which is where the paper begins to describe what PCJ is, before reading the first several sections which detail the problems with the existing system and lays out the reasons that, in this author's estimation, the existing system is irreparable, or more to the point, is designed to be something other than what most people want it for.

The reform inclined reader who believes it is a salvageable but flawed system should start with page one, or more generally examine the origins of this criminal justice system, the behavioral sciences, economics, history and the various other factors which come into play in this arena. The opening section of this paper

touch upon some of these element, and contains sufficient references to aid one in getting started in this endeavor.

Introduction

My main focus in this paper and subsidiary components contained in its appendices—up to this point—has been what replaces prisons. There is discussion in this context of what replaces police, but it is not as robust. The Centers of PCJ are the defining element. Interaction with the community, community outreach, should be as a natural extension of these. What is presented here should be seen as an overview. The details, how things should be organized on the ground, is beyond the scope of this proposal. Clearly there should be some kind of first-responder model in place for violent situations. But what should that look like? If fire fighters did for fires what cops too often do for crimes, nobody would call them. We need something—absolutely everybody—feels comfortable calling when things get out of hand. We need places people can always turn to for help without risking everything they hold dear just to get that help. That is what this thing I am calling PCJ would offer.

The reader might notice that throughout these papers there is little direct discussion of race or economic class. This is due mainly to time constraints. I simply have not had the time to write every section into this paper which needs to be in any complete version. Another aspect is priority. It is my perception, though this may be starting to shift with the current political winds of change, that most Americans still believe that the basic "crime problem" is that some people do bad things and we need to respond to that, and the racial economic

disparities in reported perceived crime rates and law enforcement responses are if not wholly, at some level, secondary to that. So, these papers focus mainly on our responses at that level first. That said, the model of PCJ itself is one which is meant to simultaneously tackle the economic and discriminatory considerations at their most fundamental levels. In other words, while the discussion around this is a bit lacking in this iteration, the realities have not been overlooked.

That policing in America began in the south with vigilantes on slave patrols enforcing arbitrary rules over enslaved black people, and in the north with union-busting armed-muscle working for factory owners, and others keeping overworked starvation-wage workers in-line with violence needs to be appreciated. That adding baking soda to cocaine increases the mandatory prison sentence by twenty times for no solid reason other than that minority races use that version of the drug more often than whites is also of serious concern where the existing system is being examined. There are endless ways in which I could point to how this system is weaponized against black people and other racial and cultural minorities.

Similarly, there are endless ways this system is more generally tailored to harm poor people, an economic category which to this day remains disproportionately black and brown, but which also includes a large number of whites. If not deliberately, it acts specifically as a framework to keep them poor, uneducated and in self-defeating cycles of violence and addiction. From cash-bail, to fines, to prison pay-calls to family and inmate commissaries, many of the associated costs of criminal justice are shown in the appendix "The Real Costs of Incarceration", which demonstrates that the families and communities of incarcerated people are

the hardest hit, and that prisons and law enforcement on a whole account for 6% of GDP.

When look at this way, that is a sad fact of economic accounting. Yes, there is an increase in GDP thanks to all this tragedy, much as there is for every car accident. Beyond the incomes this generates, little if any good comes of it. All of us in some way pay for it, but mainly it is those who can least afford to pay that do the working class and poor. This perpetuates poverty. Worse, it is also the working class and poor who are most likely to be the targets of the very harms this so-called justice system is supposed to be protecting them, as much as anyone else, from, in short, mainly these groups find themselves in a vicious circle, simultaneously over-policed, and under-protected. More money and resources are spent on keeping all of us (but more so the lower economic classes) under surveillance, under the gun, or under lock and key by many multiples than whatever it could possibly cost to lift each from poverty, and in so doing eliminate most of the security needs which arise from that poverty, even perhaps aside from adopting the recommendations of this paper which would surely much further reduce those security needs.

While racism is clearly a factor in all of what is wrong with this system all the evidence suggests that it is more of a symptom than a cause, one reinforces the other. The more fundamental forces at play are socio-economic, and have to do with the preservation of an age-old power structure which predates American democracy.

Wealthy people go to rehab and get counselling for their inter-personal problems, most of their minor transgressions (and some of their major ones) are overlooked, their destructive patterns are mitigated, occasionally the very serious ones land them in jail. Working-class and poor people get shot, Tazered, strangled, beat, have dogs sicked, sent to prison, executed, what have you, routinely. It is two entirely different systems.

This is not to discount the effects of skin color on the equation. A wealthy black person may find his or her color is more important than his or her status when dealing with this or that cop or store clerk, or random stranger. Conversely, a working-class or poor whiter person might—whether he or she notice it or not—receive preferential treatment from one of these same people. On the more extreme end the likelihood that a confrontation with authority might turn deadly is perhaps amplified when one has darker skin.

As a person who at different times in my life has been perceived by others as variously white or Latino in different contexts and in others understood as variously Jewish and other, I have experienced a variety of forms of both preferential and mistreatment from people in authority. Nonetheless, this did not alter the fact that in one prison setting a run-in I had with a guard who had a reputation for being behind numerous clandestine beatings and murders of inmates, this C.O. seemed perfectly content with the idea of taking me to a back room and beating me (perhaps to death) regardless of the fact that he clearly believed me to be white, until I began talking about a certain person in my family who was a lawyer and so on, by what he said about why he let me go made him think twice. It was the perception of status which saved me, prior to that

moment, in his mind I was default minority status based on my surroundings and uniform.

As sociologists have pointed out, the leadership of explicitly racist organizations usually are not strong believers of their own rhetoric. Racism is really about power. At the end of the day, race is a convenient tool for certain elements of the extremely powerful to keep the masses at odds with one another and garner support for other things politically.

Racial disparities within the criminal justice system are one of its defining features. They are part of its design. To this day in the supposedly liberal state where I am imprisoned, the administration allows, if not encourages, inmates to self-segregate. Our dining hall tables are mostly divided along racial or ethnic lines. Cells are typically two people of the same race or culture. In many states one cannot sit at this or that table or bench in the day-room if they are the wrong color without provoking a racial incident. In most cases, prison administrations turn a blind eye to these tensions wherever they do not actively participate or encourage them.

The community centered model of PCJ would help to alleviate some of the problems of systemic racism. While it is true that there are many communities in this country which remain largely segregated, increasing diversity, especially in our cities, is the norm. The amount or lack of diversity in the community should be about similar within the community center, if not more so, as centers should also attract paying customers from outside the immediate community for treatment services. Along with this, centers would have the added attention of

available social-work-oriented staff on-site and an organizational focus on communicating an attitude of inclusion, cooperation and mutuality. With these elements in place, many of the intra-group tensions could be expected to diminish. Furthermore, whereas criminal justice involves the imposition of order from outside agencies, PCJ would be based on community self-determination. This is of paramount importance where the question of racism and classism are concerned. Wherein all too often the implications on the ground are that what is called law enforcement is no more than the employment by the wealthier classes of police, judges and punitive institutions against the best interests of low income people.

At the end of the day, those of us who want to see this system replaced with something more thoughtful and sensible are left having to argue against misperceptions that we are asking for something less safe. What I have labeled Positive Cooperative Justice in these pages would result in much greater safety and much better end result for those who have already been harmed than business-as-usual law-and-order. This is what must be communicated to anyone with ears to listen. The belief that the only way to combat violence is through greater threats and worse violence is absolutely bonkers.

We need to deal with the underlying causes of destructive acts, the interruption of their commission and their aftermath with both intelligence and understanding. We need to develop and employ—with consistency—a set of best practices for these things. We should start with recognizing that sending an armed person or squad of armed and armored people with military hardware and

military training is simply not the answer to every situation, and furthermore is not the answer to most of the situations wherein this our current go-to response.

We should recognize that locking people in a bathroom (which is what most prison cells basically are) for years-on-end is not therapeutic and does not protect the public in any way. We should finally pull our heads from the sand and look for real solutions. This is what is offered here.

To many, the idea that we could ever have a society without jails and prisons seems impossible, if not absurd. Those who argue that alternatives could exist are often portrayed as unrealistic or even as extremist. The arguments for prisons are deceptively simple ones: some people are too dangerous to be allowed to live free, people need to be punished for the things they have done wrong, or that the threat of punishments deters crime. The arguments against prisons tend to be complex and multidimensional and at times may even tend to center on ideological components. All too often, those which the author has encountered, discuss that which should be done in replacement of these institutions in only the most general terms or even focus on what we shouldn't be doing without ever specifying what we should be doing instead.

In this brief treatment of the subject, the aim is first to demonstrate to the reader that there are more thoughtful, more effective and less costly ways of addressing society's needs for security, retribution and fostering personal responsibility. These approaches, at the very least should be tried in parallel to the less effective, costlier and more dangerous ways employed by the current justice system.

Following this exposition, the author will outline a concept for community owned and centered resources, treatment and secured housing facilities based on such principles and which can generate additional social and economic benefits for those who have been harmed, and the community at large. Within this discussion, the author shall attempt to clarify the basis for the call for an entirely new concept of justice, labeled here as Positive-Cooperative Justice (PCJ), and distinguish its workings from the various related ideas of Restorative Justice, and the emerging field of Positive Criminology, both of which are most likely compatible with PCJ, and could be integrated to it, but which appear to fall short of offering the total replacement which is needed for the existing punitive structures.